

Flea Markets & New Jersey Sales Tax

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Technical
Services

Introduction

The New Jersey Sales and Use Tax Act provides that most sales of tangible personal property are subject to tax. These sales include regular and occasional or seasonal sales such as those taking place at flea markets.

Registration

All businesses are required to register with the State for tax purposes at least 15 business days before starting business. To register, a **Business Registration Application (Form NJ-REG)** must be filed. You will receive a **New Jersey Certificate of Authority (Form CA-1)** for sales tax if you have indicated on your application that you will collect sales tax or purchase materials for resale. This certificate is your authorization from the State of New Jersey to collect sales tax and accept exemption certificates. A seller **must** always be registered with New Jersey to accept exemption certificates. A Public Records Filing may also be required depending upon the type of business ownership. For more information on Public Records Filing call 609-292-9292.

Owners and Operators of Flea Markets

Owners and operators of flea markets are required to register with New Jersey and pay any applicable State taxes. They are also required to charge and collect sales tax on the sale or rental of any taxable tangible personal property sold or rented to concessionaires, lessees, or others (i.e., display counters, racks, tables, etc.). Items for rental or resale may be purchased without paying sales tax provided a valid **Resale Certificate (Form ST-3)** is issued to the supplier. The rental charges for space within the flea market are not subject to sales tax. If the rental charge **includes** tangible personal property as part of the charge for the space, then the flea market operator is not holding such property out for rental and is not entitled to use a resale certificate when purchasing the property.

Examples: (1) Bob's Flea Market advertises available space for rent. The ad quotes a price of \$10 for a space without a table and \$12 for a space with a table. The rental charge for either space is not subject to sales tax. Here, the flea market operator is not renting the tables as such and should have paid sales tax, or a compensating use tax, when they were purchased. (2) The Greenview Flea Market advertises their available space at a price of \$10 and charges a separate \$2 rental fee for a table. In this case, the \$10 space rental is exempt from sales tax and the \$2 charge for renting a table is taxable.

Owners and operators of flea markets should inform all concessionaires, licensees, or lessees using space or equipment at the flea market to sell taxable tangible personal property that (1) they are required to be registered with New Jersey and (2) they must collect and remit sales tax to the State on their taxable sales. Registered sellers must display their New Jersey Certificate of Authority at their sales location at all times.

Seasonal, Occasional, and Casual Sales

Persons regularly engaged in the business of selling taxable tangible property, taxable services, or prepared foods are considered to be sellers under the New Jersey sales tax law and are required to register and collect and remit sales tax. Registration is required even if the sales are only made on a **seasonal** basis (e.g., Christmas trees) or if they are only made **occasionally** (e.g., by an artist or craftsman who periodically sells handmade items at shows) during the year.

Sales by persons making isolated or occasional sales of items of tangible personal property which were purchased by them **for their own use** are considered to be "casual sales" and are not subject to tax. Examples of casual sales are one-time sales of household items, children's toys, tools, etc. at a yard sale, garage sale, or through a classified ad.

Persons regularly engaged in the sale of merchandise at flea markets are presumed to be in the business of making retail sales and, therefore, are required to be registered with New Jersey and to charge, collect, and remit New Jersey sales tax. The Certificate of Authority to collect sales tax must be displayed at all times.

Concessionaires, Licensees, and Lessees

Concessionaires, licensees, and lessees are required to register with New Jersey if they sell taxable tangible personal property or services.

The Certificate of Authority issued to a seller (concessionaire) is required to be displayed at the table, stand, motor vehicle, or other merchandising device used at their business location. These certificates are nonassignable and nontransferable and must be returned to the State immediately upon termination of the business.

A seller who has a permanent place of business other than at a flea market should apply for a duplicate Certificate of Authority to display at the flea market location.

Resale Certificates

Businesses may purchase tangible personal property either for resale in its present form or for incorporation into other property held for sale without paying sales tax. The exemption also applies to the purchase of services performed on tangible personal property held for sale. When purchasing tax-exempt goods or services, a retailer or wholesaler must issue one of the following exemption certificates to the supplier.

Businesses Registered in New Jersey. Businesses with locations, employees, independent contractors, leased tangible personal property, or sales and service activities in New Jersey are required to register with New Jersey. Businesses registered with New Jersey should issue a **Resale Certificate (Form ST-3)** when making tax-exempt purchases of goods and services intended for resale.

Qualified Out-of-State Sellers. Qualified out-of-State sellers may make tax-exempt purchases in New Jersey of goods or services purchased for resale. When the qualified out-of-State seller carries the goods away with him from the point of sale, or sends his own vehicle or messenger to pick them up in New Jersey, the qualified out-of-State seller may use the **Resale Certificate for Non-New Jersey Vendors (Form ST-3NR)**. The ST-3NR requires the person picking up the merchandise to provide acceptable identification (i.e., driver's license of any state in the United States, major credit card including photograph, or any identification card including a number **and** a photograph **and** the bearer's address). "Qualified out-of-State sellers" are sellers that (1) are not registered with New Jersey, (2) are not required to be registered with New Jersey, **and** (3) are registered with another state.

Out-of-State sellers and in-State sellers may also make tax-exempt purchases for resale using a **Resale Certificate (Form ST-3)** or the **Streamlined Sales and Use Tax Certificate of Exemption (Form ST-SST)**.

Suppliers accepting an exemption certificate must always be registered with New Jersey and must collect sales tax when a purchaser does not issue the appropriate exemption certificate. For more information on exemption certificates, request Tax Topic Bulletin S&U-6, *Sales Tax Exemption Administration*.

For More Information

For more information on flea markets and New Jersey sales tax, contact the Division's Customer Service Center at 609-292-6400, e-mail us at nj.taxation@treas.state.nj.us, or write to:

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The following Division of Taxation publications provide additional information on topics mentioned in this bulletin: S&U-7, *Filing Sales & Use Tax Returns* and ANJ-7, *Use Tax in New Jersey*.

Many State tax forms and publications are now available by fax and on our Web site. Call NJ TaxFax at 609-826-4500 from your fax machine's phone, or access the Division's home page at: www.state.nj.us/treasury/taxation/