

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-M-01(02)S
Sales Tax
February 12, 2001

**Sales and Use Tax Exemption on Clothing, Footwear,
and Items Used to Make or Repair Exempt Clothing**

This memorandum supercedes TSB-M-00(01)S, dated January 24, 2000, regarding the sales and use tax exemption on clothing, footwear, and items used to make or repair exempt clothing. The information in the two memoranda is identical in all respects except for the reference to TSB-M-00(1.1)S, *Sales and Use Tax Clothing and Footwear Exemption Within Counties and Cities*. The rate information provided in TSB-M-00(1.1)S is now contained in Publication 718-C, *Local Sales and Use Tax Rates on Clothing and Footwear*.

Governor George E. Pataki signed into law legislation that provided for a permanent sales and use tax exemption on clothing, footwear, and items used to make or repair exempt clothing, costing less than \$110 per item.

Beginning March 1, 2000, clothing and footwear costing less than \$110 per item is exempt from the 4% New York State sales and compensating use taxes. This 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. See Publication 718-C, *Local Sales and Use Tax Rates on Clothing and Footwear*. Likewise, the exemption does not apply to the ¼% tax imposed by the State in any portion of the Metropolitan Commuter Transportation District (MCTD), unless the county or city in the MCTD provides an exemption from its own tax, in which case the exemption will also apply to the ¼% MCTD tax in that county or city. The MCTD consists of the city of New York and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester.

The exemption applies only to clothing and footwear worn by humans. It also applies to most fabric, thread, yarn, buttons, snaps, hooks, zippers, and like items which become a physical component part of exempt clothing, or that are used to make or repair exempt clothing. A vendor's charge for alterations made to exempt clothing that the vendor sells is likewise exempt.

While the exemption applies to items of clothing and footwear worn on the body, not all items worn on the body are clothing and footwear. Jewelry, watches, and like items remain taxable. Equipment items, such as tool belts, hard hats, and sport, bicycle, and motorcycle helmets, though worn on the body, remain taxable. Protective goggles and safety glasses (unless prescription) for sport or occupational use, protective sport or occupational masks or pads, hockey and baseball fielders' gloves or mitts, ice skates and roller skates, fireplace mittens, and similar pieces of equipment (sporting or otherwise) also remain taxable. Antique clothing and footwear are exempt if they are purchased for human wear and not as collector items. All purchases of doll and pet clothes and footwear, antique or otherwise, are taxable.

If exempt clothing or footwear is sold with other taxable merchandise as a single unit, the full price is subject to sales or use tax, unless the price of the clothing or footwear is separately stated. For example, a store has a boxed gift set for sale that has a French-cuff dress shirt, cufflinks and a tie tack. The gift set is sold for a single price of \$50. Although the shirt sold by itself would be exempt, the full price of the boxed gift set would be taxable because the cufflinks and tie tack are taxable and the selling price of the shirt is not separately stated.

The following additional limitations will apply to the exemption.

- The article of clothing or footwear (per pair) must be sold for less than \$110. This "less than \$110" limitation also applies to each item of fabric, thread, yarn, buttons, snaps, hooks, zippers and like items which become a physical component part of exempt clothing or are used to make or repair the exempt clothing. Any charge by the vendor for alterations to clothing sold by the vendor must be included when determining whether the "less than \$110" limitation has been met.
- Costumes and rented formal wear are not eligible for exemption. Nor does the exemption apply to fabric, thread, yarn, buttons, snaps, hooks, zippers and like items which become a physical component part of costumes or rented formal wear, or are used to make or repair costumes or rented formal wear.
- Items of fabric, thread, yarn, buttons, snaps, hooks, zippers and like items used to make or repair otherwise exempt clothing are not eligible for exemption if the item used is made from real or imitation pearls, or from real or imitation precious or semiprecious stones, jewels, or metals.
- Most accessories (such as handbags, umbrellas, watches, and watchbands) are not considered clothing and are taxable. However, belt buckles, handkerchiefs, sweatbands, head scarves, and neckwear such as scarves and ties, are exempt.
- Fabric, thread, yarn, buttons, snaps, hooks, zippers and like items used to make or repair taxable products, are taxable.
- Monogramming of clothing prior to its sale is eligible for exemption if the monogramming is sold in conjunction with the sale of the article. However, if monogramming is done separately by a vendor for a separate charge, the charge for this service is taxable. This limitation also applies to the application of decals, logos and like items (pictures, letters) by sewing, printing, imprinting, silk screening, and the like.

