



Contractor Certification to Covered Agency

ST-220-CA

(12/11)

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

For information, consult Publication 223, Questions and Answers Concerning Tax Law Section 5-a (see Need Help? on back).

Contractor name Health Insurance Plan of Greater New York				For covered agency use only Contract number or description	
Contractor's principal place of business 55 Water Street		City New York	State NY	ZIP code 10041	
Contractor's mailing address (if different than above)				Estimated contract value over the full term of contract (but not including renewals) \$	
Contractor's federal employer identification number (EIN) 13-1828429		Contractor's sales tax ID number (if different from contractor's EIN)			
Contractor's telephone number 646 447-0092		Covered agency name New York State Department of Civil Service			
Covered agency address Office of Financial Admin, Floor 17, Agency Building 1, Empire State Plaza, Albany, NY 12239				Covered agency telephone number 518 473-2726	

I, George Babitsch, hereby affirm, under penalty of perjury, that I am SVP, Account Management
(name) (title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

N/A non-profit org -> see legal excerpt included
The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____
(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this 17 day of July, 2020

(sign before a notary public)

Senior Vice President
(title)

Instructions

General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, Contractor Certification to Covered Agency, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. See Need help? for more information on how to obtain this publication. In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

- As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:
- The procuring entity is a covered agency within the meaning of the statute (see Publication 223, Q&A 5);
 - The contractor is a contractor within the meaning of the statute (see Publication 223, Q&A 6); and
 - The contract is a contract within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for commodities or services, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned on or after April 26, 2006 (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF New York }

: SS.:

COUNTY OF Queens }

On the 17 day of July in the year 2020, before me personally appeared George Babitsch, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he resides at 55 Water Street, Town of New York, County of New York, State of New York; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

- (If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.
(If a corporation): he is the Senior Vice President, Account Management of Health Insurance Plan of GreaterNY, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

- (If a partnership): he is a of the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

- (If a limited liability company): he is a duly authorized member of LLC, the limited liability company described in said instrument; that he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public See previous page

Registration No.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).
This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.
Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.
Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?
Visit our Web site at www.tax.ny.gov
• get information and manage your taxes online
• check for new online services and features
Telephone assistance
Sales Tax Information Center: (518) 485-2889
To order forms and publications: (518) 457-5431
Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082
Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.



Publication 223

Questions and Answers Concerning

Tax Law Section 5-a

(as amended, effective April 26, 2006)

Contractor, Affiliate and Subcontractor

Sales and Compensating Use Tax

Certification

Note: Although accurate, some of the definitions given in this publication have been simplified. If there is any discrepancy between the definitions of the terms in this publication and applicable New York law or regulations, then the law and regulations will govern.

1) **Q:** What does Tax Law section 5-a require?

A: The statute requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor of such contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also certify to the procuring state entity that they filed the certification with the Tax Department and that it is correct and complete.

2) **Q:** What is the purpose of section 5-a?

A: The statute's aim is to ensure that contractors do not get state work unless they, their affiliates and their subcontractors are, when required by section 5-a, registered to collect New York State and local sales and compensating use taxes. Included within the statute's scope are out-of-state businesses making sales of more than \$300,000 into New York but having no physical presence in the state. Other businesses, if affiliated with, or subcontractors of, a bidder for a state contract, would similarly have to consent to registration as a condition of the contractor's obtaining state work, providing the affiliate's or subcontractor's sales exceed the \$300,000 sales threshold.

3) **Q:** Under what circumstances does section 5-a apply?

A: A contract is covered by section 5-a if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Q & A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Q & A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000, and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Q & A 8 and 9). Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

If all of the above criteria are met, amended section 5-a is applicable and, as general matter, two certifications (Forms ST-220-CA and ST-220-TD) are required to be filed. These forms are available at www.nystax.gov.

If any of the above criteria are not met, amended section 5-a is not applicable and no certifications (no forms) are required to be filed.

