



**Department of
Taxation and Finance**

Publication 838

A Guide to Sales Tax for Automobile Dealers

About this publication

As an automobile dealer (hereafter called *dealer*) in New York State, you have many duties and responsibilities for the collection of New York State and local sales tax, and the payment of use tax. In general, hereafter all these taxes will be called *sales tax*. This publication provides a general explanation of sales tax, and includes information about sales tax registration and record-keeping responsibilities. It also explains which sales and services are subject to tax; how to apply sales tax to lease or rental transactions; general use tax rules for such topics as demonstrators, mixed-use, and loaner vehicles; how sales tax applies to sales and purchases of parking, garaging, and storage; how to determine the correct tax rate; dealer purchases and exempt sales; sales to exempt organizations; and the lemon law. In addition, the appendix includes definitions; record-keeping and return information; and general information about the sale, transfer, or assignment of business assets.

To obtain tax bulletins, forms, technical memoranda (TSB-Ms), publications, and other information from the Tax Department, see *Need help?* on the back cover.

For information about motor vehicle registrations and similar matters, see the New York State Department of Motor Vehicles (DMV) Web site at www.dmv.ny.gov.

NOTE: A Publication is an informational document that addresses a particular topic of interest to taxpayers. 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 contained in a publication. Publications are updated regularly and are accurate on the date issued. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

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Part I – Introduction

Sales and use taxes

New York State and local sales tax is imposed on the receipts from the sale of tangible personal property and certain services in New York State. *Tangible personal property* includes motor vehicles (see Appendix A for the definition of *motor vehicle*), as well as parts and accessories. In addition, charges for maintaining, servicing, repairing, and installing tangible personal property in or on motor vehicles are subject to sales tax.

As a dealer in New York State, you will be making sales of motor vehicles and related services. You may also be issuing and accepting New York State sales tax exemption documents. Therefore, you must register for sales tax purposes and collect sales tax on the sales you make. As a registered sales tax vendor, you become a trustee on behalf of the state for the tax collected. Officers and employees who are responsible for collecting and remitting sales tax may be personally liable for any tax required to be collected but not remitted.

In addition, state and local use tax (hereafter called *use tax*) may apply to the use, within New York State, of taxable tangible personal property and certain services by residents (see Appendix A for the definition of *resident*), including dealers in New York State. For general information on use tax, see page 18.

Dealers can visit the Tax Department's Web site (www.tax.ny.gov) and click on subscribe, to receive emails announcing newly posted content and other general information.

Part II – Vendor responsibilities

Authority to collect sales and use taxes

A dealer in New York State must register for sales tax purposes with the Tax Department, and obtain a *Certificate of Authority*. The *Certificate of Authority* gives a dealer the authority to collect state and local sales and use tax and to issue and accept most sales tax exemption documents. See Part IX for more information about exempt sales.

Applying for your Certificate of Authority

You must apply for a *Certificate of Authority* at least 20 days before beginning business operations. For the most up-to-date information on how to apply, see Tax Bulletin [How to Register for New York State Sales Tax \(TB-ST-360\)](#).

Penalties for operating without a valid *Certificate of Authority*

A dealer who makes taxable sales, or issues or accepts exemption documents, before receiving a valid *Certificate of Authority* is subject to a penalty of up to \$10,000. For more information, see Tax Bulletin [Sales and Use Tax Penalties \(TB-ST-805\)](#).

In addition to the *Certificate of Authority* requirement, dealers also have record-keeping, filing, and payment responsibilities. For more information, see Appendix B.

A dealer that is acquiring business assets of an existing business may be held liable for any sales taxes owed to the Tax Department by the seller or transferor. See Appendix C.

Part III – Taxable sales of motor vehicles

Sales of motor vehicles

This part explains how to determine the amount subject to tax on sales of motor vehicles. Special rules apply to leases of motor vehicles for one year or more (see page 17).

Determining the receipt subject to sales tax on sales of motor vehicles

When a dealer sells a motor vehicle to a resident of New York State, the dealer must collect sales tax from the customer, unless the sale is exempt (see Part X). The amount subject to tax includes all the following items:

- the sale price of the vehicle;
- warranty fees (see page 15);
- transportation and destination charges;
- dealer-installed optional equipment and accessories, unless otherwise exempt;
- advertising charges;
- dealer preparation fees;
- certain dealer-imposed tire disposal fees (see page 15); and
- the amount of a customer rebate or customer incentive, provided or reimbursed by the manufacturer or any other third party, that is applied against the amount due under the sales agreement. Examples include:
 - a customer factory rebate;
 - first-time-buyer incentive;
 - college student incentive;
 - or other similar rebate or payment.

For this purpose, rebates and incentives do not include factory-to-dealer rebates or other incentives which reduce the dealer's cost of the vehicle.

The receipt amount subject to tax does **not** include:

- any trade-in allowance for motor vehicles taken in trade (see *Trade-ins* below);
- any fees to be paid by the customer for financing the motor vehicle, such as interest;
- any charge for gap insurance if the charge is reasonable and separately stated;
- any rebates, discounts, or similar incentives provided by the dealer for which the dealer is not reimbursed by the manufacturer or any other third party;
- factory-to-dealer incentives;
- certain documentation fees (see page 12); and
- any fees imposed by the DMV, such as vehicle registration, title, and vehicle inspection fees (see pages 13 and 16).

When a dealer sells taxable and non-taxable items together for a single price, the entire receipt from the sale is subject to sales tax. However, if the price of the separately available nontaxable item is reasonable and separately stated on any invoice or other statement of price given to the customer, sales tax is due only on the price of the taxable item.

Example: A dealer sells a new van with a hydraulic wheelchair lift. The van is subject to sales tax. The price of the lift (including installation), as a prosthetic aid, is exempt from tax if it is reasonable and the dealer separately states it on the invoice or statement of price given to the customer. If the dealer sells the van and the hydraulic lift as a unit for a single price, then the entire receipt is subject to sales tax.

For information about the exemption for prosthetic aids, see page 28.

Trade-ins

The amount of the credit the dealer gives to the purchaser for any motor vehicle (or other tangible personal property) taken in trade, and accepted as part payment on the purchase of a motor vehicle, may be deducted from the taxable receipt amount, but only if the motor vehicle (or other property) taken in trade is intended to be resold, even if to a scrap yard.

Example: A customer and a salesperson arrive at a price of \$32,000 for a new motor vehicle, which includes the cost and all taxable optional equipment and accessories. (There are no rebates.) They also agree on a trade-in value of \$8,500 for the customer's current vehicle, which the dealer will take in trade and resell. The amount subject to sales tax is calculated as follows:

New vehicle	\$32,000
Minus trade-in value	<u>- 8,500</u>
Taxable amount	\$23,500

Discounts

Any discount given to the customer by the dealer that is not reimbursed by a third party (including affiliated entities), and that reduces the price of the motor vehicle, must be deducted from the amount subject to sales tax. Examples include discounts or price reductions negotiated between a customer and a salesperson or dealership, such as trade discounts or fleet discounts. However, early payment discounts granted by a dealer (to encourage prompt payment) must be included in the amount subject to tax.

