

CHAPTER 24
SALES AND USE TAX ACT

Authority

N.J.S.A. 54:32B-24.

Source and Effective Date

R.1993 d.313, effective June 4, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).

Executive Order No. 66(1978) Expiration Date

Chapter 24, Sales and Use Tax Act, expires on June 4, 1998.

Chapter Historical Note

All provisions of this chapter became effective prior to September 1, 1969.

1969 Revisions: Amendments became effective December 23, 1969 as R.1969 d.36. See: 2 N.J.R. 7(b).

1970 Revisions: Amendments became effective July 1, 1979 as R.1979 d.70. See: 2 N.J.R. 51(b), 2 N.J.R. 58(a).

1971 Revisions: Amendments became effective September 2, 1971 as R.1971 d.157. See: 3 N.J.R. 211(a), 3 N.J.R. 162(b). Further amendments became effective November 1, 1971 as R.1971 d.194. See: 3 N.J.R. 275(b), 3 N.J.R. 207(c). Further amendments became effective December 10, 1971 as R.1971 d.218. See: 4 N.J.R. 13(c), 3 N.J.R. 234(b).

1972 Revisions: Subchapter 21 was adopted as R.1972 d.126, effective July 1, 1972. See: 4 N.J.R. 197(d). Amendments became effective February 9, 1972 as R.1972 d.27. See: 4 N.J.R. 54(b), 4 N.J.R. 12(b). Also, on December 18, 1972 as R.1972 d.258. See: 4 N.J.R. 19(c), 5 N.J.R. 23(b).

1973 Revisions: Amendments became effective May 30, 1973 as R.1973 d.139. See: 5 N.J.R. 246(b). Further amendments became effective December 4, 1973 as R. 1973 d.336. See: 5 N.J.R. 392(a), 6 N.J.R. 38(a).

1974 Revisions: Subchapter 22 was adopted as R.1974 d.123, effective May 20, 1974. See: 6 N.J.R. 85(a), 6 N.J.R. 251(a). Subchapter 23 became effective April 19, 1974 as R.1974 d.96. See: 6 N.J.R. 123(a), 6 N.J.R. 208(a). Amendments became effective August 30, 1974 as R.1974 d.244. See: 6 N.J.R. 326(a), 6 N.J.R. 414(e). Subchapter 24 was adopted as R.1974 d.252, effective September 17, 1974. See: 6 N.J.R. 415(a).

1975 Revisions: Amendments became effective January 13, 1975 as R.1975 d.4. See: 6 N.J.R. 494(b), 7 N.J.R. 77(a). Further amendments became effective June 26, 1975 as R.1975 d.187. See: 7 N.J.R. 282(a), 7 N.J.R. 350(b). Further amendments became effective August 15, 1975 as R.1975 d.246. See: 7 N.J.R. 347(a), 7 N.J.R. 446(b). Subchapter 24 became effective September 17, 1974 as R.1974 d.252. See: 6 N.J.R. 415(a).

1976 Revisions: Amendments became effective February 27, 1976 as R.1976 d.62. See: 8 N.J.R. 87(b), 8 N.J.R. 209(a). June 21, 1976 as R.1976 d.190. See: 8 N.J.R. 356(e).

1977 Revisions: Amendments became effective February 3, 1977 as R.1977 d.29. See: 9 N.J.R. 44(b), 9 N.J.R. 147(b). Further amendments became effective September 30, 1977 as R.1977 d.365. See: 9 N.J.R. 445(a), 9 N.J.R. 544(a). Further amendments became effective December 29, 1977 as R.1977 d.484. See: 9 N.J.R. 594(a), 10 N.J.R. 81(a).

1978 Revisions: Subchapter 25 became effective May 4, 1978 as R.1978 d.142. See: 10 N.J.R. 173(a), 10 N.J.R. 265(e). Subchapter 26 became effective August 15, 1978 as R.1978 d.285. See: 10 N.J.R. 300(a), 10 N.J.R. 407(a). Further amendments became effective September 13, 1978 as R.1978 d.320. See: 10 N.J.R. 362(a), 10 N.J.R. 457(b).

1979 Revisions: Amendments became effective March 8, 1979 as R.1979 d.89. See: 11 N.J.R. 103(a), 11 N.J.R. 210(d). Further amendments became effective May 4, 1979 as R.1979 d.179. See: 11 N.J.R. 209(b), 11 N.J.R. 305(a). Further amendments became effective September 28, 1979 as R.1979 d.384. See: 11 N.J.R. 472(b), 11 N.J.R. 595(a).

1980 Revisions: Amendments became effective March 15, 1980 as R.1980 d.102. See: 12 N.J.R. 96(b), 12 N.J.R. 224(d). Further amendments became effective April 9, 1980 as R.1980 d.149 and d.150. See: 12 N.J.R. 161(b), 12 N.J.R. 293(e); 12 N.J.R. 161(c), 12 N.J.R. 293(f). Further amendments became effective May 6, 1980 as R.1980 d.197. See: 12 N.J.R. 219(b), 12 N.J.R. 355(a). Further amendments became effective November 6, 1980 as R.1980 d.489. See: 12 N.J.R. 619(a), 12 N.J.R. 729(b).

1981 Revisions: Subchapter 27 was adopted as R.1981 d.208, effective July 9, 1981. See: 13 N.J.R. 164(a), 13 N.J.R. 465(d). Amendments became effective July 9, 1981 as R.1981 d.209 and d.210. See: 13 N.J.R. 163(a), 13 N.J.R. 465(a); 13 N.J.R. 111(a), 13 N.J.R. 465(c). Subchapter 28 was adopted as R.1981 d.436, effective November 16, 1981. See: 13 N.J.R. 622(a), 13 N.J.R. 847(c).

1982 Revisions: Amendments became effective February 16, 1982 as R.1982 d.36. See: 13 N.J.R. 751(a), 14 N.J.R. 212(b). Further amendments became effective April 5, 1982 as R.1982 d.85. See: 13 N.J.R. 883(b), 14 N.J.R. 348(a). Further amendments became effective May 3, 1982 as R.1982 d.141. See: 14 N.J.R. 140(b), 14 N.J.R. 430(b).

1983 Revisions: Amendments became effective June 20, 1983 as R.1983 d.220. See: 15 N.J.R. 324(a), 15 N.J.R. 1039(b). Subchapter 29 was adopted as R.1983 d.324, effective August 15, 1983. See: 15 N.J.R. 797(a), 15 N.J.R. 1384(a). This chapter was readopted pursuant to Executive Order 66(1978) effective August 12, 1983 as R.1983 d.357. See: 15 N.J.R. 1086(a), 15 N.J.R. 1487(d). Further amendments became effective September 6, 1983 as R.1983 d.367. See: 15 N.J.R. 1088(a), 15 N.J.R. 1488(a).

1984 Revisions: Amendments became effective January 17, 1984 as R.1983 d.619. See: 15 N.J.R. 1565(a), 16 N.J.R. 148(c). Further amendments became effective April 16, 1984 d.126. See: 16 N.J.R. 235(a), 16 N.J.R. 926(b). Further amendments became effective May 7, 1984 as R.1984 d.156. See: 16 N.J.R. 359(a), 16 N.J.R. 1098(a). Further amendments became effective September 4, 1984 as R.1984 d.380. See: 16 N.J.R. 1466(a), 16 N.J.R. 2379(c). Further amendments became effective October 1, 1984 as R.1984 d.431. See: 16 N.J.R. 1965(a), 16 N.J.R. 2689(a). Subchapter 31 was adopted as R.1984 d.495, effective November 5, 1984. See: 16 N.J.R. 1332(a), 16 N.J.R. 3059(a).

1985 Revisions: Amendments became effective February 4, 1985 as R.1985 d.31. See: 16 N.J.R. 3193(a), 17 N.J.R. 320(c). Further amendments became effective February 19, 1985 as R.1985 d.44. See: 16 N.J.R. 3298(b), 17 N.J.R. 480(a). Subchapter 12 title was changed from "Criteria for Determining Taxability of Food" and the subchapter was revised effective June 3, 1985 as R.1985 d.280. See: 17 N.J.R. 178(a), 17 N.J.R. 1440(a).

1986 Revisions: Amendments became effective January 6, 1986 as R.1985 d.651 and d.652. See: 17 N.J.R. 2387(a), 18 N.J.R. 94(b); 17 N.J.R. 2240(a), 18 N.J.R. 94(a).

1987 Revisions: Amendments became effective August 17, 1987 as R.1987 d.325. See: 19 N.J.R. 858(a), 19 N.J.R. 1570(a). Further amendments became effective November 16, 1987 as R.1987 d.474. See: 19 N.J.R. 1181(b), 19 N.J.R. 2201(b).

1988 Revisions: This chapter was readopted effective June 7, 1988 as R.1988 d.298. See: 20 N.J.R. 512(a), 20 N.J.R. 1570(d).

