

2. As a component of a product produced for sale by the purchaser; or

3. For use by the purchaser in performing taxable services, where the property so sold becomes a physical component of the property upon which the services are performed; or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the taxable service.

(b) The purchase or use of materials such as chemicals and catalysts which are used to induce or cause a refining or chemical process, where such materials are an integral or essential part of the processing operation, but do not become a component of the finished product is exempt from tax.

#### Case Notes

Copper wires were taxable on purchase if solely used to keep primary electrodes clean during manufacture of tin cans. *Phelps Dodge Industries, Inc. v. Director, Div. of Taxation*, 8 N.J. Tax 354 (1986).

#### 18:24-4.6 Services subject to tax

(a) The following enumerated services, purchased or sold by any person engaged in manufacturing, processing, assembling or refining, as defined in N.J.A.C. 18:24-4.2, not purchased for resale, that is, not performed on property offered for sale by the purchaser, are subject to sales and use taxes, as well as services otherwise taxable:

1. Producing, fabricating, processing, printing or imprinting tangible personal property (with the exception of imprinting services performed upon machinery, apparatus, or equipment used directly and primarily in manufacturing, processing, assembling, or refining), performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him for resale, upon which such services are performed.

2. Installing tangible personal property, except where such installation results in a capital improvement to real property. In determining whether an installation of tangible personal property results in a capital improvement to real property, the following factors should be considered:

- i. Whether the improvement results in an increase in the capital value of the real property;
- ii. Whether the improvement results in a significant increase in the useful life of the property;
- iii. The treatment, for accounting purposes, of such improvements for Federal Internal Revenue purposes.

3. Maintaining, servicing, or repairing real or tangible personal property, regardless of how such services are performed, and whether or not any tangible personal property is transferred in conjunction with the performance of such services.

Amended by R.1993 d.313, effective July 6, 1993.

See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).  
Amended by R.1998 d.288, effective June 1, 1998.  
See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).  
Amended by R.2003 d.348, effective August 18, 2003.  
See: 35 N.J.R. 2165(a), 35 N.J.R. 3848(a).

In (a)1, inserted "(with the exception of imprinting services performed upon machinery, apparatus, or equipment used directly and primarily in manufacturing, processing, assembling, or refining)" preceding "; performed for a person".

#### 18:24-4.7 Services not subject to tax

(a) The following services are not subject to tax:

1. Services performed on a residential heating system unit serving not more than three families living independently of each other and doing their cooking on the premises.

2. Services performed involving only garbage removal or sewer services, performed on a regular contractual basis for a term of not less than 30 days.

3. Services otherwise taxable under N.J.A.C. 18:24:24-4.6 are not subject to the taxes imposed under the provisions of N.J.S.A. 54:32B-3(b)(1) and 54:32B-3(b)(2) where the tangible personal property upon which such services were performed is delivered to the purchaser outside this State for use outside this State.

i. "Delivery outside this State" means the tangible personal property upon which the services have been performed has been delivered to a location outside of New Jersey by the person performing the services in the vendor's vehicle or by common or contract carrier.

ii. Delivery to a purchaser or to his representative or designee in this State for immediate transportation outside this State is subject to tax. Examples of the foregoing are:

Example 1. A nonresident customer sends a New Jersey printer various forms upon which the customer's name and address are to be printed. The forms when completed are delivered by the printer in his truck to the customer outside of New Jersey. The printing services are not subject to tax;

Example 2. A nonresident individual purchases lumber outside New Jersey and has a cabinetmaker in New Jersey construct a bookcase for him. The bookcase is delivered outside New Jersey. The charges for the production service performed in New Jersey are not subject to tax in New Jersey;

Example 3. Same facts as Example 2 above except that the individual picks up the finished bookcase in New Jersey himself. The charge for the service is subject to tax because the tangible personal property was delivered in New Jersey;

Example 4. A nonresident individual brings his car into New Jersey for repair. Upon completion, delivery is made to him by the mechanic outside New Jersey. The charge for the

service is not subject to tax, since the vehicle was delivered outside New Jersey;

**Example 5.** Same facts as in Example 4 above except that the nonresident after the repairs are made picks up the vehicle in New Jersey and returns to his state of residence. Since delivery is made in New Jersey, the service is subject to tax;

**Example 6.** A New Jersey advertising agency performs imprinting services for a nonresident purchaser not for use directly and primarily for publication in newspapers and magazines. The charges for these services are subject to tax under N.J.S.A. 54:32B-3(b)(5) and do not fall within the exclusion provided for services under N.J.S.A. 54:32B-3(b).

Amended by R.1977, d.365, effective September 30, 1977.

See: 9 N.J.R. 445(a), 9 N.J.R. 544(a).

Amended by R.1993 d.313, effective July 6, 1993.

