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## Exempt Use Certificate (Form ST-121)

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### Introduction

Manufacturers, certain service providers, and other types of businesses may use [Form ST-121](#), *Exempt Use Certificate*, to purchase, rent, or lease certain tangible personal property or services exempt from sales tax. This bulletin explains:

- how to use the certificate,
- what kinds of property and services can be purchased exempt from sales tax using Form ST-121, and
- penalties that may be imposed for misuse of the certificate.

### How to use Form ST-121

If you are the purchaser, fill out Form ST-121 and give it to the seller. You must complete all required entries and sign and date the form. The seller keeps the certificate and may then sell you certain property or services without charging sales tax. You must give the seller a properly completed Form ST-121 within 90 days after the delivery of the property or performance of the service. Sales tax exemption certificates may also be issued and accepted electronically. See [TSB-M-07\(1\)S](#), *Electronic Resale and Exemption Documents for Sales and Compensating Use Taxes*.

You may use Form ST-121 as a single-purchase certificate, or as a blanket certificate covering the first and subsequent purchases of the same general type of property or service from the same seller.

Except as noted in this bulletin and in the instructions for Form ST-121, you must have a valid *Certificate of Authority* when you use Form ST-121 to make tax-free purchases.

### Definitions

For purposes of this bulletin:

- *Predominantly* means that the property or service is used more than 50% of the time directly for the purpose for which an exemption is claimed,
- *Exclusively* means that the property or service is used 100% of the time directly for the purpose for which an exemption is claimed, and
- *Primarily* means that the property or service is used 50% or more of the time directly for the purpose for which an exemption is claimed.

### Exemptions related to production

Examples of tangible personal property and services related to production that you may purchase exempt from sales tax with Form ST-121 are listed and generally described in the chart below. Please see the instructions for Form ST-121 for additional details on each of these exemptions.

Activity	Exemption applies to
Production of tangible personal property or utilities	<ul style="list-style-type: none"> <li>• Machinery and equipment, including parts, tools, and supplies, used or consumed <b>directly and predominantly</b> in the production of tangible personal property, gas, electricity, refrigeration, or steam for sale.</li> <li>• Installing, repairing, maintaining, or servicing the property described above.</li> </ul>
Film production	<ul style="list-style-type: none"> <li>• Tangible personal property used <b>directly and predominantly</b> in the production (including editing, dubbing, and mixing) of a film for sale.</li> <li>• Installing, repairing, maintaining, or servicing the property described above.</li> <li>• Producing, fabricating, processing, printing, and imprinting (including editing, dubbing, and mixing) the property described above.</li> </ul>
Telecommunications or Internet access services	<ul style="list-style-type: none"> <li>• Tangible personal property used <b>directly and predominantly</b> in providing telecommunications services or Internet access services, or both, for sale.</li> <li>• Installing, repairing, maintaining, or servicing the property described above.</li> </ul> <p><b>Note:</b> A <i>Certificate of Authority</i> is not required if you are engaged exclusively in providing Internet access services for sale.</p>
Broadcasting	<ul style="list-style-type: none"> <li>• Machinery, equipment, or other tangible personal property (including parts, tools, and supplies) used by television or radio broadcasters <b>directly and predominantly</b> in the production (including post-production) of live or recorded programs used by a broadcaster predominantly for the purpose of broadcast over the air or for transmission through a cable television or direct-broadcast satellite system.</li> <li>• Machinery, equipment, and other tangible personal property (including parts, tools, and supplies) used <b>directly and predominantly</b> by the broadcaster in the transmission of live or recorded programs over the air or through a cable television or direct-broadcast satellite system. (<b>Note:</b> This exemption does not apply to a cable system operator or a direct broadcast satellite system operator.)</li> <li>• Installing, repairing, maintaining, or servicing the property described above.</li> <li>• Producing, fabricating, processing, printing, and imprinting (including editing, dubbing, and mixing) the property described above.</li> </ul>

Activity	Exemption applies to
Utilities used to provide utility services	<ul style="list-style-type: none"> <li>• Gas or electricity or gas or electric service used or consumed <b>directly and exclusively</b> to provide gas or electric service consisting of:                             <ul style="list-style-type: none"> <li>◦ operating a gas pipeline;</li> <li>◦ operating a gas distribution line;</li> <li>◦ operating an electric transmission or distribution line; or</li> <li>◦ ensuring the necessary working pressure in an underground gas storage facility.</li> </ul> </li> </ul>
Utilities used to produce tangible personal property or a film	<ul style="list-style-type: none"> <li>• Fuel, gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam service used or consumed <b>directly and exclusively</b> in the production of tangible personal property (or a film) for sale.</li> </ul>
Utilities used to produce utilities	<ul style="list-style-type: none"> <li>• Fuel, gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam service used or consumed <b>directly and exclusively</b> in the production of gas, electricity, refrigeration, and steam for sale</li> </ul> <p><b>Note:</b> This exemption does not apply to the local sales and use tax imposed in New York City.</p>

**Exemption related to transfer stations and demolition facilities**

Facilities regulated by the New York State Department of Environmental Conservation as either a transfer station or construction and demolition debris processing facility may purchase the service of waste removal exempt from tax as long as the waste is not generated by the facility.