Rebates, coupons, and cash allowances

The amount of rebates, coupons, and similar cash allowances given to the customer by the dealer, **that are not reimbursed** to the dealer by the manufacturer or another third party, **must be deducted** from the amount subject to sales tax.

Example: A customer and a salesperson arrive at a price of \$25,000 for a new motor vehicle prior to any rebates. This includes the cost of all taxable options and equipment and any other taxable charges. The manufacturer offers the customer a rebate of \$2,000 (which it will reimburse to the dealer), and the dealership offers its own promotional rebate of \$1,000. In addition, a credit card company has offered the customer a \$500 rebate because the customer will purchase the vehicle using their credit card. The credit card company will reimburse the dealer \$500. The amount subject to sales tax is calculated as follows:

New vehicle (prior to rebates)	\$25,000
Minus dealer's rebate	<u>- 1,000</u>
Taxable amount	\$24,000

In this example, since the dealer will be reimbursed by the manufacturer and the credit card company, neither the \$2,000 manufacturer's rebate nor the \$500 credit card rebate may be deducted from the amount subject to sales tax. However, the dealer's rebate of \$1,000, which is not reimbursed by any other third party, must be deducted from the taxable amount.

Documentation fees

Dealers charge documentation fees to prepare, on behalf of purchasers, the paperwork needed to obtain titles and registrations for vehicles. In the case of a sale of a vehicle, these fees are not subject to tax if the amount of the

fee is separately stated and reasonable. The fee will be presumed reasonable if the amount is equal to or less than the amount permitted under the New York State Department of Motor Vehicle rules.

The preceding information applies only to sales of motor vehicles. For information about documentation fees for long-term motor vehicle leases, see [Publication 839](#), *A Dealer's Guide to Sales And Use Taxes on Long-Term Motor Vehicle Leases in New York State*.

Vehicle registration and title fees

If a dealer obtains the vehicle's title and registration on behalf of the purchaser, and the dealer separately states the actual amount of title and registration fees on the invoice or other statement of price given to the customer, the fees are not subject to sales tax.

These fees are also not subject to tax if the dealer charges the customer a separately stated, estimated amount (*DMV fee deposit*) for registration and title fees, does not include the deposit on the purchase invoice or other statement of price, and later refunds to the customer the amount of the deposit that exceeded the exact fees. However, if the dealer charges the customer more than this exact amount, the excess is subject to tax.

Insurance proceeds

A dealer, who receives insurance proceeds to compensate for a vehicle that is destroyed while in inventory and the title to the destroyed vehicle is transferred to the insurer, is not required to pay sales tax on the insurance settlement amount.

Example: Dealer A agrees to transfer a new vehicle from its inventory to Dealer B, f.o.b. – delivery point (the ownership and liability passes from Dealer A to Dealer B at the point where the vehicle is delivered, rather than the point it was shipped from). The vehicle is destroyed while in transit. Dealer A then transfers the vehicle's title to Dealer A's insurer, who pays Dealer A insurance proceeds to compensate for the loss. The insurance proceeds are not subject to tax.

Free and no charge services

Coupons for a free service, such as an oil change, are not subject to tax, unless the coupon is a manufacturer's coupon or other third-party coupon for which the dealer will be reimbursed by a third party. For information on repair and maintenance services provided by a prepaid maintenance contract, see page 15.

Generally when a dealer provides a free service, such as an oil change, the dealer owes use tax on the property transferred as part of this service (for example, oil and oil filters) if the property was originally purchased for resale. However, if the dealer is contractually obligated to provide the service at no charge, the dealer will not owe use tax on any property transferred as part of the service.

Employee incentives

Manufacturers occasionally offer their employees, the employees of the manufacturer's affiliates, or dealers and their employees cash incentives to purchase certain models of motor vehicles. If the manufacturer requires that the employee receive the full benefit of the incentive offered by the manufacturer, the amount of the incentive is deducted from the amount subject to tax. Also, see *Rebates, coupons and cash allowances* on page 12.

Part IV – Other sales made by dealers

Sales of property and services by a dealer

Generally, sales of tangible personal property and certain services by a dealer are subject to sales tax. Dealers can purchase property that is intended for resale exempt from sales tax by issuing [Form ST-120](#), *Resale Certificate*, to their suppliers at the time of purchase. For information about sales to other dealers or repair facilities, see *Dealer's use of resale certificates*, on page 24.

Servicing customers' motor vehicles

Charges for the services of maintaining, servicing, or repairing a vehicle are subject to sales tax. *Maintaining*, *servicing*, and *repairing* are terms used to cover all activities that relate to keeping a motor vehicle in a condition of fitness, efficiency, readiness, and safety, or restoring the vehicle to these conditions. Charges for the service of installing parts and other items of tangible personal property (for example, charges for the installation of car stereos or car starters) in or on a motor vehicle are also subject to sales tax. Any separate charges for fees, such as shop supplies and hazardous waste disposal fees, are also subject to tax.

Routine maintenance services are all taxable, such as tune-ups and oil changes; troubleshooting and diagnostic work; mechanical, electrical, fuel, cooling, braking, steering, suspension, exhaust, and other automobile systems work; and bodywork. Taxable services also include activities such as towing a disabled motor vehicle or detailing a vehicle.

For additional sales tax information specific to auto repair and auto body shops, see Tax Bulletin [Auto Repair and Body Shops \(TB-ST-40\)](#).

Sales tax on the servicing of motor vehicles is based on the total amount charged for the service (including charges for parts, supplies, and labor). The form of payment received from the customer (for example, an insurance check) has no effect on the amount of tax due. The rate of the combined state and local sales tax is the rate in effect in the taxing jurisdiction where the property serviced is delivered to the customer (or the customer's designee).

The taxing jurisdiction where such services are made could be different from the taxing jurisdiction where the dealership is located. For example, if a dealer sends a technician to a customer's home to repair a vehicle, sales

tax is calculated using the rate in effect for the taxing jurisdiction where the customer's home is located.

Note: Motor vehicle insurers must file information returns with the Tax Department, and report any payments made to New York vendors (including auto repair shops), under an insurance contract for servicing or repairing motor vehicles. For more information, see [TSB-M-09\(8\)S](#), *New Requirement for the Filing of Information Returns for Insurers of Motor Vehicles*, and [TSB-M-09\(8.1\)S](#), *Additional Guidance Relating to the New Requirement for the Filing of Information Returns for Insurers of Motor Vehicles*.

Parts, accessories, and supplies

Sales of parts, accessories, tires, supplies, and other items of tangible personal property are taxable at the combined state and local rate in effect where the property is delivered to the customer. However, if the purchaser will be reselling the item (for example, if the purchaser is a dealer or independent repair facility), they can use Form ST-120 to make the purchase exempt from tax.

