

**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.

**Case Notes**

Drop-shipment sale was two transactions; obligation on seller to collect sales tax from customers; statutory exemption for sales for resale. *Steelcase, Inc. v. Director, Div. of Taxation*, 13 N.J.Tax 182 (1993).

**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Repealed by R.1993 d.313, effective July 6, 1993.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 AND PAY SALES TAX OR COMPENSATING USE TAX

**Subchapter Historical Note**

Subchapter 11, Obligation to Collect Sales Tax, was amended to "Obligation to Collect and Pay Sales Tax or Compensating Use Tax" by R.1996 d.217, effective May 6, 1996. See: 28 N.J.R. 807(a), 28 N.J.R. 2403(a).

**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 Filing of use tax returns by registered individuals and entities not operating as vendors**

(a) Every individual, corporation, or unincorporated entity which is engaged in the conduct of any trade, business, profession or occupation within this State, but which does not make sales subject to tax under the Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq., or purchase tangible personal property for lease, shall pay compensating use tax, as required by N.J.S.A. 54:32B-6, and file use tax returns according to the following procedures:

1. If the taxpayer's average annual compensating use tax liability for the previous three calendar years was greater than \$2,000, taxpayer shall be required to complete and file a Sales and Use Tax Quarterly Return (form ST-50) every quarter and pay any use tax due by the 20th of the month following the end of the quarter in which the liability was incurred. Taxpayers filing Sales and Use Tax Quarterly Returns pursuant to this section, whose use tax liability exceeds \$500.00 for the first or second month of a quarter, shall also be subject to monthly filing and payment requirements in accordance with N.J.A.C. 18:24-11.2(b).

2. If the taxpayer's average annual compensating use tax liability for the previous three calendar years did not exceed \$2,000, then, if the taxpayer incurs a use tax liability during the current calendar year, it shall file the Annual Business Use Tax Return (form ST-18B) and pay the use tax due by May 1 of the calendar year following the year in which the liability was incurred. It shall not be required to file an Annual Business Use Tax Return for any year in which no use tax liability was incurred.

(b) This section shall be effective with respect to use tax liabilities incurred on or after January 1, 1995.

Example 1: Partnership operating a fruit and vegetable stand sells no taxable items and is not required to collect and remit sales tax. The partnership paid its use tax liability of \$26.00 in 1992, \$210.00 in 1993, and \$87.00 in 1994. It made a few purchases subject to use tax in 1995, and its use tax liability for 1995 is \$12.00. It must file an Annual Business Use Tax Return for 1995 by May 1, 1996.

Example 2: Sole proprietor providing dressmaking, tailoring, and clothing alteration service sells no taxable goods or services and is not required to collect and remit sales tax. The sole proprietor had no use tax liability in 1993 or 1995 and paid its \$45.00 use tax liability for 1994. During 1996 the sole proprietor did not incur any use tax liability. Therefore, no Annual Business Use Tax Return is due for the 1996 calendar year.

Example 3: Corporation providing professional medical services sells no taxable goods or services and is not required to collect and remit sales tax. The corporation paid its use tax liability of \$1,500 for 1993, \$5,100 for 1994, and \$2,300 for 1995. During 1996 it incurred no use tax liability in January, February, March, July, August, or September. It incurred use tax liability of \$200.00 in April, \$10.00 in May, \$65.00 in June, \$1,000 in October, \$600.00 in November and \$100.00 December. It must file a Sales and Use Tax Quarterly Return (ST-50) for each quarter, including those quarters when it incurred no use tax liability. Its second and fourth quarter returns should be accompanied by payments. It must also file monthly remittance statements (ST-51) and pay monthly use tax due for the months of October and November.

Example 4: Delaware corporation sells no taxable goods or services in New Jersey and is not required to collect New Jersey sales tax. The corporation does, however, purchase office equipment which it leases to New Jersey customers. Its use tax liability has been under \$2,000 every year. It must nevertheless continue to file Sales and Use Tax Quarterly Returns (ST-50) in accordance with N.J.A.C. 18:24-11.2 because it purchases property for lease and therefore is not eligible to file the Annual Business Use Tax Return.

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".

New Rule, R.1996 d.217, effective May 6, 1996.

See: 28 N.J.R. 807(a), 28 N.J.R. 2403(a).

## 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 considered 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.