**Other exemptions**

Use Form ST-121 to purchase the following tangible personal property and services exempt from sales tax. Please see the instructions for Form ST-121 for additional details on each of these exemptions. (**Note:** You do not need a *Certificate of Authority* for the following exempt purchases, but if you have one, enter the number on Form ST-121 in Part 3.)

- tangible personal property used **directly and predominantly** in research and development;
- utilities used **directly and exclusively** in research and development;
- cartons, containers, and other wrapping and packaging materials and supplies that are transferred to purchasers of tangible personal property;
- certified enhanced emissions inspection equipment for testing and inspecting motor vehicles;
- commercial vessels (including certain property and services) primarily engaged in interstate or foreign commerce;
- commercial aircraft (including certain machinery and equipment) primarily engaged in intrastate, interstate, or foreign commerce, and flight simulators purchased by commercial airlines;
- commercial fishing vessels (including certain property);
- pollution control equipment;
- tangible personal property (including lubricants) installed on or used to maintain, service, or repair any aircraft when purchased by the person providing the service;
- machinery and equipment used directly and predominantly in loading, unloading, and handling cargo at a qualified marine terminal facility in New York City (**Note:** this exemption does not apply to the local sales tax in New York City);

- motor fuel or diesel motor fuel eligible to be taxed on a cents-per-gallon basis (see [TSB-M-06\(8\)S](#), *New Guidelines on the Sales of Motor Fuel and Diesel Motor Fuel Subject to the Cents-Per-Gallon Sales Tax*);
- line access services purchased by an Internet Service Provider and used for transmission between its point of presence and the public Internet to connect its customers to the Internet (see [TSB-M-07\(2\)S](#), *Sales Tax Treatment of Telecommunications Services Purchased By an Internet Service Provider*); or
- certain military decorations sold to an active member or a veteran of the United States military.

You may also use Form ST-121 to claim other exemptions from sales tax for tangible personal property or services that are not otherwise specified in this bulletin. To do so, describe the exempt use of the tangible personal property or service being purchased, and identify the applicable section of the Tax Law under which you are claiming the exemption, in the *Other* box on Form ST-121.

### Penalties

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- a penalty equal to 100% of the tax due,
- a \$50 penalty for each fraudulent exemption certificate issued, and
- criminal felony prosecution, punishable by a substantial fine and a possible jail sentence, and revocation of your *Certificate of Authority*, if you are required to be registered for sales tax purposes.

Note: A Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

### References and other useful information

**Tax Law:** Sections 1105(b)(1), 1111(m), 1115(a)(12) and 1115(c), and 1115(a)(11-a)

**Regulations:** Sections 528.13 and 528.22

#### Publications:

[Publication 28](#), *A Guide to Sales Tax for the Film Industry*

[Publication 825](#), *A Guide to Sales Tax in New York State for Broadcasters*

[Publication 852](#), *Sales Tax Information for Manufacturers, Processors, Generators, Assemblers, Refiners, Miners and Extractors, and Other Producers of Goods and Merchandise*

#### Memoranda:

[TSB-M-85\(17\)S](#), *1985 Legislation-Chapter 799 Sales Tax Exemption for Commercial Fishing Vessels*

[TSB-M-96\(14\)S](#), *Tax Law Defines Commercial Vessels and Commercial Aircraft*

[TSB-M-97\(8\)S](#), *Enhanced Emissions Inspection Equipment*

[TSB-M-00\(6\)S](#), *Summary of the 2000 Sales and Compensating Use Tax Budget Legislation*

[TSB-M-06\(8\)S](#), *New Guidelines on the Sales of Motor Fuel and Diesel Motor Fuel Subject to the Cents-Per-Gallon Sales Tax*

[TSB-M-07\(1\)S](#), *Electronic Resale and Exemption Documents for Sales and Compensating Use Taxes*

[TSB-M-07\(2\)S](#), *Sales Tax Treatment of Telecommunications Services Purchased By an Internet Service Provider*

[TSB-M-09\(14\)S](#), *Extension of Sales and Use Tax Exemptions on Certain Purchases of Tangible Personal Property and Services for Leased Commercial Office Space in Lower Manhattan*

[TSB-M-09\(17\)S](#), *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*

[TSB-M-09\(18\)S](#), *Sales and Use Tax Exemption Related to the Repair and Maintenance of Aircraft Made Permanent*

#### Bulletins:

[Sales and Use Tax Penalties \(TB-ST-805\)](#)