



Making Mail-Order and Internet Sales

Bulletin S&U-5

Introduction

If you operate a business in New Jersey that sells products through the mail or over the Internet, you must comply with this State's tax laws. This bulletin explains the New Jersey sales tax rules that apply to mail-order and Internet retailers.

Registration

All vendors operating in New Jersey are required to register with the State for tax purposes by filing an Application for Business Registration, Form NJ-REG, at least fifteen (15) business days prior to commencement or opening in this State. Registration is mandatory unless your business is located outside New Jersey and has no physical business presence within this State. (See *Who Must Collect Sales Tax*, on page 2.)

Registration ensures that you will receive all the necessary forms and information that you need to comply with New Jersey tax laws. A Public Records Filing may also be required depending upon the type of business ownership.

Once you are registered you will be assigned an identification number, which is usually based on either your Federal identification number or your social security number. This identification number will appear on all preprinted forms that you receive. Be sure to include this New Jersey tax identification number on all checks and other correspondence that you send to us.

Certificate of Authority

If you have indicated on your registration application that you will collect sales tax or purchase materials for resale, you will be issued a Certificate of Authority (Form CA-1) for sales tax. This certificate will bear the name of the proprietor or corporation or, in the case of a partnership, the names of the partners, as well as the trade name (if any), physical business location, and New Jersey tax identification number of your business. The Certificate of Authority must be prominently displayed at your place of business and returned to the State in the event you cease

operations. If your business relocates, immediately notify the State in writing to obtain a corrected certificate.

Sales and Use Tax

What is Taxable?

New Jersey imposes a 6% tax on the retail sale of most merchandise and certain services sold within this State. Some items are exempt from tax regardless of who buys them or how they are used. Food purchased for home consumption (except certain prepared food), clothing, footwear, and prescription drugs fall into this category.

The law exempts other products from sales tax when they are purchased to be used in a particular manner. Purchases of certain machinery and equipment for use in the production of products intended for resale, and packaging materials necessary for the delivery of products to customers are examples of items which are exempt because of their use. Certain services are also exempt from sales tax. For example, your charge to customers for shipping is exempt from tax as a transportation charge.

Contact the Division of Taxation if you are uncertain whether you must pay sales tax on items you purchase for the business, or whether you must collect sales tax on an item you are planning to sell.

Who Must Collect Sales Tax?

New Jersey Vendors. Generally, every New Jersey vendor selling taxable items or services must collect and remit New Jersey sales tax whenever such sales are completed by delivery of the item(s) to a New Jersey location or performance of the service within this State.

If you maintain any place of business in New Jersey, operate a Web site from a location within New Jersey, have employees working in this State, or own any business property here such as a warehouse or showroom, you have a physical presence in New Jersey and must register and collect New Jersey sales

tax on all taxable transactions. The term “employee” includes salespersons, consultants, customer representatives, service or repair technicians, instructors, and delivery persons, as well as independent representatives or solicitors acting as agents on your behalf. Contact the Division of Taxation if you are an out-of-State vendor and you are uncertain whether you must register to collect New Jersey sales tax.

Out-of-State Vendors. Certain out-of-State vendors may not be required to collect New Jersey sales tax if their *only* contact with New Jersey is limited to maintaining a Web site outside this State which can be accessed by New Jersey residents; mailing catalogs, flyers, or other advertisements to potential customers in New Jersey; and/or shipping merchandise to a New Jersey destination by means of commercial common carrier, parcel post, or the United States mail.

Use Tax

The New Jersey Sales and Use Tax Act provides for a compensating use tax whenever sales tax is not collected by a vendor of taxable items sold and delivered into New Jersey. The imposition of use tax helps protect New Jersey vendors from unfair competition from out-of-State vendors.

Typically, New Jersey sales tax is not collected on transactions where the vendor is an out-of-State business that is not required to register to collect the tax. Since the vendor is not authorized to collect New Jersey sales tax in such cases, the *purchaser* must remit use tax, calculated at the same rate as sales tax, directly to the State.

Example: Mary Jones purchases some decorative candles through a catalog sent to her by a California mail-order company called Waxing Romantic. Waxing Romantic does not have an office or employees in New Jersey and is not registered to collect New Jersey sales tax. The company bills Mary \$27.99 for the candles plus a charge of \$3.00 for shipping. Mary must remit

6% use tax ($\$27.99 \times .06 = \1.68) to New Jersey because sales tax was not collected by the vendor. There is no tax on the shipping charge provided that it is separately listed on the bill.

