

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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MARGO SEIBERT, JENNIFER MOORE,
CATHERINE O'NEIL, NATALIE BRASINGTON, and
TAJA-NIA HENDERSON, on behalf of themselves and
all persons similarly situated,

Plaintiffs,

v.

THE NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE, and JERRY BOONE
in his individual capacity and in his official capacity as the
Commissioner of the New York State Department of
Taxation and Finance,

Defendants.

-----X

Index No.:

Plaintiffs Designate
New York County
as the Place of Trial

SUMMONS

Plaintiffs' Address:
c/o Emery Celli Brinckerhoff
& Abady LLP
600 Fifth Avenue, 10th Floor
New York, New York 10020

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve
a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of
appearance, on the plaintiff's attorneys within 20 days after the service of this summons,
exclusive of the date of service (or within 30 days after the service is complete if this summons is
not personally delivered to you within the State of New York); and in case of your failure to
appear or answer, judgment will be taken against you by default for the relief demanded in the
complaint.

Dated: March 3, 2016
New York, New York

Respectfully submitted,

EMERY CELLI BRINCKERHOFF
& ABADY LLP

By: /s/_____

Ilann M. Maazel
Matthew D. Brinckerhoff
Zoe Salzman
600 Fifth Avenue, 10th Floor
New York, NY 10020
(212) 763-50000

Attorneys for Plaintiff

TO: NEW YORK STATE DEPARTMENT
OF TAXATION AND FINANCE
15 MetroTech Center
4th Floor
Brooklyn, NY 11201

NEW YORK STATE OFFICE
OF THE ATTORNEY GENERAL
120 Broadway
New York, NY 10271

Defendants

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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MARGO SEIBERT, JENNIFER MOORE,
CATHERINE O'NEIL, NATALIE BRASINGTON, and
TAJA-NIA HENDERSON, on behalf of themselves and
all persons similarly situated,

Plaintiffs,

Index No.:

v.

VERIFIED
CLASS ACTION
COMPLAINT

THE NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE, and JERRY BOONE in
his individual capacity and in his official capacity as the
Commissioner of the New York State Department of
Taxation and Finance,

Defendants.

-----X

Plaintiffs Margo Seibert, Jennifer Moore, Catherine O'Neil, Natalie Brasington, and
Taja-Nia Henderson (collectively "Plaintiffs"), on behalf of themselves and all others similarly
situated ("the Class"), by their attorneys Emery Celli Brinckerhoff & Abady LLP, as and for
their Verified Class Action Complaint allege as follows:

TIME TO END THE ILLEGAL TAMPON TAX

1. This is a class action to eliminate the "Tampon Tax" imposed by the New York
State Department of Taxation and Finance (the "Department") on women in New York State.
The tampon and sanitary pad sales tax violates New York law. It violates the Equal Protection
Clauses of the United States and New York Constitutions. It is a vestige of another era, and now
it is time to end it.

2. New York State does not tax medical items. But the Department imposes a
double standard when defining medical items for women and men. Medical products exclusively

for women are taxed. Medical products also used by men are not.

3. For example, the Department considers Rogaine, foot powder, dandruff shampoo, chapstick, facial wash, adult diapers, and incontinence pads to be medical items. These products are not taxed.

4. But medical items used *only* by women—tampons and sanitary pads—are taxed.

5. Tampons and sanitary pads are far more necessary to the preservation of health than Rogaine, dandruff shampoo, or many other products the Department considers medically exempt. The Department’s double standard for men and women finds no support in the tax law and serves no purpose other than to discriminate.

6. Justice Scalia once wrote for the Supreme Court that “A tax on wearing yarmulkes is a tax on Jews.”¹ A tax on tampons and sanitary pads is a tax on women. The Tampon Tax is irrational. It is discrimination. It is wrong. Defendants should be required to follow the law, and return the many millions of dollars they took illegally at the expense of women’s health.

PARTIES

7. Plaintiff Margo Seibert is a woman, age 31, who resides in the County of New York, New York. Ms. Seibert is a professional actor and the co-founder of *Racket*. (@weracket), a new organization with the mission of providing all women with a shame-free period, which raises awareness of inequities in access to feminine hygiene products and collects and donates tampons and pads to homeless women in New York City. Ms. Seibert has paid sales tax on her purchases of tampons and pads in New York State, including on March 1, 2016 in the County of New York, New York.

¹ *Bray v. Alexandria Women’s Health Clinic*, 506 U.S. 263, 270 (1993).

8. Plaintiff Jennifer Moore is a woman, age 45, who resides in the County of New York, New York. Ms. Moore is a programs coordinator for children's programs. Ms. Moore has paid sales tax on her purchases of tampons and pads in New York State, including on February 26, 2016, in the County of New York, New York.

9. Plaintiff Catherine O'Neil is a woman, age 43, who resides in the County of New York, New York. Ms. O'Neil is a writer, a mathematician, and a data scientist. Ms. O'Neil has paid sales tax on her purchases of tampons and pads in New York State, including on February 26, 2016 in the County of New York, New York.

10. Plaintiff Natalie Brasington is a woman, age 31, who resides in the County of New York, New York. Ms. Brasington is a professional photographer and a founder and producer of The Portrait Project at Art Start, a not-for-profit organization that works with New York City's underserved youth through consistent creative workshops inside homeless shelters, alternative to incarceration programs, and partnering youth agencies. Ms. Brasington has paid sales tax on her purchases of tampons and pads in New York State, including on March 1, 2016 in the County of New York, New York.

11. Plaintiff Taja-Nia Henderson is a woman, age 39, who resides in the County of New York, New York. Ms. Henderson is a professor. Ms. Henderson has paid sales tax on her purchases of tampons and pads in New York State, including on February 29, 2016 in the County of New York, New York.

12. All of the named Plaintiffs, as well as all members of the proposed Class, have paid sales tax on their purchases of feminine hygiene products in the State of New York in the past three years.

13. Defendant New York State Department of Taxation and Finance is an agency of

the State of New York organized under Section 170 of the New York Tax Law. The Department maintains offices throughout the State of New York. The Department is responsible for administering and enforcing the tax laws of the State of New York, including the administration and collection of sales tax and the administration of sales tax exemptions at issue in this case.

14. Defendant Jerry Boone is the Commissioner of the New York State Department of Taxation and Finance. He is sued in his personal and official capacities. As the principal officer of the Department, Commissioner Boone is responsible for administering and enforcing the tax laws, regulations, and policies of the State of New York, including the sales tax and sales tax exemptions at issue in this case.

15. The Department and Commissioner Boone created and enforce the “Guide to Sales Tax for Drugstores and Pharmacies” and the “Tax Bulletin for Drugstores and Pharmacies” that impose a double standard on women’s medical products.

JURISDICTION AND VENUE

16. The Court has jurisdiction over this combined action pursuant to its general jurisdiction under CPLR 901 *et seq.*, CPLR 3001 *et seq.*, and CPLR 7801 *et seq.*, as well as under 42 U.S.C. § 1983 and the Fourteenth Amendment of the United States Constitution and of Article I, § 11 of the New York Constitution.

17. Venue is proper in this county pursuant to New York CPLR 503 because Plaintiffs reside in New York County.

FACTS

Background on New York State Sales Tax Law

18. New York collects a sales tax of 4% on “every sale of tangible personal property” unless the product being sold fits within a statutory exemption. N.Y. Tax Law § 1105(a).

19. A long list of products is exempt from the sales tax. N.Y. Tax Law § 1115.
20. Products necessary to human health are exempt from the sales tax, including “drugs and medicines,” “medical equipment,” “medical supplies,” and “products consumed by humans for the preservation of health but not including cosmetics or toilet articles.” N.Y. Tax Law § 1115(a)(3).
21. The Department of Taxation and Finance enacted a regulation that specifies which products qualify for this health exemption. 20 N.Y.C.R.R. 528.4.
22. The regulation defines “drugs and medicines” to include “articles (other than food) intended to affect the structure or any function of the human body.” 20 N.Y.C.R.R. 528.4(b)(1)(ii).
23. The regulation defines “medical equipment” as “machinery, apparatus and other devices . . . which are intended for use in the cure, mitigation, treatment or prevention of illnesses or diseases or the correction or alleviation of physical incapacity in human beings.” 20 N.Y.C.R.R. 528.4(e)(1). As an example of “medical equipment” that is tax exempt, the regulation lists the “birth control device commonly known as an I.U.D. or intrauterine device.” *Id.*, Example 4.
24. The regulation defines medical “supplies” as “supplies used in the cure, mitigation, treatment or prevention of illnesses or diseases.” 20 N.Y.C.R.R. 528.4(g). As an example of “medical supplies” that are tax exempt, the regulation lists “bandages, gauze, and dressings.” *Id.*, Example 2.
25. The regulation defines “products consumed by humans for the preservation of health” to “include other substances used internally or externally, which are not ordinarily considered drugs or medicines.” 20 N.Y.C.R.R. 528.4(b)(3). As examples of such products that

are tax exempt, the regulation lists: “acne preparations, including acne soaps,” “dandruff shampoos,” “foot powders that eliminate excessive perspiration,” and “lip ice that treats or prevents chapped lips.” *Id.*, Examples 4, 5, 8, 9.

26. The Department of Taxation and Finance has published “A Guide to Sales Tax for Drugstores and Pharmacies” to further explain to drugstores and pharmacies “which retail sales are subject to sales tax and which are not.” Publication 840 (Aug. 1998), I (attached here as Exhibit A).² The Guide clarifies that the following products are also tax exempt under the medical exemption:

- Rogaine and other products “intended as a hair regrowth treatment for use by individuals who experience hair loss or gradual thinning of the hair.” *Id.* at 8, 10.
- Condoms and other forms of contraception. *Id.* at 8.
- Adult diapers, “incontinence liners, pads and pants.” *Id.* at 12.

27. In addition to the medical exemption, the Department has also chosen to exempt a whole host of other products from the sales tax, including: “fruit rollups,” the chocolate drink mixes “Quik” and “Ovaltine,” the soft drinks “Moola Koola” and “Tang,” “brownies,” “cookies,” “Clamato Juice Cocktail,” “potato chips,” “fudges,” “ice cream,” as well as all “sugar,” “sugar substitutes,” and “artificial sweeteners.” *Id.* at 26.

The Department Chooses to Tax Feminine Hygiene Products

28. Notwithstanding the broad definition of health products that qualify for exemption from the sales tax, the Department and its Commissioner have deliberately chosen to tax tampons and sanitary pads.

29. The Department’s Guide provides that “feminine hygiene products,” including

² Available at <https://www.tax.ny.gov/pdf/publications/sales/pub840.pdf> (last visited Feb. 25, 2016).

“tampons” and “sanitary napkins,” are “subject to sales tax” because, according to the Department, they are used “to control a normal bodily function and to maintain personal cleanliness.” Exhibit A at 9.

30. The Department reaffirmed this decision in 2014, when it published a Tax Bulletin for Drugstores and Pharmacies that listed “sanitary napkins or pads, tampons, and similar products” as “generable merchandise” subject to the sales tax. TB-ST-193 (Aug. 5, 2014) at 4 (attached here as Exhibit B).³ The Bulletin continued to list items such as foot powder, dandruff shampoo, chapstick, and facial wash as tax exempt. *Id.*

31. It is, however, undisputable that tampons and sanitary pads serve multiple medical purposes. They are not luxury items, but a necessity for women’s health.

32. Tampons, sanitary pads, and other feminine hygiene products are used to staunch the flow of menstrual blood and prevent encrustation and detritus.

33. Without access to tampons and sanitary pads, women are forced to use unsanitary and dirty rags—which can lead to infections and an increased risk of diseases such as cervical cancer—or have nothing at all to staunch the blood—which poses a risk to the health of women and the public.⁴

34. In addition to these obvious sanitary and health benefits, tampons and sanitary pads help prevent other illness and disease in women.