Pursuant to Executive Order No. 66(1978), Chapter 24 was readopted as R.1993 d.313. See: Source and Effective Date. Subchapter 21, Accounting Procedures relating to Sales of Alcoholic Beverages, and Subchapter 24, Sale and Installation of Gasoline Service Station Equipment, were repealed by R.1993 d.313, effective July 6, 1993. See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c). See, also, section annotations for specific rulemaking activity.

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SUBCHAPTER 1. FORMS

18:24-1.1 Sales and Use Tax Act forms enumerated

(a) The following list reflects sales and use tax forms currently available for use under N.J.S.A. 54:32B-1, et seq.

REGISTRATION APPLICATIONS

- REG-1 Application for Registration with Division of Taxation
- ST-2 Sales Tax Certificate of Authority
- ST-5B Application for Exempt Organization Permit
- UZ-1 Urban Enterprise Zone Application for Reduced Sales Tax Collection

SPECIALIZED USE FORMS

- ST-3 Resale Certificate
- ST-4 Exempt Use Certificate
- ST-5 Exempt Organization Certificate
- ST-6 Direct Payment Permit
- ST-6A Direct Payment Certificate
- ST-7 Farmers Exemption Certificate
- ST-8 Certificate of Capital Improvement
- ST-10 Motor Vehicle Dealer Sales and Use Tax Exemption Report
- ST-10A Aircraft Dealer Sales and Use Exemption Report
- ST-10V Vessel Dealer Sales and Use Tax Exemption Report

- ST-10V Supplement 1—Supplement for a Foreign Corporation
- ST-11 Report of Sales Tax on Motor Vehicles
- ST-13 Contractor's Exempt Purchase Certificate
- ST-16 Exemption Certificate for Student Books
- ST-40 Lessor's Certification

SALES AND USE TAX RETURNS

- ST-18 Use Tax Return
- ST-50 Sales and Use Tax Quarterly Return
- ST-51 Monthly Remittance Statement
- ST-52 Consolidated Return Schedule
- ST-20A Deduction Worksheet for Computing New Jersey/New York Deductions

ATLANTIC CITY LUXURY TAX

- ST-250 Atlantic City Luxury Tax/State Sales Tax Monthly Return
- ST-252 Atlantic City Luxury Tax Certificate of Authority

NEW JERSEY/NEW YORK COOPERATIVE TAX PROGRAM

- ST-20 New Jersey/New York Combined Sales Tax and Use Tax Return
- ST-20A Deduction Worksheet for Computing New Jersey Deductions
- ST-21 New Jersey/New York Combined State Sales and Use Tax Remittance
- DTF-24 Application for New Jersey and New York Simplified Sales and Use Tax Reporting
- DTF-17.1 Business Description (used in computing form DTF-24)

URBAN ENTERPRISE ZONE FORMS

- UZ-2 Urban Enterprise Sales Tax Certificate of Authority
- UZ-4 Urban Enterprise Zone Contractor's Exempt Purchase Certificate
- UZ-4A/5A Exempt Qualified Business Permit/Exempt Purchase Permit
- UZ-5 Urban Enterprise Exempt Purchase Certificate
- UZ-50 Combined Sales and Use Tax/Urban Enterprise

EXEMPTION STATUS

- ST-5A Exempt Organization Permit

New Rule, R.1987 d.246, effective June 15, 1987.
See: 18 N.J.R. 2192(a), 19 N.J.R. 1104(a).
Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).

18:24-1.2 Newspaper defined

(a) A "newspaper" means a publication which generally conforms to all the following indicia:

1. A newspaper is published in printed or written form at stated short intervals at least 50 times a year;

18:24-2.14 Exempt organization permits; effective date

(a) Organizations which qualify for sales tax exemption under N.J.S.A. 54:32B-9(b)(1), forming after July 31, 1973, must file form ST-5B (Application for Exempt Organization Permit) within six months of formation or before October 1, 1975, whichever is later, in order for the effective date of the exempt organization permit to be retroactive to the date of formation.

(b) If the organization for any reason was required to alter its activities or substantially amend its charter to qualify under N.J.S.A. 54:32B-9(b)(1), its exemption shall be effective only in accordance with (a) above.

(c) In all other instances the exemption, if the organization qualifies, shall be effective as of the date of application.

R.1975 d.187, effective June 26, 1975.

See: 7 N.J.R. 282(a), 7 N.J.R. 350(b).

Case Notes

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).

18:24-2.15 Insufficiency of records

(a) The records of a vendor may be deemed incorrect or insufficient if:

1. An evaluation of the accounting system discloses that the system does not provide adequate internal control procedures which assure the accuracy and completeness of the transactions recorded in the books and records.

2. The records are not maintained in accordance with the general outline of this chapter.

(b) If the records of a vendor are determined to be incorrect or insufficient, the return(s) filed on the basis of the information obtained from such records may be deemed to be incorrect or insufficient and the director may determine the amount of tax due the State by using any information available, whether from the vendor's place of business or from any other source.

R.1982 d.36, effective February 16, 1982.

See: 13 N.J.R. 751(a), 14 N.J.R. 212(b).

18:24-2.16 Admission records and information; promoter registration

(a) Every person who contracts, agrees to or otherwise arranges to hold, produce or sponsor an event, entertainment, or amusement the admission to which is subject to tax under N.J.S.A. 54:32B-3(e) of the Sales and Use Tax Act is deemed a promoter and a person required to collect sales tax and shall, within three days after commencing business,

file with the Division of Taxation an application for registration (REG-1) for New Jersey sales tax purposes. When registration is granted it will be for an indefinite period. However, the applicant must notify the Division of Taxation of any change of address, ownership, and business activity.

(b) Every person required to collect sales tax shall collect the tax on receipts from sales of taxable admissions for events, entertainments, or amusements to be held in New Jersey, including exempt organizations described in N.J.S.A. 54:32B-9 of the Sales and Use Tax Act. If the customer is given a ticket or other evidence of a right to admission which states the price of the admission, there must be a separate statement thereon of the sales tax imposed and collected with respect to the sale of the admission for remittance to the Division of Taxation.

(c) Any person who sells admission tickets or collects admission charges for a promoter is considered the recipient of amusement charges and is also a person required to register and collect and remit sales tax; provided, however, that the sales tax collected may be turned over to and remitted to the Division of Taxation by the promoter for whom the admissions were sold if all the following requirements are met:

1. The ticket sales agent is acting under a written agreement with the promoter which accounts for the sales tax and provides for the tax collected to be remitted by the promoter;

2. The promoter provides the ticket sales agent with a copy of its New Jersey Certificate of Authority;

3. The ticket sales agent has no reason to believe the sales tax will not be remitted by the promoter;

4. The ticket sales agent maintains records showing the promoter's name, address, telephone number, a copy of the promoter's New Jersey Certificate of Authority, the number of tickets sold or admissions granted, gross receipts from admission ticket sales, sales tax collected for New Jersey, and such other information as the Director may specify from time to time; and,

5. The Division of Taxation has not instructed the ticket sales agent in writing to remit the tax collected for that promoter directly to the State.

(d) A person who sells admission tickets or collects admission charges for a promoter or who rents or leases space for an event, amusement or entertainment the admission to which is subject to tax shall, upon request, furnish information to the Division of Taxation concerning any such New Jersey events, entertainment or amusements and their promoters.

New Rule, R.1992 d.140, effective March 16, 1992.

See: 23 N.J.R. 3275(b), 24 N.J.R. 969(b).

SUBCHAPTER 3. ROOM OCCUPANCY SUBJECT TO SALES TAX

18:24-3.1 Taxes on hotel room occupancy

(a) The rent for every occupancy of a room or rooms in a hotel, as defined in N.J.A.C. 18:24-3.2, is subject to sales tax, except that the tax is not imposed upon:

1. A permanent resident who shall be in residence for at least 90 consecutive days; or
2. A daily rental of not more than \$2.00.

18:24-3.2 Definitions

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

“Hotel” means a building or portion thereof which is regularly used and kept open as such for the purpose of furnishing sleeping accommodations for pay to tourists, transients or travelers. It includes, but is not limited to the following:

1. An apartment hotel, motel, inn, tourist home, tourist house or court, tourist cabin and club;
2. A boarding house or rooming house containing eight or more units; and
3. Any other building or group of buildings in which sleeping accommodations are normally available to the public on a transient basis.

“Unit” means any portion of a building which is, or may be, rented or leased separately to any individual or family.

18:24-3.3 Guest house

A boarding or rooming house containing fewer than eight units must be registered and collect and remit sales tax on taxable occupancies as a hotel unless it is held out by the operator and kept open for the residence of permanent boarders or lodgers. A permanent boarder or lodger is any person who occupies or has the right to occupy a room or rooms in the house for at least 90 consecutive days.

