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Title 18. Department of Treasury—Taxation

Supplement July 3, 1995

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CHAPTER 24
SALES AND USE TAX ACT

Authority

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

Source and Effective Date

R.1993 d.313, effective June 4, 1993.
See: 25 N.J.R. 1486(a), 25 N.J.R. 2899(c).

Executive Order No. 66(1978) Expiration Date

Chapter 24, Sales and Use Tax Act, expires on June 4, 1998.

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 was readopted as R.1993 d.313. See: Source and Effective Date. 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). See, also, section annotations for specific rulemaking activity.

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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

- REG-1 Application for Registration with Division of Taxation
- ST-2 Sales Tax Certificate of Authority
- ST-5B Application for Exempt Organization Permit
- UZ-1 Urban Enterprise Zone Application for Reduced Sales Tax Collection

SPECIALIZED USE FORMS

- ST-3 Resale Certificate
- ST-4 Exempt Use Certificate
- ST-5 Exempt Organization Certificate
- ST-6 Direct Payment Permit
- ST-6A Direct Payment Certificate
- 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-50 Sales and Use Tax Quarterly Return
- 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

EXEMPTION STATUS

ST-5A Exempt Organization Permit

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).

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 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	<u>\$75.00</u>

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	<u>\$200.00</u>

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
<u>\$106.00</u>		<u>\$106.00</u>	Due
2.00	Discount		
<u>\$104.00</u>	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	<u>150.00</u>
	\$350.00
Sales tax at 6 percent	<u>21.00</u>
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	<u>5.00</u>
	\$45.00
Sales tax at 6 percent	<u>2.70</u>
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	<u>.20</u>
Taxable receipt	\$.80
Sales tax at 6 percent rate	<u>.05</u>
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	<u> </u>
Taxable receipt	\$1.00
Sales tax at 6 percent rate	<u>.06</u>
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	<u>.60</u>
	\$10.60
Manufacturer coupon	<u>1.00</u>
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	<u>.06</u>
	\$1.06
Manufacturer coupon	<u>.20</u>
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	<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).

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 duly authorized agent or employee and shall be preserved for a period of three 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).

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 three years from the last date of the quarterly (or monthly) period for the filing of sales tax returns to which summary records pertain.

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 three 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.

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 three 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 three 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 three year period, unless the vendor shall have notified the Director, by certified mail, of a change in accounting practice.

18:24-2.8 Purchase records

(a) In all instances, vendors are required to retain for a period of three 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.

18:24-2.9 Direct payment permit holders' 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 three 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 three 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.

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 permits; effective date

(a) Organizations which qualify for sales tax exemption under N.J.S.A. 54:32B-9(b)(1), forming after July 31, 1973, must file form ST-5B (Application for Exempt Organization Permit) within six months of formation or before October 1, 1975, whichever is later, in order for the effective date of the exempt organization permit to be retroactive to the date of formation.

(b) If the organization for any reason was required to alter its activities or substantially amend its charter to qualify under N.J.S.A. 54:32B-9(b)(1), its exemption 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).

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 a promoter and a person required to collect sales tax and shall, within three days after commencing business, file with the Division of Taxation an application for registration (REG-1) 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).

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 shall be in residence for at least 90 consecutive days; or
2. A daily rental of not more than \$2.00.

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.

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Tax Law. Robert J. Alter, Jay Soled, 135 N.J.L.J. S53 (1993).

Case Notes

Manufacturing tax exemption applied to equipment used to produce property which is used to produce other property sold to consumers. *GE Solid State, Inc. v. Director, Div. of Taxation*, 132 N.J. 298, 625 A.2d 468 (1993).

Interpretation of manufacturing exemption to sales and use tax was not manifestly unreasonable. *GE Solid State, Inc. v. Director, Div. of Taxation*, 11 N.J.Tax 320 (1990), affirmed 254 N.J.Super. 653, 604 A.2d 189, certification granted 130 N.J. 394, 614 A.2d 617, reversed 132 N.J. 298, 625 A.2d 468.

Receipts from purchase of photomask machinery by manufacturer of integrated circuits did not qualify for exemption from sales or use tax. *GE Solid State, Inc. v. Director, Div. of Taxation*, 11 N.J.Tax 320 (1990), affirmed 254 N.J.Super. 653, 604 A.2d 189, certification granted 130 N.J. 394, 614 A.2d 617, reversed 132 N.J. 298, 625 A.2d 468.

Integrated circuits and chips manufacturer's purchase of photomask machinery was not exempt from use tax. *GE Solid State, Inc. v. Director, Div. of Taxation*, 254 N.J.Super. 653, 604 A.2d 189 (A.D. 1992), certification granted 130 N.J. 394, 614 A.2d 617, reversed 132 N.J. 298, 625 A.2d 468.

Commercial photographer was collaterally estopped from challenging assessments on purchase and use of film. *Blair v. Taxation Div. Director*, 225 N.J.Super. 584, 543 A.2d 99 (A.D.1988), certification denied 113 N.J. 349, 550 A.2d 460.

Statute exempting from retail sales taxation sales of catalysts used to cause refining or chemical process held not to apply to manufacturer's sale of grinding balls, found not to be catalysts; regardless of catalyst status, grinding balls would not be exempt because they were not used to induce or cause a refining or chemical process. *Grinding Balls, Inc. v. Director, Div. of Taxation*, 1 N.J.Tax 514, 176 N.J.Super. 620, 424 A.2d 470.

Sales of dynamite to stone quarries for use in producing stone as an end product in blasting of quarry held exempt from sales tax; definition of refining. *Romac Explosives, Inc. v. Director, Div. of Taxation*, 125 N.J.Super. 154, 309 A.2d 465 (App.Div.1973), affirmed per curiam 64 N.J. 551, 319 A.2d 65 (1974).

Plaintiff's direct mailing services performed in state, including sortie-bag services on mail to out-of-state addresses, held subject to sales and use tax; manufacturing or processing definition (citing former N.J.A.C. 18:24-25). *Fisher-Stevens, Inc. v. Director, Div. of Taxation*, 121 N.J.Super. 513, 298 A.2d 77 (App.Div.1972), certification denied.

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.

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) Delivery for the purpose of these rules means the taking of possession by the purchaser at his location in New Jersey.

