



Sales and Use Tax Exemption for Electronic News Services and Electronic Periodicals

This memorandum explains recently enacted legislation that provides a sales and use tax exemption for electronic news services and electronic periodicals. The new exemption takes effect on March 1, 2012.

Legislation was recently enacted (Chapter 583 of the Laws of 2011) that exempts the sales and use of certain electronic news services and electronic periodicals, as described below, from state and local sales and use taxes (sales tax). However, in the case of electronic news services, the service must also be sold at or below the *cap amount* to qualify for the exemption.¹ In addition, the new law provides that information services and telephony and telegraphy and telephone and telegraph services used by an electronic news service are exempt from sales tax. A description of the new exemptions follows.

Definitions

Definitions related to electronic news services

Electronic news service is a service that is delivered, furnished or provided to or accessed by the purchaser electronically or digitally and that meets all of the following conditions:

- The service's predominant purpose is the presentation of news content, and that news content is prominently featured.
- The service's news content must:
 - include general news that is accessible without the use of a search function;
 - be newly published or updated at least daily unless the service specifies some other interval (however, the news content must be newly updated or published within a twenty-four hour period that precedes or immediately follows a time when the non-news content is newly published or updated); and
 - be predominantly purchased from contracted wire services or be written or produced by employees or by independent contractors engaged by the person providing the

¹ This new exemption is in addition to the pre-existing exemption for the separately stated charge for newspapers and periodicals that are delivered to the purchaser electronically, and that have the exact same content, other than advertising, of the paper edition. (See section 1101(b)(6) and 1115(a)(5) of the Tax Law.)

service (these include, but are not limited to, employees or independent contractors engaged by any affiliate of such person).

- The service is available to the public.
- The service describes itself as a *news service, newspaper, magazine, periodical, journal, or post*, or describes itself using similar words.
- The title of the service and the general nature of its content are continuous over time.
- The service is not, in whole or in substantial part, a listing, catalog, database, or compilation.
- The only search function the service offers without a separately stated, reasonable charge is a search of the service's or any of its affiliates' present or past news content.

However, if the service **does** feature a search function without a separately stated, reasonable charge that allows access to content other than the service's or any of its affiliates' past or present news content, the service will still qualify as an electronic news service if:

- all of the other conditions described above are met, and
- the provider of the service can prove that the "enhanced" search function is only an incidental part of the service.

For example, a provider can show that the enhanced search function is only an incidental part of the service by establishing that the cost to the provider of the service for any non-news content available through the search function is less than the cost of providing the news content available through the service.

The *cap amount* is 300% of the annualized average daily newsstand price of the three newspapers with the largest total paid national daily circulation. The Tax Department must determine the *cap amount* annually by April 1 of each year, based on the prices charged for the three newspapers as described above, during the first week of January of each year. The *cap amount* will then apply for the succeeding twelve-month period beginning on June 1 and ending on May 31. However, see **Effective date** on page 7 for the special rules for determining the *cap amount* for the sales tax quarter beginning on March 1, 2012, when this new law first takes effect.

The cap amount for the period March 1, 2012 to May 31, 2012 is also provided under the **Effective date** section of this memorandum. The Tax Department will publish the *cap amount* on its Web site at www.tax.ny.gov.

News content means the articles, photographs, and video and audio material concerning general news or specialized news. It does not include listings, advertisements, catalogs, compilations, databases, or the like.

Definitions related to electronic periodicals

Electronic periodical is a publication that is delivered, furnished or provided to or accessed by the purchaser electronically or digitally that meets all the following conditions:

- The publication's predominant purpose is the presentation of news content, which it prominently features.
- The publication is published at stated intervals, at least as frequently as four times a year, but no more than weekly, and is not updated between issues. However, the display of reader comments or letters to the editor between issues or the incidental provision of additional news content between issues will not prevent this condition from being met.