See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).

Amended by R.1998 d.288, effective June 1, 1998.

See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).

In (a)3i, substituted a reference to locations outside New Jersey for a reference to purchasers.

Amended by R.2003 d.348, effective August 18, 2003.

See: 35 N.J.R. 2165(a), 35 N.J.R. 3848(a).

Rewrote the section.

#### Case Notes

Delivery of free perfume samples to common carrier for shipment outside state was exempt from use tax. *Cosmair, Inc. v. Director, New Jersey Div. of Taxation*, 109 N.J. 562, 538 A.2d 788 (1988).

#### 18:24-4.8 Record keeping

Any person engaged in the business involving manufacturing, processing, assembling, or refining is required to maintain records in compliance with the rules set forth in subchapter 2 (Retention of Records by Vendors) of this chapter.

### SUBCHAPTER 5. BUILDING AND CONSTRUCTION TRADES

#### 18:24-5.1 Scope of subchapter

This subchapter is intended to clarify the application of the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) to the building and construction trades and related activities.

#### Case Notes

Assessment of sales and use tax on sales involving the repair, maintenance and servicing of automobiles and construction equipment, owned and used by contractor having same stockholders and officers as the taxpayer, held proper, since work was not exclusively performed in fulfillment of a contract of an exempt organization, and because the taxpayer was a viable corporation for the years in question, rather than an agent for the contractor. *Seaview Demolition & Rental Co., Inc. v. Director, Div. of Taxation*, 4 N.J. Tax 541 (Tax Ct.1982), affirmed per curiam 6 N.J. Tax 254 (App.Div.1984).

#### 18:24-5.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

“Component materials” means materials that become a physical component of items of tangible personal property produced by a fabricator/contractor for incorporation into real property.

“Construction equipment” means any vehicle, machine, tool, implement or other device used by a contractor in erecting structures for others, or building on, or otherwise improving, altering, or repairing property of others, which does not become a physical component part of the property upon which work is performed, and which is not necessarily consumed in the performance of such work. Construction equipment includes, but is not limited to, grading, lifting and excavating vehicles, compressors, scaffolds, forms, hand tools and ladders.

“Construction materials” means items of tangible personal property purchased by a contractor for incorporation into property as a physical component part of such property.

“Construction supplies” means items of tangible personal property consumed in the fulfillment of a construction contract, which items do not become a physical component part of the property upon which work is performed. Supplies include, but are not limited to lubricants, cleaning compounds, polyethylene covers, rock salt and rope.

“Contractor” means any individual, partnership, corporation or other commercial entity engaged in any business involving erecting structures for others, or building, or otherwise improving, altering, or repairing real property of others.

“Exempt organization” means any agency, instrumentality, authority, or public corporation of the governments of the United States of America or the State of New Jersey or any political subdivision of the State of New Jersey; or any organization which holds a valid exempt organization certificate issued pursuant to the provisions of N.J.S.A. 54:32B-9(b).

“Fabricator” means any individual, partnership, corporation or other commercial entity engaged in any business involving manufacturing, processing or assembling property for sale which when installed ordinarily becomes a physical component part of real property.

“Materials” means items of tangible personal property.

“Real property, property, or land” means land and any structure or appurtenance affixed permanently thereto.

"Tangible personal property" means corporeal personal property of any nature. Tangible personal property also includes natural gas and electricity.

Amended by R.1998 d.288, effective June 1, 1998.

See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).

Amended by R.2003 d.348, effective August 18, 2003.

See: 35 N.J.R. 2165(a), 35 N.J.R. 3848(a).

Added "Component materials" and "Materials"; in "Exempt organization", substituted "certificate" for "permit" preceding "issued"; in "Tangible personal property", inserted the second sentence.

#### Case Notes

Sales and Use Tax Act taxes the purchase of personal property and service for installing such property, unless installation constitutes an addition or capital improvement to real property; Act's use of "sales" in exempting certain public utility business transactions does not include installation services; definition of real property found in the Business Personal Property Tax Act held to be used in determining the nature of installation. *Middlesex Water Co. v. Director, Division of Taxation*, 3 N.J.Tax 233, 181 N.J.Super. 38, 437 A.2d 368 (Tax Ct.1981).

Rentals paid by contractor for equipment used in performance of its contract with port authority held not exempt from taxation under Sales and Use Tax Act section exempting sales to contractors for the exclusive use in improving and altering real property of the State or any of its agencies, instrumentalities, public authorities or public corporations. *Mal Brothers Contracting Co. v. Director, Div. of Taxation*, 124 N.J.Super. 55, 304 A.2d 750 (App.Div.1973), certification denied 63 N.J. 554, 310 A.2d 469 (1973).

