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## **Live Dramatic and Musical Arts Performances - Exemption Form ST-121.9**

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### **Introduction**

Certain purchases of tangible personal property or services for use in the production of live dramatic or musical arts performances are exempt from New York State and local sales taxes. [Form ST-121.9](#), *Exempt Purchase Certificate for Certain Property and Services Used in Dramatic and Musical Arts Performances*, should be used to make tax-exempt purchases. This bulletin explains:

- how to use the certificate,
- what kinds of property and services can be purchased exempt from sales tax using [Form ST-121.9](#), and
- penalties that may be imposed for misuse of the certificate.

### **How to use Form ST-121.9**

[Form ST-121.9](#) applies only to a production of a live dramatic or musical arts performance that meets all the following conditions:

- It will be presented in a theater or other similar place of assembly in New York State (excluding roof gardens, cabarets, or other similar places).
- It will be performed in a facility that has seating capacity of at least 100 permanently installed seats.
- The production or performance will be presented to the public at least five times a week for a period of at least two consecutive weeks.
- The content of each production or performance is the same.
- There is a charge for admission to each production or performance.

The purchaser must complete [Form ST-121.9](#), sign it, and submit it to the seller within 90 days of the delivery of the property or the 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*.

[Form ST-121.9](#) may be used as a single-use certificate, or as a blanket certificate covering the first and subsequent purchases for the same production or performance.

### **Exempt purchases**

The tangible personal property being purchased or rented must be used or consumed directly and predominantly in the production of qualifying live dramatic or musical arts performances.

Tangible personal property is used *directly* in production of a performance if it is used to prepare the stage for performances, is on-stage during performances, or is otherwise actually used directly in producing the performances.

Tangible personal property is used *predominantly* in production if more than 50% of its use is in the production of the performances.

Exempt property includes:

- scenery and scenic elements (any or all devices ordinarily used on a stage in the presentation of a production/performance, such as backdrops, projections, special effects, side tabs, teasers, borders or scrim, rigid flats, set pieces, and properties);
- lighting and sound equipment purchased or rented for the production or performance (but not if permanently installed in or at the place where the production or performance will occur);
- props (items used on stage, such as tables, chairs, and glasses); and
- costumes.

Services must be performed on exempt tangible personal property. Exempt services include:

- installing, repairing, maintaining, or servicing exempt personal property (for example, repairing a broken chair used as a prop); and
- producing, fabricating, processing, printing, and imprinting tangible personal property for a person who directly or indirectly furnishes the property.

### **Taxable purchases**

The exemption does not include:

- tangible personal property that is permanently affixed to or becomes an integral component part of a building, structure, or land;
- property or services used for administrative purposes, such as sales promotions, general office work, ordering and receiving materials, making travel arrangements, preparing rehearsal schedules, and preparing work and payroll records;
- advertising and promotional materials (such as posters and handbills purchased by the production company);
- electricity and other utilities; or
- food, drink, and gifts purchased for the cast and crew.

### **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;
- 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 1115(x) and 1145(a)(5)

**Memoranda:**

[TSB-M-98\(1\)S](#), *New Local Sales and Use Tax Exemption in New York City for Certain Theatrical Productions*

[TSB-M-99\(4\)S](#), *Summary of the 1999 Sales and Compensating Use Tax Budget Legislation*

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

**Bulletins:**

[Exemption Certificates for Sales Tax \(TB-ST-240\)](#)

[Quick Reference Guide for Taxable and Exempt Property and Services \(TB-ST-740\)](#)

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