In determining whether the news content added between issues is incidental, the Tax Department will consider:

- the amount of news content added between issues relative to the news content in preceding issues; and
 - the frequency of the provision of additional news content between issues.
- The publication's news content is purchased from contracted wire services or written or produced by multiple employees or by independent contractors engaged by the person providing the publication. These include, but are not limited to, employees or independent contractors engaged by any affiliate of such person.
 - The publication is available to the public.
 - The publication describes itself as a *magazine*, or *periodical* or describes itself using similar words.
 - The title of the publication and the general nature of its content are continuous over time.
 - The publication is not, in whole or in substantial part, a listing, catalog, database, or compilation.
 - The only search function the publication offers without a separately-stated, reasonable charge, is a search of the publication's present or past news content or that of an affiliate of the publication's seller. However, this condition will be considered to have

been met if the publication provides access to a search function, at no additional charge, if this same search function is offered to the public for free.

News content means articles, photographs, and video and audio material devoted to literature, the sciences, the arts, news, an industry, profession, sport or other field of endeavor, and does not include listings, advertisements, catalogs, compilations, databases, or the like.

General definitions

Non-news content means any information other than news content.

Article means a prose composition, including commentaries, reviews, editorials, op-eds, letters to the editor, and reader comments on articles. *Article* **does not include** listings, advertisements, catalogs, compilations, databases, or the like.

General news means matters of general interest and reports of current events.

Specialized news means matters of a specialized interest, such as legal, mercantile, financial, theatrical, entertainment news, political, religious, or sporting matters.

Affiliate means any person who, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person. The terms control, controlled by, and under common control with, mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the person, whether through ownership of voting securities, by contract or otherwise.

Bundled price means the price at which an electronic news service or an electronic periodical is sold together with any other components for one price.

Component as the term relates to the above definition of *bundled price* means any property, service, or other item of whatever nature that is sold together with an electronic news service or electronic periodical for one price.

Application of exemption to the sale of electronic news services

The new law provides that the sale or use of an *electronic news service* is exempt from sales tax when the receipts from the sale of, or the consideration given for, or for the use of, the electronic news service do not exceed the *cap amount*.

If the subscription period of an electronic news service is other than a year, the annual cap amount must be adjusted proportionately to determine if the subscription price exceeds the cap amount. For example, if an electronic news service is sold on a monthly basis, the cap amount would be 1/12 of the annual cap amount.

Also, if the contract for the sale of the electronic news service grants more than one person the right to view the electronic news service, the service will be deemed not to exceed the cap amount only if the listed selling price for an individual subscription on the day the contract commences does not exceed the cap amount.

Electronic news service sold together with other components for a single price

If an electronic news service is sold together with other components for a single (i.e., bundled) price, the following rules apply regarding the sales tax exemption:

- If the provider of the electronic news service does not separately sell the electronic news service in the regular course of business, and the other components are subject to sales tax, the exemption afforded an electronic news service does not apply, and the entire bundled price is subject to sales tax.
- If the provider of the electronic news service does not separately sell the electronic news service in the regular course of business, and the other components are not subject to sales tax (e.g., an application that provides their customers with Internet access on their smart phone), and the bundled price is less than the cap amount, then the entire sales price is exempt from sales tax.
- If the provider of the electronic news service sells the electronic news service separately and also sells each of the other components (whether they are taxable or not) separately in the regular course of business, and the separate price of the electronic news service does not exceed the cap amount, only a portion of the bundled price is exempt from sales tax as the sale of an electronic news service. In this case, determine the exempt portion of the bundled price as follows:

Multiply the bundled price by a fraction, whose numerator is the price of the electronic news service when sold separately in the regular course of business, and whose denominator is the sum of the price of the electronic news service and the prices of the other components when sold separately in the regular course of business. If the amount of the charge for the electronic news service when sold separately is less than the amount determined as a result of this computation, the amount exempted is limited to the lesser amount.

