



Certification Requirements for Businesses that Contract with New York State

Introduction

In certain instances, section 5-a of the Tax Law requires businesses that are awarded contracts with New York State to certify that they are registered to collect New York State and local sales and use taxes (sales tax) on sales delivered to locations within New York.

The purpose of section 5-a is to ensure that contractors do not get state work unless they, their affiliates, and their subcontractors making sales of tangible personal property or taxable services are registered to collect New York State's sales tax. This means that certain businesses, including in some cases out-of-state businesses not currently registered to collect New York State sales taxes, will need to register for New York State sales tax purposes.

This bulletin explains the general rules related to the certification requirements for contractors and their affiliates and subcontractors. For more detailed information on the contractor certification requirements imposed under section 5-a of the Tax Law, see [Publication 223, Questions and Answers Concerning Tax Law Section 5-a \(as amended, effective April 26, 2006\)](#).

Definitions

The following definitions apply to the parties involved in the certification procedure:

- *Contractor* means a person (for example, an individual, partnership, limited liability company, corporation, etc.) awarded a contract by a covered agency.
- *Covered agency* means a state agency (for example, a state department, board, commission, office, or institution), or certain public authorities or public benefit corporations.
- *Subcontractor* means a person engaged by a contractor or by another subcontractor to perform a portion of the contractor's obligations under the contract.
- *Affiliate* means a person who directly, indirectly, or constructively controls another person; is controlled by another person; or is, along with another person, under the control of a common parent.
- *Control* means having the power to direct the management and policies of another person. Determining whether control exists is based on the facts and circumstances of each case. The contractor has responsibility for determining whether a person is an *affiliate*.

Certification requirements

Section 5-a of the Tax Law requires certain contractors that are awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect sales tax. This certification is made by filing a properly completed [Form ST-220-TD, Contractor Certification](#), with the Tax Department. This certification

only has to be filed once, as long as the information it contains remains correct and complete.

Contractors who have made sales of tangible personal property or services with a cumulative value in excess of \$300,000, delivered by any means to locations within New York State, must certify that they are registered to collect sales tax.¹ The \$300,000 threshold in cumulative sales is measured over the four sales tax quarters that immediately precede the sales tax quarter in which [Form ST-220-TD](#) is filed. Sales tax quarters are March-May, June-August, September-November, and December-February.

Contractors must also certify that each affiliate and subcontractor who exceeds the \$300,000 sales threshold during the specified period is registered to collect sales tax. If the contractor, affiliate, or subcontractor did not make sales of property or taxable services in excess of \$300,000 during the specified period, it must indicate this on [Form ST-220-TD](#).

When determining whether the \$300,000 sales threshold has been met, contractors must take into account **all** sales of tangible personal property and taxable services within New York during the specified period (not merely sales to covered agencies). This also includes the amount of any sales made that are exempt from sales tax (for example, sales made to an exempt organization).

In addition to filing [Form ST-220-TD](#), certifying that the contractor (and any affiliates or subcontractors) is registered to collect sales tax, the contractor must also certify to the procuring covered agency that it filed [Form ST-220-TD](#) with the Tax Department, and that the filing is correct and complete. Contractors must make this certification by filing [Form ST-220-CA](#), *Contractor Certification to Covered Agency*, with the procuring covered agency.

Exempt contracts

Certain contracts are exempt from the contractor certification requirements. A contract is exempt if the procuring covered agency and the Office of the State Comptroller (or other contract reviewer) find in writing that the contract is necessary to:

- address an emergency (defined in the State Finance Law as *an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk*); or
- ensure the public health, safety, or welfare when an urgent event with a compelling public purpose arises.

In addition, the agency's and contract reviewer's written finding must explain the reasons supporting the determination.

Note: A Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

References and other useful information

Tax Law: Section 5-a

Publications: [Publication 223](#), *Questions and Answers Concerning Tax Law Section 5-a (as amended, effective April 26, 2006)*

Bulletins: [Quick Reference Guide for Taxable and Exempt Property and Services \(TB-ST-740\)](#)

¹ For examples of tangible personal property and services, see Tax Bulletin [Quick Reference Guide for Taxable and Exempt Property and Services \(TB-ST-740\)](#).