CHAPTER 24

SALES AND USE TAX ACT

Authority

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

Source and Effective Date

R.2003 d.348, effective July 28, 2003.
See: 35 N.J.R. 2165(a), 35 N.J.R. 3848(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 24, Sales and Use Tax Act, expires on January 24, 2009. See: 40 N.J.R. 1777(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: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. FORMS

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

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

REGISTRATION APPLICATIONS

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

SPECIALIZED USE FORMS

ST-3	Resale Certificate
ST-3NR	Resale Certificate for Non-New Jersey Vendors
ST-4	Exempt Use Certificate
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-40	Lessor's Certification

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-52	Consolidated Return Schedule
ST-20A	Deduction Worksheet for Computing New Jersey/New York Deductions

ATLANTIC CITY LUXURY TAX

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

NEW JERSEY/NEW YORK COOPERATIVE TAX PROGRAM

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

URBAN ENTERPRISE ZONE FORMS

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

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.

18:24–1.2 Newspaper defined

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

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

2. A newspaper is available for circulation among the public, whether or not through paid subscriptions;

3. A newspaper contains information of general interest or reports of current events and contains original or reprinted articles on a variety of topics, photographs, illustrations, advertising matter, legal notices, comic strips, cartoons, editorial comment or other such subject matter;

4. A newspaper does not contain as advertising matter more than 90 percent of its printed area;

5. A newspaper has continuity as to title and the general nature of its content from issue to issue; and

6. A newspaper does not constitute a book, either singly or when successive issues are put together.

(b) Except as inconsistent with (a) above, whether a publication has been or would be classified as one which is entitled to second class mailing privileges by the United States Postal Service will be taken into consideration in the determination of whether or not the publication is a newspaper.

New Rule, R.1987 d.325, effective August 17, 1987.
See: 19 N.J.R. 858(a), 19 N.J.R. 1570(a).

18:24–1.3 Magazine and periodical defined

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

1. A periodical is published in printed or written form at stated intervals, at least as frequently as four times a year;

2. A periodical is available for circulation among the public, whether or not through paid subscriptions;

3. A periodical contains a variety of articles or other information;

4. A periodical does not contain as advertising matter more than 90 percent of its printed area;

5. A periodical has continuity as to title and the general nature of content from issue to issue; and

6. A periodical does not constitute a book, either singly or when successive issues are put together.

(b) Except as inconsistent with (a) above, whether a publication has been or would be classified as one which is entitled to second class mailing privileges by the United States Postal Service will be taken into consideration in the determination of whether or not the publication is a magazine.

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).

18:24–1.4 Receipt defined

(a) "Receipt" means the amount of the sales price of any property and the charge for any service taxable under the Sales and Use Tax Act, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts, but excluding any credit for property of the same kind accepted in part payment and intended for resale, excluding the cost of transportation except of energy, where such cost is separately stated in the written contract, if any, and on the bill rendered to the purchaser, and excluding the amount of the sales price for which food stamps have been properly tendered in full or in part payment pursuant to the Federal Food Stamp Act of 1977, Pub.L. 95–113 (7 U.S.C. § 2011 et seq.).

(b) Excise taxes which are imposed on manufacturers, importers, producers, distributors or vendors 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.

1. Excise taxes which are imposed on the consumer 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.

(c) Expenses billed to a customer but incurred by a vendor 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 customer, 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 customer is billed as follows:

Repair time—2 hours @ $20.00	$40.00
Travel time	10.00
Parts	20.00
Meals	5.00
Total Due	$75.00

The receipt subject to tax is $75.00.

Example 2: A photographer contracts with a customer to sell photographs at $50.00 each in addition to the reimbursement of certain expenses. The customer is billed as follows:

Photographs (2)	$100.00
Model fees	60.00
Meals	10.00
Travel	25.00
Props (Flowers)	5.00

Total Due	$200.00

The receipt subject to tax is $200.00.

(d) Discounts which are given by a vendor for the purpose of encouraging prompt payment on an account, known as "early payment discounts", are not deductible from receipts.

Example: A vendor gives a purchaser a two percent discount for paying the price of a $100.00 camera within 10 days. The sales tax is to be computed on the taxable receipt of $100.00 regardless of which method of payment the customer chooses.

Discount Method		Full Price Method	
$100.00	Price	$100.00	Price
6.00	Tax at 6 percent	6.00	Tax at 6 percent
$106.00		$106.00	Due
2.00	Discount		
$104.00	Due		

(e) Discounts which represent a reduction in price, such as a trade discount, volume discount or cash and carry discount, are deductible in computing receipts.

Example 1: A vendor gives a purchaser a 30 percent discount for purchasing 1,000 light bulbs. The taxable receipt will be the discount price. The customer is billed as follows:

1,000 bulbs @ $0.50	$500.00
Less 30 percent discount	150.00
	$350.00
Sales tax at 6 percent	21.00
Due	$371.00

Example 2: A vendor gives a purchaser a 10 percent cash and carry discount. The taxable receipt will be the discounted price. The customer is billed as follows:

Merchandise	$50.00
Less 10 percent discount	5.00
	$45.00
Sales tax at 6 percent	2.70
Due	$47.70

(f) Where a vendor issues a coupon entitling a purchaser to receive a discount upon presentation, and the vendor receives no reimbursement from any person, the sales tax is due from the purchaser on only 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 sales price. The retailer would bill as follows:

Regular price	$1.00
Store coupon	.20

Discount Method	Full Price Method
Taxable receipt	$ .80
Sales tax at 6 percent rate	.05
Amount due from purchaser	$ .85

Example 2: A store issues a coupon entitling the holder to receive two items for the price of one. The retailer would bill as follows:

Regular price for one item	$1.00
Store coupon for free item	
Taxable receipt	$1.00
Sales tax at 6 percent rate	.06
Amount due from purchaser	$1.06

(g) Where a vendor issues a coupon, entitling a purchaser to pay a reduced price on an item purchased, and the vendor is reimbursed by a manufacturer, distributor, or other third party, the tax is due on the full regular price of the item. The receipt is composed of the amount paid and 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 regular purchase price. The retailer would bill as follows:

Regular price	$10.00
Sales tax at 6 percent rate	.60
	$10.60
Manufacturer coupon	1.00
Amount due from purchaser	$ 9.60

(h) Where a manufacturer issues a coupon entitling a purchaser to pay a reduced price on an item purchased, the tax is due on the full regular 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 vendor.

Example: A manufacturer issues a coupon entitling the holder to purchase an item from a retailer for $0.20 less than the regular purchase price. The retailer would bill as follows:

Regular price	$1.00
Sales tax at 6 percent rate	.06
	$1.06
Manufacturer coupon	.20
Amount due from purchaser	$ .86

(i) Where a manufacturer or a vendor issues a coupon involving a reimbursement but does not disclose that fact to the purchaser on the coupon or in an accompanying advertisement, the vendor 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.

(j) Any allowance or credit for property of the same kind accepted in part payment by a vendor on the purchase of tangible personal property and intended for resale by such vendor shall be excluded when arriving at the receipt subject to tax. Only the net sale price of tangible personal property would be subject to tax.

Example 1: An automobile dealer allows a customer $2,000 for a used automobile, accepted in part payment against the purchase price of $10,000 for a new automobile. The dealer will hold the used automobile for resale. The customer is billed as follows:

New automobile	$10,000
Trade in	2,000
Due	$ 8,000

Receipt subject to tax is $8,000

Example 2: A motor vehicle dealer allows a customer $500.00 for a used boat, accepted in part payment against the purchase price of $10,000 for a new automobile. A boat is not property of the same kind as an automobile. The customer is billed as follows:

New automobile	$10,000.00
Sales tax at 6 percent	600.00
	$10,600.00
Trade in	500.00
Due	$10,100.00

(k) The cost of transportation of tangible personal property, sold at retail, which is separately stated in the written contract, if any, and on the bill rendered to the purchaser is excluded from the receipt subject to the tax (see N.J.A.C. 18:24-27).

