

**Purchases by New York Governmental Entities
Through Properly Appointed Agents**

A *New York governmental entity* includes the State of New York, or any of its agencies, instrumentalities, public corporations, or political subdivisions. The term “governmental entities” as used in this memorandum does not include Industrial Development Agencies (IDAs), whose agents must follow the procedures outlined in section 542.1 of the Sales and Use Taxes Regulations.

New York governmental entities are exempt organizations under Article 28 of the New York State Tax Law and may generally purchase property and services exempt from State and local sales and use taxes (sales tax). In addition, such entities may purchase motor fuel, diesel motor fuel, and residual petroleum product for their own use or consumption exempt from motor fuel, diesel motor fuel, and petroleum business taxes (fuel excise taxes) under Articles 12-A and 13-A of the Tax Law. New York governmental entities may also make exempt purchases through a third party, but only where the third party has been properly appointed by the governmental entity to act as agent on its behalf. Currently, if a vendor makes a sale to a purchaser who claims to be acting as an agent of a New York governmental entity, and that purchaser is later determined not to be acting as the agent of the New York governmental entity, the vendor and the purchaser both face potential tax liabilities.

The Department has recently learned that many New York governmental entities, their contractors and suppliers often misunderstand the scope of the governmental entity exemption as provided in the Tax Law. Therefore, the Department has issued Publication 765, *Sales and Fuel Excise Tax Information for Properly Appointed Agents of New York Governmental Entities*, which explains: (1) the scope of the governmental entity exemption afforded by the Tax Law; (2) the legal requirements that generally must be satisfied for an agency relationship to exist; and (3) the new procedures that the Department has created in order for a properly appointed agent to make purchases exempt from sales and fuel excise taxes.

Under applicable case law including the decisions of the Tax Appeals Tribunal, in order for a person to make exempt purchases as "agent" on behalf of a governmental entity, the following conditions must be satisfied: (1) the governmental entity must properly appoint the person to make purchases as its agent; (2) the purchases must be within the scope of the agent's authority; and (3) the conduct of the parties must be consistent with the agency relationship (for example, the invoice should be made out in a manner indicating that the sale was to ‘X, as agent for Y, Government Entity.’) For additional information concerning the requirements for establishing an agency relationship, please refer to Publication 765.

While each New York governmental entity must determine for itself whether it possesses the legal authority to appoint an agent, Publication 765 provides information to assist such entities and persons contracting with them in determining whether the person is considered the governmental entity's properly appointed agent. Beginning July 1, 2005, to the extent that a

governmental entity does have such legal authority and properly appoints an agent, the entity and its agent should use the following new procedures when the agent is making tax-exempt purchases on behalf of the governmental entity.

The procedures require a New York governmental entity and its properly appointed agent to complete Form DTF-122, *Certification of Agency Appointment by a New York Governmental Entity*. By completing this form, the governmental entity certifies the designation of an agent to make tax-exempt purchases on the governmental entity's behalf. If an agent has been properly appointed and the New York governmental entity and its agent have completed Form DTF-122, the agent may begin making tax-exempt purchases on behalf of the governmental entity. When making a purchase of tangible personal property (other than motor fuel, diesel motor fuel, and residual petroleum products) or services on behalf of a New York governmental entity, the agent must provide the vendor with a copy of a properly completed Form ST-122, *Exempt Purchase Certificate for an Agent of a New York Governmental Entity*. When making a purchase of motor fuel, diesel motor fuel, or residual petroleum product on behalf of a New York governmental entity, the agent must provide the vendor with a copy of a properly completed Form FT-122, *Fuel Tax Exempt Purchase Certificate for an Agent of a New York Governmental Entity*. For Forms ST-122 and FT-122 to be properly completed, Form DTF-122 must be attached.

A purchaser claiming to be an appointed agent will not be protected from tax liability by the use of these forms if it is subsequently determined that the purchaser was not an agent of the governmental entity. Forms DTF-122, ST-122 and FT-122 may only be obtained by calling the Sales Tax Exempt Organizations Unit at (518) 457-2782.

The vendor will be protected from liability for the taxes if all of the following conditions are met:

- a properly completed Form ST-122 or FT-122 is received from the purchaser within 90 days of the delivery of the property or rendition of the service; and
- a properly completed Form DTF-122 (which is valid for the date the property is delivered or the service is rendered) is attached to Form ST-122 or Form FT-122; and
- Form ST-122 or Form FT-122, along with Form DTF-122, are accepted in good faith by the vendor; and
- the bill or invoice that is provided to the purchaser indicates that the purchase is being made by the purchaser as agent on behalf of the named governmental entity.

A certificate is properly completed if all the required entries on the certificate are made. A certificate is accepted in good faith when the vendor has no knowledge that the certificate is false or is fraudulently given, and reasonable, ordinary due care is exercised in the acceptance of the certificate. If an agent fails to provide the vendor with these certificates within the 90-day period, the vendor must collect tax on the sale. However, the date of the agency appointment must always be before the date the property or service is sold to the agent.