35. For example, a study at the Yale University School of Medicine found that the regular use of tampons decreased the risk of endometriosis, a disease in which endometrial tissue grows outside the uterus instead of inside it, causing severe abdominal pain, impaired fertility,

³ Available at https://www.tax.ny.gov/pdf/tg_bulletins/sales/b14_193s.pdf (last visited Mar. 2, 2016).

⁴ Jennifer Weiss-Wolf, *Helping Women and Girls. Period.*, N.Y. Times, Jan. 28, 2015, available at http://kristof.blogs.nytimes.com/2015/01/28/helping-women-and-girls-period/?_r=1 (last visited Mar. 2, 2016).

and an increased risk of ovarian cancer.⁵

36. For these reasons, the federal Food and Drug Administration (“FDA”) classifies tampons and sanitary pads as “medical devices.” 21 C.F.R. §§ 884.5425, 884.5435, 884.5460, 884.5470.

37. The Supreme Court of Illinois agreed, holding that tampons and sanitary napkins are “medical appliances” and therefore had to be exempt from the local sales tax.⁶

38. Under New York law, tampons and pads qualify as “products consumed by humans for the preservation of health.” 20 N.Y.C.R.R. 528.4(b)(3). Taxing tampons and pads is not substantially related to an important state interest and there is not even a rational basis for claiming—as the Department currently does—that Rogaine, adult diapers and incontinence pads, “acne soaps,” “dandruff shampoos,” “foot powders that eliminate excessive perspiration,” and “lip ice that treats or prevents chapped lips” are “products consumed by humans for the preservation of health”—while tampons and sanitary pads are not.

39. In addition, tampons and sanitary pads qualify as “medical equipment” because they are “devices” “which are intended for use in the cure, mitigation, treatment or prevention of illnesses or diseases.” 20 N.Y.C.R.R. 528.4(e)(1). Taxing tampons and pads is not substantially related to an important state interest and there is not even a rational basis for claiming—as the Department currently does—that an IUD is “medical equipment” used to prevent or treat disease, while tampons and pads are not.

40. Tampons and pads also qualify as medical “supplies” because they are “supplies

⁵ Erika L. Meaddough, David L. Olive, Peggy Gallup, Michael Perlin & Harvey Kliman, *Sexual Activity, Orgasm and Tampon Use Are Associated with a Decreased Risk for Endometriosis*, 53 Gynecologic and Obstetric Investigation 163 (2002), available at <http://www.karger.com/Article/Abstract/58368> (last visited Feb. 25, 2016).

⁶ *Geary v. Dominick’s Finer Foods, Inc.*, 129 Ill. 2d 389, 411 (1989).

used in the cure, mitigation, treatment or prevention of illnesses or diseases.” 20 N.Y.C.R.R. 528.4(g). Taxing tampons and pads is not substantially related to an important state interest and there is not even a rational basis for claiming—as the Department currently does—that “bandages, gauze, and dressings” used to stop the flow of blood from non-feminine parts of the body are “medical supplies,” while tampons and pads, used to stop the flow of blood from the uterus, are not.

41. There can be only one explanation for the Department’s decision to tax tampons and pads but not Rogaine, dandruff shampoo, foot powder, chapstick, and so many other less medically necessary products also used by men: feminine hygiene products like tampons and sanitary pads are used by women only, to treat women’s health issues only. As the Supreme Court has held, when a government action targets a protected class—in this case, women—and is this irrational, the intent to discriminate can readily be presumed.

Taxing Tampons and Pads Harms Women

42. On information and belief, the average woman spends at least \$70 per year on tampons and pads.⁷

43. On information and belief, menstruating women make up at least 25 percent of New York’s population of 20 million.⁸

44. On information and belief, by imposing a 4% sales tax on 5 million women paying \$70/year for tampons and pads, New York State collects approximately \$14 million each year by taxing women.

45. On information and belief, this represents less than one hundredth of one

⁷ Jennifer Weiss-Wolf, *Helping Women and Girls. Period.*, N.Y. Times, Jan. 28, 2015, *available at* http://kristof.blogs.nytimes.com/2015/01/28/helping-women-and-girls-period/?_r=1 (last visited Mar. 2, 2016).

⁸ U.S. Census Bureau, Quick Facts New York, *available at* <http://quickfacts.census.gov/qfd/states/36000.html> (last visited Mar. 2, 2016).

percent—just 0.0099%—of the total annual budget of the State of New York, which was \$142 billion for 2015-16.⁹

46. But this tax is burdensome for the women who have to pay it, particularly for women living in poverty or with a low income. For some, paying a 4% tax on a product that women *must* have (or risk infection, disease, loss of work, or worse) is a financial hardship.¹⁰

CLASS ACTION ALLEGATIONS

47. This action is brought as and may properly be maintained as a class action under the provisions of Article 9 of the CPLR.

48. The putative class is defined as women who reside in the State of New York and who have purchased tampons and/or sanitary pads, and paid sales tax on those purchases, in the State of New York within the statute of limitations period.

49. The members of this putative class are so numerous that separate actions or joinder of parties, whether required or permitted, is impracticable.

50. There are questions of law and fact common to the Class that predominate over any questions affecting only individual members of each class.

51. The principal common questions of law for the Class is whether Defendants violated the New York State Tax Law, the Fourteenth Amendment of the United States Constitution, and the Equal Protection Clause of the New York Constitution by charging sales tax on tampons and sanitary pads.

52. The principal common question of fact for the Class is that the members of the

⁹ Gov. Andrew M. Cuomo, Statement: Governor Cuomo Announces Highlights from the Passage of 2015-16 State Budget (Apr. 1, 2015), *available at* https://www.budget.ny.gov/pubs/press/2015/pressRelease15_enactedBudget.html (last visited Mar. 2, 2016).

¹⁰ Women also often have to pay a local sales tax, imposed by the county they reside in, on top of the 4% charged by the State. *See* Publication 718: New York State Sales and Use Tax Rates by Jurisdiction (Dec. 1, 2015), *available at* <https://www.tax.ny.gov/pdf/publications/sales/pub718.pdf> (last visited Mar. 2, 2016).

Class were all charged the same sales tax by Defendants on their purchases of tampons and pads.

53. Plaintiffs have no interests antagonistic to the interests of the other members of the Class. There is no conflict between Plaintiffs and any other members of the Class with respect to this action or the claims for relief herein.

54. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent legal counsel experienced in constitutional law and class action litigation matters for that purpose.

55. Plaintiffs are adequate representatives of the Class and, together with their attorneys, are able to, and will fairly and adequately, protect the interests of the Class and its members.

56. In addition, a class action is superior to other available methods for the fair, just, and efficient adjudication of the claims asserted herein. Joinder of all members of the Class is impracticable and, for financial and other reasons, it would be impractical for individual members of the Class to pursue separate claims. Moreover, prosecution of separate actions by individual members of the Class would create the risk of varying and inconsistent adjudications, and would unduly burden the courts.

57. Plaintiffs and their counsel anticipate no difficulty in the management of this litigation as a class action.

FIRST CAUSE OF ACTION
Declaratory Judgment
Against All Defendants

58. Plaintiffs hereby repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

59. Pursuant to CPLR 3001 *et seq.*, Plaintiffs seek a declaration from this Court that

Defendants' decision to charge sales tax on tampons and sanitary napkins is unlawful, invalid, and unenforceable.

SECOND CAUSE OF ACTION

Article 78 - Inapplicable Tax and Arbitrary, Capricious, Legally Deficient Determination Against all Defendants

60. Plaintiffs hereby repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

61. The sales tax, New York Tax Law section 1105, is inapplicable to tampons and sanitary pads as a matter of law.

62. Under the New York Tax Law section 1115, tampons and sanitary pads are exempt from the sales tax because: they are "products consumed by humans for the preservation of health," 20 N.Y.C.R.R. 528.4(b)(3); they are "devices" "which are intended for use in the cure, mitigation, treatment or prevention of illnesses or diseases," 20 N.Y.C.R.R. 528.4(e)(1); and they are "supplies used in the cure, mitigation, treatment or prevention of illnesses or diseases," 20 N.Y.C.R.R. 528.4(g).

63. Defendants' decision to charge and collect sales tax on tampons and sanitary pads, but not on other products with a much less substantial medical purpose, is arbitrary, capricious, and irrational, and violates the New York State Tax Law and the New York Constitution.

64. Defendants' decision to charge and collect sales tax on tampons and sanitary pads discriminates against women.

65. Women in New York who buy tampons and sanitary pads are harmed by Defendants' decision to tax these products because they are forced to pay a sales tax on products necessary and vital to their health.

66. Pursuant to CPLR 7803(3), Plaintiffs request that the Court issue an order declaring that Defendants' decision to charge and collect a sales tax on tampons and sanitary pads is unlawful, affected by an error of law, arbitrary and capricious, invalid, unenforceable, and in violation of New York law; enjoining Defendants from charging and collecting sales tax on tampons and sanitary pads; and ordering that Defendants refund to Plaintiffs and all members of the Class the illegal sales tax they have improperly paid on tampons and sanitary napkins over the past two years.

THIRD CAUSE OF ACTION
N.Y. Constitution, Art. I, § 11
Against All Defendants

67. Plaintiffs hereby repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

68. Article I, § 11 of the New York State Constitution provides that: "No person shall be denied the equal protection of the laws of this state or any subdivision thereof."

69. Defendants' decision to charge and collect sales tax on tampons and sanitary pads violates the Equal Protection Clause, Article I, § 11, of the New York Constitution because it denies women equal protection and discriminates against women, because a tax on feminine hygiene products is on its face a tax on women, and because it results in the disparate treatment of women.

70. Defendants' decision to charge and collect sales tax on women's medical products—tampons and sanitary pads—but not medical products also used by men (Rogaine, lip ice, acne soap, foot powder, dandruff shampoo, adult diapers, etc.) is not substantially related to an important state interest, is not rationally related to a legitimate state purpose, is not rational at all, directly discriminates against women, and directly results in the disparate treatment of

women.

71. As a direct and proximate result of the above-mentioned acts, Plaintiffs have suffered injuries and damages. Women in New York who buy tampons and sanitary pads are harmed by Defendants' decision to tax these products, because they are forced to pay a sales tax on products necessary and vital to their health, while men who purchase products far less necessary to their health are not.

FOURTH CAUSE OF ACTION
U.S. Constitution Fourteenth Amendment / 42. U.S.C. § 1983
Denial of Equal Protection on the Basis of Sex/Due Process
Against Defendant Jerry Boone

72. Plaintiffs hereby repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

73. Defendant Jerry Boone's decision to charge and collect sales tax on tampons and sanitary pads discriminates against women, because a tax on feminine hygiene products is on its face a tax on women, and because it results in the disparate treatment of women.

74. Defendant Boone's decision to charge and collect sales tax on women's medical products—tampons and sanitary pads—but not medical products also used by men (Rogaine, lip ice, acne soap, foot powder, dandruff shampoo, adult diapers, etc.) is not substantially related to an important state interest, is not rationally related to a legitimate state purpose, is not rational at all, directly discriminates against women, and directly results in the disparate treatment of women.

75. Such discrimination violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the United States Constitution.

76. Defendant acted under color of New York State law to deprive the Plaintiffs of

their Fourteenth Amendment rights. A cause of action is created by 42 U.S.C. § 1983.

