

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-98(3)S
Sales Tax
June 5, 1998

**Nonregistered Out-of-State Purchaser's
Use of
Resale Certificate
Form ST-120**

The New York State Tax Department has changed its policy regarding the use of sales tax resale certificate, Form ST-120, by out-of-state vendors not registered in New York State. Prior to this change in policy, Form ST-120 could only be used by vendors registered in New York State.

Effective immediately, any qualified out-of-state purchaser (see definition below) can use Form ST-120, *Resale Certificate (print date 5/98)* to make tax-exempt purchases for resale when:

- the vendor will drop-ship the item(s) purchased for resale to the out-of-state purchaser's customer in New York State,
- the vendor will drop-ship the item(s) purchased for resale to the out-of-state purchaser's unaffiliated fulfillment service provider in New York State, or
- the out-of-state purchaser takes delivery of the items in New York for resale from a business located outside New York State.

The Department has revised Form ST-120 (print date 5/98) to reflect this new policy. There is no change in the use of the certificate by registered vendors; and registered vendors may continue to accept and issue previous versions of Form ST-120 until they have acquired the latest edition (print date 5/98).

Users of Form ST-128, Out-of State Resale Permit

Please note that along with this change in policy, the Department is also discontinuing its out-of-state resale permit program. Form ST-120, *Resale Certificate*, is replacing Form ST-128, *Out-of-State Resale Permit*. Holders of Form ST-128 are no longer required to use their permit or to apply for a replacement when the current permit expires. Although the Form ST-120 is for immediate use, we will continue to recognize Form ST-128 as a legitimate exemption document until the expiration date of the current permit.

A qualified out-of-state purchaser is one who:

- **is not registered and is not required** to be registered as a sales tax vendor with the New York State Tax Department, and
- **is** registered with another state, the District of Columbia, a province of Canada, or other country, or has its only location in a state, province or country that does not require registration; and
- is purchasing items for resale that will be either (1) delivered by the vendor to the purchaser's customer or unaffiliated fulfillment service

provider located in New York State, or (2) delivered to the purchaser in New York State, but resold from a business located outside the state.

If, among other things, a purchaser has any place of business or salespeople in New York State, or owns or leases tangible personal property in New York State, that purchaser is required to be registered in New York State. If you need help determining if you are required to register because you engage in some other activity in the State, contact the Department (See the "Need Help Section" of Form ST-120, Resale Certificate). However, a purchaser who is not otherwise required to be registered in New York may purchase fulfillment services from an unaffiliated New York fulfillment service provider and have its tangible personal property located on the premises of the provider without being required to be registered in New York.

The term *drop-shipment* as used in this memorandum means a shipment that occurs when a purchaser purchases merchandise from a vendor who delivers the merchandise to the purchaser's customer or unaffiliated fulfillment service provider.

Qualified out-of-state purchasers may issue Form ST-120 either as a single-use certificate or as a blanket certificate. Certificates issued as blanket certificates will cover the first and any subsequent purchases of the same general type of property or service purchased for resale.

This exemption certificate may not be used by a contractor to purchase materials and supplies.

When a New York registered vendor accepts the exemption certificate from an out-of-state purchaser in lieu of collecting tax, the New York vendor will be protected from liability if the certificate is valid and was accepted in good faith. The certificate will be considered valid if it is in the vendor's possession within 90 days of the delivery of the property, and is properly completed (all required entries were made). An exemption certificate received within 90 days that is not properly completed will be considered valid if the deficiency is corrected within a reasonable period. The certificate is accepted in good faith when a vendor has no knowledge that the exemption certificate is false or is fraudulently given, and reasonable ordinary due care is exercised in the acceptance of the certificate.

If a New York State vendor accepts in good faith a timely issued, properly completed (or corrected) exemption certificate, the vendor will not be responsible for the purchaser's misuse of the certificate. If, on the other hand, the New York State vendor accepts an improperly completed, or otherwise invalid exemption certificate, the vendor will be liable for the tax and any penalty or interest due.

Registered vendors doing business in New York State should maintain a method of associating the exemption certificate on file from a purchaser with the corresponding invoice (or other source document) for the exempt sales made to that purchaser. Also, the vendor may be asked to provide the Department with the names and addresses of each of the purchaser's customers or unaffiliated fulfillment service providers receiving a drop shipment where delivery occurs in New York State.