4) **Q:** Are any contracts expressly exempted from application of section 5-a?

A: Yes. A contract will be exempted from application of section 5-a if the procuring covered agency and OSC, or other contract reviewer if OSC is not required to approve the contract, find in writing that the contract is necessary to:

- (a) address an emergency, within the meaning of Article 11 of the State Finance Law¹; or
- (b) ensure the public health, safety, or welfare when an urgent event with a compelling public purpose arises.

In addition, the agency's and contract reviewer's written finding must explain the reasons supporting the determination.

5) **Q:** What governmental entities are *covered agencies* for purposes of Tax Law section 5-a?

A: Tax Law section 5-a defines a *covered agency* to mean:

- a *state agency* for purposes of Article 11 of the New York State Finance Law; or
- a public authority or public benefit corporation at least one of whose members is appointed by the Governor.

For purposes of Article 11 of the New York State Finance Law, the term *state agency* includes all state departments, boards, commissions, offices or institutions. As such, the Department of Law, Office of the State Comptroller and the Education Department are included. Local government entities are **not** covered agencies for purposes of section 5-a.

¹ An *emergency* within the meaning of the State Finance Law is "an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk."

6) **Q:** Who is a *contractor* for purposes of section 5-a?

A: The statute defines a *contractor* as a person awarded a contract by a covered agency. The term *person* is defined as an individual, partnership, limited liability company, society, association, joint stock company or corporation.

The term *person* does **not** include a public corporation or an education corporation, as such terms are defined in section 66 of the New York State General Construction Law, a not-for-profit corporation whose contracts are subject to approval in accordance with Article 11-B of the New York State Finance Law, a board of cooperative educational services created pursuant to Article 40 of the New York State Education Law, or a soil and water conservation district created pursuant to section 5 of the New York State Soil and Water Conservation Districts Law.

As defined in the New York State General Construction Law:

- The term *public corporation* includes a municipal corporation, a district corporation and a public benefit corporation.
- A *municipal corporation* includes a county, city, town, village and school district.
- A *district corporation* includes any territorial division of the state, other than a municipal corporation, established by law, which possesses the power to contract indebtedness and levy taxes or benefit assessments upon real estate or to require the levy of such taxes or assessments, whether or not such territorial division is expressly declared to be a body corporate and politic by the statute creating or authorizing the creation of such territorial division.
- A *public benefit corporation* is a corporation organized to construct or operate a public improvement wholly or partly within the state, the profits from which inure to the benefit of New York State or other states, or to the people thereof.
- As defined in the New York State General Construction Law and the New York State Education Law, the term *education corporation* means a corporation
 - chartered or incorporated by the Board of Regents of the University of the State of New York or otherwise formed under the New York State Education Law, or
 - formed by a special act of New York State with its principal purpose an education purpose and which is a member of the University of the State of New York, or
 - formed under laws other than the statutes of New York State which, if it were to be formed currently under the laws of New York State, might be chartered by the Board of Regents of the University of the State of New York, and which has been authorized to conduct its activities in this state by the Regents or as an authorized foreign education corporation with the consent of the New York State Commissioner of Education.

7) **Q:** When does award of a contract occur for purposes of section 5-a?

A: A contract is awarded when the procuring covered agency notifies a person either orally or in writing that the person has been selected to provide the commodities or perform the services being procured. The certifications required by section 5-a are only required to be filed by the person awarded a contract.

8) **Q:** What contracts let by covered agencies are subject to section 5-a?

A: The statute defines the term *contract* as an agreement between a contractor and a covered agency for the purchase by the covered agency, pursuant to Article 11 of the New York State Finance Law, of commodities or services having a value in excess of \$100,000. The statute also expressly includes within the definition of *contract* centralized contracts with values in excess of \$100,000.

The definition of *contract* in section 5-a is broad enough to include, but is not limited to, the following types of contracts:

- backdrop contracts;
- single source contracts;
- sole source contracts;
- multiple award contracts;
- piggybacking contracts;
- strategic partnership procurement contracts; and
- contracts for the state.

