

Important Changes to New York Sales Tax Law Affecting Exempt Organizations

Alert

Recent amendments to the New York Tax Law, effective September 1, 2008, will require exempt organizations to collect sales tax with respect to sales of certain goods and services which are currently exempt. The most important change for many organizations will be the new requirement to collect sales tax on items sold over the Internet and by other "remote" means.

Under current law, retail sales in New York of tangible personal property by qualifying exempt organizations are generally subject to sales tax only if made at a physical shop or store. "Tangible personal property" includes items such as books, jewelry, clothing and furniture. Sales of tangible personal property by other means (including by mail order, telephone and the Internet) are not currently subject to sales tax.

Beginning September 1, 2008, exempt organizations will be required to collect sales tax on retail sales in New York of tangible personal property where the sale is made by remote means, including telephone, mail order, email, the Internet and similar methods, but only if such sales are made with a degree of regularity, frequency and consistency. These sales will be subject to sales tax whether or not the organization also has taxable sales from a shop or store. These changes do not affect other New York Tax Law provisions specifically exempting certain items from sales tax (regardless of the method of sale), such as periodicals, certain food products and certain drugs and medicines.

The changes also will require exempt organizations to collect sales tax on the lease or rental of tangible personal property and the provision of certain utility services and certain services to real property.

Guidelines issued by the New York State Department of Taxation and Finance (the "Department") discussing these changes and providing helpful examples can be found at http://www.tax.state.ny.us/pdf/memos/sales/m08_5s.pdf. As noted on page four of the guidelines, an exempt organization that makes any taxable sales must register with the Department for sales tax purposes if it has not already done so. Once registered, organizations generally will be required to file quarterly sales tax returns, regardless of whether any sales tax is actually collected.

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