

Changes to the Sales Tax Exemption for Clothing and Footwear

Chapter 57 of the Laws of 2010 recently amended the sales and use tax law to enact changes to the state's exemption for clothing, footwear, and items used to make or repair clothing (clothing and footwear) sold for less than \$110 per item or pair. These law changes also allow counties and cities that impose sales and use taxes to choose the new exemption applicable to the state's taxes or to retain the current exemption.

State clothing exemption changes

For the period October 1, 2010, through March 31, 2011, there will be no state and MCTD sales and use tax (sales tax) exemption for clothing and footwear. Accordingly, for the period beginning October 1, 2010, and ending March 31, 2011, sales tax vendors must collect and remit the state's 4% sales tax and, if applicable, the state-imposed 3/8% sales tax in the Metropolitan Commuter Transportation District (MCTD)¹ on sales of clothing and footwear, regardless of the price.

Then, for the period April 1, 2011, through March 31, 2012, clothing and footwear sold for less than \$55 per item or pair will be exempt from the state's 4% sales tax and the state-imposed 3/8% sales tax in the MCTD.

Finally, on and after April 1, 2012, the original less-than-\$110-per-item clothing and footwear exemption will be restored. It will apply to the state's 4% sales tax and also the 3/8% sales tax in those localities in the MCTD that provide the less-than-\$110 exemption.

County and city clothing exemptions

Throughout all periods, counties and cities that impose sales tax can continue to provide the less-than-\$110 exemption, or elect to provide it if they do not already do so. In addition, counties and cities that impose sales tax can also elect the less-than-\$55 exemption during the same period that exemption applies to the state's taxes (April 1, 2011, through March 31, 2012). If a county or city already has the less-than-\$110 exemption, it can continue to provide that exemption, and also elect the less-than-\$55 exemption, instead of the less-than-\$110 exemption, for the period April 1, 2011, through March 31, 2012.

Publication 718-C, *Sales and Use Tax Rates on Clothing and Footwear*, contains the most up-to-date listings of the applicable rates of tax in counties and cities.

¹ The MCTD consists of the City of New York and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester.

Transitional provisions relating to clothing and footwear purchases during the period October 1, 2010, through March 31, 2011

Orders for clothing, footwear, and items used to make or repair clothing or footwear

Merchandise that is ordered by mail, telephone, the Internet or e-mail, is taxed at the rate in effect on the date the order is accepted by the vendor regardless of when the order will be delivered. If the order is accepted on or after October 1, 2010, through March 31, 2011, the sale is subject to the total New York State, MCTD, and local (if any) sales tax rate in effect on that date.

Rain checks

The state sales and use tax exemption in place prior to October 1, 2010, will not apply to purchases made on or after October 1, 2010, even if the purchaser uses a rain check that was issued prior to October 1, 2010.

Layaway sales

A layaway sale is a sale in which merchandise is set aside for future delivery to a customer who makes a deposit and agrees to pay the balance of the purchase price over a period of time before the merchandise is delivered. The sales price of the merchandise includes any additional charges a vendor makes for putting the merchandise on layaway.

If a written agreement is made prior to October 1, 2010, the exemption will apply to the state's sales tax, the MCTD tax in those localities in the MCTD that offer the exemption and the local tax (if the locality provides the exemption) as long as the item sold was segregated from other similar property in the possession of the vendor and the purchaser paid at least 10% of the sale price.

Exchanges

When a customer makes a purchase prior to October 1, 2010, and later returns the merchandise for an exchange on or after October 1, 2010, through March 31, 2011, the vendor need not charge sales tax on the exchanged item as long as it is similar to the item returned. When a customer returns an item and receives a credit to purchase a different item in the future or is allowed to purchase a different item at the time of return, the appropriate sales tax rate will apply to the sale of the new item.

Additional information

Additional guidance regarding the exemptions for periods on and after April 1, 2011, will be provided in future memoranda.

A complete description of the clothing and footwear exemption and a listing of exempt and taxable items is provided in TSB-M-06(6)S, *Year-Round Sales and Use Tax Exemptions of Clothing, Footwear, and Items Used to Make or Repair Exempt Clothing*.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department 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.