77. As a direct and proximate result of the above-mentioned acts, Plaintiffs have suffered injuries and damages. Women in New York who buy tampons and sanitary pads are harmed by Defendants' decision to tax these products, because they are forced to pay a sales tax on products necessary and vital to their health, while men who purchase products far less necessary to their health are not.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor against Defendants, and issue an order containing the following relief:

- A. A declaration that Defendants' decision to charge and collect a sales tax on tampons and sanitary pads is unlawful, invalid, unenforceable, in violation of New York tax law, and unconstitutional under the Fourteenth Amendment of the United States Constitution and Article I, § 11 of the New York Constitution;
- B. An order certifying the Plaintiff Class;
- C. An order permanently enjoining Defendants from charging and collecting a sales tax on tampons and sanitary napkins;
- D. An order awarding Plaintiffs and the other members of the Class refunds, restitution, and damages in an amount to be determined at trial;
- E. An order awarding Plaintiffs attorneys' fees and costs pursuant to CPLR 909, CPLR 8600, and 42 U.S.C. § 1988; and

F. Such other and further relief as the Court may deem just and proper.

Dated: March 3, 2016
New York, New York

EMERY CELLI BRINCKERHOFF
& ABADY LLP

By: /s/_____

Ilann M. Maazel
Matthew D. Brinckerhoff
Zoe Salzman
600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000
Attorneys for Plaintiffs

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Natalie Brasington, being sworn states:

I am a plaintiff in the within action: I have read the foregoing Verified Complaint and know the contents thereof: the same is true to my own knowledge, except as to the matters therein that pertain to the other plaintiffs in this case and as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

Natalie Brasington
Signature

Natalie Brasington
Name

Sworn to before me this
2nd day of March, 2016

Zoe A. Salzman
Notary Public

ZOE A. SALZMAN
NOTARY PUBLIC-STATE OF NEW YORK
No. 02SA6225344
Qualified in New York County
My Commission Expires July 19, 2018

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Jennifer Moore, being sworn states:

I am a plaintiff in the within action: I have read the foregoing Verified Complaint and know the contents thereof: the same is true to my own knowledge, except as to the matters therein that pertain to the other plaintiffs in this case and as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

Jennifer Moore
Signature

Jennifer Moore
Name

Sworn to before me this
2nd day of March, 2016

Miluska Rios
Notary Public

MILUSKA RIOS
Notary Public - State of New York
No. 01R16301528
Qualified in Bronx County
My Commission Expires April 14, 2018

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Catherine O'Neil being sworn states:

I am a plaintiff in the within action: I have read the foregoing Verified Complaint and know the contents thereof: the same is true to my own knowledge, except as to the matters therein that pertain to the other plaintiffs in this case and as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

Catherine O'Neil
Signature

Catherine O'Neil
Name

Sworn to before me this
2nd day of March, 2016

Michael F. McCarthy
Notary Public

Michael F. McCarthy NOTARY PUBLIC, STATE OF NEW YORK No. 01MC6295512 Qualified in New York County Commission Expires January 6, 2018
--

VERIFICATION

[illegible]

Margo Seibert, being sworn states:

I am a plaintiff in the within action: I have read the foregoing Verified Complaint and know the contents thereof: the same is true to my own knowledge, except as to the matters therein that pertain to the other plaintiffs in this case and as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

Signature Margo Seibert

Name Margo Seibert

Sworn to before me this
2nd day of March, 2016


Notary Public

ZOE A. SALZMAN
NOTARY PUBLIC-STATE OF NEW YORK
No. 02SA6225344
Qualified in New York County
My Commission Expires July 19, 2018

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Taja-Nia Henderson, being sworn states:

I am a plaintiff in the within action: I have read the foregoing Verified Complaint and know the contents thereof: the same is true to my own knowledge, except as to the matters therein that pertain to the other plaintiffs in this case and as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.



Signature

Taja-Nia Henderson
Name

Sworn to before me this
1st day of March, 2016


Notary Public

QUINTELLA L. HANKS
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES APRIL 14, 2016

Exhibit A



Publication 840

A Guide To Sales Tax For Drugstores and Pharmacies

About This Publication

This publication is a guide for owners, managers, and other operators of drugstores, pharmacies, and similar businesses. It contains a general discussion of how the New York State Sales and Compensating Use Tax Law applies to retail sales made by these establishments.

The information contained in this publication will assist in answering questions generally encountered in the operation of a drugstore or pharmacy. This information is current as of the print date of this publication. **In instances where there seems to be a discrepancy between the information presented in this publication and the Tax Law or regulations, the law and regulations govern.**

Using drugstore and pharmacy industry classifications as a guideline, the publication is set up alphabetically, by product category, and includes discussions of:

- Beverages
- Cigarettes and Tobacco Products
- Cosmetics and Toiletries
- Drugs and Medicines
- Food and Food Products
- General Merchandise (Auto Supplies, Housewares, Clothing, Etc.)
- Medical Equipment and Supplies
- Pet Accessories and Supplies
- Prosthetic Aids

This publication also contains information on topics such as:

- Use of Coupons
- Food Stamp Purchases
- Sales to Exempt Purchasers
- Sales for Resale

While the discussions of the general categories provide the general rule and exceptions relating to the taxation of retail sales of particular products, it is important to remember that **there are special rules for exempt purchasers**. For that reason, a section on exempt purchasers is included in the discussion.

While the information contained in this publication is not all-inclusive, it will provide you with a general overview of which retail sales are subject to sales tax and which are not.

Telephone numbers and addresses for obtaining forms, publications, or other information appear on the back cover of this publication.

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Part I

Taxability of Product Sales

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Audio and Video

Sales of audio and video equipment are subject to sales tax

Sales or rentals of audio and video equipment and supplies are subject to sales tax. This includes sales or rentals of:

- audio and video cleaning devices
- blank audio and video cassette tapes
- compact discs and disc players
- miniature cassette tapes
- prerecorded audio and video cassette tapes
- radios / boom boxes
- tape players / recorders
- televisions
- VCRs (video cassette recorders)
- video game systems / cartridges
- portable cassette/radio players with headphones

Automotive Supplies

Sales of automotive supplies are subject to sales tax

Sales of automotive supplies are subject to sales tax. This includes sales of:

- antifreeze
- brake fluid
- car deodorizers
- car polish
- car wax
- carburetor cleaner
- dry gas
- motor oil
- transmission fluid
- windshield washer fluid

Beverages

Taxability of the sale depends on type of beverage sold

The taxable or exempt status of the sale of a beverage depends on the nature of the beverage. This is true whether the beverage is sold in liquid, frozen, or solid form. The list below contains examples of some common beverages and gives the taxable or exempt status of the sale of each.

TYPE OF BEVERAGE	TAXABLE	EXEMPT*
Alcoholic beverages (beer, wine, liquor, etc.)	x	
Bottled water	x	
Carbonated beverages	x	
Carbonated water	x	
Coffee		x
Cocktail mixes (such as <i>Collins Mixers</i>)	x	
Cocoa		x

TYPE OF BEVERAGE	TAXABLE	EXEMPT*
Fruit drinks with less than 70% natural fruit juice	x	
Fruit juices with at least 70% natural fruit juice		x
Milk		x
Sodas and soft drinks (colas, ginger ale, root beer, etc.)	x	
Sports drinks (e.g., <i>Gatorade</i>)	x	
Tea		x
Vegetable juices		x
Wine coolers	x	

* For the sale of these beverages to be exempt from sales tax, the beverage must be sold in the same form, packaging, quantity, and condition as sold by food stores (such as grocery stores) that are not principally engaged in selling foods that are prepared and ready to be eaten. That is, the beverage must be sold in the same form, packaging, quantity, and condition in which the manufacturer prepared it for market. For example, the sale of a glass of iced tea is subject to sales tax, but the sale of a package of iced tea mix is not.

In addition, the beverage must be sold for off-premises consumption. The sale of any beverage that is intended for consumption on the premises where the beverage is sold is taxable, regardless of the type of beverage. Thus, otherwise exempt sales of these beverages will be subject to sales tax if the beverage is intended for on-premises consumption (for example, at a soda fountain, or at a table or a booth within the establishment).

The sale of any beverage in a take-out container (such as a cup, glass, or sports bottle) is also subject to sales tax.

Books

Sales of books, whether hardcover or paperback, are subject to sales tax

The sale of a publication that does not meet the definition of a newspaper or periodical is subject to sales tax. (See page 13 for information on newspapers and periodicals). Taxable sales include sales of:

- audio books (such as books on tape or compact disc)
- children's books
- books on health and diet
- coloring books
- cookbooks
- hardcover novels, histories, biographies, etc.
- paperback novels, histories, biographies, etc.
- religious texts (for example, the Holy Bible, the Torah, and the Koran)
- television program listings
- textbooks

Candy and Confections

Sales of candy and confections are taxable unless the item is marketed for use as a cooking ingredient

Sales of candy and confections are subject to sales tax. (*Confections* are preparations of fruits, nuts, popcorn, or grains in combination with chocolate, sugar, honey, candy, etc.)

Exception. Sales of confections that are marketed for use in cooking are not subject to sales tax. For example, sales of items advertised and sold for use in cooking and baking are not subject to sales tax. The method used in packaging and advertising products such as chocolate, including the kind and size of container used, will be considered in determining the primary use for which these products are sold.

Examples of candies and confections on which tax must be collected when sold are:

- candy bars
- candy jellies
- caramel
- chewing gum
- chocolate
- chocolate-coated nuts and raisins
- coated candies
- cream candies
- fudges
- hard candy
- honey-roasted nuts
- jelly beans
- licorice
- malted milk balls
- nougats
- sugar-coated nuts and raisins
- toffee

Examples of items which are not subject to sales tax when sold are:

- chocolate morsels
- glazed fruit
- candy sprinkles (jimmies)
- butterscotch morsels

Cigarettes

Retail sales of cigarettes are subject to sales tax

The sales tax due on the sale of a pack or carton of cigarettes is determined by multiplying the retail selling price of the cigarettes by the applicable state and local sales tax rate in effect in the locality in which the sale takes place. **There is an exception for sales made in New York City. See the discussion under *New York City Rule* below.**

Example: John Jones operates a neighborhood pharmacy in upstate New York where the combined state and local sales tax rate is 7%. He sells many standard brands of cigarettes for \$2.50 per pack (composed of the minimum retail sales price

of \$2.00 per pack, plus Mr. Jones's markup of \$.50 per pack). Mr. Jones should compute the sales tax on the cigarettes, and the total tax due, as follows:

Selling price per pack	\$ 2.50
Multiply by tax rate (7%)	<u>x.07</u>
Sales tax due on sale	<u>\$.18</u>

New York City Rule

In calculating the sales tax for sales made within New York City, the vendor must first subtract the New York City excise tax (80 cents per carton, 8 cents per pack of twenty cigarettes) from the retail selling price, and then compute the sales tax due.

Example: Assume that Mr. Jones operates his neighborhood pharmacy in New York City, where the combined state and local sales tax rate is $8\frac{1}{4}\%$. Mr. Jones should compute the sales tax on the cigarettes, and the total tax due, as follows:

Selling price per pack of 20 cigarettes	\$ 2.50
Less: NYC excise tax on 1 pack of 20 cigarettes	<u>-.08</u>
Amount subject to sales tax	\$ 2.42
Multiply by tax rate ($8\frac{1}{4}\%$)	<u>x.0825</u>
Sales tax due on sale	<u>\$.20</u>

New York City consists of the boroughs of Bronx (Bronx County), Manhattan (New York County), Brooklyn (Kings County), Queens (Queens County), and Staten Island (Richmond County).

Registration Requirements

All dealers, wholesalers, or retailers of cigarette products must be licensed or registered by the Tax Department. See page 20 for more information.

Cigars and Other Tobacco Products

Retail sales of tobacco products are subject to sales tax

Tobacco products include any cigar or roll for smoking (other than a cigarette) made in whole or in part of tobacco, and any other tobacco product (other than cigarettes), intended for consumption by smoking, chewing, or as snuff. All retail sales of tobacco products are subject to sales tax.

All dealers, wholesalers, or retailers of tobacco products must be licensed, appointed, or registered by the Tax Department. See page 21 for more information.

Cosmetics and Toiletries

Sales of cosmetics and toiletries are subject to sales tax, except sales of those products specifically designed to treat illnesses or diseases

Sales of cosmetics and toiletries are subject to sales tax, even though there may be medicinal ingredients in the products. *Cosmetics* are items used by human beings for cleansing, beautifying, promoting their attractiveness, or altering their appearance. *Toiletries* are items customarily used for grooming purposes.