Repeal and New Rule, R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).
Section was “Effective date tax payable”.

SUBCHAPTER 4. MANUFACTURING, PROCESSING, ASSEMBLING AND REFINING INDUSTRIES

18:24-4.1 Scope of subchapter

(a) 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:

1. Manufacturing, processing, assembling and refining industries; and
2. Services performed on real or tangible personal property.

As amended, R.1977 d.365, effective September 30, 1977.
See: 9 N.J.R. 445(a), 9 N.J.R. 544(a).

18:24-4.2 Definitions

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

“Assembling” means the collecting or gathering together of the parts of a product, and placing them in their proper relation to each other.

“Machinery, apparatus, or equipment” means any complex, mechanical, electrical or electronic device, mechanism or instrument which is adapted to the accomplishment of a production process, and which is designed to be used, and is used, in manufacturing, converting, processing, fabricating, assembling, or refining tangible personal property for sale.

“Manufacturing or processing” means the performance of an operation or series of operations, the object of which is to place items of tangible personal property in a form, composition, or character different from that in which they were acquired. The change in form, composition, or character must be a substantial change, and it must result in a transformation of property into a different or substantially more usable product.

“Motor vehicle” means all vehicles propelled otherwise than by muscular power (excepting such vehicles as run only upon rails or tracks), trailers, semitrailer, house trailers, or any other type of vehicle drawn by a motor-driven vehicle, and motorcycles, designed for operation on the public highways.

“Part” means an item used as a replacement for any portion of a machine and which is attached or affixed to the machine of which it is a part permanently or during periods of use. A part cannot accomplish the work for which it was designed independent of the machine of which it is intended to be a component.

“Refining” means the making fine or pure, or partially free from extraneous or undesirable matter.

"Supplies" means items of tangible personal property used in the maintenance of a building, work area, or machinery, apparatus, and equipment, and may include items of tangible personal property consumed or used in production whose uses are incidental to such production. Supplies include, but are not limited to, such items as lubricants, cleaning materials, boiler compounds and light bulbs.

"Tool" means a hand-held and manually operated work instrument which is simple in design and used in the performance of simple work functions.

"Year" means a standard calendar year of 12 months.

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Tax Law. Robert J. Alter, Jay Soled, 135 N.J.L.J. S53 (1993).

Case Notes

Manufacturing tax exemption applied to equipment used to produce property which is used to produce other property sold to consumers. *GE Solid State, Inc. v. Director, Div. of Taxation*, 132 N.J. 298, 625 A.2d 468 (1993).

Interpretation of manufacturing exemption to sales and use tax was not manifestly unreasonable. *GE Solid State, Inc. v. Director, Div. of Taxation*, 11 N.J.Tax 320 (1990), affirmed 254 N.J.Super. 653, 604 A.2d 189, certification granted 130 N.J. 394, 614 A.2d 617, reversed 132 N.J. 298, 625 A.2d 468.

Receipts from purchase of photomask machinery by manufacturer of integrated circuits did not qualify for exemption from sales or use tax. *GE Solid State, Inc. v. Director, Div. of Taxation*, 11 N.J.Tax 320 (1990), affirmed 254 N.J.Super. 653, 604 A.2d 189, certification granted 130 N.J. 394, 614 A.2d 617, reversed 132 N.J. 298, 625 A.2d 468.

Integrated circuits and chips manufacturer's purchase of photomask machinery was not exempt from use tax. *GE Solid State, Inc. v. Director, Div. of Taxation*, 254 N.J.Super. 653, 604 A.2d 189 (A.D. 1992), certification granted 130 N.J. 394, 614 A.2d 617, reversed 132 N.J. 298, 625 A.2d 468.

Commercial photographer was collaterally estopped from challenging assessments on purchase and use of film. *Blair v. Taxation Div. Director*, 225 N.J.Super. 584, 543 A.2d 99 (A.D.1988), certification denied 113 N.J. 349, 550 A.2d 460.

Statute exempting from retail sales taxation sales of catalysts used to cause refining or chemical process held not to apply to manufacturer's sale of grinding balls, found not to be catalysts; regardless of catalyst status, grinding balls would not be exempt because they were not used to induce or cause a refining or chemical process. *Grinding Balls, Inc. v. Director, Div. of Taxation*, 1 N.J.Tax 514, 176 N.J.Super. 620, 424 A.2d 470.

Sales of dynamite to stone quarries for use in producing stone as an end product in blasting of quarry held exempt from sales tax; definition of refining. *Romac Explosives, Inc. v. Director, Div. of Taxation*, 125 N.J.Super. 154, 309 A.2d 465 (App.Div.1973), affirmed per curiam 64 N.J. 551, 319 A.2d 65 (1974).

Plaintiff's direct mailing services performed in state, including sortie-bag services on mail to out-of-state addresses, held subject to sales and use tax; manufacturing or processing definition (citing former N.J.A.C. 18:24-25). *Fisher-Stevens, Inc. v. Director, Div. of Taxation*, 121 N.J.Super. 513, 298 A.2d 77 (App.Div.1972), certification denied.

Gauges and electrical control systems taxable as real property if functionally essential to special purpose property. *Texas Eastern Transmission Corp. v. Department of Treasury Div. of Taxation*, 11 N.J.Tax 198 (1990).

Personal property ordinarily intended to be affixed permanently to real property is taxable as real property. *Texas Eastern Transmission Corp. v. Department of Treasury Div. of Taxation*, 11 N.J.Tax 198 (1990).

"Functionally essential", for purposes of business personal property tax regulation, referred to support of special purpose property. *Texas Eastern Transmission Corp. v. Department of Treasury Div. of Taxation*, 11 N.J.Tax 198 (1990).

Property permanently affixed to natural gas pipe was exempt from business personal property tax. *Texas Eastern Transmission Corp. v. Department of Treasury Div. of Taxation*, 11 N.J.Tax 198 (1990).

Applicable use tax for donations of books to charity calculated at the price such property is offered for sale by taxpayer. *McGraw-Hill, Inc. v. State, Dept. of Treasury, Div. of Taxation*, 9 N.J.Tax 372 (1987).

Purchases of parts for silk screens exempt from sales tax. *Panta Astor, Inc. v. Taxation Div. Director*, 8 N.J.Tax 464 (1986).

For purposes of sales tax exemption, "machinery, apparatus or equipment" include parts of unit which perform required function. *Panta Astor, Inc. v. Taxation Div. Director*, 8 N.J.Tax 464 (1986).

Taxpayer's procedure by which new designs were placed on printing rollers constituted a service subject to sales tax; purchaser of parts for silk screens used in wall covering production held exempt from sales tax. *Panta Astor, Inc. v. Taxation Div. Director*, 8 N.J.Tax 464 (Tax Ct.1986).

Wire used solely for manufacture of tin cans was taxable on purchase. *Phelps Dodge Industries, Inc. v. Director, Div. of Taxation*, 8 N.J.Tax 354 (1986).

Copper wire which prevented tin buildup on electrodes during manufacture of tin cans was not exempt from sales and use tax. *Phelps Dodge Industries, Inc. v. Director, Div. of Taxation*, 8 N.J.Tax 354 (1986).

Use of copper wire in the manufacturing of tin cans held not a refining or chemical process which would render purchases of the wire exempt from the sales and use tax. *Phelps Dodge Industries, Inc. v. Director, Div. of Taxation*, 8 N.J.Tax 354 (Tax Ct.1986).

Purchase of color film by taxpayer engaged in business of taking, processing and selling photographs of new born infants did not fall within either the chemicals and catalysts exemption, the machinery apparatus or equipment exemption or the conversion exemption to the sales and use tax. *Hospital Portrait Service Co. v. Taxation Div. Director*, 6 N.J.Tax 305 (Tax Ct.1983), affirmed per curiam 7 N.J.Tax 431 (App.Div.1984), certification denied 101 N.J. 235, 501 A.2d 912 (1985).

Materials used by foundry operator to produce a mold or core held not exempt from sales tax as not used to induce or cause a refining or chemical process. *Kalpin v. Taxation Div. Director*, 5 N.J.Tax 172 (Tax Ct.1983), affirmed per curiam 6 N.J.Tax 258 (App.Div.1984).

Loaders used to place rock in trucks and trucks used to transport stone from quarry face to crusher held exempt from taxation under statute exempting from sales tax equipment used in refining tangible personal property for sale. *Millington Quarry, Inc. v. Taxation Div. Director*, 5 N.J.Tax 144 (Tax Ct.1983).

Chemicals used by milk processor to clean milk lines, fillers and tanks held not exempt from sales tax as used in a chemical or refining process, because the sanitizing operation was separate from the processing and did not produce a finished product (no citation—decided on statutory grounds). *Tuscan Dairy Farms, Inc. v. Director, Div. of Taxation*, 4 N.J.Tax 92 (Tax Ct.1982).