Waste tire management and recycling fee

The state-imposed waste tire and recycling fee is not subject to sales tax. This fee, administered by the Tax Department, is \$2.50 for every new tire sold. Tire sellers are allowed to retain twenty-five cents of the fee to cover the cost associated with collecting it.

Note: If a dealer's waste tire management and recycling costs exceeds twenty-five cents, the dealer may include the excess in the advertised price of the tire, or the dealer may state the cost separately. Since this additional charge is part of the sales price of the tire, this fee is subject to sales tax. For more information, see [TSB-M-08\(6\)S](#), *Sales Tax Treatment of Waste Tire Management and Recycling Charges Imposed by Tire Sellers*.

Charges for transportation services

Sales tax applies to the charge for transportation services provided using limousines, black cars, and certain other motor vehicles with a driver. For more information, see [TSB-M-09\(2\)S](#), *Sales Tax Imposed on Certain Transportation Services*; [TSB-M-09\(7\)S](#), *Additional Guidance Relating to the Sales Tax on Certain Transportation Services*; and [TSB-M-10\(15\)S](#), *Sales Tax on Certain Transportation Services Amended to Exclude Livery Service Provided by an Affiliated Livery Vehicle in New York City*.

Extended warranties or service contracts

When a dealer sells a warranty, extended warranty, or service contract, the sale is subject to sales tax at the same jurisdictional rate as the tangible personal property (motor vehicle) covered by the contract. There is no additional sales tax due on any tangible personal property and services provided to the customer at no charge under the warranty contract (for example, free oil changes provided as part of a service contract).

When the work provided to the customer is only partially covered under the warranty contract, any additional charges are subject to sales tax.

Goodwill repairs

When a dealer, solely at its own discretion, makes a repair at no charge that is not covered under a warranty or service contract, the dealer would owe use tax on any property transferred as part of this service if the property was originally purchased for resale. However, if the dealer is required by the manufacturer or other third party, or by state law, to make the repair at no charge, the amount reimbursed to the dealer by the third party is not subject to tax, and the dealer would not owe use tax on any property transferred as part of the services.

Roadside assistance plan

Charges to participate in a roadside assistance plan, a multi-service driving plan, or similar plan, are not subject to sales tax. However, any charge for any tangible personal property associated with the plan and installed on the vehicle or transferred to the customer is subject to sales tax. Where charges for the plan and the tangible personal property installed on the vehicle are not separately stated on any written receipt given to the customer, the entire charge is subject to sales tax.

Motor fuel and diesel motor fuel

Sales of gasoline and other motor fuels to customers at a filling station located at the dealership are subject to sales tax. Filling stations must also file [Schedule FR, Sales and Use Tax on Qualified Motor Fuel and Highway Diesel Motor Fuel](#), in addition to their regular sales tax return. Schedule FR provides detailed instructions about filling station reporting requirements, including how to compute the retail sales tax due and how to claim a credit for the prepaid sales tax passed through to the dealer by the supplier.

Free tank of gas provided with the sale of a vehicle

Gasoline or other fuel provided by the dealer as part of the sale of the new vehicle is considered a component part of the vehicle sold. When the dealer purchases gas at a retail filling station, the dealer must pay the sales tax at the time of purchase and then apply for a refund, using [Form FT-500, Application for Refund of Sales Tax Paid on Petroleum Products](#). For more information, see Tax Bulletin [How to Apply for a Refund of Sales and Use Tax \(TB-ST-350\)](#). Dealers must keep detailed records (such as the window sticker that lists a free tank of gas) of the amount of fuel that is given away on a per-vehicle basis.

Fuel provided by the dealer to the customer as goodwill (and not included as part of the sales price of the vehicle) is not eligible for a refund.

New York State inspections

The service of performing required New York State safety and emissions inspections is not subject to sales tax. Purchases of enhanced emissions inspection equipment are not subject to sales tax; for more information see page 26. Any charges for repairs performed based on the findings of an inspection are subject to New York State and local sales tax.

Warranty repairs

When a dealer or repair shop provides maintenance, repairs, or other services without charge to a customer under a warranty agreement, those services are not subject to sales tax (including a “come back” repair to continue to address a problem). However, if a warranty provider

reimburses a dealer for performing warranty service, that reimbursement is normally subject to tax, unless the warranty provider issues Form ST-120 to the dealer, making the reimbursement not subject to tax. For information on loaner cars provided under a warranty agreement, see page 19.

Note: For repairs mandated by the Lemon Law, see Part XI, beginning on page 32.

Clothing

Dealers that sell clothing (such as hats or T-shirts) must charge sales tax based on rates for clothing. See [Publication 718-C, Sales and Use Tax Rates on Clothing and Footwear](#), which lists up-to-date tax rates on clothing sales.

Part V – Leases or rentals of motor vehicles

General

This section provides general sales tax information about leases or rentals of motor vehicles. The Tax Law provides special rules for calculating and paying state and local sales and use taxes on certain long-term vehicles. For detailed information, see [Publication 839, A Dealer's Guide to Sales and Use Taxes on Long-Term Motor Vehicles in New York State](#).

Long-term lease

A *long-term lease* covers a period of one year or more. However, a lease covering a period of less than one year is considered a long-term lease if it includes one or more options to renew (or similar contract provisions) that, if exercised, would make the total period of the lease one year or more.

For long-term leases for vehicles with a gross vehicle weight of 10,000 pounds or less, the dealer must collect sales tax on the total amount due for the entire lease period (including any option to renew or similar provision), using the combined state and local tax rate in effect in the locality where the lessee resides, not the dealership's location. The dealer must submit the tax to the Tax Department at the inception of the lease.

Short-term lease

A *short-term lease* covers less than one year (including any options to renew). For short-term leases, the dealer must collect sales tax at the time of each lease or rental payment. The dealer calculates the tax on the total lease or rental charge for each period, using the combined state and local sales tax rate in the locality where the vehicle is delivered to the customer.

The sale of an optional insurance policy (including a collision damage waiver) to the customer, if separately stated, is not taxable and must be deducted from the amount subject to tax. However, the charge for this insurance is subject to tax if not separately stated.

Special tax on passenger car rentals

In addition to the sales tax imposed on the receipts from a short-term lease of a motor vehicle (see above), a 6% special tax is currently imposed on the receipts from any rental of a passenger car rented or used in New York

State, when the period of the lease is less than one year. The tax is imposed on all rental charges, including all incidental charges (such as additional mileage charges). For more information, see [TSB-M-09\(1\)S](#), *Increase in the Special Tax on the Rental of Passenger Cars*.

Special supplemental tax on passenger car rentals within the MCTD

In addition to the applicable state and local sales and use tax, and the 6% special tax, all passenger cars that are rented or used within the Metropolitan Commuter Transportation District (MCTD) are subject to an additional 5% *special supplemental tax* if the lease is for less than one year. The MCTD includes New York City and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester. For more information, see [TSB-M-09\(6\)S](#), *Special Supplemental Tax on the Rental of Passenger Cars Within the Metropolitan Commuter Transportation District*.

