

**A Guide to
Sales Tax in
New York State
for Exempt
Organizations**

About this publication

This publication provides information for organizations that are exempt from New York State and local sales and compensating use taxes (sales tax) and for organizations that wish to obtain sales tax exempt status.

Many different kinds of organizations are exempt from paying sales tax on their purchases or may qualify for sales tax exemption in New York State. Certain sales made by these types of organizations are also exempt from sales tax. This publication identifies these organizations and explains the procedures that prospective exempt organizations must follow in order to request sales tax exempt status.

An exempt organization's purchases of tangible personal property and services, rent paid for hotel occupancy, and amusement charges are generally exempt from sales tax, provided the exempt organization is the direct purchaser, occupant or patron of record. The publication explains the procedures that exempt organizations must follow in order to properly make tax exempt purchases.

While many sales made by exempt organizations are exempt from sales tax, certain sales made by these organizations are subject to tax. The rules that govern taxable sales vary depending on the type of organization making the sales. This publication explains the selling rules for most types of exempt organizations.

If an exempt organization will be making sales in New York State that are subject to sales tax, it may be required to collect sales tax from the purchasers. If it is required to collect sales tax, it must register for sales tax purposes with the Tax Department and obtain a *Certificate of Authority*, which authorizes the organization to collect sales tax and accept certain exemption documents from purchasers. See *Information on registering for sales tax purposes* on page 43 of this publication for more details, including important information related to disclosing an exempt organization's *responsible persons*.

If you need additional information or clarification about the information in this publication, or any other information regarding sales tax or other taxes administered by the Tax Department, please refer to the addresses and telephone numbers listed on the back cover of this publication in the *Need help?* box.

For more information on what electronic services are available from the Tax Department, visit our Online Tax Center on our Web site, www.tax.ny.gov. Use the Online Services to make payments, file certain returns, view account information, and more.

NOTE: A publication is an informational document that addresses a particular topic of interest to taxpayers. Subsequent changes in law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in Tax Department policies could affect the validity of the information contained in a publication. Publications are updated regularly and are accurate on the date issued.

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Certain organizations are not required to establish exempt status

Under sections 1116(a)(1) and (2) of the Tax Law, the following organizations are exempt from payment of sales tax on their purchases and uses, and are granted sales tax exemption without being required to establish their exempt status with the Tax Department:

- New York governmental entities
- United States governmental entities

New York governmental entities

All New York governmental entities are exempt from paying New York State sales taxes. However, other states of the United States and their agencies and political subdivisions **do not** qualify for sales tax exemption. Examples of governmental entities that do not qualify for exemption include:

- The state of Vermont
- The city of Boston, Massachusetts
- The borough of Saddle River, New Jersey

New York governmental entities include the state of New York and any of its agencies, instrumentalities, public corporations (including a public corporation created by agreement or compact with another state or Canada), or political subdivisions.

Agencies and instrumentalities include any authority, commission, or independent board created by an act of the New York State Legislature for a public purpose. Examples of agencies and instrumentalities include:

- NYS Department of Taxation and Finance
- NYS Department of Education
- Association of Fire Districts of New York State
- Nassau County Village Officials Association

Public corporations include any corporation chartered by the New York State Legislature for a public purpose or in accordance with an agreement or compact with another state or Canada. Examples of public corporations include:

- Empire State Development Corporation
- Lower Manhattan Development Corporation
- New York State Canal Corporation
- Industrial Development Agencies
- The Port Authority of New York & New Jersey

**Purchases by New
York governmental
entities**

Political subdivisions include governmental entities such as counties, cities, towns, villages, fire districts, and school districts.

Generally, a New York governmental entity is exempt from payment of sales tax on its purchases when the entity is the purchaser, user or consumer of tangible personal property or services, or when an employee of the entity, on official business, is the occupant of a hotel room, or a patron at a place of amusement, club, or similar place.

To claim exemption from sales tax, a New York governmental entity must provide vendors with a governmental purchase order, government credit card, or the appropriate exemption document (for example, Form ST-129, *Exemption Certificate - Tax on Occupancy of Hotel Rooms*, or Form AC 946, *Tax Exemption Certificate*). (**Please note:** A New York governmental entity **may not use** Form ST-119.1, *Exempt Organization Exempt Purchase Certificate*, to make tax-exempt purchases.)

An employee of a New York governmental entity who is on official business may purchase hotel occupancy exempt from tax by providing the operator of the hotel or motel with a properly completed Form ST-129. (For more information about purchases of hotel occupancy by sales tax exempt organizations, see Publication 848, *A Guide to Sales Tax for Hotel and Motel Operators*.)

Employees of New York governmental entities, while in the performance of their official duties, may make tax-exempt purchases of property or services (but not food and drink for personal consumption) by presenting vendors with a properly completed Form AC 946. (**Please note:** Electronic versions of certain exemption documents may be accepted by vendors. See TSB-M-07(1)S, *Electronic Resale and Exemption Documents for Sales and Compensating Use Taxes*, for more information.)

A governmental entity that purchases motor fuel or diesel motor fuel for its own use and consumption and pays sales tax, fuel excise tax, and petroleum business tax on its purchase, may claim a refund of the taxes paid by filing Form FT-504, *Claim for Refund of Taxes Paid on Fuel by a Governmental Entity*. Credit card issuers who are eligible to apply for a refund of sales tax, fuel excise tax, and petroleum business tax paid on purchases of motor fuel and diesel motor fuel sold to a governmental entity and paid for with the issuer's credit card may claim a refund of the taxes paid by filing Form FT-505, *Claim for Refund of Taxes Paid on Governmental Entity Credit Card Purchases of Fuel*. See forms FT-504 and FT-505 for more information.

A public school teacher, as an employee of a New York governmental entity, may make purchases of school supplies on behalf of the governmental entity exempt from tax (for example, purchases made through the New York City Department of Education's Teacher's Choice program), provided the teacher presents the vendor with a governmental purchase order or the appropriate exemption document.

A New York governmental entity that needs to provide confirmation to vendors that the organization is exempt from payment of sales tax may request a *New York governmental entity letter* from the Sales Tax Exempt Organizations Unit (contact information appears on page 44 of this publication). The letter identifies the organization as a New York governmental entity and states that it is exempt from the payment of sales tax on its purchases. It further states that the vendor needs only a governmental purchase order, or other evidence that the governmental entity is the purchaser, in order to not collect tax.

Agents of New York governmental entities

A New York governmental entity, if authorized by applicable law, may also appoint an agent to make tax-exempt purchases on its behalf, provided certain requirements are met. For more information about purchases by agents of New York governmental entities, see Publication 765, *Sales and Fuel Excise Tax Information For Properly Appointed Agents of New York Governmental Entities*.

Sales by New York governmental entities

Sales by New York governmental entities of tangible personal property or services that **are not** ordinarily sold by private persons are exempt from sales tax. Admission charges by New York government entities are also exempt.

Generally, sales by New York governmental entities of tangible personal property or services that **are** ordinarily sold by private persons are subject to sales tax. Most sales of food and drink and sales of hotel occupancy are also subject to tax. However, receipts from trash removal services are exempt from tax when the service is performed by a New York State municipality (a town, village, or city, except trash removal services in New York City, which are subject to tax), or when the service is rendered by a private trash removal company under an agreement with the municipality.

Sales of parking services

Charges by certain New York governmental entities for parking services are also exempt from sales tax. Charges for parking in facilities owned and operated by the following entities are exempt from the combined state and local sales taxes (but not from the additional 8% New York City tax imposed on parking, garaging, or storing motor vehicles in Manhattan):

- municipal corporations (counties, cities, towns, villages, and school districts) or any agency or instrumentality thereof;
- district corporations (for example, fire districts or water districts) or any agency or instrumentality thereof; and
- public benefit corporations (other than public benefit corporations which have been created by interstate compact or public benefit corporations at least half of whose members are appointed by the Governor).

In addition, charges for parking in facilities that are owned and operated by New York City are generally exempt from sales tax (however, see TSB-M-96(12)S, *Sales of Parking by Local Municipal Facilities Exempt From Sales Tax*, for more information, including when these charges are exempt from the additional 8% sales tax imposed in Manhattan). This includes facilities owned and operated by:

- any agency or instrumentality of New York City, and
- a public corporation the majority of whose members are appointed by the Mayor of New York City, the New York City Council, or both.