Exception: Sales of products that are specifically designed to be used in the cure, mitigation, treatment, or prevention of illnesses or diseases in human beings are not subject to sales tax. For example, the sale of styptic pencils and creams that are recommended for stopping blood flow is exempt, as is the sale of peroxide that is recommended for use as an antiseptic or for other medicinal purposes. The following table contains examples of taxable and exempt cosmetics and toiletries.

Product	Taxable	Exempt
Antiperspirants	x	
Baby oil, powder, shampoo, lotion	x	
Body creams, lotions, makeup, oils, powder, rubs, etc.	x	
Dandruff preparations		x
Deodorants	x	
Hair coloring preparations, including peroxide used for bleaching hair	x	
Hair shampoos, conditioners, cream rinses, dressings, sprays	x	
Hair styling products (e.g., permanent kits, mousse, gels, sprays, brushes, combs, picks)	x	
Lip products (e.g., lipstick, liquid lip color, lip pomade)	x	
Men's hair dressing products	x	
Makeup (eye, face, body)	x	
Nail care products (e.g., manicure implements, nail polish, polish remover)	x	
Oral hygiene products (toothpaste, mouthwash, dental floss, etc.)	x	
Personal cleanliness products (e.g., soap, bubble bath, talcum powder)	x	
Shaving products (e.g., aftershaves, depilatories, and pre-shave products)	x	
Skin care products (non-medicated)	x	
Sunscreens with an SPF factor of 2 or greater		x

Note: Generally, products that contain coloring, perfume, or similar additives are considered to be cosmetic or toiletry products, and the sale of such products is subject to sales tax. For example, sales of lip products that are colored or perfumed, such as lipstick, are subject to sales tax. Sales of lip products that are uncolored, unscented, and recommended for use in treating lips, such as a product for treating cold sores, are not subject to sales tax.

See pages 24 and 25 for a more detailed listing of cosmetics and toiletries.

Dietary Foods

Sales of dietary foods are exempt from sales tax

Sales of infant food and infant formula are not subject to sales tax

A *dietary food* is any food that purports to be or is represented to be for special dietary use as a food for humans. The labels of dietary foods should bear a statement of the dietary properties upon which the product's use is based. Sales of dietary foods are not subject to sales tax.

A food fabricated from two or more ingredients which purports to be or is represented to be for special dietary use, such as a food for infants, should contain on the label the common or usual name of each such ingredient including spice, flavoring, and coloring. A food for special dietary use for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk should contain information on the label about its content of moisture, protein, fat, carbohydrate, minerals, calories and vitamins. Sales of infant (baby) food and infant formula are not subject to sales tax. See page 9 for more information on the sale of food and food products.

Drugs and Medicines

All sales of drugs and medicines for use by human beings are exempt from sales tax

Sales of drugs and medicines are exempt from sales tax if the drug or medicine is intended for use, internally or externally, in the diagnosis, cure, mitigation, treatment, or prevention of illnesses or diseases in **human beings**. *Drugs and medicines* are products, whether or not a prescription is required for their purchase, that are recognized as drugs or medicines in either the *United States Pharmacopeia*, the *Homeopathic Pharmacopeia of the United States*, or the *National Formulary*.

The base or medium used to contain the drug or medicine (such as oil, ointment, cream, talc, or alcohol), and the medium used for delivery of the drug or medicine (such as disposable wipe, atomizer, syringe, or saturated pad) will not affect its exempt status. Drugs and medications are classified as either:

- prescription drugs and medicines;
- non-prescription drugs and medicines (commonly called *packaged medication*); or
- other medicinal products.

Prescription drugs and medicines

Prescription drugs and medicines are products that are ordinarily used under the supervision of a medical practitioner licensed by law. The category includes, for example, antibiotics, barbiturates, narcotics, and other controlled substances.

Non-prescription (packaged) drugs and medications

Non-prescription drugs and medicines are products that are listed in either the *United States Pharmacopeia*, the *Homeopathic Pharmacopeia of the United States*, or the *National Formulary*, and that are intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans. Sales of non-prescription drugs and medicines are exempt from sales tax. Non-prescription drugs and medicines include packaged medications such as:

- analgesics
- antacids
- antihistamines

- antiseptics
- aspirin
- boric acid
- burn remedies
- cough and cold remedies
- dandruff preparations
- diarrhea remedies
- hemorrhoid medications
- insulin
- pain relievers
- products used to kill lice that infest humans
- products that prevent or treat mange or ringworm in humans
- products that are intended as a hair regrowth treatment for use by human beings who experience hair loss or gradually thinning hair
- vaginal infection remedies

Other medicinal products

Other medicinal products are those used (internally or externally) by humans for the preservation of their health, and products (other than food) that are intended to affect the structure or a function of the human body. Such products, which are not ordinarily considered drugs or medicines, include:

- acne preparations
- castor oil and cod liver oil
- contact lens preparations
- eye drops
- laxatives
- lip products that treat lips for exposure
- products that treat nicotine withdrawal symptoms
- products that prevent athlete's foot or other fungus infections

Sales of these products are also exempt from sales tax.

Sales of drugs and medicines for treatment of non-humans are generally subject to sales tax

Sales of drugs and medicines that are intended for use in treating non-humans (such as birds, dogs, cats, and reptiles) are subject to sales tax regardless of whether or not a prescription is written for such drug or medicine. See, however, the exception for guide, hearing, and service dogs on page 13, under *Pet Accessories and Supplies*.

Family Planning

Sales of family planning products are exempt from sales tax

Sales of family planning products, whether by prescription or over-the-counter, are exempt from sales tax. Examples are:

- birth control pills
- condoms
- contraceptive creams
- contraceptive foams
- contraceptive jellies
- female contraceptive sponges
- pessaries
- vaginal suppositories

Feminine Hygiene

Sales of feminine hygiene products are generally subject to sales tax

Feminine hygiene products are generally used to control a normal bodily function and to maintain personal cleanliness. Sales of these products are, therefore, generally subject to sales tax (see exception below). Examples are:

- douches
- sanitary napkins
- tampons
- vaginal creams, foams, ointments, jellies, powders, and sprays (other than contraceptive creams, foams, ointments, and jellies)

The exception is for those products that are used to treat a specific medical condition

Exception: If the product is intended to function as a treatment for a specific medical condition, then the product may be sold tax exempt. For example, the sale of a product that is used to treat a vaginal infection is exempt from sales tax.

Food and Food Products

Sales of food and food products for human consumption are not subject to sales tax

Sales of food and food products for human consumption are exempt from sales tax. The phrase “food and food products” includes:

- cereals and grain products (e.g., bran, oats, grains)
- chocolate (for cooking purposes)
- meat and meat products
- frozen meals and desserts
- nuts and nut products
- baked goods and snacks (except candy and confections)
- oils, fats, and shortenings (e.g., cooking oil, salad oil, lard)
- sweetening agents (e.g., sugar and sugar substitutes)
- food coloring, preservatives, and flavoring preparations
- spices, herbs, seasonings, dressings, relishes, sauces, gravies, and condiments
- baby foods

Exception: Sales of food are subject to sales tax when the food is sold for consumption on the premises where the sale is made. Sales of prepared foods such as sandwiches are also subject to sales tax, whether sold for on- or off-premises consumption. Moreover, all sales of heated foods are also subject to sales tax.

Sales of dieting aids, diet substitutes, and supplements are not subject to sales tax

Sales of dieting aids, diet substitutes, diet supplements, and dietary foods are not subject to sales tax.

See pages 26 and 27 for a more detailed listing of exempt and taxable food items.

Sales of exempt and taxable items together as a single unit (such as gift baskets) are subject to sales tax

When taxable tangible personal property is sold in combination with nontaxable food items as a single unit, the entire charge is subject to sales tax unless the price of the exempt components are separately stated. Therefore, the sale of items such as gourmet gift baskets which contain fruits, nuts, cheese, cider, smoked meats, and candy is subject to sales tax on the full selling price of the item, unless the price of the nontaxable food items are separately stated. This rule also applies to food sold in decorative tins, decorative glass containers, and similar containers.

General (Miscellaneous) Merchandise

*Sales of general merchandise
are subject to sales tax*

Sales of general merchandise are subject to sales tax. General merchandise includes such items and categories as:

- artificial trees
- cameras and film (including film processing services)
- clothing
- cotton balls, swabs, squares
- electrical appliances
- electronics (record, tape, and compact disc players)
- eyeglasses (non-prescription)
- flowers and plants
- gift wrap
- greeting cards
- hair accessories
- hardware
- hosiery (stockings, socks)
- household products (e.g., detergents, paper towels, waxes, etc.)
- housewares (e.g., lawn furniture, kitchenware, etc.)
- ice (cubes, blocks)
- jewelry
- pet foods, pet medications, and pet supplies *
- school supplies
- stationery supplies
- sunglasses (nonprescription)
- toys
- writing implements

* See the exception on page 13 for such items used in caring for guide, hearing, and service dogs.

Hair Care Products

*Sales of hair care products are
generally subject to sales tax*

*Exceptions are medicinal
dandruff preparations and hair
restoratives*

Hair care products are, like cosmetics and toiletries, used for cleansing, beautifying, promoting one's attractiveness, altering one's appearance, and grooming. As a result, the sale of hair care products is generally subject to sales tax.

Exception. Sales of all dandruff preparations, including dandruff shampoos, are exempt from sales tax if the preparation contains a recognized drug or medicine that is listed in the *United States Pharmacopeia*, the *Homeopathic Pharmacopeia of the United States*, or the *National Formulary*. In addition, sales of products (such as Rogaine) that are intended as a hair regrowth treatment for use by individuals who experience hair loss or gradual thinning of the hair are exempt from sales tax.

Health Supplements

*Sales of vitamins and minerals
are not subject to sales tax*

Health supplements are products that are intended to substitute for natural food, or supplement natural food in the ordinary diet. Sales of health supplements (such as vitamins and minerals) are not subject to sales tax.

The label for the vitamin or mineral product should bear a statement of the proportion of the minimum daily requirement or daily requirement supplied by the product, when the product is consumed in a specified quantity during a specified period by infants, children, or adults. For example, the statement on the label may read “One ounce provides 10% of the minimum daily adult requirement (or MDR) of vitamin B1.” The statement on a label for a mineral product may read “One ounce provides 5% of the minimum daily adult requirement (or MDR) of iron.”

If the nutritional value of the product has not been established, then the label for the product should contain a statement of the quantity of the vitamin or mineral provided by a specified dosage, and the statement “*The need for (name of vitamin or mineral) in human nutrition has not been established*” or a similar statement.

Housewares

All sales of housewares are subject to sales tax

All sales of housewares are subject to tax. This includes sales of:

- bakeware
- barbecue grills and accessories
- beverage containers
- cutlery
- drinking glasses
- flatware (table knives, spoons, forks)
- glassware (ornamental, novelty, etc.)
- kitchen appliances and gadgets (dicers, slicers, etc.)
- kitchen towels
- kitchen utensils
- microwave cookware
- pans
- paper plates and cups
- plastic utensils
- pots
- silverware
- table linen (tablecloths and napkins)
- tableware (utensils such as china, glass, or silver for table use)

Medical Equipment and Supplies

Sales of medical equipment and supplies are exempt unless sold to a provider of a medical service

Sales of medical equipment and supplies are exempt from New York State and local sales taxes.

Exception: All medical equipment and supplies purchased for use in providing medical or similar services (such as services of physicians, hospitals, clinical laboratories, and ambulance companies) for compensation are taxable.

The term *medical equipment* includes items such as hospital beds, wheelchairs, hemodialysis equipment, respirators, crutches, back and neck braces, trusses, trapeze bars, walkers, inhalators, nebulizers, traction equipment, orthodontic devices, and intrauterine birth control devices, all of which are primarily or customarily used for medical purposes.

