



---

## Bulk Sales

---

### Introduction

Special rules and procedures must be followed when a *bulk sale* transaction takes place to ensure the purchaser is not held personally liable for any of the seller's unpaid sales or use taxes.

This bulletin explains:

- what a *bulk sale* is,
- the purchaser's obligations in a bulk sale, and
- the seller's obligations in a bulk sale.

### What is a bulk sale?

The sale, transfer, or assignment of business assets, in whole or in part, by a person required to collect sales tax is called a *bulk sale*. *Business assets* means any assets directly related to the conduct of a business, including:

- tangible personal property,
- real property, and
- intangible assets, such as goodwill.

However, sales of assets made in the ordinary course of business, such as retail sales to customers, are not considered bulk sales.

Examples of bulk sales transactions:

*Example: A retiring contractor sells all his tools and other equipment to another contractor.*

*Example: A restaurant that is closing sells all of its fixtures and equipment to a person opening up a new restaurant.*

*Example: Corporation A, which is required to collect sales tax, sells its business assets to Corporation B for \$5,000.*

*Example: Corporation C, which is required to collect sales tax, transfers all of its business assets to Corporation D in exchange for stock in Corporation D.*

*Example: Corporation E, which is required to collect sales tax, sells its entire inventory to Corporation F, which intends to resell the inventory.*

*Example: Mr. Smith, a person required to collect sales tax, makes a gift of all of his business assets to another person.*

*Example: A sole proprietor incorporates her business and transfers her business assets to the new corporation.*

Examples of transactions that **are not** bulk sales:

*Example: A hardware store makes a retail sale of tools and building materials to a contractor.*

*Example: A clothing manufacturer trades in six of its delivery vehicles when purchasing six new vehicles from a car dealer.*

*Example: Corporation A purchases all the issued and outstanding stock of Corporation B, which is required to collect sales tax. Corporation A and Corporation B will continue to exist as separate legal entities. Since the business assets of Corporation B have not been transferred in connection with the sale of its stock, this is not a bulk sale.*

### The purchaser's obligations

**Note: A purchaser in a bulk sale transaction should not pay the seller** without following the procedures outlined below. Otherwise, the purchaser **may be held liable** for any unpaid sales and use taxes owed by the seller.

### Notifying the Tax Department

A purchaser must notify the Tax Department of a pending bulk sale by filing [Form AU-196.10](#), *Notification of Sale, Transfer, or Assignment in Bulk*, at least 10 days before paying for or taking possession of any business assets, whichever happens first. File this form by:

- registered mail;
- certified mail with return receipt; or
- hand-delivery to the Tax Department in Albany.

If any other delivery method is used, the notice will not be effective until the date the Tax Department actually receives it. The burden of proving the notice was received is on the purchaser.

File a revised [Form AU-196.10](#) if any information on the original form changes or was incorrect or unavailable. For example, if the closing date for the sale changes, file a revised form showing the new closing date. Write *Revised* at the top of the new form.

Within five (5) business days after receiving [Form AU-196.10](#), the Tax Department will issue the purchaser either:

- Form AU-197.1, *Purchaser's and/or Escrow Agent's Release - Bulk Sale*, if the seller does not have any unpaid sales taxes and an additional review or audit is not necessary; or
- Form AU-196.2, *Notice of Claim to Purchaser*, if the seller owes unpaid sales tax, is scheduled for a review, or is under audit.

A purchaser who receives Form AU-197.1 from the Tax Department will not be held liable for any unpaid sales tax owed by the seller.

A purchaser who receives Form AU-196.2 should not pay the seller until the Tax Department completes its review of the seller's sales tax account. The purchaser may wish to consult a tax professional at this time.

For purposes of the Tax Department's obligation to respond within 5 business days, the date of receipt of [Form AU-196.10](#) will be considered to be the date it was actually

delivered to the Bulk Sales Unit of the Audit Division, but not earlier than 10 days before the scheduled date of sale or the actual date of sale, whichever is later.

The purchaser will not be held liable for any of the seller's unpaid sales and use taxes and may pay the seller the full purchase price if the Tax Department:

- fails to issue the purchaser Form AU-196.2 within five (5) business days after receipt of a properly completed and timely filed [Form AU-196.10](#); or
- incorrectly sends the purchaser Form AU-197.1 stating that the seller has no outstanding liability.

**Note:** Whether a purchaser receives Form AU-197.1 or AU-196.2 from the Tax Department, the assets purchased from the seller may still be subject to the department's liens if there are outstanding warrants or judgments against the seller for past unpaid taxes.

### **At closing**

A purchaser who receives Form AU-197.1 from the Tax Department may pay the seller the full purchase price when the sale closes.

A purchaser who receives Form AU-196.2 should place the full amount of the purchase price into an escrow account. The department will notify the purchaser (and the seller) of the amount of sales tax due, if any, within 90 days of receiving [Form AU-196.10](#).

Once notified of the seller's unpaid sales tax liability, the purchaser may pay the amount due to the Tax Department out of the escrow account, up to the purchase price or fair market value of the assets, whichever is greater. The purchaser may then pay any remaining amount to the seller, which will satisfy the purchaser's liability to the seller for the sale.

### **Registration**

A purchaser who plans to start a business or continue an existing business that makes taxable sales must register with the Tax Department and obtain a *Certificate of Authority*. The seller's *Certificate of Authority* is **not transferable**. The application must be filed at least 20 days before beginning business.

Apply for a *Certificate of Authority* online using [New York Business Express](#). See also Tax Bulletins [Do I Need to Register for Sales Tax? \(TB-ST-175\)](#) and [How to Register for New York State Sales Tax \(TB-ST-360\)](#).

### **Sales tax on the business assets purchased**

A purchaser in a bulk sale transaction is also responsible for paying the sales tax due on any tangible personal property purchased or acquired. The tax due may be paid to the seller to be remitted with the seller's final return, or it may be paid directly to the Tax Department. (Sales tax is not imposed on the sale of inventory acquired for resale, real property, or on intangible assets, such as goodwill.)

### **The seller's obligations**

A seller must give all prospective purchasers [Form TP-153](#), *Notice to Prospective Purchasers of a Business or Business Assets*. This form outlines the purchaser's responsibilities in a bulk sale. However, the failure of the seller to give this notification does not relieve the purchaser of its bulk sale obligations or the potential bulk sale liability.

A seller considering a sale of its business or business assets can contact the Tax Department for a review of its sales tax account to determine if the business has any

delinquent sales tax returns or owes any sales tax. Resolving any outstanding liabilities in advance should help facilitate the sale.

A seller who will no longer operate its business must file a final return within 20 days after its business operations have ended. All taxes due must be paid with the final return. See Tax Bulletin [Filing a Final Sales Tax Return \(TB-ST-265\)](#), for more information. The seller remains liable for any taxes, penalty, and interest due, whether or not the purchaser has been relieved of any liability as a result of the bulk sale.

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:** Sections 1134(a)(1); 1138(a)(3)(A); and 1141(c)

**Regulations:** Part 537

**Publications:**

[Publication 20](#), *New York State Tax Guide for New Businesses*

[Publication 750](#), *A Guide to Sales Tax in New York State*

**Memoranda:** [TSB-M-83\(6\)S](#), *Guidelines for Bulk Sales Transactions*

**Bulletins:**

[Business Information for Sales Tax Purposes \(TB-ST-75\)](#)

[Do I Need to Register for Sales Tax? \(TB-ST-175\)](#)

[Filing a Final Sales Tax Return \(TB-ST-265\)](#)

[How to Register for New York State Sales Tax \(TB-ST-360\)](#)