Cloth filter pads used in manufacture of cellulose acetate film and sheets fell within the meaning of the phrase "materials, such as chemicals and catalysts" within the statute exempting from sales tax such materials "used to induce or cause a refining or chemical process", where pads are used to remove impurities from chemical solution. *Xcel Corp. v. Director, Div. of Taxation*, 4 N.J.Tax 85 (Tax Ct.1982), affirmed per curiam 5 N.J.Tax 480 (App.Div.1982).

18:24-4.3 Tax on purchase or use of certain items

(a) The purchase or use of the following items is subject to tax, unless otherwise specifically exempted, notwithstanding any use or intended use in production.

1. Supplies;
2. Tools;
3. Motor vehicles;
4. Parts with a useful life of one year or less. In determining whether a part has a useful life of one year or less, the purchaser's own treatment of the item for accounting purposes should be taken into consideration. In addition, the term "year" as used in this rule shall mean a standard calendar year of 12 months.

Case Notes

Purchase of color film by taxpayer engaged in business of taking, processing and selling photographs of new born infants did not fall within either the chemicals and catalysts exemption, the machinery apparatus or equipment exemption or the conversion exemption to the sales and use tax. *Hospital Portrait Service Co. v. Taxation Div. Director*, 6 N.J.Tax 305 (Tax Ct.1983), affirmed per curiam 7 N.J.Tax 431 (App.Div.1984), certification denied 101 N.J. 235, 501 A.2d 912 (1985).

18:24-4.4 Purchase, rental, lease or use of machinery, apparatus or equipment directly in production exempt from tax

(a) The purchase, rental, lease or use of machinery, apparatus or equipment for use or consumption directly and primarily in the production of tangible personal property by manufacturing, processing, assembling or refining is exempt from tax on or after January 1, 1978.

(b) Production is limited to those operations commencing with the introduction of raw materials into a systematic series of manufacturing, processing, assembling, or refining operations, and ceases when the product is in the form in which it will be sold to the ultimate consumer, and does not include any activities which are distributive in nature. For example, a machine which packs a product into shipping cases after the product is in the form in which it will be purchased by the ultimate consumer is not considered to be used in production.

(c) Machinery, apparatus, or equipment is considered to be directly used in production only when it is used to initiate, sustain or terminate the transformation of raw materials into finished products. In determining whether property consisting of machinery, apparatus or equipment is "directly" used, consideration must be given to the following factors:

1. The physical proximity of the property in question to the production process in which it is used;
2. The proximity of the time of use of the property in question to the time of use of other property used before and after it in the production process; and,

3. The active causal relationship between the use of the property in question and the production of a product. The fact that particular property may be considered essential to the conduct of manufacturing, processing, assembling or refining because its use is required either by law or practical necessity does not, of itself, mean that the property is used directly in manufacturing, processing, assembling or refining. For example, property used to prevent accidents, which may be required by law, is not considered directly used.

(d) Concerning primary use, where a single unit of machinery, apparatus or equipment is put to use in two different activities, one of which is a "direct use" and the other of which is not, the property is not exempt from tax unless the manufacturer, processor, assembler or refiner makes use of the property more than 50 percent of the time directly in manufacturing, processing, assembling or refining operations, except in those cases where such machinery, apparatus or equipment is rented, leased, or used by persons other than the purchaser.

1. For example:

i. A manufacturer purchases a machine for self-use in two activities, one of which is a direct use in a manufacturing operation and the other use is distributive in nature. Sixty percent of the time the machine is used in production and 40 percent of the time it is used in a loading activity. Since the machine will be used directly in production over 50 percent of the time, it qualifies for exemption.

ii. Same facts as in example i, except that 30 percent of the time the machine is used in production and 70 percent of the time it is used in a loading activity. The machine is taxable as it is not used directly in production over 50 percent of the time.

iii. A manufacturer purchases a machine for self-use 10 hours a week. The machine is rented or leased for 30 hours a week. The rental or lease of a machine is not deemed a self-use activity. Therefore, where the manufacturer uses the machine for more than five hours a week directly in production, it is used over 50 percent of the time for purposes of qualifying for exemption. Where the machine is used five hours or less directly in production, the purchase of it does not qualify for exemption and the purchase of the machine is taxable.

iv. The lessee of the machine under example iii above uses the machine directly in production for more than 15 hours a week. Since the machine is used more than 50 percent of the time directly in production, the rental or lease charges are not subject to tax. If the machine is used for 15 hours a week or less directly in production, it does not qualify for exemption and the rental or lease charges are subject to tax.

"Tangible personal property" means corporeal personal property of any nature.

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, 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).

Case Notes

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, except where such installation results in a capital improvement to real property, (see Section 7 of this Subchapter);
3. Maintaining, servicing, or repairing real or tangible personal property.

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).

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. Where such services are 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);
2. Where such services involve only garbage removal and sewer services performed on a regular contractual basis for a term of not less than 30 days.

(c) In all instances, sales or use taxes on materials used in maintaining, servicing, or repairing real property where such materials are provided by the contractor as part of his services, are the responsibility of the contractor. The contractor should charge tax only on the service portion of his bill.

Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).

18:24-5.9 Fabricator/contractor's purchase of materials

(a) Where any person is engaged in the business of fabrication of items of tangible personal property produced for incorporation into real property as component parts thereof, as well as the business of installing such property, such person is required to purchase all materials as defined in Section 5.2 (Definitions) of this Chapter as purchases for resale.

4. Certificate of Capital Improvement (Form ST-8).

(f) Prior to titling a motor vehicle, it is required that motor vehicle dealers indicate on both the new car Manufacturer's Statement of Origin and the used car Dealer's Certificate of Ownership the fact that the sales tax has been satisfied. In order to indicate this fact, the prescribed "New Jersey Sales Tax Satisfied" stamp shall be used. On the new car Manufacturer's Statement of Origin, the stamp shall be imprinted on the reverse side of the form above the section entitled "Third Assignment". On the used car Dealer's Certificate of Ownership the stamp shall be imprinted on the reverse side of the form above the section entitled "Schedule of Fees".

New Rule, R.1971 d.157, effective September 2, 1971.
See: 3 N.J.R. 211(a), 3 N.J.R. 162(a).
Amended by R.1979 d.90, effective March 8, 1979.
See: 11 N.J.R. 104(a), 11 N.J.R. 210(e).
Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).

18:24-7.11 Casual sales of motor vehicles

Under the provisions of N.J.S.A. 54:32B-3(a) and N.J.S.A. 54:32B-8.6, casual sales, (as defined in N.J.S.A. 54:32B-2(u)) of motor vehicles, unless otherwise exempted, 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).

18:24-7.12 Taxable and exempt services

(a) The following services, except as hereinafter provided, sold or purchased by a dealer in motor vehicles, are subject to tax; provided, however, that where the following services are performed on tangible personal property held for sale by the purchaser of such services, the performance of such services is not subject to tax:

1. Installing, maintaining, servicing, or repairing tangible personal property; where such services are sold by a dealer of motor vehicles, or any other person engaged in the performance of such services;
2. Storage of tangible personal property, including motor vehicles;
3. Printing or imprinting tangible personal property, including motor vehicles.

(b) None of the services enumerated in subsection (a) of this Section are subject to tax when rendered with respect to trucks, tractors, trailers or semitrailers by a person who is not engaged, directly or indirectly through subsidiaries, parents, affiliates or otherwise, in a regular trade or business offering such services to the public.

(c) The purchase of tangible personal property by any person engaged in the sale of the services enumerated in subsection (a) of this Section for use by that person in the performance of such services are not subject to tax where

the property so purchased becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of their service in conjunction with the performance of the service. Thus the purchase of parts, lubricants, brake and transmission fluids, and similar items is not subject to tax if such items will be transferred in the performance of the services enumerated in subsection (a) of this Section. The purchaser of such items should issue a duly completed Resale Certificate (Form ST-3) to his supplier.

(d) The purchase or use by any person engaged in the sale of the services enumerated in subsection (a) of this Section of machinery, apparatus, equipment, tools, or supplies (not otherwise exempted) is subject to tax.

(e) A separately stated and identified charge for a motor vehicle inspection by an official inspection station to obtain an approval sticker as provided under N.J.S.A. 39:8-1, et seq. is exempt from tax. The charge for any repairs or adjustments required to obtain an approval sticker for a motor vehicle as a result of an inspection rejection is subject to tax as provided in (a) above.

(f) A separately stated and identified charge for towing a disabled or illegally parked motor vehicle by a wrecker or tow car is exempt from tax. The term "towing" includes the use of special transportation equipment such as a dolly or tilt bed truck.