For sales tax purposes, the sale of certain equipment is not exempt even if the equipment is used for medical reasons

The sale of medical supplies is exempt from sales tax

The sale of replacement parts for medical equipment is exempt from sales tax unless sold to a provider of medical services who receives compensation for the services rendered

Charges for servicing or repairing exempt medical equipment are exempt from sales tax

The term *medical equipment* does not include air conditioners, air purifiers, water filtration systems, and similar equipment. For tax purposes, such equipment is considered to be nonmedical in nature. This is so even though the equipment may have been purchased to alleviate an existing illness.

The term *medical supplies* includes bandages, callous pads, condoms, contraceptive diaphragms, first aid kits, surgical gauze, incontinence liners, pads and pants, inhalers, nasal aspirators, pregnancy test kits, arm slings, and surgical stockings.

The sale of medical supplies is exempt from sales tax unless the supplies are purchased by a provider of medical services who receives compensation for the medical services provided. For example, bandages, gauze, dressings, and so forth are not exempt when purchased by a physician who will use them in performing a medical service for compensation. Likewise, the sale of dental supplies such as porcelain or acrylic denture base is not exempt when the items are purchased by a dentist who will use them in performing a dental service for compensation.

The sale of replacement parts for medical equipment is exempt from tax provided the replacement parts are identifiable as medical equipment replacement parts. If the part is not identifiable as a replacement part for medical equipment, the purchaser must pay sales tax at the time of purchase and apply to the Tax Department for a refund of the tax paid. The purchaser, in applying for a refund of the taxes paid, must show that the part was used to replace a defective part on exempt medical equipment. Form AU-11, *Application for Credit or Refund*, should be used to apply for the refund.

The sale of replacement parts for medical equipment is subject to sales tax if the sale is made to a provider of medical services (such as a physician, hospital, clinical laboratory, or ambulance company) for use in providing medical or similar services for compensation.

Charges for servicing or repairing exempt medical equipment are exempt from sales tax. Charges for servicing or repairing medical equipment that is not eligible for exemption from tax when purchased are subject to sales tax.

A detailed listing of medical equipment and supplies can be found on pages 29 through 31 of this publication.

Nail Care Products

Sales of nail care products are generally subject to sales tax

However, sales of products designed to treat a specific nail problem are exempt from sales tax if the product contains a recognized drug or medicine

Nail care products are, like cosmetics and toiletries, used by human beings for cleansing, beautifying, promoting one's attractiveness, altering one's appearance, or grooming. As a result, the sale of nail care products is generally subject to sales tax.

Exception. Sales of products designed to treat a specific nail problem, such as nail fungus, are exempt from sales tax if the preparation contains a recognized drug or medicine that is listed in the *United States Pharmacopeia*, the *Homeopathic Pharmacopeia of the United States*, or the *National Formulary*.

Newspapers and Periodicals

Sales of newspapers and periodicals (magazines) are exempt from sales tax

The sale of newspapers and periodicals (such as magazines) is exempt from sales tax. To be considered a newspaper, a publication must be printed at stated short intervals, usually daily or weekly, be available for circulation to the public, and contain articles of general interest and reports of current events. To be considered a periodical, a publication must be printed *at least four times a year*, have the same general title and content from issue to issue, and contain a variety of articles by different authors. Any publication that either singly or when successive issues are put together constitutes a book does not qualify as a newspaper or periodical.

Sales of comic books are exempt from sales tax, provided the comic is published serially under the same title at least once quarterly.

Sales of crossword puzzle magazines are also exempt from sales tax if the magazine is published at least quarterly under the same title. For example, the sale of a crossword puzzle magazine that is published and distributed monthly is exempt from sales tax since the magazine qualifies as a periodical.

Packaged Medications

The sale of packaged medications that are intended for use, internally or externally, in the cure, mitigation, treatment, or prevention of illnesses or diseases in human beings is **exempt** from sales tax, provided the medication contains a recognized drug or medicine. See *Drugs and Medicines* (page 7) for more information.

The sale of packaged medications that are intended for use in treating non-humans (such as birds, dogs, cats, and reptiles) is subject to sales tax. See the exception for guide, hearing, and service dogs under *Pet Accessories and Supplies* below.

Pet Accessories and Supplies

Sales of pet food, medications, equipment, accessories, and supplies are subject to sales tax. However, sales of items that are necessary for the acquisition, sustenance, or maintenance of a guide dog, a hearing dog, or a service dog are exempt from sales taxes

Sales of pet food, medications, equipment, accessories, and supplies are subject to sales tax. For example, sales of dog biscuits, dog collars, dog shampoos, flea or tick collars, grooming brushes, combs and rakes, and pharmaceutical supplies specifically designed for use on non-humans (such as birds, dogs, and cats), are subject to sales tax.

Exception: Sales of items that are necessary for the acquisition, sustenance, or maintenance of a guide dog, a hearing dog, or a service dog that is used by a person with a disability, are exempt from sales tax. Those eligible to claim this exemption are a person with a disability, an individual whose dependent is a person with a disability, or a person who has been given express authority by an eligible person to make purchases on the eligible person's behalf. To claim the exemption, the purchaser should give the seller Form ST-860, *Exemption Certificate for Purchases Relating to Guide, Hearing and Service Dogs*. A list of eligible items appears on the back of this certificate.

Prosthetic Aids

The sale of prosthetic devices (hearing aids, prescription eyeglasses, braces, artificial limbs, and other prosthetic aids) is exempt from sales tax

The sale of prosthetic devices is exempt from sales tax. In order to qualify for the exemption, the device must either completely or partially replace a missing body part, or the function of a permanently inoperative or permanently malfunctioning body part. In addition, the item must primarily and customarily be used for such purposes, and not generally be useful in the absence of illness, injury or physical incapacity.

Prosthetic devices include braces (ankle, arm, elbow, knee, leg, spinal), prescription eyeglasses, hearing aids, artificial limbs (hands, arms, legs), breast forms for post-mastectomy patients, closed-captioning devices, sound amplification devices for the hearing impaired, and telecommunications devices for the deaf (TDDs).

Sales of parts, special controls, special attachments, special lettering, and similar devices that are added or attached to items (such as appliances) so that a person with a disability may use the items, are exempt from sales tax.

If an item is sold with special controls, lettering, or devices, the additional charge for the added features is exempt from sales tax if the additional charge is separately stated on the bill or other receipt given to the purchaser.

Sales of repair and maintenance services for prescription eyeglasses, hearing aids, and other prosthetic devices are exempt from sales tax

Sales of repair or maintenance services for exempt prosthetic devices, including hearing aids, prescription eyeglasses, and other artificial devices, are also exempt.

This exemption extends to the purchase of replacement parts for exempt prosthetic devices (that is, hearing aids, prescription eyeglasses, and other artificial devices). The replacement part must be clearly identified by the manufacturer as a replacement part for such item. For example, the sale of batteries for hearing aids, which are clearly labeled as such by the manufacturer, is exempt from sales tax.

If the part is not identifiable as a replacement part for an exempt prosthetic aid, the purchaser must pay sales tax at the time of purchase and apply to the Tax Department for a refund of the tax paid. At the time of applying to the Tax Department for a refund of the tax paid, the purchaser must show that the part was used to replace a defective part on an exempt prosthetic device. Form AU-11, *Application for Credit or Refund*, should be used to apply for this refund.

Sales of supplies to be used in conjunction with hearing aids, prescription eyeglasses, and other prosthetic devices are subject to sales tax

Sales of supplies that are used in conjunction with prosthetic devices, including hearing aids, and prescription eyeglasses, are subject to sales tax. For example, the purchase of lens tissue for cleaning eyeglasses is subject to sales tax even though the eyeglasses are prescription eyeglasses, as is the purchase of cushioned eyeglass nose pads.

Part II

General Information

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Medical Insurance

Method of payment does not affect taxable or exempt status of the sale

Payment by a medical insurance plan does not affect the taxable or exempt status of the sale of drugs, medicines, medical equipment, medical supplies, and prosthetic aids. That is, sales that qualify for exemption from sales tax are exempt even when payment is made by or through a medical insurance fund, employer medical contract, or government agency (such as Medicare or Medicaid), on behalf of an insured individual.

Likewise, sales of items that are not eligible for exemption as a drug or medicine, or as medical equipment, a medical supply, or a prosthetic aid, are still subject to sales tax even though payment is made by or through a medical insurance fund, employer medical contract, or government agency such as Medicare or Medicaid. For example, the purchase of an air conditioner may be approved under a health insurance contract, but such a purchase is not exempt from sales tax.

Coupons

Store coupons

Only those store coupons that entitle the customer to a discount on the item purchased can be used to reduce the amount on which sales tax is to be computed

Sales tax is due on the entire amount of the consideration received by a vendor for the item being sold, including any reimbursement by a third party.

When a store issues a coupon entitling the customer to a discount on the price of an item sold by the store, and the store receives no reimbursement from the manufacturer, sales tax must be collected from the customer based on the price of the item reduced by the value of the coupon. This is illustrated by the following example in which the customer purchases an item that the store is selling for \$1.00. The customer has a coupon issued by the store valued at 25 cents. Assuming a 7% tax rate, the tax should be computed as follows.

Selling price of the product	\$1.00
Subtract: face value of the coupon	<u>- .25</u>
Subtotal	\$.75
Add: tax computed on the net selling price (7% x \$.75)	<u>.05</u>
Total due from customer	<u><u>\$.80</u></u>

When accounting for the sale, the store must remit sales tax on the discounted selling price of the item which, in this example, is 75 cents. Thus, the store must remit sales tax of five cents on the sale.

When a store issues a coupon involving a manufacturer's reimbursement, but does not reveal this fact on the coupon, the store must collect sales tax from the customer on the discounted price of the product. This is illustrated by the following example (assuming a 7% tax rate) in which the customer purchases an item that the store is selling for \$1.00, and the customer presents the store clerk with a coupon issued by the store valued at 25 cents.

Selling price of the product	\$1.00
Subtract: face value of the coupon	<u>- .25</u>

Subtotal	\$.75
Add: tax computed on the net selling price (7% x \$.75)	<u>.05</u>
Total due from customer	<u><u>\$.80</u></u>

When accounting for the sale, however, the store must remit sales tax of seven cents (7% of \$1.00, the full sales price of the item).

When a store issues a coupon entitling the customer to a credit on the item purchased, and the store will be reimbursed by the manufacturer for the amount of the coupon, the customer must pay tax on the cost of the item before the allowance for the coupon, as shown in the following example. (In this situation, the coupon should show that the discount is a manufacturer's promotion. The coupon should be encoded by the abbreviation "**Mfg.**" or some similar code.)

Selling price of the product	\$ 1.00
Add: tax computed on the selling price (.07 x \$1.00)	<u>.07</u>
Subtotal	\$ 1.07
Subtract: face value of the manufacturer's coupon	<u>-.25</u>
Total due from customer	<u><u>\$.82</u></u>

A manufacturer's coupon does not reduce the price on which sales tax is to be computed

When a manufacturer issues a coupon entitling a customer to a credit on the item purchased, sales tax is due on the regular selling price of the product, without deduction for the coupon. The amount subject to tax, therefore, is composed of the amount the customer pays for the item plus the amount that will be reimbursed by the manufacturer. This is illustrated by the following example (assuming a 7% tax rate) in which the customer purchases an item that the store is selling for \$1.00, and the customer presents the store clerk with a manufacturer's coupon valued at 25 cents.

Selling price of the product	\$1.00
Add: tax computed on the selling price (.07 x \$1.00)	<u>.07</u>
Subtotal	\$1.07
Subtract: face value of coupon	<u>-.25</u>
Total due from customer	<u><u>\$.82</u></u>

When accounting for the sale, the store must remit sales tax on the full sales price of the item (\$1.00). Thus, the store must remit sales tax of \$.07 (seven cents) on the sale.