Internet purchases are treated in the same manner as purchases made through the mail. If the Internet retailer does not have a physical business presence in New Jersey and is not registered with the State, sales tax is not collected on items delivered into the State and the customer must remit use tax to New Jersey.

If you are an out-of-State vendor who is not required to collect New Jersey sales tax, a responsible customer service policy would be to inform your New Jersey customers of their obligation to pay use tax on their mail-order or Internet purchases. Your efforts might include a stamped message on your New Jersey customer's receipt stating "*This purchase may be subject to your state's use tax.*"

For more information on use tax, request publication ANJ-7, *Use Tax in New Jersey*.

Collecting Sales Tax on...

Sales to New Jersey Customers

As a New Jersey vendor, you must collect sales tax on all taxable items sold that are delivered to a New Jersey location. This is true even if an out-of-State customer purchases a product from you and has it shipped to a recipient in New Jersey (e.g., a gift). A taxable transaction also occurs if your customer or his agent takes possession of the merchandise in New Jersey even if the items are later shipped out of State.

Sales to Other Businesses

Sales for Resale. When another vendor buys your product for resale and takes possession of it in New Jersey, the transaction is not taxable, provided the purchaser gives you a valid New Jersey Resale Certificate (Form ST-3). If a customer claiming a resale exemption does not issue an ST-3, you *must* collect New Jersey sales tax. Keep in mind that ST-3 certifi-

cates are only valid if they are properly completed and *both* the customer who issues the certificate *and* the vendor who accepts it are registered New Jersey businesses.

Non-New Jersey Vendors. Qualified out-of-State vendors may make tax-exempt purchases in New Jersey of goods and services purchased for resale. When the qualified out-of-State vendor 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 out-of-State vendor *must* use the Resale Certificate for Non-New Jersey Vendors (Form ST-3NR). The ST-3NR requires the person picking up the merchandise to present acceptable identification (i.e., driver's license of any state in the United States, major credit card including photograph, or any identification card which includes a number *and* photograph *and* the bearer's address). "Qualified out-of-State vendors" are vendors 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. An out-of-State vendor may not use an ST-3NR unless the purchase qualifies for exemption under New Jersey law.

Drop Shipments. You might occasionally be instructed by an out-of-State vendor who is not registered in New Jersey to ship your product directly to *the out-of-State vendor's* customer in New Jersey. This type of transaction is called a drop shipment. Since it is a sale for resale (you are selling your product to the out-of-State vendor even though you are delivering to the other vendor's customer), you may accept the resale certificate of your customer's home state. This is the *only* time that New Jersey accepts the exemption certificate of another state as valid. You may also accept the Multijurisdiction Uniform Sales and Use Tax Certificate published by the Multistate Tax Commission or New Jersey Form ST-3NR, Resale Certificate for Non-New Jersey Vendors. If your customer does not provide you with one of these resale certificates, you must charge New Jersey sales tax.

Sales to Exempt Organizations

Some organizations such as churches, hospitals, veterans' organizations, and fire companies are exempt from sales tax on purchases made for the exclusive use of the organization. The Division of Taxation issues a New Jersey Exempt Organization Certificate (Form ST-5) only to those organizations that qualify for exempt status with the State of New Jersey. When you sell your product to such an organization, you must obtain a photocopy of its ST-5 certificate to show why sales tax was not collected.

Agencies of the Federal government and the United Nations, as well as the State of New Jersey and its political subdivisions, are also exempt from paying sales tax. However, these organizations do not use ST-5 certificates. Instead, they must provide you with a copy of a valid purchase order or contract, signed by an authorized official. When the amount of the purchase is \$150 or less, you may accept a New Jersey Exempt Use Certificate (Form ST-4) from these government agencies in place of a purchase order or contract.

Purchases made by Federal employees are exempt when payment is made by Federal check or voucher or with the proper SmartPay credit card. Only Visa or MasterCard credit cards imprinted with "United States of America – SmartPay for Official Government Purchases Only U.S. Government Tax Exempt" or "United States of America – SmartPay for Official Government Use Only" are acceptable for tax-exempt purchases. Such transactions are billed directly to and paid by the U.S. Government. Credit card purchases billed to and paid by a Federal employee who is later reimbursed by the Federal government are subject to sales tax.

