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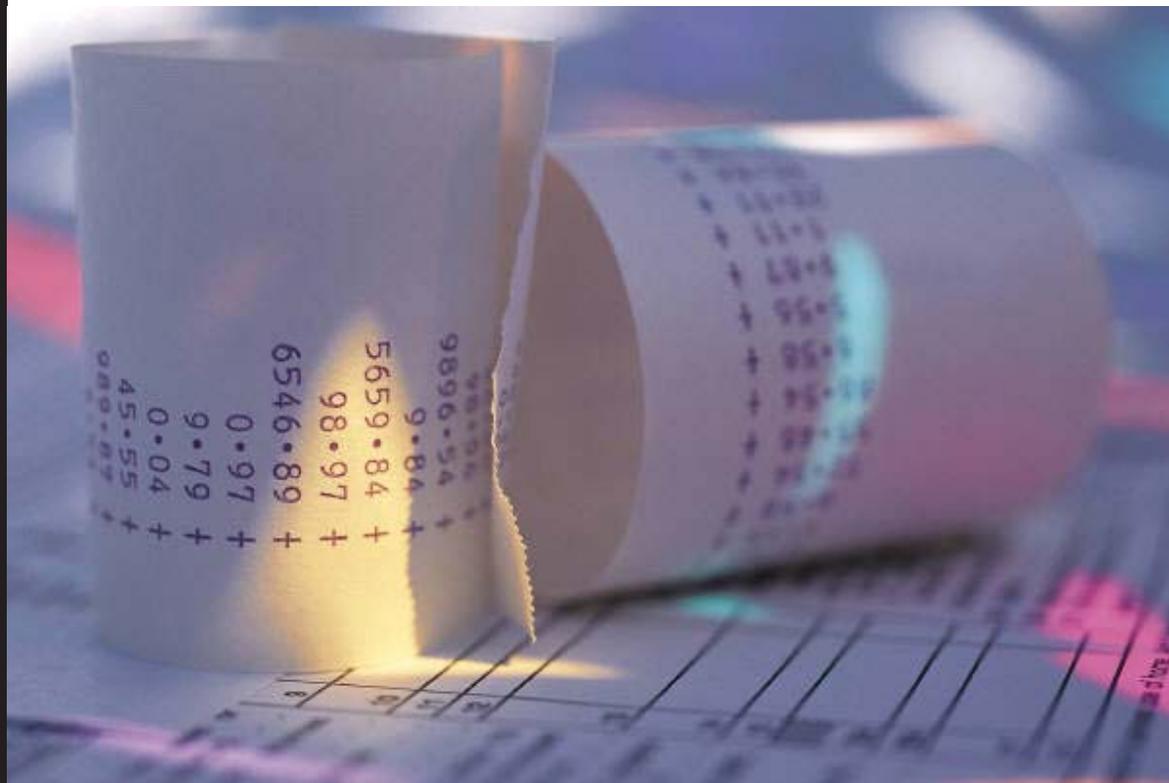
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SALES & USE TAX GUIDELINES FOR

PENNSYLVANIA, NEW JERSEY AND NEW YORK



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P R E F A C E

These Guidelines contain important information on the Sales & Use Tax regulations and the effect of court decisions for the states of Pennsylvania, New Jersey, and New York.

Highlights of this Guidelines publication include:

- o NEXUS criteria: Should you register to do business in other states?
- o “What if” situations (including use of a mail house)
- o Internet transactions
- o Status of the Streamlined Sales and Use Tax Agreement
- o Compilation of exemption forms and NEXUS Questionnaires

Respectfully Submitted,

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INTRODUCTION

This document represents an effort to catalogue various sales and use tax regulations impacting the printing and graphic communications industry in the states of Pennsylvania, New Jersey and New York. Its purpose is to provide practical guidance in day-to-day situations for the members of the Graphic Arts Association (representing Pennsylvania, southern New Jersey, and Delaware) and the Printing Industries Alliance (representing New York State, northern New Jersey, and northwestern Pennsylvania).

We believe the information contained herein reflects the current status of the regulations, giving effect to actual court rulings and guidance provided by the Sales and Use Tax Departments of Pennsylvania, New Jersey and New York.

Comments are supplied where there is sufficient information available to support an interpretation. We did not speculate on issues which lack official guidance. To avoid misinterpretation in these "gray" areas, we cited or paraphrased the actual "general" regulations.

This document is not intended, and cannot be considered, to provide legal advice. In specific cases, the actual facts and circumstances will control. Should you need legal advice, please seek it from an attorney.

Periodically, the states will issue further rulings and regulations to clarify or amend the contents of this manual. Association members should consult their state tax departments to obtain guidance based on the latest available information.



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Krupnick provides a full range of services to businesses and individuals in the following areas:

- Mergers and Acquisitions
- Business Valuation
- Business and Strategic Planning
- Financial Planning
- Accounting and Auditing
- Personal Financial Planning
- Sales Tax Consulting
- Tax Return Preparation, Planning, and Advice
- Management Information Systems
- Employee Benefit Plan Consulting and Accounting

His professional memberships include:

- Printing Industries of America (PIA), and regional affiliates.
- National Association for Printing Leadership (NAPL)
- American Institute of Certified Public Accountants (AICPA)
- The ESOP Association (Employee Stock Ownership Plan)
- National Association of Certified Valuation Analysts (NACVA)
- Numerous State Certified Public Accountant associations

MargolisBecker, LLC is the nationally known business and management advisory specialist in the graphic communications industry. We offer services including strategic planning, business valuations, mergers and acquisitions, turnaround management, accounting, auditing and tax compliance; and are the preparers of the PIA financial Ratios Studies.

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NEXUS

Beware if transacting business with out-of-state customers. State governments are increasingly taking aggressive positions with unregistered out-of-state vendors in pursuit of tax revenue. Their legal right to proceed against out-of-state companies for uncollected sales taxes (or, for that matter, corporate income taxes) is not clear in all cases.

What is clear is that a nexus (or connection) must be established before out-of-state vendors must register as a dealer/vendor and collect sales tax from out-of-state customers. To establish nexus, certain subjective criteria must exist. For example:

- Do you have a sales office, warehouse or other place of business in the state?
- Are there sales people soliciting within the state on a regular, active and systematic basis?
- Does your company truck regularly deliver to customers in the state?
- Do you place advertisements in local publications within the state?

If the weight of evidence shows that you have a “presence” within the state, then Nexus is established and you should register and collect sales tax in that state.

If you are transacting business out-of-state, the safest course of action is to register as a dealer/vendor in that jurisdiction and collect sales taxes as appropriate; otherwise, you could be held liable for the uncollected taxes.

[See Appendix, Section VII, for state NEXUS Questionnaires].

SECTION I: PENNSYLVANIA

SECTION I: PENNSYLVANIA

PART A: YOUR RESPONSIBILITY AS A **SELLER**

PENNSYLVANIA

I. YOUR RESPONSIBILITY AS A **SELLER**, IF YOU ARE LOCATED IN PENNSYLVANIA

NOTE: A sales tax obligation exists when and where title passes. Title passes at destination: where goods are dropped-off, picked-up, or the mailing address of the recipient. (If mailed, the location of the post office is irrelevant).

A. Charging of Tax:

Sales tax is to be charged on every job, unless a valid, properly executed Pennsylvania Exemption Certificate (REV-1220) or evidence of a Direct Pay Permit is provided by the customer.

1. **Sales Tax Exemption** – possible reasons:

a. **Resale**, such as by a publisher or ad agency

b. **Charitable or Not-for-Profit Organization**

Applies to charitable organizations, non-profit educational institutions, religious organizations, volunteer firemen's organizations, and hospitals registered with the Department of Revenue, as purely public charities.

The exemption extends only to purchases billed directly to and paid by the charity. It does not include purchases for an unrelated trade or business.

The organization must present a **REV-1220 Exemption Certificate** containing the organization's exemption number beginning with the two digits "75."

c. **Government Agencies:** United States Government or the Commonwealth of Pennsylvania or its political subdivisions.

1. **Sales Tax Exemption** – possible reasons (continued):

- d. **Direct mail advertising literature or materials distributed through the US mail**, including mail order catalogues or electoral literature and materials. Related services for mailing, personalization and providing variable data are also exempt, as are costs of mailing envelopes, address labels, mailing lists, delivery costs and postage.

