

TV Commercials

163

Sales Tax
Fact Sheet

This fact sheet will help to explain the exemption that began July 1, 1999, for:

- sales of TV commercials, and
- purchases of items used or consumed in preproduction, production, or postproduction of TV commercials.

Preproduction and production include all activities related to preparation for shooting and the shooting of TV commercials, including film processing. Postproduction includes all activities related to finishing and duplicating TV commercials.

What is a TV commercial?

To qualify for the exemption, the TV commercial must be made for **broadcast, cable, or satellite** television.

The TV commercial must be promotional in nature. A TV commercial includes films or videos where the main purpose is **advertising or promotion**. It includes films, videos, or infomercials that are intended to make the viewer want to buy something, think positively about an idea or organization, hear about a public concern, or vote for a candidate. It may promote the sale of a product, service, or a public image. It may be a public service announcement or a political message.

Still taxable. The exemption does not apply to commercials made for the following uses, even though they may be promotional in nature:

- conventions
- dealers' showrooms
- demo reels
- in-store videos
- in-store closed circuit broadcasts
- mall kiosks
- movie theaters
- trade shows
- video walls

Training, instructional, educational, or internal company communication films or videos are not TV commercials—therefore, the exemption does not apply.

Note: Although the TV commercial exemption does not apply, some items used in the production of these films and videos may still be exempt. For example, items used or consumed in the production of a video may be purchased exempt. Also, a capital equipment refund may apply (see page 3).

Exempt sales

All sales of TV commercials are exempt from sales tax if they meet the definition of TV commercial as described in the previous section. Sometimes footage is shot and production and postproduction work is done for multiple uses. If part of the footage will be used for a TV commercial along with taxable uses (such as those listed in the *Still taxable* section in the column at left), the exemption applies to items used in preproduction and production activities. When postproduction work is separated and final production is done, charges for the TV commercial are exempt; charges for taxable uses are subject to tax.

It must be clear on the invoice and in the contract that the work being done is for a TV commercial in connection with other uses of the footage.

Example 1. A client wants a TV commercial made and will also need a video made to be shown at a trade show. Footage is shot and production is completed. Postproduction work includes transferring the film to tape, electronic manipulation, and color enhancement. At this point, three 60 second TV commercials are made and other footage is used to make the trade show video. The exemption applies during preproduction, production, and postproduction while the footage has multiple uses. The charges for the postproduction of the trade show video are taxable. The postproduction charges for the TV commercial are exempt.

Example 2. Same as above except the three 60 second TV commercials are looped together to make the trade show video. The exemption applies during preproduction, production, and postproduction while the footage has multiple uses. The charges for looping the three commercials together for the trade show video are taxable. The postproduction charges for the TV commercials are exempt.

Example 3. An ad agency is hired to develop a commercial. The same commercial will be broadcast on TV and shown at movie theaters. The exemption applies during preproduction, production, and postproduction, while the footage has multiple uses. The postproduction charges for broadcast on TV are exempt; the postproduction charges for the movie theater commercial are taxable.

Example 4. A video is made for a trade show. Later, part of the video is made into a TV commercial. The total charge for producing the original video is taxable—the exemption does not apply. The later charges to make the TV commercial are exempt.

Exempt purchases

To claim exemption for items used or consumed to make TV commercials, use Form ST3, Certificate of Exemption, using Exemption Code I and writing in, “TV Commercials.” Examples of exempt items or services used in TV commercials include:

- animation services, including animatics and ripomatics
- audio services, including mixing, recording, and music
- closed captioning services
- duplication services, including film, video tapes, and CD’s
- editing services, including audio and special effects
- expendables (supplies consumed in production)
- film stock and processing
- spec work
- special effects
- talent fees

Equipment

Purchases of equipment are always taxable. However, you may qualify for a refund of tax on purchases of capital equipment. See *Capital equipment* on page 3.

Rentals or leases of equipment are exempt if used for *preproduction or production* of TV commercials. Examples of exempt equipment rentals include:

- cameras
- generators
- lighting and grip equipment
- VTR/video assist equipment

Equipment you rent or lease for use in postproduction is taxable.

Vehicle rentals for TV commercials are not taxable if the vehicle is specially designed and equipped with items that are used primarily in the preproduction and production of TV commercials. Vehicles rented for administration or general management are taxable.

Example 1. A grip truck is rented for use at a location where a TV commercial is being filmed. The grip truck is specially fitted with equipment for the shoot. Rental charges for the grip truck are not taxable.

Example 2. The producer’s assistant rents a utility truck from a truck rental company, then rents and picks up equipment and lights to take to a site to shoot a TV commercial. Since the truck is not specially fitted with production equipment, rental of the truck is taxable. Rental of equipment and lights used to shoot the TV commercial is exempt.

Example 3. A trailer is rented for use at a site where a TV commercial is being filmed. The trailer is used for storing equipment and wardrobe. The charge for the trailer rental is taxable.

Example 4. A motor home is rented for use at a location where a TV commercial is being filmed. The motor home was specifically modified to include a makeup room and is rented to persons to use at locations where commercial filming is being done. Since the motor home was specifically modified for film production, the rental charge is not taxable.

