

Expanded Sales and Compensating Use Tax Exemption for Promotional Materials

The Tax Law has been amended to provide an expanded sales and compensating use tax exemption for certain purchases and uses of promotional materials, and of certain services related to promotional materials. These changes are effective on and after March 1, 1997.

Prior to March 1, 1997, promotional materials mailed, shipped, or otherwise distributed from a point within this state, by or on behalf of vendors or other persons, to their customers or prospective customers located outside this state, for use outside this state, were exempt from sales and compensating use taxes.[See TSB-M-92(4)S.] On and after March 1, 1997, the exemption also applies to certain printed promotional materials, as well as certain other promotional materials, mailed or shipped by a common carrier, the U.S. Postal Service or a like delivery service within the state.

Please note that purchasers of promotional materials should use new **Form ST-121.2, *Certificate of Exemption for Purchases of Promotional Materials***, with respect to purchases of promotional materials exempt under either the old rules or the new rules. Purchasers who are currently registered (whether or not they are required to be) to collect sales tax should enter their sales tax vendor identification number in the space provided at the top of page 1 of new form ST-121.2. Purchasers who are not otherwise required to register as persons required to collect sales tax, may avail themselves of the expanded exemption for promotional materials without registering for a certificate of authority from the Department to collect sales tax. **These unregistered purchasers should also use Form ST-121.2, *Certificate of Exemption for Purchases of Promotional Materials*** and should enter *N/A* in the space provided for the sales tax vendor identification number at the top of page 1 of the certificate.

During the interim period from March 1, 1997, until the issuance date of this TSB-M, purchasers of promotional materials not otherwise required to register as persons required to collect sales tax were instructed to use Form ST-121, *Exempt Use Certificate*, until the new form was available. They were advised to check box (g) *other*, and to indicate in the space provided under box (g) that they were purchasing promotional materials eligible for the expanded exemption for promotional materials effective March 1, 1997, [Tax Law section 1115(n)] **and** that they were not required to be registered with the department to collect tax. Persons required to collect tax who had a certificate of authority were told to enter their certificate of authority number in the space provided on the *Exempt Use Certificate*, check box (g), and indicate in the space provided that they were purchasing such eligible promotional materials.

The new rules apply to sales made, services rendered, and uses occurring on or after March 1, 1997, regardless of whether the sale is made, the service is rendered, or the use occurs under a contract entered into prior to that date.

Section 1101(b)(12) of the Tax Law defines promotional materials as:

...[a]ny advertising literature, other related tangible personal property (whether or not personalized by the recipient's name or other information uniquely related to such person) and envelopes used exclusively to deliver the same. Such other related tangible personal property includes, but is not limited to, free gifts, complimentary maps or other items given to travel club members, applications, order forms and return envelopes with respect to such advertising literature, annual reports, promotional displays and Cheshire labels but does not include invoices, statements and the like.

The following explanations of the expanded exemption for promotional materials and certain services are referenced to the specific section of the Tax Law providing the exemption.

Promotional Materials Exempt Under Section 1115(n)(4) of the Tax Law

Printed Promotional Materials

Effective March 1, 1997, **printed promotional materials** mailed or shipped to destinations in the state are exempt from tax when all of the conditions listed below are met.

- The printed promotional materials are ultimately mailed or shipped to customers or prospective customers of the purchaser of the printed promotional materials.
- The printed promotional materials are mailed or shipped by the purchaser of the materials using a common carrier, the U.S. Postal Service or a like delivery service. (This requirement is also met if the mailing or shipping is arranged by a third party [such as a printer/mailer] on behalf of the purchaser of the promotional materials.)
- There is no charge to the purchaser's customer or prospective customer (ultimate recipient) for the promotional materials, or for mailing or shipping them.
- The purchaser of the promotional materials gives a properly completed Form ST-121.2, *Certificate of Exemption for Purchases of Promotional Materials*, to the seller of the promotional materials.