Direct mail advertising literature is defined as: “Tangible personal property which is intended to promote business interest, create goodwill, or engage the attention or interest of the prospective purchaser to whom it is distributed through the US mail. Such property includes but is not limited to *printed matter*, brochures, price lists, matchbooks, playing cards, calendars, pens, and similar materials, including the envelopes and address labels used in sending the literature and materials through the mail.”

Printed matter is defined as: “Books, booklets, letterheads, billheads, printed envelopes, folders, printed packages and packaging materials, advertising, circulars, programs, newspapers, magazines, periodicals, and similar items.”

Editor’s Note **Beware:** *To take advantage of this exemption, the customer must not furnish their own material (e.g., paper or cardboard) for printing (see examples below).*

Examples of printed matter not qualifying as direct mail advertising literature: (as denoted by Pennsylvania Department of Revenue):

1. **Sales Tax Exemption** – possible reasons / **Part d. Direct Mail Advertising Literature** (continued):

EXAMPLE 1:

Printer “A” imprints stamped envelopes and brochures not qualifying as direct mail advertising literature or material for his customer “B”. “A” furnishes stamped envelopes and paper for the brochures. The contract requires “A” to return the completed envelopes and brochures to “B” who in turn will mail them to his customers. “A” is required to collect sales tax upon his services for the envelopes, paper, printing charges and cost of delivering the envelopes and brochures to “B”. “A” may separately state the costs of the postage stamps which are not subject to tax.

EXAMPLE 2:

Printer “A” imprints stamped envelopes and brochures not qualifying as direct mail advertising materials or literature for customer “B”. “A” furnishes the stamped envelopes and paper for the brochures. The contract requires “A” to mail the envelopes and brochures to “B’s” customers. “A” is required to collect sales tax upon charges for the envelopes, paper, printing charges and stamps. The value of the stamps represents the delivery charges in conjunction with the sale.

EXAMPLE 3:

Printer “A” imprints paper for customer “X”. “X” supplies the paper. The letters are advertisements which will be mailed directly to “X’s” customers. This printing service does not qualify for the direct mail advertising exemption. Accordingly, “A” is required to collect sales tax on the total purchase price of the printing service.

The exemption relating to the purchase of direct mail advertising literature or materials and mail order catalogs is confined to transactions in which the printer provides both the printing service and the material to be imprinted. If the printer performs printing services upon paper, cardboard or other material furnished by the purchaser of the services or a third party, the charges are **subject to tax** even though the finished product qualifies as direct mail advertising literature or material or a mail order catalog.

Pennsylvania / Seller
(continued)

1. **Sales Tax Exemption** – possible reasons (continued):

e. **Periodicals**, if published at regular intervals not exceeding three months (at least 4 times per year) and which are circulated among the general public, containing matters of general interest and reports of current events published for the purpose of disseminating information of a public character or devoted to literature, the sciences, art or some special industry.

2. **Printer - Mail House Transactions: *Selected Scenarios***

Reminder: **Direct Mail printing is non-taxable.** (Refer to Section I: Pennsylvania, part I.A.1.d above).

Mail House Selection	Mailer's Location	Taxable Status
Printer is mailer or printer selects mailer	In State	Only pieces ultimately mailed to Pennsylvania addresses are taxable in Pennsylvania.
Printer is mailer or printer selects mailer	Out of State	Only pieces ultimately mailed to Pennsylvania addresses are taxable in Pennsylvania.
Customer selects mailer	In State	Only pieces ultimately mailed to Pennsylvania addresses are taxable in Pennsylvania.
Customer selects mailer	Out of State	Non-taxable to printer. Customer, if registered in PA, may be obligated for use taxes on pieces ultimately mailed to PA addresses.

[See "What If" Situations in Section IV].

3. Taxability of Other Services

The following services are stipulated as taxable or non-taxable in **Pennsylvania** even if separately stated on the invoice:

Separately Invoiced Services	Taxable?	Notes
Mailing of printed materials	Yes	Mailing is defined as a stand-alone service only if no printing is performed. Non-taxable if related to direct mail advertising.
Addressing and stamping	Yes	Non-taxable if related to direct mail advertising.
Personalization and providing of variable data for direct mail advertising	No	
Mail list maintenance	No	Non-taxable if no tangible personal property is delivered to the purchaser.
Website development, design, or hosting	No	Non-taxable if no tangible personal property is delivered to the purchaser.
Graphic design or banner advertising	No	Non-taxable if no tangible personal property is delivered to the purchaser.
Fulfillment of orders	Yes	
Delivery and postage	Yes	Non-taxable if related to direct mail advertising or other non-taxable sale (see below).

4. Delivery Costs

If the transaction is taxable, delivery costs are **taxable**, even if the following items are separately stated on the invoice:

- Shipping and handling
- Freight costs
- Postage

Editor's Note These charges are non-taxable, if the customer pays directly to, or is charged separately by, a third party.

Postage: If the customer pays for their own postage on a taxable sale, there is no tax on the postage (such as an indicia arrangement).

Pennsylvania / Seller
(continued)

B. Computation of Tax:

1. **Sales Tax Rate in Pennsylvania is 6.0%.** An **additional 1% tax** applies on goods shipped into the **City/County of Philadelphia or Allegheny County.**
2. **The selling price upon which tax shall be computed** is based upon the inclusion or exclusion of the following:

Items Included in Taxable Portion of Purchase Price:	Items Excluded from Taxable Portion of Purchase Price:
Property or service	Deposit charges for Returnable Containers.
Delivery Costs, including shipping and handling, freight and postage	Discounts or rebates.
Restocking charges for returned merchandise	
Amounts representing reimbursed costs (manufacturer's excise tax, gross receipts tax, fuel adjustment charges, mercantile tax, insurance, meals, lodging, mileage or similar)	

Pennsylvania / Seller
(continued)

B. Computation of Tax (continued):

3. **If a sale is cancelled or the customer receives a credit or refund**, the following regulations apply:

If:	Action:
Tax <u>has not</u> been remitted to Dept. and tax has been returned to purchaser or credited to purchaser's account	Seller shall deduct from the amount of gross and taxable sales for a reporting period, as sale or allowance, where in the same reporting period one of the following occurred: 1) Cancellation of contract of sale; 2) Property return; 3) Allowance for defective merchandise; 4) Exemption certificate is <u>presented by the purchaser to the seller.</u>
Tax <u>has</u> been remitted to the Dept. but tax <u>has not</u> been returned to the purchaser or credited to customer's account	Purchaser may file a claim for credit or refund with the Dept. for the tax within 2 years.
Tax <u>has</u> been remitted to the Dept. and tax <u>has</u> been returned to the purchaser or credited to customer's account	Purchaser may assign rights to the Seller for the tax remitted to the Dept. and the Seller may file for a refund or credit for the tax within 2 years. The Seller may deduct from the amount of gross and taxable sales for a reporting period, as sale or allowance, where in the same reporting period one of the following occurred: 1) Cancellation of contract of sale; 2) Property return; 3) Allowance for defective merchandise; 4) Exemption certificate is presented by the purchaser to the seller.

4. **Bad Debts** are not eligible for sales tax credits. Such tax remains due upon the original purchase price of the property sold.

C. Collection of Out-of-State Taxes (The Nexus Issue):

Nexus is established when a business has a physical presence within **Pennsylvania**, either through a physical building within the Commonwealth, property stored in **Pennsylvania**, or sales personnel soliciting sales in **Pennsylvania**.

1. **You are considered to have a "location"** or to be "actively engaged in business" in **Pennsylvania**, and thus liable for collecting **Pennsylvania** sales taxes, based on the following:

C. Collection of Out-of-State Taxes, part 1 (The Nexus Issue) (continued):

- a. **Maintaining a place of business in Pennsylvania**, including having, maintaining or using either directly or indirectly or through a subsidiary, representative or agent, an office, distribution house, sales house, warehouse, service enterprise or other place of business; or any agent of general or restricted authority or representative in **Pennsylvania**, regardless of whether the place of business, representative or agent is permanently or temporarily in **Pennsylvania**, or whether the person or subsidiary maintaining the place of business, representative or agent is authorized to do business in **Pennsylvania**.
- b. **Regularly or substantially soliciting orders in Pennsylvania**, regardless of whether orders are accepted within or outside **Pennsylvania**.
- c. **Delivery of printed materials into Pennsylvania** constitutes nexus and requires the out of state printer to register as a dealer in **Pennsylvania** and collect tax on goods shipped to **Pennsylvania** customers.

