

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-98(7)S
Sales Tax
July 10, 1998

Temporary Sales and Use Tax Exemptions on Clothing and Footwear

Governor George E. Pataki signed into law Chapter 56 of the laws of 1998 which provides for additional temporary exemption periods and amends the conditions of the exemption for New York State's (4%) sales and use taxes for clothing and footwear costing less than \$500 per item. The information contained in this memorandum and the list that appears at the end of this memorandum showing taxable and exempt items may be relied upon for the temporary exemption periods unless we notify you about any changes to the list.

The exemption will apply for the periods September 1, 1998, through September 7, 1998, and January 17, 1999, through January 24, 1999. In addition to the State's (4%) sales and use taxes, the exemption also applies to the ¼% tax imposed by the State in the Metropolitan Commuter Transportation District. This district consists of the city of New York and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester. The exemption will not apply to any locally imposed sales and use taxes unless the county or city imposing those taxes elects to provide for it.

The exemption will apply to most clothing and footwear worn by human beings. It will also apply to most 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. A vendor's charge for alterations made to exempt clothing that the vendor sells will likewise be exempt during the temporary exemption periods.

While the exemption will apply to items of clothing and footwear worn on the body, not all items worn on the body are clothing and footwear. Jewelry, watches, and so forth, remain taxable. Equipment items, such as tool belts, hard hats, and sport, bicycle, and motorcycle helmets, though worn on the body, will not be exempt from tax. 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 subject to tax. Antique clothing and footwear will be exempt provided the clothing and footwear are purchased for human wear and not as collector items. All purchases of doll clothes and footwear, antique or otherwise, are taxable.

If exempt clothing and/or footwear are sold with other taxable merchandise, as a single unit, the full price will be subject to sales tax, unless the price of the clothing and/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 during the temporary exemption periods, 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 these exemptions.

- The article of clothing or footwear (per pair) must be sold for less than \$500. This “less than \$500” limitation also applies to each item of fabric, thread, yarn, buttons, etc., used to make or repair clothing. Any charge by the vendor for alterations to clothing sold by the vendor must be included when determining whether the “less than \$500” limitation has been met.
- Costumes and rented formal wear will not be eligible for exemption. Nor will the exemption apply to fabric, thread, yarn, buttons etc., used to make or repair costumes or rented formal wear.
- Items of fabric, thread, yarn, buttons, and so forth, used to make or repair otherwise exempt clothing will not be 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 (handbags, umbrellas, watches, watchbands, and so forth,) are not considered clothing and are taxable. However, belt buckles, handkerchiefs, sweatbands, head scarves, and neckwear such as scarves and ties, will be exempt.
- Fabric, thread, yarn, buttons, and so forth, used to make or repair taxable products will be taxable.
- Monogramming of clothing prior to its sale will be eligible for exemption if the monogramming is sold as part of the article. However, if monogramming is done separately by a vendor for a separate charge, the charge for this service will be taxable. Monogramming includes application of decals, logos and like items (pictures, letters) by sewing, printing, imprinting, silk screening, etc.

Special Rules That Apply During the Temporary Exemption Periods

The following special rules are to be used **only** for purposes of determining whether a sale of eligible clothing or footwear qualifies for the exemption during the periods of September 1, 1998, through September 7, 1998, and January 17, 1999, through January 24, 1999.

Delivery, Shipping and Handling Charges (Delivery)

Reasonable charges by the vendor for delivery of eligible clothing and footwear items are not taken into account in determining if an item meets the “less than \$500” limitation. For example, if, during a temporary exemption period, an article of clothing sells for \$495 and the vendor charges \$10 for delivery, the clothing and the delivery charge will qualify for exemption. However, delivery charges by the vendor for items costing \$500 or more remain subject to tax.

Mail and Telephone Orders

The exemption will apply to eligible clothing and footwear items ordered by mail or by telephone if the orders are accepted by the vendor during one of the temporary exemption periods. An order is accepted by the vendor when the vendor has taken an action to fill the order. Actions to fill an order include placing an in-date stamp on a mail order and assigning an order number to a telephone order. As long as the vendor accepts the customer's order during one of the temporary exemption periods, the exemption will apply even though delivery might be made after the exemption period has ended. These rules will also apply to orders for eligible clothing and footwear items made using the Internet, E-Mail and computer bulletin boards.

