

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01546-REB-CBS

The Direct Marketing Association,

Plaintiff,

v.

Roxy Huber, in her capacity as Executive Director, Colorado Department of Revenue,
Defendant.

DECLARATION OF JENNIFER DURAN

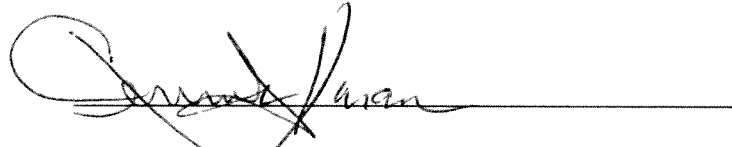
I, Jennifer Duran, pursuant to 28 U.S.C. § 1746 depose and state as follows:

1. I am a paralegal with the Colorado office of Attorney General.
2. At the request of the Assistant Attorneys General working on this matter I went to the website of the New York State Department of Taxation and Finance (<http://www.tax.state.ny.us/>) and reviewed the New York State Combined Instructions for Forms IT-150 and IT-201, Personal Income Tax Returns short and long forms for the year 2009. I downloaded pages 23 and 81 of those instructions (attached as Exhibits A and B respectively) which contain the instructions for completing the Sales or Use Tax line on the tax return forms, line 35 on IT-150 and line 59 on IT-201.
3. I also downloaded Instructions for Form ST-141(Individual Purchaser's Periodic Report of Sales and Use Tax) which has a chart showing the Sales and Use tax rates in the various local jurisdictions in New York State and which chart is attached as Exhibit C.

4. I contacted the New York State Department of Taxation and Finance and spoke to Eric Songayllo in the Office of Tax Policy Analysis who advised me that the State of New York collects the Sales and Use Tax reported on taxpayer's Personal Income Tax returns for the State and the jurisdictions listed on the chart, Exhibit C, and remits to those jurisdictions their share of the use tax paid based on the taxpayers' addresses on their tax return forms.

I declare under penalty of perjury that the foregoing is true and correct

Executed this 19th day of November 2010.


Jennifer Duran

Line 35 — Sales or use tax

Report your sales or use tax liability on this line.

You owe sales or compensating use tax if you:

- purchased an item or service subject to tax that is delivered to you in New York State without payment of New York State and local tax to the seller; or
- purchased an item or service outside New York State that is subject to tax in New York State (and you were a resident of New York State at the time of purchase) with subsequent use in New York State.

Note: You may be entitled to a credit for sales tax paid to another state. See the exact calculation method in the instructions for Form ST-140, *Individual Purchaser's Annual Report of Sales and Use Tax*.

For sales and use tax purposes, a resident includes persons who have a permanent place of abode in the state. Accordingly, you may be a resident for sales tax purposes even though you may not be a resident for income tax purposes. See the instructions for Form ST-140 for more information.

You may not use this line to report:

- any sales and use tax on business purchases if the business is registered for sales and use tax purposes. You must report this tax on the business's sales tax return.
- any unpaid sales and use tax on motor vehicles, trailers, all-terrain vehicles, vessels, or snowmobiles. This tax is paid directly to the Department of Motor Vehicles.

An unpaid sales or use tax liability commonly arises if you made purchases through the Internet, by catalog, from television shopping channels, or on an Indian reservation, or if you purchased items or services subject to tax in another state and brought them back to New York for use here.

Example 1: You purchased a computer over the Internet that was delivered to your house in Monroe County, New York, from an out-of-state company and did not pay sales tax to that company.

Example 2: You purchased a book on a trip to New Hampshire that you brought back to your residence in Nassau County, New York, for use there.

You may also owe an additional **local** tax if you made a purchase in a locality in New York State and brought the item into or subsequently used the service in another New York State locality where you were a resident and that locality had a higher tax rate than where you made the purchase.

Failure to pay sales or use tax may result in the imposition of penalty and interest. The Tax Department conducts routine audits based on information received from third parties, including the U.S. Customs Service and other states.

If you owe sales or use tax, you may report the amount you owe on your personal income tax return rather than filing Form ST-140.

Using the sales and use tax chart below is an easy way to compute your liability for all your purchases of items or services costing less than \$1,000 each (excluding shipping and handling) that are not related to a business, rental real estate, or royalty activities.