(*l*) Any charges for credit imposed by a vendor and paid by a purchaser in addition to the purchase price under a designation such as interest, service charge, or finance charge is not deemed to be part of the sales price of tangible personal property or charge for services rendered. Such charges are consideration for the extension of credit and shall not be included in the receipt subject to sales tax.

Example: A vendor sells furniture for $1,000 and charges 1½ percent interest per month on the outstanding balance. Only the $1,000 is a receipt subject to tax.

1. The imposition of charges by a credit card company deducted from a participating vendor's account are charges for financial services rendered. Such charges have no bearing on the computation of receipts subject to tax.

Example: A vendor sells furniture for $1,000. The purchaser uses a bank credit card. The bank, when remitting to the vendor, deducts a five percent service charge ($50.00). The vendor is required to charge and remit tax on $1,000.

2. Interest paid by a lessor on the purchase of tangible personal property intended to be rented for 28 days or less to a customer is an expenditure of the lessor and is to be included in the receipt subject to tax.

Example: A taxpayer purchases equipment on credit for rental purposes. The agreement for 28 days or less provides that the party renting is to pay $100.00 per month for equipment rented and $7.00 per month to reimburse the lessor for interest paid. The tax is to be collected on $107.00.

(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, Pub.L. 96-113 (7 U.S.C. § 2011 et seq.) is excluded from taxable receipts.

1. On 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 as a part payment. Nontaxable food, food products and non-carbonated beverages 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 would apply even if the $42.00 worth of food stampable items consisted of food stamp eligible but sales taxable food and beverages, such as candy and soda. The purchase of 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 customer for $10,000.00. As a sales incentive, the manufacturer agrees to give a rebate of $500.00 to a customer who purchases an automobile during the month of December. The customer elects to have the rebate paid to the dealer. The customer is billed as follows:

Sales price	$10,000.00
Sales tax at 6 percent	600.00
Due	$10,600.00
Rebate	500.00
Net Cost to Purchaser	$10,100.00

(*o*) Charges for the use or rental of tangible personal property for periods of 28 days or less are subject to tax based on the amount billed for the period of use. The lessor is required to collect and remit the tax on the receipts from the rental.

(p) The amount of the sales price of tangible personal property purchased for lease for a period of more than 28 days is subject to tax and means, at the election of the lessor, either:

1. The amount of the lessor's purchase price; or

2. The amount of the total of the lease payments attributable to the lease of such property. A lessor, as a retail purchaser, is required to pay the tax upon the purchase of property for lease.

Example 1: A leasing company purchases an automobile for $20,000. After the purchase the company enters into a three year lease agreement with a customer who will pay a total of $15,000 over this period. The lessor at the time the lease is executed must elect to pay tax on the purchase price of $20,000 or on the contract lease price of $15,000, less the interest charge to the lessee.

Example 2: A rental company purchases automobiles to be held for short term rentals of 28 days or less. In this case the sales tax is not imposed on the rental company; however, it must collect the applicable sales tax on each rental payment from a customer renting an automobile.

(q) The taxable receipt for intrastate and interstate telecommunications is the amount charged to a service address in New Jersey regardless of where the services are billed or paid.

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.

Case Notes

Where supermarket customers asserted violations of the New Jersey Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 through 56:8-20, with regard to supermarkets overcharging the customers for sales tax by calculating the sales tax based on the regular price of the items purchased rather than on the reduced or discounted sales price actually charged for the items, the exclusive remedy available to the customers for a refund of any overpaid sales tax once the tax had been paid over to the Director was N.J.S.A. 54:32B-20(a), and therefore the customers' claims, including those under the CFA, were dismissed. Kawa v. Wakefern Food Corp. Shoprite Supermarkets, Inc., 24 N.J. Tax 39, 2008 N.J. Tax LEXIS 8 (Tax Ct. 2008).

Director of the Division of Taxation had exclusive jurisdiction as to the assessment, collection, and refund of any tax under the Sales and Use Tax Act, N.J.S.A. 54:32B-1 through 54:32B-29, and N.J.S.A. 54:32B-18 makes clear that vendors have the obligation to pay over any overpaid tax monies to the Director with their returns; the Director is then authorized to determine the amount of tax due and, upon proper application, refund any tax erroneously, illegally, or unconstitutionally collected, pursuant to N.J.S.A. 54:32B-20(a). Kawa v. Wakefern Food Corp. Shoprite Supermarkets, Inc., 24 N.J. Tax 39, 2008 N.J. Tax LEXIS 8 (Tax Ct. 2008).

SUBCHAPTER 2. RETENTION OF RECORDS BY VENDORS

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.

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

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 vendor 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.

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 vendor may dispose of individual sales slips, invoices, receipts, statements, memoranda of price, or cash register tapes, except as provided in Section 2.5 (Resale and exemption certificates), 2.6 (Out-of-State sales) and 2.8 (Purchase records), of this Chapter, 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.

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 vendor in lieu of collecting the sales tax, pursuant to such regulations 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.

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 vendor 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.

18:24-2.7 Records presumed representative of accounting practices

It shall be presumed where a vendor 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 vendor's accounting practices for such four year period, unless the vendor 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.

18:24-2.8 Purchase records

(a) In all instances, vendors 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.

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

(a) A vendor 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 which disclose the following:

1. The amount of every purchase, the name and address of the vendor 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 provision herein, except upon written determination of the Director, Division of Taxation.

Such determination may be conditioned upon the vendor'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 vendor'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.

18:24-2.10 Extended record keeping periods

The Director, in his discretion, may require a vendor, by written notice, to retain records for such period as he may designate other than provided in this Subchapter.

18:24–2.11 Waiver of record keeping requirements

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

1. A statement of the reasons why it is impractical for the vendor to retain documents for the periods required herein;

2. A detailed description of the method of collection of the sales tax from customers;

3. A detailed description of the vendor's system of accounting for sales tax liability;

4. Samples of the sales documents which the vendor seeks authorization to dispose of; and

5. A sample of the summary records used by the vendor to account for sales tax liability.

18:24–2.12 Waiver of limitation of time by vendor

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

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 vendor may be deemed incorrect or insufficient if:

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

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

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

R.1982 d.36, effective February 16, 1982.
See: 13 N.J.R. 751(a), 14 N.J.R. 212(b).

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

(a) Every person who contracts, agrees to or otherwise arranges to hold, produce or sponsor an event, entertainment, or amusement the admission to which is subject to tax under N.J.S.A. 54:32B–3(e) of the Sales and Use Tax Act is deemed 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. ROOM OCCUPANCY SUBJECT TO SALES TAX

18:24–3.1 Taxes on hotel room occupancy

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

1. A permanent resident who is in residence for at least 90 consecutive days; or

2. A daily rental of not more than $2.00.

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".

18:24–3.2 Definitions

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

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

1. An apartment hotel, motel, inn, tourist home, tourist house or court, tourist cabin and club;

2. A boarding house or rooming house containing eight or more units; and

3. Any other building or group of buildings in which sleeping accommodations are normally available to the public on a transient basis.

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

18:24–3.3 Guest house

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

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

SUBCHAPTER 4. MANUFACTURING, PROCESSING, ASSEMBLING AND REFINING INDUSTRIES

18:24–4.1 Scope of subchapter

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

1. Manufacturing, processing, assembling and refining industries; and

2. Services performed on real or tangible personal property.

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

18:24–4.2 Definitions

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

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

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

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

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

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

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

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

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

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

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 sort-tie-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 a 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 a 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. 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 qualified as 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, Capital Improvement Certificate, to evidence that the job qualifies as a capital improvement, exempting his construction labor from tax;

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 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 rental of equipment or vehicles for use on the job of the mechanical contractor is not exempt from tax. A rental for 28 days or less is taxable to the contractor and tax is due on the rental charge. On leases for more than 28 days the tax is imposed on the purchase of property for lease and is paid by the lessor. (See N.J.A.C. 18:24–1.4(*o*)).