Editor's Note *Pennsylvania has no frequency of occurrence threshold to define "engaging in business": however, this provision is generally not enforced for "diminimus" activity (minor or infrequent occurrences).*

The mere delivery of goods in another jurisdiction without any service being performed does not constitute engaging in business. To take this position, a company must not have a location in, or salespeople going into, that jurisdiction.

SAFE HARBOR: *If there's even the slightest possibility that your activities might be interpreted as "engaged in business" or "maintaining a place of business" in a jurisdiction, the safest course of action is to register and collect tax. Given the continual possibility of governmental claims, this suggestion is a "safe position," not a consensus opinion in all cases.*

D. Internet Transactions:

1. **Access to the Internet:**

Computer services, including Internet access, are **exempt** from sales tax.

2. **Sale of goods purchased over the Internet** are treated the same as sales of tangible personal property and are subject to the rules of nexus and **Pennsylvania's** sales/use tax laws. Services are taxable if provided along with printed material, regardless of whether they are separately stated on the invoice.

3. **Sale of data, information or software downloaded from the Internet:**

The sale of all "canned" software, including updates, enhancements and upgrades, whether transmitted electronically or in a physical medium, is **taxable** as the sale of tangible personal property.

E. Statute of Limitations/Records Retention:

Pennsylvania has up to four (4) years (3 full calendar years plus the current year) to initiate proceedings for collection of unpaid sales and use taxes. If returns were not filed, or returns were willfully filed falsely or fraudulently, then assessments can be determined at any time.

Sales and use tax records must be maintained for four (4) years in **Pennsylvania** (3 years after the end of the calendar year to which the transactions relate).

SECTION I: PENNSYLVANIA

PART B: YOUR RESPONSIBILITY AS A **BUYER**

PENNSYLVANIA

I. YOUR RESPONSIBILITY AS A **BUYER**, IF YOU ARE LOCATED IN PENNSYLVANIA

A. Non-Taxable Items - Definitions:

Generally, materials purchased by a printer/manufacturer which are ***predominantly and directly*** used in the production process and/or **incorporated as components** into printed matter, are **non-taxable**.

Predominantly and directly is defined as being used greater than 50% of the time in the manufacturing process.

Printing is defined as “the performance of an integrated series of operations, engaged in as a business which is *predominantly and directly* related to the production of multiple copies of substantially similar printed matter.”

“*Property* is *predominantly* used in printing when, over a 12 month period, multiple copies are produced for 50% or more of the time or the total copies of printed matter, divided by the number of orders for substantially similar items, exceeds 50 or more copies.”

The *printer/manufacturer tax exemptions* also apply to those businesses (whether extinct or not) related to the printing industry including: “trade binding, engraving, silk screening, typography including advertising typographers, plate making, color separating, stereotyping, electrotyping, gravure cylinder making, photographic processing, and the business of manufacturing page mechanicals, camera ready copy, image carriers, or related or component items for sale to printers for use in their printing operations.”

Pennsylvania / Buyer
(continued)

A. Non-Taxable Items – Definitions (continued):

Examples of specific purchases that are **Non-taxable according to Pennsylvania:**

Non-Taxable Items in PA	Notes
Mixed Use Items, such as utilities and equipment	Non-taxable if its predominant use in manufacturing is greater than 50% of the time.
High Speed Copy Machines used for commercial use	Non-taxable if predominantly used to make 50 or more copies of an item.
Printing equipment, parts and supplies	Also includes computers, accessories, parts and supplies if used greater than 50% of the time in the manufacturing process
Repairs and maintenance	For manufacturing equipment only
Wiping towels	Non-taxable if used to prepare plates for the production process; but <i>taxable as maintenance supplies</i> if used to maintain the plates prior to or after the printing operation.
Protective equipment for employee use	Face masks, gloves, coveralls, goggles, etc.
Direct lighting fixtures	Non-taxable if attached to, or necessary to run, exempt machinery and equipment

Editor's Note *Proofing materials and related equipment: As of the writing of this document, there is uncertainty and ambiguity regarding their taxability, which we believe are **predominantly and directly** used in the manufacturing process, as well as integral in the testing and inspection of printed products throughout the production cycle.*

For all **non-taxable purchases**, a printer must provide its vendors with a valid, properly executed **REV-1220 Exemption Certificate**.

Pennsylvania / Buyer
(continued)

B. Taxable Items:

Examples of specific purchases that are **Taxable according to Pennsylvania:**

Taxable Items in PA	Notes
Mixed-use items, such as utilities and equipment	Taxable if predominant use is 50% or less in manufacturing.
Safety programs	Equipment and supplies used for safety and accident prevention programs.
Items used for warehousing and storage of printed products	Purchase of property used to store printed/manufactured products, including materials handling equipment.
Wiping towels	Taxable as maintenance supplies if used to maintain the plates prior to or after the printing operation; <i>Non-taxable if used to prepare plates for the production process.</i>

C. Use Tax:

In the event that you purchase taxable items and are not charged sales tax, you are still obligated for paying use tax. This may occur when purchases are made from out-of-state vendors. **The use tax should be determined and paid with the filing of your next sales and use tax return.**

Editor's Note **No reporting of use tax is an audit red flag.**

D. Statute of Limitations/Records Retention:

Pennsylvania has up to four (4) years (3 full calendar years plus the current year) to initiate proceedings for collection of unpaid sales and use taxes. If returns were not filed, or returns were willfully filed falsely or fraudulently, then assessments can be determined at any time.

Sales and use tax records must be maintained for four (4) years in **Pennsylvania** (3 years after the end of the calendar year to which the transactions relate).

SECTION I: PENNSYLVANIA

PART C: SSUTA – Multistate STREAMLINED SALES AND USE TAX AGREEMENT

Pennsylvania is currently **NOT** a member, although it continues to monitor the project.

[See “What Is the Streamlined Sales and Use Tax Project?” and the map of participating states in Section V, SSUTA, Streamlined Sales & Use Tax Agreement].

SECTION II: NEW JERSEY

SECTION II: NEW JERSEY

PART A: YOUR RESPONSIBILITY AS A SELLER

NEW JERSEY

II. YOUR RESPONSIBILITY AS A SELLER, IF YOU ARE LOCATED IN **NEW JERSEY**

NOTE: A sales tax obligation exists when and where title passes. Title passes at destination: where goods are dropped-off, picked-up, or the mailing address of the recipient. (If mailed, the location of the post office is irrelevant).

A. Charging of Tax:

Sales tax is to be charged on every job, unless a valid, properly executed New Jersey exemption certificate or Direct Pay Permit is provided by the customer. The Streamlined Sales and Use Tax Certificate of Exemption (Form ST-SST) may also be provided by the customer for use in multijurisdictional transactions.

1. **Sales Tax Exemption** – possible reasons:

a. **Resale**, such as by a publisher or ad agency

Resale Certificate Form ST-3 or Streamlined Sales and Use Tax Certificate of Exemption (Form ST-SST) is required to be provided by the customer.

1. **Sales Tax Exemption** – possible reasons / **Part a. Resale** (continued):

Printing and publishing services purchased by customers for use out of state are not subject to **New Jersey** sales or use tax if the finished product is delivered out of state by the seller. If the finished product is picked up in **New Jersey**, the sale is subject to **New Jersey** sales tax. **Exempt Use Certificate Form ST-4** or **Streamlined Sales and Use Tax Certificate of Exemption (Form ST-SST)** is required to be provided by the customer. (See item “d” below for rules on “direct mail” printing).

Resale Certificate for Non-New Jersey Vendors, Form ST-3NR or **Streamlined Sales and Use Tax Certificate of Exemption (Form ST-SST)** is required to be provided by **qualified** out-of-state customers if goods are picked up in **New Jersey** by the customer, in customer’s vehicle or by customer’s messenger. **Form ST-3NR** requires the person picking up the merchandise to provide acceptable identification (i.e., driver’s license of any state in the US, major credit card including photo, or any identification card which includes a number, photo and address).

b. Charitable or Not-for-Profit Organization

Applies to entities that have obtained tax immunity authorization from the Division of Taxation by the filing of **Form ST-5B**. Sales tax exemption may be claimed for any purchases made by the organization that are paid for with organizational funds.

