

ENTERTAINMENT EVENTS/PROMOTERS

Effective June 1, 1989, the Tax Law was amended to provide rules relating to the operation of an entertainment event at which there are taxable sales of tangible personal property. As amended, the Tax Law imposes certain registration and reporting requirements on persons who are involved with or otherwise promote this type of event.

Entertainment Events

An "entertainment event" is a concert, athletic contest or exhibition (other than an amateur sports competition), and other similar forms of entertainment where:

- the performers at the event give less than four performances a week at the location where the event is held or, in the case of athletic contests or exhibitions between teams, no one team competes in more than four contests a year* at the location where the event is held; and
- the facility or site at which the event is held has the capacity to accommodate more than 1,000 persons (capacity to accommodate does not mean only seating capacity, but includes standing room and lawn accommodations).

The determination of whether or not an event is an "entertainment event" is not affected by the number of people actually attending the event, whether there is an admission charge to the event or, if there is an admission charge, whether such charge is subject to sales tax or an admissions tax.

Thus, the term "entertainment event" includes, but is not limited to, events such as:

- folk, rock, pop or symphony music concerts;
- dramatic plays or musical shows;
- circuses, carnivals, rodeos;
- stand-up comedy acts;
- dance performances;
- beauty pageants;

*For purposes of determining whether an athletic contest or exhibition is an entertainment event, a year is any twelve consecutive months.

- boxing matches or exhibitions;
- wrestling matches or exhibitions;
- body building or weight lifting competitions;
- auto races, drag races and tractor pulls;
- roller derbies;
- mud wrestling;
- track meets;
- horse shows;
- dog shows;
- golf and tennis tournaments; and
- baseball games and other professional team sporting events where neither team plays more than four games at the location during the year.

Example 1. The owner of a fairground that has the capacity to accommodate up to 2,500 persons schedules an exhibition softball game at the fairground site. Neither team participating in the game is scheduled to compete in any other events at the site during the year. Because the exhibition softball game is being held at a facility with an attendance capacity of more than 1,000 persons, and because neither of the teams participating in the game is going to compete in at least five contests at that location during the year, the exhibition softball game is considered to be an "entertainment event."

Example 2. A performing arts center with a seating capacity of 500 and a surrounding lawn area that can accommodate an additional 3,000 persons schedules the following events for a summer season: a ballet company and an orchestra which each perform five times a week for two weeks; rock, folk and pop music concerts in which the performers give only two shows; an opera company which gives a total of four performances over a four-day period consisting of two different operas which are each performed twice; a modern dance company which gives only one performance; and stand-up comedian shows and musical plays which consist of one performance. The performances by the ballet company, the orchestra and the opera company are not entertainment events because, although they are held at a location that has the capacity to accommodate more than 1,000 persons, the performers at these events give a least four performances a week at the same location; the other events are considered to be entertainment events since the performers give less than four performances a week at that location.

Example 3. A promoter schedules 10 wrestling exhibitions to be held once a month, from February through November. All 10 exhibitions will be held at the same facility, and will feature the same wrestling teams. The facility has a seating capacity of 12,000 persons. Each wrestling exhibition is considered to be an entertainment event since it is held at a facility that can accommodate over 1,000 persons, and the performers at the events give less than four performances a week at the facility.

The term "entertainment event" does not include events such as:

- high school or college athletic games;
- little league games;
- festivals featuring amateur sporting events;
- tennis, golf or similar tournaments lasting 4 days or longer;
- professional baseball, football, basketball and hockey games where at least one of the teams participating in the competition plays a regular schedule at the facility that consists of at least five competitions during the year (any twelve consecutive months including the month in which the competition in question takes place); and
- flea market, craft show, antique show, coin show, stamp show and similar events (these type of shows are regulated under different provisions of the Tax Law).

