



Film Production in New York State

Introduction

This bulletin explains how New York State and local sales and use taxes apply to film production activities. It provides general information for film producers on what property and services are exempt from tax as they relate to film production.

In addition, this bulletin explains the difference between a *license to use or exhibit* and a *right to reproduce*. It also explains how that difference affects the taxability of films produced in New York State.

This Tax Bulletin is intended to provide basic information. See [Publication 28, A Guide to Sales Tax for the Film Industry](#), for additional details, including a chart detailing the taxable status of various expenses incurred when making a film and frequently asked questions (FAQs).

Producing a film

The term *film* includes, but is not limited to:

- feature films
- television films
- commercials
- documentary films and shorts
- similar film and video productions

Film production activities that are eligible for the exemption from sales tax are:

- pre-production
- production
- post-production
- sale and distribution

Pre-production

Pre-production involves all activities engaged in before the shooting of a film. Sometimes these activities are referred to as *above-the-line costs*.

Pre-production includes:

- obtaining story rights
- writing the script
- hiring talent, producers, and directors
- arranging schedules
- creating a budget

Production

Production involves the entire process of recording a film. The actual shooting may take place either on location or at a film studio.

Production includes:

- construction of sets
- obtaining props
- stage and location rentals
- wardrobe creation

Post-production

Post-production involves the editing, dubbing, and mixing of a film. It consists of the entire process by which the individual actions recorded during production are transformed into the final release print.

Post-production includes:

- selecting recorded images
- editing work prints, rough cuts, and visual/audio masters
- incorporating sound, special effects, and credits

Sale and distribution

Sale and distribution involves all activities that consist of getting the final release print ready for actual sale. Marketing activities are considered part of distribution.

Distribution includes:

- hiring a publicist
- placement of advertisements in newspapers
- selecting photograph stills used for advertising
- creating press kits

Exemptions for film production

Film producers engaged in the film production activities described above can make tax-exempt purchases of:

- tangible personal property used directly and predominantly to produce a film for sale;
- services to property used directly and predominantly to produce a film for sale; and
- utilities used directly and exclusively to operate equipment when producing a film for sale.

These exemptions and exclusions apply even if the resulting film is delivered in an intangible form (for example, when a film is delivered electronically).

A film producer must register for New York State sales tax purposes to claim exemptions from sales tax. See Tax Bulletin [How to Register for New York State Sales Tax \(TB-ST-360\)](#).

Tangible personal property

A film producer can purchase, lease, or rent exempt from sales tax machinery or equipment, as well as parts, tools, and supplies, used **directly and predominantly** in the production of a film for sale.

Directly means that the property is actually used in the production of the film or has an active, causal relationship to the production of the film for sale.

Predominantly means that the property must be used more than 50% directly in the production of the film for sale.

Items eligible for the exemption include:

- cameras and accessories, such as lenses
- layouts and designs
- materials used in set construction
- dollies, including grips and tracks
- props, including prop vehicles
- wardrobe purchases or rentals and makeup supplies

Example: A film company rents a truck for three months to be used in the production of a film for sale. The truck is used 40% of the time to transport equipment to and from shooting locations, and 60% of the time to carry the main camera and cameramen during actual filming. The rental of the truck qualifies for the film production exemption, as carrying the camera and cameraman during filming is considered part of the production process.

The exemptions for tangible personal property **do not apply** to property used in administrative activities, including but not limited to:

- sales promotions
- general office work
- ordering and receiving materials
- making travel arrangements
- preparing shooting schedules, work, and payroll records

Services

A film producer can purchase exempt from sales tax services to tangible personal property used directly and predominantly in the production of a film for sale. These services include:

- producing, fabricating, processing, printing, and imprinting property that you furnish to the provider of these services; and
- installing, maintaining, servicing, or repairing property that is used in producing a film for sale.

For example, film processing services and film editing services performed for a film produced for sale are exempt from sales tax. Also, the installation on a motor vehicle of a camera used in making a film for sale is exempt from sales tax.

Utilities, utility services, and fuel

The following utilities and utility services purchased for use or consumption **directly and exclusively** in the production of a film for sale are exempt from tax:

- gas
- electricity
- refrigeration
- steam
- fuel
- gas, electric, refrigeration, and steam service of whatever nature

With respect to utilities, *directly* means the gas, electricity, refrigeration, fuel, or steam (and like services), must be used during the production of the film to:

- operate exempt production machinery or equipment,
- create conditions necessary for production, or
- perform an actual part of the production process.