Part VI – Use tax

General

Dealers in New York State must pay use tax directly to the Tax Department when they purchase taxable property or services, and for any reason did not pay tax at the time of purchase (unless entitled to an exemption). There is a distinction between sales tax that should have been paid and use tax. However, for purposes of simplicity, the tax required to be paid is referred to in this publication as use tax. For more information, see Tax Bulletin [Use Tax for Businesses \(TB-ST-910\)](#).

Listed below are some common situations when a dealer would owe use tax to the Tax Department.

Use tax examples

Personal use of a vehicle by a dealer

Vehicles held in a dealer's inventory for resale, that are used occasionally for business or pleasure by the dealer or one of its owners or employees, are considered mixed-use vehicles subject to state and local use tax on the cost of the vehicle. For the use tax rules for mixed-use vehicles, see page 20.

Example: A dealer purchases a motor vehicle for resale, and an employee uses the car for personal transportation. The vehicle is considered a mixed-use vehicle and subject to use tax.

Dealer donates a vehicle

Vehicles held in a dealer's inventory for resale that are later donated are subject to use tax on the cost of the vehicle.

Example: A dealer purchases a vehicle for resale but then donates the vehicle to the local senior citizens program. The dealer owes use tax based on the dealer's cost of the vehicle.

Example: A dealer donates a car from inventory to a shopping mall operator to raffle off the car. Mall customers may enter the raffle to get a chance to win the car. The dealer donating the car is not eligible for the resale exemption and must pay use tax on the dealer's cost of the vehicle.

Out-of-state purchase

When a dealer purchases taxable property from a vendor located outside New York without paying New York State and local sales taxes, and then later uses that property in New York, the dealer is required to pay use tax.

See page 22 for an example of an out-of-state purchase.

Use tax rules for demonstrators, loaners, and mixed-use vehicles

The following applies to vehicles held in a dealer's inventory that are used as demonstrators, loaners, and mixed-use vehicles.

Demonstrators

Vehicles held in a dealer's inventory exclusively for resale, but used for demonstration purposes to prospective customers, are not taxable if used solely for customer demonstration.

Loaners

Dealers often provide customers with a loaner vehicle to drive while repairs are being made (whether under warranty or not) on the customer's vehicle. The tax treatment of a loaner can depend upon whether the customer is contractually entitled to a loaner car.

If a dealer takes a vehicle out of inventory, and loans it to customers without charge, or at a rate that does not reflect the fair market rental value, and not all of those customers using the vehicle are contractually entitled to a loaner, then the vehicle is subject to use tax based on the dealer's purchase price, plus delivery charges.

However, if the dealer takes a vehicle out of inventory and uses it **exclusively** to provide loaners to customers who are contractually entitled to a loaner car, then no use tax is due.

Loaners provided to customers while warranty work is being performed

If the car is used exclusively as a loaner and the manufacturer reimburses the dealer for the cost of supplying the vehicle as part of the warranty agreement or other dealer-sponsored program, the charge to the manufacturer is exempt from sales tax. The manufacturer must provide the dealer with a properly completed [Form ST-120](#).

Loaners provided to customers through contracts with car rental agencies

If the dealer contracts with a car rental agency to provide free loaners to customers and the customer is contractually entitled to a loaner, the dealer can rent the car exempt from tax by providing the rental agency with Form ST-120. However, if the customer is not contractually entitled to a

loaner, the dealer must pay sales tax (including any special taxes) on the rental, to the car rental agency.

Dealers may also rent cars to provide a customer with a loaner at their discretion, rather than as part of the manufacturer's warranty or a dealer's contractual obligation. In this case, the use of the loaner would be considered a promotional use and subject to tax on the rental rate.

Vehicles loaned to a high school driver education program

No tax is due for vehicles loaned without charge to a high school driver education program.

Mixed-use vehicles

Any motor vehicle held in a dealer's inventory for resale, but used occasionally for business or pleasure by the dealer or one of its owners or employees, is subject to tax as a *mixed-use* vehicle. Use tax due on a mixed-use vehicle must be reported and paid on the dealer's sales tax return under *purchases subject to use tax* with the sales tax return that covers the period of use.

1% method for each month of mixed use

Use tax on a mixed-use vehicle may be calculated by multiplying the dealer's total cost of the vehicle by 1% per month, for each month of mixed use. That amount is then multiplied by the sales tax rate in effect in the taxing jurisdiction where the dealership is located.

A vehicle has been used for a month of mixed use if it has been used during any part of the month. A motor vehicle dealer may pay use tax on mixed-use vehicles based on the 1% method, provided that the vehicle is held in inventory, is available for sale, and is used by the dealer:

- for six months or less as a mixed-use vehicle with no mileage restriction; or
- for more than six months but no more than one year, and the mileage does not exceed 15,000 miles for the entire 12 months.

If mileage exceeds 15,000 miles and the vehicle is used for more than six months, or if the vehicle is used by the dealer for more than 12 months, regardless of mileage, use tax is due based on the dealer's total cost of the vehicle, plus penalties and interest. Penalties and interest are calculated from the due date of a tax return covering the first time the vehicle was used. Credit is allowed for use tax already paid using the 1% method.

Note: If a vehicle was previously used as a mixed use vehicle but it can be documented that no mixed use occurred with the respect to that vehicle in a subsequent month, no use tax will be due for that vehicle for that month.

Vehicles that do not qualify for the 1% method

A vehicle does not qualify for the 1% method of computing use tax if:

- the dealer seeks or intends to seek a trade-in allowance on the vehicle;
or
- the dealer depreciates or takes an investment tax credit for the vehicle.

If a vehicle is disqualified under either of these conditions but the dealer had calculated its use tax under the 1% method, the use tax is due on the dealer's total cost of the vehicle, plus penalties and interest, calculated from the due date of a tax return covering the first time the vehicle was used. Credit is allowed for use tax already paid using the 1% method.

A dealer's total cost of a new vehicle, for purposes of calculating use tax, includes the total invoiced cost plus delivery charge. For a used vehicle, the dealer's total cost includes the purchase price or trade allowance, plus the value of all repairs made to the vehicle since being acquired by the dealer. For a vehicle leased to a dealer for a year or more, the dealer's total cost includes the total amount of the lease payments for the entire term of the lease, plus any amount charged for renewal options.

Any vehicle assigned to a family member who is not an owner, officer, or employee of the dealer, does not qualify for the 1% method of calculating use tax. Tax is due on the entire cost of the vehicle. The mixed-use vehicle must be held in inventory and be available for sale. For more information, see *Family members* on page 29.

Record-keeping rules for vehicles that qualify for the 1% method

Dealers must maintain adequate records to verify the use of a vehicle as a mixed-use vehicle. All the following information must be retained for each vehicle:

- stock number and vehicle identification number (VIN);
- name and title of person to whom the vehicle is assigned;
- dates assigned and dates returned;
- mileage at date of assignment and date of return;
- disposition of vehicle;
- whether registration is in the dealer's name or the vehicle is used with dealer plates;

- whether depreciation or an investment tax credit has been or will be claimed on the vehicle; and
- whether a trade-in allowance has been or will be taken on the vehicle.