Sales and use tax chart**If your federal adjusted gross income (line 11) is:**

	Enter on line 35:
up to \$15,000 *	\$ 8
\$ 15,001 - \$ 30,000	17
30,001 - 50,000	23
50,001 - 75,000	31
75,001 - 100,000	44
100,001 - 150,000	61
150,001 - 200,000	78
200,001 and greater	.0389% (.000389) of income, or \$225, whichever amount is smaller

* This may be any amount up to \$15,000, including 0 or a negative amount.

You may use this chart for purchases of items or services costing less than \$1,000 each (excluding shipping and handling). You may not use this chart for purchases related to a business, rental real estate, or royalty activities, regardless of the amount.

If you maintained a permanent place of abode in New York State for sales and use tax purposes for only part of the year, multiply the tax amount from the chart by the number of months you maintained the permanent place of abode in New York State and divide the result by 12. (Count any period you maintained the abode for more than one-half month as one month.)

You must use Form ST-140 to calculate your sales and use tax liability to be reported on this return if any of the following apply:

- You prefer to calculate the exact amount of sales and use tax due.
- You owe sales or use tax on an item or service costing \$1,000 or more (excluding shipping and handling).
- You owe sales or use tax for purchases related to a business not registered for sales tax purposes, rental real estate, or royalty activities.

Include the amount from Form ST-140, line 4, on Form IT-150, line 35. **Do not attach Form ST-140 to your return.**

If you owe sales or use tax on an item or service costing \$25,000 or more, you must complete Form IT-135, *Sales and Use Tax Report for Purchases of Items and Services Costing \$25,000 or More*, and attach it to your return.

If you do not owe any sales or use tax, you must enter 0 on line 35. Do not leave line 35 blank.

For additional information on when you may owe sales or use tax to New York, see Publication 774, Purchaser's Obligations to Pay Sales and Use Taxes Directly to the Tax Department, Questions and Answers. For more information on taxable and exempt goods and services, see Publication 850, *New York State and Local Sales and Use Tax Quick Reference Guide*.

Line 59 — Sales or use tax

Report your sales or use tax liability on this line.

You owe sales or compensating use tax if you:

- purchased an item or service subject to tax that is delivered to you in New York State without payment of New York State and local tax to the seller; or
- purchased an item or service outside New York State that is subject to tax in New York State (and you were a resident of New York State at the time of purchase) with subsequent use in New York State.

Note: You may be entitled to a credit for sales tax paid to another state. See the exact calculation method in the instructions for Form ST-140, *Individual Purchaser's Annual Report of Sales and Use Tax*.

For sales and use tax purposes, a resident includes persons who have a permanent place of abode in the state. Accordingly, you may be a resident for sales tax purposes even though you may not be a resident for income tax purposes. See the instructions for Form ST-140 for more information.

You may not use this line to report:

- any sales and use tax on business purchases if the business is registered for sales and use tax purposes. You must report this tax on the business's sales tax return.
- any unpaid sales and use tax on motor vehicles, trailers, all-terrain vehicles, vessels, or snowmobiles. This tax is paid directly to the Department of Motor Vehicles.

An unpaid sales or use tax liability commonly arises if you made purchases through the Internet, by catalog, from television shopping channels, or on an Indian reservation, or if you purchased items or services subject to tax in another state and brought them back to New York for use here.

Example 1: You purchased a computer over the Internet that was delivered to your house in Monroe County, New York, from an out-of-state company and did not pay sales tax to that company.

Example 2: You purchased a book on a trip to New Hampshire that you brought back to your residence in Nassau County, New York, for use there.

You may also owe an additional **local** tax if you made a purchase in a locality in New York State and brought the item into or subsequently used the service in another New York State locality where you were a resident and that locality had a higher tax rate than where you made the purchase.

Failure to pay sales or use tax may result in the imposition of penalty and interest. The Tax Department conducts routine audits based on information received from third parties, including the U.S. Customs Service and other states.

If you owe sales or use tax, you may report the amount you owe on your personal income tax return rather than filing Form ST-140.

Using the sales and use tax chart below is an easy way to compute your liability for all your purchases of items or services costing less than \$1,000 each (excluding shipping and handling) that are not related to a business, rental real estate, or royalty activities.

Sales and use tax chart

If your federal adjusted gross income (line 18) is:

	Enter on line 59:
up to \$15,000*	\$ 8
\$ 15,001 - \$ 30,000	17
30,001 - 50,000	23
50,001 - 75,000	31
75,001 - 100,000	44
100,001 - 150,000	61
150,001 - 200,000	78
200,001 and greater	.0389% (.000389) of income, or \$225, whichever amount is smaller

* This may be any amount up to \$15,000, including 0 or a negative amount.

