

SALES AND USE TAX EXEMPTION
FOR PROPERTY DONATED TO EXEMPT ORGANIZATIONS

Effective June 29, 1987 subdivision (11) of section 1118 of the Tax Law was repealed, and a new subdivision (*l*) was added to section 1115. As a result of these changes the exemption for property donated to exempt organizations is now limited to manufacturers, processors, and assemblers of such property.

During the period September 1, 1986 thru June 28, 1987 when section 1118(11) was in effect, donations made by any donor, of tangible personal property, to an exempt organization as described in section 1116(a) of the Tax Law was exempt from compensating use tax. See TSB-M-86(11)S for examples of circumstances under which the exemption applied.

The new section 1115(*l*) enables only manufacturers, processors or assemblers to donate tangible personal property to exempt organizations described in section 1116(a) of the Tax Law without incurring any sales or use tax liability, and only when:

- the donor is the manufacturer, processor, or assembler of the donated property;
- the donor offers the same kind of tangible personal property for sale in the regular course of business and;
- the donor made no prior use of the property before it was donated.

Example. Manufacturer "A" manufactures and sells computers to retail computer stores. Manufacturer "A" donates 50 computers to several New York State public schools which are exempt organizations under section 1116(a) of the Tax Law. The 50 computers were, prior to being donated, held by Manufacturer "A" in inventory and were not used for any other purpose. Since the manufacturer offers computers for sale during the regular course of business and made no use of the computers before they were donated to the public schools, the manufacturer may make the donation without incurring any sales or use tax liability.

Section 1115(1) of the Tax Law also provides that no refund or credit will be allowed for tax previously paid by the donor.

The following chart illustrates the tax status of donated property before, during and after the enactment and repeal of section 1118(11).

Date of Donation	Donor is	Tax Consequence to Donor
8/31/86 and before	Manufacturer, Processor, or Assembler	Taxable
	Individual, Retailer, Wholesaler, Etc.	Taxable
9/1/86 thru 6/28/87	Manufacturer, Processor, or Assembler	Exempt
	Individual, Retailer, Wholesaler, Etc.	Exempt
6/29/87 and after	Manufacturer, Processor, or Assembler	Exempt
	Individual, Retailer, Wholesaler, Etc.	Taxable

Section 1116(a) Exempt Organizations

1. New York State, its agencies, instrumentalities, public corporations and political subdivisions.
2. The United States of America, its agencies and instrumentalities.
3. The United Nations or other international organizations of which the United States of America is a member.
4. Religious, charitable, scientific, testing for public safety, literary or educational organizations, organizations which foster national or international amateur sports competition, and organizations for the prevention of cruelty to children or animals.
5. Posts and organizations consisting of past or present members of the Armed Forces of the United States.
6. Certain Indian Nations or Tribes.
7. Not-for-profit corporations acting as health maintenance organizations subject to the provisions of article forty-four of the Public Health Law.
8. Rural electric cooperatives.