

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

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Sales Tax
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**New Local Sales and Use Tax Exemption in New York City
For Certain Theatrical Productions**

Governor George E. Pataki has signed into law new local sales and use tax exemptions for tangible personal property used or consumed directly and predominantly in producing live dramatic or musical arts performances in a theater or other similar place of assembly in New York City and for certain services to such property.

The exemptions are effective March 1, 1998, and apply to the 4% sales and use taxes imposed in New York City by section 1107 of the Tax Law. The new exemptions do not apply to the 4% state sales and use taxes, the ¼ % tax imposed in the Metropolitan Commuter Transportation District, or any local sales and use taxes imposed outside New York City. Therefore, the total rate of the exemptions available to eligible property and services for qualifying theatrical productions is 4%. The new exemptions will also apply to New York City's own sales and use taxes once the section 1107 taxes expire.

Property Used or Consumed in Production

Tangible personal property, including machinery or equipment, as well as parts, tools and supplies, used or consumed directly and predominantly in the production of qualifying live dramatic or musical arts performances in New York City may be purchased or leased exempt from the section 1107 sales and use taxes imposed in New York City. Such property includes scenery and scenic elements, properties, costumes, projection equipment, and lighting and sound equipment, purchased or rented for use in producing the qualifying performances. Tangible personal property is used directly in production if it is used to prepare the stage for performances, is on-stage during performances, or is otherwise actually used directly in producing the qualifying performances. Tangible personal property is used predominantly in production if more than 50% of its use is in the production of qualifying performances in New York City.

The exemption does not apply to tangible personal property that is permanently affixed to, or becomes an integral component part of, a structure, building or real property. Thus, lighting and sound equipment which are permanently installed in the theater building do not qualify for exemption. Likewise, property used to repair the interior or exterior of the theater does not qualify for the exemption.

For example, if scaffolding is used 70 % of the time in stage construction for qualifying performances and 30 % of the time in repairs made to the structure of the theater, the purchase or rental of the scaffolding would qualify for this exemption because it is being used more than 50% of the time in stage construction, and because stage construction is considered direct use in production.

Services to Exempt Property

The new exemptions also apply to services described in section 1105(c)(2) and (3) of the Tax Law to the qualified exempt property described above. These services include producing, fabricating, processing, printing or imprinting qualified exempt property, where such services are performed for the person (e.g., the producer of the performances) who furnished the property to the service provider. Such services also include installing, maintaining, servicing, and repairing the qualified exempt property described above.

The new exemptions for property and services do not apply to the purchase of property or services used for administrative purposes. Administration includes such activities as sales promotions, general office work, ordering and receiving materials, making travel arrangements, the preparation of rehearsal schedules, and the preparation of work and payroll records.

Qualifying Performances

In order for these exemptions to apply, the following conditions must be met:

- (1) The production must be of live dramatic or musical arts performances in a theater or other place of assembly in New York City. A roof garden, cabaret, or other similar place does not qualify as a theater or other place of assembly for purposes of this exemption.
- (2) The theater or other place of assembly must have a seating capacity of at least 100 permanently installed fixed seats.
- (3) The performances in which the property will be used or with respect to which the services will be performed are expected, at the time that the property or services are purchased, to be presented to the public in New York City on a regular basis, at least five (5) times per week for at least two consecutive weeks.
- (4) The content of each of the performances described in the prior condition must be the same.
- (5) There must be a charge for admission to the theater or other place where the performances occur.

For purposes of this exemption, *a place of assembly* in New York City means an enclosed room or space or an outdoor space in which persons gather for religious, recreational, educational, political, or social purposes, or for similar group activities, or which is designed for use by persons gathered for any of the above reasons, but excluding such spaces in dwelling units. The place of assembly must have a stage in which scenery and scenic elements are used. In addition, the place of assembly must keep on the premises copies of approved seating plans and approved alternate seating plans. (See New York City Administrative Code Sections 27-232, 27-255 and 27-528.)

How to Make Qualified Purchases Exempt From the NYC Local Tax

In order to purchase qualified property and services without paying tax at the time of purchase, the purchaser must give the vendor a completed ST-121.9, *New York City Sales and Use Tax Exempt Use Certificate for Certain Theatrical Productions*. The exempt use certificate may be used as a single purchase certificate or as a blanket certificate for repeated purchases from the same vendor for the same production.

In the event that sales tax was paid at the time of purchasing qualified exempt property or services, the purchaser can apply for a refund or credit of such tax paid by completing Form AU-11, *Application for Credit or Refund*. The basis for the refund or credit must be detailed, and all documentation (such as, for example, invoices) necessary to substantiate the claim must be attached. The documentation must identify the claimant. Cash receipts, register tapes and other forms of receipts or invoices that do not identify the purchaser cannot be accepted.

If a producer purchases qualifying property or services outside New York City and takes delivery outside the city, the purchases remain subject to state and local sales and use taxes. In that case there would be no use tax when the property is used in New York City. Nor would there be any right to a refund or credit of any tax paid elsewhere in New York State. In order for the exemption to apply, the property must be delivered and services must be performed in New York City. A properly completed Form ST-121.9, *New York City Sales and Use Tax Exempt Use Certificate for Certain Theatrical Productions*, must be given to the vendor who is delivering the property or services in New York City in order for the purchase to be exempt from the section 1107 taxes in New York City.