

S&U-9 Business Purchases

Introduction

This bulletin provides information on the taxability of business purchases of various goods and services. It explains when a business owner is required to pay sales tax on a purchase, when a sales tax exemption certificate may be used and indicates when use tax may be due.

General Information

Registration Requirements

New Jersey law requires every person or entity engaged in a business, trade or occupation in New Jersey to register with the State at least 15 business days before starting business. To register, you must file an Application for Registration, Form REG-1, with the State. 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 issue or accept exemption certificates. For more information on business registration requirements, request Tax Topic Bulletin MISC-3, *Starting Business in New Jersey*.

Sales Tax

In New Jersey, sales tax at the rate of 6% is imposed on all sales of tangible personal property (unless specifically exempt by law) and certain services purchased by the ultimate consumer or end user. Tangible personal property is property that can be owned or leased, has a physical presence and is moveable (with or without difficulty).

As a business owner, you are required to pay sales or use tax on all purchases of goods and services used by your business which are not held for resale or exempt by law. You are required to pay sales tax on all purchases of business office supplies, including furniture,

equipment and stationery that you use in connection with your business since you are the ultimate consumer of these items. For more information on the taxability of goods and services request Tax Topic Bulletin S&U-4, *New Jersey Sales Tax Guide*.

Use Tax

Use tax is a companion to sales tax. Use tax is a tax which you, the buyer, must pay directly to the State whenever you purchase taxable goods or services that are used in New Jersey and the vendor did not collect sales tax, or where you paid sales tax at a rate less than the New Jersey sales tax rate. If sales tax is not paid on such goods, the person who uses or stores the goods in New Jersey owes a use tax (unless the goods are held for resale). The New Jersey use tax rate is 6%, the same as the sales tax rate. The amount of use tax due is based on the purchase price of the item.

Use tax is not new. Use tax laws have been in effect in New Jersey since 1966. Most states that have a sales tax also have a companion, or compensating, use tax. If there were no use tax, buyers would be encouraged to shop out-of-State to avoid paying New Jersey sales tax. Business owners are frequently unaware that they have an ongoing responsibility to pay use tax. Items purchased from mail-order catalogs, directly over the phone or through the Internet, and delivered by mail, UPS or Federal Express, generally do not have sales tax included as part of the total purchase price. These are purchases that should always be reviewed for taxability in order to fulfill your use tax obligations.

The following are examples of when use tax is due:

- Catalog or mail-order purchases — Some mail-order companies are not registered to collect New Jersey sales tax. When you purchase goods and services through the mail and those items are normally subject to New Jersey sales tax, use tax is due on the amount of the purchase price if New Jersey sales tax was not paid.
- Buying goods in a nontaxing state to bring back to New Jersey — You owe 6% use tax to New Jersey.
- Buying from an out-of-State seller who ships or delivers goods to you in New Jersey and does not charge sales tax — You owe 6% use tax to New Jersey.
- Buying from an out-of-State seller who charges sales tax at a rate lower than New Jersey's — You owe use tax to New Jersey on the difference between New Jersey's 6% sales tax rate and the tax rate in the other state, provided that New Jersey has reciprocity with the other state. For example, if you paid 5% sales tax in another state, you are required to submit 1% use tax to New Jersey.

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

Remitting Use Tax — Businesses registered with New Jersey for sales tax purposes report use tax on New Jersey Sales and Use Tax Returns (Forms ST-50 and ST-51). "Nonvendor"

businesses, or businesses that are registered with New Jersey that neither sell taxable goods or services nor lease taxable property to others, and that purchase items without the payment of sales tax as described above, may be eligible to remit use tax due by filing an Annual Business Use Tax Return (Form ST-18B). Form ST-18B may only be filed by a nonvendor whose *average* annual use tax liability for the three preceding calendar years is \$2,000 or less. If the use tax due exceeds that average, Forms ST-50 and/or ST-51 must be used. For more information on filing sales and use tax returns, request Tax Topic Bulletin S&U-7, *Filing Sales & Use Tax Returns*.

