

Note: See also, Tax Bulletin [*Exemption Certificates for Sales Tax \(TB-ST-240\)*](#).

Tax Bulletins are up-to-date, online, easy-to-understand explanations of tax topics. *Tax Bulletins* are updated as needed to reflect changes in the rules.

TSB-M-07(1)S begins on page 2 below.

Electronic Resale and Exemption Documents for Sales and Compensating Use Taxes

The Department of Taxation and Finance now authorizes the use and acceptance of electronic versions of certain sales and use tax resale and exemption documents (e-certificates) in accordance with this memorandum.

Pursuant to section 1132(c)(1) of the Tax Law, all receipts from the sale of tangible personal property or from the sale of certain enumerated services, all rents for hotel occupancy, and all amusement charges of the types mentioned in Articles 28 and 29 of the Tax Law are presumed subject to tax until the contrary is established. The burden of proving that any receipt, rent, or amusement charge is not subject to tax is upon both the purchaser and the person who is required to collect the tax (seller). In general, every seller who in good faith accepts from the purchaser a properly completed resale certificate, exemption certificate, or other exemption document prescribed by the Commissioner not later than 90 days after delivery of the property or the rendition of the service is relieved of liability for failure to collect the tax. The burden of proving that the sale is exempt from tax is then solely upon the purchaser.¹

The new policy **does not require** the use or acceptance of e-certificates. The paper resale and exemption forms prescribed by the department may still be used. The change in policy only pertains to the manner in which resale and exemption documents may be executed and does not affect any law, rule, or other departmental policy concerning these documents.

E-certificates

E-certificates are not available from the department. At their discretion, purchasers and sellers may establish the means to electronically issue and receive e-certificates. The department does not prescribe specific technologies or technical specifications for executing e-certificates nor does the department require the use of particular types of hardware or software.

An e-certificate, however, must reproduce in its entirety the current paper resale or exemption form that is prescribed by the department. Although the electronic version does not need to be a facsimile or an exact copy of the paper form, it must contain all of the language that is on the paper form. If a purchaser or a seller (or other interested person) wishes to use an e-certificate that has modified language, including any additions or deletions, prior approval must be obtained from the department. A request for prior approval must include a copy of (or grant access privileges to) the proposed modification and an explanation as to why the modification is requested. The request must also contain the name of the individual seeking the modification and information as to how the individual may be contacted. The request must not contain any confidential taxpayer information

¹ See 20 NYCRR 532.4(b), *Burden of proof*.

(e.g., no social security numbers or taxpayer identification numbers). Requests must be sent either to *dtf_exdoc@tax.state.ny.us* or to the following address:

New York State Department of Taxation and Finance
Technical Services Division
Sales Tax I&I
W. A. Harriman Campus
Albany, New York 12227

An e-certificate in its entirety, which includes all applicable instructions, must be available to both the purchaser and the seller. However, it is not necessary that the instructions be included when issuing an e-certificate to the seller in order for the e-certificate to be considered accepted in good faith or properly completed.

If the paper resale or exemption form may be issued as a blanket certificate or as a single-purchase certificate, the corresponding e-certificate may also be issued as a blanket certificate or as a single-purchase certificate.

Additional e-certification and electronic signature language

In addition to reproducing all of the language (including all certifications) that is on the paper resale or exemption form, an e-certificate must also contain the following e-certification and electronic signature language (or such language as may be updated from time to time by the department) at the end of the document:

Electronic Signature/Certification Language

By entering my name and *[if applicable]* my title and the name of my entity/organization in the space below; providing additional information to the person required to collect tax (seller) that reasonably identifies me as the individual named below; and completing this transaction, I understand and agree that I am electronically signing and submitting this sales and use tax resale or exemption certificate in connection with a purchase that, but for the presentation of this electronic resale or exemption certificate, the seller would otherwise charge and collect sales or use tax from me. I also certify to the truthfulness, completeness, and correctness of all of the statements contained in this electronic certificate and to entitlement to the exclusion or exemption from sales or use tax claimed via my submission of this electronic certificate to the seller.

Enter: Name of Purchaser; Purchaser’s Title (e.g., Owner, Partner, President, Treasurer, etc.); Name of Purchaser’s Entity/Organization; and Date.

Name of Individual Submitting Certificate

Date

Title (if applicable)

Name of Purchasing Entity/Organization (if applicable)

All of the information required by this e-certification block must be filled in, and the e-certificate must be signed by the purchaser in accordance with the *Electronic Signatures and Records Act (ESRA)*² as outlined in the following section of this memorandum.

