

SUBCHAPTER 5. FACSIMILE FILING SERVICE

17:35-5.1 Filing service

(a) The Filing Office shall offer a [teletype] **facsimile** filing service [(hereafter termed facsimile filing service)] for any business entity or related document type submitted to the Filing Office, which [can be processed through facsimile transmission] **the Filing Office determines is suitable for facsimile filing. This service may include the transmission of filed documents and related data to persons requesting such content. The Filing Office shall publish which filings and related data are suitable for facsimile filing, along with the approved facsimile filing methods, on its web site at www.nj.gov/treasury/revenue.**

(b) (No change.)

(c) Documents delivered via the facsimile filing service [shall] **may be processed as non-expedited work with no specific turnaround service level, or be processed on one of the following accelerated service levels: [the] same work day received; [or] within 8.5 business hours of receipt[.]; one business-hour of receipt[.]; or two business-hours of receipt[, based on the service level chosen]. The service level shall be indicated on a covering communication approved by the Filing Office by persons who deliver the documents via the facsimile [transmission] filing service.**

17:35-5.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings:

“Delivered” means submitted to the Filing Office via [direct] a facsimile transmission **in accordance with a format and processing method approved by the Filing Office**, or to any other location designated by the Filing Office].

“Filing Office” means the Department of the Treasury, Division of Revenue and Enterprise Services[, Bureau of Business Support Services].

“Processed” means that a facsimile document submitted via [the] a facsimile [filing service] **transmission in accordance with a format and processing method approved by the Filing Office that is reviewed by the Filing Office and accepted or rejected with the appropriate acknowledgment being sent back to the submitter, [that is] including, as applicable, a rejection notice or stamped copy of an approved [facsimile document] filing.**

17:35-5.3 Exceptions

Services pursuant to this subchapter shall be rendered as soon as possible[, but]. **However, turnaround times may extend beyond [the] requested accelerated service levels [timeframe,] if the computer systems, [facsimile devices and/or] or communications devices/systems utilized by the Filing Office malfunction, or if the Filing Office experiences other difficulties beyond its control, making a timely response impossible. In such cases, upon resuming normal operations, the Filing Office will [first] process facsimile filing service requests on a first-in first-out basis, in the following priority order: one business-hour; two business-hour; [and] same day; and 8.5 business hours.** These requests will be given priority over mail-in requests.

17:35-5.4 Fees

The fees for facsimile filing services shall be: \$15.00 **for each 8.5 business hours request; \$50.00** for each same day service request; \$1,000 for each one-business-hour service request; and \$500.00 for each two-business-hour service request. The filing fee shall be in addition to the basic statutory filing fee usually charged for filing a document.

17:35-5.5 Methods of payment for facsimile filing service

(a) All fees assessed pursuant to this subchapter may be paid via a pre-paid deposit account, **provided the delivery process allows for the use of such accounts**, or charged against a major credit card held by the service user [of the facsimile filing service]. **An electronic method approved by the Filing Office is also an acceptable payment method.**

1. When a credit card **or electronic payment method acceptable to the Filing Office** is utilized as a method of payment, the user may be charged a separate fee to cover reasonable [bank] **service fees that are incurred [by the Filing Office] in processing the credit [charge] card or**

electronic payment. [If no bank fees are incurred in processing the charges, no separate fee shall be charged.]

2. (No change.)

TREASURY — TAXATION

(a)

DIVISION OF TAXATION

Sales and Use Tax Act

Proposed Readoption with Amendments: N.J.A.C. 18:24

Proposed Repeals and New Rules: N.J.A.C. 18:24-31.5 and 33.1

Proposed Repeals: N.J.A.C. 18:24-2.2, 4.7, 5.15, 5.18, 12.4, 18, 22.4, 22.5, and 32.7

Proposed Recodification: N.J.A.C. 18:24-2.14 as 8.6

Authorized By: Dennis Shilling, Acting 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 2015-153.

Submit written comments by February 5, 2016, to:

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The agency proposal follows:

Summary

In accordance with the sunset provisions of Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, the Division has evaluated the rules at N.J.A.C. 18:24, Sales and Use Tax Act, scheduled to expire on October 28, 2015, and has determined that they are necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Division of Taxation (Division) proposes to readopt the rules with technical changes, such as grammar and formatting, as well as substantive changes in order to properly reflect current statutory provisions. As the Division has filed this notice of readoption prior to the expiration date, the rules are extended 180 days to April 25, 2016, pursuant to N.J.S.A. 52:14B-5.1.c(2).

The proposed amendments, new rules, a recodification, and repeals will increase ease of use and consistency. Certain language, phrasing, and formatting inconsistencies have been addressed. The following technical changes have been proposed: examples have been restructured without substantive changes; gender-specific pronouns have been amended to eliminate gender designations or to provide gender-neutral phrasing; stated numbers have been replaced with digits where appropriate; grammatical changes have been made; incorrect punctuation has been corrected; extraneous words and punctuation have been eliminated; references to Resale Certificate (Form ST-3), Certificate of Exempt Capital Improvement (Form ST-8), Farmer's Exemption Certificate (Form ST-7), and Exempt Use Certificate (Form ST-4) have been amended to follow with “or other approved form”; “vendor(s)” has been changed to “seller(s)” to reflect the terminology used in the Sales and Use Tax Act; peculiar words or phrases have been replaced with plain language; the phrase “digital property” was changed to “specified digital product” to correspond with a statutory change; “personal property” or “goods” were changed to “tangible personal property” to correspond with the statute; references to other rules as authority were replaced by the

appropriate statutory citations; the introduction to definition sections were made consistent; generic taxpayers were given specific names in examples; references to public laws have been deleted, and typographical errors were corrected.

Effective October 1, 2005, through the enactment of P.L. 2005, c. 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” or “Agreement”). As a member state, New Jersey is required to be in compliance with the SSUTA through the incorporation of its provisions into New Jersey law, rules, and policies. The SSUTA was developed over the course of several years through the joint effort of the many states participating in the Streamlined Sales and Use Tax Project (Project). The underlying purpose of the SSUTA is to simplify and modernize the administration of the sales and use tax laws of the member states in order to assist in tax administration and compliance. New Jersey chose to participate in the SSUTA in order to help New Jersey businesses that operate in multiple states because the SSUTA simplifies the sales and use tax burdens for such businesses. New Jersey has been involved as a participating state since 2001, when the State Treasurer was authorized, pursuant to N.J.S.A. 54:32B-44 et seq., to enter into multistate discussions concerning the SSUTA to provide a streamlined sales tax system. The two parts to the Project’s proposed streamlines sales tax system are: a uniform sales and use tax administration system to reduce the burden of tax compliance for all sellers and all types of commerce; and a sales tax law simplification and uniformity system. These simplifications apply to all sellers.

The rules proposed for readoption with amendments, new rules, a recodification, and repeals implementing the Sales and Use Tax Act contains the following 37 subchapters:

- Subchapter 1. Forms and General Definitions.
- Subchapter 2. Retention of Records By Sellers.
- Subchapter 3. Hotel Room Occupancy Subject to Sales Tax.
- Subchapter 4. Manufacturing, Processing, Assembling, and Refining Industries.
- Subchapter 5. Contractors and Services Performed on Real Property.
- Subchapter 6. Sales of Clothing, Footwear, and Protective Equipment and Services Performed on Clothing.
- Subchapter 7. Motor Vehicles.
- Subchapter 8. Exempt Nongovernmental Organizations.
- Subchapter 9. Requirements Relating to Exempt Private Organizations.
- Subchapter 10. Issuance and Acceptance of Exemption Certificates.
- Subchapter 11. Obligation to Collect and Pay Sales Tax or Compensating Use Tax.
- Subchapter 12. Receipts from the Sale of Food, Food Ingredients, and Prepared Food.
- Subchapter 13. Garbage Removal Service.
- Subchapter 14. Taxability of Hospital Sales and Services.
- Subchapter 15. Laundry and Dry Cleaning Services.
- Subchapter 16. Coin-Operated Vending Machines; Sales of Tangible Personal Property; Sales of Food and Drink.
- Subchapter 17. Specific Rules for Vendors Who Sell Tangible Personal Property Through Vending Machines at 25 Cents or Less.
- Subchapter 18. Taxability of Motor Fuels
- Subchapter 19. Sales of Tangible Personal Property and Services Used on Farms.
- Subchapter 20. Commercial Advertising Film Negatives, Original Production Video Tape, and Similar Materials.
- Subchapter 21 is reserved.
- Subchapter 22. Sales Made by Floor Covering Dealers.
- Subchapter 23. Bad Debts.
- Subchapter 24 is reserved.
- Subchapter 25. Sales of Software and Related Services.
- Subchapter 26. Solar Energy Devices or Systems; Exemption From Sales and Use Taxation.
- Subchapter 27. Transportation of Persons and Tangible Personal Property.
- Subchapter 28. Race Horses.
- Subchapter 29. Disposable Household Paper Products: Exemption from Sales and Use Tax.

Subchapter 30 is reserved.

Subchapter 31. Urban Enterprise Zones Act.

Subchapter 32. Leases and Rentals of Tangible Personal Property.

Subchapter 33. Massage, Bodywork, and Somatic Services.

Subchapter 34. Investigation and Security Services.

Subchapter 35. Information Services.

Subchapter 36. Sales Price.

Subchapter 37. Medical.

Specifically, the following changes are proposed:

N.J.A.C. 18:24-1.1 is proposed for amendment to delete obsolete forms and to amend form names to correspond to the names of forms currently in use. An “*” was added after the Streamlined Sales and Use Tax Agreement Certificate of Exemption (Form ST-SST) to indicate that it may be used as an alternative form in approved circumstances.

At N.J.A.C. 18:24-1.2, definitions of “Director” and “seller” are added. The definition of “certified service provider” is proposed to be amended, by deleting “certified jointly by the states that are signatories to the Agreement to perform all of the seller’s sales tax functions” and by adding “certified under the Agreement to perform all the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases,” to reflect the definition used in the Streamlined Sales and Use Tax Agreement. The definition of “person” is proposed to be amended by deleting “estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity” and by adding “individual, trust, partnership, limited partnership, limited liability company, society, association, joint stock company, corporation, public corporation or public authority, estate, receiver, trustee, assignee, referee, fiduciary, and any other legal entity,” to reflect the definition used in the Sales and Use Tax Act.

The definition of “retail sale” is proposed to be amended by including additional information on what qualifies as a sales for resale; such as the conversion of natural gas into another product, telecommunications services to a telecommunications service provider as a component part of telecommunications service provided to a customer, and a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person. This addition is necessary to reflect the definition used in the Sales and Use Tax Act.

The definition of “sale, selling, or purchase” is proposed to be amended by adding “conditional or otherwise” to reflect the definition used in the Sales and Use Tax Act, which was amended to conform to the definition used in the SSUTA.

The definition of “sales price” is proposed to be amended by adding “which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise,” and by deleting “installation charges; and the value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise,” in order to reflect the definition used in the Sales and Use Tax Act which was amended to conform to the definition used in the SSUTA. The definition of “Sales price” is further proposed to be amended by adding information concerning consideration received by the seller from third parties to conform to the definition used in the Sales and Use Tax Act as amended by the SSUTA. The definition of “sales price” is further proposed to be amended by adding information on bundled transactions involving telecommunications services to reflect the definition used in the Sales and Use Tax Act, as amended by the SSUTA.

N.J.A.C. 18:24-2.1 is proposed to be amended for clarity to delete “promulgated by the Director of Taxation pursuant to authority vested in him under N.J.S.A. 54:32B-1 et seq.,” as it is not necessary.

N.J.A.C. 18:24-2.2 is proposed for repeal as the definitions were relocated to N.J.A.C. 18:24-1.2, since they apply to the entire chapter.

In N.J.A.C. 18:24-2.3, 2.4, 2.5, and 2.9, “or guest check” was added after “individual sales slips, invoices, receipts, statements, memoranda of price and cash register tapes.”

N.J.A.C. 18:24-2.3(a) is proposed for amendment by adding “both retail and wholesale” to the types of records that must be maintained and “and purchase for lease” is proposed for deletion because a purchase is defined in the law as including a lease. N.J.A.C. 18:24-2.3(b) is proposed

for amendment by replacing the outdated phrase “microfilm reproductions” with the current phrase “photocopies or electronically stored copies.” N.J.A.C. 18:24-2.3(b)4 is proposed for amendment by deleting the outdated term “modern projectors” and replacing it with the current phrase “computer hardware and software.” At N.J.A.C. 18:24-2.3(c), an amendment is proposed to add “and date of issuance” to each invoice. At N.J.A.C. 18:24-2.3(d)3, the sentence “[t]he general ledger should coincide with the financial reports” is proposed to clarify the information required to be maintained by taxpayers.

N.J.A.C. 18:24-2.4(a) is proposed for amendment to change 90 days to four years to conform with N.J.S.A. 54:32B-16. N.J.A.C. 18:24-2.4(a) and (b) and 2.5(a) are proposed for amendment by deleting the phrase “(or monthly)” because sales tax audits are conducted based on quarterly filings, so the Division requires records for the entire quarter in the audit period. N.J.A.C. 18:24-2.4(a) is further proposed for amendment to delete the three cross-references as they are unnecessary.

At N.J.A.C. 18:24-2.5(a), “[a]ll resale and exemption certificates must be contemporaneously dated, and all supporting documentation must be retained by the seller” is proposed for clarity. N.J.A.C. 18:24-2.5(b) is proposed for amendment to add “any resale” certificate to clarify that a retail certificate is a type of exemption certificate.

N.J.A.C. 18:24-2.6(a)1 is proposed for amendment to replace “catered event” with “catering charge” for clarity.

N.J.A.C. 18:24-2.8(a)4 is proposed for amendment to add “including quantity, description of item, and purchase price of each individual item” for clarity.

N.J.A.C. 18:24-2.9(c)1 is proposed for amendment to add “and payment (if payment is made on a date different from the purchase date).” N.J.A.C. 18:24-2.9(c)2 is proposed for amendment to add “and a detailed description of such use.” N.J.A.C. 18:24-2.9(c)4v is proposed for amendment to add “if applicable” for clarity. N.J.A.C. 18:24-2.9(d) is proposed for amendment by replacing the word “disposal” with “retention” because that is the phrase used in N.J.A.C. 18:24-2.11.

N.J.A.C. 18:24-2.11(a)1 is proposed for amendment to add “including the specific period for which the seller wishes to dispose of records.” N.J.A.C. 18:24-2.14 is proposed for recodification without amendment as N.J.A.C. 18:24-8.6 because Subchapter 8 pertains to exempt nongovernmental organizations.

N.J.A.C. 18:24-2.16(a) is proposed for amendment to change “within three days after” to “at least 15 days before” commencing business, in order to conform with the general registration requirements found in N.J.S.A. 54:32B-15. This subsection is further proposed for amendment by adding “and Enterprise Services” after “Division of Revenue” to reflect the proper name of the agency.

N.J.A.C. 18:24-3.3 is proposed for amendment to delete language describing “permanent resident” (as being someone who is in residence for at least 90 consecutive days) because that term is already defined in N.J.A.C. 18:24-3.2.

Throughout Subchapter 4, Manufacturing, Processing, Assembling, and Refining Industries, the word “exempt” is proposed for addition to references of “capital improvement” to reflect the statute at N.J.A.C. 18:24-4.4(e)2, (e)2i, (e)6, and (e)7.

At N.J.A.C. 18:24-4.3(a)4, the final sentence defining the term year is proposed for deletion because it is a defined term in N.J.A.C. 18:24-4.2.

At N.J.A.C. 18:24-4.6, “as well as services otherwise taxable” was deleted because this phrase caused confusion.

N.J.A.C. 18:24-4.7, addressing services not subject to tax, is proposed for repeal, as the section is not compatible with the subchapter and this information is found in other subchapters throughout the chapter.

N.J.A.C. 18:24-5.8(a) is proposed for amendment to add “or repair” to properly describe the listed examples of tax on materials.

At N.J.A.C. 18:24-5.12(b), the phrase “taxable receipt” is proposed to be replaced with “sales price” for consistency with the statutory term.

N.J.A.C. 18:24-5.15 and 5.18 are proposed for repeal as they were deemed unnecessary because the sections are similar to the information found in Subchapters 2 and 10.

At N.J.A.C. 18:24-5.16(a)2, language regarding data elements necessary for claiming an exemption is proposed for deletion because it is redundant with language found in Subchapter 10. N.J.A.C. 18:24-5.16(a)7i, regarding use of the Contractor’s Exempt Purchase Certificate

(Form ST-13), is proposed for deletion and replacement for clarity without any substantive change, other than the removal of the cross-reference to “(a)3 above,” as the cross-reference to a different form is not applicable.

No change was made to N.J.A.C. 18:24-5.1.

At N.J.A.C. 18:24-6.2, the statutory definition of “fur” found in N.J.S.A. 54:32B-8.4 is proposed for addition.

N.J.A.C. 18:24-6.3 is proposed for amendment to exclude “fur clothing” from the clothing exemption as provided for by N.J.S.A. 54:32B-8.4.

The phrase “not exempt” is proposed for deletion from the headings of N.J.A.C. 18:24-6.5, Sales of accessories and 6.6, Sales of sport or recreational equipment. The word “equipment” is proposed for deletion from N.J.A.C. 18:24-6.5, because this section refers to accessories. N.J.A.C. 18:24-6.5(b) is proposed for deletion because this sentence was duplicative of N.J.A.C. 18:24-6.5(a).

N.J.A.C. 18:24-6.6(b)15 is proposed for amendment to replace “or” with “and” for grammatical consistency.

At N.J.A.C. 18:24-7.1, the definitions of “dealer of manufactured and mobile homes, trailers or house trailers,” “first sale,” “gross vehicle weight rating,” “lease or rental,” “manufactured or mobile home,” “manufacturer’s invoice price,” “new manufactured or mobile home,” “place of abode,” “semitrailer,” “trailer,” “truck,” “truck tractor,” “vehicle used in combination therewith,” and “used manufactured or mobile home,” were relocated from various other sections within the subchapter in order to have all of the definitions in one section. At N.J.A.C. 18:24-7.1, the term “Director” is proposed for deletion, as it is relocated to N.J.A.C. 18:24-1.2.

At N.J.A.C. 18:24-7.3(c), “unless the purchaser issues the dealer or seller a fully completed exemption certificate” is proposed for addition to clarify when the tax need not be collected.

N.J.A.C. 18:24-7.4(c)4 is proposed for amendment to delete “in amount” for clarity.

N.J.A.C. 18:24-7.5(a) is proposed for amendment by relocating the phrase “regardless of whether they are separately stated upon the customer’s invoice” from paragraph (a)2, to clarify that the charges listed follow the taxability of the motor vehicle whether or not they are separately stated on the invoice to the customer.

N.J.A.C. 18:24-7.6 is proposed for amendment to add “fair market value of such property, which shall form the” for clarity and to change “true value” to “fair market value” as there is not legal meaning to “true value.”

At N.J.A.C. 18:24-7.8(b)1, the definition of “place of abode” is proposed for deletion as it was relocated to the subchapter definitions section.

N.J.A.C. 18:24-7.10(a) is proposed for amendment to add “Motor Vehicle Sales and Use Tax Exemption Report” to identify the title of Form ST-10. An extraneous note was deleted from N.J.A.C. 18:24-7.10(a)4 because the information it contained was not relevant to the section. Subsection (b) is proposed for amendment to delete “A resale certificate may be accepted from a lessor registered for sales tax purposes in New Jersey” since it is redundant with the previous sentence, as proposed for amendment. This subsection is further proposed for amendment to add “and each invoice must include the date of the transaction.” The list of certificates not ordinarily accepted in N.J.A.C. 18:24-7.10(e) is proposed for deletion because it was deemed unnecessary. N.J.A.C. 18:24-7.10(f) is proposed for amendment to delete the final two sentences since they no longer state the current practice of the industry.

N.J.A.C. 18:24-7.12(f) is proposed for amendment to replace the outdated terms “wrecker or tow car” with the current terms “wrecker truck or tow truck.”

Throughout N.J.A.C. 18:24-7.14, “automobile” is proposed for replacement with “motor vehicle” for consistency with the statutory term. Subsection (b) is proposed for amendment to add “employed by the dealership” to conform with language used in N.J.A.C. 18:24-7.14(c). Paragraph (b)2 is proposed for amendment to add the word “new” to the first sentence to clarify that the tax treatment described applies to new motor vehicles withdrawn from a dealer’s inventory.

At subsection (a), the definition of “lease or rental” is proposed for deletion as it was relocated to the subchapter definitions section. N.J.A.C. 18:24-7.15(c)2 was rephrased for clarity. N.J.A.C. 18:24-7.15(d) is proposed for deletion as it refers to an obsolete law.

Existing N.J.A.C. 18:24-7.18(b) through (g) are proposed for deletion as the subsections contain definitions that were relocated to N.J.A.C. 18:24-7.1. Recodified N.J.A.C. 18:24-7.18(c) is proposed for amendment to delete the word “type” after “nonconventional” because this word caused confusion.