Exemption Certificates

In certain situations, a business may use an exemption certificate to purchase goods or services without paying sales tax. Each exemption certificate has a specific use.

Resale Certificate (Form ST-3)

As a New Jersey business owner, you may issue Form ST-3, Resale Certificate, to purchase tangible personal property or services which you resell in their present form or which will be incorporated into other property held for sale without paying sales tax. Sales tax *is collected* when these items are sold at retail. Businesses registered in New Jersey may issue the New Jersey Resale Certificate, Form ST-3, when purchasing the following:

- Inventory which you intend to resell, rent or lease
- Property which is actually transferred to the purchaser of a taxable service in conjunction with the performance of such service

- Raw materials which will become component parts of the finished product
- Services for resale

Exempt Use Certificate (Form ST-4)

As a business owner, you may also use an Exempt Use Certificate, Form ST-4, to purchase certain items such as packaging supplies or production machinery without paying sales tax if the way you intend to use these items has been specifically exempted by New Jersey law.

Qualified purchases include:

- Advertising for Use Out-of-State
- Certain Aircraft and Equipment
- Certain Broadcasting Equipment
- Certain Buses
- Certain Chemicals and Catalysts
- Commercial Fishing Boats
- Certain Commercial Trucks and Trailers
- Commercial Printing Machinery and Equipment
- Telecommunications Equipment (sold to a telecommunication service provider)
- Advertising Materials to be Published in a Newspaper
- Newspaper Production Machinery
- Packaging Materials
- Production Machinery and Equipment
- Recycling Equipment
- Research and Development Materials
- Solar Energy Devices or Systems

For more information on using Form ST-3, Form ST-4 or other exemption certificates, request Tax Topic Bulletin S&U-6, *Sales Tax Exemption Certificates*.

Purchases of Tangible Personal Property

Equipment Purchases

When you purchase office equipment (e.g., fax machines, copiers, computers, desks, etc.) and office supplies (e.g., stationery, paper towels, pens, pencils) for use in your business, you are required to pay sales tax. If you purchase any of these items and do not pay sales tax at the time of purchase, you owe use tax.

Example

Taylor Lynn purchased a computer through a mail-order company located in Tennessee. The company does not have an office in New Jersey and is not registered to collect New Jersey sales tax. They bill her \$2,599 for the equipment plus a \$50 shipping charge. She must remit \$155.94 use tax ($\$2,599 \times .06 = \155.94) 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.

Rentals

When you rent office equipment such as copiers, computers, desks, or postage meters, you are required to pay sales tax. The New Jersey Sales and Use Tax Act defines a rental as a short-term transaction, with an original term of no more than 28 days. Rental transactions are treated as retail sales and the renter pays sales tax on the amount of the rental payment. Where the rental includes the services of an operator, such as with construction equipment, and a separate billing is made for the rental of equipment and the services of the operator, only the rental charge for the equipment is subject to sales tax; the charges for the operator's services are exempt from sales tax. However, if the

charges are not separately stated on the invoice, the entire invoice is subject to tax.

Leases

The New Jersey Sales and Use Tax Act defines a lease as a long-term transaction, with an original term of more than 28 days. The lessor (generally the owner of the property) is responsible for paying use tax based on either the purchase price of the property or the total amount of lease payments being made by the lessee (not including separately stated nontaxable charges, such as finance charges). Lessors who elect to pay tax on the total of the lease payments must make the election each time a new lease is executed. The lessor does *not* collect sales tax from the lessee. However, nothing in the law prohibits a lessor from increasing the lessee's monthly payment to recover his costs.

Computer Software

In general, off-the-shelf, or "canned" software is subject to sales tax as tangible personal property. However, software may be considered intangible property and exempt from sales tax as "custom" software, if one of the following elements is present:

1. Preparation or selection of the customer's use requires an analysis of the program for the customer's requirements by the vendor, or
2. The program requires adaptation by the vendor to be used in a specific environment, that is, on a particular make and model of computer utilizing a specified output device.