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 which 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. Where subcontractors are involved, the mechanical contractor should treat such subcontractors in the same manner as in dealing with his 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 supplier is a retail sale subject to tax to be paid by the contractor either to his supplier or directly to the Division of Taxation. The contractor should be furnished an ST–8, 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.

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

i. Whether the improvement results in an increase in the capital value of the real property;

ii. Whether the improvement results in a significant increase in the useful life of the property;

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

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

Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).
Amended by R.1998 d.288, effective June 1, 1998.
See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).
Amended by R.2003 d.348, effective August 18, 2003.
See: 35 N.J.R. 2165(a), 35 N.J.R. 3848(a).
In (a)1, inserted "(with the exception of imprinting services performed upon machinery, apparatus, or equipment used directly and primarily in manufacturing, processing, assembling, or refining)" preceding ", performed for a person".

18:24–4.7 Services not subject to tax

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

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

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

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

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

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

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

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

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

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

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

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

Amended by R.1977, d.365, effective September 30, 1977.
See: 9 N.J.R. 445(a), 9 N.J.R. 544(a).
Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).
Amended by R.1998 d.288, effective June 1, 1998.
See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).
In (a)3i, substituted a reference to locations outside New Jersey for a reference to purchasers.
Amended by R.2003 d.348, effective August 18, 2003.
See: 35 N.J.R. 2165(a), 35 N.J.R. 3848(a).
Rewrote the section.

Case Notes

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

18:24–4.8 Record keeping

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

SUBCHAPTER 5. BUILDING AND CONSTRUCTION TRADES

18:24–5.1 Scope of subchapter

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

Case Notes

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

18:24–5.2 Definitions

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

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

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

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

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

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

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

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

"Materials" means items of tangible personal property.

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

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

Amended by R.1998 d.288, effective June 1, 1998.
See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).
Amended by R.2003 d.348, effective August 18, 2003.
See: 35 N.J.R. 2165(a), 35 N.J.R. 3848(a).
Added "Component materials" and "Materials"; in "Exempt organization", substituted "certificate" for "permit" preceding "issued"; in "Tangible personal property", inserted the second sentence.

Case Notes

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

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

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

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

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

Amended by R.1973 d.336, effective December 4, 1973.
See: 5 N.J.R. 392(a), 6 N.J.R. 38(a).
Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).
Amended by R.1998 d.288, effective June 1, 1998.
See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).
In (b), substituted a reference to N.J.S.A. 52:27H-29 et seq. for a reference to N.J.S.A. 52:27H-29 in the introductory paragraph.

Case Notes

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

Taxpayer 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

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

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

Case Notes

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

18:24-5.5 Purchase of taxable services

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

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

1. The fabrication of tangible personal property;

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

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

Amended by R.2003 d.348, effective August 18, 2003.
See: 35 N.J.R. 2165(a), 35 N.J.R. 3848(a).
In (b), rewrote 2 and 3.

Case Notes

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

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

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

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

Case Notes

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

18:24-5.7 Installation services capital improvement

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

1. Whether the improvement results in an increase in the capital value of the real property;

2. Whether the improvement results in a significant increase in the useful life of the real property.

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

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

As amended, R.1982 d.141, effective May 3, 1982.
See: 14 N.J.R. 140(b), 14 N.J.R. 430(b).
(b): Text deleted; (c) and (d) renumbered as (b) and (c).

Case Notes

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

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

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

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

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

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

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

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

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).

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, of this chapter as purchases for resale.

(b) The fabricator/contractor will not be required to pay tax on materials at the time of purchase. (The fabricator/contractor should issue a duly completed Resale Certificate (Form ST-3) in all such instances.)

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".

18:24-5.10 Fabricator/contractor

Where a fabricator/contractor sells his completed product for installation by someone other than himself, for example, by the property owner or by another contractor, he 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".

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) 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 in this State, and such installation does not result in a capital improvement to real property (see N.J.A.C. 18:24-5.7), he or she 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 his or her bill attributable to installation charges.

(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).

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. 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. However, 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 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. Sections 18:24-5.3, 18:24-5.4 and 18:24-5.5 for procedural requirements on exempt organization contracts.)

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.

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

(a) The purchase 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".

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 Certificates (Form ST-4) may be issued by contractors and fabricator/contractors only in cases where 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(a), (b) or (d); 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 may

be issued by a contractor or fabricator/contractor, the certificate form must disclose his business name, sales tax registration number, the name and sales tax registration number of any other party to the contract, 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 Capital Improvement (Form ST–8) should be obtained by a contractor, subcontractor or fabricator/contractor from his customer in any instance where the performance of his work results in a capital improvement to real property. A contractor or a fabricator/ contractor may accept certificates of capital improvement as a basis for exemption from tax on his services only where his work has, in fact, resulted in a 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. The possession of a certificate of capital improvement, in and of itself, is not sufficient to eliminate liability for taxes which should have been collected. The contractor must accept such certificate in "good faith" to be relieved of liability.

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" means maintaining the existing value of the property.

iii. Examples of capital improvements are:

(1) New construction;

(2) New roof, installation of;

(3) Tiled bath, installation of;

(4) New bath fixtures, installation of;

(5) New kitchen fixtures, installation of;

(6) Paving of driveway;

(7) Shrubbery, trees, and so forth, planted;

(8) Paneling, installation of;

(9) In-ground swim pool, installation of;

(10) New central air conditioner installation;

(11) Porch enclosure, construction of;

(12) New heating system installation;

(13) Rewiring;

(14) New electrical outlets installed;

(15) New siding, installation of;

(16) Garage, construction of;

(17) Patio, construction of;

(18) Storm doors and windows, installation of;

(19) New hot water heater installation.

iv. In general, a contractor who accepts a certificate of capital improvement 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. A contractor is presumed to be familiar with the law and the regulations pertinent to the business in which he deals. In order for "good faith" to be established, the following conditions must be met:

(1) The certificate must contain no statement or entry which the contractor knows, or has reason to know, is false or misleading.

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

(3) The certificate must be dated and executed in accordance with the published instructions, and must be complete and regular in every respect.

v. The contractor may, therefore, under the circumstances, accept this "good faith" certificate of capital improvement as a basis for not collecting sales tax with respect to service or labor charges.

vi. The use of the Certificate of 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 pur-

chase 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.

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 Penalty for fraudulent issuance of exemption certificates

Any person who issues or accepts an exemption certificate, known to him to be false, for the purpose of avoiding payment or collection of sales or use taxes is guilty of a misdemeanor under the provisions of N.J.S.A. 54:32B–26(b), the penalty for which shall be a fine of not more than $1,000 or imprisonment for not more than one year, or both such fine and imprisonment.

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. CLOTHING AND FOOTWEAR

18:24–6.1 Clothing and footwear exempt

Section 8.4 of the New Jersey Sales and Use Tax, N.J.S.A. 54:32B–1 et seq., exempts receipts from the sale of articles of clothing and footwear for human use except articles made of fur on the hide or pelt of an animal, where such fur is the component material or chief value of the article.

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

Case Notes

Rules concerning exemptions from sales and use tax for receipts from retail sales of clothing and footwear valid; ski boots not exempt because they are not adaptable for general use as footwear. Ski Haus, Inc. v. Taxation Div. Director, 5 N.J.Tax 26 (Tax Ct.1982).

18:24–6.2 Clothing and footwear defined

For the purposes of Section 8.4 (see N.J.A.C. 18:24–6.1), clothing and footwear means all inner and outer wear, footwear, headwear, gloves and mittens, neckwear and hosiery customarily worn on the human body, and shall include baby blankets and bunting, diapers and diaper inserts and baby pants. For the purpose of section 8.4 special clothing or safety clothing necessary for the daily work of the user shall be considered clothing and footwear.

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

Case Notes

Rules concerning exemptions from sales and use tax for receipts from retail sales of clothing and footwear valid; ski boots not exempt because they are not adaptable for general use as footwear. Ski Haus, Inc. v. Taxation Div. Director, 5 N.J.Tax 26 (Tax Ct.1982).