Other Exempt Promotional Materials

Promotional materials upon which services described in section 1105(c)(2) of the Tax Law have been or will be directly performed are also exempt from tax as of March 1, 1997, provided their delivery in the state meets the same conditions as listed above for **printed promotional materials**. Section 1105(c)(2) services consist of producing, fabricating, processing, printing, or imprinting tangible personal property, not purchased for resale, that is directly or indirectly furnished by the customer (that is, the purchaser of such promotional material).

Certain Services to Promotional Materials Exempt Under Section 1115(n)(5) of the Tax Law

Services that would otherwise be taxable under section 1105(c)(2) of the Tax Law are exempt from tax when performed on promotional materials that are exempt from tax under section 1115(n)(4) of the Tax Law, as described above.

(For purposes of examples 1, 2, 3, 4, 7, and 8 of this TSB-M, it is assumed that the purchaser of the exempt promotional materials or exempt services will furnish the seller of the exempt promotional materials or exempt services a properly completed Form ST-121.2, *Certificate of Exemption for Purchases of Promotional Materials*. It is also assumed that the promotional materials will be delivered to the purchaser's customers or prospective customers [ultimate recipients] without charge to those customers or prospective customers.)

Example 1. A New York company purchases printed annual reports (promotional materials) from a printer/mailer located in New York, to be sent to shareholders in New York. The company also purchases blank envelopes from an office stationery company to be used as outside mailing envelopes exclusively for the mailing of the annual reports. The company's purchase of the annual reports is exempt from tax. Since the envelopes are used exclusively to deliver exempt promotional materials, the company may purchase the envelopes tax exempt.

The company also contracts with the printer/mailer to print mailing addresses and the company's logo on the outside of the envelopes and to mail the materials via the U.S. Postal Service to the company's shareholders in New York State. Since this printing service is performed on exempt promotional materials, the company may purchase the printing service exempt from tax.

Example 2. A New York company contracts with a printer/mailer located in New York to produce brochures (promotional materials) to be sent to customers in and out of New York via the U.S. Postal Service. Under the agreement, the New York company furnishes the printer/mailer the paper, ink, and printing plates to print the brochures, and envelopes in which the brochures will be mailed. The New York company also purchases a mechanical (artwork) and color separations for use in producing the printing plates supplied to the printer. The ink will also be used to print the company's logo on the envelopes in which the brochures will be mailed. In addition, the New York company provides the printer/mailer a customer/prospective customer mailing list in the form of address labels. The printer/mailer prepares the brochures, prints the New York company's logo on the envelopes, affixes the address labels, stuffs the brochures into the envelopes, and arranges for mailing with the Postal Service.

The paper, ink, mechanical (artwork), color separations and printing plates used in producing the promotional materials printed for the New York company by the printer are exempt from sales tax. The envelopes and address labels may be purchased exempt from tax by the New

York company as these items qualify as exempt promotional materials, based on the use described above. The printer/mailler's charges for printing the brochures, printing the New York company's logo on the envelopes, and affixing the address labels to the envelopes are exempt from sales tax. The printer/mailler's charges for inserting the brochures into the envelopes and for mailing (postage) are not subject to tax.

Storage of Promotional Materials Exempt Under Section 1115(n)(6) of the Tax Law

Charges for storing promotional materials which are exempt from tax under Section 1115(n)(4) of the Tax Law are exempt from sales tax when:

- **the vendor** of the storage service either:
 - sold the exempt printed promotional materials or the exempt promotional materials upon which services described in section 1105(c)(2) were performed; or
 - performed services exempt under section 1115(n)(2) or 1115(n)(5), or both, to the promotional materials; or
 - performed exempt services relating to mailing lists exempt under section 1115(n)(2) of the Tax Law. (Such exempt services include merge/purge, label affixing, glue affixing, imprinting, etc.); and
- **the purchaser** of the storage service is the purchaser of the exempt printed promotional materials or the exempt promotional materials upon which section 1105(c)(2) services were performed.