Sales to Out-of-State Customers

Items that are normally taxable when sold and delivered to a New Jersey location are generally *not* subject to New Jersey sales tax when they are shipped to a destination outside this State. The taxability of the transaction is determined by the laws of the state in

which the purchaser or his agent takes possession of the merchandise. Contact the taxing authority of the state into which the items are delivered to find out your responsibilities under their sales tax laws.

If no New Jersey sales tax was charged on a New Jersey taxable item because it was shipped out of State, and the item is subsequently returned by the purchaser to New Jersey for use within this State, the item is subject to New Jersey use tax.

For more information, request publication ANJ-10, *Out-of-State Sales & New Jersey Sales Tax*, and Tax Topic Bulletin S&U-6, *Sales Tax Exemption Certificates*.

Paying Sales Tax to Suppliers Inventory and Materials

Products that you buy for resale (inventory) are not taxable. Also exempt are any raw materials that are incorporated into a finished product you make and sell. When you purchase such items, you may issue a New Jersey Resale Certificate (Form ST-3) to your supplier and not pay sales tax.

Example: You design and print your own greeting cards and sell them through your Internet company, Felicity Greetings. Since Felicity Greetings is properly registered with New Jersey, you may issue an ST-3 to your New Jersey supplier when you buy the paper, ink, paint, and glue that ultimately become part of the cards that you sell. You pay no sales tax when you purchase these materials.

If you buy materials or inventory items with a resale certificate and decide to use them for your own purposes (not resell them), you must remit 6% of the wholesale purchase price as use tax.

Tools and Supplies

When you buy tools and supplies, you must pay sales tax. Items such as scissors, knives, brushes, easels,

hand tools, detergents, and disposable paper products differ from materials in that they are not resold as part of your final product. Supplies become your personal property; they belong to you and are not entitled to any exemption.

Packaging Materials

Nonreturnable materials used to contain, protect, wrap, and ship your product to customers are exempt from New Jersey sales tax. You may issue a New Jersey Exempt Use Certificate (Form ST-4) to your supplier when purchasing these items and not pay sales tax. The packaging materials must be used in the delivery of your product to qualify for the exemption. Inventory storage containers are not considered to be exempt packaging materials.

Equipment

When you purchase office equipment (e.g., computers, printers, fax machines, copiers, desks, etc.) for use in your business, you are required to pay sales tax. If you do not pay New Jersey sales tax on such items at the time of purchase, you owe use tax.

Machinery or equipment used *directly* and *primarily* in the production of tangible personal property for resale by manufacturing, processing, assembling or refining, however, is exempt. You may issue a New Jersey Exempt Use Certificate (Form ST-4) to your supplier when purchasing such equipment. (The exemption does not apply to tools which are simple, hand-held, and manually-operated instruments.)

Example: Felicity Greetings uses computers to operate its Internet Web site and to design greeting cards, among other things. The business must pay either sales or use tax on such purchases of computer equipment. Felicity Greetings prints some cards on its own printing press. Since the printing press is used directly in the production of products for resale, Felicity Greetings issued an ST-4 and paid no sales tax when it purchased the press from a New Jersey supplier.

For more information, request Tax Topic Bulletins S&U-6, *Sales Tax Exemption Certificates*, and S&U-9, *Business Purchases*.

Out-of-State Purchases

If you buy taxable tangible personal property outside New Jersey for use in this State, you must remit 6% use tax to New Jersey if you paid no sales tax to the state where you made the purchase. If you paid a lesser tax in the state of purchase (4% for example) and the other state has sales tax reciprocity with New Jersey, you must remit the difference (2%) to the State of New Jersey.

NOTE: If the tangible property purchased outside of New Jersey is entitled to exemption in New Jersey (e.g., production machinery), you are not required to remit use tax.

For more information on use tax, request publication ANJ-7, *Use Tax in New Jersey*.

Filing Returns and Keeping Records

Whether your business is large or small, keeping accurate records makes good business sense. For example, New Jersey requires you to retain copies of the exemption certificates that you accept from your customers for at least four years to show why you did not collect sales tax. You should also keep copies of invoices and other records, such as those that verify out-of-State deliveries (shipping receipts, bills of lading, etc.) in case of audit.