References to obsolete dates were deleted from N.J.A.C. 18:24-7.19. N.J.A.C. 18:24-7.19(a)1 is proposed for deletion as all terms were relocated to the subchapter definitions section. At N.J.A.C. 18:24-7.19(b)3i, “taxable receipt” is proposed for replacement with “sales price” for consistency with the term in this section. N.J.A.C. 18:24-7.19(b) is proposed for amendment to add “pursuant to N.J.S.A. 54:4-1.7” to state the statutory authority. N.J.A.C. 18:24-7.19(d) is proposed for amendment to replace “exempt from” with “not subject to” since that is the correct terminology. N.J.A.C. 18:24-7.19(e)1 is proposed for amendment to delete the extraneous word “permanent” from the paragraph, pertaining to records. N.J.A.C. 18:24-7.19(f) is proposed for amendment to replace the phrase “as provided for” with “in the same manner as” for clarity.

New N.J.A.C. 18:24-7.20(d) and 7.21(e) are proposed to provide guidance on the appropriate exemption forms.

N.J.A.C. 18:24-8.5 is proposed for amendment to clarify the phrase “personal and private interests.”

Existing N.J.A.C. 18:24-9.10(c)3 is proposed for amendment to relocate the examples as new paragraph (c)4. N.J.A.C. 18:24-9.10(f) is proposed for deletion as the subsection is unnecessary. N.J.A.C. 18:24-9.11(d)1ii and (d)3 are proposed for amendment to include “online” and “online store,” respectively.

At N.J.A.C. 18:24-10.2(b), the final sentence is proposed for deletion because it was deemed unnecessary. N.J.A.C. 18:24-10.5(b) and (f) are proposed for amendment to add the appropriate form number of the Streamlined Sales and Use Tax Agreement Certificate of Exemption - New Jersey and the New Jersey Resale Certificate for Non-New Jersey Sellers.

N.J.A.C. 18:24-11.3(a) is proposed for amendment by deleting “or purchase tangible personal property for lease,” as unnecessary. N.J.A.C. 18:24-11.3(b) is proposed for deletion as it is unnecessary. New subsection (b) is proposed as an introduction to the examples in the section for clarity. The examples in N.J.A.C. 18:24-11.3(b) are proposed for amendment to reflect current dates, and to codify them as paragraphs to the subsection.

At N.J.A.C. 18:24-12.2A(b)2, “fountain beverages” was added as an example of a food item received in a cup.

At N.J.A.C. 18:24-12.3(b), the phrase “for consumption on or off the premises” was deleted because it is irrelevant and in the list of examples, the outdated phrase “soda fountains” was replaced with “juice bars.”

N.J.A.C. 18:24-12.4 is proposed for repeal because this section simply reiterates the statutory exemption.

The examples at N.J.A.C. 18:24-12.6 are proposed with technical amendments for clarity.

At N.J.A.C. 18:24-13.2(c)6, the conjoining word “or” connecting paragraphs (c)1 through 6 is changed to “and.”

At N.J.A.C. 18:24-14.2, the cross-reference to N.J.A.C. 18:24-14.1 was changed to the statutory cross-reference of N.J.S.A. 54:32B-(b)(1).

At N.J.A.C. 18:24-15.1 the final sentence is proposed for deletion as it is an explanation of the prior law, which was repealed October 1, 2005.

N.J.A.C. 18:24-15.3 is proposed for amendment to include “cleaning” and for consistency with the rest of the chapter.

At N.J.A.C. 18:24-15.5 and in the heading of Subchapters 16 and 17, the term “coin-operated” is proposed for deletion because it is outdated.

At N.J.A.C. 18:24-16.6, the cross-reference to N.J.A.C. 18:24-17 is proposed for deletion because the statutory exemption (N.J.S.A. 54:32B-8.9) is already stated in this section and the statute provides the authority for the exemption.

The heading of N.J.A.C. 18:24-17.1 is proposed for amendment to properly describe the subject matter it addresses. Instead of “statutory basis,” the heading is proposed to read “sales of tangible personal

property through vending machines at \$.25 or less.” The first sentence is proposed for deletion as unnecessary.

N.J.A.C. 18:24-17.2 is proposed for amendment to revise the definition of “primarily engaged” for clarity.

N.J.A.C. 18:24-18 is proposed for repeal as it merely restates the law.

Throughout N.J.A.C. 18:24-19, the word “enterprise” is replaced with the term “farming enterprise” for consistency with the regulatory definition. Several technical changes were for clarity.

At N.J.A.C. 18:24-19.4(e)1, an unnecessary statutory cross-reference is proposed for deletion. At paragraph (f)2, “information services” was added to an example of possible non-qualifying purchases made by a farmer. Throughout subsection (g), the term “promotional or advertising materials” was replaced with “printed advertising material” to reflect current law.

The heading of N.J.A.C. 18:24-19.7 was amended to add the word “Form” before “ST-7.”

At N.J.A.C. 18:24-19.8(a)2, the examples are proposed for amendment to be reworded for clarity.

N.J.A.C. 18:24-20.2(a) is proposed for deletion and replacement to be reworded for clarity. The word “protection” was replaced by “production” to correct the typographical error.

N.J.A.C. 18:24-22.1 is proposed for amendment to include “epoxy” and “laminates” to the list of floor covering examples.

Throughout Subchapter 25, the word “computer” is proposed to be added before the word “software” to reflect proper terminology.

The definition of “first available for transmission” is proposed to be relocated from N.J.A.C. 18:24-25.8(a)5i to 25.1A.

N.J.A.C. 18:24-26 states that solar energy systems and devices must meet certain technical sufficiency standards. Those standards had been outlined in rules issued by the Department of Environmental Protection. This role has been transferred to the Board of Public Utilities (Board), but the rules cross-referenced in N.J.A.C. 18:24-26.2 (N.J.A.C. 14:25) expired effective February 23, 2000. N.J.A.C. 18:24-26 has been amended to reflect the transfer of this function to the Board and to explain that the Division will make exemption decisions on a case-by-case basis until rules are promulgated by the Board. N.J.A.C. 18:24-26.4 is also proposed for amendment to delete the cross-reference to N.J.A.C. 18:24-26.2, for the reasons noted above. N.J.A.C. 18:24-26.4 is also proposed for amendment to add “and written clearly on the certificate” for clarity.

Throughout Subchapter 27 minor changes are proposed to the examples for clarity. Geographic references were added throughout the section.

N.J.A.C. 18:24-28.4 is proposed for amendment to clarify that use tax would be imposed on the use of a race horse purchased outside of the State.

N.J.A.C. 18:24-29.4(a) is proposed for amendment to be reformatted to be consistent with other provisions within the chapter.

N.J.A.C. 18:24-31.1 is proposed with technical amendments that do not change the meaning of the section and the final sentence in subsection (a) is proposed for deletion as it is unnecessary.

At N.J.A.C. 18:24-31.2, the definition of “enterprise zone” is proposed to be relocated so that all of the terms are alphabetized as required in the Administrative Code standards. The definition of “qualified business” is proposed for amendment for clarity. The word “programs” is proposed to be added following the reference to “New Jersey public assistance” to accurately reflect the benefits offered. Chapter law references are proposed for deletion from subparagraph 2iii in the definition of qualified business and were replaced with the correct citation for the Workforce Investment Act.

N.J.A.C. 18:24-31.3 was reworded for clarity, with no substantive change proposed. N.J.A.C. 18:24-31.3(a) is proposed for amendment to add “specified digital products” as an exclusion from the exemption. N.J.A.C. 18:24-31.3(a) is further proposed for amendment so that tangible personal property eligible for exemption is listed separately from services that qualify for exemption. Subsection (b), which is proposed for recodification as paragraph (a)1, is proposed for amendment to add “when used or consumed exclusively within the enterprise zone” for clarity. Numerical references of exemption forms (“Form UZ-5” and “Form UZ-4”) are proposed for addition in recodified N.J.A.C. 18:24-

31.3(a)3 and 31.6 for consistency with the rest of the chapter. Application instruction information is proposed for addition to recodified N.J.A.C. 18:24-31.3(c).

N.J.A.C. 18:24-31.4 is proposed for amendment to clarify the ordering and delivery requirements to qualify for the partial sales tax exemption. Subsection (d) is proposed for amendment to include “online” as a method of conducting business.

N.J.A.C. 18:24-31.5 is proposed for addition to state the prohibition of sales of taxable services from the partial sales tax exemption.

Throughout Subchapter 32, references to prior tax treatment under the Sales Tax and Use Tax Act are proposed for elimination.

At N.J.A.C. 18:24-32.1, a reference to a statutory change in 2005 is proposed for deletion.

The definition of “transportation equipment” is proposed for relocation from N.J.A.C. 18:24-32.6 to 32.2. A further amendment properly locates the defined term “long-term lease or rental” alphabetically.

At N.J.A.C. 18:24-32.4(b)2 and 4 is proposed for amendment by replacing “customer” with “lessee” for clarity.

N.J.A.C. 18:24-32.7 is proposed for repeal because the section reflected an obsolete version of the law.

Proposed new N.J.A.C. 18:24-33.1 is added to state the scope of Subchapter 33.

The heading of N.J.A.C. 18:24-33.3 is proposed for amendment to delete “of massage, bodywork, and somatic services” for consistency with other headings in the chapter. N.J.A.C. 18:24-33.3(b)1 is proposed for amendment to change “O.D.” to “D.O.” since that is the proper designation.

N.J.A.C. 18:24-33.6(a) is proposed for amendment to be rewritten for clarity.

N.J.A.C. 18:24-34.3(c)4 and 5 are proposed for amendment to replace “real-life” with “in-person” for clarity. Subsection (g) is proposed for amendment to replace the phrase “video cassettes” with the phrase “DVDs” to update the language.

At N.J.A.C. 18:24-35.2, the definition of “information services” is proposed for replacement to include the actual definition, rather than the statutory cross-reference.

An error in the statutory cross-reference at N.J.A.C. 18:24-35.5(a) and (b) is proposed to be corrected.

Throughout Subchapter 36, the word “receipt” and the phrase “taxable receipt” were replaced by the phrase “sales price” for consistency with the statutory term.

At N.J.A.C. 18:24-36.2(e), the phrase “any person” is proposed for replacement with “a manufacturer, distributor, or any other third party.” Also throughout N.J.A.C. 18:24-36.2 amendments are proposed to follow a common structure within the subchapter.

The definition of “transferred to the patient” is proposed for relocation from N.J.A.C. 18:24-37.9 to 37.2, for consistency with the rest of the chapter.

N.J.A.C. 18:24-37.5(a), (b) and (c) are proposed for amendment to delete “home use,” since durable medical equipment is already described by that term in subsection (a). Paragraph (e)21 is proposed for amendment to add “for medical use” after “monitors” for clarity.

N.J.A.C. 18:24-37.9(c) is proposed for amendment to delete the final sentence because it is not relevant to the subject matter.

As the Division has provided a 60-day comment period for 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 rules proposed for readoption with amendments, new rules, a recodification, and repeals will have a positive social impact because they reflect the Division’s current guidance on the application of the Sales and Use Tax Act. Clearer and more uniform rules should result in increased voluntary compliance. The rules proposed for readoption with amendments, new rules, a recodification, and repeals will potentially affect all businesses, public entities, private organizations, and individual consumers in New Jersey, including out-of-State individuals and entities doing business in New Jersey or making purchases here. These rules also affect accountants; tax practitioners and advisors; and writers, editors,

and publishers of books, websites, newsletters, software, articles, and other published information about tax information matters.

Economic Impact

Enactment of the rules proposed for readoption with amendments, new rules, a recodification, and repeals would be revenue neutral since the Division is clarifying statutory definitions, impositions, and exemptions set forth in the Sales and Use Tax Act. In the long term, the rules proposed for readoption with amendments, new rules, a recodification, and repeals will protect the current sales tax base and will result in an increased ability to collect sales tax that is due to the State, since taxpayer compliance will be facilitated by explaining statutory definitions, impositions, and exemptions.

Federal Standards Statement

A Federal standards analysis is not required because the authority for rules proposed for readoption with amendments, new rules, a recodification, and repeals is based on N.J.S.A. 54:32B-24. The rules proposed for readoption with amendments, new rules, a recodification, and repeals are, therefore, independent from any Federal standards or requirements.

Jobs Impact

It is not expected that the rules proposed for readoption with amendments, new rules, a recodification, and repeals will result in the creation or loss of jobs in New Jersey.

Agriculture Industry Impact

The rules proposed for readoption with amendments, new rules, a recodification, and repeals will not have an impact on the agriculture industry beyond the general impact imposed on all taxpayers in the State.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments, new rules, a recodification, and repeals impose reporting, recordkeeping, and compliance requirements on all businesses, including those employing fewer than 100 full-time employees, which are defined as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the reporting, recordkeeping, and compliance requirements do not differentiate based on business size.

The rules impose requirements regarding the proper use of exemption certificates and require that sellers of taxable property, services, or fees maintain specific records, for example, copies of invoices, receipts, or cash register tapes. Furthermore, all sellers of taxable property, taxable services, and taxable fees are required by the Sales and Use Tax Act to register with the Division of Taxation for collection of tax and must file quarterly sales and use tax returns (Form ST-50) with the Division of Taxation on or before the 20th day of the month following the quarter covered by the return. When the seller’s tax liability exceeds \$500.00 for the first or second month of a quarterly filing period, it must file a monthly remittance statement (Form ST-51) and pay the tax. The return and payment are due on or before the 20th day of the month following the month in which the seller’s liability exceeds \$500.00. Credit is given on the quarterly return for payments made on a monthly remittance statement. Because only sellers whose liability exceeds \$500.00 for the month are required to file a monthly return and remittance, sellers who meet the definition of “small business” in the Regulatory Flexibility Act tend to be subject to a reduced reporting requirement. However, because small businesses are less likely to be multistate sellers they may not derive any benefits from the uniform definitions that must be included in the rules in order for New Jersey to be in compliance with the Streamlined Sales and Use Tax Agreement (SSUTA).

Instead, proposed amendments implementing changes in the Sales and Use Tax Act may be more burdensome to small businesses that are not linked to large corporations with their own in-house accounting and legal personnel. These small businesses, especially those that sell food and food ingredients, may need to increase their use of outside professional services providing tax advice in order to learn about the sometimes complex statutory sales and use tax obligation. Many businesses will incur costs of accounting, legal, and other professional services in order to comply with the sales and use tax law. There may also be some capital costs, such as accounting software and cash registers.

The discretion of the Division of Taxation in implementing the SSUTA is limited, since it must conform to the SSUTA and must apply the rules uniformly to taxpayers, regardless of size. However, the rules proposed for readoption with amendments, new rules, a recodification, and repeals are designed to ease the burden on small businesses by providing detailed guidance and numerous examples in plain language, so that, if necessary, a small business that prefers to analyze changes in its tax collection obligations on its own might do so by using the rules as its guide.

The Division has reviewed rules proposed for readoption with amendments, new rules, a recodification, and repeals with a view to minimizing the impact of the rules on small businesses to the extent permissible by law.

The Division is required to administer the State’s tax laws uniformly, equitably, and efficiently to maximize State revenues to support public services, and to ensure voluntary compliance with tax statutes without creating an impediment to economic growth. The Division has reviewed the application of the Regulatory Flexibility Act to the rules proposed for readoption with amendments, new rules, a recodification, and repeals and because the tax rules must be applied uniformly and equitably, the Division cannot develop and apply special rules for small businesses different from the rules applied to all taxpayers.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments, new rules, a recodification, and repeals would not result in a change in the average costs associated with housing. The rules proposed for readoption with amendments, new rules, a recodification, and repeals would have no impact on any aspect of housing.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments, new rules, a recodification, and repeals would not result in a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the rules proposed for readoption with amendments, new rules, a recodification, and repeals do not involve housing production, either within Planning Area 1 or 2, or within designated centers, or anywhere in the State of New Jersey. The rules proposed for readoption with amendments, new rules, a recodification, and repeals concern State tax administration.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:24.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 18:24-2.2, 4.7, 5.15, 5.18, 12.4, 18, 22.4, 22.5, 31.5, 32.7, and 33.1.

Full text of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. FORMS AND DEFINITIONS

18:24-1.1 Sales and Use Tax Act forms enumerated

The following list reflects sales and use tax forms currently available for use under N.J.S.A. 54:32B-1 et seq.

REGISTRATION APPLICATIONS

- ... [UZ-1 Urban Enterprise Zone Application for Reduced Sales Tax Collection
- UZ-5-SB-A Application for Exemption from Sales Tax on Purchases of Goods and Materials for Exclusive Use or Consumption within an Urban Enterprise Zone]
- UZ-1 **Application for Reduced Sales Tax Collection For Qualified Urban Enterprise Zone Retail Businesses**
- SPECIALIZED USE FORMS

- ... ST-8 Certificate of **Exempt** Capital Improvement
- ST-10 Motor Vehicle [Dealer] Sales and Use Tax Exemption Report

- ... ST-16 Exemption Certificate for Student [Books] **Textbooks**
- ST-SST Streamlined Sales and Use Tax **Agreement** Certificate of Exemption* (**may be used as an alternative form in approved circumstances**)
- ... SALES AND USE TAX RETURNS
- ST-18 Use Tax [Return]
- ... [ST-20A Worksheet for Computing New Jersey/New York Deductions]
- ATLANTIC CITY LUXURY TAX
- ... [NEW JERSEY/NEW YORK COOPERATIVE TAX PROGRAM
- ST-20 New Jersey/New York Combined Sales Tax and Use Tax Return
- ST-20A Worksheet for Computing New Jersey/New York Deductions
- ST-21 New Jersey/New York Combined State Sales and Use Tax Remittance
- DTF-24 Application for New Jersey and New York Simplified Sales and Use Tax Reporting
- DTF-17.1 Business Description (used in computing form DTF-24)]
- URBAN ENTERPRISE ZONE FORMS
- ... UZ-5[-SB] Urban Enterprise Exempt Purchase Certificate
- ... CAPE MAY COUNTY TOURISM TAX
- ... SALEM COUNTY

18:24-1.2 Definitions

The following words and terms, [as] **when** used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

... [“Certified service provider” means an agent certified jointly by the states that are signatories to the Agreement to perform all of the seller’s sales tax functions.]

“Certified service provider” means an agent certified under the Agreement to perform all the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.

“Director” means the Director of the Division of Taxation of the State Department of the Treasury, or any officer, employee, or agency of the Division of Taxation in the Department of the Treasury duly authorized by the Director (directly, or indirectly by one or more redelegations of authority) to perform the functions mentioned or described in the Sales and Use Tax Act.

“Magazine” or “periodical” means any publication that appears at stated intervals at least four times per year, each issue of which contains news or information of general interest to the public or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues with respect to continuity of literary character or similarity of subject matter and there must be some connection between the different issues of the series in the nature of the articles appearing in them. Each issue must be sufficiently similar in style and format to make it evident that it is one of a series. The publication must qualify for the second class mailing rate or as a controlled circulation publication under U.S. postal laws and regulations.

[This definition] **Magazine or periodical** does not include books complete in themselves, even those issued at stated intervals; paperback books, a new one of which may be issued once a month or some other interval; or so-called “one-shot” magazines that have no literary or subject matter connection or continuity between prior or subsequent issues. [This definition] **Magazine or periodical** does not include circulars, flyers, guides or handbooks, catalogs, programs, scorecards, handbills, maps, real estate brokers’ listings, price or order books, printed

sales messages, shopping guides, or corporate reports issued to stockholders.

“Newspaper” means those publications[, which] **that** are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of a general interest to the public. The main purpose of a newspaper is to distribute news of current events (political, sports, entertainment, etc.). A newspaper may also contain other material, such as articles on a variety of topics, photographs, illustrations, legal notices, comic strips, cartoons, editorials, etc. A newspaper is available for circulation among the public. [For purposes of this definition, advertising] **Advertising** is not considered to be news of a general character and of a general interest.

[This definition] **Newspaper** does not include books complete in themselves, even those issued at stated intervals; paperback books, a new one of which may be issued once a month or some other interval; or so-called “one-shot” magazines that have no literary or subject matter connection or continuity between prior or subsequent issues. [The definition] **Newspaper** does not include circulars, flyers, guides or handbooks, catalogs, programs, scorecards, handbills, maps, real estate brokers’ listings, price or order books, printed sales messages, shopping guides, or corporate reports issued to stockholders.

“Person” means an individual, trust, [estate, fiduciary,] partnership, **limited partnership**, limited liability company, [limited liability partnership,] **society, association, joint stock company**, corporation, [or] **public corporation or public authority, estate, receiver, trustee, assignee, referee, fiduciary, and** any other legal entity.

“Purchaser” means a person to whom a sale of tangible personal property, [or] **specified** digital [property] **product**, or a sale of a service is made; or a person liable for the payment of any amusement charge, hotel room occupancy charge, fees or dues for access or use of the property or facilities of a fitness, athletic, sporting, or shopping club or organization, [or] charges for storage, or for parking or garaging a motor vehicle.

“Receipt” means the amount of the sales price of any tangible personal property, **specified** digital [property] **product**, or service taxable under the Sales and Use Tax Act. See also [“sales price[“] below.

[“Retail sale” means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent. A sale is for “resale, sublease, or subrent” if it is for resale as is; for resale as a component part of a product that the purchaser produces for sale; for use by the purchaser in performing taxable services, if the property purchased becomes a physical component of the tangible personal property on which the services are performed or is actually transferred to the purchaser’s customer in conjunction with the performance of the taxable service. “Retail sale” includes sales of tangible personal property to all contractors, subcontractors, or repairmen of materials or supplies used in erecting structures for others, or building on, or otherwise improving, altering, repairing, maintaining, or servicing real property of others.]

