

**A Guide to
Sales Tax in
New York
State for
Broadcasters**

About this publication

This publication provides television and radio broadcasters (broadcasters) with information on how New York State and local sales and use taxes (sales tax) apply to their business activities, with emphasis on the various exemptions and exclusions available to broadcasters. The *Questions and Answers* section of this publication analyzes some of the specific types of exempt property and services purchased by broadcasters.

With certain exceptions, New York State imposes a sales tax on the purchase of all tangible personal property delivered within the state, as well as on certain specifically enumerated services performed within the state. For purposes of this publication, the terms *sale*, *sold*, or *purchased* when used with reference to tangible personal property used or acquired by a broadcaster also includes a lease, rental of, or license to use such property. It also imposes a use tax on such property and services when purchased outside the state and used within the state. In addition, New York City and many local jurisdictions also impose sales and use taxes. Exemptions and exclusions that apply to the state sales tax also apply to all the local sales taxes, including the local sales tax imposed by New York City, unless specifically provided otherwise. These state and local sales taxes are administered by the Department of Taxation and Finance. Unless otherwise noted, the term *sales tax* in this publication refers to the state, county, and city sales and use taxes under Articles 28 and 29 of the Tax Law, including the local sales and use taxes imposed by New York City.

Wages, salaries, and other compensation paid by an employer to its employees are not subject to sales tax, even if the services performed would otherwise be taxable. For purposes of this publication, it is assumed that the services purchased by a broadcaster are not being provided by an employee. The determination of whether an individual is an employee is based upon the facts and circumstances of each situation.

For broadcasters, the taxable or exempt status of items and services depends on their use and whether the broadcaster is a *regular broadcaster* or *system broadcaster*. As explained in this publication, the sales tax exemptions allowed a *regular broadcaster* include the purchase or use of tangible personal property used or consumed directly and predominantly in either the production or transmission of live or recorded programs. For *system broadcasters*, sales tax exemptions include only the purchase or use of tangible personal property used or consumed directly and predominantly in the production of live or recorded programs intended for transmission to its viewers over its system. (See page 7 for definitions of a *regular broadcaster* and *system broadcaster*.)

For additional information or clarification about the information in this publication, please refer to *Need help?* on the back cover.

NOTE: A Publication is an informational document that addresses a particular topic of interest to taxpayers. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in Department policies could affect the validity of the information contained in a publication. Publications are updated regularly and are accurate on the date issued.

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General information

Definitions

Except as otherwise provided, for purposes of this publication:

A regular broadcaster means:

- a television or radio station licensed by the Federal Communications Commission (FCC);
- a television or radio broadcast network; or
- a cable television network.

A system broadcaster means a cable system operator or a direct broadcast satellite system operator.

A television or radio broadcast network means an organization that:

- produces and/or purchases programs that are intended for transmission by affiliated FCC-licensed television or radio stations; and
- has distribution facilities or circuits available to such affiliated stations during all or a portion of one or more days each week.

A cable television network means an organization that:

- produces and/or purchases programs that are intended for transmission by either direct broadcast satellite systems or cable systems pursuant to an affiliation or similar agreement; and
- has distribution facilities or circuits available to such satellite or cable systems during all or a portion of one or more days each week.

Program means any performance, event, play, story or other literary, musical, artistic, or other work that is used for entertainment or education purposes. Programs include news, news specials, sporting events, game shows, talk shows, movies, television series, commercials, and other types of programming.

Recorded program means any program contained on film, tape, disc, or other physical media.

(See Tax Law, §1115(a)(38).)

Producing a program

The production of live and recorded programming by regular or system broadcasters includes both the actual recording or filming of programs and also post-production work, such as editing, dubbing, and mixing.

The programs produced by regular or system television broadcasters may include programs such as television series, made-for-television movies, newscasts, sporting events, talk shows, documentaries, or public service programs. Production may involve physical staging and sets, backdrops, costumes, lighting, props, make-up, cameras, video recording devices, microphones and related sound capturing equipment, sound recording devices (digital, track, cassette, or CD), consoles, amplifiers, monitors, mixing and dubbing equipment, audio encoders and decoders (also known as *codecs*) for the compression and decompression of audio, screening equipment, and specialty graphic equipment.