1. Where a written agreement has been entered into for the purchase of machinery, apparatus or equipment, and such machinery, apparatus or equipment qualifies for an exemption as provided for in this section, the date of delivery shall be the criterion for determining the right to exemption from tax. For example, a written agreement is entered into on May 1, 1977, for purchase of a machine which will be used directly in production. The machine is picked up by a contract or common carrier and delivery takes place at the manufacturer's location in New Jersey on January 2, 1978. Since delivery is made on or after January 1, 1978, the receipts from the sale of the machine are not subject to tax.

2. In cases of partial delivery of machinery, apparatus or equipment for use directly in production where the partial delivery is made to the purchaser's location in New Jersey prior to January 1, 1978, and delivery of the remainder is made on or after January 1, 1978, the exemption will apply, provided, however, that the partially delivered machinery, apparatus or equipment is not capable of operation in production prior to January 1, 1978.

(f) Under a written agreement entered into prior to January 1, 1978, for the rental or lease of machinery, apparatus or equipment used directly in production, the periodic rental payments due on or after January 1, 1978, are exempt from tax. A lease is distinguishable from an executed or completed sale. The lease is not considered to be a single and completed transaction at the time that the tangible personal property was first leased to the lessee. It is, rather, an agreement for a series of transactions to be completed thereafter. The right to the continued use and possession of the personal property is conditioned upon subsequent payment of rental charges and performance of other covenants. Each rental period relates to a period of possession and the tax becomes chargeable as each rental payment becomes due. Rent which is due before January 1, 1978, is subject to tax irrespective of the period of possession. The payments for each rental period are thus treated as severable portions of the contract. Such a lease agreement differs from an ordinary sale of property since it is not completely executed until the term expires and all of its conditions are fulfilled. For example, on January 1, 1976, a unit of machinery was leased for use directly in production. The lease was for a term of five years (termination date, December 31, 1980) and rental payments are to be made in advance on the first day of each month. Each monthly rental payment for the rental period up to December 31, 1977, is subject to tax. The monthly rental payments due on and after January 1, 1978, are not subject to tax.

1. For use of leased machinery, apparatus or equipment in two different activities, see subsection (d) of this section.

(g) The exemption will apply 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 produce tangible personal property for sale, to be used by the owner upon completed construction and acceptance after January 1, 1978. 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, a sale of process piping is contracted for and will be completed and accepted on or after January 1, 1978. Where process piping meets the qualifications for exemption under this subchapter as manufacturing machinery, apparatus or equipment, it is exempt from tax.

2. 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.

3. 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.

4. 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.

5. 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)).

6. 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.

7. 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.

8. 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.

9. 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 (g)2 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).

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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 section 2 of this subchapter, 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, 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).

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 section 6 of this subchapter are not subject to the taxes imposed under the provisions of N.J.S.A. 54:32B-3(b)(1) and N.J.S.A. 54:32B-3(b)(2) where the tangible personal property upon which such services were performed is delivered on or after April 5, 1977, 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 purchaser 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:

(1) A nonresident firm sends a New Jersey printer various forms upon which the firm'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;

(2) A nonresident individual purchases lumber outside New Jersey and has a cabinetmaker in New Jersey construct a bookcase for him. The work is completed on March 31, 1977. The bookcase is delivered outside New Jersey on April 7, 1977. The charges for the production service performed in New Jersey is not subject to tax in New Jersey;

(3) Same facts as item (2) above except that the individual picks up the finished bookcase in New Jersey himself on April 7, 1977. The charge for the service is subject to tax because the tangible personal property was delivered in New Jersey;

(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 on April 4, 1977. The charge for the service is subject

to tax since the vehicle was delivered prior to April 5, 1977, the effective date of the amendment (P.L. 1977, c.54);

(5) Same facts as in item (4) above except that the vehicle is delivered outside New Jersey on or after April 5, 1977. The charge for the service is not subject to tax;

(6) Same facts as in item (4) above except that the nonresident after the repairs are made picks up the vehicle in New Jersey on or after April 5, 1977, and returns to his state of residence. Since delivery is made in New Jersey, the service is subject to tax;

(7) A New Jersey advertising agency performs advertising services for a nonresident purchaser not for use directly and primarily for publication in newspapers and magazines. Delivery is made on or after April 5, 1977. 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).

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.

“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, political subdivision, authority, or public corporation of the governments of the United States of America or the State of New Jersey; or, any organization which holds a valid exempt organization permit 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.

“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.

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).

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, 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).

Case Notes

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, except where such installation results in a capital improvement to real property, (see Section 7 of this Subchapter);
3. Maintaining, servicing, or repairing real or tangible personal property.

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).

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:

1. Where such services are 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);
2. Where such services involve only garbage removal and 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. The contractor should charge tax only on the 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).

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 is required to purchase all materials as defined in Section 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.)

18:24-5.10 Fabricator/contractor

Where a fabricator/contractor sells his completed product for installation by someone other than himself, he is required to charge and collect tax on the selling price of the product.

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 neither responsible for the payment of use tax as provided in (a) above nor for 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.

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

Subcontractors—Where a contractor enters into a contract to perform specified operations for a second contractor:

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

(b) Taxable services (see Section 5.6 of this Chapter) performed by a subcontractor for a prime contractor are not subject to collection of tax by the subcontractor. 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.

(c) 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.)

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.

(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.

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 materials, supplies, equipment or services. A fabricator/contractor should issue a Resale Certificate to his suppliers on all purchases of materials.

2. Exempt Use Certificates (Form ST-4) may be issued by contractors and fabricator/contractors only in cases where the materials purchased are for exclusive use in installing machinery, equipment or apparatus exempt at the time of purchase under the provisions of Section 8 of the Sales and Use Tax Act. 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. Farmer's Exemption Certificates (Form ST-7) may neither be issued by a contractor or fabricator/contractor, nor accepted by him as evidence of exemption, except, that in the case of a sale by a fabricator/contractor to a person empowered to issue a Farmer's Exemption Certificate of an item of tangible personal property which is for direct and exclusive use in agriculture or horticulture, and which is not purchased for incorporation into a building or structure, a Farmer's Exemption Certificate may be accepted by the fabricator/contractor; provided, however, that any charges for installing such exempt property are subject to tax.

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.

Editor's Note: Copies of form ST-8 may be obtained from the Division of Taxation, West State and Willow Streets, Trenton, New Jersey 08625.

