

Sales Price: the Application of the Bundled Transaction Definition

N.J.S.A. 54:32B-12 sets forth a statutory presumption that all sales of tangible personal property are subject to tax until the contrary is established. Previously, the general policy was to impose tax on the entire sales price when taxable products were sold along with non-taxable products for a non-itemized price. In some situations, the true object test or the de minimus test were utilized to make a taxability determination, however, there were no consistent guidelines for applying these tests.

In order to standardize the treatment of certain transactions, the Streamlined Sales and Use Tax Project created an administrative definition of a “bundled transaction” which New Jersey has adopted. (See Streamlined Sales & Use Tax Agreement (SSUTA) Appendix C, Part I) The presumption in New Jersey is that if a sale meets the bundled transaction definition, and any of the distinct and identifiable products are taxable, the sales price is taxable.

There are four exceptions to the bundled transaction definition which, if applicable, require the application of a specific analysis in order to determine the tax consequences of the transaction. The exceptions essentially can be used to overcome the presumption of taxability in N.J.S.A. 54:32B-12, based on the mix of products in the bundle.

A “**bundled transaction**” is the retail sale of two or more products (including services, digital property, and other products that tax is imposed upon), except real property and services to real property, where:

- (1) The products are otherwise **distinct and identifiable**, and
- (2) The products are sold for one **non-itemized price**.

A “bundled transaction” does not include the sale of any products in which the “sales price” varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

(A) “**Distinct and identifiable products**” does not include:

1. Packaging – such as containers, boxes, sacks, bags, and bottles – or other materials – such as wrapping, labels, tags, and instruction guides – that accompany the “retail sale” of the products and are incidental or immaterial to the “retail sale” thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags and express delivery envelopes and boxes.

2. A product provided free of charge with the required purchase of another product. A product is “provided free of charge” if the “sales price” of the product purchased does not vary depending on the inclusion of the product “provided free of charge.”

3. Items included in the member state’s definition of “sales price,” pursuant to the Streamlined Sales & Use Tax Agreement. New Jersey includes the following in its sales price definition: cost of materials, labor or service cost, interest, losses, all costs of

transportation to the seller, all taxes imposed on the seller, all expenses of the seller, delivery charges, and installation charges. N.J.S.A. 54:32B-2(oo)

(B) The term “**one non-itemized price**” does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

If the transaction is not bundled because there is only one distinct and identifiable product (e.g. an appliance packaged in a cardboard box), the tax treatment is that of the product.

If the transaction is not bundled because the price of each product is itemized, the tax treatment of each product is considered separately.

Exceptions to the “bundled transaction” definition:

A transaction that otherwise meets the definition of a “bundled transaction” as defined above, is not a “bundled transaction” if it is:

1. The “retail sale” of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the **true object** of the transaction is the service; or
2. The “retail sale” of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the **true object** of the transaction is the second service;

These are not bundled transactions. In these transactions, the **true object** test is used to determine taxability of the non-itemized price.

3. A transaction that includes taxable products and nontaxable products and the “purchase price” or “sales price” of the taxable products is **de minimis**.

(a) **De minimis** means the seller’s “purchase price” or “sales price” of the taxable products is ten percent (10%) or less of the total “purchase price” or “sales price” of the bundled products.

(b) Sellers shall use either the “purchase price” or the “sales price” of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the “purchase price” and “sales price” of the products to determine if the taxable products are de minimis.

(c) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis;

This is not a bundled transaction. In these transactions, since the taxable products are **de minimus**, the sales price is not subject to sales tax.

4. The “retail sale” of exempt tangible personal property and taxable tangible personal property where:

(a) the transaction includes only tangible personal property, and at least one product that is: “food and food ingredients”, “drugs”, “durable medical equipment”, “mobility enhancing equipment”, “over-the-counter drugs”, “grooming and hygiene products”, “prosthetic devices” (all as defined in the law) or medical supplies; and

(b) the seller's “purchase price” or “sales price” of the taxable tangible personal property is fifty percent (50%) or less of the total “purchase price” or “sales price” of the bundled tangible personal property. Sellers may not use a combination of the “purchase price” and “sales price” of the tangible personal property when making the fifty percent (50%) determination for a transaction.

This is not a bundled transaction. In these transactions, since more than 50% of the products are not taxable, the sales price is not subject to tax.

Telecommunications Bundled Transactions (SSUTA Section 330)

In the case of a bundled transaction that includes any of the following: telecommunication service, ancillary service, internet access, or audio or video programming service, the following applies:

1. If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.
2. If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.
3. The provisions of this section apply unless otherwise provided by federal law. 1