Radio broadcast networks produce programs on a national or regional scale, for distribution to radio stations affiliated with the network. In addition to studio programs, recordings (live or otherwise) of concerts, news, or sporting events, which may require mobile recording equipment, may be produced for transmission to affiliated stations. Radio networks may also provide affiliated radio stations with imaging programming content, which is designed to give a certain overall style to the station. Also, while the production and post-production of radio programs is generally focused on equipment that captures and manipulates sound, similar to that used in the production (and post-production) of television programs, both radio networks and radio stations may also require physical facilities for conducting interviews, maintaining a quiet announcer booth, and performing overdubbing or mixing.

Individual radio stations receive programming from networks and may also produce some local programming. Any given station's own radio personalities may have their own talk shows, music, news, or local issue programs, which could either be recorded locally for later broadcast or broadcast live. When receiving and broadcasting national or non-regional programs obtained from other sources (such as from a radio network), local stations may insert regional advertising or regional program content.

Transmitting a program

The transmission of radio and television programs may occur at one or more stages. There may be transmission from a radio or television broadcast network to its individual affiliated radio or television stations. This transmission is not required for programming that originates from a local station. Transmission may also be made to transfer "on location"

news, sports, concerts, in-store promotions and other material from the site of an event to the station or network covering the event.

Transmission can also be made from the local radio or television station to that station's listening or viewing audience.

In addition, transmissions may be made via satellite, Internet, telephone lines or other traditional telecommunications technology, or some combination thereof. Radio networks and over-the-air and cable television networks will generally maintain facilities capable of uplinking programming content for distribution, along with a system of receivers "in the field" for penetration into affiliated stations and cable systems that receive the programming content. Both radio and television transmissions may also be accomplished via cable or fiber-based physical systems.

Sales tax exemptions related to producing and transmitting programs

Regular broadcasters may purchase certain property and services related to **producing or transmitting** programs exempt from tax as explained below. System broadcasters may purchase certain property and services related to **producing** programs exempt from sales tax as described below.

(See Tax Law, §1115(a)(38).)

Requirements to register as a sales tax vendor

A broadcaster (regular or system) must register as a New York State sales tax vendor to purchase property and services that are exempt from sales tax. Unregistered broadcasters must pay the tax and file a claim for refund using Form AU-11, *Application for Credit or Refund of Sales and Use Tax*. Once registered, a broadcaster may issue the appropriate exemption certificate for its exempt purchases to its suppliers. For example, a regular broadcaster uses Form ST-121, *Exempt Use Certificate*, to purchase equipment that qualifies for one of the sales tax exemptions allowed specifically to regular broadcasters under the Tax Law. In addition, a broadcaster who purchases tangible personal property that becomes a physical component part of a product that is actually sold to a customer may claim a resale exclusion from sales tax by issuing a properly completed *Resale Certificate*, Form ST-120, to its supplier. For example, if a broadcaster produces a program for sale to a customer and the broadcaster delivers the program in the form of a duplicate tape, the broadcaster may purchase the raw tape upon which the program is recorded for resale.

Publication 750, *A Guide to Sales Tax in New York State*, contains information on registering as a sales tax vendor and the use of exemption certificates. As indicated in Publication 750, a person may register as a sales tax vendor by completing Form DTF-17, *Application to Register for a Sales Tax Certificate of Authority*, and sending it to the

address listed in the instructions for that form. You may obtain Publication 750, the registration form, and exemption certificates from the Tax Department's Web site or by contacting us. See *Need help?* on the back cover of this publication.

A broadcaster that is a registered vendor must file a sales and use tax return even if no tax is due during the filing period. A broadcaster must also collect and remit both state and local sales taxes to the Tax Department if taxable sales are made, along with any use tax that may be due. See Publication 750 and Publication 774, *Purchaser's Obligations to Pay Sales and Use Taxes Directly to the Tax Department Questions and Answers*.

Exemption related to tangible personal property used or consumed to produce programs

Tangible personal property used or consumed directly and predominantly in the production of live or recorded programs is exempt from sales tax

Tangible personal property that a **regular** broadcaster uses or consumes directly and predominantly in the production (including post-production) of live or recorded programs is exempt from sales tax if the program is intended for broadcast over the air or transmission through a cable television system or a direct broadcast satellite system by the broadcaster. Post-production includes activities such as editing, dubbing, and mixing. Tangible personal property is used directly and predominantly in program production if more than 50% of its use is directly in the production of programs.