18:24–6.3 Specific articles of clothing and footwear exempt

(a) The following articles of clothing and footwear are deemed exempt from the sales and use tax under N.J.S.A. 54:23B–8.4 and 54:32B–24:

1. Aprons, household and shop;
2. Bathing suits;
3. Beach capes and coats;
4. Belts and suspenders;
5. Bibs;
6. Bowling shirts if suitable for ordinary wear;
7. Bridal apparel and accessories;
8. Camp clothes;
9. Chesterfield overcoats and opera capes (evening wear);
10. Coats and wraps for evening wear; coats and wraps for daytime wear;
11. Incontinence briefs;
12. Children's costumes, for example, Halloween, dance;
13. Crib blankets;
14. Dress shields;
15. Dresses—evening gowns and dresses, regular or short, baretop or straps, cocktail dresses, party dresses and skirts for formal wear and bodices for evening wear;
16. Garters and garter belts;
17. Girdles;
18. Gloves, except for use in sports;
19. Hairbows;
20. Head and neck scarves and bandannas;
21. Headwear and millinery, all types;
22. Hosiery and peds;
23. Leotards and tights;
24. Mackinaws;
25. Men's formal wear;
26. Neckwear;
27. Overshoes;
28. Rainwear;
29. Receiving blankets;
30. Rubber gloves for home or work use;
31. Safety clothing normally worn in hazardous occupations;
32. Scout uniforms;
33. Shoe laces;
34. Shoes, hightop, for outdoor use;
35. Socks—heavy ribbed;
36. Safety shoes;
37. Shoes for formal wear, such as metallic cloth, brocade, satin, gold or silver leather;
38. Sneakers and tennis shoes;
39. Underwear;
40. Work clothes, work uniforms; and
41. Yarmulke and turbans.

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 incontinence briefs for a reference to corset laces in 11, inserted a reference to neck scarves in 20, and added 41.
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)12, inserted ", for example, Halloween, dance"; in (a)20, inserted "and bandannas".

Case Notes

Rules concerning exemptions from sales and use tax for receipts from retail sales of clothing and footwear valid; ski boots not exempt because they are not adaptable for general use as footwear. Ski Haus, Inc. v. Taxation Div. Director, 5 N.J.Tax 26 (Tax Ct.1982).

18:24–6.4 Clothing and footwear for sporting activities

Clothing and footwear used in connection with sporting activities or pastimes, which clothing and footwear are not adaptable to a use set forth in N.J.A.C. 18:24–6.2 (Clothing and footwear defined) shall not be considered to be clothing and footwear within the meaning of Section 8.4 of the Act.

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

Case Notes

Rules concerning exemptions from sales and use tax for receipts from retail sales of clothing and footwear valid; ski boots not exempt because they are not adaptable for general use as footwear. Ski Haus, Inc. v. Taxation Div. Director, 5 N.J.Tax 26 (Tax Ct.1982).

18:24–6.5 Athletic goods and equipment

(a) Athletic equipment normally worn only in conjunction with the particular activity for which it is designed is subject to the sales tax. This includes, but is not limited to:

1. Baseball and hockey gloves;
2. Bowling shoes;
3. Fishing boots (waders);
4. Golf shoes;
5. Helmets (sports);
6. Protective masks;
7. Shin guards and padding;
8. Skin diving suits;
9. Track shoes and cleats;
10. Motorcycle helmets;
11. Ski boots;
12. Life preservers and vests;
13. Snorkel and scuba masks;
14. Swim fins; and
15. Skates and rollerblades.

(b) Articles which may be worn for general use not exclusively connected with a sporting activity are exempt. These include, but are not limited to:

1. Athletic supporters;
2. Children's sports and play uniforms, for example, football, baseball, and karate uniforms and gymsuits;
3. Hooded shirts;
4. Knitted caps or hats;
5. Overshoes, coats, mittens, parkas, and trousers sometimes sold in the trade as hunting, skating and skiing apparel, but suitable for general outdoor wear and commonly worn other than in a particular sport.
6. Pullovers, turtle neck and other sweaters.

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), added 12 through 15; in (b), rewrote 2, deleted former 3 and 4, and recodified former 5 through 8 as 3 through 6.

Case Notes

Rules concerning exemptions from sales and use tax for receipts from retail sales of clothing and footwear valid; ski boots not exempt because they are not adaptable for general use as footwear. Ski Haus, Inc. v. Taxation Div. Director, 5 N.J.Tax 26 (Tax Ct.1982).

18:24–6.6 Fur garments and articles

(a) Garments or articles such as coats, stoles, jackets, capes, collars, muffs and hats and similar items made essentially of fur, as defined in subsection (c) of this Section, are subject to tax.

(b) Clothing or footwear containing cloth or other materials and having trim or other component parts of fur are subject to tax if the value of the fur trim or fur part comprises more than half the value of all components of the article.

(c) The word "fur" means natural or dressed animal hair on the hide or pelt. It does not include felt, woolens, or other fabrics which are made from animal hair. Thus:

1. Rabbit fur dyed to resemble mink is "fur";
2. Sheepskin with wool or hair attached thereto is "fur";
3. Woven or knit materials made of animal hair or wool (such as angora or alpaca) are not "fur"; and
4. Cloth printed with a leopard pattern is not "fur".

(d) The sale of remodeling services for fur garments and articles is subject to sales tax.

Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).
Amended by R.1998 d.288, effective June 1, 1998.
See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).
In (c)3, inserted a reference to knit materials.

18:24–6.7 Accessories taxable

(a) Accessories and similar items are not considered clothing and footwear, and are taxable. These include, but are not limited to:

1. Hairclips;
2. Hairnets and barrettes;
3. Handbags;
4. Handkerchiefs;
5. Jeweled tiaras;
6. Jewelry;
7. Umbrellas;
8. Wallets; and
9. Headbands and sweatbands.

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)9.

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.

"Division of Motor Vehicles" means the Division of Motor Vehicles of the Department of Law and Public Safety, State of New Jersey.

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

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 vendor 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 Division of Motor Vehicles.

(b) Under the provisions of N.J.S.A. 54:32B–13, the Director of the Division of Motor Vehicles 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 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 Division of Motor Vehicles, the vendor 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).

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; and

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

3. The trade-in is acquired by a dealer of motor vehicles who is registered as such with the Division of Motor Vehicles 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.

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 whether they are separately stated upon the customer's invoice or not; but delivery charges from the dealer to his customer, if separately stated upon the customer's invoice, are not included;

3. Warranty charges;

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

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.

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 whether or not his place of abode is located on or off a military reservation and otherwise 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 rental for a period of 28 days or less 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 subsection (d) of this section, "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 vendor 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 vendor's customers its own goods. The exemption from tax does not apply since the vendor 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).

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).

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. Furmato 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 nonresidents, 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);
4. Certificate of Capital Improvement (Form ST–8).

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

New Rule, R.1971 d.157, effective September 2, 1971.
See: 3 N.J.R. 211(a), 3 N.J.R. 162(a).
Amended by R.1979 d.90, effective March 8, 1979.
See: 11 N.J.R. 104(a), 11 N.J.R. 210(e).
Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).
Amended by R.1998 d.288, effective June 1, 1998.
See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).

18:24–7.11 Casual sales of motor vehicles

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

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

18:24–7.12 Taxable and exempt services

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

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

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

(c) The purchase of tangible personal property by any person engaged in the sale of the services enumerated in subsection (a) of this Section for use by that person in the performance of such services are not subject to tax where the property so purchased becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of their service in conjunction with the performance of the service. Thus the purchase of parts, lubricants, brake and transmission fluids, and similar items is not

subject to tax if such items will be transferred in the performance of the services enumerated in subsection (a) of this Section. The purchaser of such items should issue a duly completed Resale Certificate (Form ST–3) to his supplier.

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

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

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

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

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

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

(b) The tax shall be computed and paid monthly by the motor vehicle manufacturer as part of 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 .06 to effectuate the six percent tax imposed pursuant to N.J.S.A. 54:32B–6.

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

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 .06 to effectuate the six 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.

