

New Requirement for the Filing of Information Returns for Franchisors

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 franchisors, regarding their transactions with particular businesses required to collect state and local sales tax (collectively referred to as vendors). Franchisors required to file the information returns under the new law include every franchisor, as defined in the General Business Law (GBL), that has at least one franchisee, as defined in the GBL, that is required to be registered as a sales tax vendor.

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 4.

Definitions

For purposes of the new law, the following definitions apply:

A *franchise* means a contract or agreement which grants a franchisee either of the following:

- the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor, where the franchisee is required to pay, directly or indirectly, a franchise fee; or
- the right to engage in the business of offering, selling, or distributing goods or services substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate, where the franchisee is required to pay, directly or indirectly, a franchise fee.

A *franchise location* means each separate business location of the franchisee.

A franchisor means a person who grants a franchise.

A *franchisee* means a person (including an entity such as a corporation, partnership or an LLC) to which a franchise is granted.

Information required to be provided on the returns

Franchisors that 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 franchise location of its

franchisees doing business in New York State that are required to be registered as sales tax vendors:

Franchisee information

- legal name of each franchisee;
- phone number of each franchisee;
- DBA name of each franchisee (if different than legal name);
- the name of the owner of each franchisee (e.g., principal shareholder, general partner);
- franchisee's Federal Employer Identification Number (EIN/Federal ID Number), which would be the franchisee's owner's Social Security Number if the franchisee is a sole proprietor;
- franchisee's New York State Sales Tax Certificate of Authority number(s);

Franchise information

- beginning date of each franchise;
- each franchise location's physical address;
- mailing address of each franchise location if different than physical address;
- gross sales in New York State for each franchise location as reported to the franchisor for the period covered by the return;
- gross sales in New York State for each franchise location as audited by the franchisor if different than reported by the franchisee;
- if known, the amount of New York state and local sales tax collected at each franchise location by each franchisee for the period covered by the return;
- amount of royalty payments, if any, for each franchise location, made to the franchisor;
- for each franchise location, where applicable, the royalty percentage of gross sales reported (if royalty payments are based on a computation other than percentage of gross sales give details of that computation);
- amount of sales, if any, made to each franchise location by the franchisor or companies affiliated with the franchisor; and
- the amount of any sales made to each franchise location by any supplier designated by the franchisor.

Requirement to notify franchisees regarding their information provided in the information returns filed by franchisors

The new law provides that franchisors that are required to file information returns must give to each franchisee included on the return a *statement* showing the same information reported for that franchisee in the information return. The statement given to each franchisee may be in a summary format, but it must include the identifying information pertinent to the franchisee along with the gross sales of each franchise location of the franchisee, royalty payments and sales made to the franchisee for each franchise location as reported to the Tax Department on 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 franchisees have filed with the Tax Department.

The statement must be given to each franchisee 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 franchisee on the information return due on or before March 20, 2010, the statement must also include the information pertaining to the franchisee 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, franchisors 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 franchisee in a proper and timely manner.

Penalties

If a franchisor fails to comply with the new law, the following penalties will apply:

(1) If a franchisor 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 franchisee, on or before March 20th of each year, the statement as described above;

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

(2) If a franchisor 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

Franchisors 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 franchisors to determine the accuracy of income and sales tax returns filed by franchisees. Taxpayers, including franchisees, 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.nystax.gov* 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.