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

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

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

9. If a qualified housing sponsor, as defined in N.J.S.A. 55:14K-3 of the New Jersey Housing and Mortgage Finance Agency Law of 1983, has received Federal, State or local government subsidies, as verified by the New Jersey Housing and Mortgage Finance Agency on a Certification of Housing Sponsor form, in addition to New Jersey Housing and Mortgage Finance Agency financing for the specific housing project, contractors of the housing sponsor, pursuant to P.L. 1988, c.83, may purchase materials, supplies and services tax free for the specific housing project. The contractor must receive a copy of the housing sponsor's Letter of Exemption for his records and may then issue a Contractor's Exempt Purchase Certificate (Form ST-13) to his suppliers to document his exempt purchases for the housing project.

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

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

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

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

Case Notes

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.

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. 54:32B-8.4 and N.J.S.A. 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. Corset laces;
12. Children's costumes;
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 scarves;
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.

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).

18:24-6.4 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; and
11. Ski boots.

(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 baseball uniforms;
3. Children's football uniforms;
4. Girls' and boys' gym suits;
5. Hooded shirts;
6. Knitted caps or hats;

7. 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.

8. 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).

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 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).

18:24-6.7 Accessories taxable

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.

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 Section 7.1 of this Chapter; 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.

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

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, the Director may, at his discretion, utilize external indices to establish the basis upon which tax shall be paid.

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.

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 since⁴ 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).

18:24-7.9 Transfers statutorily excluded from tax

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:

(a) 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;

(b) Transfers of motor vehicles to a corporation upon its organization in consideration for the issuance of its stock;

(c) Transfers of motor vehicles in the distribution of property by a corporation to its stockholders as a liquidating dividend;

(d) Transfers of motor vehicles as a contribution of property to a partnership in consideration for a partnership interest therein;

(e) Transfers of motor vehicles in the distribution of property by a partnership to its partners in whole or partial liquidation;

(f) 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.

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 designate) 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).

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

(c) The basis for tax shall be determined monthly by multiplying 2½ percent times the total invoice cost to distributors or dealers 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 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).

18:24-7.14 Taxability of motor vehicles used by automobile dealers for demonstration and other company purposes; 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 but do not in fact use such vehicles in the promotion of business (as defined in subsection (c) of this Section, paragraph 3), prior to the sale thereof, shall be required to pay a compensating use tax on such uses. Said tax shall be imposed upon the dealers' net invoice price, or if there is a vehicle returned to inventory or stock in exchange therefor, on the dealers' net invoice price less the fair market value of the exchanged vehicle.

(c) There shall be no compensating use tax imposed on the use of motor vehicles by retail dealers who withdraw such vehicles from inventory or stock prior to the sale thereof when such vehicles are available for and are in fact used for the promotion of the business of the dealership:

1. "Available for use in the promotion of the business of the dealership" means that the vehicle is present at the dealership during a substantial portion of the hours of normal business operation of the dealership.

2. "In fact used" means that the vehicle must not only be available but also must actually be used by the dealership in the promotion of its business.

3. "Promotion of business" means any and all efforts directed toward effecting the sale at retail of motor vehicles.

(d) In order to be entitled to the exemption provided in subsection (c), paragraph 3 of this Section, a dealer shall file together with his quarterly return, a certification wherein the dealer certifies the usage of all company-owned motor vehicles withdrawn from inventory or stock, which certification 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).

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) above.

(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).

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 record keeping requirements set forth in subchapter 2 of this chapter.

(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 three years from the date of the use of such certificate as a basis for exemption.

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, semitrailers, and vehicles used in combination therewith, as defined in N.J.S.A. 39:1-1, which are registered in New Jersey, 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".

18:24-7.19 Taxation of manufactured and mobile homes

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

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

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

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

iii. "Manufacturer's invoice price" means the price charged by the manufacturer to a purchaser for a new manufactured or mobile home, including any amount for which credit is allowed by the manufacturer to the purchaser, the charge for the manufacturer-installed accessories, options, components or other taxable tangible personal property, without any deduction for expenses, early payment discounts or the value of a trade-in.

iv. "Dealer" means any person who sells manufactured and mobile homes, trailers or house trailers and other tangible personal property in New Jersey in the regular course of business and who is registered as a 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 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).

(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, and 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.

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 ST-5B.

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

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)(1) may rely upon such determination so long as there are no substantial changes in the organization's character, purposes or methods of operation.

18:24-8.4 Application for exemption; information

(a) An organization claiming exemption under Section 9(b)(1) shall file the formal application Form ST-5B, in accordance with the instructions on the form or issued therewith.

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)(1), hereinafter referred to as section 9(b)(1), where such sales, charges, uses or occupancies are directly related to the purposes for which qualified organizations have been organized.

(b) The application should 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).

18:24-8.5 "Private shareholder or individual" defined

The term "private shareholder or individual" in Section 9(b)(1) refers to persons having a personal and private interest in the activities of the organization.

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)(1), 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.

18:24-9.2 Exempt purpose defined

The term "exempt purpose or purposes", as used in this Subchapter, means any purpose specified in Section 9(b)(1), as defined and elaborated in Section 8.6 of this Chapter.

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 or organization (referred to in this Section as its "articles"), as defined in subsection (b) of this Section, 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)(1). Therefore, an organization which, by the terms of its articles, is formed "for literary and scientific purposes within the meaning of Section 9(b)(1) 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)(1), 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 subsection (e) of this Section 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)(1). 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)(1) 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)(1). 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 must, in order to establish its exemption, 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 Section 9(b)(1) 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 Section 8.9(c) (Operational test) of this Chapter;
4. The terms used in paragraphs 1, 2 and 3 of this subsection shall have the meanings provided in Section 8.9(c) (Operational test) of this Chapter.

(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).

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)(1). 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 contracts, 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 insub-

stantial 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.

18:24-9.5 Specific purposes exempt

(a) An organization may be exempt as an organization described in Section 9(b)(1) if it is organized and operated exclusively for one or more of the following purposes:

1. Religious;
2. Charitable;
3. Scientific;
4. Testing and 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".

18:24-9.6 Exemption organizations must serve public interest

An organization is not organized or operated exclusively for one or more of the purposes specified in Section 8.10 (Specific purposes exempt) of this Chapter 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 family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

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. To eliminate prejudice and discrimination;
8. To defend human and civil rights secured by law; or
9. To combat 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 Section 8.9(c) of this Chapter.

18:24-9.8 "Education" 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.

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)(1) 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)(1) even though it may have certain exempt purposes, its property is held in common, and its profits do no 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;
- 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.

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.

