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

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

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 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 has performed any

of the taxable services enumerated in Sections 5.6, 5.7 and 5.8 of this Chapter.

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. In general, a contractor who accepts a Certificate of Exempt Capital Improvement in "good faith" is relieved of liability for collection or payment of tax upon transactions covered by the certificate. In order to establish "good faith", the following conditions must be met:

- (1) The certificate must contain no statement or entry, which the contractor knows is false or misleading;
- (2) The certificate must be an officially promulgated form or a substantial and proper reproduction, including electronic copies of certificates;
- (3) The certificate must be dated and filled out completely in accordance with the published instructions; and
- (4) The certificate must include the purchaser's New Jersey tax identification number or, for a purchaser not registered in New Jersey, the Federal employer identification number or out-of-State registration number. Individual, nonbusiness purchasers must include their driver's license numbers.

vii. The contractor may, therefore accept this "good faith" Certificate of Exempt Capital Improvement as a basis for not collecting sales tax with respect to service or labor charges.

viii. The contractor may not accept a Certificate of Exempt Capital Improvement for landscaping services, floor covering installation, or installation of alarm or security systems.

ix. 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 vendors 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 vendors. "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 records and may then issue a Contractor's Exempt Purchase Certificate (Form ST-13) to his suppliers to document his 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.

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;

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 business 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 in good faith by a motor vehicle dealer as a basis for exemption from any tax imposed by the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) shall be retained by said dealer for a period of not less than 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).

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.

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 properly 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".

18:24-10.3 Responsibility

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

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".

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 in good faith

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

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

(c) 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.

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.

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 Disclosure of proper exemption basis

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

1. The certificate must be an official form or a substantial and proper reproduction, thereof, including electronic certificates.

2. The certificate must be dated and executed in accordance with the instructions published for its use, must be filled out completely and must include the purchaser's New Jersey tax identification number or, for a purchaser not registered in New Jersey, the Federal employer identification number or another state's tax identification number.

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

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

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

6. The certificate must be provided within 90 days of the sale.

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)1, substituted "official" for "officially promulgated certificate", inserted a comma following "reproduction" and inserted ", including electronic certificates"; rewrote (a)2; in (a)4, substituted "seller" for "vendor"; in (a)5, deleted "or lessor" following "seller" twice and deleted "thereunder" following "exemption"; and added (a)6.

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).

18:24-10.6 Acceptance of exemption certificates; conditions, retention and inspection; use of resale certificates by out-of-State vendors

(a) All certificates, whether single purchase or blanket, accepted in good faith 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) 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.

(c) Where a certificate is not made available for inspection on or before that time, 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.

(d) Whenever the sale for resale exemption is claimed by an unregistered out-of-State seller, either the properly completed and executed resale certificate of another state or a Division-approved multi-jurisdictional resale certificate or the Streamlined Sales and Use Tax Certificate, including evidence that the purchaser is a licensed seller in one or more jurisdictions, accepted in good faith 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 vendors, accepted in good faith by the seller.

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

Amended by R.1995 d.267, effective June 5, 1995.

See: 27 N.J.R. 474(a), 27 N.J.R. 2250(b).

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

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".

Case Notes

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

18:24-10.7 (Reserved)

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

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

SUBCHAPTER 11. OBLIGATION TO COLLECT AND PAY SALES TAX OR COMPENSATING USE TAX

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, with respect to sales and use tax liabilities incurred on and after July 1, 1996, 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.

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".

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."

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 vendor with a signed, properly completed Farmer's Exemption Certificate (ST-7) disclosing a proper basis for exemption.

(b) Purchases which are not supported by a properly executed exemption certificate shall be treated as taxable retail sales by the vendor.

(c) A signed, completed blanket Farmer's Exemption Certificate may be furnished to the vendor by the farmer to cover additional purchases of the same type of goods or services.

1. The blanket certificate may be used only as long as all of the information furnished on the certificate remains unchanged.

2. 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).

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 orig-

inal 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