

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

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Sales Tax
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DELIVERY CHARGE ADDED TO TAXABLE
RECEIPT EFFECTIVE SEPTEMBER 1, 1991

The sales tax law had provided, that when determining the amount of sales tax to collect on a taxable receipt, charges included on such receipt that represent the seller's cost of transporting the purchase to the retail purchaser (if such transportation charge was separately stated on the bill rendered to the purchaser), could be excluded from the taxable receipt.

As a result of an amendment to the sales tax law, effective September 1, 1991, shipping or delivery charges billed by the vendor (which had been previously excluded from taxation as the cost of transportation, if separately stated) are part of the taxable receipt subject to sales tax, regardless of whether such charges are separately stated or whether the shipping or delivery is provided by the vendor or a third party.

Billings for Taxable Sales

When a customer pays the vendor for a taxable product or service and for its delivery, any charge for the cost of delivery that the vendor includes on the bill, invoice or other memorandum of sale given to the customer, becomes part of the receipt subject to sales tax.

Accordingly, when billing for taxable sales that are delivered within New York State (whether such shipment originates from inside or outside this state) on or after September 1, 1991, sales tax must be computed on the sum of all the component charges that comprise the taxable receipt including any charge for transportation, delivery, shipping, postage, freight, handling or similar charges. It is the vendor's responsibility to collect the tax on such charges regardless of whether the vendor ships the property by means of its own employees, a contract carrier, common carrier, the mail, or any other delivery service.

Example (1) A customer purchases a kitchen appliance (including service contract) from a major department store chain that has its own delivery vehicles. The department store delivers the appliance to the customer's home and charges \$20.00 for its delivery. The store issues the following bill to the customer:

Appliance	\$499.95
Service contract	30.00
Delivery charge	<u>20.00</u>
Total (before tax)	\$549.95

Sales tax must be computed on the total receipt of \$549.95.

Example (2) A customer purchases a table and chairs from a custom furniture maker; the customer requests that the items be delivered. The furniture maker contracts with a common carrier to transport the furniture from his/her workshop to the customer's home. The furniture maker issues the following invoice:

Table and chairs	\$3,500.00
Transportation	<u>250.00</u>
Total (before tax)	\$3,750.00

Sales tax must be computed on the total receipt of \$3,750.00.

Example (3) A customer orders movies from a mail order video club. The cost of each movie varies but the club requires that the customer pay an additional \$1.50 per movie for shipping and handling. The video club bills the customer as follows:

Video #1	\$14.99
Video #2	29.99
Video #3	29.99
Shipping and handling (3 @ \$1.50)	<u>4.50</u>
Total (before tax)	\$79.47

Sales tax is due on the total receipt of \$79.47.

Billings for Nontaxable Sales

Since the tax status of the underlying transaction controls the tax status of the receipt, when a customer pays the vendor for a nontaxable product or service and its delivery, any charge for delivery that is included on the customer's bill is also not subject to sales tax. In other words, a charge for delivery, shipping, postage, etc. that is a component of a nontaxable receipt is not taxable; this is true even if the receipt is not subject to tax because the customer provided the vendor with a valid resale certificate or other exemption document.

Example (4) A customer purchases smoked meats, assorted cheeses and jellies from a mail order food merchant. The food merchant adds a shipping and handling charge to the customer's bill. Since all the items purchased by the customer are nontaxable food items, the entire receipt, including the shipping and handling charge, is exempt from tax.

Example (5) A wholesaler delivers an inventory shipment to a customer engaged in retail sales. The customer provided the wholesaler with a resale certificate at the time the order was placed. The freight charge billed by the wholesaler for delivery of this order is not subject to tax.

Billings for Sales That Contain Taxable and Nontaxable Charges

When taxable and nontaxable property and/or services are combined into a single charge on one bill, the entire charge is subject to tax. When separate charges for the taxable and nontaxable sales are made, sales tax is not to be collected on the nontaxable portion. If both taxable and nontaxable sales are separately listed on one bill, but only one charge for delivery is made, the entire delivery charge becomes part of the taxable portion of the receipt and therefore, subject to tax.

Example (6) A customer orders a coffee maker and a five pound supply of imported coffee through the mail. The mail order retailer renders the following bill to the customer:

Coffee maker	\$89.95
Five pounds imported coffee	55.00
Postage	<u>5.00</u>
Total (before tax)	\$149.95

The receipt subject to tax is \$94.95.

