

Compensating Use Tax
on Materials Manufactured Out of State

Effective September 1, 1989, Section 1110 of the Tax Law is amended to provide that the use of tangible personal property manufactured, processed or assembled by the user, even when not offered for sale by the user in the regular course of business, is subject to a use tax when brought into the State and either (1) used as such or (2) incorporated into structures, buildings or real property by contractors, subcontractors or repairmen erecting structures or buildings, or otherwise making improvements to real property or maintaining, servicing or repairing real property. Prior to September 1, 1989, the items at issue here were taxed only when similar items were also offered for sale by the user.

Consequently, as of September 1, 1989, any person who manufactures, processes or assembles items of tangible personal property outside New York state and uses those items in New York State as such or to erect buildings or otherwise modify, improve or repair structures, property or land anywhere in New York State, must pay a compensating use tax on the items used in this state.

The base upon which the use tax is computed depends on whether items of the same kind are offered for sale in the regular course of business.

- (1) If items of the same kind are not offered for sale in the regular course of business, the amount subject to tax is the amount paid or agreed to be paid (including transportation costs) for the materials used in manufacturing, processing or assembling the tangible personal property. (The cost of transportation is excluded from use tax if it is separately stated in the written contract, if any, and on the bill rendered to the user.)
- (2) If items of the same kind are offered for sale in the regular course of business, the amount subject to tax is the usual catalog selling price of the items used.

The use tax due is computed by multiplying the base upon which tax is computed by the combined state and local sales and use tax rate in effect in the taxing jurisdiction in which the tangible personal property is used.

If the person incurring the use tax is registered as a vendor in New York State, the use tax must be remitted with the vendor's next regular sales and use tax return.

If the person incurring the use tax is not registered as a vendor in New York State, the use tax must be paid within (20) days from the date the manufactured, processed or assembled item is used in a taxable manner in this state. Form ST-130, NEW YORK STATE AND LOCAL USE TAX RETURN, may be obtained at any of the regional district tax offices of this department, or by calling toll-free (from New York State only) 1-800-462-8100. From areas outside New York state call (518) 438-1073.

If you have any questions about this or any sales tax matter, please call our Taxpayer Assistance Bureau toll-free (from New York State only) 1-800-CALL TAX (1-800-225-5829). From areas outside New York State, call (518) 438-8581.