

Out-of-State Resale Permit

An "Out-of-State Resale Permit", Form ST-128, is a notice to a supplier that the permit holder is not a New York State vendor, but is authorized to make purchases in New York State for resale outside New York State, without payment of sales tax. The supplier's responsibility for the collection of sales tax from the permit holder is waived upon receipt of a copy of the permit issued by the Department of Taxation and Finance. This is a special permit and does not require the holder to file sales and use tax returns.

In order to be eligible for an Out-of-State Resale Permit, a purchaser must be a vendor engaged in selling items of the kind purchased, and he must be selling the items exclusively outside New York State. The purchaser must have no business location nor be engaged in selling in New York State. Neither a construction contractor nor a New York State vendor is eligible for an Out-of-State Resale Permit.

For New York State sales and use tax purposes, the term "vendor" includes:

a person making sales of tangible personal property or services in New York State, the receipts from which are taxed in New York State;

a person maintaining a place of business* in New York State and making sales of tangible personal property or services taxed in New York State, to persons within the State, whether at such place of business or elsewhere;

a person who solicits business either by employees, independent contractors, agents or other representatives or by distribution of catalogs or other advertising matter and by reason thereof makes sales of tangible personal property or services, taxed in New York State, to persons within the State;

a person who regularly makes delivery into New York State other than by common carrier or mail, or regularly engages in servicing property in this State;

a person who places advertisements in New York newspapers or over New York radio or television stations, and either requests orders, payments or inquiries be sent to a New York address or delivers orders to New York in vehicles which he controls; and

any other person authorized by the Tax Commission to collect sales tax, who makes sales of tangible personal property or services taxed in New York State, to persons within the State.

*Maintaining a place of business - Either directly or through a subsidiary, having a store, salesroom, sample room, showroom, distribution center, warehouse, service center, factory, credit and collection office, administrative office or research facility in New York State.

Any purchases which are for the personal use or consumption of the permit holder or for use or consumption in his business, rather than for resale, will be subject to the sales and use tax.

Examples:

- (1) An out-of-state stationery store owner purchases and takes possession of assorted stationery items in New York City. These items are purchased for resale outside of New York State with the exception of a sales receipt book which the stationer intends to use in his own business. The stationer must give the supplier an Out-of-State Resale Permit and also pay the applicable sales tax on the price of the sales receipt book that was selected for personal use.
- (2) While in New York City, the stationer purchases and takes possession of a camera for his own use. The stationer must pay the applicable sales tax on the price of the camera at the time of purchase.

Any Out-of-State Resale Permit may be used only to purchase tangible personal property or services delivered to the permit holder in New York State, which are for resale outside the State. These items or services shall be identified on the purchase order, delivery slip or other invoice signed by the permit holder or his representative. The permit holder is required to file a copy of the permit with each supplier as he makes his first purchase under the permit. Subsequent purchases from the same supplier(s) may be made by identifying the Out-of-State Resale Permit number, and need not be accompanied by a copy of the permit.

To obtain an Out-of-State Resale Permit, a purchaser must file a properly completed application, Form ST-128.1, giving the following information:

- (1) his business name and address,
- (2) the sales tax vendor identification number assigned by his home state, or other verification of business activity from the state in which he operates,
- (3) the nature of his business.

The purchaser must certify that:

- (1) he is not a New York State vendor,
- (2) he does not hold a Certificate of Authority to collect New York State and local sales and use taxes,
- (3) he will file a Certificate of Registration if he is subsequently required to register as a New York State vendor, and
- (4) his records will be available for inspection, upon request by the New York State Tax Commission.

The Out-of-State Resale Permits will be issued beginning July 1, 1982 for persons who have never obtained a letter from the Department of Taxation and Finance authorizing tax free purchases in New York State, intended for resale outside New York State. Persons who are in possession of such a letter may continue to use it until they apply and receive the new permit, but no later than November 30, 1982. Any purchase made after December 1, 1982 will be taxable unless the out-of-state vendor has obtained a validated "out-of-State Resale Permit".

The permit applications will be available at all New York State district tax offices or may be obtained by writing to:

Technical Services Bureau
Sales Tax Instructions and Interpretations Unit
State Campus - Building 9 - Room 104
Albany, New York 12227

The completed application must be returned to the above address for processing.

After the receipt and review of an application, it is the responsibility of the Technical Services Bureau to issue an Out-of-State Resale Permit or reject the application. If the application is approved, a numbered permit will be issued; if it is rejected, the applicant will be so notified by mail.

An Out-of-State Resale Permit will expire two years from the last day of the month in which the permit was issued. If the permit holder wishes to have his permit renewed, he must complete application Form ST-128.1 three months prior to the expiration date of his permit and send it to the Technical Services Bureau at the address listed above.

The permit holder must surrender the permit to the Technical Services Bureau upon termination or suspension of his business, change of name or address, or change of circumstances which renders the permit unnecessary.