Use Tax for Businesses

Introduction

New York State and local sales taxes are imposed on taxable property and services purchased or delivered to you in New York State. In most instances, when you purchase a taxable item or service in the state, or if it is delivered to you in the state, the seller will collect sales tax from you. The seller then pays the tax over to the Tax Department.

When sales tax has not been collected on taxable items or services, tax is required to 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 has not been paid. 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 bulletin as *use tax*.

This bulletin discusses the following common situations in which a business operating in New York State may owe use tax:

- purchases of taxable property or services made outside of New York State;
- purchases of taxable property or services made over the Internet, from catalogs, or by phone from businesses that are located outside of New York State;
- purchases of taxable property or services on an Indian reservation;
- purchases where the taxable property or services are used in a different local taxing jurisdiction in the state from where they were purchased or where they were delivered;
- withdrawal of taxable property from inventory for use by the business; and
- use of taxable property that is manufactured, processed, or assembled by the business.

This bulletin also discusses how to calculate the use tax and how to report and pay the use tax.

This bulletin does not address use tax as it applies to individuals. For information on use tax as it relates to individuals, including estates and trusts, see Tax Bulletin *Use Tax for Individuals (including Estates and Trusts)* (TB-ST-913).

Situations in which a business owes use tax

Below are explanations of common situations in which a business operating in New York State would owe use tax. For purposes of use tax, *taxable property or services* are generally the same items or services that would be subject to New York sales tax if sold in New York State. For more information on sales subject to tax, see Publication 750, *A Guide to Sales Tax in New York State*, and Tax Bulletin *Quick Reference Guide for Taxable and Exempt Property and Services* (TB-ST-740).

Purchases of taxable property or services made outside of New York State

When you purchase taxable property from a seller who is located outside of New York without paying New York State and local sales taxes, and you later use that property in New York, you are required to pay use tax.

> **Example:** *You buy office supplies in New Jersey and bring them back to New York State for use in your business. The seller does not collect New York State and local sales tax. You owe use tax on the amount you paid for the supplies.*

> **Example:** *While in Florida attending a business meeting, you purchase equipment that will be used by your business in New York State. You have the equipment delivered to your business. The seller does not collect New York sales tax. You owe New York State and local use tax on the cost of the equipment, including any charge for shipping and handling.*

When you take property out of New York State to have a taxable service performed on that property, and then bring that property back into New York for use, you are required to pay use tax.

> **Example:** *You take an office fax machine to New Jersey to be repaired. The repaired fax machine is brought back for use in your business in New York. You owe use tax on the amount you paid to have the fax machine serviced.*

When you purchase taxable services outside New York and you use them in New York State you are required to pay use tax. Examples of these services include taxable information services and protective (security) and detective services.

> **Example:** *Your New York State firm intends to expand its market for one of its products. You contract with an out-of-state survey group to provide you with certain information. The service is a taxable information service. The report and data are sent to your New York office. No New York sales tax is collected by the survey group. You owe use tax on the amount you paid to the survey group for the report and data.*

Purchases made over the Internet, from catalogs, or by phone from businesses that are located outside of New York State

When you purchase taxable property or services over the Internet, from catalogs, or by phone without paying New York sales tax, and the seller delivers the property or services to you in New York by common carrier, you are required to pay use tax.

> **Example:** *You buy a computer through a retail Web site from a business that does not collect New York sales tax. It is delivered by a freight company to your business in New York State. You owe New York State and local use tax on the cost of the computer, including any charge for shipping and handling.*

Purchases of taxable property or services on an Indian reservation

When you purchase taxable property or services from an Indian reservation without paying New York sales tax, and you bring it or have it delivered to your business location in New York for use in your business, you are required to pay use tax.

> **Example:** *While on an Indian reservation, you purchase a fax machine to be used by your business. You bring the machine to your business location off the reservation. You owe New York State and local use tax not collected by the seller on the cost of the fax machine.*

Note: Indian arts and crafts purchased on an Indian reservation are not taxable property.

Purchases where the taxable property or services are used in a different local taxing jurisdiction than where they were purchased or where they were delivered

Local sales tax rates vary from one jurisdiction (city, county, etc.) within New York State to another. The amount of use tax you owe is generally determined by the rates in effect where your business uses the item or service. Therefore, even though New York State and local sales tax may have been collected where you purchased an item or service, if the local tax was collected at a rate that is lower than the rate at the location where you use the item or service, you will owe the difference in use tax.