18:24–7.15 Renting motor vehicles

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

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

New Rule, R.1971 d.157, effective September 2, 1971.
See: 3 N.J.R. 211(a), 3 N.J.R. 162(a).
Amended by R.1979 d.179, effective May 4, 1979.
See: 11 N.J.R. 209(b), 11 N.J.R. 305(a).
Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).
Amended by R.1998 d.288, effective June 1, 1998.
See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).

18:24–7.16 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 Sales, renting or leasing of commercial motor vehicles and vehicles used in combination therewith exempt from tax

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

1. Sales, renting or leasing of commercial trucks, truck tractors, tractors, trailers, semi-trailers, and vehicles used in combination therewith, as defined in N.J.S.A. 39:1–1, which are properly registered as provided by New Jersey law, pursuant to N.J.S.A. 39:3–6.1, and:

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

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

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

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

(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 Interstate Commerce Commission 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.

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 housetrailers and other tangible personal property in New Jersey in the regular course of business and who is registered as a vendor with the Division of Taxation, whether or not licensed as a motor vehicle dealer with the Division of Motor Vehicles.

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 vendor 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 vendor 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 vendor 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 vendor who is not a registered vendor 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 1: 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. The taxable receipt is $20,000 and the sales tax is stated to and collected from the purchaser at the rate of six percent, or $1,200.

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 1: 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. The dealer is liable for the tax on $19,500, or $1,170. 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 vendor 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 the 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 vendor 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 Capital Improvement (Form ST–8) has been obtained from the purchaser and retained by the contractor or dealer for his permanent records.

2. Sales of construction materials and supplies, construction equipment or taxable services to a contractor or subcontractor, manufacturer or other vendor 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 Division of Motor Vehicles except upon proof, in a form approved by the Division of Taxation and the Division of Motor Vehicles, 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 permanently installed in a mobile home 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).

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 for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals, or as a volunteer fire company, rescue, ambulance, first aid or emergency company or squad, or 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 an association of parents and teachers of an elementary or secondary public or private school, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which 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, and provided that organizations seeking to qualify for exempt organization status meet the eligibility requirements set forth in this subchapter, and further provided that such organizations comply with all procedural requirements contained in this subchapter.

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).

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 exemption, 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 ORGANIZATIONS OPERATED FOR RELIGIOUS, CHARITABLE, SCIENTIFIC, TESTING FOR PUBLIC SAFETY, LITERARY OR EDUCATIONAL PURPOSES OR FOR THE PREVENTION OF CRUELTY TO CHILDREN OR ANIMALS

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 of purposes," as used in this subchapter, means any purpose specified in Section 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)".

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 Section 9(b). Therefore, an organization which, by the terms of its articles, is formed "for literary and scientific purposes within the meaning of Section 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 described in Section 9(b), and exempt from taxation under Section 9" 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) above 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 Section 501(c)(3) determination letter or ruling issued by the Internal Revenue Service as prima facie evidence of exemption under Sections 9(b)(1) or 9(b)(2) of the Sales and Use Tax Act. A Federal exemption granted under Section 501(c)(4) or another section of the Internal Revenue Code is not a basis for exemption under the Sales and Use Tax Act.

(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)".

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 vendor 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;

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)".

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

(b) School affiliated teacher organizations and parent organizations that do not qualify as specifically exempted parent-teacher associations and organizations, student organizations not sponsored by the school, and other school support groups such as booster clubs and class alumni associations are not considered integral components of the school. They are deemed to be separate legal entities and may not use the school's tax exempt documentation to make tax exempt purchases. Such organizations may apply for and receive exempt organization 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 .

SUBCHAPTER 10. ISSUANCE AND ACCEPTANCE OF EXEMPTION CERTIFICATES

18:24–10.1 Scope of Subchapter

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

18:24–10.2 General requirements

(a) A vendor of taxable goods, services, amusement charges or occupancies is required to collect any tax imposed by the Sales and Use Tax Act (N.J.S.A. 54:32B–1 et seq.), unless the vendor shall have taken from the purchaser a certificate, signed by the purchaser and bearing his name, address and certificate of authority number, to the effect that the goods, services, amusement charges or occupancies purchased are not subject to the sales or use tax by virtue of a statutory exemption set forth in such certificate.

(b) In the case of an exempt organization certificate (form ST–5), a vendor may 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. On and after July 1, 1976, only certificates issued in accordance with this subsection shall be valid.

As amended, R.1976 d.62, effective February 27, 1976.
See: 8 N.J.R. 87(b), 8 N.J.R. 209(a).
Amended by R.1998 d.288, effective June 1, 1998.
See: 30 N.J.R. 1206(b), 30 N.J.R. 2070(b).

18:24–10.3 Responsibility

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

Case Notes

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

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 or lessor knows, or has reason to know, is false or misleading.

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

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

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

Case Notes

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 officially promulgated certificate form or a substantial and proper reproduction thereof.

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

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

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

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

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

Case Notes

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 vendor as a basis for exemption from any tax imposed by the Sales and Use Tax Act (N.J.S.A. 54:32B–1 et seq.) shall be retained by said vendor for a period of not less than 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 or lessor, and available for appropriate inspection, on or before the 60th day following the date of the transaction to which the certificate relates.

(c) Where a certificate is not made available for inspection on or before that time, the seller or lessor must provide to the satisfaction of the Director, by means of evidence other than certification of the purchases, that the sale or lease in question is, in fact, exempt.

(d) Whenever the sale for resale exemption is claimed by an unregistered out-of-State vendor, either the properly completed and executed resale certificate of another state or a Division-approved multi-jurisdictional resale certificate, including evidence that the purchaser is a licensed vendor 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.

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 Vendor to collect tax

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

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

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.

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

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

(b) Effective July 1, 1996, with respect to sales and use tax liabilities incurred on and after July 1, 1996, every vendor 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 over 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).

18:24–11.3 Filing of use tax returns by registered individuals and entities not operating as vendors

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

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

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

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

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

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

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

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

New Rule, R.1983 d.220, effective June 20, 1983.
See: 15 N.J.R. 324(a), 15 N.J.R. 1039(b).

Repealed by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).
Section was "Transitional provisions for increase in tax rate".
New Rule, R.1996 d.217, effective May 6, 1996.
See: 28 N.J.R. 807(a), 28 N.J.R. 2403(a).

SUBCHAPTER 12. RECEIPTS FROM THE SALE OF FOOD AND DRINK

18:24–12.1 Scope of subchapter

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

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

18:24–12.2 Definitions

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

"Food stores" shall mean any establishment which is principally engaged in selling food or drink which is not prepared and ready to be eaten. Supermarkets, grocery stores, fish markets, produce markets, bakeries and meat markets are examples of the types of establishments considered to be food stores. When a department within food stores makes sales of food or drink which are subject to tax, it must collect the tax. For purposes of these rules, stores which are principally engaged in selling food prepared and ready to be eaten are not food stores.

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

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

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

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

18:24–12.3 Receipts subject to sales tax

(a) Sales tax is imposed on the receipts, including any cover, minimum, entertainment or other charge, or the value of a coupon, from every sale of food and drink of any

nature sold in or by restaurants, taverns or other establishments in this State or by caterers:

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

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

i. An unheated state; and

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

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

Automats
Cafes
Cafeterias
Carry-out restaurants
Caterers
Chili parlors
Dairy bars
Delicatessens
Diners
Drive-in restaurants
Fast food operators
Food vendors in offices, factories and other work places
Hamburger and hot dog stands
Ice cream stands
Lunch bars, counters and rooms
Luncheonettes
Mall food courts
Mobile vending operators
Oyster and clam bars
Pizzerias
Restaurants
Sandwich bars and shops
Snack bars
Soda fountains, juice bars
Sports/entertainment arena food vendors
Sushi bars
Taverns, grills and bars
Wiener restaurants

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

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

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

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

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

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

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

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

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

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

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

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

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 Sales through vending machines

Sales of food and drink through vending machines are subject to sales tax. (See N.J.A.C. 18:24–16.1, et seq. and 18:24–17.1, et seq.)