Examples

Example: *A county clerk office (a New York governmental entity) sells tax maps and certified copies of various documents. The sales of these items are not subject to tax because the items are not ordinarily sold by private persons.*

Example: *A New York State agency conducts an auction to sell surplus state-owned motor vehicles. Sales of the motor vehicles are subject to tax because motor vehicles are ordinarily sold by private persons.*

Example: *A New York municipality sells leaf/recycling bags to its residents. Sales of the bags are subject to tax because leaf bags are ordinarily sold by private persons.*

Example: *A New York public high school sells books, school supplies, small gift items and candy at the school bookstore. Sales of these items are subject to sales tax because such items are ordinarily sold by private persons.*

If a New York governmental entity fails to collect sales tax on a transaction that is subject to tax, the purchaser is still obligated to pay the tax. If this occurs, the purchaser must pay the tax due directly to the Tax Department. For more information, see Publication 774,

Purchaser's Obligations to Pay Sales and Use Taxes Directly to the Tax Department - Questions and Answers.

United States governmental entities

The United States of America and its agencies and instrumentalities (also referred to as *United States governmental entities*) are exempt from paying New York State sales tax on their purchases, insofar as they are immune from State taxation.

United States governmental entities are organizations created by an act of Congress for a public purpose that are immune from state taxation. Examples of United States governmental entities include:

- U.S. Department of State
- Internal Revenue Service
- U.S. Postal Service
- Peace Corps

Tax-exempt purchases by U.S. governmental entities

Generally, a United States governmental entity is exempt from payment of sales tax on its purchases when it is the purchaser, user, or consumer of tangible personal property or services, or when it is the occupant of a hotel room, or a patron at a place of amusement, club, or similar place.

To claim exemption from sales tax, a United States governmental entity must provide vendors with a governmental purchase order or the appropriate exemption document. (**Please note:** A United States governmental entity **may not use** Form ST-119.1 to make tax-exempt purchases.) An employee of a United States governmental entity who is on official business may purchase hotel occupancy exempt from tax by providing the operator of the hotel or motel with a properly completed Form ST-129. (For more information about purchases of hotel occupancy by sales tax exempt organizations, see Publication 848, *A Guide to Sales Tax for Hotel and Motel Operators*.)

United States governmental entities that need to provide confirmation to vendors that their organization is exempt from payment of sales tax may request a *United States governmental entity letter* from the Sales Tax Exempt Organizations Unit (contact information appears on page 44). The letter identifies the organization as a United States governmental entity and states that it is exempt from the payment of sales tax on its purchases. It further states that the vendor needs only a governmental purchase order or other evidence that the governmental entity is the purchaser, in order to not collect tax.

Sales by United States governmental entities

Sales by United States governmental entities of tangible personal property or services that **are not** ordinarily sold by private persons are

exempt from sales tax. Sales of food and drink and admission charges are also exempt.

Sales by United States governmental entities of tangible personal property or services that **are** ordinarily sold by private persons are subject to sales tax. Sales of hotel occupancy are also subject to tax.

If a United States governmental entity fails to collect sales tax on a transaction that is subject to tax, the purchaser is still obligated to pay the tax. If this occurs, the purchaser must pay the tax due directly to the Tax Department. For more information, see Publication 774, *Purchaser's Obligations to Pay Sales and Use Taxes Directly to the Tax Department - Questions and Answers*.

Example: *The U.S. Government Printing Office (GPO) a United States governmental entity, sells federal publications, records, and other documents. These documents are only available through the GPO. The sales of these documents are not subject to tax because the documents are not tangible personal property of a kind ordinarily sold by private persons.*

Example: *The National Park Service, a United States governmental entity, sells souvenirs at the parks and historic sites it operates in New York State. The sales are subject to tax because the souvenirs are tangible personal property of a kind ordinarily sold by private persons.*

Example: *The U.S. Postal Service charges \$15 for passport photographs. It does not collect sales tax on these sales, even though the sale of passport photographs is subject to tax. Customers who purchase the photographs without paying sales tax must pay the tax due directly to the Tax Department.*

See also *Sales to contractors working for exempt organizations* and *General rules regarding exempt organization certificates* beginning on page 40 for additional information.

The United Nations and other international organizations

The United Nations and any other international organizations of which the United States of America is a member are exempt from paying sales tax. However, in order to obtain exemption from sales tax, they must establish their exempt status with the Tax Department. Examples of these organizations include:

- United Nations Children's Fund
- International Monetary Fund
- International Civil Aviation Organization

Applying for exempt status

An international organization must submit a request for exemption on the letterhead of the organization, stating the basis for the exemption. The request must be signed by a responsible officer of the organization and sent to the Sales Tax Exempt Organizations Unit at the address that appears on page 44.

Upon approval of the request for exemption, the Sales Tax Exempt Organizations Unit will issue the organization Form ST-119, *Exempt Organization Certificate*, containing the organization's exemption number.

Purchases by the United Nations and other international organizations

The United Nations or any other international organization of which the United States of America is a member is exempt from paying sales tax when the organization is the purchaser, user or consumer of tangible personal property or services, or when the organization or its representative, on official business, is the occupant of a hotel room, or a patron at a place of amusement, club, or similar place.

In order to make tax-exempt purchases, the United Nations or any other qualifying international organization must provide each vendor with a properly completed Form ST-119.1, *Exempt Organization Exempt Purchase Certificate*. The organization must be the direct purchaser, occupant or patron of record and must also be the direct payer of record. *Direct purchaser, occupant or patron* includes any agent or employee authorized by the organization to act on its behalf in making purchases, provided both the agent or employee **and** the organization are identified on any bill or invoice. The organization is considered the direct payer of record when payment is made by the organization or from its funds directly to the vendor.

Form ST-119.1 is properly completed when it contains:

- the name and address of the vendor;
- the name and address of the exempt organization;
- the 6-digit exemption number of the exempt organization;
- the signature of a responsible officer of the organization; and
- the date the certificate is issued.

Sales by the United Nations and other international organizations

Generally, sales by the United Nations and other international organizations of tangible personal property or services that **are** ordinarily sold by private persons are subject to sales tax. However, sales by the United Nations or its agencies that are made within the United Nations headquarters district (as defined in Public Law 80-357) are not subject to tax.

Sales by the United Nations and other international organizations of tangible personal property or services that **are not** ordinarily sold by private persons are exempt from sales tax. Sales of food and drink, admission charges, and hotel occupancy are also exempt.

If the United Nations or other international organization fails to collect sales tax on transactions that are subject to tax, the purchaser is obligated to pay the tax due directly to the Tax Department. See Publication 774, *Purchaser's Obligations to Pay Sales and Use Taxes Directly to the Tax Department - Questions and Answers*, for more information.

See also *Sales to contractors working for exempt organizations* and *General rules regarding exempt organization certificates* beginning on page 40 for additional information.

**Religious,
charitable,
educational, and
other
organizations**

Tax exempt status may be granted by New York State to 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. These organizations are referred to as *religious, charitable, educational, and other organizations* throughout this publication.

Organizations of these types are often referred to as *section 501(c)(3) organizations* because that is the section of the Internal Revenue Code (IRC) under which they would qualify for federal income tax exemption, if they chose to apply. An organization that has applied for and received a federal income tax exemption must still apply to receive a New York State sales tax exemption. However, an organization does not need to obtain a federal income tax exemption to be granted a New York State exemption from sales tax under section 1116(a)(4) of the Tax Law.

Examples of these types of organizations include:

- parent-teacher associations;
- private schools;
- nonprofit hospitals;
- churches;
- museums;
- charitable relief organizations (for example, American Red Cross, Salvation Army); and
- youth sports organizations.

Please note: Being organized and operated as a not-for-profit organization does not, by itself, qualify an organization as a sales tax exempt organization. Religious, charitable, educational, and other organizations must apply to the Tax Department to obtain sales tax exempt status.

Qualifying for exempt status

In order to qualify as an exempt organization under section 1116(a)(4) of the Tax Law, an organization must be formally organized and must prove that it is organized and operated exclusively for one or more of the exempt purposes listed above (for example, religious purposes, charitable purposes, etc.).

An organization will be considered *formally organized* only if it has an organizing document defining its purposes and activities, and a code of regulations (commonly referred to as *bylaws*) describing how the organization will function (for example, how to elect officers, conduct meetings, and establish committees). Types of formal organizing documents include the following:

- a certificate of incorporation and bylaws;
- a constitution and bylaws;
- articles of association and bylaws; or
- a declaration of trust and bylaws.

An organization's formal organizing documents must:

- limit the purposes of the organization to one or more exempt purposes; and
- not empower the organization to participate (other than as an insubstantial part of its activities) in activities that **do not** further one or more of the exempt purposes.

In addition, the organization's organizing documents must contain certain provisions which ensure that the organization will operate exclusively for exempt purposes. In order for an organization to obtain sales tax exempt status, the organization's organizing documents must contain the following provisions:

- **Dissolution provision** - This provision states that upon the dissolution of an organization, all of the organization's remaining assets must, after any necessary expenses, be distributed for one or more exempt purposes. This means that the dissolving organization must distribute its remaining assets to an organization that qualifies for federal income tax exemption under section 501(c)(3) of the IRC, or to the federal government, or to a state or local government for a public purpose.

