

# Tenenbaum Law, P.C.

*Tax Attorneys*

## **YOUR GUIDE TO NEW YORK STATE SALES AND USE TAX**



*Tax Attorneys Representing Taxpayers in IRS and New York State Tax Matters*

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## **WHAT IS SUBJECT TO SALES AND USE TAX IN NEW YORK STATE?**

- Sales tax applies to retail sales of certain tangible personal property and services.
- Use tax applies if tangible personal property and services are purchased from another state for use within New York State.

Generally...

- Sales of tangible personal property are subject to New York sales tax unless they are specifically exempt.
- Sales of services are generally exempt from New York sales tax unless they are specifically taxable.

## **TANGIBLE PERSONAL PROPERTY**

The term tangible personal property means any kind of physical personal property that has a material existence and is perceptible to the human senses (in other words, something you can see and touch).

Sales of tangible personal property and certain services are subject to sales tax when delivered in New York State.

Examples of taxable tangible personal property include:

- ✓ Raw materials (for example- wood or metal)
- ✓ Manufactured items such as jewelry, clothing, furniture, machinery and appliances
- ✓ Motor vehicles, gasoline, oil, and chemicals
- ✓ Computers and prewritten computer software
- ✓ Artistic items such as sculptures, paintings, and photographs
- ✓ Animals, trees, shrubs, and flowers
- ✓ Certain grocery store items such as soda, beer, cigarettes, candy, and bottled water.

## **SERVICES SUBJECT TO NEW YORK SALES TAX**

Examples of services subject to New York sales tax include:

- ✓ Restaurant food and drink
- ✓ Utility and (intrastate) telecommunication services
- ✓ Telephone answering services, prepaid telephone calling services, mobile telecommunication services
- ✓ Certain information services
- ✓ Maintaining, installing, servicing, and repairing of tangible personal property or realty
- ✓ Storing tangible personal property
- ✓ Certain parking and garaging or storing of motor vehicles
- ✓ Interior decorating and design services;
- ✓ Security and detective services
- ✓ Passenger transportation services with a driver using limousines, black cars, and certain other motor vehicles (not including taxi and bus services)
- ✓ Telephone entertainment services
- ✓ Hotel occupancy
- ✓ Admission charges to a place of amusement
- ✓ Social and athletic club dues
- ✓ Portions of cabaret charges

Services subject only to **New York City** sales tax include:

- ✓ Hair services such as those provided by a beautician, barber or hair restoration services
- ✓ Tanning
- ✓ Manicure and pedicure
- ✓ Electrolysis
- ✓ Massage services
- ✓ Services provided by weight control and health salons, gyms, Turkish and sauna baths, and similar facilities, including any charge for the use of these facilities
- ✓ Written or oral credit rating or reporting services



## CERTIFICATE OF AUTHORITY

Anyone making a sale in New York State that is subject to sales tax must register with the Tax Department and obtain a *Certificate of Authority*.

The *Certificate of Authority* gives the seller the authority to collect sales tax on taxable sales and to issue and accept most New York State sales tax exemption certificates.

Vendors must register with New York State if they sell tangible property or services that are subject to sales tax and if they:

- Maintain a place of business in the state and sell taxable, tangible personal property or services within the state
- Solicit business in New York State through employees, independent contractors, agents, or other representatives, and sell taxable, tangible personal property or services in New York State
- Solicit business through catalogs or other advertising material, and have some additional nexus with New York State
- Make sales of taxable products to customers within New York State, and regularly (at least 12 times a year) deliver the products in the vendor's own vehicles

## MAINTAINING ADEQUATE RECORDS

Under New York law, registered sales tax vendors are obligated to keep accurate records of all sales and purchases.

Adequate records may include detailed purchase and sales records including any substantiation related to the purchase or sale. Additionally, detailed electronic point of sale (POS) systems records may be adequate.

If records are deemed inadequate, New York State may:

- Use an estimated audit methodology to determine any additional taxes
- Pursue criminal penalties if improper records were *willfully* maintained
- Subject you to penalties and interest if there is additional tax due
- Revoke or suspend your *Certificate of Authority*



## TRUST FUND TAXES

- Sales and use taxes are considered trust fund taxes.
- Registered vendors are held as trustees holding sales and use tax in trust for New York State.
- Since these taxes are held in trust for New York State, unpaid trust fund taxes can flow through to owners corporate officers and certain employees, making them personally liable for any uncollected or unremitted sales and use tax.



## ABOUT US

The law firm of Tenenbaum Law, P.C. focuses its practice on the resolution of tax controversies. It has been repeatedly recognized as one of the top tax law firms on Long Island by *Long Island Business News*, as well as one of the Top 100 Women Owned Firms by *New York Law Journal*. The founding member of the firm, Karen Tenenbaum, has experience in the area of taxation and is skilled in New York State and New York City residency audits.

In addition to comprehensive legal support to taxpayers facing or planning against residency audits, the firm offers comprehensive services to businesses and individuals with respect to their Federal and State tax matters including:

- Tax Controversy Resolution
- Federal and State Tax Audits
- Sales and Use Taxes
- IRS Appeals
- NYS Conciliation Conferences
- Federal and New York State Collection Issues
- Liens, Levies, Warrants and Seizures
- Offers in Compromise
- Installment Agreements and Installment Payment Agreements
- Innocent Spouse Claims
- Responsible Person Assessments
- Non-Filers

The firm is located in Melville, New York, on the border of Nassau and Suffolk counties on Long Island. Our clients are based primarily in the greater New York City area, with others from other states throughout the country.

Tenenbaum Law, P.C. welcomes the opportunity to discuss your tax controversy matter with any of the firm's seasoned attorneys.

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**The information contained in this document does not constitute legal advice. No person or entity should act on this information without seeking the advice of qualified legal counsel. No attorney-client relationship shall be deemed to exist by virtue of the use of this information.**