

Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. This is because the proposed new rules deal with the applicability of, and reports, filings, and remittance required as part of the Uniform Transitional Utility Assessment.

Full text of the proposed new rules follows:

CHAPTER 9.
UNIFORM TRANSITIONAL UTILITY ASSESSMENT

SUBCHAPTER 1. UNIFORM TRANSITIONAL UTILITY ASSESSMENT

18:9-1.1 Applicability of Uniform Transitional Utility Assessment

(a) Telephone companies that were subject to the provisions of P.L. 1940, c. 4, as of April 1, 1997, and gas and electric light, heat, and power corporations that were subject to the provisions of P.L. 1940, c. 5, municipal or otherwise, prior to January 1, 1998, are subject to the Uniform Transitional Utility Assessment (UTUA) Act, N.J.S.A. 54:30A-114 et seq.

(b) Corporate or non-corporate legal successors or assigns to the entities in (a) above, whether through any reorganization, sale, bankruptcy, consolidation, merger, or other transaction or occurrence of any kind without limitation, also are subject to the UTUA. These successors and assigns are liable for the UTUA, whether or not a transfer of corporate stock or a sale of corporate assets is involved.

(c) In a situation involving the sale of corporate assets, the successor corporation is liable for the UTUA on the corporation business tax and sales and use tax related to such assets.

18:9-1.2 Filing of monthly reports, payments, and quarterly returns

(a) All gas and electric light, heat, and power corporations subject to the UTUA must, on or before the 20th day of the month following the first and second month of each quarterly filing period:

1. In a manner prescribed by the Director of the Division of Taxation, report its Sales and Use Tax - Energy liability for the month and the remaining balance of its available credit resulting from the payment made in accordance with N.J.S.A. 54:30A-116; and

2. Pay an amount equal to its Sales and Use Tax - Energy liability for the month, less any available credit resulting from the payment made in accordance with N.J.S.A. 54:30A-116.

(b) All gas and electric light, heat, and power corporations subject to the UTUA shall file a quarterly return (Form ST-50EN) with the Division of Taxation and remit any payment due on or before the 20th day of the month following the quarter covered by the return.

(a)

DIVISION OF TAXATION

**Sales and Use Tax
Urban Enterprise Zones Act**

Proposed Amendments: N.J.A.C. 18:24-31

Proposed New Rule: N.J.A.C. 18:24-31.3A

Proposed New Rule and Repeal: N.J.A.C. 18:24-31.5

Authorized By: Michael Bryan, Director, Division of Taxation.

Authority: N.J.S.A. 52:27H-81 and 54:32B-24.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2014-156.

Submit comments by November 14, 2014, to:

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The agency proposal follows:

Summary

The proposed amendments, repeal, and new rules are intended to clarify the sales and use tax law as it applies to the administration of benefits that are provided to certain qualified businesses under the New Jersey Urban Enterprise Zones (UEZ) Act, N.J.S.A. 52:27H-60 et seq. The proposed amendments, repeal, and new rules will help businesses participating in the UEZ Program, as well as consumers, to better understand the sales and use tax laws that apply to transactions occurring within the UEZs.

The heading of the subchapter is amended to more accurately reflect content of the subchapter, to indicate that the subchapter pertains to exemptions of the sales and use tax. The subchapter explains how the sales and use tax benefits provided to qualified businesses within the UEZ Program are administered by supplying relevant definitions, listing qualifications as they pertain to the application of the sales and use tax exemptions, and giving examples of proper usage. This subchapter does not merely duplicate the Department of Community Affairs' (DCA) UEZ rules as provided in N.J.A.C. 5:120, or those that pertain to UEZs promulgated by the New Jersey Economic Development Authority (NJEDA) within N.J.A.C. 19:31-13, but supplements them by focusing on the sales and use tax exemptions allowed by the UEZ Program.

N.J.A.C. 18:24-31.1 is amended to more accurately reflect the purpose and scope of the subchapter, as described above. The role of the New Jersey Urban Enterprise Zone Authority (the Authority) is defined as provided by N.J.S.A. 52:27H-63 and N.J.A.C. 5:120. The proposed amendments also explain that the Authority is the governing body that oversees the administration of the UEZ Program.