Amended by R.1984 d.126, effective April 16, 1984.
See: 16 N.J.R. 235(a), 16 N.J.R. 926(b).
Amended by R.1984 d.380, effective September 4, 1984.
See: 16 N.J.R. 1466(a), 16 N.J.R. 2379(c).
New (f) added.
Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).

18:24-7.13 Taxability of motor vehicles used by manufacturer before sale; computation

(a) Manufacturers of motor vehicles who withdraw such vehicles from inventory or stock for company purposes such as demonstration, promotional or executive use, prior to the sale thereof, shall be required to pay a tax on such uses.

(b) The tax shall be computed and paid monthly by the motor vehicle manufacturer as part of his regular monthly report of taxes due on the sale and use of taxable property and services.

(c) The basis for tax shall be determined monthly by multiplying $2\frac{1}{2}$ percent times the total invoice cost to distributors or dealers of vehicles of the same make, model and accessory equipment.

(d) In computing the tax, the basis for tax as computed in (c) above shall be multiplied by .06 to effectuate the six percent tax imposed pursuant to N.J.S.A. 54:32B-6.

New Rule, R.1971 d.157, effective September 2, 1971.
See: 3 N.J.R. 211(a), 3 N.J.R. 162(a).
Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).

18:24-7.14 Taxability of motor vehicles used by automobile dealers for demonstration and other company purposes; computation

(a) Vehicles actually sold to a salesman, partner or other official of the dealer's company are subject to the New Jersey Sales Tax on the purchase price, or, if there is a trade-in, on the purchase price less the trade-in allowance.

(b) Retail dealers of motor vehicles who withdraw such vehicles from inventory or stock but do not in fact use such vehicles in the promotion of business (as defined in subsection (c) of this Section, paragraph 3), prior to the sale thereof, shall be required to pay a compensating use tax on such uses. Said tax shall be imposed upon the dealers' net invoice price, or if there is a vehicle returned to inventory or stock in exchange therefor, on the dealers' net invoice price less the fair market value of the exchanged vehicle.

(c) There shall be no compensating use tax imposed on the use of motor vehicles by retail dealers who withdraw such vehicles from inventory or stock prior to the sale thereof when such vehicles are available for and are in fact used for the promotion of the business of the dealership:

1. "Available for use in the promotion of the business of the dealership" means that the vehicle is present at the dealership during a substantial portion of the hours of normal business operation of the dealership.

2. "In fact used" means that the vehicle must not only be available but also must actually be used by the dealership in the promotion of its business.

3. "Promotion of business" means any and all efforts directed toward effecting the sale at retail of motor vehicles.

(d) In order to be entitled to the exemption provided in subsection (c), paragraph 3 of this Section, a dealer shall file together with his quarterly return, a certification wherein the dealer certifies the usage of all company-owned motor vehicles withdrawn from inventory or stock, which certification shall be on a form prescribed by the Director of the Division of Taxation.

R.1971 d.218, effective December 10, 1971.
See: 4 N.J.R. 13(c), 3 N.J.R. 234(b).

18:24-7.15 Renting motor vehicles

(a) The total charge for the rental for 28 days or less of a motor vehicle to the customer is subject to the six percent New Jersey sales and use tax pursuant to N.J.S.A. 54:32B-3(a), except as set forth in (b) above.

(b) The charge to the customer which is subject to the sales tax is the total charge to the customer except where nontaxable charges such as registration fees, license fees, insurance and gasoline are separately stated then such charges are not subject to the tax.

New Rule, R.1971 d.157, effective September 2, 1971.
See: 3 N.J.R. 211(a), 3 N.J.R. 162(a).
Amended by R.1979 d.179, effective May 4, 1979.
See: 11 N.J.R. 209(b), 11 N.J.R. 305(a).
Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).

18:24-7.16 Issuance and acceptance of resale and exemption certificates

Motor vehicle dealers in issuing or accepting certificates, affidavits, or other documentary evidence as a basis for exemption from any tax imposed by N.J.S.A. 54:32B-1 et seq. are subject to the rules set forth in subchapter 11 of this chapter.

18:24-7.17 Retention of records

(a) In general, motor vehicle dealers are subject to the record keeping requirements set forth in subchapter 2 of this chapter.

(b) All certificates, affidavits, or other documentary evidence accepted in good faith by a motor vehicle dealer as a basis for exemption from any tax imposed by the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) shall be retained by said dealer for a period of not less than three years from the date of the use of such certificate as a basis for exemption.

18:24-7.18 Sales, renting or leasing of commercial motor vehicles and vehicles used in combination therewith exempt from tax

(a) Receipts from sales of the following are exempted from the tax imposed under the Sales and Use Tax Act:

1. Sales, renting or leasing of commercial trucks, truck tractors, tractors, trailers, semitrailers, and vehicles used in combination therewith, as defined in N.J.S.A. 39:1-1, which are registered in New Jersey, and:

i. Have a gross vehicle weight rating in excess of 26,000 pounds; or

ii. Are operated actively and exclusively for the carriage of interstate freight pursuant to a certificate or permit issued by the Interstate Commerce Commission; or

iii. Are registered pursuant to N.J.S.A. 39:3-24 or N.J.S.A. 39:3-25 and have a gross vehicle weight rating in excess of 18,000 pounds.

2. Repair parts and replacement parts for such vehicles. Parts shall not include lubricants, motor oil or antifreeze.

See: 16 N.J.R. 3298(b), 17 N.J.R. 480(a).

(d)1-2 added.

Amended by R.1991 d.577, effective December 2, 1991.

See: 23 N.J.R. 2005(a), 23 N.J.R. 3654(b).

Revised (d) and (d)1; added (d)1i through iii; revised (d)2; repealed (d)2i; added (d)3.

18:24-9.12 Sales of meals and rental of rooms to exempt organizations

(a) Receipts from the sale to exempt organizations of food and drink in or by restaurants, taverns or other establishments in this State, or by caterers, including in the amount of such receipts any cover, minimum, entertainment or other charge made to patrons or customers, and rental of rooms to exempt organizations in a hotel shall be treated in the following manner:

1. Whenever there is such a sale of food or drink, the vendor shall charge and collect the sales tax thereon unless an organization holding a valid exempt organization permit (form ST-5A) furnishes the vendor with a valid properly executed exempt organization certificate (form ST-5) which has the name, address and registration number of the exempt organization imprinted on the certificate by the Division of Taxation along with the signature of the director;

2. Whenever there is a room occupancy, the hotel shall charge and collect the sales tax thereon unless an organization holding a valid exempt organization permit (form ST-5A) furnishes the vendor with a valid properly executed exempt organization certificate (form ST-5) which has the name, address and registration number of the exempt organization imprinted on the certificate by the Division of Taxation along with the signature of the director;

3. In all cases, the exempt organization must pay the bill with organizational funds and the organization must hold a valid exempt organization permit (form ST-5A) as of the date of the transaction;

4. Any organization holding a valid exempt organization permit (Form ST-5A), which has paid the sales tax in accordance with the foregoing procedure, may apply to the New Jersey Division of Taxation for a refund of the tax if all the charges on which the tax was calculated were paid by the organization using organizational funds.

Amended by R.1976 d.190, effective June 21, 1976.

See: 8 N.J.R. 356(e).

Amended by R.1977 d.29, effective February 3, 1977.

See: 9 N.J.R. 44(b), 9 N.J.R. 147(b).

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

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

18:24-9.13 Student organization purchases

(a) Student organizations within a school exempt from tax under N.J.S.A. 54:32B-9(a) or (b) may be considered integral components of the school and may make tax exempt purchases for educational purposes, including school spon-

sored fundraising activities and functions, and events such as proms and similar activities, provided:

1. The event or activity is sanctioned and supervised by the board of education, school district, or school administration;

2. Payment in the form of a check or voucher is made from a school, school district, or board of education account, including a student activities account maintained under the auspices of the school and/or the board of education; and

3. Documentation is provided to the vendor to properly evidence the tax exempt purchase. The only acceptable documentation for private schools is a copy of a valid ST-5 Exempt Organization Certificate. New Jersey public schools are New Jersey government entities and as such are not issued exemption certificates or exempt organization numbers. A school contract, letterhead, or purchase order signed by a school official is sufficient to document the exemption.

(b) School affiliated teacher organizations and parent organizations that do not qualify as specifically exempted parent-teacher associations and organizations, student organizations not sponsored by the school, and other school support groups such as booster clubs and class alumni associations are not considered integral components of the school. They are deemed to be separate legal entities and may not use the school's tax exempt documentation to make tax exempt purchases. Such organizations may apply for and receive exempt organization permits, if qualified for exemption under N.J.S.A. 54:32B-9(b)(1) of the Sales and Use Tax Act.

New Rule, R.1995 d.133, effective March 6, 1995.

See: 26 N.J.R. 4977(a), 27 N.J.R. 936(a).