Examples of tangible personal property used or consumed in the production of programming, whose purchase, rental by, or leasing to a regular broadcaster include, but are not limited to, machinery or equipment, parts, tools and supplies, cameras, lighting, sets, costumes, and sound equipment. Hereinafter, this will be referred to as *production property qualifying for the regular broadcaster exemption*.

(See Tax Law, §1115(a)(38)(A))

Tangible personal property that a **system** broadcaster uses or consumes directly and predominantly in the production (including post-production) of live or recorded programs is exempt from sales tax if the program is intended for transmission to viewers over its system. Post-production includes activities such as editing, dubbing, and mixing. Tangible personal property is used directly and predominantly in program production if more than 50% of its use is directly in the production of programs.

(See Tax Law, §1115(a)(38)(A))

Tangible personal property that a system broadcaster may purchase exempt, includes, but is not limited to, machinery or equipment, parts, tools and supplies, cameras, lighting, sets, costumes, and sound equipment, used directly and predominantly in the production of live or recorded programs intended for transmission to its viewers over its system. Hereinafter, this will be referred to as *production property qualifying for the system broadcaster exemption*.

(See Tax Law, §1115(a)(38)(A) and (C).)

These exemptions may be claimed by providing the vendor with a properly completed Form ST-121, *Exempt Use Certificate*, and checking the appropriate box on the form or by filing a timely claim for a credit or refund on Form AU-11, *Application for Credit or Refund of Sales or Use Tax*.

In addition, if a regular or system broadcaster leases any production property to another person or entity for that person's or entity's use or consumption directly and predominantly in the production of live or recorded programs, the property will be deemed to have been used or consumed by broadcaster (lessor), for purposes of determining whether the broadcaster has met the direct and predominant use or consumption requirements of the sales tax exemptions described in the preceding paragraphs.

(See Tax Law, §1115(a)(38)(A).)

Exemption related to tangible personal property used or consumed to transmit programs

Tangible personal property used or consumed directly and predominantly by regular broadcasters to transmit live or recorded programs is exempt from sales tax

In addition to the exemption from sales tax available to a regular broadcaster for purchases of tangible personal property related to the production of programming, regular broadcasters are entitled to an exemption from sales tax on their purchases of machinery, equipment, and other tangible personal property (including parts, tools, and supplies) used or consumed directly and predominantly to transmit live or recorded programs over-the-air or through a cable television system or direct broadcast satellite system by the broadcaster. Tangible personal property is used directly and predominantly in transmission if more than 50% of its use is directly to transmit programs. Examples of tangible personal property used or consumed in the transmission of programs include, but are not limited to, machinery, equipment, parts, tools and supplies, amplifiers, transmitters, and antennas. Hereinafter, this will be referred to as *transmission property qualifying for the regular broadcaster exemption*. (**Note:** A system broadcaster is not entitled to the exemption for transmission property.) This exemption

may be claimed by providing the vendor with a properly completed Form ST-121, *Exempt Use Certificate*, and checking the appropriate box on the form or by filing a timely claim for credit or refund on Form AU-11, *Application for Credit or Refund of Sales or Use Tax*.

In addition, if a regular broadcaster leases any transmission property to another person or entity for that person's or entity's use or consumption directly and predominantly in the transmission of live or recorded programs, the transmission property will be deemed to have been used or consumed by the regular broadcaster (lessor) for purposes of determining whether the regular broadcaster has met the direct and predominant use or consumption requirements of the sales tax exemption described in the preceding paragraph.

(See Tax Law, §1115(a)(38)(B).)

Exemption related to purchasing certain production or transmission services

Otherwise taxable services performed on tangible personal property used directly and predominantly in the production or transmission of live or recorded programs may be exempt from sales tax

Certain services rendered to a regular or system broadcaster in connection with its broadcasting business are exempt from sales tax. These services include producing, fabricating, processing, printing, and imprinting tangible personal property as well as the services of editing, dubbing, and mixing.

For regular broadcasters, these services are exempt if they are performed in connection with the production or transmission of live or recorded programs that are intended to be broadcast over-the-air by the broadcaster or transmitted through a cable television system or direct broadcast satellite system by the broadcaster. For system broadcasters, these services are exempt if they are performed in connection with the production of live or recorded programs which are intended for transmission to the system broadcaster's viewers over its system. This exemption may be claimed by providing the vendor with a properly completed Form ST-121, *Exempt Use Certificate*, and checking the appropriate box on the form or by filing a claim for credit or refund on Form AU-11, *Application for Credit or Refund of Sales or Use Tax*.