> **Example:** *You purchase and pay sales tax on office equipment and supplies in a locality in New York State with a lower tax rate than the rate where your business uses the items. When you bring the equipment and supplies to your office, you will owe tax for the **difference** between the rate in the locality of the business location where you use the items and the rate in the locality where you purchased and took delivery of the equipment and supplies.*

> **Example:** *A printer used in your business is in need of repair. You have it repaired at a shop in a locality in New York State that has a lower sales tax rate than the rate in the locality where your business uses the printer. You will owe tax for the **difference** between the rate in the locality where your business uses the printer and the rate in the locality where the printer was repaired.*

However, if the local tax was collected at a rate that is higher than the rate at the location where you use the item or service, you are **not** entitled to a refund of the difference.

Withdrawal of taxable property from inventory for use by the business

When you purchase taxable property (such as inventory) or services without paying taxes because you intend to resell them, but you remove an item from inventory and use it, you are required to pay use tax.

> **Example:** *You purchase a dozen desks for sale to your customers. You subsequently withdraw a desk from inventory to be used in your office. You owe use tax on the amount you paid for the desk.*

> **Example:** *You own a lumber yard in New York State. You purchase, for resale, lumber from an out-of-state vendor who will deliver the lumber by common carrier. No tax is collected by the supplier. Upon delivery of the lumber, you withdraw enough lumber to build shelves to be used in a milling room. You owe use tax on the cost of the lumber used to build the shelves.*

Use of taxable property that is manufactured, processed, or assembled by the business

When a manufacturer, processor, or assembler uses its product in New York State or incorporates the product into real property, it has made a taxable use of the property. This is so whether it was manufactured, processed, or assembled inside or outside of New York State. For information on calculating use tax in this case, see *How to calculate use tax* below.

> **Example:** *You own manufacturing facilities located in New York that produce furniture. Your company makes office furniture for its own use. You owe use tax on the furniture used in New York State.*

Purchases by nonresident businesses

Use tax is generally not due on taxable property or services purchased by a business while it is a nonresident of New York State. However, the Tax Law was amended effective April 10, 2017, to narrow the exclusion from use tax for purchases made by nonresident businesses. Use tax is now imposed when a nonresident business brings tangible personal property or a taxable service into New York State for use here **unless** the nonresident business has been doing business outside of New York for **at least** six months prior to the date that the property or service is brought into New York State.

Doing business means that the business is actively engaged in normal operating activities, such as hiring employees, having a payroll, and making routine purchases and sales. Merely being organized as a legal entity is **not** a sufficient indication of doing business absent other normal operating activities.

> **Example:** *X Corporation was formed in Delaware on January 15, 2017. X Corporation is a nonresident of New York State. X Corporation remained dormant until March 17, 2017, when it hired employees and purchased a number of computer servers for use in its business. On June 24, 2017, X Corporation opened an office in New York State and brought some of the servers to New York for use here. Because X Corporation had been doing business outside New York for* ***less*** *than six months prior to bringing the servers into New York (i.e., March 17 - June 24), X Corporation owes use tax on the servers.*

> **Example:** *Same facts as in the preceding example, except that X Corporation does not open its New York office and bring some of the servers to New York until October 4, 2017. Since X Corporation had been doing business outside New York for* ***at least*** *six months prior to bringing the servers into New York (March 17 - October 3), the exclusion from use tax provided in Tax Law* § *1118(2) applies and X Corporation does not owe use tax on the servers.*

> **Example:** *XYZ Corporation is a resident of New York. On May 1, 2017, XYZ Corporation forms PQR, Inc., a Delaware corporation wholly owned by XYZ Corporation. On June 1, 2017, PQR, Inc., purchases a large sculpture for installation in the lobby of XYZ Corporation's New York City offices. PQR, Inc., conducts no other business activity, and has no employees or offices. On February 1, 2018, PQR, Inc., brings the sculpture into New York and delivers it to the installation site. Even though PQR, Inc., was in existence for more than six months when it brought the sculpture into New York (May 1, 2017 - February 1, 2018), PQR, Inc., was never doing business as required by the statute. Therefore, PQR, Inc., will owe use tax on the sculpture when it is brought into New York.*

This new restriction on the use tax exclusion does not apply to individuals. Additionally, if a nonresident business paid sales or use tax in another state when it purchased the property or service subject to use tax under this new law, a reciprocal credit for sales or use tax paid in the other state may be available.