Dental service corporation, though entitled to exemption from sales tax, was not tax exempt until it actually applied for and was approved for that status; corporation not entitled to refund of sales tax paid prior to its application. *New Jersey Dental Service Plan, Inc. v. Baldwin*, 7 N.J.Tax 421 (Tax Ct.1985), affirmed per curiam 8 N.J.Tax 335 (App. Div.1986).

Assessment of sales and use tax on sales involving the repair, maintenance and servicing of automobiles and construction equipment, owned and used by contractor having same stockholders and officers as the taxpayer, held proper, since work was not exclusively performed in fulfillment of a contract of an exempt organization, and because the taxpayer was a viable corporation for the years in question, rather than an agent for the contractor. *Seaview Demolition & Rental Co., Inc. v. Director, Div. of Taxation*, 4 N.J.Tax 541 (Tax Ct.1982), affirmed per curiam 6 N.J.Tax 254 (App.Div.1984).

#### 18:24-5.3 Purchase of materials and supplies by contractors

(a) For the purposes of sales and use taxes, sales of materials and supplies to contractors for use by them in erecting structures for others, or building on, or otherwise improving, altering or repairing real property of others are deemed to be retail sales.

(b) Except as hereinafter provided, contractors purchasing materials and supplies must pay the sales tax at the time of purchase. This subchapter does not apply where:

1. The purchase of materials and supplies is made for exclusive use in the fulfillment of a contract to improve or repair the real property of an exempt organization described in N.J.S.A. 54:32B-9(a) and 9(b) or a qualified business described in the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-29 et seq., or a housing sponsor described in N.J.S.A. 54:32B-8.22(c).

i. For the purpose of subsection (b)1 above, "exclusive use" means that the supplies purchased will be entirely consumed in use or lack any residual utility after use and the supplies will not be used on jobs performed for nonexempt organizations either prior to, simultaneously with or after completion of the exempt organization job; or

2. The contractor holds a valid direct payment permit (form ST-6).

Amended by R.1973 d.336, effective December 4, 1973.

See: 5 N.J.R. 392(a), 6 N.J.R. 38(a).

Amended by R.1993 d.313, effective July 6, 1993.

See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).

Amended by R.1998 d.288, effective June 1, 1998.

See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).

In (b), substituted a reference to N.J.S.A. 52:27H-29 et seq. for a reference to N.J.S.A. 52:27H-29 in the introductory paragraph.

#### Case Notes

Tangible personal property; exemption pursuant to Urban Enterprise Zones Act. *Fedway Associates, Inc. v. Director, Div. of Taxation*, 14 N.J.Tax 71 (1994), affirmed 282 N.J.Super. 129, 659 A.2d 536, 15 N.J.Tax 203, certification denied 142 N.J. 573, 667 A.2d 190.

Taxpayer, by acquiring and installing property used in transaction, exercised such power and control over property so as to constitute use of the property within the meaning of the Sales and Use Tax Act; taxpayer not entitled to rely on customers' certificates of exemption; taxpayer's sale and installation of hydraulic deck level held not exempt from sales tax as an improvement to real property. *Elbert Lively & Co., Inc. v. Director, Div. of Taxation*, 5 N.J.Tax 431 (Tax Ct.1983).

#### 18:24-5.4 Equipment purchase, rental or use

The purchase, rental for 28 days or less, or use of equipment by a contractor is subject to tax, whether or not the equipment is purchased, rented or used in fulfillment of a contract with an exempt organization. Lessors shall be taxed on lease transactions of more than 28 days duration. See N.J.A.C. 18:24-1.4(o).

Amended by R.1993 d.313, effective July 6, 1993.

See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).

#### Case Notes

Rentals paid by contractor for equipment used in performance of its contract with port authority held not exempt from taxation under Sales and Use Tax Act section exempting sales to contractors for the exclusive use in improving and altering real property of the State or any of its agencies, instrumentalities, public authorities or public corporations. *Mal Brothers Contracting Co. v. Director, Div. of Taxation*, 124 N.J.Super. 55, 304 A.2d 750 (App.Div.1973), certification denied 63 N.J. 554, 310 A.2d 469 (1973).

#### 18:24-5.5 Purchase of taxable services

(a) Taxable services purchased by a contractor are subject to tax unless such services are performed for a purchasing contractor exclusively for use in fulfilling a contract with an exempt organization.

(b) Services subject to tax include, but are not limited to:

1. The fabrication of tangible personal property;

2. Installing tangible personal property, for the benefit of the contractor, rather than the property owner. Examples: Installation of scaffolding, temporary fencing, temporary lighting during construction;

3. Maintaining, servicing, or repairing real or tangible personal property. Examples: Snow removal, sweeping and removing debris on construction site.

Amended by R.2003 d.348, effective August 18, 2003.

See: 35 N.J.R. 2165(a), 35 N.J.R. 3848(a).