- **Non-inurement provision** - This provision states that no part of the net earnings of the organization may inure to the benefit of any member, trustee, director, or officer of the organization or to any private individual. (However, reasonable compensation may be paid for services rendered to or for the organization.) Also, no member, trustee, director, or officer of the organization, or any private individual will be entitled to share in the distribution of any of the assets upon dissolution of the organization.
- **Restrictive legislation provision** - This provision states that an organization may not devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or any other means, nor may the organization directly or indirectly participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office (including the publishing or distribution of statements).
- **Restrictive purposes and activities provision** - This provision states that the organization is organized exclusively for one or more of the following: religious, charitable, or scientific purposes; testing for public safety; literary, or educational purposes; or to foster national or international amateur sports competition. The organization may not carry on any activities that are not allowed to be carried on by organizations exempt under section 501(c)(3) of the IRC.

An organization will be regarded as operated exclusively for one or more exempt purposes only if almost all of its activities accomplish one or more of the exempt purposes specified above. If more than an insubstantial part of its activities do not further exempt purposes (for example, a substantial amount of the organization's activities are social in nature), the organization will not be considered to be operating in an exempt manner.

Applying for exempt status

In order to claim exemption from sales tax, an organization must complete Form ST-119.2, *Application for an Exempt Organization Certificate*. In addition to the application, the organization must provide the following documentation:

- a copy of the organizing document, including any amendments;
- a copy of the bylaws, including any amendments;
- a statement of activities, which must fully describe the organization's current and proposed activities;
- a statement of receipts and expenditures for the most recent fiscal year of operation (or for the period that that the organization has

been in existence, if the organization has been in existence for less than one year); and

- a statement of assets and liabilities for the most recent fiscal year of operation (or for the period that that the organization has been in existence, if the organization has been in existence for less than one year).

Organizations that have applied for and received federal income tax exemption under section 501(c)(3) of the IRC, and organizations covered under a section 501(c)(3) group ruling, are not required to provide the additional documentation listed above when applying for sales tax exemption. These organizations need only include a copy of their federal section 501(c)(3) determination letter with their completed Form ST-119.2. However, the Tax Department may still request any additional documentation it deems necessary to determine the organization's exempt status.

The organization must send the application and supporting documentation to the Sales Tax Exempt Organizations Unit at the address that appears on page 44 of this publication.

Upon approval of the application, the Sales Tax Exempt Organizations Unit will issue to the organization Form ST-119, *Exempt Organization Certificate*, containing the organization's 6-digit exemption number, which the organization must retain as evidence of its exempt status.

Please note: An organization's federal employer identification number (FEIN), the 9-digit business identification number issued by the Internal Revenue Service, **is not** a sales tax exemption number.

Subordinate units

A subordinate unit of an organization that has qualified for tax exempt status (for example, individual chapters of the American Red Cross) may not use their parent organization's certificate and tax exemption number to make tax-exempt purchases (except Girl Scout and Boy Scout units, as explained below). Subordinate units must file their own application for exempt status in the manner described above, and will only be exempt from sales tax if they are issued their own numbered exempt organization certificate.

Applications for exempt status by Girl Scouts and Boy Scouts

The Tax Department does not issue individual exempt organization certificates and exemption numbers to each scout unit (that is, troops, packs, and posts) of the Girl Scouts of the USA or the Boy Scouts of America. Instead, a single certificate and exemption number is issued to each Girl Scout and Boy Scout council and all of the individual scout units under the council use their council's certificate and exemption

number to make tax-exempt purchases. For more information, see TSB-M-05(3)S, *Sales and Use Tax Exemption Certificates for the Girl Scouts of the USA and the Boy Scouts of America*.

**Purchases by
religious, charitable,
educational, and other
exempt organizations**

Once an organization has received its exempt organization certificate, all of its purchases, including purchases of tangible personal property and services, food and drink, payment of admission charges, and rent paid for hotel occupancy, are exempt from sales tax.

In order to make purchases exempt from sales tax, the organization must provide vendors with a properly completed Form ST-119.1, *Exempt Organization Exempt Purchase Certificate*. The organization must be the direct purchaser, occupant or patron of record and must also be the direct payer of record. *Direct purchaser, occupant, or patron* includes any employee or agent authorized by the organization to make purchases on the organization's behalf. *Direct payer of record* means that direct payment is made by the organization or from its funds directly to the vendor.

To qualify as an exempt purchase, both the name of the organization and its employee, officer, or agent must be identified on any bill or invoice. Payment must be made using cash, a check, or a debit or credit card of the organization. An employee, officer, or agent of the organization may not use a personal check or personal debit or credit card to make tax-exempt purchases on behalf of the organization, even if that person will later be reimbursed by the organization.

Example: *The treasurer of an exempt organization purchases office furniture for the organization. The treasurer provides the vendor with a properly completed Form ST-119.1, and makes payment using the organization's credit card. The treasurer may purchase the office furniture exempt from sales tax.*

Example: *An authorized employee of an exempt organization purchases office equipment that will be used by and become the property of the organization. The employee uses her personal credit card to purchase the equipment and will be reimbursed for the purchase by the organization. The employee may not purchase the equipment exempt from tax because payment is made using the employee's funds and not the funds of the organization. In addition, even though the organization is the owner of the equipment, it is not eligible for a refund of the tax paid.*

Please note: When making purchases of motor fuel and diesel motor fuel, most exempt organizations must pay sales tax at the time of purchase and then file for a refund of the tax paid. To claim a refund of

sales taxes paid on motor fuel and diesel motor fuel, use Form FT-500, *Application for Refund of Sales Tax Paid on Automotive Fuel*.

Purchases of motor fuel and diesel motor fuel by qualified hospitals, volunteer fire companies, and volunteer ambulance services may be made exempt from sales tax at the time of purchase. See Form FT-937, *Certificate of Exemption for Qualified Hospitals, Volunteer Fire Companies, and Volunteer Ambulance Services*, for more information.

Purchases made by any officer, member, or employee of an exempt organization are subject to sales tax when the purchases are for the personal use of the purchaser and not for the organization.

**Sales by religious,
charitable,
educational, and other
organizations**

The following sales of tangible personal property and services, food and drink, admission charges, and hotel occupancy made by religious, charitable, educational, and other organizations are subject to sales tax:

- retail sales of tangible personal property made by any shop or store operated by an exempt organization;
- sales of food or drink in or by a restaurant, tavern, or other establishment operated by an exempt organization (other than sales exempt under section 1105(d)(ii) of the Tax Law; see *Certain sales by a restaurant, tavern or other establishment are tax exempt*, on page 23);
- sales of the service of providing parking, garaging or storing for motor vehicles (other than a garage which is part of the premises occupied solely as a private one or two-family dwelling);
- certain admission charges;
- sales of hotel occupancy by a college or university operating a hotel where the hotel offers 100 or more rooms for occupancy and where the person renting the room(s) is not doing business on behalf of an exempt organization;
- leases or rentals of tangible personal property;
- sales of certain utility services;
- sales of services to real property;
- sales of tangible personal property made by remote means, such as by telephone, mail order (including email), over the Internet, or by

similar methods, provided the exempt organization makes such sales with a degree of regularity, frequency, and continuity; and

- certain sales made at traditional and remote auctions.

Sales made by a shop or store

A religious, charitable, educational, or other organization's retail sales of tangible personal property made by any shop or store, including a temporary shop or store it operates, are taxable, unless (1) the item itself is tax exempt (for example, most food items, drugs and medicine used for humans, and newspapers and periodicals are exempt from sales tax), or (2) some other exemption applies (for example, the purchaser is exempt). 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.

When a religious, charitable, educational, or other organization operates a shop or store and also makes retail sales of similar (though not necessarily identical) items of tangible personal property by any means other than at its shop or store (such as by remote means or at an auction), those additional sales are considered to be made from its shop or store. (For more information about these types of sales, See *Sales made by remote means* on page 26 and *Auction sales* beginning on page 27.)

Examples of a shop or store

Gift shops, book stores, and thrift stores are examples of a shop or store. Vending machines operated by an exempt organization may also be considered a shop or store, but only if the vending machines are located in a defined area which is dedicated to selling tangible personal property. If a vending machine is not located in a defined area (for example, the vending machine is located in a hallway), it is not considered a shop or store.

Note: Sales of candy, soda, and certain fruit drinks sold for 75 cents or less from vending machines that accept coins, currency, or credit or debit cards are exempt from sales tax. Also, sales of heated beverages from a vending machine are exempt from tax regardless of the cost.