Exempt Organization Certificate Form ST-5 is required to be provided by the customer.

c. Government Agencies

Applies to Federal, State of **New Jersey** and their instrumentalities, or local government entities, and the United Nations or any international organization of which the United States is a member.

1. **Sales Tax Exemption** – possible reasons / **Part c. Government Agencies** (continued):

Acceptable proof for exemption is a copy of a government purchase order or official contract on official government letterhead, and payment by government check or USA SmartPay Visa or Mastercard, not a card charged to an employee who gets reimbursed by the Federal government.

For government cash purchases of \$150 or less, **Exempt Use Certificate Form ST-4** is required to be provided and signed by a qualified government official.

Exemption also applies to certain purchases by foreign diplomatic and consular personnel residing in the US. Sales tax exemption cards are issued by the US Department of State, Office of Foreign Missions, and are for the sole benefit of the mission or individual identified on the card.

d. Direct mail advertising materials

Applies to direct mail material and related processing services delivered to out-of-state addresses.

“Direct mail” is defined as printed material delivered or distributed by US mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients. “Direct mail” includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. For example, if product samples are included with the printed material, it still is treated as direct mail. “Direct mail” does not include multiple items of printed material delivered to a single address (for example, a shipment of flyers in bulk to the purchaser).

“Processing services” are described as mailing, addressing and stamping, separating, folding, inserting, sorting, personalization, mail list maintenance, fulfillment, packaging and transporting to the point of shipment.

1. **Sales Tax Exemption** – possible reasons / **Part d. Direct mail advertising materials** (continued):

The customer should provide a direct mail form OR information to show the states in which the direct mail is to be delivered to recipients. Acceptable direct mail forms are the **New Jersey Exempt Use Certificate Form ST-4** or the **Streamlined Sales and Use Tax Certificate of Exemption (Form ST-SST)**.

If the purchaser provides a direct mail form, the seller shall be relieved of all obligations to collect, pay or remit the applicable tax and the purchaser shall be obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

If the purchaser provides information showing the states to which the direct mail is to be delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller shall be relieved of any further obligation to collect tax on any transaction for which the seller has collected tax pursuant to the delivery information provided by the purchaser. The purchaser may use **Form ST-4** or **Streamlined Sales and Use Tax Certificate of Exemption (Form ST-SST)** in order to document the allocation for out-of-state delivery.

If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information, the seller is required to collect sales tax on the entire amount.

The exemption for shipments out-of-state still applies even if first shipped into **New Jersey** and stored for subsequent delivery.

Editor's Note *The prorated cost of printed materials and related processing services which are mailed to **New Jersey** addresses (in state locations) are subject to New Jersey sales tax.*

1. **Sales Tax Exemption** – possible reasons (continued):

e. Newspapers, Magazines and Periodicals

Applies to newspapers and magazines sold by subscription, and membership periodicals distributed by nonprofit organizations, whether or not accessed electronically. **Resale Certificate Form ST-3** or **Streamlined Sales and Use Tax Certificate of Exemption (Form ST-SST)** is required to be provided by the customer.

Advertising to be published in a newspaper is also exempt. **Exempt Use Certificate Form ST-4** or **Streamlined Sales and Use Tax Certificate of Exemption (Form ST-SST)** is required to be provided by the customer.

2. **Printer - Mail House Transactions: *Selected Scenarios***

Mail House Selection	Mailer's Location	Taxable Status
Printer is mailer or printer selects mailer	In State	Only pieces ultimately mailed to NJ addresses are taxable in NJ.
Printer is mailer or printer selects mailer	Out of State	Only pieces ultimately mailed to NJ addresses are taxable in NJ.
Customer selects mailer	In State	Only pieces ultimately mailed to NJ addresses are taxable in NJ.
Customer selects mailer	Out of State	Non-taxable to printer. Customer, if registered in NJ, may be obligated for use tax on pieces ultimately mailed to NJ addresses.

[See "What If" Situations in Section IV].

3. **Taxability of Other Services:**

The following services are stipulated as taxable or non-taxable in **New Jersey even if separately stated on the invoice:**

Separately Invoiced Services	Taxable?	Notes
Mailing of printed materials	no	
Addressing and stamping	no	
Personalization and providing of variable data for direct mail advertising	no	
Sale of mailing lists	yes	Whether delivered in hard copy, as labels, or electronically; Non-taxable if related to exempt direct mail.
Mail list maintenance	no	
Web site development, design, or hosting	no	
Graphic design or banner advertising	no	,
Fulfillment of orders	yes	Non-taxable if exempt direct mail.
Delivery costs and postage	yes	Non-taxable if sale is non-taxable (see below).

4. **Delivery Costs:**

Delivery costs are **taxable**. The following charges are associated with the **taxable portion** of sales of printed materials, in accordance with the Multistate Streamlined Sales and Use Tax rules, even if these items are separately stated on the invoice:

- All costs of transportation
- Shipping, handling
- Postage

Editor's Note These charges are non-taxable, if the customer pays directly to, or is charged separately by, a third party.

Postage: If the customer pays for their own postage on a taxable sale, there is no tax on the postage (such as an indicia arrangement).

New Jersey / Seller
(continued)

B. Computation of Tax (what portion of your invoice is taxable):

1. **Sales Tax rate in New Jersey is 7%.**
2. **The selling price upon which tax shall be computed** is based upon the following items included or excluded from the taxable portion:

Items Included in Taxable Portion of Purchase Price:	Items Excluded from Taxable Portion:
Cost of property or service	Taxes imposed by the State.
All costs of transportation: Delivery Costs Shipping and Handling Postage	Discounts.
Labor and installation charges	Tangible personal property traded-in or exchanged.
Storage charges and fulfillment services	Finance charges to the purchaser.

3. **If a sale is cancelled or the customer receives a credit or refund**, the following regulations apply:

If:	Action:
Tax <u>has Not</u> been remitted to the State and tax has been returned to purchaser or credited to purchaser's account	Seller may deduct as a credit on next filed reporting Form ST-50 or 51, or apply for a refund on Form A-3730.
Tax <u>has</u> been remitted to the State but tax <u>has not</u> been returned to the purchaser or credited to his account	Seller may deduct as a credit on next filed reporting Form ST-50 or 51, or apply for a refund on Form A-3730.
Tax <u>has</u> been remitted to the State and tax <u>has</u> been returned to the purchaser or credited to his account	Seller may deduct as a credit on next filed reporting Form ST-50 or 51, or seller or purchaser may apply for a refund on Form A-3730.

4. **Bad Debts:** A deduction is allowable from taxable sales and reported on the return when the debt is determined to be uncollectible. If the bad debt amount exceeds the taxable sales, a refund claim may be filed within four (4) years from the due date of the return on which the bad debt could first be claimed.

C. Collection of Out-of-State Taxes (The Nexus Issue):

Nexus is established when a business has a physical presence within **New Jersey**.

1. **You are considered to have a "location"** or to be "actively engaged in business" **in New Jersey**, and thus liable for collecting **New Jersey** sales taxes, based on the following:
 - a. **Maintaining a place of business in New Jersey** (such as retaining employees, owning inventory or owning or leasing real property) and making sales to persons within **New Jersey** of taxable tangible property, digital property, or services.
 - b. **Regularly or substantially soliciting orders in New Jersey**, regardless of whether orders are accepted within or outside **New Jersey**. Persons who solicit business are defined as employees, independent contractors, agents or other representatives.
 - c. **Distribution of catalogues or other advertising matter within New Jersey**, especially when a vendor uses its own trucks to make deliveries into **New Jersey**.
2. **New Jersey/New York Combined State Sales & Use Taxes:**

*File **Form DTF-24, Application for New Jersey/New York State Simplified Sales and Use Tax Reporting**, to become a registered vendor in either state. **Form ST-20/21** will then be sent to you for remitting sales and use taxes on interstate transactions.*

Editor's Note ***New Jersey** has no frequency of occurrence threshold to define "engaging in business": however, this provision is generally not enforced for "diminimus" activity (minor or infrequent occurrences).*

The mere delivery of goods in another jurisdiction without any service being performed does not constitute engaging in business. To take this position, a company must not have a location in, or salespeople going into, that jurisdiction.

