

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

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Sales Tax
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Telephone Answering Services Subject to Sales Tax Effective September 1, 1991

Beginning September 1, 1991, telephone answering services are subject to state and local sales and use tax. A telephone answering service is a service that consists of taking messages by telephone and transmitting the messages to the customer or to any other person as directed by the customer. The tax imposed on these services will generally be administered in the same manner as the sales taxes that are currently imposed on ordinary telephony, telegraphy, telephone and telegraph services. Telephone answering services are subject to the special utilities tax imposed by certain cities and school districts. The state and combined state and local tax rates applicable to the charge for an answering service range from 4% to 11 1/2% depending on the jurisdiction.

In general, it is the location for which the telephone answering service is being provided (the customer's business or the customer's personal residence) that will determine whether the service is subject to tax in New York State and the rate (local jurisdiction) at which tax is to be computed.

The rate of tax to charge with respect to telephone answering services is determined as follows:

- If telephone answering service is being provided to a business, the physical location (address) of that business determines the tax rate, regardless of the physical location of the phone that is being answered.

Example (1): Mr. Smith, doing business as County Realty, purchases an answering service for calls which would normally ring through the number of the real estate business. Mr. Smith's personal residence is in County A which has a 7 percent tax rate and the answering service is also located in county A; but Mr. Smith's real estate office is located in County B, which has a tax rate of 6 percent. The telephone answering service is required to collect sales tax at 6 percent and report such sale as a sale in County B.

Example (2): A major bank, headquartered in County A, with branches in other counties throughout the state, contracts with a telephone answering service located outside the state to answer a special "800" phone number the bank advertises to receive comments, compliments, or complaints about any of its tellers and service representatives. These messages are then provided to the

customer service department located at the headquarters in County A, for processing. Since the telephone answering service is being provided for the service department located in County A, the answering service must add to its charges the combined New York State and local sales tax in effect in County A.

If a telephone answering service is being provided for an individual, the physical location of the individual's personal residence determines the tax rate.

Example (3): Ms. Jones, a nonresident of New York State, purchases an answering service from a service located in New York State. Ms. Jones is frequently away from her home. When Ms. Jones leaves her personal residence (which is located outside New York State), her personal calls are answered by the service in this state. Ms. Jones is made aware of her calls through a pager. Virtually all Ms. Jones' personal messages from the service are received by her while she is in New York. The telephone answering service rendered for Ms. Jones' personal residence located outside New York State is not subject to this state's sales tax even though the answering service business providing the service is located in this state, and even though Ms. Jones may receive her messages while she is in New York.

A telephone answering service is a service that consists of taking messages by telephone and transmitting those messages to the customer or the customer's designee. However, the tax on telephone answering services does not extend to the physical act of answering a telephone if that function is merely an incidental element of a different service being provided to the customer.

Example (4): A company regularly contacts a temporary help agency when any one of its key secretaries is unable to report for work. The person sent by the agency is expected to be able to take dictation, type, do filing, assist in meetings and answer the phone. The service provided by the agency is primarily secretarial in nature; the fact that such service may include a certain amount of telephone answering does not make the service taxable since the telephone answering is merely incidental to the actual service performed.

Example (5): A mail order company forms a separate corporation whose sole function is to take customer's orders for merchandise sold by the mail order company. This corporation has computer access to the mail order company's inventory data, accounts receivable, customer credit accounts and shipment scheduling.

When a customer calls, the corporation can assist the customer with product information, such as sizes and colors available. If the customer desires to make a purchase, the corporation elicits from the customer information such as name, delivery address, billing address, item, quantity, size, color and billing/credit information. The corporation then tells the customer the amount due, verifies the customer's credit, forwards the order to the mail order company's shipping department, and reduces available product in the company's inventory data. In this example, the service provided by the corporation to the mail order company would be categorized as telephone sales and order processing. The telephone answering portion thereof is incidental to the sales processing service provided to its customer. The service being provided is not subject to tax as a telephone answering service.

Example (6): A manufacturer as part of an advertising campaign provides an "800" telephone number where customers or prospective customers can inquire about a product. The manufacturer hires an answering service to staff the telephone and trains the personnel how to respond to particular inquiries regarding the product's uses, warranty, etc. No messages are taken or transmitted by the answering service. The service being provided is not subject to tax as a telephone answering service.

The tax applies to all telephone answering services rendered on and after September 1, 1991, even if the contract for that service was entered into before that date. If the answering service's charges are not billed on a daily or per-call basis (e.g., weekly rate, monthly rate or some other basis), the charges subject to tax on a bill for services rendered both before and after September 1, 1991, are to be based on the ratio of the number of days falling on and after September 1st to the total number of days covered by the billing term.

Since telephone answering services were not subject to sales tax before September 1, 1991, any business or person providing this service who was not otherwise registered to collect sales tax must contact the Tax Department to obtain an application for a Certificate of Authority to collect sales tax. Vendors who perform taxable services but who are not registered and who do not hold a valid Certificate of Authority are in violation of the law and subject to civil or criminal fines and penalties. Information and instructions on how to collect and report tax will be provided as part of the registration and filing process.