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 this 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 holding a valid exempt organization permit (form ST-5A) 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 holding a valid exempt organization permit (form ST-5A) 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 permit (form ST-5A) as of the date of the transaction;

4. Any organization holding a valid exempt organization permit (Form ST-5A), 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).

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 permits, 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).

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 only accept the original or 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).

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).

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

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

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 Retention of certificates; inspection

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

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 SALES TAX

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 Sales Tax Bureau 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.

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 April 1, 1975, with respect to sales and use tax liabilities incurred on and after April 1, 1975, every vendor whose liability exceeds \$100.00 for the first or second month of a quarterly filing period shall, on or before 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 his liability for the month:

1. Example—January, February, March 1975: Taxpayer's sales and use tax liability for January and February, 1975, exceeds \$100.00 for each of said months. Thus, taxpayer files a monthly remittance on February 28, 1975, for January, 1975, and pays the tax at said time. He does the same on March 28, 1975, for February, 1975, and pays the tax at said time. On April 20, 1975, he files his quarterly return and takes credit for payments made on February 28, and March 28.

2. Example—April, May, June, 1975, and thereafter: Taxpayer's sales and use tax liability for April and May, 1975, exceeds \$100.00 for each of said months. Thus, taxpayer files a monthly remittance on May 20, 1975, for April, 1975, and pays the tax at said time. He does the same on June 20, 1975, for May, 1975, and pays the tax at said time. On July 20, 1975, he files his quarterly return and takes credit for payments made on May 20 and June 20.

Note: The foregoing rule revises previous rule appearing in instructions—Form ST-50A.

New Rule, R.1975 d.4, effective January 13, 1975.
See: 6 N.J.R. 494(b), 7 N.J.R. 77(a).

18:24-11.3 (Reserved)

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".

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	Drive-In	Luncheonettes
Cafes	Restaurants	Mobile Vending Operators
Cafeterias	Fast Food	Oyster and Clam Bars
Carry-Out	Operators	Pizzerias
Restaurants	Hamburger and	Restaurants
Caterers	Hot Dog Stands	Sandwich Bars and Shops
Chili Parlors	Ice Cream Stands	Snack Bars
Dairy Bars	Lunch Bars,	Soda Fountains
Delicatessens	Counters and	Taverns, Grills and Bars
Diners	Rooms	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).

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 non-profit organizations to certain elderly or disabled persons for:

i. Meals especially prepared for and delivered to homebound elderly, age 60 or older, and to disabled persons.

ii. Meals prepared and served at a group sitting at a location outside of the home to the otherwise homebound elderly persons, age 60 or older, and otherwise homebound disabled persons.

6. Food and drink furnished by an employer to employees for the employee's convenience where assigned a money value for purposes of: inclusion in remuneration, which is the basis for computing the employers' 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).

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 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.

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).

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 Modification by hospital sales exemption for retail 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).

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 her cloths may be adjusted in the manner prescribed in this subchapter to determine the portion thereof subject to the sales tax.

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 $\frac{2}{3}$ 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 though the tax is not reimbursed to the vendor by the purchaser where such sales are in the amount of less than \$0.11.

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

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 tangible 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 \$0.10 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).

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 TEN 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 \$0.10 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.

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 sales of milk;
 - ii. Receipts from sales of tangible personal property through coin-operated vending machines at \$0.10 or less, per item. (These receipts do not include any portion of the receipts from the sale of any item in excess of \$0.10);
 - iii. Receipts from any other exempt sales.
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.

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 USED DIRECTLY AND EXCLUSIVELY IN THE PRODUCTION FOR SALE OF TANGIBLE PERSONAL PROPERTY ON FARMS

18:24-19.1 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 sale, rental or leasing of tangible personal property used directly and exclusively in the production for sale of tangible personal property on farms. (N.J.S.A. 54:32B-8.16).

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).

18:24-19.2 Definitions

For the purposes of this Rule:

“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.

“Farmer” means a person who operates or manages a farm for gain or profit, either as owner or tenant.

“Farms” means an enterprise using land and improvements thereto for agricultural and horticultural production for the sale of tangible personal property. Farms include, but are not limited to, such enterprises producing: forages and sod crops; grains and feed crops; dairy products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; fruits of all kinds, including grapes, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products.

“Productive animals” means animals which are raised for their meat, for the edible products which they produce, for their fur, wool or skin, for breeding purposes or for farm work. Thus, the following are examples of productive animals: dairy cows, poultry, swine, sheep, food fish, rabbits and other game animals raised for meat or fur, chinchillas and minks; also, cows and bulls held for breeding purposes, stallions, brood mares and plow horses.

The animals in the following list are examples of nonproductive animals: pets, including fish, dogs (including work dogs), cats, horses, ponies, birds, rabbits; race horses, riding horses; animals for game farms and gun clubs.

New Rule, R.1971 d.195, effective November 1, 1971.
See: 3 N.J.R. 276(a), 3 N.J.R. 208(a).

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 Exemption

(a) The exemption provided by N.J.S.A. 54:32B-8.16 applies to the purchases of tangible personal property.

(b) There is no exemption for the purchase of taxable services.

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).

18:24-19.4 Directly in production

(a) The use of the phrase “directly in production” in the statute makes the exemption status of property depend upon the particular use of such property and does not exempt the property solely on the basis that such property is used on a farm.

(b) Property which is used in some manner prior to the actual commencement of production or in some manner after production has terminated is not used “directly” in production within the meaning of the law.

1. Property used to collect, convey, or transport property, and storage facilities or devices used to store property, prior to its use in the actual farming operation are subject to tax.

2. Property used to transport or convey the farm product after the final farming operation (which includes but does not extend beyond the operation of packaging for the ultimate consumer) and storage facilities or devices used to store the product are not used directly in farming and are taxable. For example, equipment which loads packaged products into cases or cartons for ease of handling in delivery is subject to tax. Machinery, equipment, supplies and other property used to convey, transport, handle or store the packaged product are also taxable.

(c) Production machinery, equipment, implements and other articles have exempt status when used exclusively in the growing, stimulation of growth and processing of tangible personal property on farms to a marketable state.

1. Machinery or equipment used in clearing, reclaiming and draining of land does not constitute a direct use inasmuch as the items and their use result only in making land suitable for subsequent cultivation and production of crops or other tangible personal property.