If records are not properly maintained for any mixed-use vehicle, use tax is due on the total cost of the vehicle to the dealer, with interest and penalties due from the date of the first use by the dealer.

Property purchased and used out of state

If a vehicle or other tangible personal property is purchased and delivered outside the state and used outside the state, the amount of use tax owed may be reduced, depending on how long the vehicle was used before entering New York.

If a vehicle or other property is used outside the state for less than six months prior to use within the state, the entire purchase price of the property is subject to use tax.

If a vehicle or other property is used outside the state for more than six months prior to use within the state, the amount subject to use tax is the selling price, or the fair market value of the property, whichever is lower, calculated at the time of first use within the state.

Credit for tax paid to another state

Sales or use tax paid to another state may be used as a credit to reduce the amount of New York State and local use tax due. However, the credit is allowed only to the extent that the other state provides a reciprocal credit for sales and use tax paid to New York and its localities, and no refund of the tax paid to the other state is available to the purchaser. For more information, see Tax Bulletin [*Reciprocal Credit for Sales or Use Taxes Paid to Other Taxing Jurisdictions \(TB-ST-765\)*](#).

Note: The states of New Jersey, Connecticut and Pennsylvania do **not** allow reciprocal credit for sales tax.

Federal excise taxes, custom duties and taxes, and fees paid in foreign countries are not allowed as a credit against any New York State and local sales and use tax.

Example: A New York auto dealer purchases diagnostic equipment from a seller in another state, who does not collect New York State sales tax. The dealer owes use tax on the cost of the diagnostic equipment. Any sales tax paid by the dealer to the other state may be used as a credit to reduce the amount of tax due, but only if the other state provides a reciprocal credit for sales tax paid in New York, and no refund of the tax paid to the other state is available to the purchaser.

Part VII – Parking, garaging, or storing

Sales of parking, garaging, or storing of motor vehicles

The sale of providing parking, garaging, or storing of motor vehicles by dealers operating a parking garage (other than a garage that is part of premises occupied solely as a private one-or-two family dwelling), parking lot, or other place of business providing parking, garaging, or storing of motor vehicles is generally subject to sales tax.

Rates of sales tax

Sales tax on providing parking, garaging, and storing of vehicles is imposed at the combined state and local rate in effect in the taxing jurisdiction where the service is provided. See below for additional rates and special rules.

Special sales tax requirements in Manhattan

Providing parking, garaging, or storing of vehicles in New York City is subject to a higher rate of sales tax than other sales. In addition, there are special sales tax requirements (such as filing Schedule N-ATT) for providing parking, garaging, or storing of vehicles at facilities located in Manhattan. For more information, see Tax Bulletin [Sales Tax Rates, Additional Sales Taxes, and Fees \(TB-ST-825\)](#).

Purchases of parking, garaging, or storage services

Generally, the purchase of parking, garaging, or storage services for motor vehicles (for example, the storage of vehicles held in inventory) is subject to tax. However, if a dealer enters into a lease or rental agreement of real property, the charges are not subject to tax. For determining if an agreement is a nontaxable lease of real property, see [TSB-M-08\(14\)S, Sales Tax Treatment of a Lease or Rental of Real Property for the Purpose of Parking, Garaging or Storage of Motor Vehicles](#).

Part VIII – Rate of sales tax

Rate of sales tax for sales of motor vehicles

Sales tax is due on the sale of a motor vehicle to a purchaser who is a resident of New York State (see Appendix-A). For information on use tax see page 18.

A dealer computes the amount of sales tax due on the sale by multiplying the combined state and local sales tax rate by the taxable amount of the sale. Generally, sales tax is collected at the combined rate in effect in the local jurisdiction where the customer is a resident, regardless of where the vehicle is delivered to the customer. The combined state and local sales tax rate consists of the state sales tax rate, plus the applicable rate of sales tax imposed by the local jurisdiction (city or county). There is also an additional sales tax rate imposed in those localities within the Metropolitan Commuter Transportation District (MCTD). The MCTD is composed of New York City (Bronx, Kings, New York, Queens and Richmond counties), and Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester counties.

If an individual is a resident of New York State, and has one or more residences outside of New York State, sales tax is collected at the rate in effect in the jurisdiction where the individual is a New York State resident.

If an individual is a resident of more than one local taxing jurisdiction within New York State (whether or not the individual has one or more residences outside of New York State), but is not a resident of the locality where delivery occurs, sales tax is collected at the rate in effect in the New York State jurisdiction where the vehicle is principally used or garaged.

To determine the correct local sales tax jurisdiction for a particular address in New York State, including the combined state and local sales tax rate for that jurisdiction, visit the Tax Department's Web site and click on [Sales Tax Jurisdiction and Rate Lookup](#). For rate information only, see [Publication 718, New York State Sales and Use Tax Rates by Jurisdiction](#). For more information on sales tax rates, see Tax Bulletin [Sales Tax Rates, Additional Sales Taxes, and Fees \(TB-ST-825\)](#).

Caution: Do not use ZIP codes to determine the sales tax rate. Postal zones usually do not coincide with sales tax jurisdictions, and using ZIP codes, including the ZIP code on a driver license, often results in incorrect tax reporting.

Rate of sales tax for sales of all other tangible personal property and services

In general, sales of all other tangible personal property and taxable services are taxed using the rate in effect in the jurisdiction where the property is delivered by the seller to the purchaser (or the purchaser's designee), or in the jurisdiction where the services are performed. This rule applies to a dealer's sales of parts and repair services. However, towing services are taxed using the rate in effect in the jurisdiction where the purchaser directs the vehicle to be delivered.

Part IX – Dealer purchases and exempt sales

General

Certain purchases and sales by dealers are exempt from sales tax. Most exempt purchases, as well as most exempt sales, require an exemption document. For a complete list of exempt purchases and sales and any required exemption document, see Tax Bulletin [Exemption Certificates for Sales Tax \(TB-ST-240\)](#).

Dealer purchases

Dealer's use of resale certificates

Dealers may purchase certain property or services exempt from sales tax. The property and services must be exclusively for resale. To make such purchases tax exempt, the dealer must give the seller a properly completed [Form ST-120](#). The dealer must provide the certificate to the seller no more than 90 days after the delivery of the property or the performance of the

service. The certificate may be used as a *single-use certificate* or as a *blanket certificate*. The blanket certificate allows the dealer to make subsequent eligible purchases exempt from tax.

Purchases of tangible personal property for resale

Examples of tangible personal property for resale that a dealer may purchase tax-exempt are:

- motor vehicles held for sale;
- motor vehicle parts, tires, and other accessories;
- motor oils and lubricants;
- adhesives; and
- paints, primers, and waxes.

A dealer who leases vehicles to customers is also entitled to use Form ST-120 to purchase for resale parts or other property that will become a physical component part of the leased vehicle.