Entertainment Promoters

When taxable sales of tangible personal property are made at an entertainment event, the person or persons who are either directly or indirectly responsible for authorizing such selling activities are considered to be "entertainment promoters." The term "entertainment promoter" includes the owner or operator of any facility or site where an entertainment event is held at which taxable sales of tangible personal property take place. The term also includes any other person who:

- either directly or indirectly rents, leases or grants a license to use space to a vendor making taxable sales of tangible personal property at the facility or site where an entertainment event is held; or
- under any other type of arrangement authorizes a vendor to make taxable sales of tangible personal property at an entertainment event; or
- has any management responsibility with respect to vendors making taxable sales of tangible personal property at an entertainment event.

Exempt organizations (such as religious, charitable, scientific or educational organizations, the State of New York or the United States) which are owners or operators of facilities or sites where an entertainment event is held at which taxable sales of tangible personal property occur, or which otherwise promote such entertainment events, are likewise entertainment promoters.

The responsibilities of an entertainment promoter are to:

- obtain an entertainment promoter certificate from the Tax Department, and prominently display the certificate at the entrance to the entertainment event;

- make sure that each vendor who will be making taxable sales of tangible personal property at the event has a valid Certificate of Authority and that the certificate is prominently displayed at the vendor's location (this includes denying authorization to make sales to any vendor who does not have a valid Certificate of Authority);
- keep a record of the date and place of each entertainment event and the name, address and Certificate of Authority number of every vendor authorized by the promoter to make taxable sales of tangible personal property at the event; and
- within 20 days of the end of the month, file a report with the Tax Department regarding any entertainment event held during the month at which the promoter, directly or indirectly, authorized taxable sales of tangible personal property by a vendor.

The entertainment promoter must file an application for an entertainment promoter certificate at least 20 days before the scheduled start of the entertainment event if the promoter is authorizing vendors to make taxable sales of tangible personal property at the event. If the only sales taking place at an entertainment event are sales of food and drink for consumption on the premises where the event is held, such sales, although taxable, will not require the organizer(s) to register as entertainment promoters or file reports relating to the event. However, sales of items such as T-shirts, buttons, posters, tapes, record albums, programs, banners, video tapes, etc., will require the organizer(s) of the event, and anyone else who directly or indirectly authorizes such sales, to register as an entertainment promoter. Registration is required regardless of whether the vendors operate at the premises on a regular basis or are present only for the duration of a specific event.

Example 4. Two professional basketball teams play a pre-season game at an arena owned by a university. The arena has a seating capacity of over 5,000 persons. Neither basketball team will make another appearance at this arena during the year. The vendors selling tangible personal property and food and beverages at this event are the same vendors who regularly make sales at all other events which are held in the arena. Most of the other events are college sports games which are not entertainment events. The promoter(s) of this basketball game must register as an entertainment promoter even though the vendors at the event are not transient vendors and operate at the site on a regular basis.

Example 5. The operator of an amphitheater with a seating capacity of 1,200 persons arranges for a folk/rock concert to be held at the amphitheater. Part of the space in the amphitheater is rented to vendors of wine and cheese so that during intermission and after the concert, the audience can purchase refreshments. No other sales occur at the site of the concert. Although the concert is an entertainment event, the operator of the amphitheater is not required to register as an entertainment promoter since the only sales taking place at the event are sales of food and beverages.

There can be more than one "entertainment promoter" for a single entertainment event since that status applies to any person who, directly or indirectly, is responsible for vendors making taxable sales of tangible personal property at an entertainment event.

Example 6. The owner of an amphitheater with a seating capacity of 1,200 persons leases the amphitheater to an organizer who arranges for a folk/rock concert to be held at the amphitheater. In addition to the entertainment, the organizer also arranges to have vendors of wine and cheese at the site as well as vendors of memorabilia such as sweat shirts, record albums and tapes featuring folk and rock artists. The concert is considered to be an entertainment event, and the presence of vendors making taxable sales of tangible personal property (sweat shirts, record albums, etc.) makes the owner of the amphitheater, as well as the organizer of the event, entertainment promoters.

When two or more persons are entertainment promoters for the same event, the requirements imposed on a promoter regarding that event will be satisfied when any one of the promoters complies with the requirement. In other words, if one of the promoters applies for an entertainment promoter certificate and files a report on an entertainment event, the other promoters do not have to register or file a report for that event.