“Retail sale” means any sale, lease, or rental for any purpose, other than for resale, sublease, or subrent. A sale is for “resale, sublease, or subrent” if it is a sale:

1. For resale either as such or as converted into or as a component part of a product produced for sale by the purchaser, including the conversion of natural gas into another intermediate or end product, other than electricity or thermal energy, produced for sale by the purchaser;
2. For use by that person in performing a service subject to tax under N.J.S.A. 54:32B-3(b) where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax;
3. Of telecommunications service to a telecommunications service provider for use as a component part of telecommunications service provided to an ultimate customer; or
4. To a person who receives by contract a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to

another person, other than rights to redistribute based on statutory or common law doctrine, such as fair use.

The term retail sale includes: sales of tangible personal property to all contractors, subcontractors, or repairmen of materials and supplies for use by them in erecting structures for others, or building on, or otherwise improving, altering, or repairing real property of others.

“Sale, selling, or purchase” means [the] **any** transfer of title or possession or both, including by exchange or barter, rental, lease, or license to use or consume, **conditional or otherwise**, in any manner and by any means, for consideration. It also includes the rendering of a taxable service for consideration[. It also includes] **and** any agreement for such transfers of title or possession, or for such rendering of service, or for any other transactions that are taxable pursuant to N.J.S.A. 54:32B-3.

“Sales price” means the same as [“receipt.[”] It is the measure subject to sales tax[,] and means the total amount of consideration, including cash, credit, property, and services, for [the purchase of personal property, services, amusement admissions, taxable club dues, storage, parking, and other taxable transactions. “Sales price” is] **which personal property or services are sold, leased, or rented**, valued in money, [regardless of] whether received in money or [in other form of consideration] **otherwise**, without any deduction for any of the following:

- 1.-2. (No change.)
 3. Charges by the seller for any services necessary to complete the sale; **and**
 4. Delivery charges[;].
 - [5. Installation charges; and
 6. The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.]
- [“Sales price[”] does not include:
- 1.-3. (No change.)
 4. The amount of the sales price for which food stamps have been properly tendered in full or part payment pursuant to the Federal Food Stamp Act of 1977, [Pub.L. 95-113 (17 U.S.C. §§2011) §§ 2011 et seq.]); or
 5. (No change.)

Sales price includes consideration received by the seller from third parties if:

1. **The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;**
2. **The seller has an obligation to pass the price reduction or discount through to the purchaser;**
3. **The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and**
4. **One of the following criteria is met:**
 - i. **The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;**
 - ii. **The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount; provided, however, that a preferred customer card that is available to any patron does not constitute membership in such a group; or**
 - iii. **The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.**

In the case of a bundled transaction that includes a telecommunications service, an ancillary service, internet access, or an audio or video programming service, if the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products is subject to tax unless the provider can identify by reasonable and verifiable

standards, such portion from its books and records, that are kept in the regular course of business, including non-tax purposes.

“Seller” means a person making sales, leases, or rentals of tangible personal property, specified digital products, or services, the receipts from which are subject to tax.

“Tangible personal property” means personal property that can be seen, weighed, measured, felt, or touched, or that is perceptible in any other manner to the senses [in any other manner]. It includes electricity, water, gas, steam, and prewritten computer software[,] including prewritten computer software delivered electronically.

SUBCHAPTER 2. RETENTION OF RECORDS BY SELLERS

18:24-2.1 Scope of subchapter

This subchapter[, promulgated by the Director of Taxation pursuant to authority under N.J.S.A. 54:32B-1 et seq.,] is intended to set forth certain records required to be kept by [vendors under] **sellors pursuant** to the Sales and Use Tax Act, [(N.J.S.A. 54:32B-1 et seq.).]

18:24-2.2 (Reserved)

18:24-2.3 General requirements

(a) A true copy of all sales slips, invoices, receipts, statements, memoranda of price, [or] cash register tapes, **or guest checks** issued to any customer by a seller who is required to be registered pursuant to the provisions of the Sales and Use Tax Act, [(N.J.S.A. 54:32B-1 et seq.)] and records of every purchase, [and purchase for lease] **both retail and wholesale**, must be available for inspection and examination at any time upon demand by the Director[, Division of Taxation,] or his or her duly authorized agent or employee and shall be preserved for a period of four years from the filing date of the quarterly period for the filing of sales tax returns to which such records pertain.

(b) [Microfilm reproductions] **Photocopies or electronically stored copies** of general books of account, such as cash books, journals, voucher registers, ledgers, etc., are not acceptable in lieu of original records. However, [microfilm reproductions] **photocopies or electronically stored copies** of supporting records of details, such as sales invoices, purchase invoices, credit memoranda, etc., may be maintained [providing] **provided** the following conditions are met:

1. Appropriate facilities are provided for preservation of the [films] **copies for the periods required.**
2. [Microfilm rolls] **Copies** are indexed, cross referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included, and are systematically filed.
3. The taxpayer agrees to provide transcriptions of any information contained [on microfilm] **in copies**, which may be required for purposes of verification of tax liability.
4. Proper facilities are provided for the ready inspection and location of the particular records, including [modern projectors] **computer hardware and software** for viewing and copying the records.

(c) A posting reference **and date of issuance** must be on each invoice. Credit memoranda must carry a reference to the document evidencing the original transaction. Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in an order by which they [readily] can be **readily** related to the transactions for which exemption is sought.

(d) An automatic data processing tax accounting system must have built into its program a method of producing visible and legible records, which will provide the necessary information for verification of the taxpayer's tax liability.

1. [Machine-sensible] **Machine-readable** data media, such as punch[ed] cards, magnetic tape, and disks are deemed to be records within the meaning of N.J.S.A. 54:32B-16 and must be retained in accordance with said statute.

2. Automatic data processing records must provide an opportunity to trace any transaction back to the original source or forward to a final total. If [detail] printouts are not made of **the transaction[s] details** at the time they are processed, then the system must have the ability to reconstruct these transactions.

3. A general ledger with source references will be [written out] **maintained** to coincide with financial reports for tax reporting periods.

The general ledger should coincide with the financial reports. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be [written out] **maintained** periodically.

4. The [audit trail] **seller's records** should be designed so that the details underlying the summary accounting data may be identified and made available on request. The system should be so designed that supporting documents, such as sales invoices, purchase invoices, credit memoranda, etc., are readily available.

5. A description of the automatic data processing portion of the accounting system should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate the following:

- i. (No change.)
 - ii. The procedures employed in each [participation] **application** (which, for example, might be supported by flow charts, block diagrams, or other [unsatisfactory] description of the input or output procedures); and
 - iii. The controls used to [insure] **ensure** accurate and reliable processing.
6. (No change.)

18:24-2.4 Summary sales records

(a) Where summary records are maintained[, which] **that** show, by sales location, total receipts and taxable receipts, the seller [may dispose of] **must maintain** individual sales slips, invoices, receipts, statements, memoranda of price, [or] cash register tapes, [except as provided in N.J.A.C. 18:24-2.5, Resale and exemption certificates, N.J.A.C. 18:24-2.6, Records for out-of-State sales, and N.J.A.C. 18:24-2.8, Purchase records, after the lapse of a period not less than 90 days] **or guest checks for a period of four years** from the last date of the most recent quarterly [(or monthly)] period for the filing of sales tax returns to which such individual sales documents pertain.

(b) In all instances, summary sales records as described [herein] **in this section** shall be retained for a period of not less than four years from the last date of the quarterly [(or monthly)] period for the filing of sales tax returns to which **the** summary records pertain.

18:24-2.5 Resale and exemption certificates

(a) In the case of sales upon which no tax has been collected [by virtue of] **due to** the acceptance of a [duly] **fully** completed resale or exemption certificate by the seller in lieu of collecting the sales tax, [pursuant to such rules as may have been promulgated,] individual sales slips, invoices, receipts, statements, memoranda of price, [or] cash register tapes, **or guest checks** recording such sales shall be retained for a period of not less than four years from the last date of the quarterly [(or monthly)] period for the filing of sales tax returns to which individual sales records pertain.[.] **All resale and exemption certificates must be contemporaneously dated, and all supporting documentation must be retained by the seller.**

(b) Summary records will not be considered to be adequate evidence of the accuracy of **any resale or** exemption certification.

18:24-2.6 Records for out-of-State sales

(a) In the case of sales upon which no tax has been collected because of delivery or performance outside of New Jersey, the seller shall retain records, which show for each such sale:

1. The nature of the item sold, the service(s) performed, the amusement charge[s], or the [catered event] **catering charge**;
- 2.-4. (No change.)

(b) Such records shall[, in all cases,] be retained for a period of not less than four years.

18:24-2.7 Records presumed representative of accounting practices

It shall be presumed where a seller elects to dispose of individual sales records prior to the end of the statutory four-year period pertaining to the retention of such records, that those records[, which in all cases] **that** are required to be retained by this subchapter are representative of the seller's accounting practices for such four-year period, unless the seller [shall have] **has** notified the Director, by certified mail, of a change in accounting practice.

18:24-2.8 Purchase records

(a) In all instances, sellers are required to retain for a period of four years, **detailed** purchase records[, which] **that** disclose the following:

1.-3. (No change.)

4. The nature of the items or services purchased, **including quantity, description of item, and purchase price of each individual item.**

18:24-2.9 Direct payment permit holder’s records

(a) (No change.)

(b) A holder of a Direct Payment Permit may not dispose of sales slips, invoices, receipts, statements, memoranda of price, [or] **detailed** cash register tapes, **guest checks**, individual or summary sales or purchase records, or any other record of sale, purchase, or use prior to the expiration of a period of four years after the filing date for the quarterly filing period to which such records pertain.

(c) [In all instances, a] A holder of a valid Direct Payment Permit shall maintain, in addition to all other records required by this subchapter, records that disclose the following:

1. The amount of every purchase, the name and address of the seller from whom the purchase was made, a description of the property purchased, and the exact date of the purchase **and payment (if payment is made on a date different from the purchase date);**

2. The date upon which purchased property was put to use, whether or not such use was taxable, the amount of the property put to use, and a **detailed** description of the property put to use **and a detailed description of such use;**

3. (No change.)

4. Summary records, maintained by calendar quarter, including:

1st Quarter	JAN.	FEB.	MAR.
2nd Quarter	APR.	MAY	JUN.
3rd Quarter	JUL.	AUG.	SEP.
4th Quarter	OCT.	NOV.	DEC.

which records shall include quarterly summaries of:

i.-iii. (No change.)

iv. Tax paid; **and**

v. Effective rate of tax paid on taxable uses, **if applicable.**

(d) A holder of a valid Direct Payment Permit is ineligible for any reduced record [disposal] **retention**, except upon written determination of the Director[, Division of Taxation]. Such determination may be conditioned upon the seller’s willingness to extend the period for assessing prior tax liabilities.

(e) A holder of a valid Direct Payment Permit who wishes to surrender such permit may not do so without prior written permission of the Director[, Division of Taxation. Rulings]. **Determinations** in such matters will be conditioned upon:

1.-3. (No change.)

18:24-2.10 Extended recordkeeping periods

The Director, in his or her discretion, may require a seller, by written notice, to retain records for such period as he or she may designate other than **as** provided in this subchapter.

18:24-2.11 Waiver of recordkeeping requirements

(a) At any time, the Director may, [in] **at** his or her discretion, consent to the disposal of individual sales records upon written application of the seller. Such written application shall include the following:

1. A statement of the reasons why it is impractical for the seller to retain documents for the periods required, **including the specific period for which the seller wishes to dispose of records;**

2.-5. (No change.)

18:24-2.12 Waiver of limitation of time by seller

Where a seller has consented in writing to an extension of the time for assessment of an additional tax, he or she is required, without **further** notice, to retain such records as [may be] required in this subchapter for the periods required, as well as any period covered by his or her waiver[, or approval thereof].

(**Agency Note:** N.J.A.C. 18:24-2.14 is proposed for recodification as N.J.A.C. 18:24-8.6.)

18:24-2.14 (Reserved)

18:24-2.15 Insufficiency of records

(a) The records of a seller may be deemed incorrect or insufficient if:

1. (No change.)

2. The records are **not** maintained in accordance with [the general outline of this chapter] **this subchapter.**

(b) If the records of a seller are determined to be incorrect or insufficient, the return(s) filed on the basis of the information obtained from such records may be deemed to be incorrect or insufficient and the Director may determine the amount of tax due **to** the State by using any information available, whether **obtained** from the seller[’s place of business] or from any other source.

18:24-2.16 Admission records and information; promoter registration

(a) Every person who contracts, agrees to, or otherwise arranges to hold, produce, or sponsor an event, entertainment, or amusement, the admission to which is subject to tax under N.J.S.A. 54:32B-3(e) of the Sales and Use Tax Act is deemed to be a promoter, and a person required to collect sales tax, and shall, [within three days after] **at least 15 business days before** commencing business, file with the Division of Revenue **and Enterprise Services** an application for registration (NJ-REG) for New Jersey sales tax purposes. When registration is granted, it will be for an indefinite period. However, the applicant must notify the Division of Taxation of any change of address, ownership, [and] **or** business activity.

(b) (No change.)

(c) Any person who sells admission tickets or collects admission charges for a promoter is considered the recipient of amusement charges and is also a person required to register and collect and remit sales tax; provided, however, that the sales tax collected may be turned over to and remitted to the Division of Taxation by the promoter for whom the admissions were sold if all the following requirements are met:

1.-3. (No change.)

4. The ticket sales agent maintains records showing the promoter’s name, address, telephone number, a copy of the promoter’s New Jersey Certificate of Authority, the number of tickets sold or admissions granted, gross receipts from admission ticket sales, sales tax collected for New Jersey, and such other information as the Director may specify from time to time; and[,]

5. (No change.)

(d) A person who sells admission tickets or collects admission charges for a promoter or who rents or leases space for an event, amusement, or entertainment, the admission to which is subject to tax, shall, upon request, furnish information to the Division of Taxation concerning any such New Jersey events, entertainment, or amusements and their promoters.

SUBCHAPTER 3. HOTEL ROOM OCCUPANCY SUBJECT TO SALES TAX

18:24-3.2 Definitions

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

...

“Occupancy” means the use or possession, or the right to the use or possession, of any room in a hotel.

“Occupant” means a person who, for a consideration, uses, possesses, or has the right to use or possess, any room in a hotel under any lease, concession, permit, right of access, license to use, or other agreement, or otherwise.

...

18:24-3.3 Taxes on hotel room occupancy

(a) The rent for every occupancy of a room or rooms in a hotel is subject to sales tax, except that the tax is not imposed upon:

1. A permanent resident [who is in residence for at least 90 consecutive days];

2.-3. (No change.)

18:24-3.4 Hotels

(a) Hotels are regularly kept open for the purpose of furnishing sleeping accommodations and related services for pay to tourists, transients, or travelers. The relationship between the operator of the establishment and the occupant is that of an innkeeper and guest, not that of a landlord and tenant, although the signing of a lease cannot overcome the operation of a facility as a hotel. Examples of a hotel include, but are not limited to[, the following]:

1. An apartment hotel, bed and breakfast, motel, and inn;
 2. (No change.)
 3. A condotel (for example, a building [used] **operated** as both a condominium and a hotel); and
 4. (No change.)
- (b)-(c) (No change.)
- (d) Services customarily provided by hotels include, **but are not limited to:** maid service, linen service, room service, safe storage, and concierge services.
- (e) (No change.)

18:24-3.5 Facilities other than hotels

(a) [The following are examples] **Examples** of facilities that are not subject to the tax imposed on rent received for hotel occupancy **include, but are not limited to:**

- 1.-3. (No change.)
 4. Campsites available for trailers, recreational vehicles, or tent camping;
 5. (No change.)
 6. Furnished or unfurnished private residential property (that is, condominiums, bungalows, single-family homes, and similar living units), where no maid service, room service, linen service, or other common hotel services are made available by the lessor and where the keys to the property are provided to the lessee at the location of an offsite real estate broker. The furnishing of linens without the service of changing the linens does not alter the nontaxable nature of the facility.
- (b) (No change.)

18:24-3.6 Permanent residents

- (a)-(b) (No change.)
- (c) A business can be deemed a permanent resident when it contracts for a room for use by an employee, customer, client, or other authorized person[s], as long as the duration meets the 90-day threshold. The contracting business can maintain its permanent resident status even where the room or rooms are not occupied by the same party throughout the rental period.
- (d)-(e) (No change.)

18:24-3.7 Guest house

A boarding or rooming house containing fewer than eight units must be registered, and collect and remit sales tax on taxable occupancies as a hotel, unless it is held out by the operator and kept open for the residence of permanent boarders or lodgers. A permanent boarder or lodger is any person who occupies or has the right to occupy a room or rooms in the house for at least 90 consecutive days.

SUBCHAPTER 4. MANUFACTURING, PROCESSING, ASSEMBLING, AND REFINING INDUSTRIES

18:24-4.1 Scope of subchapter

- (a) This subchapter is intended to clarify the application of the Sales and Use Tax Act, [(N.J.S.A. 54:32B-1 et seq.)], to:
- 1.-2. (No change.)

18:24-4.2 Definitions

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

...
 "Machinery, apparatus, or equipment" means any complex, mechanical, electrical, or electronic device, mechanism, or instrument [which] **that** is adapted to the accomplishment of a production process, and which is designed to be used, and is used, in manufacturing,

converting, processing, fabricating, assembling, or refining tangible personal property for sale.

...
 "Supplies" means items of tangible personal property used in the maintenance of a building, work area, or machinery, apparatus, [and] **or** equipment, and may include items of tangible personal property consumed or used in production whose use[s] are] **is** incidental to such production. Supplies include, but are not limited to[, such items as lubricants, cleaning materials, boiler compounds and light bulbs.]:

- 1. Lubricants;**
- 2. Cleaning materials;**
- 3. Boiler compounds; and**
- 4. Light bulbs.**

18:24-4.3 Tax on purchase or use of certain items

- (a) The purchase or use of the following items is subject to tax, unless otherwise specifically exempted, notwithstanding any use or intended use in production.
- 1.-3. (No change.)
 4. Parts with a useful life of one year or less. In determining whether a part has a useful life of one year or less, the purchaser's own treatment of the item for accounting purposes should be taken into consideration[. In addition, the term "year" as used in this rule shall mean a standard calendar year of 12 months]; and
 5. (No change.)

18:24-4.4 Purchase, rental, lease, or use of machinery, apparatus, or equipment directly in production exempt from tax

- (a) The purchase, rental, lease, or use of machinery, apparatus, or equipment for use or consumption directly and primarily in the production of tangible personal property by manufacturing, processing, assembling, or refining is exempt from tax [on or after January 1, 1978].
- (b) (No change.)
- (c) Machinery, apparatus, or equipment is considered to be directly used in production only when it is used to initiate, sustain, or terminate the transformation of raw materials into finished products. In determining whether property consisting of machinery, apparatus, or equipment is "directly" used, consideration must be given to the following factors:
- 1.-2. (No change.)
 3. The active causal relationship between the use of the property in question and the production of a product. The fact that particular property may be considered essential to the conduct of manufacturing, processing, assembling, or refining because its use is required either by law or practical necessity does not, of itself, mean that the property is used directly in manufacturing, processing, assembling, or refining. For example, property used to prevent accidents, which may be required by law, is not considered directly used.

(d) Concerning primary use, where a single unit of machinery, apparatus, or equipment is put to use in two different activities, one of which is a "direct use" and the other of which is not, the property is not exempt from tax unless the manufacturer, processor, assembler, or refiner makes use of the property more than 50 percent of the time directly in manufacturing, processing, assembling, or refining operations, except in those cases where such machinery, apparatus, or equipment is rented, leased, or used by persons other than the purchaser.

1. (No change.)
- (e) The exemption **in this section** applies to industrial owners, mechanical contractors, and their suppliers, where an industrial owner awards a contract to a mechanical contractor to install manufacturing machinery, apparatus, or equipment, to be used by the owner to produce tangible personal property for sale. The installation may be made in a new or existing industrial plant of the owner designed for or currently used for the manufacture of tangible personal property. For example:

1. Under the above facts where the installation of machinery, apparatus, or equipment results in an exempt capital improvement to real property, the labor charges for installation are exempt from tax. In determining whether the installation of machinery, apparatus, or equipment results in an exempt capital improvement, such property must be annexed to a structure to carry out the purposes for which the structure was erected or designed or to which it has been adapted, with the

intention to remain there permanently, and the removal thereof will result in material injury and does not constitute a taxable capital improvement under N.J.A.C. 18:24-5.6. The installation would result in a capital improvement when such improvement results in an increase in the capital value or in a significant increase in the useful life of the real property. Where the installed machinery, apparatus, or equipment retains its character as **tangible** personal property and has not resulted in a capital improvement to real property, the labor charges for installation are subject to tax.

2. Under the facts above, where the installation, upon completion, results in [a] **an exempt** capital improvement, the owner should issue to the contractor two **fully completed** certificates:

i. [ST-8,] **Certificate of Exempt Capital Improvement [Certificate (Form ST-8) or other approved form**, to evidence that the job qualifies as [a] **an exempt** capital improvement, exempting his or her construction labor from tax; and

ii. [ST-4,] **Exempt Use Certificate (Form ST-4) or other approved form**, to evidence that the machinery, apparatus, or equipment installed qualifies for exemption in manufacturing, processing, assembling, or refining activity.