2. The purchase or use of tangible personal property by a person engaged in the business of farming is exempt from tax if such property is exclusively used by him directly in farming operations. However, purchases of automobiles, trucks, trailers and truck-trailer combinations as well as supplies and repair parts for such vehicles are subject to tax; provided, however, that certain trucks, trailers and truck-trailer combinations are exempt from tax in accordance with N.J.S.A. 54:32B-8.43. (See N.J.A.C. 18:24-7.18.)

(d) In determining whether property 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 and 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 farm product.

(e) The fact that particular property may be considered essential to the conduct of the business of farming because its use is required either by law or practical necessity does not, of itself, mean that the property is "used directly" in farming operations.

(f) The purchase or use by a farmer of property in the following categories, when used directly and exclusively in farming, is exempt from tax. Where a single unit of such property is put to use by a farmer 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.

1. Machinery, equipment and supplies which are used in actual farm production or to transport, convey, handle or store the product as a part of such production are considered to be directly used in farming operations. Repair parts which are installed and become an integral part of such property are also exempt from tax.

2. Property used to test and inspect the product during the actual farm production is considered to be directly used in the farming operation.

3. Property used to wash, sterilize or inspect returnable containers prior to their being filled is exempt when used in packaging the product if the container will be delivered to the ultimate consumer.

4. Wrapping supplies (including internal packing materials) used in packaging which passes to the ultimate consumer are exempt.

5. Property used to handle and preserve farm products upon the farm premises, and to prevent or deter the destruction, injury or spoilage of farm products, or productive animals or plants, is exempt from tax. Examples of such property include:

i. Chemicals used for pest control and equipment used to dispense it;

ii. Property used to groom productive animals so as to preserve their health (including property such as dehorner, debeaker and hoof trimmers) and harnesses used to control productive animals on the farm premises;

iii. Refrigerating devices (including ice) used upon the farm premises to cool raw milk or to preserve perishable vegetables or other farm products;

iv. Chemicals and disinfectants used to clean and sterilize milking equipment, milk cans and bulk milk tanks, so as to prevent animal infection or the contamination or spoilage of milk;

v. Medicines, cleaning solutions, compounds and supplies used to clean and groom productive animals so as to preserve their health.

6. Property which is or becomes a constituent or a part of a farm product is "used directly in farming operations". Property consumed by productive animals

such as feed and food additives, and property used for plant growth such as seed, fertilizer and chemical additives, is also "used directly in farming".

7. Property which is used to cause other property to become a constituent or part of a farm product, or to be consumed by productive animals or to foster plant growth is exempt from tax. Examples of such property include:

i. Seeders, planters, plows, harrows, cultivators, sprayers and similar equipment used to till the soil, to plant seed, and to care for and cause the growth of productive plants;

ii. Portable equipment used to feed and water productive animals and to administer medication to them, such as portable tubs, buckets, cans, feed scoops, feed carts, portable watering devices, portable incubators and brooders, and artificial breeding equipment;

iii. Fuel used for heating and power.

8. Property which is used to extract or separate a farm product from productive animals, the soil or plants is exempt from tax. Such property includes harvesters, combines, binders, forage blowers, milking equipment including strainers and strainer discs, egg collecting equipment, pickers and manure or feed handling equipment such as shovels, scoops, forks, barn brooms and carts.

(g) Property in the following categories is not used directly in a farming operation; and the purchase or use of such property is subject to tax:

1. The term "farming" does not include the construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance or improvement of real estate. The purchase or use of tangible personal property by a farmer for such purpose is subject to tax, even though the structure may house or otherwise contain equipment or other facilities used directly in farming.

2. Remodeling, repairing, or maintaining buildings (including houses, garages, barns, stables, greenhouses, mushroom houses and storehouses), fences and stanchions permanently affixed to real estate, dams, roads, spillways, and other improvements to real estate, is not a "farming operation", and property used in such work is taxable. Activities such as land reclamation, land clearing, landscaping, and similar activities which are intended to improve or preserve real estate, are not "farming operations".

3. Maintenance, service, and repair work is not a farming operation. Maintenance facilities, including tools, equipment and supplies predominantly used in performing such work (examples: chain hoists, tire spreaders, welding equipment, drills, sanders, wrenches, paint brushes and sprayers, oilers, absorbent compounds, dusting compounds, air blowers, wipers, and paint or other protective or decorative coatings) are subject to tax. However, replacement parts which are used to replace worn

parts upon exempt machinery and equipment (examples: motors, belts, screws, bolts, cutting edges, air filters or gears) are not subject to tax. Equipment and supplies, including soaps and cleaning compounds, brushes, brooms, mops, and similar items, used in general cleaning and maintenance of farm property are subject to tax.

4. Property used in managerial, sales or other nonoperational activities is not directly used in farming and therefore subject to tax. This category includes, but is not limited to, property used in any of the following activities:

i. Office furniture, supplies and equipment, textbooks and other educational materials, books and records, and all other property used in farming record-keeping and other administrative and managerial work are subject to tax. Such property includes, but is not limited to, supplies used to record the quality and quantity of work in production, of goods in storage, the flow of work, the results of inspection, or to instruct workers in routing work or other production activities.

ii. Property used in advertising farm products for sale, or in marketing, transporting such products to a market or to customers, or selling such products, is not within the scope of the farming exemption.

iii. Property used in the exhibition of farm products or of farming operations is subject to tax. Such property includes blankets, halters, prods, leads, harnesses, dressings, ribbons, clippers and similar show grooming and display equipment.

iv. Property used to prevent or fight fires, and equipment and supplies used for such programs as safety, accident prevention or first aid is subject to tax, even though such equipment or property is required by law.

v. Property used for the personal comfort or convenience of the farmer, his family, his employees, or persons associated with him is subject to tax. Examples of such property include: Beds, mattresses, blankets, tableware, stoves, refrigerators, and other equipment used in conjunction with the operation of a migrant labor camp, or facilities for farm employees.

vi. Property used in managerial, sales or other nonproduction activities, is subject to tax even though it is used during farming operations. Illustrations of such property include safety, heating and ventilation equipment, planking or grating for crosswalks or platforms, and maintenance equipment or facilities.

vii. Property used in making butter, sausage, canned goods, jellies, flour, juices, cheeses, ice cream, and other items which are not deemed to be "farm products" is not exempt from tax under the farming exemption.

(h) The following businesses are not deemed to be farms, and purchases made in the furtherance of such businesses are not accorded the farmer's exemption:

1. The breeding or raising of dogs, cats and other pets; game animals, birds or fish; or other animals which are intended for use in sporting or recreational activities such as, but not limited to, hunting and fishing.