The following terms were added to the definitions section (N.J.A.C. 18:24-31.2) to conform with the definitions adopted by the Authority: "Administrator," "Authority," "certification," "recertification," and "zone business benefits."

The terms: "certified seller," "energy," "motor vehicles," "natural gas," "partial sales tax exemption," and "utility service," are also defined to clarify and emphasize the context in which they are used in the rules. The definition of "qualified business" is amended to indicate that the qualified business must meet the criteria and be certified by the Authority to meet the tax benefits under the Act and has no outstanding tax obligations.

Other general/technical amendments are proposed for purposes of clarity. The proposed amendments, repeal and new rules revise the subchapter to refer to the statutory exemption from sales and use tax for retail sales of energy (electricity and natural gas) and related utility service to a qualified manufacturer operating in a UEZ or a vertically integrated combination of qualified businesses manufacturing a single product within a single redevelopment area within a UEZ. Such purchases must be made for consumption in the UEZ, and the business must employ at least 250 people at least 50 percent of whom are directly employed in a manufacturing process. Details on general qualifications and references on where to locate an application have been proposed as new N.J.A.C. 18:24-31.3A.

N.J.A.C. 18:24-31.3(a) is amended to explain that the sales and use tax exemption for qualified businesses is applicable to purchases of stationery used at the place of business in the zone, but is not applicable to purchases of specified digital products. Specified digital products are a distinct class of products defined under N.J.S.A. 54:32B-2(zz), on which sales tax is specifically imposed under N.J.S.A. 54:32B-3(a).

N.J.A.C. 18:24-31.3(a) is also amended to delete the last clause of the subsection because it is unclear. New paragraph (a)3 is added to state the existing administrative practice that the qualified business must follow and is relocated from existing subsection (c) (which is proposed for deletion). Existing subsection (e) is proposed for deletion as it is relocated to new N.J.A.C. 18:24-31.3A.

N.J.A.C. 18:24-31.4 has been expanded to fully explain how a sales transaction with a UEZ-certified seller can qualify for the partial sales tax exemption. Specifically, language is deleted from subsection (a), as it is incorporated into the definition of "certified seller"; in subsection (c), "rentals and leases" is added to reinforce the concept that retail sales of tangible personal property includes the rental and leasing of such

property for purposes of sales and use tax applications; subsection (d) is proposed for deletion as it is also repetitive of the criteria stated in the definition of “certified seller”; and at recodified subsection (d), the amendments clarify the “in-person” requirements necessary for a sales transaction to qualify for the partial sales tax exemption. A detailed interpretation of transactions that originate and are completed personally by the purchaser is provided, along with an example to stress how important it is that the origin and the completion of a sales transaction take place at the same business location for a partial sales tax exemption to be applicable.

Additional information has been added to recodified N.J.A.C. 18:24-31.4(e) to address changes to common business practices resulting from technology (such as electronic mail and the Internet) that affect how businesses currently market, advertise, and sell their products. Technology may also affect how orders for goods and services are received and fulfilled. Examples are provided to illustrate how the “in-person” ordering and delivery requirements affect a certified seller’s authority to apply the partial sales tax exemption to certain transactions. Requiring an “in-person” transaction at a retailer’s UEZ location reflects the legislative intent to physically bring people into the UEZs to help stimulate economic activity and growth.

New N.J.A.C. 18:24-31.4(f) through (h) are added along with relevant examples to reflect how other elements of business transactions may affect the applicability of the partial sales tax exemption to tangible personal property sold by certified sellers. Expanding this section should help sellers and consumers better understand how other factors, such as the location of the tangible personal property sold, the timing of payments on orders, and the taxability of delivery charges associated with taxable sales transactions can affect the eligibility of the partial sales tax exemption to transactions that take place within UEZs.

N.J.A.C. 18:24-31.5 is proposed for repeal and replaced with a new section that is expanded to include a list of sales that are not eligible for the partial sales tax exemption.