For more information, see TSB-M-09(4)S, *Amendments Affecting the Application of Sales and Use Tax to Aircraft, Vessels and Motor Vehicles*, and Tax Bulletin *Reciprocal Credit for Sales or Use Taxes Paid to Other Taxing Jurisdictions* (TB-ST-765).

How to calculate use tax

Use tax is generally due on the consideration given or contracted to be given for the property or service, or for the use of the property or service, including any charges by the seller to the user for shipping or handling. Generally, the rate of tax used to compute the use tax due is the rate in effect where the business takes delivery of an item or service, or where it uses the item or service, if higher.

Consideration is the dollar value of all amounts paid for any property or service. It can include:

- money;
- bartered goods or services;
- assumption of liabilities;
- fees, rentals, royalties;
- charges that a purchaser, lessee, or licensee is required to pay (such as a delivery charge); and
- any other agreement for payment.

Calculating use tax on purchases of tangible personal property

Any use tax due on tangible personal property purchased by a business is computed on the price paid by the business for the property.

> *Example: Your business purchased a dozen desks at $750 each for retail sale to your customers at $1,250 each. You subsequently withdrew one desk from inventory to be used in your office. Use tax is computed on $750.*

Calculating use tax on tangible personal property manufactured, processed, or assembled by the user

If you are engaged in a business that manufactures, processes, or assembles tangible personal property and you take an item that you made from inventory and use it in New York State, you owe use tax. The amount of the use tax depends on these factors:

- whether or not you offer items of the same kind for sale in the regular course of your business; and
- if you do offer items of the same kind for sale in the regular course of your business, whether or not the item is used solely on your own premises and the item retains its character as tangible personal property when used.

If you **do offer** items of the same kind for sale in the regular course of business, the basis of the use tax that you owe on your use of the item is the price for which you sell similar items, as evidenced by a price list, catalog, or record of sales. In the absence of a catalog price or price list, the basis of the use tax that you owe is the average of the prices charged to customers.

However, if you use an item you made and you sell similar items in the ordinary course of business, but use the item only in the conduct of your business operations on your own premises, and the item retains its characteristics as tangible personal property when used, then the base on which the use tax is computed is the cost of the tangible personal property (for example, raw materials) used to manufacture, process, or assemble the item used, including any charges for shipping and delivery that the vendor of those raw materials charged you.

> *Example: As a manufacturer of desks, you withdraw a desk from your inventory for use in your executive office located on the premises. In the regular course of business, you sell similar desks for $1,500 each. The cost of the property (raw materials) you used to manufacture, process, or assemble the desk was $400. Use tax is computed on $400, plus any charges for shipping or delivery that the vendor of the raw materials charged you.*

If you use an item you made but you **do not offer** similar items in the regular course of your business, then the base on which the use tax is computed is the cost of the tangible personal property (for example, raw materials) you used to manufacture, process, or assemble the item used, including any charges for shipping and delivery that the vendor of those raw materials charged you.

Calculating use tax on services and tangible personal property upon which services were performed

The applicable tax rate is computed on the consideration given or contracted to be given for the service and for any tangible personal property transferred in conjunction with the service. The consideration includes any charges to you by the vendor for the service, for shipping or delivery, and any charges to you by the vendor for picking up the tangible personal property upon which taxable services will be performed.

Example: You contract with an auto shop located outside of New York State to change the oil in your company's vehicles. The shop does not collect New York State sales tax. When you bring the vehicles back into New York State, you owe use tax. The use tax is computed on the total cost to you including the service charge and the costs for the oil and filter replacements.

Six-month rule

The sales tax is generally computed on the price you paid for an item or service, **including** any shipping or handling charges made by the seller. However, there are two instances where a New York State business's tax due is not based on the purchase price of the item or service:

- If you used the item or service outside of New York for more than six months prior to bringing the item or service into New York, the amount subject to tax is the lesser of the purchase price or the fair market value at the time you bring the item or service into New York State.
- If tangible personal property is brought into New York to be used in the performance of a contract for a period of less than six months, the user may elect to compute the tax on the fair rental value of the property for the period of its use within New York. This method may only be used if the property is not completely consumed or incorporated into real property in New York State.

In these instances, a lower amount of tax may be due. The same six-month rule applies when computing local tax due.

Credit for sales taxes paid on purchases outside of New York State

You may be eligible for a credit for tax you paid to another state or local jurisdiction against the tax owed to New York State on your purchase of taxable property or services. To determine whether the tax you paid qualifies for credit against New York State and local tax, see Tax Bulletin *Reciprocal Credit for Sales or Use Taxes Paid to Other Taxing Jurisdictions* (TB-ST-765).