2. The operation of stockyards or slaughter houses.

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).

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 Farmer's Exemption Certificate—ST-7

(a) A farmer may issue this certificate to his supplier to cover his purchases of tangible personal property which have been declared in this rule to be exempt, provided he enters all the required information on such certificate.

(b) Sales which are not supported by a properly executed exemption certificate shall be deemed taxable retail sales.

(c) A blanket Farmer's Exemption Certificate may be furnished to the vendor by the farmer to cover additional purchases of the same general type of tangible personal property.

(d) Each sales slip or purchase invoice based on such blanket certificate must show the farmer's name, address and social security or Federal identification number.

18:24-19.6 Taxable and exempt items

Schedules A and B show examples of items of tangible personal property taxable and exempt under N.J.S.A. 54:32B-8.16.

EXEMPT SALES—(SCHEDULE "A")

Animals for breeding purposes

Animals, productive

Apiary equipment *

Artificial growing media*

Artificial insemination equipment

Augers *

Balers	Wrapping supplies used for delivery of any personal property
Barn brooms	Coolers, bulk milk*
Bedding for productive animals	Cooling tanks and refrigerators used to cool raw milk*
Bees, beehives, and other apiary equipment *	Combines
Bins, grain, portable	Conveyors (elevators), portable*
Blowers	Corn pickers
Boarding of productive animals	Cow stanchions, portable
Brooders, poultry, portable	Cow ties
Brooms*	Crates, field
Buckets *	Cultipackers
Bulbs, -plant *	Cultivators
Bulk milk coolers *	Debeakers for productive animals
Bulk milk tanks*	Defoliant*
Calf weaners and feeders	Dehorner for productive animals
Cattle currying and oiling machines	Disks
Cattle feeders, portable (see list of taxable items)	Drags
Capital improvements: charges for labor and services in the performance of a capital improvement	Driers
Chain saws used in harvesting timber or preparing lumber for sale	Drugs and medicines for productive animals, including vaccines, hormones and food additives
Chemicals and solutions for exclusive use on milking equipment, milk cans and bulk milk tanks to prevent spoilage	Dusters
Chemicals, medicines, serums and solutions used in the care of productive animals	Egg candling equipment
Chemicals used for drop disease, pest and weed control	Egg collecting equipment
Chicken pickers, portable	Egg graders
Chinchillas purchased for breeding purposes	Egg oiling equipment
Clipping machines for use on productive animals	Egg washing equipment
Clothing, safety	Egg washers
Containers	Electrical generators*
Nonreturnable	Ensilage cutters
Milk, reusable	Farm tractors*
Used for delivery of any personal property	Farm wagons and accessories*
	Feed bowls, water bowls for productive animals

Feed carts	Grain bins, portable
Feeders, cattle, portable	Grain conveyors*
Feed for boarded horses	Grain drills
Feed for breeding animals	Grain elevators, portable*
Feed for productive animals	Grain planters
Feed grinders	Grooming equipment
Feed shovels	cattle currying and oiling machines
Fertilizer distributors	debeakers
Fertilizers*	dehorners
Field crates*	clipping machines
Fish hatchery stock	Grooming equipment used on productive animals
Flats and pots*	Growing media, artificial*
Foils*	Hand tools, farm*
Food additives for productive animals	Hand trucks*
Forage boxes	Harrows
Forage harvesters	Harvesters
Fork lifts*	Hay conditioners
Front and rear end loaders*	Hay loaders
Fruit graders	Hay mowers
Fruit harvesters	Hay racks
Fruit trees*	Hay rakes
Fruit washers	Hay tedders
Fruit waxers	Hay windrowers
Fuels	Herbicides*
Fungicides*	Hog feeders, portable
Garden tractors*	Hoof trimmers for productive animals
Gasoline	Hormones for productive animals
Generators, auxiliary*	Horses purchased for breeding purposes
Graders, Fruit, vegetable and egg	Horses purchased for productive work
Grain augers*	Horses purchased for rental purposes, including horse-back riding
Grain binders	Horses purchased for resale

Horseshoes for plow horses or horses held for breeding or for sale	Pallets and pallet boxes*
Hose*	Paper towels for udder washing
Husking machines	Parts for exempt equipment
Hydro-coolers	Peat moss, mulches*
Ice	Picking and pruning equipment, mechanized
Incubators, portable	Pipe, portable, to water productive animals or crops
Insecticides, rodenticides, fungicides and herbicides*	Planters*
Irrigation pipe and fittings, portable	Plants*
Labor used in capital improvements	Plastics*
Land levelers for sod production	Plows
Litter for productive animals	Post hole diggers*
Livestock water foundations, portable	Potato washing and waxing machines
Lumber used to build or repair exempt items	Pots and flats*
Manure handling equipment	Poultry brooders, portable
Manure spreaders	Poultry feeders, portable
Medical services, veterinarian	Poultry house equipment*
Medicines and drugs for productive animals including vaccines, hormones and food additives	Poultry nests, portable
Milk cans, reusable	Productive animals
Milking equipment, including specialized cleaning brushes	Pruning and picking equipment, mechanized
Milk pails	Pruning tools for use in orchards or nurseries
Milk strainer disks	Pump for exclusive use in watering productive animals or in farm irrigation
Milk strainers	Refrigerators used to cool raw milk*
Milk tanks, bulk*	Rental charges for exempt items
Mowers, hay	Replacement parts for exempt equipment
Mowers, rotary blade*	Rodenticides*
Mulches*	Rollers
Nests, poultry, portable	Root planters
Nursery stock*	Root vegetable harvesters
Packing materials or other wrapping supplies used in the delivery of any personal property	Rotary blade mowers*
Pails, milk	Rotary hoes
	Safety clothing

Salt blocks for use by productive animals
 Salt hay purchased by nursery
 Sawdust for bedding productive animals
 Seeders
 Seedlings*
 Seed planters
 Seeds*
 Semen
 Serums for use on productive animals
 Shellers
 Shovels for handling feed
 Silo unloaders
 Soil amendments and conditioners*
 Soil substitutes*
 Stallions purchased for stud purposes by horse farm
 Stanchions, portable
 Stock, plant *
 Stone pickers
 Storage (charges for the storage of farm produce held for sale)
 Strainer disks, milk
 Stud fees (productive animals only)
 Sprayers*
 Tanks, bulk milk*
 Tarpaulins (tarps) *
 Tires for exempt equipment
 Tools, hand, farm*
 Top soil *
 Towels for udder washing
 Tractors, farm*
 Tractors, garden*
 Training of horses

