

(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.

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.

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.

"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, 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).

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:

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).

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.