

(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	<u>2,000</u>
Due	<u>\$ 8,000</u>
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	<u>600.00</u>
	\$10,600.00
Trade in	<u>500.00</u>
Due	<u>\$10,100.00</u>

(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	<u>600.00</u>
Due	\$10,600.00
Rebate	<u>500.00</u>
Net Cost to Purchaser	<u>\$10,100.00</u>

(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.

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.

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".

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.

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 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.

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)).