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)4 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 vendor/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 nonprofit 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.

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 vendor required to collect the tax on receipts from either the employee, 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".

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. TRASH REMOVAL SERVICE

18:24–13.1 Trash removal service on regular basis tax exempt

Trash removal service, when performed on a regular contractual basis for a term of not less than 30 days, is not subject to tax.

18:24–13.2 Trash removal service defined

(a) Trash includes garbage or rubbish.

(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 would, therefore, not include sweeping parking lots, snow removal and construction site clean-up, or a process such as septic tank cleaning.

(c) Examples of trash removal service would include circumstances where:

1. A private company removes trash from baskets located in a building and collects the trash in larger receptacles for removal from the premises; or

2. A private company picks up garbage at a house; or

3. A private company picks up industrial sawdust at a plant.

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

Case Notes

Taxpayer 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).

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. Meals sold to visitors;

2. Sales of cosmetics, candy, 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).

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 patients and consumed on the premises;

2. Charges for oxygen, blood plasma and blood administered to patients;

3. Dressings and bandages applied in the hospital;

4. Charges for X-ray and radiation treatments, braces, splints, casts, therapeutic diets and intravenous solutions furnished patients;

5. Charges for anesthesia supplies and laboratory test;

6. Meals sold in a cafeteria used exclusively by hospital employees.

As amended, R.1980 d.196, effective May 6, 1980.
See: 12 N.J.R. 219(a), 12 N.J.R. 354(d).

SUBCHAPTER 15. TAXABILITY OF CERTAIN LINEN RENTALS

18:24–15.1 Adjustment of linen rental tax liability

Pursuant to the provisions of the New Jersey Sales and Use Tax Act, the total charge for the furnishing by rental of laundered dust cloths, mats, mops, industrial wiper cloths, fender covers, bed linens, hospital linens, table linens, linen supply towels and other cloths may be adjusted in the manner prescribed in this subchapter to determine the portion thereof subject to the sales tax.

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

18:24–15.2 Reduction percentage of adjusted charge

The total charge for the furnishing of any product enumerated in N.J.A.C. 18:24–15.1 may be reduced by 66 2/3 percent of the total charge.

As amended, R.1980 d.489, effective November 6, 1980.
See: 12 N.J.R. 619(a), 12 N.J.R. 729(b).

Reference to N.J.A.C. 18:24–15.1 added and reference to N.J.A.C. 18:24–14.1 deleted.

18:24–15.3 Tax computation; inclusion on invoice

(a) The tax must be calculated at the rate of six percent on the adjusted charge as set forth in N.J.A.C. 18:24–15.2.

(b) The invoice given to the customer must show the total charge prior to the reduction, the percentage reduction and the net total charge subject to the sales tax. It must also contain a calculation showing a multiplication by .06 times the net charge to effectuate the imposition of the five percent tax due.

New Rule, R.1971 d.194, effective November 1, 1971.
See: 3 N.J.R. 275(b), 3 N.J.R. 207(c).
Amended by R.1980 d.489, effective November 6, 1980.
See: 12 N.J.R. 619(a), 12 N.J.R. 729(b).
(a) Reference to N.J.A.C. 18:24–15.2 added and reference to N.J.A.C. 18:24–14.2 deleted.
Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).

18:24–15.4 Improper indication of tax rate

It is improper for a vendor of linen furnishings to indicate that the effective rate of tax is two percent of the total charge.

New Rule, R.1971 d.194, effective November 1, 1971.
See: 3 N.J.R. 275(b), 3 N.J.R. 207(c).
Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).

18:24–15.5 Subchapter inapplicable in certain situations

The provisions of this subchapter are not applicable to those invoices where the charge for the rental of the linens and the charge for laundering services are separately stated. In such situations the charge for the laundering service would be exempt from the tax, but the full rental charge would be subject to the tax.

18:24–15.6 Effective date

This subchapter is effective on and after January 1, 1972.

As amended, R.1969 d.36, effective December 23, 1969.
See: 2 N.J.R. 7(b).
R.1971 d.194, effective November 1, 1971.
See: 3 N.J.R. 275(b), 3 N.J.R. 207(c).
As amended, R.1980 d.489, effective November 6, 1980.
See: 12 N.J.R. 619(a), 12 N.J.R. 729(b).
This section was "Expiration date"; "on and after January 1, 1972" added, "for the six month period ending December 31, 1971" deleted.

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 vendor 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).

18:24–16.2 Registration to operate vending machines

Vendors 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).

18:24–16.3 Registration number

One Sales Tax Registration number is sufficient for all machines of one vendor.

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

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 Vendor

_____
Place of Business of Vendor
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).

18:24–16.5 Vendor's records; contents

(a) Adequate records must be kept by the vendor, 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 vendor;

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 vendor purchased for resale; and

8. The cost of all supplies of which the vendor 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).

18:24–16.6 Tax on gross receipts

(a) Vendors 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)), vendors 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) Taxpayers 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 × $8,000)	2,400	
Total deductions		3,400
Receipts subject to tax		$ 6,600
Tax due (at 6 percent)		$ 396

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.

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 secondary 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 vendor may purchase tangible personal property, food or drink for sale through coin-operated vending machines without payment of the sales tax provided he issued to his 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).

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 vendor is the amount of the actual tax collected from all taxable sales, or six 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).

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 vendors engaged in making sales through coin-operated vending machines, and for this subsection to be applicable the vendor must show that more than half of the total receipts from his 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.

18:24–17.3 Reports qualifying exemption; contents

(a) In addition to the filing of Form ST–50 (Quarterly Return) and/or Form ST–51 (monthly remittance statement), a vendor who seeks to exempt a portion of his gross receipts pursuant to N.J.S.A. 54:32B–8.9 shall report quarterly to the Division of Taxation on Form ST–3229 the following information:

1. The total receipts of his business;

2. The total receipts from sales through coin-operated vending machines;

3. The total receipts from exempt sales, including:

i. Receipts from the sale of milk;

ii. Receipts from sales of tangible personal property through coin-operated vending machines at $0.25 or less, per item. (These receipts do not include any portion of the receipts from the sale of any item in excess of $0.25); and

iii. Receipts from any other exempt sales; and

4. The total taxable receipts, calculated by subtracting the exempt sales from total receipts of the vending machine company.

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.

18:24–17.4 Tax amount payable

The amount of New Jersey Sales Tax payable is the net taxable receipts multiplied by .06 to effectuate application of the six percent tax rate, or the actual tax collected, whichever is the 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).

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

For purposes of this subchapter:

"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 fee 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; and

iv. Making repairs on farm workers' housing.

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.

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 "handing 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 clean-up 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; and

x. Repairing a farm truck.

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".

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 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).

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.

1. A floor covering dealer in New Jersey is required to be registered as a vendor 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 sells, or who arranges for subcontractors to install the floor coverings for him, is both a retail seller of floor coverings and a contractor, with respect to the installation services.

(b) Wherever 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 customer on the sales price of the floor covering, whether or not the installation results in a capital improvement to the real estate, unless the customer has a valid statutory exemption, supported by a properly executed exemption certificate, or unless the floor covering is delivered to a point outside of New Jersey.

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).

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) The installation of floor covering results in a capital improvement only where the floor covering is permanently affixed to a subfloor. A subfloor may be composed of any material, such as boards, plywood, underlayment or cement, which is not considered to be a material which customarily or normally serves as a finished floor. For sales tax purposes a subfloor is also a finished floor whose value is no greater than that of the conventional subfloor, because of deterioration through damage or age.

(c) Where the installation of a floor covering by a floor covering dealer or his subcontractor has resulted in a capital improvement to real property, the dealer-contractor may not collect the sales tax from the real property owner on his charges for labor and services in installing the floor covering, provided that the charges for the labor and services are billed and stated separately from the charges for the floor covering.

(d) A floor covering installation made in New Jersey does not result in a capital improvement if the floor covering has not been permanently affixed to a subfloor.