Double Coupons

When a store redeems a manufacturer's coupon, and also gives a store discount equal to the amount of the manufacturer's coupon (double coupons), sales tax is due from the customer based on the discounted price of the item (the amount the item usually sells for less the store discount) **plus** the value of the manufacturer's coupon. If an item is priced at \$2.00 and a store matches the value of a fifty-cent manufacturer's coupon for that item with its own discount, the tax due from the customer is calculated as follows:

Price of the item	\$2.00
Less: Store discount (equal to value of manufacturer's coupon)	<u>.50</u>
Subtotal	\$1.50
Sales tax (7% x \$1.50)	<u>.11</u>

Total	\$1.61
Less: Value of manufacturer's coupon	<u>.50</u>
Amount due from customer	<u>\$1.11</u>

When accounting for this sale, the store must remit sales tax of eleven cents on the sale.

Food Stamps

Purchases of certain food items that are ordinarily subject to sales tax are exempt if purchased with food stamps

If a business is qualified to accept food stamps, such stamps can be applied to purchases of any food or food product intended for human consumption. Purchases of certain items that would ordinarily be subject to sales tax are exempt when the purchase is made with food stamps. For example, sales of the following items are exempt if purchased with food stamps:

- bottled water
- candy and confections (e.g., candy bars, lollipops, chewing gum, etc.)
- candy-coated popcorn
- carob-coated nuts, fruits and candy
- caramel-coated nuts, popcorn, etc.
- chocolate-coated fruits, nuts, raisins, pretzels, popcorn, etc.
- cold sandwiches
- fruit drinks containing less than 70% of natural fruit juice
- fruit plants and seeds
- ice
- soft drinks (regular and dietetic)
- sodas (regular and dietetic)
- sugar-coated nuts, popcorn, etc.
- vegetable plants and seeds

Paying with a combination of food stamps and cash

If a customer purchases taxable and nontaxable eligible food items and pays with a combination of food stamps and cash, the vendor must apply the food stamps to the payment of the taxable food items first. The balance of food stamps, if any, is then applied to the other food purchases. Only the portion of a purchase of taxable food actually paid for with food stamps is exempt from sales tax.

When a customer purchases only taxable food items with food stamps and cash, sales tax must be collected on the amount of the cash payment.

Paying with a combination of cash, food stamps, and coupons

When a customer uses coupons, food stamps, and cash to purchase food and beverages the vendor must:

- first, apply any **store coupon** to reduce the purchase price of the item to which the store coupon relates;
- second, apply any **manufacturer's coupon** to the purchase price of the item to which it relates. Where the item is taxable, collect tax on the value of the manufacturer's coupon;
- third, apply the food stamps against the remaining purchase price of any taxable,

eligible items and then to the remaining purchase price of any exempt eligible items; and

- finally, if the customer does not have enough food stamps to cover the entire bill, collect the tax on any remaining balance due on taxable items paid for with cash.

Exempt Purchasers

Sales to certain individuals and organizations are not subject to sales tax. Exempt purchasers include federal government agencies, New York State and local government agencies, exempt organizations such as religious, charitable, scientific and educational institutions, and certain Indian nations, tribes or individuals. In each case, the purchaser must exercise the right to exemption by submitting the proper documentation to the vendor of the products or services.

Government Agencies

In the case of a governmental entity (such as a New York State agency or an agency of the United States government), the entity must exercise its right to exemption through the issuance of a governmental purchase order or other appropriate exemption document. The governmental entity must be the direct purchaser and payer of record for the sale to be exempt from sales tax.

In addition, sales made to the United Nations or any other international organization of which the United States of America is a member are not subject to sales tax. The organization must exercise its right to exemption by issuing Form ST-119.1, *Exempt Organization Certification*. The organization must be the direct purchaser and payer of record.

Other Exempt Organizations

In the case of other exempt organizations (such as charities, and religious, scientific, and educational organizations), the organization must exercise its right to exemption by presenting the seller with Form ST-119.1, *Exempt Organization Certification*. The exempt organization must be the direct purchaser and payer of record. The following Indian nations or tribes residing in New York State are also exempt organizations: Cayuga, Oneida, Onondaga, Poospatuck, Saint Regis Mohawk, Seneca, Shinnecock, Tonawanda Band of Senecas, and Tuscarora.

Diplomatic Missions and Diplomatic Personnel

Diplomatic missions and diplomatic personnel must be the direct purchasers and payers of record in order to exercise their entitlement to exemption from sales taxes. The person making the purchase must be the holder of a valid tax exemption card issued by the United States Department of State, or by the American Institute in Taiwan (in which case the exemption card must bear the purchaser's picture identification), or the person must be the holder of other documentation evidencing the person's entitlement to exemption as provided by the United States Department of State. In addition to verifying that they hold a valid tax exemption card, the mission or person must exercise their right to exemption by presenting the seller with Form DTF-950, *Certificate of Sales Tax Exemption for Diplomatic Missions and Personnel*, a single purchase certificate, or Form DTF-951, which is the corresponding blanket purchase certificate, and which may be used only for purchases paid for with a charge card.

Indian Individuals

Sales to members of recognized Indian nations or tribes are not subject to sales tax

provided the merchandise sold is delivered to the person on a qualified reservation. The purchaser must exercise the right to the exemption by giving the seller Form DTF-801, *Certificate of Individual Indian Exemption from State Taxes on Property or Services Delivered on a Reservation*. The qualified reservations are Allegany, Cattaraugus, Oil Spring, Oneida, Onondaga, Poospatuck, St. Regis Mohawk (Akwasasne), Shinnecock, Tonawanda, and Tuscarora.

Resale Exclusion

The purchase of items by a person for resale to another is not subject to sales tax. It is immaterial whether the item is purchased singly or in bulk. To claim the exclusion for resale, the customer must present Form ST-120, *Resale Certificate*. The *Resale Certificate* may only be used if the purchaser is registered as a vendor for sales tax purposes. The purchaser's vendor identification number must be included with the information required to be entered on the certificate.

Note: Medical equipment and supplies purchased for use in providing medical or similar services by physicians, hospitals, clinical laboratories, ambulance companies, and other medical providers, for compensation, may not be purchased with a resale certificate.

Cigarette Dealers, Retailers

Cigarettes are any roll for smoking that is made wholly or in part of tobacco or any other substance, regardless of size or shape and regardless of whether or not such tobacco or other substance is flavored, adulterated or mixed with other ingredients, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

Retail Dealers of Cigarettes

A *retail dealer of cigarettes* is any person who sells cigarettes in New York State, other than a wholesale dealer or an operator of a vending machine. Every retail dealer of cigarettes in New York State must file Form DTF-716, *Application for Registration of Retail Dealers and Vending Machines for Sales of Cigarettes or Tobacco Products*. These registrations are valid for a calendar year and must be renewed annually. Any registration applied for after January 1 will only be valid for the balance of the calendar year in which it is issued; the \$100 registration fee will not be prorated.

A registered retail dealer of cigarettes must publicly display a Form DTF-720, *Retail Dealer Certificate of Registration for Cigarettes and/or Tobacco Products*, in each place of business in New York State in which sales of cigarettes or tobacco products are made.

Vending machine operators

Vending Machine Operators. An operator of a vending machine is anyone who sells cigarettes or tobacco products through a vending machine. Each vending machine must be registered by the operator. To register a vending machine, the vending machine operator must file Form DTF-716, *Application for Registration of Retail Dealers and Vending Machines for Sales of Cigarettes or Tobacco Products*, and obtain a registration for each machine. Form DTF-721, *Vending Machine Registration Certificate for Cigarettes and Tobacco Products*, must be

conspicuously displayed on each vending machine that is registered. Any registration applied for after January 1 will only be valid for the balance of the calendar year in which it is issued; the \$25 registration fee will not be prorated.

Pass-through of the Prepaid Sales Tax on Cigarettes

Beginning September 1, 1995, any wholesale dealer selling cigarettes to a retail dealer or vending machine operator must pass the prepaid sales tax through to the purchaser. (The prepayment amount is subject to adjustment annually, as of the first day of September.) The wholesaler must furnish the purchaser with Form ST-133, *Certificate of Prepayment of Sales Tax on Cigarettes*, for each invoice or other billing document the wholesaler gives the purchaser. The purchaser is required to attach this certificate to the invoice or delivery ticket covering the purchase indicated on the certificate, and keep these documents as part of his or her records for a period of three years.

Claiming a refund or credit of the prepaid sales tax

When the retailer or vending machine operator files a sales and use tax return, he or she may claim a credit or refund for the prepaid sales tax he or she paid on purchases of cigarettes. The prepaid sales tax credit or refund is computed by multiplying the number of packs (or cartons) sold times the prepaid sales tax paid on each pack (or carton). The prepaid sales tax should not be used to figure the amount for which the cigarettes will be sold at retail, or the amount of tax to be collected on the sale.

Dealers of Cigars and Other Tobacco Products

All dealers of tobacco products must be licensed, appointed, or registered by the Tax Department

Tobacco products include any cigar or roll for smoking (other than a cigarette) made in whole or in part of tobacco, and any other tobacco product (other than cigarettes), intended for consumption by smoking, chewing, or as snuff. All retail sales of tobacco products are subject to sales tax.

Wholesale Dealer. A wholesale dealer is any person who sells tobacco products to retail dealers or to other persons for resale. A wholesale dealer is also any person who owns, operates or maintains one or more tobacco product vending machines at premises owned or occupied by another person. All wholesale dealers must be licensed by the Tax Department.

Distributor. A distributor is any person who imports, or causes to be imported into New York State any tobacco products in excess of 50 cigars or one pound of tobacco for sale; or any person who manufactures any tobacco product within New York State; or any person who is located outside New York State and ships tobacco products into the state. All distributors must request appointment as a distributor from the Commissioner of Taxation and Finance.

Retail Dealer. A retail dealer is any person, other than a wholesale dealer, engaged in selling cigarettes or tobacco products. Every retail dealer of cigarettes or tobacco products in New York State must file Form DTF-716, *Application for Registration of Retail Dealers and Vending Machines for Sales of Cigarettes or Tobacco Products*. These registrations are valid for a calendar year and must be renewed annually. Any registration applied for after January 1 will only be valid for the balance of the calendar year in which it is issued; the \$100 registration fee will not be prorated.

Vending machine sales

See the discussion of vending machine operators on page 20 for information relating to sales of tobacco products through vending machines.

Returns, Allowances, Bad Debts

Allowances. When an allowance is made to the customer for defective merchandise, the customer is required to pay sales tax only on the balance due after subtracting the allowance from the selling price.

Bad Debts. If a charge is determined to be uncollectible, either in whole or in part, the seller may be eligible to apply for a refund or credit of the tax paid on the sale within three years from the date the tax was payable to the Tax Department.

Canceled Sales and Returned Merchandise. If a sales contract has been canceled or merchandise has been returned before the tax collected on the sale was payable to the Tax Department, the seller may exclude such tax collections from his or her sales and use tax return, provided the amount paid for the merchandise plus the tax collected thereon has been returned to the customer. If, however, the contract was canceled or the merchandise was returned after the tax has been remitted to the Tax Department, an application for a refund or credit must be filed with the Tax Department, within three years from the date the tax was payable to the Department. If the vendor has returned the tax paid to the purchaser, then the vendor may file for a refund or credit. If the vendor has not returned the tax to the purchaser, then the purchaser, instead of the vendor, must file for the refund or credit of the tax paid.