Details on the proper use of the Contractor’s Exempt Purchase Certificate, Urban Enterprise Zone (Form UZ-4) are integrated into N.J.A.C. 18:24-31.6 in response to general inquiries received from contractors and suppliers of building materials. The amendments provide when Form UZ-4 may be issued by contractors performing services associated with the erection, alteration, improvement, or repair of real property that a UEZ business owns or occupies, and restrictions on the use of the contractor’s exemption for UEZ projects.

Other technical corrections have been proposed throughout the subchapter to correct syntax, delete or update references, complete citations, and change the order of terms and definitions. Some revisions are stylistic changes intended to maintain consistency within the subchapter or to make certain provisions easier to read without changing their meaning.

Because the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments, repeal, and new rules clarify the sales and use tax exemptions granted to certain qualified businesses that operate within the UEZs. The Division believes that by updating and clarifying the application of the law and including illustrative examples, the amendments, repeal, and new rules provide improved guidance. The Division anticipates that the promulgation of the proposed amendments, repeal, and new rules will increase voluntary compliance.

Economic Impact

The proposed amendments, repeal, and new rules clarify the sales and use tax exemptions granted to certain qualified businesses that operate within the UEZs. The proposed amendments, repeal, and new rules explain the law as applied to purchases of tangible personal property or services made by qualified businesses or their contractors, where the purchases are used exclusively on the premises of the qualified business. The proposed amendments, repeal, and new rules also address specific requirements for “in-person” ordering and delivery that must be met in order for sales made by qualified businesses to be eligible for the partial sales tax exemption. Thus, the proposed amendments, repeal, and new

rules will enhance compliance with the current sales and use tax laws for both purchases and sales made by qualified businesses.

Federal Standards Statement

The proposed amendments, repeal, and new rules do not contain any requirements that exceed those imposed by Federal law. The proposed amendments, repeal, and new rules reflect the Division’s application of New Jersey laws that are not subject to any Federal regulatory requirement or standards.

Jobs Impact

The Division does not anticipate that any jobs will be generated or lost as a result of the proposed amendments, repeal, and new rules.

Agriculture Industry Impact

The proposed amendments, repeal, and new rules will have no impact on the agriculture industry.

Regulatory Flexibility Statement

Consistent with its mission, the Division reviews its rulemakings with a view to minimizing the impact of its rules on small businesses to the extent possible. The mission of the Division is to administer the State’s tax laws uniformly, equitably, and efficiently, to maximize State revenues to support public services, and to ensure that voluntary compliance with the taxing statutes is achieved without impeding economic growth.

The proposed amendments, repeal, and new rules apply to small businesses, as the term is defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments, repeal, and new rules do not impose any new reporting, recordkeeping, or compliance requirements, they are merely restated and restructured from other sections of the existing rules. While the proposed rulemaking itself does not require the qualified businesses to utilize professional services, businesses operating in UEZs may wish to consult with a professional to determine how the rulemaking may apply to them.

The proposed amendments, repeal, and new rules clarify the administration of certain sales and use tax benefits available to certain qualified businesses. Businesses of all sizes, including small businesses that operate within UEZs, will directly benefit from the proper administration of the exemptions provided.

Housing Affordability Impact Analysis

The proposed amendments, repeal, and new rules will not result in changes to the average costs associated with housing. The proposed amendments, repeal, and new rules have no impact on housing because they involve UEZ sales and use tax exemptions.

Smart Growth Development Impact Analysis

The proposed amendments, repeal, and new rules will not result in a change in the housing production within the Planning Areas 1 or 2, within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the proposed amendments, repeal, and new rules have no direct application to housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey. The proposed amendments, repeal, and new rules deal with the sales and use tax exemptions granted to certain qualified businesses that participate in New Jersey’s UEZ Program.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 31. ADMINISTRATION OF SALES AND USE TAX EXEMPTIONS PROVIDED UNDER THE URBAN ENTERPRISE ZONES ACT

18:24-31.1 General provisions

(a) This subchapter of the sales and use tax rules sets forth relevant definitions, the possible sales and use tax benefits, and the procedures for qualifying for the benefits under the New Jersey Urban Enterprise Zones Act (the UEZ Act). The sales and use tax benefits include an exemption for retail purchases made by a qualified business; a partial sales tax exemption for retail sales made by a certified seller; and an exemption for purchases of building materials and services made by contractors for use in constructing or maintaining buildings or realty of a qualified business.

