



Delivery Rules for New York State Sales Tax

Introduction

Whether a sale is subject to New York State sales tax and what rate of tax applies is based on the location where property or services are delivered by a seller to a purchaser or a purchaser's designee. This bulletin discusses the rules governing where the delivery of property or services occurs, and the resulting sales tax consequences.

General delivery rules

New York State sales tax is a "destination tax." The point of delivery or the point at which possession is transferred by the seller to the purchaser determines if tax is due and, if due, the rate of tax that applies. A sale is subject to New York State sales tax when the point of delivery or transfer of possession is located in New York State. The seller is required to collect New York State and local sales taxes at the combined rate imposed in the taxing jurisdiction where delivery occurs.

The point of delivery is generally the location at which the property or service is received by the purchaser or location to which the property is transported to the purchaser by the seller.

Internet, catalog, and phone sales are treated the same way as sales made by any other business. Sales or use tax applies to taxable items ordered remotely when the items are shipped or delivered to a purchaser in New York.

A sale of tangible personal property in which the title to the property passes in New York State but delivery and transfer of possession occur outside of New York is not subject to tax.

Example 1: *A Schenectady County resident purchases a desk at a store located in Schenectady County and takes delivery at the store at the time of purchase. The sale is taxable at the combined State and local tax rate imposed in Schenectady County.*

Example 2: *A customer who lives in Albany County goes into a flooring store in Washington County and purchases wood flooring. The customer instructs the store owner to deliver the flooring to his home in Albany County. The store owner is required to collect the State and local taxes imposed in Albany County.*

Example 3: *Same as Example 2, above, but the customer takes the flooring with him at the time of purchase. The store owner is required to collect tax at the combined State and local tax rate of 7% imposed in Washington County. Albany County's combined State and local tax rate is 8%. Therefore, the customer owes an additional 1% Albany County local use tax.*

Example 4: *A resident of Monroe County orders a watch online. The sale is subject to tax at the combined State and local tax rate imposed in Monroe County where the watch is delivered.*

Example 5: *A New Jersey resident orders a computer by phone from an electronics store in New York State. The store delivers the computer to the purchaser's home in New Jersey. The sale is not subject to New York State sales tax since the computer was delivered in New Jersey.*

Delivery to a purchaser's designee

If tangible personal property or a taxable service is delivered to or transferred to the possession of a purchaser's:

- agent,
- representative,
- employee, or
- other designee (e.g., a private or contract carrier **hired by the purchaser**),

that location is the site for determining if sales tax is due, regardless of the ultimate destination of the product.

Example 6: *A retailer of home electronics equipment located in New York State sells a television to a purchaser located in Massachusetts. The purchaser makes arrangements to have a private carrier pick up the television from the retailer in New York. The private carrier is acting as the purchaser's designee when it takes possession of the television in New York. Therefore, the sale is subject to tax in New York, even though the television is to be delivered to the purchaser in Massachusetts.*

Example 7: *A Pennsylvania asphalt manufacturer that is registered as a New York State vendor hires a private carrier to deliver its product to a customer located in New York. The asphalt is loaded into the tank truck of the private carrier at the manufacturer's Pennsylvania plant. Because the private carrier is hired by the seller, not the purchaser, the sale is subject to tax in New York since the private carrier delivers the asphalt to the manufacturer's customer in New York.*

Example 8: *A California art gallery sells a painting to a New York resident visiting California. The purchaser hires a private carrier to pick up the painting in California, package it, and deliver it to his home in New York State. Since transfer of possession to purchaser's designee occurs in California, the sale is not subject to New York State sales tax. However, New York State use tax is due from the New York resident when the painting is delivered to his home in New York State.*

Delivery by a common carrier

A common carrier is different from a private or contract carrier in that a common carrier does not operate under a private arrangement or contract with negotiated terms. A common carrier is one that:

- holds itself out to the public as one who will agree to carry (transport) personal property for all who apply;
- is required to carry for all who apply;
- agrees to carry for a specified and standard rate of compensation; and
- makes deliveries under standard delivery schedules.

Sales tax is due based on where a common carrier delivers tangible personal property, whether the common carrier has been hired by the seller **or** by the purchaser. A seller must maintain records which substantiate points of delivery by common carriers.

Example 9: *A resident of New York State purchases an air conditioner from an online appliance seller that is registered as a New York State vendor. The seller ships the air conditioner by common carrier to the purchaser's vacation home in*

Massachusetts. The transaction is not subject to New York State sales tax since delivery takes place in Massachusetts.

Example 10: A Vermont resident purchases a piano in New York State and hires a common carrier to pick up the piano in New York and deliver it to his home in Vermont. The sale is not subject to New York State sales tax since the piano was delivered by the common carrier in Vermont.

Delivery as a gift at the purchaser's direction

There is an exception to the general rule for delivery by a common carrier. When a purchaser goes into a store and buys tangible personal property, then directs the seller to deliver the property by common carrier to a third party as a gift, the sale is deemed to occur at the location of the store where the purchase is made. This is because two transactions occur: (i) a sale of the property at the location of the store; and (ii) a gift transaction to a third-party recipient for no consideration.

Example 11: A customer goes into a jewelry store in New Jersey and purchases a ring as a gift for a friend who lives in Albany, NY. The customer instructs the store to deliver the ring to the friend in Albany by common carrier. The sale is deemed to occur at the store location in New Jersey even though the ring was delivered to Albany, NY.

Example 12: A customer goes into a lighting store located in New York and purchases a lamp as a gift for her sister in Maryland. At the customer's request, the store has the lamp delivered by common carrier to the customer's sister in Maryland. The sale is deemed to occur, and is subject to sales tax, at the store location in New York State even though the lamp was delivered to Maryland.

Other delivery rules

For other delivery rules concerning sales (including leases) of motor vehicles, vessels, and trailers, and florist's wire services, see Tax Bulletins *Motor Vehicles, Vessels, and Trailers* (TB-ST-590) and *Florists: Sales of Flowers* (TB-ST-277).

Delivery records

A registered sales tax vendor must keep accurate records of all sales. Keeping detailed records of business operations will help to prepare accurate and complete sales tax returns and serve as documentation of the accuracy those returns in the case of an audit. Records must substantiate points of delivery for sales of taxable products or services. For additional information, see *Recordkeeping Requirements for Sales Tax Vendors* (TB-ST-770).

Note: A Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

References and other useful information

Tax Law: Sections 1101(b)(5) and 1213

Regulations: Sections 525.2, 526.7, and 533.2

Bulletins:

Florists: Sales of Flowers (TB-ST-277)

Motor Vehicles, Vessels, and Trailers (TB-ST-590)

Recordkeeping Requirements for Sales Tax Vendors (TB-ST-770)

Use Tax for Individuals (including Estates and Trusts) (TB-ST-913)