However, when a dealer purchases tangible personal property or services for its own use, or the items are consumed by the dealer and are not actually transferred to the customer, these purchases are not for resale. The dealer must pay state and local sales or use tax on the items or services purchased. Examples of these items are:

- equipment;
- tools;
- shop rags and hand cleaners;
- paint sprayers and masking tape;
- waste removal services to remove items such as old tires or waste oil;
- tools and supplies used by a dealer in the showroom, business office, shop, or on the lot; and
- a vehicle taken out of inventory and used by a dealer or its staff (see page 20).

These items are subject to tax whether or not the property or services are ultimately itemized on any invoice or other statement of price given to the dealer's customer. The fact that a dealer chooses to itemize or charges a separate fee for its expenses (property or services used by the dealer in

making the sale) does not enable the dealer to make these purchases exempt from sales tax.

Example: A dealer purchases shop equipment, hand tools, and supplies such as specialty gases, abrasives, shop-cloths, and hand cleaners for its repair and auto body shops. The dealer also purchases the services of a waste disposal contractor to remove old tires, used motor oil, and other materials. The dealer must pay sales tax on all these purchases (even if the dealer separately itemizes or charges a separate fee for these items on the customer's invoice). Since the items are consumed by the dealer in its operations, they cannot be purchased for resale.

For more information, see Tax Bulletin [Auto Repair and Body Shops \(TB-ST-40\)](#).

Purchases of services for resale

A dealer may purchase certain taxable services exempt from sales tax by providing the seller with a properly completed Form ST-120, as explained on page 24. For example, when a dealer is servicing an automobile and subcontracts part or all of the service to a specialty shop (such as a body shop, automobile glass shop, detailing shop, or machine shop), the subcontracted services may be purchased for resale.

However, certain taxable tangible personal property or services used by a dealer cannot be purchased for resale and are subject to sales tax. Examples include repairs, maintenance, or cleaning of a dealership's real property, vehicles that are not in inventory (for example parts trucks), or machinery or equipment.

For sales tax information about car wash services, including purchasing the services for resale, see Tax Bulletin [Car Wash Services \(TB-ST-105\)](#).

Services to items in inventory

Installing parts, or servicing, maintaining, or repairing a vehicle that is being held in inventory for sale is not subject to tax. Dealers may purchase washing, waxing, vacuuming, and detailing services exempt from tax, using a properly completed Form ST-120, provided the dealer is holding the vehicle for sale or lease, or is repairing it.

Rental of vehicles for use as loaner cars

If a dealer rents or leases vehicles to be used as loaner cars for its customers, the rental or lease of such a vehicle is a purchase for resale only if the customer is contractually entitled to a loaner car. This obligation can be through the manufacturer, through an extended service contract or by other contractual agreements. A dealer policy to provide a loaner car to its customers is not sufficient, and such vehicles are not eligible for the resale exemption. Also, see *Loaners* on page 19.

Enhanced emissions inspection equipment

Certain purchases of enhanced emissions inspection equipment for conducting emission inspection and maintenance programs as required by

the Federal Clean Air Act of 1990, and the New York State Clean Air Compliance Act, are exempt from sales tax. In order to qualify, a dealer must be an official inspection station licensed by DMV, and must use equipment that has been certified by the Department of Environmental Conservation. To claim the exemption, the dealer must give the seller of the equipment a properly completed [Form ST-121](#), *Exempt Use Certificate*.

Note: This exemption does not apply to equipment used to perform emissions inspections on diesel engine-powered vehicles with a gross vehicle weight rating exceeding 8,500 pounds.

Promotional materials – flyers and coupons

Certain printed promotional materials, including coupons that are mailed to prospective customers free of charge, may be purchased exempt from sales tax by the dealer. The exemption includes the purchase and storage of the exempt promotional materials. To claim the exemption, the dealer must provide the seller with a properly completed [Form ST-121.2](#), *Exemption Certificate for Purchases of Promotional Materials*. This exemption applies only to promotional materials delivered by the U. S. Postal Service or a similar delivery service.

Exempt sales

Dealers may sell certain property or services exempt from sales and use tax. Several examples of the types of exempt sales typical for dealers are listed below, including the appropriate exemption certificate, if any.

In addition, sales to certain organizations are exempt from sales tax. For more information, see *Sales to exempt organizations* on page 30.

Accepting exemption certificates

If a dealer accepts a properly completed exemption certificate from its customer in good faith (that is, the dealer has no knowledge that the certificate is false or fraudulently issued), no later than 90 days from the date of the sale, the dealer is relieved of any liability for failure to collect the sales tax for that sale. As a result, the burden of proving that the sale is exempt rests solely with the customer. The dealer may not accept a certificate in good faith if the dealer has actual knowledge that the document is false or fraudulent. The customer must present the certificate to the dealer, who must retain it for at least three years after the due date of the sales tax return to which it relates, or the date the return was filed, whichever is later. For more information about exemption certificates, see Tax Bulletin [Exemption Certificates for Sales Tax \(TB-ST-240\)](#).

Sales to nonresidents

If a purchaser of a motor vehicle is a nonresident of New York State, sales tax is generally not imposed nor required to be collected. However, if the vehicle is registered in New York State, sales tax must be collected at the rate in effect in the jurisdiction where the vehicle is delivered.

Nonresident purchasers may purchase a motor vehicle exempt from sales tax by providing to the dealer a properly completed [Form DTF-820](#),

Certificate of Nonresidency of New York State and/or Local Taxing Jurisdiction. Purchasers must certify that they:

- are not residents of New York State;
- do not have a place of abode in this state;
- are not carrying on any employment, trade, business, or profession in this state in which the motor vehicle will be used; and
- are not registering the motor vehicle in New York State (including any temporary registration).

If the transaction fails to meet any of these conditions, the purchase is subject to sales tax.

In addition to receiving Form DTF-820, the dealer must indicate on DMV Form MV-50 that the sale was made without collecting New York State sales tax.

The sale of a motor vehicle to a customer who has a home in New York and a home in another state (a *dual resident*) is subject to New York sales tax. This tax is due at the rate in effect in the jurisdiction where the purchaser's New York State residence is located. If the purchaser has more than one residence in New York State, but is not a resident of the locality where delivery occurs, the rate used is where the vehicle will be principally garaged.

An *in-transit permit* for transporting a motor vehicle out of New York State for registration outside the state does not cause the transaction to be subject to tax. However, if a dealer issues a *temporary certificate of registration* or a *temporary registration* (for transport or for any other purpose) to a customer who is a nonresident, the dealer must collect New York sales tax.

**Accessibility
equipment for persons
with disabilities**

Sales of accessibility equipment for persons with disabilities (prosthetic aids) are exempt from tax. This exemption includes charges for the services of installing, maintaining, servicing, or repairing these items. Special lifts and hand controls installed on or in a vehicle to enable persons with disabilities to access or operate a motor vehicle are examples of prosthetic aids that a dealer may sell, install, or service exempt from sales tax. A dealer does not need to obtain an exemption document from the customer for the sale of, or service to, such property, but must retain documentation describing the sale.