Also, the services of installing, maintaining, servicing, and repairing production or transmission property qualifying for the regular broadcaster exemption are services exempt from sales tax for regular broadcasters, and such services on production property qualifying for the system broadcaster exemption are exempt from sales tax for system broadcasters. In addition, the services of installing, maintaining, servicing, and repairing production or transmission property qualifying

for the regular broadcaster exemption and on production property qualifying for the system broadcaster exemption, which, when installed, becomes a capital improvement to real property, are also exempt from sales tax.

(See Tax Law, §1115(aa).)

Telecommunications and information services used for news

Purchases and uses of telephony and telegraphy and telephone and telegraph services that are used in the collection and dissemination of news are exempt from sales tax

Although sales tax is generally imposed on receipts from the sale of intrastate telephony, telegraphy and telephone and telegraph service, charges for certain telephone and telegraph services are exempt from sales tax when the services are used by regular or system broadcasters in the collection or dissemination of news. To qualify for this telecommunications-related exemption, the charge for the services must be a toll charge, a charge for mileage services, or a charge for associated station terminal equipment. Therefore, toll charges for calls originating and terminating in New York State by a regular or system broadcaster used in the collection or dissemination of news are exempt from sales tax. Telecommunications services used for other purposes, such as administrative purposes, are not exempt from sales tax. Furthermore, services billed on a flat-rate basis and not as a toll charge or a mileage services charge are not exempt from sales tax.

If one bill is received for exempt and taxable services, sales tax must be paid based on the amount of the entire bill. However, a refund or credit may be claimed based on the toll charges on the bill that are for exempt services. A broadcaster may request a refund of the tax paid by filing Form AU-11, *Application for Credit or Refund of Sales or Use Tax*. Alternatively, a broadcaster may claim a credit on its next sales tax return. In either case, the broadcaster must explain that the basis for the exemption is the exemption provided in section 1115(b)(i) of the Tax Law and it must include documentation establishing that it paid the claimed amount of tax to the service provider.

Although sales tax is generally imposed on the receipts from the sale of information services, charges to a regular or system broadcaster for the purchase or use of information services that are used in the collection or dissemination of news are exempt from sales tax. This exemption may be claimed by providing the vendor with a properly completed Form ST-121, *Exempt Use Certificate*, and checking the *Other* box in Part III-*Other exemptions*, and stating that the information services are being used by a broadcaster in the collection or dissemination of news. In the alternative, the broadcaster may file a claim for a credit or refund of the tax on Form AU-11, *Application for Credit or Refund of Sales or Use Tax*.

In addition, meteorological services are not subject to sales tax, even if the purchaser is not a regular or system broadcaster. No exemption certificates are needed to receive this exemption.

(See Tax Law, §§1115(b)(i) and 1105(c)(1).)

Questions and answers

The following questions and answers relate to the sales tax exemptions and exclusions for *broadcasters* as set forth in sections 1115(a)(38), 1115(aa), 1115(b)(1) and 1105(c)(1).

1. (Q) A radio broadcast network (a regular broadcaster) purchases a CD-ROM containing certain prewritten software that is loaded onto a computer. The software is used more than 50% of the time for the production and/or the transmission of programs to be broadcast over the air by the broadcaster. Is the purchase of the CD-ROM exempt from sales tax?

(A) Yes. Since the software on the CD-ROM will be used directly and predominantly (more than 50% of the time) by a regular broadcaster in the production and/or transmission of programs to be broadcast over the air by the broadcaster, the purchase of the CD-ROM is exempt from sales tax. (See Tax Law, §1115(a)(38).)

2. (Q) A regular broadcaster purchases equipment that will be used directly and predominantly in the production and/or transmission of programs to be broadcast over the air by the broadcaster. The production and transmission work in which the equipment will be used will be performed outside New York State. However, the broadcaster takes delivery of the equipment in New York, where it is customized before being shipped to another state for use. Are the purchases of the equipment and the customization service exempt from sales tax?

