

CHAPTER 24
SALES AND USE TAX ACT

Authority

N.J.S.A. 54:32B-24 and 54:50-1.

Source and Effective Date

R.2008 d.356, effective October 28, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1.c(2), Chapter 24, Sales and Use Tax Act, expires on April 25, 2016. See: 47 N.J.R. 2919(a).

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, Sales and Use Tax Act, was readopted as R.1993 d.313, effective June 4, 1993. See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c). 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).

Pursuant to Executive Order No. 66(1978), Chapter 24, Sales and Use Tax Act, was readopted as R.1998 d.288, effective May 8, 1998. See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).

Chapter 24, Sales and Use Tax Act, was readopted as R.2003 d.348, effective July 28, 2003. See: 35 N.J.R. 2165(a), 35 N.J.R. 3848(a).

Chapter 24, Sales and Use Tax Act, was readopted as R.2008 d.356, effective October 28, 2008. As a part of R.2008 d.356, Subchapter 1, Forms, was renamed Forms and Definitions; Subchapter 2, Retention of Records By Vendors, was renamed Retention of Records By Sellers; Subchapter 3, Room Occupancy Subject to Sales Tax, was renamed Hotel Room Occupancy Subject to Sales Tax; Subchapter 5, Building and Construction Trades, was renamed Contractors and Services Performed on Real Property; Subchapter 6, Clothing and Footwear, was repealed and Subchapter 6, Sales of Clothing, Footwear, and Protective Equipment and Services Performed on Clothing, was adopted as new rules; Subchapter 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, was renamed Requirements Relating to Exempt Private Organizations; Subchapter 12, Receipts from the Sale of Food and Drink, was renamed Receipts from the Sale of Food, Food Ingredients and Prepared Food; Subchapter 13, Trash Removal Service, was renamed Garbage Removal Service; Subchapter 15, Taxability of Certain Linen Rentals, was repealed and Subchapter 15, Laundry and Dry Cleaning Services, was adopted as new rules; Subchapter 25, Data Processing, was repealed and Subchapter 25, Sales of Software and Related Services was adopted as new rules; Subchapter 27, Transportation of Tangible Personal Property, was repealed and Subchapter 27, Transportation of Persons and of Tangible Personal Property, was adopted as new rules; and Subchapter 32, Leases and Rentals of Tangible Personal Property, Subchapter 33, Massage, Bodywork, and Somatic Services, Subchapter 34, Investigation and Security Services, Subchapter 35, Information Services, and Subchapter 36, Sales Price were adopted as new rules, effective December 1, 2008. See: Source and Effective Date. See, also, section annotations.

Subchapter 37, Medical, was adopted as new rules, effective April 6, 2015. See: 46 N.J.R. 1968(a), 47 N.J.R. 729(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 24, Sales and Use Tax Act, was scheduled to expire on October 28, 2015. See: 43 N.J.R. 1203(a).

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SUBCHAPTER 1. FORMS AND DEFINITIONS

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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

- NJ-REG Business Registration
- REG-1E Application for Exempt Organization Certificate
- ST-2 Sales Tax Certificate of Authority
- UZ-1 Urban Enterprise Zone Application for Reduced Sales Tax Collection
- UZ-5-SB-A Application for Exemption from Sales Tax on Purchases of Goods and Materials for Exclusive Use or Consumption within an Urban Enterprise Zone

SPECIALIZED USE FORMS

- ST-3 Resale Certificate
- ST-3NR Resale Certificate for Non-New Jersey Sellers
- ST-4 Exempt Use Certificate
- ST-4 Sales and Use Tax Exemption Certificate-
- (BRRAG) Business Retention and Relocation Assistance Grant Program
- ST-5 Exempt Organization Certificate
- ST-6 Direct Payment Permit
- ST-6A Direct Payment Certificate
- ST-6E Direct Payment Permit/Certificate (Energy)
- 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-SST Streamlined Sales and Use Tax Certificate of Exemption
- MTC Uniform Sales and Use Tax Certificate-Multi Jurisdiction

SALES AND USE TAX RETURNS

- ST-18 Use Tax Return
- ST-18B Annual Business Use Tax Return
- ST-50 Sales and Use Tax Quarterly Return
- ST-50EN Sales and Use Tax Quarterly Return (Energy)
- ST-51 Monthly Remittance Statement
- ST-20A 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 Worksheet for Computing New Jersey/New York 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-5-SB Urban Enterprise Exempt Purchase Certificate
- UZ-50 Combined Sales and Use Tax/Urban Enterprise
- UZ-6 Urban Enterprise Zone Energy Sales Tax Exemption Certificate

CAPE MAY COUNTY TOURISM TAX

- ST-350 Cape May County Tourism Sales Tax and Tourism Assessment

SALEM COUNTY

- ST-450 Sales and Use Tax Return-Salem County
- ST-451 Salem County Sales and Use Tax Monthly Remittance
- SC-6 Salem County-Energy Sales Tax Exemption Certificate

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).
 Amended by R.1998 d.288, effective June 1, 1998.
 See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).

In (a), inserted REG-1E and deleted ST-5B from list of registration applications, inserted ST-3NR and ST-6E in list of specialized use forms, and inserted ST-18B and ST-50EN in list of sales and use tax returns.

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

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

In (a), deleted "REG-1", inserted "NJ-REG" and substituted "Certificate" for "Permit" in "REG-1E" in the registration applications list, and deleted the exemption status list.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Deleted designation (a); under "REGISTRATION APPLICATIONS", added the entry for "UZ-5-SB-A"; under "SPECIALIZED USE FORMS", in the entry for "ST-3NR", substituted "Sellers" for "Vendors", added the entries for "ST-4(BRRAG)", "ST-SST" and "MTC", and deleted the entry for "ST-40"; under "SALES AND USE TAX RETURNS", deleted the entry for "ST-52", and in the entry for "ST-20A", deleted "Deduction" preceding "Worksheet"; under "URBAN ENTERPRISE ZONE FORMS", deleted the entry for "UZ-4A/5A", substituted "UZ-5-SB" for "UZ-5" and added the entry for "UZ-6"; and added listings for "CAPE MAY COUNTY TOURISM TAX" and "SALEM COUNTY".

18:24-1.2 Definitions

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

"Agreement" means the Streamlined Sales and Use Tax Agreement.

"Certified service provider" means an agent certified jointly by the states that are signatories to the Agreement to perform all of the seller's sales tax functions.

"Magazine" or "periodical" means any publication that appears at stated intervals at least four times per year, each issue of which contains news or information of general interest to the public or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues with respect to continuity of literary character or similarity of subject matter and there must be some connection between the different issues of the series in the nature of the articles appearing in them. Each issue must be sufficiently similar in style and format to make it evident that it is one of a series. The publication must qualify for the second class mailing rate or as a controlled circulation publication under U.S. postal laws and regulations.

This definition does not include books complete in themselves, even those issued at stated intervals; paperback books, a new one of which may be issued once a month or some other interval; or so-called "one-shot" magazines that have no literary or subject matter connection or continuity between prior or subsequent issues. This definition does not include circulars, flyers, guides or handbooks, catalogs, programs, scorecards, handbills, maps, real estate brokers' listings, price or order books, printed sales messages, shopping guides or corporate reports issued to stockholders.

"Newspaper" means those publications, which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly or other short intervals for the dissemination of news of a general character and of a general interest to the public. The main purpose of a newspaper is to distribute news of current events (political,

sports, entertainment, etc.). A newspaper may also contain other material, such as articles on a variety of topics, photographs, illustrations, legal notices, comic strips, cartoons, editorials, etc. A newspaper is available for circulation among the public. For purposes of this definition, advertising is not considered to be news of a general character and of a general interest.

This definition does not include books complete in themselves, even those issued at stated intervals; paperback books, a new one of which may be issued once a month or some other interval; or so-called "one-shot" magazines that have no literary or subject matter connection or continuity between prior or subsequent issues. The definition does not include circulars, flyers, guides or handbooks, catalogs, programs, scorecards, handbills, maps, real estate brokers' listings, price or order books, printed sales messages, shopping guides or corporate reports issued to stockholders.

"Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

"Purchaser" means a person to whom a sale of tangible personal property or digital property or a sale of a service is made; or a person liable for the payment of any amusement charge, hotel room occupancy charge, fees or dues for access or use of the property or facilities of a fitness, athletic, sporting, or shopping club or organization, or charges for storage or for parking or garaging a motor vehicle.

"Receipt" means the amount of the sales price of any tangible personal property, digital property, or service taxable under the Sales and Use Tax Act. See also "sales price" below.

"Retail sale" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent. A sale is for "resale, sublease, or subrent" if it is for resale as is; for resale as a component part of a product that the purchaser produces for sale; for use by the purchaser in performing taxable services, if the property purchased becomes a physical component of the tangible personal property on which the services are performed or is actually transferred to the purchaser's customer in conjunction with the performance of the taxable service. "Retail sale" includes sales of tangible personal property to all contractors, subcontractors, or repairmen of materials or supplies used in erecting structures for others, or building on, or otherwise improving, altering, repairing, maintaining, or servicing real property of others.

"Sale, selling, or purchase" means the transfer of title or possession or both, including by exchange or barter, rental, lease, or license to use or consume, in any manner and by any means, for consideration. It also includes the rendering of a taxable service for consideration. It also includes any agreement for such transfers of title or possession or for such rendering of service or for any other transactions that are taxable pursuant to N.J.S.A. 54:32B-3.

"Sales price" means the same as "receipt." It is the measure subject to sales tax, and means the total amount of consideration, including cash, credit, property, and services, for the purchase of personal property, services, amusement admissions, taxable club dues, storage, parking, and other taxable transactions. "Sales price" is valued in money, regardless of whether received in money or in other form of consideration, without any deduction for any of the following:

1. The seller's cost of the property sold;
2. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
3. Charges by the seller for any services necessary to complete the sale;
4. Delivery charges;
5. Installation charges; and
6. The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

"Sales price" does not include:

1. Discounts, including cash, term, or coupons that are not reimbursed by a third party, that are allowed by a seller and taken by a purchaser on a sale;
2. Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the

amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

3. Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

4. The amount of the sales price for which food stamps have been properly tendered in full or part payment pursuant to the Federal Food Stamp Act of 1977, Pub.L. 95-113 (7 U.S.C. §§2011 et seq.); or

5. Credit for any trade-in of property of the same kind accepted in part payment and intended for resale if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

"Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is perceptible to the senses in any other manner. It includes electricity, water, gas, steam, and prewritten computer software, including prewritten computer software delivered electronically.

New Rule, R.1987 d.325, effective August 17, 1987.

See: 19 N.J.R. 858(a), 19 N.J.R. 1570(a).

Repeal and New Rule, R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was "Newspaper defined".

Amended by R.2009 d.369, effective December 7, 2009.

See: 41 N.J.R. 3049(a), 41 N.J.R. 4464(a).

Added definitions "Magazine" and "Newspaper".

18:24-1.3 (Reserved)

New Rule, R.1987 d.325, effective August 17, 1987.

See: 19 N.J.R. 858(a), 19 N.J.R. 1570(a).

Amended by R.1993 d.313, effective July 6, 1993.
 See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).
 Repealed by R.2008 d.356, effective December 1, 2008.
 See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).
 Section was "Magazine and periodical defined".

18:24-1.4 (Reserved)

New Rule: R.1990 d.74, effective February 5, 1990.
 See: 21 N.J.R. 1107(a), 22 N.J.R. 363(c).
 Amended by R.1992 d.139, effective March 16, 1992.
 See: 23 N.J.R. 3433(b), 24 N.J.R. 969(a).
 Revised (i).
 Amended by R.1993 d.313, effective July 6, 1993.
 See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).
 Amended by R.1998 d.288, effective June 1, 1998.
 See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).
 In (a), inserted an exception relating to energy.
 Repealed by R.2008 d.356, effective December 1, 2008.
 See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).
 Section was "Receipt defined".

SUBCHAPTER 2. RETENTION OF RECORDS BY SELLERS

18:24-2.1 Scope of subchapter

This subchapter, promulgated by the Director of Taxation pursuant to authority under N.J.S.A. 54:32B-1 et seq., is intended to set forth certain records required to be kept by vendors under the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.).

18:24-2.2 Definitions

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

"Director" means the Director of the Division of Taxation of the State Department of the Treasury, or any officer, employee or agency of the Division of Taxation in the Department of the Treasury duly authorized by the Director (directly, or indirectly by one or more redelegations of authority) to perform the functions mentioned or described in the Sales and Use Tax Act.

"Persons" means an individual, partnership, society, association, joint stock company, corporation, public corporation or public authority, estate, receiver, trustee, assignee, referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of the foregoing.

"Seller" means any person required to be registered under the provisions of N.J.S.A. 54:32B-15.

Amended by R.2008 d.356, effective December 1, 2008.
 See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In the introductory paragraph, inserted a comma following "terms" and substituted a colon for a period following "otherwise"; and substituted definition "Seller" for definition "Vendor".

18:24-2.3 General requirements

(a) A true copy of all sales slips, invoices, receipts, statements, memoranda of price, or cash register tapes, issued to any customer by a seller who is required to be registered pursuant to the provisions of the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) and records of every purchase and purchase for lease must be available for inspection and examination at any time upon demand by the Director, Division of Taxation, or his or her duly authorized agent or employee and shall be preserved for a period of four years from the filing date of the quarterly period for the filing of sales tax returns to which such records pertain.

(b) Microfilm reproductions of general books of account, such as cash book, journals, voucher registers, ledgers, etc., are not acceptable in lieu of original records. However, microfilm reproductions of supporting records of details, such as sales invoices, purchase invoices, credit memoranda, etc., may be maintained providing the following conditions are met:

1. Appropriate facilities are provided for preservation of the films for periods required.

2. Microfilm rolls are indexed, cross referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included, and are systematically filed.

3. The taxpayer agrees to provide transcriptions of any information contained on microfilm which may be required for purposes of verification of tax liability.

4. Proper facilities are provided for the ready inspection and location of the particular records, including modern projectors for viewing and copying the records.

(c) A posting reference must be on each invoice. Credit memoranda must carry a reference to the document evidencing the original transaction. Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in an order by which they readily can be related to the transactions for which exemption is sought.

(d) An automatic data processing tax accounting system must have built into its program a method of producing visible and legible records which will provide the necessary information for verification of the taxpayer's tax liability.

1. Machine-sensible data media, such as punched cards, magnetic tape and disks are deemed to be records within the meaning of N.J.S.A. 54:32B-16 and must be retained in accordance with said statute.

2. Automatic data processing records must provide an opportunity to trace any transaction back to the original source or forward to a final total. If detail printouts are not made of transactions at the time they are processed, then

the system must have the ability to reconstruct these transactions.

3. A general ledger with source references will be written out to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be written out periodically.

4. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available on request. The system should be so designed that supporting documents, such as sales invoices, purchase invoices, credit memoranda, etc., are readily available.

5. A description of the automatic data processing portion of the accounting system should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate the following:

- i. The application being performed;
- ii. The procedures employed in each participation (which, for example, might be supported by flow charts, block diagrams or other unsatisfactory description of the input or output procedures); and
- iii. The controls used to insure accurate and reliable processing.

6. Important changes, together with their effective dates, should be noted in order to preserve an accurate chronological record.

Amended by R.1981 d.209, effective July 9, 1981.
See: 13 N.J.R. 163(a), 13 N.J.R. 465(a).
Amended by R.1985 d.652, effective January 6, 1986.
See: 17 N.J.R. 2240(a), 18 N.J.R. 94(a).

(d)1 added; (d)1-5 renumbered to (d)2-6.
Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).
Amended by R.1998 d.288, effective June 1, 1998.
See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).

In (a), neutralized a gender reference, and increased the required preservation period from three to four years.
Amended by R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (a), substituted "seller" for "vendor".

Case Notes

Where a taxpayer failed to keep receipts from its cash business as required by N.J.S.A. 54:32B-16 and N.J.A.C. 18:24-2.3(a), the tax court properly affirmed the assessment of sales tax, corporate business tax, and gross income tax by the Director of the New Jersey Division of Taxation, as the taxpayer failed to overcome the presumption of the assessment's correctness with cogent evidence that was definite, positive, and certain in quality and quantity. *Yilmaz, Inc. v. Director, 390 N.J. Super. 435, 915 A.2d 1069, 2007 N.J. Super. LEXIS 32 (App.Div. 2007)*.

Trial court endorsed the application by the Tax Court of New Jersey of the standard utilized in local property tax cases, namely cogent evidence that is definite, positive, and certain in quality and quantity to overcome the presumption of correctness of the assessment to a taxpayer who challenged a state tax assessment based on an audit of its cash business, involving only factual issues and the methods employed by the Director of the Division of Taxation. *Yilmaz, Inc. v. Director, 390 N.J.*

Super. 435, 915 A.2d 1069, 2007 N.J. Super. LEXIS 32 (App.Div. 2007).

18:24-2.4 Summary sales records

(a) Where summary records are maintained, which show, by sales location, total receipts and taxable receipts, the seller may dispose of individual sales slips, invoices, receipts, statements, memoranda of price, or cash register tapes, except as provided in N.J.A.C. 18:24-2.5, Resale and exemption certificates, N.J.A.C. 18:24-2.6, Records for out-of-State sales, and N.J.A.C. 18:24-2.8, Purchase records, after the lapse of a period not less than 90 days from the last date of the most recent quarterly (or monthly) period for the filing of sales tax returns to which such individual sales documents pertain.

(b) In all instances, summary sales records as described herein shall be retained for a period of not less than four years from the last date of the quarterly (or monthly) period for the filing of sales tax returns to which summary records pertain.

Amended by R.1998 d.288, effective June 1, 1998.
See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).

In (b), increased the required retention period from three to four years.
Amended by R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Rewrote (a).

Case Notes

Trial court endorsed the application by the Tax Court of New Jersey of the standard utilized in local property tax cases, namely cogent evidence that is definite, positive, and certain in quality and quantity to overcome the presumption of correctness of the assessment to a taxpayer who challenged a state tax assessment based on an audit of its cash business, involving only factual issues and the methods employed by the Director of the Division of Taxation. *Yilmaz, Inc. v. Director, 390 N.J. Super. 435, 915 A.2d 1069, 2007 N.J. Super. LEXIS 32 (App.Div. 2007)*.

Taxpayer's records were adequate even though it lacked any cash register tapes through which its receipts could be verified because, while N.J.S.A. 54:32B-16 requires vendors to keep records of every purchase, including a copy of each sales slip, invoice, receipt, statement, or memorandum showing the amount of separately stated tax, N.J.A.C. 18:24-2.4(a) provides that a taxpayer may dispose of the records listed in N.J.S.A. 54:32B-16 when it maintains summary records showing total receipts and taxable receipts. The taxpayer's cash receipts and cash disbursement journals were such summary records. *Charley O's Inc. v. Director, 23 N.J. Tax 171, 2006 N.J. Tax LEXIS 11 (Tax Ct. 2006)*.

18:24-2.5 Resale and exemption certificates

(a) In the case of sales upon which no tax has been collected by virtue of the acceptance of a duly completed resale or exemption certificate by the seller in lieu of collecting the sales tax, pursuant to such rules as may have been promulgated, individual sales slips, invoices, receipts, statements, memoranda of price, or cash register tapes recording such sales shall be retained for a period of not less than four years from the last date of the quarterly (or monthly) period for the filing of sales tax returns to which individual sales records pertain..

(b) Summary records will not be considered to be adequate evidence of the accuracy of exemption certification.

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

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

In (a), increased the required retention period from three to four years.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (a), substituted "seller" for "vendor" and "rules" for "regulations".

18:24-2.6 Records for out-of-State sales

(a) In the case of sales upon which no tax has been collected because of delivery or performance outside of New Jersey, the seller shall retain records, which show for each such sale:

1. The nature of the item sold, the service performed, the amusement charges or the catered event;
2. The date(s) of the transaction;
3. The name and address of the purchaser; and
4. The method of delivery to the out-of-State location.

(b) Such records shall, in all cases, be retained for a period of not less than four years.

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

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

In (b), increased the required retention period from three to four years.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (a), substituted "seller" for "vendor" and inserted a comma following "records".

18:24-2.7 Records presumed representative of accounting practices

It shall be presumed where a seller elects to dispose of individual sale records prior to the end of the statutory four-year period pertaining to the retention of such records, that those records, which in all cases are required to be retained by this subchapter are representative of the seller's accounting practices for such four-year period, unless the seller shall have notified the Director, by certified mail, of a change in accounting practice.

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

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

Increased the required retention period from three to four years.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Substituted "seller" for "vendor" twice, "four-year" for "four year" twice, "subchapter" for "Subchapter" and "seller's" for "vendor's", and inserted a comma following the third occurrence of "records".

18:24-2.8 Purchase records

(a) In all instances, sellers are required to retain for a period of four years, purchase records, which disclose the following:

1. Names and addresses of persons from whom purchases were made;
2. Amounts of all purchases;
3. The dates upon which all purchases were made; and

4. The nature of the items or services purchased.

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

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

In (a), increased the required retention period from three to four years in the introductory paragraph.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In the introductory paragraph of (a), substituted "sellers" for "vendors" and inserted a comma following "records".

18:24-2.9 Direct payment permit holder's records

(a) A seller who is the holder of a valid Direct Payment Permit, issued under the provisions of N.J.S.A. 54:32B-12(b), is required to maintain and retain all records required by this subchapter for a period of four years after the filing date for the quarterly filing period to which such records pertain.

(b) A holder of a Direct Payment Permit may not dispose of sales slips, invoices, receipts, statements, memoranda of price, or cash register tapes, individual or summary sales or purchase records, or any other record of sale, purchase or use prior to the expiration of a period of four years after the filing date for the quarterly filing period to which such records pertain.

(c) In all instances, a holder of a valid Direct Payment Permit shall maintain, in addition to all other records required by this subchapter, records that disclose the following:

1. The amount of every purchase, the name and address of the seller from whom the purchase was made, a description of the property purchased, and the exact date of the purchase;
2. The date upon which purchased property was put to use, whether or not such use was taxable, the amount of the property put to use, and a description of the property put to use;
3. The sales tax reporting period during which tax or deduction was reported on all purchases;
4. Summary records, maintained by calendar quarter, including:

1st Quarter	JAN.	FEB.	MAR.
2nd Quarter	APR.	MAY	JUN.
3rd Quarter	JUL.	AUG.	SEP.
4th Quarter	OCT.	NOV.	DEC.

which records shall include quarterly summaries of:

- i. Purchases;
- ii. Taxable uses;
- iii. Nontaxable uses (including taxable purchases upon which tax has been paid);
- iv. Tax paid;
- v. Effective rate of tax paid on taxable uses.

(d) A holder of a valid Direct Payment Permit is ineligible for any reduced record disposal, except upon written determination of the Director, Division of Taxation. Such determination may be conditioned upon the seller's willingness to extend the period for assessing prior tax liabilities.

(e) A holder of a valid Direct Payment Permit who wishes to surrender such permit may not do so without prior written permission of the Director, Division of Taxation. Rulings in such matters will be conditioned upon:

1. The payment record of the permit holder;
2. The present liquidity of the permit holder's business; and
3. The seller's willingness to extend the period for assessing prior tax liabilities.

Amended by R.1998 d.288, effective June 1, 1998.
See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).

In (a), increased the required maintenance and retention period from three to four years; and in (b), increased the disposal prohibition period from three to four years.

Amended by R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (a) and c(1), substituted "seller" for "vendor"; in the introductory paragraph of (c), substituted "subchapter" for "Subchapter" and "that" for "which"; in (d) and (e)3, substituted "seller's" for "vendor's"; and in (d), deleted "provision herein" following "disposal".

18:24-2.10 Extended recordkeeping periods

The Director, in his or her discretion, may require a seller, by written notice, to retain records for such period as he or she may designate other than provided in this subchapter.

Amended by R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was "Extended record keeping periods". Inserted "or her" and "or she", and substituted "seller" for "vendor" and "subchapter" for "Subchapter".

18:24-2.11 Waiver of recordkeeping requirements

(a) At any time, the Director may, in his or her discretion, consent to the disposal of individual sales records upon written application of the seller. Such written application shall include the following:

1. A statement of the reasons why it is impractical for the seller to retain documents for the periods required;
2. A detailed description of the method of collection of the sales tax from customers;
3. A detailed description of the seller's system of accounting for sales tax liability;
4. Samples of the sales documents, which the seller seeks authorization to dispose of; and
5. A sample of the summary records used by the seller to account for sales tax liability.

Amended by R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was "Waiver of record keeping requirements". Substituted "seller" for "vendor" throughout; in the introductory paragraph of (a), inserted "or her"; in (a)1, deleted "herein" following "required"; in (a)3, substituted "seller's" for "vendor's"; and in (a)4, inserted a comma following "documents".

18:24-2.12 Waiver of limitation of time by seller

Where a seller has consented in writing to an extension of the time for assessment of an additional tax, he or she is required, without notice, to retain such records as may be required in this subchapter for the periods required, as well as any period covered by his or her waiver, or approval thereof.

Amended by R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was "Waiver of limitation of time by vendor". Substituted "seller" for "vendor" and "subchapter" for "Subchapter", inserted "or she" and "or her", and deleted "herein" following "required".

18:24-2.13 (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 failure to keep records".

18:24-2.14 Exempt organization certificates; effective date

(a) Organizations which qualify for sales tax exemption under N.J.S.A. 54:32B-9(b) must file form REG-1E (Application for Exempt Organization Certificate) within six months of formation in order for the effective date of the exempt organization certificate to be retroactive to the date of formation.

(b) If the organization for any reason is required to alter its activities or substantially amend its charter to qualify under N.J.S.A. 54:32B-9(b), its exempt status 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).

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

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

Rewrote (a); in (b), substituted "is" for "was" preceding "required", amended the N.J.S.A. reference, and substituted "exempt status" for "exemption".

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 seller 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 seller 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 seller'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).

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Substituted "seller" for "vendor" throughout; and in (b), substituted "Director" for "director" and "seller's" for "vendor's".

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 to be a promoter and a person required to collect sales tax and shall, within three days after commencing business, file with the Division of Revenue an application for registration (NJ-REG) 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).

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

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

In (a), substituted "Revenue" for "Taxation" and substituted "NJ-REG" for "REG-1" in the first sentence.

SUBCHAPTER 3. HOTEL ROOM OCCUPANCY SUBJECT TO SALES TAX

18:24-3.1 Scope of the subchapter

This subchapter is intended to clarify the application of the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) to the sale of hotel room occupancies.

New Rule, R.2012 d.062, effective March 19, 2012.

See: 43 N.J.R. 1587(a), 44 N.J.R. 924(c).

Former N.J.A.C. 18:24-3.1, Taxes on hotel room occupancy, recodified to N.J.A.C. 18:24-3.3.

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 lodging of guests.

"Occupancy" means the use or possession or the right to the use or possession, of any room in a hotel.

"Occupant" means a person who, for a consideration, uses, possesses or has the right to use or possess, any room in a hotel under any lease, concession, permit, right of access, license to use or other agreement or otherwise.

"Operator" means any person operating a hotel.

“Permanent resident” means any occupant of any room or rooms in a hotel for at least 90 consecutive days.

“Place of assembly” means a room or suite of rooms containing no sleeping accommodations and intended to be occupied and used by persons for purposes other than as sleeping and living quarters.

“Room” means any room or rooms of any kind in any part or portion of a hotel, which is available for or let out for any purpose other than place of assembly.

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

Amended by R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In the introductory paragraph, substituted “subchapter” for “Subchapter”; in the introductory paragraph of definition “Hotel”, inserted a comma following “thereof” and “limited to” and inserted “and related services”; and in paragraph 1, inserted “bed and breakfast.”

Petition for Rulemaking.

See: 42 N.J.R. 92(a).

Amended by R.2012 d.062, effective March 19, 2012.

See: 43 N.J.R. 1587(a), 44 N.J.R. 924(c).

Rewrote definition “Hotel”; and added definitions “Occupancy”, “Occupant”, “Operator”, “Permanent resident”, “Place of assembly” and “Room”.

18:24-3.3 Taxes on hotel room occupancy

(a) The rent for every occupancy of a room or rooms in a hotel is subject to sales tax, except that the tax is not imposed upon:

1. A permanent resident who is in residence for at least 90 consecutive days;
2. An exempt organization, which qualifies for exemption pursuant to N.J.S.A. 54:32B-9 and holds and presents a valid Exempt Organization Certificate (Form ST-5); or
3. A government entity, agency or instrumentality exempt pursuant to N.J.S.A. 54:32B-9.

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

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

In (a)1, substituted “is” for “shall be”.

Recodified from N.J.A.C. 18:24-3.1 and amended by R.2012 d.062, effective March 19, 2012.

See: 43 N.J.R. 1587(a), 44 N.J.R. 924(c).

In the introductory paragraph of (a), deleted “, as defined in N.J.A.C. 18:24-3.2,” following “hotel”; in (a)1, deleted “or” from the end; rewrote (a)2; and added (a)3. Former N.J.A.C. 18:24-3.3, Guest house, recodified to N.J.A.C. 18:24-3.7.

18:24-3.4 Hotels

(a) Hotels are regularly kept open for the purpose of furnishing sleeping accommodations and related services for pay to tourists, transients or travelers. The relationship between the operator of the establishment and the occupant is that of an innkeeper and guest, not that of a landlord and tenant, although the signing of a lease cannot overcome the operation of a facility as a hotel. Examples of a hotel include, but are not limited to, the following:

1. An apartment hotel, bed and breakfast, motel and inn;
2. A boarding house or rooming house containing eight or more units;
3. A condotel (for example, a building used as both a condominium and a hotel); and
4. Any other building or group of buildings in which sleeping accommodations are normally available to the public on a transient basis.

(b) The manner in which a hotel is owned has no effect on the sales tax treatment of its rentals.

(c) A hotel may operate on a seasonal basis.

(d) Services customarily provided by hotels include: maid service, linen service, room service, safe storage and concierge services.

(e) Hotels are typically maintained by onsite management.

New Rule, R.2012 d.062, effective March 19, 2012.

See: 43 N.J.R. 1587(a), 44 N.J.R. 924(c).

18:24-3.5 Facilities other than hotels

(a) The following are examples of facilities that are not subject to the tax imposed on rent received for hotel occupancy:

1. Places of assembly;
2. Health-care and similar facilities (that is, a nursing home, assisted living community, rehabilitation center, etc);
3. Summer camps and other overnight camps for children;
4. Campsites available for trailers, recreational vehicles or tent camping;
5. College dormitories and other student-housing facilities; and
6. Furnished or unfurnished private residential property (that is, condominiums, bungalows, single-family homes and similar living units), where no maid service, room service, linen service or other common hotel services are made available by the lessor and where the keys to the property are provided to the lessee at the location of an offsite real estate broker. The furnishing of linens without the service of changing the linens does not alter the nontaxable nature of the facility.

(b) Hotels do not typically engage the services of real estate brokers, as defined by N.J.S.A. 45:15-3, to solicit or sell occupancies.

New Rule, R.2012 d.062, effective March 19, 2012.

See: 43 N.J.R. 1587(a), 44 N.J.R. 924(c).

18:24-3.6 Permanent residents

(a) Any occupant of any room or rooms in a hotel for at least 90 consecutive days is considered a permanent resident with regard to the period of such occupancy. There is no tax on the rent for occupancy of a hotel room by a permanent resident. A hotel operator must collect the tax from an occupant until the occupancy reaches 90 consecutive days. When continuous occupancy has reached 90 days, the sales tax is no longer imposed and the tax previously collected is refundable to the occupant. If the tax is not refunded to the occupant by the hotel operator, the occupant may apply directly to the Division of Taxation for a refund. (See N.J.A.C. 18:2-5, Refunds, for general information concerning refund claims.)

(b) If an upfront rental agreement exists between the parties for a rental duration of 90 days or more, sales tax is not required to be charged by the hotel operator on the rental. If the occupant vacates the hotel in less than 90 days, tax is due on the full rental stay.

(c) A business can be deemed a permanent resident when it contracts for a room for use by an employee, customer, client or other authorized persons, as long as the duration meets the 90-day threshold. The contracting business can maintain its permanent resident status even where the room or rooms are not occupied by the same party throughout the rental period.

(d) The change of rooms within the same hotel does not alter a person's or business's status as a permanent resident nor interrupt the number of consecutive days necessary in order to establish permanent residency.

(e) A permanent resident who transfers from one hotel to another hotel, whether or not the hotels are run by the same operator, loses permanent-resident status. The occupant does not continue as a permanent resident at the second establishment until meeting the required 90-day requirement.

New Rule, R.2012 d.062, effective March 19, 2012.
See: 43 N.J.R. 1587(a), 44 N.J.R. 924(c).

18:24-3.7 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".
Recodified from N.J.A.C. 18:24-3.3 by R.2012 d.062, effective March 19, 2012.
See: 43 N.J.R. 1587(a), 44 N.J.R. 924(c).

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.

Law Review and Journal Commentaries

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.

Floating docks and finger piers were not "machinery, apparatus or equipment." *Taylor v. Lower Tp.*, 13 N.J.Tax 371 (1993).

Floating docks and finger piers were not "used or held for use in business". *Taylor v. Lower Tp.*, 13 N.J.Tax 371 (1993).

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; and
5. Natural gas distributed through a pipeline, electricity, and utility service.

Amended by R.1998 d.288, effective June 1, 1998.
See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).
In (a), added 5.

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.

(e) The exemption applies to industrial owners, mechanical contractors and their suppliers where an industrial owner awards a contract to a mechanical contractor to install manufacturing machinery, apparatus or equipment, to be used by the owner to produce tangible personal property for sale. The installation may be made in a new or existing industrial plant of the owner designed for or currently used for the manufacture of tangible personal property. For example:

1. Under the above facts where the installation of machinery, apparatus or equipment results in an exempt capital improvement to real property, the labor charges for installation are exempt from tax. In determining whether the installation of machinery, apparatus or equipment results in an exempt capital improvement, such property

must be annexed to a structure to carry out the purposes for which the structure was erected or designed or to which it has been adapted, with the intention to remain there permanently, and the removal thereof will result in material injury and does not constitute a taxable capital improvement under N.J.A.C. 18:24-5.6. The installation would result in a capital improvement when such improvement results in an increase in the capital value or in a significant increase in the useful life of the real property. Where the installed machinery, apparatus or equipment retains its character as personal property and has not resulted in a capital improvement to real property, the labor charges for installation are subject to tax.

2. Under the facts above where the installation upon completion results in a capital improvement, the owner should issue to the contractor two certificates:

i. ST-8, Exempt Capital Improvement Certificate, to evidence that the job qualifies as a capital improvement, exempting his or her construction labor from tax; and

ii. ST-4, Exempt Use Certificate, to evidence that the machinery, apparatus or equipment installed qualifies for exemption in manufacturing, processing, assembling, or refining activity.

3. In the above examples to obtain the exemption of machinery, apparatus or equipment from tax the contractor must furnish his or her supplier with an ST-4, Exempt Use Certificate, properly identifying the job, with a copy of the owner's ST-4 attached.

4. Under the above facts, the lease or rental of equipment or vehicles for use on the job of the mechanical contractor is not exempt from tax.

5. Under the above facts, only machinery, apparatus or equipment used directly and primarily in the production of tangible personal property for sale by manufacturing, processing, assembling, or refining is exempt. Items that may qualify for exemption include, vessels, pumps, mixers, pipe valves, and fittings. Other materials used by the mechanical contractor for the installation are not exempt from tax.

6. When subcontractors are involved, the mechanical contractor should treat such subcontractors in the same manner as in dealing with his or her suppliers, so far as the classification of the job as a capital improvement and an exempt use is concerned. The use of the ST-8 and ST-4 exemption certificates to evidence these classifications is also the same.

7. In addition to the above facts, the mechanical contractor also contracts to install heating, ventilating and air conditioning, which when installed will constitute an addition or capital improvement to real property. The sale to the installing contractor of tangible personal property from his or her supplier is a retail sale subject to tax to be

paid by the contractor either to his or her supplier or directly to the Division of Taxation. The contractor should be furnished an ST-8, Exempt Capital Improvement Certificate, by the owner of the real property for the purpose of exempting installation charges from tax.

8. Under the above facts, piping, such as air, gas, water, steam, and condensate, is designed for use in both the manufacturing process and incidentally in heating the building. The key to this example is the word "incidentally." If the system is used "directly and primarily" for the production of tangible personal property, and only incidentally to aid the building environment housing the machinery, apparatus or equipment, the exemption will apply to property purchased. For installation charges, see (e)1 above.

Amended by R.1973 d.139, effective May 30, 1973.

See: 5 N.J.R. 246(b).

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

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

Amended by R.1979 d.89, effective March 8, 1979.

See: 11 N.J.R. 103(a), 11 N.J.R. 210(d).