Mail and telephone orders, custom and special orders, and rain checks

Mail and telephone orders, custom and special orders will be taxed at the rate in effect on the date the order is accepted by the vendor. If the order is accepted on or after March 1, 2000, there will be no tax due if the purchase of eligible clothing or footwear (per pair), or items used to make or repair clothing, is less than \$110 per article. Eligible clothing or footwear purchased with a rain check will be taxed at the rate in effect when purchased.

Special Rules That Apply To The Exemption

Delivery, shipping and handling charges (delivery)

Reasonable charges by the vendor for delivery of eligible clothing and footwear are not taken into account in determining if the cost of an item is less than the \$110 limitation. For example, if an article of clothing sells for \$105 and the vendor charges \$10 for delivery, the clothing and the delivery charge qualify for exemption. However, delivery charges by the vendor for items or pairs costing \$110 or more remain subject to tax.

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. These additional charges must be added to the ticket price of the article of clothing or pair of shoes or other articles of footwear for purposes of determining whether the cost of the item or pair is less than \$110.

Exchanges

Where a customer purchases eligible clothing, footwear, or an item used to make or repair exempt clothing prior to March 1, 2000, and later returns the item and receives a credit or is allowed to purchase another exempt item after the effective date of the exemption, the tax paid on the purchase of the initial item can be refunded or credited. This is because the original sale was canceled. Where a customer purchases eligible clothing, footwear, or an item used to make or repair exempt clothing, on or after March 1, 2000, and later returns the item for an exchange, there will be no tax due as long as the item is exchanged for another exempt item. Where a customer returns the item and receives a credit or is allowed to purchase a different item that is not eligible for the exemption, the applicable sales tax will apply to the sale of the newly-purchased item. For example, if a customer buys a pair of shoes and returns them for credit, with which an umbrella is purchased, tax is due on the full price of the umbrella.

Coupons

Where a customer uses a manufacturer's coupon to pay for an article of clothing or a pair of shoes or other articles of footwear, the value of the coupon does not reduce the selling price for purposes of determining whether the article or pair is sold for less than \$110. Where a customer pays for clothing or footwear using a store coupon, for which the store receives no reimbursement, the store coupon does reduce the selling price of the clothing or footwear for purposes of determining whether the item is sold for less than \$110.

Special reporting requirements for exemption items

Vendors who make sales of exempt clothing, footwear, and items used to make or repair exempt clothing must file ***Schedule H*** to report those sales. *Schedule H* contains lines to report sales of exempt clothing, footwear, and items used to make or repair exempt clothing. All sales of exempt clothing, footwear, and items used to make or repair exempt clothing must be separately reported on *Schedule H* for the locality in which the sales were made. Sales of exempt clothing, footwear, and items used to make or repair exempt clothing must be reported, by locality, whether they are subject to local tax (because a county or city did not elect for the exemption to apply) or are exempt from both state and local taxes.

Beginning March 1, 2000, this schedule must be completed and filed by vendors who have made sales of eligible clothing and footwear during the period covered by the return. *Schedule H* will be supplied to all quarterly and annual filers of Forms ST-100, ST-101, ST-102 and ST-810 with their returns. This schedule should be completed and filed along with your quarterly or annual report.

