



Important Notice

July 2009

Sales Tax Law Changes in New York City - Effective August 1, 2009

Chapter 200 of the Laws of 2009 amended the Tax Law and the Administrative Code of the City of New York as follows, effective August 1, 2009:

(1) New York City local sales and use tax rate is increased to 4½%

As a result of this change, the combined state and local sales and use tax rate imposed in New York City is increased to 8⅞% (8.875%) effective August 1, 2009. This rate includes the 4% state tax, the ⅜% Metropolitan Commuter Transportation District (MCTD) tax, and the 4½% New York City local tax.

(2) New York City's local exemption for clothing and footwear costing \$110 or more is repealed

The exemption from New York City's local tax for clothing and footwear regardless of the cost is repealed, and New York City will conform to the New York State exemption for clothing and footwear costing less than \$110 per item or pair. As of August 1, 2009, purchases of clothing and footwear costing \$110 or more per item or pair in New York City are subject to the full 8⅞% rate of tax. Purchases costing less than \$110 remain fully exempt.

(3) Transportation and delivery of gas or electricity

As of August 1, 2009, all receipts from the sale of the services of transporting, transmitting, distributing, or delivering gas or electricity are subject to the 4½% New York City local tax, even if purchased from someone other than the vendor of the gas or electricity. The commodities of gas and electricity themselves are already subject to New York City local tax.

Changes to the sales and use tax returns

As a result of these changes, certain adjustments must be made to information on the sales and use tax returns and schedules to ensure correct reporting and revenue distribution. The sales tax return covering the quarter from June 1, 2009, through August 31, 2009, will contain a double set of entry lines for each of the rates affected by this increase: one to report sales and uses occurring from June 1 through July 31, and one to report sales and uses for August 1 through August 31. It is important to report transactions on the correct line according to the date of the transaction.

Reporting requirements

Beginning August 1, 2009, all taxable sales and uses in New York City are reported as follows, except as otherwise provided by the special transitional provisions below.

All taxable sales made within New York City reported on page 3 of sales and use tax returns Form ST-100, Form ST-101, and Form ST-810, must be reported on the New York City 8 $\frac{3}{8}$ % entry line.

Sales of clothing and footwear costing \$110 or more, previously reported on the New York State/MCTD 4 $\frac{3}{8}$ % entry line, must be reported on the New York City 8 $\frac{3}{8}$ % entry line. (Qualifying sales of clothing and footwear costing less than \$110 must continue to be reported on **Schedule H**, Part 1, on the New York City 0% entry line.)

Sales of the services of transporting, transmitting, distributing, or delivering gas or electricity, even if made by someone other than the vendor of the gas or electricity, must be reported on page 3 on the New York City local tax 4 $\frac{1}{2}$ % entry line.

All **Schedule B** filers reporting sales of **residential** gas, propane in containers of 100 pounds or more, electricity, and steam, must enter this information on Schedule B, Part 1, on the New York City 4 $\frac{1}{2}$ % entry line. Report sales of coal, fuel oil, and wood (for heating) for **residential** use, on Schedule B, Part 2, on the New York City local tax 4 $\frac{1}{2}$ % entry line.

All **Schedule N** filers reporting sales of hotel/motel room occupancy must enter this information on the New York City 8 $\frac{3}{8}$ % and 4 $\frac{1}{2}$ % entry lines, as applicable. All **Schedule N** filers reporting sales of cleaning and maintenance services or sales of protective and detective services must enter this information on the New York City 8 $\frac{3}{8}$ % entry line, as applicable. All **Schedule N** filers reporting sales of credit rating and reporting services or sales of miscellaneous personal services must enter this information on the 4 $\frac{1}{2}$ % entry line, as applicable. The rate of tax imposed in New York City on sales of parking, garaging, or storing of motor vehicles, and on interior decorating and design services, are not affected by the rate increase described in this notice.

All **Schedule Q** filers reporting sales of property or services eligible for exemption to a Qualified Empire Zone Enterprise (QEZE) must enter this information on the New York City 4 $\frac{1}{2}$ % entry line.

All **Schedule FR** filers reporting retail sales of motor fuel and diesel motor fuel must enter this information as instructed on the schedule.

Special transitional provisions

All sales and uses occurring on or after August 1, 2009, are taxed at the new rate of 8 $\frac{3}{8}$ % (or 4 $\frac{1}{2}$ % if subject to only the New York City local tax), except as provided below:

Layaway sales

Receipts from layaway sales of items other than clothing and footwear costing \$110 or more may be reported at the lower rate only if the following conditions are met:

- (1) before April 1, 2009, a written agreement was made and the item sold was segregated from other similar property in the possession of the vendor; and
- (2) before August 1, 2009, the purchaser has paid at least 10% of the sales price.

The transitional provisions are different for layaway sales of clothing and footwear costing \$110 or more. See the information beginning on page 4 regarding layaway sales of clothing and footwear costing \$110 or more.

Utility bills for gas and electricity based on meter readings

If the meter is read on or after August 1, 2009, and the number of days from August 1, 2009, to the date of the meter reading is more than half the total number of days covered by the bill, report sales of these services at the new residential rate of 4½% or the nonresidential rate of 8%.

If the meter is read on or after August 1, 2009, and the number of days from August 1, 2009, to the date of the meter reading is more than half the total number of days covered by the bill, any sales of the services of transporting, transmitting, distributing, or delivering gas or electricity, even if made by someone other than the vendor of the gas or electricity, must be reported at the new rate of 4½%.