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

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

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

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

Deleted former (e) and (f); recodified former (g) as (e) and rewrote the introductory paragraph, deleted former 1, and recodified former 2 through 9 as 1 through 8.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (e)1, substituted "an exempt" for "a" twice and "resulted in" for "qualified as", and inserted "and does not constitute a taxable capital improvement under N.J.A.C. 18:24-5.6"; in (e)2i, inserted "Exempt", "or her" and "and"; in (e)3, inserted "or her" and inserted a comma following "job"; in (e)4, inserted a comma following "facts", inserted "lease or" and deleted the former last three sentences; in (e)5, inserted a comma following "facts" and substituted "that" for "which"; in (e)6, substituted "When" for "Where" and "exemption certificates" for "Exemption Certificates", inserted "or her" and a inserted a comma following "suppliers"; in (e)7, inserted a comma following "facts" and "air conditioning", inserted "or her" twice and inserted "Exempt"; and in (e)8, substituted "facts, piping," for "facts piping".

Law Review and Journal Commentaries

Taxes. Steven P. Bann, 134 N.J.L.J. No. 7, 49 (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).

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.

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.

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.

Photoplates used in photomask operation were not exempt from sales and 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.

Test as to whether photoplates used in photomask operation were exempt, as raw materials, from sales and use tax focused on whether machinery was used during manufacturing period. *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.

Photomask machinery was not subject to manufacturing exemption to sales and 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.

Photomasks used solely to produce other photomasks did not qualify for manufacturing exemption from sales and 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.

Weight given to factors in determining whether purchases of photomask machinery was exempt from sales and use tax was neither arbitrary nor 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.

Catalyst exemption to sales and use tax requires use of chemicals to induce process in manufacture of tangible personal property. *Blair v. Taxation Div. Director*, 9 N.J.Tax 345 (1987), affirmed 225 N.J.Super. 584, 543 A.2d 99, certification denied 113 N.J. 349, 550 A.2d 460.

Film used in photography of newborn infants at hospital not subject to manufacturing exemption to sales and use tax. *Blair v. Taxation Div. Director*, 9 N.J.Tax 345 (1987), affirmed 225 N.J.Super. 584, 543 A.2d 99, certification denied 113 N.J. 349, 550 A.2d 460.

Sale of business equipment necessary for bakery business held a bulk sale within the meaning of the Sales and Use Tax and Business Personal Property Tax Acts; equipment purchaser personally liable for seller's delinquent taxes due to purchaser's failure to notify Director at least 10 days prior to taking possession of equipment. *Bunting v. Director, Div. of Taxation*, 1 N.J.Tax 189, 176 N.J.Super. 262, 422 A.2d 815 (Tax Ct.1980), certification denied.

Taxpayer's lease of railroad tank cars to transport oil to its electrical generating plant held not exempt from sales and use tax. *Atlantic City Electric Co. v. Taxation Div. Director*, 7 N.J.Tax 554 (Tax Ct.1985).

Loaders used to place rock in trucks and trucks 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).

Only printing function of computer system comes within the intent of the sales tax exemption for the sale of equipment for use in the production of tangible personal property: since the majority of computer time was devoted to data processing, sale held not to come under exemption. *Fisher-Stevens, Inc. v. Director, Div. of Taxation*, 3 N.J.Tax 559 (Tax Ct.1981).

18:24-4.5 Purchase or use of components and catalysts exempt from tax

(a) The purchase or use of tangible personal property is exempt from tax when it is intended that the property be resold either:

1. In the same form as when purchased or used; or
2. As a component of a product produced for sale by the purchaser; or
3. For use by the purchaser in performing taxable services, where the property so sold becomes a physical component of the property upon which the services are performed; or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the taxable service.

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

Case Notes

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

18:24-4.6 Services subject to tax

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

1. Producing, fabricating, processing, printing or imprinting tangible personal property (with the exception of imprinting services performed upon machinery, apparatus, or equipment used directly and primarily in manufacturing, processing, assembling, or refining), performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him for resale, upon which such services are performed.
2. Installing tangible personal property, except where such installation results in an exempt capital improvement to real property. In determining whether an installation of tangible personal property results in a capital improvement to real property, the following factors should be considered:
 - i. Whether the improvement results in an increase in the capital value of the real property;
 - ii. Whether the improvement results in a significant increase in the useful life of the property; and

iii. The treatment, for accounting purposes, of such improvements for Federal Internal Revenue purposes.

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

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

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

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

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

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

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

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

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In the introductory paragraph of (a)2, substituted "an exempt" for "a"; and in (a)2ii, inserted "and" at the end.

18:24-4.7 Services not subject to tax

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

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

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

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

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

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

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

Example 2. A nonresident individual purchases lumber outside New Jersey and has a cabinetmaker in New Jersey construct a bookcase for him. The bookcase is delivered

outside New Jersey. The charges for the production service performed in New Jersey are not subject to tax in New Jersey;

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

Example 4. A nonresident individual brings his car into New Jersey for repair. Upon completion, delivery is made to him by the mechanic outside New Jersey. The charge for the service is not subject to tax, since the vehicle was delivered outside New Jersey;

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

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

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

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

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

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

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

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

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

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

Rewrote the section.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In the introductory paragraph of (a)3, updated the N.J.A.C. reference; in (a)3i, substituted "seller's" for "vendor's"; and in (a)3ii, inserted "or her" and deleted Example 6.

Case Notes

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

18:24-4.8 Recordkeeping

Any person engaged in the business including manufacturing, processing, assembling, or refining is required to maintain records in compliance with N.J.A.C. 18:24-2, Retention of Records by sellers.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was "Record keeping". Substituted "N.J.A.C. 18:24-2, Retention of Records by sellers" for "the rules set forth in subchapter 2 (Retention of Records by Vendors) of this chapter".

SUBCHAPTER 5. CONTRACTORS AND SERVICES PERFORMED ON REAL PROPERTY

18:24-5.1 Scope of subchapter

This subchapter is intended to clarify the application of the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) to services performed on real property.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Substituted "services performed on real property" for "the building and construction trades and related activities".

Case Notes

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

18:24-5.2 Definitions

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

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

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

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

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

"Contractor" means any individual, partnership, corporation or other commercial entity engaged in any business involving erecting structures for others, or building, or otherwise improving, altering, or repairing real property of others. "Contractor" does not include the owner of the real property on which services are being performed. For example, a developer who owns the land on which construction or landscaping is taking place is not a contractor.

"Exempt organization" means any agency, instrumentality, authority, or public corporation of the governments of the United States of America or the State of New Jersey or any political subdivision of the State of New Jersey; or any

organization which holds a valid exempt organization certificate issued pursuant to the provisions of N.J.S.A. 54:32B-9(b).

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

"Fabricator/contractor" means any individual, partnership, corporation, or other commercial entity engaged in any business that functions as both a fabricator and a contractor.

"Garbage" means contained trash and waste, including, but not limited to, construction debris, discarded recyclable materials, hazardous waste, general household trash, restaurant food waste, medical and veterinary waste, industrial waste, metal scraps, leaves, lawn clippings, twigs and brush.

"Landscaping services" means services that result in a capital improvement to land, but not including construction, erection, alteration, improvement, repair, or maintenance of structures. "Landscaping services" include, for example, planting trees, laying sod, clearing and filling land in preparation for new planting, removal of trees and stumps.

"Materials" means items of tangible personal property.

"Property owner" means the owner of real property on which contractors' services are performed. "Property owner" includes a developer who owns the land and as used in this subchapter, "property owner" can also include a commercial tenant who engages the services of a contractor.

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

"Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas steam, and prewritten computer software, including prewritten computer software transmitted electronically.

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

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

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

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

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

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In definition "Contractor", inserted the last two sentences; added definitions "Fabricator/contractor", "Garbage", "Landscaping services" and "Property owner"; and rewrote definition "Tangible personal property".

Case Notes

Taxpayer, which provided management services to hospital for food service and cleaning, was not acting as a contractor exempt from use tax, under statute exempting from use tax sales to contractors of materials

used in improving real property of certain tax-exempt organizations, when it purchased furniture to be used in hospital's employee dining room; taxpayer was not a 'contractor' as defined in regulation, furniture did not constitute construction materials or supplies, furniture did not constitute improvement, alteration or repair to hospital facility, and taxpayer paid for purchase and received no reimbursement from hospital. 21 N.J.Tax 24.

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 tax, sales of materials and supplies to contractors for use by them in erecting structures for others, or building on, or otherwise improving, altering, repairing or maintaining the real property of others, including performing landscaping services, are deemed to be retail sales. Examples of taxable purchases of materials and supplies are: grout by a home repair service provider; fertilizer and pesticides by a lawn service, tree service or other landscaping service; pipes by a plumber; and lumber by a builder of new houses.

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

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

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

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

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

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

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

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

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

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

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

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (a), substituted "tax" for "taxes" and a comma for "or" following "altering", inserted "or maintaining the" and "including performing landscaping services," and inserted the last sentence.

Case Notes

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

Taxpayer was subject to use tax on the materials it used in the performance of its service contracts and the fact that the taxpayer elected to collect its fees for its service in a single price on which it collected sales tax from its customers did not cause double taxation nor make the assessment against it wrong. *Tozour Energy Sys. v. Director*, 23 N.J. Tax 341, 2007 N.J. Tax LEXIS 4 (Tax Ct. 2007).

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

(a) The purchase, lease or rental, or use of equipment by a contractor is subject to tax, whether or not the equipment is purchased, leased, rented or used in fulfillment of a contract with an exempt organization.

(b) If a contractor pays to have a crane, bulldozer, or other equipment supplied with an operator who is needed in order for the equipment to function properly, the transaction is not deemed to be the lease or rental of the crane, bulldozer, or other equipment. It is treated as a service transaction.

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

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

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Inserted designation (a); in (a), inserted "lease or" and "leased," deleted "for 28 days or less" following "rental" and deleted the former last two sentences; and added (b).

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 by contractors

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

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

1. The fabrication of tangible personal property;
2. Installing tangible personal property, for the benefit of the contractor, rather than the property owner, for example, installation of scaffolding, temporary fencing, temporary lighting during construction;
3. Maintaining, servicing, or repairing real or tangible personal property, for example, snow removal, sweeping and removing debris from a construction site, pest control services;
4. Security services, for example guard services; and
5. Landscaping, floor covering installation, and alarm system installation (security, burglar, fire, carbon monoxide).

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

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

In (b), rewrote 2 and 3.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was "Purchase of taxable services". Rewrote (b)2 and (b)3; and added (b)4 and (b)5.

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

(a) Treatment of installation services that do not result in a capital improvement are as follows:

1. Charges for services rendered by a contractor for installing tangible personal property, which, when installed, will not result in a capital improvement to real property, are subject to tax.

(b) Treatment of installation services that result in capital improvements are as follows:

1. Charges for the following types of services are taxable even though they result in a capital improvement:

- i. Landscaping services;
- ii. Installation of floor covering; and
- iii. Installation of alarm or security systems;

2. Charges for landscaping, floor covering installation, and alarm system installation charges that result in capital improvements are taxable to the party who contracts with the contractor performing the service, which may be the property owner or the prime contractor; and

3. Charges for installation services that result in capital improvements, except the three types of services listed in (b)1 above, are exempt from sales tax.

(c) The factors to determine whether services result in a capital improvement are as follows:

1. In determining whether an installation of tangible personal property results in a capital improvement, the factors include, but are not limited to, the following, whether:

- i. The improvement results in an increase in the value of the real property; and
- ii. The improvement results in a significant increase in the useful life of the real property; and

2. Determination of whether services result in a capital improvement for sales tax purposes does not depend upon the characterization of the work for local property tax purposes.

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

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

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

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

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Added (a); inserted designation (a)1; rewrote (a)1; and added (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).

18:24-5.7 Documentation and application of the capital improvement exemption

(a) When a contractor has installed property, which, when installed, results in a capital improvement to real property, other than landscaping services, floor covering installation, or

alarm system installation, he or she shall obtain from his or her customer a properly completed Certificate of Exempt Capital Improvement (Form ST-8) and retain it in his or her permanent records.

(b) When a contractor performs an installation, which results in a capital improvement to real property, other than landscaping services, floor covering installation, or alarm system installation, no tax should be collected from the customer. Payment of the tax on materials used is the responsibility of the contractor, and therefore materials obtained and provided by the contractor are not taxable to the property owner. The services performed by making an installation are not subject to tax where the installation results in a capital improvement to real property, other than landscaping services, floor covering installations, or alarm system installation.

(c) If a property owner purchases construction materials and supplies from a retail store or other supplier, instead of having them purchased and supplied by the contractor, the property owner is liable for sales tax on the construction materials and supplies. The capital improvement exemption applies only to services.

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).

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was "Installation services capital improvement". Rewrote the section.

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 main-

taining, servicing and repairing real property, a contractor must charge the sales tax on only that portion of his or her bill attributable to services. The tax on materials used in performance of such services is the responsibility of the contractor. Examples of taxable maintenance services include, but are not limited to, mowing lawns, applying lawn chemicals, spraying trees, weeding, repainting the interior or exterior of a building, patching a roof, cleaning up oil spills, snow plowing, power-washing a building, removal of contained garbage (including hazardous wastes), except as provided in (b)2 below.

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

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

2. Services involving only removal of garbage that has been placed in a container, performed on a regular contractual basis for a term of not less than 30 days, or 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 rather than of the contractor's customer. The contractor should charge tax only on the separately stated 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).

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

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

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

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

In (b), rewrote 2; rewrote (c).

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (a), inserted "or her" and inserted the last sentence.

Case Notes

Taxpayer was subject to use tax on the materials it used in the performance of its service contracts and the fact that the taxpayer elected to collect its fees for its service in a single price on which it collected sales tax from its customers did not cause double taxation nor make the assessment against it wrong. *Tozour Energy Sys. v. Director*, 23 N.J. Tax 341, 2007 N.J. Tax LEXIS 4 (Tax Ct. 2007).

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 may purchase all component materials as defined in N.J.A.C. 18:24-5.2, Definitions, as purchases for resale.

(b) A fabricator/contractor is not required to pay tax on materials at the time of purchase. However, the fabricator/contractor does have the option to pay sales tax at the time of purchase. The fabricator/contractor should issue a duly completed Resale Certificate (Form ST-3) when claiming a resale exemption at the time of purchase.

(c) A fabricator/contractor who claimed a resale exemption when purchasing materials that become physical components of the items fabricated must self-assess and pay use tax if the fabricator/contractor later installs the completed product on real property. A fabricator/contractor who paid sales tax when purchasing such component materials may seek a refund of the tax paid if he or she sells the completed product to a contractor, property owner, or other customer, but does not install the completed product.

Amended by R.2003 d.348, effective August 18, 2003.
See: 35 N.J.R. 2165(a), 35 N.J.R. 3848(a).

In (a), substituted "may purchase all component materials as defined in N.J.A.C. 18:24-5.2, Definitions," for "is required to purchase all materials as defined in Section 5.2 (Definitions) of this Chapter".
Amended by R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (a), substituted a comma for "of this chapter," following "Definitions"; rewrote (b); and added (c).

18:24-5.10 Fabricator/contractor's sales of completed products

Where a fabricator/contractor sells his or her completed product for installation by someone other than himself or herself, for example, by the property owner or by another contractor, he or she is required to charge and collect tax on the sales price of the product.

Amended by R.2003 d.348, effective August 18, 2003.
See: 35 N.J.R. 2165(a), 35 N.J.R. 3848(a).

Inserted "for example, by the property owner or by another contractor," and substituted "sales" for "selling".
Amended by R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was "Fabricator/contractor". Inserted "or her", "or herself" and "or she".

18:24-5.11 Fabricator/contractor sale and installation of completed products; tax

(a) Where a fabricator/contractor sells his or her fabricated product, and as a part of that sale further agrees to install the product at a location in this State, he or she may not collect tax from his or her customer for charges rendered in connection with the installation if the installation of his or her product results in a capital improvement to real property. In such cases, the fabricator is, however, required to pay use tax directly to the Division of Taxation upon the value of his or her product as hereinafter set forth. The use tax shall be computed on:

1. The price at which items of the same kind are offered for sale by him or her; or

2. If the fabricator/contractor makes no sales of items of the same kind, the tax shall be computed on the cost of all materials used in fabrication.

(b) A fabricator/contractor who sells his or her fabricated product, and as a part of that sale agrees to install the product at a location in this State, is required to pay use tax on the product installed, in the same manner as described in (a) above, and is further required to collect the sales tax on that portion of the bill attributable to installation charges, unless the installation results in an exempt capital improvement.

(c) Where a fabricator/contractor sells his or her fabricated product, and as a part of that sale agrees to install the product at a location outside this State, he or she is responsible for neither the payment of use tax as provided in (a) above nor the collection of sales tax on installation charges as provided in (b) above.

Example: A structural steel fabricator purchases steel which is delivered to his facility in New Jersey. The steel is fabricated as provided in shop drawing specifications for on-site installation. The fabricated structural steel is then shipped to a job site located outside this State. Such fabricated steel is not subject to tax in this State.

Amended by R.1989 d.438, effective August 21, 1989.
See: 21 N.J.R. 439(a), 21 N.J.R. 2528(a).

Revised section with stylistic and minor technical changes throughout.

In (a): added "for charges rendered in connection with the installation"; changed "Sales Tax Bureau" to "Division of Taxation."

In (a)1: changed "value" to "price" regarding items of the same kind.

In (a)2: changed "market value of such property" to "the cost of all materials used in fabrication".

Added subsection (c), with example.

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

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

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Rewrote (b).

Case Notes

Roof installer owed compensating use tax on its purchase of raw materials. *Polaris Corp. v. Director, Div. of Taxation*, 12 N.J.Tax 70 (1991).

18:24-5.12 Subcontractor purchases and services

(a) Contractors who enter into a contract to perform specified operations for a second contractor are subcontractors. Their purchases and services are treated as follows:

1. The purchases of the subcontractor shall be treated in the same manner as purchases of a prime contractor.

2. Except as provided in (b) below, taxable services (see N.J.A.C. 18:24-5.6) performed by a subcontractor for a prime contractor are not subject to collection of tax by the subcontractor from the prime contractor. In such cases, the responsibility for collection of tax is that of the prime contractor. The subcontractor should maintain records to

substantiate that taxable services were performed for a prime contractor. Purchases of materials by subcontractors for use in fulfilling service contracts with prime contractors are subject to tax, except where such purchases are for exclusive use in fulfilling service contracts with a prime contractor fulfilling a contract with an exempt organization.

3. Services performed by subcontractors for prime contractors resulting in exempt capital improvements to real property are not subject to tax. Purchases of materials by subcontractors for use in fulfilling contracts with prime contractors are subject to tax, except where such purchases are for exclusive use in fulfilling contracts with a prime contractor fulfilling a contract with an exempt organization. (See N.J.A.C. 18:24-5.3, 5.4 and 5.5 for procedural requirements on exempt organization contracts.)

(b) Landscaping services, flooring installation services, and alarm or security system installation services performed by a subcontractor are subject to sales tax upon purchase by a prime contractor. A separately stated charge for the actual cost of materials upon which the subcontractor has paid New Jersey sales or use tax may be excluded from the taxable receipt, provided, however, that any person acting as subcontractor who is also acting as a fabricator/contractor or as a floor covering dealer/installer must impose and collect sales tax on the charge for materials stated to the prime contractor as required under N.J.A.C. 18:24-5.10 and 22.2.

Amended by R.2003 d.348, effective August 18, 2003.
See: 35 N.J.R. 2165(a), 35 N.J.R. 3848(a).

Rewrote the section.

Amended by R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (a)2, substituted "Except as provided in (b) below, taxable" for "Taxable" and "The subcontractor" for "However, the subcontractor"; in (a)3, inserted "exempt" and substituted "18:24-5.3, 5.4 and 5.5" for "Sections 18:24-5.3, 18:24-5.4 and 18:24-5.5"; and added (b).

18:24-5.13 Performance of contracts out-of-State

(a) Purchases of materials, supplies and equipment in New Jersey for use in erecting structures for others, or building on, or otherwise improving, altering or repairing real property of others at a location outside of New Jersey are subject to New Jersey sales and use taxes when such materials, supplies and equipment are picked up by the contractor in New Jersey, except as provided in N.J.A.C. 18:24-5.11(c).

(b) Such purchases of materials and supplies are not subject to tax when delivered to an out-of-State job site by:

1. The supplier;
2. A common carrier; or
3. An unregulated carrier hired by the supplier.

Amended by R.2003 d.348, effective August 18, 2003.
See: 35 N.J.R. 2165(a), 35 N.J.R. 3848(a).

In (a), inserted ", except as provided in N.J.A.C. 18:24-5.11(c)" following "the contractor in New Jersey".

Amended by R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (a), substituted "Purchases" for "The purchase".

18:24-5.14 Out-of-State purchases

(a) The use in New Jersey of any materials, supplies, equipment or services purchased outside of New Jersey is taxable, subject to the comity provisions of N.J.S.A. 54:32B-11(6).

(b) In such cases, the use tax liability shall be based on the purchase price of the materials, supplies, equipment or services, except that in the case of equipment used outside of New Jersey by the contractor for more than six months prior to its use within New Jersey, the use tax on such equipment shall be based upon the current market value of the equipment.

18:24-5.15 Code provisions applicable to certificates

In general, the issuance and acceptance of certificate forms issued pursuant to the provisions of the Sales and Use Tax Act are governed by the provisions set forth in Subchapter 9 of this Chapter.

18:24-5.16 Certificate issuance and acceptance procedures

(a) Procedures to be followed by contractors and fabricator/contractors with respect to the issuance and acceptance of certificate forms are as follows:

1. Resale Certificates (Form ST-3) may not be issued by a contractor on any purchase of construction materials, supplies, equipment, or services, except that a fabricator/contractor may issue a Resale Certificate to his or her suppliers on all purchases of materials that become component parts of the items he or she fabricates.

2. Exempt Use Certificate (Form ST-4) may be issued by contractors and fabricator/contractors when the materials purchased are machinery, equipment, apparatus, or other tangible personal property, exempt at the time of purchase under the provisions of section 8.13; 8.14; 8.29; or 8.36 of the Sales and Use Tax Act, which are purchased for incorporation into real property. In those instances where a valid Exempt Use Certificate (ST-4) may be issued by a contractor or fabricator/contractor, the certificate must disclose his, her, or its business name, New Jersey taxpayer identification number, the name and taxpayer identification number of the customer for whom the equipment or other tangible personal property is being installed, the nature of the work to be performed, and the date the work will commence.

3. Exempt Organization Certificates (Form ST-5) may not be issued by a contractor or fabricator/contractor in connection with any purchase. The Exempt Organization Certificate should be obtained by a contractor or fabricator/contractor in all instances where he or she has performed

any of the taxable services enumerated in N.J.A.C. 18:24-5.6, 5.7, and 5.8.

4. Direct Payment Certificates (Form ST-6A) may be issued by a contractor or a fabricator/contractor only when he is a holder of a valid Direct Payment Permit (Form ST-6) and must be used in accordance with the directions issued for use thereof.

5. Neither Exempt Use Certificates (Form ST-4) nor Farmer's Exemption Certificates (Form ST-7) may be issued by a contractor or fabricator/contractor for his purchases of tangible personal property to be installed in a farming enterprise. A contractor may accept a Farmer's Exemption Certificate (Form ST-7) only when performing exempt production and conservation services for a farming enterprise. See N.J.A.C. 18:24-19.1.

6. Certificates of Exempt Capital Improvement (Form ST-8) should be obtained by a contractor, subcontractor, or fabricator/contractor from his or her customer in any instance where the performance of his or her work results in a capital improvement to real property. A contractor or a fabricator/contractor may accept Certificates of Exempt Capital Improvement as a basis for exemption from tax on his or her services only where his or her work has, in fact, resulted in an exempt capital improvement to real property. The nature of the work performed is the determining factor in deciding whether to collect tax on a contractor's services.

i. "Capital improvement" means an installation of tangible personal property which results in an increase of the capital value of the real property or a significant increase in the useful life of such property. See N.J.A.C. 18:24-5.7.

ii. "Repair services" means services that fix problems with property in order to maintain the property's existing value and keep it in working condition.

iii. "Maintenance" services are services that preserve the existing condition of property.

iv. Examples of exempt capital improvements are:

- (1) New construction;
- (2) New roof, installation of;
- (3) Bathroom wall tiles, installation of;
- (4) New bath fixtures, installation of;
- (5) New kitchen fixtures, installation of;
- (6) Paving of driveway;
- (7) Paneling, installation of;
- (8) In-ground swimming pool, installation of;
- (9) New central air conditioner installation;
- (10) Porch enclosure, construction of;

(11) New heating system installation;

(12) Rewiring;

(13) New electrical outlets installed;

(14) New siding, installation of;

(15) Garage, construction of;

(16) Patio, construction of;

(17) Storm doors and windows, installation of; and

(18) New hot water heater installation.

v. Examples of taxable capital improvements are:

(1) Trees, shrubs, installation of;

(2) Tiled floors, installation of;

(3) Wall-to-wall carpeting, installation of;

(4) Security and alarm system, installation of; and

(5) New sod, installation of.

vi. The contractor may not accept a Certificate of Exempt Capital Improvement (Form ST-8) for landscaping services, floor covering installation, or installation of alarm or security systems.

vii. The use of the Certificate of Exempt Capital Improvement (Form ST-8) is required in all applicable transactions.

7. Contractor's Exempt Purchase Certificate (Form ST-13).

i. Form ST-13 must be completed and issued to the supplier of a contractor in every instance where purchases are made by contractor and exemption from sales and use taxes is claimed, except as provided in (a)3 above.

8. An Exempt Qualified Business Permit/Exempt Purchase Permit (Form UZ-4A/5A) must be completed by the contractor when the contractor purchases materials or supplies exclusively for performing work for a qualified business at the business's real property located in an urban enterprise zone. The UZ-4 is obtainable only from the qualified business. After completing the UZ-4, the contractor must issue copies to its sellers and its subcontractors. Any subcontractor receiving a UZ-4 must attach its name, address, and Certificate of Authority number (in addition to the name, address, and number of the contractor) and then give the UZ-4 and attachments to its sellers. "Qualified business" means a person or entity that the Urban Enterprise Zone Authority has certified to be a qualified business according to the criteria in N.J.S.A. 52:27H-62c.

9. If a qualified housing sponsor, as defined in N.J.S.A. 55:14K-3 of the New Jersey Housing and Mortgage Finance Agency Law of 1983, has received Federal, State, or local government subsidies, as verified by the New

Jersey Housing and Mortgage Finance Agency on a Certification of Housing Sponsor form, in addition to New Jersey Housing and Mortgage Finance Agency financing for the specific housing project, contractors of the housing sponsor, pursuant to P.L. 1988, c. 83, may purchase materials, supplies, and services tax free for the specific housing project. The contractor must receive a copy of the housing sponsor's Letter of Exemption for his or her records and may then issue a Contractor's Exempt Purchase Certificate (Form ST-13) to his or her suppliers to document his or her exempt purchases for the housing project.

Amended by R.1975 d.246, effective August 15, 1975.

See: 7 N.J.R. 347(a), 7 N.J.R. 446(b).

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

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

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

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

In (a)6vi, deleted an Editor's Note.

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

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

In (a), rewrote 1, 2 and 5.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Rewrote (a)2 and (a)6.

Amended by R.2014 d.040, effective March 17, 2014.

See: 45 N.J.R. 1092(a), 46 N.J.R. 552(a).

In (a)1, inserted a comma following "equipment", and inserted "or her"; in (a)2, inserted a comma following "apparatus" and following "her", and substituted a semicolon for a comma following "8.29"; in (a)3, inserted "or she", and substituted "N.J.A.C. 18:24-5.6, 5.7, and 5.8" for "Sections 5.6, 5.7 and 5.8 of this Chapter"; in (a)6, inserted a comma following "subcontractor"; deleted former (a)6vi and (a)6vii; recodified former (a)6viii and (a)6ix as (a)6vi and (a)6vii; in (a)8, substituted "sellers" for "vendors" twice; and in (a)9, inserted a comma following "State" and following "supplies", substituted "c. 83" for "c.83", and inserted "or her" three times.

Case Notes

Providing hardwood floor refinishing services did not entitle taxpayer to capital improvement exemption. *Newman v. Director, Div. of Taxation*, 14 N.J. Tax 313 (1994), affirmed 15 N.J. Tax 228.

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).

18:24-5.17 (Reserved)

Repealed by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was "Penalty for fraudulent issuance of exemption certificates".

18:24-5.18 Records

Contractors and fabricator/contractors are required to maintain records in compliance with the rules set forth in Subchapter 2 of this Chapter.

18:24-5.19 Unregistered contractor bonds or reports

(a) When a contractor who has not registered under provisions of N.J.S.A. 54:32B-15 enters into a contract under which tangible personal property or taxable services will be used or consumed in New Jersey, the contractor shall register for tax purposes and present to the Director of the Division of Taxation a deposit or guarantee bond equal to five percent of the total amount to be paid under the contract whenever the circumstances indicate that it is appropriate to protect the interests of the State. Such circumstances would include a situation in which an unregistered contractor is only temporarily engaged in business in the State.

(b) Any person doing business with a contractor shall obtain from the contractor a copy of the tax registration certificate issued to the contractor pursuant to N.J.S.A. 54:32B-15. If the contractor does not have a tax registration certificate, the person doing business with the contractor shall provide the name and address of the contractor and a brief description of the contract to the Division. This requirement shall be satisfied by mailing the name and address and contract summary to the New Jersey Division of Taxation, PO Box 269, Trenton, NJ 08695. Failure to comply shall be a disorderly persons offense under N.J.S.A. 54:52-6.

(c) The bond requirement is imposed to secure payment of sales and use taxes payable with respect to tangible personal property or taxable services used or consumed under a contract or of other State taxes and is also imposed to assure that all contractors are registered and in compliance with New Jersey tax law.

New Rule, R.2001 d.256, effective July 16, 2001.

See: 33 N.J.R. 1346(a), 33 N.J.R. 2494(c).

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

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

In (a), substituted "When a contractor who has not registered under provisions" for "When an unregistered contractor under provisions" and substituted "include a situation in which an unregistered contractor" for "include if the unregistered contractor"; in (c), inserted "sales and use" preceding "taxes payable" and inserted "of" preceding "State taxes".

SUBCHAPTER 6. SALES OF CLOTHING, FOOTWEAR, AND PROTECTIVE EQUIPMENT AND SERVICES PERFORMED ON CLOTHING

18:24-6.1 Scope of subchapter

This subchapter is intended to clarify the application of the Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq., to sales of clothing, footwear, protective equipment, sport or recreational equipment, accessories, and certain services performed upon clothing and footwear.

18:24-6.2 Definitions

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

“Clothing” means all human wearing apparel, including footwear, suitable for general use. Clothing does not include: clothing accessories or equipment, sport or recreational equipment, protective equipment, sewing equipment and supplies, or sewing materials that become part of clothing.

“Clothing accessories or equipment” means incidental items worn on the person or in conjunction with clothing.

“Fur clothing” means clothing that is required to be labeled as a “fur product” under 15 U.S.C. §69, and in which the value of its fur components is more than three times the value of the next most valuable tangible component.

“Protective equipment” means items for human wear and designed as protection of the wearer against injury or disease, or as protection against damage or injury of other persons or property but not suitable for general use.

“Sport or recreational equipment” means items designed for human use and worn in conjunction with an athletic or recreational activity but that are not suitable for general use.

18:24-6.3 Exempt sales of clothing and footwear

(a) Receipts from the retail sales of clothing, are exempt from tax imposed under the Sales and Use Tax Act.

(b) The exemption in (a) above does not apply to clothing accessories, sport or recreational equipment, or protective equipment.

(c) Examples of clothing include, but are not limited to:

1. Athletic supporters;
2. Baby receiving blankets;
3. Bibs;
4. Bathing suits, swim trunks, bathing caps;
5. Beach cover-ups, such as beach jackets, sarongs or shorts;
6. Belts;
7. Boots, including hiking boots, snow boots or fashion boots;

8. Bras, girdles and garter belts;
9. Capes, ponchos and mantillas;
10. Coats and jackets;
11. Collars and dickies;
12. Costumes;
13. Diapers, waterproof diaper pants or incontinence briefs;
14. Djellabas;
15. Ear muffs or hand muffs;
16. Fezzes;
17. Formal wear;
18. Fur clothing;
19. Galoshes, rubbers, and other overshoes;
20. Gloves and mittens;
21. Hats, caps, visors and baby bonnets;
22. Lab coats or hospital gowns;
23. Leather jackets;
24. Neckties;
25. Rainwear (jackets, ponchos, hats, etc.);
26. Sandals;
27. Saris;
28. Scarves and bandannas;
29. Shawls;
30. Shoes;
31. Shoe laces or shoe insoles;
32. Sleepwear (pajamas, nightgowns, robes, etc.);
33. Slippers;
34. Sneakers, tennis shoes, running shoes, and similar athletic shoes;
35. Socks, stockings, pantyhose, tights, footlets, peds, and other hosiery;
36. Steel-toed shoes;
37. Suede gloves;

38. Suspenders;
39. Turbans;
40. Underwear;
41. Yarmulkes;
42. Wedding apparel; and
43. Work clothing.

(d) Costume masks, belt buckles, patches and emblems, when sold separately, are not clothing and are subject to tax.

18:24-6.4 Sales of protective equipment necessary for the user's work

(a) Receipts from sales of protective equipment, when necessary for the user's daily work, are exempt from tax imposed under the Sales and Use Tax Act. This exemption is based on use and is entirely separate from the exemption for clothing.

(b) Sales of items of protective equipment that are not necessary for the user's daily work are not exempt.

(c) Examples of protective equipment include, but are not limited to:

1. Breathing masks;
2. Chemical respirators and face masks;
3. Clean-room apparel;
4. Ear and hearing protectors;
5. Face shields;
6. Hard hats;
7. Helmets;
8. Protective gloves, (for example, welder's gloves);
9. Safety belts and harnesses;
10. Tool belts; and
11. Welders' masks.

18:24-6.5 Sales of accessories not exempt

(a) Clothing accessories or equipment, which are incidental items worn on the body, are not deemed to be clothing, and their retail sale is therefore taxable.

(b) Receipts from the retail sale of clothing accessories or equipment are not exempt from sales and use tax.

(c) Examples of clothing accessories and equipment include, but are not limited to:

1. Backpacks and fanny packs;

2. Barrettes, hair bows, hair nets, ponytail holders, tiaras, and other hair notions;
3. Briefcases;
4. Cosmetics;
5. Fashion wigs and hair pieces;
6. Hand bags; shoulder bags or tote bags;
7. Handkerchiefs;
8. Jewelry, bindhis, and body piercing studs;
9. Sunglasses (nonprescription);
10. Umbrellas;
11. Wallets and cell phone cases; and
12. Watches.

18:24-6.6 Sales of sport or recreational equipment not exempt

(a) Retail sales of items that are worn in conjunction with specific recreational or athletic activities, but that are not suitable for general use, do not fall within the clothing exemption and are therefore taxable.

(b) Examples. The following items, when worn in conjunction with recreational or athletic activities, are treated as taxable sport and recreational equipment:

1. Ballet and tap shoes;
2. Cleated or spiked athletic shoes;
3. Football helmets;
4. Gloves designed for specific sports, such as baseball catchers' mitts, boxing gloves or bowling gloves;
5. Hand and elbow guards;
6. Life preservers and vests;
7. Mouth guards;
8. Roller skates or ice skates;
9. Shin and knee pads;
10. Shoulder pads;
11. Skis and ski boots;
12. Snorkel masks;
13. Swim fins;
14. Swim goggles;
15. Waders; or
16. Wetsuits.

(c) Under some circumstances, items that are usually classified as sport or recreational equipment may be treated as

exempt clothing (work clothing) or as exempt “protective equipment” necessary for the user’s daily work. Examples include: toe shoes worn by a professional ballerina or by a dance teacher, waders worn by a commercial fisherman and life preservers and vests used by water safety and rescue squads.

18:24-6.7 Sewing materials

(a) Sewing materials are not included within the definition of clothing, but their sale may be exempt under certain circumstances.

(b) Receipts from the sale of sewing materials, such as fabric, thread, yarn, buttons, zippers, facing materials, hem tape, bias tape, trims (for example, lace, braid or rickrack), snaps and hooks and eyes, when purchased by noncommercial purchasers, for incorporation into clothing, are exempt from tax.

(c) Sewing equipment, tools, and supplies, such as sewing machines, needles, knitting needles, crocheting needles, tape measures, pins, tailor’s chalk, scissors, and thimbles are not sewing materials, and their sale is not exempt from tax.

18:24-6.8 Services performed on clothing

(a) The following services are exempt from sales tax:

1. Laundering clothing;
2. Dry cleaning clothing;
3. Tailoring, including mending, resizing, and altering;
4. Weaving clothing or weaving done on clothing;
5. Ironing or pressing clothing;
6. Repairing shoes; and
7. Cleaning and shining shoes.

(b) Except as stated in (a) above, sales tax is imposed on the services of producing, fabricating, processing, printing, or imprinting tangible personal property, including clothing, for a customer who directly or indirectly furnishes the item to be serviced, which is not intended for resale.