Example 3. A retailer contracts with a printer/mailler to print advertising brochures and mail them to the retailer's customers in the state. The actual mailing will not occur until several weeks after the brochures have been printed. The printer/mailler agrees to store the brochures until the date of mailing. The charges to the retailer for the printing and storing of the brochures are not subject to sales tax.

Services described under section 1105(c)(2) of the Tax Law consist of producing, fabricating, processing, printing, or imprinting tangible personal property, not purchased for resale, that is directly or indirectly furnished by the customer (that is, the purchaser of such property).

Example 4. A retailer contracts with a printer to purchase advertising brochures printed by the printer. The retailer also contracts with a mailer for the mailing of the brochures and for the rental of several mailing lists. Under the terms of the contract with the mailer, the mailer will perform merge/purge services on the mailing lists, print address labels, and affix the labels to the brochures. The mailer will store the brochures for a period of time before mailing them to the retailer's customers throughout the U.S., including New York State, via the U.S. Postal Service. The brochures are printed promotional materials.

The printer's charges to the retailer for the brochures are exempt from sales and compensating use taxes. The mailer's charges to the retailer for the rental of the mailing lists, and for the printing and affixing of address labels, are exempt from sales and compensating use tax under section 1115(n)(2) of the Tax Law. The mailer's charges to the retailer for storing the brochures before mailing them are also exempt from tax, since the mailer performed exempt services with respect to the printed promotional materials being stored.

Example 5. XYZ Department Store/Mail Order Seller asks Printco to print 1,000,000 catalogs which subsequently will be furnished, free, to XYZ's customers and prospective customers. XYZ arranges for the shipment of 500,000 of the catalogs to Mailerco for mailing via the U.S. Postal Service. The remaining 500,000 are shipped to XYZ's headquarters for storage until a subsequent mailing that will occur in three months. XYZ intends to place 1,000 of those catalogs in its New York retail store to give away to customers. XYZ will ship the remaining 499,000 catalogs to Mailerco for mailing in the same manner as the initial 500,000. XYZ may purchase 999,000 of the catalogs from Printco tax exempt. However, Printco must collect sales tax from XYZ on the charges attributable to the 1000 catalogs XYZ does not intend to mail or ship to customers or prospective customers. On Form ST-121.2, *Certificate of Exemption for Purchases of Promotional Materials*, given to Printco, XYZ should indicate that 99.9% of the catalogs are exempt from tax, since they will be shipped or mailed to XYZ's customers or prospective customers in accordance with Section 1115(n) of the Tax Law. Form ST-121.2 given to Mailerco should show that Mailerco's services are exempt from tax, since 100% of the 999,000 catalogs furnished to Mailerco will be shipped or mailed to XYZ's customers or prospective customers in accordance with Section 1115(n) of the Tax Law.

Example 6. Using the same scenario as in example 5, with the exception that XYZ intends to distribute, free, all 1,000,000 catalogs to their customers and prospective customers via the U.S. Postal Service, XYZ may purchase Printco's and Mailerco's services tax exempt. The Form(s) ST-121.2 given to Printco and to Mailerco should indicate that 100% of the catalogs are tax exempt. XYZ arranges for the immediate shipment of 500,000 catalogs to Mailerco for mailing, and for the remaining 500,000 to be shipped to XYZ's headquarters. XYZ intends to store those catalogs until shipping them to Mailerco for a mailing that will occur in three months. Two months after receiving the 500,000 catalogs from Printco, XYZ decides to forward 499,000 catalogs to Mailerco for mailing and to distribute the remaining 1000 to customers who visit XYZ's department store. The 499,000 catalogs forwarded to Mailerco remain exempt from tax. However, XYZ owes a tax on the purchase price of the 1000 catalogs which are to be distributed in the department store. The 1000 catalogs are not exempt from tax, as they are not mailed or shipped to XYZ's customers or prospective customers.

