



State Sales Tax Exemption for Clothing and Footwear Costing less than \$110 is Restored Effective April 1, 2012

Clothing sold for less than \$110 per item and footwear sold for less than \$110 per pair will be exempt from the **state's** sales and use taxes beginning April 1, 2012.

State clothing and footwear sales tax exemption

Beginning April 1, 2012, clothing, footwear, and items used to make or repair exempt clothing¹ sold for less than \$110 (per item of clothing or per pair of footwear) will be exempt from the state's 4% sales and use tax (sales tax). The exemption will also apply to the 3/8% state sales tax only in those localities in the MCTD² that provide for the exemption from their local sales tax.

For the period April 1, 2011, through March 31, 2012, clothing and footwear sold for less than \$55 per item of clothing or per pair of footwear were exempt from the state's 4% sales tax and the 3/8% state sales tax in the MCTD.

County and city clothing and footwear sales tax exemption

A county or city can elect whether or not to participate in the sales and use tax exemption for clothing and footwear costing less than \$110 per item or pair for purposes of its local sales tax.

A county or city may change its election to provide or not provide the exemption; however, any change can take effect only on March 1 of each year.

See Publication 718-C, *Sales and Use Tax Rates on Clothing and Footwear*, for the current listings of which counties and cities exempt clothing and footwear, as well as the applicable rates of tax on clothing and footwear in counties and cities that do not exempt these items.

¹ For purposes of this TSB-M clothing, footwear, and items used to make or repair exempt clothing are referred to as clothing and footwear.

² The Metropolitan Commuter Transportation District (MCTD) consists of the City of New York and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester.

Transitional provisions relating to clothing and footwear sales

Orders for clothing and footwear

Merchandise that is ordered by mail, telephone, the Internet, or e-mail is taxed at the rate in effect on the date the order is accepted by the vendor, regardless of when the order will be delivered. 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 or assigning an order number to an order. Accordingly, the state and local exemption in effect on the date the order is accepted will apply.

Rain checks

Sales tax on any purchase made with a rain check is based on the rate in effect at the time of the purchase, without regard to when the rain check was issued. Accordingly, any state and local exemption in effect at the time of purchase will apply.

Layaway sales

In a layaway sale, 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. If a vendor and a customer enter into a contract for a layaway sale of eligible clothing or footwear before April 1, 2012, the state and local exemption in effect at the time the layaway contract is entered into will apply if:

- the customer makes a deposit of at least 10% of the purchase price, and
- the merchandise is segregated from other inventory.

If a vendor and a customer enter into a contract for a layaway sale of eligible clothing or footwear on or after April 1, 2012, the state and local exemption in effect at that time will apply.

Returns and exchanges

If a customer purchases eligible clothing or footwear before April 1, 2012, and pays tax on the purchase, and then returns the item and receives a store credit or is allowed to purchase an exempt item on or after April 1, 2012, the tax paid on the purchase of the initial item can be refunded or credited. This is because the original sale was canceled.

If a customer purchases exempt clothing or footwear, and later returns the item for an exchange, there will be no tax due as long as the item is exchanged for another exempt item. If the customer returns the original item and receives a credit, or is allowed to purchase a different item that is not eligible for the exemption, the applicable sales tax will apply to the sale of the newly-purchased item. For example, if a customer buys a pair of exempt shoes and returns them

for store credit, and then uses the credit to purchase an umbrella, tax is due on the full price of the umbrella.

Additional Information

A complete description of the clothing and footwear exemption and a listing of exempt and taxable items is provided in TSB-M-06(6)S, *Year Round Sales and Use Tax Exemption of Clothing, Footwear, and Items Used to Make or Repair Exempt Clothing*.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. 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 presented in a TSB-M.