[(a)] (b) The [New Jersey Urban Enterprise Zones] UEZ Act, [Chapter 303, Laws of] P.L. 1983, c. 303 (N.J.S.A. 52:27H-60 et seq.), approved August 15, 1983, provides for the establishment of urban enterprise zones ([also known as UEZs] “enterprise zones,” “zones,” or “UEZs”) in urban areas suffering from high unemployment and economic distress, and [UEZ-impacted] urban enterprise zone-impacted business districts (“UEZ-impacted districts” or “districts”). [Each designation shall be for 20 years, except as otherwise designated or extended by the Authority. Zones] Enterprise zones and UEZ-impacted districts are designated by [an] the Urban Enterprise Zone Authority (the Authority), which is responsible for administering the UEZ Act. The Authority may grant certain sales and use tax and other tax benefits to businesses existing in or formed in enterprise zones or UEZ-impacted districts, which have met the definition of a qualified business. [This subchapter of the sales tax rules sets forth the possible benefits, the necessary definitions, and the procedures for qualifying for any of these sales tax benefits.]

[(b)] The possible sales tax benefits include an exemption for retail sales to a qualified business, a partial exemption for retail sales to a qualified business, and an exemption for sales of building materials and services used in construction or maintaining buildings or realty of a qualified business.]

(c) No business [can] may obtain tax benefits under this subchapter unless the [Urban Enterprise Zone Authority has determined that the] business [meets the definition of a qualified business under N.J.S.A. 52:27H-62c paraphrased below in N.J.A.C. 18:24-31.2] is certified as a qualified business by the Authority.

18:24-31.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Administrator” means the Executive Director of the Urban Enterprise Zone Program in, but not of, the New Jersey Department of Community Affairs.

“Authority” means the New Jersey Urban Enterprise Zone Authority.

“Certification” means the application process by which a qualified business, operating within a zone or UEZ-impacted district, becomes eligible for zone business benefits.

“Certified seller” means a qualified business having a place of business located in a designated enterprise zone or UEZ-impacted district that has applied for certification to make certain retail sales of tangible personal property from its business location at 50 percent of the sales tax rate imposed under the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.). In order to become a certified seller, a qualified business must demonstrate the following:

1. The seller owns or leases and regularly operates a place of business located in the designated zone or district for the purpose of making retail sales;

2. Items are regularly exhibited and offered for retail sale at that location; and

3. The place of business is not used primarily for catalog, mail order, or Internet business. For purposes of this paragraph, “primarily” means more than 50 percent of a business’s receipts.

“Energy” means natural gas or electricity.

“Enterprise zone,” “zone,” or “UEZ” means an urban enterprise zone designated by the Urban Enterprise Zone Authority under the UEZ Act (N.J.S.A. 52:27H-60 et seq.).

“Motor vehicles” includes all vehicles propelled, other than by muscular power (except vehicles that run only on rails or tracks), trailers, semitrailers, house trailers, or any other type of vehicle drawn by a motor-driven vehicle, and motorcycles, designed for operation on the public highways.

“Natural gas” means any gaseous fuel distributed through a pipeline system.

“Partial sales tax exemption” means an exemption of 50 percent of the tax imposed under the Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.).

“Qualified business” means:

1. (No change.)