Certain Promotional Materials Continue to be Taxable or Exempt Without Regard to the Above Provisions, Under Section 1115(n)(7) of the Tax Law

Section 1115 (n)(7) of the Tax Law provides that the exemptions in section 1115(n)(4), (5), and (6) described above do not apply to tangible personal property where the purchaser of the property furnishes it to a promotional materials vendor to be included as free gifts with exempt promotional materials which are to be mailed or shipped to the purchaser's customers or prospective customers. However, if these free gifts furnished by the purchaser to the exempt promotional materials vendor are themselves printed promotional materials or promotional materials upon which section 1105(c)(2) services have been performed, then they would be exempt if they are mailed or shipped with the other exempt promotional materials purchased from the vendor, as described in section 1115(n)(4).

Section 1115 (n)(7) of the Tax Law also provides that the section 1115 (n)(4), (5), and (6) exemptions do not apply to tangible personal property which is manufactured, processed, or assembled by the manufacturer, processor, or assembler where the manufacturer, processor, or assembler furnishes the property to a vendor of exempt promotional materials to be included as free gifts (such as a manufacturer's product sample) with other exempt promotional materials which are to be mailed or shipped to the manufacturer's, processor's, or assembler's customers or prospective customers. Likewise, if the manufacturer, processor, or assembler otherwise uses the property in this state, such as by giving or donating it as free gifts to someone, such use would not be exempt from tax.

Finally, section 1115 (n)(7) provides that if the property described above is mailed, shipped, or otherwise delivered from a point within this state to customers or prospective customers outside this state, for use outside this state, then it would be exempt, notwithstanding the other provisions of section 1115(n)(7).

When a mailing of promotional materials which includes taxable items is directed to locations both inside and outside of New York State, then the exempt percentage to be written on Form ST-121.2, *Certificate of Exemption for Purchases of Promotional Materials*, is determined using the methods prescribed by TSB-M-92(4.1)S.

Example 7. A company located in New York purchases golf balls. The company has the golf balls delivered to a printer/mailer. The printer/mailer will imprint the company's name and telephone number on the golf balls. The company instructs the printer/mailer to mail the golf balls via the U.S. Postal Service to the company's customers and prospective customers in New York State for advertising purposes.

The golf balls qualify as exempt promotional materials under section 1115(n)(4) of the Tax Law. The service of imprinting the company's name and telephone number on the golf balls qualifies for the exemption from tax provided under section 1115(n)(5) of the Tax Law.

Example 8. A detergent manufacturer produces sample packets of a new detergent product. The manufacturer furnishes the samples to a printer/mailer for inclusion in a promotional mailing to the manufacturer's prospective customers, via the U.S. Postal Service. The mailing will include the product sample and coupons for \$1 off the retail price of a large size of the new product. (The coupons are printed by the printer/mailer.) The coupons and the detergent sample will be mailed in envelopes also supplied by the printer/mailer. The printer/mailer will merge/purge several mailing lists to obtain names and addresses for use in printing names and addresses on the mailing envelopes.

The manufacturer's purchase of the printer/mailer's products and services (coupons, outside envelopes, merge/purge services, addressing the outside mailing envelopes, and mailing charges) are not subject to sales or use taxes. However, the sample packets of new detergent do not qualify as exempt promotional materials when delivered to customers or prospective customers in New York State. The manufacturer is liable for use tax on the free samples distributed in New York State. However, any detergent samples delivered to out-of-state destination(s) will not be subject to tax.

Other Types of Delivery

Purchases of promotional materials that will be distributed in New York State to customers or prospective customers in some manner other than being mailed or shipped by a common carrier, the U.S. Postal Service, or a like delivery service continue to be subject to sales and compensating use taxes. Likewise, services taxable under Section 1105(c)(1) or (2) of the Tax Law when performed on non-exempt promotional materials continue to be subject to tax. Charges for storing such non-exempt promotional materials are taxable under Section 1105(c)(6) of the Tax Law.

