

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
COMMISSIONER OF TAXATION AND FINANCE
ALBANY, NEW YORK

Pursuant to the authority contained in sections 171, subdivision First, 1134(a)(2) and (5), 1142(1) and (8), and 1250 (not subdivided) of the Tax Law, and pursuant to Part LL-1 of Chapter 57 of the Laws of 2008, the Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendments to the Sales and Use Taxes Regulations as published in Subchapter A of Chapter IV of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York, such amendments to read as follows:

Section 1. Paragraphs (2) through (6) of subdivision (b) of section 533.1 of the regulations are REPEALED and subdivision (b) is further amended to read as follows:

(b) [Registering and applying for a certificate of authority for] “Registration of show vendors.” [(1)]
Every person who has no permanent place of business in the State who intends to display for sale or sell tangible personal property or services subject to tax at a flea market, craft show, antique show, coin show, stamp show, comic book show, fair, or any similar show in the State must file [an application] a certificate of registration for a certificate of authority [for show vendors] in accordance with Part 539 of this Title.

Section 2. Paragraph (10) of subdivision (c) of section 533.1 of the regulations is amended to read as follows:

(10) Any promoter, who is also a person required to register with the Department of Taxation and Finance to obtain a certificate of authority[, or a certificate of authority for show vendors], must comply with all requirements relating to such status, as well as with the requirements governing promoters.

Section 3. Paragraph (1), excluding the examples which remain unchanged, of subdivision (d) of section 533.1 of the regulations is amended to read as follows:

(1) Each certificate of authority [and certificate of authority for show vendors] must be prominently displayed at each place of business of the registrant. A registrant who has no fixed place of doing business must attach such certificate to [his] the registrant's cart, stand, truck, or other merchandising device.

Section 4. Paragraphs (4) and (5) of subdivision (d) of section 533.1 of the regulations are amended to read as follows:

(4) A show promoter must not permit any person to display for sale or sell tangible personal property or services subject to tax at a show[,], unless such person has obtained a certificate of authority [or a certificate of authority for show vendors,] and properly displays such certificate.

(5) Any person failing to display a certificate of authority [or a certificate of authority for a show vendor] may be subject to the civil and criminal penalties prescribed, respectively, by [section] sections 1145(a)(4) and 1817 of the Tax Law.

Section 5. Subparagraph (v) of paragraph (1) of subdivision (e) of section 533.1 of the regulations is amended to read as follows:

(v) there is a change in the responsible persons of the business, including those responsible for collecting or paying tax (as such persons are described in section [539.2(c)(2)(iii)] 539.2(h)(2) of [the] this Title);

Section 6. Paragraphs (3) and (4), excluding the examples which remain unchanged, of subdivision (f) of section 533.1 of the regulations are amended to read as follows:

(3) [The certificate of authority for] A show [vendors] vendor must [be surrendered] surrender the vendor's certificate of authority to the New York State Department of Taxation and Finance, together with a final return of [a] the vendor, within 20 days after the termination of [his] the vendor's business. A show vendor's business is terminated when [he] the vendor no longer participates in shows in New York State.

(4) Any person [assigning or transferring] who assigns or transfers a certificate of authority [or certificate of authority for show vendors,] or who fails to surrender a certificate of authority [or a certificate of

authority for show vendors,] may be subject to the criminal penalties prescribed by section 1817 of the Tax Law.

Section 7. Paragraph (1) of subdivision (j) of section 539.2 of the regulations is amended to read as follows:

(1) [There] Except as otherwise provided by Part LL-1 of Chapter 57 of the Laws of 2008, which directs a re-registration program to be completed by March 31, 2012, and imposes a re-registration application fee, there shall be no charge to an applicant for a certificate of authority.

Section 8. Paragraph (2) of subdivision (j) of section 539.2 of the regulations is REPEALED, and paragraph (3) is renumbered to be paragraph (2).

Section 9. Subdivision (m) of section 539.2 of the regulations is amended to read as follows:

(m) [Any] Every certificate of authority [issued pursuant to a certificate of registration] is subject to the suspension and/or revocation procedures described in section 539.4 of this Part.