Examples of a temporary shop or store include booths or stands operated by an exempt organization at a flea market, craft fair, antique show, or similar premises where there are other vendors on the premises who are required to collect sales tax.

Example: *A church that is an exempt organization conducts an annual rummage sale where it sells donated items including furniture, toys and athletic equipment. Since the rummage sale is held only once a year,*

the sales of these items are not considered to be made by a shop or store and are not subject to sales tax.

Example: *An exempt organization operates coin-operated vending machines that sell candy and gum. The vending machines are placed in hallways, corridors, recesses or alcoves in the building operated by the exempt organization. Since the vending machines are not located in an area devoted to selling tangible personal property, the sales made from these vending machines are not considered sales made by a shop or store and are not subject to sales tax.*

Example: *A hospital that is an exempt organization operates vending machines that sell a variety of items that are normally subject to sales tax. The vending machines are placed in a waiting room where a television, sofa, and chairs are located. Because the vending machines are not located in an area devoted to selling tangible personal property, the sales made through the vending machines are not considered sales made by a shop or store and are not subject to sales tax.*

Example: *A church that is an exempt organization sells religious items displayed from a counter located in a small room at the back of the church. The counter is open for business each Saturday from 1:00 to 4:00 pm. The church is considered to be operating a shop or store because the merchandise is displayed and sold with a degree of regularity, frequency, and continuity. Since the sales of the merchandise are subject to sales tax, the church is required to register for sales tax purposes and collect and remit sales tax.*

Example: *An exempt organization sells donated paintings and craft works from a booth located at a craft fair. Other vendors that are required to collect sales tax also make sales at the fair. The exempt organization's booth is considered to be a temporary shop or store and its sales of the items are subject to sales tax. The organization is required to register for sales tax purposes and collect and remit sales tax.*

Example: *A volunteer fire department that is an exempt organization sells Christmas trees at the firehouse every day for a three-week period. The sales of the Christmas trees are considered to be made by a shop or store and are subject to sales tax because the trees are sold from display with a degree of regularity, frequency, and continuity. The fire department is required to register for sales tax purposes and collect and remit sales tax.*

Example: *An American Red Cross chapter that is an exempt organization operates coin-operated vending machines that sell soda,*

bottled water, and iced tea. All of the items sell for more than 75 cents. The vending machines are located in the organization's cafeteria. The sales made through these vending machines are considered to be sales made by a shop or store and are subject to sales tax.

Fundraising sales

It is common for exempt organizations to become involved in fund-raising activities. For example, youth sports organizations such as Little League baseball and soccer organizations often sell candy bars as a way to raise funds. Other common fundraisers involve the sale of products such as wrapping paper and candles which are marketed through a catalog.

Fundraising sales are often made through door-to-door solicitation or by distributing order forms or catalogs to prospective customers. Whether these types of sales are subject to tax depends on whether the exempt organization has title to the product at the time it is sold. If the exempt organization purchases the merchandise from a vendor and then sells it to its customer, the sale is not subject to sales tax because the exempt organization has title to the merchandise and the sale is not made by a shop or store or by remote means. (For more information on sales made by remote means, see *Sales made by remote means* on page 26 of this publication.)

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 league has title to the candles and the sales are not made from a shop or store and are not sales made by remote means.*

If the exempt organization does not acquire title to the product being sold, but merely solicits the sales, collects the selling price of the product from the customer, gives the money to the company selling the product, and the product is delivered to the customer, the exempt organization is considered to be acting as a sales representative of the company that is selling the product. Since title to the product passes from a vendor required to collect sales tax directly to the customer, the sale is subject to sales tax. When collecting the selling price from the customer, the exempt organization must also collect the appropriate sales tax on behalf of the company, unless the company is also an

exempt seller or the sale is exempt for some other reason. The company is required to be registered for sales tax purposes and is ultimately responsible for the collection and remittance of the sales tax to the Tax Department.

Example: *A parent-teachers organization (PTO) that is an exempt organization distributes catalogs that contain taxable merchandise such as wrapping paper, candy, and gift items to the students of an elementary school. The students solicit sales from family members and neighbors. The PTO does not take title to the products; title passes from the vendor directly to the customers. The sales of these products through the PTO fundraiser are subject to sales tax, since the students are merely taking orders on behalf of the vendor. The students must collect sales tax on the full selling price and the PTO must give the tax collected to the vendor, who must remit the tax to the Tax Department.*

Fundraising sales that are made in ways other than through door-to-door solicitation or by distributing order forms or catalogs to prospective customers may be subject to sales tax.

Example: *A 4-H club that is an exempt organization sells stuffed animals at a county fair to support the organization's activities. Other vendors required to collect sales tax also make sales at the fair. The 4-H club is required to collect sales tax because the sales are being made through a temporary shop or store located on the same premises as persons required to collect tax.*

**Sales in or by a
restaurant, tavern, or
other establishment**

Sales of food or drink in or by a restaurant, tavern, or other establishment operated by an exempt organization are subject to sales tax. A restaurant, tavern, or other establishment includes any dining room, bar and barroom, cafeteria, snack bar, banquet room, or concession stand operated with a degree of regularity, frequency and continuity. It also includes any place where sales are made from a temporary restaurant, tavern, or other establishment located on the same premises as persons required to collect sales tax. Examples of temporary restaurants, taverns or other establishments include concession stands and food trucks operated by an exempt organization at a county fair, church bazaar, or similar places.

Example: *An exempt organization occasionally holds dinners in its hall and charges \$10 for tickets. The organization never holds more than 2 dinners each year. Because of the infrequency of the events, the exempt organization is not considered to be operating a restaurant, tavern or other establishment, so the sales of the dinner tickets are exempt from sales tax.*

Example: *Assume the same facts as in the previous example, except that the exempt organization holds the dinners every month. In this instance, since the dinners occur frequently, the exempt organization is considered to be operating a restaurant, tavern, or other establishment and the sales of the dinner tickets are subject to tax. The organization is required to register for sales tax purposes and collect and remit sales tax.*

Example: *An exempt organization maintains a bar and dining room from which it sells prepared food and drink on a regular basis. The exempt organization is considered to be operating a restaurant, tavern, or other establishment and is required to register for sales tax purposes and collect and remit sales tax.*

Example: *A girl's youth softball league that is an exempt organization operates a concession stand on a daily basis during the months of May through July. The concession stand is considered to be a restaurant or other establishment and sales of taxable items made from the stand are subject to sales tax. The softball league is required to register for sales tax purposes and collect and remit sales tax.*

Example: *A Boy Scout troop that is an exempt organization operates a hot dog stand for two weeks at a county fair. Other vendors who are required to collect sales tax also operate food concessions and merchandise booths at the fair. The hot dog stand is considered to be a temporary restaurant or other establishment because it is operating on the same premises as persons required to collect sales tax. The Boy Scout troop is required to register for sales tax purposes and collect and remit sales tax.*

Example: *An exempt organization regularly caters weddings and other social gatherings at its banquet hall. The catering is considered to be the sale of food or drink in or by a restaurant, tavern, or other establishment and is subject to tax. The exempt organization is required to register for sales tax purposes and collect and remit sales tax.*

Vending machine sales may be considered sales by a restaurant, tavern, or other establishment

Sales from vending machines are considered to be sales made by a restaurant, tavern, or other establishment and are subject to sales tax when the vending machines are located in an area devoted to food sales, and where furnishings and fixtures in the area are commonly associated with a restaurant or similar establishment, such as tables and chairs. However, individual sales of 75 cents or less made through vending machines are exempt from sales tax. All sales of heated beverages made through vending machines are also excluded from tax.

Example: *An exempt organization has several vending machines that dispense soup, sandwiches, and other food items. The machines are located in a room that also contains tables, chairs, and other furnishings typically found in restaurants and similar establishments. All items in the vending machines are sold for more than 75 cents. Sales made through the vending machines constitute sales by a restaurant, tavern, or other establishment, and are subject to sales tax.*

Certain sales by a restaurant, tavern, or other establishment are tax exempt

The following sales of food or drink in or by a restaurant, tavern, or other establishment are exempt from sales tax, whether operated by an exempt organization or by any other person:

- sales to a purchaser who is a person or organization exempt under section 1116(a) of the Tax Law;
- sales to an airline for consumption while in flight;
- sales to a student of a nursery school, kindergarten, elementary, or secondary school at a restaurant or cafeteria located on the premises of the school;
- sales to an enrolled post secondary school student (other than sales of alcoholic beverages) under the terms of a contractual agreement whereby the student does not pay when served (for example, a college meal plan). The sales must be made at a restaurant, tavern, or other establishment located on the premises of the post secondary school, and the school itself must be operated by an exempt organization, or sanctioned by the State of New York in a manner specified under section 1105(d)(ii)(B) of the Tax Law; and
- sales of food or drink (other than beer, wine, or other alcoholic beverages) made by a senior citizen independent housing community that are sold for consumption on the premises to the residents of the community and guests of the residents. The exemption applies only where the food and drink is served to the residents and their guests at the community's dining facility, which is not open to the public, or in the residents' rooms. See TSB-M-01(4)S, *Summary of Recently Enacted Sales and Use Tax Legislation*, for more information about this exemption.