1. Examples of taxable fabrication services performed on clothing include, but are not limited to: imprinting, embroidering, silk screening designs, painting designs and monogramming.

SUBCHAPTER 7. MOTOR VEHICLES

18:24-7.1 Definitions

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

“Director” means the Director of the Division of Taxation of the State Department of the Treasury, or any officer, employee or agency of the Division of Taxation in the Department of the Treasury duly authorized by the Director, (directly, or indirectly by one or more redelegations of authority), to perform the functions mentioned or described in the Sales and Use Tax Act.

“Motor vehicle” as defined in the Sales and Use Tax Act and used in this subchapter includes all vehicles propelled otherwise than by muscular power (except such vehicles as run only upon rails or tracks), trailers, semitrailers, house-trailers, or any other type of vehicle drawn by a motordriven vehicle, and motorcycles, designed for operation on public highways.

“Motor Vehicle Commission” means the Motor Vehicle Commission of the Department of Transportation, State of New Jersey.

Amended by R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In the introductory paragraph, substituted “subchapter” for “Subchapter”; deleted definition “Division of Motor Vehicles”; substituted definition “Motor vehicle” for definition “Motor Vehicle”; in definition “Motor vehicle”, inserted “Act”, and substituted “subchapter” for “Subchapter” and “except” for “excepting”; and added definition “Motor Vehicle Commission”.

18:24-7.2 Taxability of retail sales receipts

The receipts from every retail sale of any motor vehicle, except as otherwise provided in this Subchapter and by the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.,) are subject to the sales or use tax.

Case Notes

Transfer of automobile title from sole shareholder to wholly-owned corporation held to meet definition of retail sale for the purpose of sales tax liability. *L.B.D. Construction, Inc. v. Director, Div. of Taxation*, 8 N.J.Tax 338 (Tax Ct.1986).

18:24-7.3 Tax payment prerequisite to registration

(a) The purchaser or user of a motor vehicle, as well as the seller thereof, is responsible for the payment of tax due on the sale at retail or use of a motor vehicle required to be registered with the Motor Vehicle Commission.

(b) Under the provisions of N.J.S.A. 54:32B-13, the Director of the Motor Vehicle Commission shall not issue a registration certificate for any motor vehicle, (except in the case of a renewal of registration by the same owner) unless proof has been furnished that the tax with respect to the sale of the motor vehicle to the registrant or his or her use thereof has been paid, or that no such tax is due.

(c) If the motor vehicle is not required to be registered with the Motor Vehicle Commission, the seller thereof must collect the tax from the purchaser, if any such tax is due, and must remit the same to the Division of Taxation.

Amended by R.1993 d.313, effective July 6, 1993.
 See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).
 Amended by R.2008 d.356, effective December 1, 2008.
 See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Substituted "Motor Vehicle Commission" for "Division of Motor Vehicles" throughout; in (a) and (c), substituted "seller" for "vendor"; and in (b), inserted "or her".

18:24-7.4 Computation of tax on purchase price; trade-in

(a) Where any person engaged in the business of selling motor vehicles at retail completes a sale of a motor vehicle, he shall collect the sales or use tax, as may be the case.

(b) The tax shall be computed upon the full amount of the purchase price of a motor vehicle less any deduction for the trade-in of property of a like kind, if any.

(c) A deduction from the purchase price, equal in amount to the amount of a trade-in actually allowed on the purchase, will be permitted, provided, that:

1. The purchase and trade-in occur at the same time. A separate or independent sale of a motor vehicle is not considered a trade-in even if the proceeds of the sale are immediately applied by the seller to a purchase of a motor vehicle from the buyer;

2. The trade-in consists of property of the same kind as that purchased and that is accepted as partial payment. "Property of the same kind" is construed to mean any other motor vehicle as defined in N.J.A.C. 18:24-7.1;

3. The trade-in is acquired by a dealer of motor vehicles who is registered as such with the Motor Vehicle Commission and the New Jersey Division of Taxation; and

4. The dealer obtains the certificate of title of the trade-in vehicle and retains a copy of it as part of the record of the sale transaction.

Amended by R.1993 d.313, effective July 6, 1993.
 See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).
 Amended by R.2000 d.233, effective June 5, 2000.
 See: 32 N.J.R. 29(a), 32 N.J.R. 2110(b).

In (c)2 substituted "Section 7.1 of this Chapter" with "N.J.A.C. 18:24-7.1" and added (c)4.

Amended by R.2008 d.356, effective December 1, 2008.
 See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In the introductory paragraph of (c), substituted a comma for a semicolon following "permitted"; in (c)1 and (c)2, deleted "and" at the end; in (c)2, inserted "and that is accepted as partial payment"; and in (c)3, substituted "Motor Vehicle Commission" for "Division of Motor Vehicles".

Case Notes

Transfer of automobile title from sole shareholder to wholly-owned corporation held to meet definition of retail sale for the purpose of sales tax liability. *L.B.D. Construction, Inc. v. Director, Div. of Taxation*, 8 N.J.Tax 338 (Tax Ct.1986).

18:24-7.5 Charges in tax computation

(a) Where charges are made for the following items in conjunction with the sale of a motor vehicle, they must be included in the amount upon which the tax is computed:

1. Federal excise taxes;

2. Delivery or freight charges for delivery of a vehicle from a manufacturer or distributor to a dealer are included regardless of whether they are separately stated upon the customer's invoice. Delivery charges from the dealer to his or her customer are subject to tax if the sale of the vehicle itself is subject to tax;

3. Warranty charges and service/maintenance agreements;

4. Charge for preparation of or additional work upon a motor vehicle; and/or

5. Charges for additional accessories or equipment placed in or attached to the motor vehicle by the dealer are included even though the charges may be separately stated upon the customer's invoice.

Amended by R.2008 d.356, effective December 1, 2008.
 See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Rewrote (a)2; in (a)3, inserted "and service/maintenance agreements"; and in (a)4, inserted "and/or".

18:24-7.6 External tax computation indices

Where, because of affiliation of interests between the seller and purchaser, or for any other reason, the purchase price stated for a motor vehicle is not indicative of the true value of the property and the purchaser is unable to prove that a lower price was paid, the Director may, at his or her discretion, utilize external indices to establish the basis upon which tax shall be assessed and paid.

Amended by R.1998 d.230, effective May 4, 1998.
 See: 30 N.J.R. 805(a), 30 N.J.R. 1635(c).

Inserted "and the purchaser is unable to prove that a lower price was paid" preceding "the Director".

Case Notes

Transfer of automobile title from sole shareholder to wholly-owned corporation held to meet definition of retail sale for the purpose of sales tax liability. *L.B.D. Construction, Inc. v. Director, Div. of Taxation*, 8 N.J.Tax 338 (Tax Ct.1986).

18:24-7.7 Out-of-State purchase by resident

(a) A motor vehicle purchased by a resident of this State outside of this State for use outside of this State which subsequently becomes subject to the use tax imposed under the Sales and Use Tax Act, shall be taxed on the basis of the purchase price of said motor vehicle; provided, however, that where a taxpayer affirmatively shows that the motor vehicle was used outside this State for more than six months prior to its use within this State, the motor vehicle shall be taxed on the basis of the current market value thereof at the time of its first use within this State.

(b) The value of such motor vehicle for use tax purposes may not exceed its cost, except as provided in N.J.A.C. 18:24-7.6.

Amended by R.1998 d.288, effective June 1, 1998.
See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).

In (b), added an exception relating to provisions of N.J.A.C. 18:24-7.6.

18:24-7.8 Sales of motor vehicles specifically exempted

(a) Any sale of a motor vehicle to any of the following shall not be subject to the sales and use tax:

1. The State of New Jersey, or any of its agencies, instrumentalities, public authorities, public corporations or political subdivisions;

2. The United States of America, and any of its agencies and instrumentalities, insofar as it is immune from taxation;

3. The United Nations or any international organization of which the United States of America is a member;

4. Those organizations described in subsection 9(b)(1) of the Sales and Use Tax Act which have obtained and hold an exempt organization permit as provided in said Act; provided, however, that such vehicle is used directly in pursuit of the purposes of the exempt organization.

(b) Any sale of a motor vehicle to a nonresident of this State is not subject to tax provided such nonresident, at the time of delivery, has no permanent place of abode in this State, is not engaged in carrying on in this State any employment, trade, business or profession in which the motor vehicle will be used in this State, and furnishes to the seller, prior to delivery, proof supporting his claim from exemption. For the purposes of this subsection:

1. Any person who maintains a place of abode in New Jersey is a resident individual. A place of abode is a dwelling place maintained by a person, or by another for him, whether or not owned by such person, other than a temporary or transient basis. The dwelling may be a house, apartment or flat, a room, including a room in a hotel, motel, boarding house or club, or at a residence hall operated by an educational or charitable institution, barracks, billets or other housing provided by the Armed Forces of the United States, or a trailer, mobile home, house boat or any other premises.

2. Any corporation incorporated under the laws of New Jersey, and any corporation, association, partnership or other entity doing business in New Jersey or maintaining a place of business in the State, or operating a hotel, motel, place of amusement or social or athletic club in the State is a resident.

3. Any person, corporation or other entity engaged in carrying on in New Jersey any employment, trade, business or profession is deemed a resident of New Jersey with

respect to the use of a motor vehicle in such employment, trade, business or profession in the State.

4. (Reserved)

5. Any person serving in the Armed Forces of the United States whose home of record is a state other than the State of New Jersey is a resident of this State if he or she is living in this State, regardless of whether his or her place of abode is located on or off a military reservation, provided that it is within the territorial limits of New Jersey.

6. Any person serving in the Armed Forces of the United States whose home of record is the State of New Jersey is a resident of this State whether his place of abode is located on or off a military reservation situated in New Jersey or another state of the United States or a foreign nation.

(c) Any sale of a motor vehicle to be used exclusively for lease or rental is purchased for resale and is not subject to tax at the time of purchase.

(d) The renting, leasing, licensing or interchanging of trucks, tractors, trailers, or semitrailers by persons not engaged in a regular trade or business offering such renting, leasing, licensing or interchanging to the public; provided, however, that such renting, leasing or interchanging is carried on with persons engaged in a regular trade or business involving carriage of freight by such vehicles is exempt from tax.

(e) For purposes of (d) above, "carriage of freight" means property transported by a common or public carrier, such as regular trucking companies, and does not include the type of business utilizing rented or leased vehicles to transport its own goods. For example, a seller of welding supplies leases trucks from a person not engaged in the regular trade or business of leasing such vehicles to the public. The trucks are used to transport to the seller's customers its own goods. The exemption from tax does not apply since the seller is not engaged in the carriage of freight, unless the trucks qualify for exemption under subsection 8.43 of the Sales and Use Tax Act (see N.J.A.C. 18:24-7.18).43 of the Sales and Use Tax Act (see N.J.A.C. 18:24-7.18).

As amended, R.1977 d.484, effective December 29, 1977.

See: 9 N.J.R. 594(a), 10 N.J.R. 81(a).

As amended, R.1979 d.90, effective March 8, 1979.

See: 11 N.J.R. 104(a), 11 N.J.R. 210(e).

Amended by R.1987 d.474, effective November 16, 1987.

See: 19 N.J.R. 1181(b), 19 N.J.R. 2201(b).

(b)4 repealed.

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

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

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Rewrote (b)5; in (c), inserted "lease or" and deleted "for a period of 28 days or less"; in (e), substituted "(d) above" for "subsection (d) of this section", "seller" for "vendor" twice and "seller's for "vendor's".

Case Notes

Taxpayer, who maintained "summer home" in state and returned every year, was "resident" of state and was not exempt from sales tax on purchase of automobile. *Furnato v. State*, Dept. of Treasury, Div. of Taxation, 16 N.J.Tax 10 (1996).

18:24-7.9 Transfers statutorily excluded from tax

(a) Within the meaning of subsection (e) of section 2 of the Sales and Use Tax Act, the following transfers of motor vehicles are not subject to tax:

1. Transfers of motor vehicles to a corporation, solely in consideration for the issuance of its stock, pursuant to a merger or consolidation effected under the law of New Jersey or any other jurisdiction;
2. Transfers of motor vehicles to a corporation upon its organization in consideration for the issuance of its stock;
3. Transfers of motor vehicles in the distribution of property by a corporation to its stockholders as a liquidating dividend;
4. Transfers of motor vehicles as a contribution of property to a partnership in consideration for a partnership interest therein;
5. Transfers of motor vehicles in the distribution of property by a partnership to its partners in whole or partial liquidation;
6. Transfers of motor vehicles where the purpose of the vendee is to hold the thing transferred as security for the performance of an obligation of the vendor.

Amended by R.1998 d.288, effective June 1, 1998.
See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).

Recodified the former introductory paragraph as (a); and recodified former (a) through (f) as 1 through 6.

18:24-7.10 Procedures for motor vehicle dealers; forms and certificates

(a) New Jersey motor vehicle dealers are required to execute and retain as a part of their records Form ST-10 if a purchaser of a motor vehicle:

1. Is a nonresident of New Jersey; and
2. Has no permanent place of abode in New Jersey; and
3. Is not engaged in carrying on in New Jersey any employment, trade, business or profession in which the motor vehicle will be used in New Jersey; or
4. Certifies that the motor vehicle has been contracted for delivery out-of-State (state must be designated) and the dealer affirms that the vehicle has been delivered to the purchaser in the aforesaid state. In all cases of sale to non-residents, New Jersey motor vehicle dealers are required to forward a completed copy of Form ST-10 to the New Jersey Division of Taxation.

Note: It is not necessary to complete Form ST-10 for sales of motor vehicles to New Jersey residents where the dealer collects the tax, or where, in cases of trade-ins, the information required in Item III of Form ST-10 is set forth in the invoice pertaining to such sale.

5. The rules regarding the status of the purchaser of a motor vehicle as a resident of this State are set forth in N.J.A.C. 18:24-7.8(b).

6. The sale of a warranty in conjunction with the sale of a motor vehicle qualified for exemption under this subsection is not subject to sales tax.

(b) A Resale Certificate may be accepted by a dealer of motor vehicles in cases of sales to other licensed dealers where the vehicle is purchased for resale, or is being acquired for rental purposes. A Resale Certificate may be accepted from a lessor registered for sales tax purposes in New Jersey. In all such cases, the purchaser's Certificate of Authority number and name and address must be shown on each sales invoice. The certificate itself should be retained in the dealer's files.

(c) Exempt Organization Certificates may be accepted by a motor vehicle dealer where a vehicle is being acquired by an organization holding a valid Exempt Organization Permit issued pursuant to the provisions of subsection (b)(1) of Section 9 of the Sales and Use Tax Act. A statement should be made on the invoice to the effect that the sale was made to an exempt organization. The purchaser's Exempt Organization Permit Number must be shown on each such sales invoice. The certificate furnished by the organization should be retained in the dealer's files.

(d) Purchases of vehicles by the Federal Government or one of its agencies, or by the State of New Jersey or one of its agencies or political subdivisions, or by the United Nations or any international organization of which the United States is a member are not subject to tax under the provisions of subsection (a) of Section 9 of the Sales and Use Tax Act. A statement must be made on the invoice identifying the governmental agency to which the sale was made.

(e) The certificates listed below may not ordinarily be accepted by motor vehicle dealers as a basis for exemption from sales or use taxes:

1. Exempt Use Certificates (Form ST-4);
2. Direct Payment Certificate (Form ST-6A);
3. Farmer's Exemption Certificate (Form ST-7); or
4. Certificate of Exempt 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 Certificate of Origin and the used car Dealer's Certificate of Ownership the fact that the sales tax has been satisfied. In order to evidence this fact, the prescribed "New Jersey Sales

Tax Satisfied” stamp shall be used. On the new car Manufacturer’s Certificate 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).

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

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

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (e)3, inserted “or”; in (e)4, inserted “Exempt”; in (f), substituted the first and third occurrences of “Certificate” for “Statement” and substituted “evidence” for “indicate”, transposed the periods from outside to inside the closing quotation marks following “Assignment” and “Fees”, and inserted a comma following the second occurrence of “Ownership”.

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; for example, detailing, washing, waxing, installing electronic equipment or repairing transmissions;
2. Storage of tangible personal property, including motor vehicles; and
3. Printing or imprinting tangible personal property, including motor vehicles, for example, etching of vehicle identification number.

(b) None of the services in (a) above 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) Purchases of tangible personal property by any person engaged in the sale of the services in (a) above for use by that person in the performance of such service 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 (a) above. The purchaser of such items should issue a duly completed Resale Certificate (Form ST-3) to his or her supplier.

(d) The purchase or use by any person engaged in the sale of services in (a) above 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).

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (a)1, inserted “for example, detailing, washing, waxing, installing electronic equipment or repairing transmissions;”; in (a)2, inserted “and”; in (a)3, inserted “, for example, etching of vehicle identification number”; in (b), (c) and (d), substituted “(a) above” for “enumerated in subsection (a) of this Section”; and in (c), substituted “Purchases” for “The purchase” and inserted “or her”.

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 the regular monthly report of taxes due on the sales and use of taxable property and services.

(c) The basis for tax shall be determined by multiplying .25 times the sum of \$500.00 plus the total invoice cost to

distributors or dealer 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 divided by 12 and the result multiplied by .07 to effectuate the seven 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).

Amended by R.1996 d.216, effective May 6, 1996.

See: 28 N.J.R. 808(a), 28 N.J.R. 2402(a).

New basis formula in (c) and (d).

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (d), substituted ".07" for ".06" and "seven" for "six".

18:24-7.14 Taxability of motor vehicles withdrawn from inventory of motor vehicle dealer; 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 prior to the sale thereof, shall be required to pay a compensating use tax on such uses unless the vehicle is assigned to and used by a full-time automobile salesperson.

1. The tax shall be computed and paid monthly by the retail dealer as part of the regular monthly report of taxes due on the sale and use of taxable property or services.

2. The basis for tax shall be determined by multiplying .25 times the sum of manufacturer's suggested list price of the motor vehicle plus \$500.00. If the motor vehicle is used, the basis for tax shall be determined by multiplying .25 times the sum of the average retail price listed for the vehicle in the N.A.D.A. Official Used Car Guide or similar N.A.D.A. official guides for other categories of used vehicles, for the year and month of withdrawal, plus \$500.00.

3. In computing the tax, the basis for tax as computed in (b)2 above shall be divided by 12 and the result multiplied by .07 to effectuate the seven percent tax imposed under N.J.S.A. 54:32B-6.

(c) There shall be no compensating use tax imposed on the use of an automobile by a retail dealer during a period when the motor vehicle is assigned to and used by a full-time automobile salesperson employed by the dealership.

1. For purposes of this section, a "full-time automobile salesperson employed by the dealership" means any individual who:

- i. Is employed by a retail dealer of automobiles;
- ii. Customarily spends at least half of a normal busi-

ness day performing the functions of a floor salesperson or sales manager;

iii. Directly engages in substantial promotion and negotiation of sales to customers;

iv. Customarily works a number of hours considered full-time in the industry, but at a rate not less than 1,000 hours per year; and

v. Derives at least 25 percent of his or her gross income from the automobile dealership as a direct result of the activities listed in (c)1i through iii above.

2. The use tax exemption shall apply to motor vehicles assigned to and used by such full-time automobile salespersons employed by the dealership, regardless of whether or not the salesperson uses the vehicle exclusively for the promotion of the dealership's business. There is no exemption for motor vehicles other than automobiles that are withdrawn from inventory for the use of a full-time salesperson.

(d) In order to be entitled to the exemption provided in (c) above, a dealer shall file together with the quarterly return, a certification wherein the dealer certifies the type, assignment and usage of all company-owned motor vehicles withdrawn from inventory or stock, which certificate 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).

Amended by R.1996 d.216, effective May 6, 1996.

See: 28 N.J.R. 808(a), 28 N.J.R. 2402(a).

Rewrote section.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (b)3, substituted ".07" for ".06" and "seven" for "six".

18:24-7.15 Leases and rentals of motor vehicles

(a) Lease or rental means any transfer of possession or control of tangible personal property, for a fixed or indeterminate term, for consideration. A lease or rental agreement may include future options to purchase the property or to extend the lease or rental. The terms "lease" and "rental" may be used interchangeably, for leases and rentals beginning on or after October 1, 2005.

(b) When the sales tax must be collected and remitted depends on whether the lease or rental agreement is for a term of six months or less, or for a term of more than six months.

(c) Leases and rentals of motor vehicles beginning on or after October 1, 2005, are treated according to the rules set forth in N.J.A.C. 18:24-32.

1. Customers are liable for sales tax on the leases or rentals of motor vehicles.

2. If the rental or lease is for a term of six months or less, the customer is charged sales tax on the total of the periodic payments due or the original purchase price of the property.

3. If the lease or rental is for an original term of more than six months, the customer pays sales tax on an accelerated basis, on either the lessor's original purchase price for the motor vehicle or the total of the periodic payments required under the lease agreement. The periodic payments include payments received at the inception of a lease (down payments, rebates, etc.). Regardless of the method used, the full amount of the tax is due on an accelerated basis, during the period when the lease or rental begins.

4. Sourcing of receipts from leases or rentals is governed by the following principles:

i. When the rental or lease is for a term of six months or less, each periodic payment is sourced to the state that is the primary property location of the motor vehicle, which is the address provided by the customer and maintained in the lessor's business records in good faith; and

ii. If the lease or rental is for a term of more than six months, the accelerated payment is sourced to the state where the vehicle was delivered to the customer, unless an exemption applies.

5. When a motor vehicle subject to a lease for a term of more than six months is relocated to or from New Jersey before expiration of the lease, the lease is treated in accordance with N.J.A.C. 18:24-32.5.

(d) Leases for a term of more than 28 days that began before October 1, 2005, are subject to use tax payable by the lessor and are not taxable to the lessee. (See also N.J.A.C. 18:24-32.7.)

1. Leases that began before October 1, 2005, remain nontaxable to the lessee.

2. Renewals on or after October 1, 2005, of leases that began before October 1, 2005, are treated as new leases and are taxable to the lessee, unless sales tax was paid on the original purchase price of the motor vehicle.

Repeal and New Rule, R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was "Renting motor vehicles".

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 recordkeeping requirements set forth in N.J.A.C. 18:24-2.

(b) All certificates, affidavits, or other documentary evidence accepted 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 four years from the date of the use of such certificate as a basis for exemption.

(c) A copy of the certificate of title of a vehicle accepted as a trade-in in accordance with N.J.A.C. 18:24-7.4 shall be retained by the dealer for a period of not less than four years from the date of the sale in which the trade-in was allowed.

Amended by R.2000 d.233, effective June 5, 2000.

See: 32 N.J.R. 29(a), 32 N.J.R. 2110(b).

In (a), substituted "subchapter 2 of this chapter" with "N.J.A.C. 18:24-2" and added paragraph (c).

Amended by R.2014 d.040, effective March 17, 2014.

See: 45 N.J.R. 1092(a), 46 N.J.R. 552(a).

In (b), deleted "in good faith" following "accepted".

18:24-7.18 Exemption for sale, lease or rental of certain commercial trucks and vehicles used in combination therewith

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

1. Sales, rentals or leases of commercial trucks, truck tractors, tractors, trailers, semi-trailers, and vehicles used in combination therewith, as defined in N.J.S.A. 39:1-1, which are properly registered as defined in N.J.S.A. 39:3-6.1, and:

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

ii. Are operated actively and exclusively for the carriage of interstate freight; or

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

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

(b) For the purposes of this section, "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of the single or combination vehicle and, if the manufacturer has not specified a value for a towed vehicle, means the value specified for the towing vehicle plus the loaded weight of the towed unit.

(c) For the purposes of this section, "truck" means every motor vehicle designed, used, or maintained primarily for the transportation of property.

(d) For the purposes of this section, "truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(e) For the purposes of this section, "trailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

(f) For the purposes of this section, "semitrailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

(g) For the purposes of this section, "vehicle used in combination therewith" means and includes motor-drawn vehicles, such as trailers, semitrailers, or pole trailers.

(h) For the purpose of motor vehicle dealer records indicating why sales tax has not been collected on sales of motor vehicles exempt from tax under this section or repair parts and replacement parts therefor, the dealer is required to receive a properly completed Exempt Use Certificate (Form ST-4) from the purchaser whether such purchaser is or is not registered with the Division of Taxation. When the purchaser is not registered with the Division of Taxation, a Certificate of Authority number is not required. However, an identification number or New Jersey registration plate number must be shown on Form ST-4.

(i) Nonconventional type motor vehicles not designated or used primarily for the transportation of property and only incidentally operated or moved over a highway, such as ditch digging apparatus, well-boring apparatus, road and general purpose construction and maintenance machinery, asphalt, spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, road rollers, earth-moving carryalls, self-propelled cranes, earth-moving equipment, bulldozers, road building machinery, and so forth, vehicles which operate on general registration plates transferable from vehicle to vehicle and which identify the owner rather than the vehicle, are not exempt from sales tax.

(j) Equipment mounted on vehicles exempt from tax under this section is eligible for exemption only if it is an integral part of the basic vehicle, and the basic vehicle would lose its identity should the equipment be removed. If the equipment is not an integral part of the vehicle and can be severed from the vehicle, the equipment is not exempt from tax.

Example 1: Motor vehicle bodies or bodies on vehicles used in combination with exempt vehicles, such as trailers or semitrailers, permanently mounted so that they effectuate the purpose for which the vehicle is intended are exempt from tax.

Example 2: Devices used in or on vehicles for effectuating business purposes, such as shortwave receiving and transmitting of messages, are not considered an integral part of such vehicle and are not exempt from tax.

New Rule, R.1977 d.484, effective December 29, 1977.

See: 9 N.J.R. 594(a), 10 N.J.R. 81(a).

Amended by R.1980 d.197, effective May 6, 1980.

See: 12 N.J.R. 219(b), 12 N.J.R. 355(a).

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 "Sales, renting or leasing of commercial motor vehicles and vehicles used in combination therewith exempt from tax".

Amended by R.1999 d.386, effective November 15, 1999.

See: 31 N.J.R. 1299(a), 31 N.J.R. 3750(a).

In (a)1, substituted "properly registered as provided by New Jersey law, pursuant to N.J.S.A. 39:3-6.1" for "registered in New Jersey" following "which are" in the introductory paragraph.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was "Sales, renting or leasing of commercial motor vehicles and vehicles used in combination therewith exempt from tax". In the introductory paragraph of (a)1, substituted "rentals or leases" for "renting or leasing" and the second occurrence of "defined in" for "provided by New Jersey law, pursuant to"; in (a)1i, deleted "or" at the end; in (a)1ii, deleted "pursuant to a certificate or permit issued by the Interstate Commerce Commission" following "freight"; in (a)1iii, deleted "N.J.S.A." preceding "39:3-25" and substituted "; and" for a period at the end; and in (h), deleted "Interstate Commerce Commission" preceding "identification".

18:24-7.19 Taxation of manufactured and mobile homes

(a) This section is intended to clarify the taxation of manufactured or mobile homes under the provisions of P.L. 1983, c. 400, approved December 22, 1983. This section does not apply to the sale of modular buildings because they are not on a permanent chassis.

1. For the purposes of this section, the following terms shall have the following meanings:

i. "Manufactured or mobile home" means a unit of housing which consists of one or more transportable sections which are substantially constructed off site and, if more than one section, are joined together on site; is built on a permanent chassis; is designed to be used, when connected to utilities, as a dwelling on a permanent or nonpermanent foundation; and is manufactured in accordance with the standards promulgated for a manufactured home pursuant to the "National Manufactured Housing Construction and Safety Standards Act of 1974", Pub. L. 93-383 (42 U.S.C. § 5401, et seq.) and the standards promulgated for a manufactured or mobile home pursuant to the "State Uniform Construction Code Act", P.L. 1975, c.217 (C. 54:27D-119, et seq.).

ii. "Trailer or housetrailer" means a recreational vehicle, travel trailer, camper or other transportable, temporary dwelling unit, with or without its own motor power, designed and constructed for travel and recreational purposes to be installed on a nonpermanent foundation if installation is required.

iii. "Manufacturer's invoice price" means the price charged by the manufacturer to a purchaser for a new manufactured or mobile home, including any amount for which credit is allowed by the manufacturer to the purchaser, the charge for the manufacturer-installed accessories, options, components or other taxable tangible

personal property, without any deduction for expenses, early payment discounts or the value of a trade-in.

iv. "Dealer" means any person who sells manufactured and mobile homes, trailers or house trailers and other tangible personal property in New Jersey in the regular course of business and who is registered as a seller with the Division of Taxation, whether or not licensed as a motor vehicle dealer with the Motor Vehicle Commission.

v. "New manufactured or mobile home" means only a newly manufactured unit.

vi. "Used manufactured or mobile home" means a unit which has become what is commonly known as "second hand" within the ordinary meaning thereof.

vii. "First sale" means a retail sale as defined by the Sales and Use Tax Act.

(b) On and after December 22, 1983, the first sale of a new manufactured or mobile home is subject to sales tax based upon the manufacturer's invoice price.

1. The sale of a new manufactured or mobile home by the manufacturer or other seller to a contractor, subcontractor, homeowner or other ultimate consumer is a retail sale and the tax must be collected from the purchaser at the time of sale and remitted to the Division of Taxation.

2. Where the manufacturer or other seller sells a new manufactured home to a homeowner or other ultimate consumer and agrees to install the home for the purchaser, the manufacturer or other seller is acting as a contractor and the tax is due directly from such person. Sales tax is not collected from the purchaser.

i. Where a new manufactured or mobile home is purchased from a manufacturer or other seller who is not a registered seller in New Jersey for sales tax purposes, the purchaser must pay the tax directly to the Division; provided, however, that where the manufacturer's invoice price cannot be ascertained, the tax is based on the purchase price.

3. The sale of a new manufactured or mobile home by the manufacturer to a dealer is a sale for resale, and in the subsequent resale the tax applies to the manufacturer's invoice price as follows:

i. Where the dealer sells a new manufactured or mobile home to a contractor, subcontractor, homeowner or other ultimate consumer, the sales tax must be collected from the purchaser by the dealer and remitted to the Division of Taxation.

Example: Dealer X sells a manufactured home to Y for \$30,000. The manufacturer's invoice price, including a charge for certain home furnishings, was \$19,500. The cost of freight into dealer X's place of business was \$500.00. The taxable receipt is \$20,000 and the sales tax

is stated to and collected from the purchaser at the rate of seven percent, or \$1,400.

ii. Where the dealer sells a new manufactured or mobile home to a homeowner or other ultimate consumer and agrees to install the home for the purchaser, the dealer is acting as a contractor and the tax is due directly from the dealer. Sales tax is not collected from the purchaser.

Example: Dealer X sells a new manufactured home to Y and agrees to install the unit in a mobile home park. The manufacturer's invoice price, including a charge for certain home furnishings, is \$19,500. The cost of freight into dealer X's place of business is \$500.00. The dealer is liable for the tax on \$20,000 or \$1,365. No tax on the manufactured home is stated to or collected from the purchaser.

iii. The sale of a new manufactured home by a dealer or other seller to a dealer is a sale for resale and the acquiring dealer may issue a valid New Jersey Resale Certificate (Form ST-3); however, that sales tax is due at the time of retail sale on the price paid by acquiring dealer whenever the manufacturer's invoice price cannot be ascertained.

(c) The sale of dealer-installed accessories, options, components or other taxable tangible personal property for either a new or used manufactured or mobile home is subject to sales tax based upon the retail sales price, whether or not the dealer also agrees to install the home for his customer; provided, however, that where the dealer does agree to install a home for his customer, the purchase of the construction materials, supplies and equipment is subject to tax as provided by subsection (e) below.

1. Dealer-installed accessories, options, components or other taxable tangible personal property are items such as furniture, fixtures, furnishings, appliances, attachments or similar tangible personal property which are not included with the home upon sale by the manufacturer or permanently incorporated as a part of the home at the time of manufacture. The latter can include items such as air conditioning units, sinks, cabinets, counter tops, exhaust hoods, water heaters, etc. A Certificate of Capital Improvement (Form ST-8) cannot be issued by the purchaser in connection with the purchase of dealer-installed options, accessories or components.

(d) On and after December 22, 1983, the sale of a used manufactured or mobile home by any person, including a dealer, is exempt from sales and use tax, whether or not the home is located in a mobile home park.

(e) On and after December 22, 1983, the permanent installation of a new or used manufactured or mobile home results in a capital improvement to real property, whether or not the home is installed in a mobile home park. (See N.J.A.C. 18:24-5.7).

1. Services performed by a contractor, subcontractor, manufacturer or other seller or dealer acting as a contractor or subcontractor and rendered in connection with the permanent installation of a new or used manufactured or mobile home for the purchaser are exempt from sales tax; provided, however, that a duly completed Certificate of Exempt Capital Improvement (Form ST-8) has been obtained from the purchaser and retained by the contractor or dealer for his or her permanent records.

2. Sales of construction materials and supplies, construction equipment or taxable services to a contractor or subcontractor, manufacturer or other seller or a dealer acting as a contractor or subcontractor, for use in the installation of a new or used manufactured or mobile home are subject to sales tax or use tax as provided by N.J.A.C. 18:24-5.

(f) The sale of a new or used trailer or housetrailer is subject to sales tax as provided for other motor vehicles in this subchapter.

(g) A certificate of ownership for a new or used manufactured or mobile home will not be issued by the Motor Vehicle Commission except upon proof, in a form approved by the Division of Taxation and the Motor Vehicle Commission, that any tax due on the sale or use of a new manufactured or mobile home has been paid or that no such tax is due.

(h) The rental or lease of a manufactured or mobile home that has already been permanently installed in a mobile park is not subject to sales tax.

New Rule, R.1980 d.149, effective April 9, 1980.

See: 12 N.J.R. 161(b), 12 N.J.R. 293(e).

Amended by R.1981 d.206, effective July 9, 1981.

See: 13 N.J.R. 163(b), 13 N.J.R. 465(b).

Section amended to include taxation through December 31, 1981.

Amended by R.1983 d.367, effective September 6, 1983.

See: 15 N.J.R. 1088(a), 15 N.J.R. 1488(a).

Moratorium on taxation of mobile homes imposed until December 31, 1983.

Amended by R.1984 d.156, effective May 7, 1984.

See: 16 N.J.R. 359(a), 16 N.J.R. 1098(a).

Section substantially amended.

Amended by R.1984 d.431, effective October 1, 1984.

See: 16 N.J.R. 1965(a), 16 N.J.R. 2689(a).

(h): added "not" subject to sales tax and deleted "as provided in N.J.A.C. 18:24-3".

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

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

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

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

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Substituted "seller" for "vendor" throughout; in the introductory paragraph of (a), substituted "c. 400" for "c.400"; in (a)iv, substituted "Motor Vehicle Commission" for "Division of Motor Vehicles"; in the Example paragraph of (b)3i, deleted "1" following "Example", substituted "\$500.00" for "\$500", "seven" for "six" and "\$1,400" for "\$1,200"; in the Example paragraph of (b)3ii, deleted "1" following "Example", substituted "\$500.00" for "\$500", "\$20,000" for "\$19,500" and "\$1,365" for "\$1,170"; in (e)1, inserted "Exempt" and "or her"; in (g), substituted "Motor Vehicle Commission" for "Division of Motor Vehicles" twice; and in (h), inserted "that has already been".

18:24-7.20 Exemption for certain buses

(a) Sales of buses for public passenger transportation to bus companies whose rates are regulated by the Surface Transportation Board of the United States or the New Jersey Department of Transportation are exempt from sales and use tax.

(b) Sales of buses to affiliates of companies referred to in (a) above or to common or contract carriers, for use in transporting children to and from school, are exempt from sales and use tax.

(c) Charges for repair services or for repair and replacement parts for the buses categorized in (a) or (b) above are exempt from sales and use tax.

New Rule, R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

18:24-7.21 Exemption for limousines

(a) A "limousine" is a motor vehicle that satisfies the following criteria, it:

1. Is registered pursuant to N.J.S.A. 39:3-19.5 or registered as a limousine under the laws of another state or of the United States;

2. Is used exclusively in the business of carrying passengers for hire to provide prearranged passenger transportation at a premium fare on a nonscheduled basis, that is not conducted on a regular route;

3. Has a seating capacity not exceeding 14 passengers;

4. Has a seating capacity (including driver) that is not more than five persons in excess of the seating capacity at the time of manufacture; and

5. Does not include taxicabs, hotel shuttles or buses, airport shuttles or buses, buses employed solely in transporting schoolchildren or teachers to and from school, or vehicles owned and operated by a business for its own purposes without either charge to passengers or remuneration to the business.

(b) Receipts from the sale of a limousine, to a person licensed under N.J.S.A. 48:16-17 to operate a limousine service, are exempt from sales and use tax.

(c) Receipts from the sale of repair services or repair or replacement parts for a limousine, operated by a person licensed under the laws of New Jersey, or of another state, or of the United States to operate a limousine service, are exempt from sales and use tax.