Section 10. Subdivision (n) of section 539.2 of the regulations is amended to read as follows:

(n)(1) [Certificates] (i) Except as otherwise provided in this subdivision, a certificate of authority issued pursuant to a certificate of registration filed as provided in this section [and certificates of authority issued pursuant to a certificate of registration renewal filed as provided in Part 540 of this Title shall be valid] may be issued for a specified period of not less than three years and, by its terms, would expire at the end of the specified period. [However, such certificates of authority remain subject to the suspension and revocation provisions provided in section 539.4 of this Part.]

(ii) A certificate of authority may be issued to a show vendor, entertainment vendor, or temporary vendor for a specified period of less than three years, in which case it will expire at the end of the specified period.

(iii) A certificate of authority may be subject to an expiration and renewal process in accordance with the terms and conditions provided in Part 540 of this Subchapter even if it has not been in effect for its specified period.

(iv) A show or entertainment vendor whose certificate of authority will expire December 31, 2008, will automatically receive from the department a new certificate of authority, effective January 1, 2009, provided that such vendor has timely filed tax returns and paid the applicable tax due.

(2) All [certificates of authority issued are subject to expiration as herein provided and all] persons holding [such certificates] a certificate of authority shall, in due course, be required to file a new certificate of registration (renewal).

(3) Procedures for the expiration of [a] the certificate of authority and filing a new certificate of registration (renewal) [shall be as] are provided [for] in Part 540 of this [Title] Subchapter.

(4) [(i) However, no certificate of authority described in paragraph (1) of this subdivision shall expire earlier than three years after its issuance.

(ii) The provisions of this paragraph notwithstanding, any certificates] When a person holding a certificate of authority requests that the certificate of authority [which a vendor has requested] be associated, combined, or consolidated for purposes of the expiration and renewal process with one or more other certificates of authority [, may be subject to such renewal process even though all such certificates have not been in effect for a period of three years] issued to that person, all of the renewed certificates of authority may be for a common specified period in accordance with paragraph (1) of this subdivision.

“Example:” ABC Company, whose certificate of authority was [last issued/renewed more than] issued three years ago, expanded its operations by adding a retail outlet in each year of the past three years. A separate certificate of authority was issued for each of the three new locations and separate sales tax returns are filed for each location. The sales tax returns are prepared for all locations by the company’s main office. For ease of administration, ABC Company requests that each certificate of

authority be renewed simultaneously for all its locations, even though the certificates of authority for all locations were originally issued at different times. Based upon the written request by the vendor for consolidation for renewal purposes of the certificates of authority, the department may:

(1) expire the other existing certificates of authority; [and]

(2) require registration renewal applications for all locations[, regardless of the fact that some certificates have been valid for less than three years, when the certificate of authority originally issued/renewed becomes subject to the registration renewal requirements]; and

(3) issue a new certificate of authority for each location, each of which will be valid for the same specified period.

Section 11. Paragraphs (2), (3), and (5) of subdivision (a) of section 539.3 of the regulations are amended to read as follows:

(2) a tax due under [articles] or pursuant to article 28 [and] or 29 of the Tax Law has been finally determined to be due from an officer, director, partner, manager, member, or employee of the applicant (as such persons are described in section 539.2(h)(2) of this Part) in his/her capacity as a person required to collect tax on behalf of the applicant and has not been paid in full; or

(3) a tax due under [articles] or pursuant to article 28 [and] or 29 of the Tax Law has been finally determined to be due from an officer, director, partner, manager, member, or employee of the applicant (as such persons are described in section [539.2(c)(2)(iii)] 539.2(h)(2) of this Part) in his/her capacity as a person required to collect tax on behalf of any entity other than the applicant and has not been paid in full; or

(5) [An] an officer, director, partner, manager, member, or employee of the applicant (as such persons are described in section [539.2(c)(2)(iii)] 539.2(h)(2) of this Part) has, in his/her capacity as a person required to collect tax [for] on behalf of the applicant or in his/her capacity as a person required to collect tax [for] on behalf of any other person, been convicted of a crime provided for in the Tax Law within one year from the date on which such certificate of registration was filed by the applicant; or

Section 12. Clause (c) of subparagraph (ii) of paragraph (3) of subdivision (c) of section 539.3 of the regulations is amended to read as follows:

“(c)” Any certificate issued pursuant to the provisions of this paragraph which does not expire pursuant to the provisions of this paragraph shall be [valid for a period of not less than three years from the date issued and] subject to expiration pursuant to Part 540 of this Subchapter. Any such certificate may be issued for a specified period, in which case it shall [otherwise] expire [pursuant to the provisions of subdivision (i) of section 539.2 of this Part] at the end of the specified period.

