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Sales Tax and Exempt Organizations

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 (i.e., 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, e.g. property management or maintenance services. It is not necessary to collect sales tax from a purchaser that has been granted New York State and City tax-exempt status.

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 in order 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.

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).