



## **I. Member Alert on New York Bill Proposing Changes to Sales Tax Exemption for Promotional Materials**

This message is being sent to DMA members in New York state to alert you to the New York Assembly budget bill, [AB 9710](#), that has recently been amended to include a repeal of certain sales tax exemptions pertinent to direct marketers. As in other states, New York is struggling to close a budget gap to fund state operations and is therefore considering a variety of revenue (tax) raising options.

The amended language repeals the sales tax exemption for, among other things:

- promotional materials (*see definition below*) mailed, shipped or otherwise distributed from within New York state, by or on behalf of vendors or other persons to their customers or prospective customers located outside New York state;
- mailing lists and activities directly in conjunction with mailing lists; and
- “mechanicals, layouts, artwork, photographs, color separations and like property where such property is purchased, manufactured, processed or assembled by a person who furnishes such property to a printer and the printer uses such property directly and predominantly in the production of promotional materials.” (*The complete text of this amendment is included below.*)

If this provision passes, services and materials that were previously exempt from the NY state sales tax of 4% and county sales taxes averaging an additional 4% (for a total of 8%) will now be required to pay the tax. The legislature is currently on recess until April 7<sup>th</sup>, but discussions remain underway in Albany and the budget is always a priority bill, so we expect attention on it soon.

Please review this information to see how it might apply to you. If it does, DMA encourages you to contact your state Assembly Member and Senator this week to oppose this provision. If you do contact your legislator, please let me know.

For further information, contact Ron Barnes, Vice President, State Affairs at 202-861-2414 or [rbarnes@the-dma.org](mailto:rbarnes@the-dma.org).

## **II. Legislator Contact Information**

The following sites have contact information for Assembly Members and Senators and a search feature if you do not know who your member is.

Assembly - <http://assembly.state.ny.us/mem>

Senate - <http://www.nysenate.gov/senators>

### **III. Key messages**

- Removal of the sales tax exemption threatens business to NY-based merchants in the promotional materials, list and advertising business as clients will now be faced with the imposition of state and county sales taxes totaling about 8% statewide.
- The advertising and marketing businesses cannot sustain increased pricing pressures now. This is a highly price sensitive business and any cost increase to customers will have a negative effect us business.

### **IV. Definition of Promotional Materials**

“Any advertising literature, other related tangible personal property (whether or not personalized by the recipient’s name or other information uniquely related to such person) and envelopes used exclusively to deliver the same. Such other related tangible personal property includes, but is not limited to, free gifts, complimentary maps or other items given to travel club members, applications, order forms and return envelopes with respect to such advertising literature, annual reports, prospectuses, promotional displays and Cheshire labels but does not include invoices, statements and the like. Promotional materials shall also include paper or ink furnished to a printer for use in providing the services of producing, printing or imprinting promotional materials or in producing, printing or imprinting promotional materials, where such paper and ink become a physical component part of the promotional materials and such printer sells such services or such promotional materials to the person who furnished the paper and ink to such printer.”

### **V. Relevant Text of the Sales Tax Exemption Removal Language**

(n) (1) Except as otherwise provided in this subdivision, promotional materials mailed, shipped or otherwise distributed from a point within the state, by or on behalf of vendors or other persons to their customers or prospective customers located outside this state for use outside this state shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten of this article.

(2) Services otherwise taxable under paragraph one or two of subdivision (c) of section eleven hundred five of this article relating to mailing lists or activities directly in conjunction with mailing lists shall be exempt from tax under this article if such services are performed on or directly in conjunction with promotional materials exempt under paragraph one or four of this subdivision.

(3) Receipts from the retail sale of promotional materials, receipts from every sale, except for resale, of services described in paragraph one or two of subdivision (c) of section eleven hundred five to such promotional materials and consideration given or contracted to be given for either such materials or such services to such materials shall be exempt from tax under this article to the extent of the vendor's separately stated charge to the purchaser of such materials or services for the vendor's cost to ship or deliver such materials to the purchaser's customers or prospective customers by means of the United States postal service, paid by the vendor to such postal service to ship or deliver such materials, but only where the vendor separately states such charge to ship or deliver (not exceeding the vendor's United States postal service costs) in a written contract with the purchaser or on a written bill rendered to the purchaser.

(4) Notwithstanding any contrary provisions of paragraph one of this subdivision, promotional materials which are printed materials and promotional materials upon which services described in paragraph two of subdivision (c) of section eleven hundred five have been directly performed shall be exempt from tax under this article where the purchaser of such promotional materials mails or ships such promotional materials, or causes such promotional materials to be mailed or shipped, to its customers or prospective customers, without charge to such customers or prospective customers, by means of a common carrier, United States postal service or like delivery service.

(5) Services otherwise taxable under paragraph two of subdivision (c) of section eleven hundred five performed on promotional materials exempt under paragraph four of this subdivision shall be exempt from tax under this article.

(6) Storing promotional materials exempt under paragraph four of this subdivision shall be exempt from tax under this article where the vendor of the storing service is also either the vendor of such exempt promotional materials or the vendor who rendered exempt services under paragraph two or five, or both, of this subdivision with respect to such exempt promotional materials and the purchaser of the storing service is the purchaser of such exempt promotional materials.

(7) Mechanicals, layouts, artwork, photographs, color separations and like property shall be exempt from tax under this article where such property is purchased, manufactured, processed or assembled by a person who furnishes such property to a printer and the printer uses such property directly and predominantly in the production of promotional materials exempt under paragraph four of this subdivision, or in performing services exempt under paragraph five of this subdivision, for sale by such printer to the person who furnished such property to the printer.

(8) Nothing in this subdivision shall be construed to exempt tangible personal property (i) purchased by a person (other than exempt promotional materials described in paragraph four of this subdivision) or (ii) manufactured, processed or assembled by the manufacturer, processor or assembler, who furnishes such property to the vendor of promotional materials exempt under paragraph one or four of this subdivision to be included as free gifts with such exempt promotional materials to be mailed or shipped to such purchaser's or such manufacturer's, processor's or assembler's customers or prospective customers or who otherwise uses such property in this state, for example, by giving or donating the property as free gifts to another person, unless such tangible personal property is mailed, shipped or otherwise distributed from a point within this state to such customers or prospective customers located outside this state for use outside this state.