The pages that follow contain lists of exempt and taxable clothing and footwear items. The lists are intended as a guide and are not all-inclusive. ***Previous lists should not be used for the permanent exemption.***

**Sales and Use Tax Exemption on Clothing, Footwear,
and Items Used to Make or Repair Exempt Clothing
Effective March 1, 2000
Listing of Exempt and Taxable Items**

Exempt Items

Aerobic clothing	Gloves (batting, bicycle, dress [unless rented], garden, golf, ski, tennis, work)	Shoulder pads, for dresses, jackets, etc. (but not athletic or sport protective pads)
Antique clothing (for wear)		
Aprons		
Arch supports*	Graduation caps and gowns (unless rented)	Shower caps
Arm warmers		Ski masks
Athletic supporters	Gym suits	Sleepwear
Athletic or sport uniforms or clothing (but not equipment such as mitts, helmets and pads)	Hand muffs	Slippers
	Handkerchiefs	Slippers
	Hats	Sneakers
	Hosiery (panty hose, peds, etc)	Socks
Bandannas	Insoles	Sports clothing and uniforms (but not equipment such as mitts, helmets and pads)
Bathing caps	Jeans	
Bathing suits	Jogging suits	
Beach capes and coats	Lab coats	
Belt buckles	Leg warmers	Stockings
Belts/suspenders	Leotards	Support hosiery
Bibs (baby)	Lingerie	Suspenders
Blouses	Pajamas	Sweat bands
Boots (climbing, fishing, riding, ski, waders)	Ponchos	Sweat suits
Bridal gowns and veils (unless rented)	Prom dress (unless rented)	Ties/neckwear
Caps	Rain wear	Tights
Coats and wraps	Receiving blankets	Tuxedo (unless rented)
Corset laces	Religious clothing	Underwear
Coveralls	Rented uniforms (unless formal wear/costume)	Uniforms (occupational, military, scouting, sport)
Diapers (adult - including disposable)*	Riding pants	
Diapers (children - including disposable)	Robes	Wet and dry suits
Dress shields	Scarves	Yard goods, and notions**
Dresses	Scout uniforms	
Ear muffs	Shawls and wraps	
Formal clothing (unless rented)	Shirts	
Fur clothing	Shoes (ballet, bicycle, bowling, cleated, football, golf, jazz/dance, soccer, track, etc.)	
Garters/garter belts	Shoe inserts	
Girdles	Shoe laces	

**Sales and Use Tax Exemption on Clothing, Footwear,
and Items Used to Make or Repair Exempt Clothing
Effective March 1, 2000
Listing of Exempt and Taxable Items**

Taxable Items

Antique clothing (collectable - not for wear)	Jewelry	Shin guards and padding
Barrettes	Key cases	Shoulder pads (football, hockey, etc.)
Bobby pins	Mitts (baseball fielder's glove, hockey, etc.)	Sunglasses (unless prescription)
Costumes	Party costumes	Umbrellas
Crib blankets	Personal flotation devices	Wallets
Elastic ponytail holders	Protective masks (athletic, sport or occupational)	Watch bands
Goggles (unless prescription*)	Roller skates	Watches
Hair bows	Safety glasses (unless prescription*)	Wigs
Hair clips	Sewing accessories (not an integral part of clothing such as chalk, instruction books, knitting needles, measuring tapes, needles, patterns, scissors, pins, thimbles)	Yard goods and notions**
Handbags and purses		
Headbands (Sweatbands are exempt)		
Helmets (sport, motorcycle, bicycle, etc.)		
Ice skates		
In-line skates		

* Items marked with an asterisk are exempt regardless of their price. See Publication 822, *Taxable Status of Medical Equipment and Supplies*. **Do not report these items on Schedule H.**

** Yard goods and notions (fabric, thread, yarn, buttons, snaps, hooks, zippers and like items) used or consumed to make or repair exempt clothing which become a physical component part of the clothing are generally exempt. See page 1 under the heading, ***The following additional limitations will apply to the exemption***, for additional details concerning the taxability of yard goods and notions.