Definitions

The term *commodities* has the meaning given by Article 11 of the New York State Finance Law, and includes (other than with respect to contracts for state printing) material goods, supplies, products, construction items, or other standard articles of commerce, other than technology, which are the subject of any purchase or other exchange.

The term *services* has the meaning given by Article 11 of the New York State Finance Law. *Services* means (other than with respect to contracts for state printing) the performance of a task or tasks, and may include a material good or a quantity of material goods, and which is the subject of any purchase or other exchange. For Article 11 purposes, *services* includes technology.² The term *services* does **not** apply to contracts for architectural, engineering or surveying services, or to contracts with not-for-profit organizations approved in accordance with Article 11-B of the New York State Finance Law.

9) **Q:** Is a contract for information technology (IT) services subject to Tax Law Section 5-a?

A: Yes, assuming the criteria identified in Q & A 3 are met. When an IT service contract is awarded to a contractor, the section 5-a certifications must be made on Forms ST-220-CA and ST-220-TD irrespective as to whether the contractor is providing (1) only custom software, (2) only hardware and pre written off-the-shelf software, or (3) a combination of (1) and (2).

On Form ST-220-TD, a certification is made by the contractor as to whether the contractor, an affiliate(s) and/or subcontractor(s) made sales in New York State of *tangible personal property* (TPP) or *taxable services*, as set forth under the Tax Law, that exceeded \$300,000 over a certain look-back test period. If such sales threshold is met, then a certification is made that the contractor, affiliate(s) and/or subcontractor(s) is (are) registered to collect sales tax in New York. If the threshold is not met, then the contractor marks the box on Form ST-220-TD indicating that fact.

Pre written computer software (including software delivered electronically) and computer hardware constitute TPP for sales tax purposes, and therefore, are counted towards the \$300,000 New York sales threshold. In contrast, custom software (which is computer software designed to the specifications of a specific purchaser) is **neither** TPP nor a taxable service. Thus, the amount of sales derived from custom software is **not** counted towards this \$300,000 sales tax threshold.

Example:

*A contractor made sales in New York State valued at \$1,000,000 during the test period specified in section 5-a of **only** custom software, which is neither TPP nor a taxable service. Under such circumstances the contractor would certify on Form ST-220-TD that it did **not** meet the \$300,000 sales threshold by marking the bottom box in Section 1 of the form. Although total sales exceeded \$300,000, custom software does not fit the criteria of being TPP or taxable services and cannot be counted toward the \$300,000 sales threshold.*

However, if the contractor also made sales of pre-written computer software (TPP) in the amount of \$500,000 during the same look-back test period, then the contractor must certify that it was registered to collect sales tax in New York. Accordingly, the contractor must mark the first box in Section 1 on Form ST-220-TD.

Under both scenarios above, the contractor must also certify to the procuring agency on Form ST-220-CA that it also filed Form ST-220-TD with the Tax Department.

10) **Q:** What contract types are excluded from the definition of *contract* under section 5-a?

A: The following are not included within the definition of *contract* in section 5-a:

- contracts based on formal mini-bid solicitations pursuant to centralized contracts;
- grants;
- revenue contracts;
- intergovernmental agreements; and
- contracts with preferred sources as defined in Article 11 of the New York State Finance Law.

11) **Q:** Is the more than \$100,000 threshold determined based on total contract value, or on an annualized basis?

A: The more than \$100,000 threshold is determined based on the value (estimated, if necessary) of the contract over its full term, excluding possible renewal terms.

Also, multiple purchases of commodities or services by a covered agency from the same contractor during a state fiscal year are not to be aggregated for purposes of determining whether the more than \$100,000 threshold has been met.

² The term *technology* is defined by Article 11 of the New York State Finance Law as either a good or a service or a combination of the two, that results in a technical method of achieving a practical purpose or in improvements in productivity. Goods may be either new or used.

