

## Changes to New York State Sales Tax Law Affecting Tax-Exempt Organizations

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The New York State Legislature recently amended the tax law relating to sales made by tax-exempt organizations. Beginning September 1, 2008, not-for-profit charitable, educational, and religious organizations will be required to collect New York State sales tax on the retail sale of the following property and services:

- any lease or rental of tangible personal property (such as equipment);
- any utility service (such as the provision of telephone services or electricity);
- any service to real property (such as building maintenance); and
- any tangible personal property, where the sale is made by remote means, and where the organization makes such sales regularly (such as by telephone, mail order, or over the Internet, throughout the year).

Sales of tangible personal property from a shop or store by exempt organizations were already subject to sales tax and remain taxable. With this newly enacted legislation, sales of items falling into the categories listed above are now also subject to tax regardless of whether they are sold from a shop or store, or over the telephone or on a website.

The New York State Department of Taxation and Finance gives the following examples to illustrate the categories of sales now subject to sales tax:

### Category 1: Leases and Rentals of Tangible Personal Property

Example: A hospital that is an exempt organization leases radiology equipment to a group of doctors for use in their radiology practice. The doctors' lease payments to the hospital for the equipment are subject to tax.

### Category 2: Utility Services

Example: A private college that is an exempt organization sells and separately bills telephone services to its students. These sales of telephone services by the private college are subject to tax.

Example: A hospital that is an exempt organization provides telephone answering services to medical practices located in the hospital. The hospital's sales of telephone answering services are subject to tax.

Example: A charitable relief agency that is an exempt organization leases space in its building to a commercial tenant and submeters electricity to the tenant. The agency's charge to the tenant for electric service is billed separately and is not included in the tenant's rent. The sale of electric service by the agency is subject to tax.

Category 3: Services to Real Property

Example: A preservation society that is an exempt organization does repair work on privately-owned historic homes. The society pays 50% of the repair costs and charges the individual homeowners the remaining amount. The society's charges to the homeowners for the repair work are subject to tax.

Category 4: Sales by Remote Means

Example: An exempt organization that fosters international amateur sports competition places television advertisements to sell sports equipment imprinted with the organization's logo. Customers place orders for the products by telephone. The organization accepts telephone orders for its products throughout the year. Sales of the sports equipment by the exempt organization are subject to tax.

Example: A scientific research foundation that is an exempt organization distributes a catalog displaying books and videos sold by the organization. Throughout the year customers place orders with the organization by mail and the products are delivered by mail. Sales of the books and videos by the exempt organization are subject to tax.

Example: An art museum that is an exempt organization sells books, jewelry, posters, and prints from a virtual store located on its Internet Web site. Sales of these items occur throughout the year. Sales made from the art museum's virtual store are subject to tax.

Certain direct sales by tax-exempt organizations, not made from a shop or store or by remote means, remain exempt from New York State sales tax. This exemption does not apply to sales through a third-party. The New York State Department on Taxation and Finance gives the following example to illustrate the sale of items by an exempt organization where such sale is not subject to New York State sales tax:

Example: A youth basketball league that is an exempt organization sells decorative candles for its annual fundraiser. League members solicit sales only through door-to-door visits, showing potential customers a brochure of the various candles available for purchase. The league members take orders and collect payment from their customers at the time of the door-to-door visit. Orders are not placed by the customers by mail or by telephone or over the Internet. The league then purchases the candles from a supplier and arranges for delivery of the candles to its customers. Sales of the candles by the youth basketball league are not subject to tax since the sales are not made from a shop or store and are not sales made by remote means.

Any not-for-profit corporation making sales subject to sales tax must register with the State, if it has not already done so, and must obtain a Certificate of Authority authorizing the collection of sales tax. Once registered, the organization must, in addition to collecting the applicable sales tax, keep records, file tax returns, and remit the collected sales tax.

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