When selling a motor vehicle with the equipment already installed, only the incremental cost of the vehicle is exempt from sales tax. The incremental cost is the amount of the sales price of a vehicle that exceeds the sales price of a comparable motor vehicle without the prosthetic aids installed. The

amount must be reasonable and separately stated in the written contract or bill given to the customer. The cost of the vehicle remains taxable. If the vehicle and the prosthetic aids are sold for a single price, the entire amount is subject to sales tax.

**Farming and
qualifying commercial
horse boarding**

The sale of a motor vehicle and other tangible personal property that is used predominantly (more than 50 percent) in farming, or in a qualifying commercial horse boarding operation, or both, is exempt from sales tax. Also exempt are installing, repairing, maintaining, or servicing tangible personal property used predominantly either in farming or in a commercial horse boarding operation, or both.

To make these purchases exempt from sales tax, customers must give the dealer a properly completed [Form ST-125](#), *Farmer's and Commercial Horse Boarding Operator's Exemption Certificate*.

Family members

Sales of motor vehicles by dealers to family members (spouses, children or stepchildren, or parents or stepparents), **are subject to sales tax**. Sales between family members who are not dealers are exempt.

Film production

A motor vehicle used directly and predominantly in the production of a film for sale may be purchased, leased, or rented exempt from sales tax (for example, a prop vehicle featured in a commercial or film).

To claim this exemption, the customer must provide the dealer with a properly completed Form ST-121.

**Tractors, trailers, and
semi-trailers**

The sale or lease of a qualifying tractor, trailer, or semi-trailer (a vehicle used in combination where the gross vehicle weight of the combination exceeds 26,000 pounds), and any tangible personal property installed on the qualifying vehicle, may be purchased exempt from sales tax. This also includes installation, repair, or maintenance services performed on qualifying vehicles.

To claim this exemption, the purchaser must provide the dealer with a properly completed [Form ST-121.1](#), *Exemption Certificate for Tractors, Trailers, Semi-trailers, or Omnibuses*.

Omnibuses

The sale or lease of a qualifying omnibus (bus) and any parts, equipment, and lubricants (but not fuel) used in operating a qualifying omnibus (see Appendix A for the definition of *qualifying omnibus*), may be purchased exempt from sales tax. The exemption also includes installation, maintenance, or repair services performed on the omnibus, or performed on parts, equipment, or lubricants used in the operation of the omnibus.

To claim this exemption, the purchaser must give the dealer a properly completed Form ST-121.1.

Services delivered outside the state

Charges for the services of installing, maintaining, servicing, and repairing motor vehicles and other tangible personal property are exempt from sales tax when the property upon which the service is performed is delivered to the purchaser outside New York State. Although no exemption certificate is required, the dealer must maintain records to document that the property was delivered outside the state.

Sales of parts for resale

Dealers often sell vehicle parts and accessories to purchasers who intend to use those items to perform a taxable service or repair (for example, sales to other dealers or repair facilities). Such items are considered purchased for resale. To obtain an exemption from tax, purchasers must provide the dealer with a properly completed Form ST-120.

Sales of vehicles to scrap or salvage yards

When scrap or salvage yards purchase vehicles from a dealer, the sale is subject to tax unless the scrap or salvage yard intends to resell the vehicle or its parts. To purchase or transfer the vehicle exempt from tax, the scrap or salvage yard must provide the dealer with a properly completed Form ST-120.

Part X – Sales to exempt organizations

General

Sales of tangible personal property, including motor vehicles and parts, and sales of services to certain governments, individuals, and organizations (exempt customers), are not subject to sales tax. A brief discussion of these sales follows.

Exempt customers include:

- the United States and its agencies and instrumentalities;
- New York State, and any of its agencies and instrumentalities, public corporations or political subdivisions (including local governments);
- exempt organizations such as religious, charitable, scientific, and educational institutions that have qualified for exempt status under New York State sales tax law;
- certain posts or organizations of past or present members of the armed forces of the United States; and
- certain Indian nations, tribes, and individual Indians.

Other states of the United States and their agencies and political subdivisions (for example, the state of Vermont, the city of Boston, a public school in another state) **do not** qualify for sales tax exemption.

In each case, the exempt customer must establish its right to an exemption by giving the dealer Form ST-119.1, *Exempt Organization Exempt Purchase Certificate*, or other proper documentation.

Organizations using Form ST-119.1 must be the direct purchaser of record and the direct payer of record. *Direct purchaser* includes any employee or agent authorized by the organization to make purchases on its behalf.

Direct payer of record means that payment is made by the organization or from its funds directly to the dealer.

Federal, New York State, and local government agencies

Eligible governmental agencies must establish their right to exemption by giving the dealer a governmental purchase order, or other appropriate document that identifies the customer as a governmental agency. For more information, see Tax Bulletin [Purchases and Sales by Governmental Entities \(TB-ST-700\)](#).

Certain Indian nations, tribes, and individuals

An exempt Indian nation or tribe may make purchases exempt from sales tax, including purchases of motor vehicles, and services or repairs to vehicles. To make purchases exempt from sales tax, the nation or tribe must provide vendors with a properly completed Form ST-119.1.

The sale of a motor vehicle to an individual member of an exempt Indian nation or tribe is exempt from sales tax only if the individual is an enrolled member of the nation or tribe, resides on a qualified reservation, and the vehicle will be registered to an address on a qualified reservation. The purchaser should give the dealer a properly completed [Form DTF-801, Certificate of Indian Exemption for Certain Property or Services Delivered on a Reservation](#).

Services or repairs to vehicles performed on or delivered to the qualified reservation

To qualify for the exemption, services or repairs to vehicles must be made on or delivered to the qualified reservation.

Diplomatic missions and personnel

The Office of Foreign Missions (OFM) administers the exemption of eligible foreign missions and their members from payment of any taxes when purchasing or leasing a vehicle. For information about OFM's vehicle tax exemption program, contact the U.S. Department of State, Office of Foreign Missions, at www.state.gov/ofm/tax/vehicle/.

Sales of parts, accessories, or repair services made to diplomatic missions or to diplomatic personnel may be exempt from sales tax. The United States Department of State grants tax exemption to eligible foreign officials on assignment in the United States. The purchaser must be the holder of a valid sales tax exemption card issued by the U.S. Department of State or by the American Institute in Taiwan. Both mission and individual exemption cards contain animal images to indicate both the level of exemption and

any restrictions, which are explained on both the diplomatic exemption card and on Form DTF-950, described below. Exemption cards issued to qualified persons bear a photograph of the individual to whom it is issued.

For purchases other than vehicles, in addition to holding a valid sales tax exemption card, the purchaser must:

- Present the dealer with [Form DTF-950](#), *Certificate of Sales Tax Exemption for Diplomatic Missions and Personnel: Single Purchase Certificate*.
- Show the dealer the tax exemption card or other exemption evidence so the dealer can record the pertinent identifying information.
- Sign the invoice at the time of purchase in the presence of the dealer.