- 12) Q:** If a contract is not let pursuant to Article 11 of the State Finance Law, is it subject to section 5-a?
- A:** Contracts not let pursuant to Article 11 of the State Finance Law are **not** subject to section 5-a.
- 13) Q:** Does Tax Law section 5-a apply to an agency accessing a centralized contract through issuance of a purchase order?
- A:** Assuming all criteria identified in Q&A 3 are met, Tax Law section 5-a applies to award of the centralized contract and not to covered agency access to the centralized contract through issuance of a purchase order. However, the requirements of Tax Law section 5-a do apply to covered agency purchases using **all-copy purchase orders**. For information regarding all-copy purchase orders, contact the Office of the State Comptroller, Bureau of Contracts at (518) 474-4622.
- 14) Q:** Is a mini-bid contract, which is let by a covered agency from a backdrop contract, subject to Tax Law Section 5-a?
- A:** No. A backdrop contract is one in which a procuring agency selects a pool of qualified vendors that are deemed eligible to bid on a procurement via a mini-bid. A mini-bid is an abbreviated process during which contract users solicit final pricing from the pool of pre-selected back-drop contractors.
- A state agency backdrop procurement is deemed awarded to a contractor at the point in time when the vendor is selected to be included in the pool of contractors eligible to participate in a mini-bid process. In view of that, a contractor is required to submit the Tax Law section 5-a forms when selected as a backdrop vendor by a state agency. During a mini-bid process, additional section 5-a certifications by a backdrop contractor are not required unless there are changes necessitating a new filing. For instance, if during a mini bid, a contractor hires a new subcontractor which was not previously reported on its Form ST-220-TD, then the contractor should report the new subcontractor by filing of a new Form ST-220-TD (assuming the subcontractor meets the more than \$300,000 sales in New York State threshold).
- 15) Q:** Who is an *affiliate* for purposes of Tax Law section 5-a?
- A:** Section 5-a defines an *affiliate* as a person which directly, indirectly or constructively controls another person; is controlled by another person; or is, along with another person, under the control of a common parent. *Control* means possession of the power to direct, or cause the direction of, the management and policies of another person. Determining whether control exists is a factual inquiry to be based upon the circumstances in each case. Responsibility for determining whether a person is an affiliate rests with the contractor.
- 16) Q:** Who is a *subcontractor* for purposes of Tax Law section 5-a?
- A:** A *subcontractor* is a person engaged by a contractor or another subcontractor to perform a portion of the contractor's obligations under a contract.
- 17) Q:** Which contractors, affiliates and subcontractors must be certified as registered to collect New York State and local sales and compensating use taxes pursuant to section 5-a prior to a contract taking effect?
- A:** Those contractors, affiliates and subcontractors making sales delivered by any means to locations within New York State of tangible personal property or taxable services having a value in excess of \$300,000 during a specified period must be certified as registered to collect New York State and local sales and compensating use taxes.
- All** sales of tangible personal property or taxable services within New York State during the specified period (not merely sales to covered agencies) are taken into account in determining whether the more than \$300,000 cumulative sales threshold has been met. This also includes the amount of any sales made which are exempt from sales tax (see Q & A 20).
- 18) Q:** Over what period must the more than \$300,000 cumulative sales threshold occur so as to require a contractor, affiliate, or subcontractor to be certified under Tax Law section 5-a as registered with the Tax Department to collect sales and compensating use taxes?
- A:** The registration requirement applies if the person made a cumulative total of more than \$300,000 in sales in New York State during the four completed sales tax quarters which immediately precede the sales tax quarter in which the certification is made. Sales tax quarters are June-August, September-November, December-February and March-May.
- If a person has not closed its books for the sales tax quarter immediately preceding the sales tax quarter in which the certification is being made, such person should use its sales information from the four most recent sales tax quarters for which such information is available to determine whether the more than \$300,000 cumulative sales threshold has been met.

