



WADING RIVER FIRE DISTRICT BOARD OF FIRE COMMISSIONERS

3.3 Sales Tax Procedure Policy

OBJECTIVES:

A great deal of confusion seems to surround the procedures that should be implemented by Fire Districts, Volunteer Fire Departments and Volunteer Fire Companies in order to purchase goods without paying New York State sales tax. The New York State Tax Law governs the procedures to be followed for an entity to utilize a sales tax exemption. The Tax Law permits the New York State Department of Taxation and Finance to adopt rules, regulations and forms in order to implement the Tax Law. Sales taxes are a function of state statutes, and thus, an exemption from the payment of these taxes must be provided for under the statutory scheme.

POLICY:

Fire districts are exempt from the payment of sales tax on the goods that they purchase within this state, and vendors selling to them are exempt from the requirement that they collect sales tax in transacting these purchases under Section 1116(a)(1) of the Tax Law. A political subdivision of the State purchasing goods in order to conduct its business and affairs is exempt from the payment of sales tax under the statute, and is not required to submit any application to the state in order to gain this status. Unfortunately, the lack of an application requirement and a corresponding lack of the issuance of a certificate showing this exemption eligibility has created some confusion.

A Volunteer Fire Department or Fire Company must apply for sales tax exempt status as a not-for-profit entity, and when this status is approved obtains a sales tax exemption certificate that can be displayed to vendors and merchants making the tax exempt purchasing process a simpler one.

On the other hand, a Fire District purchasing goods in this state as an entity exempt from the payment of sales tax avoids the payment of sales tax by simply issuing a government purchase order to the vendor. This places the vendor on notice of the fact that the purchaser is a political subdivision of this state of New York and is exempt from the payment of sales tax. Vendors may prefer to see the tax-exempt certificate that not-for-profit entities submit, but they are submitting these forms based upon a different set of guidelines and criteria. The tax exemption certificate is proof that they have qualified to purchase goods without paying sales tax because they have demonstrated to the New York State Department of Taxation and Finance that they conduct their business in a manner that qualifies them to receive exempt status. The Fire District automatically qualifies for this status. It does not have to demonstrate its

worthiness. In order to simplify the purchasing process for the fire district the following form will be utilized when a vendor questions the right of the fire district to be exempt from the payment of New York State sales tax:

WADING RIVER FIRE DISTRICT

EXEMPTION FROM NEW YORK STATE SALES AND USE TAX

SECTION 1116 OF THE TAX LAW AND REGULATIONS OF DEPARTMENT OF TAXATION AND FINANCE

The Wading River Fire District is a fire district and political subdivision of the State of New York. Under Section 1116(a)(1) of the Tax Law of the State of New York it is exempt from the payment of sales and use taxes on purchases it makes of goods and services in New York State. Under the regulations adopted by the New York State Department of Taxation and Finance at 20 NYCRR Section 529.2(3)(b):

*(1) New York State, or any of its agencies, instrumentalities, public corporations or **political subdivisions** (hereinafter referred to as New York State governmental entities) **are not subject to sales or use tax when they are the purchaser, user, or consumer of tangible personal property or services or when they are the occupant of a hotel room or a patron at a place of amusement, club, roof garden, cabaret or other similar places.***

(2) New York State governmental entities as purchasers, users, consumers, occupants or patrons must exercise their right to exemption through the issuance of governmental purchase orders or the appropriate exemption document.

The attached purchase order has been issued to you in conformance with 20 NYCRR Section 529.2(3)(b)(2) since the Wading River Fire District is exempt from the payment of sales and use taxes on this proposed purchase. Please make certain that your invoice and claim voucher submitted to the District for payment does not include any charges for sales or use taxes.

Dated: _____, New York

Chairman

This form letter will be given to the vendor.

Fire departments and fire companies must file form ST 119.2, Application for an Exempt Organization Certificate, in order to qualify for a sales tax exemption and to obtain an exempt organization certificate that can be displayed to vendors when making purchases. This form together with the instruction form for filing (form ST 119.2 I) and the general publication on sales tax issues (Publication 750) can be found on the website of the New York State Department of Taxation and Finance.

Applications for the issuance of exempt organization certificates require the fire department or fire company to demonstrate that it is a proper entity and conducts its business in a manner that would justify a sales tax exemption. These forms and instructions should be carefully reviewed and carefully filled out.

It is also important to recognize the fact that each entity, be it the fire district, fire department or fire company, should make its own purchases and obtain and use its own sales tax exemption rights. It is not proper for the fire district to be purchasing based upon the exempt organization certificate of the fire department or fire company and it is not proper for a fire department or fire company to be doing its exempt purchasing through the name of the fire district.

Fire districts as sales tax exempt political subdivisions of the State and fire departments and fire companies as sales tax exempt organizations purchasing pursuant to an exemption certificate issued by the New York State Department of Taxation and Finance should not permit any other persons or entities to utilize their sales tax exemption rights. It is important to understand that officers, employees and members cannot make personal purchases based upon the tax-exempt status of a fire district, fire department or fire company.

With regard to hotel bill payment in New York State, the Department of Taxation and Finance provides form ST 129 as an exemption certificate to be used by government employees of the United States, New York State and the political subdivisions of New York State when they pay their hotel bills. The hotel operator is permitted to require that the government employee show proper identification before accepting the certificate. It is recommended that traveling personnel be issued the form when leaving for their approved convention, seminar or training program so that they can submit it to the hotel operator at the time of registration. Hotel operators in other States are not governed by New York State law, but providing the traveling personnel with the completed form to submit to hotel staff may in some instances result in savings on hotel taxes.

It is also important to understand the difference between the exempt status for sales tax purposes and the tax status of governments and not-for-profit entities under the Internal Revenue Service Code. A sales tax exemption relates to New York State provisions for sales tax free purchases within New York State. The sales tax requirements relating to out-of-state purchases or taxes imposed by the federal government are issues that are distinct from in-state sales tax exemption. It is important to remember that the sales and use tax exemption applies to purchases in New York State and may not apply with regard to purchases in another state or jurisdiction or with regard to taxes imposed by another state or jurisdiction.

Many not-for-profit entities such as volunteer fire companies can file applications with the Internal Revenue Service in order to obtain tax-exempt status under Section 501 of the Internal Revenue Service Code. This is a status that relates more to the income tax implications for entities that receive donations and persons or entities that make donations than to issues of

sales tax exemptions. A review of New York State Department of Taxation and Finance form ST 119.2 and its instructions makes it clear that exempt status under the Internal Revenue Service Code will assist a not-for-profit entity in obtaining the status of being exempt for New York State sales tax purposes, but each type of exemption has a very distinct focus.

RELATED POLICIES:

- 1.2 Whistle Blower Policy
- 1.12 Discipline Procedure Policy
- 3.0 Annual Inspection Policy
- 3.1 Refreshment Policy
- 3.2 Annual Inspection Policy
- 3.4 Credit Card Policy
- 3.5 Authorization of Food Purchase for Department Events Policy

Adopted by the Wading River Fire District Board of Fire Commissioners on Monday, 09/26/11.

Edward Frost, Chairman
Timothy Deveny, Commissioner
Michael Harrigan, Commissioner
Thomas Lateulere, Commissioner
James Meier, Commissioner