You may use this chart for purchases of items or services costing less than \$1,000 each (excluding shipping and handling). You may not use this chart for purchases related to a business, rental real estate, or royalty activities, regardless of the amount.

If you maintained a permanent place of abode in New York State for sales and use tax purposes for only part of the year, multiply the tax amount from the chart by the number of months you maintained the permanent place of abode in New York State and divide the result by 12. (Count any period you maintained the abode for more than one-half month as one month.)

You must use Form ST-140 to calculate your sales and use tax liability to be reported on this return if any of the following apply:

- You prefer to calculate the exact amount of sales and use tax due.
- You owe sales or use tax on an item or service costing \$1,000 or more (excluding shipping and handling).
- You owe sales or use tax for purchases related to a business not registered for sales tax purposes, rental real estate, or royalty activities.

Include the amount from Form ST-140, line 4, on Form IT-201, line 59. **Do not attach Form ST-140 to your return.**

If you owe sales or use tax on an item or service costing \$25,000 or more, you must complete Form IT-135, *Sales and Use Tax Report for Purchases of Items and Services Costing \$25,000 or More*, and attach it to your return.

If you do not owe any sales or use tax, you must enter 0 on line 59. Do not leave line 59 blank.

For additional information on when you may owe sales or use tax to New York, see Publication 774, *Purchaser's Obligations to Pay Sales and Use Taxes Directly to the Tax Department, Questions and Answers*. For more information on taxable and exempt goods and services, see Publication 850, *New York State and Local Sales and Use Tax Quick Reference Guide*.

Chart 1

New York State Sales and Use Tax Rates by Jurisdiction

This chart and the notes below show the combined state and local tax rates in effect for the period beginning **January 1, 2010**, and ending **November 30, 2010**. Use these rates for your entries in the Worksheets on Form ST-141.

New York City comprises five counties. These counties are also boroughs whose names are more widely known. The counties, with borough names shown in parentheses, are Bronx (Bronx), Kings (Brooklyn), New York (Manhattan), Queens (Queens), and Richmond (Staten Island).

County or other locality	Tax rate %	County or other locality	Tax rate %	County or other locality	Tax rate %
New York State — only	4	Jefferson	7¾	St. Lawrence	7
Albany	8	Kings (Brooklyn) — see <i>New York City</i>		Saratoga — except	7
Allegany	8½	Lewis	7¾	Saratoga Springs (city)	7
Bronx — see <i>New York City</i>		Livingston	8	Schenectady	8
Brooklyn — see <i>New York City</i>		Madison — except	8	Schoharie	8
Broome	8	Oneida (city)	8	Schuyler	8
Cattaraugus — except	8	Manhattan — see <i>New York City</i>		Seneca	8
Olean (city)	8	Monroe	8	Staten Island — see <i>New York City</i>	
Salamanca (city)	8	Montgomery	8	Steuben — except	8
Cayuga — except	8	Nassau	8⅝	Corning (city)	8
Auburn (city)	8	New York (Manhattan) — see <i>New York City</i>		Hornell (city)	8
Chautauqua	7¾	New York City	8⅞	Suffolk	8⅝
Chemung	8	Niagara	8	Sullivan	8
Chenango — except	8	Oneida — except	8¾	Tioga	8
Norwich (city)	8	Rome (city)	8¾	Tompkins — except	8
Clinton	8	Utica (city)	8¾	Ithaca (city)	8
Columbia	8	Onondaga	8	Ulster	8
Cortland	8	Ontario	7½	Warren — except	7
Delaware	8	Orange	8⅞	Glens Falls (city)	7
Dutchess	8⅞	Orleans	8	Washington	7
Erie	8¾	Oswego — except	8	Wayne	8
Essex	7¾	Oswego (city)	8	Westchester — except	7⅜
Franklin	8	Otsego	8	Mount Vernon (city)	8⅜
Fulton — except	8	Putnam	8⅜	New Rochelle (city)	8⅜
Gloversville (city)	8	Queens — see <i>New York City</i>		White Plains (city) ¹	8⅜
Johnstown (city)	8	Rensselaer	8	Yonkers (city)	8⅜
Genesee	8	Richmond (Staten Island) — see <i>New York City</i>		Wyoming	8
Greene	8	Rockland	8⅜	Yates	8
Hamilton	7				
Herkimer	8¼				

¹ The City of White Plains, located in Westchester County, combined rate was 8⅞% from January 1, 2010, through May 31, 2010.