3. In the above examples, to obtain the exemption of machinery, apparatus, or equipment from tax, the contractor must furnish his or her supplier with [an ST-4,] a **fully completed** Exempt Use Certificate **(Form ST-4) or other approved form**, properly identifying the job, with a copy of the owner's [ST-4] **exemption certificate** attached.

4. (No change.)

5. Under the above facts, only machinery, apparatus, or equipment used directly and primarily in the production of tangible personal property [for sale] by manufacturing, processing, assembling, or refining is exempt. Items that may qualify for exemption include[,]: vessels, pumps, mixers, pipe valves, and fittings. Other materials used by the mechanical contractor for the installation are not exempt from tax.

6. When subcontractors are involved, the mechanical contractor should treat such subcontractors in the same manner as in dealing with his or her suppliers, so far as the classification of the job as [a] **an exempt** capital improvement and an exempt use is concerned. The use of [the] **Form ST-8 and Form ST-4 [exemption certificates] or other approved form** to evidence these classifications is also the same.

7. In addition to the above facts, the mechanical contractor also contracts to install heating, ventilating, and air conditioning, which when installed will constitute an addition or **exempt** capital improvement to real property. The sale to the installing contractor of tangible personal property from his or her supplier is a retail sale subject to tax [to]. **The tax shall** be paid by the contractor either to his or her supplier or directly to the Division of Taxation. The contractor should be [furnished an ST-8,] **issued a fully completed Certificate of Exempt Capital Improvement [Certificate,] (Form ST-8) or other approved form** by the owner of the real property for the purpose of exempting installation charges from tax.

8. Under the above facts, piping, such as air, gas, water, steam, and condensate, is designed for use in both the manufacturing process and incidentally in heating the building. The key to this example is the word "incidentally." If the system is used ["directly and primarily["] for the production of tangible personal property, and only incidentally to aid the building environment housing the machinery, apparatus, or equipment, the exemption will apply to property purchased. For installation charges, see (e)1 above.

18:24-4.5 Purchase or use of components and catalysts exempt from tax

(a) The purchase or use of tangible personal property is exempt from tax when it is intended that the property be resold either:

1. In the same form as when purchased or used; [or]

2.-3. (No change.)

(b) (No change.)

18:24-4.6 Services subject to tax

(a) The following enumerated services, purchased or sold by any person engaged in manufacturing, processing, assembling, or refining, [as defined in N.J.A.C. 18:24-4.2,] not purchased for resale, that is, not performed on property offered for sale by the purchaser, are subject to sales and use [taxes, as well as services otherwise taxable] **tax**:

1. Producing, fabricating, processing, printing, or imprinting tangible personal property (with the exception of imprinting services performed upon machinery, apparatus, or equipment used directly and primarily in manufacturing, processing, assembling, or refining), performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him **or her** for resale, upon which such services are performed.

2.-3. (No change.)

18:24-4.7 (Reserved)

18:24-4.8 Recordkeeping

Any person engaged in the business [including] **involving** manufacturing, processing, assembling, or refining is required to maintain records in compliance with N.J.A.C. 18:24-2, Retention of Records by [sellers] **Sellers**.

SUBCHAPTER 5. CONTRACTORS AND SERVICES PERFORMED ON REAL PROPERTY

18:24-5.2 Definitions

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

...
 "Construction equipment" means any vehicle, machine, tool, implement, or other device used by a contractor in erecting structures for others, or building on, or otherwise improving, altering, or repairing property of others, which does not become a physical component part of the property upon which work is performed, and which is not necessarily consumed in the performance of such work. [Construction] **Examples of construction** equipment include[s], but [is] **are** not limited to[, grading]:

1. **Grading**, lifting, and excavating vehicles[, compressors,];

2. **Compressors and scaffolds**[, forms, hand];

3. **Forms**;

4. **Hand tools**[, and ladders.]; **and**

5. **Ladders**.

...
 "Construction supplies" means items of tangible personal property consumed in the fulfillment of a construction contract, which items do not become a physical component part of the property upon which work is performed. [Supplies] **Construction supplies** include, but are not limited to [lubricants, cleaning]:

1. **Lubricants**;

2. **Cleaning** compounds[, polyethylene];

3. **Polyethylene** covers[, rock];

4. **Rock salt**[, and rope.]; **and**

5. **Rope**.

"Contractor" means any individual, partnership, corporation, or other commercial entity engaged in any business involving erecting structures for others, or building, or otherwise improving, altering, or repairing real property of others. ["Contractor["] does not include the owner of the real property on which services are being performed. For example, a developer, who owns the land on which construction or landscaping is taking place, is not a contractor.

...
 "Fabricator" means any individual, partnership, corporation, or other commercial entity engaged in any business involving manufacturing, processing, or assembling **tangible personal** property for sale, which when installed ordinarily becomes a physical component part of real property.

...
 "Garbage" means contained trash and waste[, including,]. **Examples of garbage include**, but **are** not limited to[, construction]:

1. **Construction** debris[, discarded];

2. **Discarded** recyclable materials[, hazardous];

3. **Hazardous** waste[, general];

4. **General** household trash[, restaurant];

5. **Restaurant** food waste[, medical];

6. **Medical** and veterinary waste[, industrial];

7. **Industrial** waste[, metal];

8. Metal scraps[, leaves]; and**9. Leaves, lawn clippings, twigs, and brush.**

“Landscaping services” means services that result in a capital improvement to land, but not including construction, erection, alteration, improvement, repair, or maintenance of structures. [“Landscaping Examples of landscaping services[”] include, [for example, planting] **but are not limited to:**

1. Planting trees[, laying];**2. Laying sod[, clearing];**

3. Clearing and filling land in preparation for new planting[, removal]; and

4. Removal of trees and stumps.

...

“Property owner” means the owner of real property on which contractors’ services are performed. [“Property owner[”] includes a developer who owns the land and as used in this subchapter, [“]property owner[”] can also include a commercial tenant who engages the services of a contractor.

...

“Tangible personal property” means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. [“Tangible personal property[”] includes electricity, water, gas, steam, and prewritten computer software[.] including prewritten computer software transmitted electronically.

18:24-5.3 Purchase of materials and supplies by contractors

(a) [For the purposes of sales and use tax, sales] **Sales** of materials and supplies to contractors for use by them in erecting structures for others, or building on, or otherwise improving, altering, repairing, or maintaining the real property of others, including performing landscaping services, are deemed to be retail sales. Examples of taxable purchases of materials and supplies [are: grout by a home repair service provider; fertilizer and pesticides by a lawn service, tree service or other landscaping service; pipes by a plumber; and lumber by a builder of new houses.] **include, but are not limited to:**

1. Grout by a home repair service provider;

2. Fertilizer and pesticides by a lawn service, tree service, or other landscaping service;

3. Pipes by a plumber; and**4. Lumber by a builder of new houses.**

(b) Except as [hereinafter] provided in **this subchapter**, contractors purchasing materials and supplies must pay [the] sales tax at the time of purchase. This subchapter does not apply where:

1. The purchase of materials and supplies is made for exclusive use in the fulfillment of a contract to improve or repair the real property of an exempt organization described in N.J.S.A. 54:32B-9(a) and [9(b)] **(b)** or a qualified business described in the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-29 et seq., or a housing sponsor described in N.J.S.A. 54:32B-[8.22(c)]**8.22.c.**

i. For the purpose of [subsection] (b)1 above, [“]exclusive use[”] means that the supplies purchased will be entirely consumed in use or lack any residual utility after use and the supplies will not be used on jobs performed for nonexempt organizations either prior to, simultaneously with, or after completion of the exempt organization job; or

2. The contractor holds a valid [direct payment permit] **Direct Payment Permit** ([form] **Form ST-6**).

18:24-5.4 Equipment purchase, rental, or use

(a) The purchase, lease, [or] rental, or use of equipment by a contractor is subject to tax, whether or not the equipment is purchased, leased, rented, or used in fulfillment of a contract with an exempt organization.

(b) (No change.)

18:24-5.5 Purchase of taxable services by contractors

(a) (No change.)

(b) Services subject to tax include, but are not limited to:

1. (No change.)

2. Installing tangible personal property, for the benefit of the contractor, rather than the property owner[, for example, installation of scaffolding, temporary fencing, temporary lighting during construction;]. **Examples include, but are not limited to:**

i. Installation of scaffolding;**ii. Temporary fencing; and****iii. Temporary lighting during construction;**

3. Maintaining, servicing, or repairing real or tangible personal property[, for example, snow removal, sweeping and removing debris from a construction site, pest control services;]. **Examples include, but are not limited to:**

i. Snow removal;**ii. Sweeping and removing debris from a construction site; and****iii. Pest control services.**

4.-5. (No change.)

18:24-5.6 Contractor’s tangible personal property installation services

(a) (No change.)

(b) Treatment of installation services that result in capital improvements are as follows:

1.-2. (No change.)

3. Charges for installation services that result in capital improvements, except the [three types of] services listed in (b)1 above, are exempt from sales tax.

(c) The factors **used** to determine whether services result in a capital improvement are as follows:

1. In determining whether an installation of tangible personal property results in a capital improvement[, the factors include, but are not limited to, the following, whether] **depend upon if:**

i. (No change.)

ii. The improvement results in a significant increase in the useful life of the real property; and

2. [Determination] A **determination** of whether services result in a capital improvement for sales tax purposes does not depend upon the characterization of the work for local property tax purposes.

18:24-5.7 Documentation and application of the capital improvement exemption

(a) When a contractor has installed property, which, when installed, results in a capital improvement to real property, other than landscaping services, floor covering installation, or alarm system installation, he or she shall obtain from his or her customer a [properly] **fully** completed Certificate of Exempt Capital Improvement (Form ST-8) **or other approved form** and retain it in his or her permanent records.

(b) When a contractor performs an installation, which results in a capital improvement to real property, other than landscaping services, floor covering installation, or alarm system installation, no tax should be collected from the customer. Payment of the tax on materials used is the responsibility of the contractor, and therefore materials obtained and provided by the contractor are not taxable to the property owner. The **installation** services [performed by making an installation] are not subject to tax where the installation results in a capital improvement to real property, other than landscaping services, floor covering installations, or alarm system installation.

(c) If a property owner purchases construction materials and supplies from a retail store or other supplier, instead of having them purchased and supplied by the contractor, the property owner is liable for sales **or use** tax on the construction materials and supplies. The capital improvement exemption applies only to **the charge for** services.

18:24-5.8 Contractor services maintaining, servicing, or repairing real property

(a) Services rendered by a contractor in maintaining, servicing, or repairing real property, except as hereinafter provided, are subject to tax. When charging the tax on maintaining, servicing, and repairing real property, a contractor must charge the sales tax on only that portion of his or her bill attributable to services. The tax on materials used in performance of such services is the responsibility of the contractor. Examples of taxable maintenance **or repair** services include, but are not limited to[, mowing lawns, applying lawn chemicals, spraying trees, weeding, repainting the interior or exterior of a building, patching a roof, cleaning up oil spills, snow plowing, power-washing a building, removal of contained garbage (including hazardous wastes), except as provided in (b)2 below;].

1. Mowing lawns;

2. Applying lawn chemicals;
3. Spraying trees;
4. Weeding;
5. Repainting the interior or exterior of a building;
6. Patching a roof;
7. Cleaning up oil spills;
8. Snow plowing;
9. Power-washing a building; and
10. Removal of contained garbage (including hazardous wastes), except as provided in (b)2 below.

(b) The following maintenance, service, and repair operations are not subject to tax:

1. (No change.)
2. Services involving only removal of **contained** garbage [that has been placed in a container], performed on a regular contractual basis for a term of not less than 30 days, or sewer services, performed on a regular contractual basis for a term of not less than 30 days.

(c) In all instances, sales or use taxes on materials used in maintaining, servicing, or repairing real property where such materials are provided by the contractor as part of his **or her** services, are the responsibility of the contractor rather than of the contractor's customer. The contractor should charge tax only on the separately stated service portion of his **or her** bill.

18:24-5.9 Fabricator/contractor's purchase of materials

(a) Where any person is engaged in the business of fabrication of items of tangible personal property produced for incorporation into real property as component parts thereof, as well as the business of installing such property, [such] **the** person may purchase all component materials [as defined in N.J.A.C. 18:24-5.2, Definitions,] as purchases for resale.

(b) A fabricator/contractor is not required to pay tax on materials at the time of purchase. However, the fabricator/contractor does have the option to pay sales tax at the time of purchase. The fabricator/contractor should issue a [duly] **fully** completed Resale Certificate (Form ST-3) **or other approved form** when claiming a resale exemption at the time of purchase.

(c) (No change.)

18:24-5.10 Fabricator/contractor's sales of completed products

Where a fabricator/contractor sells his or her completed product for installation by someone other than himself or herself, [for example] **such as**, by the property owner or by another contractor, he or she is required to charge and collect tax on the sales price of the product.

18:24-5.11 Fabricator/contractor sale and installation of completed products; tax

(a) Where a fabricator/contractor sells his or her fabricated product, and as a part of that sale [further] agrees to install the product at a location in this State, he or she may not collect tax from his or her customer for **installation** charges [rendered in connection with the installation] if the installation of his or her product results in [a] **an exempt** capital improvement to real property. In such cases, the fabricator/contractor is, however, required to pay use tax directly to the Division of Taxation upon the value of his or her product [as hereinafter set forth]. The use tax shall be computed on:

1.-2. (No change.)

(b) (No change.)

(c) Where a fabricator/contractor sells his or her fabricated product, and as a part of that sale agrees to install the product at a location outside this State, he or she is **not** responsible for [neither] the payment of use tax as provided in (a) above [nor] **or** the collection of sales tax on installation charges as provided in (b) above.

Example: A structural steel fabricator purchases steel which is delivered to his **or her** facility in New Jersey. The steel is fabricated as provided in shop drawing specifications for on-site installation. The fabricated structural steel is then shipped to a job site located outside this State. Such fabricated steel is not subject to tax in this State.

18:24-5.12 Subcontractor purchases and services

(a) Contractors who enter into a contract to perform specified operations for a second contractor are subcontractors. Their purchases and services are treated as follows:

1. (No change.)

2. Except as provided in (b) below, taxable services (see N.J.A.C. 18:24-5.6) performed by a subcontractor for a prime contractor are not subject to collection of tax by the subcontractor from the prime contractor. In such cases, the responsibility for collection of tax is that of the prime contractor. The subcontractor should maintain records to substantiate that taxable services were performed for a prime contractor. Purchases of materials by subcontractors for use in fulfilling service contracts with prime contractors are subject to tax, except where such purchases are for exclusive use in fulfilling service contracts with a prime contractor **that is** fulfilling a contract with an exempt organization.

3. Services performed by subcontractors for prime contractors resulting in exempt capital improvements to real property are not subject to tax. Purchases of materials by subcontractors for use in fulfilling contracts with prime contractors are subject to tax, except where such purchases are for exclusive use in fulfilling contracts with a prime contractor **that is** fulfilling a contract with an exempt organization. (See N.J.A.C. 18:24-5.3, 5.4, and 5.5 for procedural requirements on exempt organization contracts.)

(b) Landscaping services, flooring installation services, and alarm or security system installation services performed by a subcontractor are subject to sales tax upon purchase by a prime contractor. A separately stated charge for the actual cost of materials upon which the subcontractor has paid New Jersey sales or use tax may be excluded from the [taxable receipt] **sales price**, provided, however, that any person acting as subcontractor who is also acting as a fabricator/contractor or as a floor covering dealer/installer must impose and collect sales tax on the charge for materials stated to the prime contractor as required under N.J.A.C. 18:24-5.10 and 22.2.

18:24-5.13 Performance of contracts out-of-State

(a) Purchases of materials, supplies, and equipment in New Jersey for use in erecting structures for others, or building on, or otherwise improving, altering, or repairing real property of others at a location outside of New Jersey are subject to New Jersey sales and use taxes when such materials, supplies, and equipment are picked up by the contractor in New Jersey, except as provided in N.J.A.C. 18:24-5.11(c).

(b) (No change.)

18:24-5.14 Out-of-State purchases

(a) The use in New Jersey of any materials, supplies, equipment, or services purchased outside of New Jersey is taxable, subject to the comity provisions of N.J.S.A. 54:32B-11(6).

(b) In such cases, the use tax liability shall be based on the purchase price of the materials, supplies, equipment, or services, except that in the case of equipment used outside of New Jersey by the contractor for more than six months prior to its use within New Jersey, the use tax on such equipment shall be based upon the current market value of the equipment.

18:24-5.15 (Reserved)

18:24-5.16 Certificate issuance and acceptance procedures

(a) Procedures to be followed by contractors and fabricator/contractors with respect to the issuance and acceptance of certificate forms are as follows:

1. Resale [Certificates (Form ST-3)] **certificates** may not be issued by a contractor on any purchase of construction materials, supplies, equipment, or services, except that a fabricator/contractor may issue a Resale Certificate (**Form ST-3**) **or other approved form** to his or her suppliers on all purchases of materials that become component parts of the items he or she fabricates.

2. Exempt Use Certificates (Form ST-4) **or other approved forms** may be issued by contractors and fabricator/contractors when the materials purchased are machinery, equipment, apparatus, or other tangible personal property, exempt at the time of purchase under the provisions of [section] **N.J.S.A. 54:32B-8.13(a), (b), or (d)**; 8.14; 8.29; or 8.36 [of the Sales and Use Tax Act], which are purchased for incorporation into real property. [In those instances where a valid Exempt Use Certificate (ST-4) may be issued by a contractor or fabricator/contractor, the certificate must disclose his, her or its business name, New Jersey taxpayer identification number, the name and taxpayer identification number of the customer for whom the equipment or other

tangible personal property is being installed, the nature of the work to be performed, and the date the work will commence.]

3. (No change.)

4. Direct Payment Certificates (Form ST-6A) may be issued by a contractor or a fabricator/contractor only when he **or she** is a holder of a valid Direct Payment Permit (Form ST-6) and must be used in accordance with the directions issued for use thereof.

5. Neither Exempt Use Certificates (Form ST-4) nor Farmer's Exemption Certificates (Form ST-7) may be issued by a contractor or fabricator/contractor for his **or her** purchases of tangible personal property to be installed [in] **at** a farming enterprise. A contractor may accept a Farmer's Exemption Certificate (Form ST-7) only when performing exempt production and conservation services for a farming enterprise. See N.J.A.C. 18:24-19.1.

6. Certificates of Exempt Capital Improvement (Form ST-8) **or other approved forms** should be obtained by a contractor, subcontractor, or fabricator/contractor from his or her customer in any instance where the performance of his or her work results in [a] **an exempt** capital improvement to real property. A contractor or a fabricator/contractor may accept a Certificate[s] of Exempt Capital Improvement **or other approved form** as a basis for exemption from tax on his or her services only where his or her work has[, in fact,] resulted in an exempt capital improvement to real property. The nature of the work performed is the determining factor in **determining** [deciding] whether to collect tax on a contractor's services.

i. "Capital improvement" means an installation of tangible personal property which results in an increase [of] **in** the [capital] value of the real property or a significant increase in the useful life of such property. See N.J.A.C. 18:24-5.7.

ii. (No change.)

iii. "Maintenance[?]" services" are services that preserve the existing condition of property.

iv. Examples of exempt capital improvements **include, but are not limited to:**

(1)-(8) (No change.)

(9) New central air conditioner, installation of;

(10) (No change.)

(11) New heating system, installation of;

(12) (No change.)

(13) New electrical outlets [installed], **installation of;**

(14)-(17) (No change.)

(18) New [hot] water heater, installation of.

v. Examples of taxable capital improvements **include, but are not limited to:**

(1)-(5) (No change.)

vi. The contractor may not accept a Certificate of Exempt Capital Improvement (Form ST-8) **or other approved form** for landscaping services, floor covering installation, or installation of alarm or security systems.

vii. The use of the Certificate of Exempt Capital Improvement (Form ST-8) **or other approved form** is required in all applicable transactions.

7. Contractor's Exempt Purchase Certificate (Form ST-13).

[i. Form ST-13 must be completed and issued to the supplier of a contractor in every instance where purchases are made by contractor and exemption from sales and use taxes is claimed, except as provided in (a)3 above.]

i. A contractor issues Form ST-13 or other approved form to the supplier when making purchases of materials, supplies, or services for use in performing work on the real property of an exempt organization, a New Jersey or Federal governmental entity, or a qualified housing sponsor.

8. An Exempt Qualified Business Permit/Exempt Purchase Permit (Form [UZ-4A/5A] **UZ-4**) must be completed by the contractor when the contractor purchases materials or supplies exclusively for performing work for a qualified business at the business's real property located in an urban enterprise zone. [The] **Form UZ-4** is obtainable only from the qualified business. After completing [the] **Form UZ-4**, the contractor must issue copies to its sellers and its subcontractors. Any subcontractor receiving [a] **Form UZ-4** must attach its name, address, and Certificate of Authority number (in addition to the name, address, and number of the

contractor) and then give [the] **Form UZ-4** and attachments to its sellers. "Qualified business" means a person or entity that the Urban Enterprise Zone Authority has certified to be a qualified business according to the criteria in N.J.S.A. 52:27H-[62c]**62.c**.

