

This memorandum supersedes TSB-M-79(9)S dated July 10, 1979 which should be destroyed.

TAXABILITY OF PROMOTIONAL MATERIALS SENT INTO NEW YORK STATE

The following is the policy of the State Tax Commission in regard to the taxable status of catalogs, promotional materials and other mailings sent by vendors, free of charge, directly to their customers.

1. Mailed or shipped by common carrier from outside New York State directly to customers within New York State - EXEMPT
2. Mailed or shipped from outside New York State to the issuing company or its outlets, offices or agents within New York State for distribution to customers within New York State - TAXABLE
3. Mailed, shipped or otherwise distributed from within New York State to customers within New York State- TAXABLE
4. Mailed or shipped to customers outside New York State - EXEMPT

This position is based upon the decision in the Matter of the Application of Ford Motor Company and upon Bennett Brothers, Inc. v. State Tax Commission, where it was determined that the sender lacked real control over the catalogs once they were deposited with the common carrier. Theoretical ownership is not in itself sufficient reason to justify the assessment of use tax where no right or power over material is exercised within New York State.

Material deposited with a common carrier outside New York State will not lose its exempt status because more than one carrier is involved in transporting the merchandise to its final destination. This is true even when the transfer from one common carrier to the next takes place in New York State, as long as the final distribution is made through a common carrier.

If during the series of transfers there is an intermediate pick up and delivery by the vendor or his agent from one common carrier to another common carrier, the transaction would be rendered taxable.

NOTE: "Promotional materials and other mailings" consist of any tangible personal property which is given without charge by a manufacturer, wholesaler or distributor to a vendor for distribution to a prospective or current customer as an inducement or reward for a purchase, and any literature or printed matter given without charge for distribution or use to advertise, induce, or facilitate a sale or to be used in any manner by said vendor. Examples of such items would include:

1. Free gifts, whether a sample or given as the result of a purchase.
2. Complimentary maps and other items given away to travel club members.
3. Advertising literature.
4. All sales and ordering forms, including applications, return envelopes, etc.
5. Corporate annual reports.
6. Travel brochures.
7. Promotional displays.