Part III

Product Listings

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Cosmetics and Toiletries

(Taxable except as noted)

After shave creams	Eye shadow	Lipstick refill
After shave lotions	Eyebrow brushes	Liquid face powder
After shave powders	Eyebrow dyes	Liquid lip color
After shave moisturizers	Eyebrow pencils	Liquid stockings
Almond meal	Eyelash dyes	Manicure preparations
Almond paste	Eyelash mascara	Mascara
Antiperspirants	Face cream	Mask preparations
Astringents	Face lotion	Massage cream
Bath crystals	Face packs	Mittens containing toilet powder
Bath milks	Face powder	Moisturizers
Bath oils	Facial oil	Mousse
Bath powders	Fingerwave lotions	Mouthwash
Bath salts	Floral essences	Mustache wax
Bath tablets	Foundation makeup	Nail bleach
Bay rum	Freckle remover	Nail brushes
Beauty creams	Fuller's earth	Nail enamel
Bleaching creams and lotions	Glycerine *	Nail lacquer
Body powders	Hair bleach	Nail polish
Bouquet liquids	Hair brushes	Nail polish remover
Breath fresheners	Hair combs	Nail whitener
Breath sweeteners	Hair dressing	Olive oil (if scent or color added)
Brilliantine	Hair dye	Orris root
Bubble bath	Hair gel	Pancake makeup
Cleansing creams and lotions	Hair lotion	Perfume
Closet deodorants	Hair oils	Perfume kits
Cocoa butter *	Hair pomade	Perfume novelties
Cold creams	Hair remover	Permanent waving cream
Colognes	Hair restorative	Permanent waving kits
Combs	Hair rinse	Permanent waving lotion
Compact refills	Hair spray	Permanent wave neutralizers
Cosmetic stockings	Hair straightener	Peroxide (if for use in bleaching the hair or for other toiletry purposes)
Cuticle softeners	Hair tint	Petroleum jelly (if scent or color added)
Cuticle removers	Hair tonic	Plucking cream
Dental floss	Hand cream	Pore cleanser
Denture cleaners	Hand lotion	Powder base
Deodorants	Henna	Protective cream *
Depilatories	Lavender	
Dusting powders	Lip ice	
Eau de cologne	Lip pomade	
Essences and extracts	Lip salve *	
Exfoliants	Lipstick	

* The sale is not subject to sales tax if the product is labeled for use for medicinal purposes.

Cosmetics and Toiletries (Cont'd)

(Taxable except as noted)

Pumice stones	Skin lotion	Toilet ammonia
Rock salt bath crystals	Skin oil	Toilet cream
Rose water	Skin tonic	Toilet lanolin
Rouge	Skin whitener	Toilet water
Sachets (containing powder or other aromatic material)	Stain removers	Toothbrushes
Scalp lotion *	Styptics *	Toothpaste
Scalp ointment *	Sun screens **	Tooth powder
Shampoo (non-medicated)	Suntan creams **	Vanishing cream
Shaving cream	Suntan lotions **	Water softener
Shaving preparations	Suntan oils **	Wave set
Skin balm	Talcum powder	Witch hazel
Skin bleach	Texture cream	Wrinkle-concealing preparations
Skin cream	Tissue cream	

* The sale is not subject to sales tax if the product is labeled for use for medicinal purposes.

** Those suntan screens that contain an SPF factor of 2 or greater are not subject to sales tax.

Exempt Foods and Beverages

(Includes items listed in Publication 880)

Artificial sweeteners	Fruit juices (but only if they contain 70% or more of natural fruit juice)	<i>Ovaltine</i>
Baby food	<i>Fruit Rollups</i>	Peanut butter
Bakery products	Fudges	Peanuts
Baking products	Game (e.g., partridges, rabbits, wild turkeys)	Pepper
<i>Beefamato</i>	Grain products	Popcorn
Bouillon cubes	Granola bars	Potato chips
Bread	Gravies	Poultry
Brownies	<i>Great Shakes</i>	Poultry products
Butter	Health bars	Preservatives
Cereals	Health food	Pretzels
Chicory	Health supplements	<i>Quik</i>
<i>Chocko</i>	Herbs	Relishes
Chocolate (for cooking purposes only)	Honey	Salad dressings
<i>Clamato Juice Cocktail</i>	Ice Cream (prepackaged only)	Salad dressing mixes
Cocoa	Iced tea (frozen or canned)	Salt
<i>Cocomalt</i>	Iced tea mix	Sandwich spreads
Coconut	Instant breakfast mix	Sunflower seeds (salted)
Coffee	Jams (fruit preserves)	Sauces
Coffee creamers	Jelling agents	Seafood
Condiments (e.g., salt, pepper)	Jellies	Seasonings
Cookies	Ketchup	Sesame seeds (for baking)
Crackers	Lard	Sherbet
Cupcakes	Leavening agents	Shortening
Dehydrated fruit	Liquid diet products	<i>Slim Fast</i>
Dehydrated vegetables	Mayonnaise	Soup
Diet foods (but not diet candy)	Meats and meat products	Spices
Diet substitutes	<i>Metrecal</i>	Starch (for cooking)
Diet supplements	Milk and milk products	<i>Start</i>
Doughnuts	<i>Moola Koola</i>	Sugar
Dressings	Mustard	Sugar substitutes
Eggs and egg products	Non-stick cooking sprays	Syrups
Fats	<i>Nutrament</i>	<i>Tang</i>
Fish and fish products	Nuts and nut products (but not chocolate or candy coated nuts)	Tea
Flavorings (e.g., vanilla extract and almond extract)	Oils (cooking, salad)	Vanilla extract
Flour	Oleomargarine	Vegetables
Food coloring	Olives	Vegetable juices
Frozen desserts		Vegetable oils
Frozen dinners		<i>V-8 Juice</i>
Fruit		Vitamins
		Yeast

Taxable Foods and Beverages

(Includes items listed in Publication 880)

<i>Awake</i>	Dietetic carbonated beverages	Lemonade
Beer	Dietetic soft drinks	Licorice
Bottled water	Fountain drinks (e.g., sodas, milkshakes, etc.)	Maple sugar candy
Candy and confectionery	French burnt peanuts	Mineral water
Candied apples	Fruit drinks *	Nuts (chocolate or candy coated)
Caramel-coated popcorn	Fruit nectars *	<i>Orange Crush</i>
Caramels	Fruit punch *	Pet foods **
Carbonated beverages	Fudge	Seltzer (water)
Carbonated water	<i>Gatorade</i>	Soft drinks
Chewing gum	Glazed fruit	Vegetable plants (used to grow food)
Chocolate candy	<i>Hi-C</i>	Vegetable seeds (used to grow food)
Chocolate-coated nuts	Ice	Vichy water
Chocolate-coated pretzels	Ice cream cones	Water
Coated candy	Ice cream sodas	<i>Yoo Hoo</i> (assorted flavor sodas)
Cocktail mixes	Ice cubes	
Collins mixer	<i>Jordan Almonds</i>	
Cranberry juice cocktails	<i>Kool-Aid</i>	
Dietetic candy		

* If product contains less than 70% real fruit juice.

** See the exemption for guide, hearing and service dogs under *Pet Accessories and Supplies* on Page 13.

General Merchandise

(Taxable except as noted)

Automotive supplies
Ballpoint pens
Bath linens (towels, washcloths, etc.)
Bathroom scales
Batteries
Bed linens (sheets, pillowcases, etc.)
Books (except for serial comic books and crossword puzzle magazines)
Calcium fluoride (for melting ice)
Candles
Carpet cleaners
Carpet fresheners
Chalk
Charcoal
Christmas trees (live or artificial)
Christmas tree ornaments
Cigarette lighters
Clock radios
Clocks
Clothing (gloves, hats, socks, shoes, underwear, etc.)
Coffee makers
Comic books (non-serial)
Compact discs
Computer discs
Cookbooks
Cookware
Correction fluid (e.g., *White-out*)
Crayons
Cutlery
Date books
Diaries
Dish detergent
Disposable cigarette lighters
Dog collars *
Dog food *
Envelopes
Erasers
Flashlights

Flatware
Flea collars *
Flower pots
Flower seeds
Footwear (all types)
Folders
Furniture (e.g., folding chairs)
Furniture polish, wax, etc.
Garden seed packets
Garden furniture
Garden tools and supplies
Gift wrap
Glue
Greeting cards
Highlighters
Hosiery
Household cleaners, deodorizers
Housewares
Ice (including ice cubes, ice chunks, ice blocks, and chipped ice)
Ink
Ink pens
Kitchen appliances
Kitchen utensils
Lead pencils
Lighter fluid
Loose-leaf binders
Loose-leaf paper
Lunch boxes
Magic Markers
Manila folders
Mechanical pencils
Memo pads
Menorahs
Message pads
Microwave cookware
Notebooks
Paper clips
Paper plates and cups
Pens and pencils
Pet accessories *

Pet medications *
Pet supplies *
Photography equipment (disposable cameras, instant cameras, still cameras, etc.)
Photography supplies (film, flash bulbs, flash cubes, etc.)
Picnic accessories (jugs, flatware, cutlery, etc.)
Picnic baskets
Plants
Plastic ware
Playing cards
Radios (including *Walkmans* and boom boxes)
Reading glasses (non-prescription)
Rock salt
Room fresheners, deodorizers
Sewing notions (needles, thread, thimbles, etc.)
Scales (kitchen or bathroom)
Shoe laces
Shoes
Silverware
Snow shovels
Staplers
Staples
Stationery
Stereos
Sunglasses (non-prescription)
Table linen
Tableware
Tape players, recorders, cassettes
Tea pots
Thermos bottles, cups, jars, etc.
Torch lights
Toys
Underwear
Video cassette recorders and tapes
Watches
Wrapping paper
Writing tablets

* See the exemption for guide, hearing, and service dogs under *Pet Accessories and Supplies* on Page 13.

Medical equipment and supplies - Updated July 1, 2014. See [TSB-M-14\(8\)S](#)

(Exempt unless purchased by paid providers of medical services)

Adhesive bandages, surgical tape	Contraceptive applicators	Incontinence liners	Splints
Aspirators	Corn pads	Incontinence pads	Splints, finger
Bandages (cotton, porous, etc.)	Corn removal razor	Incontinence pants ²	Sponges, surgical
Bathtub chairs and seats ¹	Cotton, absorbent sterile	Inhalers	Spray-on bandages
Bathtub safety grab bars, handles, and rails ¹	Cotton, sterile balls	Insulin travel kits	Stethoscopes
Bed boards, rails ¹	Cotton, sterile swabs	Lymphedema sleeves	Stockings, surgical ²
Bedpans	Crutch tips, pads	Mastectomy sleeves	Swabs, butterfly, sterile
Bench, bathtub transfer	Crutches	Medical oxygen regulators	Syringes, ear and hypodermic
Blood pressure gauges	Cushions, invalid	Nasal aspirators	Tape, surgical
Blood testing strips	Diaphragms, contraceptive	Nasal breathing strips	Thermometers
Braces, ankle	Drainage sets, body, bedside	Nebulizers	Throat and spine bags
Braces, arm	Elastic bandages	Orthodontic devices (i.e., TMJ splints, positioners, retainers, etc.)	Tonsillectomy bags
Braces, elbow	Eye droppers	Ostomy pouches, tubes, supplies	Tourniquets
Braces, knee	Eye pads (non-cosmetic)	Overbed tables ¹	Traction supports and devices
Braces, leg	First aid kits	Oxygen inhalers, tents	Urinals, medical
Braces, spinal	First aid products	Oxygen therapy regulators	Urinary drainage sets
Breast pumps	Foot boards ¹	Pessaries	Urine drainage tubes
Breathing tubes	Forearm crutches	Pregnancy test kits	Urine testing strips
Bunion pads, reducers	Fracture bed pans	Raised toilet seats ¹	Urostomy bags, sets, supplies
Callous pads	Gauze, surgical, sterile	Rectal tubes	Vaccination shields
Canes ¹	Heating pads	Respirators	Vaporizers
Cast covers, boots	Hernia belts, supports and trusses	Resuscitators	Walkers
Catheters, temporary	Hospital beds	Rib belts	Wheelchairs and cushions
Cervical collars	Hot water bottles	Rings, invalid	Wheelchair ramps
Colles splints	Hypodermic needles, syringes	Roll-about chairs ³	(prefabricated)
Colon tubes	IPPB machines	Sinus masks	Wheelchair trays
Colostomy bags, sets, supplies	IUDs	Slings, arm	Wound cleansers
Commodos (portable toilets)	Ice bags, medical	Slings, knee	Wound dressings, sterile
Condoms	Ileostomy bags, sets, supplies	Slings, pelvic	

Prosthetic devices - Updated July 1, 2014. See [TSB-M-14\(8\)S](#)

(Exempt to all purchasers)