Sales of parking services

An exempt organization's sales of the service of providing parking, garaging or storing for motor vehicles are subject to sales tax. However, if the parking or garaging is in a garage that is part of premises that are occupied solely as a one or two-family dwelling, the sales of these services are not taxable.

For purposes of this publication, the following definitions apply:

Parking means providing temporary storage for a motor vehicle for a consideration, with the customer or the attendant having the right to remove the vehicle.

Garaging means providing storage facilities for a motor vehicle for a consideration, with the customer having the sole right of entrance and exit.

Storing is similar to parking or garaging, with the right to remove the vehicle at will, but generally with no attendant on the premises.

Example: *A church that is an exempt organization charges \$2 per vehicle for parking at its annual church bazaar. This is a sale of parking services and is subject to sales tax.*

Example: *The security office of a private college that is an exempt organization sells parking permits to students who wish to park their vehicles in campus parking lots. The sales of the parking permits are considered sales of parking services and are subject to sales tax.*

Admission charges

Generally, any admission charge by a religious, charitable, educational, or other exempt organization is exempt from sales tax if all of the proceeds inure exclusively to the benefit of the organization. However, admissions to the following events are subject to tax:

- Any athletic game or exhibition. However, if the proceeds from the admission charges exclusively benefit an elementary or secondary school, the admission charges are exempt. In the case of an athletic game between two elementary or secondary schools, the admission charges are exempt if the proceeds exclusively benefit one or more religious, charitable, educational, or other exempt organization.
- Carnivals or rodeos in which any professional performer or operator participates for compensation. However, the admission charges are exempt if the entire net profit from the carnival or rodeo exclusively benefits a religious, charitable, educational, or other exempt organization, and the charitable or educational purposes for which the organization was formed include the operation of a school and the operation of a carnival or rodeo.

Example: *A private New York college that is an exempt organization charges patrons for admission to a football game. Proceeds from the admission charges benefit the college athletic department. The admission charges are subject to tax because they do not exclusively benefit an elementary or secondary school.*

**Sales of hotel
occupancy**

Generally, if an exempt organization operates a hotel, sales tax is imposed on the rent it receives for hotel occupancy unless (1) the occupant is otherwise exempt from sales tax (for example, a representative of a sales tax exempt organization), (2) the occupant qualifies as a permanent resident of the hotel, or (3) the rent is \$2 or less per day. However, rent received for the hotel occupancy is not subject to sales tax if an exempt organization operates the hotel in furtherance of its exempt purposes on premises where it carries on its exempt activities. This exception from the imposition of sales tax does not apply if an exempt organization is a college or university, and the hotel offers 100 or more rooms for occupancy.

Example: *The YMCA, an exempt organization, operates a hotel in furtherance of its exempt purpose. It rents rooms for \$50 per day in the same building in which it conducts its exempt activities. The rent received by the YMCA is not subject to sales tax.*

Example: *A private college that is an exempt organization operates a hotel on its campus in a building that is also used to conduct its exempt activities as an educational organization. The hotel offers 110 rooms for rent. Except when rented to an exempt organization, the rent received by the college is subject to sales tax because 100 or more rooms are offered for occupancy.*

**Leases and rentals of
tangible personal
property**

Any lease or rental of tangible personal property by a religious, charitable, educational, or other exempt organization is subject to sales 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.*

**Sales of certain
utility services**

Any sale of utility services described in section 1105(b) of the Tax Law by a religious, charitable, educational, or other exempt organization is 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 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.*

**Sales of services to
real property**

The sale of any service to real property described in section 1105(c)(5) of the Tax Law by a religious, charitable, educational, or other exempt organization 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 (except cleaning of carpets or drapes), 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**

A religious, charitable, educational, or other organization's sales of any tangible personal property are subject to tax where the sales are made by remote means and the exempt organization makes such sales with a degree of regularity, frequency, and continuity. *Sales made by remote means* include sales made by telephone, mail order (including email), over the Internet, or by other similar methods.

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.*

For more information on sales by certain exempt organizations of utility services, services to real property, remote sales, and leases and rentals of tangible personal property, see TSB-M-08(5)S, *Tax Law Amendments Related to Sales Made by Certain Exempt Organizations Effective September 1, 2008*.

Auction sales - traditional auctions

Certain sales made at traditional and remote auctions by religious, charitable, educational, or other exempt organizations are subject to sales tax.

A traditional auction is an auction where any bidders or their representatives are physically present. This is so, regardless of whether bids are also accepted by telephone, over the Internet, or otherwise. Sales of taxable items of tangible personal property made by religious, charitable, educational, or other organizations at a traditional auction are considered sales made from a shop or store operated by the organization and are subject to tax if made with a degree of regularity, frequency, and continuity. *A single traditional auction event* is any day or portion of a day during which a traditional auction sale takes place.

If a religious, charitable, educational, or other organization conducts no more than two traditional auction events during a calendar year, sales made at these events are not considered to be made with a degree of regularity, frequency and continuity from a shop or store and are not subject to tax, provided:

- the exempt organization does not otherwise make sales of similar (though not necessarily identical) items at a shop or store; and
- the auction events are not conducted on the premises of a commercial auction house or on any premises where an auctioneer is conducting other auction sales.

Example: *An exempt charitable organization holds an annual one-day auction of donated items on the premises of the organization. The organization does not make sales of similar items at a shop or store. Sales at the auction event are not subject to tax.*

If a religious, charitable, educational, or other organization conducts, or schedules or otherwise intends to conduct, three or more traditional auction events during a calendar year, sales at the auction events are considered to be made with a degree of regularity, frequency, and continuity from a shop or store and are subject to tax, and the organization must collect tax on all taxable sales beginning with those made at the first auction event. However, if an affected exempt organization does not schedule or otherwise intend to conduct more than two auction events during a calendar year, but does, in fact, conduct more than two auction events during that year, the organization does not have to collect tax on sales made at the first two auction events (unless the sales are otherwise taxable as discussed above). The organization must collect tax on any taxable sales made at the third and any subsequent auction events.

Example: *An exempt religious organization schedules and holds three auction events each year to sell various taxable items. Sales made at all of the auction events are subject to tax.*

Example: *A charitable relief agency occasionally holds auction events on its premises to sell paintings that have been donated to the organization. The organization does not sell paintings at any time other than during the auction events. The organization does not schedule or intend to conduct more than two auction events each year. However, during a particular calendar year, because of the number of paintings donated, the organization decides after the first two auctions have been conducted to hold a third auction. Sales made at the first two auction*

events are not subject to sales tax, but sales made at the third auction are subject to tax.

When a traditional auction event is held by or for the benefit of a religious, charitable, educational, or other organization on the premises of a commercial auction house, or on any premises where an auctioneer is conducting other auction sales, the sales made at the auction are considered to be made by the exempt organization's temporary shop or store, and any sales of taxable items of tangible personal property are subject to tax, even if the organization participates in only one or two such auction events each year. This rule applies to exempt organizations located in New York State and to exempt organizations located outside New York State selling items through an auction house located in New York State. In either case, the exempt organization remains jointly liable for the collection and remittance of sales tax on the auction house's sales of the exempt organization's property.

Example: *A private college that is an exempt educational organization contracts with a commercial auction house to auction a collectible piece of furniture owned by the college. The auction event will be held on the premises of the auction house, which is a vendor required to collect tax. The auction house must collect tax on the sale of the furniture.*

Auction sales - remote auctions

A *remote auction* is an auction conducted by remote means where no bidders or their representatives are physically present, such as an auction conducted by telephone, mail order, or over the Internet. Like traditional auctions, sales of taxable items of tangible personal property made by a religious, charitable, educational, or other organization at a remote auction are subject to tax if made with a degree of regularity, frequency and continuity. A *remote auction event* is an auction conducted by remote means for a period of time beginning on a common date and closing on a common date during which one or more taxable items of tangible personal property are offered for sale to the highest bidder. Each such occurrence is considered a separate *remote auction event*. An organization may conduct remote auction events over the Internet using the organization's own Web site, or it may use an Internet auction service to conduct the events. Each auction conducted by a different auction service or auctioneer constitutes a separate auction event. Generally, if several items are offered for sale, each item must be offered for the entire duration of the event for it to be considered a single auction event. However, the occasional late addition of an item or items after the start of the event, where the bidding for those items ends on the common date, will not be considered a new auction event.

