

Revised 9/20/05

NOTICE:
LEASES AND RENTALS OF TANGIBLE PERSONAL PROPERTY
New Jersey Sales and Use Tax Act--Streamlined Legislation
(P.L. 2005, c. 126, effective October 1, 2005)

Through the enactment of Public Law 2005, chapter 126, New Jersey joined a national coalition of states in conforming the New Jersey Sales and Use Tax Act to the provisions of the Streamlined Sales and Use Tax Agreement (SSUTA). The SSUTA was developed over the course of several years through the joint effort of over forty states participating in the Streamlined Sales and Use Tax Project. The underlying purpose of the Agreement is to simplify and modernize the administration of the sales and use tax laws of the member states in order to facilitate multi-state tax administration and compliance. The provisions of New Jersey's law are effective on October 1, 2005.

Public Law 2005, chapter 126, changes the sales and use tax treatment of leasing transactions. The most significant changes concern: (1) who pays the tax, (2) the threshold for requiring remittance upfront on the whole lease rather than on individual lease payments, (3) the allowance of a partial refund when property originally leased in New Jersey is permanently relocated outside of this State before the expiration of a lease, and (4) rules for determining "sourcing," i.e. the state whose sales and use tax laws apply to the lease payment(s).

Summary of Major Changes

| | <u>L. 1989, c. 123</u> | <u>L. 2005, c.126</u> |
|---|---|---|
| Terms "lease" or "rental": | Different meaning | Interchangeable |
| Legal incidence of tax (who is liable to pay the tax): | Lessor paid use tax on leases for terms of over 28 days, while lessee paid sales tax on rentals for terms of 28 days or less. | Lessee pays sales tax, regardless of length of term. |
| Collection of tax: | Lessor collected tax only on rentals for 28 days or less. Lessor did <i>not</i> collect tax on leases over 28 days. | Lessor collects on lease/rental regardless of length of term. |
| Threshold for determining whether tax is remitted on accelerated basis: | Term of more than 28 days | Term of more than six months. |
| Refunds if leased property is relocated | No refund | Allocated |

outside NJ before expiration of lease:

refund
(certain
conditions)

Definition (N.J.S.A. 54:32B-2(aa))

Unlike in the prior law (Public Law 1989, chapter 123), in the new law the words “lease” and “rental” are used interchangeably to mean any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration.

A lease or rental does not include any of the following types of transactions:

- transfer of property under a security agreement or deferred payment plan that requires transfer of title upon completion of the required payments;
- transfer of property under an agreement that requires transfer of title upon completion of the required payments and payment of an option price not exceeding \$100 or one percent of the total required payments;
- providing tangible personal property along with an operator who is necessary in order for the equipment to function as designed.

Tax Base (N.J.S.A. 54:32B-7(d))

Agreements for a term of six months or less: The tax base for these short-term rentals and leases is the amount of the periodic payment, i.e. the amount of the rent due. These short term agreements will be treated the same as “rentals” under the prior law.)

Agreements for a term of more than six months: The lessee pays the sales tax to the lessor either on the original purchase price of the leased property or on the total of the periodic payments required under the lease agreement. (Whether the tax will be calculated on the purchase price or the total of the periodic payments is negotiable between lessor and lessee.)

Note:

Interest or finance charges will not be excludible from the lease payments when calculating the amount of tax due.

*The value of a trade-in of property of the same kind, accepted in partial payment for the lease, will reduce the tax base. The trade-in credit is only available for property that is owned by the lessee; the tax base is **not** reduced if the lessee is turning in leased or rented property for credit, or if the property traded in will not be held for sale by the lessor.*

Who Pays the Tax, Collection of Tax, and When It Is Remitted (N.J.S.A. 54:32B-7(d); N.J.S.A. 54:32B-2 (i)(1)(A))

The lessor must now collect sales tax on both short-term and extended-term agreements and must remit this sales tax with its sales and use tax returns. The legal incidence of the sales tax falls upon the lessee in both short-term and extended-term leases and rentals. This means that the law imposes the sales tax on the customer, that is, the lessee.

Note: *Since the lessor will be collecting sales tax from the lessee on both short- and long-term agreements beginning on or after October 1, 2005, the lessor will no longer*

use the Lessor Certification, Form ST-40, which was required when the lessor, rather than the lessee, was the payor of the tax.

