

New Requirement for the Filing of Information Returns for Insurers of Motor Vehicles

Recently enacted legislation (Subpart G of Part V-1 of Chapter 57 of the Laws of 2009) requires that information returns be filed by certain parties, including specified insurers, regarding their transactions with particular businesses required to collect state and local sales tax (collectively referred to as vendors). Insurers required to file the information returns under the new law include every insurer licensed to issue motor vehicle physical damage or motor vehicle property damage liability insurance for motor vehicles registered in New York State (motor vehicle insurers). A motor vehicle insurer is required to file an information return if, during the period covered by the return, it made a payment under an insurance contract to a vendor located in New York State for the servicing or repair of a motor vehicle on behalf of an insured person or entity.

The first information returns required under the new law are due on or before September 20, 2009, and will cover the period March 1, 2009 through August 31, 2009. The next information returns will be due on or before March 20, 2010, and will cover the period September 1, 2009 through February 28, 2010. Subsequently, annual information returns will be due on or before March 20th of each year, and will cover the period from March 1st of the previous year through February 28 (29) of the current year. The annual information returns must be filed using the procedure described in *Instructions for filing the information return* on page 3.

Information required to be provided on the returns

Motor vehicle insurers who are required to file an information return under the new law must provide the following information for the period covered by the return for each vendor to whom it has made a payment under an insurance contract for the servicing or repair of a motor vehicle on behalf of an insured:

- vendor's name (legal entity name);
- vendors DBA name (e.g., repair shop name as displayed outside premises, if different from legal entity name);
- vendor's address;
- total amount paid to each vendor located in New York State, including payments made by checks made out to both the vendor and other parties, such as the insured or a lien holder (multiple payee checks);
- total number of individual payments made to each vendor (including multiple payee checks);

- vendor's Federal Employer Identification Number (EIN/Federal ID number) which would be the owner's Social Security Number if vendor is a sole proprietor;
- vendor's New York State Sales Tax Certificate of Authority Number;*
- vendor's New York State Department of Motor Vehicles (DMV) Facility Number;*

Note: If a motor vehicle insurer is unable to provide any of the information listed above that is marked with an asterisk (*) on the first information return required to be filed on or before September 20, 2009, the motor vehicle insurer **will not** be considered to have failed to provide information that is required on the return, as long as all the other information is provided. However, for all returns due March 20th 2010, and thereafter, the information listed above marked with an asterisk must be provided along with the information that is not marked with an asterisk, in order for the return to be considered to be properly filed.

In addition to the information listed above that must be included on the return, certain additional information must be compiled by motor vehicle insurers and provided to the Tax Department upon request. This information is not currently required to be provided by motor vehicle insurers on their return. This additional information is as follows:

- the name of the insured on whose behalf payments were made;
- deductible amount for each claim;
- total amount paid for sales tax for each claim;
- date of each individual payment; and
- check number of each check issued to the vendor or where applicable, the vendor's electronic funds transfer (EFT) number.

Requirement to notify vendors regarding their information provided in the information returns filed by motor vehicle insurers

The new law provides that motor vehicle insurers that are required to file information returns must give to each vendor included on the return a *statement* showing the information reported for that vendor in the information return. The statement given to each vendor may be in a summary format, but it must include the identifying information pertinent to the vendor along with the total amount of payments and number of payments reported to the Tax Department that the insurer paid to that vendor during the period covered by the return. The information provided on the return, when necessary, will be used to determine the accuracy of income and sales tax returns that the vendors have filed with the Tax Department.

The statement must be given to each vendor, on or before March 20th of each year. For the statement due on or before March 20, 2010, in addition to the information reported for the vendor on the information return due on or before March 20, 2010, the statement must also

include the information pertaining to the vendor that was reported on the first information return that was required to be filed on or before September 20, 2009. There is no specific form for this statement. Therefore, motor vehicle insurers can use any format for the statement as long as it can be verified by the Tax Department that the statement was sent to each vendor in a proper and timely manner.

Penalties

If a motor vehicle insurer fails to comply with the new law, the following penalties will apply:

(1) If a motor vehicle insurer fails to:

- provide any of the information as required on the information return;
- include information on the information return that is true and correct; or
- provide to each affected vendor, on or before March 20th of each year, the statement as described above;

the motor vehicle insurer is subject to a penalty of \$500 for 10 or fewer failures and up to \$50 for each additional failure.

(2) If a motor vehicle insurer fails to timely file an information return under the new law, in addition to the penalties described above, a penalty of not less than \$500 but up to \$2000, will apply to each failure.

The penalties described above cannot exceed a total of \$10,000 for any filing period.

If the Tax Department determines that any failure to comply with the requirements of this new law was entirely due to reasonable cause and not to willful neglect, the penalties as described above will be waived.

Instructions for filing the information return

Motor vehicle insurers must file their information return **electronically**. To file the return and for additional information go to the Tax Department's Web site:

<http://www.nystax.gov/sbc/thirdpty.htm>. You may also reach this Web site by going to www.nystax.gov.

Information regarding the actual filing of the electronic return will be available on the Tax Department's Web site by September 1, 2009. The Tax Law contains strict secrecy provisions to protect the confidentiality of tax returns and tax return information. Consequently, the Tax Department limits access to return information collected through the Department's Web site to only those employees or subcontractors who need access to the information in the performance of their official duties.

Voluntary Disclosure and Compliance program

The Tax Department will be using the information provided by insurers to determine the accuracy of income and sales tax returns filed by vendors in the business of servicing and repairing motor vehicles. Taxpayers, including vendors that service or repair motor vehicles, are still eligible for the Tax Department's Voluntary Disclosure and Compliance program. The goal of the program is to encourage taxpayers to voluntarily disclose and correct delinquent tax liabilities and avoid penalties. For more information on this program, go to the department's Web site www.tax.state.ny.us or call 1(866)763-7115.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.