If the software qualifies pursuant to these factors, the software, as well as any licensing fees and maintenance agreements would be exempt from New Jersey sales and use tax.

Employee Incentives, Giveaways, Awards

When you purchase items to be used as employee incentives, giveaways, and/or awards you must pay sales tax. If you purchase items intended for resale using a Resale Certificate (Form ST-3) which later become giveaways and/or awards, you owe use tax on the purchase price of the items.

Packaging Supplies

You may purchase items such as wrapping paper, bags, cartons, rope, twine, labels, non-returnable containers and all other packaging supplies without paying sales tax *when the use of the supplies is incidental to the delivery of merchandise*. You must issue an Exempt Use Certificate, Form ST-4, to your supplier to receive the exemption.

Example

Brittany James owns a company that manufactures radios. In order to deliver the radios to wholesalers, she must package them in cardboard boxes and seal the boxes with tape. When Brittany purchases the boxes and rolls of tape, she issues her supplier an ST-4 exemption certificate and does not pay sales tax. However, she may not use an ST-4 when purchasing tape dispensers, which are not part of the packaging used to deliver the radios.

Books and Periodicals

When you purchase books, including the Bible or similar sacred scripture, you are required to pay sales tax. Purchases of newspapers, maga-

zines and periodicals, however, are specifically exempt from sales tax.

Research and Development Property

Materials that you purchase for use or consumption directly and exclusively in research and development in the experimental or laboratory sense are exempt from sales tax provided an Exempt Use Certificate, Form ST-4, is given to your supplier at the time of purchase. For more information on the exemptions available to research and development businesses, request Tax Topic Bulletin S&U-6, *Sales Tax Exemption Certificates*.

Purchases of Services

Advertising Services

You must pay sales tax when you purchase advertising services, except for:

- Advertising services for use directly and primarily for publication in newspapers and magazines; and
- Direct mail advertising processing services in connection with distribution to out-of-State recipients.

Advertising services means everything done to counsel, conceive, produce or disseminate advertising for a client, whatever the method or means used to accomplish this purpose.

Example

Robert Williams hires a direct mail advertising firm to distribute flyers promoting his business to 20,000 households, of which 5,000 have New Jersey addresses. Robert is required to pay sales tax on the charges for the 5,000 flyers distributed to the New Jersey locations.

Advertising material is generally subject to sales tax. *Advertising material* means anything produced in a tangible form which is intended to attract public notice and attention, and includes all forms of announcement which aid directly or indirectly in furthering public notice of a business, commodity, service or entertainment.

If advertising services are only performed through the idea stage and nothing considered tangible under the law is produced as a result, the charges for such services are subject to sales tax. However, if ideas are incorporated into something tangible that is produced as a result of such services, and the transfer of tangible personal property is the object of the transaction, then the transaction is viewed as the sale of tangible personal property and is also subject to sales tax.

Charges for the sale or rental of advertising space is exempt from sales tax. This would include charges for leasing or renting advertising space on billboards, buses, etc.

Internet Services

Web Site Design—Charges for creating and/or designing a web site for advertising or promotional purposes are subject to sales tax in New Jersey, just as are charges for the design of a brochure or other advertising material.

Web Site Internet Storage—Charges for housing a web page are exempt from sales tax as a charge for advertising space.

Internet Consulting—Charges for consulting services are generally exempt from sales tax as professional services.

Online Access Services—Charges to access the Internet are not subject to sales tax. Online service users pay sales tax on the telecommunication charges incurred when connecting to the Internet via their modem, which are billed directly by the telephone carrier.

Maintenance and Repair Services

Real Property—You are required to pay sales tax on all charges for services performed in conjunction with maintaining, servicing or repairing real property (i.e., land, buildings). This includes charges for janitorial services, whether or not performed on a regular contractual basis and whether commercial or residential. For more information on the taxability of maintenance and repair services, request Tax Topic Bulletin S&U-2, *Sales Tax and Home Improvements*, or Tax Topic Bulletin S&U-3, *Contractors and New Jersey Taxes*.