Exclusively means that gas, electricity, refrigeration, fuel, and steam (and like services) are used 100% directly in the production process.

Examples of **exempt** utility and fuel usage include:

- electricity used or consumed by set lighting equipment;
- motor fuel or diesel motor fuel used or consumed in an automobile while used as a prop in a commercial.

Examples of **taxable** utility and fuel usage include:

- electricity used or consumed in a mobile trailer maintained for actors;
- electricity used or consumed to light and heat a temporary or permanent office; and
- motor fuel or diesel motor fuel used or consumed in a motor vehicle that carries equipment from location to location.

Purchases for resale

Certain purchases that a film producer makes may qualify as purchases for resale. You may purchase materials, and services to these materials, exempt from tax when they become a component part of the film for sale. The purchase of negative raw film stock, as well as any services associated with developing it, may be exempt as purchases for resale.

Forms to use

Use [Form ST-121](#), *Exempt Use Certificate*, to purchase exempt tangible personal property, services, and utilities. For motor fuel and diesel motor fuel used in film production, you must pay the sales tax at the time of purchase, and claim a refund using [Form FT-500](#), *Application for Refund of Sales Tax Paid on Petroleum Products*.

If you are purchasing materials or services to materials that become a component part of the film, complete [Form ST-120](#), *Resale Certificate*, and give it to your supplier.

If you pay tax on any purchase or rental of tangible personal property that was used directly and predominantly in producing a film for sale, you may apply for a refund directly from the Tax Department by filing [Form AU-11](#), *Application for Credit or Refund*, within three years from the date the tax was due and payable. See also, Tax Bulletin [How to Apply for a Refund of Sales and Use Tax \(TB-ST-350\)](#).

Selling a film

Sales and use tax is imposed on the **total selling price** of a film sold in a tangible form, unless otherwise exempt. The person selling the film is responsible for collecting the sales tax. The sales tax rate is the rate in effect in the taxing jurisdiction where the film is delivered. A film is considered to be delivered where the original negative is delivered.

The materials used for exhibition in theaters or for distribution by cable or broadcast (for example, release prints, dupes, or other release copies), may be in the form of a film or tape, as well as CDROMs, Digital Video Disks (DVDs) and any other medium, both analog or digital. The sale of these materials is considered separate and apart from the sale of the film.

No New York sales tax is due on a film delivered out of state. Also, a film is not taxable when the film is delivered in an intangible form, whether the delivery takes place in or out of New York State.

License to use or license to exhibit

A *license to use* or *license to exhibit* means the granting of a right or license to exhibit a film to the public. Sometimes a film producer will not sell a film outright, but instead will grant a distributor a license to use or license to exhibit. In this case, the producer must collect sales tax unless the distributor has acquired the license for resale. If this happens, the distributor must complete [Form ST-120, Resale Certificate](#), and give it to the producer.

The granting of a license to exhibit or license to use is not taxable when the film is delivered in an intangible form, whether the delivery takes place in or out of New York State.

Right to reproduce

In some instances, a producer will grant a right to reproduce a film. The granting of a right to reproduce is neither a sale nor a license to use or exhibit. Therefore, granting a right to reproduce is not subject to tax.

However, if a producer makes a film intending to grant a right to reproduce it, rather than selling or licensing the film for distribution, the producer is not making a film for sale. Therefore, sales tax must be paid on all purchases of tangible personal property used in the production of the film, as well as services to that property, and all fuel, utilities, and utility services used in connection with the production of the film.

If a producer makes a film with the intent of granting both a right to reproduce to one or more parties, and a license to exhibit or use to one or more other parties, then the producer will be entitled to purchase qualifying tangible personal property and services used in producing the film exempt from sales and use taxes.

Note: A Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

References and other useful information

Tax Law: Sections 1115(a)(12) and 1115(a)(39)

Regulations: Sections 526.7, 528.13 and 528.22

Publications:

[Publication 28](#), *A Guide to Sales Tax for the Film Industry*

Bulletins:

[How to Apply for a Refund of Sales and Use Tax \(TB-ST-350\)](#)

[How to Register for New York State Sales Tax \(TB-ST-360\)](#)

[Miscellaneous Personal Services and Related Sales in New York City \(TB-ST-575\)](#)