(d) A person qualified to claim sales tax exemption under this section and providing transportation services in this State is presumed to be providing transportation services that may be subject to sales tax pursuant to N.J.S.A. 54:32B-3(b)(13). See N.J.A.C. 18:24-27.3.

New Rule, R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

SUBCHAPTER 8. EXEMPT NONGOVERNMENTAL ORGANIZATIONS

18:24-8.1 General statutory exemption to qualified organizations

(a) N.J.S.A. 54:32B-9(b) provides for exemption from sales and use taxes on any sale or amusement charge by or to, and any use or occupancy by certain nonprofit organizations described in N.J.S.A. 54:32B-9(b), hereinafter referred to as Section 9(b), where such sales, charges, uses or occupancies are directly related to the purposes for which qualified organizations have been organized.

(b) Specifically, organizational exemption is afforded to any corporation, association, trust, or community chest, fund or foundation organized and operated exclusively:

1. For religious, charitable, scientific, testing for public safety, literary or educational purposes;
2. For the prevention of cruelty to children or animals;
3. As a volunteer fire company, rescue, ambulance, first aid or emergency company or squad;
4. As a National Guard organization, post or association, or as a post or organization of war veterans, or the Marine Corps League, or as an auxiliary unit or society of any such post, organization or association; or
5. As an association of parents and teachers of an elementary or secondary public or private school.

(c) Organizational exemption in accordance with (b)1-5 above, is permitted, provided that no part of the net earnings inures to the benefit of any private shareholder or individual, no substantial part of the activities is carrying on propaganda, or otherwise attempting to influence legislation, and the organization does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office.

(d) Organizations seeking to qualify for exempt organization status must meet the eligibility requirements set forth in this subchapter, and comply with all procedural requirements contained in this subchapter, in addition to the requirements in (a)-(c) above.

Amended by R.2003 d.348, effective August 18, 2003.
See: 35 N.J.R. 2165(a), 35 N.J.R. 3848(a).

In (a), substituted "N.J.S.A. 54:32B-9(b)" for "N.J.S.A. 54:32B-9(b)(1)" preceding ", hereinafter" and substituted "9(b)" for "9(b)(1)" preceding "where such sales"; rewrote (b).

Amended by R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Rewrote (b) through (d).

18:24-8.2 Exemption not based on nonprofit status

An organization is not exempt from tax merely because it is a nonprofit organization. In order to establish this exemption, it is necessary that every organization claiming exemp-

tion, file with the Division of Taxation an application Form REG-1E.

Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).
Amended by R.1998 d.288, effective June 1, 1998.
See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).

Substituted a reference to Form REG-1E for a reference to form ST-5B.

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).

18:24-8.3 Reliance on granted exemption; change in status

Subject to the power of the Director, Division of Taxation, to revoke rulings because of a change in the law or regulations or for other good cause, an organization that has been determined by the director to be exempt under Section 9(b) may rely upon such determination so long as there are no substantial changes in the organization's character, purposes or methods of operation.

Amended by R.2003 d.348, effective August 18, 2003.
See: 35 N.J.R. 2165(a), 35 N.J.R. 3848(a).
Substituted "9(b)" for "9(b)(1)".

18:24-8.4 Application for exemption; information

(a) An organization claiming exemption under Section 9(b) shall file the formal application Form REG-1E, in accordance with the instruction on the form or issued therewith.

(b) The applicant may be required to show:

1. The character of the organization;
2. The purpose for which it was organized;
3. Its actual activities;
4. Sources of its income and receipts and disposition thereof;
5. Whether or not any part of its income or receipts is credited to surplus or may inure to the benefit of any private shareholder or individual;
6. Names and titles of principal officers; and
7. In general, all facts relating to its operations which may affect its right to exemption.

(c) To each application should be attached:

1. A conformed copy of the articles of incorporation;
2. The declaration of trust, or other instruments of similar import, setting forth the permitted powers and the authorized activities of the organization;

3. The by-laws or other code or regulations;
4. The latest financial statement showing the assets, liabilities, receipts, and disbursements of the organization.
5. A copy of the organization's Federal tax determination letter or ruling issued by the Internal Revenue Service.

(d) Each application shall contain or be verified by a written declaration that such application is made under oath and therefor subject to the penalties for perjury.

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

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

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

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

In (a), substituted a reference to Form REG-1E for a reference to Form ST-5B.

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

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

In (a), substituted "9(b)" for "9(b)(1)".

18:24-8.5 Private shareholder or individual defined

The term "private shareholder or individual" in Section 9(b) refers to persons having a personal and private interest in the activities of the organization.

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

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

Substituted "9(b)" for "9(b)(1)".

SUBCHAPTER 9. REQUIREMENTS RELATING TO EXEMPT PRIVATE ORGANIZATIONS

18:24-9.1 Organizational and operational requirements of exempt organizations

(a) In order to be exempt as an organization described in Section 9(b), an organization must be both organized and operated exclusively for one or more of the purposes specified in this subchapter.

(b) If an organization fails to meet either the organizational test or the operational test, it is not exempt.

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

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

In (a), substituted "9(b)" for "9(b)(1)".

18:24-9.2 Exempt purpose defined

The term "exempt purpose or purposes," as used in this subchapter, means any purpose specified in N.J.S.A. 54:32B-9(b).

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

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

Deleted "as defined and elaborated in Section 8.6 of this Chapter" at the end.

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

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

Substituted "9(b)" for "9(b)(1)".

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Substituted "or" for "of" and "N.J.S.A. 54:32B-9(b)" for "Section 9(b)".

18:24-9.3 Organizational tests

(a) In general.

1. An organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this section as its "articles"), as defined in (b) below, limit the purposes of such organization to one or more exempt purposes; and do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

2. In meeting the organizational test, the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes stated in N.J.S.A. 54:32B-9(b). Therefore, an organization, which, by the terms of its articles, is formed "for literary and scientific purposes" within the meaning of N.J.S.A. 54:32B-9(b) of the Sales and Use Tax Act, shall, if it otherwise meets the requirements in this section, be considered to have met the organizational test. Similarly, articles stating that the organization is created solely "to receive contributions and pay them over to organizations, which are exempt from taxation under N.J.S.A. 54:32B-9(b)" are sufficient for purposes of the organizational test. Moreover, it is sufficient if the articles set forth the purpose of the organization to be the operation of a school for adult education and describe in detail the manner of the operation of such school. In addition, if the articles state that the organization is formed for "charitable purposes," such articles ordinarily shall be sufficient for purposes of the organizational test (See (e) below for rules relating to construction of terms).

3. An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is by the terms of such articles, created for a purpose that is no broader than the purposes specified in Section 9(b). Thus, an organization that is empowered by its articles, "to engage in a manufacturing business," or "to engage in the operation of a social club," does not meet the organizational test regardless of the fact that its articles may state that such organization is created "for charitable purposes within the meaning of Section 9(b) of the New Jersey Sales and Use Tax Act."

4. In no case shall an organization be considered to be organized exclusively for one or more exempt purposes if, by the terms of its articles, the purposes for which such organization is created are broader than the purpose specified in Section 9(b). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient

to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes.

5. An organization, in order to establish its exemption, may be required to submit a detailed statement of its proposed activities with and as part of its application for exemption.

6. An organization should submit a copy of its Internal Revenue Code Section 501(c)(3) determination letter or ruling issued by the Internal Revenue Service as prima facie evidence of exemption under N.J.S.A. 54:32B-9(b)(1) or (2).

(b) *Articles of organization.* For purposes of this Section, the term “articles of organization” or “articles” include the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created.

(c) *Authorization of legislative or political activities.* An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it:

1. To devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise; or

2. Directly or indirectly to participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office; or

3. To have objectives and to engage in activities which characterize it as an “action” organization as defined in N.J.A.C. 18:24-9.4(c) (Operational test);

4. The terms used in (c)1, 2 and 3 shall have the meanings provided in N.J.A.C. 18:24-9.4(c) (Operational test).

(d) *Distribution of assets on dissolution.* An organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization’s assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization’s articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a state or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the state in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

(e) *Construction of terms.* The law of the state in which an organization is created shall be controlling in construing the terms of its articles. However, any organization which contends that such terms have under state law a different meaning from their generally accepted meaning must establish such special meaning by clear and convincing reference to relevant court decisions, opinions of the state attorney general, or other evidence of applicable state law.

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

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

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

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

In (a)5, made submission of statements optional requirement in lieu of a mandatory requirement; and in (c), substituted references to N.J.A.C. 18:24-9.4(c) for references to N.J.A.C. 18:24-8.9(c) in 3 and 4.

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

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

In (a), substituted “(e) above” for “subsection (e) of this section” in the last sentence of 2 and substituted “Section 9(b)” for “Section 9(b)(1)” throughout 2 through 4; in (a)6, substituted “Sections 9(b)(1) or 9(b)(2)” for “Section 9(b)(1)”.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (a)2, substituted “N.J.S.A. 54:32B-9(b)” for “Section 9(b)” three times, inserted a comma following the first occurrence of “organization” and following “organizations”, inserted a closing quotation mark following the third occurrence of “purposes”, deleted a closing quotation mark following “Act.”, deleted “described in Section 9(b), and” preceding “exempt” and substituted “below” for “above” following “See (e)”; and rewrote (a)6.

18:24-9.4 Operational test

(a) *Primary activities.* A nonprofit organization is considered to be operating exclusively for an exempt purpose only if it engages primarily in activities which accomplish one or more of the exempt purposes specified in Section 9(b). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

(b) *Distribution of earnings.* An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. (For the definition of the words “private shareholder or individual” see Section 8.5 (Definition) of this Chapter).

(c) *“Action” organizations.*

1. An organization is not operated exclusively for one or more exempt purposes if it is an “action” organization as defined in (c)2, 3 or 4 below;

2. An organization is an “action” organization if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. For this purpose, an organization will be regarded as attempting to influence legislation if the organization contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or advocates the adoption or rejection of legislation. The term “legislation,” as used in this paragraph, includes action by

the Congress, by any state legislature, by any local council or similar governing body, or by the public in referendum, initiative, constitutional amendment, or similar procedure. An organization will not fail to meet the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation.

3. An organization is an "action" organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term "candidate for public office" means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, state or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

4. An organization is an "action" organization if it has the following two characteristics:

i. First, its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and

ii. Secondly, it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

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

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

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

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

In (a), substituted "9(b)" for "9(b)(1)".

18:24-9.5 Specific purposes exempt

(a) An organization may be exempt as an organization described in Section 9(b)(1) or 9(b)(2) if it is organized and operated exclusively for one or more of the following purposes:

1. Religious;
2. Charitable;
3. Scientific;
4. Testing for public safety;
5. Literary;
6. Educational; or

7. Prevention of cruelty to children or animals.

(b) Since each of the purposes specified in subsection (a) of this Section is an exempt purpose in itself, an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes. If, in fact, an organization is organized and operated exclusively for an exempt purpose or purposes, exemption will be granted to such an organization regardless of the purpose or purposes specified in its application for exemption. For example, if an organization claims exemption on the ground that it is "educational", exemption will not be denied if, in fact, it is "charitable".

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

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

In (a)4, substituted "for" for "and".

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

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

In (a), inserted "or 9(b)(2)" following "9(b)(1)" in the introductory paragraph.

18:24-9.6 Exempt organizations must serve public interest

An organization is not organized or operated exclusively for one or more of the purposes specified in N.J.A.C. 18:24-9.5 (Specific purposes exempt) unless it serves a public rather than a private interest. Thus, to meet the requirement of this section, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his or her family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

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

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

Substituted a reference to N.J.A.C. 18:24-9.5 for a reference to N.J.A.C. 18:24-8.10 in the first sentence, and neutralized a gender reference.

18:24-9.7 "Charitable" defined

(a) The term "charitable" is used in Section 9(b)(1) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in Section 9(b)(1) of other tax exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions.

(b) The term includes:

1. Relief of the poor and distressed or of the underprivileged;
2. Advancement of religion;
3. Advancement of education or science;
4. Erection or maintenance of public buildings, monuments, or works;
5. Lessening of the burdens of Government;
6. Promotion of social welfare by the organization's purposes, or lessening neighborhood tensions;

7. Elimination of prejudice and discrimination;
8. Defense of human and civil rights secured by law;
9. The combat of community deterioration and juvenile delinquency.

(c) The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organizations from being exempt as an organization organized and operated exclusively for charitable purposes.

(d) The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under Section 9(b)(1) so long as it is not an "action" organization of any one of the types described in N.J.A.C. 18:24-9.4(c).

Amended by R.1998 d.288, effective June 1, 1998.
See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).

In (d), substituted a reference to N.J.A.C. 18:24-9.4(c) for a reference to N.J.A.C. 18:24-8.9(c).

18:24-9.8 "Educational" defined

(a) The term "educational", as used in Section 9(b)(1), relates to:

1. The instruction or training of the individual for the purpose of improving or developing his capabilities; or
2. The instruction of the public on subjects useful to the individual and beneficial to the community. An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. An organization is not educational if its principal function is the mere presentation of unsupported opinion.

(b) *Examples of educational organizations.* The following are examples of organizations which, if they otherwise meet the requirements of this Section, are educational:

Example (1): An organization, such as a primary or secondary school, or college, or a professional or trade school, which has a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

Example (2): An organization which presents a course of instruction by means of correspondence or through the utilization of television or radio.

Example (3): Museums, zoos, planetariums, symphony orchestras, and other similar organizations.

Example (4): An organization whose activities consist of developing in youth, ideals of honesty, loyalty, courage, reverence, or knowledge of the world in which we live. Organizations which meet these requirements include, but are not limited to, the Boy Scouts, Girl Scouts and 4-H Clubs.

Amended by R.1998 d.288, effective June 1, 1998.
See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).

18:24-9.9 "Testing for public safety" defined

The term "testing for public safety", as used in Section 9(b)(1), includes the testing of consumer products, such as electrical products, to determine whether they are safe for use by the general public.

18:24-9.10 "Scientific" defined

(a) Since an organization may meet the requirements of Section 9(b)(1) only if it serves a public rather than a private interest, a "scientific" organization must be organized and operated in the public interest (see subsections (b) and (c) of this Section). Therefore, the term "scientific", as used in Section 9(b)(1) includes the carrying on of scientific research in the public interest. Research when taken alone is a word with various meanings; it is not synonymous with "scientific", and the nature of particular research depends upon the purpose which it serves. For research to be "scientific", within the meaning of Section 9(b)(1), it must be carried on in furtherance of a "scientific" purpose. The determination as to whether research is "scientific" does not depend on whether such research is classified as "fundamental" or "basic" as contrasted with "applied" or "practical".

(b) Scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as, for example, the ordinary testing or designing or construction of equipment, buildings, and similar structures.

(c) Scientific research will be regarded as carried on in the public interest:

1. If results of such research (including any patents, copyrights, processes, or formulae resulting from such research) are made available to the public on a nondiscriminatory basis;
2. If such research is performed for the United States or any of its agencies or instrumentalities, or for a state or political subdivision thereof; or
3. If such research is directed toward benefiting the public. The following are examples of scientific research which will be considered as directed toward benefiting the public, and, therefore, which will be regarded as carried on in the public interest:

Example (1): Scientific research carried on for the purpose of aiding in the scientific education of college or university students;

Example (2): Scientific research carried on for the purpose of obtaining scientific information which is published in a treatise, thesis, trade publication, or in any other form that is available to the interested public;

Example (3): Scientific research carried on for the purpose of discovering a cure for a disease; or

Example (4): Scientific research carried on for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area. Scientific research described in this paragraph will be regarded as carried on in the public interest even though such research is performed pursuant to a contract or agreement under which the sponsor or sponsors of the research have the right to obtain ownership or control of any patents, copyrights, processes, or formulae resulting from such research.

(d) An organization will not be regarded as organized and operated for the purpose of carrying on scientific research in the public interest and consequently will not qualify under Section 9(b)(1) as a "scientific" organization, if:

1. Such organization will perform research only for persons which are (directly or indirectly) its creators and which are not described in Section 9(b)(1); or

2. Such organization retains, directly or indirectly, the ownership or control of more than an insubstantial portion of the patents, copyrights, processes, or formulae resulting from its research and does not make such patents, copyrights, processes, or formulae available to the public. For purposes of this Section a patent, copyright, process, or formula shall be considered as made available to the public if such patent, copyright, process or formula is made available to the public on a nondiscriminatory basis. In addition, although one person is granted the exclusive right to the use of a patent, copyright, process, or formula such patent, copyright, process, or formula shall be considered as made available to the public if the granting of such exclusive right is the only practicable manner in which the patent, copyright, process, or formula can be utilized to benefit the public.

(e) The fact that any organization (including a college, university, or hospital) carries on research which is not in furtherance of an exempt purpose described in Section 9(b)(1) **will not preclude** such organization from meeting the requirements of Section 9(b)(1) so long as the organization meets the organizational test and is not operated for the primary purpose of carrying on such research.

(f) The rules in this Section are applicable with respect to taxable periods beginning after February 28, 1967.

18:24-9.11 Organizations carrying on trade or business

(a) An organization may meet the requirements of Section 9(b) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business.

(b) In determining the existence or nonexistence of such primary purpose, all circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes.

(c) An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under Section 9(b) even though it may have certain exempt purposes, its property is held in common, and its profits do not inure to the benefit of individual members of the organization.

(d) Any sale, amusement charge, use or occupancy by an exempt organization, in the course of a trade or business in substantial competition with privately operated nonexempt business entities, is not directly related to the purposes of the exempt organization. Except as specifically exempted in N.J.S.A. 54:32B-9(e) and (f), such an organization shall, in the conduct of the trade or business, pay and collect sales and use taxes in the same manner required of a privately operated nonexempt business.

1. An exempt organization is considered to be engaged in a trade or business in substantial competition with privately operated nonexempt business entities to the extent sales are made as follows:

i. From a shop or store operated by such organization except as provided in (e) below;

ii. By mail, telephone, or facsimile orders accepted by such organization on a regular, continuous or long term basis; or

iii. By or through a nonexempt business entity on behalf of or under an agreement with such organization.

2. An exempt organization is not considered to be engaged in a trade or business in substantial competition with privately operated nonexempt business entities to the extent sales are made by such organizations through fundraising events or activities which are of relatively short duration, and are not held on a regular basis during a calendar year; provided, however, that all proceeds inure to the benefit of the exempt organization. Nothing in this paragraph shall be construed as exempting sales that are subject to sales and use taxes under (d)1 above or N.J.S.A. 54:32B-9(f)(2).

Example 1: The operation of a booth selling sandwiches and soft drinks at a state fair for two weeks a year is an activity of relatively short duration and that is not held on a regular basis during the calendar year. The exempt organization is not required to collect sales tax on the sandwiches and soft drinks.

Example 2: The operation of a coffee shop one day a week throughout the year is an activity that is conducted on a regular basis. The exempt organization must collect sales tax on the coffee shop sales.

3. A shop or store as used in (d)1i above includes any place or establishment from which goods are sold with a degree of regularity, frequency and continuity.

(e) A shop or store operated by an exempt organization is not required to collect sales tax on donated merchandise if at least 75 percent of its merchandise is donated and at least 75 percent of the work to carry on the store business is performed by volunteers.

Amended by R.1985 d.44, effective February 19, 1985.
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.

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

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

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

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

In (a) and (c), substituted "9(b)" for "9(b)(1)"; in (d)1i, inserted "except as provided in (e) below" following "organization"; added (e).

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 the 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 seller shall charge and collect the sales tax thereon unless an organization furnishes the seller 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 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 certificate, which is a tax immunity authorization, as of the date of the transaction;

4. Any organization holding a valid exempt organization certificate, 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).

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

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

In (a)1 and (a)2, deleted "holding a valid exempt organization permit (form ST-5A)" following "unless an organization"; in (a)3, substituted "certificate, which is a tax immunity authorization," for "permit (form ST-5A)"; in (a)4, substituted "certificate" for "permit (Form ST-5A)".

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (a)1, substituted "seller" for "vendor" twice, inserted a comma following "valid", "executed", "ST-5" and "Taxation", and substituted "Form" for "form".

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-sponsored 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 seller 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 certificates, 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).

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

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

In (b), substituted "certificates" for "permits" following "exempt organization" in the third sentence.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In the introductory paragraph of (a), substituted "school-sponsored" for "school sponsored" and inserted a comma following "events"; and in (a)3, substituted "seller" for "vendor".

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 seller 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 seller shall have taken from the purchaser a fully completed certificate, signed by the purchaser and bearing his or her 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 seller may accept a 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. 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).

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

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

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (a), substituted "seller" for "vendor" twice, and inserted "properly completed" and "or her"; and in (b), substituted "Form" for "form" twice and "seller" for "vendor", inserted a comma following "ST-5", and substituted "Only" for "On and after July 1, 1976, only".

Amended by R.2014 d.040, effective March 17, 2014.

See: 45 N.J.R. 1092(a), 46 N.J.R. 552(a).

In (a), inserted a comma following "charges" twice, and substituted "fully" for "properly"; and in (a) and (b), inserted a comma following "address".

18:24-10.3 Responsibility

A seller who accepts any fully completed exemption certificate is relieved of any liability for collection or payment of tax upon transactions covered by the certificate pursuant to the conditions set forth in N.J.A.C. 18:24-10.4.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Deleted "or lessor" following "seller", and inserted "properly completed" and a comma following the first occurrence of "certificate".

Amended by R.2014 d.040, effective March 17, 2014.

See: 45 N.J.R. 1092(a), 46 N.J.R. 552(a).

Rewrote the section.

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).

Receipt of tax exemption certificate from buyer: liability for sales tax. *J.R. Corelli Associates, Inc. v. Director, Div. of Taxation*, 14 N.J.Tax 160 (A.D.1993).

Seller not absolved of liability for sales tax by good faith. *J.R. Corelli Associates, Inc. v. Director, Div. of Taxation*, 14 N.J.Tax 160 (A.D.1993).

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 of exemption certificates

(a) For transactions entered into prior to October 1, 2005, an exemption certificate is properly accepted if the following conditions are met:

1. An exemption certificate to be accepted in good faith must contain no statement or entry, which the seller knows is false or misleading;
2. A seller is presumed to be familiar with the law and rules regarding the business in which he or she deals;
3. In general, a seller who accepts a properly completed 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;
4. The certificate must be in the physical possession of the seller, and available for appropriate inspection on or

before the 90th day following the date of the transaction to which the certificate relates; and

5. Where a certificate is not made available for inspection on or before the date in (a)4 above, the seller must provide to the satisfaction of the Director, by means of evidence other than certification of the purchases, that the sale in question is, in fact, exempt.

(b) For transactions entered into between October 1, 2005 and December 31, 2007, an exemption certificate is properly accepted and the seller is held harmless if the following conditions are met:

1. The certificate must contain no statement or entry, which the seller knows is false or misleading;
2. The certificate must be an official form or a proper and substantive reproduction, including electronic;
3. The certificate must be filled out completely;
4. The certificate must be dated and include the purchaser's New Jersey tax identification number or, for a purchaser that is not registered in New Jersey, the Federal employer identification number or out-of-State registration number. Individual purchasers must include their driver's license number; and
5. The certificate or required data must be provided within 90 days of the sale.

(c) For transactions entered into on and after January 1, 2008, an exemption certificate is properly accepted and the seller is held harmless when a purchaser claims an exemption if the certificate is fully completed.

1. The following information must be obtained from a purchaser in order for the exemption certificate to be "fully completed":

- i. The purchaser's name and address;
- ii. The type of business;
- iii. The reasons(s) for the exemption;
- iv. The purchaser's New Jersey tax identification number or, for a purchaser that is not registered in New Jersey, the Federal employer identification number or out-of-State registration number. Individual purchasers must include their driver's license number; and
- v. The signature of the purchaser, if a paper exemption certificate is used, including facsimile.

2. The seller's name and address are not required and are not considered when determining if an exemption certificate is fully completed. A seller that enters data elements from paper into an electronic format is not required to retain the paper exemption certificate.

(d) If the seller either has not obtained an exemption certificate, has obtained an incomplete exemption certificate,

or the seller has not obtained the relevant data elements as provided in (c)1 above, then the standard is different from that which applies at the point of sale as described in (c)1 above. The seller shall have at least 120 days after the Division's request for substantiation of the claimed exemption to do the following:

1. From January 1, 2008 to September 30, 2011, obtain a fully completed exemption certificate from the purchaser, taken in good faith, which means that the seller is presumed to be familiar with the law and rules regarding the business in which he or she deals and the exemption certificate must not contain any statement or entry that the seller knows is false or misleading; or

2. On and after October 1, 2011, either:

i. Obtain a fully completed exemption certificate from the purchaser, taken in good faith, which means that the seller obtains a certificate that claims an exemption that:

(1) Was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced;

(2) Could be applicable to the item being purchased; and

(3) Is reasonable for the purchaser's type of business; or

ii. Obtain other information establishing that the transaction was not subject to the tax.

(e) If the seller obtains the information described in (d) above, the Division shall relieve the seller of any liability for the tax on the transaction, unless it is discovered through the audit process that the seller had knowledge or had reason to know, at the time such information was provided, that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction. The Division must establish that the seller had knowledge or had reason to know, at the time the information was provided, that the information was materially false.

Amended by R.1974 d.244, effective August 30, 1974.

See: 6 N.J.R. 326(a), 6 N.J.R. 414(e).

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (a), (b) and (c), deleted "or lessor" following "seller"; in (a), inserted a comma following "entry" and deleted ", or has reason to know," following "knows"; in (b), inserted "or she"; and in (c), substituted "a properly completed" for "an" and deleted the former last sentence.

Amended by R.2014 d.040, effective March 17, 2014.

See: 45 N.J.R. 1092(a), 46 N.J.R. 552(a).

Section was "Acceptance in good faith". Rewrote the section.

Case Notes

Receipt of tax exemption certificate from buyer; liability for sales tax. J.R. Corelli Associates, Inc. v. Director, Div. of Taxation, 14 N.J. Tax 160 (A.D.1993).

Seller not absolved of liability for sales tax by good faith. *J.R. Corelli Associates, Inc. v. Director, Div. of Taxation*, 14 N.J.Tax 160 (A.D.1993).

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 Exemption certificates; conditions, retention, and inspection; use of resale certificates by out-of-State sellers

(a) All certificates, whether single purchase or blanket, accepted by a seller 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 the seller for a period of not less than four years from the date of the last use of such certificate as a basis for exemption.

(b) Whenever the sale for resale exemption is claimed by an unregistered out-of-State seller, either the fully completed and executed resale certificate of another state or a Division-approved multi-jurisdictional resale certificate or the Streamlined Sales and Use Tax Agreement Certificate of Exemption – New Jersey, including evidence that the purchaser is a licensed seller in one or more jurisdictions, accepted by the seller, is deemed evidence of exemption, unless: 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 the person to whom the sale was made took delivery of the property at the sale location in New Jersey. If the person to whom the sale was made was not required to be registered in New Jersey at the time of sale, and in fact was not registered, but did take delivery of the tangible personal property at the sale location in New Jersey, the only acceptable evidence of exemption is a New Jersey resale certificate for non-New Jersey sellers, accepted by the seller.

(c) The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.

(d) The seller shall maintain proper records of exempt transactions and provide them to the Division when requested.

(e) In the case of drop-shipment sales, the Division will allow a third-party seller (for example, drop shipper) to claim a resale exemption based on an exemption certificate provided by its customer/reseller or any other acceptable information available to the third-party seller evidencing qualification for a resale exemption, regardless of whether the customer/reseller is registered to collect and remit sales and use tax in the state where the sale is sourced.

(f) The Division shall relieve sellers that follow the requirements of N.J.A.C. 18:24-10.4 from the tax otherwise

applicable if it is determined that the purchaser improperly claimed an exemption and will hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply to a seller who fraudulently fails to collect tax, a seller who solicits purchasers to participate in the unlawful claim of an exemption, or a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption when:

1. The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller; and

2. New Jersey has indicated on the Streamlined Sales and Use Tax Agreement Certificate of Exemption – New Jersey, that the claimed exemption is unavailable.

(g) The Division shall relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate or captures the relevant data elements required under the Agreement within 90 days subsequent to the date of sale.

(h) The Division shall relieve a seller of the tax otherwise applicable if the seller obtains a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. Notwithstanding the provisions of (d) above, the Division may not request from the seller renewal of blanket certificates or updates of exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this subsection, a "recurring business relationship" exists when a period of no more than 12 months elapses between sales transactions.

(i) The Division may require purchasers to update exemption certificate information or to reapply with the State to claim certain exemptions.

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.

Amended by R.1998 d.288, effective June 1, 1998.
See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).

In (a), increased the required retention period from three to four years.
Amended by R.1998 d.440, effective September 8, 1998.
See: 30 N.J.R. 1923(a), 30 N.J.R. 3259(a).

Rewrote the section.

Amended by R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (a), inserted a comma following "certificates" and substituted "seller" for "vendor" and "the seller" for "said vendor"; in (b), deleted "or lessor," following "seller", deleted a comma following "inspection" and substituted "90th" for "60th"; in (c), deleted "or lessor" following "seller" and "or lease" following "sale"; and in (d), substituted "seller" for "vendor" twice and inserted "or the Streamlined Sales and Use Tax Certificate".

Recodified from N.J.A.C. 18:24-10.6 and amended by R.2014 d.040, effective March 17, 2014.

See: 45 N.J.R. 1092(a), 46 N.J.R. 552(a).

Section was "Acceptance of exemption certificates; conditions, retention and inspection; use of resale certificates by out-of-State vendors". Rewrote the section. Former N.J.A.C. 18:24-10.5, Disclosure of proper exemption basis, repealed.

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).

18:24-10.6 (Reserved)

Recodified to N.J.A.C. 18:24-10.5 by R.2014 d.040, effective March 17, 2014.

See: 45 N.J.R. 1092(a), 46 N.J.R. 552(a).

Section was "Acceptance of exemption certificates; conditions, retention and inspection; use of resale certificates by out-of-State vendors".

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

Law Review

Use tax collection on Internet purchases: Should the mail order industry serve as a model? Steven J. Forte, 15 J. Marshall J. Computer & Info. L. 203 (1997).

18:24-11.1 Seller to collect tax

(a) Every seller of taxable goods, services, or other items subject to sales tax under N.J.S.A. 54:32B-3 that is required to collect any tax imposed by the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) is required under the law to collect such tax commencing July 1, 1966, irrespective of whether or not he or she has received a sales tax certificate of authority issued by the Division of Taxation under Section 15 of the Act.

(b) Failure to receive a sales tax certificate of authority shall not relieve a seller of taxable goods, services, or other transactions subject to sales tax under N.J.S.A. 54:32B-3 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.

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

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

In (a), substituted a reference to the Division of Taxation for a reference to the Sales Tax Bureau.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was "Vendor to collect tax". In (a) and (b), substituted "seller" for "vendor" and a comma for "and" following "goods"; in (a), inserted " , or other items subject to sales tax under N.J.S.A. 54:32B-3 that is"; and in (b), inserted " , or other transactions subject to sales tax under N.J.S.A. 54:32B-3".

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

(a) All sellers 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 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 seller 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 July 1, 1996 through August 2, 2009, with respect to sales and use tax liabilities incurred on and after July 1, 1996 through August 2, 2009, every seller with liability exceeding \$500.00 for the first or second month of a quarterly filing period shall, on or before the 20th day of the month following each such month, file with the Director a monthly remittance statement (Form ST-51) and pay an amount equal to its liability for the month. Any payment due for the calendar months of March, June, September, or December shall be paid with the quarterly return filed for the quarter in which such month falls.

(c) Effective August 3, 2009, sellers that collect more than \$30,000 in sales and use tax in New Jersey during the preceding calendar year must file a monthly remittance for the first and second months of each calendar quarter if the amount of tax due for that month exceeds \$500.00. See N.J.A.C. 18:24B-1.4. If less than \$30,000 in sales and use tax is collected by the seller in New Jersey during the preceding calendar year, a monthly remittance is not required to be remitted regardless of the amount of tax due for that particular month.

(d) Only a single return is required to be filed for each taxing period for each seller.

(e) Returns are due on the 20th day of the month following the month in which the transaction occurred. When the due date for a return falls on a Saturday, Sunday, or legal holiday in New Jersey, the return shall be due on the next business day. If the return is filed in conjunction with a remittance and the remittance cannot be made because the Federal Reserve Bank is closed on a due date that prohibits a person from being able to make a payment by the automated clearing house (ACH) debit or credit, the return shall be accepted as timely filed on the same day as the remittance.

New Rule, R.1975 d.4, effective January 13, 1975.

See: 6 N.J.R. 494(b), 7 N.J.R. 77(a).

Amended by R.1996 d.416, effective September 3, 1996.

See: 28 N.J.R. 3057(a), 28 N.J.R. 4111(a).

Rewrote (b).

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (a) and (b), substituted "seller" for "vendor" and "Form" for "form"; in (a), substituted "sellers" for "vendors" and deleted "on or before April 20, 1975, and quarterly thereafter"; and in (b), deleted "over" following "pay".

Amended by R.2014 d.040, effective March 17, 2014.

See: 45 N.J.R. 1092(a), 46 N.J.R. 552(a).

In (b), inserted "through August 2, 2009" twice; and added (c) through (e).

18:24-11.3 Filing of use tax returns by registered individuals and entities not operating as sellers

(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 2005, \$210.00 in 2006, and \$87.00 in 2007. It made a few purchases subject to use tax in 2008, and its use tax liability for 2008 is \$12.00. It must file an Annual Business Use Tax Return for 2008 by May 1, 2009.

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 2005 or 2006 and paid its \$45.00 use tax liability for 2007. During 2008 the sole proprietor did not incur any use tax liability. Therefore, no Annual Business Use Tax Return is due for the 2008 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 2005, \$5,100 for 2006,

and \$2,300 for 2007. During 2008 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 in 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.

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).

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was "Filing of use tax returns by registered individuals and entities not operating as vendors". In (b), in Example 1, substituted "2005" for "1992", "2006" for "1993", "2007" for "1994", "2008" for "1995" three times and "2009" for "1996"; in Example 2, substituted "2005" for "1993", "2006" for "1995", "2007" for "1994" and "2008" for "1996" twice; in Example 3, substituted "2005" for "1993", "2006" for "1994", "2007" for "1995" and "2008" for "1996", and inserted "in" following "\$100.00"; and deleted Example 4.

SUBCHAPTER 12. RECEIPTS FROM THE SALE OF FOOD, FOOD INGREDIENTS AND PREPARED FOOD

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 food ingredients.

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

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

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Substituted "food ingredients" for "drink in or by restaurants, taverns or other establishments and caterers".

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:

"Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" does not include any preparation containing flour or requiring refrigeration.

"Dietary supplement" means any product for human consumption, other than tobacco, intended to supplement the diet, that:

1. Contains one or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; a concentrate, metabolite, constituent, extract, or combination of any of these ingredients;

2. Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

3. Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required pursuant to 21 CFR 101.36.

"Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include alcoholic beverages or tobacco. For purposes of this subchapter, "food and food ingredients" may sometimes also be referred to as "food and drink."

“Food sold in a heated state” means food that the seller attempts to maintain at a temperature warmer than the surrounding air temperature, for example, by using heating lamps, warming trays, rotisserie or similar heating devices. Food, which the seller cooks to order and sells while still hot, and food that the seller reheats for the purchaser is considered food “heated by the seller.”

“Prepared food” means:

1. Food sold in a heated state or heated by the seller;
2. Two or more food ingredients mixed or combined by the seller for sale as a single item, but not including food that is only cut, repackaged, or pasteurized by the seller; and not including eggs, fish, meat, poultry, and foods containing these raw animal products when they required cooking by the consumer, according to the recommendations of the Food and Drug Administration, in order to prevent food-borne illnesses; or
3. Food sold with eating utensils provided by the seller. (Eating utensils include plates, knives, forks, spoons, glasses, cups, napkins, straws, but do not include containers or packaging used to transport the food).

However, “prepared food” does not include the following when sold without utensils provided by the seller: food sold in an unheated state by weight or volume as a single item; bakery items, such as breads, rolls, biscuits, bagels, pastries, donuts, cakes, pies, muffins, cookies, tortillas; or food sold by a seller whose primary NAICS classification is manufacturing, except for bakeries.

“Provided by the seller” means whether utensils are considered to be “provided by the seller” and is determined by application of N.J.A.C. 18:24-12.2A.

“Soft drinks” means non-alcoholic beverages that contain natural or artificial sweeteners. “Soft drinks” does not include beverages that contain: milk or milk products; soy, rice, almond, or similar milk substitutes; or greater than 50 percent of vegetable or fruit juice by volume.

“Tobacco” means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

Repeal and New Rule, R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was “Definitions”.

18:24-12.2A Threshold test for determining whether utensils are provided by seller

(a) Food sold with eating utensils provided by the seller is subject to sales tax as prepared food.