Props and sets for TV commercials fall into one of three categories:

1. Props and sets *purchased* but only *used once* and disposed of are exempt.
2. Props and sets *purchased* and *kept for future use* are taxable. However, a capital equipment refund may apply (see *Capital equipment* in the next column).
3. Props and sets *rented* for use in preproduction or production are exempt.

Note: Props and sets for other uses (not TV commercials) are taxed as follows.

1. Props and sets *purchased* but only *used once* and disposed of are exempt.
2. Props and sets *purchased* and *kept for future use* are taxable. However, a capital equipment refund may apply (see *Capital equipment* in the next column).
3. Props and sets *rented* are taxable. However, a capital equipment refund may apply (see *Capital equipment* in the next column).

Taxable purchases

Fuel, electricity, gas, or steam used for **space heating or lighting** is taxable.

Catering services, restaurant meals, and other prepared food are taxable.

Lodging is taxable. Motels, hotels, resorts, and others must charge sales tax on lodging and related services furnished for a period of less than 30 days. Lodging is not taxable if it is for a period of 30 days or more and there is an enforceable agreement that requires the lessor and lessee to give prior notice of their intention to terminate.

Vehicles, trailers, and motor homes *purchased* are taxable. Also, licensed vehicles do not qualify for the capital equipment refund.

Items used in **administration and general management** are taxable. Examples include:

- building cleaning and maintenance services
- office furniture
- lawn care services
- letterhead, envelopes, invoices
- office supplies
- parking fees
- security services
- specialty advertising materials (mugs, calendars)
- telephone service

Capital equipment

When you buy, lease, or rent capital equipment, you must pay sales or use tax. However, you may be eligible for a refund of the tax you paid. Capital equipment includes any equipment used by the purchaser or lessee primarily for manufacturing or fabricating a product to be sold ultimately at retail.

A production company (including preproduction or postproduction companies) may qualify for a refund of sales or use tax paid on any equipment that is used for preproduction, production, or postproduction of a film or video that is sold ultimately at retail. *The refund is not limited to equipment used for TV commercials, but includes equipment to produce any film or video.* Examples of equipment that may qualify are:

- cameras
- lights
- props
- computers and software to make animated films
- audio recording equipment
- special effects equipment
- duplication recording equipment

Not included: Trucks or trailers that haul equipment, and any other licensed vehicles, do not qualify for the capital equipment refund. General office and administrative computers and equipment do not qualify.

Note: Advertising agencies that produce TV commercials in house *as part of an advertising service* do not qualify for the capital equipment refund, since they are selling an advertising service rather than a product.

To file for a capital equipment refund, request Sales Tax Form ST-11, Capital Equipment Refund Claim. Request Sales Tax Fact Sheet 103, Capital Equipment, for more information. These forms are also available on our web site.

Miscellaneous

A **video board** is a “paper” version of a TV commercial (similar to a story board) sent to a dealer to choose which TV commercials the dealer wants to use. Video boards may also be used for archive purposes to store in the job file. In either case, the video board is considered to be part of the postproduction process and is exempt.

PowerPoint presentations. If a PowerPoint or similar electronic presentation is developed and sold in a tangible form, such as on a disk or CD-ROM, it is taxable. Sales of additional copies of the presentation are also taxable. However, if the cost also includes the services of providing a person to give the presentation, it is considered to be a nontaxable service.

Sales to governments

The *federal* government and its agencies can purchase goods and services exempt from sales tax.

Minnesota state agencies use a Direct Pay Permit, which means that state agencies do not pay tax to the seller on purchases of *goods*, they pay the state directly.

School districts and *local government owned hospitals and nursing homes* can purchase goods and services exempt from sales tax.

All other *local government agencies* (such as cities, counties, and townships) must pay sales or use tax on purchases of goods and services.

Request Fact Sheet 142, Sales to Governments, for more information.

Sales to nonprofits

Qualifying *nonprofit organizations* must give you an exemption certificate to claim exemption on purchases.

Use tax

The use tax complements and is similar to the sales tax. Use tax and sales tax rates are identical. Use tax applies when you buy taxable items or services without paying sales tax to the vendor. The use tax is based on your cost of taxable purchases.

For example, if you buy a desk for use in your Minnesota office from a mail order company or over the Internet and the seller does not charge sales tax, you must pay use tax. Other items commonly purchased from retailers outside Minnesota that are subject to tax include:

- computer hardware and software
- office supplies
- books
- business furniture, fixtures, and decorations
- capital equipment. (However, a refund may apply—see *Capital equipment* on page 3).

Report state and local use tax when you electronically file your sales and use tax return. Request Fact Sheet 146, Use Tax for Businesses, for more information.

Local sales and use taxes

If you are located or working in an area with a local tax, local sales or use tax may also be due. Local taxes are listed and explained in detail in Fact Sheet 164, Local Sales and Use Taxes.

References:

M. S. 297A.68, Subd. 30, Television commercials
M. S. 297A.68, Subd. 5, Capital equipment
M. S. 297A.61, Subd. 3(g)(2), Lodging

Other fact sheets you may need:

Sales to Governments, #142
Use Tax for Businesses, #146
Local Sales and Use Taxes, #164
Guide to Filing and Paying Sales and Use Tax Electronically, #170