9. If a qualified housing sponsor, as defined in N.J.S.A. 55:14K-3 of the New Jersey Housing and Mortgage Finance Agency Law of 1983, has received Federal, State, or local government subsidies, as verified by the New Jersey Housing and Mortgage Finance Agency on a Certification of Housing Sponsor form, in addition to New Jersey Housing and Mortgage Finance Agency financing for the specific housing project, contractors of the housing sponsor[, pursuant to P.L. 1988, c. 83,] may purchase materials, supplies, and services tax free for the specific housing project. The contractor must receive a copy of the housing sponsor's Letter of Exemption for his or her records and may then issue a Contractor's Exempt Purchase Certificate (Form ST-13) to his or her suppliers to document his or her exempt purchases for the housing project.

18:24-5.18 (Reserved)

18:24-5.19 Unregistered contractor bonds or reports

(a)-(b) (No change.)

(c) The bond requirement is imposed to secure payment of sales and use taxes payable with respect to tangible personal property or taxable services used or consumed under a contract, or of other State taxes, and is also imposed to assure that all contractors are registered and in compliance with New Jersey tax law.

SUBCHAPTER 6. SALES OF CLOTHING, FOOTWEAR, AND PROTECTIVE EQUIPMENT AND SERVICES PERFORMED ON CLOTHING

18:24-6.2 Definitions

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

...
"Fur" means any animal skin or part thereof with hair, fleece, or fur fibers attached thereto, either in its raw or processed state, but shall not include such skins that have been converted into leather or suede, or which in processing the hair, fleece, or fur fiber has been completely removed.

"Fur clothing" means clothing that is required to be labeled as a "fur product" under 15 U.S.C. [§69] § **69**, and in which the value of its fur components is more than three times the value of the next most valuable tangible component.

18:24-6.3 Exempt sales of clothing and footwear

(a) Receipts from [the] retail sales of clothing[,] are exempt from tax imposed under the Sales and Use Tax Act.

(b) The exemption in (a) above does not apply to **fur clothing**, clothing accessories, sport or recreational equipment, or protective equipment.

(c) Examples of clothing include, but are not limited to:

1.-4. (No change.)

5. Beach cover-ups, such as beach jackets, sarongs, or shorts;

6. (No change.)

7. Boots, including hiking boots, snow boots, or fashion boots;

8. Bras, girdles, and garter belts;

9. Capes, ponchos, and mantillas;

10.-12. (No change.)

13. Diapers, waterproof diaper pants, or incontinence briefs;

14.-17. (No change.)

[18. Fur clothing;]

Recodify existing 19. and 20. as **18. and 19.** (No change in text.)

[21.] **20.** Hats, caps, visors, and baby bonnets;

Recodify existing 22.-43. as **21.-42.** (No change in text.)

(d) Costume masks, belt buckles, patches, and emblems, when sold separately, are not clothing and are subject to tax.

18:24-6.4 Sales of protective equipment necessary for the user's work

(a) (No change.)

(b) Sales of items of protective equipment that are not necessary for the user's daily work are [not exempt] **taxable**.

(c) (No change.)

18:24-6.5 Sales of accessories [not exempt]

(a) Clothing accessories [or equipment], which are incidental items worn on the body, are not deemed to be clothing, and their retail sale is [therefore] taxable.

[(b) Receipts from the retail sale of clothing accessories or equipment are not exempt from sales and use tax.]

[(c)] (b) Examples of clothing accessories [and equipment] include, but are not limited to:

1.-5. (No change.)

6. Hand bags[;], shoulder bags, or tote bags;

7.-12. (No change.)

18:24-6.6 Sales of sport or recreational equipment [not exempt]

(a) Retail sales of items that are worn in conjunction with specific recreational or athletic activities, but that are not suitable for general use, do not fall within the clothing exemption and are [therefore] taxable.

(b) Examples[. The following items, when worn in conjunction with recreational or athletic activities, are treated as taxable] of sport and recreational equipment, **include, but are not limited to:**

1.-3. (No change.)

4. Gloves designed for specific sports, such as baseball catchers' mitts, boxing gloves, or bowling gloves;

5.-14. (No change.)

15. Waders; [or] **and**

16. (No change.)

(c) Under some circumstances, items that are usually classified as sport or recreational equipment may be treated as exempt clothing (work clothing) or as exempt ["protective equipment"] necessary for the user's daily work. Examples include: toe shoes worn by a professional ballerina or by a dance teacher, waders worn by a commercial fisherman, and life preservers and vests used by water safety and rescue squads.

18:24-6.7 Sewing materials

(a) (No change.)

(b) Receipts from the sale of sewing materials, such as fabric, thread, yarn, buttons, zippers, facing materials, hem tape, bias tape, trims (for example, lace, braid, or rickrack), snaps, and hooks and eyes, when purchased by noncommercial purchasers, for incorporation into clothing, are exempt from tax.

(c) (No change.)

SUBCHAPTER 7. MOTOR VEHICLES

18:24-7.1 Definitions

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

["Director" means the Director of the Division of Taxation of the State Department of the Treasury, or any officer, employee or agency of the Division of Taxation in the Department of the Treasury duly authorized by the Director, (directly, or indirectly by one or more redelegations of authority), to perform the functions mentioned or described in the Sales and Use Tax Act.]

"Dealer of manufactured and mobile homes, trailers, or house trailers" means any person who sells manufactured and mobile homes, trailers, or house trailers, and other tangible personal property in New Jersey in the regular course of business and who is registered as a seller with the Division of Taxation, whether or not licensed as a motor vehicle dealer with the Motor Vehicle Commission.

"First sale" means a retail sale as defined by the Sales and Use Tax Act.

"Gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of the single or combination vehicle and, if the manufacturer has not specified a value for a towed vehicle, means the value specified for the towing vehicle plus the loaded weight of the towed unit.

"Lease or rental" means any transfer of possession or control of tangible personal property, for a fixed or indeterminate term, for consideration.

"Manufactured or mobile home" means a unit of housing, which consists of one or more transportable sections that are substantially constructed off site and, if more than one section, are joined together on site; is built on a permanent chassis; is designed to be used, when connected to utilities, as a dwelling on a permanent or nonpermanent foundation; and is manufactured in accordance with the standards promulgated for a manufactured home pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §§ 5401 et seq., and the standards promulgated for a manufactured or mobile home pursuant to the State Uniform Construction Code Act, N.J.S.A. 54:27D-119 et seq.

"Manufacturer's invoice price" means the price charged by the manufacturer to a purchaser for a new manufactured or mobile home, including any amount for which credit is allowed by the manufacturer to the purchaser, the charge for the manufacturer-installed accessories, options, components, or other taxable tangible personal property, without any deduction for expenses, early payment discounts, or the value of a trade-in.

"Motor vehicle" [as defined in the Sales and Use Tax Act and used in this subchapter includes] means all vehicles propelled [otherwise] other than by muscular power (except such vehicles [as] that run only upon rails or tracks), trailers, semitrailers, house trailers, or any other type of vehicle drawn by a [motordriven] **motor-driven** vehicle, and motorcycles, designed for operation on public highways.

...

"New manufactured or mobile home" means only a newly manufactured unit.

"Place of abode" means a dwelling place maintained by a person, or by another for him or her, whether or not owned by such person, other than on a temporary or transient basis. The dwelling may be a house, apartment, or flat, a room, including a room in a hotel, motel, boarding house or club, or at a residence hall operated by an educational or charitable institution, barracks, billets, or other housing provided by the Armed Forces of the United States, or a trailer, mobile home, house boat, or any other premises.

"Semitrailer" means every vehicle with or without motor-driven power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rest upon or is carried by another vehicle.

"Trailer" means every vehicle with or without motor-driven power, other than a pole trailer, designed for carrying persons or property, and for being drawn by a motor vehicle, and so constructed that no part of its weight rests upon the towing vehicle.

"Truck" means every motor vehicle designed, used, or maintained primarily for the transportation of property.

"Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

"Used manufactured or mobile home" means a unit that has become what is commonly known as "second hand" within the ordinary meaning thereof.

"Vehicle used in combination therewith" means and includes motor-drawn vehicles, such as trailers, semitrailers, or pole trailers.

18:24-7.2 Taxability of retail sales receipts

The receipts from every retail sale of any motor vehicle, except as otherwise provided in [this Subchapter and by] the Sales and Use Tax Act, [(N.J.S.A. 54:32B-1 et seq.,)] are subject to the sales or use tax.

18:24-7.3 Tax payment prerequisite to registration

(a) The purchaser or user of a motor vehicle, as well as the seller thereof, is responsible for the payment of tax due on the sale at retail or taxable use of a motor vehicle required to be registered with the Motor Vehicle Commission.

(b) Under the provisions of N.J.S.A. 54:32B-13, the [Director] **Chairperson** of the Motor Vehicle Commission shall not issue a

registration certificate for any motor vehicle, (except in the case of a renewal of registration by the same owner) unless proof has been furnished that the tax, with respect to the sale of the motor vehicle to the registrant or his or her use thereof has been paid[,] or that no such tax is due.

(c) [If] **Whether or not** the motor vehicle is [not] required to be registered with the Motor Vehicle Commission, [the] **a registered motor vehicle dealer or seller** [thereof] must collect the tax from the purchaser, if any such tax is due, and must remit the same to the Division of Taxation, **unless the purchaser issues the dealer or seller a fully completed exemption certificate.**

18:24-7.4 Computation of tax on purchase price; trade-in

(a) Where any person engaged in the business of selling motor vehicles at retail completes a sale of a motor vehicle, he **or she** shall collect the sales or use tax, as may be the case.

(b) (No change.)

(c) A deduction from the purchase price, equal [in amount] to the amount of a trade-in actually allowed on the purchase, will be permitted, provided[,] that:

1. (No change.)

2. The trade-in consists of property of the same kind as that purchased and that is accepted as partial payment. "Property of the same kind" [is construed to] means any other motor vehicle [as defined in N.J.A.C. 18:24-7.1];

3. (No change.)

4. The dealer obtains the certificate of title of the [trade-in] **traded in** vehicle and retains a copy of it as part of the record of the sale transaction.

18:24-7.5 Charges in tax computation

(a) Where charges are made for the following items in conjunction with the sale of a motor vehicle, they must be included in the amount upon which the tax is computed **regardless of whether they are separately stated upon the customer's invoice:**

1. (No change.)

2. Delivery or freight charges for delivery of a vehicle from a manufacturer or distributor to a dealer [are included regardless of whether they are separately stated upon the customer's invoice]. Delivery charges from the dealer to his or her customer are subject to tax, if the sale of the vehicle itself is subject to tax;

3. (No change.)

4. Charges for preparation of or additional work upon a motor vehicle; and/or]

5. Charges for additional accessories or equipment placed in or attached to the motor vehicle by the dealer [are included even though the charges may be separately stated upon the customer's invoice].

18:24-7.6 External tax computation indices

Where, because of affiliation of interests between the seller and purchaser, or for any other reason, the purchase price stated for a motor vehicle is not indicative of the [true] **fair market** value of the property and the purchaser is unable to prove that a lower price was paid, the Director may, at his or her discretion, utilize external indices to establish the **fair market value of such property, which shall form the** basis upon which tax shall be assessed and paid.

18:24-7.7 Out-of-State purchase by resident

(a) A motor vehicle purchased by a resident of this State outside of this State for use outside of this State which subsequently becomes subject to the use tax imposed under the Sales and Use Tax Act, shall be taxed on the basis of the purchase price of [said] **the** motor vehicle; provided, however, that where a taxpayer affirmatively shows that the motor vehicle was used outside this State for more than six months prior to its use within this State, the motor vehicle shall be taxed on the basis of the current market value [thereof] at the time of its first use within this State.

(b) (No change.)

18:24-7.8 Sales of motor vehicles specifically exempted

(a) Any sale of a motor vehicle to any of the following shall not be subject to the sales and use tax:

1. The State of New Jersey, or any of its agencies, instrumentalities, public authorities, public corporations, or political subdivisions;

2.-3. (No change.)

4. Those organizations described in [subsection] **N.J.S.A. 54:32B-9(b)(1)** [of the Sales and Use Tax Act which] **that** have obtained and hold an [exempt organization permit] **Exempt Organization Certificate** as provided in [said Act] **N.J.S.A. 54:32B-9**; provided, however, that such vehicle is used directly in pursuit of the purposes of the exempt organization.

(b) Any sale of a motor vehicle to a nonresident of this State is not subject to tax, provided such nonresident, at the time of delivery, has no permanent place of abode in this State, is not engaged in carrying on in this State any employment, trade, business, or profession in which the motor vehicle will be used in this State, and furnishes to the seller, prior to delivery, proof supporting his claim from exemption. For the purposes of this section:

1. Any person who maintains a place of abode in New Jersey is a resident individual. [A place of abode is a dwelling place maintained by a person, or by another for him, whether or not owned by such person, other than a temporary or transient basis. The dwelling may be a house, apartment or flat, a room, including a room in a hotel, motel, boarding house or club, or at a residence hall operated by an educational or charitable institution, barracks, billets or other housing provided by the Armed Forces of the United States, or a trailer, mobile home, house boat or any other premises.]

2. Any corporation incorporated under the laws of New Jersey, and any corporation, association, partnership, or other entity doing business in New Jersey, or maintaining a place of business in the State, or operating a hotel, motel, place of amusement, or social or athletic club in the State is a resident.

3. Any person, corporation, or other entity engaged in carrying on in New Jersey any employment, trade, business, or profession is deemed a resident of New Jersey with respect to the use of a motor vehicle in such employment, trade, business, or profession in the State.

4.-6. (No change.)

(c) (No change.)

(d) The renting, leasing, licensing, or interchanging of trucks, tractors, trailers, or semitrailers by persons not engaged in a regular trade or business offering such renting, leasing, licensing, or interchanging to the public; provided, however, that] **is not subject to tax, so long as** such renting, leasing, **licensing**, or interchanging is carried on with persons engaged in a regular trade or business involving carriage of freight by such vehicles [is exempt from tax].

[e)] **1.** [For purposes of (d) above] **As used in this subsection**, "carriage of freight" means property transported by a common or public carrier, such as regular trucking companies, and does not include the type of business utilizing rented or leased vehicles to transport its own goods. For example[, a]: **A** seller of welding supplies leases trucks from a person not engaged in the regular trade or business of leasing such vehicles to the public. The trucks are used to transport [to] the seller's **own goods to its** customers [its own goods]. The exemption from tax does not apply since the seller is not engaged in the carriage of freight, unless the trucks qualify for exemption under [subsection] **N.J.S.A. 54:32B-8.43**. [of the Sales and Use Tax Act] (see] **See** N.J.A.C. 18:24-7.18)[.43 of the Sales and Use Tax Act (see N.J.A.C. 18:24-7.18).]

18:24-7.9 Transfers statutorily excluded from tax

(a) Within the meaning of [subsection (e) Section 2 of the Sales and Use Tax Act] **N.J.S.A. 54:32B-2(e)(4)**, the following transfers of motor vehicles are not subject to tax:

1.-4. (No change.)

5. Transfers of motor vehicles in the distribution of property by a partnership to its partners in whole or partial liquidation; **and**

6. Transfers of motor vehicles where the purpose of the vendee is to hold the [thing] **property** transferred as security for the performance of an obligation of the [vendor] **seller**.

18:24-7.10 Procedures for motor vehicle dealers; forms and certificates

(a) New Jersey motor vehicle dealers are required to execute and retain as a part of their records **a Motor Vehicle Sales and Use Tax Exemption Report** (Form ST-10) if a purchaser of a motor vehicle:

1. Is a nonresident of New Jersey; [and]
 2. Has no permanent place of abode in New Jersey; and
 3. Is not engaged in carrying on in New Jersey any employment, trade, business, or profession in which the motor vehicle will be used in New Jersey[;] or [4. Certifies] **certifies** that the motor vehicle has been contracted for delivery out-of-State (**the state must be designated**) and the dealer affirms that the vehicle has been delivered to the purchaser in [the aforesaid] **such** state. In all cases of sales to nonresidents, New Jersey motor vehicle dealers are required to forward a completed copy of Form ST-10 to the New Jersey Division of Taxation.

[Note: It is not necessary to complete Form ST-10 for sales of motor vehicles to New Jersey residents where the dealer collects the tax, or where, in cases of trade-ins, the information required in item III of Form ST-10 is set forth in the invoice pertaining to such sale.]

[5.] **(b)** (No change in text.)

[6.] **(c)** The sale of a warranty in conjunction with the sale of a motor vehicle [qualified] **which qualifies** for exemption under this subsection is not subject to sales tax.

[**(b)**] **(d)** A [Resale Certificate] **resale certificate** may be accepted by a dealer **or lessor** of motor vehicles in cases of [sales to] **transactions with** other licensed dealers, where the vehicle is purchased for resale[,] or is being acquired for rental **or leasing** purposes. [A Resale Certificate may be accepted from a lessor registered for sales tax purposes in New Jersey.] In all such cases, the purchaser's Certificate of Authority number [and], name, and address must be shown on each sales invoice, **and each invoice must include the date of the transaction.** The certificate itself [should] **must** be retained in the dealer's files.

[**(c)**] **(e)** An Exempt Organization Certificate[s] may be accepted by a motor vehicle dealer where a vehicle is being acquired by an organization [holding a valid Exempt Organization Permit issued] **qualified** pursuant to [the provisions of subsection (b)(1) of Section 9 of the Sales and Use Tax Act] **N.J.S.A. 54:32B-9(b)(1).** A statement should be made on the invoice to the effect that the sale was made to an exempt organization. The [purchaser's] Exempt Organization's [Permit] **Tax Identification Number** must be shown on each such sales invoice. The certificate furnished by the organization [should] **must** be retained in the dealer's files.

[**(d)**] **(f)** Purchases of vehicles by the Federal Government or one of its agencies, or by the State of New Jersey or one of its agencies or political subdivisions, or by the United Nations or any international organization of which the United States is a member, are not subject to tax [under the provisions of subsection (a) of Section 9 of the Sales and Use Tax Act] **pursuant to N.J.S.A. 54:32B-9(a).** A statement must be made on the invoice identifying the governmental agency to which the sale was made.

[**(e)**] The certificates listed below may not ordinarily be accepted by motor vehicle dealers as a basis for exemption from sales or use taxes:

1. Exempt Use Certificate (Form ST-4);
2. Direct Payment Certificate (Form ST-6A);
3. Farmer's Exemption Certificate (Form ST-7); or
4. Certificate of Exempt Capital Improvement (Form ST-8).]

[**(f)**] **(g)** Prior to titling a motor vehicle, it is required that motor vehicle dealers indicate on both the new car Manufacturer's Certificate of Origin and the used car Dealer's Certificate of Ownership the fact that the sales tax has been satisfied. In order to evidence this fact, the [prescribed "New Jersey [Sales Tax Satisfied]" **sales tax satisfied** stamp shall be used. [On the new car Manufacturer's Certificate of Origin, the stamp shall be imprinted on the reverse side of the form above the section entitled "Third Assignment." On the used car Dealer's Certificate of Ownership the stamp shall be imprinted on the reverse side of the form above the section entitled "Schedule of Fees."]

18:24-7.11 Casual sales of motor vehicles

Under the provisions of N.J.S.A. 54:32B-3(a) and [N.J.S.A. 54:32B-]8.6, casual sales[,] (as defined in N.J.S.A. 54:32B-2(u)) of motor vehicles, unless otherwise exempted, are subject to tax.

18:24-7.12 Taxable and exempt services

(a) The following services, except as [hereinafter] provided **in this subsection**, sold or purchased by a dealer [in] **of** motor vehicles, are subject to tax; provided, however, that where the following services are

performed on tangible personal property held for sale by the purchaser of such services, the performance of such services is not subject to tax:

1. Installing, maintaining, servicing, or repairing tangible personal property[;], where such services are sold by a dealer of motor vehicles, or any other person engaged in the performance of such services; for example, detailing, washing, waxing, installing electronic equipment or repairing transmissions;]. **Examples include, but are not limited to:**

- i. Detailing;**
- ii. Washing;**
- iii. Waxing;**
- iv. Installing electronic equipment; and**
- v. Repairing transmissions;**

2. (No change.)

3. Printing or imprinting tangible personal property, including motor vehicles[, for], **For** example, etching of vehicle identification number.

(b) None of the services in (a) above are subject to tax when rendered with respect to trucks, tractors, trailers, or [semitrailers] **semi-trailers** by a person who is not engaged, directly or indirectly through subsidiaries, parents, affiliates, or otherwise, in a regular trade or business offering such services to the public.

(c) Purchases of tangible personal property by any person engaged in the sale of the services in (a) above for use by that person in the performance of such services are not subject to tax where the property so purchased becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of [their] **the** service in conjunction with the performance of the service. [Thus] **For example**, the purchase of parts, lubricants, brake and transmission fluids, and similar items is not subject to tax if such items will be transferred in the performance of the services enumerated in (a) above. The purchaser of such items should issue a [duly] **fully** completed Resale Certificate (Form ST-3) **or other approved form** to his or her supplier.

(d) The purchase or use by any person engaged in the sale of **the** services in (a) above of machinery, apparatus, equipment, tools, or supplies (not otherwise exempted **by the Sales and Use Tax Act**) is subject to tax.

(e) A separately stated and identified charge for a motor vehicle inspection by an official inspection station to obtain an approval sticker as provided under N.J.S.A. 39:8-1[,] et seq., is exempt from tax. The charge for any repairs or adjustments required to obtain an approval sticker for a motor vehicle as a result of an inspection [rejection] **failure** is subject to tax as provided in (a) above.