(b) The threshold test for determining whether eating utensils have been “provided by the seller” is as follows:

1. Whether eating utensils are deemed to be “provided by the seller” depends on whether the seller’s annual sales

of certain types of prepared food make up more than 75 percent of its total sales of food and food ingredients (excluding alcoholic beverages). This 75 percent threshold is calculated as follows:

i. First, calculate the percentage of food provided by the seller as follows:

(1) Determine the numerator, which is made up of the total dollar value of sales of prepared food that is either sold in a heated state or heated by the seller; plus sales of prepared food made up of two or more food ingredients mixed or combined by the seller for sale as a single item; plus sales of food that cannot be transferred to the purchaser without plates, bowls, glasses, cups or other utensils (for example, fountain beverages, salad bar); then

(2) Divide the numerator determined in (a)1i(1) above by the total dollar value of all sales of food and food ingredients, including prepared food, candy, dietary supplements, and soft drinks, but not including alcoholic beverages. Application of the threshold test will depend upon whether the result of that calculation is more than .75 (more than 75 percent) or .75 or less (75 percent or less); and

ii. Second, calculate the annual percentage of utensil usage as follows:

(1) The prepared food sales percentage will be calculated by the seller for each tax year or business fiscal year, based on the seller’s data from the prior tax year or business fiscal year, as soon as possible after accounting records are available, but not later than 90 days after the beginning of the tax or business fiscal year;

(2) A single prepared food sales percentage will be determined annually, for all of the seller’s establishments in the State; and

(3) A new business will make a good faith estimate of its prepared food sales percentage for its first year. A new business should adjust its good faith estimate prospectively after the first three months of operation if actual prepared food sales percentages materially affect the 75 percent threshold test.

2. Application of the 75 percent threshold test as follows.

i. For sellers with a sales percentage of 75 percent or less, utensils are considered to be “provided by the seller” if the seller’s practice for the item (as represented by the seller) is to physically give or hand the utensil to the purchaser, except that plates, bowls, glasses, or cups necessary for the purchaser to receive the food (for example, dispensed milk or salad bar) need only be made available.

ii. For sellers with a sales percentage greater than 75 percent, utensils are considered to be “provided by the seller” if they are merely made available to purchasers. Thus, utensils at a kiosk or common area are treated as utensils “provided by the seller.”

(1) For sellers who sell items that contain four or more servings packaged as one item and sold for a single price, an item does not become prepared food based on the seller having utensils available. However, if the seller physically gives or hands a utensil to the purchaser, or plates, bowls, glasses or cups are necessary for the purchaser to receive the food, then the item is considered prepared food.

New Rule, R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

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 prepared food of any nature either sold by restaurants, taverns, bars, cafeterias, and other food establishments in this State (except as provided in this subchapter), or sold by caterers.

(b) Examples of establishments engaged in the sale of food and drink for consumption on or off premises that are required to collect the tax on sales of prepared food include:

Cafes	Fast food operators	Pizzerias
Cafeterias	Fish stores that also	Restaurants
Carry-out	sell fish cooked to	Sandwich shops
restaurants	order	Snack bars
Caterers	Food sellers in work	Soda fountains, juice
Coffee bars and tea	places	bars
parlors	Hamburger and hot	Sports/entertainment
Convenience stores	dog stands	arena food sellers
Delicatessens	Ice cream stands	Sushi bars
Diners	Ice cream trucks	Taverns, grills and
Drive-in restaurants	Lunch bars, counters	bars
	and rooms	
	Lunch trucks	
	Mall food courts	
	Oyster and clam bars	

(c) Sales of food and drink through vending machines are subject to sales tax. (See N.J.A.C. 18:24-16 and 17.)

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

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

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

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

In (b), inserted a reference to Sushi Bars.

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

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

In (b), inserted “Food vendors in offices, factories and other work places” following “Fast food operators”, “Mall food courts” following “Luncheonettes”, “, juice bars” following “Soda fountains” and “Sports/entertainment arena food vendors” preceding “Sushi bars”.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Rewrote the introductory paragraph of (a); deleted (a)1 and (a)2; and rewrote (b) and (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.

18:24-12.4 Exemption for sales of food sold for human consumption off seller’s premises

(a) Receipts from the sale of food and food ingredients and dietary supplements sold for human consumption off the seller’s premises are exempt from sales tax, except for sales of candy, soft drinks and prepared food. (See N.J.A.C. 18:24-12.2.)

(b) Candy, soft drinks, and prepared food are taxable types of food and food ingredients. (See N.J.A.C. 18:24-12.2.)

(c) Alcoholic beverages are not food and food ingredients, and their retail sale is subject to sales tax.

Repeal and New Rule, R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was “Sales through vending machines”.

18:24-12.5 Receipts exempt from sales tax

(a) The tax imposed on the sale of food and drink shall not apply to the following:

1. Food and drink sold to an airline for consumption in flight;
2. Food or drink sold in an elementary or secondary school at a restaurant or cafeteria located on the premises of such schools;
3. Food or drink sold to an enrolled post secondary school student under the terms of a contractual agreement whereby the student does not pay cash when served. The sales may be made at a restaurant, tavern or other establishment on the premises of the school which is a post secondary school or in a fraternity, sorority or eating club operated in connection therewith;

Example: A student who has paid a semester charge for room and board or board alone has entered into a contractual arrangement for food and drink. The arrangement provides for a fixed number of meals over the duration of the contract, which are served in designated areas. The student is provided with identification, which entitles the student to be served meals. This plan qualifies for the exclusion.

4. Food or drink sold to an enrolled post secondary school student who is not a participant in a student food plan as described in (a)3 above at a restaurant, tavern or other establishment on the premises of the school of his or her enrollment or in a fraternity, sorority or eating club operated in connection therewith. A student purchasing

food or drink otherwise subject to the tax can be required to exhibit to the seller/cashier a valid student identification card at the time of purchase in order to document the exemption.

5. Food or drink provided as all or part of a food service project funded by government or by private non-profit organizations to certain elderly or disabled persons for:

i. Meals especially prepared for and delivered to homebound elderly, age 60 or older, and to disabled persons.

ii. Meals prepared and served at a group sitting at a location outside of the home to the otherwise homebound elderly persons, age 60 or older, and otherwise homebound disabled persons.

6. Food and drink furnished by an employer to employees for the employer's convenience where assigned a money value for purposes of: inclusion in remuneration, which is the basis for computing the employer's contribution to the unemployment insurance fund; social security; or meeting minimum wage requirements (regarding employees of hotels and restaurants). To qualify for exemption, no cash may change hands as payment for the food and drink and the assigned value of such food and drink cannot be classified as income for Federal or New Jersey income tax purposes.

7. Food or drink included in the total charges made by a rest home, residential health care facility, nursing home and boarding home licensed by the Department of Health, Department of Human Services or the Department of Community Affairs to residents for board, shelter and care.

(b) See N.J.A.C. 18:24-9.12 regarding sales of food and drink to exempt organizations.

Amended by R.1990 d.74, effective February 5, 1990.
See: 21 N.J.R. 1107(a), 22 N.J.R. 363(c).

Added new exemption at (a)5, recodified 5-7 to 6-8.
Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).
Amended by R.1998 d.288, effective June 1, 1998.
See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).

In (a)6, substituted "employer's" for "employee's" preceding "convenience" in the first sentence.

Amended by R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (a)4, substituted "(a)3" for "(a)4" and "seller" for "vendor".

18:24-12.6 Subsidized employee cafeterias and food service operations

(a) An employer who by contract or otherwise engages a caterer or food service contractor to provide food and drink or service to employees at the employer's expense is the purchaser of food and drink subject to the sales tax.

Example: Employer E provides food and drink to his employees without charge. E contracts with a food service contractor F to prepare and serve the food and drink for a

fee to be paid by E. The fee paid by E is subject to tax as a receipt from the sale of food and drink.

(b) Sales of food, drink or service to employees through a cafeteria on an employer's premises are subject to the sales tax, except as provided in N.J.A.C. 18:24-14.3(a)6.

Example: Employer E maintains a cafeteria or restaurant on his premises for the purpose of selling food and drink to his employees. The sale of the food and drink to the employees is taxable.

(c) (Reserved)

(d) If a subsidy based on individual sales of food and drink is paid by an employer in addition to a specified amount paid by the employees, both amounts are taxed as the receipt from the sale of food and drink.

Example: Employer E will pay \$0.50 to a caterer for each sale of food and drink to E's employees. E's employees will pay any amount due which exceeds the \$0.50 paid by E. Both the amount paid by the employee and the \$0.50 paid by E are taxable receipts from the sale of food and drink.

(e) The caterer or food service contractor is a seller required to collect the tax on receipts from either the employee, the employer, or both.

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

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

In (d), inserted "based on individual sales of food and drink" following "subsidy".

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (e), substituted "seller" for "vendor" and inserted "the" preceding "employer".

18:24-12.7 Gratuities and service charges

(a) Any charge made to a customer is taxable as a receipt from the sale of food or drink unless:

1. The charge is separately stated on the bill or invoice given to the customer; and
2. The charge is specifically designated as a gratuity; and
3. All such monies received are paid over in total to employees.

SUBCHAPTER 13. GARBAGE REMOVAL SERVICE

18:24-13.1 Garbage removal service on regular basis tax exempt

Garbage removal service, when performed on a regular contractual basis for a term of not less than 30 days, is not subject to tax.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was "Trash removal service on regular basis tax exempt".
Substituted "Garbage" for "Trash".

18:24-13.2 Garbage removal service defined

(a) "Garbage" means contained, bundled, or piled trash, waste, and rubbish, including, but not limited to, construction debris, discarded recyclables, hazardous waste, general household trash, restaurant food waste, medical and veterinary waste, industrial waste, metal scraps, leaves, lawn clippings, twigs and brush.

(b) "Removal" includes only the operation of picking up and physically removing contained waste from the premises and does not include activities related to maintaining or servicing property or any processing of the waste product. "Removal" does not include, for example, sweeping parking lots, plowing snow, cleaning up a construction site or septic tank cleaning.

(c) Examples of garbage removal service include, but are not limited to:

1. A private company removes trash from waste baskets located in a building and collects the trash in larger receptacles for removal from the premises;
2. A private company picks up contained garbage at a house;
3. A private company picks up contained industrial sawdust at a plant;
4. A private company picks up contained hazardous waste from a veterinary surgical facility;
5. A private company picks up stacked lawn clippings, leaves, and bundled brush from the curbs of houses;
6. A private company picks up contained recyclable paper from an office building; or
7. A private company pipes liquid waste (for example, wastewater or sludge) from a tank.

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

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

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was "Trash removal service defined". Rewrote (a); in (b), inserted quotation marks around both occurrences of "Removal", substituted "does" for "would, therefore," "plowing snow, cleaning up a" for "snow removal and", inserted ", for example," and deleted "clean-up," following "site" and "a process such as" preceding "septic"; in introductory paragraph of (c), substituted "garbage" for "trash" and ", but are not limited to" for "circumstances where" and deleted "would" preceding "include"; in (c)1, inserted "waste" and deleted "or" from the end; in (c)2, inserted "contained" and deleted "or" from the end; in (c)3, inserted "contained" and substituted a semicolon for a period at the end; and added (c)4 through (c)7.

Case Notes

Taxpayer who provided service cleaning parking lots was not engaged in integrated process of trash removal for purposes of sales and use tax

exemption where, although taxpayer used vacuum system to remove dirt from parking lots and place it in dumpsters, separate entity was responsible for removing material from dumpsters. *D. P.S. Acquisition Corp. v. Director, Div. of Taxation*, 16 N.J. Tax 292 (Tax Ct.1997).

18:24-13.3 Taxable garbage removal services

Receipts for garbage removal services are subject to sales tax when they are not performed on a regular contractual basis for a contract term of 30 days or more.

New Rule, R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

SUBCHAPTER 14. TAXABILITY OF HOSPITAL SALES AND SERVICES

18:24-14.1 Hospital sales may be exempt

N.J.S.A. 54:32B-9(b)(1) permits a hospital which has qualified as an exempt organization to make sales which are not subject to the sales and use taxes imposed under the New Jersey Sales and Use Tax Act.

18:24-14.2 Taxable hospital sales

(a) The exemption provided in N.J.A.C. 18:24-14.1 is modified by N.J.S.A. 54:32B-9(c) which provides in part that the retail sales of tangible personal property by any shop or store operated by such organization shall be subject to the tax unless the purchaser is an exempt organization.

(b) In accordance with the foregoing, the following are examples of taxable retail sales:

1. Prepared food sold to visitors; and
2. Sales of cosmetics, candy, soft drinks, souvenirs, and other similar merchandise.

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

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

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

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

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (b)1, substituted "Prepared food" for "Meals" and inserted "and"; and in (b)2, inserted "soft drinks," and a comma following "souvenirs".

18:24-14.3 Hospital sales specifically exempt

(a) The following sales by qualified hospitals are not considered retail sales subject to the sales tax. These may be considered a guide to the legislative intent with respect to exemption:

1. Drugs, medicines and meals furnished to patients and consumed on the premises;
2. Charges for medical oxygen, and human blood and its derivatives administered to patients;
3. Dressings and bandages applied in the hospital;

4. Charges for X-ray and radiation treatments, therapeutic diets and intravenous solutions furnished to patients;
5. Charges for anesthesia supplies and laboratory tests;
6. Prepared food, candy, and soft drinks sold in a cafeteria used exclusively by hospital employees; and
7. Prosthetic devices, such as braces, splints, and casts applied in the hospital.

As amended, R.1980 d.196, effective May 6, 1980.

See: 12 N.J.R. 219(a), 12 N.J.R. 354(d).

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (a)1, inserted "to"; in (a)2, inserted "medical" and "and human"; and substituted "and its derivatives" for "plasma and blood"; in (a)4, deleted "braces, splints, casts," preceding "therapeutic" and inserted "to"; in (a)5, substituted "tests" for "test"; in (a)6, substituted "Prepared food, candy, and soft drinks" for "Meals" and "; and" for a period at the end; and added (a)7.

SUBCHAPTER 15. LAUNDRY AND DRY CLEANING SERVICES

18:24-15.1 Scope of the subchapter

This subchapter is intended to explain the sales and use tax treatment of laundry and dry cleaning services. Previously exempt pursuant to section 3(b)(2)(iv), laundry and dry cleaning services became taxable, effective October 1, 2006, except as applied to clothing.

18:24-15.2 Taxability of laundry and dry cleaning services

(a) Receipts from the retail sale of laundry and dry cleaning services are subject to sales tax, except as provided in N.J.A.C. 18:24-15.3.

(b) Examples of taxable laundry and dry cleaning services include, but are not limited to: dry cleaning drapes and curtains, steam cleaning carpets, laundering hotel bed linens and towels, dry cleaning oriental rugs, steam cleaning upholstered furniture, laundering restaurant tablecloths and napkins.

18:24-15.3 Laundering, dry cleaning, and cleaning of clothing is exempt

(a) The cleaning, laundering, and dry cleaning of clothing is an exception to the taxability of laundry and dry cleaning services, and receipts for laundering and dry cleaning clothing are not taxable.

(b) Examples of nontaxable services of cleaning clothing include, but are not limited to: dry cleaning sweaters, machine washing underwear and sleepwear, hand washing shirts, cleaning leather jackets, laundering work uniforms, cleaning and shining shoes.

18:24-15.4 Rentals of linens and clothing

(a) Charges for the service of supplying non-clothing linens, such as bed linens, tablecloths, towels, mops, floor mats, and dust cloths, including picking up soiled items and replacing them with cleaned items, are taxable in full.

(b) Charges for furnishing and cleaning clothing items, such as aprons, surgeons' scrubs, janitorial uniforms, protective overshoes, hospital gowns, waiters' uniforms, and other clothing items are exempt from tax.

18:24-15.5 Receipts for use of self-service washing and drying machines

Receipts for the use of coin-operated washing machines and dryers in a self-service laundromat or laundry room are not subject to sales tax.

SUBCHAPTER 16. COIN-OPERATED VENDING MACHINES; SALES OF TANGIBLE PERSONAL PROPERTY; SALES OF FOOD AND DRINK

18:24-16.1 Tax of vending machine sales generally

In general, receipts from sales of taxable tangible personal property and receipts as defined in N.J.A.C. 18:24-16.6(c) from sales of taxable food and drink are subject to the New Jersey sales tax even where such sales are in the amount of less than \$0.11, although an amount equal to the tax is not reimbursed to the seller by the purchaser.

R.1970 d.70, effective July 1, 1970.

See: 2 N.J.R. 51(b), 2 N.J.R. 58(a).

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

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

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Substituted "sales tax" for "Sales Tax" and "seller" for "vendor".

18:24-16.2 Registration to operate vending machines

Sellers operating vending machines in the State of New Jersey must register with the New Jersey Division of Taxation to engage legally in the business of selling tangible personal property at retail, including also, food and drink of a kind the receipts from which are subject to the sales tax.

R.1970 d.70, effective July 1, 1970.

See: 2 N.J.R. 51(b), 2 N.J.R. 58(a).

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Substituted "Sellers" for "Vendors".

18:24-16.3 Registration number

One Sales Tax Registration number is sufficient for all machines of one seller.

R.1970 d.70, effective July 1, 1970.

See: 2 N.J.R. 51(b), 2 N.J.R. 58(a).

Amended by R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).
Substituted "seller" for "vendor".

18:24-16.4 Statement on vending machines

There shall be affixed upon each vending machine, in a conspicuous place, a statement in substantially the following form:

"This vending machine is operated by _____

Name of Seller

Place of Business of Seller

New Jersey Sales Tax Registration Number _____"

New Rule, R.1970 d.70, effective July 1, 1970.
See: 2 N.J.R. 51(b), 2 N.J.R. 58(a).
Amended by R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).
In the form, substituted "Seller" for "Vendor" twice.

18:24-16.5 Seller's records; contents

(a) Adequate records must be kept by the seller, showing the following:

1. The location or locations of each machine operated by him;
2. The serial number of each machine operated by him;
3. Purchases and inventories by physical units of merchandise bought for sale through all such machines;
4. The unit prices charged by the seller;
5. The gross receipts derived from the operation of each machine at each location, or the gross receipts derived from the sale of like products at each location;
6. The receipts from exempt sales;
7. The cost of all tangible personal property, food and drink, which the seller purchased for resale; and
8. The cost of all supplies of which the seller is deemed to be the ultimate consumer.

New Rule, R.1970 d.70, effective July 1, 1970.
See: 2 N.J.R. 51(b), 2 N.J.R. 58(a).
Amended by R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was "Vendor's records; contents". In the introductory paragraph of (a) and in (a)4, (a)7 and (a)8, substituted "seller" for "vendor"; and in (a)7, inserted a comma following "drink".

18:24-16.6 Tax on gross receipts

(a) Sellers operating vending machines, which dispense personal property, other than food and drink, must report and pay to the State the tax upon the gross receipts from all sales of such items made through such machines, subject to the exemptions set forth in the Sales and Use Tax Act, such as items sold through vending machines for \$0.25 or less (exempt under N.J.S.A. 54:32B-8.9 and N.J.A.C. 18:24-17).

(b) Effective January 3, 1980 (P.L. 1979, c. 274; N.J.S.A. 54:32B-3(c)(4)), sellers operating vending machines, which dispense food and beverages must report and pay to the State the tax upon vending machine sales as defined in (c) below from all sales of such items made through such machines subject to the exemptions set forth in N.J.A.C. 18:24-16.7(b) and (c).

(c) For purposes of subsection (b) above, taxable vending machine sales means the wholesale price of food and beverage which is 70 percent of the retail vending machine selling price of such food and beverage.

(d) Sellers must report total receipts from all vending machine sales and deductions of all non-taxable items including 30 percent of sales of food and drink.

(e) Example:

Receipts from sales of taxable tangible personal property	\$1,000	
Receipts from sales of milk	1,000	
Receipts from sales of food and beverages (other than milk)	8,000	
Total receipts from all vending machine sales		\$10,000
Less deductions:		
Milk	\$1,000	
30 percent of receipts from food and beverage sales (30 percent x \$8,000)	2,400	
Total deductions		3,400
Receipts subject to tax		\$ 6,600
Tax due (at 7 percent)		\$ 462

New Rule, R.1970 d.70, effective July 1, 1970.
See: 2 N.J.R. 51(b), 2 N.J.R. 58(a).
Amended by R.1991 d.557, effective November 4, 1991.
See: 23 N.J.R. 396(a), 23 N.J.R. 3345(b).
Deleted old and added new (e). Stylistic revisions.
Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).
Amended by R.2000 d.83, effective March 6, 2000.
See: 31 N.J.R. 4244(a), 32 N.J.R. 815(a).

In (a), substituted a reference to \$0.25 for a reference to \$0.10.
Amended by R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (a), substituted "Sellers" for "Vendors" and inserted a comma following the first occurrence of "machines" and following "Act"; in (b), substituted "c. 274" for "c.274" and "sellers" for "vendors", and inserted a comma following the first occurrence of "machines"; in (d), substituted "Sellers" for "Taxpayers"; and in (e), in the entry for "Tax due", substituted "7" for "6" and "462" for "396".

18:24-16.7 Tax exemptions

(a) Receipts from sales of food or drink exempted from the tax by subsection 8.2 of the Sales and Use Tax Act, are not allowable deductions from gross receipts derived from sales through vending machines.

(b) Receipts from the sale of food and drink sold through vending machines in a cafeteria of an elementary or sec-

ondary school or to students in an eating facility of an institution of higher education, fraternity, sorority and eating club operated in connection with an institution of higher education are exempt from tax only when located within such cafeteria or eating facility. Receipts from sales of food and drink through vending machines located in areas not designed by an institution of higher education as an eating facility, other than a cafeteria or eating facility, are subject to tax as provided in N.J.A.C. 18:24-16.6(c). For purposes of these rules vending machines located in areas including but not limited to student lounges, dormitories, gymnasiums, libraries, etc., are not deemed located in an eating facility.

(c) In all instances the receipts from the sales of milk through vending machines are exempt from tax.

New Rule, R.1970 d.70, effective July 1, 1970.
See: 2 N.J.R. 51(b), 2 N.J.R. 58(a).
Amended by R.1991 d.557, effective November 4, 1991.
See: 23 N.J.R. 396(a), 23 N.J.R. 3345(b).
Stylistic revisions.

Case Notes

Former subsection (b) resulting in subjection of food vending machine sales of 10 cents or less being subject to sales and use tax held invalid as not justified by statute and an impermissible amendment thereof by regulation. Automatic Merchandising Council of New Jersey v. Glaser, 127 N.J.Super 413, 317 A.2d 734 (App.Div.1974).

18:24-16.8 Purchase of vending machine contents without tax payment; resale certificate

A seller may purchase tangible personal property, food or drink for sale through coin-operated vending machines without payment of the sales tax provided he or she issued to his or her supplier a Resale Certificate, Form ST-3.

New Rule, R.1970 d.70, effective July 1, 1970.
See: 2 N.J.R. 51(b), 2 N.J.R. 58(a).
Amended by R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).
Substituted "seller" for "vendor" and inserted "or she" and "or her"

18:24-16.9 Responsibility for tax payment; amount

(a) The owner or operator of vending machines is responsible for the remittance of the Sales Tax. He must pay the tax on the total receipts, subject to statutory exemptions, without any deduction whatsoever for any expense incident to the conduct of business, such as a commission to the proprietor of the premises in which the equipment is located.

(b) The tax to be remitted to the State of New Jersey by the seller is the amount of the actual tax collected from all taxable sales, or seven percent of the taxable sales, whichever amount is greater.

New Rule, R.1970 d.70, effective July 1, 1970.
See: 2 N.J.R. 51(b), 2 N.J.R. 58(a).
Amended by R.1991 d.557, effective November 4, 1991.
See: 23 N.J.R. 396(a), 23 N.J.R. 3345(b).
In (b), tax increased from five to seven percent.
Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (b), substituted "seller" for "vendor" and "seven" for "six".

SUBCHAPTER 17. SPECIFIC RULES FOR VENDORS WHO SELL TANGIBLE PERSONAL PROPERTY THROUGH VENDING MACHINES AT 25 CENTS OR LESS

18:24-17.1 Statutory basis

N.J.S.A. 54:32B-8.9 provides that the following receipts shall be exempt from the sales tax:

"Tangible personal property sold through coin-operated vending machines at \$0.25 or less, provided the retailer is primarily engaged in making such sales and maintains records satisfactory to the Director."

Amended by R.1991 d.557, effective November 4, 1991.

See: 23 N.J.R. 396(a), 23 N.J.R. 3345(b).

Added N.J.S.A. 54:32B-8.9.

Amended by R.2000 d.83, effective March 6, 2000.

See: 31 N.J.R. 4244(a), 32 N.J.R. 815(a).

In "Tangible personal property", substituted a reference to \$0.25 for a reference to \$0.10.

18:24-17.2 Definition

The phrase "primarily engaged in making such sales," as used in N.J.S.A. 54:32B-8.9, refers to sellers engaged in making sales through coin-operated vending machines, and for this section to be applicable the seller must show that more than half of the total receipts from his or her business are derived from sales through coin-operated vending machines.

Amended by R.1970 d.70, effective July 1, 1970.

See: 2 N.J.R. 51(b), 2 N.J.R. 58(a).

Amended by R.1991 d.557, effective November 4, 1991.

See: 23 N.J.R. 396(a), 23 N.J.R. 3345(b).

Stylistic revisions.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Transposed the comma following "such sales" from outside to inside the closing quotation mark, substituted "sellers" for "vendors", "section" for "subsection" and "seller" for "vendor", and inserted "or her".

18:24-17.3 (Reserved)

Amended by R.1970 d.70, effective July 1, 1970.

See: 2 N.J.R. 51(b), 2 N.J.R. 58(a).

Amended by R.1991 d.557, effective November 4, 1991.

See: 23 N.J.R. 396(a), 23 N.J.R. 3345(b).

In (a)3i, changed cigarettes to milk. Stylistic revisions.

Amended by R.2000 d.83, effective March 6, 2000.

See: 31 N.J.R. 4244(a), 32 N.J.R. 815(a).

In (a)3ii, substituted references to \$0.25 for references to \$0.10 throughout.

Repealed by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was "Reports qualifying exemption; contents".

18:24-17.4 Tax amount payable

The amount of New Jersey sales tax payable is the net taxable receipts multiplied by .07 to effectuate application of the seven percent tax rate, or the actual tax collected, whichever is greater.

Amended by R.1970 d.70, effective July 1, 1970.

See: 2 N.J.R. 51(b), 2 N.J.R. 58(a).

Amended by R.1991 d.557, effective November 4, 1991.

See: 23 N.J.R. 396(a), 23 N.J.R. 3345(b).

Multiplication factor increased from .05 to .07; tax increased from five to seven percent.

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

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

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Substituted "sales tax" for "Sales Tax", ".07" for ".06" and "seven" for "six", and deleted "the" preceding "greater".

SUBCHAPTER 18. TAXABILITY OF MOTOR FUELS**18:24-18.1 Motor fuel exempt from Act**

(a) N.J.S.A. 54:32B-8.8 exempts sales of motor fuels as motor fuels are defined for the purposes of the New Jersey Motor Fuels Tax Law and sales of fuel to an airline for use in its airplanes or to a railroad for use in its locomotives.

(b) In accordance with (a) above sales of fuels used to propel any aircraft or motor vessel are exempt from the New Jersey sales and use tax.

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

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

SUBCHAPTER 19. SALES OF TANGIBLE PERSONAL PROPERTY AND SERVICES USED ON FARMS**18:24-19.1 Scope of rules**

N.J.A.C. 18:24-19.1 through 19.7 are intended to clarify the application of the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) to the sale, rental or leasing of tangible personal property and the sale of production and conservation services used directly and primarily in the production, handling and preservation for sale of agricultural or horticultural commodities at a farming enterprise. N.J.A.C. 18:24-19.8 is intended to clarify the application of the Act to sales of containers used in a farming enterprise and sales of commercial motor vehicles registered as farm vehicles.

New Rule, R.1971 d.195, effective November 1, 1971.

See: 3 N.J.R. 276(a), 3 N.J.R. 208(a).

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

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

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

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

Substituted a reference to this subchapter for a reference to this section, and substituted "primarily" for "exclusively" following "directly and".

Amended by R.2000 d.439, effective November 6, 2000.

See: 32 N.J.R. 2663(a), 32 N.J.R. 3997(b).

Rewrote the section.

18:24-19.2 Definitions

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

"Agricultural or horticultural commodities" means tangible personal property produced through the raising of plants or animals useful to people, with certain categories of exceptions noted below:

1. The following are examples of "agricultural and horticultural commodities":

- i. Vegetables;
- ii. Fruits, nuts and berries;
- iii. Poultry and poultry products (for example, chickens, ducks, eggs);
- iv. Game animals (for example, rabbits, quail);
- v. Dairy animals and milk (for example, cows, goats);
- vi. Grain (for example, corn, oats, wheat);
- vii. Trees (for example, shade trees, Christmas trees) and forest products (for example, timber);
- viii. Honey and other apiary products;
- ix. Fur-bearing animals and their skins and fur (for example, sheep, minks);
- x. Livestock and their meat (for example, cattle, pigs, sheep);
- xi. Horses;
- xii. Products of aquaculture (for example, tuna, oysters, waterlilies);
- xiii. Sod;
- xiv. Forage and feed crops (for example, soybeans, feed corn); and
- xv. Ornamental plants (for example, flowers, yews).

2. The following are not deemed to be "agricultural and horticultural commodities":

- i. Dogs and cats;
- ii. Microscopic organisms raised in a laboratory (for example, penicillin); and
- iii. Secondary commodities produced from agricultural or horticultural commodities (for example, jellies, ice cream, pies, wreaths, woolen fabrics, finished lumber).

“Aquaculture” means the propagation, raising and harvesting for sale of aquatic organisms, in controlled or selected environments in which the farmer must actively intervene in the rearing process in order to effect, improve or increase production for the purpose of sale.

“Automobiles” means motor vehicles designed to be used on public roadways and required to be registered as motor vehicles, other than vehicles that qualify for exemption pursuant to N.J.S.A. 54:32B-8.43(a)(1), (2) or (3). (See N.J.A.C. 18:24-7.18.)

“Conservation services” means services performed in order to conserve soil, water, soil nutrients or other natural resources useful in the production of agricultural or horticultural commodities.

1. “Conservation services” are exempt under this section only when used directly and primarily in the production, handling or preservation of agricultural or horticultural commodities for sale.

2. Following are examples of conservation services:

- i. Aerial sowing of fall cover crop in a field of growing summer crops for purposes of soil nutrient management; and
- ii. Applying mulch to growing crops during a drought to prevent moisture loss.

“Dairy farming” means the business of breeding, feeding and raising of cattle and other milk-producing animals, and the production of feed for them by the owner of such animals, but does not include operations such as the making of butter, cheese or ice cream.

“Energy” means natural gas or electricity as defined in N.J.S.A. 54:32B-2(gg).

“Farm animals” means animals that fall within the definition of “agricultural commodities” and animals that perform work used directly and primarily in production, handling and preservation for sale of agricultural and horticultural commodities.

1. The following are examples of “farm animals” as used in this subchapter:

- i. Cows raised for their milk for sale;
- ii. Pigs raised for their meat for sale;
- iii. Horses bred and raised for sale;
- iv. Draught animals used for productive farm work; and
- v. Herding dogs used by a sheep farmer.

2. The following are not examples of “farm animals” as used in this subchapter:

- i. Farmer’s pet dogs, hunting dogs, watch dogs;

- ii. Horses being boarded and trained for customers; and

- iii. Animals not raised for sale, which are used on the premises where they are maintained for purposes other than farm work, for example, trout in a stream stocked for fishermen, animals in a petting zoo, horses in a riding academy.

“Farmer” means a person who owns, operates or manages a farming enterprise for gain or profit.

“Farming enterprise” means a business or part of a business which, using land and improvements to the land, is engaged primarily in producing agricultural or horticultural commodities for sale.

1. The following are examples of “farming enterprises”:

- i. A fruit orchard that raises apples, pears and cherries for sale to the public;

- ii. A tree nursery that grows trees for sale to contractors and property owners;

- iii. A game farm that raises pheasants and other game animals for sale to butchers, supermarkets and sporting clubs;

- iv. A fish hatchery that raises fish for sale to restaurants, food stores and fish processors;

- v. A cranberry facility that grows cranberries for sale to distributors and food processors;

- vi. A greenhouse that grows flowering plants for sale to retail stores;

- vii. A sod farm that grows sod for sale to landscapers;

- viii. A poultry farm that raises chickens for their meat and eggs for sale;

- ix. A horse farm that breeds horses for sale to horse dealers and to the public;

- x. A dairy farm that raises cows in order to sell their milk;

- xi. A grain farm that produces crops for either human consumption or livestock forage; and

- xii. A vegetable farm.

2. The following are not “farming enterprises”:

- i. A horse boarding enterprise;

- ii. A horse training enterprise;

- iii. A botanical garden primarily engaged in displaying plants;

- iv. A hunting game preserve;

- v. A lake that is stocked with trout, for sporting and recreational use;
- vi. Farmers' markets, produce stores, dairy product stores, florist shops;
- vii. A kennel that raises dogs for sale; and
- viii. Rural property on which the owner may grow or raise horses, barnyard animals, flowers, vegetables and fruits primarily for his own use rather than for sale.

"Handling and preservation" means the care and maintenance of farm animals and of agricultural and horticultural commodities during production for sale and up to the point when the commodity reaches a marketable state, and the prevention of spoilage or deterioration of agricultural and horticultural commodities during and after production until they reach a marketable state.

"Production services" means services purchased by a farmer that are part of the process of planting, breeding, propagating, feeding, fertilizing, raising, or harvesting agricultural or horticultural commodities on that farmer's farming enterprise for the purpose of selling those commodities.

1. The following are examples of "production services":

- i. Plowing a field in preparation for planting;
- ii. Spraying pesticide on a sod field;
- iii. Shoeing horses used for breeding purposes;
- iv. Shearing sheep raised for their wool; and
- v. Picking and packing berries grown for sale.

2. The following are not examples of "production services":

- i. Cleaning a retail store facility operated by the farmer;
- ii. Services of repairing farm production equipment;
- iii. Grooming pet horses;
- iv. Making repairs on farm workers' housing; and
- v. Renting a storage space for farm equipment.

New Rule, R.1971 d.195, effective November 1, 1971.

See: 3 N.J.R. 276(a), 3 N.J.R. 208(a).

Amended by R.2000 d.439, effective November 6, 2000.

See: 32 N.J.R. 2663(a), 32 N.J.R. 3997(b).

Rewrote the section.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Rewrote the introductory paragraph; in definition "Production services", deleted "and" from the end of 2iii, substituted "; and" for a period at the end of 2iv; and added 2v.

Case Notes

Chemicals purchased to clean and sanitize milk processor's lines, fillers and tanks held not sales tax exempt as property used and consumed on a farm because taxpayer failed to establish that its

operation was a dairy farm, and the chemicals were not used to handle and preserve farm products on a farm premises. Tuscan Dairy Farms, Inc. v. Director, Div. of Taxation, 4 N.J.Tax 92 (Tax Ct.1982).

18:24-19.3 Scope of exemption

(a) The exemption provided by N.J.S.A. 54:32B-8.16 applies to the purchases of:

- 1. Tangible personal property;
- 2. Production services; and
- 3. Conservation services.

(b) The exemption applies only when the property or service is purchased for use or consumption directly and primarily in the production for sale, handling for sale or preservation for sale of agricultural or horticultural commodities.

(c) The exemption provided by N.J.S.A. 54:32B-8.16 applies only to purchases by the farmer of property or services to be used in that farmer's own farming enterprise.

1. The exemption does not apply to purchases by a contractor of tangible personal property to be installed on a customer's farm premises or consumed during the work performed by the contractor on that property.

2. The exemption does not apply to purchases of items used by a service provider in rendering services to a farmer, regardless of whether the services rendered will be exempt.

(d) The exemption does not apply to purchases of the following categories of tangible personal property:

- 1. Automobiles;
- 2. Energy; and
- 3. Materials used to construct a building or structure, with the following exceptions:
 - i. Silos;
 - ii. Greenhouses;
 - iii. Grain bins; and
 - iv. Manure handling facilities.

New Rule, R.1971 d.195, effective November 1, 1971.

See: 3 N.J.R. 276(a), 3 N.J.R. 208(a).

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

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

Amended by R.2000 d.439, effective November 6, 2000.

See: 32 N.J.R. 2663(a), 32 N.J.R. 3997(b).

Rewrote the section.

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

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

18:24-19.4 Direct use

(a) In order to be exempt under N.J.S.A. 54:32B-8.16, a farmer's purchase of qualified tangible personal property or

services must be used directly in the production, handling or preservation for sale of agricultural or horticultural commodities on the purchaser's farming enterprise.

(b) In determining whether a service or an item of tangible personal property is used directly for an exempt purpose, the following factors are to be considered:

1. The physical proximity of the item in question to the production, handling or preservation for sale process in which it is used;
2. The proximity of the time of use of the property or service to the time of use of other property or services employed before or after it in the production, handling or preservation of agricultural or horticultural commodities; and
3. The active causal relationship between the use of the property or service in question and the production, handling or preservation of an agricultural or horticultural commodity.

