

Taxability of Alterations to Clothing

Effective September 1, 2002, the New York State Sales Tax Regulations have been amended to exclude reasonable and separately stated charges for alterations to all clothing from the sales and compensating use taxes. Prior to September 1, 2002, the taxability of alterations depended on whether the clothing was new or used, and on who performed the service.

Background

Section 1105(c)(3)(ii) of the Tax Law provides that receipts from tailoring are excluded from sales tax. The regulations provided that alterations to used clothing (i.e., alterations made after the article's purchase and use) were considered tailoring services exempt from tax. However, alterations performed on new purchases of clothing were subject to tax as fabricating services under section 1105(c)(2) of the Tax Law. In addition, when an alteration service was combined with the sale of clothing, the entire transaction may or may not have been taxable, depending on its total cost.

The amended regulations remove these distinctions and classify alterations to all items of clothing as nontaxable tailoring services. This exclusion does not depend on whether the individual articles of clothing are new or used, or on who performs the alterations. However, the charge for such alterations must be reasonable and separately stated when provided in conjunction with the sale of clothing.

Amended regulations

Section 527.5(b)(3) of the regulations has been amended to read as follows:

(3) Tax is not imposed on the services of laundering, dry-cleaning, tailoring, weaving, pressing, shoe repairing, and shoe shining. For example, alterations to clothing, although considered to be maintaining, servicing, or repairing property, are excluded from tax because they are tailoring. This would include tailoring performed either by an independent tailor or seamstress, or by a tailor or seamstress employed by the vendor of the clothing so long as the vendor's charge for the tailoring is reasonable and separately stated from the charge for the clothing itself, and regardless of whether the clothing qualifies for the exemption from tax under section 1115(a)(30) of the Tax Law. However, when a person provides raw materials to a tailor or seamstress and the tailor or seamstress produces an article of clothing for the person, the tailor's or seamstress' work constitutes the production of clothing (which is not tailoring); and the charge for such service would be subject to State and local sales and use tax (see section 527.4(b) of this Part).

Amendments relating to the definitions of *producing* and *fabricating* were also made to section 527.4 of the regulations.

Section 527.4 of the regulations was amended to read as follows:

(b) *Producing*. Producing means the manufacture of a product from one or more raw materials and any process in which a raw material loses its identity when the production process is completed.

Example 1: An individual purchases tweed cloth from a retail textile store and has a tailor make a suit for the individual to wear. The tailor's charge for the service of making the suit is taxable.

Example 2: A corporation purchases lumber from a mill and has the lumber taken to a cabinetmaker who uses the lumber to build a bookcase for use in its corporate offices. The cabinetmaker's charge to build the bookcase is taxable.

(c) *Fabricating*. Fabricating is the alteration or modification of tangible personal property to the specifications of the purchaser of the service, without changing the identify of the property. However, alterations to clothing do not constitute fabricating; rather they constitute tailoring services and are excluded from tax. (See section 527.5(b)(3) of this Part.)

Example 1: An individual purchases sheet metal from a supplier and takes the sheet metal to a metal shop to be cut, perforated, and bent to the individual's specifications, for the individual's own use. The metal shop's charge for these services is taxable.

Example 2: A lumber yard charges a corporation for cutting 4 foot by 8 foot sheets of plywood into 2 foot by 2 foot squares. The plywood had been purchased for the purchaser's own use. The lumber yard's charge for the cutting services is taxable. (If the lumber yard sold the plywood to the corporation and cut it into squares at the time of sale, then its charge to cut the plywood is taxable as part of the sale of tangible personal property, pursuant to paragraph (4) of subdivision (a) of this section.)

Implications for tailoring businesses

Beginning September 1, 2002, clothing alterations will not be subject to sales tax. Businesses providing clothing alteration services should stop collecting sales tax from customers on sales of alteration services on and after September 1, 2002. However, when a customer brings material to a vendor to have a new article of clothing made, the vendor is considered to be performing the service of producing tangible personal property (making the article of clothing) for the customer. This transaction is not an alteration; instead the transaction is subject to tax as the production of clothing. See *Other services* below for additional details and for information on other services that may be subject to tax.

Implications for clothing retailers

Section 1115(a)(30) of the Tax Law provides an exemption for purchases of certain clothing, footwear, and items used to make or repair exempt clothing costing less than \$110 per item. The exemption does not apply to any locally imposed sales and use taxes unless the county or city imposing those taxes elects to provide for it. An article of clothing will be subject to tax if its purchase price is \$110 or more. Charges for alterations that are performed in conjunction with the sale of clothing are not taxable and are not taken into consideration when determining whether the article of clothing is subject to tax due to the \$110 threshold, provided the charges are reasonable and separately stated on the receipt given to the customer. However, if the charge for the clothing alterations is not reasonable or is not separately stated on the receipt given to the customer, the entire charge to the customer is used to determine whether the article of clothing meets or exceeds the \$110 threshold.

Example 1. A retail clothing store has a tailor on staff to perform alterations on clothes sold in the store. A customer purchases a suit for \$300, and has alterations performed on the suit that cost an additional \$43, the charge for which is separately stated on the receipt. Sales tax is computed on the \$300 charge for the suit only. Sales tax is not due on the \$43 charge for the alterations, since the charge was reasonable and separately stated on the receipt given to the customer.

Example 2. A customer purchases a dress in the same store as in *Example 1* for \$100 and has alterations costing \$20 made to the dress. The alterations are separately stated on the receipt given to the customer. The dress qualifies for the clothing exemption because it costs less than \$110 and the charge for the alterations is exempt since it was reasonable and separately stated on the receipt given to the customer.

Example 3. A customer purchases a sport jacket for \$98 and arranges to have the store's tailor alter the length of the sleeves. The alterations cost \$20 and are not separately stated on the receipt given to the customer. Sales tax is computed on the total purchase price (\$118) because the charge for alterations was not separately stated on the receipt given to the customer and the resulting total purchase price exceeds \$110.

Other services

Monogramming of clothing or the application of decals, logos, and like items (such as pictures and letters) by sewing, printing, imprinting, silk screening, and the like, are **not** considered to be alterations exempt under the regulations, as amended. However, such a service performed on an article of clothing prior to its sale may be eligible for the clothing exemption if the service is sold in conjunction with the sale of the article, and there is no separate charge for the service. In this case, the total charge to the customer is used to determine whether the article of clothing meets or exceeds the \$110 threshold.