***Example 1:** A provider sells a yearly subscription to a service that meets the definition of an electronic news service, together with other products that are subject to sales tax for a bundled price of \$160. This provider sells the electronic news service and each of the other products separately in the regular course of business. The separate price of a yearly subscription to the electronic news service is \$110 and the total separate prices of the other taxable products is \$70. For purposes of this example, assume that the separate price of the electronic news service is less than the cap amount. Since the provider sells the electronic news service separately in the regular course of business and the separate price of the electronic news service is less than the cap amount, the exemption for the*

sale of an electronic news service applies. Accordingly, the provider determines the exempt portion of the bundled price as follows:

$\$160 \times \$110/\$180 = \97.77 (amount of bundled price exempt from sales tax)

In this example, \$97.77 of the bundled price of \$160 is exempt as a receipt from the sale of an electronic news service and the remaining \$62.23 that is attributable to the taxable products is subject to sales tax.

Application of exemption to the sale of an electronic periodical

Under the new law, the sale or use of an electronic periodical is exempt from sales tax.

However, if an electronic periodical is sold together with other components that are subject to sales tax for a single (i.e., bundled) price, the exemption for the sale of an electronic periodical will not apply unless the vendor sells the electronic periodical and the other components separately in the regular course of business.

Example 2: *A vendor sells a subscription to an electronic periodical and a separate stock market quotation service for a bundled price. The vendor does not sell subscriptions to the electronic periodical and the stock market quotation service separately in the regular course of business. The stock market quotation service is subject to sales tax as an information service. Since the electronic periodical and the stock market quotation service are not sold separately in the regular course of business, the entire bundled price is subject to sales tax.*

If an electronic periodical is sold together with other taxable components and the vendor **does sell** the electronic periodical and the other components separately in the regular course of business, the vendor determines the exempt amount as follows:

Multiply the bundled price by a fraction, whose numerator is the price of the electronic periodical when sold separately in the regular course of business and whose denominator is the sum of the price of the electronic periodical when sold separately in the regular course of business and the price of the other components of the transaction when sold separately in the regular course of business.

Example 3: *A vendor sells a yearly subscription to an electronic periodical and a separate stock market quotation service for a single price of \$350 per year. The vendor sells the electronic periodical and the stock market quotation service separately in the regular course of business. The price of the yearly subscription to the electronic periodical when sold separately is \$54 per year. The price of a yearly subscription to the stock market quotation service when sold separately is \$320 per year. Since the vendor sells the electronic periodical and the stock market quotation service separately in the regular course of business, the exemption for the sale of an electronic periodical applies. Accordingly, the vendor determines the exempt portion of the bundled price as follows:*

$\$350 \times \$54/\$374 = \50.54 (amount of bundled price exempt from sales tax)

In this example, \$50.54 of the \$350.00 bundled price is exempt as a receipt from the sale of an electronic periodical, and the remainder, \$299.46 (\$350.00-50.54) is subject to sales tax as an information service.

Exemption for information services and telephony and telegraphy used by electronic news services

In addition to the amendments described above, Chapter 583 also amended section 1105(c)(1) of the Tax Law to provide that information services that are used by an electronic news service are not subject to sales tax.

Also, section 1115(b)(i) of the Tax Law was amended to provide that telephony and telegraphy and telephone and telegraph service that is used by electronic news services in the collection and dissemination of news can also be purchased exempt from sales tax.

Effective date

This new law applies to the sale or use of electronic news services and electronic periodicals occurring on and after March 1, 2012.

In addition, the cap amount used for purposes of sales or uses of an electronic news service that occur from March 1, 2012 to May 31, 2012, is based on the newsstand prices that were in effect for the period October 1, 2011, to October 7, 2011. This cap amount, **for sales or uses of electronic news services that occur up to May 31, 2012, is \$2034**. The cap amounts for sales or uses of electronic news services that occur after May 31, 2012, will be published on the Tax Department's Web site at www.tax.ny.gov.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.