



Amendments Regarding Sales Tax Rules for Transactions between Certain Related Entities and for Purchases Made by Nonresident Businesses

This memorandum explains recently enacted legislation that:

- amends how sales tax applies to transactions between certain related entities, and
- narrows the exclusion from use tax for purchases made out of state by nonresident businesses.

Part CC of Chapter 59 of the Laws of 2017 amended the Tax Law for transactions involving tangible personal property that is resold between certain related entities. Part CC also narrows the exclusion from use tax when a nonresident business purchases property or services outside New York State. These amendments apply to sales made and uses occurring on or after **April 10, 2017**.

Amendment regarding transactions between certain related entities

Generally, tangible personal property that a purchaser intends to sell in the regular course of business is considered to be purchased for resale and is not subject to sales tax. The term *sale* includes any transfer of title or possession, or both, for a consideration, including exchanges, barter, rentals, leases, or licenses to use or consume tangible personal property.

Part CC amended the Tax Law to no longer permit a resale exclusion for sales of tangible personal property between certain related entities. As a result of the amendment, the following sales of tangible personal property are considered retail sales subject to sales tax:

- sales to a single-member LLC or its subsidiary for resale to its member or owner, when the single-member LLC or its subsidiary is disregarded as an entity separate from its owner for federal income tax purposes;
- sales to a partnership for resale to one or more of its partners; or
- sales to a trustee of a trust for resale to one or more beneficiaries of the trust.

Example 1: *A New York resident creates a single-member LLC that purchases artwork in New York City with the intent to lease the artwork to the single member of the LLC. The LLC is treated as a disregarded entity for federal income tax purposes.*

The purchase of the artwork by the LLC does not qualify as a purchase for resale and is subject to sales tax at the rate in effect in New York City. In addition, the lease of the artwork by the LLC to its single member is also a taxable sale.

If the single member purchased the artwork directly, without the additional transaction involving the LLC, the purchase of the artwork would only be subject to sales tax once.

Note: A seller that accepts a valid exemption document in good faith from a purchaser will be protected from liability for any tax due. An exemption certificate will be considered valid if it is properly completed and presented within 90 days of the transaction.

Amendment regarding the use tax exclusion for purchases by nonresident businesses

With certain exceptions, Tax Law § 1118(2) provides an exclusion from the imposition of use tax for the use of property and services purchased by the user while a nonresident of New York State.

Part CC amended Tax Law § 1118(2) to narrow the exclusion from use tax for purchases made by nonresident business entities. As a result of the amendment, use tax is now imposed when a nonresident business brings tangible personal property or a taxable service into New York State for use here **unless** the nonresident business has been doing business outside of New York for **at least** six months prior to the date that the property or service is brought into New York State.

Doing business means that the business is actively engaged in normal operating activities, such as hiring employees, having a payroll, and making routine purchases and sales. Merely being organized as a legal entity is **not** a sufficient indication of doing business absent other normal operating activities.

Example 2: *X Corporation was formed in Delaware on January 15, 2017. X Corporation is a nonresident of New York State. X Corporation remained dormant until March 17, 2017, when it hired employees and purchased a number of computer servers for use in its business. On June 24, 2017, X Corporation opened an office in New York State and brought some of the servers to New York for use here. Because X Corporation had been doing business outside New York for **less** than six months prior to bringing the servers into New York (i.e., March 17 - June 24), X Corporation owes use tax on the servers.*

Example 3: *Same facts as in Example 2, except that X Corporation does not open its New York office and bring some of the servers to New York until October 4, 2017. Since X Corporation had been doing business outside New York for **at least** six months prior to bringing the servers into New York (March 17 - October 3), the exclusion from use tax provided in Tax Law § 1118(2) applies and X Corporation does not owe use tax on the servers.*

Example 4: *XYZ Corporation is a resident of New York. On May 1, 2017, XYZ Corporation forms PQR, Inc., a Delaware corporation wholly owned by XYZ Corporation. On June 1, 2017, PQR, Inc., purchases a large sculpture for installation in the lobby of XYZ Corporation's New York City offices. PQR, Inc., conducts no other business activity, and has no employees or offices. On February 1, 2018, PQR, Inc., brings the sculpture into New York and delivers it to the installation site. Even though PQR, Inc., was in existence for more than six months when it brought the sculpture into New York (May 1, 2017 - February 1, 2018), PQR, Inc., was never doing business as required by the statute. Therefore, PQR, Inc., will owe use tax on the sculpture when it is brought into New York.*

This new restriction on the use tax exclusion does not apply to individuals. For more information, see Tax Bulletin [Use Tax for Businesses \(TB-ST-910\)](#). Additionally, if a nonresident business paid sales or use tax in another state when it purchased the property or service subject to use tax under this new law, a reciprocal credit for sales or use tax paid in the other state may be available. For more information on this reciprocal credit see Tax Bulletin [Reciprocal Credit for Sales or Use Taxes Paid to Other Taxing Jurisdictions \(TB-ST-765\)](#).

Note: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.