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

How to report and pay use tax

Report your use tax in one of the following ways:

1. If your business is registered (or required to be registered) for New York State sales tax purposes, you must report your use tax on your sales and use tax return.
2. If you are a business operating in New York State as a sole proprietor that is not registered or required to be registered for New York State sales tax purposes, report your use tax on your:

• New York State personal income tax return;

• Form ST-140, *Individual Purchaser's Annual Report of Sales and Use Tax;* or

• Form ST-141, *Individual Purchaser's Periodic Report of Sales and Use Tax*.

3. If you are a business, other than a sole proprietorship, operating in New York State and you are not registered or required to be registered for New York State sales tax purposes, report your use tax on Form ST-130, *Business Purchaser's Report of Sales and Use Tax.*

Reporting use tax on your sales and use tax returns. A business required to collect sales tax in New York State must file sales and use tax returns periodically to report and remit any sales tax collected and sales or use tax owed during each sales tax period. A business is required to file annually, quarterly, or monthly (part-quarterly), depending on the amount of taxable sales or tax collected. You can file your return online using New York's Web Filing for sales tax returns. Also, see Tax Bulletin *Filing Requirements for Sales and Use Tax Returns* (TB-ST-275). Businesses required to collect sales taxes should use these returns to pay their use tax.

Reporting use tax on personal income tax returns. If your business is a sole proprietorship and is not required to be registered, and you are filing Form IT-201, *Resident Income Tax Return*, Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*, or Form IT-205, *Fiduciary Income Tax Return*, your sales or use tax is due on the due date of your income tax return.

If you request an **automatic extension of time to file** your New York State personal income tax return, you should pay your sales or use tax (as well as the personal income tax you may owe) by using one of these forms:

- Form IT-370, *Application for Automatic Six-Month Extension of Time to File for Individuals*, or
- Form IT-370-PF, *Application for Automatic Six-Month Extension of Time to File for Partnerships and Fiduciaries*.

You must file your extension application on or before the due date for filing your income tax return (generally April 15 or the first business day after April 15).

Sales and use tax forms. If your business is not a sole proprietorship and is not required to be registered for New York State sales tax purposes, you must report your use tax liability by filing Form ST-130, *Business Purchaser's Report of Sales and Use Tax.* The use tax is due within 20 days from the date the property or service purchased is first brought or delivered into New York State (or into a jurisdiction within the state where you have a business location with a higher tax rate than the rate originally paid).

Example: A travel agency located in New York State is a corporation. It is not registered or required to be registered for sales tax purposes. The corporation purchases a computer over the Internet from a seller located outside New York State, who did not collect New York State sales tax from the corporation. The seller has the computer delivered to the travel agency's office in New York. Use tax on the purchase must be paid directly to the Tax Department using the Form ST-130 within 20 days of its delivery to the travel agency.

Special rule for motor vehicles, trailers, or vessels

The tax on a motor vehicle, trailer, or vessel that must be registered or titled by the New York State Department of Motor Vehicles (DMV) will be collected by DMV when you register it. The tax is computed at the combined state and local rate in effect where your business is located or at the rate in effect where the property will be principally used or garaged. For more information, see Publication 750, *A Guide to Sales Tax in New York State*, and Sales tax forms used for Department of Motor Vehicles transactions.

If you will not be registering or titling the motor vehicle, trailer, or vessel at DMV, tax must be remitted directly to the Tax Department using Form ST-130, *Business Purchaser's Report of Sales and Use Tax*.

Failure to pay use tax

Failure to pay the use tax you owe by the due date may result in the imposition of penalties, interest, or both. You can use the online *Penalty and Interest Calculator* to determine the amount of penalty and interest due.

The Tax Department conducts both routine and special audits to promote compliance. In addition, the U. S. Customs Service provides the Tax Department with information from customs declarations filed by New York State residents returning from overseas travel. The Tax Department also obtains information on sales to New York State residents under information exchange agreements with other states.

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 1105,1110, 1118, and 1133

Regulations: Parts 525 and 531

Publications: Publication 750, *A Guide to Sales Tax in New York State*

Bulletins:

Filing Requirements for Sales and Use Tax Returns (TB-ST-275)
Quick Reference Guide for Taxable and Exempt Property and Services (TB-ST-740)
Reciprocal Credit for Sales or Use Taxes Paid to Other Taxing Jurisdictions (TB-ST-765)
Use Tax for Individuals (including Estates and Trusts) (TB-ST-913)