(f) A separately stated and identified charge for towing a disabled or illegally parked motor vehicle by a wrecker **truck** or tow [car] **truck** is exempt from tax. The term "towing" includes the use of special transportation equipment, such as a dolly or tilt bed truck.

18:24-7.13 Taxability of motor vehicles used by manufacturers before sale; computation

(a) Manufacturers of motor vehicles who withdraw such vehicles from inventory or stock for company purposes such as demonstration, promotional, or executive use, prior to the sale thereof, shall be required to pay a tax on such uses.

(b) (No change.)

(c) The basis for tax shall be determined by multiplying .25 times the sum of \$500.00 plus the total invoice cost to distributors or dealers of vehicles of the same make, model, and accessory equipment.

(d) (No change.)

18:24-7.14 Taxability of motor vehicles withdrawn from inventory of motor vehicle dealer; computation

(a) Vehicles actually sold to a salesman, partner, or other official of the dealer's company are subject to [the New Jersey Sales Tax] **sales tax** on the purchase price, or, if there is a trade-in, on the purchase price less the trade-in allowance.

(b) Retail dealers of motor vehicles who withdraw such vehicles from inventory or stock prior to the sale thereof, shall be required to pay a compensating use tax on such uses unless the vehicle is assigned to and used by a full-time [automobile] **motor vehicle** salesperson **employed by the dealership.**

1. (No change.)

2. The basis for tax shall be determined by multiplying .25 times the sum of **the** manufacturer's suggested list price of the **new** motor vehicle plus \$500.00. If the motor vehicle is used, the basis for tax shall be determined by multiplying .25 times the sum of the average retail price listed for the vehicle in the N.A.D.A. Official Used Car Guide or similar N.A.D.A. official guides for other categories of used vehicles, for the year and month of withdrawal, plus \$500.00.

3. (No change.)

(c) There shall be no compensating use tax imposed on the use of [an automobile] **a motor vehicle** by a retail dealer during a period when the motor vehicle is assigned to and used by a full-time [automobile] **motor vehicle** salesperson employed by the dealership.

1. For purposes of this [section] **subsection and (b) above**, a ["full-time [automobile] **motor vehicle** salesperson employed by the dealership["] means any individual who:

i. Is employed by a retail dealer of [automobiles] **motor vehicles**;

ii.-iv. (No change.)

v. Derives at least 25 percent of his or her gross income from the [automobile] **motor vehicle** dealership as a direct result of the activities listed in (c)1i through iii above.

2. The use tax exemption shall apply to motor vehicles assigned to and used by such full-time [automobile] **motor vehicle** salespersons employed by the dealership, regardless of whether or not the salesperson uses the vehicle exclusively for the promotion of the dealership's business. There is no exemption for motor vehicles other than [automobiles] **motor vehicles** that are withdrawn from inventory for the use of a full-time salesperson.

(d) In order to be entitled to the exemption provided in (c) above, a dealer shall file together with the quarterly return, a certification wherein the dealer certifies the type, assignment, and usage of all company-owned motor vehicles withdrawn from inventory or stock, [which certificate shall be] on a form prescribed by the Director of the Division of Taxation.

18:24-7.15 Leases and rentals of motor vehicles

(a) [Lease or rental means any transfer of possession or control of tangible personal property, for a fixed or indeterminate term, for consideration.] A lease or rental agreement may include future options to purchase the property or to extend the lease or rental. The terms ["lease["] and ["rental["] may be used interchangeably[, for leases and rentals beginning on or after October 1, 2005].

(b) (No change.)

(c) Leases and rentals of motor vehicles [beginning on or after October 1, 2005,] are treated according to [the rules set forth in] N.J.A.C. 18:24-32.

1. (No change.)

2. If the rental or lease is for a term of six months or less, the customer is charged sales tax on [the total of the periodic payments due or the original purchase price of the property] **each periodic payment, calculated based on either the lessor's original purchase price for the motor vehicle or the total of the periodic payments required under the lease agreement.**

3.-5. (No change.)

[(d) Leases for a term of more than 28 days that began before October 1, 2005, are subject to use tax payable by the lessor and are not taxable to the lessee. (See also N.J.A.C. 18:24-32.7.)

1. Leases that began before October 1, 2005, remain nontaxable to the lessee.

2. Renewals on or after October 1, 2005, of leases that began before October 1, 2005, are treated as new leases and are taxable to the lessee, unless sales tax was paid on the original purchase price of the motor vehicle.]

18:24-7.17 Retention of records

(a) [In general, motor] **Motor** vehicle dealers are subject to the recordkeeping requirements set forth in N.J.A.C. 18:24-2.

(b) All certificates, affidavits, or other documentary evidence accepted by a motor vehicle dealer as a basis for exemption from any tax imposed by the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) shall be retained by [said] **the** dealer for a period of not less than four years from the date of the use of such certificate as a basis for exemption.

(c) (No change.)

18:24-7.18 Exemption for sale, lease, or rental of certain commercial trucks and vehicles used in combination therewith

(a) Receipts from sales of the following are exempt[ed] from the tax imposed under the Sales and Use Tax Act:

1. Sales, rentals, or leases of commercial trucks, truck tractors, tractors, trailers, semi-trailers, and vehicles used in combination therewith, as defined in N.J.S.A. 39:1-1, which are properly registered as defined in N.J.S.A. 39:3-6.1, and:

i.-iii. (No change.)

2. Repair parts and replacement parts for such vehicles. Parts shall not include lubricants, motor oil, or antifreeze.

[(b) For the purposes of this section, "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of the single or combination vehicle and, if the manufacturer has not specified a value for a towed vehicle, means the value specified for the towing vehicle plus the loaded weight of the towed unit.

(c) For the purposes of this section, "truck" means every motor vehicle designed, used, or maintained primarily for the transportation of property.

(d) For the purposes of this section, "truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(e) For the purposes of this section, "trailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

(f) For the purposes of this section, "semitrailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rest upon or is carried by another vehicle.

(g) For the purposes of this section, "vehicle used in combination therewith" means and includes motor-drawn vehicles, such as trailers, semitrailers, or pole trailers.]

[(h)] (b) For the purposes of motor vehicle dealer records indicating why sales tax has not been collected on sales of motor vehicles exempt from tax under this section or repair parts and replacement parts therefor, the dealer is required to [receive] **obtain** a [properly] **fully** completed Exempt Use Certificate (Form ST-4) **or other approved form** from the purchaser whether such purchaser is or is not registered with the Division of Taxation. When the purchaser is not registered with the Division of Taxation, a Certificate of Authority number is not required. However, an identification number or New Jersey registration plate number must be shown on Form ST-4 **or other approved form.**

[(i)] (c) Nonconventional [type] motor vehicles not designated or used primarily for the transportation of property and only incidentally operated or moved over a highway[, such as ditch digging apparatus, well-boring apparatus, road and general purpose construction and maintenance machinery, asphalt, spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, road rollers, earth-moving carryalls, self-propelled cranes, earth-moving equipment, bulldozers, road building machinery, and so forth, vehicles which operate on general registration plates transferable from vehicle to vehicle and which identify the owner rather than the vehicle, are not exempt from sales tax.] **are not included within this exemption. Examples include, but are not limited to:**

1. Ditch digging apparatus;

2. Well-boring apparatus;

3. Road and general purpose construction and maintenance machinery;

4. Asphalt spreaders;

5. Bituminous mixers;

6. Bucket loaders;

7. Ditchers;

8. Leveling graders;

9. Road rollers;

10. Earth-moving carryalls;

11. Self-propelled cranes;

12. Earth-moving equipment;

13. Bulldozers;**14. Road building machinery; and****15. Vehicles that operate on general registration plates transferable from vehicle to vehicle and that identify the owner rather than the vehicle.**

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

18:24-7.19 Taxation of manufactured and mobile homes

(a) This section is intended to clarify the taxation of manufactured or mobile homes under [the provisions of P.L. 1983, c. 400, approved December 22, 1983] **N.J.S.A. 54:4-1.2 et seq.** This section does not apply to the sale of modular buildings because they are not on a permanent chassis.

1. For the purposes of this section, the following term[s] shall have the following meaning[s]:

[i. “Manufactured or mobile home” means a unit of housing which consists of one or more transportable sections which are substantially constructed off site and, if more than one section, are joined together on site; is built on a permanent chassis; is designed to be used, when connected to utilities, as a dwelling on a permanent or nonpermanent foundation; and is manufactured in accordance with the standards promulgated for a manufactured home pursuant to the “National Manufactured Housing Construction and Safety Standards Act of 1974,” Pub. L. 93-383 (42 U.S.C. § 5401, et seq.) and the standards promulgated for a manufactured or mobile home pursuant to the “State Uniform Construction Code Act,” P.L. 1975, c. 217 (C. 54:27D-119, et seq.).]

[ii. i. (No change in text.)

[iii. “Manufacturer’s invoice price” means the price charged by the manufacturer to a purchaser for a new manufactured or mobile home, including any amount for which credit is allowed by the manufacturer to the purchaser, the charge for the manufacturer-installed accessories, options, components or other taxable tangible personal property, without any deduction for expenses, early payment discounts or the value of a trade-in.

iv. “Dealer” means any person who sells manufactured and mobile homes, trailers or housetrailer and other tangible personal property in New Jersey in the regular course of business and who is registered as a seller with the Division of Taxation, whether or not licensed as a motor vehicle dealer with the Motor Vehicle Commission.

v. “New manufactured or mobile home” means only a newly manufactured unit.

vi. “Used manufactured or mobile home” means a unit which has become what is commonly known as “second hand” within the ordinary meaning thereof.

vii. “First sale” means a retail sale as defined by the Sales and Use Tax Act.]

(b) [On and after December 22, 1983, the] **The** first sale of a new manufactured or mobile home is subject to sales tax based upon the manufacturer’s invoice price pursuant to **N.J.S.A. 54:4-1.7.**

1. The sale of a new manufactured or mobile home by the manufacturer or other seller to a contractor, subcontractor, homeowner, or other ultimate consumer is a retail sale and the tax must be collected from the purchaser at the time of sale and remitted to the Division of Taxation.

2. (No change.)

3. The sale of a new manufactured or mobile home by the manufacturer to a dealer is a sale for resale, and in the subsequent resale the tax applies to the manufacturer’s invoice price as follows:

i. Where the dealer sells a new manufactured or mobile home to a contractor, subcontractor, homeowner, or other ultimate consumer, the sales tax must be collected from the purchaser by the dealer and remitted to the Division of Taxation.

Example: Dealer X sells a manufactured home to Y for \$30,000. The manufacturer’s invoice price, including a charge for certain home furnishings, was \$19,500. The cost of freight [into dealer] to Dealer X’s place of business was \$500.00. The [taxable receipt] sales price is \$20,000, and the sales tax is stated to and collected from the purchaser at the rate of seven percent[, or] (\$1,400).

ii. Where the dealer sells a new manufactured or mobile home to a homeowner or other ultimate consumer and agrees to install the home for

the purchaser, the dealer is acting as a contractor and the tax is due directly from the dealer. Sales tax is not collected from the purchaser.

Example: Dealer X sells a new manufactured home to Y and agrees to install the unit in a mobile home park. The manufacturer’s invoice price, including a charge for certain home furnishings, is \$19,500. The cost of freight [into dealer] to Dealer X’s place of business is \$500.00. [The dealer] **Dealer X** is liable for the tax on \$20,000[, or] (\$1,365). No tax on the manufactured home is stated to or collected from the purchaser.

iii. The sale of a new manufactured home by a dealer or other seller to a dealer is a sale for resale and the acquiring dealer may issue a [valid New Jersey] **fully completed** Resale Certificate (Form ST-3) **or other approved form**; however, [that] sales tax is due at the time of retail sale on the price paid by **the** acquiring dealer whenever the manufacturer’s invoice price cannot be ascertained.

(c) The sale of dealer-installed accessories, options, components, or other taxable tangible personal property for either a new or used manufactured or mobile home is subject to sales tax based upon the retail sales price, whether or not the dealer also agrees to install the home for his **or her** customer; provided, however, that where the dealer does agree to install a home for his **or her** customer, the purchase of the construction materials, supplies, and equipment is subject to tax as provided by [subsection] (e) below.

[1. Dealer-installed accessories, options, components or other taxable tangible personal property are items such as furniture, fixtures, furnishings, appliances, attachments or similar tangible personal property which are not included with the home upon sale by the manufacturer or permanently incorporated as a part of the home at the time of manufacture. The latter can include items such as air conditioning units, sinks, cabinets, counter tops, exhaust hoods, water heaters, etc. A Certificate of Capital Improvement (Form ST-8) cannot be issued by the purchaser in connection with the purchase of dealer-installed options, accessories or components.]

1. Examples of dealer-installed accessories, options, components, or other taxable tangible personal property include, but are not limited to:

- i. Furniture;**
- ii. Fixtures;**
- iii. Furnishings;**
- iv. Appliances;**
- v. Attachments;**
- vi. Air conditioning units;**
- vii. Sinks;**
- viii. Cabinets;**
- ix. Counter tops;**
- x. Exhaust hoods; and**
- xi. Water heaters.**

2. A Certificate of Exempt Capital Improvement (Form ST-8) or other approved form cannot be issued by the purchaser in connection with the purchase of dealer-installed options, accessories, or components.

(d) [On and after December 22, 1983, the] **The** sale of a used manufactured or mobile home by any person, including a dealer, is [exempt from] **not subject** to sales and use tax, whether or not the home is located in a mobile home park.

(e) [On and after December 22, 1983, the] **The** permanent installation of a new or used manufactured or mobile home results in [a] **an exempt** capital improvement to real property, whether or not the home is installed in a mobile home park. (See N.J.A.C. 18:24-5.7)[.]

1. Services performed by a contractor, subcontractor, manufacturer, or other seller or dealer acting as a contractor or subcontractor and rendered in connection with the permanent installation of a new or used manufactured or mobile home for the purchaser, are exempt from sales tax; provided, however, that a [duly] **fully completed** Certificate of Exempt Capital Improvement (Form ST-8) **or other approved form** has been obtained from the purchaser and retained by the contractor or dealer for his or her [permanent] records.

2. Sales of construction materials, [and] supplies, construction equipment, or taxable services to a contractor or subcontractor, manufacturer, or other seller or a dealer acting as a contractor or subcontractor, for use in the installation of a new or used manufactured or

mobile home, are subject to sales [tax] or use tax as provided by N.J.A.C. 18:24-5.

(f) The sale of a new or used trailer or house trailer is subject to sales tax [as provided for] **in the same manner as** other motor vehicles in this subchapter.

(g)-(h) (No change.)

18:24-7.20 Exemption for certain buses

(a)-(b) (No change.)

(c) Charges for repair services, or for repair and replacement parts, for the buses categorized in (a) or (b) above are exempt from sales and use tax.

(d) The seller must obtain a fully completed Exempt Use Certificate (Form ST-4) or other approved form from the purchaser to document why sales tax has not been collected on exempt purchases of buses, repair services, or repair parts and replacement parts.

18:24-7.21 Exemption for limousines

(a) A "limousine" is a motor vehicle that satisfies the following criteria[, it]:

1.-5. (No change.)

(b) Receipts from the sale of a limousine, to a person licensed under N.J.S.A. 48:16-17 to operate a limousine service[,] are exempt from sales and use tax.

(c) Receipts from the sale of repair services, [or] repair **parts**, or replacement parts for a limousine, operated by a person licensed under the laws of New Jersey, or of another state, or of the United States to operate a limousine service, are exempt from sales and use tax.

(d) A person qualified to claim sales tax exemption under this section and providing transportation services in this State is presumed to be providing transportation services that may be subject to sales tax pursuant to N.J.S.A. 54:32B-3(b)(13). (See N.J.A.C. 18:24-27.3[.])

(e) The seller must obtain a fully completed Exempt Use Certificate (Form ST-4) or other approved form from the purchaser to document why sales tax has not been collected on exempt purchases of limousines, repair services, or repair parts and replacement parts.

SUBCHAPTER 8. EXEMPT NONGOVERNMENTAL ORGANIZATIONS

18:24-8.1 General statutory exemption to qualified organizations

(a) N.J.S.A. 54:32B-9(b) provides for exemption from sales and use taxes on any sale or amusement charge by or to, and any use or occupancy by certain nonprofit organizations described in N.J.S.A. 54:32B-9(b), [hereinafter referred to as Section 9(b)] where such sales, charges, uses, or occupancies are directly related to the purposes for which qualified organizations have been organized.

(b) Specifically, organizational exemption is afforded to any corporation, association, trust, or community chest, fund, or foundation organized and operated exclusively:

1. For religious, charitable, scientific, testing for public safety, literary, or educational purposes;

2. (No change.)

3. As a volunteer fire company, rescue, ambulance, first aid, or emergency company or squad;

4. As a National Guard organization, post, or association, or as a post or organization of war veterans, or the Marine Corps League, or as an auxiliary unit or society of any such post, organization, or association; or

5. (No change.)

(c) Organizational exemption in accordance with (b)1-5 above, is permitted, provided that no part of the net earnings inures to the benefit of any private shareholder or individual[.]; no substantial part of the activities is carrying on propaganda, or otherwise attempting to influence legislation[.]; and the organization does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office.

(d) Organizations seeking to qualify for exempt organization status must meet the eligibility requirements set forth in this subchapter[.] and

comply with all procedural requirements contained in this subchapter, in addition to the requirements in (a)-(c) above.

18:24-8.2 Exemption not based on nonprofit status

An organization is not exempt from tax merely because it is a nonprofit organization. In order to establish this exemption, it is necessary that every organization claiming exemption[,] file **an Application for Exempt Organization Certificate (Form REG-1E)** with the Division of Taxation [an application Form REG-1E].

18:24-8.3 Reliance on granted exemption; change in status

[Subject to the power of the] **The Director**[, Division of Taxation, to] **may revoke [rulings] the determination of an organization's exempt status** because of a change in the law or regulations or for other good cause[, an]. **An** organization that has been determined by the [director] **Director** to be exempt under [Section 9(b)] **N.J.S.A. 54:32B-9(b)** may rely upon such determination, so long as there are no substantial changes in the organization's character, purposes, or methods of operation.

18:24-8.4 Application for exemption; information

(a) An organization claiming exemption under [Section 9(b)] **N.J.S.A. 54:32B-9(b)** shall file the [formal] application (Form REG-1E), in accordance with the instruction on the [form] **application** or issued therewith.

(b) (No change.)

(c) [To each] **Each** application should [be] **have the following attached:**

1.-3. (No change.)

4. The latest financial statement showing the assets, liabilities, receipts, and disbursements of the organization[.]; **and**

5. (No change.)

(d) (No change.)

18:24-8.5 Private shareholder or individual defined

The term "private shareholder or individual" in [Section 9(b)] **N.J.S.A. 54:32B-9(b)** refers to persons having a personal and private interest in the activities of the organization, **such as the creator or the creator's family, shareholders of the organization, other designated individuals, or persons controlled directly or indirectly by such private interests.**

18:24-[2.4]8.6 (No change in text.)

SUBCHAPTER 9. REQUIREMENTS RELATING TO EXEMPT PRIVATE ORGANIZATIONS

18:24-9.1 Organizational and operational requirements of exempt organizations

(a) In order to be exempt as an organization described in [Section 9(b)] **N.J.S.A. 54:32B-9(b)**, an organization must be both organized and operated exclusively for one or more of the purposes specified in this subchapter.

(b) (No change.)

18:24-9.3 Organizational tests

(a) [*In general.*] **In general, an organization is exempt if it meets one of the following:**

1. An organization is organized exclusively for one or more exempt purposes only if its "articles of organization" ([referred to in this section as its "[articles]"), as defined in (b) below, limit the purposes of such organization to one or more exempt purposes; and do not expressly empower the organization to engage, otherwise than as an insubstantial

part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

2. In meeting the organizational test, the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes stated in N.J.S.A. 54:32B-9(b). Therefore, an organization, which, by the terms of its articles, is formed ["for literary and scientific purposes"] within the meaning of N.J.S.A. 54:32B-9(b) [of the Sales and Use Tax Act], shall, if it otherwise meets the requirements in this section, be considered to have met the organizational test. Similarly, articles stating that the organization is created solely "to receive contributions and pay them over to organizations, which are exempt from taxation under N.J.S.A. 54:32B-9(b)" are sufficient for purposes of the organizational test. Moreover, it is sufficient if the articles set forth the purpose of the organization to be the operation of a school for adult education and describe in detail the manner of the operation of such school. In addition, if the articles state that the organization is formed for ["charitable purposes,"] such articles ordinarily shall be sufficient for purposes of the organizational test ([See] see (e) below for rules relating to construction of terms).

3. An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is by the terms of such articles, created for a purpose that is no broader than the purposes specified in [Section 9(b)] N.J.S.A. 54:32B-9(b). Thus, an organization that is empowered by its articles, ["to engage in a manufacturing business,"] or ["to engage in the operation of a social club,"] does not meet the organizational test regardless of the fact that its articles may state that such organization is created ["for charitable purposes within the meaning of [Section 9(b) of the New Jersey Sales and Use Tax Act.]" N.J.S.A. 54:32B-9(b).

