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## **Business Information for Sales Tax Purposes**

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### **Introduction**

If you operate or plan to open or acquire a business in New York State, there are certain things you need to know. This bulletin will provide you with information concerning your business's sales tax responsibilities. This bulletin provides basic information. You may wish to consult a tax professional to assist you in complying with requirements under the Tax Law.

### **General information**

You can help minimize the potential for sales tax-related problems by doing the following:

- seek advice from a tax professional when necessary
- file your returns on time even if you have no tax due
- pay the correct amount of tax due on time
- maintain a separate bank account for your sales tax receipts
- maintain proper internal controls

For detailed guidance, see the Tax Department's Web site. We have numerous [Tax Bulletins and Publications](#) available, including many focused on specific industries or specific products or services.

Our Web site also provides many online services for businesses, such as:

- [Sales Tax Web File](#) - a fast and easy way to file sales and use tax returns and make payments
- business account creation
- online registration and permit assistance
- new hire reporting
- bill paying
- email subscription service

You can also view information about our [speaking events and education programs](#).

Don't forget that your local Chamber of Commerce may offer small business workshops.

### **Registration**

Every person who sells taxable tangible personal property or taxable services (even if you make sales from your home) must register with the Tax Department before beginning business. If you aren't sure whether you need to register for sales tax purposes, see Tax Bulletins [Do I Need to Register for Sales Tax? \(TB-ST-175\)](#) and [Sales from Your Home \(TB-ST-807\)](#).

Certain sellers of taxable property or services are subject to a presumption that they are sales tax vendors who are required to register and collect state and local sales taxes. See [Presumption applicable to definition of sales tax vendor](#) for more information.

Register for a *Certificate of Authority* online using [New York Business Express](#). You must apply for your certificate at least 20 days before you begin operating your business or before purchasing assets of another business.

For detailed information, see Tax Bulletin [How to Register for New York State Sales Tax \(TB-ST-360\)](#).

### Buying an existing business

If you are buying or otherwise acquiring some or all of the business assets of an existing business, other than in the ordinary course of the seller's business, **don't pay the seller until you contact the Tax Department**. We'll check to see if the seller owes any taxes. If you don't contact us and wait for our reply, **you may have to pay the seller's sales tax debts**.

At least ten days before you plan to pay for the business or any assets of a business, or take over the business (whichever comes first), complete and send to the Tax Department Form AU-196.10, *Notification of Sale, Transfer, or Assignment in Bulk*. We'll check to see if the seller owes us any sales tax or is under audit.

- If the seller does not owe any unpaid sales taxes and if an additional review or audit is not necessary, we'll send you a sales tax release on Form AU-197.1, *Purchaser's and/or Escrow Agent's Release - Bulk Sale*. You can go ahead and pay the seller, and take over the business.
- If the seller owes sales tax, is scheduled for a review, or is under audit, we'll send you Form AU-196.2, *Notice of Claim to Purchaser*. Don't pay the seller until we notify you that the taxes have been paid. You may also wish to consult a tax professional.

For more information, see Tax Bulletin [Bulk Sales \(TB-ST-70\)](#).

You will also need to register and get your own *Certificate of Authority*.

### Collection of sales tax

Once you register for sales tax purposes, you become a trustee for New York State. As a trustee you:

- have a personal responsibility to collect the proper amount of sales tax from your customers and to pay the tax you have collected to New York State with your sales tax return;
- must pay the full amount of sales tax that you collect or that you are required to collect, even if you haven't yet been paid the tax by your customers;
- should **maintain a separate bank account** for sales tax receipts; and
- **should never** use the sales tax money you collect to make other purchases or to pay any of your business or personal expenses

Maintaining a separate bank account for your sales tax receipts should assist you in properly accounting for the sales tax money you must pay over to the Tax Department when filing your sales tax returns. Segregating your sales tax collections from your other business receipts should also help ensure that the sales tax money is not used to make other purchases or to pay any of your business or personal expenses. See also [Establish a segregated bank account for sales taxes](#) on our Web site.

Keeping a separate bank account for your sales tax receipts is one example of establishing proper internal controls for your business. Proper internal controls will help your business and your business records stay properly organized. They also serve to act as an anti-theft device by helping ensure that all business transactions and assets are properly accounted for.

The Tax Law imposes personal responsibility for payment of sales and use taxes on the responsible persons of a business. Responsible persons can be owners, officers, directors, employees, partners, or members of a business. Being personally liable means that the Tax Department can take your personal assets to satisfy the outstanding sales and use tax liabilities of the business.

You can be held personally responsible even if you have an employee or an accountant handle your sales tax matters. A responsible person is liable for the full amount of tax owed by the business. In addition, you can be held personally responsible even though the business is a corporation or a limited liability company.

### **Filing your sales tax returns**

Once you're registered for sales tax purposes in New York State, you must file sales and use tax returns quarterly, part-quarterly (monthly), or annually with the department. You must file a sales tax return by its due date, **even if you have no tax due for the filing period.**

[Sales Tax Web File](#) is a fast and easy way to file sales and use tax returns and make payments. Sales tax vendors must Web file if they meet all three of the following conditions:

- don't use a tax preparer to prepare sales tax returns;
- use a computer to prepare, document, or calculate the required filings or related schedules, or are subject to the corporation tax e-file mandate; and
- have broadband internet access.