C. Collection of Out-of-State Taxes (The Nexus Issue, continued):

SAFE HARBOR: *If there's even the slightest possibility that your activities might be interpreted as "engaged in business" or "maintaining a place of business" in a jurisdiction, the safest course of action is to register and collect tax. Given the continual possibility of governmental claims, this suggestion is a "safe position," not a consensus opinion in all cases.*

D. Internet Transactions:

1. **Access to the Internet:**

Computer services, including Internet access, are **exempt** from state sales tax.

2. **Sale of goods purchased over the Internet** are treated the same as sales of tangible personal property through more traditional channels and, therefore, subject to the rules of nexus and **New Jersey's** sales/use tax laws.

3. **Sale of digital property, information or software downloaded from the Internet** is **taxable** and defined as electronically delivered medium such as books, mailing lists, and audio and video works and similar products, where the customer is granted a right or license to use, retain, or make a copy of such item. The sale of "canned" software, though, is **exempt**.

E. Statute of Limitations/Records Retention:

To proceed against a vendor for assessment of additional tax, the state has up to four (4) years in **New Jersey**. If a false or fraudulent return is filed with intent to evade tax, or if no return was filed, a tax assessment may be made at any time.

Sales and use tax records must be maintained for four (4) years in **New Jersey**.

SECTION II: NEW JERSEY

PART B: YOUR RESPONSIBILITY AS A BUYER

II. YOUR RESPONSIBILITY AS A BUYER, IF YOU ARE LOCATED IN **NEW JERSEY**

A. Non-Taxable Items:

Generally, materials purchased by a printer/manufacturer for use or consumption ***directly and primarily*** in the production process, are **non-taxable**.

(The manufacturing exemption is claimed by issuing **Exempt Use Certificate Form ST-4** and noting "8.29" as the statutory basis for exemption).

Specific purchases that are **Non-taxable according to New Jersey**:

Non-Taxable Items in NJ	Notes
Mixed Use Items	Machinery must be used more than 50% of the time to be considered <i>directly and primarily</i> used in production.
Component parts of the end product	
Printing equipment and related supplies	Also Includes high speed copiers used directly and primarily in production.
Protective equipment worn on the body	Necessary for work only, not suitable for general use, including safety shoes, uniforms, ear and hearing protectors, safety glasses, goggles, and belts.
"Printing and publishing production machinery, apparatus, or equipment used directly and primarily in publishing newspapers, and by a commercial printer in the production of tangible property for sale". <i>Editor's Note This would include computers.</i>	"Commercial printers include those businesses engaged in periodical, book, manifold business form, greeting card, or miscellaneous publishing and typesetting; photoengraving; electrotyping and stereotyping; and lithographic platemaking, including engraving, enlarging and development equipment, internal process cameras and news and other similar transmission equipment, composing and pressroom apparatus and equipment, binding apparatus and equipment, type fonts, lead, mats, ink, plates, conveyors, stackers, sorting, bundling, stuffing, labeling, and wrapping equipment and supplies for any of the foregoing".
Canned software downloaded from the Internet	

New Jersey / Buyer
(continued)

A. Non-Taxable Items / Specific Purchases (continued):

<p>Specific examples of exempt supplies include:</p>	<p>Acids Alcohol used a fountain solution Blanket wash Boxes Carbon tissue Cartons Color filters Color separations Custom dies and die cutting materials Dampener sleeves Dampening solution Developer chemicals Engravings Film used to photograph printing copy Ink Labels Latex gum Lettering Masking paper Offset plates Opaqueing ink Paper Plates Press blankets Press chemicals (etch) Press chemicals (press wash) Printing plates (all types) Proof paper Proofs and proof processing (all types) Protective gloves Reducers Roller covering Screen tints Shrink wrap Thermopowder Tissue overlays Toners Transparencies Varnishes Veloxes Wood mounts Wrapping paper Wrapping tape</p>
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New Jersey / Buyer
(continued)

B. Taxable Items:

Examples of specific purchases that are **Taxable according to New Jersey:**

Taxable Items in NJ	Notes
Items used for warehousing and storage of printed products	Shelving, racks, etc.
Repairs and maintenance service, installation or maintenance contracts	On manufacturing and non-manufacturing equipment.
Specific examples of taxable purchases include:	Stripping knives used to trim negatives or masking paper, filing envelopes used to file negatives, and tape dispensers for wrapping tape.

C. Use Tax:

In the event that you purchase taxable items and are not charged sales tax, you are still obligated for paying use tax. This may occur when supplies are purchased in another state, or via the internet, and then brought into **New Jersey**. If the tax paid on an out-of-state purchase was less than **New Jersey's** 7% sales tax and the other state has sales tax reciprocity with **New Jersey**, the difference must be remitted as use tax. **The use tax should be determined and paid with the filing of your next sales and use tax return.**

Editor's Note

No reporting of use tax is an audit red flag.

*File **Form DTF-24, Application for New Jersey/New York State Simplified Sales and Use Tax Reporting**, to become a registered vendor in either state. **Form ST-20/21** will then be sent to you for remitting sales and use taxes on interstate transactions.*

D. Statute of Limitations/Records Retention:

The state of **New Jersey** has up to four (4) years to initiate proceedings for collection of unpaid use taxes; but, if a false or fraudulent return is filed with intent to evade tax, or if no return was filed, a tax assessment may be made at any time.

Sales and use tax records must be maintained for four (4) years in **New Jersey**.

SECTION II: NEW JERSEY

PART C: SSUTA – Multistate STREAMLINED SALES AND USE TAX AGREEMENT

New Jersey IS a member, effective October 1, 2005.

[See “What Is the Streamlined Sales and Use Tax Project?” and the map of participating states in Section V, SSUTA, Streamlined Sales & Use Tax Agreement].

SECTION III: NEW YORK

SECTION III: NEW YORK

PART A: YOUR RESPONSIBILITY AS A SELLER

NEW YORK

III. YOUR RESPONSIBILITY AS A SELLER, IF YOU ARE LOCATED IN **NEW YORK**

NOTE: A sales tax obligation exists when and where title passes. Title passes at destination: where goods are dropped-off, picked-up, or the mailing address of the recipient. (If mailed, the location of the post office is irrelevant).

A. Charging of Tax:

Sales tax is to be charged on every job, unless a valid, properly executed New York Resale Certificate (Form ST-120) or Direct Payment Permit is provided by the customer.

1. **Sales Tax Exemption** – possible reasons:

- a. **Resale**, such as by a publisher of newspapers and periodicals. (Periodicals are defined as being published at least four (4) times per year, among other general criteria).

Resale Certificate Form ST-120 is required to be provided by the customer.

b. **Charitable or Not-for-Profit Organization**

Applies to organizations that have received **exempt** status (under section 1116) and are the direct purchaser and payer of record.

Exempt Organization Exempt Purchase Certificate (Form ST-119.1) is required to be provided by the customer.

1. **Sales Tax Exemption** – possible reasons (continued):

c. Government Agencies:

Applies to **Federal Government entities** and **New York State and local entities** when the governmental entity is the purchaser, user or consumer. A governmental purchase order is required to be provided.

Also applies to:

- The United Nations or any international organization of which the United States is a member
- An armed forces post or organization organized in **New York State**
- Diplomatic missions and personnel
- Certain Indian nations or tribes residing in **New York State**

d. Out-of-State Deliveries

Applies to all printed materials delivered outside of **New York State** for use outside **New York State**.

This provision specifically exempts “promotional materials” delivered in or outside **New York State**, services related to mailing lists for promotional materials, and storage of promotional materials (see III.A.1.e).

e. Printed Promotional Materials

Applies to materials ultimately mailed or shipped by common carrier or delivery service to end users of the customers, or their potential customers, for use in or outside New York State.

1. **Sales Tax Exemption** – possible reasons: / **Part e. Printed Promotional Materials** (continued):

Definition of Printed Promotional Materials:

Promotional materials include any advertising literature such as catalogs and brochures, and related tangible personal property (for example, annual reports, prospectuses, complimentary maps, other free gifts, applications, and order forms), and the envelopes used exclusively to deliver the promotional materials (including direct materials and outside costs necessary to produce exempt promotional materials). Account statements, invoices, or the envelopes used to deliver them are not promotional materials.

Sales Tax Exemption also applies to:

- Mailing list services related to the distribution of promotional materials, such as addressing, labeling, inserting, mailing and related materials such as envelopes, labels and mailing lists.
- Charges for storage of printed promotional materials

The exemption does not apply and the following promotional materials are **taxable**:

- Printed promotional materials delivered in **New York State** by a means other than common carrier or delivery service.
- Free gifts, product samples, and other non-printed promotional materials delivered in **New York State**.

