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Legal Alert: Sales Tax and Exempt Organizations

January 1, 2009 Update:

As described below, recent amendments to the New York State Tax Law have dramatically increased the instances in which nonprofit tax-exempt organizations are required to collect sales tax on tangible personal property. The most recent amendment, which came into effect on January 1, 2009, made two additional changes:

First, sales tax must now be collected on items sold through “remote action events.” A remote auction event is defined as 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 personal property are offered for sale to the highest bidder. Because the law covers only tangible property, the new regulations do not apply to items such as vacation packages or spa services. Additionally, if your organization holds no more than two traditional auction events in a calendar year, you are not required to collect sales tax on personal property sold unless (a) you currently sell similar items at a store or shop you, or (b) the auction takes place at a commercial auction house.

Second, the January 1 amendment clarified that if your organization operates a store or shop and also sells similar items by any other means (e.g. online or at an auction), the sales outside the store or shop are also subject to sales tax.

September 1, 2009 Amendments

Until recently, many exempt organizations were not required to collect sales tax on sales of “tangible personal property” if the sales were not made from a physical shop or store. However, effective September 1, 2008, if sales are made with “a degree of regularity, frequency, and continuity,” then exempt organizations will be required to collect sales tax even if the sale is made by remote means (e.g., telephone, mail order, email, or the internet). There is no exemption for sales of items relating to your exempt purpose.

The recent amendments also require exempt organizations to collect sales tax on (a) any lease or rental of tangible personal property, (b) any utility service described in section 1105(b) of the Tax Law, and (c) any service to real property described in 1105(c)(5) of the Tax Law.

These changes do not affect your exemption from *paying* sales tax on your purchases if you have been granted New York State and City tax-exempt status.

If as a result of these recent changes you are now required to collect sales tax, you should register with the New York State Department of Taxation and Finance to obtain a Certificate of

Authority, which will authorize your organization to collect state and local sales tax on taxable sales. The forms are available at www.nys-permits.org. Once you have registered, you will need to collect the applicable sales tax, keep records of those sales, and file tax returns.

The New York State Department of Taxation has published a helpful memo outlining the changes and providing examples of scenarios in which sales tax would or would not need to be collected. It is available at www.tax.state.ny.us/pdf/memos/sales/m08_5s.pdf.

This alert is meant to provide general information only, not legal advice. If you have questions regarding these amendments to the tax law, please contact Elizabeth Perez at Lawyers Alliance for New York (212-219-1800 ext. 232 or eperez@lawyersalliance.org).