General home and office cleaning as well as window washing services are also subject to sales tax. Rug and carpet cleaning and cleaning of upholstered fabrics including draperies are exempt from sales tax as a laundering service. However, if the charges for general office cleaning and the charges for carpet cleaning are not separately stated on the invoice, then the entire receipt would be subject to sales tax under the law.

Charges for the removal of garbage, rubbish, trash, and recyclables are exempt from sales tax where the services are performed on a regular contractual basis for a term of not less than 30 days. Charges for parking lot sweeping, snow plowing and lawn maintenance are all services subject to sales tax in New Jersey, whether the

services are performed on a regular contractual basis or not.

Tangible Personal Property—You are required to pay sales tax on all charges for maintaining, servicing or repairing tangible personal property.

A maintenance contract (for computer hardware, electronics equipment, etc.) is considered to be a prepayment for taxable services to tangible personal property, and is subject to sales tax.

Example

EvironCo has a service technician come to their office to fix a broken computer; charges, if any, incurred for parts and labor are subject to sales tax. However, if the computer was covered by a maintenance contract, there would be no tax due on the parts or labor for a qualified repair since the tax was paid upon purchase of the agreement.

Printing and Reproduction Services

You are required to pay sales tax on all purchases of printing and reproduction services. Printing services include purchases of business cards, stationery, engraved items, etc. If you ordered these items through a mail-order catalog without the payment of sales tax, you owe use tax on the total amount of the purchase.

Professional Services

You are not required to pay sales tax on charges for professional services such as consultation, inspection, typing, legal, accounting, or payroll services.

Telecommunication Services

Charges for telephone service, pager, cellular phone and fax services are subject to sales tax as are the charges for the equipment itself. Charges for repair or maintenance services for telephones or telephone equipment are also subject to sales tax in New Jersey.

Telephone Answering Services

Telephone answering services are included in the definition of telecommunications and are subject to sales tax in New Jersey. Only telecommunication services rendered with respect to a service address in New Jersey are taxed. New Jersey sales tax is not imposed on charges for telephone answering services for a telephone located in another state.

Alarm Systems

Alarm Systems—Sales of alarm systems are taxable when purchased without an installation agreement. However, when a contractor sells a system and agrees to install the system as part of the same contract, the entire receipt is exempt from sales tax if the installation results in a capital improvement to real property and a Certificate of Capital Improvement (Form ST-8) is provided to the installer of the system. The sale of portable and/or mobile systems is subject to sales tax.

Direct alarm monitoring systems require the use of a panel, which is **rented or leased** to the homeowner by the alarm company, installed in both your business and a police station. The installation of alarm monitoring equipment which is rented or leased rather than purchased does not result in a capital improvement because ownership of the equipment remains with the

lessor. Therefore, charges for the installation of a direct alarm monitoring system are taxable.

Alarm Monitoring Services—Charges for monitoring service fees for both central monitoring systems (by an alarm company) and direct monitoring systems (by the telephone company) are taxable.

NOTE: Sales tax is only charged on the monitoring service for alarm systems with a service address in New Jersey.

Charges for security guard services are exempt from sales tax as professional services. For more

information on alarm systems and alarm system businesses, request Tax Topic Bulletin S&U-8, *Alarm System Businesses*.

Miscellaneous Services

Charges for transportation services for both persons and tangible personal property are exempt from sales tax as long as separately stated. Examples include: limousine services, courier services, and shipping (United Parcel Service, Federal Express, etc).

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 on business purchases, contact the Division's Tax Hotline at 609-292-6400, or write to:

NEW JERSEY DIVISION OF TAXATION
TECHNICAL SERVICES TSB/OCE
PO BOX 281
TRENTON NJ 08646-0281

Many State tax forms and publications are now available, both by fax and through the World Wide Web. Call NJ TaxFax at 609-826-4500 from your fax machine's phone or access the Division's home page via your computer's modem at: <http://www.state.nj.us/treasury/taxation/>

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