



Promotional Materials - Exemption Form ST-121.2

Introduction

Purchases of promotional materials that the purchaser gives away without charge, and purchases of certain services relating to qualifying promotional materials, may be exempt from New York State and local sales and use taxes. To make exempt purchases, the purchaser must use [Form ST-121.2](#), *Exemption Certificate for Purchases of Promotional Materials*. This bulletin explains:

- what kinds of property and services can be purchased exempt from sales and use tax using [Form ST-121.2](#),
- how to use the certificate, and
- penalties that may be imposed for misuse of the certificate.

Property and services that qualify for the exemption

Promotional materials are any advertising literature, other related items (whether or not personalized), and envelopes used exclusively to deliver promotional materials. *Other related items* include, but are not limited to:

- free gifts,
- complimentary maps or other items given to travel club members,
- applications,
- order form and return envelopes with respect to such advertising literature,
- annual reports,
- prospectuses,
- promotional displays, and
- Cheshire labels.

Promotional materials also include paper or ink furnished to a printer for use in producing, printing, or imprinting promotional materials, where the paper and ink become a physical component part of the promotional materials, and the printer sells its services or the promotional materials to the person who furnished the paper and ink.

Promotional materials **do not include** billing invoices, account statements, personal responses to customer correspondence, etc.

Promotional materials delivered out of state

Promotional materials mailed, shipped, or otherwise distributed from a point in New York by or on behalf of the purchaser to its customers or prospective customers located outside New York, for use outside New York, are exempt.

Printed promotional materials

Printed promotional materials, and promotional materials on which producing, fabricating, processing, printing, or imprinting services have been performed, are exempt where:

- the purchaser mails or ships them, or has them mailed or shipped, to its customers or prospective customers;
- there is no charge to the customers or prospective customers; and
- the purchaser uses a common carrier, the US Postal Service, or a similar delivery service.

Services

The following services qualify for the exemption described in this bulletin:

- Information services relating to mailing lists, including merging names, labeling envelopes, and similar services, when sold in conjunction with exempt promotional materials.
- Producing, fabricating, processing, printing, or imprinting services when they are related to mailing lists for exempt promotional materials.
- Producing, fabricating, processing, printing, or imprinting services when performed on exempt printed promotional materials.
- Storing printed promotional materials where the purchaser of the exempt promotional materials is purchasing the storage service from:
 - the seller of the exempt promotional materials; or
 - the seller who performed exempt producing, fabricating, processing, printing, or imprinting services on exempt promotional materials.

Related property

Paper, ink, artwork, layouts, photographs, mechanicals, and other supplies purchased and provided to a printer are exempt if the printer uses them to produce exempt promotional materials that are then sold to the person who provided the supplies.

Non-exempt purchases

Purchases of items that are not themselves exempt promotional materials that will be included with exempt promotional materials in a mailing to the purchaser’s customers or prospective customers are not exempt.

Items produced by a manufacturer (such as product samples) to be included in a mailing of exempt promotional materials to the manufacturer’s customers or prospective customers, or to otherwise be used by the producer in New York (e.g., as gifts or donations), are not exempt.

However, the items described above are exempt if they are mailed or shipped outside New York State for use outside the state.

Example: A detergent manufacturer produces sample packets of a new detergent product. The manufacturer furnishes the samples to a printer/mailer for inclusion in a promotional mailing to the manufacturer’s prospective customers using the U.S. Postal Service. The mailing will include the product sample and coupons for \$1.00 off the retail price of a large size of the new product. (The coupons are printed by the printer/mailer.) The coupons and the detergent sample will be mailed in envelopes also supplied by the printer/mailer. The printer/mailer will merge/purge several mailing lists to obtain names and addresses for use in printing names and addresses on the mailing envelopes.

The manufacturer’s purchase of the printer/mailer’s products and services (coupons, outside envelopes, merge/purge services, addressing the outside mailing envelopes, and mailing charges) are not subject to sales or use taxes. However, the sample

packets of new detergent do not qualify as exempt promotional materials when delivered to customers or prospective customers in New York State. The manufacturer is liable for use tax on the free samples distributed in New York State. However, any detergent samples delivered to out-of-state destinations will not be subject to tax.

How to use Form ST-121.2

If you are the purchaser, fill out [Form ST-121.2](#) and give it to the seller. You must give the seller a properly completed [Form ST-121.2](#) 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-121.2](#) 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.

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 1101(b)(12), 1115(n), and 1145(a)(5)

Regulations: Section 526.6(c)(4)

Publications: [Publication 831](#), *Collection and Reporting Instructions for Printers and Mailers*

Memoranda:

[TSB-M-92\(4\)S](#) and [TSB-M-92\(4.1\)S](#), *The Sales and Use Tax and Promotional Materials*
[TSB-M-97\(6\)S](#), *Expanded Sales and Compensating Use Tax Exemption for Promotional Materials*
[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 \(TB-ST-805\)](#)