Transportation charges
 Tubs*
 Twine*
 Udder towels
 Vaccines for productive animals (charges for vaccinating poultry are taxable)
 Vacuum coolers*
 Vegetable graders
 Vegetable washers
 Vegetable waxers
 Veterinarian medical services
 Washers, fruit, vegetable and egg
 Water bowls, feed bowls for productive animals
 Water foundations for livestock, portable
 Water pump for exclusive use in watering productive animals or in farm irrigation
 Water pumps, portable, for use in production (see taxable items)
 Waxers, vegetable, fruit, etc.
 Weaners, calf
 Weeders
 Wood chips for bedding productive animals
 Wrapping supplies or packing materials used in the delivery of any personal property

TAXABLE SALES (SCHEDULE "B")

Air compressors
 Air tanks
 Animals used by game farms, gun clubs or commercial zoological gardens
 Automobile parts
 Automobiles
 Barn ventilators
 Bins permanently installed
 Blades, bulldozer

Boarding of horses, except horses boarded for breeding	Feed for pets or other nonproductive animals
Boarding of nonproductive animals	Feeders, cattle, permanently installed (see list of exempt items)
Brooders, poultry, permanently installed (see list of exempt items)	Feeders, poultry, permanently installed (see list of exempt items)
Brooms*	Fertilizer for lawn and home garden
Brushes*	Field toilets
Building materials and supplies for the repair, maintenance or construction of real property, including, but not limited to:	Fire prevention equipment
Paint and painting supplies	Fountains, water, permanent
Fence materials	Garden hose*
Lumber	Gasoline tanks and pumps
Nails	Grain bins permanently installed (see list of exempt items)
Bricks	Grain elevators (structures)
Cement	Greases and oils
Bulldozers	Greenhouses, unassembled
Bulldozer blades	Harness for nonproductive animals
Cabinets, dispensing, for paper towels	Harness used in transport of livestock or for nonproductive animals
Cabinets for dispensing or storing milk strainer disks	Heaters, portable
Cattle feeders, permanently installed (see list of exempt items)	Herd dogs
Compressors, air	Horses (for exceptions see list of exempt items)
Construction tools	Horse grooming and exercising
Containers, returnable, except reusable milk containers	Horses purchased as pets
Conveyors, permanently installed	Horses, racing, unless purchased for breeding purposes or for resale
Cow stalls	Horse stalls
Dispensing cabinets for paper towels	Hose, garden*
Dispensing or storing equipment for milk strainer disks	Incubators, permanently installed (see list of exempt items)
Dogs (herd dogs, watch dogs)	Insecticides for home and home garden use (see list of exempt items)
Dusting and spraying services	Irrigation pipe and fittings, permanently installed (see list of exempt items)
Equipment for fire prevention	Labor charges (except wages to employees) for repairing, maintaining and servicing either real or personal property
Equipment and supplies for home or personal use	
Extermination services	
Fans for ventilation	

Lamps	Poultry nests, permanently installed (see list of exempt items)
Lanterns	Pumps, gasoline
Lawnmowers	Pumps for household or lawn use
Lubricating oils and greases	Pumps, water, for uses other than watering livestock or for irrigation
Machinery used to clean, reclaim or drain land for cultivation	Race horses, unless purchased for breeding purposes or for resale
Medicines and drugs for nonproductive animals	Refrigerators for home use
Nests, poultry, permanently installed (see list of exempt items)	Repair tools
Nonproductive animals	Returnable containers, except reusable milk containers
Office supplies and equipment oils and greases	Road maintenance equipment, including snowplow attachments
Packing room supplies, including but not limited to:	Road scrapers
gummed tape machines	Rodenticides for home use (see list of exempt items)
crate openers	Sanders
basket ladders	Scales
closers for wirebound crates	Seeds, plants, bulbs for home use (see list of exempt items)
turntables	Shoeing of horses
dispensers for wrapping materials	Shovels*
stapling machines, staplers	Silos, purchased without installation
bag sealing machines	Snow fence
paints and painting supplies	Snow plows and snow plow equipment
Parts, automobile and truck	Sod or turf
Parts for taxable equipment	Spraying and dusting services
Personal property installed in or used in housing for farm workers	Stalls
Pet food	Stanchions, permanently installed
Pets	Supplies for home or personal use
Pipe, irrigation, permanently installed (see list of exempt items)	Swimming pools, pool components and auxiliary equipment
Plants for home use (see list of exempt items)	Tanks, air
Ponies, unless used as breeding stock	Tanks, gasoline
Poultry brooders, permanently installed (see list of exempt items)	Tanks for washing dairy utensils and equipment
Poultry feeders, permanently installed (see list of exempt items)	

Toilets, field
 Tools for repair or construction
 Tractors, garden*
 Trucks
 Truck parts
 Turf
 Vaccination of poultry (charge for the service)
 Ventilators, barn
 Watch dogs
 Water fountains, permanent
 Water pumps for uses other than watering livestock or for irrigation
 Welding equipment

R.1971 d.195, effective November 1, 1971.

See: 3 N.J.R. 276(a), 3 N.J.R. 208(a).

* Exempt only when directly and exclusively used in production for sale on farms.

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 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).

18:24-22.2 Floor covering dealer transactions

(a) Wherever an installation service is rendered in conjunction with the sale of floor coverings, 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 any incidental agreement to install the floor covering. The vendor 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 furnishes the vendor with a properly executed exemption certificate, or unless the vendor delivers the floor covering to a point outside of New Jersey.

(b) Excluded from the term "floor covering" are the supplies which become part of the floor covering installation.

As amended, R.1978 d.320, effective September 13, 1978.
See: 10 N.J.R. 362(a), 10 N.J.R. 457(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 to either 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.

2. Any other person who installs floor covering is required to pay sales tax at the time supplies for use in the installation service are purchased.

3. Supplies include, but are not limited to, underlayment, nails, staples, plywood strips, adhesive tape and cement.

(b) The installation of floor covering results in a capital improvement only under certain conditions. An installation of a 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 has resulted in a capital improvement to real property, the installer, whether he be the vendor of the floor covering or another person, 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:

1. The charges for the labor and services are charged for 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;

1. For sales tax purposes, the person who makes such installation is required to be registered with the New Jersey Division of Taxation, to collect the sales tax from his customer on the installation charges (as well as on the charges for floor covering), and to remit the tax to the Division.