Example 9. A multi state vendor with sales offices and retail outlets in New York purchases catalogs from a printer outside the State. The multi state vendor will mail some of the catalogs via the U. S. Postal Service to customers and prospective customers in New York State, without charge to the customers. The vendor will also have catalogs available for distribution to customers at its retail outlets in New York State. The vendor may purchase the catalogs that are to be mailed without charge to customers as exempt promotional materials. However, the vendor will owe sales or compensating use tax on its cost of the catalogs that are given to customers at the retail outlets in New York. These catalogs do not qualify as exempt promotional materials since they are not mailed or shipped to customers or prospective customers.

Example 10. A retailer purchases and takes delivery of catalogs from a printer/mailer. The catalogs are distributed to New York customers and prospective customers door to door by the retailer's sales representatives. Since the retailer's catalogs are not mailed or delivered to customers or prospective customers via a common carrier, the U.S. Postal Service or a like delivery service, the catalogs are not exempt promotional materials. Accordingly, the retailer owes tax on its purchase of the catalogs.

Tangible Personal Property Purchased for Use in In-House Printing of Promotional Materials

Purchases of tangible personal property used by the purchaser to print its own promotional materials in-house, such as paper, ink, and mechanicals, do not qualify for the exemptions available for promotional materials delivered in the state.

Example 11. A company uses in-house printing equipment and supplies (paper, ink, etc.) to produce its own promotional materials. The promotional materials consist of advertising brochures and catalogs. The company will ship the promotional materials to customers and prospective customers via the U.S. Postal Service, without charge to the customers. Since the company is purchasing raw materials, and is not purchasing promotional materials, these purchases are taxable. However, if the company delivers any of the brochures or catalogs outside the state for use outside the state, the company will be entitled to a refund of any sales tax or use tax paid on the raw materials incorporated into those brochures or catalogs, as provided under section 1119(a)(4) of the Tax Law, with respect only to property upon which fabricating, processing, printing, or imprinting was performed.

The following chart illustrates the tax status of certain purchases related to promotional material, before and after March 1, 1997. **NOTE:** For purposes of this chart, any reference to items mailed as of 3/1/97 means the items are mailed or shipped via a common carrier, the U.S. Postal Service or a like delivery service, without charge to the customers or prospective customers to whom shipped.

<u>Promotional Materials</u>	<u>Before 3/1/97</u>	<u>As of 3/1/97</u>
Contents of Envelope (whether or not personalized)		
- Mailed from NY to NY destinations	T	E ¹
- Mailed from NY to destinations outside NY	E	E
- Mailed from outside NY to NY destinations	T	E ²
Outer Envelopes and Outer Labels		
- Mailed from NY to NY destinations	T	E ³
- Mailed from NY to destinations outside NY	E ⁴	E ⁵
- Mailed from outside NY to NY destinations	T	E ⁶

Promotional Materials

Mailing Lists (Purchase or Rental)

- List received in NY or outside NY

Before
3/1/97

As of
3/1/97

T - based on
percentage
of NY
mailings

E⁷

Related Services to Exempt Promotional
Materials(merge/purge, label affixing,
glue affixing, imprinting, keying
enhancement, etc.)

- Service performed in NY or
outside NY

T - based on
percentage
of NY
mailings

E⁸

The purchase of non-imprinted gifts or
the self-manufacture of samples, goods,
etc., to be mailed or shipped to customers
or prospective customers without charge

- Delivery in NY

- Delivery outside NY

T

E

T

E

For further information, please call our toll-free number, 1 800 972-1233, or visit us at our Website,
<http://www.tax.state.nys.us>.

1. Not including non-imprinted free gifts or free product samples, which would be taxable.

2. See endnote 1.

3. Exempt only if used exclusively to deliver promotional materials.

4. See endnote 3.

5. See endnote 3.

6. See endnote 3.

7. Exempt based on percentage of promotional materials that are mailed or shipped by means of a common carrier, the U.S. Postal Service or a like delivery service.

8. However, taxable if performed exclusively with respect to taxable promotional materials delivered in New York State.