

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. 14:25<sup>1</sup> 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).

<sup>1</sup> 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.