If a religious, charitable, educational, or other organization conducts no more than two remote auction events during a calendar year, sales made

at these events are not considered to be made with a degree of regularity, frequency, and continuity and are not subject to tax, provided the organization does not make sales of similar (though not necessarily identical) items at a shop or store or by remote means.

Example: *An exempt organization that provides testing for public safety regularly sells appliances, electronics, and other items after they are tested from a store located on the organization's premises, and collects tax on those sales. The organization also conducts an annual remote auction event where it uses an Internet auction service to sell similar items. Since the exempt organization sells items from its store that are similar to the items being sold at the auction event, all sales of taxable items made at the remote auction event are subject to tax.*

If a religious, charitable, educational, or other organization conducts, or schedules or otherwise intends to conduct, three or more remote auction events in a calendar year, sales at the auction events are considered to be made with a degree of regularity, frequency, and continuity, and the organization must collect tax on all taxable sales beginning with those made at the first remote auction event. However, if an exempt organization does not schedule or otherwise intend to conduct more than two remote auction events during a calendar year, but does, in fact, conduct more than two remote auction events during that year, the organization does not have to collect tax on sales made at the first two remote auction events (unless the sales are otherwise taxable as discussed above). The organization must collect tax on any taxable sales made at the third and any subsequent remote auction events.

Example: *WEXO, an exempt organization that operates a public broadcasting television station, conducts an annual auction of items donated to the station to support its broadcasting activities. The auction event is conducted over the air and on the station's Web site. Hundreds of items are listed for sale and may be bid upon by telephone or online. New items are regularly introduced during the four weeks that items are offered for sale. Individual items are generally not offered for sale for the entire four weeks of the auction. Instead, most items are offered for sale for a period of one week or less. When determining whether the organization is conducting auction events with a degree of regularity, frequency, and continuity, each time an item is offered for sale during a different time period (that is, the opening and closing bidding dates of one item are different than those of other items offered), is considered a separate auction event. If these separate remote auction events are conducted, or scheduled or otherwise intended to occur, three or more times during the four-week period during which items are offered for sale, all of the taxable items sold by remote auction are subject to tax.*

Example: *An exempt organization that fosters international amateur sports competition plans to conduct an annual auction on its Internet Web site where it sells donated sports memorabilia. All of the items being auctioned are offered for sale on the same date and may be bid on during the entire period that the auction is held. On the last day of the auction, all items are sold to the highest bidders. The organization does not plan or intend to conduct any other auction sales during the calendar year and does not make sales of similar items at a shop or store. Sales made at the remote auction event are not subject to tax.*

There are additional rules regarding auction sales made by certain exempt organizations. For more information, see TSB-M-08(15)S, *Regulatory Amendments Related to Sales Made by Certain Sales Tax Exempt Organizations - Effective January 1, 2009.*

See also *Sales to contractors working for exempt organizations* and *General rules regarding exempt organization certificates* beginning on page 40 for additional information.

Posts and organizations consisting of past or present members of the armed forces of the United States

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 are exempt from the payment of sales tax on purchases of tangible personal property, services, food and drink, hotel occupancy, and admission and dues.

The following definitions apply to this section:

Post means a chartered, subordinate unit of an organization of past or present members of the armed forces of the United States.

Auxiliary units or societies means a group affiliated with the post or organization and organized in accordance with its bylaws and regulations.

Qualifying as an exempt post, organization, or affiliate

The post, organization, or affiliate (hereinafter also referred to as *organization*), must be formally organized to qualify for tax-exempt status. An organization is formally organized only if it has an organizing document that defines its purposes and activities, and bylaws that describe how the organization will function (for example, rules for electing officers, conducting meetings, and establishing committees). Types of formal organizing documents include the following:

- a certificate of incorporation and bylaws;
- a constitution and bylaws;

- articles of association and bylaws; or
- a declaration of trust and bylaws.

The organization must also be organized in New York State, which means that if the organization is incorporated, it must be incorporated under the laws of New York State. If it is not incorporated, the organization must be formally organized and must be **physically located** in New York State.

In addition, the organization 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.

An organization will not qualify for tax exempt status if any part of its net earnings, income, or assets inures to the benefit of any private shareholders or individuals (that is, any person who has a personal and private interest in the activities of the organization).

In order to qualify as an exempt post or organization, the organization must be operated exclusively for one or more of the following purposes:

- to promote the social welfare of the community;
- to assist disabled and needy past or present members of the United States armed forces and their dependants;
- to provide entertainment, care, and assistance to hospitalized past or present members of the armed forces of the United States;
- to carry on programs to perpetuate the memory of deceased members of the armed forces and to comfort their survivors;
- to conduct programs for religious, charitable, scientific, literary, or educational purposes;
- to sponsor or participate in activities of a patriotic nature;

- to provide insurance benefits for their members or dependents of its members, or both; or
- to provide social and recreational activities for its members.

Applying for exempt status

In order to claim exemption from sales tax, the organization must complete Form ST-119.2, *Application for an Exempt Organization Certificate*. In addition to the application, the organization must provide the following documentation:

- a copy of the organizing document, including any amendments;
- a copy of the bylaws, including any amendments;
- a statement of activities, which must fully describe the organization's current and proposed activities;
- a statement of receipts and expenditures for the most recent fiscal year of operation (or for the period that the organization has been in existence, if the organization has been in existence for less than one year); and
- a statement of assets and liabilities for the most recent fiscal year of operation (or for the period that the organization has been in existence, if the organization has been in existence for less than one year).

In addition to the documentation specified above, an organization that has received a ruling that it is exempt from federal income taxes under a section of the IRC other than 501(c)(19) must provide a copy of its determination letter or ruling.

Organizations that have applied for and received federal income tax exemption under section 501(c)(19) of the IRC are not required to provide the additional documentation listed above when filing for exemption from sales tax. Instead, these organizations may send their completed Form ST-119.2, a copy of their federal 501(c)(19) determination letter, and documentation to confirm that the organization is incorporated in New York State or, if it is not incorporated, documentation that shows that the organization is physically located in New York State. However, the Tax Department may still request any additional documentation it deems necessary to determine the organization's exempt status.

Upon approval of the application, the Sales Tax Exempt Organizations Unit will issue to the organization Form ST-119, *Exempt Organization*

Certificate, containing the organization's exemption number, which the organization must retain as evidence of its exempt status.

A subordinate unit of a qualified post, organization or affiliate may not use the parent organization's certificate and tax exemption number to make tax-exempt purchases. A subordinate unit must file its own application for exempt status in the manner described above, and will only be allowed to make tax-exempt purchases if it is issued its own exempt organization certificate and exemption number.

Purchases by exempt posts, organizations, and affiliates

A post, organization, or affiliate that has received its exempt organization certificate may make all of its purchases, including purchases of tangible personal property and services, food and drink, payment of admission charges, and rent paid for hotel occupancy, exempt from sales tax.

In order to make purchases exempt from sales tax, the organization must provide vendors with a properly completed Form ST-119.1, *Exempt Organization Exempt Purchase Certificate*. The organization must be the direct purchaser, occupant, or patron of record and must also be the direct payer of record. *Direct purchaser, occupant or patron* includes any employee or agent authorized by the organization to make purchases on the organization's behalf. *Direct payer of record* means that direct payment is made by the organization, or from its funds, directly to the vendor.

To qualify as an exempt purchase, both the name of the organization and the name of its employee, officer, or agent must be identified on any bill or invoice. Payment must be made using cash, a check, or a debit or credit card of the organization. An employee, officer, or agent of the organization **may not** use a personal check or debit or credit card to make tax-exempt purchases on behalf of the organization, except to purchase hotel occupancy, as explained below.

When making purchases of motor fuel and diesel motor fuel, the organization must pay sales tax at the time of purchase and then file for a refund of the tax paid. To claim a refund of sales taxes paid on motor fuel and diesel motor fuel, use Form FT-500, *Application for Refund of Sales Tax Paid on Automotive Fuel*.

Special payment rule for purchases of hotel occupancy

Any rent due for hotel occupancy paid for with a **personal check or personal debit or credit card** of an authorized representative of a post, organization, or affiliate that has qualified as an exempt organization is exempt from sales tax when:

- the representative is acting on behalf of the organization and will be reimbursed for the rent paid;
- the representative provides the hotel operator with a properly completed Form ST-119.5, *Exemption Certificate for Hotel or Motel Occupancy by Veterans Organizations*; and
- the hotel operator identifies both the representative and the organization on the invoice.

