

September 25, 2009

New York Franchise Tax Reporting Extension Requests

This alert updates our August alert regarding the recently enacted New York law that imposes reporting obligations on franchisors. The previous alert is available on the [Publications section of our Web site](#).

We want to remind you that if you have one or more franchisees in New York and have not yet requested an automatic extension of time to file an information return, you must do so immediately.

As we noted in August, a 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 that collects and pays sales tax on its New York sales transactions) to file periodic information returns with the New York Department of Taxation and Finance. The returns must provide, among other things, contact information, sales information and royalty payment information with respect to the franchisor's New York franchisees. The Department of Taxation and Finance is expected to use these annual returns to verify or corroborate the franchisees' tax returns. The first return, for the period beginning March 1, 2009 to August 31, 2009, was due on September 20, 2009. Requests to extend this due date had to be filed on or before September 21, 2009 (to extend the due date of the return to December 21, 2009).

The International Franchise Association (IFA) requested that the New York Department of Taxation and Finance postpone the initial September 20, 2009 filing date. The Department accepted the IFA's request, however, to obtain the extension, franchisors must have submitted a formal request for extension. The extension will be granted automatically (e.g., without a review), for a period of 90 days. Hence, franchisors who obtain the extension must file the required information by December 21, 2009.

We have contacted both the IFA and the New York Department of Taxation and Finance. At this time, we have been advised that New York is still accepting requests for automatic extensions; however, it has not formally extended the September 21, 2009 deadline, and could stop accepting requests for an automatic extension without prior notice. To request an extension online, franchisors should proceed to the Department's Online Tax Center, which is available at <http://www.nystax.gov/nyshome/online.htm>. The Department has advised us that some franchisors that are not registered with the Online Tax Center are unable to register online, and that such franchisors should call the Department directly at (518) 485-2889 to obtain information regarding registration and requesting an automatic extension.

According to the IFA, New York has made other announcements regarding the new law, including the following:

- Franchisors must provide gross sales information to the state, but only to the extent that the franchisee has reported such information to the franchisor.
- In addition to the gross sales, franchisor must report the amount of royalty payments as a percentage of gross sales. However, if royalty payments are not based on gross sales, then a franchisor is not required to report the amount of the royalty payments and instead the franchisor must provide details as to how the franchise fee, royalties or other fees are determined.
- Franchisors will not be required to report sales made by third party "designated" suppliers to New York franchisees.

For more information, please contact:

[Jan S. Gilbert](mailto:jan.gilbert@haynesboone.com)
202.654.4542
jan.gilbert@haynesboone.com

[Robert A. Lauer](mailto:rob.lauer@haynesboone.com)
512.867.8505
rob.lauer@haynesboone.com