(A) Yes. The purchases of the equipment and the customization service are exempt from sales tax. The fact that the equipment will be used in a state other than New York is not relevant. Because the equipment is exempt, the charges for customization services performed on the equipment in New York are also exempt, even if those services otherwise would have been taxable under section 1105(c)(2) of the Tax Law as processing services performed on tangible personal property or taxable under section 1105(c)(3) of the Tax Law as installing, maintaining, servicing, or repairing of tangible personal property. However, it is possible that the state in which the equipment is later used may impose a sales or use tax on the property or the services. (See Tax Law, §§1115(a)(38) and 1115(aa).)

3. (Q) A regular or system broadcaster hires a production company to produce film segments (or segments captured with other media) for incorporation into a program that will ultimately be broadcast by the broadcaster. The master segment is delivered to the broadcaster in New York State, where the segment is incorporated into the program to be broadcast over the air by the broadcaster. Is the purchase by the broadcaster of the film segments (or segments captured with other media) exempt from sales tax?

(A) Yes. Since the broadcaster will use the segments to produce a program it will broadcast over the air, the purchase of the segments is a purchase of production tangible personal property qualifying for the regular and system broadcaster exemptions. (See Tax Law, §1115(a)(38).)

4. (Q) A regular broadcaster hires an independent production company to perform the post-production addition of sound tracks to a program that will be used by the broadcaster for broadcast over the air. The broadcaster delivers a tape of the program to the production company. The production company makes a copy of the tape, then adds the sound tracks to the new tape and delivers both the original tape and the new tape to which it has added the sound tracks to the broadcaster. Is the charge by the independent production company exempt from sales tax?

(A) Yes. The production and sale of the new tape by the independent production company to the regular broadcaster constitutes the sale of production property qualifying for the regular broadcaster exemption. Therefore, the charge by the independent production company is exempt from sales tax. **Note:** If the independent production company added sound tracks to the original tape without producing a new tape, the receipts from the sale of the service of adding the sound tracks would also be exempt from sales tax. (See Tax Law, §§1115(a)(38) and 1115(aa).)

5. (Q) Is the purchase of equipment by or renting equipment to an independent production company which is not a regular or system broadcaster for use in producing programs for a radio or television network or station exempt from sales tax pursuant to section 1115(a)(38) of the Tax Law ?

(A) No. The exemption is only for equipment purchased by or rented to a regular or system broadcaster. However, the equipment may qualify for another exemption, such as the film production exemption. (See Tax Law, §§1115(a)(38) and 1115(a)(39) and Publication 28, *A Guide to Sales Tax for the Film Industry*.)

6. (Q) A regular or system broadcaster hires an independent contractor to produce a recorded tape of promotional announcements for the broadcaster (such as announcements asking the audience to "stay tuned" for a particular upcoming program). The broadcaster owns and has exclusive rights to use the promotional announcements and does in fact transmit them to the audience as part of its normal broadcast. Are the independent contractor's charges exempt from sales tax?

(A) No. These promotional announcements are considered to be separate programs (commercials) produced by the independent contractor and purchased by the broadcaster. Therefore, they are not considered production property qualifying for the regular or system broadcasters' exemptions.

7. (Q) A regular broadcaster purchases a vehicle onto which transmission equipment is mounted along with the control panels that are necessary to send audio and video information to the broadcaster's production or transmission facilities. Is the purchase of the vehicle exempt from sales tax?

(A) Yes. As long as it is reasonable to expect the vehicle will be used by the broadcaster directly and predominantly (i.e., more than 50% of the time the vehicle is in use) in the production or transmission of a news or other program for broadcast and/or to transmit such information to a broadcast facility for use in the production or transmission of a program for broadcast, the broadcaster's purchase of the vehicle is exempt from sales tax. If, notwithstanding the broadcaster's intentions at the time of purchase, the vehicle is actually used for such purposes less than 50% of the time it is in use, the broadcaster will be required to remit use tax on the vehicle because it does not qualify for the exemption.

8. (Q) A regular broadcaster purchases a vehicle to be used for various purposes, including to transport news reporters, camera operators, and other production personnel to various news scenes. The usage of the vehicle is expected to break down, on average, as follows: 8 hours of the day to transport reporters and camera operators to news scenes and 4 hours of the day to run errands or transport guests or employees to or from the administrative offices. (The 12 hours a day the vehicle is not in use are not considered when determining how the vehicle is predominantly used.) Is the purchase of the vehicle exempt from sales tax?

(A) No. The vehicle is not exempt from sales tax because transporting news reporters and camera operators to news scenes is not considered to be directly part of the production process.