In (b), rewrote 2 and 3.

#### Case Notes

Assessment of sales and use tax on sales involving the repair, maintenance and servicing of automobiles and construction equipment, owned and used by contractor having same stockholders and officers as the taxpayer, held proper, since work was not exclusively performed in fulfillment of a contract of an exempt organization, and because the taxpayer was a viable corporation for the years in question, rather than an agent for the contractor. *Seaview Demolition & Rental Co., Inc. v. Director, Div. of Taxation, 4 N.J.Tax 541 (Tax Ct.1982)*, affirmed per curiam 6 N.J.Tax 254 (App.Div.1984).

#### 18:24-5.6 Contractor's tangible personal property installation services

Services rendered by a contractor in installing tangible personal property, except in those instances where such services are rendered in connection with the installation of property which, when installed, will constitute an addition or capital improvement to real property, are subject to tax.

Amended by R.1993 d.313, effective July 6, 1993.

See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).

Amended by R.1998 d.288, effective June 1, 1998.

See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).

#### Case Notes

Sales and Use Tax Act taxes the purchase of personal property and service for installing such property, unless installation constitutes an addition or capital improvement to real property: Act's use of "sales" in exempting certain public utility business transactions does not include installation services; definition of real property found in the Business Personal Property Tax Act held to be used in determining the nature of installation. *Middlesex Water Co. v. Director, Division of Taxation, 3 N.J.Tax 233, 181 N.J.Super 38, 437 A.2d 368 (Tax Ct.1981)*.

#### 18:24-5.7 Installation services capital improvement

(a) In determining whether an installation of tangible personal property results in a capital improvement, the following factors should be considered:

1. Whether the improvement results in an increase in the capital value of the real property;
2. Whether the improvement results in a significant increase in the useful life of the real property.

(b) Where any contractor has installed property which, when installed, results in a capital improvement to real property, he shall obtain from his customer a duly completed certificate of capital improvement (form ST-8) and retain it for his permanent records.

(c) Where a contractor performs an installation which results in a capital improvement to real property, no tax should be collected from the customer. The tax on materials used is the responsibility of the contractor. The services performed by making an installation are not subject to tax where the installation results in a capital improvement to real property. (See N.J.A.C. 18:24-2, Retention of records by vendors, and N.J.A.C. 18:24-9, Requirements relating to organizations operated for religious, charitable, scientific, testing for public safety, literary or educational purposes or for the prevention of cruelty to children or animals.)

As amended, R.1982 d.141, effective May 3, 1982.

See: 14 N.J.R. 140(b), 14 N.J.R. 430(b).

(b): Text deleted; (c) and (d) renumbered as (b) and (c).

#### Case Notes

Sales and Use Tax Act taxes the purchase of personal property and service for installing such property, unless installation constitutes an addition or capital improvement to real property; Act's use of "sales" in exempting certain public utility business transactions does not include installation services; definition of real property found in the Business Personal Property Tax Act held to be used in determining the nature of installation. *Middlesex Water Co. v. Director, Division of Taxation, 3 N.J.Tax 233, 181 N.J.Super 38, 437 A.2d 368 (Tax Ct.1981)*.

Taxpayer, by acquiring and installing property used in transaction, exercised such power and control over property so as to constitute use of the property within the meaning of the Sales and Use Tax Act; taxpayer not entitled to rely on customers' certificates of exemption; taxpayer's sale and installation of hydraulic deck level held not exempt from sales tax as an improvement to real property. *Elbert Lively & Co., Inc. v. Director, Div. of Taxation, 5 N.J.Tax 431 (Tax Ct.1983)*.

Where a contractor installs property that becomes part of real property, the contractor is not to collect sales tax from the customer, but must obtain from the customer a completed Certificate of Capital Improvement for permanent retention; installation charges for above ground pool not sales tax exempt where contractor failed to prove installation was a capital improvement absent certificate. *H.J. Bradley, Inc. v. Taxation Div. Director, 4 N.J.Tax 213 (Tax Ct.1982)*.

#### 18:24-5.8 Contractor services maintaining, servicing or repairing real property

(a) Services rendered by a contractor in maintaining, servicing or repairing real property, except as hereinafter provided, are subject to tax. When charging the tax on maintaining, servicing and repairing real property, a contractor must charge the sales tax on only that portion of his bill attributable to services. The tax on materials used in performance of such services is the responsibility of the contractor.

(b) The following maintenance, service, and repair operations are not subject to tax:

1. Services performed on a residential heating system unit serving not more than three families living independently of each other and doing their cooking on the premises. (In cases where the heating system is also used for cooling purposes, it shall be presumed, in the absence of evidence to the contrary, that the system is primarily used for heating purposes, except where the system is known to be in use for only the months during which a cooling system might be in use.); or