2. [An entity which, after that designation but during the designation period,] A business that becomes newly engaged in the active conduct of a trade or business in [that] an existing zone or district, [and has] with at least 25 percent of its full-time employees employed at [a] its business location in [the] that zone or district[,] who [meet at least one of the following criteria]:

i. [Residents] Reside within [the] that zone or district, within another zone, or within [the] a qualifying municipality [within which the zone or any other zone or district is located]; or

ii. [Either] Were either unemployed for at least six months prior to being hired and residing in New Jersey, or recipients of New Jersey public assistance programs, for at least six months prior to being hired; or

iii. [Found] Have been determined to be low income individuals[,] pursuant to the Workforce Investment Act of 1998, P.L. 105-220 (29 U.S.C. §§ 2811 et seq.).

As used in this definition, a “qualified business” refers to any business that meets the criteria listed in the definition and has been certified by the Authority to receive tax benefits authorized under this Act. As provided by N.J.S.A. 52:27H-62, designation as a qualified business is conditioned on the business having no outstanding State tax obligations. The Authority may withdraw the “qualified business” designation of any business that fails to meet its State tax obligations.

[“Enterprise zone” or “zone” means an urban enterprise zone designated by the Urban Enterprise Zone Authority under N.J.S.A. 52:27H-60 et seq.]

“Recertification” means the process of applying to the Authority for continued eligibility of zone business benefits.

“UEZ-impacted business district” or “district” means an economically-distressed business district classified by the Authority as having been negatively impacted by two or more adjacent [urban enterprise zones] UEZs in which 50 percent less sales tax is collected pursuant to section 21 of P.L. 1983, [c.303] c. 303 (N.J.S.A. 52:27H-80).

“Utility service” means the transportation or transmission of natural gas or electricity by means of mains, wires, lines, or pipes to users or customers.

“Zone business benefits” means those benefits as provided under N.J.S.A. 52:27H-75 through 52:27H-80 and 52:27H-87.1.

18:24-31.3 Exemption for retail sales to a qualified business

(a) Retail sales, rentals, and leases of tangible personal property (except motor vehicles and energy) to a qualified business operating within an enterprise zone, and sales of services (except telecommunications and utility services) to a qualified business for the exclusive use or consumption of such business within an enterprise zone are exempt from the sales and use taxes imposed by N.J.S.A. 54:32B-1 et seq., provided that the designation of the enterprise zone by the Urban Enterprise Zone Authority specifically makes this exemption available to the qualified business.]

[(b)] 1. [Tangible] Examples of tangible personal property that qualifies for the exemption described in (a) above, include[s, for example, items such as], but are not limited to: office supplies and stationery, office or business equipment, office and store furnishings, trade fixtures, and cash registers. [Services include installing, maintaining or repairing tangible personal property used in business (other than a motor vehicle); maintaining, servicing or repairing real property used in business, including janitorial and landscaping services; and information services used or consumed exclusively within the enterprise zone.] Sales of specified digital products, as defined by N.J.S.A. 54:32B-2(zz), are not eligible for the exemption.

2. Examples of services used or consumed exclusively within the enterprise zone that qualify for the exemption described in (a) above include, but are not limited to: installing, maintaining, or repairing tangible personal property (other than a motor vehicle), used by the qualified business; maintaining, servicing, or repairing real property at the qualified business’s location in the zone, including janitorial services, garbage removal or sewer services, landscaping services,

and security services, including alarm monitoring services; and information services.

3. A qualified business operating within an enterprise zone must properly document entitlement to the exemption by issuing a fully completed Urban Enterprise Zone Purchase Certificate (Form UZ-5) to the seller.

[(c) Qualified businesses purchasing, renting or leasing tangible personal property (except motor vehicles and energy) or services (except telecommunications and utility services) to be used or consumed exclusively within the enterprise zone shall furnish to their sellers, suppliers or lessors a properly completed Urban Enterprise Exempt Purchase Certificate, subject to the provisions of P.L. 2006, c. 34, and P.L. 2007, c. 328.]

[(d)] (b) (No change in text.)

[(e) Notwithstanding the provisions in (a)-(c) above, a qualified business may be exempt from sales and use tax on energy and utility service in accordance with the provisions in N.J.S.A. 52:27H-87.1. A qualified business may be eligible to use an Urban Enterprise Zone – Energy Exemption Certificate (Form UZ-6), in accordance with those provisions and the instructions provided on the certificate.]