9. (Q) A regular broadcaster purchases a camera that is expected to be used for 8 hours a day as follows: 3 hours a day in the production of a local news program that is broadcast over the air by the broadcaster and 5 hours a day leased by the regular broadcaster to a school of broadcasting (school). The school will use the camera for 2 hours a day for classroom instruction and 3 hours a day to produce a program that is broadcast over the local public access television station. Is the purchase of the camera by the regular broadcaster exempt from sales tax?

(A) Yes. The 5 hours a day that the school leases the camera from the regular broadcaster qualifies as use by the regular broadcaster for purposes of determining whether the camera is used directly and predominantly by the regular broadcaster in exempt program production activities. Therefore, in this example, the regular broadcaster is deemed to be using the camera 75% of the time that the camera is in use directly in the production of programs for over the air broadcast (3 hours that the regular broadcaster uses the camera to produce its news program plus 3 hours that the school uses the camera to produce the program for broadcast over the public access station divided by the 8 hours a day that the camera is in use).

10. (Q) Are charges to a regular broadcaster for cleaning services performed on production or transmission facilities exempt from sales tax?

(A) Yes. The charges to a regular broadcaster for cleaning services are exempt from sales tax if performed on production or transmission property qualifying for the regular broadcaster exemption, including any such property that has subsequently become an addition or capital improvement to

land or other property. For example, cleaning services performed on overhead production lighting permanently installed as a capital improvement will be exempt from tax, while cleaning services performed for the building generally (e.g., trash removal, floor cleaning, window washing) or for office space will not be exempt.

If, for example, a monthly charge for cleaning services represents a charge for cleaning exempt property, as described in the preceding paragraph, and also for cleaning other (non-exempt) property, such as general office areas, sales tax must be paid on the entire charge. However, if there is a reasonable and separately stated charge for the cleaning services on the exempt property, this separately stated charge is exempt from sales tax.

11. (Q) Are purchases by a regular broadcaster of supplies (such as paper and ink) used directly and predominantly by the regular broadcaster in the production or transmission of programs for broadcast by it over the air exempt from sales tax?

(A) Yes. Supplies used by a regular broadcaster directly and predominantly in the production or transmission of programs for broadcast over the air by the regular broadcaster are exempt from sales tax. For example, paper and ink used to prepare filming schedules or scripts used directly and predominantly in the production of a program by a regular broadcaster for broadcast over the air by the broadcaster are exempt from sales tax. However, sales tax is due on supplies used for administrative purposes, such as paper used to prepare expense reports. **Note:** If the broadcaster is a system broadcaster, only those supplies used directly and predominantly in the production of programs for broadcast by it over its system are exempt from sales tax.

12. (Q) Are purchases by a regular broadcaster of maintenance items, such as light bulbs or area rugs, that are used on a set for a television program exempt from sales tax?

(A) Yes, for regular broadcasters, maintenance items used directly and predominantly in the production or transmission of programs for broadcast over the air by such broadcasters are exempt from sales tax. Accordingly, maintenance items such as light bulbs and area rugs purchased for use on a set for a television program that is to be broadcast as described in the preceding sentences are exempt from sales tax. Maintenance items purchased for use in administrative offices are subject to sales tax. In addition, a regular broadcaster may purchase maintenance items that are transmission property qualifying for the regular broadcaster exemption exempt from sales tax. **Note:** For system broadcasters, only maintenance items used directly and predominantly in the production of programs intended for transmission to its viewers over its system are exempt from sales tax. (See Tax Law, §1115(a)(38).)

13. (Q) Are purchases by a regular broadcaster of makeup to be used by its newscasters when broadcasting the news exempt from sales tax?

(A) Yes. The makeup constitutes production property qualifying for the regular broadcaster exemption. (See Tax Law, §1115(a)(38).)

14. (Q) Are purchases by a regular broadcaster of microphones and camera batteries that will be used directly and predominantly in the production or transmission of programs for broadcast by the broadcaster over the air exempt from sales tax?

(A) Yes. As long as equipment and supplies, such as microphones and camera batteries, are used directly and predominantly in the production and/or transmission of programs for over-the-air broadcast by a regular broadcaster (for example, when used by reporters, camera operators, or other production personnel), these purchases are exempt from sales tax. (See Tax Law, §1115(a)(38).)

15. (Q) Are the costs of meals at restaurants or taxable entertainment incurred by regular or system broadcasters for newscasters or program performers exempt from sales tax?