Electronic signatures on e-certificates

To be relieved of liability for failure to collect tax, a seller must accept in good faith an e-certificate that is properly completed, as described in section 532.4(b)(2)(ii) or Part 529 of the sales and use tax regulations, not later than 90 days after delivery of the property or the rendition of the service. A properly completed e-certificate includes the purchaser's (or the purchaser's authorized representative's) signature. In the case of an e-certificate, this requires an electronic signature. The electronic signature required on the e-certificate is in lieu of any written signature required on the paper counterpart. There is no requirement to affix a physical signature on the e-certificate.

An electronic signature has the same validity and effect as a handwritten signature. Section 302 of ESRA provides the following relevant definitions:

(1) "Electronic" shall mean of or relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

* * *

(3) "Electronic signature" shall mean an electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record.

This definition of electronic signature affords the purchaser and the seller, as parties to an e-certificate, flexibility in selecting an appropriate e-signature solution. However, it also sets some parameters on what constitutes an e-signature for purposes of ESRA. The seller must make certain that any electronic sound, symbol, or process that is used to create an e-signature is attached to or logically associated (*e.g.*, linked during transmission and storage) with the applicable e-certificate and that the e-signature is made by the purchaser with the intent to sign the e-certificate. The signed e-certification language previously set out in this memorandum is evidence of the purchaser's intent, but the seller must establish a procedure to authenticate or prove the identity of the purchaser.

The department does not require any specific method of authentication; however, the seller must make reasonably certain that the individual accessing and electronically signing the e-certificate is the individual identified on the e-certificate. The seller must establish a level of confidence that the source of the e-signature can be verified so as to minimize the ability of the purchaser to subsequently repudiate or disavow submission of the e-certificate. This may be as simple as requiring the purchaser to show identification before allowing the purchaser access to e-certificates, or it could involve more complex means of authentication such as requiring the purchaser to provide identifying information before assigning the purchaser a password to access online e-certificates, or employing some other authenticating technology that the seller uses to confidently conduct e-commerce. The seller must provide the department, upon its request, with the opportunity and means to ensure the accuracy and integrity of the seller's authentication procedures.

² See New York State Technology Law, section 301 *et seq.* (ESRA). See also the ESRA regulations set forth at 9 NYCRR Part 540 and the Office for Technology's current Web site.

Example 1: A registered sales tax hotel operator rents rooms to New York State employees who are on official business for the state. Upon registering at the front desk and showing appropriate identification, each employee is directed to an interactive digital pad where he or she may properly complete, electronically sign, and submit the appropriate e-certificate for the hotel's records. The verification of the employee's ID authenticates the employee. The employee's act of providing his or her signature after the certification language using a digital pen on the pad and completing the transaction constitutes an electronic signature.

Example 2: An online seller of tangible personal property who is a registered sales tax vendor in New York State requires every purchaser to initially provide identifying information such as his or her name, billing address, shipping address, e-mail address, and credit card number and expiration date. Each purchaser, as part of this registration process, selects or is assigned a unique username and password to be used to login to his or her account and to make purchases. Either as part of this initial registration or as part of each checkout process, the purchaser must indicate if his or her purchases are exempt from New York State and local sales taxes. If so, the purchaser is directed to a menu of commonly used NYS e-certificates where the appropriate e-certificate may be properly completed on either a blanket or single-purchase basis. Upon completion of the e-certificate, the purchaser enters his or her password after the certification language and clicks a link to electronically sign and submit the e-certificate for retention in the seller's records. The identifying information gathered from the purchaser authenticates the purchaser. Entering the purchaser's password and affirmatively clicking the link to complete the transaction constitutes an electronic signature.

E-certificates must be up-to-date versions

Purchasers and sellers are cautioned that the department, from time to time, updates its resale and exemption documents. When electronically reproducing the department's documents, it is incumbent on the purchasers and sellers that they use the department's current forms as the bases for their e-certificates. Purchasers and sellers should keep abreast of the department's current forms and make conforming changes to their e-certificates, as necessary, to keep such e-certificates up to date. Current versions of resale and exemption documents are available on the department's Web site at www.nystax.gov or by otherwise contacting the department.

Recordkeeping

Sellers must keep e-certificates as part of the records required to be kept by section 1135 of the Tax Law. See the sales and use tax regulations, 20 NYCRR section 533.2, *Records to be kept*. See also the department's procedural regulations concerning retention of records in an electronic format, at 20 NYCRR Part 2402, *Taxpayer Record Retention Formats*. An e-certificate must comply with all of the requirements in Part 2402, including the requirements that it be capable of being accurately reproduced so as to be perceptible by human sensory capabilities and be capable of being accessed by the department if requested.

Applicable forms

Forms covered by this memorandum that the department has authorized to be reproduced electronically are listed on the department's Web site at www.nystax.gov/forms/sales_ecerts.htm.