18:24-31.3A Energy sales and use tax exemption program for certain UEZ manufacturers

(a) Notwithstanding N.J.A.C. 18:24-31.3(a), and in accordance with N.J.S.A. 52:27H-87.1, a qualified business may receive an exemption from sales and use tax on charges for energy and utility service purchases provided that provisions of relevant rules of the New Jersey Economic Development Authority (NJEDA) and certain eligibility requirements established by the Authority are met.

(b) A qualified business meeting certain requirements including, but not limited to, employment levels in its manufacturing process, must apply for the energy and utility service exemption for UEZ manufacturers by submitting an application to the NJEDA. Details and application instructions are available at N.J.A.C. 19:31-13.

18:24-31.4 Partial sales tax exemption for retail sales of tangible personal property by a certified seller

(a) [Sales] A certified seller may impose sales tax [is imposed] at 50 percent of the statutory rate[,] on receipts from retail sales, [with] subject to the exceptions stated in (b) [or] and (c) below[,] made by a certified vendor which is a qualified business from a place of business owned or leased, and regularly operated by the seller for the purpose of making retail sales, and located in a designated enterprise zone or UEZ-impacted district].

(b) [This] The partial sales tax exemption does not [extend] apply to retail sales of motor vehicles, cigarettes, alcoholic beverages, or energy.

(c) [The provisions of this] The partial sales tax exemption [do] does not apply to retail sales, rentals, or leases of manufacturing machinery, equipment, or apparatus. Such sales may[,] however[,] be exempt from sales tax under the provisions of N.J.S.A. 54:32B-8.13[,] as further defined in]. See N.J.A.C. 18:24-4.1 through 4.8.

[(d) In addition to being a qualified business, a certified seller must regularly operate a place of business for the purpose of making retail sales. Items of tangible personal property must be regularly exhibited and offered for retail sale at this location, and the place of business may not be utilized primarily for the purpose of catalog or mail order sales.]

[(e)] (d) [All] Only sales [made by] transactions that originate or are completed by the purchaser, in person, at a [qualified and] certified seller's [must be made from his or her] place of business within an enterprise zone or district[,] that is, either the purchaser must accept delivery at the seller's place of business within an enterprise zone or district, or the] qualify for the partial sales tax exemption. A transaction will be deemed to originate or be completed by the purchaser, in person, if:

1. The purchaser places his or her order, in person, at the seller's place of business within the zone or district and the seller [must] delivers the tangible personal property directly from [his or her place of] the same business location within [an] the [enterprise] zone or district[. Only receipts from sales, which originate and are completed by the purchaser in person at the seller's place of business within an enterprise zone or district qualify for the reduced rate of sales tax; provided,

however, that after a sale has been completed within an enterprise zone or district, the seller may deliver the tangible personal property to the purchaser at a location outside an enterprise zone or district.]; or

2. The purchaser personally accepts delivery at the seller's place of business within the enterprise zone or district. The transaction must be completed at the same business location within the same zone or district even if the seller operates more than one business location in one or more zones or districts.

Example: A customer goes to a certified seller's location to purchase building materials. The seller does not have the materials in stock at that location and offers to have the materials shipped to the customer from another location (for example, a warehouse) that is operated by the seller. Even if the materials are in stock at another location that the seller operates within a zone or district, the materials must be delivered to the location where the items were originally ordered by the customer before being delivered to the customer, otherwise, the seller must collect tax on the transaction at the full rate.

[1.] (e) Receipts from mail order, Internet, telephone, [telex] fax, and similar sales transactions are subject to sales tax at the regular rate [where delivery is made] when a certified seller delivers the order directly from the seller's location in the zone to a location within this State. The partial sales tax exemption applies when orders are received by mail order, Internet, telephone, fax, or similar sales transactions, if the customer picks up the order at the business location in the zone or district, and as long as the business does not operate primarily as a catalog, mail order, or Internet business.