(e) For sales tax purposes, the person who installs floor covering in New Jersey is required to be registered with the New Jersey Division of Taxation, to collect the sales tax from his customer on the installation services that do not result in a capital improvement and to remit the tax to the Division.

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.

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

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

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

1. The composition of the subfloor upon which the floor covering was permanently affixed. (For instance, cement, plywood, diagonal tongue-and-groove).

2. In cases of deteriorated finished floors, the cause and degree of deterioration.

3. Where preinstallation work was required—for instance, where previously cemented linoleum was removed before the new floor covering was permanently affixed—a statement to that effect should be retained.

4. Any other information that would enable an auditor to verify the performance of a capital improvement.

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

Case Notes

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.

18:24-22.5 Examples

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

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

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

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

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

1. Mrs. Charles then locates a floor covering installer who advertises himself as such in the yellow pages. This installer agrees to remove the existing floor covering and install the liner and new tiles in a manner which will result in the permanent affixation of the tiles. No sales tax is due on the charges made for this installation.

(d) Mrs. Darling, who lives in Ewing Township, New Jersey decides to have new vinyl tiles laid on her kitchen floor, as did Mrs. Charles in (c) above. However, Mrs. Darling purchases her tiles from a Pennsylvania floor covering dealer who delivers them to her New Jersey address. Not being registered with the New Jersey Division of Taxation, this dealer does not add the New Jersey sales tax to the charges for the tiles. Mrs. Darling owes the New Jersey use tax to the State of New Jersey upon receipt of the tiles, and should remit the same to the New Jersey Division of Taxation with a properly completed Use Tax Return (Form ST-18).

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

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

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

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

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

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

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".

SUBCHAPTER 23. BAD DEBTS

18:24-23.1 Charging and remitting tax

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

18:24-23.2 Bad debts; tax refund

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

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

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

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

4. The following example illustrates the foregoing rules:

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

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), increased the filing period from two to four years in the introductory paragraph.

Case Notes

Director of the New Jersey Division of Taxation's interpretation of N.J.S.A. 54:32B-12(c), set forth in N.J.A.C. 18:24-23.2(a), does not deny equal protection or due process, as the statute and regulation are reasonable and have a rational relationship to a legitimate governmental interest. Insofar as N.J.A.C. 18:24-23.2(a) distinguishes between a taxpayer that directly incurs a bad debt loss and one which asserts that it has funded some portion of the bad debt losses incurred by a third party, the Director has established a rational, reasonable, and valid classification. Home Depot U.S.A., Inc. v. Director, Div. of Taxation, 24 N.J. Tax 23, 2008 N.J. Tax LEXIS 7 (Tax Ct. 2008).

As finance companies that provided financing for private label credit cards a taxpayer offered its customers bore all losses for bad debts, under N.J.S.A. 54:32B-12(c) and N.J.A.C. 18:24-23.2(a), the taxpayer was not entitled to a refund of sales taxes paid on sales made with its credit card by customers who later defaulted. Home Depot U.S.A., Inc. v. Director, Div. of Taxation, 24 N.J. Tax 23, 2008 N.J. Tax LEXIS 7 (Tax Ct. 2008).

N.J.A.C. 18:24-23.2(a)2, which limits a vendor's right to a sales tax refund, does not impermissibly distort the effective rate of the sales tax to a rate substantially higher than six percent. Home Depot U.S.A., Inc. v. Director, Div. of Taxation, 24 N.J. Tax 23, 2008 N.J. Tax LEXIS 7 (Tax Ct. 2008).

18:24-23.3 Claim for refund

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

Case Notes

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

SUBCHAPTER 24. (RESERVED)

SUBCHAPTER 25. DATA PROCESSING

18:24-25.1 General provisions

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

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

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

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

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

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

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

"Input" means information transferred into the internal storage of a data processing system, including data to be processed or information to help control the process.

"Media" means the material, or configuration thereof, on which data are recorded, such as punched cards, discs, magnetic tape and microfilm.

"Output data" means data delivered from a device or program, usually after processing, and usually in the form of tangible personal property.

"Program" means the complete plan for the solution of a problem; more specifically, the complete sequence of machine instructions and routines necessary to solve a problem, including the media on which instructions and routines are recorded.

"Fabrication of media" means the incorporation of bits of intelligence into media by means which include, but are not limited to, processing, printing or imprinting; and as a result of which incorporation of a medium is given value which it did not previously possess.

"Service bureau" means any organization which processes data for others, or leases or rents electronic data processing equipment, or charges for the use of such equipment by others. Among other activities, service bureaus are engaged in the production of output data.

"Software" means the term applied to the property used to guide or control hardware and to cause the hardware to function. Software includes, but is not limited to a set of programs, procedures and associated documentation concerned with the operation of a data processing system.

"Time sharing" means a method of using a computing system that allows a number of users to execute programs concurrently and to interact with the programs during execution.

Case Notes

Leasing of computer information held not to be the leasing of tangible personal property and not subject to either sales or use taxation; rental of computer mailing lists held not subject to sales tax as a taxable advertising service; item described as a wrapper by taxpayer held not entitled to sales or use tax exemption. Spencer Gifts, Inc. v. Director, Div. of Taxation, 3 N.J.Tax 482, 182 N.J.Super 179, 440 A.2d 104 (Tax Ct.1981).

Taxpayer producing computer-generated test score results was performing a tax-exempt data processing service rather than producing tangible personal property; computer equipment rented by taxpayer was not exempt from sales and use tax. Educational Computer Software, Inc. v. Baldwin, 8 N.J.Tax 253 (Tax Ct.1986).

18:24–25.2 Electronic data processing transactions

(a) Rules concerning the taxable transactions include the following:

1. The sale or lease of data processing equipment is taxable, except where the equipment is leased or purchased with the intention of reselling or subleasing it. Equipment which is leased with the intention to sublease it is taxable to the sublessee on the charges made to such sublessee. Incidental use of the equipment made by the lessee is subject to the use tax, based upon the same rate charges as those charged to a sublessee.

2. The sale or lease of terminal device has been and continues to be taxable. It is not essential for a transfer of possession to include the right to move the tangible personal property which is the subject of a rental, lease or license to use. The charges made to a customer for use of a computer (known as timesharing), which the customer has access to through a remote terminal device, are not deemed to be a taxable transfer of possession of the computer.

i. Examples:

(1) A corporation contracts with a computer center to use the computer on the center's premises for 10 hours weekly. The corporation provides its own operator and its own materials. During the 10 hour period, no one else may use the machine. This transaction, commonly known as the sale of raw time, constitutes a transfer of possession, pursuant to a rental, lease or license to use, which is a sale subject to tax.

(2) A corporation contracts with a computer center to use the computer on the center's premises for 10 hours weekly. The corporation provides its own materials and the computer center provides and directs the operator. During the 10 hour period, no one else may use the machine. In this case, there is no transfer of possession to the corporation as it has no control over the operation of the computer.

(3) A corporation contracts with a computer center for access time of the computer center's equipment through the use of a terminal located in the corporation's office. The terminal is connected to the computer by telephone. The corporation's access to the computer through the terminal is not deemed to be a transfer of possession of the computer subject to tax.

3. Examples of taxable transactions:

i. The charges for additional copies or records, reports, tabulations, and the like which are prepared by rerunning the original program;

ii. Electronic data processing equipment, manufacturers' service bureaus, and data processing educational centers are deemed to be the consumers of tangible personal property which is used in training others. They are required to pay the tax on their purchases of such property; training aids which they purchase for resale, however, are taxable to the ultimate users.

(b) Rules concerning non-taxable transactions are as follows:

1. The processing of data by a service bureau constitutes a nontaxable service whether or not the customer supplies the medium. Data conversion services, whether by keyentry, keystroke verification or other entry procedure, are part of the processing of data, and whether or not forwarded to a customer, are nontaxable services.