The legal incidence of the sales tax on the total of periodic payments is now on the lessee. If the agreement is for a term of more than six months, the lessor must collect and remit the full amount of the tax due from the lessee on the total periodic payments for the complete term of the lease. The lessor must remit the full amount of tax at the time of filing the monthly or quarterly return covering the period when the leased property was delivered to the lessee in New Jersey.

The legal incidence of the sales tax also falls upon the lessee if the tax is calculated instead on the original purchase price of the leased property. The lessor must remit the full amount of tax at the time of filing the monthly or quarterly return covering the period when the leased property was delivered to the lessee in New Jersey.

The treatment of short-term rental or leases (six months or less) under the new law is the same as the treatment of rentals of 28 days or less under the old law, i.e., the lessor must charge customer sales tax on periodic payments, and must separately state sales tax on invoices.

Note: The lessor must separately state the sales tax on invoices, billing slips, and similar documents given to the lessee or renter. N.J.S.A. 54:32B-14(d)

Treatment When Leased Property Is Relocated Either to New Jersey or Out of New Jersey Before Expiration of the Lease (N.J.S.A. 54:32b-7(c); N.J.S.A. 54:32B-7(d))

If property purchased outside of New Jersey for a lease or rental that originated outside this State is subsequently brought into New Jersey for use in this state, tax will be due on each of the subsequent lease payments attributable to the period of the agreement remaining after the first use in this State.

If property originally leased in New Jersey is permanently relocated to another state before the expiration of the lease, the lessee is entitled to a partial refund of the amount of sales tax paid allocable to the portion of the lease or rental that remains in effect after the property is removed from New Jersey. This refund is allowed only if the following conditions are met: the state to which the property has been moved does not provide a credit against its own sales or use tax for the tax paid to this State, and, if the new state is one in which leases or rentals are taxed on a lump-sum or accelerated basis, only if that state allows a corresponding partial refund when property originally leased there is subsequently relocated to New Jersey before the lease expires.

Sourcing (N.J.S.A. 54:32B-3.1 (b), (c), (d), (e))

General rule, for leases or rentals of tangible personal property other than motor vehicles, trailers, or aircraft, and other than “transportation equipment”(see below):

The general rule, under the new section 26b of the act, is that, if a lease or rental does not require periodic payments, the lump-sum or accelerated payment is sourced, for sales and use tax purposes, to the location where the leased property was first transferred to the

lessee, i.e. either to the seller's place of business or to the location of delivery. If the lease or rental **does** require periodic payments, the first periodic payment is sourced as described above. Subsequent periodic payments will then be sourced, for sales and use tax purposes, to the primary property location provided by the lessee to the lessor in good faith.

Special sourcing rule for leases of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as “transportation equipment”:

The new section 26c of the Act provides that, if the lease, e.g., a motor vehicle lease, requires periodic payments, each periodic payment is sourced to the primary property location. The “primary property location” is the address provided by the lessee and maintained in the lessor's ordinary business records, provided that the address is used in good faith. If the lease does not require periodic payments, the payment is sourced the same as a retail sale, i.e. to the location where the property is delivered.

Note: The special sourcing rules for motor vehicles do not affect the requirement of collecting and remitting sales tax on an accelerated basis on extended leases.

Leases or rentals of “transportation equipment”:

Leases or rentals of “transportation equipment”(e.g. railroad cars, trucks with a gross vehicle weight rating of 10,001 pounds or more, certain passenger buses, air carriers, and containers for all of the above) as defined in the new section 26e of the Act, are sourced to the location where the leased property was first transferred to the lessee, i.e. either to the seller's place of business or the location of delivery.(Note that “transportation equipment” does not include passenger cars and most motor vehicles or boats.)

Effective Date (new section 38 of P.L. 2005, c.126)

The changes in the law governing the sales and use tax treatment of leases or rentals become effective October 1, 2005. They apply only to leases or rentals beginning on October 1, 2005, or later. They do not apply to leases and rentals that began before that date *even if* the leases or rented property is relocated to New Jersey or removed from New Jersey after October 1, 2005, before the lease has expired. Leases that are renewed for an additional time are considered “new leases.”

E-mail *Questions concerning the new Streamlined sales and use tax law.*

Note: You may access the full text of Public Law 2005, chapter 126, on the New Jersey Legislature's website at www.njleg.state.nj.us