In order to claim the exemption, the properly completed Form ST-119.5 must be presented to the hotel operator within 90 days of the first period of occupancy. For more information, see Form ST-119.5.

Please note: The special rule described above allowing the use of a **personal check or personal debit or credit card** of an authorized representative to pay for hotel occupancy does not apply to charges for food or drink, entertainment services, parking services, safety deposit box rentals, taxable telephone calls or any other taxable products or services purchase by the authorized representative. For those purchases, the organization must provide vendors with a properly completed Form ST-119.1 and must be the direct purchaser and payer of record.

**Sales by exempt posts,
organizations, and
affiliates**

The following sales of tangible personal property and services made by exempt posts, organizations, and affiliates are subject to sales tax:

- retail sales of tangible personal property made by any shop or store operated by the organization;
- sales of food or drink in or by a restaurant, tavern, or other establishment operated by the organization, other than sales exempt under section 1105(d)(ii) of the Tax Law (see *Certain sales by a restaurant, tavern or other establishment are tax exempt* on page 23);
- sales of the service of providing parking, garaging, or storing for motor vehicles (other than a garage which is part of the premises occupied solely as a private one or two-family dwelling);
- certain admission charges.
- leases or rentals of tangible personal property;
- sales of certain utility services;
- sales of services to real property;

- sales of tangible personal property sold by remote means where the sales are made with a degree of regularity, frequency, and continuity, and
- sales made at traditional and remote auctions.

Except as noted below, the rules that govern taxable sales by exempt posts, organizations, and affiliates are identical to the rules for taxable sales by religious, charitable, educational, and other organizations. See *Sales by religious, charitable, educational, and other organizations* on page 17 for an explanation of these rules.

Please note: Retail sales of tangible personal property by any gift shop located in a veterans' home are exempt from sales tax. For purposes of this exemption, the term *veterans' home* means any of the veterans' nursing homes operated by New York State for disabled veterans. The exemption applies regardless of the amount of the sale or who the purchaser is. See TSB-M-06(15)S, *Supplemental Summary of Recently Enacted Legislation Affecting Sales and Use Taxes Effective in 2006*, for additional information.

Example: *An American Legion Post that is an exempt organization holds chicken barbecue dinners on its grounds twice each year. Because the dinners are held infrequently, the sales are not considered to be made by a restaurant, tavern, or other establishment and are not subject to sales tax.*

Example: *A VFW Post that is an exempt organization regularly sells food and drink from a dining room and bar area it operates on its premises. The sales of food and drink are considered to be made by a restaurant, tavern, or other establishment and are subject to sales tax.*

Example: *A post that is an exempt organization operates a gift shop on its premises. The gift shop is considered a shop or store and sales from the gift shop are subject to sales tax.*

See also *Sales to contractors working for exempt organizations* and *General rules regarding exempt organization certificates* beginning on page 40 for additional information.

Certain Indian nations and tribes

The Indian nations and tribes identified below are exempt from payment of sales tax on their purchases of tangible personal property, services, food and drink, hotel occupancy, and admission charges.

Only the following Indian nations and tribes in New York are entitled to sales tax exemption:

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	

Confirming the nation's or tribe's exempt status

In order to confirm its exempt status, an Indian nation or tribe may submit a written request to the Sales Tax Exempt Organizations Unit for a certificate to evidence its exempt status. The request must be signed by the governing chief or ruling body. Upon approval of the request, the unit will issue to the organization a numbered Form ST-119, *Exempt Organization Certificate*.

Purchases by exempt Indian nations or tribes

An exempt Indian nation or tribe may make all of its purchases, including purchases of tangible personal property and services, food and drink, payment of admission charges, and rent paid for hotel occupancy, exempt from sales tax.

In order to make purchases exempt from sales tax, the organization should provide vendors with a properly completed Form ST-119.1, *Exempt Organization Exempt Purchase Certificate*. The organization must be the direct purchaser, occupant, or patron of record and must also be the direct payer of record. The organization may be the *direct purchaser, occupant, or patron* with respect to purchases made through an employee or agent authorized by the organization to make purchases on the organization's behalf. *Direct payer of record* means that direct payment is made by the organization, or from its funds, directly to the vendor.

Sales of Indian arts and crafts

Sales of Indian arts and crafts by a member of an exempt nation or tribe are exempt from sales tax when the sales are made on the reservation. However, if the sales of arts and crafts are made by a member of an exempt nation or tribe **off** the reservation, or are made by any other vendor, whether on or off the reservation, the sales are subject to tax unless the vendor receives the appropriate exemption document from the purchaser.

See also *Sales to contractors working for exempt organizations* and *General rules regarding exempt organization certificates* beginning on page 40 for additional information.

Other exempt organizations

Other organizations generally exempt from sales tax under section 1116(a) of the Tax Law include:

- health maintenance organizations (HMOs) subject to the provisions of Article 44 of the New York State Public Health Law. The rules for obtaining exempt status and documenting exempt purchases are the same as for *Religious, charitable, educational and other organizations*, explained earlier in this publication. Generally, all purchases and sales made by exempt HMOs are exempt from sales tax;
- rural electric cooperatives doing business in New York under the Rural Electric Cooperative Law which establish their exempt status with the Tax Department (some purchases and all sales made by exempt rural electric cooperatives are subject to sales tax); and
- certain New York State-chartered credit unions (see TSB-M-06(4)S, *Credit Unions Designated as Exempt Organizations for Sales and Use Tax Purposes*, for more information).

In addition, certain organizations are exempt from sales tax because they are organized and/or operated under some other New York State or federal statute which provides exemption from state and/or local sales and use taxes. These organizations include:

- limited dividend housing companies exempt under section 93(1) of the Private Housing Finance Law, which are exempt from state and some local sales and use taxes;
- nonprofit property/casualty insurance companies organized under Article 67 of the Insurance Law, which are exempt from all state and local sales and use taxes;
- nonprofit medical expense indemnity corporations and hospital service corporations organized under Article 43 of the Insurance Law, which are exempt from all state and local sales and use taxes; and
- Job Corps centers whose operations are federally exempt from state and local taxation under Public Law 99-496.

If you need additional information about these other exempt organizations, contact the Sales Tax Exempt Organizations Unit (contact information appears on page 44).

See also *Sales to contractors working for exempt organizations* and *General rules regarding exempt organization certificates* beginning on page 40 for additional information.

Diplomatic missions and personnel

Diplomatic missions and their personnel, and foreign government owned enterprises and agencies are exempt from payment of sales tax when they are the purchaser, user or consumer of tangible personal property or services, or when they are the occupant of a hotel, or a patron at a place of amusement, club or similar place.

Diplomatic missions include permanent missions to the United Nations and foreign embassies and consulates.

Diplomatic personnel include foreign embassy and consular officials and certain employees, certain officers and employees of the United Nations, permanent missions to the United Nations, international organizations, and certain employees of the Taipei Economic and Cultural Office (formerly called the Coordination Council for North American Affairs).

Examples of diplomatic missions and personnel include:

- the Embassy of India
- the Consulate General of Jamaica in New York
- the Secretary General of the United Nations

The extent of a diplomatic mission's New York State sales tax exemption is limited to the exemption granted by the United States Department of State, Office of Foreign Missions.

Exemption for diplomatic missions and personnel is federally determined

Diplomatic missions and personnel seeking sales tax exemption should apply to the Office of Foreign Missions to obtain the appropriate exemption card or other documentation evidencing their tax exemption. For more information about obtaining exemption, contact the **U.S. Department of State, Office of Foreign Missions**, Washington, DC 20522-3303, or access their website at www.state.gov/ofm.

Purchases by diplomatic missions and personnel

Diplomatic missions and personnel may make purchases exempt from sales tax when they are the direct purchaser, occupant, or patron of record, and the direct payer of record, but only to the extent of the exemption granted to them by the U.S. Department of State.

Direct purchaser, occupant or patron of record means that the purchaser is the holder of a valid tax exemption card issued by the U.S. Department of State or the American Institute in Taiwan, or the holder

of other documentation issued by the U.S. Department of State which is evidence of the holder's entitlement to exemption.

Diplomatic missions or personnel are the *direct payer of record* when payment is made directly to the vendor from the mission's funds by the holder of the exemption card or other documentation, or by the diplomatic mission.

In order to make tax-exempt purchases, the holder of a tax exemption card or other evidence of exemption must:

- provide the vendor with a properly completed Form DTF-950, *Certificate of Sales Tax Exemption For Diplomatic Missions and Personnel - Single Purchase Certificate*;
- show the vendor the tax exemption card or other exemption evidence so the vendor can record the pertinent identifying information; and
- sign the invoice at the time of purchase in the presence of the vendor.