Editor's Note

*Deliveries to a customer location or retail store for customer's use or give away are **taxable**. The printer's customer must not charge the ultimate recipient for the printed materials or for the related mailing or shipping costs.*

*If delivery is by company vehicle, or if picked up by the customer, then the transaction is **taxable**.*

*If the materials are ultimately delivered out of state by common carrier or delivery service, and the customer provides the printer with appropriate documentation, then the transaction is **exempt**.*

New York / Seller
(continued)

1. **Sales Tax Exemption** – possible reasons: / **Part e. Printed Promotional Materials** (continued):

Exemption Certificate for Purchases of Promotional Materials (Form ST-121.2) is required to be provided by the customer.

2. **Printer-Mail House Transactions: *Selected Scenarios***

Mail House Selection	Mailer's Location	Taxable Status **
Printer is mailer or printer selects mailer	In State	Only pieces ultimately mailed to New York addresses are taxable in NY.
Printer is mailer or printer selects mailer	Out of State	Only pieces ultimately mailed to New York addresses are taxable in NY.
Customer selects mailer	In State	Fully taxable in NY.
Customer selects mailer	Out of State	Non-taxable to printer. Customer, if registered in NY, may be obligated for use tax on pieces ultimately mailed to NY addresses.

[See “What If” Situations in Section IV].

These transactions may be **exempt if they qualify as printed promotional materials, as defined as follows:

“Any **printed** promotional materials delivered by a common carrier, the US Postal Service, or a similar delivery service to a mailing address **within New York State**, are exempt from **New York State** sales and use taxes when a purchaser (directly or through a printer-mailer) delivers these materials to a customer or prospective customer **at no charge to the customer**”.

Alternative Model:

If mailing records are not adequate to show all mailing addresses in **New York State**, a sampling technique may be used, provided 10% of the list, or 5000, whichever is less, is sampled.

[See Appendix: Publication 831 for more information and examples].

3. Taxability of Other Services:

The following services are stipulated as taxable or non-taxable in **New York** even if the items are separately stated on the invoice:

Separately Stated Services	Taxable?	Notes
Mailing of printed materials	no	
Addressing and stamping	no	
Personalization and providing of variable data for direct mail advertising	yes	Unless qualifies as promotional materials.
Sale of mailing lists	yes	Unless qualifies as promotional materials.
Mail list maintenance	yes	Unless qualifies as promotional materials.
Web site development, design, or hosting	no	
Graphic design or banner advertising	no	Taxable if delivered in tangible form (such as a CD).
Fulfillment of orders	yes	
Printing of political campaign literature	yes	Taxable (by case law) since the end users are not considered purchasers or potential purchasers of the customer's products or services.
Transportation, delivery costs, postage	yes	Taxable only if sale is taxable (see below).

4. Delivery Costs:

Even if items are separately stated on the invoice, the following charges are **taxable**, as long as the transaction is taxable:

- Shipping and handling:
- Freight costs
- Postage

Editor's Note These charges are **non-taxable** if customer pays directly to, or is charged separately by, a third-party.

Postage: If the customer pays for their own postage on a taxable sale, there is no tax on the postage (such as an indicia arrangement).

New York / Seller
(continued)

B. Computation of Tax (what portion of your invoice is taxable):

1. **Sales Tax rate in New York State is 4%. The New York City rate is 4% plus a .375% transportation tax. Therefore the combined rate in New York City is 8.375%.**

Other counties and local jurisdictions impose separate sales tax rates.

[See Appendix for **New York State Sales and Use Tax Rates by Jurisdiction, Publication 718**].

2. **The selling price upon which tax shall be computed** is based upon the following items included or excluded from the taxable portion:

Items Included in Taxable Portion of Purchase Price:	Items Excluded from Taxable Portion:
Property or service.	Items delivered out-of-state for use out-of-state.
Labor and installation services.	Discounts.
Restocking charges (for returned merchandise.	Tangible personal property traded-in or exchanged.
Shipping, delivery and transportation charges including postage.	Shipping, delivery and transportation charges, including postage, are non-taxable, if for mailing or delivery of printed promotional materials (by USPS or delivery service, not company vehicle).
Storage charges, unless for printed promotional materials.	Finance charges to the purchaser.

B. Computation of Tax (continued):

3. **If a sale is cancelled or the customer receives a credit or refund**, the following regulations apply:

If:	Action:
Tax <u>has not</u> been remitted to Dept. and tax has been returned to purchaser or credited to purchaser's account.	Seller shall take a credit on the next filed sales tax return, if within three (3) years of the date the tax was payable.
Tax <u>has</u> been remitted to the Dept. but tax <u>has not</u> been returned to the purchaser or credited to their account.	Purchaser may file a claim for credit or refund within the later of three (3) years from date of filing the return, or two (2) years from the date of payment.
Tax <u>has</u> been remitted to the Dept. and tax <u>has</u> been returned to the purchaser or credited to their account.	Seller may file a claim for credit or refund within the later of three (3) years from date of filing the return, or two (2) years from the date of payment.

4. **Bad Debts:** A refund or credit is allowed for tax paid on uncollectible accounts.

C. Collection of Out-of-State Taxes (The Nexus Issue):

Nexus is established when a business has a physical presence within **New York**.

1. **You are considered to have a "location"** or to be "actively engaged in business" **in New York**, and thus liable for collecting **New York** sales taxes, based on the following:
 - a. **Maintaining a place of business in New York** (store, salesroom, sample room, showroom, distribution center, warehouse, service center, factory, credit and collection office, administration office or research facility).
 - b. **Own or rent real or personal property in the state.**
 - c. **Regularly or systematically soliciting orders in New York**, through salespeople, employees, independent contractors, or agents present within the state.

C. Collection of Out-of-State Taxes (The Nexus Issue) (continued):

- d. **Delivery of printed materials into New York** using a company vehicle more than 12 times a year.
- e. **Regularly and systematically distributing**, by mail or otherwise, advertising flyers or letters, including advertisements and telecommunications when receipts from the sales delivered into the state exceed \$300,000 and the number of sales exceeds 100.

2. **New York/ New Jersey Combined State Sales and Use Taxes:**

For New York vendors who have no business location in **New Jersey**, but who make taxable sales that are delivered in **New Jersey**.

File Form DTF-24, Application for New York/New Jersey State Simplified Sales and Use Tax Reporting, to become a registered vendor in either state. Form ST-20/21 will then be sent to you for remitting sales and use taxes on interstate transactions.

3. **New York/Connecticut Combined State Sales and Use Taxes:**

For **New York** vendors who have no business location in **Connecticut**, but who make taxable sales that are delivered in **Connecticut**.

[For registration information, obtain Connecticut publication 904.]

Editor's Note *The mere delivery of goods in another jurisdiction without any service being performed does not constitute engaging in business. To take this position, a company must not have a location in, or salespeople going into, that jurisdiction.*

SAFE HARBOR: *If there's even the slightest possibility that your activities might be interpreted as "engaged in business" or "maintaining a place of business" in a jurisdiction, the safest course of action is to register and collect tax. Given the continual possibility of governmental claims, this suggestion is a "safe position," not a consensus opinion in all cases.*

D. Internet Transactions:

1. **Access to the Internet:**

Computer services, including Internet access, are **exempt** from state sales tax.

2. **Sale of goods purchased over the Internet** are treated the same as sales of tangible personal property

3. **Sale of data, information or software downloaded from the Internet:**

The sale of all “canned” software is taxable. Music, artwork and computer graphics are **exempt**.

E. Statute of Limitations/Records Retention:

To proceed against a vendor for assessment of additional tax, the state has up to three (3) years in **New York**. If a willfully false or fraudulent return was filed with intent to evade tax, or if no return was filed, a tax assessment may be made at anytime.

Sales and use tax records must be maintained for a minimum of three (3) years from the due date of the return to which they relate, or the date the return is filed, if later.

SECTION III: NEW YORK

PART B: YOUR RESPONSIBILITY AS A BUYER

NEW YORK

III. YOUR RESPONSIBILITY AS A **BUYER**, IF YOU ARE LOCATED IN **NEW YORK**

A. Non-Taxable Items - Definitions:

Generally, materials purchased by a printer/manufacturer which are used ***directly and predominantly*** in the production process and/or **incorporated as components** of the final product, are **non-taxable**.

