

August 6, 2009

New NY Law Imposes Reporting Obligations on Franchisors

A newly passed law in New York will apply to and impose reporting obligations on most franchisors with franchisees located in the state.

The new law, which became effective in early July 2009, requires franchisors with franchisees in New York that are registered sales tax vendors (i.e., a franchisee collects and pays sales tax on its New York sales transactions) to file annual information returns with the New York Department of Taxation and Finance. However, the first return, for the period from March 1, 2009 to August 31, 2009, is due on September 20, 2009. The returns must provide, among other things, contact information, sales information and royalty payment information on the franchisor's New York franchisees. The Department of Taxation and Finance is expected to use these returns to verify or corroborate the franchisees' tax returns.

The International Franchise Association (IFA) is currently reviewing the law and, in a letter to the Acting Commissioner of the New York Department of Taxation and Finance, has asked New York to postpone the September 20, 2009 filing date until December 31, 2009. The IFA and others have serious questions about the scope of the law from a constitutional and jurisdictional standpoint. Most recently, the IFA conducted a teleconference with the New York Department of Taxation and Finance in which the IFA reiterated its position. While it is too early to know what, if any, impact the IFA may be able to have on the law, the IFA staff has expressed optimism that the September deadline will be extended and that certain portions of the law will be clarified.

We note that the law is written to apply broadly to franchisors, as defined by the New York Franchise Law, with any franchisees in New York who are registered sales tax vendors. This means that the law will apply to franchisors who make use of an exemption from the registration and disclosure requirements of the New York Franchises Law or who have chosen not to register under the law (because, for example, they do not wish to offer new franchises in the state), if they have existing franchisees that are registered sales tax vendors in New York.

The law's key details are as follows:

- Franchisors with franchised locations in New York must make an electronic filing with respect to their New York franchisees and locations. The first filing deadline is September 20, 2009 (covering the March 1, 2009 to August 31, 2009 period).
- A second filing is due March 20, 2010 (covering the September 1, 2009 to February 28, 2010 period). Annual filings are due thereafter on March 20th of each year.
- The filing must include for each New York franchisee/franchised location: (a) legal name, trade name, contact information, ownership information, federal employer ID number, and New York State Sales Tax Certificate of Authority number, (b) beginning date of each franchise location; (c) physical and mailing addresses of each franchise location; (d) gross sales for each franchise location as reported to the franchisor and, if different than reported, as audited by the franchisor; (e) amount of New York state sales tax collected at each franchisee location; (f) royalty payments made to the franchisor for the location, along with the applicable royalty rate or computation

method; and (g) sales, if any, made to the franchise location by the franchisor, its affiliates, and suppliers designated by the franchisor.

- Franchisors must also provide annual statements to each New York franchisee on or before March 20th of each year summarizing the information reported about the franchisee in the franchisor's information return.
- Franchisors who fail to comply with the reporting requirements can face penalties of up to \$2,000 per violation and up to \$10,000 per reporting period.
- Additional information can be found at the following websites: <http://www.nystax.gov/sbc/fran.htm> and http://www.nystax.gov/pdf/memos/sales/m09_9s.pdf.

We are monitoring the law and the IFA's actions, and will provide an update as additional information and guidance are available. However, we recommend that franchisors with franchisees in New York assess their ability to obtain and provide the information by the current deadlines in case the IFA is not successful in its efforts to postpone the September 20 filing date.

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