(c) Tangible personal property and services qualify for the farm use exemption when used primarily in growing agricultural or horticultural commodities, or in preserving agricultural commodities from the time of harvest until they are in a marketable state, or in maintaining farm animals or handling agricultural and horticultural commodities until they reach a marketable state.

1. Tangible personal property used in planting, propagating, growing, feeding, stimulating growth, or raising plant and animal agricultural or horticultural commodities is used directly in production for sale, for example, tilling equipment used in a vegetable farm, seeds used in a forage crop farm, fertilizer used in a sod farm, feed scoops used in a poultry farm, bull semen used in a cattle ranch, incubator used by a poultry farm. Repair and replacement parts for exempt farm equipment are also exempt from tax, but repair services are taxable.

2. Services of an outside service contractor of tilling, planting, or harvesting are used directly in production.

3. Property used to extract or separate an agricultural or horticultural commodity from farm animals, the soil, water, or plants is used directly in production, for example, milking equipment, egg collecting equipment, cherry picking devices, combines, sheep shearing tools, and ropes used by a tuna aquaculture enterprise.

4. Services of an outside service contractor of extracting agricultural or horticultural commodities from farm animals, soil, water or plants for the farmer are used directly in production, for example, picking fruit for an orchard, shearing sheep for a sheep farm, aerial spraying of pesticide on an orchard.

5. Tangible personal property or services are used directly in "handling and preservation" of agricultural or

horticultural commodities for sale when used for the following purposes:

- i. Maintaining the health of farm animals, handling and maintaining agricultural or horticultural commodities during production, and preparing them until they reach a marketable state, for example, equipment used to wash and pack fruit at a fruit orchard, ropes and harnesses used in moving livestock on a ranch, medicines for a sheep farmer's herding dog, debeakers used on a poultry farm, service of washing eggs on poultry farm, grooming and shoeing service provided for horse breeding farm; or

- ii. Preventing the spoilage or deterioration of agricultural or horticultural commodities until they reach a marketable state, for example, refrigerators to cool and preserve raw milk on a dairy farm, disinfectants to sterilize milking equipment and cans on a dairy farm, cooling equipment to preserve harvested perishable fruits on an orchard, watering equipment to maintain the freshness of balled and burlapped trees on a tree farm until shipment to market, pesticide application service to preserve horticultural products being prepared for sale by a farm.

(d) A farmer's purchase of building materials used to construct a silo, greenhouse, grain bin or manure handling facility is exempt from sales tax if the silo, greenhouse, grain bin or manure handling facility will be used directly and primarily in producing, handling or maintaining the specific varieties of agricultural or horticultural commodities raised in that farmer's farming enterprise:

1. Repair or replacement parts purchased by the farmer for such structures are also exempt.

2. Tools and equipment used to construct such structures are not exempt.

(e) Property or services used in producing secondary products, made from agricultural or horticultural commodities, are not deemed to be used "directly" in the production of an agricultural or horticultural commodity and therefore are not eligible for the farm use exemption. (However, the manufacturing equipment exemption may apply in some circumstances. See N.J.S.A. 54:32B-8.13a and N.J.A.C. 18:24-4.)

1. For example, property or services used in making butter, sausage, jellies, flour, cider, cheese, ice cream, woolen fabric, floral wreaths, herbal sachets, bees wax candles, finished lumber, furniture and other items which are made from farm products, but which are not in themselves agricultural or horticultural commodities, are not eligible for exemption under the farm use exemption provision, N.J.S.A. 54:32B-8.16.

2. Property and services used directly and primarily in producing an agricultural or horticultural commodity are exempt from tax, even though the farmer may also operate another enterprise, which is not a farming enterprise, in

which he produces and sells secondary products made from his farm products:

i. For example, a corporation which raises sheep for their wool, which it then uses to make sweaters and blankets for sale, is eligible for the farm use exemption on purchases of tangible personal property used in raising the sheep and shearing the wool;

ii. A business that raises flowers and herbs in order to produce wreaths, sachets, teas and jellies for sale is eligible for the farm use exemption on seeds, fertilizers and farming equipment used in planting, raising and harvesting the herbs and flowers.

(f) The fact that a particular item of tangible personal property or service may be essential to the conduct of a farmer's business because its use is required by law or practical necessity does not, by itself, mean that the property or service is used "directly" in production, handling or preservation for sale of agricultural or horticultural commodities.

1. Example: A vegetable farmer's purchase of a smoke alarm to install in farm workers' housing is not exempt under N.J.S.A. 54:32B-8.16 because the item is not used "directly" in production, handling or preservation of agricultural or horticultural commodities.

2. Example: A sod farmer's purchase of books, CD-Roms and other employee training materials regarding the safe use of pesticides, although necessary, is not exempt because it is not used "directly" in production.

(g) Property and services used in personal, administrative, clerical, financial, personnel management, promotional, repair, sales and other nonfarming activities are not used directly in the production, handling and preservation of agricultural and horticultural commodities and, therefore, are not eligible for the farm use exemption.

1. Following are examples of taxable tangible personal property not used "directly" in production, handling or preservation of agricultural or horticultural commodities:

i. Office furniture, equipment and supplies; books and educational materials; recordkeeping materials;

ii. Advertising and promotional materials;

iii. Equipment and supplies used in transporting products to market or to customers, or in displaying products for sale or in operating a store;

iv. Computers and software;

v. Items used to prevent or fight fires, first aid supplies, safety and accident prevention equipment; and

vi. Property used for the personal comfort or convenience of the farmer, his employees, service personnel, suppliers or customers, for example, planking for

crosswalks, beds and fans for migrant labor camp; telephones.

2. Following are examples of taxable services not used "directly" in the production, handling and preservation for sale of agricultural and horticultural commodities:

i. Repairing farming equipment;

ii. Janitorial services;

iii. Landscaping, snow removal, and grounds cleanup and maintenance services;

iv. Grooming dogs, horses and other animals kept for the farmer's personal use or enjoyment;

v. Repairing a greenhouse;

vi. Imprinting the farmer's stationery with his business logo;

vii. Direct mail processing services of promotional literature sent to potential New Jersey customers;

viii. Painting and maintaining a silo;

ix. Cleaning and repairing a grain bin;

x. Repairing a farm truck;

xi. Security services, including guard dog services and installation of alarm systems; and

xii. Boarding of horses, not used in the business of breeding and raising horses for sale.

New Rule, R.1971 d.195, effective November 1, 1971.

See: 3 N.J.R. 276(a), 3 N.J.R. 208(a).

Amended by R.1977 d.484, effective December 29, 1977.

See: 9 N.J.R. 594(a), 10 N.J.R. 81(a).

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

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

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

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

Substituted "primarily" for "exclusively" throughout; and in (f)7iii, added an exception for energy and utility service.

Repeal and New Rule, R.2000 d.439, effective November 6, 2000.

See: 32 N.J.R. 2663(a), 32 N.J.R. 3997(b).

Section was "Directly in production".

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (g)2ix, deleted "and" from the end; in (g)2x, substituted a semicolon for a period at the end; and added (g)2xi and (g)2xii.

Case Notes

Chemicals purchased to clean and sanitize milk processor's lines, fillers and tanks held not sales tax exempt as property used and consumed on a farm because taxpayer failed to establish that its operation was a dairy farm, and the chemicals were not used to handle and preserve farm products on a farm premises. *Tuscan Dairy Farms, Inc. v. Director, Div. of Taxation*, 4 N.J. Tax 92 (Tax Ct.1982).

18:24-19.5 Primary use

(a) In order to be exempt under N.J.S.A. 54:32B-8.16, a farmer's purchase of qualified tangible personal property or services must be used primarily in the production, handling

and preservation for sale of agricultural or horticultural commodities on the purchaser's farming enterprise.

(b) When a service or piece of tangible personal property is put to use in more than one way, the item of service or property is not exempt under this section unless it is used more than 50 percent of the time directly in the production, handling and preservation for sale of agricultural or horticultural commodities.

(c) Examples:

1. A farmer is in the business of raising vegetable plants for sale to garden centers and other retail sellers of plants. He buys tilling equipment which he uses to prepare the soil for planting. The equipment is used directly in the production of the horticultural commodities he raises for sale. The farmer also occasionally uses the tiller to prepare a small decorative flower border at the entrance of his farm, adjacent to the road. The tiller is used approximately 90 percent of the time in preparing the growing areas for plants raised for sale, and 10 percent in preparing the decorative border.

The tiller qualifies for exemption because it is used directly in production for sale more than 50 percent of the time.

2. A partnership breeds and raises horses for sale. It also uses a portion of its property as a boarding and training facility for customers' horses. It makes the following purchases: food additives, horse shoeing tools, grooming equipment. The food additives are used approximately 60 percent of the time in feeding the horses used for breeding for sale and 40 percent in feeding the horses being boarded; the horse shoeing tools are used approximately 75 percent of the time on the horses being bred for sale and 25 percent on the horses boarded for customers; the grooming equipment is used approximately 20 percent on the horses bred for sale, 80 percent on the horses boarded or trained for customers.

The food additives and horse shoeing tools qualify for exemption because they are used more than 50 percent of the time directly in the production, handling and preservation of an agricultural product, that is, horses, for sale. The grooming equipment does not qualify because it is used directly for exempt purposes only 20 percent of the time; its use in the boarding and training of customers' horses is not a use in the production, handling and preservation of horses for sale.

3. A corporation is in the business of operating a botanical garden. It charges the public a fee for admission to its greenhouses to view the plant collections and displays. Part of each greenhouse is used for propagating and growing plants. Most of the plants are grown for display in the portions of the greenhouses open to the public. Approximately 15 percent of the plants are grown for sale in the botanical garden's gift shop or for sale to

plant stores. The corporation is purchasing materials to construct an additional greenhouse in the complex, which will be used in the same way as the existing greenhouses.

The materials purchased to construct a greenhouse will not qualify for exemption because they will not be used more than 50 percent of the time in the production, preservation or handling of horticultural products for sale.

4. A corporation operates a tree nursery, which raises trees for sale. It uses the land adjacent to the tree nursery to operate an arboretum, which grows and maintains trees that are not for sale and provides free tours to the public. The corporation contracts with an aero-spray service to spray pesticide on the nursery and the arboretum as needed. The service is used 70 percent of the time on the tree nursery and 30 percent of the time on the arboretum.

The lump sum fee for the service is exempt, since the aero-spraying of pesticides is a production service used directly in the production and preservation of horticultural products for sale 70 percent of the time.

5. A tree nursery and landscaping business grows shade trees which it installs for its customers as part of its landscaping operation. It purchases tree seedlings, watering equipment, and digging equipment. The watering equipment is used during the growing process, and the digging equipment is used approximately 70 percent in the growing operations and 30 percent in the landscaping operations.

The purchase of the watering equipment is eligible for the farming use exemption because it is used directly in production in the nursery's farming operations. The digging equipment also qualifies for exemption because, although it is used part of the time in the landscaping operations, it is used more than 50 percent of the time, that is, primarily, in production of an agricultural commodity (trees). The seedlings are not eligible for exemption because they become the property which the business installs in its landscaping operation. When this business installs trees or performs other landscaping jobs on its customers' real property, it is acting as a contractor, rather than as a farmer. Contractors are liable for sales or use tax on the materials they install on their customers' real property.

(d) The eligibility of a particular purchase for exemption under the farm use exemption provision (N.J.S.A. 54:32B-8.16) depends upon the nature and extent of its use in the farming enterprise.

1. The fact that an item of service or tangible personal property is purchased by a farmer does not in itself make the purchase eligible for exemption.

2. Examples:

i. A vegetable farmer raises vegetables for sale. He also raises a goat, a sheep, and several ducks for the enjoyment of his family and guests, but does not sell the

animals or their products. His purchases of feed for the animals are not exempt.

ii. A neighboring farmer raises goats, sheep and ducks for their meat, milk, wool and eggs for sale. He also grows vegetables solely for his family's consumption. His purchases of fertilizer and a hoe for his vegetable garden are not eligible for exemption.

iii. Three farms maintain horses on their premises. Farm No. 1 breeds and raises horses for sale. Farm No. 2 raises corn and beans for sale, and also boards a few horses for customers. Farm No. 3 raises horticultural products for sale in a greenhouse and also has a few horses which it raised for the use and enjoyment of the farmer's family. The purchases of feed, equine medicine, and horse grooming supplies by Farm No. 1 qualify for the farm use exemption. Purchases of the same items by Farm No. 2 and Farm No. 3 are taxable, because the items are not used directly and primarily in the production, handling and preservation of horses ("agricultural product") for sale by that farm.

iv. A sod farmer grows most of his sod for sale to landscaping contractors. However, he sometimes acts as a "contractor" by supplying fully installed sod to his customers. The farmer purchased two pieces of equipment: a cutting implement used to cut and harvest mature sod for sale, and a roller used in planting and installing sod on customers' property. The cutter is eligible for the farm use exemption. The roller is not, because it is used in contracting work, not in the farming operation.

Repeal and New Rule, R.2000 d.439, effective November 6, 2000.
See: 32 N.J.R. 2663(a), 32 N.J.R. 3997(b).

Section was "Farmer's Exemption Certificate—ST-7".

18:24-19.6 Exclusions; exceptions to exclusions

(a) The exemption provided by N.J.S.A. 54:32B-8.16 does not apply to purchases of the following categories of tangible personal property, even if they are used directly and primarily in the production of agricultural and horticultural commodities:

1. Automobiles;
2. Energy; and
3. Materials used to construct a building or structure, with the exception of the following single-use agricultural facilities: silos, greenhouses, grain bins, manure handling facilities.

(b) The exclusion from exemption for materials used to construct a building or structure does not apply to farming equipment used directly and primarily in the production, handling and preservation of agricultural or horticultural commodities, even if the equipment must be permanently affixed to an existing building or structure. Purchases of such equipment are deemed to be exempt purchases of farming

equipment; they are not deemed to be purchases of materials used to construct a building or structure.

(c) Examples:

1. A vegetable farmer makes the following three purchases: a farm tractor used in preparing fields for planting, a commercial truck with manufacturer's gross vehicle weight rating over 18,000 pounds which he registers with Motor Vehicle Services as a farm vehicle, and an all-terrain vehicle which he used to transport workers and farming implements to the work site.

The all-terrain vehicle does not qualify for exemption; as an "automobile" it is excluded from the scope of the exemption. The commercial farm truck is not an "automobile." The commercial truck qualifies for exemption under the commercial truck exemption provision, N.J.S.A. 54:32B-8.43, regardless of whether it is used "directly and primarily" in production. The farm tractor, which is not required to be registered as a motor vehicle, is not an "automobile." It is farm equipment, which is exempt when used directly and primarily in production.

2. A poultry farmer purchases animal feeders which must be permanently installed onto an existing farm building.

The purchase qualifies for exemption as tangible personal property used directly and primarily in production of agricultural products.

3. A farmer who grows horticultural products in greenhouses purchases building materials which he intends to use to construct a permanent addition to his greenhouse.

The farmer's purchase qualifies for exemption as tangible personal property used directly and primarily in production. Because the materials will be used to construct a greenhouse, they are not the kind of building materials that are excluded from the scope of the exemption.

4. The same farmer hires a contractor to build a new greenhouse for him. The contractor purchases materials to construct the greenhouse for the farmer.

The contractor must pay tax on his purchase of materials. The farm use exemption is available only to the farmer and does not pass through to the contractor.

5. A farmer purchases lumber and other materials to build a barn.

The farmer must pay tax on his purchase of materials. The exemption does not apply to materials used to construct a building, with certain exceptions; barns are not among the four exceptions enumerated in the statute.

6. A farmer uses electric and gas utility services directly and primarily in some of his production activities.

The electric and gas utility services are subject to sales tax. The exemption does not apply to purchases of energy even when used directly and primarily in production.

7. A farmer purchases fuel oil and water utility services for use in his business and his home.

Oil, water, and other fuels and utilities, except natural gas and electricity, are exempt from sales tax under N.J.S.A. 54:32B-8.7. They need not be used in farming in order to qualify for exemption, and they do not fall within the definition of "energy" in N.J.S.A. 54:32B-8.16.

R.1971 d.195, effective November 1, 1971.

See: 3 N.J.R. 276(a), 3 N.J.R. 208(a).

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

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

In the exempt sales schedule, added an exception to "Fuels"; in the taxable sales schedule, inserted "Electricity" and "Natural gas used for heat and power", and added an exception to "Herd dogs"; and in the footnote, substituted "primarily" for "exclusively".

Repeal and New Rule, R.2000 d.439, effective November 6, 2000.

See: 32 N.J.R. 2663(a), 32 N.J.R. 3997(b).

Section was "Taxable and exempt items".

18:24-19.7 Farmer's Exemption Certificate: ST-7

(a) A farmer claiming exemption from sales tax pursuant to N.J.S.A. 54:32B-8.16 on a purchase of qualified tangible personal property or services must present the seller with a signed, fully completed Farmer's Exemption Certificate (ST-7) disclosing a proper basis for exemption.

(b) The Division shall relieve a seller of the tax otherwise applicable, if it obtains a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. The Division may not request from the seller renewal of blanket certificates or updates of exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this subsection, a "recurring business relationship" exists when a period of no more than 12 months elapses between sales transactions. See N.J.A.C. 18:24-10.4(g).

(c) Each sales slip or invoice based on such blanket certificate must show the farmer's name, address, and New Jersey tax registration number.

(d) The Farmer's Exemption Certificate may not be used to support claims for exemption based on provisions other than N.J.S.A. 54:32B-8.16.

New Rule, R.2000 d.439, effective November 6, 2000.

See: 32 N.J.R. 2663(a), 32 N.J.R. 3997(b).

Amended by R.2014 d.040, effective March 17, 2014.

See: 45 N.J.R. 1092(a), 46 N.J.R. 552(a).

In (a), substituted "seller" for "vendor" and "fully" for "properly"; and rewrote (b) and (c).

18:24-19.8 Other exemptions specifically for farmers

(a) Containers, wrapping supplies and packing supplies are exempt from sales and use tax when purchased by a farmer

for any use in that farmer's farming enterprise. N.J.S.A. 54:32B-8.15.

1. The use of the containers in the farming enterprise need not be "direct" or "primary" in order for the purchase to qualify for exemption.

2. Examples:

i. Crates used to store farming implements on the farm qualify for the container exemption;

ii. Returnable and nonreturnable pallets used by a sod farmer to ship sod to market qualify for the container exemption; and

iii. Burlap used to wrap the root balls of trees dug for sale on a tree farm qualify for the container exemption.

(b) The sale, rental or lease of a commercial truck, having a manufacturer's gross vehicle weight rating in excess of 18,000 pounds, and registered as a farm vehicle pursuant to N.J.S.A. 39:3-24 or N.J.S.A. 39:3-25 is exempt from sales or use tax pursuant to N.J.S.A. 54:32B-8.43(a)(3). See N.J.A.C. 18:24-7.18.

(c) A properly executed Exempt Use Certificate (ST-4) shall be used to support a claim for exemption based on (a) or (b) of this subsection.

New Rule, R.2000 d.439, effective November 6, 2000.

See: 32 N.J.R. 2663(a), 32 N.J.R. 3997(b).

18:24-19.9 Other exemptions not specifically for farming enterprises

(a) Other statutory sales tax exemptions that are not limited to specific categories of purchasers or specific types of use are available to farmers, as they are to all consumers.

(b) Following are examples of items that will be exempt from sales tax even though not used directly and primarily in the production, handling, or preservation for sale of agricultural commodities:

1. Protective equipment, such as protective masks;

2. Clothing, including work clothing, such as gloves and boots; and

3. Electronically transmitted software that is used directly and exclusively in the conduct of the farmer's business, even though not used directly and primarily in the production, handling, or preservation for sale of agricultural commodities.

New Rule, R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

**SUBCHAPTER 20. COMMERCIAL ADVERTISING
FILM NEGATIVES, ORIGINAL PRODUCTION
VIDEO TAPE, AND SIMILAR MATERIALS**

18:24-20.1 Scope of rule

This section is intended to clarify the application of the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) to the use of commercial advertising film negatives, commercial original production video tape, and similar materials stored in New Jersey.

R.1972 d.27, effective February 9, 1972.
See: 4 N.J.R. 54(b), 4 N.J.R. 12(b).

18:24-20.2 Taxability

(a) Where, after the original commercial advertising motion picture negative is finally edited and completed outside of the State of New Jersey, and after one or more duplicate negatives and/or one or more fine grain master positives are made outside the State, the original negative, with or without said dupes or fine grain masters, is or may be brought into New Jersey for various purposes, including the storage thereof, the person bringing the same into the State is subject to the New Jersey compensating use tax on the use of each of such original negatives, duplicate negatives or fine grain master positives at the time each of them is brought into the State, regardless of the nature or extent of the subsequent use of each of said original negatives, dupe negatives or fine grain master positives.

(b) Under the circumstances described in subsection (a) above, whether original negative, duplicate negative, or fine grain master positive, the State compensating use tax shall be computed upon the raw stock cost of the film, plus the cost of laboratory development of each original negative, duplicate negative or fine grain master positive brought into the State. The raw stock cost of the film is the price paid for the quantity of the film brought into the State as if unexposed. The cost of laboratory development is the compensation paid to an outside laboratory. If the development process is performed in and by the user's own laboratory and/or affiliated laboratory, the cost of laboratory development may be determined from its own records or in lieu thereof, the cost shall be the compensation charge for similar development by another outside laboratory in the same area at the time of development. Where the duplicate negative or fine grain master positive is made by an outside laboratory which also furnishes the raw stock film, the cost with respect to such duplicate negative or fine grain master positive shall be the laboratory's total charge therefor.

(c) Where, after the commercial original production video tape is finally edited and completed outside of the State of New Jersey, and after one or more original protection duplicates and/or one or more air master tapes applicable to both high band and low band video tape recording, are made outside the State, the original production video tape with or

without said original protection duplicates or air master tapes is or may be brought into New Jersey for various purposes including the storage thereof, the person bringing the same into the State is subject to the New Jersey compensating use tax on the use of such original production video tapes, original production duplicates or air master tapes at the time each of them is brought into the State regardless of the nature or extent of the subsequent use of each of said original production tapes, original protection duplicates or air master tapes.

(d) Under the circumstances described in subsection (c) of this Section, whether original production video tape, original protection duplicate or air master tape, the State compensating use tax shall be computed upon the raw stock cost of the tape plus the cost of machine time (processing of video tape) of each original production video tape, original protection duplicate or air master tape brought into the State. The raw stock cost of the tape is the price paid for the quantity of tape brought into the State without the cost of machine time. The cost of machine time is that paid to an outside laboratory. If the machine time is in and by the user's own laboratory and/or affiliated laboratory, the cost of the machine time may be determined from its own records or, in lieu thereof, the cost shall be the compensation for similar cost of machine time by another outside laboratory in the same area at the time rendered. Where the original protection duplicate or air master tape is made by an outside laboratory which also furnishes the raw stock tape, the cost with respect to such original protection duplicate or air master tape shall be the laboratory's total charge therefor.

R.1972 d.27, effective February 9, 1972.
See: 4 N.J.R. 54(b), 4 N.J.R. 12(b).

SUBCHAPTER 21. (RESERVED)

**SUBCHAPTER 22. SALES MADE BY FLOOR
COVERING DEALERS**

18:24-22.1 Scope of subchapter

This subchapter is designed to clarify the tax obligations of persons who sell and/or install floor coverings including, but not limited to, carpeting, linoleum, tile, hardwood, marble and padding.

As amended, R.1980 d.102, effective March 5, 1980.
See: 12 N.J.R. 96(b), 12 N.J.R. 224(d).
Amended by R.2003 d.348, effective August 18, 2003.
See: 35 N.J.R. 2165(a), 35 N.J.R. 3848(a).
Inserted "hardwood, marble" following "tile".

18:24-22.2 Floor covering dealer transactions

(a) "Floor covering dealer" means a person who makes retail sales of floor coverings.

(b) When an installation service is rendered in conjunction with the sale of floor coverings by a floor covering dealer, the agreement for such service is treated as a transaction separate and distinct from the sale of the floor covering. Sales of floor

coverings are, therefore, subject to the New Jersey sales and use tax regardless of whether the floor covering dealer also agrees to install the floor covering. The floor covering dealer

must collect the sales tax from his or her customer on the sales price of the floor covering.

(c) The sales tax collection obligations of a floor covering dealer/installer, who as both a seller of tangible personal property and a contractor are as follows:

1. A floor covering dealer in New Jersey is required to be registered as a seller with the New Jersey Division of Taxation and to collect tax from customers to whom it makes retail sales of floor coverings in New Jersey.

2. A floor covering dealer who installs the floor coverings that he or she sells, or who arranges for sub-contractors to install the floor coverings for him or her, is both a retail seller of floor coverings and a contractor with respect to the installation services. The dealer/contractor must collect sales tax from customers on both the sale of floor coverings and the sale of installation services.

As amended, R.1978 d.320, effective September 13, 1978.

See: 10 N.J.R. 362(a), 10 N.J.R. 457(b).

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

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

Added a new (a); recodified former (a) as (b) and rewrote the paragraph; deleted former (b).

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Deleted (a)1 and (a)2; rewrote (b); and added (c).

18:24-22.3 Installation services

(a) Every person who installs floor covering is a contractor.

1. When a floor covering dealer performs an installation service, he is required either to pay sales tax at the time supplies for use in the installation service are purchased or remit use tax upon the cost of supplies withdrawn from his sales inventory for use in the installation service. Supplies include, but are not limited to, underlayment, nails, staples, plywood strips, adhesive tape and cement.

2. A contractor who is not also a floor covering dealer is required to pay sales or use tax on the floor coverings he purchases for installation, as well as on supplies. See N.J.A.C. 18:24-5.3.

(b) Receipts for the service of installing floor covering are subject to sales tax, regardless of whether the installation results in a capital improvement. See also N.J.A.C. 18:24-5.6(b)1 and 5.16(a)6vi.

As amended, R.1978 d.320, effective September 13, 1978.

See: 10 N.J.R. 362(a), 10 N.J.R. 457(b).

As amended, R.1980 d.102, effective March 15, 1980.

See: 12 N.J.R. 96(b), 12 N.J.R. 224(d).

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

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

Rewrote the section.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Rewrote (b); and deleted (c) through (e).

18:24-22.4 (Reserved)

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

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

Repealed by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was "Floor covering when capital improvement; dealer records".

18:24-22.5 (Reserved)

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

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

In (d), substituted "properly completed Use Tax Return (Form ST-18)" for "note explaining the remittance" at the end.

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

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

In (e)1, inserted "New Jersey" preceding "sales tax"; in (h), deleted " and Mr. Frank is liable for the business personal property tax on the value of the carpet" following "installation of the carpeting".

Repealed by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was "Examples".

SUBCHAPTER 23. BAD DEBTS

18:24-23.1 Charging and remitting tax

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

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Substituted "seller" for "vendor".

18:24-23.2 Definitions

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

"Bad debt" has the same meaning as in the Federal definition at 26 U.S.C. §166, except that the amount calculated according to 26 U.S.C. §166 shall be adjusted to exclude financing charges, interest, sales or use tax charged on the purchase price, uncollectible amounts on property that remains in the seller's possession pending payment of the full purchase price, expenses incurred in attempting to collect the debt, and repossessed property.

"Claimant" means a seller seeking a deduction, credit, or refund for a bad debt.

Repeal and New Rule, R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was "Bad debts; tax refund".

18:24-23.3 Deduction for bad debt

A seller is allowed a deduction from taxable sales for bad debts.

Repeal and New Rule, R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).
Section was "Claim for refund".

18:24-23.4 Procedure for claiming credit for bad debts

(a) As seller may deduct a bad debt on the sales and use tax return for the period during which the bad debt is written off as uncollectable in the claimant's books and records and is eligible to be deducted for Federal income tax purposes. A claimant who is not required to file Federal income tax returns may deduct a bad debt on the sales and use tax filed for the period in which the bad debt is written off as uncollectable in the claimant's books and records and would have been eligible for a bad debt deduction for Federal income tax purposes if the claimant had been required to file a Federal income tax return.

(b) If a deduction is taken for bad debt and the debt is subsequently collected in whole or in part, the sales or use tax on the amount so collected must be paid and reported on the sales and use tax return filed for the period in which the collection is made.

(c) When the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within four-years from the due date of the return on which the bad debt could first be claimed.

(d) If the filing responsibilities have been assumed by a certified service provider, the service provider may claim, on behalf of the seller, any bad debt allowance provided by this section. The certified service provider must credit or refund the full amount of any bad debt allowance or refund received to the seller.

(e) For the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.

New Rule, R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

SUBCHAPTER 24. (RESERVED)

SUBCHAPTER 25. SALES OF SOFTWARE AND RELATED SERVICES

18:24-25.1 Scope

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 sales of software and software related-services. This subchapter does not address the sale of clerical, data entry, or accounting

services, etc., which may be performed with the use of software.

New Rule, R.2014 d.184, effective December 1, 2014.
See: 46 N.J.R. 690(a), 46 N.J.R. 2375(a).

Former N.J.A.C. 18:24-25.1, Definitions, recodified to N.J.A.C. 18:24-25.1A.

18:24-25.1A Definitions

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

"Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

"Custom software" means software created, written, and designed for the exclusive use of a specific purchaser and sold to the purchaser for whom it was designed. The use of development languages or prewritten functions or routines does not necessarily cause software, designed for a specific purchaser, to become taxable prewritten computer software.

"Customer support services" means verbal and written computer software advice or guidance (for example, provided via the Internet or telephone).

"Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.

"Installing" software means the act of loading an executable file, whether tangible or electronic, containing a prewritten computer software application or program onto a device or equipment. The mere act of electronic delivery does not constitute installation.

"Load-and-leave" is a method of software delivery whereby a seller or its representative installs software on a purchaser's computer by using a tangible storage medium, which is then removed and not left in the purchaser's possession.

"Modifying" software means any action, other than installing or servicing software, performed to enhance, improve, or customize software, regardless of whether the computer code is changed.

"Prewritten computer software" means any computer software, including prewritten upgrades and updates and combinations of two or more prewritten software programs, or prewritten portions thereof, that is not designed and developed to meet the unique requirements of a specific purchaser and sold to that specific purchaser for the purchaser's exclusive use.

"Servicing" software means any action to maintain the compatibility of computer software with other hardware and software products and performing other corrective services that do not involve changing computer code.

“Software maintenance contract” means a contract to provide future upgrades and/or updates to computer software and/or customer support services.

“Software subscription” means a transaction requiring additional payments for updates to prewritten computer software.

“Software term license” means a transaction in which the purchaser’s right to continue to use prewritten software is dependent on periodic payments.

“Tangible personal property” means personal property that can be seen, weighed, measured, felt, touched, or in any other way perceived by human senses. It includes prewritten computer software, regardless of whether it is delivered electronically or through tangible storage media.

Recodified from N.J.A.C. 18:24-25.1 and amended by R.2014 d.184, effective December 1, 2014.

See: 46 N.J.R. 690(a), 46 N.J.R. 2375(a).

Rewrote definition “Custom software”; added definitions “Customer support services”, “Installing”, “Modifying”, “Servicing”, and “Software maintenance contract”; in definition “Load-and-leave”, substituted “purchaser’s” for “customer’s” twice; and in definition “Prewritten computer software”, inserted “and updates” and “or prewritten portions thereof.”

18:24-25.2 Prewritten computer software taxed as tangible personal property

(a) The retail sale of prewritten computer software, including prewritten software transmitted electronically, is subject to sales or use tax unless a specific statutory exemption applies under the circumstances of the transaction.

(b) The sale of a license to use prewritten computer software is a retail sale of prewritten computer software.

18:24-25.3 Development of custom software treated as nontaxable service transaction

(a) Software created, written, and designed for the exclusive use of a specific purchaser and sold to the purchaser for whom it was created is not prewritten software.

(b) The purchase of entirely custom-made software, by the purchaser for whom it was created, is treated as the purchase of a nontaxable software design service.

18:24-25.4 Treatment of modified software

(a) The sale of prewritten software that has been modified to meet the purchaser’s special need or combined with other prewritten software is treated as the sale of prewritten software.

(b) Separately stated, commercially reasonable fees for the service of modifying prewritten software for a purchaser are not taxable.

18:24-25.5 Retail sales of electronically delivered prewritten software; business-use exemption

(a) Effective October 1, 2006, retail sales of electronically delivered prewritten software are treated as retail sales of tangible personal property.

(b) Retail sales of electronically delivered prewritten software are taxable, except as provided in this subsection.

1. Sales of electronically delivered prewritten software are exempt from sales and use tax if the software is to be used directly and exclusively in the conduct of the purchaser’s business, trade, or occupation.

2. In the following situations, software is not deemed to be delivered electronically, and therefore the business-use exemption does not apply:

i. Software delivered by “load-and-leave” method; or

ii. Purchaser receives the software in some tangible storage medium in addition to receiving it by electronic delivery.

(c) The sale of music, ringtones, movies, books, and audio and video works delivered through electronic means is not deemed to be the sale of electronically delivered software.

18:24-25.6 Treatment of software-related services

(a) Since prewritten computer software is defined as tangible personal property under the Sales and Use Tax Act, servicing, installing, or maintaining software is subject to tax pursuant to N.J.S.A. 54:32B-3(b)(2), whether the software is serviced, installed, or maintained at the purchaser’s location or from or at a seller or service provider’s remote location.

Example: Upon purchase of prewritten computer software, and for a separate additional cost, a technician goes to a customer’s business location to download (install) software to the business’s server. The charge for this installation service is subject to sales tax.

(b) Modifying prewritten computer software for a purchaser is treated as a sale of non-enumerated services and is not subject to sales tax.

Example: A computer technician creates a string of code to “bridge” two software platforms already in place at the location of the business customer. This requires the entry of computer code programming. The charge for modifying the existing software is not subject to sales tax.

(c) Customer support services are treated as a sale of a non-enumerated service and are not subject to sales tax.

Example: A software developer provides customers the opportunity to call a manned hot-line whereby customers who are experiencing issues/problems may receive verbal advice or advice by email about how to resolve their issues/problems. The charge for this service is not subject to sales tax.

(d) Clerical, data entry, or accounting services, etc., which may be performed with the use of software are not considered to be servicing software. The charge for these services is not subject to sales tax.

Example: An accountant assists one of his business customers by creating an Excel template spreadsheet that may be used as a basis for day-to-day inventory tracking. The charge for this service is clerical or professional in nature. It is not considered the servicing of software and is not subject to sales tax.

Repeal and New Rule, R.2014 d.184, effective December 1, 2014.
See: 46 N.J.R. 690(a), 46 N.J.R. 2375(a).

Section was "Treatment of maintenance contracts and software-related services".

18:24-25.7 Software maintenance contracts

(a) Software maintenance contracts are taxed as follows:

1. A software maintenance contract that only provides upgrades and updates is treated as a sale of prewritten computer software and is subject to tax regardless of whether the software is delivered on tangible storage media (for example, disk, CD-ROM) or electronically; however, if the upgrades and updates are delivered only electronically and for use directly and exclusively in the conduct of the purchaser's business, trade, or occupation, the software maintenance contract is not taxable.

2. A software maintenance contract that only provides customer support services is treated as a sale of non-enumerated services and is not subject to sales tax.

3. A software maintenance contract that includes both taxable and nontaxable or exempt products that are not separately itemized on the invoice or similar billing document is a bundled transaction and shall be treated as taxable unless the seller can demonstrate, using a reasonable and verifiable method based on its books and records as of the time of sale, the portion of the contract that is for nontaxable or exempt products. The method selected by the seller shall be binding on the purchaser.

New Rule, R.2014 d.184, effective December 1, 2014.

See: 46 N.J.R. 690(a), 46 N.J.R. 2375(a).

Former N.J.A.C. 18:24-25.7, Sourcing, recodified to N.J.A.C. 18:24-25.8.

18:24-25.8 Sourcing

(a) Sourcing of receipts from sales of prewritten computer software is governed by the following principles.

1. If prewritten computer software is received by the purchaser at a business location of the seller, the retail sale is sourced to that business location.

2. If prewritten computer software is not received by the purchaser at a business location of the seller, the retail sale is sourced to the location(s) where receipt by the purchaser occurs. Receipt may occur at multiple locations if the seller delivers the software to multiple locations. The transaction is sourced to those locations if the seller receives delivery information from the purchaser by the time of the invoice.

3. If (a)1 and 2 above do not apply, the retail sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller, that are maintained in the ordinary course of business when use of this address does not constitute bad faith.

4. If (a)1, 2 and 3 above do not apply, the retail sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the retail sale, including the address of a purchaser's payment instrument if no other address is available when this address does not constitute bad faith.