Directly and predominantly is defined as more than 50% of the time.

The production process begins when raw materials are received, and ends when the product is completed, packaged and ready for shipment or storage. Costs to transport the completed product from production for shipment or storage are **taxable**.

New York / Buyer
(continued)

A. Non-Taxable Items - Definitions (continued):

Specific purchases that are **Non-taxable according to New York:**

Non-Taxable Items in NY	Notes
Mixed-use items: Predominant manufacturing use vs. admin use.	Predominant use is defined as <i>more than 50%</i> of the time.
High speed Copy Machines used for manufacturing.	
Production equipment, parts, tools and supplies.	
Installation, maintenance and repair services.	Non-taxable if performed on exempt production equipment, parts, tools and supplies, though subject to local sales and use taxes if incurred outside of New York City. Non-taxable items include plumbing and electrical components, industrial wipes.
Production equipment rigging, erecting, connecting, dismantling, relocating .	
Activities of receiving, unloading and storage of raw materials.	Taxable, though, if raw materials are weighed, inspected, measured, tested or inventoried <i>before</i> placed in storage. The mere verifying of shipping counts <u>does not make these activities taxable.</u>
Utility costs.	Non-taxable if used <i>directly and exclusively</i> in the production process .Printer to provide vendor with exemption forms ST-121, FT-1012 or FT-1020. If mixed use, an allocation must be made to determine non-taxable portion. [See Appendix for formula examples].
Items used in Research and Development activities.	Equipment and utilities, etc.
Waste treatment equipment and filters.	Non-taxable if over 50% of waste (such as particulate dust and gases) result from production processes.
Labels and tags.	Non-taxable if used in packaging, shipping, mailing. Taxable if not permanently attached to product and not useful to customer/consumer after sale.
Pallitizer Systems.	Non-taxable if used <i>directly and predominantly</i> as part of production line. Taxable if predominant use is for storage then distribution of finished products.
Quality Control equipment and supplies.	Non-taxable if used <i>directly and predominantly</i> during the production process. Taxable if predominant use is to test the manufactured product after it is finished and ready for sale, or to test raw materials before they are stored.

New York / Buyer
(continued)

A. Non-Taxable Items - Definitions / Specific purchases that are **Non-taxable according to New York** (continued):

Safety apparel and supplies	Uniforms, safety shoes, gloves, eye shields, etc. that are indispensable for production and furnished to employees. If items are sold to employees, tax must be collected from employees.
Cartons, containers, and other packaging materials (see examples below**)	

**Examples of exempt cartons, containers, and other packaging materials:

Bags	Glue
Barrels	Gummed labels
Binding	Gummed tape
Bottles (including deposit bottles)	Kegs
Boxes	Lumber used for blocking
Cans	Pallets
Carboys	Reels
Cartons	Sacks
Cellophane	Spools
Coatings and other preservative material	Staples
Cores	Strapping
Crates	String
Cylinders	Tape
Drums	Twine
Excelsior	Wrapping paper

These materials must be transferred with the product to the customer and must become the property of customer to be **non-taxable**. Common **taxable** items are returnable cartons and pallets, and racking.

If these materials are not transferred to the customer, then they are **taxable** regardless of the taxability of the items being packaged, or if ultimately shipped outside of **New York**.

New York / Buyer
(continued)

A. Non-Taxable Items - Definitions / Specific purchases that are **Non-taxable according to New York** (continued):

For all non-taxable purchases, a printer must provide its vendors with a **Resale Certificate Form ST-120** (for raw materials, etc), **Exempt Use Certificate Form ST-121** (for equipment, consumable items, utilities, packaging materials, safety equipment, etc) or **Exempt Pay Permit Form AU-297**.

B. Taxable Items:

Examples of specific purchases that are **Taxable according to New York**:

Taxable Items in NY	Notes
Utility costs not used directly and exclusively in production.	To provide vendor an Exempt use Certificate Form ST-121, FT-1012, FT-1020 or Form FT-500 if requesting refund or credit. [See appendix for allocation formula examples].
Items used in activities before and after the production process.	Pertains to equipment, fuel, utilities. After production activities include storage/warehousing, loading or delivery of finished goods.
Items that are incidental or ancillary to the production process.	Purchasing, transporting and testing raw materials; office and collections; clerical work related to production, such as production and time records; general maintenance and janitorial services (to maintain production premises); hand cleaner and aprons.
Motor fuel (gasoline and liquefied petroleum gas) and diesel motor fuel.	If used <i>directly and exclusively</i> in the production process, refund may be claimed from State and local sales tax by filing Form FT-500 (Application for Refund of Sales Tax Paid on Automotive Fuels).
Tools used in general maintenance and repair of production equipment.	Non-taxable if used directly and predominantly in the production process.
Racking, returnable cartons and pallets.	
Storage charges.	Exempt if for non-taxable promotional materials.

[See Appendix for charts detailing **items exempt or taxable by a manufacturer in New York State, Publication 852**].

C. Use Tax:

In the event that you purchase taxable items and are not charged sales tax, you are still obligated for paying use tax. This may occur when supplies are purchased in another state, or via the internet, and then brought into **New York**. Use tax is also due on the cost of materials used to manufacture your own equipment not used directly and predominantly in the production process. **The use tax should be determined and paid with the filing of your next sales and use tax return.**

Editor's Note No reporting of use tax is an audit red flag.

D. Statute of Limitations/Records Retention:

To proceed against a vendor for assessment of additional tax, the state has up to three (3) years in **New York**. If a willfully false or fraudulent return was filed with intent to evade tax, or if no return was filed, a tax assessment may be made at anytime.

Sales and use tax records must be maintained for a minimum of three (3) years from the due date of the return to which they relate, or the date the return is filed, if later.

SECTION II: NEW YORK

PART C: SSUTA – Multistate STREAMLINED SALES AND USE TAX AGREEMENT

New York State is currently **NOT** a member.

[See “What Is the Streamlined Sales and Use Tax Project?” and the map of participating states in Section V, SSUTA, Streamlined Sales & Use Tax Agreement].

SECTION IV

EXAMPLES...WHAT IF SITUATIONS

What If Situations

EXAMPLE 1

What if: **SALE IS TAXABLE
PRINTER DELIVERY
(PRINTER REGISTERED IN SINGLE STATE)**

Printer in: State A/Registered in State A (only)

Customer in: State B

Mail house in: N/A

Job: Print 2,000 Brochures

Deliver to: Customer in State B

Via: Company truck

Price (*): \$10,000

Tax in: State A State B

Taxable amt: \$0 N/A

(*) Taxable price will include delivery costs and postage (if charged) on materials delivered to PA, NJ or NY and if the printer is registered in PA, NJ or NY.

NOTES:

- Beware, if registered in multiple states, each state may have differing rules for taxability of the same transaction.
- Beware of possible obligation to register and collect tax in other states (see NEXUS information).

**What If Situations
(continued)**

EXAMPLE 2

What if: **SALE IS TAXABLE
CUSTOMER PICK-UP
(PRINTER REGISTERED IN SINGLE STATE)**

Printer in: State A/Registered in State A (only)

Customer in: State B

Mail house in: N/A

Job: Print 2,000 Brochures

Deliver to: Customer pick-up in State A

Via: N/A

Price (*): \$10,000

Tax in: State A State B

Taxable amt: \$10,000 N/A

(*) Taxable price will include delivery costs and postage (if charged) on materials delivered to PA, NJ or NY and if the printer is registered in PA, NJ or NY.

NOTES:

- Beware, if registered in multiple states, each state may have differing rules for taxability of the same transaction.
- Beware of possible obligation to register and collect tax in other states (see NEXUS information).

**What If Situations
(continued)**

EXAMPLE 3

What if: **SALE IS TAXABLE
PRINTER DELIVERY
(PRINTER REGISTERED IN MULTIPLE STATES)**

Printer in: State A/Registered in States A, B AND C

Customer in: State B

Mail house in: N/A

Job: Print 2,000 Brochures

Deliver to: Customer

Via: Company Truck

Price (*): \$10,000

Tax in: State A State B State C

Taxable amt: N/A \$10,000 N/A

(*) Taxable price will include delivery costs and postage (if charged) on materials delivered to PA, NJ or NY and if the printer is registered in PA, NJ or NY.