For information about accepting exemption certificates, see page 27.

Part XI – Lemon law

New car lemon law

Under the new car lemon law, when a new motor vehicle does not conform to the manufacturer's warranties, the manufacturer, at the option of the purchaser, must refund to the purchaser the full lease price or purchase price of the vehicle.

The purchaser may then submit a claim for refund from the Tax Department for all or a portion of the sales tax paid on the lease or purchase price of the vehicle. This includes the sales tax paid on the purchase price or capitalized cost, including any lease payments, fees, and charges or any portion thereof that were subject to tax and were refunded to the purchaser by a manufacturer under the new car lemon law. Neither the dealer nor the vehicle manufacturer is entitled to a refund or credit of any of the sales and use tax paid by the purchaser.

Used car lemon law

Under the used car lemon law, if the dealer of a used motor vehicle (after a reasonable period of time) fails to correct a malfunction or defect as required by the warranty, the dealer must accept the return of the vehicle from the purchaser. Upon acceptance, the dealer must refund to the purchaser the full purchase price, or for lease contracts, all payments made under the contract, including sales tax, minus a reasonable allowance for any damage not attributable to normal wear or usage. For lease contracts, all further contract payments due from the purchaser are canceled.

When a dealer accepts the return of a used vehicle, the dealer is entitled to a refund or credit from the Tax Department for any of the sales or use taxes refunded by the dealer to the purchaser for the return of the vehicle. Otherwise, the purchaser must submit an application for a refund of the sales tax paid directly to the Tax Department.

To claim a refund or credit, submit [Form AU-11](#), *Application for Credit or Refund of Sales or Use Tax*, within three years of the date the refund is received by the purchaser. See Tax Bulletin [How to Apply for a Refund of Sales and Use Tax \(TB-ST-350\)](#).

Appendix A – Definitions

For purposes of this publication:

Motor vehicle

Motor vehicle generally means a vehicle as defined in section 125 of the Vehicle and Traffic Law, and includes any motorized vehicle operated or driven on a public highway. Cars, light trucks, vans, motorcycles, and motorbikes are all examples of motor vehicles. The following vehicles are not considered motor vehicles:

- electrically-driven personal mobility assistance devices operated or driven by a person with a disability;
- snowmobiles;
- all terrain vehicles (ATVs);
- fire and police vehicles (other than ambulances);
- farm tractors and other farm equipment used exclusively for agricultural purposes or for snow plowing other than for hire;
- self-propelled caterpillar or crawler-type equipment while operated on a construction site; and
- any vehicle with a gross vehicle weight of more than 10,000 pounds.

Resident

For sales and use tax purposes, an individual is a resident of the state and of any locality in which he or she maintains a permanent place of abode. A *permanent place of abode* is a dwelling place maintained by a person, or by another for that person to use, whether or not owned by such person. This includes a person maintaining a permanent place of abode in New York who does **not** spend more than 183 days a year in the state (e.g., a college student or a member of the military may all be residents for sales and use tax purposes).

The dwelling may be a home; an apartment or flat; a room (including a room at a hotel, motel, boarding house, or club); a room at a residence hall operated by an educational, charitable, or other institution; housing provided by the armed forces of the United States, whether the housing is located on or off a military base or reservation; a trailer; a mobile home; a houseboat; or any other premises. This includes second homes, including vacation homes. Therefore, for sales tax purposes, you can be a resident of more than one locality, more than one state, or both.

An individual is also a resident of any local jurisdiction in which the individual carries out any employment, trade, business, or profession with respect to any property used in that trade, business, or profession.

A corporation incorporated under the laws of New York is a resident of New York State. In addition, a corporation, association, partnership (including an LLP), LLC, or other entity doing business in New York State or maintaining a place of business in New York State is a resident of New York State, and of any locality in which it is doing business or maintaining a place of business.

For sales tax information on sales to nonresidents, see page 27.

**Qualifying
omnibus**

Qualifying omnibus is a motor vehicle weighing at least 26,000 pounds and measuring at least 40 feet in length, used to transport persons for hire by an omnibus carrier operating with a certificate or permit issued by the New York State Department of Transportation, or by an appropriate agency of the United States.

Appendix B – Record keeping and returns

Record keeping, filing returns, and the payment of sales tax

As a sales tax vendor, a dealer is required to not only collect the correct amount of tax from its customers, but is also required to keep accurate records of sales, report the sales to the Tax Department by filing sales and use tax returns on time, and remit any sales or use tax collected or owed. Records may be kept on paper or electronically. See Tax Bulletin [Recordkeeping Requirements for Sales Tax Vendors \(TB-ST-770\)](#).

Dealers must report any sales made and remit the applicable sales tax based on the accrual method of accounting. That is, when you make a sale for which payment is not received at the time the product or service is delivered, you must still report the sale and remit the sales tax due, using the tax return covering the period in which the sale is made. *Sales Tax Web File* is the easiest and fastest way to file sales and use tax returns and make payments, and most registered sales tax vendors are required to use it. To get started, visit our Web site and create an Online Services business account. Also, see Tax Bulletin [Filing Requirements for Sales and Use Tax Returns \(TB-ST-275\)](#).

The dealer must also document exempt sales, retaining the exemption document or other evidence of exemption, and associating it with each exempt sale. If a dealer fails to keep adequate records, and the dealer is audited by the Tax Department, the dealer could be held liable for substantial additional sales and use taxes, plus penalties and interest. For more information, see [Publication 900](#), *Important Information for Business Owners*.

A dealer must also track its use tax obligations, including use tax due on its purchases, or on items removed from inventory and used by the dealer or its employees (for use tax information, see page 18). Also, see Tax Bulletin [Use Tax for Businesses \(TB-ST-910\)](#).

Appendix C – Sale, transfer, or assignment of business assets

Purchasing or acquiring a business or its assets: Caution

If you are acquiring business assets of an existing business, you may be held liable for any sales taxes the seller or transferor owes to the Tax Department.

At least ten days before you plan to pay for the business or any assets of the business, or take possession of the business assets (whichever comes first), complete and send to the Tax Department [Form AU-196.10](#), *Notification of Sale, Transfer, or Assignment in Bulk*. Generally, the Tax Department is obligated to respond within five business days of the receipt of the form. The date of receipt of Form AU-196.10 by the Tax Department is the date it is actually delivered to the Audit Division's Bulk Sales Unit. For more rules which you and the seller must follow in any such sale, see [Publication 750](#), *A Guide To Sales Tax in New York State*.

Caution: If you fail to comply with these procedures, **you could be held liable** for the amount of the seller's unpaid sales taxes, up to the selling price or the fair market value of the assets you purchased or acquired, whichever is greater.

Need help?



Visit our Web site at www.tax.ny.gov

- get information and manage your taxes online
- check for new online services and features



Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at (518) 485-5082. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.



Telephone assistance

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.