5. If (a)1, 2, 3, or 4 above of this rule do not apply, including circumstances in which the seller is without sufficient information to apply those paragraphs, then the retail sale is sourced to the jurisdiction for the address of the location from which the prewritten computer software was shipped or, if delivered electronically, was first available for transmission by the seller.

i. "First available for transmission" means the location from which the software originated.

(b) Sourcing of receipts from sales of services to prewritten software is governed by the following principles:

1. A retail sale of a computer-related service is sourced where the purchaser makes first use of the service. The purchaser may make first use of a service in more than one location; and

2. A retail sale of a post-sale support agreement, sold by the seller of software at the same time as the sale of the software itself, is sourced to the same address(es) as the retail sale of the underlying software.

(c) Sourcing of payments made in connection with a software term license or subscription is governed by the following principals:

1. Initial payments are sourced in the same manner as the sale of the software. (See (a) above.)

2. If the initial payment is sourced based on the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery known to the seller, then one of the following apply:

i. If the seller receives information from the purchaser indicating that the location of the underlying software has changed, a subsequent payment made in connection with a software term license or renewal of a software subscription is sourced to such new location; or

ii. If the seller has not received information from the purchaser indicating a change in the location of the underlying software, sourcing a subsequent license payment made in connection with a software term license or the renewal of a software subscription to the same location where the initial payment was sourced will not constitute bad faith.

Recodified from N.J.A.C. 18:24-25.7 by R.2014 d.184, effective December 1, 2014.
See: 46 N.J.R. 690(a), 46 N.J.R. 2375(a).

SUBCHAPTER 26. SOLAR ENERGY DEVICES OR SYSTEMS; EXEMPTION FROM SALES AND USE TAXATION

18:24-26.1 Scope of subchapter

This subchapter is intended to clarify the application of the Sales and Use Tax Act (N.J.S.A. 54:32B-1, et seq.) to the purchase, rental, lease or use of solar energy devices or systems designed to provide heating or cooling or electrical or mechanical power by collecting and transferring solar-generated energy and including mechanical or chemical devices for storage of solar-generated energy.

18:24-26.2 Technical sufficiency standards of solar energy systems; devices for storing solar-generated energy

The technical sufficiency standards of solar energy systems, devices for storing solar-generated energy as established and promulgated under N.J.A.C. 14:25¹ by the Department of Environmental Protection and Energy shall be used to determine eligibility for exemption from sales and use tax of such solar energy systems.

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

¹ See N.J.A.C. 14:25-1.1 et seq.

18:24-26.3 (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 "Exemption effective on or after July 1, 1978".

18:24-26.4 Procedure for exemption

For purposes of exemption from tax the purchaser of a solar energy device or system shall issue to the seller an

Exempt Use Certificate (Form ST-4). The certificate should indicate on its face that the purchase qualifies for exemption under the technical sufficiency standards of a solar energy system. (See N.J.A.C. 18:24-26.2.) The purchaser must insert the address of the property upon which the solar energy device or system will be installed. In those cases where the purchaser is not registered with the Division of Taxation a New Jersey tax identification number is not required. However, for purposes of verification either a Federal employer identification number, out-of-State tax identification number for businesses or a driver's license number for individuals purchasing for personal use is to be furnished.

Amended by R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).
Rewrote the section.

18:24-26.5 Nonexempt purchases

The exemption from tax will not apply to those devices or systems for heating or cooling, electrical or mechanical power that would be required regardless of the energy source being utilized.

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

SUBCHAPTER 27. TRANSPORTATION OF PERSONS AND OF TANGIBLE PERSONAL PROPERTY

18:24-27.1 Nontaxability of transportation services; exceptions

(a) Receipts from charges for the service of transporting persons or tangible personal property are exempt from sales and use tax, except as provided in (b) below.

(b) The following categories of transportation charges are not exempt from tax:

1. Delivery charges;
2. Charges for transportation services provided by a limousine operator; and
3. Charges for transportation or transmission of natural gas and electricity (utility service).

(c) Examples of nontaxable transportation services include, but are not limited to: transporting household belongings to a new home, bus rides, services provided to retailers to transport their merchandise to customers, free-floating balloon rides, document delivery services, taxi rides, transportation of mourners and of the deceased in connection with funeral services, train rides and ferry service.

18:24-27.2 Delivery charges

(a) "Delivery charges" means charges by the seller of tangible personal property or services for the preparation and delivery to a location designated by the purchaser of tangible personal property or the purchaser of services performed upon tangible personal property. Delivery charges include, but are not limited to, transportation, shipping, postage, handling, crating, and packing.

(b) Delivery charges are part of a "receipt" or "sales price" for the retail sale of tangible personal property delivered to a New Jersey location or for the retail sale of services performed on tangible personal property delivered to New Jersey.

1. Whether the delivery charges are separately stated on the invoice has no effect on taxability.

2. Delivery charges are not taxable if the sale itself is not taxable. When there is a taxable receipt for the retail sale of tangible personal property or services, then the amount charged for delivery to an address in New Jersey designated by the customer is part of the taxable receipt.

(c) If a shipment includes both exempt and taxable property, the seller should charge the sales tax proportionately according to either the percentage of:

1. The sales price of taxable items in the shipment compared to the total sales price of all items in the shipment; or

2. The weight of the taxable items in the shipment compared to the total weight of all items in the shipment.

Example 1: Customer makes a retail purchase of clothing from a mail order seller and has the items shipped to his home in New Jersey. Invoice is as follows:

Sweater	\$30.00
Gloves	\$10.00
Hat	\$15.00
Merchandise Total	\$55.00
Shipping	\$4.00

No sales tax will be imposed on this purchase. The purchase of clothing items is exempt from tax. Therefore the shipping charge will be exempt as well.

Example 2: New Jersey based interior designers who sell items to their customers purchase fabric from an online seller, which they will use to make curtains for a customer. The invoice is as follows:

Fabric	\$40.00
Shipping	\$5.00

Because the designers are purchasing the items for resale, they may claim a resale exemption on their purchase of the fabric that will become a physical component of curtains that they will sell to their customer. There is no tax on the fabric

or the shipping charge. Since the purchase of the fabric will be exempt from sales tax, the charge for shipping the fabric to the designer will also be exempt.

Example 3: Parents make a retail purchase from an online seller and ask to have the merchandise shipped to their son's college dormitory address in New Jersey. Invoice is as follows:

Boots	\$50.00
Backpack	\$35.00
Clock	\$15.00
Merchandise Total	\$100.00
Shipping and handling	\$6.00
N.J. sales tax	\$3.71

In this example, the tax on the shipping charge was allocated according to the proportion of the total sale that was taxable. Half of the \$100.00 sale was for taxable items (backpack and clock). Therefore sales tax was collected on the taxable merchandise and on half of the \$6.00 shipping and handling charge. (7% tax on \$50.00 merchandise is \$3.50, and 7% tax on \$3.00 handling charge is \$.21.)

18:24-27.3 Transportation services provided by limousine operators

(a) The retail sale of transportation services provided by a limousine operator and both originating and ending within New Jersey is subject to sales tax.

(b) "Limousine operator" means a person who provides prearranged passenger transportation, for consideration, not on a scheduled, regular route, and not in connection with mortuary and funeral services.

(c) A "limousine" is a motor vehicle that satisfies the following criteria:

1. Is registered pursuant to N.J.S.A. 39:3-19.5 or registered as a limousine under the laws of another state or of the United States;
2. Is used exclusively in the business of carrying passengers for hire to provide prearranged passenger transportation at a premium fare on a nonscheduled basis that is not conducted on a regular route;
3. Has a seating capacity not exceeding 14 passengers;
4. Has a seating capacity (including driver) that is not more than five persons in excess of the seating capacity at the time of manufacture; and
5. Does not include taxicabs, hotel shuttles or buses, airport shuttles or buses, buses employed solely in transporting schoolchildren or teachers to and from school, or vehicles owned and operated by a business for its own purposes without either charge to passengers or remuneration to the business, or vehicles engaged exclusively in providing ambulance services or handicapped transport.

(d) Receipts for “transportation services” include the charge for physically transporting a passenger or passengers, as well as any charges that may be itemized for amenities, individualized services, and components of the limousine operator’s overhead, which are billed to the purchaser of the transportation service.

1. Additional amounts charged, beyond the base rate, for services, amenities, and expenses, such as the following, are treated as part of the receipt for the transportation service and therefore subject to sales tax payable by the purchaser of the transportation service:

- i. Waiting time;
- ii. Meeting and greeting;
- iii. Transporting luggage or packages with the passengers;
- iv. Transporting pets with the passengers;
- v. Making extra stops;
- vi. Reimbursement of expenses incurred incident to providing the transportation service, such as tolls and parking charges;
- vii. Providing refreshments, flowers, or other amenities purchased by the operator; and
- viii. Providing access to in-vehicle television, telephone, internet service or videos.

2. Tips are treated according to the following rules:

- i. Tips that are voluntarily given by the purchaser of the transportation service to the limousine driver are not subject to sales tax;
- ii. Gratuities that are billed to the purchaser are not taxable if they are separately stated on the bill or invoice for the transportation and designated as a “gratuity” or “tip” and are paid over in their entirety to the driver; and
- iii. Gratuities that are billed to the purchaser are treated as part of the taxable receipt for transportation services if they are not paid in their entirety to the driver.

3. The following are not deemed to be receipts for transportation services provided by a limousine operator and therefore are not subject to sales tax:

- i. Cancellation and “no-show” charges; and
- ii. The transportation of tangible personal property, including packages, pets, and medical supplies and human organs, when any of these are not accompanied by a human passenger.

(e) “Services originating in New Jersey” means services in which the trip begins with pick-up of the passenger or passengers in New Jersey. The location from which the limousine is dispatched, the office location of the limousine

operator, and the purchaser’s billing address are all irrelevant to the determination of where the service originates.

Example 1: The passenger is picked up by a limousine in Hackensack, New Jersey, and dropped off at the airport in Newark. The limousine operator itemizes extra charges for luggage and for parkway tolls.

The charges are taxable because the service begins and ends in New Jersey. The extra charges for luggage and tolls are treated as part of the transportation service and therefore are taxed as well.

Example 2: The passenger is picked up by limousine in Red Bank, New Jersey, and dropped off at J.F. Kennedy Airport in New York.

The charges are not taxable, because the service ends outside New Jersey.

Example 3: A passenger is picked up in Washington, D.C., and taken to Montclair, New Jersey.

The charges are not taxable because the service originates outside New Jersey.

Example 4: A passenger contracts with a limousine operator to provide him with round trip service from his home to a meeting in Pennsylvania and back. The passenger is picked up in Cherry Hill, New Jersey, in the morning and taken to a location in Philadelphia, Pennsylvania. Then, several hours later, the passenger is taken back home to Cherry Hill.

The services provided are not taxable. The morning service is not taxable because it ends outside New Jersey, and the afternoon service is not taxable because it originates outside New Jersey.

Example 5: Three tourists staying in Morristown, New Jersey, plan a group trip to visit Ellis Island and the Statue of Liberty. They arrange for a limousine operator to take them from Morristown to the Jersey City, New Jersey ferry terminal in the morning and then to pick them up in New York City in the evening and take them back to Morristown. They are charged extra for 20 minutes of waiting time in the morning in Morristown, and for an hour of waiting time in New York City.

They are charged for two transportation services provided by a limousine operator. The service from Morristown to Jersey City, including the charge for 20 minutes of waiting time in Morristown, is taxable, because the service both originates and ends in New Jersey. The service from New York City back to Morristown, including the waiting time in New York City, is not taxable, because that service originates outside New Jersey.

Example 6: Pursuant to a reservation made in advance, a passenger is taken by limousine from Matawan, New Jersey to J.F. Kennedy Airport and is then picked up at the same airport and returned to Matawan a week later.

The charges are not taxable because the first service ends outside New Jersey and the second service originates outside New Jersey.

Example 7: A family of five arranges for limousine transportation from their home in Stockton, New Jersey. On the way they arrange to stop briefly to get a package awaiting pick-up in New Hope, Pennsylvania, and then they proceed to their destination in Cape May, New Jersey.

The charges are not taxable, because the trip does not take place entirely in New Jersey, since it includes a requested stop in Pennsylvania.

Example 8: A purchaser decides to hire a limousine to take her from her home in Cherry Hill, New Jersey, to a hospital in Camden, New Jersey, where she will be having surgery.

The charges are taxable because the trip begins and ends in New Jersey.

Example 9: A family in Belle Mead, New Jersey, arranges for a limousine service to drive their son to and from his private school in Lawrenceville, New Jersey.

The charges are taxable because the rides begin and end in New Jersey.

carrier to the purchaser's farm in Kentucky. There is no New Jersey sales or use tax due on the transaction. However, should the horse be returned to New Jersey, it may be subject to a compensating use tax.

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

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

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (b), substituted "seven" for "six"; in (c), in Example 1, substituted "\$1,050" for "\$900.00", and in Example 2, inserted "New Jersey" and "or use".

18:24-28.3 Claiming races

(a) A sale of a race horse is deemed to have occurred when it is claimed in a claiming race within New Jersey.

(b) A "claim" or purchase of a horse is made when a person acquires a horse as a result of a successful bid placed prior to a claiming race. Title is passed once the race begins.

(c) For purposes of computing the sales tax due, if no previous purchases have been made within the calendar year, the full purchase price is subject to sales tax. If previous purchases have been made in the calendar year, the sales tax is imposed only on the portion of the total purchase price that exceeds the highest of any prior purchase prices paid for the same horse within the State in the same calendar year. The sales tax is collected at the track at the time the claim is paid.

Example 1: Horse X is entered in a \$10,000 claiming race at Monmouth Park. ABC Farms claims the horse. Horse X has not been previously claimed in the same calendar year. A taxable transaction has taken place and the tax due is \$700.00.

Example 2: Same facts as Example 1, but Horse X had previously been claimed twice in the same calendar year for \$3,000 and \$5,000. A taxable transaction has taken place and the tax due is \$350.00 ($\$10,000 - \$5,000 = 5,000$; $7\% \text{ of } \$5,000 = \350.00).

Amended by R.1994 d.626, effective December 19, 1994.

See: 26 N.J.R. 4166(b), 26 N.J.R. 5035(c).

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (c), in Example 1, substituted "\$700.00" for "\$600.00", and in Example 2, substituted "\$350.00" for "\$300.00" twice and "7%" for "6%".

18:24-28.4 Compensating use tax

(a) The compensating use tax is imposed on the use of a race horse within this State if the race horse would have been subject to the sales tax when purchased in this State. The compensating use tax will not be imposed on the use of a race horse within this State if the horse was purchased by the user while a nonresident of this State. (See N.J.A.C. 18:24-28.5 regarding the term "resident".)

(b) The amount of the compensating use tax due is computed by multiplying the purchase price of the race horse by seven percent. If such horse was used outside of this State for

SUBCHAPTER 28. RACE HORSES

18:24-28.1 Scope of subchapter

This subchapter is intended to clarify the application of the New Jersey Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) to the imposition of sales and compensating use tax on race horses purchased or used within New Jersey.

18:24-28.2 Purchase of race horses

(a) The purchase of a race horse (tangible personal property) delivered to a person within New Jersey is subject to sales tax.

(b) The amount of the sales tax due is computed by multiplying the purchase price of the race horse by seven percent.

(c) The residency of the purchaser is not considered for purposes of imposing the tax where delivery is made to the purchaser in this State.

Example 1: A person purchases a race horse at an auction sale in Colts Neck. The purchase price of the horse is \$15,000. The purchaser or his agent takes delivery of the horse at the sale in Colts Neck. The sales tax due on the transaction is \$1,050.

Example 2: The facts are the same as in Example 1, except the horse is shipped by the auctioneer on a common

more than six months prior to its first use in this State, the compensating use tax is computed on the fair market value (not to exceed cost) of the race horse. Upon submission of proof that sales tax legally due another state has been paid to that state, New Jersey will allow a credit in that amount against any taxes due this State; but only if a similar credit is allowed by the other state for taxes paid in New Jersey.

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

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

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (b), substituted "seven" for "six".

18:24-28.5 Resident

(a) For the purpose of this subchapter, the following will apply for determining a resident:

1. Any individual who maintains a permanent place of abode in this State is a resident. A permanent place of abode is a dwelling place maintained by a person, or by another for him, whether or not owned by such person, on other than a temporary or transient basis. The dwelling may be a house, apartment, or flat; a room, including a room at a hotel, motel, boarding house or club; or a residence hall operated by an educational or charitable institution, or a trailer, mobile home, house boat or any other premises.

2. Any corporation incorporated under the laws of New Jersey and any corporation, association, partnership or other entity doing business in the State or maintaining a place of business in the State, or operating a hotel, place of amusement or social or athletic club in this State is a resident.

3. Any person while engaged in any manner in carrying on in this State any employment, trade, business or profession shall be deemed a resident with respect to the use in this State of tangible personal property or services in such employment, trade, business or profession.

4. A person is considered to be engaged in carrying on business within New Jersey if he carries on activity preparatory to racing, maintains a stable, or races horses on tracks within New Jersey.

5. Activities preparatory to racing are those acts of a person which enable him to pursue a racing operation, such as the possession of a license to race in New Jersey and, in conjunction therewith, the entry of horses in racing; the hiring of grooms, trainers, jockeys or drivers, and registration with a jockey club at various tracks. The possession of a license by a nonresident, which is not accompanied simultaneously by one or more of the other activities described above will not result in a resident status until one or more of the additional acts occur.

18:24-28.6 (Reserved)

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

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

Section was "Leases".

18:24-28.7 Trades

(a) Trading of horses within New Jersey is a taxable transaction for each party to the trade. Sales tax due is to be computed on the current market value of the horse accepted in trade.

(b) Trading of horses outside of New Jersey will cause the parties to the trade to be liable for a compensating use tax if they meet the resident requirements set forth in N.J.A.C. 18:24-28.5 at the time of the trade and subsequently race the horse in New Jersey. Compensating use tax is to be computed on the market value as provided in N.J.A.C. 18:24-28.4 of the horse accepted in trade.

18:24-28.8 Homebreds

(a) A horse that is raced in New Jersey by the breeder is exempt from the sales and compensating use tax. However, if a breeder transfers ownership of the horse and later reacquires the horse to race, the reacquisition is considered a taxable purchase.

(b) Upon reacquisition of the horse in New Jersey for racing purposes, a sales tax is due. If the horse is reacquired outside of New Jersey and is subsequently raced in New Jersey, the user will be subject to a compensating use tax if he met the resident requirements set forth in N.J.A.C. 18:24-28.5 at the time of reacquisition.

18:24-28.9 Syndication

(a) The syndication of a horse within New Jersey, with the exception of one used exclusively for breeding purposes, is considered a sale of the horse and is subject to the sales tax.

(b) If a horse, not used exclusively for breeding purposes, is syndicated outside of New Jersey and subsequently is used in New Jersey, the syndicate will be subject to a compensating use tax if it met the resident requirements set forth in N.J.A.C. 18:24-28.5 at the time of syndication. The qualifying residence is that of the syndicate, not of its individual members.

SUBCHAPTER 29. DISPOSABLE HOUSEHOLD PAPER PRODUCTS: EXEMPTION FROM SALES AND USE TAX

18:24-29.1 Scope of subchapter

This subchapter is intended to clarify the application of the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) to the purchase and use of disposable household paper products.

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

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

18:24-29.2 Definitions

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

“Disposable” means an item of tangible personal property which is designed to be thrown away after use.

“Household use” means of or pertaining to the house or family.

“Paper products” means items of tangible personal property made or substantially derived from paper.

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

18:24-29.3 (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 “Household cleaning agents, soaps and detergents”.

18:24-29.4 Household paper products

The sale of disposable paper products, such as paper towels, paper napkins, toilet tissue, facial tissue, diapers, paper plates and cups, purchased for household use is exempt from sales and use tax.

Example: The sale of paper place mats, paper bags, wax paper, paper freezer wrap, paper tablecloths and paper straws is exempt from sales and use tax.

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

18:24-29.5 Business use

The exemptions from sales and use tax provided by this subchapter do not apply to the sale or any use of disposable paper products for industrial, commercial or other business purposes or for the use of any person consuming them in a capacity related to such purposes.

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

SUBCHAPTER 30. (RESERVED)**SUBCHAPTER 31. URBAN ENTERPRISE ZONES ACT****18:24-31.1 General**

(a) The New Jersey Urban Enterprize Zones Act, Chapter 303, Laws of 1983, N.J.S.A. 52:27H-60 et seq., approved August 15, 1983, provides for the establishment of urban enterprise zones (also known as UEZs) in urban areas suffering from high unemployment and economic distress and

UEZ-impacted business districts. Each designation shall be for 20 years, except as otherwise designated or extended by the Authority. Zones and districts are designated by an Urban Enterprize Zone Authority. The Authority may grant certain sales tax and other tax benefits to businesses existing in or formed in enterprise zones or UEZ-impacted districts, which have met the definition of a qualified business. This subchapter of the sales tax rules sets forth the possible benefits, the necessary definitions, and the procedures for qualifying for any of these sales tax benefits.

(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).
Amended by R.1998 d.288, effective June 1, 1998.
See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).

In (a), deleted “, and the right to establish enterprise zones shall expire 10 years from August 15, 1983” at the end of the second sentence.
Amended by R.2003 d.348, effective August 18, 2003.
See: 35 N.J.R. 2165(a), 35 N.J.R. 3848(a).

Rewrote (a).

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 or UEZ-impacted district, is engaged in the active conduct of a trade or business in that zone or district; or

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

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

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

iii. Found to be low income individuals, pursuant to the Workforce Investment Act of 1998, P.L. 105-220 (29 U.S.C. § 2811).

“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.

“UEZ-impact business district” or “district” means an economically-distressed business district classified by the Authority as having been negatively impacted by two or more adjacent urban enterprise zones in which 50 percent less sales tax is collected pursuant to section 21 of P.L. 1983, c.303 (N.J.S.A. 52:27H-80).

Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).
Amended by R.2003 d.348, effective August 18, 2003.
See: 35 N.J.R. 2165(a), 35 N.J.R. 3848(a).
Rewrote the section.

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

(a) Retail sales, rentals and leases of tangible personal property (except motor vehicles and energy) to a qualified business and sales of services (except telecommunications and utility services) 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, for example, items such as office supplies, office or business equipment, office and store furnishings, trade fixtures, and cash registers. Services include installing, maintaining or repairing tangible personal property used in business (other than a motor vehicle); maintaining, servicing or repairing real property used in business, including janitorial and landscaping services; and information services used or consumed exclusively within the enterprise zone.

(c) Qualified businesses purchasing, renting or leasing tangible personal property (except motor vehicles and energy) or services (except telecommunications and utility services) to be used or consumed exclusively within the enterprise zone shall furnish to their sellers, suppliers or lessors a properly completed Urban Enterprise Exempt Purchase Certificate, subject to the provisions of P.L. 2006, c. 34, and P.L. 2007, c. 328.

(d) The benefits set forth in this section are unavailable for qualified businesses within a UEZ-impacted business district.

(e) Notwithstanding the provisions in (a)-(c) above, a qualified business may be exempt from sales and use tax on energy and utility service in accordance with the provisions in N.J.S.A. 52:27H-87.1. A qualified business may be eligible to

use an Urban Enterprise Zone – Energy Exemption Certificate (Form UZ-6), in accordance with those provisions and the instructions provided on the certificate.

Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).
Amended by R.1998 d.288, effective June 1, 1998.
See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).

In (a) and (c), inserted exceptions relating to energy and to utility service; and in (c), substituted “including janitorial services, and advertising services used or consumed exclusively within the enterprise zone” for “and “and advertising services” at the end.
Amended by R.2003 d.348, effective August 18, 2003.
See: 35 N.J.R. 2165(a), 35 N.J.R. 3848(a).

Added (d).
Amended by R.2008 d.356, effective December 1, 2008.
See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (a), inserted “, rentals” and substituted the second occurrence of “services” for “service”; in (b), inserted “and landscaping” and substituted a semicolon for a comma following “services” and “information” for “advertising”; in (c), inserted “, renting” and “, subject to the provisions of P.L. 2006, c. 34, and P.L. 2007, c. 328”, substituted “sellers” for “vendors” and deleted “UZ-5,” preceding “Urban”; and added (e).

Case Notes

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

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

(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 seller for the purpose of making retail sales, and located in a designated enterprise zone or UEZ-impacted district.

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

(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 4.8.

(d) In addition to being a qualified business, a certified seller 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 a qualified and certified seller must be made from his or her place of business within an enterprise zone or district, that is, either the purchaser must accept delivery at the seller’s place of business within an enterprise zone or district, or the seller must deliver the tangible

personal property from his or her place of business within an enterprise zone or district. Only receipts from sales, which originate and are completed by the purchaser in person at the seller's place of business within an enterprise zone or district qualify for the reduced rate of sales tax; provided, however, that after a sale has been completed within an enterprise zone or district, the seller may deliver the tangible personal property to the purchaser at a location outside an enterprise zone or district.

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.

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).

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

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

In (b), added a reference to energy; and in (e), rewrote the first sentence.

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

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

In (a), inserted "or UEZ-impacted district" following "designated enterprise zone"; in (e), inserted "or district" following "enterprise zone" throughout the introductory paragraph.

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

Section was "Partial exemption for retail sales of tangible personal property by a certified vendor". In (a), (d) and (e), substituted "seller" for "vendor" throughout; in (c), substituted "4.8" for "18:24-4.8"; in the introductory paragraph of (e), inserted "or her", substituted "seller's" for "vendor's" twice and "his or her" for "its", and inserted a comma following the first occurrence of "sales"; and deleted (f).

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, energy, 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).

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

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

Inserted a reference to energy.

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 sellers or suppliers a properly completed UZ-4, Contractor's Exempt Purchase Certificate, Urban Enterprise Zone.

(c) The benefits set forth in this section are unavailable for qualified businesses within a UEZ-impacted business district.

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

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

Added (d).

Amended by R.2008 d.356, effective December 1, 2008.

See: 40 N.J.R. 1777(a), 40 N.J.R. 6832(a).

In (b), substituted "sellers" for "vendors"; deleted former (c); and recodified former (d) as new (c).

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

SUBCHAPTER 32. LEASES AND RENTALS OF TANGIBLE PERSONAL PROPERTY

18:24-32.1 Scope of subchapter

Except where otherwise explicitly provided, the provisions of this subchapter apply to the sales and use tax treatment of leases beginning on or after October 1, 2005, the effective date of P.L. 2005, c. 126.

18:24-32.2 Definition of "lease or rental"

(a) A lease or rental is a transfer of possession or control of tangible personal property, for either a fixed or an indeterminate term and for consideration.

(b) A lease or rental does not include any of the following types of transactions:

1. Providing equipment with an operator;
2. The transfer of property under a security agreement or deferred payment plan that requires transfer of title upon completion of the required payments; or
3. The transfer of property under an agreement that requires transfer of title upon completion of the required payments and payment of an option price not exceeding the greater of \$100.00 or one percent of the total required payments.

(c) As used in this subchapter, "short-term" lease or rental agreements means those for a term of six months or less, and "long-term" lease or rental agreements means those for a term of more than six months.

18:24-32.3 Tax base and calculation of tax

(a) The tax base and method of calculating the tax, which depend upon whether the lease or rental agreement is short-term or long-term is as follows:

1. Agreements for a term of six months or less. The tax base for these short-term rentals and leases is either the total amount of the periodic payments due under the agreement, that is, the amount of rent due, or the original purchase price of the property; and

2. Agreements for a term of more than six months. The lessee pays the sales tax to the lessor either on the lessor's original purchase price of the leased property or on the total of the periodic payments required under the lease agreement.

(b) Interest or finance charges are included in the tax base when calculating the amount of tax due.

(c) The treatment of trade-ins is as follows:

1. The value of a trade-in of the same kind of property, accepted in partial payment for the lease, will reduce the tax base.

2. Reduction of the tax base through trade-in credit is available only when the lessee trades in property that is owned and not merely leased.

i. Reduction of the tax base through trade-in credit is not allowed if the lessee turns in leased or rental property for credit.

ii. Reduction of the tax base through trade-in is not allowed if the property traded in will not be held for sale (including lease or rental) by the lessor.

(d) Charges for delivering the leased property to the lessee are included in the tax base.

(e) Manufacturers' rebates and the value of manufacturers' coupons are included in the tax base.

(f) The treatment of special charges in motor vehicle leases for terms of more than six months is as follows:

1. The portion of the lease payment attributable to capitalized sales taxes is not included in the tax base;

2. The portion of the lease payment attributable to the payoff of a prior loan on a trade-in vehicle (negative equity) is not included in the tax base;

3. The portion of a lease payment attributable to the buy-out of a prior lease is not included in the tax base;

4. Acquisition fees are included in the tax base;

5. Capital cost reduction payments are included in the tax base;

6. Fees commonly known as "motor vehicle fees," which are imposed by the State, including title and registration fees, are not included in the tax base;

7. Reimbursed coupons or rebates, regardless of whether directed toward payment of up-front fees or cred-

ited as a capital cost reduction payment, are included in the tax base;

8. The allowed value of a trade-in vehicle, which was owned by the customer and is taken by the dealer for resale is credited against the tax base for purposes of computing the sales tax;

9. "Gap coverage" sold by and the premium collected by the leasing company is included in the tax base;

10. "Gap coverage" sold to the buyer directly by a third-party insurer is not included in the tax base; and

11. Other lessor charges, unless specifically excluded by rule, are included in the tax base, regardless of their designation.

18:24-32.4 Payments, collection, and remittance of tax

(a) The legal incidence of the sales tax on leases and rentals falls upon the lessee.

1. The lessee pays the tax to the lessor on short-term and long-term rentals and leases.

(b) Lessor's collection and remittance obligations are as follows:

1. The lessor must collect the sales tax from the lessee on both short-term and long-term rentals and leases;

2. The lessor must separately state the sales tax on invoices, billing slips, and similar documents given to the customer;

3. When the lease agreement is for a term of more than six months, the lessor must remit the full amount of tax due on the lease at the time of filing the monthly or quarterly sales and use tax return for the period when the leased property was delivered to the lessee in New Jersey, regardless of whether the tax is calculated on the original purchase price of the property or on the total of the periodic payments required under the lease agreement;

4. When the lease is for a term of six months or less, the lessor must charge the customer sales tax at the time of each periodic payment and must remit the tax at the time of filing the monthly or quarterly sales and use tax returns for the periods when the periodic payments are charged to the customer;

5. Since the lessor collects sales tax from the lessee on both short-term and long-term lease and rental agreements beginning on or after October 1, 2005, the Lessor Certification, Form ST-40, should no longer be used; and

6. The lessor may be held personally liable for unremitted tax.

18:24-32.5 Treatment of leases when property is relocated to or from New Jersey before expiration of the lease

(a) If property purchased outside of New Jersey for a lease or rental that originated outside this State is subsequently brought into New Jersey for use in this State, tax is due on each of the subsequent lease payments attributable to the period of the agreement remaining after the first use in this State. Lessee's tax liability is reduced by credit for sales tax paid to the state where the lease began, if the tax on the full lease was due and paid to that state at the inception of the lease, with no right of refund of that state's sales tax under that state's law.

(b) If property originally leased in New Jersey is permanently relocated to another state before the expiration of the lease, the lessee is entitled to a partial refund of the amount of sales tax paid allocable to the portion of the lease or rental that remains in effect after the property is removed from New Jersey, if the following conditions are met:

1. The state to which the property has been relocated does not provide a credit against its own sales or use tax for the tax paid on a lease that began in this State; and

2. If the state to which the property is relocated taxes leases or rentals on a lump-sum basis, it allows a corresponding partial refund when property originally leased there is subsequently relocated to New Jersey before the lease expires.

18:24-32.6 Sourcing

(a) The general rule, for leases or rentals of tangible personal property other than motor vehicles, trailers, or aircraft, or "transportation equipment" is as follows:

1. If a lease or rental does not require periodic payments, the lump sum or accelerated payment is sourced, for sales and use tax purposes, to the location where the leased property was first transferred to the lessee, that is, either to the seller's place of business or to the location of the delivery; and

2. If the lease or rental does require periodic payments, the first periodic payment and any down payment, rebate, or other taxable receipts at the inception of the lease are sourced to the primary property location. Subsequent periodic payments will also be sourced, for sales and use tax purposes, to the primary property location provided by the lessee to the lessor in good faith.

(b) Sourcing for leases and rentals of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as "transportation equipment" is treated as follows.

1. If the lease requires periodic payments, each periodic payment is sourced to the primary property location, that is, the address provided by the lessee, in good faith,

and maintained in the lessor's ordinary business records in good faith.

2. If the lease does not require periodic payments, the payment is sourced the same as a retail sale, that is, to the location where the property is delivered.

3. This subsection does not affect the requirement of collecting and remitting sales tax on an accelerated basis on leases for a term of more than six months.

(c) Sourcing for leases and rentals of "transportation equipment" is treated as follows.

1. "Transportation equipment" includes railroad cars, trucks, with a gross vehicle weight rating of 10,001 pounds or more, certain passenger buses, air carriers, and containers for all of these. It does not include passenger cars and most motor vehicles or boats.

2. Leases or rentals of transportation equipment are sourced to the location where the leased property was first transferred to the lessee, that is, either the seller's place of business or the location of delivery.

18:24-32.7 Treatment of leases that began before October 1, 2005

(a) Any leases of tangible personal property that began before October 1, 2005, continue to be treated, for sales and use tax purposes, according to the provisions of the prior law, P.L. 1989, c. 123.

1. Short-term agreements, for contract terms of 28 days or less, were called "rentals" and were treated as taxable retail transactions.

2. Longer-term agreements, for contract terms longer than 28 days, were called "leases" and were subject to use tax payable by the lessor, not the lessee.

i. The lessor had the option of calculating its use tax on either its purchase price of the property to be leased or on the total of the lease payments payable by lessee for the full term of the lease, excluding interest.

ii. The lessor's use tax had to be paid in full with the monthly or quarterly sales and use tax return for the period when the lease began.

iii. Sales tax was not payable by the lessee.

iv. New Jersey tax paid on the lease is not refundable if the leased property is relocated outside New Jersey before the lease expires.

v. Leases that began before October 1, 2005, continue to be nontaxable to the lessee (that is, the customer).

(b) Leases that are renewed after October 1, 2005, are treated as new leases, subject to the new sales and use tax

treatment of leases enacted pursuant to P.L. 2005, c. 126, effective October 1, 2005.

(c) The following is a chart summarizing the differences between prior treatment of leases and rentals under P.L. 1989, c. 123, applicable to leases beginning before October 1, 2005, and the new treatment of leases and rentals under P.L. 2005, c. 126, applicable to leases and rentals beginning on or after October 1, 2005.

	Leases and rentals beginning before October 1, 2005 (P.L. 1989, c. 123)	Leases and rentals beginning on or after October 1, 2005 (P.L. 2005, c. 126)
Terms "lease" or "rental":	Different meaning	Interchangeable
Legal incidence of tax (who is liable to pay the tax):	Lessor paid use tax on leases for terms of over 28 days, while lessee paid sales tax on rentals for terms of 28 days or less	Lessee pays sales tax, regardless of length of term
Collection of tax:	Lessor collected tax only on rentals for 28 days or less. Lessor did <u>not</u> collect tax on leases over 28 days	Lessor collects on lease/rental regardless of length of term
Threshold for determining whether tax is remitted on accelerated basis:	Term of more than 28 days	Term of more than six months
Refunds if lease property is relocated outside New Jersey before expiration of lease:	No refund	Allocated refund (certain conditions)

SUBCHAPTER 33. MASSAGE, BODYWORK, AND SOMATIC SERVICES

18:24-33.1 Scope of the subchapter

The provisions of this subchapter implement N.J.S.A. 54:32B-3(b)(9), as authorized by N.J.S.A. 54:32B-24.

18:24-33.2 Tax imposed on massage, bodywork, and somatic services

(a) Charges for the retail sale of massage, bodywork, and somatic services are subject to sales tax, except when these services are rendered pursuant to a doctor's prescription.

(b) The sales tax applies when such services are rendered in New Jersey. There is no New Jersey use tax imposed on massage, bodywork, or somatic services received outside of New Jersey.

18:24-33.3 Definition of "massage, bodywork, and somatic services"

(a) "Massage, bodywork and somatic services" means systems of activity of structured touch, which include holding, applying pressure, positioning and mobilizing soft tissue of the body by manual technique and use of visual, kinesthetic, auditory and palpating skills to assess the body for purposes of applying massage, bodywork or somatic principles. Such application may, for example, include the use of therapies, such as heliotherapy or hydrotherapy, the use of moist hot and cold external applications and external application of herbal or topical preparations.

(b) For purposes of the Sales and Use Tax Act, "massage, bodywork, and somatic services" do not include:

1. Services rendered by persons in the following medical and medical-related fields, when they are performing services they are authorized to perform within the scope of their specific professional licenses: medical doctors (M.D.), doctors of osteopathy (O.D.), dentists, chiropractors, physical therapists, registered nurses (R.N.), podiatrists (D.P.M.), certified midwives;
2. Acupuncture; or
3. Cosmetic and beauty services, such as manicures and pedicures, cosmetic facials and cosmetic wraps, depilatory services, hair styling, sauna baths, and other services that are designed primarily to enhance appearance or cleanliness.