4. In no case shall an organization be considered to be organized exclusively for one or more exempt purposes if, by the terms of its articles, the purposes for which such organization is created are broader than the purpose specified in [Section 9(b)] N.J.S.A. 54:32B-9(b). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes.

5. (No change.)

6. An organization should submit a copy of its Internal Revenue Code [Section] section 501(c)(3) determination letter or ruling issued by the Internal Revenue Service as prima facie evidence of exemption under N.J.S.A. 54:32B-9(b)(1) or (2).

(b) [Articles of organization.] **Articles of organization.** For purposes of this [Section] section, the term "articles of organization" or "articles" include the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created.

(c) [Authorization of legislative or political activities.] **Authorization of legislative or political activities.** An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it:

1. To devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise; [or]

2. Directly or indirectly to participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of, or in opposition to, any candidate for public office; [or]

3. To have objectives and to engage in activities which characterize it as an ["action"] organization as defined in N.J.A.C. 18:24-9.4(c) [(Operational test)];

4. The terms used in (c)1, 2, and 3 above shall have the meanings provided in N.J.A.C. 18:24-9.4(c) [(Operational test)].

(d) [Distribution of assets on dissolution.] **Distribution of assets on dissolution.** An organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a

provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a state or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the state in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

(e) [Construction of terms.] **Construction of terms.** The law of the state in which an organization is created shall be controlling in construing the terms of its articles. However, any organization [which] that contends that such terms have under state law a different meaning from their generally accepted meaning must establish such special meaning by clear and convincing reference to relevant court decisions, opinions of the state attorney general, or other evidence of applicable state law.

18:24-9.4 Operational test

(a) [Primary activities.] **Primary activities.** A nonprofit organization is considered to be operating exclusively for an exempt purpose only if it engages primarily in activities which accomplish one or more of the exempt purposes specified in [Section 9(b)] N.J.S.A. 54:32B-9(b). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

(b) [Distribution of earnings.] **Distribution of earnings.** An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. (For the definition of the words "private shareholder or individual" see [Section 8.5 (Definition) of this Chapter] N.J.A.C. 18:24-8.5).

(c) ["Action" organizations.] **Action organizations are as follows:**

1. An organization is not operated exclusively for one or more exempt purposes if it is an ["action"] organization as defined in (c)2, 3, or 4 below;

2. An organization is an ["action"] organization if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. For this purpose, an organization will be regarded as attempting to influence legislation if the organization contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or advocates the adoption or rejection of legislation. The term "legislation," as used in this paragraph, includes action by the Congress, by any state legislature, by any local council or similar governing body, or by the public in referendum, initiative, constitutional amendment, or similar procedure. An organization will not fail to meet the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation.

3. An organization is an ["action"] organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term "candidate for public office" means an individual who offers himself or herself, or is proposed by others, as a contestant for an elective public office, whether such office [be] is national, state, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

4. An organization is an ["action"] organization if it has the following two characteristics:

i. [First, its] **Its** main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and

ii. [Secondly, it] **It** advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

18:24-9.5 Specific purposes exempt

(a) An organization may be exempt as an organization described in [Section 9(b)(1)] **N.J.S.A. 54:32B-9(b)(1)** or 9(b)(2), if it is organized and operated exclusively for one or more of the following purposes:

1.-7. (No change.)

(b) Since each of the purposes specified in [subsection] (a) [of this Section] **above** is an exempt purpose in itself, an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes. If, in fact, an organization is organized and operated exclusively for an exempt purpose or purposes, exemption will be granted to such an organization regardless of the purpose or purposes specified in its application for exemption. For example, if an organization claims exemption on the ground that it is [“educational”], exemption will not be denied if, in fact, it is [“charitable”].

18:24-9.6 Exempt organizations must serve public interest

An organization is not organized or operated exclusively for one or more of the purposes specified in N.J.A.C. 18:24-9.5, [(Specific purposes exempt)], unless it serves a public rather than a private interest. Thus, to meet the requirement of this section, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his or her family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

18:24-9.7 [“Charitable”] defined

(a) The term [“charitable”] is used in [Section 9(b)(1)] **N.J.S.A. 54:32B-9(b)(1)** in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in [Section 9(b)(1)] **N.J.S.A. 54:32B-9(b)(1)** of other tax exempt purposes which may fall within the broad outlines of [“charity”] as developed by judicial decisions.

(b) The term includes, **but is not limited to:**

1.-4. (No change.)

5. Lessening of the burdens of [Government] **government;**

6.-7. (No change.)

8. Defense of human and civil rights secured by law; **and**

9. (No change.)

(c) (No change.)

(d) The fact that an organization, in carrying out its primary purpose, advocates social or civic changes, [or] presents opinion on controversial issues with the intention of molding public opinion, or [creating] **creates** public sentiment to an acceptance of its views, does not preclude such organization from qualifying under [Section 9(b)(1)] **N.J.S.A. 54:32B-9(b)(1)**, so long as it is not an [“action”] organization of any one of the types described in N.J.A.C. 18:24-9.4(c).

18:24-9.8 [“Educational”] defined

(a) The term [“educational”], as used in [Section 9(b)(1)] **N.J.S.A. 54:32B-9(b)(1)**, relates to:

1.-2. (No change.)

(b) [Examples of educational organizations. The following are examples of organizations which, if they otherwise meet the requirements of this Section, are educational:] **Examples of educational organizations include, but are not limited to:**

[Example (1):] **1.** An organization, such as a primary or secondary school, or college, or a professional or trade school, which has a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on[.];

[Example (2):] **2.** An organization which presents a course of instruction by means of correspondence or through the utilization of television or radio[.];

[Example (3):] **3.** Museums, zoos, planetariums, symphony orchestras, and other similar organizations[.]; **and**

[Example (4):] **4.** An organization whose activities consist of developing in youth, ideals of honesty, loyalty, courage, reverence, or knowledge of the world in which we live. Organizations [which] **that** meet these requirements include, but are not limited to[.]: the Boy Scouts, Girl Scouts, and 4-H Clubs.

18:24-9.9 [“Testing for public safety”] defined

The term [“testing for public safety”], as used in [Section 9(b)(1)] **N.J.S.A. 54:32B-9(b)(1)**, includes the testing of consumer products, such as electrical products, to determine whether they are safe for use by the general public.

18:24-9.10 [“Scientific”] defined

(a) Since an organization may meet the requirements of [Section 9(b)(1)] **N.J.S.A. 54:32B-9(b)(1)** only if it serves a public rather than a private interest, a [“scientific”] organization must be organized and operated in the public interest (see [subsections] (b) and (c) [of this Section] **below**). Therefore, the term [“scientific”], as used in [Section 9(b)(1)] **N.J.S.A. 54:32B-9(b)(1)** includes the carrying on of scientific research in the public interest. Research, when taken alone, is a word with various meanings; it is not synonymous with [“scientific”], and the nature of particular research depends upon the purpose which it serves. For research to be [“scientific”], within the meaning of [Section 9(b)(1)] **N.J.S.A. 54:32B-9(b)(1)**, it must be carried on in furtherance of a [“scientific”] purpose. The determination as to whether research is [“scientific”] does not depend on whether such research is classified as [“fundamental”] or [“basic”] as contrasted with [“applied”] or [“practical”].

(b) Scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, [as,] for example, the ordinary testing, [or] designing, or construction of equipment, buildings, and similar structures.

(c) Scientific research will be regarded as carried on in the public interest **if:**

1. [If results] **Results** of such research (including any patents, copyrights, processes, or formulae resulting from such research) are made available to the public on a nondiscriminatory basis;

2. [If such] **Such** research is performed for the United States or any of its agencies or instrumentalities, or for a state or political subdivision thereof; or

3. [If such] **Such** research is directed toward benefiting the public. [The following are examples of scientific research which will be considered as directed toward benefiting the public, and, therefore, which will be regarded as carried on in the public interest:]

(d) Examples of scientific research that are considered directed toward benefiting the public, and which are regarded as carried on in the public interest, include, but are not limited to:

Recodify *Example (1)-(2)* as 1.-2. (No change in text.)

[*Example (3):*] **3.** Scientific research carried on for the purpose of discovering a cure for a disease; [or] **and**

[*Example (4):*] **4.** Scientific research carried on for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area. Scientific research, described in this [paragraph] **subsection**, will be regarded as carried on in the public interest even though such research is performed pursuant to a contract or agreement under which the sponsor or sponsors of the research have the right to obtain ownership or control of any patents, copyrights, processes, or formulae resulting from such research.

[(d)] **(e)** An organization will not be regarded as organized and operated for the purpose of carrying on scientific research in the public interest and consequently will not qualify under [Section 9(b)(1)] **N.J.S.A. 54:32B-9(b)(1)** as a [“scientific”] organization, if:

1. Such organization will perform research only for persons which are (directly or indirectly) its creators and which are not described in [Section 9(b)(1)] **N.J.S.A. 54:32B-9(b)(1)**; or

2. Such organization retains, directly or indirectly, the ownership or control of more than an insubstantial portion of the patents, copyrights, processes, or formulae resulting from its research and does not make such patents, copyrights, processes, or formulae available to the public. For purposes of this [Section] **section**, a patent, copyright, process, or formula shall be considered as made available to the public if such patent, copyright, process, or formula is made available to the public on a nondiscriminatory basis. In addition, although one person is granted the exclusive right to the use of a patent, copyright, process, or formula, such patent, copyright, process, or formula shall be considered as made

available to the public if the granting of such exclusive right is the only practicable manner in which the patent, copyright, process, or formula can be utilized to benefit the public.

(e) (f) The fact that any organization (including a college, university, or hospital) carries on research which is not in furtherance of an exempt purpose described in [Section 9(b)(1)] **N.J.S.A. 54:32B-9(b)(1)** will not preclude such organization from meeting the requirements of [Section 9(b)(1)] **N.J.S.A. 54:32B-9(b)(1)**, so long as the organization meets the organizational test and is not operated for the primary purpose of carrying on such research.

(f) The rules in this Section are applicable with respect to taxable periods beginning after February 28, 1967.]

18:24-9.11 Organizations carrying on trade or business

(a) An organization may meet the requirements of [Section 9(b)] **N.J.S.A. 54:32B-9(b)** although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business.

(b) (No change.)

(c) An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under [Section 9(b)] **N.J.S.A. 54:32B-9(b)** even though it may have certain exempt purposes, its property is held in common, and its profits do not inure to the benefit of individual members of the organization.

(d) Any sale, amusement charge, use, or occupancy by an exempt organization, in the course of a trade or business in substantial competition with privately operated nonexempt business entities, is not directly related to the purposes of the exempt organization. Except as specifically exempted in **N.J.S.A. 54:32B-9(e)** and (f), such an organization shall, in the conduct of the trade or business, pay and collect sales and use taxes in the same manner required of a privately operated nonexempt business.

1. An exempt organization is considered to be engaged in a trade or business in substantial competition with privately operated nonexempt business entities to the extent sales are made as follows:

- i. (No change.)
 - ii. By mail, **online**, telephone, or facsimile orders accepted by such organization on a regular, continuous, or [long term] **long-term** basis; or
 - iii. (No change.)
2. (No change.)
3. A shop or store as used in (d)1i above includes any place, [or] establishment, **or online store** from which goods are sold with a degree of regularity, frequency, and continuity.

(e) (No change.)

18:24-9.12 Sales of meals and rental of rooms to exempt organizations

(a) Receipts from the sale to exempt organizations of food and drink in or by restaurants, taverns, or other establishments in the State, or by caterers, including in the amount of such receipts any cover, minimum, entertainment, or other charge made to patrons or customers, and rental of rooms to exempt organizations in a hotel shall be treated in the following manner:

1. Whenever there is such a sale of food or drink, the seller shall charge and collect the sales tax thereon unless an organization furnishes the seller with a valid[, properly executed, exempt organization certificate] **Exempt Organization Certificate** (Form ST-5), which has the name, address, and registration number of the exempt organization imprinted on the certificate by the Division of Taxation, along with the signature of the Director;

2. Whenever there is a room occupancy, the hotel shall charge and collect the sales tax thereon unless an organization furnishes the [vendor] **seller** with a valid [properly executed exempt organization certificate (form ST-5)] **Exempt Organization Certificate (Form ST-5)**, which has the name, address, and registration number of the exempt organization imprinted on the certificate by the Division of Taxation, along with the signature of the Director;

3. In all cases, the exempt organization must pay the bill with organizational funds and the organization must hold a valid [exempt

organization certificate, which is a tax immunity authorization,] **Exempt Organization Certificate** as of the date of the transaction;

4. Any organization holding a valid [exempt organization certificate] **Exempt Organization Certificate**, which has paid the sales tax in accordance with the foregoing procedure, may apply to the New Jersey Division of Taxation for a refund of the tax, if all the charges on which the tax was calculated were paid by the organization using organizational funds.

18:24-9.13 Student organization purchases

(a) Student organizations within a school exempt from tax under **N.J.S.A. 54:32B-9(a)** or (b) may be considered integral components of the school and may make tax exempt purchases for educational purposes, including school-sponsored fundraising activities, [and] functions, and events, such as proms and similar activities, provided:

1.-2. (No change.)

3. Documentation is provided to the seller to properly evidence the tax exempt purchase. The only acceptable documentation for private schools is a copy of a valid [ST-5] Exempt Organization Certificate (**Form ST-5**). New Jersey public schools are New Jersey governmental entities and [as such] are not issued [exemption certificates] **Exemption Organization Certificates** or exempt organization numbers. A school contract, letterhead, or purchase order signed by a school official is sufficient to document the exemption.

(b) School affiliated teacher organizations and parent organizations that do not qualify as specifically exempted parent-teacher associations and organizations, student organizations not sponsored by the school, and other school support groups such as booster clubs and class alumni associations are not considered integral components of the school. They are deemed to be separate legal entities and may not use the school's tax exempt documentation to make tax exempt purchases. Such organizations may apply for and receive [exempt organization certificates] **an Exemption Organization Certificate**, if qualified for exemption under **N.J.S.A. 54:32B-9(b)(1)** [of the Sales and Use Tax Act].

SUBCHAPTER 10. ISSUANCE AND ACCEPTANCE OF EXEMPTION CERTIFICATES

18:24-10.1 Scope of [Subchapter] subchapter

This [Subchapter] **subchapter** shall govern the issuance and acceptance of any official form of the Division of Taxation, the proper use of which entitles the issuer to an exemption from sales or use taxes.

18:24-10.2 General requirements

(a) A seller of taxable [goods] **tangible personal property**, services, amusement charges, or occupancies is required to collect any tax imposed by the Sales and Use Tax Act, [(N.J.S.A. 54:32B-1 et seq.)], unless the seller [shall have taken from the purchaser] **obtains** a fully completed **exemption certificate from the purchaser**, signed by the purchaser and bearing his or her name, address, and certificate of authority number, to the effect that the [goods] **tangible personal property**, services, amusement charges, or occupancies purchased are not subject to the sales or use tax by virtue of a statutory exemption set forth in such certificate.

(b) In the case of an [exempt organization certificate] **Exemption Organization Certificate** (Form ST-5), a seller may **only** accept a copy of Form ST-5, which has the name, address, and registration number of the exempt organization imprinted on the certificate by the Division of Taxation, along with the signature of the Director. [Only certificates issued in accordance with this subsection shall be valid.]

18:24-10.4 Acceptance of exemption certificates

(a) For transactions entered into prior to October 1, 2005, an exemption certificate is properly accepted if the following conditions are met:

1. (No change.)
2. A seller is presumed to be familiar with the laws and rules regarding the business in which he or she deals;
3. In general, a seller who accepts a properly completed exemption certificate in ["good faith"] is relieved of liability for collection or payment of tax upon transactions covered by the certificate. The question

of “[*]good faith[*]” is one of fact and depends upon a consideration of all the conditions surrounding the transaction;

4.-5. (No change.)

(b) (No change.)

(c) For transactions entered into on and after January 1, 2008, an exemption certificate is properly accepted and the seller is held harmless when a purchaser claims an exemption if the certificate is fully completed.

1. (No change.)

2. The seller’s name and address are not required and are not considered when determining if an exemption certificate is fully completed. A seller that enters data elements from a paper **exemption certificate** into an electronic format is not required to retain the paper exemption certificate.

(d) If the seller either has not obtained an exemption certificate, has obtained an incomplete exemption certificate, or the seller has not obtained the relevant data elements as provided in (c)1 above, then the standard is different from that which applies at the point of sale as described in (c)1 above. The seller shall have at least 120 days after the Division’s request for substantiation of the claimed exemption to do the following:

1. From January 1, 2008 to September 30, 2011, obtain a fully completed exemption certificate from the purchaser, taken in good faith, which means that the seller is presumed to be familiar with the laws and rules regarding the business in which he or she deals and the exemption certificate must not contain any statement or entry that the seller knows is false or misleading; or

2. (No change.)

(e) (No change.)

18:24-10.5 Exemption certificates; conditions, retention, and inspection; use of resale certificates by out-of-State sellers

(a) (No change.)

(b) Whenever the sale for resale exemption is claimed by an unregistered out-of-State seller, either the fully completed [and executed] resale certificate of another state, or a Division-approved multi-jurisdictional resale certificate, or the Streamlined Sales and Use Tax Agreement Certificate of Exemption - New Jersey (**Form ST-SST**), including evidence that the purchaser is a licensed seller in one or more jurisdictions, accepted by the seller, is deemed evidence of exemption, unless: the person to whom the sale was made and who issued the certificate was required to be registered in New Jersey under N.J.S.A. 54:32B-2(i) at the time of sale, or the person to whom the sale was made took delivery of the property at the sale location in New Jersey. If the person to whom the sale was made was not required to be registered in New Jersey at the time of sale, and in fact was not registered, but did take delivery of the tangible personal property at the sale location in New Jersey, the [only] acceptable evidence of exemption is a New Jersey [resale certificate for non-New Jersey sellers, accepted by the seller] **Resale Certificate for Non-New Jersey Sellers (Form ST-3NR) or other approved form.**

(c)-(e) (No change.)

(f) The Division shall relieve sellers that follow the requirements of N.J.A.C. 18:24-10.4 from the tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and will hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply to a seller who fraudulently fails to collect tax, a seller who solicits purchasers to participate in the unlawful claim of an exemption, or a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption when:

1. (No change.)

2. New Jersey has indicated on the Streamlined Sales and Use Tax Agreement Certificate of Exemption - New Jersey (**Form ST-SST**), that the claimed exemption is unavailable.

(g) (No change.)

(h) The Division shall relieve a seller of the tax otherwise applicable if the seller obtains a blanket exemption certificate [for] **from** a purchaser with which the seller has a recurring business relationship. Notwithstanding the provisions of (d) above, the Division may not request from the seller a renewal of blanket certificates or **an** update[s] of

exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this subsection, a “recurring business relationship” exists when a period of no more than 12 months elapses between sales transactions.

(i) (No change.)

SUBCHAPTER 11. OBLIGATION TO COLLECT AND PAY SALES TAX OR COMPENSATING USE TAX

18:24-11.1 Seller to collect tax

(a) Every seller of taxable [goods] **tangible personal property**, services, or other items subject to sales tax under N.J.S.A. 54:32B-3 that is required to collect any tax imposed by the Sales and Use Tax Act, [(N.J.S.A. 54:32B-1 et seq.)], is required under the law to collect such tax [commencing July 1, 1966, irrespective] **regardless** of whether or not he or she has received a sales tax [certificate of authority] **Certificate of Authority** issued by the Division of Taxation under [Section 15 of the Act] **N.J.S.A. 54:32B-15.**

(b) Failure to receive a sales tax [certificate of authority] **Certificate of Authority** shall not relieve a seller of taxable [goods] **tangible personal property**, services, or other transactions subject to sales tax under N.J.S.A. 54:32B-3 from the obligation to properly collect, remit, and account for the [said] tax, and to maintain complete records of all transactions in the manner provided by law.

18:24-11.2 Filing of monthly remittance and quarterly returns

(a) All sellers required to collect and remit sales and use tax are required to file a [quarterly return] **Sales and Use Tax Quarterly Return** (Form ST-50) with the Division of Taxation on or before the 20th day of the month following the quarter covered by the return. In calculating the amount of tax to be remitted to the Division of Taxation for the quarterly period, the seller shall be entitled to a credit in the amount of tax remitted as monthly remittances for the months of the quarter covered by the quarterly return.

(b) Effective July 1, 1996 through August 2, 2009, with respect to sales and use tax liabilities incurred on and after July 1, 1996 through August 2, 2009, every seller with liability exceeding \$500.00 for the first or second month of a quarterly filing period shall, on or before the 20th day of the month following each such month, file with the Director a [monthly remittance statement] **Monthly Remittance Statement** (Form ST-51) and pay an amount equal to its liability for the month. Any payment due for the calendar months of March, June, September, or December shall be paid with the quarterly return filed for the quarter in which such month falls.

(c)-(e) (No change.)

