

**Tax Law Amendments Related to  
Sales Made by Certain Sales Tax Exempt Organizations  
Effective September 1, 2008**

Recently enacted legislation (Part KK-1 of Chapter 57 of the Laws of 2008) amended the Tax Law to provide that receipts from the sale of certain property and services by the exempt organizations described below are subject to state and local sales and compensating use tax. Beginning September 1, 2008, nonprofit charitable, educational, and religious organizations, armed services posts, and other organizations exempt from sales tax as described in sections 1116(a)(4), (5) and (6) of the Tax Law, collectively referred to as exempt organizations, are required to collect state and local sales and use tax on their retail sales of the following property and on their sales, other than for resale, of the following services:

- any lease or rental of tangible personal property;
- any utility service described in section 1105(b) of the Tax Law;
- any service to real property described in section 1105(c)(5) of the Tax Law; and
- any tangible personal property where the sale is made by remote means, such as by telephone, mail order (including email), over the Internet, or by other similar methods, provided the exempt organization makes such sales with a degree of regularity, frequency, and continuity.

The sales described above are subject to tax whether or not they are made from a shop or store. Sales of tangible personal property made from a shop or store by these exempt organizations were already subject to tax and remain taxable. A *shop or store* is any place or establishment where goods are sold from display with a degree of regularity, frequency, and continuity, and any place where sales are made through a temporary shop or store located on the same premises as persons required to collect tax. These organizations also remain liable for collecting tax on receipts from their sales of food and drink made in or by a restaurant, tavern, or other establishment operated by the organization. Also, organizations described in sections 1116(a)(4) and (5) of the Tax Law remain liable for collecting tax on receipts from their sales of parking services.

*Leases and rentals of tangible personal property* mean leases or rentals of tangible personal property subject to tax.

**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.*

*Utility services* include gas, electricity, refrigeration, and steam; and gas, electricity, refrigeration, and steam service of any nature. These services also include telephony, telegraphy

and telephone and telegraph service of any nature, except interstate and international telephony, telegraphy and telephone and telegraph service; telephone answering services; prepaid telephone calling services; and mobile telecommunications 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.*

*Services to real property* means maintaining, servicing, or repairing real property to keep it in a condition of fitness, efficiency, readiness, or safety, or restoring it to such condition. Taxable services include, but are not limited to, painting and cleaning services, landscaping and lawn services, snow plowing, and property repair services.

**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.*

*Sales made by remote means* include sales made by telephone, mail order (including email), over the Internet, or by other similar methods. Sales made by remote means are taxable when made with a degree of regularity, frequency, and continuity.

- *Telephone sales* include any sales by an organization that occur as a result of telephone contact, whether the call is initiated by the organization or by a prospective customer.

**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.*

- *Mail order* includes cases where the order is initiated by email or mail. In many instances, organizations publish mail-order catalogs from which customers purchase products. Mail-order sales may be similar to telephone sales in that customers may place orders for products by telephone and have the products delivered to them by mail.

**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.*

• *Internet sales* means sales effected via the Internet. For example, these could be sales made from an exempt organization's online or virtual store, which may be accessed on the organization's Web site or some other Web site. If the exempt organization sells goods or services on its own Web site or if the organization sells its goods and services through an online store which is hosted by another Web site, and the organization makes such sales on a regular, frequent and continuous basis, then the organization's Internet sales 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 other sales made by exempt organizations to their customers that are not made from a shop or store and are not made by remote means are not subject to tax. However, the sales must be made by the exempt organization and not a third-party vendor. For example, sales solicited by an exempt organization using only door-to-door visits are not subject to tax if the exempt organization purchases the items sold from a third-party supplier and then resells the items to its customers. These sales are not subject to tax because the sales are not made from a shop or store and are not sales made by remote means.

**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.*

## Definitions

*Section 1116(a)(4) organizations* include any not-for-profit corporation, association, trust, or community chest, fund, foundation, or limited liability company organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, testing for public safety, fostering national or international amateur sports competition, or preventing cruelty to children or animals.

*Section 1116(a)(5) organizations* include qualifying posts or organizations of past or present members of the armed forces of the United States, as well as auxiliary units, societies, trusts, or foundations for the organizations. These organizations must be incorporated in New York State, or, if not incorporated, must be **physically located** in New York State. In addition, these organizations must meet the following membership requirements:

- at least 75% of the members of the post or organization must be past or present members of the armed forces of the United States; and
- 90% of the remaining members must be cadets or spouses, widows, widowers, ancestors, or lineal descendants of past or present members of the armed forces of the United States or of cadets.

*Section 1116(a)(6) organizations* include the following Indian nations or tribes:

Cayuga	Seneca Nation of Indians
Oneida Indian Nation	Shinnecock
Onondaga Nation of Indians	Tonawanda Band of Senecas
Poospatuck	Tuscarora Nation of Indians
St. Regis Mohawk	

### **Sale tax registration and other requirements**

Any exempt organization that makes any of the sales described in this memorandum, or makes any other taxable sales, must, if it has not already done so, register for sales tax purposes and obtain a *Certificate of Authority*, which authorizes the organization to collect state and local sales and use taxes on its taxable sales. To register for sales tax purposes, the organization may apply using the *New York State Online Permit Assistance and Licensing Web site* at [www.nys-permits.org](http://www.nys-permits.org), or fill out Form DTF-17, *Application for Registration as a Sales Tax Vendor*, and send it to the address listed in the instructions for that form at least 20 days before the organization begins making taxable sales. Once registered, the exempt organization must collect tax on its taxable sales, keep records, file tax returns, and remit tax with its returns.

### **Additional Information**

For more information, see Publication 750, *A Guide to Sales Tax in New York State*, Publication 850, *New York State and Local Sales and Use Tax Quick Reference Guide*, and Publication 900, *Important Information for Business Owners*.

NOTE: A TSB-M is an informational statement of existing Department policies or of changes to the law, regulations, or Department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in Department policies could affect the validity of the information presented in a TSB-M.