Example 1: A customer goes to a certified seller in a UEZ to order merchandise that the seller has in stock and arranges to have the items delivered directly from the seller's inventory to a location outside of the zone. The partial sales tax exemption applies to this transaction because the purchaser placed the order in-person and delivery was made directly from the seller's location in the zone where the purchase was made.

Example 2: A certified seller receives an order from a customer by fax. The seller uses its own truck to deliver the property from its inventory to the customer's location in New Jersey. The partial sales tax exemption does not apply to this transaction because the customer did not place the order in-person or take delivery of the merchandise at the seller's location in the zone.

Example 3: A certified seller receives an Internet order for tangible personal property. The customer goes to the seller's location in the zone to pick up the property that was ordered. The partial sales tax exemption applies to this transaction because by picking up the merchandise, the customer completed the "in-person" sale at the seller's retail location in the zone.

(f) The goods that are eligible for the partial sales tax exemption must be ordered from, and the order fulfilled from, inventory held at the same zone location. Sales of merchandise are not eligible for the reduced rate if delivered by drop-shipment, from a warehouse, or another location operated by the certified seller, even if the location is in the same or another zone.

Example: A certified seller has two certified retail stores located in different zones, Zone A and Zone Y. A purchaser makes an in-person order for goods at the store in Zone A. The goods are in stock at the Zone Y location, but not at the Zone A store where the customer placed the order. The seller takes the goods from the Zone Y store's inventory and delivers the goods to the customer. The partial sales tax exemption does not apply to this transaction because the goods delivered to the customer were not taken from the Zone A store, where the order was placed. The seller must collect tax at the full rate.

(g) The timing of a payment is not relevant in determining whether a sale qualifies for the partial sales tax exemption. The "in-person" sale must be completed regardless of when (or how) payment is made.

Example: A certified seller receives an order by telephone. The seller fulfills the order by taking property from its inventory and delivering the goods by common carrier to the purchaser's location in New Jersey. The purchaser then goes to the retail store to pay for

the merchandise using a credit card. The partial sales tax exemption does not apply to this transaction because the purchaser did not place the order in person or pick up the goods at the seller's location in the zone. The seller must collect tax at the full rate.

(h) The partial sales tax exemption applies to handling, packing, shipping, and other delivery charges associated with a taxable sales transaction that is eligible for the partial sales tax exemption. Separately stating such delivery charges on the invoice has no effect on taxability.

Example: A customer makes an in-store retail purchase of office supplies from a certified seller. The seller ships the items directly from its inventory to a location outside of a UEZ, but within New Jersey, as designated by the purchaser. The customer's invoice is stated as follows:

| | |
|-----------------------------|----------|
| Pens | \$30.00 |
| Paperclips | \$20.00 |
| 15 Clipboards | \$150.00 |
| Office supplies total..... | \$200.00 |
| Shipping and handling..... | \$8.00 |
| Total taxable receipt | \$208.00 |
| N.J. sales tax @ 3.5%..... | \$7.28 |

The partial sales tax exemption applies to this entire transaction (that is, merchandise and the shipping and handling charges) because the purchaser placed the order in-person and delivery was made directly from the seller's location in the zone where the purchase was made. The charge for shipping and handling follows the taxability of the items being sold, as part of the taxable receipt.

18:24-31.5 No partial sales tax exemption for [retail sales of] taxable services and other retail sales by a [qualifying business] certified seller

[The Urban Enterprise Zones Act in Section 21 provides for an exemption to the extent of 50 percent of the statutory rate of sales and use tax on retail sales (other than motor vehicles, cigarettes, alcoholic beverages, energy, and manufacturing machinery, equipment or apparatus) by a certified vendor which is a qualified business. The statute does not provide for any full or partial exemption on the sale or furnishing of taxable services.]

(a) The partial sales tax exemption (50 percent of the statutory rate of sales and use tax) only applies to the retail sales of tangible personal property by a certified seller with some exceptions, as described in N.J.A.C. 18:24-31.4.