SUBCHAPTER 10. ISSUANCE AND ACCEPTANCE OF EXEMPTION CERTIFICATES

18:24-10.1 Scope of Subchapter

This Subchapter shall govern the issuance and acceptance of any official form of the Division of Taxation, the proper use of which entitles the issuer to an exemption from sales or use taxes.

18:24-10.2 General requirements

(a) A vendor of taxable goods, services, amusement charges or occupancies is required to collect any tax imposed by the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.), unless the vendor shall have taken from the purchaser a certificate, signed by the purchaser and bearing his name, address and certificate of authority number, to the effect that the goods, services, amusement charges or occupancies

purchased are not subject to the sales or use tax by virtue of a statutory exemption set forth in such certificate.

(b) In the case of an exempt organization certificate (form ST-5), a vendor may only accept the original or copy of form ST-5 which has the name, address and registration number of the exempt organization imprinted on the certificate by the Division of Taxation, along with the signature of the Director. On and after July 1, 1976, only certificates issued in accordance with this subsection shall be valid.

As amended, R.1976 d.62, effective February 27, 1976.
See: 8 N.J.R. 87(b), 8 N.J.R. 209(a).

18:24-10.3 Responsibility

A seller or lessor who accepts in good faith any exemption certificate which upon its face discloses a proper basis for exemption is relieved of any liability for collection or payment of tax upon transactions covered by the certificate.

Case Notes

Exemption from sales and use tax for sales of buses for public transportation including repair and replacement parts held not to apply to bus repair services. *Body-Rite Repair Co. v. Director, Div. of Taxation*, 89 N.J. 540, 446 A.2d 515 (1982).

Taxpayer who accepted ICC exemption certificates in good faith not liable for collection of sales tax. *J.R. Corelli Associates, Inc. v. Director, Div. of Taxation*, 11 N.J.Tax 584 (1991), reversed 14 N.J.Tax 160.

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).

18:24-10.4 Acceptance in good faith

(a) An exemption certificate to be accepted in good faith must contain no statement or entry which the seller or lessor knows, or has reason to know, is false or misleading.

(b) A seller or lessor is presumed to be familiar with the law and rules regarding the business in which he deals.

(c) In general, a seller or lessor who accepts an exemption certificate in "good faith" is relieved of liability for collection or payment of tax upon transactions covered by the certificate. The question of "good faith" is one of fact and depends upon a consideration of all the conditions surrounding the transaction.

Amended by R.1974 d.244, effective August 30, 1974.
See: 6 N.J.R. 326(a), 6 N.J.R. 414(e).

Case Notes

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).

18:24-10.5 Disclosure of proper exemption basis

(a) In order for a certificate to disclose a proper basis for exemption it must meet the following requirements:

1. The certificate must be an officially promulgated certificate form or a substantial and proper reproduction thereof.

2. The certificate must be dated and executed in accordance with the instructions published for use therewith and must be complete and regular in every respect.

3. The certificate must state a proper basis for the exemption.

4. The vendor must have no reason to believe that the property to be purchased is of a type not ordinarily used in the purchaser's business for the purposes described in the certificate.

5. Where a seller or lessor has accepted a blanket certificate, each transaction between the parties is considered a separate claim for exemption thereunder, and the seller or lessor must therefore exercise good faith in each such transaction in order to avoid liability for the tax.

Amended by R.1974 d.244, effective August 30, 1974.
See: 6 N.J.R. 326(a), 6 N.J.R. 414(e).

Case Notes

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).

18:24-10.6 Retention of certificates; inspection

(a) All certificates whether single purchase or blanket, accepted in good faith by a vendor as a basis for exemption from any tax imposed by the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) shall be retained by said vendor for a period of not less than three years from the date of the last use of such certificate as a basis for exemption.

(b) The certificate must be in the physical possession of the seller or lessor, and available for appropriate inspection, on or before the 60th day following the date of the transaction to which the certificate relates.

(c) Where a certificate is not made available for inspection on or before that time, the seller or lessor must prove to the satisfaction of the Director, by means of evidence other than certification of the purchases, that the sale or lease in question is, in fact, exempt. Whenever the sale for resale exemption is claimed by an unregistered vendor, the properly completed and executed resale certificate of another state, accepted in good faith by the seller, is deemed evidence of exemption; unless:

1. The person to whom the sale was made and who issued the certificate was required to be registered in New Jersey under N.J.S.A. 54:32B-2(i) at the time of sale; or
2. The person to whom the sale was made took delivery of the property at the sale location in New Jersey.

(d) In the absence of such proof the transaction will be deemed taxable and assessed as such.

Amended by R.1995 d.267, effective June 5, 1995.
See: 27 N.J.R. 474(a), 27 N.J.R. 2250(b).

In (c) added the provision governing unregistered vendors; and added (c)1 and (c)2.

18:24-10.7 (Reserved)

Repealed by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).

Section was "Penalty for fraudulent issuance or acceptance of resale or exemption certificate".

SUBCHAPTER 11. OBLIGATION TO COLLECT SALES TAX

18:24-11.1 Vendor to collect tax

(a) Every vendor of taxable goods and services required to collect any tax imposed by the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) is obligated under the law to collect such tax commencing July 1, 1966, irrespective of whether or not he has received a sales tax certificate of authority issued by the Sales Tax Bureau under Section 15 of the Act.

(b) Failure to receive a sales tax certificate of authority shall not relieve a vendor of taxable goods and services from the obligation to properly collect, remit and account for the said tax and to maintain complete records of all transactions in the manner provided by law.

18:24-11.2 Filing of monthly remittance and quarterly returns

(a) All vendors required to collect and remit sales and use tax are required to file a quarterly return (form ST-50) with the Division of Taxation on or before April 20, 1975, and quarterly thereafter on or before the 20th day of the month following the quarter covered by the return. In calculating the amount of tax to be remitted to the Division of Taxation for the quarterly period, the vendor shall be entitled to a credit in the amount of tax remitted as monthly remittances for the months of the quarter covered by the quarterly return.

(b) Effective April 1, 1975, with respect to sales and use tax liabilities incurred on and after April 1, 1975, every vendor whose liability exceeds \$100.00 for the first or second month of a quarterly filing period shall, on or before 20th day of the month following each such month, file with the

Director a monthly remittance statement (form ST-51) and pay over an amount equal to his liability for the month:

1. Example—January, February, March 1975: Taxpayer's sales and use tax liability for January and February, 1975, exceeds \$100.00 for each of said months. Thus, taxpayer files a monthly remittance on February 28, 1975, for January, 1975, and pays the tax at said time. He does the same on March 28, 1975, for February, 1975, and pays the tax at said time. On April 20, 1975, he files his quarterly return and takes credit for payments made on February 28, and March 28.

2. Example—April, May, June, 1975, and thereafter: Taxpayer's sales and use tax liability for April and May, 1975, exceeds \$100.00 for each of said months. Thus, taxpayer files a monthly remittance on May 20, 1975, for April, 1975, and pays the tax at said time. He does the same on June 20, 1975, for May, 1975, and pays the tax at said time. On July 20, 1975, he files his quarterly return and takes credit for payments made on May 20 and June 20.

Note: The foregoing rule revises previous rule appearing in instructions—Form ST-50A.

New Rule, R.1975 d.4, effective January 13, 1975.
See: 6 N.J.R. 494(b), 7 N.J.R. 77(a).

18:24-11.3 (Reserved)

New Rule, R.1983 d.220, effective June 20, 1983.
See: 15 N.J.R. 324(a), 15 N.J.R. 1039(b).
Repealed by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).

Section was "Transitional provisions for increase in tax rate".

SUBCHAPTER 12. RECEIPTS FROM THE SALE OF FOOD AND DRINK

18:24-12.1 Scope of subchapter

This subchapter will clarify the application of the New Jersey Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) to the sale of food and drink in or by restaurants, taverns or other establishments and caterers.

Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).

18:24-12.2 Definitions

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

"Food stores" shall mean any establishment which is principally engaged in selling food or drink which is not prepared and ready to be eaten. Supermarkets, grocery stores, fish markets, produce markets, bakeries and meat markets are examples of the types of establishments consid-

ered to be food stores. When a department within food stores makes sales of food or drink which are subject to tax, it must collect the tax. For purposes of these rules, stores which are principally engaged in selling food prepared and ready to be eaten are not food stores.

“For consumption off the premises” shall mean that the food or drink is intended by the customer to be consumed at a place away from the vendor’s premises.

“For consumption on the premises” shall mean that the food or drink sold may be immediately consumed on the premises where the vendor conducts his business.

1. In determining whether an item of food is sold for immediate consumption, there shall be considered the customary consumption practices prevailing at the selling facility.

“Premises” shall mean the total space and facilities in or on which the vendor conducts his business, including, but not limited to, parking areas for the convenience of in-car consumption, counter space, indoor or outdoor tables, chairs, benches and similar convenience.