Arch supports	Contact lenses, corrective	Hemodialysis equipment	Patient lifts
Artificial limbs	Crowns (permanently attached by a dentist)	Hydraulic patient lifts	Power lift seats and chairs
Artificial organs	Dental space maintainers	Hydraulic wheelchair lifts	Sound amplification devices for hearing impaired persons
Artificial teeth	Elevators (for use by a person with a disability in a residence)	Hearing aids	Stairway elevators and lifts (for use by a person with a disability in a residence)
Automobile controls (for persons with disabilities)	Eyeglasses, prescription	Magnifiers for persons having low vision	Surgical implants
Bathtub lifts	Filler pads, mastectomy	Optical tactile converters	Telephone and other equipment for use by hearing impaired persons to aid in telephone communication
Braille typewriters	Garments with built-in breast forms (postmastectomy) ⁴	Orthopedic implants	
Brassieres, surgical ⁴	Hair prosthesis ⁵	Otology implants	
Breast forms, mastectomy	Hearing aid batteries (manufacturer designated)	Pacemaker, cardiac	
Cardiac pacemakers		Parts, special lettering, special attachments to appliances for use by persons with disabilities	
Catheters, permanent			
Ceiling lifts			
Closed-captioned TV program receivers			

Taxable to all - Updated July 1, 2014. See [TSB-M-14\(8\)S](#)

Air conditioners	Dehumidifiers	Medical diaries	Rubber or latex gloves
Air purifiers and cleaners	Dental floss	Non-contraceptive vaginal	Sanitary napkins or pads,
Athletic supports	Denture liners, cushions	creams, foams, ointments,	tampons, and similar
Basins	Douches	and jellies	products
Bed baths	Ear plugs, stopples	Nose clips	Skin removers
Blackhead removers	Emesis basins	Nose shields	Straws
Bracelets, medical I.D.	Exercise equipment	Nursers, baby bottles	Sunglasses, non-prescription
Braille games and books	Fans	Nursing pads	Sun lamp goggles
(except for the portion of	Feminine hygiene syringes	Orthopedic mattresses	Sun lamps
the price attributable to	Foot baths	Pads for eyeglasses	Tongue blades, depressors
features used by a person	Funnels	Parallel bars	Tweezers
with a disability)	Glass drinking tubes	Plaster bandages or splints	Ultra-violet lamps
Cast cutters	Heaters	Plastic or rubber sheets	Veterinary equipment,
Cotton, absorbent, unsterile	Humidifiers	Poison records	instruments and supplies
Cotton, unsterile balls	Massage devices	Posture shorts	Vibrators
Cotton, unsterile swabs	Mattress covers	Posture support chairs	Whirlpool baths, pumps,
Deodorant powders or	Medical charts	Prep brushes, surgical	concentrate
sprays		Pumice	

¹ To be exempt, these items must be purchased and used for a medical reason.

² These items are exempt from state and local sales and use taxes as medical equipment unless they are purchased by a person for use in providing medical or similar services for compensation. However, when these items are purchased for such use, they are exempt from the state's (4%) sales and use taxes as articles of clothing or footwear. This exemption, however, does not apply to all locally imposed sales and use taxes. See [Publication 718-C, Sales and Use Tax Rates on Clothing and Footwear](#).

³ To be exempt, roll-about chairs must be comparable to wheelchairs and have wheels that are at least five inches in diameter.

⁴ These articles of clothing and footwear are exempt from all state and local sales and use taxes as prosthetic devices.

⁵ Since a hair prosthesis may be used for cosmetic purposes that do not relate to medical problems, sales tax must be paid when it is purchased. If the prosthesis is used as a result of a medical problem, an application for a refund of the tax paid may be made using [Form AU-11, Application for Credit or Refund of Sales or Use Tax](#). This form must be accompanied by a statement from the attending physician describing the specific medical problem that resulted in the need for a prosthesis.

New York State Tax Department

Online Services

Create an Online Services account
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- view your account and filing information
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- check for new online services and features



Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at (518) 485-5082. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.



Telephone assistance

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431



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

Exhibit B



Drugstores and Pharmacies

Introduction

This bulletin explains how sales tax applies to items commonly sold by drugstores and pharmacies. See also Tax Bulletins [Convenience Stores and Bodegas \(TB-ST-135\)](#), and [Coupons and Food Stamps \(TB-ST-140\)](#). Information regarding sales of medical equipment and prosthetic devices can be found in [Publication 822, Taxable Status of Medical Equipment and Supplies, Prosthetic Devices, and Related Items](#).

Drugs and medicines

Sales of drugs and medicines are not taxable if the drug or medicine is intended for internal or external use in people to diagnose, cure, treat, or prevent illness or disease. This includes both prescription and nonprescription drugs and medicines that are recognized by the *United States Pharmacopeia*, the *Homeopathic Pharmacopeia of the United States*, or the *National Formulary*.

Prescription drugs and medicines are used under the supervision of a licensed physician and must be obtained from a licensed pharmacist. They include:

- antibiotics
- narcotics
- controlled substances

Nonprescription or over-the-counter drugs and medicines can also be purchased exempt from sales tax. They include:

- pain relievers (aspirin, ibuprofen, etc.)
- antacids
- cough and cold remedies
- dandruff shampoo and treatments

Other medicinal products used internally or externally by humans for the preservation of health, and products (other than food) that are intended to affect the structure or a function of the human body, are also exempt from sales tax. These products, which are not ordinarily considered drugs or medicines, include:

- acne preparations
- contact lens preparations
- eye drops
- laxatives
- lip balm intended to treat or prevent chapped lips
- petroleum jelly that is uncolored and unscented
- products that treat nicotine withdrawal symptoms
- products that prevent or treat athlete's foot or other fungus infections
- products intended to treat sunburns
- sunscreens
- vaginal creams, foams, ointments, and jellies that treat specific medical conditions

Family planning

Products sold to reduce the chance of pregnancy are not taxable. These products may be sold by prescription or over the counter.

Examples of these items include:

- birth control pills
- condoms
- contraceptive creams, foams, jellies, or sponges
- diaphragms
- vaginal suppositories

Cosmetics and toiletries

Cosmetic and toiletry products are used for cleansing, personal grooming, beautifying, or altering your appearance. These products are taxable even if they contain some medicinal ingredients. See the *Cosmetics and toiletries* chart below.

General merchandise

Many drugstores and pharmacies sell a variety of general merchandise that is generally taxable. See the *General merchandise* chart below.

Food and beverages

Drugstores and pharmacies often also sell a variety of food and beverages. See Tax Bulletin [*Listings of Taxable and Exempt Foods and Beverages Sold by Food Stores and Similar Establishments \(TB-ST-525\)*](#) for detailed information on sales of food and beverages.

Insurance coverage

The taxability of an item **does not change** when payment is made under medical insurance coverage, including:

- personal insurance,
- an employer-sponsored medical plan,
- Medicaid, or
- Medicare.

Nontaxable items remain nontaxable regardless of the method of payment. Taxable items remain taxable even when paid for under insurance coverage.

The charts below list examples of:

- taxable cosmetics and toiletries; and
- taxable general merchandise commonly sold by drugstores and pharmacies.

Cosmetics and toiletries (taxable except as noted)

- after-shave products
- antiperspirants and deodorants
- astringents
- baby powder, talcum powder
- bath crystals, salts, milks, etc.
- bleaching creams and lotions
- bouquet liquids
- breath fresheners
- bronzers
- bubble bath
- creams and lotions, including:
 - beauty cream
 - body lotion
 - cleansing creams
 - face cream
 - hand lotion
 - moisturizers
- cocoa butter *
- cold creams
- colognes
- depilatories
- eau de cologne
- essences and extracts
- exfoliants
- face packs
- freckle remover
- glycerin *
- hair care products, including:
 - hair brushes, combs
 - colorings, dyes, henna
 - gel, mousse, hairspray
 - texture cream
 - straightening products
- lavender
- make-up, including:
 - mascara
 - foundation
 - face powder
 - blush
 - eyeliner
 - eye shadow
 - lipstick
- manicure preparations
- massage cream
- mustache wax
- nail care products, including:
 - brushes
 - cuticle removers
 - enamel
 - polish
 - polish remover
 - acrylic nails
- oral hygiene products, including:
 - toothbrushes
 - toothpaste
 - dental floss
 - mouthwash
- permanent waving cream, lotion, and kits
- perfumes
- peroxide (if for use in bleaching the hair or for other toiletry purposes)
- pore cleanser
- protective cream *
- pumice stones
- razors
- rose water
- sachets (containing powder or other aromatic material)
- soap
- scalp lotion *
- scalp ointment *
- shampoo (nonmedicated)
- shaving cream
- stain removers
- styptics *
- suntan products that contain no sunscreen
- talcum powder
- tissue cream
- toilet lanolin *
- vaginal creams, douches, deodorant powders, or sprays (non-medicinal)
- water softener
- witch hazel
- wrinkle-concealing preparations

* Not subject to sales tax if the product is labeled for use for medicinal purposes.

General merchandise (taxable except as noted)

- automotive supplies
- bath linens
- batteries[†]
- bed linens
- books (except for serial comic books and crossword puzzle magazines)
- calcium chloride (for melting ice)
- candles
- carpet cleaners and fresheners
- chalk
- charcoal
- Christmas trees (live or artificial)
- cigarette lighters
- cleaning products
- clocks, clock radios
- comic books (non-serial)
- CD's, DVD's, Blue-ray
- computer discs
- cookbooks
- flashlights
- film, blank cassette tapes
- flowers
- flower pots and seeds
- furniture (e.g., folding chairs)
- furniture polish, wax, etc.
- garden furniture
- garden tools and supplies
- gift wrap
- glue
- greeting cards
- holiday decorations
- housewares
- ice (including cubes, chunks, blocks, and chips)
- kitchen appliances, including:
 - coffee makers
 - cookware
 - cutlery
 - utensils
- lighter fluid
- lunch boxes
- menorahs
- microwave cookware
- paper plates and cups
- pet food and supplies^{††}
- pet medications^{††}
- printer ink
- photography equipment and supplies, including:
 - cameras
 - lenses
 - memory cards
 - film
 - flash bulbs or cubes
- picnic accessories (jugs, flatware, cutlery, etc.)
- picnic baskets
- plants
- plastic ware
- playing cards
- radios
- reading glasses (non-prescription)
- rock salt
- room fresheners, deodorizers
- sanitary napkins or pads, tampons, and similar products
- scales (kitchen or bathroom)
- snow shovels
- stationery supplies, including:
 - pens and pencils
 - markers and crayons
 - highlighters
 - notebooks
 - paper, envelopes
 - binders, folders
 - scissors
 - paper clips, staples
- stereos
- sunglasses (nonprescription)
- table linen
- tableware
- tape players, recorders, cassettes
- tea pots
- thermos bottles, cups, jars, etc.
- torch lights
- toys
- video cassette recorders and tapes
- watches
- wrapping paper

[†] Except for batteries specifically designated for hearing aids.

^{††} See Tax Bulletin [Exemptions Relating to Guide, Hearing, and Service Dogs \(TB-ST-245\)](#) for additional information.

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 1105(a) and 1115 (a)(3)

Regulations: Sections 527.1 and 528.4

Publications:

[Publication 718-C](#), *Sales and Use Tax Rates on Clothing and Footwear*

[Publication 822](#), *Taxable Status of Medical Equipment and Supplies, Prosthetic Devices and Related items*

Bulletins:

[Clothing and Footwear Exemption \(TB-ST-122\)](#)

[Convenience Stores and Bodegas \(TB-ST-135\)](#)

[Coupons and Food Stamps \(TB-ST-140\)](#)

[Exemptions Relating to Guide, Hearing, and Service Dogs \(TB-ST-245\)](#)

[Listings of Taxable and Exempt Foods and Beverages Sold by Food Stores and Similar Establishments \(TB-ST-525\)](#)

[Lists of Exempt and Taxable Clothing, Footwear, and Items Used to Make or Repair Exempt Clothing \(TB-ST-530\)](#)