

(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 Authori-

ty 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).