1. Examples of taxable services that are not eligible for the partial sales tax exemption include, but are not limited to:

- i. Furnishing of storage space;
- ii. Information services;
- iii. Body massage;
- iv. Tanning;
- v. Tattooing;
- vi. Limousine services;
- vii. Motor vehicle repairs;
- viii. Landscaping;
- ix. Security and investigation services;
- x. Garbage removal and sewer services;
- xi. Floor covering installation; and
- xii. Laundering and dry cleaning of non-clothing.

2. Examples of retail sales that are not eligible for the partial sales tax exemption because they are not considered to be sales of tangible personal property include, but are not limited to:

- i. Prepared food and beverages;
- ii. Admissions;
- iii. Membership fees for access to or use of the property or facilities of a health and fitness, athletic, sporting, or shopping club or organization; and
- iv. Parking.

18:24-31.6 Exemptions for retail sales of building materials to or for a qualified business

(a) [Section 31 of the Act] N.J.S.A. 54:32B-8.22 provides an exemption from sales and use tax on sales of materials, supplies, or services to contractors or repairmen for exclusive use in erecting

structures, or building on, or otherwise improving, altering, or repairing real property of a qualified business within an enterprise zone. See N.J.A.C. 18:24-5.3.

(b) Purchasers of materials, supplies, or services to be used for construction, alteration, and repair of structures and realty of a qualified business[es] within an enterprise zone shall furnish to their sellers or suppliers a [properly] fully completed [UZ-4,] Contractor's Exempt Purchase Certificate, Urban Enterprise Zone (Form UZ-4).

(c) The benefits set forth in this section are [unavailable for] not available to qualified businesses within a UEZ-impacted [business] district.

(a)

DIVISION OF TAXATION

**Sales and Use Tax
Medical**

Proposed New Rules: N.J.A.C. 18:24-37

Authorized By: Michael J. Bryan, Director, Division of Taxation.
Authority: N.J.S.A. 54:32B-24 and 54:50-1.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2014-153.

Submit written comments by November 14, 2014, to:

Mitchell Smith
Administrative Practice Officer
Division of Taxation
50 Barrack Street
PO Box 269
Trenton, NJ 08695-0269
Email: tax_rulemakingcomments@treas.state.nj.us

The agency proposal follows:

Summary

Proposed new N.J.A.C. 18:24-37 provides clarification of N.J.S.A. 54:32B-8.1, which provides a sales and use tax exemption for drugs and certain medical equipment for human use. The Division has determined that the addition of this subchapter is necessary to provide the medical industry and consumers further clarification of N.J.S.A. 54:32B-8.1. This subchapter provides guidance as to what type of tangible personal property falls within the medical exemption for purposes of properly applying the Sales and Use Tax Act.

Following is a summary of each section of the new subchapter:

N.J.A.C. 18:24-37.1, Scope, sets forth the scope of the subchapter.

N.J.A.C. 18:24-37.2, Definitions, provides definitions of the following terms: drug, durable medical equipment, grooming and hygiene product, home-use, medical purpose, mobility enhancing equipment, over-the-counter-drug, prescription, prosthetic device, and sold pursuant to a doctor's prescription.

N.J.A.C. 18:24-37.3, Drugs and over-the-counter drugs, describes the exemption for drugs sold pursuant to a doctor's prescription and over-the-counter drugs and provides examples of exempt items.

N.J.A.C. 18:24-37.4, Grooming and hygiene products, states that grooming and hygiene products are subject to tax and provides examples of taxable items.

N.J.A.C. 18:24-37.5, Durable medical equipment, describes the exemption provided for durable medical equipment for home use and provides examples of exempt items.

N.J.A.C. 18:24-37.6, Mobility enhancing equipment, describes the exemption provided for mobility enhancing equipment sold pursuant to prescription and provides examples of exempt items.

N.J.A.C. 18:24-37.7, Prosthetic devices, describes the exemption provided for prosthetic devices and provides examples of exempt items.

N.J.A.C. 18:24-37.8, Other statutory exemptions, explains that sales of the following are exempt from sales tax: diabetic supplies, tampons and like products, medical oxygen, and human blood and its derivatives.