18:24-12.3 Receipts subject to sales tax

(a) Sales tax is imposed on the receipts, including any cover, minimum, entertainment or other charge, or the value of a coupon, from every sale of food and drink of any nature sold in or by restaurants, taverns or other establishments in this State or by caterers:

1. In all instances where the sale is for consumption on the premises where sold;

2. In those instances where the sale is for consumption off the premises of the vendor and consists of a meal, or of food prepared and ready to be eaten, including sandwiches and other food or drink, unless the food and drink, other than sandwiches, is sold in:

- i. An unheated state; and
- ii. The same form and condition, quantities and packaging commonly used by food stores not principally engaged in selling foods prepared and ready to be eaten.

(b) The following establishments, as well as other establishments engaged in the sale of food and drink for consumption on or off premises, are required to collect the tax:

Automats	Drive-In	Luncheonettes
Cafes	Restaurants	Mobile Vending Operators
Cafeterias	Fast Food	Oyster and Clam Bars
Carry-Out	Operators	Pizzerias
Restaurants	Hamburger and	Restaurants
Caterers	Hot Dog Stands	Sandwich Bars and Shops
Chili Parlors	Ice Cream Stands	Snack Bars
Dairy Bars	Lunch Bars,	Soda Fountains
Delicatessens	Counters and	Taverns, Grills and Bars
Diners	Rooms	Wiener Restaurants

(c) The determination of whether food and drink is sold either in a heated or unheated state must be made according to the vendor’s method of merchandising.

1. If the vendor attempts to maintain the food at a temperature which is warmer than the surrounding air temperature by using heating lamps, warming trays, ovens or similar units, or cooks to order, the vendor is selling food in a heated state.

2. If the vendor sells prepared food items from units maintained at or below surrounding air temperature, such sales are sales of prepared food in an unheated state.

Example: A food store sells potato salad by the pound and also sells hot pastrami by the pound for home consumption. The potato salad is not taxable but the pastrami is subject to tax.

Example: A supermarket sells barbecued chicken hot from a rotisserie to be taken home and eaten. This is a taxable sale of heated food.

3. Food sold in an unheated state is taxable when sold as sandwiches or as meals ready to be eaten when arranged on plates or platters as individual or multiple servings regardless of how the sales price is arrived at (pound versus serving).

4. Food or drink sold in an unheated state is not subject to tax when commonly sold in food stores in bulk, by weight, by the dozen (or part thereof) or by volume (gallon, quart, etc.) for off premises consumption.

i. The exemption for food or drink provided in this paragraph does not include any item classified as a candy or confectionary or carbonated soft drinks and beverages.

5. Sales of heated and unheated food in combination on plates or as dinners are subject to tax on the total charge.

Example: A supermarket sells and arranges cold cuts on platters for customers. The customer is charged by the pound for cold cuts. Sales of this type are taxable.

Example: A take-out establishment sells ten pieces of chicken, six rolls and one pound of potato salad as a meal for three persons and charges one price for the package. A sale of this type is taxable in full.

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

Face value of nonreimbursable coupons was not taxable as receipt from sale of food or drink. *Burger King Corp. v. Director, Div. of Taxation*, 224 N.J.Super. 628, 541 A.2d 241 (A.D.1988).

Face value of nonreimbursable “two for one” coupons not “credit” subject to sales tax. *Burger King Corp. v. Director, Div. of Taxation*, 9 N.J.Tax 251 (1987), affirmed 224 N.J.Super. 628, 541 A.2d 241.

18:24-22.4 Floor covering when capital improvement; dealer records

(a) Since it is usually difficult or impractical to determine the character and condition of a floor after a floor covering has been permanently affixed to it, an installer of floor coverings should be prepared to satisfy the New Jersey Division of Taxation, in case of audit, each job claimed to be a capital improvement.

(b) It is suggested that the installer's permanent records contain the following information regarding each capital improvement job:

1. The composition of the subfloor upon which the floor covering was permanently affixed. (For instance, cement, plywood, diagonal tongue-and-groove).
2. In cases of deteriorated finished floors, the cause and degree of deterioration.
3. Where preinstallation work was required—for instance, where previously cemented linoleum was removed before the new floor covering was permanently affixed—a statement to that effect should be retained.
4. Any other information that would enable an auditor to verify the performance of a capital improvement.

18:24-22.5 Examples

(a) The ABC Carpet Company of Red Bank, New Jersey agrees to sell 60 square yards of wall-to-wall carpeting to Mr. Abel and install it over the finished floor in his living room in Rumson, New Jersey. The price of the carpet is \$10.00 per square yard and the installation charges are \$2.00 per square yard.

1. This installation does not result in a capital improvement. Consequently, ABC must charge the sales tax on both the \$600.00 cost of the carpet and on the \$120.00 installation cost.

(b) The CDE Carpet Company of Millburn, New Jersey agrees to sell 60 square yards of carpeting to Mr. Baker, and to install it wall-to-wall over the concrete floor in his basement game room in Short Hills, New Jersey. The agreement stipulates that the work performed will result in a permanent installation. The costs are to be: \$10.00 per square yard for the carpet and \$2.00 per square yard for installation.

1. This type of installation results in a capital improvement. Therefore, there is no sales tax on the \$120.00 installation charge provided that Mr. Baker issues a certificate of capital improvement to CDE. The \$600.00 charge for carpet is subject to the sales tax.

(c) Mrs. Charles decides to have new vinyl tiles laid on her kitchen floor in West Orange, New Jersey. She purchases vinyl tiles from her neighborhood floor covering dealer together with "liner", a tarred paper used between the floor and tiles, and adhesive cement. She properly pays the sales tax on the total amount of these purchases.

1. Mrs. Charles then locates a floor covering installer who advertises himself as such in the yellow pages. This

installer agrees to remove the existing floor covering and install the liner and new tiles in a manner which will result in the permanent affixation of the tiles. No sales tax is due on the charges made for this installation.

(d) Mrs. Darling, who lives in Ewing Township, New Jersey decides to have new vinyl tiles laid on her kitchen floor, as did Mrs. Charles in subsection (c) of this Section. However, Mrs. Darling purchases her tiles from a Pennsylvania floor covering dealer who delivers them to her New Jersey address. Not being registered with the New Jersey Division of Taxation, this dealer does not add the New Jersey sales tax to the charges for the tiles. Mrs. Darling owes the New Jersey use tax to the State of New Jersey upon receipt of the tiles, and should remit the same to the cashier of the New Jersey Division of Taxation with a note explaining the remittance.

(e) The FGH Floor Covering Company of Lambertville, New Jersey enters into an agreement with a resident of Pennsylvania to replace a tiled kitchen floor (a capital improvement) and to cover a finished living room floor with wall-to-wall padding and carpeting (not a capital improvement) in the customer's Pennsylvania residence:

1. No sales tax is due either on these sales of tangible personal property or on the services, since the sales of the tiles and carpeting are deemed to have taken place out-of-State, and the taxable service of installing the carpeting was performed out-of-State. The permanent installation of the kitchen floor tiles constitutes a capital improvement in any case.

(f) The IJK Floor Covering Company of Bergenfield, New Jersey enters into a contract with Eureka Developers, a builder of tract homes, to cover by a permanent affixation the plywood subfloors of the living rooms, bedrooms and kitchens of 50 homes in construction in Ho-Ho-Kus, New Jersey with wall-to-wall carpeting and tiles. Eureka must pay to IJK the sales tax on the amounts charged for all of the carpeting and tiles used in these installations, but no sales tax is due on the installation charges.

(g) The LMN Floor Covering Company of Clifton, New Jersey advertises its wall-to-wall carpet prices on an "installed" basis. For instance, it advertises one of its numbers as costing "\$12.00 per square yard installed":

1. To be relieved of collecting the sales tax on the installation charges where a capital improvement is performed, LMN must break out a reasonable installation charge and state it separately on its billing to the customer. For instance, if the bill read, "60 square yards of carpet at \$10.00 per square yard"—"\$600.00, installation at \$2.00 per square yard—\$120.00", the installation charge of \$120.00 would not be subject to tax if the installation resulted in a capital improvement. On the other hand, if the customer was billed for "60 square yards of carpet installed at \$12.00 per square yard—\$720.00", the whole amount of \$720.00 would be subject to tax.

(h) Mr. Frank, the owner of a factory in Bayonne, New Jersey engages a floor covering dealer to cover the finished floor in his office in his factory with wall-to-wall carpeting. The dealer is required to collect the sales tax on his charges for both the carpeting and the installation of the carpeting, and Mr. Frank is liable for the business personal property tax on the value of the carpet.

Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).

18:24-23.3 Claim for refund

When filing either a monthly or quarterly sales tax return, a vendor of tangible personal property or services may not take any deductions from gross receipts for worthless or uncollectible bad debts but is required to file a claim for refund with respect to the alleged overpayment.