Purchases of motor fuel, diesel motor fuel, and utilities by diplomatic missions and personnel

Diplomatic missions and personnel may **not** make retail purchases of motor fuel or diesel motor fuel, or purchases of utilities exempt from sales tax by using a tax exemption card or exemption certificate. For information about making these purchases exempt from tax, contact the U.S. Department of State, Office of Foreign Missions.

Sales by diplomatic missions and personnel

Diplomatic missions and personnel engaged in a trade, business, occupation, or profession not related to their diplomatic activities are subject to tax in the same manner as other non-exempt persons or organizations engaged a trade or business. Therefore, sales of tangible personal property and services by diplomatic missions and personnel are subject to tax if the sales are not related to their diplomatic activities.

See also *Sales to contractors working for exempt organizations* and *General rules regarding exempt organization certificates* below for additional information.

Sales to contractors working for exempt organizations

Tangible personal property sold to a contractor, subcontractor, or repairman for use in erecting a structure or building of an exempt organization described in section 1116(a) of the Tax Law, or for use in adding to, altering, or improving the real property, property, or land owned by the organization is exempt from tax when it is to become an integral component part of the building, structure, or property.

Similarly, tangible personal property sold to a contractor, subcontractor, or repairman for use in maintaining, servicing, or repairing the real property of an exempt organization is exempt from tax if it is to become an integral component part of the organization's structure, building, or real property.

Example: *An exempt organization contracts to have a building erected on its land. Purchases by its contractors and subcontractors of concrete, steel, and lumber that will become part of the building are exempt.*

Example: *An exempt organization hires a contractor to paint the organization's building. The contractor may purchase the paint exempt from tax. However, purchases of masking tape and sandpaper are subject to tax because these items will not become part of the building.*

General rules regarding exempt organization certificates

The following rules govern the use of exempt organization certificates and exempt organization exempt purchase certificates by sales tax exempt organizations:

- An exempt organization certificate applies only to the organization that applied for and was granted sales tax exemption. An exempt organization certificate may be revoked for any reason constituting misuse of the exemption, or if it is discovered that the organization's application contained misleading or deceptive information, or if the organization has changed its purposes, activities or organizational structure without informing the Tax Department.
- If an exempt organization changes its purposes, activities or organizational structure, it must notify the Sales Tax Exempt Organizations Unit. A reappraisal of the organization's exempt status will be made based on a review of the amended organizing documents.
- If an exempt organization changes its organizational structure (for example, a corporation reorganizes as a limited liability company), the organization must return its exempt organization certificate to the Sales Tax Exempt Organizations Unit and must file an application and supporting documentation to request an exempt organization certificate for the new entity.
- If an exempt organization certificate needs to be amended (for example, the organization's name has changed), contact the Sales

Tax Exempt Organizations Unit (contact information appears on page 44) to determine what documentation must be provided.

- An exempt organization exempt purchase certificate may only be used to make purchases for the organization named on the exempt organization certificate. It may **not** be used by an officer, member or representative of an exempt organization to make personal purchases, nor may it be used to make purchases for any nonexempt private entity.
- Exempt organizations may only make purchases exempt from sales tax if they provide a vendor with a properly completed exempt purchase certificate or other acceptable document. An exempt purchase certificate or other document is considered to be properly completed when it contains:
 - the name and address of the vendor;
 - the name and address of the exempt organization;
 - the exemption number of the exempt organization;
 - the signature of a responsible officer of the organization;
 - the date the certificate is executed; and
 - any other information required to be completed on the particular certificate or document.

Form ST-119.1, *Exempt Organization Exempt Purchase Certificate*, is not available on the Tax Department's Web site. To obtain additional copies of Form ST-119.1, an exempt organization must contact the Sales Tax Exempt Organizations Unit or the Sales Tax Information Center.

Any exempt organization that makes taxable sales is required to register as a vendor and collect and remit sales tax. For information about registering for sales tax purposes, and for more information about using and accepting exemption documents, see Publication 750, *A Guide to Sales Tax in New York State*.

Please note: An organization whose name has been published pursuant to IRC section 501(p) and that is no longer tax-exempt for federal purposes due to the organization's designation as one that supports or engages in terrorist activity or supports terrorism will not be exempt from any tax, fee, or other imposition administered by the Commissioner of Taxation and Finance and will not be an exempt organization with respect to any sale, transfer, or assignment. See Publication 845, *Revocation of Tax Exempt Status of Identified Terrorist Organizations*, for more information.

**Information on
registering for
sales tax purposes**

If an exempt organization is required to collect sales tax as described in this publication, it must register for sales tax purposes with the Tax Department and obtain a *Certificate of Authority*, which authorizes the organization to collect sales tax and accept certain exemption documents from purchasers. To obtain a *Certificate of Authority*, the organization may apply online at *www.nystax.gov* by selecting *Online Tax Center* and then selecting *Online Permit Assistance and Licensing*. It may also apply by filling out Form DTF-17, *Application to Register for a Sales Tax Certificate of Authority*, and sending it to the address listed in the instructions for that form, at least 20 days before you begin operating your business. Utilizing the online application process is the fastest way to receive a certificate. If an organization needs to file the paper version of the application, it may obtain a copy of the form from the Tax Department's Web site or by contacting us. See the *Need help?* section on the back cover of this publication.

An organization registered for sales tax purposes is required to keep records, file periodic sales tax returns, and collect and remit any taxes due. For more information about registering for sales tax purposes, see Publication 750, *A Guide to Sales Tax in New York State*. For purposes of this publication, the term *vendor* refers to all persons required to register for sales tax purposes, including vendors of tangible personal property and services, operators of hotels, and recipients of admission charges to a place of amusement.

**Responsible persons
information must be
provided**

An exempt organization that is required to register for sales tax purposes will be subject to the same requirements as any other type of entity that is required to register. Therefore, when applying for a *Certificate of Authority* the organization must provide all required information, including the names, social security numbers and home addresses of its *responsible persons*.

Responsible persons generally include the organization's officers, employees or other persons responsible for the organization's compliance with sales and use tax obligations, such as persons authorized to sign checks, prepare or sign sales tax returns, hire or fire employees, or keep sales tax records. Other factors relevant to determining whether someone is a *responsible person* include the individual's day-to-day responsibilities, involvement with, knowledge of and control over the financial affairs and management of the organization, or the individual's simultaneous status as an officer, director and shareholder. The *responsible persons* of an exempt organization that has an outstanding sales tax liability can be held personally liable for the tax, penalties and interest owed by the organization.

**Contact
information**

If you have questions about sales tax exempt organizations, contact the Sales Tax Exempt Organizations Unit at:

New York State Department of Taxation and Finance
Sales Tax Exempt Organizations Unit
W.A. Harriman Campus
Building 9, Room 154
Albany, NY 12227

For other sales tax inquiries, contact the Sales Tax Information Center at (518) 485-2889.

Listing of referenced forms and publications

Form AC 946, *Tax Exemption Certificate* (for United States and New York State governmental employees)

Form DTF-950, *Certificate of Sales Tax Exemption for Diplomatic Missions and Personnel - Single Purchase Certificate*

Form ST-119, *Exempt Organization Certificate*

Form ST-119.1, *Exempt Organization Exempt Purchase Certificate*

Form ST-119.2, *Application for an Exempt Organization Certificate*

Form ST-119.5, *Exemption Certificate for Hotel or Motel Occupancy by Veterans Organizations*

Form ST-129, *Exemption Certificate, Tax on Occupancy of Hotel Rooms*

Form FT-500, *Application for Refund of Sales Tax Paid on Automotive Fuel*

Form FT-504, *Claim for Refund of Taxes Paid on Fuel by a Government Entity*

Form FT-505, *Claim for Refund of Taxes Paid on Government Entity Credit Card Purchases of Fuel*

Form FT-937, *Certificate of Exemption for Qualified Hospitals, Volunteer Fire Companies, and Volunteer Ambulance Services*

Publication 750, *A Guide to Sales Tax in New York State*

Publication 765, *Sales and Fuel Excise Tax Information for Properly Appointed Agents of New York Governmental Entities*

Publication 774, *Purchaser's Obligations to Pay Sales and Use Taxes Directly to the Tax Department Questions and Answers*

Publication 845, *Revocation of Tax Exempt Status of Identified Terrorist Organizations*

Publication 848, *A Guide to Sales Tax for Hotel and Motel Operators*

Notes

Need help?



Visit our Web site at ***www.tax.ny.gov***

- get information and manage your taxes online
- check for new online services and features



Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at (518) 485-5082. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.



Telephone assistance

Business Tax Information Center: (518) 457-5342

To order forms and publications: (518) 457-5431



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.