(A) No. Restaurant meals and entertainment for newscasters or program performers do not constitute tangible personal property used directly and predominantly in the production of programs nor do such items constitute exempt services rendered to exempt property.

16. (Q) Are purchases by a regular or system broadcaster of utilities and utility services, such as natural gas and electricity, used to heat and light production areas exempt from sales tax?

(A) No. Section 1105(b)(1)(A) of the Tax Law imposes tax on utilities and utility services, such as natural gas and electricity. Since there is no specific exemption for utilities and utility services purchased by a regular or system broadcaster, such purchases are subject to sales tax.

17. (Q) A regular broadcaster purchases a pager service that is used by its news program employees in the collection or dissemination of news. Are all of the charges for this pager service exempt from sales tax?

(A) No. Section 1105(b)(1)(B) of the Tax Law imposes a tax on telephony and telegraphy and telephone and telegraph services. A charge for a pager service is exempt from sales tax if the pager service is used by the broadcaster's employees in the collection or dissemination of news and the charge is a toll charge or a charge for mileage services. A flat monthly pager service charge is not exempt from tax.

18. (Q) An FCC-licensed radio station (regular broadcaster) decides to build new transmission facilities in New Jersey and purchases new machinery and equipment to be used solely for the transmission of its programs. The bills for the machinery and equipment are addressed to an office in New York State, but the property itself is delivered to the facilities in New Jersey where it is to be used. Is the purchase of the machinery and equipment subject to New York State and local sales tax?

(A) No. Since the machinery and equipment is not delivered in New York, the purchase is not subject to New York State and local sales tax.

19. (Q) A customer pays a television station (a regular broadcaster) to produce a commercial for the customer that is to be broadcast over the air. The television station charges its customer separately for (1) producing the commercial, (2) the airtime during which the commercial is broadcast, and (3)

a duplicate tape of the commercial that is supplied to the customer. Are any of these charges subject to sales tax?

(A) Yes. The exemptions for regular broadcasters apply to certain items or services purchased by a broadcaster to produce or transmit programs. Here, a regular broadcaster (the television station) is charging the customer for producing, airing, and making a duplicate tape of a commercial. If a duplicate tape of the commercial is delivered to the customer in New York State, the receipts from the sale of the tape are subject to sales tax because this constitutes a taxable sale of tangible personal property. The receipts from the service of providing air time for the airing of the commercial is not subject to sales tax as this service is not enumerated as subject to sales tax under the Tax Law. The broadcaster's purchase of the blank tape that becomes the duplicate tape of the commercial that is delivered to the customer constitutes a purchase for resale and is therefore exempt from sales tax. Also, the purchase of tangible personal property, such as the raw tape that is used to produce the duplicate tape of the commercial, may be exempt from sales tax based on the exemptions related to the production of a film for sale as provided in section 1115(a)(39) of the Tax Law. (See page 10 of this publication and Publication 28, *A Guide To Sales Tax For The Film Industry* for more information.)

20. (Q) Is the purchase of telecommunications services by a regular broadcaster, including services to use a dedicated fiber optic cable, exempt from sales tax when the services are used more than 50% of the time to transmit programming?

(A) No. Telecommunications services are not included in the exemptions afforded to regular or system broadcasters. Therefore, the purchase of telecommunications services, including services to use a dedicated fiber optic cable to transmit programming, are subject to sales tax under section 1105(b)(1)(B) since it constitutes a purchase of telephony or telegraphy or a telephone or telegraph service.

21. (Q) Is the purchase or lease of fiber optic cable by a regular broadcaster, without the provision by the seller/lessor of the equipment or other means necessary to light or activate the cable (dark fiber optic cable), where the cable is used directly and predominantly to transmit programming by the broadcaster, exempt from sales tax?

(A) Yes. If the purchased or leased dark fiber optic cable constitutes tangible personal property and is used directly and predominantly to transmit programming by the regular broadcaster, it is exempt from sales tax. (It should also be noted that if a regular or system broadcaster leased dark fiber optic cable that is installed in a manner that results in the dark fiber optic cable constituting real property, the lease of the cable would constitute the lease of real property which is not subject to sales tax).

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From areas outside the U.S. and outside Canada:	(518) 485-6800



Hotline for the hearing and speech impaired:

If you have access to a telecommunications device for the deaf (TDD), contact us at 1 800 634-2110. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.