



SALES AND USE TAX BULLETIN 2019-03

Sales Tax Absorption

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The Department of Revenue (“Department”) issues this Sales and Use Tax Bulletin to inform persons responsible for charging, collecting and remitting Sales Tax of requirements relating to Sales Tax absorption. Section I provides a general overview of the new provisions of the Tax Reform Code of 1971 (the “TRC”) allowing Sales Tax absorption and explains which sections of the Pennsylvania Code have been superseded by the amendment to the TRC. Section II provides an example of the application of the Sales and Use Tax law.

1. General Overview

Act 13 of 2019, amended section 268(b) of the TRC, 72 P.S. § 7268(b), to allow persons who sell tangible personal property or services subject to Sales Tax to “advertise or hold out or state to the public or to any purchaser or user, directly or indirectly, that the tax or any part thereof imposed by this article will be absorbed and paid by such person....” However, the ability to absorb Sales Tax is subject to the following four conditions:

- (i) Such person shall expressly state on any receipt, invoice, sales slip, or other similar document evidencing such sale and given to the purchaser that such person will pay the tax imposed by this article on behalf of such purchaser and shall not indicate or imply that the transaction is exempt or excluded from any tax imposed by this article.
- (ii) Any receipt, invoice, sales slip, or other similar document evidencing a sale given to the purchaser shall separately state the amount of tax.
- (iii) Such person, when recording the sale in the person’s books and records, shall separately state the purchase price and the tax.
- (iv) The amount of tax shall be calculated by multiplying the total purchase price by the rate of tax imposed by section 202.

Any person who advertises or holds out to the public that it will absorb the Sales Tax is solely responsible for remitting that tax to the Department. In addition, any person who advertises or holds out to the public that it will absorb the Sales Tax is prohibited from requesting a refund of the absorbed tax. This prohibition applies even if the person



absorbing the tax later discovers that the tax was incorrectly paid or the sale is canceled and the purchase price is refunded.

To the extent that it is inconsistent with Act 13 of 2019, the Department's regulations at 61 Pa. Code § 31.2(3) (relating to rates) is superseded.

II. Example

RetailCo, a retailer of electronics, advertises to the public that it will pay its customers' Sales Tax on all purchases of televisions priced \$1,000 or more. Customer A purchases a television set priced at \$1,500 from RetailCo. The Sales Tax on the sale of the television set is \$90. In accordance with the advertisement, RetailCo does not charge Customer A the \$90 in Sales Tax, and instead pays the tax on behalf of Customer A. However, in order to comply with the Sales Tax absorption requirements of the TRC, RetailCo must do all of the following:

1. Provide Customer A with a receipt, invoice, sales slip, or other similar document clearly stating that the sale is subject to Sales Tax and that RetailCo will pay the Sales Tax;
2. Provide Customer A with a receipt, invoice, sales slip, or other similar document separately stating the sales price of the merchandise of \$1,500 and Sales Tax of \$90;
3. Separately state in its books and records the sales price of \$1,500 and Sales Tax of \$90;
4. Calculate the Sales Tax by multiplying the sales price of \$1,500 by the applicable tax rate of 6% (plus the local Sales Tax if required).
5. Remit the \$90 in Sales Tax to the Department of Revenue

Please note that RetailCo cannot calculate the Sales Tax due by any method that would imply that the taxable purchase price is less than the full amount of the sale price. The tax can only be calculated by multiplying the retail price times the tax rate.

In addition, RetailCo is solely responsible for paying the tax to the Department, and it cannot obtain a refund of the Sales Tax, even if it is later discovered that Customer A was not subject to the tax.