2. The following are deemed to be professional services and are, therefore, not subject to sales and/or use tax:

i. Feasibility studies;

ii. Consulting services;

iii. Technical instruction;

iv. Professional services, such as accounting services, where the service bureau initially receives the raw material and studies, alters, analyzes, interprets and adjusts such raw material which by the use of a data processing machine are sorted, classified and rearranged.

3. Where the output resulting from data processing services is received by an out-of-State client through the medium of a telephone or telegraph transmission device at an out-of-State location, the charges for such data processing services are not taxable to the out-of-State client.

4. The sales and/or use tax is not applicable to the fabrication of a program by a non-service bureau company's employees for the exclusive use of their employer in connection with the employer's business.

5. The sales and/or use tax is not applicable when the tangible personal property involved is incidental to the professional or personal services and for which no separate charges are made.

6. The Sales and Use Tax Act is not applicable to charges for the sale or use of mailing lists.

As amended, R.1979 d.384, effective September 28, 1979.
See: 11 N.J.R. 472(b), 11 N.J.R. 595(a).
As amended, R.1983 d.357, effective September 6, 1983.
See: 15 N.J.R. 1086(a), 15 N.J.R. 1487(d).
In (a)3, deleted old i and ii and renumbered old iii and iv as new i and ii.
As amended, R.1983 d.619, effective January 17, 1984.
See: 15 N.J.R. 1565(a), 16 N.J.R. 148(c).
(b)7 added.
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), deleted former 2 and recodified former 3 through 7 as 2 through 6.

Case Notes

Leasing of computer information held not to be the leasing of tangible personal property and not subject to either sales or use taxation; rental of computer mailing lists held not subject to sales tax as a taxable advertising service; item described as a wrapper by taxpayer held not entitled to sales or use tax exemption. Spencer Gifts, Inc. v. Director, Div. of Taxation, 3 N.J.Tax 482, 182 N.J.Super 179, 440 A.2d 104 (Tax Ct.1981).

Rule found not persuasive in considering tax exemption issue in non-software storage service; receipts from storage of actual stock certificates and accompanying documents by registrar and transfer agent held subject to sales tax. Registrar & Transfer Co. v. Director, Div. of Taxation, 166 N.J.Super 75, 398 A.2d 1335 (App.Div.1979), certification denied 404 S.Ct. 1161, 81 N.J. 63 (1979).

Taxpayer producing computer-generated test score results was performing a tax-exempt data processing service rather than producing tangible personal property; computer equipment rented by taxpayer was not exempt from sales and use tax. Educational Computer Software, Inc. v. Baldwin, 8 N.J.Tax 253 (Tax Ct.1986).

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. 14:25 [1] 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 vendor 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 certificate of authority number is not required. However, for purposes of verification either a federal identification number or social security number is to be furnished.

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 TANGIBLE PERSONAL PROPERTY

18:24–27.1 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 charges for the transportation of tangible personal property.

18:24–27.2 Exclusion of transportation cost from a taxable receipt

(a) The cost of transportation of tangible personal property, except energy, where such cost is separately stated in a written contract, if any, and on the bill rendered to the purchaser is excludible from the receipt subject to tax. To qualify for the exclusion, such cost must be for the delivery of the tangible personal property to the purchaser and must be reasonable in relation to prevailing established rates. Any charge made to a retail purchaser, whether labeled transportation, handling or some other designation, which represents the vendor's cost of transportation from a supplier, manufacturer, warehouse or catalog or other distribution point to the vendor's place of business constitutes part of the receipt subject to tax. For example:

Example 1: A vendor charges his customer $15.00 for transportation of a refrigerator. The refrigerator is sold for $300.00. The refrigerator is transported from the vendor's place of business to customer's home. The customer is billed as follows:

Refrigerator	$300.00
Transportation	15.00
Total Due	$315.00

Receipt subject to tax is $300.00.

Example 2. A vendor charges his customer $10.00 for transportation of a taxable purchase. The purchase is drop-shipped from the manufacturer to the purchaser. The customer is billed as follows:

Purchase	$100.00
Transportation charge	10.00
Total Due	$110.00

Receipt subject tax is $100.00

Example 3: A motor vehicle dealer incurs a nontaxable transportation cost of $130.00 on the purchase for resale of an automobile. Delivery is made to the dealer's location. The automobile is sold to a retail purchaser for $8,320 plus the dealer's transportation cost of $130.00 which is separately stated. Receipt subject to tax under these facts is $8,450.

Example 4. A vendor charges its customer $225.00 for a supply of ready-mix concrete. The concrete is delivered to the customer's work site in the vendor's mixer truck. The vendor charges the customer $30.00 for transportation of the concrete. The customer is billed as follows:

Concrete	$225.00
Transportation	$ 30.00
Total due	$255.00

Receipt subject to tax is $225.00

(b) The charges to a shipper or consignee, which may be designated as demurrage, for detention of the means by which the property was transported to the purchaser, such as a commercial motor vehicle, trailer, semi-trailer, railroad car, commercial ship and vessel or marine cargo container, are considered part of the transportation cost and are not subject to tax. For example:

Example 1: Company A purchases tangible personal property which is shipped in five railroad cars to a location in this State. The railroad cars are retained for ten days beyond the stipulated time for unloading. Charges for the 10–day retention are made in addition to regulated tariff rates and are designated as demurrage. Under these facts, demurrage, retention charges, holding charges, etc., imposed in the transportation industry are considered a part of the transportation cost and are not a receipt subject to tax.

(c) For the purpose of (b) above, a charge by a vendor to a customer for the holding or retention of tangible personal property beyond a stipulated time, where such charge may also be designated as demurrage, and is unrelated to the transportation of property, is subject to tax; the taxable receipt from such a transaction is considered a rental, lease or license to use the tangible personal property involved. For example:

Example 1: Company A sells propane gas which is delivered to a customer in cylinders. A cylinder is retained beyond the stipulated time under the sales agreement. Charges are incurred by the customer for the period of extended retention. Even though the charge is designated as demurrage, it is subject to tax as a rental or lease of the cylinder.

Amended by R.1997 d.408, effective October 6, 1997.
See: 29 N.J.R. 3431(a), 29 N.J.R. 4338(a).
In (a)1, added Example 4.
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 in the first sentence.

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 six 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 $900.00.

Example 2: The facts are the same as in Example 1, except the horse is shipped by the auctioneer on a common carrier to the purchaser's farm in Kentucky. There is no sales 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).

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 $600.00.

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 $300.00 ($10,000 − $5,000 = $5,000; 6% of $5,000 = $300.00).

Amended by R.1994 d.626, effective December 19, 1994.
See: 26 N.J.R. 4166(b), 26 N.J.R. 5035(c).

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 six percent. If such horse was used outside of this State for 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).

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 and leases of tangible personal property (except motor vehicles and energy) to a qualified business and sales of services (except telecommunications and utility service) 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 services, and advertising services used or consumed exclusively within the enterprise zone.

(c) Qualified businesses purchasing 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 vendors, suppliers or lessors a properly completed UZ–5, Urban Enterprise Exempt Purchase Certificate.

(d) The benefits set forth in this section are unavailable for qualified businesses within a UEZ-impacted business district.

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).

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 vendor

(a) Sales tax is imposed at 50 percent of the statutory rate, on receipts from retail sales, with exceptions stated in (b) or (c) below, made by a certified vendor which is a qualified business from a place of business owned or leased, and regularly operated by the vendor for the purpose of making retail sales, and located in a designated enterprise zone 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 18:24–4.8.

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

(e) All sales made by a qualified and certified vendor must be made from his place of business within an enterprise zone or district, that is, either the purchaser must accept delivery at the vendor's place of business within an enterprise zone or district, or the vendor must deliver the tangible personal property from its 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 vendor'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 vendor 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.

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

Amended by, R.1985, d.31, effective February 4, 1985.
See: 16 N.J.R. 3193(a), 17 N.J.R. 320(c).
(e) added.
Amended by R.1993 d.313, effective July 6, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).
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.

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 vendors or suppliers a properly completed UZ–4, Contractor's Exempt Purchase Certificate, Urban Enterprise Zone.

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

(d) 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).

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