Application of the above rule is illustrated by the following example:

Example: *Contractor A is awarded a \$150,000 contract by covered agency B in June, 2006. Contractor A would determine whether the more than \$300,000 threshold was met by examining its sales of tangible personal property or taxable services within New York State during the June, 2005-August, 2005; September, 2005-November, 2005, December, 2005-February, 2006 and March, 2006-May, 2006 sales tax quarters. If Contractor A has not completed its accounting for the March, 2006-May, 2006 sales tax quarter, then it should, in lieu of that sales tax quarter, use data from the March, 2005-May, 2005 sales tax quarter.*

19) Q: How are the terms *sale*, *tangible personal property* and *taxable services* defined for purposes of determining whether the more than \$300,000 cumulative sales threshold has been met?

A: *Sale* has the meaning given for New York State and local sales and compensating use tax law purposes, and includes any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume (including, with respect to computer software, the right to reproduce), conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor.

Tangible personal property has the meaning given for New York State and local sales and compensating use tax purposes. For such purposes, the term means corporeal personal property of any nature having a material existence and perceptible to the human senses. Tangible personal property includes, but is not limited to:

- raw materials, such as wood, metal, rubber and minerals;
- manufactured items, such as gasoline, oil, diesel motor fuel and kero-jet fuel, chemicals, jewelry, furniture, machinery and equipment, parts, tools, supplies, clothing, motor vehicles, appliances, boats, yachts, lighting fixtures, building materials;
- computers and pre-written (canned/off-the-shelf/standard) software;
- artistic items, such as sketches, paintings, photographs, moving picture films and recordings;
- animals, trees, shrubs, plants and seeds;
- bottled water, soda, beer;
- candy and confections;
- cigarettes and tobacco products;
- cosmetics and toiletries;
- coins and other numismatic items, when purchased for purposes other than for use as a medium of exchange;
- postage stamps, when purchased for purposes other than mailing; and
- precious metals in the form of bullion, ingots, wafers and other forms.

Tangible personal property does **not** include real property or intangible personal property.

Taxable services means services, the receipts from the sale of which are taxable for New York State and local sales and compensating use tax purposes. The term includes those services specifically enumerated in New York State and local sales and compensating use tax law as taxable. Taxable services are determined without regard to exemptions provided for in the sales and compensating use tax law. The term includes, but is not limited to:

- providing information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons;
- processing, assembling, fabricating, printing or imprinting tangible personal property furnished by a customer who did not purchase the tangible personal property for resale;
- installing tangible personal property, or maintaining, servicing or repairing tangible personal property that is not held for sale by the purchaser of the service;
- storing tangible personal property that is not being held for sale, and the rental of safe deposit boxes or similar space;
- maintaining, servicing or repairing real property, whether inside or outside buildings;
- providing parking, garaging or storing for motor vehicles;
- interior decorating and designing services;
- protective and detective services; and
- furnishing entertainment or information services by means of telephony or telegraphy.

20) Q: Are exempt sales taken into account in determining whether the more than \$300,000 sales threshold of section 5-a is met?

A: Yes. In determining whether more than \$300,000 in sales of tangible personal property or taxable services were made during the specified period, contractors must count exempt sales of tangible personal property or taxable services. Contractors should determine whether sales are of tangible personal property or taxable services with reference to Articles 28 and 29 of the New York State Tax Law, disregarding relevant exemptions provided for therein, including, but not limited to, the exemption for sales to exempt organizations.

Example:

During the four specified sales tax quarterly periods, an out-of-state contractor made \$400,000 in sales of tangible personal property into New York State. The entire \$400,000 in sales during such periods was made to exempt state agencies. The contractor has exceeded the \$300,000 threshold and must be certified as registered for New York State and local sales and compensating use tax purposes.

21) Q: Who is responsible for making the certifications required by section 5-a?

