

HILCO INDUSTRIAL, LLC
New York Sales and Use Tax Summary

Johnson & Hoffman
40 Voice Rd
Carle Place, NY 11514

Tax Rate – 8.625 %

Auctions – An auctioneer may act in a representative capacity for the owner or may sell for himself. In the first instance, the auctioneer would be treated as an agent of the vendor, while in the latter case the auctioneer is considered to be a vendor. In either case, the auctioneer must collect tax on items not otherwise specifically exempt. [N.Y. Tax Law §1101(a) ; N.Y. Tax Law §1101(b)(8)(i) ; N.Y. Tax Law §1105(a).]

EXEMPTIONS: All exemption claims must be properly documented.

Manufacturing Machinery and Equipment –

- Machinery or equipment used or consumed directly and predominantly in the production for sale of tangible personal property, gas, electricity, refrigeration or steam, by manufacturing, processing, generating, assembling, refining, mining or extracting. The exemption extends to parts, tools and supplies. [N.Y. Tax Law §1105-B; N.Y. Tax Law §1115(a)(12); NYCRR20 §528.13(a) .]
- The term “production” includes the plant production line, starting with the handling and storage of raw materials at the plant site and continuing through the last step of production where the product is finished and packaged for sale. [NYCRR20 §528.13(b)(1)(ii).]
- The exemption does not apply to machinery and equipment that is partly used in the administrative and distribution phases unless it is used directly and predominantly in the production phase. [NYCRR20 §528.13(b)(2).]
- If, on receiving the raw materials, the purchaser weighs, inspects, measures, or tests the material prior to placement into storage, production begins when the raw material is placed in storage, and the prior activities are considered administrative. If the materials are unloaded and placed in storage without such activities, production begins with the unloading. *Examples:* A crane used to unload for storage and to place materials on an assembly line is exempt; testing equipment for incoming material is not exempt. [NYCRR20 §528.13(b)(3).]
- Production ends when the product is ready for sale. [NYCRR20 §528.13(b)(4).]
- “Directly and predominantly” means that the machinery or equipment must, during production, act upon or effect change in the material to form the product, have an active casual relationship in production, be used in handling, storage, or conveyance of materials or products, or be used to place the product in a package for commerce. [NYCRR20 §528.13(c)(1).] Machinery or equipment used in activities collateral to production is not considered to be used directly in production. [NYCRR20 §528.13(c)(2).]
- Machines used to produce other machinery or equipment or parts for self use in production are exempt as used directly in production. *Examples:* Machines used to construct molds that have a useful life of over one year and used for products being manufactured are exempt; a lathe used to make new machinery for production is exempt. [NYCRR20 §528.13(c)(3).]
- Machinery or equipment is used predominantly in production if over 50% of its use is directly in the production phase of a process. [NYCRR20 §528.13(c)(4).]
- With proper documentation, out-of-state manufacturers also qualify for the exemption.

Sales for Resale –

- Sales for resale in New York are not subject to sales and use tax because the sales and compensating use taxes are imposed only upon "retail sales" of tangible personal property and selected services. [Sec. 1105, Tax Law ; Reg. Sec. 526.6(c)(2)]
- Out of state resellers are also exempt.
- A sale for resale will be recognized only if the vendor receives a properly completed official resale certificate, Form ST-120, *Resale Certificate*. Such certificate is considered to be properly completed when it contains the following:
 - the date prepared;
 - name and address of the purchaser;
 - name and address of the vendor;
 - identification number of the purchaser as shown on its certificate of authority;
 - signature of the purchaser or the purchaser's authorized representative;
 - and any other information required to be completed on the particular certificate or document.

INTERSTATE COMMERCE -

A sale is taxable at the place where the property is delivered or the point where possession is transferred by the vendor to the purchaser or the purchaser's designee, regardless of where the property is used. As the items are purchased "**As Is, Where Is**", the sales are subject to NY sales tax rules. [NYCRR 20 §526.7(e)].

Purchase for use outside New York:

- Where a sales tax has been correctly, legally, and constitutionally imposed and paid on the purchase of tangible personal property, a refund or credit of state and local taxes paid on the sale will be allowed to the purchaser or user when, to the satisfaction of the Department of Taxation and Finance, the purchaser shows that such tangible personal property was used in one of the following manners:
 - A refund or credit is allowable for tangible personal property, or any portion thereof: (i) which is purchased in bulk; (ii) which is stored and not used by the purchaser or a user in New York State; (iii) which is later reshipped by such purchaser or user outside of New York State for use outside New York State; and (iv) provided the property is reshipped as required within three years after the date the tax was payable to the Department of Taxation and Finance and that application is made within three years from the date the tax was payable to the Department of Taxation and Finance. The phrase "purchased in bulk" means a single purchase from a single vendor of items of the same kind of tangible personal property, of such quantity that it would require storage of some part for future use. The phrase "stored and not used" means the placement of property in storage for later withdrawal for shipment outside of the State or use outside of the State.
 - The use of the tangible personal property in New York is restricted to fabricating such property (including the incorporation of it into or assembling it with other tangible personal property), processing, printing, or imprinting such property;
- Such property is then shipped to a point outside New York State for use outside the State.

FOREIGN COMMERCE –

Delivery in New York before export **is taxable**.

Motor vehicles sold to nonresidents - Motor vehicles sold to nonresidents are not subject to tax under the following conditions:

- the purchaser at the time of delivery:
 - must be a nonresident of this state;
 - must have no permanent place of abode in this state; and
 - must not be engaged in carrying on a trade, business or profession where the motor vehicle will be used in this state;
- the purchaser must not register the vehicle in this state before registering it in another state; and
- prior to delivery, the purchaser must furnish to the vendor any affidavit, statement or additional evidence which the Commissioner may require to ensure proper administration of the tax. [N.Y. Tax Law §1117]

MOTOR VEHICLES REQUIRED TO BE REGISTERED IN NEW YORK –

- **Generally. Motor vehicles** are subject to tax because they are tangible personal property, unless a specific exemption is granted (see items below). [N.Y. Tax Law §1105(a) ; NYCRR 20 §526.8 .]
- Vendors other than automobile dealers, who are registered with the Department of Taxation and Finance for sales and use tax purposes, must collect and remit the tax on the sale of a motor vehicle, as if they were dealers.
- The registered seller should supply the buyer with the NY identification number as it appears on his Certificate of Authority to collect the tax. Please contact the Tax Dept. for this information.
- A registration certificate will not be issued unless proof is given that the sales-use tax has been paid or that no tax is due. [N.Y. Tax Law §1132(f) .] County clerks outside New York City and Albany are the Commissioner's agents for collection of sales tax on sales not made through a dealer and for collection of the use tax. [N.Y. Tax Law §1132(g) .] See “Forms” below.

Additional information concerning taxable and exempt items are available at:

http://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/st/quick_reference_guide_for_taxable_and_exempt_property_and_services.htm

FORMS:

- Resale Certificate, ST-120: http://www.tax.ny.gov/pdf/current_forms/st/st120_fill_in.pdf
New York does not currently allow vendors to accept the MTC Uniform Sales and Use Tax Certificate for resales.
- Exempt use certificate, for manufacturing machinery and equipment, Form – ST-121: http://www.tax.ny.gov/pdf/current_forms/st/st121_fill_in.pdf
- Forms for DMV transactions required for registration: http://www.tax.ny.gov/forms/dmv_transaction_forms.htm