18:24-33.4 Doctor's prescription

(a) Charges for massage, bodywork, or somatic services are not subject to sales tax if they are rendered pursuant to a doctor's prescription.

(b) To qualify for the prescription exemption from the imposition of sales tax on massage, bodywork, or somatic services, a doctor's prescription must satisfy the following requirements:

1. It must be in writing;
2. It must state the purpose of the referral and describe the conditions or needs to be addressed by the prescribed massage, bodywork, or somatic therapy;
3. It must contain the name of the patient and name and signature of the referring doctor;
4. The referring doctor must be one of the following licensed professionals: medical doctor (M.D.), osteopath (O.D.), chiropractor, podiatrist (D.P.M.), psychologist with a doctorate in psychology, or dentist; and
5. The referring doctor must be one who is providing treatment or consultation services for the patient being referred for massage, bodywork, or somatic services.

18:24-33.5 Type of facility does not affect taxability

The taxability of the services does not depend upon the type of facility where the services are performed. Massage, bodywork, and somatic services are taxable regardless of whether they are performed in a massage-only facility, a clinic, a spa, an athletic facility or other location in New Jersey, unless they are performed pursuant to a doctor's prescription.

18:24-33.6 Contracted services and employee services

(a) Massage, bodywork, and somatic therapists, masseurs, and other service providers who are employed to perform these services do not collect sales tax on their salaries.

(b) Massage, bodywork, and somatic therapists, masseurs, and other providers of these services who are paid fees by an employer to perform their services at a professional office, athletic facility, spa, clinic, or other facility as independent contractors do not collect sales tax from the facility on the fees they charge to the facility.

(c) A business, such as medical office, spa, health club, massage facility, or clinic that offers massage, bodywork, or somatic services provided by its employees or contract workers, and that bills clients for such services provided, is the "seller" of the services and must collect and remit the sales tax on the receipt for taxable massage, bodywork, and somatic services.

SUBCHAPTER 34. INVESTIGATION AND SECURITY SERVICES
18:24-34.1 Scope of the subchapter

The provisions of this subchapter implement N.J.S.A. 54:32B-3(b)(11) of the Sales and Use Tax Act, and clarify the scope of the imposition of sales tax on investigation and security services, as authorized by N.J.S.A. 54:32B-24.

18:24-34.2 Categories of investigation and security services

(a) Investigation and security services means any of the following categories of services:

1. Investigation and detective services;
2. Security guard and patrol services, including bodyguard and personal protection, guard dog, guard, patrol, and security services;
3. Armored car services; or
4. Security systems services, including security, burglar, and fire alarm installation, repair or monitoring services.

18:24-34.3 Investigation and detective services

(a) Investigation and detective services, including the services of detective agencies and private investigators, and fingerprint, polygraph, missing person tracing, and skip tracing services are subject to tax as investigation services.

(b) Such services are taxable regardless of whether the service provider has a license.

(c) Examples of services taxed as investigation and detective services include, but are not limited to:

1. Lie detection services;
2. Background checks (that is, criminal background, tenant/employee screening, employment and education verification);
3. Insurance claim investigation (whether performed by a licensed private investigator, a third-party administrator, or any other type of business);
4. Online or "real-life" research services to track down unclaimed assets; and
5. Online or "real-life" research services to track down birth parents, kidnap victims, debtors, lost pets, missing persons, or others.

(d) The following are not deemed to be investigative or detective services and are not taxable:

1. Charges by a business hired by an attorney to issue subpoenas and court summonses;
2. Skycap services performed at an airport;
3. Ticket and baggage checks to verify the passenger's identity; and
4. Insurance claim adjustment services, for example, evaluation of liability or damages, settlement negotiations, trial preparation or settlement of claim.

(e) The amount of the receipt subject to sales tax includes the fee charged for the investigation and security service, as well as any expenses and overhead costs incurred by the seller, which are passed on to the purchaser of the service, regardless of whether they are separately itemized. For examples, charges for transportation, employee, telephone and Internet and other expenses incurred by the seller and billed to the purchaser of service are subject to tax as part of the receipt for the taxable investigation and security service.

(f) Investigation and detective services are sourced for sales tax purposes to the jurisdiction where the purchaser of the service makes first use of the service. "First use" is deemed to be the location where the investigative report is delivered or, if the report is delivered electronically, to the purchaser's billing address.

(g) The service provider may claim a resale exemption from sales tax when purchasing property and services that are

actually transferred to the purchaser of the services, such as photographs, video cassettes for surveillance records, printing and copy charges related to the investigative report, and when purchasing investigative and detective services subcontracted to another service provider.

18:24-34.4 Security guard and patrol services

(a) Security guard and patrol services include, for example, bodyguard, personal protection, guard dog, guard, patrol, and security services.

(b) Security guard and patrol services are sourced to the jurisdiction where the purchaser of the service makes first use of the service. Security guard and patrol services provided for a specific location, are sourced based on the location of the property being guarded. Thus, security guard and patrol services performed at a location in New Jersey are subject to tax.

18:24-34.5 Armored car services

(a) Taxable receipts for armored car services include miscellaneous service charges, such as:

1. Armored transportation – delivery and pick up of coin and currency;
2. Excess bin charges;
3. Excess bag charges;
4. Excess skid charges;
5. Emergency armored delivery of unscheduled trips; or
6. Federal Reserve trips.

(b) An armored car service provider may charge separately for armored car services and cash management services.

(c) Separately stated, commercially reasonable charges for cash management services are not taxable.

1. Examples of cash management services include:

i. ATM cassette preparation. Unloading an ATM's cassette, verifying, counting currency, placing cash into the empty ATM cassette, reloading and sealing it;

ii. Change order preparation. Preparing coin and currency for delivery to the location of the purchaser of the service;

iii. Currency verification. Counting inbound and outbound currency to verify cash amounts;

iv. Deposit processing. Counting, verifying and consolidating (wrapping, banding and rolling) customer deposits; and

v. Envelope processing. Verifying commercial drop envelope deposits, counting currency, coin and checks

and consolidating (wrapping, banding and rolling currency and coin) for deposit.

(d) Charges for armored car services are sourced as follows. If the armored car service is performed entirely within New Jersey, it is subject to sales tax. If the service is not performed entirely within this State, then the service is sourced to the jurisdiction in which the purchaser of the service is located. Thus, if the location of the purchaser of the service is in New Jersey, regardless of whether goods are picked up or delivered to that location, the service is subject to sales tax.

18:24-34.6 Security systems services

(a) Installation of mobile or portable alarm systems, closed circuit monitors, recorders, cameras, rented or temporary alarm systems, and other alarm system installations that do not result in capital improvements are taxable pursuant to N.J.S.A. 54:32B-3(b)(2) and (11).

(b) Installations of hard-wired alarm systems and any other alarm system installations that result in a capital improvement to real property are taxable pursuant to N.J.S.A. 54:32B-3(b)(11) as security services.

(c) Alarm monitoring services have been taxable pursuant to N.J.S.A. 54:32B-(b)(11) and (3)(f).

SUBCHAPTER 35. INFORMATION SERVICES

18:24-35.1 Scope of the subchapter

This subchapter is intended to clarify the scope of N.J.S.A. 54:32B-3(b)(12) of the Sales and Use Tax Act, which imposes tax on "information services."

18:24-35.2 Taxability of information services

(a) The retail sale of information services delivered to purchasers in New Jersey is taxable.

(b) "Information services" means as defined in N.J.S.A. 54:32B-2(yy).

18:24-35.3 Information services distinguished from information-related services

(a) Information services do not include professional and personal services, such as the services of lawyers, physicians, accountants, engineers, or architects, in which the service provider may collect and review information in preparation for doing the work that is the true object of the service, such as preparation of legal briefs, medical treatment plans, tax returns, blueprints, architectural designs. These services continue to be nontaxable, because they are not deemed to fall within any of the categories of services enumerated as taxable in N.J.S.A. 54:32B-3.

(b) A business, which sells access to any type of information, other than personal or individual information, through any means (for example, an electronic database or subscription to a hard copy report) is selling an information service, because what the customer seeks in that transaction is the information itself. For example, sales of access to stock quotes, legal research resources, local property tax values, and marketing trends, through electronic databases or through subscriptions to hard copy reports, are sales of information services.

18:24-35.4 Examples of taxable information services

(a) The following are examples of information services subject to tax under N.J.S.A. 54:32B-3(b)(12):

Example 1: A business sells mailing lists, which are delivered to the customer either in hard copy, as labels, or through electronic means.

This is an information service and is subject to tax.

Example 2: A business sells credit reports both to individuals seeking their own report, and to business that will use the information for reviewing credit history.

This service is an information service and is subject to tax. The information is furnished in reports sold to persons other than the individual whose personal information is contained in the report.

Example 3: A business collects and compiles information from different sources regarding new construction projects. It provides the information to purchasers of its services in abstracts or reports. The abstracted information may be accessed from the business's website, or the purchaser can obtain the information via email or by facsimile.

This service is an information service and is subject to tax. The information is not personal or individual.

Example 4: A business maintains a computer database of statistical information, which is sold to purchasers. A purchaser pays a fee for a period of time during which the purchaser can access the information online, with the option either to view it or to download and/or print it. No disk or other information is sent to the customer.

This service is an information service and is subject to tax. The information is not personal or individual.

Example 5: A business sends severe weather alerts to a purchaser's e-mail address or mobile device. Purchasers are charged an annual fee for this service.

This service is an information service and is subject to tax. The information is not personal or individual.

Example 6: A business tracks and measures sales of drugs to pharmacies, hospitals, nursing homes and other service providers. Purchasers stipulate the parameters of their request, for example by indicating the specific drugs, the geographic area, or the time frame.

This service is an information service and is subject to tax. The fact that the purchasers customize their request by selecting the particular information to be searched does not make the information personal or individual.

Example 7: A web-based business gathers statistics concerning the characteristics and activities of internet users and publishes these statistics on its website. This information is available to anyone subscribing to the service.

This service is an information service and is subject to tax. The information is not personal or individual.

Example 8: A web-based business provides a legislative tracking service, which allows purchasers to select the type of data searched, based on their particular needs. Subscription fees are based on the number of bills tracked, the number of users, or some other means.

This is an information service and is subject to tax. The purchaser's selection of the information to be searched does not make it personal or individual information.

18:24-35.5 Examples of services that are not treated as information services

(a) The following are examples of services that are not treated as "information services" under N.J.S.A. 54:32B-3(b)(2) of the Sales and Use Tax Act because they consist of furnishing "personal" or "individual" information specific to the particular purchaser and not furnished to others:

Example 1: A service provider assembles data provided by both its purchaser and its purchaser's suppliers. The data pertains to the purchaser's transactions buying and selling telecommunication services. The data is then put into a common format and entered into a database managed by the service provider. The data used to provide the service is not made available to any other potential purchaser. The database and certain software is accessible online, only to the specific purchaser. The service provider's software allows the purchaser to view the data and manipulate and analyze the data in many different ways to help them reduce costs and maximize revenue.

The information in the database is personal or individual to the purchaser, and not furnished to others by the service provider, and therefore is not an information service, as defined in the Act.

Example 2: A business is involved in producing custom market research reports to assist its purchasers in making marketing decisions. The business develops a questionnaire specific to the needs of each individual purchaser, interviews random respondents, tabulates and analyzes the data and communicates the findings to the purchaser in a report. The business is prohibited from disclosing any part of the project to anyone else.

The information is personal or individual to each customer, it is not provided to others, and thus the service is not an information service.

Example 3: A web-based business allows purchasers to obtain up-to-date information about their own websites, such as viewers' online behavior. The information is collected by the business by embedding code into the purchaser's website design, which causes the information to be sent to the business's server. Purchasers can request reports based on their needs, such as the amount of time their customers spend viewing, length of time on the website, etc.

The information is personal or individual in nature, and thus, the service is not an information service.

Example 4: A business sells a news clipping service whereby it searches information from a variety of sources and gathers any information that mentions the purchaser's name. The information collected is provided to the customer.

The information is personal or individual to the customer, and therefore the service is not an information service.

(b) The following are examples of services that are based on information, but are not taxed as information services under N.J.S.A. 54:32B-3(b)(2):

Example 1: The principal purpose of a multiple listing service, which is available only to a real estate licensee, is to facilitate offers of cooperation and compensation between brokers.

This service is not an information service and is not subject to tax.

Example 2: As requested by purchasers of its services, a business obtains information concerning a particular piece of real property, which may include an on-site inspection of such property in order to sell a real estate appraisal to banks, mortgage companies, individuals, etc.

The appraisal service is not an information service and is not subject to tax.

Example 3: A business sells consulting services to advise purchasers of their service about their hardware and/or software needs. These services include interviewing staff to gather information and presenting a written report on findings and recommendations.

The consulting service is not an information service and is not subject to tax.

Example 4: A business sells "contract programming" services, which consist of the design, development and implementation of computer programs based on the purchaser's particular computer system.

The consulting service is not an information service and is not subject to tax.

Example 5: An attorney consults with a purchaser of his professional services, gathers information and draws up a legal document, such as a will, a contract, a power of attorney, etc.

The service is not an information service and is not subject to tax.

Example 6: A business performs environmental testing services and issues a report on factors, such as the condition of the property, levels of a particular substance or habitability.

The testing service is not an information service and is not subject to tax.

Example 7: A business sells payroll processing services, which consist of receiving employee specific information and printing pay checks, pay stubs, or similar items.

The payroll processing service is not an information service and is not subject to tax.

Example 8: A business sells court stenography services, which result in a transcript of court or other legal proceedings.

The court stenography service is not an information service and is not subject to tax.

Example 9: A business provides accident reconstruction services, which include obtaining and reviewing police reports, medical records, etc, and a physical inspection of the scene.

The accident reconstruction service is not an information service and is not subject to tax.

Example 10: A title insurance company performs a title search on real property, examines the information and determines whether to issue a title insurance policy to the purchaser.

The issuance of a title policy, which includes the pass-through of costs associated with obtaining and examining the information, is not an information service and is not subject to tax.

Example 11: A business receives orders from lawyers for the preparation of certificates to form corporations or limited liability companies. The documents are prepared, hand-delivered to Commercial Recording for filing, retrieved once they are registered, and sent to attorneys. The business also receives documents from purchasers of its service, which it submits to the State for filing.

This is not an information service and is not subject to tax.

Example 12: A company, professional organization or trade school offers educational seminars, classes or courses

attended by individuals seeking continuing education credits, required pre-licensing education, or to advance their expertise in a particular profession. Written and published educational material may or may not be distributed to participants attending these educational programs.

The educational seminar, class or course is not an information service and is not subject to tax.

(c) Fees paid to New Jersey or Federal governmental agencies to obtain documents, records, or other information, which the agency is required to maintain as part of its regulatory or administrative function are not subject to tax. Examples include:

1. Fees paid to municipal clerk's office to obtain a copy of zoning map;
2. Fees paid to police department to obtain a crime report or motor vehicle report; and
3. Fees paid to the State Division of Taxation to obtain a copy of a tax return previously filed.

SUBCHAPTER 36. SALES PRICE

18:24-36.1 Scope of the subchapter

This subchapter clarifies the application of the "sales price" definition in N.J.S.A. 54:32B-2(oo) and at N.J.A.C. 18:24-1.2.

18:24-36.2 Application of "sales price"

(a) The taxable receipt or sales price includes all taxes imposed on the seller.

1. Excise taxes, which are imposed on manufacturers, importers, producers, distributors or other sellers are included in the receipt on which sales or use tax is computed, even though the excise tax may be separately stated to the purchaser. Thus, the Federal manufacturer excise taxes imposed on the sale or lease of certain automobiles (gas guzzlers) are included in the taxable receipt, as are the excise taxes on tires, sporting goods and firearms.

2. Excise taxes, which are imposed on the purchaser are excluded from the taxable receipt; for example, the Federal retail excise taxes on heavy trucks and trailers sold at retail, and the Federal luxury tax on certain retail purchases.

(b) Expenses billed to a purchaser but incurred by a seller in making a sale of taxable goods or services, regardless of whether the expenses are taxable or nontaxable, and regardless of whether the expenses are separately billed to a purchaser, are not deductible from the receipt on which sales tax is computed.

Example 1: An equipment repairman charges \$20.00 per hour plus certain expenses when on a service call. The purchaser is billed as follows:

Repair time-2 hours @ \$20.00	\$40.00
Travel time	10.00
Parts	20.00
Meals	5.00
Sales price	\$75.00
The receipt subject to 7 % tax is \$75.00.	

Example 2: A photographer contracts with a purchaser to sell photographs at \$50.00 each in addition to the reimbursement of certain expenses. The purchaser is billed as follows:

Photographs (2) @ \$50.00	\$100.00
Model fees	60.00
Meals	10.00
Travel	25.00
Props (Flowers)	5.00
Sales price	\$200.00
The receipt subject to 7% tax is \$200.00.	

(c) Term discounts, which are given by a seller for the purpose of encouraging prompt payment on an account, known as "early payment discounts," are deductible from receipts.

Example: A seller gives a purchaser a two percent discount for paying the price of a \$100.00 camera within 10 days. If the purchaser pays within 10 days, the sales tax is to be computed on the taxable receipt of \$98.00.

Merchandise price	\$100.00
Less 2% early payment discount	2.00
Sales price	\$98.00
Sales tax at 7%	6.86
Amount due	\$104.86

(d) Discounts that represent a reduction in price, such as a trade discount, volume discount or cash and carry discount, are deductible in computing the taxable receipt.

Example 1: A seller gives a purchaser a 30 percent discount for purchasing 1,000 light bulbs. The discounted price charged is the taxable receipt. The purchaser is billed as follows:

1,000 bulbs @\$0.50	\$500.00
30% volume discount	150.00
Sales price	350.00
Sales tax at 7%	24.50
Amount due	\$374.50

Example 2: A seller gives a purchaser a 10 percent cash and carry discount. The discounted price will be the taxable receipt. The purchaser is billed as follows:

Merchandise	\$50.00
Less 10% carry and carry discount	5.00
Sales price	45.00

Sales tax at 7%	3.15
Amount due	\$48.15

(e) When a seller issues a coupon entitling a purchaser to receive a discount upon presentation, and the seller receives no reimbursement from any person, the sales tax is due from the purchaser only on the discounted price, which is the actual receipt.

Example 1: A store issues a coupon entitling the holder to purchase a product for \$0.20 less than the regular selling price. The purchaser is billed as follows:

Regular price	\$1.00
Store coupon	.20
Sales price	.80
Sales tax at 7%	.06
Amount due	\$.86

Example 2: A store issues a coupon entitling the purchaser to receive two items for the price of one. The purchaser is billed as follows:

Regular price for one item	\$1.00
Store coupon for free item	
Sales price	1.00
Sales tax at 7%	.07
Amount due	\$1.07

(f) When a seller issues a coupon entitling a purchaser to pay a reduced price on an item purchased, and the seller is reimbursed by a manufacturer, distributor, or any other third party, the tax is due on the full price of the item. The receipt is composed of the amount paid plus the amount of the coupon's stated value.

Example: A store issues a coupon labeled "mfr" entitling the holder to purchase an item for \$1.00 less than the stated purchase price. The seller would bill purchaser as follows:

Regular price	\$10.00
Sales tax at 7%	.70
Sales price	10.70
Manufacturer coupon	1.00
Amount due from purchaser	\$9.70

(g) If a manufacturer issues a coupon entitling a purchaser to pay a reduced price on an item purchased, the tax is due on the full price of the item. The receipt is composed of the amount paid and the amount of the coupon's stated value. The coupon value reflects the payment or reimbursement by another party to the seller.

Example: A manufacturer issues a coupon entitling the purchaser to purchase an item from a seller for \$0.20 less than the purchase price. The seller bills purchaser as follows:

Regular price	\$1.00
Sales tax at 7%	.07
Sales price	1.07

Less manufacturer coupon	.20
Amount due from purchaser	\$.87

(h) When a manufacturer or a seller issues a coupon involving a reimbursement but does not disclose that fact to the purchaser on the coupon or in an accompanying advertisement, the seller will collect from the purchaser only the tax due on the reduced price, but will be required to pay the tax applicable to the entire receipt, that is, the amount of the price paid and the reimbursement received from the manufacturer. The abbreviation "mfr" appearing on the coupon shall constitute adequate notice that it is reimbursable by a third party.

(i) Any allowance or credit for property of the same kind accepted in part payment by a seller on the purchase of tangible personal property and intended for resale by such seller shall be excluded when arriving at the receipt subject to tax. Only the net sales price of tangible personal property is subject to tax.

Example 1: An automobile dealer allows a purchaser a \$2,000 trade-in for a used automobile, accepted in part payment against the purchase price of \$20,000 for a new automobile. The dealer will hold the used automobile for resale. The purchaser is billed as follows:

New automobile	\$20,000
Trade in	2,000
Sales price	\$18,000
Sales tax at 7%	1,260
Amount due	\$19,260

Example 2: A motor vehicle dealer allows a customer \$500.00 for a used boat, accepted in part payment against the purchase price of \$20,000 for a new automobile. A boat is not property of the same kind as an automobile. The customer is billed as follows:

New automobile	\$20,000
Sales tax at 7%	1,400
Sales price	21,400
Trade-in	500.00
Amount due	\$20,900

(j) Any charge made by a seller of tangible personal property subject to tax for the shipping or delivery of such property is included in the receipt subject to tax, unless the property is not taxable or the sale is entitled to exemption from tax (see N.J.A.C. 18:24-27).

(k) Any charge for credit imposed by a seller and paid by a purchaser in addition to the purchase price, under a designation, such as interest, finance, or carrying charge, is not deemed to be part of the sales price of tangible personal property or charge for services rendered, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser. Such charges constitute consideration for the extension of credit and shall not be included in the receipt subject to sales tax.

Example: A seller sells furniture for \$1,000 and charges one and a half percent interest per month on the outstanding balance. Only the \$1,000 selling price is a receipt subject to tax.

(l) Charges imposed by a credit card company that are deducted from a participating seller's account are charges for financial services rendered. Such charges have no bearing on the computation of receipts subject to tax.

Example: A seller sells furniture for \$1,000. The purchaser uses a bank credit card. The bank, when remitting to the seller, deducts a five percent service charge (\$50.00). The seller is required to charge and remit tax on \$1,000.

(m) The amount of the sales price of items of property paid in or eligible for payment with food stamps issued in accordance with the Federal Food Stamp Act of 1977, 7 U.S.C. § 2011 et seq., is excluded from taxable receipts. In the case of food stamp eligible purchases, otherwise taxable items will be exempt from sales tax when food stamps are presented in full payment or when cash is submitted with food stamps used as a partial payment. Food and food ingredients exempt from sales tax under N.J.S.A. 54:32B-8.2 remain exempt whether or not purchased with food stamps.

Example: If a purchaser presents \$10.00 in food stamps and \$32.00 in cash as payment for \$42.00 worth of food stamp eligible items, the entire \$42.00 is exempt from tax. Under these facts, the exemption applies even if the \$42.00 worth of food stampable items consisted of food stamp eligible, but sales taxable, food and food ingredients, such as candy. The purchase of taxable items, which are not food stampable remains subject to sales tax.

(n) A manufacturer's rebate, whether or not paid directly to the purchaser, is not deductible from the receipt on which sales tax is computed.

Example: An automobile dealer agrees to sell an automobile to a purchaser for \$20,000. As a sales incentive, the manufacturer agrees to give a rebate of \$500.00 to a purchaser who purchases an automobile during the month of December. The purchaser elects to have the rebate paid to the dealer. The purchaser is billed as follows:

Sales price	\$20,000
Sales tax at 7%	1,400
Amount due	21,400
Manufacturer's rebate	-500.00
Net cost to purchaser	\$20,900

(o) For examples of how delivery charges affect the taxable receipt, see N.J.A.C. 18:24-27.2(d).

SUBCHAPTER 37. MEDICAL

18:24-37.1 Scope of subchapter

This subchapter provides guidance as to the scope of N.J.S.A. 54:32B-8.1 of the Sales and Use Tax Act, which

provides an exemption for drugs and certain medical equipment for human use.

18:24-37.2 Definitions

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

"Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages that is:

1. Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and any supplement to any of these publications;
2. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
3. Intended to affect the structure or any function of the body.

"Durable medical equipment" means equipment, including repair and replacement parts, but not including mobility enhancing equipment, that:

1. Can withstand repeated use;
2. Is primarily and customarily used to serve a medical purpose;
3. Is generally not useful to a person in the absence of illness or injury; and
4. Is not worn in or on the body.

"Grooming and hygiene product" means a soap or cleaning solution, shampoo, toothpaste, mouthwash, anti-perspirant, or sun tan lotion or screen, regardless of whether the item meets the definition of "over-the-counter drug."

"Home use" means that the equipment is sold to an individual for use where the individual resides. This may include residential facilities, such as a nursing home, assisted care center, or school dormitory.

"Medical purpose" means that the equipment is used for the diagnosis, treatment, or cure of disease, illness, or injury.

"Mobility enhancing equipment" means equipment, including repair and replacement parts, other than durable medical equipment, that:

1. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either at home or in a motor vehicle;
2. Is not generally used by persons with normal mobility; and

3. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

“Over-the-counter-drug” means a drug that contains a label that identifies the product as a drug, as required by 21 CFR 201.66. The label must include:

1. A “Drug Facts” panel; or
2. A statement of the “active ingredient” or “active ingredients” with a list of those ingredients contained in the compound, substance, or preparation. “Over-the-counter drug” does not include a grooming and hygiene product.

“Prescription” means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this State.

“Prosthetic device” means a replacement, corrective, or supportive device, including repair and replacement parts for same, worn on or in the body in order to:

1. Artificially replace a missing portion of the body;
2. Prevent or correct a physical deformity or malfunction; or
3. Support a weak or deformed portion of the body.

18:24-37.3 Drugs and over-the-counter-drugs

(a) Sales of drugs sold pursuant to a doctor's prescription for human use and over-the-counter-drugs when sold for human use are exempt from sales and use tax. In order to determine if an over-the-counter product is an exempt over-the-counter-drug, the label must be examined to verify that it includes a “Drug Facts” panel or a list of “active ingredients.”

(b) Categories of products may include both taxable and tax-exempt items. For example, some types or brands of bandages are exempt because they have active ingredients, while others are taxable because they do not contain active ingredients.

(c) Examples of drugs and over-the-counter-drugs, the sales of which are exempt from sales and use tax, include, but are not limited to:

1. Acne medications;
2. Analgesics (aspirin, acetaminophen, ibuprofen, ketoprofen, naproxen, etc.);
3. Analgesic heat rubs (muscle and joint);
4. Antacids;
5. Antibiotic creams and ointments;
6. Antifungal creams and ointments;

7. Antihistamines;
8. Birth control (pills, patches, IUD);
9. Burn remedies;
10. Contraceptives (gels and foams);
11. Cold and cough medications, drops, and lozenges;
12. Decongestants;
13. Dermal fillers - injectables;
14. Dialysis dialysate solution;
15. Diaper rash creams;
16. Dressings - medicated;
17. Drug solutions (ad mixture, irrigation, IV);
18. Eye drops (tears and lubricants, but not saline solution);
19. Gases (medical grade nitrous oxide, helium, air, carbon dioxide, oxygen);
20. Hydrogen peroxide;
21. Insulin;
22. Laxatives;
23. Petroleum jelly;
24. Povidone iodine (PVP);
25. Radioactive isotopes (implanted seeds);
26. Reagents;
27. Rubbing alcohol;
28. Sleeping pills;
29. Smoking cessation gums and patches;
30. Vaccines;
31. Vapor rubs; and
32. Yeast infection medications.

18:24-37.4 Grooming and hygiene products

(a) Sales of grooming and hygiene products are subject to sales and use tax.

(b) If the product meets the definition of a “drug” and is sold pursuant to a doctor's prescription, it is exempt from tax under N.J.S.A. 54:32B-8.1, as a drug.

(c) A grooming and hygiene product generally refers to personal care products purchased for non-medical reasons.

(d) Examples of grooming and hygiene products include, but are not limited to:

1. Cleaning fluids and saline solutions for contact lenses;
2. Deodorants;
3. Denture cleaners;
4. Body washes; and
5. Conditioners.

18:24-37.5 Durable medical equipment

(a) Sales of durable medical equipment for home use when sold for human use are exempt from sales and use tax.

(b) Repair and replacement parts for qualifying durable medical equipment for home use are exempt. Disposable or single use items used in conjunction with durable medical equipment are not exempt as repair or replacement parts.

(c) Charges for servicing, repairing, or maintaining qualified durable medical equipment for home use are not subject to tax. See N.J.S.A. 54:32B-3(b)(2)(ii).

(d) An exemption certificate is not required to purchase durable medical equipment for home use.

(e) Examples of durable medical equipment include, but are not limited to:

1. Apnea monitors (CPAP) - not worn on the body;
2. Aqua K pumps and therapeutic heating or cooling pads, compresses, or packs;
3. Aspirators;
4. Bed pans, commodes, urinals, collection bags;
5. Bed pads (alternating pressure pads);
6. Billie lights;
7. Blood glucose monitoring machines;
8. Blood pressure machines and cuffs;
9. Cardiology and cardiopulmonary equipment;
10. Defibrillators (portable automatic - external) and cables;
11. Enteral - feeding bags, feeding connectors, feeding tubing, pumps - not worn on the body;
12. Heat lamps;
13. Heating pads;
14. Hospital beds and accessories;
15. Ice packs;

16. Intravenous stands and IV poles;
17. IV therapy arm boards - reusable;
18. Kinetic therapy beds;
19. Medical monitoring equipment;
20. Mini dopplers;
21. Monitors;
22. Nebulizers;
23. Ophthalmoscopes;
24. Oscopes;
25. Oxygen concentrators, regulators, tents, and face masks;
26. Overbed table and tray;
27. Percussors;
28. Programmable drug infusion device;
29. Resuscitators - reusable;
30. Speech aids - electronic;
31. Stethoscopes;
32. Suction machines;
33. TENS units - not worn on the body;
34. Thermometers (oral, rectal, ear, etc.) - reusable;
35. Traction equipment;
36. Ventilators; and
37. Kidney dialysis equipment.

(f) Items commonly used by people without a medical condition are not exempt as durable medical equipment.

Examples include, but are not limited to:

1. Air conditioners;
2. Bed wedges;
3. Dehumidifiers;
4. Humidifiers;
5. Cubicle curtains;
6. Exercise equipment;
7. Massagers;
8. Pillows and blankets;
9. Reaching aids;
10. Scales; and
11. Specimen containers

18:24-37.6 Mobility enhancing equipment

(a) Sales of mobility enhancing equipment when sold for human use and pursuant to a doctor's prescription are exempt from sales and use tax.

(b) Charges for equipment and labor to modify a vehicle post-production to make it handicapped accessible are exempt from tax.

(c) Repair and replacement parts for qualifying mobility enhancing equipment are exempt from tax.

(d) Charges for servicing, repairing, or maintaining qualified mobility enhancing equipment are not subject to tax. See N.J.S.A. 54:32B-3(b)(2)(ii).

(e) Examples of mobility enhancing equipment include, but are not limited to:

1. Adjustable height toilet seats;
2. Bath aids (raised toilet seat, tub, and shower stool);
3. Canes;
4. Chair lifts;
5. Crutches;
6. Hand rails and grab bars;
7. Lift chairs;
8. Patient lifts (bed, bathtub, etc.);
9. Scooters and transporters;
10. Specialty chairs;
11. Slings to lift patients;
12. Swivel seats;
13. Trapeze bars, bed pull-up T;
14. Transfer belts, benches, and chairs;
15. Walkers;
16. Wheelchairs (including batteries, cushions, and safety belts); and
17. Wheelchair ramps (portable).

(f) Purchases of items by a private business for use by on-site customers are subject to tax. Examples include, but are not limited to:

1. A wheelchair purchased by a casino to be used by customers while visiting the casino; and
2. A scooter purchased by a store that will be used by customers while shopping.

18:24-37.7 Prosthetic devices

(a) Sales of prosthetic devices when sold for human use are exempt from sales and use tax.

(b) Repair and replacement parts for qualifying prosthetic devices are exempt from tax.

(c) Charges for servicing, repairing, or maintaining qualified prosthetic devices are not subject to tax. See N.J.S.A. 54:32B-3(b)(2)(ii).

(d) Examples of prosthetic devices include, but are not limited to:

1. Abdominal belts, binders, and supports;
2. Access ports;
3. Apnea monitors (CPAP) - worn on the body;
4. Arm slings;
5. Arterial prostheses (artificial arteries implanted into humans);
6. Acetabular cups;
7. Anti-embolism stocking;
8. Artificial eyes, heart valves, larynx, limbs, valves;
9. Atrial valves;
10. Bone cement and wax;
11. Bone growth stimulator - external or implanted;
12. Bone pins, plates, nails, screws;
13. Braces (dental, back, ankle);
14. Breast prosthesis - external;
15. Casts, foam padding inside any part of cast;
16. Catheters (foley, feeding, drainage, ostomy, urinary, dialysis);
17. Cervical collars;
18. Cochlear implant devices;
19. Collagen implants;
20. Colostomy devices;
21. Corrective eyeglasses and contact lenses including non-prescription reading glasses;
22. Defibrillator and leads - implanted;
23. Dentures and dental prosthesis;
24. Drainage drains, shunts;
25. Grafts (vascular, Dacron);

26. Gastric bands;
27. Head halters;
28. Hearing aids and batteries;
29. Implanted expander;
30. Infuser pumps - worn on the body;
31. Insulin pumps;
32. Implants (breast, ear, nose, throat, hands, feet, hip, knee, membranes (neuro, spinal, joint), ocular, orbital, orthobiologics, shoulder, elbows, synthetic skin, cochlear, tendon, testicular, and penile);
33. Intra-gastric balloons;
34. Knee immobilizers;
35. Mastectomy surgical bras;
36. Maxillofacial devices - implanted;
37. Orthopedic shoes, shoe lifts, inserts, arch supports, heel protector;
38. Ostomy products (adhesives, barriers, collection bag and pouches, drain tube and valve, tubing, hernia belt);
39. Pacemakers and leads - worn on the body;
40. Penile pumps;
41. Pressure garments (edema gloves, mast pants, burn garments);
42. Programmable drug infusion devices - worn on the body;
43. Slings;
44. Speech aids (electronic) - worn on the body;
45. Splints;
46. Staples and sutures;
47. Stents;
48. Surgical mesh implants;
49. TENS units - worn on body;
50. Trachea tubes;
51. Tracheostomy speaking valve;
52. Traction devices (cervical, pelvic) - worn on the body;
53. Trusses; and
54. Vena cava filters.

18:24-37.8 Other statutory exemptions

(a) Sales of the following when sold for human use are exempt from sales and use tax:

1. Diabetic supplies;
2. Tampons and like products;

3. Medical oxygen; and
4. Human blood and its derivatives.

18:24-37.9 Purchases by medical service providers

(a) Supplies are taxable when purchased for use in providing medical services for compensation and not transferred to the purchaser of the service.

1. "Transferred to the purchaser" means that the patient must actually leave the hospital, medical, office, etc. with the property.

2. Examples of supplies that are not transferred to the purchaser include:

- i. Cotton balls;
- ii. Tongue depressors; and
- iii. Hypodermic needles and syringes.

(b) Qualified nonprofit, Federal, State, or local government owned and operated hospitals and nursing homes may purchase supplies and other tangible personal property, such as durable medical equipment and mobility enhancing equipment, which will be utilized for their own use without the payment of tax by issuing the seller a copy of the organization's Exempt Organization Certificate (Form ST-5) and paying with organizational funds. Governmental purchasers may document the exemption by issuing a valid purchase order or contract signed by an authorized officer and paying with government funds. See N.J.S.A. 54:32B-9. For example, a non-profit hospital that has applied for and received Form ST-5 from the Division may purchase a wheelchair to be utilized by patients while staying at the hospital without the payment of tax. The exempt organization is required to issue Form ST-5 to the seller and make payment with organizational funds.

(c) A nursing home, hospital, or other medical service provider may purchase tangible personal property that will be resold to a patient without the payment of tax by issuing a fully completed resale certificate to the seller. The nursing home, hospital, or other medical service provider will not collect tax from the patient if the tangible personal property is exempt from tax.

18:24-37.10 Purchases or reimbursement of property by Medicaid or Medicare

(a) Direct purchases by the Federal government are exempt from tax. See N.J.S.A. 54:32B-9(a). For example, if the Federal government (for example, Medicaid or Medicare) is directly purchasing property, no tax is due, regardless of whether or not the property meets the N.J.S.A. 54:32B-8.1 exemption.

(b) The purchase of property reimbursed by the Federal government (for example, Medicaid or Medicare) is subject to tax unless the property meets N.J.S.A. 54:32B-8.1, as N.J.S.A. 54:32B-9(a) is not applicable.