An Application for Entertainment Promoter Certificate, Form PR-169.4, must be filed for each location (facility/site) where an entertainment event is being held. The application may include more than one event as long as all events listed on the application are going to be held at the same location. In cases where there are two or more promoters for a single event, the names and addresses of the other promoters (called "co-promoters") must be listed on the application. The application must also contain the identifying information (name, title, social security number and address) of the owners and/or principal officers, if applicable, of the person applying for an entertainment promoter certificate.

When an application for an entertainment promoter certificate is filed, the Tax Department will issue an entertainment promoter certificate to the applicant within 10 days after receiving the application. The certificate, which is issued free-of-charge, allows the promoter to authorize vendors to make taxable sales of tangible personal property at the entertainment event. If the applicant does not receive a certificate or a notice of denial (which will be sent by registered or certified mail) before the event begins, the applicant can proceed to authorize taxable sales of tangible personal property at the event until such time as the Tax Department issues a certificate or a denial. If the entertainment promoter certificate is received after the event has begun, the certificate must be posted at the main entrance to the event once it is received. If the applicant receives a notice of denial, the authority to allow vendors to make taxable sales of tangible personal property at the event ceases.

If an application for an entertainment promoter certificate is denied for any reason, the applicant has the right to a hearing in the Division of Tax Appeals to contest the denial.

Within 20 days after the end of each month in which an entertainment event takes place, the entertainment promoter must file Form PR-169.6, Report of *Entertainment Event*, to report on any entertainment events held during the month at which taxable sales of tangible personal property took place. The report must contain the date and place of the event, and the name, address and Certificate of Authority number of every vendor who made taxable sales of tangible personal property at the event, including those vendors who operate at the facility/site on a regular basis (but not those vendors who sell only food and beverages). All reportable events held during the month can be included in a single report.

Any entertainment promoter who authorizes an unregistered vendor to make taxable sales of tangible personal property at an entertainment event is subject to a penalty of up to \$10,000 for each such entertainment event. In addition, any promoter who willfully fails to obtain an entertainment promoter certificate, or who willfully allows an unregistered vendor to make taxable sales of tangible personal property at an entertainment event, is guilty of a misdemeanor.

Entertainment Vendors

"Entertainment vendors" are vendors who make taxable sales of tangible personal property at an entertainment event. The term includes exempt organizations, including those religious, charitable, scientific and educational organizations which makes sales on the same premises as other vendors who are required to collect tax. An entertainment vendor must give the promoter of an entertainment event, at which the vendor intends to make taxable sales of tangible personal property, a statement containing his or her name, address and Certificate of Authority number. An entertainment promoter can *not* authorize a vendor to make taxable sales of tangible personal property unless the vendor shows that he or she is registered with the Tax Department and has a valid Certificate of Authority.

If the vendor is not registered with the Tax Department and does not have a valid Certificate of Authority, the vendor should file Form DTF-861, *Certificate of Registration for Entertainment Vendors*, with the Tax Department to obtain a Certificate of Authority. The application for a Certificate of Authority should be filed at least 20 days before the start of the entertainment event to ensure that the Certificate of Authority will be received on time. Unregistered vendors who make sales subject to tax in New York State are subject to civil and criminal penalties as provided by the Tax Law.

If a vendor is already registered with the Tax Department as a regular vendor, or as a show vendor, and has a validated Certificate of Authority, the vendor is not required to file a new registration in order to make taxable sales at an entertainment event. If, however, a registered vendor will be doing business in more than one location at the same time, the vendor must request a duplicate copy of his or her Certificate of Authority to post in the other location. Vendors may not use photocopied certificates or certificates that have been copied in any other manner; they must request a duplicate from the Tax Department.

The responsibilities of an entertainment vendor are to:

- Prominently display a valid Certificate of Authority at the location where sales are made;
- give the promoter of the entertainment event his or her name, address and Certificate of Authority number;
- collect the appropriate New York State and local sales and use tax on taxable sales of tangible personal property;
- keep accurate records of each sale made; and
- timely file the appropriate sales and use tax return to report the tax collected; the tax must be remitted with the return.