If taxable and nontaxable sales are separately stated on a bill, and any charge for delivery is separately stated, and the charge for delivery is allocated between the taxable and nontaxable sales, the delivery charge allocated to the taxable portion of the bill is taxable while the delivery charge allocated to the nontaxable portion is not subject to tax.

Example (7) An art dealer/private collector purchases 5 works of fine art at auction. Four pieces are to be resold through the purchaser's gallery (auctioneer was provided with a proper resale certificate) and one piece for the purchaser's own private collection. The auction house uses its own private courier service for delivery and charges a flat \$250.00 per item for local delivery. The auction house issues the following bill to the purchaser:

Item #1	\$300,000	N/T
Item #2	175,000	N/T
Item #3	200,000	N/T
Item #4	250,000	N/T
Delivery (4 @ \$250)	1,000	
Item #5	250,000	Tax
Delivery	250	

The amount subject to tax is \$250,250.

Billings for Delivery Service Only

Since the sales tax is not specifically imposed on transportation service, delivery services purchased by a customer directly from someone other than the vendor of the taxable property or services to be delivered are not subject to sales tax, unless the charges for the delivery services are included on the vendor's bill to the customer.

Example (8) A customer purchases taxable goods from a vendor who does not have the ability to make or arrange for delivery. The customer separately contracts with a common carrier to transport its goods from the supplier's place of business to its own. The customer receives one bill from the vendor for the taxable goods and another bill from the common carrier for the delivery service. The bill from the common carrier is not subject to sales tax since it is not a component part of the taxable bill issued by the vendor.

Example (9) At the special request of the customer, a seller of prewritten computer software ships the diskette containing the program purchased by the customer using an overnight delivery service. The customer has an account with the delivery service and arranges for the software vendor to have the delivery service bill the customer's account. The customer is billed for the software by the vendor, the customer is also billed (on their own account) by the delivery service for the overnight shipment. The delivery service charge is not subject to sales tax since it is not part of the bill for the taxable software.

The incidental sale or transfer of tangible personal property in conjunction with the sale of a delivery service does not render the delivery service charge subject to tax.

Example (10) A customer contracts with a messenger/courier service to express deliver architectural renderings for a sales presentation taking place in a hotel located in another part of the state (the renderings are not being delivered as a result of a sale). The messenger/courier service provides a protective tube for the drawings and charges the customer a separate fee for the tube. The charge for the protective tube is subject to sales tax as the sale of tangible property, but the delivery charge is not subject to sales tax since the delivery charge is for delivering the customer's own drawings, not for delivering the protective tube purchased by the customer. The sale of the tube is incidental to the delivery service.

Example (11) A corporation hires a professional packing and shipping company to move some of its important documents to a record storage facility. The packing and shipping company removes the documents from the corporation's files, packs them into special boxes, labels the boxes for identification, and then ships these boxes to the storage facility. When the packing and shipping company bills the corporation, it charges a fee for its labor, a fee for the boxes and labels, and a fee for transporting the boxes to the storage facility. The sale of the boxes and labels are subject to sales tax, but like the previous example, the sale of the boxes and labels is incidental to the packing and shipping service provided by the vendor. Since the true object of the transaction was the purchase of a nontaxable delivery service, all charges other than those made specifically for the boxes and labels are not subject to sales tax.

Calculating Use Tax

There are instances when the seller of taxable goods or services is not required to add New York State sales tax to its charges; (e.g. the seller does not do business in this state; the seller received an exemption certificate from purchaser; or the purchase was made outside the taxing jurisdiction). When a situation arises where tax was not charged by the seller and the purchaser makes a taxable use of the purchase, the purchaser must pay a use tax directly to the Tax Department.

When computing the use tax, any charge for delivery, transportation, postage, shipping, and the like that was added to the bill by the seller of the property or service, must be included in the base amount upon which the use tax is calculated. Generally the same rules which govern whether or not delivery costs are to be included for the purpose of calculating the sales tax will also apply for use tax.

When property which was originally purchased for resale is used in a taxable manner, the use tax base is the cost of property plus its delivery expense. However, if the property subject to use tax was acquired in a bulk shipment and a single delivery fee was charged, the amount of the delivery charge considered part of the amount subject to use tax may be determined by dividing the total delivery charge by the number of units being delivered.

Example (12) A retailer of office equipment purchased a supply of ten (10) word processors for resale. The retailer's purchase invoice for these items showed a delivery charge of \$150.00. The retailer takes one of the word processors out of inventory for its own use. When the retailer calculates its use tax liability for the one word processor, \$15.00 (one tenth of \$150.00) must be added to its cost.