Section 13. The statutory authority cited in the heading of Part 540 of the regulations is amended to read as follows:

(Statutory authority: Tax Law, sections 1132(c), 1134, 1142, 1145, 1147, 1817)

Section 14. Paragraph (1) of subdivision (b) of section 540.1 of the regulations is amended to read as follows:

(1) Every person holding a valid certificate of authority shall be required to file a certificate of registration [renewal] for a new certificate of authority upon notification by the Department of Taxation and Finance of the pending expiration of [its] such person’s current certificate of authority. [Provided however, a certificate of authority shall not be subject to expiration prior to its having been in effect for a period of at least three years.] Such [renewals] filing shall be [conducted] made subject to the terms and conditions set forth in this [section] Part.

Section 15. Paragraph (2) of subdivision (b) of section 540.1 of the regulations is REPEALED and a new paragraph (2) is added to read as follows:

(2) If the department considers it necessary for the proper administration of the sales and use taxes and prepaid taxes imposed by and pursuant to Articles 28 and 29 of the Tax Law, the department may require every person holding a certificate of authority to surrender the certificate of authority and to file a new certificate of registration not more than once every three years. For purposes of this provision, the destruction of the

certificate of authority by its holder at the direction of the department shall be considered the surrender of the certificate of authority.

Section 16. Section 540.2 of the regulations is amended to read as follows:

(a)[(1)] A notice of expiration and the requirement for filing a new certificate of registration [renewal] shall be [mailed] issued to the holder of a [valid] certificate of authority [at the address on its certificate of registration or, if different, the address on its sales tax return last filed with the department] at least 120 days prior to the date of expiration indicated therein. Such notice shall include:

[(i)] (1) notification of expiration of the current certificate of authority, including notice that the holder's current certificate of authority expires on the indicated date unless a new, properly completed certificate of registration [renewal] is filed with the department on or before such date; and

[(ii)] (2) information regarding [the intended mailing to the vendor of the certificate of registration renewal packet. Such initial notice of expiration and renewal requirement shall be mailed at least 120 days prior to the date of expiration indicated therein.

(2) The department will mail a sales tax registration renewal packet to each holder of a valid certificate of authority so notified in paragraph (1) of this subdivision. Such packet shall contain the forms and instructions necessary for] how to file a new certificate of registration [renewal required by this section and pursuant to section 1134 of the Tax Law. Such packet shall be mailed at least 90 days prior to the expiration date indicated in the notice of expiration and renewal requirement].

(b) Prior to the expiration of [its] a person's current certificate of authority, [where] if the [vendor] person fails to correspond with the department, the department shall issue a notification of the impending expiration of the certificate of authority [shall be mailed by certified or registered mail] to such [vendor] person. However, in no case shall [such] this notice be given to the [vendor] person less than 60 days prior to the expiration of such certificate of authority.

(c)(1) A certificate of authority shall expire on the date indicated in the notice of expiration [and renewal requirement,] unless, prior to such expiration date, a new, properly completed[,] certificate of registration [renewal] is filed with the department (see section [539.2(c)] 539.2(h) of this Title for information required on certificates of registration). Where such new certificate of registration [renewal] is filed prior to such expiration date, the current certificate of authority shall [not] expire [until such time as] once the department issues a new certificate of authority or a notice of proposed refusal to issue a certificate of authority has become final.

Section 17. Subdivision (a) of section 540.3 of the regulations is REPEALED and a new subdivision (a) is added to read as follows:

(a) The department may refuse to issue a new certificate of authority to any person (applicant) who has filed a new certificate of registration for any of the reasons described in subdivision (a) of section 539.3 of this Part. Such reasons for refusal are also set forth in section 1134(a)(4)(B) of the Tax Law.

Dated: Albany, New York
August 26, 2008

Robert L. Megna
Commissioner of Taxation and Finance