

Mail Order Businesses

Introduction

If you operate a business in New Jersey that sells and delivers products through the mail, you must comply with this State's tax laws.

This bulletin explains the New Jersey sales tax rules that apply to a mail order business.

Registration

All businesses are required to file an Application for Registration (Form REG-1) with the Division of Taxation at least 15 days prior to beginning operation in this State. Registration is mandatory unless your mail order business is located outside New Jersey and has no physical business presence within this State. (See *Who Must Collect Sales Tax*, below.)

Registration is a simple procedure. It requires no fee. You may obtain a New Jersey Tax Registration Packet (Form REG-P) from Taxpayer Services. The packet contains Form REG-1 (with instructions) and other helpful information about New Jersey taxes.

Registration ensures that you will receive all the necessary forms and information that you need to meet your obligations to the Division of Taxation as provided by law.

Once you are registered you will be assigned a twelve digit tax identification number which will appear on all pre-printed forms that you receive from the Division. This number is usually based either on your Federal identification number or your social security number. Be sure to include this twelve digit tax identification number on all checks and other correspondence that you send to us.

Certificate of Authority

If your registration application indicates that you will be collecting and remitting sales tax, remitting use tax or using exemption certificates, 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 tax identification number of your business. The Certificate of Authority must be prominently displayed at your place of business and returned to the Division of Taxation in the event you cease operations. If your business relocates, immediately notify the Division in writing to obtain a corrected certificate.

Sales and Use Tax

What's 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 with the intention of being used in a particular manner. Certain machinery and equipment that you use in the production of your product which is intended for resale, and packaging materials necessary for the delivery of your product to your customers are examples of items which are exempt because of their use. Your charge to customers for shipping your product to them is exempt from tax as a transportation charge. *Contact the Division of Taxation if you are uncertain whether an item you are planning to sell is taxable.*

Who Must Collect Sales Tax?

Generally, every vendor who sells 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. However, 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 mailing catalogs, fliers or other advertisements to potential customers in this State and/or shipping merchandise to a New Jersey destination by means of commercial common carrier, parcel post or the United States mail.

If you maintain any place of business in 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. Consult 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.

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. This provision of the law helps protect New Jersey vendors from unfair competition.

Typically, New Jersey sales tax is not collected on transactions where the vendor is an out-of-State business which 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 New Jersey Division of Taxation.

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. They bill 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 the New Jersey Division of Taxation 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.

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

Selling Your Product

To Customers

You must collect sales tax on all taxable items that you sell to customers if the items are delivered to a New Jersey location. This is true even if an out-of-State customer purchases a product from a New Jersey vendor 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.

To Other Businesses

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 your customer does not issue an ST-3, you *must* collect New Jersey sales tax. Keep in mind that ST-3 certificates 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.

You might occasionally be instructed by an out-of-State vendor, who is not registered in New Jersey, to ship your product directly to *his* customer in New Jersey. This type of transaction is called a drop shipment. Since it is a sale for resale, you may accept the resale certificate of the state in which your vendor/customer is located, registered and authorized to issue such certificates. This is the *only* time that New Jersey would recognize as valid the exemption certificate of another state. If your customer does not provide you with a resale certificate to document the exempt nature of the transaction, you must charge New Jersey sales tax.

To Exempt Organizations

Many churches, hospitals and other exempt organizations are not required to pay 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 which 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 are not issued 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 their 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.

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.

Buying the Things You Need Inventory and Materials

Products that you buy for resale (inventory) are not taxable. Also exempt are any raw materials which become incorporated into a finished product that 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 mail order company, Felicity Greetings. Since Felicity Greetings is properly registered with the New Jersey Division of Taxation, 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 would pay no sales tax on your purchase of these materials.

If you buy materials 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

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 tax. The packaging materials must be essential to the delivery of your product to qualify for the exemption. Inventory storage containers are not considered to be exempt packaging materials.

Equipment

Machinery or equipment used *directly and primarily* in the production of tangible personal property for resale by manufacturing, processing, assembling or refining is exempt. You may issue a New Jersey Exempt Use Certificate (Form ST-4) to your supplier when purchasing such equipment.

Example: Felicity Greetings needs a printing press to make many of its cards. Since the press will be used directly in the production of products for resale, Felicity Greetings may issue an ST-4 and pay no sales tax when it purchases the press from a New Jersey supplier.

Out-of-State Purchases

If you buy 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.

Filing Returns and Keeping Records

Whether your business is large or small, it's good business sense to keep accurate records. 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

Every three months a New Jersey Sales and Use Tax Quarterly Return (Form ST-50) must be filed by every New Jersey sales tax vendor, whether or not any sales or use tax is due for that particular quarter. In addition, if \$100 or more in sales tax is due during the first or second month of a particular quarter, you must file a Monthly Remittance Statement (Form ST-51) 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.

Other Taxes

Employers

If your business has employees working in this State, you must withhold New Jersey income tax from their wages. The amount withheld must be remitted to the Division of Taxation using the Employer's Return of Gross Income Tax Withheld (Form NJ-500). At the end of each calendar year you must file a New Jersey

Gross Income Tax Reconciliation of Tax Withheld (Form NJ-W-3) along with copies of the Wage and Tax Statement (Form W-2) for each employee. Contact the Division to request Tax Topic Bulletin MISC-1, *Employer Responsibilities*, to learn more about your responsibilities as a New Jersey employer.

Estimated Tax

Sole proprietors, partners and shareholders of corporations (among others) must report income received on the New Jersey Gross Income Tax Return. Because there is no provision for withholding New Jersey income tax from this type of business income, these individuals may be required to make estimated

tax payments to satisfy their liability to the State of New Jersey on these earnings. You will have to file a quart-erly Declaration of Estimated Tax (Form NJ-1040-ES) if you estimate your New Jersey in-come tax liability to be \$100 or more in excess of any credits for the tax year.

Litter Control Tax

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

Taxpayers' Bill of Rights

The New Jersey Taxpayers' Bill of Rights ensures that taxpayers are accorded fair and equitable treatment and receive the information and assistance they need to understand and meet their State tax responsibilities. To find out more, contact the Division of Taxation.

For More Information

For more information about mail order businesses and sales tax, contact the Division's Tax Hotline at 609-292-6400 or write to the Division of Taxation, Technical Services, Taxpayer Services Branch, Office of Communication, PO BOX 281, Trenton, New Jersey 08646-0281. Many commonly used State tax forms are now available by fax through the Division's NJ TaxFax service. Call NJ TaxFax at 609-826-4500 from your fax machine's phone to obtain the form you need or a list of available forms. The form(s) referenced in this bulletin may **not** be currently available on NJ TaxFax.

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