A: The contractor is responsible for making the certifications required by the statute. The contractor's certification must include whether its affiliates and/or subcontractors whose sales exceeded the \$300,000 threshold during the specified period, are registered for New York State sales and compensating use tax purposes. The contractor's certification must be made to the best of its knowledge.

22) Q: How does a contractor make the certifications required by the statute?

A: The contractor must file a properly completed Form ST-220-CA (with the procuring covered agency) and Form ST-220-TD (with the Tax Department). The covered agency must include Form ST-220-CA in the procurement record for the contract.

These requirements must be met before a contract may take effect.

Renewals: In addition, after a contract has taken effect, a Form ST-220-CA must be filed again with a covered agency if a contract, which by its terms may be renewed, is being renewed. In this case, the Form ST-220-CA must be filed with the contracting covered agency prior to the commencement date of the renewal term(s). In addition, a new Form ST-220-TD may be required to be filed with the Tax Department. A new Form ST-220-TD would be required to be filed with the Tax Department if no previous Form ST-220-TD has been filed by the contractor with the Tax Department or, if a previously filed Form ST-220-TD is no longer correct and complete.

Example:

Contractor A is awarded a contract by Covered Agency B. The contract is Contractor A's first with a covered agency, and is subject to the requirements of section 5-a. Contractor A has one affiliate and one subcontractor, and all three entities exceeded the \$300,000 threshold during the specified period. Contractor A must file Form ST-220-TD with the Tax Department, certifying that all three entities are registered for New York State and local sales and compensating use tax purposes. In addition, Contractor A must file Form ST-220-CA with Covered Agency B, certifying that it has filed Form ST-220-TD with the Tax Department, and that it is correct and complete.

During the term of its contract with Covered Agency B, Contractor A acquires two new affiliates and one additional subcontractor. One of the affiliates, as well as the subcontractor, exceeded the \$300,000 threshold during the specified sales tax quarters. Contractor A must, as soon as possible after learning of the changed circumstances, file a new Form ST-220-TD with the Tax Department, certifying that the affiliate and the subcontractor exceeding the \$300,000 threshold are registered for New York State and local sales and compensating use tax purposes. If Contractor A does not file the new Form ST-220-TD with the Tax Department, then the consequences specified in Q&A 31 below could apply.

Contractor A's contract with Covered Agency B provides that the contract may be renewed for one additional two-year term, at the option of the parties. The parties agree to renew the contract. Thus, Contractor A must, prior to the commencement date of the renewal term, file a new Form ST-220-CA with Covered Agency B certifying that it has filed Form ST-220-TD with the Tax Department, and that it is correct and complete. If Contractor A cannot make such certification to Covered Agency B because information shown on the current Form ST-220-TD filed with the Tax Department is not correct and complete, then it must immediately file a new Form ST-220-TD with the Tax Department reflecting current information. Contractor A must then file Form ST-220-CA with Covered Agency B before the commencement date of the renewal term.

Following commencement of Contractor A's renewal term with Covered Agency B, Contractor A is awarded a new contract by Covered Agency C. The new contract is covered by section 5-a. If the information shown on Contractor A's last filed

Form ST-220-TD is correct and complete, it need not file a new Form ST-220-TD with the Tax Department. However, Contractor A must file Form ST-220-CA with Covered Agency C certifying that it has previously filed Form ST-220-TD with the Tax Department, and that it is correct and complete as of the date of the new certification (Form ST-220-CA) filing with Covered Agency C.