Filing Sales Tax Returns

As a New Jersey vendor collecting sales tax and remitting use tax, you must file a New Jersey Sales and Use Tax Quarterly Return (Form ST-50) every three months, whether or not any sales or use tax is due for that particular quarter. In addition, if you have a sales tax liability of more than \$500 during the first or second month of the quarter, you must file a Sales and Use Tax Monthly Remittance (Form ST-51) for ei-

ther or both months and pay the tax due by the 20th day of the following month. Take credit on your quarterly return for any monthly remittance you may have made for either of these first two months. Forms ST-50 and ST-51 can also be filed online at the Division of Taxation's Web site at:

www.state.nj.us/treasury/taxation/

For more information, request Tax Topic Bulletin S&U-7, *Filing Sales & Use Tax Returns*.

Other Taxes

Employer Withholding

Every New Jersey employer is required to register with the State and to withhold New Jersey income tax from wages paid to both resident and nonresident employees working in this State. By completing and filing Form NJ-REG as an employer, your business will be registered for applicable taxes and related liabilities that are administered by both the Division of Taxation and the Department of Labor. You will be authorized to withhold and remit New Jersey income tax as well as New Jersey unemployment insurance/health care subsidy fund/workforce development partnership fund contributions and disability insurance contributions.

For more information on a business's responsibilities as an employer, refer to the *New Jersey Gross Income Tax Instruction Booklet for Employers, Payors of Pension and Annuity Income and Payors of Gambling Winnings* (NJ-WT) or to Tax Topic Bulletin MISC-1, *Employer Responsibilities*.

Individual Estimated Tax

New Jersey's income tax is a "pay as you go" tax. You must pay the tax as you earn or receive income throughout the year. There is no provision for withholding New Jersey income tax from the business income of a sole proprietor, partner or, in general, shareholder of a corporation. New Jersey residents with business income and nonresidents with business

income from New Jersey sources (among others) may be required to make estimated tax payments to satisfy their liability to the State on these earnings. You must file a quarterly Declaration of Estimated Tax (Form NJ-1040-ES) if you estimate your New Jersey income tax liability to be more than \$400 in excess of any credits for the tax year.

For more information, request Tax Topic Bulletin GIT-8, *Estimating Income Taxes*.

Corporation Business Tax

The New Jersey Corporation Business Tax Act imposes an annual franchise tax on every New Jersey corporation and every out-of-State corporation which acquires a taxable status in New Jersey by doing business, deriving income, employing or owning capital or property, or maintaining an office in New Jersey. Both domestic and foreign corporations are required to file a New Jersey Corporation Business Tax Return (Form CBT-100) regardless of whether they had any assets or conducted any business activities.

A corporation may elect to be treated as a New Jersey S corporation by filing the New Jersey S Corporation or New Jersey QSSS Election (Form CBT-2553), provided the corporation is or will be an S corporation for Federal purposes. S Corporations pay a reduced rate of corporation tax. All New Jersey S corporations must file the New Jersey S Corporation Business Tax Return (Form CBT-100S) instead of Form CBT-100.

For more information on corporation business tax, refer to the CBT-100 or CBT-100S instruction booklet.

Litter Control Fee

Under the authority of the Clean Communities and Recycling Grant Act, New Jersey imposes a litter control fee on the sale of certain litter-generating products within this State. Contact the Division for more information about the Litter Control Fee.

For More Information

By Phone

- Call the Division of Taxation's Customer Service Center at **609-292-6400**
- TTY equipment users call **1-800-286-6613** (within NJ, NY, PA, DE, and MD) or **609-984-7300** (anywhere)

Online

- Division of Taxation Web site:
www.state.nj.us/treasury/taxation/
- E-mail: nj.taxation@treas.state.nj.us

In Writing

New Jersey Division of Taxation
Information and Publications Branch
PO Box 281
Trenton, NJ 08695-0281

Order Forms and Publications

- Call the Forms Request System at **1-800-323-4400** (Touch-tone phones within NJ, NY, PA, DE, and MD) or **609-826-4400** (Touch-tone phones anywhere)
- Call NJ TaxFax at **609-826-4500** from your fax machine's phone
- Visit the Division of Taxation's Web site:
www.state.nj.us/treasury/taxation/