NOTES:

- Beware, if registered in multiple states, each state may have differing rules for taxability of the same transaction.
- Beware of possible obligation to register and collect tax in other states (see NEXUS information).

**What If Situations
(continued)**

EXAMPLE 4

What if: **SALE IS TAXABLE
PRINTER DELIVERS JOB TO MAIL HOUSE IN-STATE
(PRINTER REGISTERED IN SINGLE STATE)**

Printer in: State A/Registered in State A (only)

Customer in: State B

Mail house in: State A/Agent of Printer ¹

Job: Print 2,000 Brochures
per mailing list: 200 delivered to State A

Deliver to: Mail House

Via: N/A

Price (*): \$10,000

Tax in: State A

Taxable amt: $200/2000 = 10\%$ of \$10,000 = \$1,000

(*) Taxable price will include delivery costs and postage (if charged) on materials delivered to PA, NJ or NY and if the printer is registered in PA, NJ or NY.

FACT CHANGE: If in-state mailer is agent of customer, the final destination is mail-house and 100% of job is taxable in printer's State A; unless customer provides printer with mailing information, then taxable amount = \$1,000 in State A.

NOTES:

- Beware, if registered in multiple states, each state may have differing rules for taxability of the same transaction.
- Beware of possible obligation to register and collect tax in other states (see NEXUS)

¹Agent of printer (e.g., selected by printer, mailer bills printer).
Agent of customer (e.g., selected by customer, mailer bills customer).

**What If Situations
(continued)**

EXAMPLE 5

What if: **SALE IS TAXABLE
PRINTER DELIVERS JOB TO MAIL HOUSE OUT-OF-STATE
(PRINTER REGISTERED IN SINGLE STATE)**

Printer in: State A/Registered in State A (only)

Customer in: State B

Mail house in: Outside of State A/Agent of Printer ²

Job: Print 2,000 Brochures
per mailing list: 200 delivered to State A

Deliver to: Mail House

Via: N/A

Price (*): \$10,000

Tax in: State A

Taxable amt: $200/2000 = 10\%$ of \$10,000 = \$1,000

(*) Taxable price will include delivery costs and postage (if charged) on materials delivered to PA, NJ or NY and if the printer is registered in PA, NJ or NY.

FACT CHANGE: If mailer is agent of customer, the final destination is mail house out-of-state; therefore taxable amount = zero.

NOTES:

- Mailer is agent of printer; therefore location of mail house is irrelevant. Final destination is each addressee in State A (state of registration). If no mailing list is provided, then 100% of job is taxable in Printer's State A.
- Beware, if registered in multiple states, each state may have differing rules for taxability of the same transaction.
- Beware of possible obligation to register and collect tax in other states (see NEXUS)

²Agent of printer (e.g., selected by printer, mailer bills printer).
Agent of customer (e.g., selected by customer, mailer bills customer).

**What If Situations
(continued)**

EXAMPLE 6

What if: **SALE IS TAXABLE
PRINTER DELIVERS JOB TO MAIL HOUSE IN ANY STATE
(PRINTER REGISTERED IN MULTIPLE STATES)**

Printer in: State A/Registered in State A, B and C

Customer in: Any state

Mail house in: Agent of Printer³

Job: Print 2,000 Brochures
 per mailing list: 200 delivered to State A
 200 delivered to State B
 200 delivered to State C
 1, 400 delivered to other states

Deliver to: Mail House

Via: N/A

Price (*): \$10,000

Tax in: State A State B State C

Taxable amt: \$1,000 \$1,000 \$1,000

$$200/2000 = 10\% \text{ of } \$10,000 = \$1,000$$

(*) Taxable price will include delivery costs and postage (if charged) on materials delivered to PA, NJ or NY and if the printer is registered in PA, NJ or NY.

FACT CHANGE: If mailer is agent of customer, final destination is state of mail-house. Therefore taxable amount =100% (if mail house is in state A, B or C, taxed in the state of mail house.) If a mailing list is provided, taxable amount is as per above example.

FACT CHANGE: If mailer is agent of customer and mail house is outside of state A, B, or C, then taxable amount = zero.

³Agent of printer (e.g., selected by printer, mailer bills printer).
Agent of customer (e.g., selected by customer, mailer bills customer).

What If Situations (continued)

EXAMPLE 6 (continued)

NOTES:

- Mailer is agent of printer; therefore location of mail house is irrelevant. Final destination is each addressee in State A, B and C (states of registration). If no mailing list is provided, then 100% of job is taxable to Printer's State A.
- Beware, if registered in multiple states, each state may have differing rules for taxability of the same transaction.
- Beware of possible obligation to register and collect tax in other states (see NEXUS information).

**What If Situations
(continued)**

EXAMPLE 7

What if: **SALE IS TAXABLE
PRINTER IS MAILER
(PRINTER REGISTERED IN MULTIPLE STATES)**

Printer in: State A/Registered in State A, B and C

Customer in: Any state

Mail house in: N/A

Job: Print 2, 000 Brochures
per mailing list: 200 delivered to State A
 200 delivered to State B
 200 delivered to State C
 1, 400 delivered to other states

Deliver to: Addressees

Via: Mail

Price (*): \$10,000

Tax in: State A State B State C Other States

Taxable amt: \$1,000 \$1,000 \$1,000 N/A

200/2000 = 10% of \$10,000 = \$1,000

(*) Taxable price will include delivery costs and postage (if charged) on materials delivered to PA, NJ or NY and if the printer is registered in PA, NJ or NY.

NOTES:

- Beware, if registered in multiple states, each state may have differing rules for taxability of the same transaction.
- Beware of possible obligation to register and collect tax in other states (see NEXUS information).

SECTION V

**SSUTA – STREAMLINED SALES AND USE
TAX AGREEMENT**

What Is the Streamlined Sales and Use Tax Agreement?

Organized in 2000, the **Streamlined Sales and Use Tax Project** objective is to simplify and modernize sales and use tax collection and administration in the United States. It arose in response to efforts by Congress to permanently prohibit states from collecting sales taxes on online commerce. Because such a ban would have serious financial consequences for the states, the project began as an effort to try to minimize the many differences between the sales tax policies and practices of states.

In a decision regarding mail order sales, the U.S. Supreme Court ruled in 1992 that mail-order retailers were not compelled to collect use tax and remit the tax to states, in part because of the complexities of doing so. With computers, however, the difficulties of doing so are much smaller today, so the remaining stumbling block lies in the variations among state sales taxes. Organizers of the project hope that by ironing out differences among state taxation levels, they will remove a major roadblock to the collection of taxes on online sales and convince Congress and the courts to allow them to collect these taxes regularly.

As of July 2008, there are 22 participating states. There are **19 full member states** (Arkansas, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Vermont, West Virginia, Washington, and Wyoming), which are states in compliance with the Streamlined Sales and Use Tax Agreement through its laws, rules, regulations and policies. There are **3 associate member states** (Ohio, Tennessee, and Utah) which are states in compliance with Streamlined Sales and Use Tax Agreement except that its laws, rules, regulations and policies to bring the state into compliance are not in effect but are scheduled to take effect on or before July 1, 2009; or are states that have achieved substantial compliance with the terms of the Streamlined Sales and Use Tax Agreement as a whole, but not necessarily each provision, and there is an expectation that the state will achieve compliance by July 1, 2009. There are **5 states with no sales tax** (Alaska, Delaware, Montana, New Hampshire and Oregon).

The project's organizers are setting up a system by which Internet e-commerce companies can voluntarily pay state taxes to the states in which their customers reside. The incentive being offered to companies is rather than try to work out how much tax a company owes for each locality, they can instead use a CSP (Certified Service Provider). In addition, "the states that are in compliance with SSUTA (Member States) will offer advantages to those sellers who use a CSP. Four companies have been designated Certified Service Providers for the project.

What is the Streamlines Sales and Use Tax Agreement (continued)

One such advantage is that the states will offer amnesty “from assessment for uncollected or unpaid sales or use taxes together with interest or penalty for sales made during the period the seller was not registered in that state.”

The agreement goes into effect when 10 states comprising at least 20% of the population (of states imposing a sales tax) have come into compliance. **This threshold has not yet occurred.** In any case, collection by sellers of sales and use taxes on remote (out-of-state) sales remains voluntary under the agreement until either Congress or the Supreme Court acts to make this collection mandatory.

(Excerpts from Wikipedia)