- 23) Q: If the contractor filed Form ST-220 prior to amendment of section 5-a on April 26, 2006, and the contract has, since April 26, 2006, been amended, extended, renewed or assigned, must a Form ST-220-TD be filed with the Tax Department?
- A: Yes, if the contract meets the criteria set forth in Q & A 3.
- 24) Q: Must Form ST-220-TD be filed with the Tax Department if the contractor filed Form ST-220 prior to amendment of section 5-a on April 26, 2006, and the contractor is then awarded another contract after that date?
- A: Yes, if the contract meets the criteria set forth in Q & A 3.
- 25) Q: When is a contractor, affiliate or subcontractor required to be listed in Schedule A of Form ST-220-TD?
- A: A contractor, affiliate or subcontractor is required to be listed in Schedule A of Form ST-220-TD when such contractor, affiliate or subcontractor has exceeded the more than \$300,000 cumulative sales threshold during the specified period as discussed in Q & A 18.
- 26) Q: When is a contractor who previously filed Form ST-220-TD with the Tax Department required to file a new Form ST-220-TD certification with the Tax Department?
- A: If a contractor or an affiliate or subcontractor, is not registered with the Tax Department for sales and compensating use tax purposes on the contractor's original certification, and such contractor, affiliate, or subcontractor makes sales delivered by any means to locations within New York State of tangible personal property or taxable services having a value in excess of \$300,000 during any consecutive four sales tax quarters which follow the sales tax quarter in which the contractor's original certification was made, then the contractor shall, as soon as possible after such occurrence, file a new Form ST-220-TD with the Tax Department certifying that it, and/or its affiliates and/or subcontractors, as applicable, are registered for sales and compensating use tax purposes.
- 27) Q: If a contractor, affiliate or subcontractor is required by section 5-a to be registered with the Tax Department to collect New York State and local sales and compensating use taxes, and such person is not registered, what must such person do to register?
- A: The contractor, affiliate or subcontractor must complete Form DTF-17, *Application to Register for a Sales Tax Certificate of Authority* to register. Upon registration, the Tax Department will issue a certificate of authority, which authorizes the recipient to collect New York State and local sales and compensating use taxes. Form DTF-17 is available on the Tax Department's Web site, www.nystax.gov, or may be obtained by calling the Sales Tax Information Center at 518-485-2889 (in-state callers without free long distance call 1-800-698-2909). For additional information regarding registration, see Publication 750, *A Guide to Sales Tax in New York State*.
- 28) Q: If a contractor, affiliate or subcontractor has submitted Form DTF-17, to register to collect New York State sales and compensating use taxes at the time of filing the certifications required under section 5-a, but has not yet received its certificate of authority from the Tax Department, how should the contractor complete the certifications?
- A: The contractor should complete the certifications as required. The column on Schedule A asking whether the person listed is in the process of registering should be checked. If there is a problem with the registration (see Tax Law section 1134(a)(4)(B) for reasons why registration may be denied), the Tax Department will notify the applicant.
- 29) Q: Who is responsible for signing Forms ST-220-TD and ST-220-CA?
- A: An individual authorized to sign on behalf of the contractor may execute the certifications.
- 30) Q: Can Form ST-220-TD be provided to the Tax Department electronically?
- A: Form ST-220-TD **cannot** be provided electronically to the Tax Department at this time. If the Tax Department later determines that electronic submission is feasible, instructions will be issued as to how to electronically sign and file Form ST-220-TD.

- 31) Q:** What are the consequences if Form ST-220-TD and/or Form ST-220-CA are not provided, or if provided, are determined to be false?
- A:** If a contractor fails to make the certifications required by section 5-a, by law, the contract cannot take effect. If during the term of the contract, the Tax Department or the covered agency discovers that a certification is false, then such false certification may subject the contractor to civil or criminal sanctions, and a finding of nonresponsibility for future procurements. Under certain circumstances, the statute provides that the contract shall be subject to termination if the covered agency determines that termination of the contract is in the best interests of New York State.
- 32) Q:** What is the effect of registering with the Tax Department to collect New York State and local sales and compensating use taxes?
- A:** Once registered, a person is a *vendor* within the meaning of New York State and local sales and compensating use tax law, and must file returns and collect and pay, or pay over, tax. Failure to file returns and collect and pay, or pay over, tax will result in imposition of penalty and interest charges.

Need help?



Visit our Web site at www.tax.ny.gov

- get information and manage your taxes online
- check for new online services and features



Telephone assistance

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431



Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at (518) 485-5082. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.