

Didn't Pay Your New York State Sales Tax? 8 Consequences Restaurant Owners Need to Know



Karen Tenenbaum | May 29, 2019



As many owners fear, the restaurant industry is a frequent target of New York State tax audits. According to a [Bloomberg BNA analysis](#), restaurant owners are among the most high profile and commonly delinquent taxpayers in New York State. Of the Top 250 businesses with tax warrants in 2017, at least 40 were restaurants that owed \$19.5 million or more.

New York takes sales tax liability seriously and devotes significant resources to ensuring that businesses properly track, collect and pay sales tax to the government. When a business fails to do that, the state enforces the law using a variety of tools at its disposal.

1. Collection against income and assets

Through the use of tax warrants, liens, levies, and income execution, the tax department can go after your bank accounts, real or personal property, wages, and other assets to collect taxes owed. They can even take the cash you have on hand (or in a cash register) or take inventory to sell at a tax auction.

2. Imposition of penalties and interest

Delinquent taxpayers can be subject to penalties and interest as high as 14.5%. As discussed further below, penalties can be avoided in some cases for eligible taxpayers who come forward and pay their outstanding tax liabilities.

3. Closure of the business

The state can shut down a business for failure to pay sales tax. During a seizure, the state can have the locks changed at the place of business and seize the property for sale at auction. The business could also have its Certificate of Authority revoked.



4. Referral for income tax audits

The state may refer individuals and businesses for income tax audits based on under-reported income arising from a sales tax audit. A seemingly minor sales tax assessment can quickly become a major financial headache, as New York State adds on income tax, interest, and penalties. There may also be IRS liabilities based on the additional income.

5. Personal liability

Sales taxes are trust taxes. That means, under the right circumstances, certain individuals can be held personally liable for the business' outstanding sales tax debts. These responsible persons can include owners, operators, and even investors or employees if they meet the requirements.

In the case of a limited liability company (LLC), there are more risks of personal liability because each and every LLC member has 100% personal responsibility for the LLC's sales tax liability, regardless of a member's level of involvement in the business' affairs, with some exceptions.

6. Driver's license suspension

When an individual is held personally liable for the business's outstanding taxes, the state can suspend the individual's driver's license if they owe \$10,000 or more in tax, penalties, and interest, and there is no collection resolution in place (such as an Installment Payment Agreement, Income Execution, or Offer-in-Compromise, discussed below).

7. Criminal conviction

A sales tax matter may become more than a question of money owed. New York aggressively enforces its tax laws, including pursuing certain sales tax cases criminally. It's not uncommon for a sales tax audit to be referred to the state's expanded Special Investigation Unit program for a look at possible criminal consequences.

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8. Bad publicity and visibility

In order for New York State to have the legal authority to pursue collection against the taxpayer's real and personal assets, the state must first file a tax warrant (except in the case of an income execution). A tax warrant is a public record on file at the county clerk's office and with the Secretary of State. It can be found by anyone searching the database on the Department of State's website.

The Tax Department also publishes a list of the Top 250 business and individual warrants, which is updated monthly. The media often picks up stories of businesses who owe taxes – if there are arrests, it's even more likely.

When the government arrests a business owner for failing to pay taxes, it will usually broadcast that through the issuance of press releases. The goal is to inform the public and to deter others from following suit. Of course, even if the business owner can avoid jail, the bad publicity will continue to hurt the business.

Other Important Sales Tax Information

How the State Retrieves Information in New York

New York State and the IRS utilize electronic data collected from third parties such as wholesalers and distributors to compare against the taxpayer's records and uncover businesses under-reporting on their cash sales. The state also takes averages of similar businesses and determine sales based on inventory levels and other markers.

Mining the electronic data collected from debit and credit card purchases further helps the state in detecting taxpayers who fail to remit sales tax. In New York, every tax return filed is reviewed by its Case Identification and Selection System (CISS). By comparing the sales reported by credit card companies with those a business owner reports on state tax returns, CISS has created more sophisticated models to enhance fraud detection.



What Can You Do if You're Behind on Paying Taxes in New York?

The best thing to do is act quickly and get help, ideally before the State discovers your underpayment. New York's Voluntary Disclosure and Compliance Program is open to any eligible taxpayer, including individuals and businesses, for all types of tax administered by the New York State Department of Taxation and Finance (NYSDTF).

The main catch is that you must beat the state to the punch and come forward before they come after you. If you are already under audit or investigation, you cannot participate. This includes if you are a party to a criminal investigation (even if you have not yet been notified); if NYSDTF has already identified the disclosed deficiency; or if you participated in a tax avoidance transaction that is a Federal or New York State reportable or "listed" transaction.

The benefit of the Voluntary Disclosure Program is that the state will not impose penalties or bring criminal charges against eligible taxpayers with a history of noncompliance who come forward and pay their outstanding tax liabilities.

As an added incentive, qualified taxpayers are also eligible for a limited look-back period, which means you may not have to pay back taxes you owe if they fall outside the look-back period. The application for the Voluntary Disclosure program is on the NYSDTF website, but take care in filling it out and making proper disclosures.

How to Pay an Unresolved Balance in New York

If the state has already come after you for unpaid taxes, there are still ways to resolve your dispute including an Installment Payment Agreement or Offer in Compromise.

Installment Payment Agreement (IPA)

An IPA permits payment of back taxes over time on balances of \$20,000 or less to be paid within 36 months. Interest and penalties continue to accrue, but collection actions will be suspended when an IPA is put in place, as long as you comply with the terms. You can request an IPA by setting up an [NYS DTF's Online Services account](#).

Offer in Compromise (OIC)

If you cannot afford to pay your tax bill, an Offer in Compromise (OIC) may be an option. It's a binding agreement wherein New York State agrees to accept less than the full amount due of tax, interest, and penalties in certain circumstances. The forms for applying for an OIC are available on the [NYS DTF website](#), but note that because the state is settling for less than the full amount due, the Offer in Compromise process is intensive.

Sales tax rules are complicated and carry significant risks when businesses get them wrong. Restaurant owners should contact a qualified tax professional to discuss compliance with sales tax rules and how to resolve a tax dispute.

Tenenbaum Law, P.C. in Melville, NY focuses on the resolution of IRS and NYS tax controversies. Visit their website at www.litaxattorney.com or contact them at info@litaxattorney.com or (631) 465-5000.



Written by Karen Tenenbaum | May 29, 2019

An attorney for 30 years, Karen founded Tenenbaum Law, P.C., providing legal counsel to individuals and businesses facing IRS and New York State tax problems. Karen and her team have successfully represented clients in matters including Federal and State Audits, IRS Appeals and NYS Conciliation Conferences, Federal and NYS Collection Issues.

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