2. For business personal property tax purposes (N.J.S.A. 54:11A-1 et seq.) the floor covering is taxable as business personal property where its installation does not result in a capital improvement.

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).

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, 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.

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 subsection (c) of this Section. 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 cashier of the New Jersey Division of Taxation with a note explaining the remittance.

(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 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, and Mr. Frank is liable for the business personal property tax on the value of the carpet.

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, and application for a refund may be filed with the Director within two 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).

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 pur-

chased 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. Software which meets the criteria below is considered intangible personal property and not subject to sales tax; software applies to instructions and routines (programs) which, after an analysis of the customer's specific data processing requirements, are determined necessary to program the customer's electronic data processing equipment to enable the customer to accomplish specific functions with his electronic data processing system. To be considered nontaxable "software" for purposes of this rule, one of the following elements must be present:

i. Preparation or selection of the customer's use requires an analysis of the program for the customer's requirements by the vendor; or

ii. The program requires adaptation, by the vendor, to be used in a specific environment that is, a particular make and model of computer utilizing a specified output device. For example, a software vendor offers for sale a prewritten sort program which can be used in several computer models. Prior to operation, instructions must be added by the vendor which specify the particular computer model in which the program will be utilized.

iii. The software may be in the form of:

(1) Systems programs (except for those instruction codes which are considered tangible personal property)—programs that control the hardware itself, and allow it to compile, assemble and process application programs. For purposes of this rule, instruction codes mean the internalized instruction code which controls the basic operations (that is, arithmetic and logical) of the computer causing it to execute instructions contained in application and system programs, and is an integral part of the computer. It is not normally accessible nor modifiable by the user. Such internal code system is considered part of the hardware and is taxable. The fact that the vendor does not charge separately for it is immaterial.

(2) Application programs—programs that are created to perform business functions or control or monitor processes.

(3) Pre-written programs (canned)—programs that are either systems programs or application programs and are not written specifically for one user.

(4) Custom programs—programs created specifically for one user.

iv. Software, whether placed on cards, tape, disc pack or other machine readable media, or entered into a computer directly, is considered intangible personal property for sales tax purposes, and as such its sale is not subject to New Jersey State sales and use tax. Software or programs which do not meet the criteria are subject to tax. The person selling nontaxable software is required to pay the applicable sales or use tax on any tangible personal property transferred to the customer in connection with the nontaxable service. In addition, the hardware and supplies used to develop nontaxable software are not eligible for any sales tax exemptions.

(1) A nontaxable application program sold in machine readable form as keypunched cards, magnetic tape (with or without charts and instructions for its use) or discs is considered intangible personal property. As intangible personal property, its sale, including lease or license to use, is not subject to New Jersey State tax.

(2) A computer manufacturer sells or leases a computer containing nontaxable systems programs. The sales invoice rendered to the purchaser separately states a reasonable charge for the system programs. The separately stated charge for such computer software is not subject to tax.

(3) A company leases a computer with nontaxable application programs. The monthly billing shows one charge. The entire monthly charge is subject to tax.

(4) A manufacturer sells or leases equipment which, in addition to recording transactions and issuing receipts, is capable of transmitting inventory and sales information by use of an application program to a central computer. The sale of such equipment is a sale of tangible personal property except to the extent of the nontaxable applications program option which may be purchased as a separate item and is separately billed to the customer as a software addition to the tangible property. If the customer does not have this option, the application program will be viewed as part of the hardware and taxed accordingly.

(5) A software supplier manufactures prepackaged programs for use with home television games or other personal computer equipment. The programs are marketed through retail stores, and the programs are fully usable by customers without modifications. In selecting or preparing the program, the supplier does not perform a detailed analysis of the customer's requirements. The program is viewed as tangible personal property for sales tax purposes.

3. 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.
4. 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.
5. 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.

6. 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.

7. 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.

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. 14:25¹ by the Department of Environmental Protection and Energy shall be used to determine eligibility for exemption from sales and use tax of such solar energy systems.

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

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

¹ See N.J.A.C. 14:25-1.1 et seq.

18:24-26.3 (Reserved)

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

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

Section was "Exemption effective on or after July 1, 1978".

18:24-26.4 Procedure for exemption

For purposes of exemption from tax the purchaser of a solar energy device or system shall issue to the 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 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.

(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.

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 Enterprise 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 in urban areas suffering from high unemployment and economic distress. Each designation shall be for 20 years, and the right to establish enterprise zones shall expire 10 years from August 15, 1983. Zones are designated by an Urban Enterprise Zone Authority. The Authority may grant certain sales tax and other tax benefits to businesses existing in or formed in enterprise zones, 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).

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, is engaged in the active conduct of a trade or business in that zone; or

2. An entity which, after that designation but during the designation period of 20 years, becomes newly engaged in the active conduct of a trade or business in that zone, and has at least 25 percent of its full-time employees employed at a business location in the zone, who meet at least one of the following criteria:

i. Residents within the zone, within another zone or within the municipality within which the zone or any other zone is located; or

ii. Either unemployed for at least one year prior to being hired and residing in New Jersey, or recipients of New Jersey public assistance program, for at least one year prior to being hired; or

iii. Found to be economically disadvantaged, pursuant to the Jobs Training Partnership Act, P.L. 97-300 (29 U.S.C. 1501, et seq.).

“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.

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

18:24-31.3 Exemption for retail sales to a qualified business

(a) Retail sales and leases of tangible personal property (except motor vehicles) to a qualified business and sales of services (except telecommunications) 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 items such as office supplies, office or business equipment, office and store furnishings, trade fixtures, cash registers, etc. Services include items such as installing, maintaining or repairing tangible personal property used in business (other than a motor vehicle); maintaining, servicing or repairing real property used in business, and advertising services.

(c) Qualified businesses purchasing or leasing tangible personal property (except motor vehicles) or services (except telecommunications 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.

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

18:24-31.4 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.

(b) This partial exemption does not extend to sales of motor vehicles, cigarettes, or alcoholic beverages.

(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 qualified and certified vendor must be made from his place of business within an enterprise zone. 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 qualify for the reduced rate of sales tax; provided, however that after a sale has been completed within an enterprise zone, the vendor may deliver the tangible personal property to the purchaser at a location outside an enterprise zone.

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).

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, 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).

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.

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