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 charges must be added to the ticket price of the clothing or footwear item for purposes of determining whether the cost of the item is less than \$500. If a vendor and a customer enter into a contract for a layaway sale of eligible clothing or footwear during one of the temporary exemption periods, the exemption will apply as long as the customer makes a deposit of at least 10% of the purchase price during the exemption period and the vendor segregates the merchandise from other inventory.

Custom and Special Orders

Eligible clothing and footwear items that are custom ordered or special ordered during one of the temporary exemption periods will qualify for the exemption, even though the item is delivered after the exemption period. To qualify for the exemption, the vendor and the customer must enter into a contract during one of the exemption periods to have the custom or special order made for the customer.

Rain Checks

The exemption will not apply to clothing or footwear purchased after the exemption period has ended, even though the purchaser uses a rain check that was issued during the exemption period.

Exchanges

Where a customer purchases eligible clothing or footwear during one of the temporary exemption periods and returns the item after the exemption period has ended, for an exchange, the vendor need not charge tax on the exchanged item as long as it is similar to the item returned, a shirt for a shirt, etc. Where a customer returns an item and receives a credit to purchase a different item in the future or is allowed to purchase a different item at the time of the return, the appropriate sales tax will apply to the sale of the new item. For example, if a customer buys a shirt during one of the temporary exemption periods and exchanges it the following month for a pair of boots, tax is due on the full price of the boots.

Coupons

Where a customer uses a manufacturer's coupon to pay for eligible clothing or footwear, the value of the coupon does not reduce the selling price for purposes of determining whether the item is sold for less than \$500. Where a customer pays for eligible clothing or footwear using a store coupon, for which the store receives no reimbursement, the store coupon does reduce the selling price for purposes of determining whether the item is sold for less than \$500.

Special Reporting Requirements For Temporary Exemption Items

Vendors who make sales of eligible clothing and footwear during the temporary exemption periods must file **Schedule H** to report those sales. Schedule H contains lines to report sales of clothing and footwear made during the temporary exemption periods (September 1 through September 7, or January 17, 1999 through January 24, 1999) for each locality (county and city) imposing taxes in the state. All sales of eligible clothing and footwear during those periods must be separately reported on Schedule H for the locality in which the sales were made. That is, sales of eligible clothing and footwear must be reported, by locality, whether they are subject to local tax (because a city or county did not elect for the exemption to apply) or are totally exempt from state and local tax.

Schedule H will be supplied to all quarterly filers of Forms ST-100, ST-102 and ST-810 with their returns for the quarterly period September 1, 1998 - November 30, 1998 and for the quarterly period December 1, 1998 - February 28, 1999. This schedule should be completed and filed along with your quarterly report. Annual filers will receive Schedule H with the ST-101 and ST-102 (annual) for the short annual period June 1, 1998 - February 28, 1999. Sales of eligible clothing and footwear made during the period September 1 - September 7, 1998, and during the period January 17, 1999 - January 24, 1999, should be reported on this schedule. The schedule must be returned with these quarterly and annual returns regardless of whether any clothing sales have been made during the exemption periods.

The pages that follow contain lists of exempt or taxable items for the temporary sales and use tax exemption on clothing and footwear. ***Previous lists should not be used for these exemption periods.***

Telephone assistance is available from 8:30 a.m. to 4:25 p.m., Monday through Friday. You can get answers to questions concerning the taxable status of clothing and footwear items by calling the Business Tax Information Center at 1-800-972-1233.

**Temporary Sales and Use Tax Exemption on Clothing and Footwear
For Periods September 1, 1998 - September 7, 1998
and
January 17, 1999 - January 24, 1999**

Listing of Exempt and Taxable Items

Exempt Items

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

**Temporary Sales and Use Tax Exemption on Clothing and Footwear
For Periods September 1, 1998 - September 7, 1998
and
January 17, 1999 - January 24, 1999**

Listing of Exempt and Taxable Items

Taxable Items

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

* Items with an asterisk are currently exempt and will remain exempt after the temporary exemption periods for certain clothing and footwear items. See Publication 822, *Taxable Status of Medical Equipment and Supplies*. **Do not** report the 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 2 of this memorandum for additional details concerning the taxability of yard goods and notions.