Telephone bills

Report charges for services furnished on or after the date of the first bill dated on or after August 1, 2009, at the higher rate of 8%. Report charges for services furnished before the date of the first bill dated on or after August 1, 2009, at the lower rate, even though the services may be furnished after August 1, 2009.

Telephone answering services

Prorate receipts that cover a period beginning before and ending after August 1, 2009. Receipts for the period prior to August 1, 2009, must be reported at the lower rate. Report receipts for the period on and after August 1, 2009, at the higher rate of 8%.

Social and athletic club dues

Regardless of the date a bill is mailed, report all bills covering any period that begins on or after August 1, 2009, at the higher rate of 8%. Report all bills covering periods that begin before August 1, 2009, at the lower rate.

Admissions

Report taxable admissions to an event occurring on or after August 1, 2009, at the higher rate of 8 $\frac{7}{8}$ %, whether or not the admission charge was paid before that date, unless the tickets were sold and delivered before August 1, 2009, to the person attending the event.

Hotel occupancy

Report all taxable daily rentals occurring on or after August 1, 2009, at the higher rate of 8 $\frac{7}{8}$ %. Report all taxable daily rentals occurring before August 1, 2009, at the lower rate. If the rental is on other than a daily basis, prorate the amount of rent between the number of days taxable at the higher rate and the number of days taxable at the lower rate.

Pre-existing lump sum or unit price construction contracts

Contractors purchasing materials in New York City for use in construction contracts pay the lower rate on purchases made before August 1, 2009, and 8 $\frac{7}{8}$ % on purchases made on or after that date. Contractors who irrevocably entered into a pre-existing lump sum or unit price construction contract before July 11, 2009 (the date on which the legislation was adopted), may receive a credit or refund of the additional $\frac{1}{2}$ % local sales and use tax paid on or after August 1, 2009. This credit or refund applies only to purchases of tangible personal property used solely in the performance of such contract.

Special transitional provisions relating to sales in New York City of clothing and footwear costing \$110 or more**Mail, telephone and Internet orders**

The 4 $\frac{1}{2}$ % New York City local tax will not apply to sales of clothing and footwear costing \$110 or more per item or per pair that are ordered by mail, telephone or on the Internet if the orders are accepted by the vendor prior to August 1, 2009, even if the items are picked up or received in New York City on or after August 1, 2009. An order is accepted by the vendor when the vendor has taken an action to fill the order. Action to fill an order includes placing an in-date stamp on the order or assigning an order number to the order. Sales of this nature must be reported on the New York State/MCTD 4 $\frac{3}{8}$ % entry line.

Rain checks

The full 8 $\frac{7}{8}$ % state and local tax is due on clothing and footwear costing \$110 or more per item or per pair purchased on or after August 1, 2009, with a rain check obtained prior to August 1, 2009. These sales must be reported on the New York City 8 $\frac{7}{8}$ % entry line.

Layaway sales

A layaway sale is a sale in which merchandise is set aside for future delivery to a customer who makes a deposit and agrees to pay the balance of the purchase price over a period of time before the merchandise is delivered. The sales price of the merchandise includes any

additional charges a vendor makes for putting the merchandise on layaway. If a vendor and a customer enter into a contract for a layaway sale of clothing or footwear costing \$110 or more before August 1, 2009, the State/MCTD rate of 4 $\frac{3}{8}$ % will apply as long as the customer makes a deposit of at least 10% of the purchase price prior to August 1, 2009, and the merchandise is segregated from other inventory. These sales must be reported on the New York State/MCTD 4 $\frac{3}{8}$ % entry line.

Custom and special orders

Clothing and footwear costing \$110 or more that are custom ordered or special ordered prior to August 1, 2009, will be subject to the lower rate of 4 $\frac{3}{8}$ %, even though the item is delivered after August 1, 2009. To qualify for the lower rate, the vendor and the customer must enter into a contract prior to August 1, 2009, to have the custom or special order made for the customer. These sales must be reported on the New York State/MCTD 4 $\frac{3}{8}$ % entry line.

Exchanges

If a customer makes a purchase of clothing or footwear costing \$110 or more before August 1, 2009, and returns to exchange the item after August 1, 2009, the vendor need not charge the 4 $\frac{1}{2}$ % New York City local tax on the exchanged item as long as it is similar to the item returned (*i.e.*, a shirt for a shirt, one pair of shoes for another, etc.), and the exchanged item itself otherwise meets the requirements for exemption.

If a customer returns an item and receives a credit to purchase a different item in the future or is allowed to purchase a different item at the time of the return, the full 8 $\frac{7}{8}$ % rate of tax (including the 4 $\frac{1}{2}$ % New York City local tax) will apply to the sale of the new item. For example, if a customer buys a shirt costing \$110 or more before August 1, 2009, and exchanges it after August 1, 2009, for a pair of boots costing \$110 or more, the full 8 $\frac{7}{8}$ % rate of sales tax is due on the full price of the boots.

See TSB-M-06(6)S, *Year-Round Sales and Use Tax Exemption of Clothing, Footwear, and Items Used to Make or Repair Exempt Clothing*, for a detailed description of the clothing and footwear exemption and comprehensive lists of taxable and exempt items.

NOTE: An Important Notice is generally issued to announce a singular event, such as an update to a previously issued tax form or instruction, or to announce a new due date for filing returns and making payments of tax because of a natural disaster. The Department does not revise previously issued N-Notices.