

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
COMMISSIONER OF TAXATION AND FINANCE
ALBANY, NEW YORK

Pursuant to the authority contained in subdivision First of section 171; subdivisions (a), (b), (c), and (d) of section 1136; subdivisions (1) and (8) of section 1142; section 1250 (not subdivided); and subdivisions (a), (b), (c), and (d) of section 1251 of the Tax Law, the First Deputy Commissioner of Taxation and Finance, being duly authorized to act due to the vacancy in the office of Commissioner of Taxation and Finance, hereby makes and adopts the following amendments to the Sales and Use Taxes Regulations, as published in Subchapter A of Chapter IV of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York, such amendments to read as follows:

Section 1. Subdivision (d) of section 533.3 of the regulations is amended to read as follows:

(d) “Annual return.” (1) Every person required to register with the Department of Taxation and Finance (see section 533.1 of this Part and Parts 539 and 540 of this Title) only because such person is purchasing or selling tangible personal property for resale[,] and who is not required to collect any tax or pay any tax directly to the [Department of Taxation and Finance,] department must file a return annually in accordance with the provisions [schedule provided in paragraph (4)] of this subdivision.

(2) Any person required to file quarterly returns whose total tax due for the four most recent quarterly periods for which data is available for such person within the most recent six quarters for which data is available did not exceed \$3,000[,] may [be notified by the department or may elect to] file [returns] a return annually in lieu of filing quarterly.

(3)(i) Each year, the department will review its records in order to identify persons who may have become eligible to file annual returns. The department will notify such persons [required to file returns, by regular mail,] of the change in their filing status to annual filing. Such a notice [shall] will include:

“(a)” the effective date and period for which the person's first annual return will be required to be filed;
and

“(b)” instructions [for filing] as to when the person's last quarterly return is required to be filed.

(ii) Where a person [required to file returns] so notified wishes to continue its current filing status or is, in fact, not eligible to file on an annual basis, such person[: “(a)”] must [return the department's notice to] contact the department[, within 30 days of receipt, properly completed, at the address indicated on such notification;] and [“(b)” must] indicate [on the notice] that the person does not wish to file annually, but wishes to continue its current filing status, or that the person is not eligible to file annual returns. The department should be contacted within 30 days of the date of the notice.

(iii) Those persons eligible to file annual returns under paragraph (2) of this subdivision who are, for any reason, not notified by the department to file returns annually may contact the department to elect to file returns annually in lieu of filing quarterly [returns,] provided [the] such a person's total tax due for the succeeding 12-month period can reasonably be expected not to exceed \$3,000 [and the election is made on a form furnished by the Processing Division, Registration and Returns Processing Bureau, Sales Tax Section, which must be filed on or before the 20th day of the annual period described in paragraph (4) of this subdivision for which the election is made]. Upon confirmation that such a person is eligible to file annually, the department will reclassify the person as an annual filer.

(4) [An annual return is to be filed in accordance with the following schedule.] (i) Annual filers [for years commencing on or after June 1, 1998, including those persons who are not required to collect any tax or

pay any tax directly to the department, shall] must file their returns[: “(a)” For the short annual period of nine months beginning June 1, 1998, and ending on February 28, 1999, on or before March 20, 1999. “(b)” For] for annual periods beginning on [or after March 1, 1999, which annual periods shall begin on] March 1st and [end] ending with the last day of February in the subsequent year[.]. The returns must be filed with the department on or before March 20th of each such subsequent year.

(ii) [Quarterly filers who are notified by the department that they shall file annually must file annual returns (unless they timely notify the department in accordance with subparagraph (3)(ii) of this subdivision that they wish to continue filing quarterly returns) as follows: “(a)” For the short annual period of nine months beginning June 1, 1998, and ending on February 28, 1999, on or before March 20, 1999. “(b)” For annual periods beginning on or after March 1, 1999, the annual period shall begin on March 1st and end with the last day of February in the subsequent year, with the annual return being due on or before March 20th of each such subsequent year. “(c)”] Quarterly filers who become annual filers [shall] pursuant to the department’s yearly reclassification must file their last quarterly [return] returns for the quarterly period [which] that ends immediately prior to the date on which the next annual period begins [and] (“i.e.,” December – February) in accordance with instructions provided in the notification issued pursuant to paragraph (3) of this subdivision and in accordance with such other applicable instructions. Annual returns must then be filed for the next and subsequent annual periods succeeding this last quarterly period.

(iii) Quarterly filers electing to file annually who are reclassified to annual filers after the date on which an annual period has begun must report their sales and use tax activities for that entire annual period and may claim a credit for taxes paid with any quarterly returns previously filed during such annual period.

(5) A properly completed annual return is to be prepared in accordance with the instructions provided by the [Department of Taxation and Finance] department. [It] The return must include completed schedules, if required, and must show, for example, the following information:

(i) the name, address, and identification number of the vendor, recipient of amusement charges, or operator of [a] the hotel;

(ii) the gross amount, to the nearest whole dollar, of sales of tangible personal property and services, food and drink, amusement charges, and rents;

(iii) the amount, to the nearest whole dollar, of taxable sales of tangible personal property and services, food and drink, amusement charges, and rents for each jurisdiction, and the totals of all jurisdictions;

(iv) the amount, to the nearest whole dollar, of purchases subject to [use] tax[,] for each jurisdiction, and the totals of all jurisdictions;

(v) the amount of sales and use taxes for each jurisdiction, and the totals of all jurisdictions;

(vi) credits claimed and prepayments, if any;

(vii) the sales and use taxes due;

(viii) late filing [charge] charges, penalties, and interest, if any, and the total amount due;

(ix) the signature of the vendor, recipient of amusement charges, or hotel operator (or of the officer, partner, or employee [of the vendor] signing the return on the entity's behalf) and the individual's title;

(x) the signature and address of [a] the preparer[,] – if other than the vendor, recipient of amusement charges, or hotel operator; and

(xi) the date [prepared] signed by (or on behalf of) the vendor, recipient of amusement charges, or hotel operator.

(6) If [, at any time during the course of the annual periods described in paragraph (4) of this subdivision,] the total tax due from a person required to file [returns] a return is in excess of \$3,000 at any time during the course of the annual period, such person must commence filing [a] quarterly or monthly [return] returns as required by section 1136 of the Tax Law and the preceding provisions of this section. On the first [quarterly] return so required, such person must report and pay any tax due for the period commencing with the beginning of the abridged annual period. Failure to do so may result in penalty and interest being charged from the date a quarterly or monthly return should have been filed.

Section 2. Paragraph (1) of subdivision (g) of section 533.3 of the regulations is amended to read as follows:

(1) [Holders of a certificate of authority for show vendors are] A show vendor is required to file a New York State and local sales and use tax return whether or not the vendor participated in a show or made any sales in the period covered by the return. [Returns must be mailed to the address listed on the New York State and local sales and use tax return.]

Dated: Albany, New York
December 11, 2007

Barbara G. Billet
Acting Commissioner and Executive Deputy
Commissioner of Taxation and Finance