SUBCHAPTER 23. BAD DEBTS

18:24-23.1 Charging and remitting tax

A vendor of taxable tangible personal property or services must charge and remit the sales tax on all transactions whether for cash or credit.

18:24-23.2 Bad debts; tax refund

(a) Where the sales tax in connection with a sale has been remitted to the Division of Taxation and the account receivable has proven to be worthless and uncollectible, and application for a refund may be filed with the Director within two years from the payment thereof:

1. Where a vendor has collected no money on account of the account receivable or sale, a refund will be granted of the total amount of sales tax remitted to the Division.

2. Where a vendor has collected an amount with respect to the account receivable equal to or exceeding the amount of sales tax required to be remitted to the Division, the claim for refund will be denied.

3. Where a vendor has collected with respect to the account receivable or sale an amount less than the amount required to be remitted to the Division, a refund will be granted representing the difference between the amount remitted to the Division and the amount collected.

4. The following example illustrates the foregoing rules:

i. If the sale amounted to \$500.00 and the sales tax of \$30.00 was paid over to the Division by the vendor and the total collected by the vendor amounted to \$50.00, no refund would be allowed since the amount paid to the Division did not exceed the amount collected by the vendor from his customer. If, however, in the given example, the vendor collected only \$15.00 from the customer, he would be entitled to a \$15.00 refund because the amount collected by the vendor was less than the amount paid to the Division. If the vendor collected no money, he would be entitled to a refund of \$30.00. This assumes, of course, that the debt is proven to the satisfaction of the Division to be worthless and uncollectible.

Case Notes

Vendor required to file a refund application for sales tax paid on defaulted installment contracts, rather than deduct the net amount of sales price not collected on quarterly returns; refund claims for sales taxes paid more than two years previously barred by statutory limitation period. *Commercial Refrigeration & Fixture Co., Inc. v. Director, Div. of Taxation*, 2 N.J.Tax 415, 184 N.J.Super. 387, 446 A.2d 210 (Tax Ct.1981).

SUBCHAPTER 24. (RESERVED)

SUBCHAPTER 25. DATA PROCESSING

18:24-25.1 General provisions

(a) In general, the Sales Tax Act provides for the imposition of the sales tax on all sales of tangible personal property (N.J.S.A. 54:32B-3(a)) unless specifically exempted, and for the imposition of the sales tax on certain enumerated services (N.J.S.A. 54:32B-3(b)).

(b) This section is intended to clarify the application of the Sales and Use Tax Act to sales made by and to persons in the business of using automatic and electronic data processing hardware and software to manipulate data.

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

“Data processing equipment” includes, but is not limited to, computers, electro-mechanical machines, input-output devices, storage devices and peripheral equipment.

“Document” means medium and the data recorded on it for human use, for example, a report sheet.

“Electronic data processing” means the general term used to define a system for data processing by means of machines utilizing electronic circuitry at electronic speed, as opposed to electro-mechanical equipment.

“Hardware” means the term applied to the electromechanical and electronic equipment used to process data.

(b) The possible sales tax benefits include an exemption for retail sales to a qualified business, a partial exemption for retail sales by a qualified business, and an exemption for sales of building materials and services used in constructing or maintaining buildings or realty of a qualified business.

(c) No business can obtain tax benefits under this subchapter unless the Urban Enterprise Zone Authority has determined that the business meets the definition of a qualified business under N.J.S.A. 52:27H-62c paraphrased below in N.J.A.C. 18:24-31.2.

Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).

18:24-31.2 Definitions

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

“Qualified business” means:

1. An entity authorized to do business in New Jersey which, at the time of designation as an enterprise zone, is engaged in the active conduct of a trade or business in that zone; or

2. An entity which, after that designation but during the designation period of 20 years, becomes newly engaged in the active conduct of a trade or business in that zone, and has at least 25 percent of its full-time employees employed at a business location in the zone, who meet at least one of the following criteria:

i. Residents within the zone, within another zone or within the municipality within which the zone or any other zone is located; or

ii. Either unemployed for at least one year prior to being hired and residing in New Jersey, or recipients of New Jersey public assistance program, for at least one year prior to being hired; or

iii. Found to be economically disadvantaged, pursuant to the Jobs Training Partnership Act, P.L. 97-300 (29 U.S.C. 1501, et seq.).

“Enterprise zone” or “zone” means an urban enterprise zone designated by the Urban Enterprise Zone Authority under N.J.S.A. 52:27H-60, et seq.

Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).

18:24-31.3 Exemption for retail sales to a qualified business

(a) Retail sales and leases of tangible personal property (except motor vehicles) to a qualified business and sales of services (except telecommunications) to a qualified business for the exclusive use or consumption of such business within an enterprise zone are exempt from the sales and use taxes

imposed by N.J.S.A. 54:32B-1, et seq., provided that the designation of the enterprise zone by the Urban Enterprise Zone Authority specifically makes this exemption available to the qualified business.

(b) Tangible personal property includes items such as office supplies, office or business equipment, office and store furnishings, trade fixtures, cash registers, etc. Services include items such as installing, maintaining or repairing tangible personal property used in business (other than a motor vehicle); maintaining, servicing or repairing real property used in business, and advertising services.

(c) Qualified businesses purchasing or leasing tangible personal property (except motor vehicles) or services (except telecommunications services) to be used or consumed exclusively within the enterprise zone shall furnish to their vendors, suppliers or lessors a properly completed UZ-5, Urban Enterprise Exempt Purchase Certificate.

Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).

18:24-31.4 Partial exemption for retail sales of tangible personal property by a certified vendor

(a) Sales tax is imposed at 50 percent of the statutory rate, on receipts from retail sales, with exceptions stated in (b) or (c) below, made by a certified vendor which is a qualified business from a place of business owned or leased, and regularly operated by the vendor for the purpose of making retail sales, and located in a designated enterprise zone.

(b) This partial exemption does not extend to sales of motor vehicles, cigarettes, or alcoholic beverages.

(c) The provisions of this partial exemption do not apply to retail sales of manufacturing machinery, equipment or apparatus. Such sales may, however, be exempt from sales tax under the provisions of N.J.S.A. 54:32B-8.13, as further defined in N.J.A.C. 18:24-4.1 through 18:24-4.8.

(d) In addition to being a qualified business, a certified vendor must regularly operate a place of business for the purpose of making retail sales. Items of tangible personal property must be regularly exhibited and offered for retail sale at this location, and the place of business may not be utilized primarily for the purpose of catalog or mail order sales.

(e) All sales made by qualified and certified vendor must be made from his place of business within an enterprise zone. Only receipts from sales which originate and are completed by the purchaser in person at the vendor's place of business within an enterprise zone qualify for the reduced rate of sales tax; provided, however that after a sale has been completed within an enterprise zone, the vendor may deliver the tangible personal property to the purchaser at a location outside an enterprise zone.

1. Receipts from mail order, telephone, telex and similar sales transactions are subject to sales tax at the regular rate where delivery is made to a location within this State.

(f) Vendors that meet the requirements in (a) and (b) above and that lease tangible personal property may pay use tax at 50 percent of the regular rate, as long as the lease meets the requirements above. However, if the lessor later leases the property to a lessee that fails to meet the requirements in (e) above of completing the lease transaction at the lessor's place of business, tax shall be due at the regular rate, unless the lessee is exempt under some other exemption provided by the Sales and Use Tax Act.

Amended by, R.1985, d.31, effective February 4, 1985.

See: 16 N.J.R. 3193(a), 17 N.J.R. 320(c).

(e) added.

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

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

18:24-31.5 No partial exemption for retail sales of taxable services by a qualifying business

The Urban Enterprise Zones Act in Section 21 provides for an exemption to the extent of 50 percent of the statutory rate of sales and use tax on retail sales, other than motor vehicles, cigarettes, alcoholic beverages, and manufacturing machinery, equipment or apparatus, by a certified vendor which is a qualified business. The statute does not provide for any full or partial exemption on the sale or furnishing of taxable services.

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

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

18:24-31.6 Exemption for retail sales of building materials to or for a qualified business

(a) Section 31 of the Act provides an exemption from sales and use tax on sales of materials, supplies or services to contractors or repairmen for exclusive use in erecting structures, or building on, or improving, altering or repairing real property of a qualified business within an enterprise zone.

(b) Purchasers of materials, supplies or services to be used for construction, alteration and repair of structures and realty of qualified businesses within an enterprise zone shall furnish to their vendors or suppliers a properly completed UZ-4, Contractor's Exempt Purchase Certificate, Urban Enterprise Zone.

(c) For the purpose of this section, a qualified business performing construction or similar work with its own personnel shall be considered as its own contractor, and shall be entitled to deliver a properly completed UZ-4 directly to the vendor.

18:24-31.7 through 18:24-31.9 (Reserved)