If you need to know how to file sales tax returns, Tax Bulletin [Filing Requirements for Sales and Use Tax Returns \(TB-ST-275\)](#) explains the filing requirements. See also our helpful [tax calendar](#), which outlines dues dates for sales tax and other tax returns.

### **Use tax**

When sales tax hasn't been collected on taxable items or services, tax must be paid when the items or services are used in New York. Use tax is a tax imposed on the use of taxable items and services in New York when the sales tax hasn't been paid.

Common situations in which a business operating in New York State may owe use tax include purchases of taxable property or services:

- made outside of New York State;
- made over the Internet, from catalogs, or by phone from businesses that are located outside of New York State; and
- that are used in a different local taxing jurisdiction in the state from where they were purchased or where they were delivered.

A business also owes use tax if it:

- withdraws taxable property from inventory for use by the business; and
- uses taxable property that is manufactured, processed, or assembled by the business.

For detailed information see Tax Bulletin [Use Tax for Businesses \(TB-ST-910\)](#).

### **Keeping adequate records**

Businesses should have procedures in place to ensure that their records are complete and adequate. You must keep accurate records that contain all the information you need to properly prepare your sales tax returns and to verify their accuracy if you are audited by the Tax Department.

No one set of record-keeping rules applies to all businesses. However, the following rules apply to most businesses:

- Your records must be appropriate for your particular operation or business and any record-keeping systems or equipment you use.
- You may keep records in either paper or electronic format, but electronic records must accurately reproduce the original record.
- Your records must verify all transactions, and you must keep your records, under normal circumstances, for at least three years from the due date of the return to which those records relate, or the date the return is filed, if later.
- Your records must properly account for taxes collected or required to be collected. A vendor's liability for the sales tax exists whether or not the tax is actually collected.

You must keep records of every sale, the amount of the sale, and the sales tax on the sale. You must retain a true copy of each:

- sales slip, invoice, receipt, contract, statement, or other memorandum of sale;
- guest check, hotel guest check, receipt from admissions such as ticket stubs, receipt from dues; and
- cash register tape and any other original sales document.

If no written document is given to the purchaser, you must keep a **detailed** daily record of all cash and credit sales in a daybook or similar journal.

If you sell both taxable and nontaxable goods or services, you must identify which are subject to sales tax and which are not on the invoice or receipt.

You must also maintain records to establish the taxable status of all your purchases of property or services. Purchase records should include records related to purchases:

- subject to state and/or local taxes,
- for resale (e.g., inventory and raw materials), and
- exempt from state and/or local taxes for reasons other than for resale.

Purchase records must substantiate all your expenses and your cost of goods sold. They should also show that your business' purchases bear a reasonable relationship to your business' sales.

You should also keep any other record or document that, given the nature of your business, would be necessary to prove that you have collected and paid the proper amount of sales and use tax due.

For detailed information, see Tax Bulletin [Recordkeeping Requirements for Sales Tax Vendors \(TB-ST-770\)](#).

### **Failure to keep adequate records**

If your records are considered inadequate, you may be subject to:

- an estimated audit methodology to determine if the correct tax was reported on your sales tax returns,
- penalties and interest if additional tax is found to be due, and
- criminal penalties if you willfully failed to maintain proper records.

You may also have your *Certificate of Authority* suspended or revoked. If that happens, you are no longer allowed to make taxable sales of tangible personal property or services, or tax-exempt purchases, such as purchases for resale, which means you may have to cease conducting business.

See [Publication 131](#), *Your Rights and Obligations Under the Tax Law*; Tax Bulletin [Sales and Use Tax Penalties \(TB-ST-805\)](#); and [TSB-M-09\(17\)S](#), *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*.

### **Voluntary disclosure and compliance program**

The Tax Department's voluntary disclosure and compliance program encourages taxpayers who haven't paid their taxes to come forward voluntarily and pay what they owe. It offers significant incentives to taxpayers, including protection from possible criminal tax prosecution and the avoidance of civil penalties.

For more information or to apply online, visit [Voluntary Disclosure and Compliance Program](#) on our Web site. See also [TSB-M-08\(10\)S](#), *Voluntary Disclosure and Compliance Program*.

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 1105(a), 1110, 1132(a) and (c), 1133(a), 1134, 1135, 1136, 1137, 1142, 1145, and 1700

**Regulations:** Sections 531, 532.2, 532.3, 533.1, 533.2, 533.3, 533.4, 536.1, and Part 2402

**Publications:**

[Publication 131](#), *Your Rights and Obligations Under the Tax Law*  
[Publication 900](#), *Important Information for Business Owners*

**Memoranda:**

[TSB-M-83\(6\)S](#), *Guidelines for Bulk Sales Transactions*  
[TSB-M-08\(10\)S](#), *Voluntary Disclosure and Compliance Program*  
[TSB-M-09\(17\)S](#), *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*

**Bulletins:**

[Bulk Sales \(TB-ST-70\)](#)  
[Do I Need to Register for Sales Tax? \(TB-ST-175\)](#)  
[Filing Requirements for Sales and Use Tax Returns \(TB-ST-275\)](#)  
[How to Register for New York State Sales Tax \(TB-ST-360\)](#)  
[Recordkeeping Requirements for Sales Tax Vendors \(TB-ST-770\)](#)  
[Sales and Use Tax Penalties \(TB-ST-805\)](#)  
[Sales from Your Home \(TB-ST-807\)](#)  
[Use Tax for Businesses \(TB-ST-910\)](#)