18:24-11.3 Filing of use tax returns by registered individuals and entities not operating as sellers

(a) Every individual, corporation, or unincorporated entity which is engaged in the conduct of any trade, business, profession, or occupation within this State, but which does not make sales subject to tax under the Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq., [or purchase tangible personal property for lease,] shall pay compensating use tax, as required by N.J.S.A. 54:32B-6, and file use tax returns according to the following procedures:

1. If the taxpayer’s average annual compensating use tax liability for the previous three calendar years was greater than \$2,000, **the** taxpayer shall be required to complete and file a Sales and Use Tax Quarterly Return ([form] **Form** ST-50) every quarter and pay any use tax due by the 20th of the month following the end of the quarter in which the liability was incurred. Taxpayers filing Sales and Use Tax Quarterly Returns pursuant to this section, whose use tax liability exceeds \$500.00 for the first or second month of a quarter, shall also be subject to monthly filing and payment requirements in accordance with N.J.A.C. 18:24-11.2(b).

2. If the taxpayer’s average annual compensating use tax liability for the previous three calendar years did not exceed \$2,000, then, if the taxpayer incurs a use tax liability during the current calendar year, it shall file the Annual Business Use Tax Return ([form] **Form** ST-18B) and pay the use tax due by May 1 of the calendar year following the year in which

the liability was incurred. It shall not be required to file an Annual Business Use Tax Return for any year in which no use tax liability was incurred.

(b) This Section shall be effective with respect to use tax liabilities incurred on or after January 1, 1995.]

(b) Examples of the filing of use tax returns by individuals and entities not operating as sellers include, but are not limited to:

[Example 1:] **1. Partnership operating a fruit and vegetable stand sells no taxable items and is not required to collect and remit sales tax. The partnership paid its use tax liability of \$26.00 in [2005] 2008, \$210.00 in [2006] 2009, and \$87.00 in [2007] 2010. It made a few purchases subject to use tax in [2008] 2011, and its use tax liability for [2008] 2011 is \$12.00. It must file an Annual Business Use Tax Return for [2008] 2011 by May 1, [2009] 2012.**

[Example 2: Sole] **2. A sole proprietor [providing] that provides dressmaking, tailoring, and clothing alteration services and sells no taxable goods or services [and] is not required to collect and remit sales tax. The sole proprietor had no use tax liability in [2005] 2008 or [2006] 2009 and paid its \$45.00 use tax liability for [2007] 2010. During [2008] 2011, the sole proprietor did not incur any use tax liability. Therefore, no Annual Business Use Tax Return is due for the [2008] 2011 calendar year.**

[Example 3: Corporation providing] **3. A corporation that provides professional medical services and sells no taxable goods or services [and] is not required to collect and remit sales tax. The corporation paid its use tax liability of \$1,500 for [2005] 2008, \$5,100 for [2006] 2009, and \$2,300 for [2007] 2010. During [2008] 2011, it incurred no use tax liability in January, February, March, July, August, or September. It incurred use tax liability of \$200.00 in April, \$10.00 in May, \$65.00 in June, \$1,000 in October, \$600.00 in November and \$100.00 in December. It must file a Sales and Use Tax Quarterly Return (Form ST-50) for each quarter, including those quarters when it incurred no use tax liability. Its second and fourth quarter returns should be accompanied by payments. It must also file [monthly remittance statements] Monthly Remittance Statements (Form ST-51) and pay monthly use tax due for the months of October and November.**

SUBCHAPTER 12. RECEIPTS FROM THE SALE OF FOOD, FOOD INGREDIENTS, AND PREPARED FOOD

18:24-12.2 Definitions

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

“Candy” means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. [“]Candy[”] does not include any preparation containing flour or requiring refrigeration.

“Food and food ingredients” means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. [“]Food and food ingredients[”] does not include alcoholic beverages or tobacco. For purposes of this subchapter, [“]food and food ingredients[”] may sometimes also be referred to as “food and drink.”

“Prepared food” means:

1. (No change.)
2. Two or more food ingredients mixed or combined by the seller for sale as a single item, but not including food that is only cut, repackaged, or pasteurized by the seller; and not including eggs, fish, meat, poultry, and foods containing these raw animal products when they require[d] cooking by the consumer, according to the recommendations of the Food and Drug Administration, in order to prevent food-borne illnesses; or
3. (No change.)

However, [“]prepared food[”] does not include the following, when sold without utensils provided by the seller: food sold in an unheated state by weight or volume as a single item; bakery items, such as: breads,

rolls, biscuits, bagels, pastries, donuts, cakes, pies, muffins, cookies, and tortillas; or food sold by a seller whose primary NAICS classification is manufacturing, except for bakeries.

“Provided by the seller” means whether utensils are considered to be [“]provided by the seller[”] and is determined by application of N.J.A.C. 18:24-12.2A.

“Soft drinks” means non-alcoholic beverages that contain natural or artificial sweeteners. [“]Soft drinks[”] does not include beverages that contain: milk or milk products; soy, rice, almond, or similar milk substitutes; or greater than 50 percent of vegetable or fruit juice by volume.

18:24-12.2A Threshold test for determining whether utensils are provided by seller

(a) (No change.)

(b) The threshold test for determining whether eating utensils have been [“]provided by the seller[”] is as follows:

1. Whether eating utensils are deemed to be [“]provided by the seller[”] depends on whether the seller’s annual sales of certain types of prepared food make up more than 75 percent of its total sales of food and food ingredients (excluding alcoholic beverages). [This] The 75 percent threshold is calculated as follows:

i.-ii. (No change.)

2. Application of the 75 percent threshold test [as] follows[.]:

i. For sellers with a sales percentage of 75 percent or less, utensils are considered to be [“]provided by the seller[”] if the seller’s practice for the item (as represented by the seller) is to physically give or hand the utensil to the purchaser, except that plates, bowls, glasses, or cups necessary for the purchaser to receive the food (for example, fountain beverages, dispensed milk, or salad bar) need only be made available.

ii. For sellers with a sales percentage greater than 75 percent, utensils are considered to be [“]provided by the seller[”] if they are merely made available to purchasers. Thus, utensils at a kiosk or common area are treated as utensils [“]provided by the seller.[”]

(1) For sellers who sell items that contain four or more servings packaged as one item and sold for a single price, an item does not become prepared food based on the seller having utensils available. However, if the seller physically gives or hands a utensil to the purchaser, or plates, bowls, glasses, or cups are necessary for the purchaser to receive the food, then the item is considered prepared food.

18:24-12.3 Receipts subject to sales tax

(a) Sales tax is imposed on the receipts, including any cover, minimum, entertainment, or other charge, or the value of a coupon, from every sale of prepared food of any nature either sold by restaurants, taverns, bars, cafeterias, and other food establishments in this State (except as provided in this subchapter), or sold by caterers.

(b) Examples of establishments engaged in the sale of food and drink [for consumption on or off premises] that are required to collect the tax on sales of prepared food include:

Cafes	Fast food operators	Pizzerias
Cafeterias	Fish stores that also	Restaurants
Carry-out	sell fish cooked to	Sandwich shops
restaurants	order	Snack bars
Caterers	Food sellers in work	[Soda fountains, j]Juice
Coffee bars and tea	places	bars
parlors	Hamburger and hot	Sports/entertainment
Convenience stores	dog stands	arena food sellers
Delicatessens	Ice cream stands	Sushi bars
Diners	Ice cream trucks	Taverns, grills, and
Drive-in restaurants	Lunch bars, counters,	bars
	and rooms	
	Lunch trucks	
	Mall food courts	

Oyster and clam bars

(c) Sales of food and drink through vending machines are subject to sales tax. ([See] see N.J.A.C. 18:24-16 and 17[.]])

18:24-12.4 (Reserved)

18:24-12.5 Receipts exempt from sales tax

(a) The tax imposed on the sale of food and drink shall not apply to the following:

1. (No change.)
2. Food or drink sold in [an] elementary or secondary schools at a restaurant or cafeteria located on the premises of such schools;
3. Food or drink sold to an enrolled [post secondary] **post-secondary** school student under the terms of a contractual agreement whereby the student does not pay cash when served. The sales may be made at a restaurant, tavern, or other establishment on the premises of the school which is a [post secondary] **post-secondary** school or in a fraternity, sorority, or eating club operated in connection therewith;
Example: (No change.)
4. Food or drink sold to an enrolled [post secondary] **post-secondary** school student who is not a participant in a student food plan as described in (a)3 above at a restaurant, tavern, or other establishment on the premises of the school of his or her enrollment or in a fraternity, sorority, or eating club operated in connection therewith. A student purchasing food or drink otherwise subject to the tax can be required to exhibit to the seller/cashier a valid student identification card at the time of purchase in order to document the exemption.
5. Food or drink provided as all or part of a food service project funded by government or by private nonprofit organizations to certain elderly or disabled persons for:
 - i. Meals especially prepared for and delivered to homebound elderly, age 60 or older, and to disabled persons[.]; **and**
 - ii. (No change.)
6. Food and drink furnished by an employer to employees for the employer’s convenience where assigned a money value for purposes of: inclusion in remuneration, which is the basis for computing the employer’s contribution to the unemployment insurance fund; social security; or meeting minimum wage requirements (regarding employees of hotels and restaurants). To qualify for exemption, no cash may change hands as payment for the food and drink and the assigned value of such food and drink cannot be classified as income for Federal or New Jersey income tax purposes.
7. Food or drink included in the total charges made by a rest home, residential health care facility, nursing home, and boarding home licensed by the Department of Health, Department of Human Services, or the Department of Community Affairs to residents for board, shelter, and care.

(b) (No change.)

18:24-12.6 Subsidized employee cafeterias and food service operations

(a) An employer, who by contract or otherwise engages a caterer or food service contractor to provide food and drink or service to employees at the employer’s expense, is the purchaser of food and drink subject to the sales tax.

Example: Employer E provides food and drink to his employees without charge. **Employer E** contracts with [a food service contractor] **Food Service Contractor F** to prepare and serve the food and drink for a fee to be paid by **Employer E**. The fee paid by **Employer E** is subject to tax as a receipt from the sale of food and drink.

(b) Sales of food, drink, or service to employees through a cafeteria on an employer’s premises are subject to the sales tax, except as provided in N.J.A.C. 18:24-14.3(a)6.

Example: (No change.)

(c) (No change.)

(d) If a subsidy based on individual sales of food and drink is paid by an employer in addition to a specified amount paid by the employees, both amounts are taxed as the receipt from the sale of food and drink.

Example: Employer E will pay \$0.50 to a caterer for each sale of food and drink to **Employer E**’s employees. **Employer E**’s employees will pay any amount due which exceeds the \$0.50 paid by **Employer E**. Both

the amount paid by the employee and the \$0.50 paid by **Employer E** are taxable receipts from the sale of food and drink.

(e) (No change.)

SUBCHAPTER 13. GARBAGE REMOVAL SERVICE

18:24-13.2 Garbage removal service defined

(a) “Garbage” means contained, bundled, or piled trash, waste, and rubbish, including, but not limited to, construction debris, discarded recyclables, hazardous waste, general household trash, restaurant food waste, medical and veterinary waste, industrial waste, metal scraps, leaves, lawn clippings, twigs, and brush.

(b) “Removal” includes only the operation of picking up and physically removing contained waste from the premises and does not include activities related to maintaining or servicing property or any processing of the waste product. [“]Removal[”] does not include, for example, sweeping parking lots, plowing snow, cleaning up a construction site, or septic tank cleaning.

(c) Examples of garbage removal service include, but are not limited to:

1.-5. (No change.)

6. A private company picks up contained recyclable paper from an office building; [or] **and**

7. (No change.)

SUBCHAPTER 14. TAXABILITY OF HOSPITAL SALES AND SERVICES

18:24-14.1 Hospital sales may be exempt

N.J.S.A. 54:32B-9(b)(1) permits a hospital, which has qualified as an exempt organization to make sales [which] **that** are not subject to the [sales and use] taxes imposed under the [New Jersey] Sales and Use Tax Act.

18:24-14.2 Taxable hospital sales

(a) The exemption provided in [N.J.A.C. 18:24-14.1] **N.J.S.A. 54:32B-9(b)(1)** is [modified] **limited** by N.J.S.A. 54:32B-9(c), which provides in part that the retail sales of tangible personal property by any shop or store operated by such organization shall be subject to the tax unless the purchaser is an exempt organization.

(b) [In accordance with the foregoing, the following are examples]

Examples of taxable retail sales include, but are not limited to:

1.-2. (No change.)

18:24-14.3 Hospital sales specifically exempt

(a) [The following] **Examples of sales by qualified hospitals that** are not considered retail sales subject to the sales tax[. These may be considered a guide to the legislative intent with respect to exemption] **include, but are not limited to:**

1. Drugs, medicines, and meals furnished to patients and consumed on the premises;

2. Charges for medical oxygen[,] and human blood and its derivatives administered to patients;

3.-7. (No change.)

SUBCHAPTER 15. LAUNDRY AND DRY CLEANING SERVICES

18:24-15.1 Scope of the subchapter

This subchapter is intended to explain the sales and use tax treatment of laundry and dry cleaning services. [Previously exempt pursuant to section 3(b)(2)(iv), laundry and dry cleaning services became taxable, effective October 1, 2006, except as applied to clothing.]

18:24-15.2 Taxability of laundry and dry cleaning services

(a) (No change.)

(b) Examples of taxable laundry and dry cleaning services include, but are not limited to: dry cleaning drapes and curtains, steam cleaning carpets, laundering hotel bed linens and towels, dry cleaning oriental rugs, steam cleaning upholstered furniture, laundering restaurant tablecloths and napkins.]

(b) Examples of taxable laundry and dry cleaning services include, but are not limited to:

1. Dry cleaning drapes and curtains;
2. Steam cleaning carpets;
3. Laundering hotel bed linens and towels;
4. Dry cleaning oriental rugs;
5. Steam cleaning upholstered furniture; and
6. Laundering restaurant tablecloths and napkins.

18:24-15.3 [Laundering,] **Cleaning, laundering, and dry cleaning**[, and cleaning] of clothing [is exempt]

(a) The cleaning, laundering, and dry cleaning of clothing is an exception to the taxability of laundry and dry cleaning services, and receipts for **cleaning**, laundering, and dry cleaning clothing are not taxable.

(b) Examples of nontaxable services of cleaning clothing include, but are not limited to: dry cleaning sweaters, machine washing underwear and sleepwear, hand washing shirts, cleaning leather jackets, laundering work uniforms, cleaning and shining shoes.]

(b) **Examples of nontaxable services performed on clothing include, but are not limited to:**

1. Dry cleaning sweaters;
2. Machine washing underwear and sleepwear;
3. Hand washing shirts;
4. Cleaning leather jackets;
5. Laundering work uniforms; and
6. Cleaning and shining shoes.

18:24-15.5 Receipts for use of self-service washing [and drying] machines **and dryers**

Receipts for the use of [coin-operated] washing machines and dryers in a self-service laundromat or laundry room are not subject to sales tax.

SUBCHAPTER 16. [COIN-OPERATED] VENDING MACHINES; SALES OF TANGIBLE PERSONAL PROPERTY; SALES OF FOOD AND DRINK

18:24-16.2 Registration to operate vending machines

Sellers operating vending machines in the State [of New Jersey] must register with the [New Jersey] Division [of Taxation] to engage [legally] in the business of selling tangible personal property at retail[, including also, food and drink of a kind the receipts from which are subject to the sales tax].

18:24-16.6 Tax on gross receipts

(a) Sellers operating vending machines [which] **that** dispense **tangible** personal property, other than food and drink, must report and pay to the State the tax upon the gross receipts from all sales of such items made through such machines, subject to the exemptions set forth in the Sales and Use Tax Act, such as items sold through vending machines for \$0.25 or less (exempt under N.J.S.A. 54:32B-8.9 [and N.J.A.C. 18:24-17]).

(b) [Effective January 3, 1980 (P.L. 1979, c. 274; N.J.S.A. 54:32B-3(c)(4)), sellers] **Sellers** operating vending machines[, which] **that** dispense food and beverages must report and pay to the State the tax upon vending machine sales as defined in (c) below from all sales of such items made through such machines subject to the exemptions set forth in N.J.A.C. 18:24-16.7(b) and (c).

(c)-(e) (No change.)

18:24-16.7 Tax exemptions

(a) Receipts from sales of food or drink [exempted from the tax by subsection 8.2 of the Sales and Use Tax Act,] **exempt pursuant to N.J.S.A. 54:32B-8.2** are not allowable deductions from gross receipts derived from sales through vending machines.

(b) Receipts from the sale of food and drink [sold] through vending machines in a cafeteria of an elementary or secondary school or to students in an eating facility of an institution of higher education, fraternity, sorority, and eating club operated in connection with an institution of higher education are exempt from tax only when located within such cafeteria or eating facility. Receipts from sale[s] of food and drink through vending machines located in areas not designed by an institution of higher education as an eating facility, other than a cafeteria or eating facility, are subject to tax as provided in N.J.A.C. 18:24-16.6(c). For purposes of [these rules] **this subsection**, vending machines located

in areas including, but not limited to: student lounges, dormitories, gymnasiums, libraries, etc., are not deemed located in an eating facility.

(c) In all instances, the receipts from the sale of milk through vending machines are exempt from tax.

18:24-16.8 Purchase of vending machine contents without tax payment; resale certificate

A seller may purchase tangible personal property, food, or drink for sale through [coin-operated] vending machines without payment of the sales tax provided [he or she issued to his or her] **the seller issues a Resale Certificate (Form ST-3) or other approved form to the supplier** [a Resale Certificate, Form ST-3].

18:24-16.9 Responsibility for tax payment; amount

(a) The owner or operator of vending machines is responsible for the remittance of [the Sales Tax] **sales tax**. [He] **The seller** must pay the tax on the total receipts, subject to statutory exemptions, without any deduction whatsoever for any expense incident to the conduct of the business, such as a commission to the proprietor or the premises in which the equipment is located.

(b) The tax to be remitted to the State [of New Jersey] by the seller is the amount of the actual tax collected from all taxable sales, or seven percent of the taxable sales, whichever amount is greater.

SUBCHAPTER 17. SPECIFIC RULES FOR [VENDORS] **SELLERS** WHO SELL TANGIBLE PERSONAL PROPERTY THROUGH VENDING MACHINES AT 25 CENTS OR LESS

18:24-17.1 [Statutory basis] **Sales of tangible personal property through vending machines at \$.25 or less**

[N.J.S.A. 54:32B-8.9 provides that the following receipts shall be exempt from the sales tax:]

[“Tangible personal property sold through [coin-operated] vending machines at \$0.25 or less **is exempt from tax**, provided the retailer is primarily engaged in making such sales and maintains records satisfactory to the Director.”]

18:24-17.2 Definition of **primarily engaged**

[The phrase “primarily engaged in making such sales” as used in N.J.S.A. 54:32B-8.9, refers to sellers engaged in making sales through coin-operated vending machines, and for this section to be applicable the seller must show that more than half of the total receipts from his or her business are derived from sales through coin-operated vending machines.]

“Primarily engaged” refers to sellers making sales through vending machines, and for this subchapter to be applicable, the seller must show that more than half of the total receipts from his or her business are derived from sales through vending machines.

18:24-17.4 Tax amount payable

The amount of New Jersey sales tax payable is the net taxable receipts multiplied by .07 [to effectuate application of the seven percent tax rate,] or the actual tax collected, whichever is greater.

SUBCHAPTER 18. (RESERVED)

SUBCHAPTER 19. SALES OF TANGIBLE PERSONAL PROPERTY AND SERVICES USED ON FARMS

18:24-19.1 Scope of [rules] **subchapter**

[N.J.A.C. 18:24-19.1 through 19.7 are intended to clarify] **This subchapter clarifies** the application of the Sales and Use Tax Act, [(N.J.S.A. 54:32B-1 et seq.)], to the sale, rental, or [leasing] **lease** of tangible personal property and the sale of production and conservation services used directly and primarily **at a farming enterprise** in the production[, and handling and preservation [for sale] of agricultural or horticultural commodities [at a farming enterprise] **for sale**. [N.J.A.C. 18:24-19.8 is intended to clarify] **This subchapter further clarifies** the application of the Act to sales of containers used in a farming enterprise and sales of commercial motor vehicles registered as farm vehicles.

18:24-19.2 Definitions

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

“Agricultural or horticultural commodities” means tangible personal property produced through the raising of plants or animals useful to people, with certain categories of exceptions noted below:

1. [The following are examples] **Examples** of [“]agricultural [and] or horticultural commodities[”] **include, but are not limited to:**

- i. (No change.)
- ii. Fruits, nuts, and berries;
- iii.-xv. (No change.)

2. [The following are] **Examples of tangible personal property not deemed to be** [“]agricultural [and] or horticultural commodities[”] **include, but are not limited to:**

- i.-iii. (No change.)

“Aquaculture” means the propagation, raising, and harvesting for sale of aquatic organisms, in controlled or selected environments in which the farmer must actively intervene in the rearing process in order to effect, improve, or increase production for the purpose of sale.

“Automobiles” means motor vehicles designed to be used on public roadways and required to be registered as motor vehicles, other than vehicles that qualify for exemption pursuant to N.J.S.A. 54:32B-8.43(a)(1), (2), or (3). (See N.J.A.C. 18:24-7.18[.])

“Conservation services” means services performed in order to conserve soil, water, soil nutrients, or other natural resources useful in the production of agricultural or horticultural commodities.

1. [“]Conservation services[”] are exempt [under the section] only when used directly and primarily in the production[,] **and** handling [or] **and** preservation of agricultural or horticultural commodities for sale.

2. [Following are examples] **Examples** of conservation services **include, but are not limited to:**

- i.-ii. (No change.)

“Dairy farming” means the business of breeding, feeding, and raising of cattle and other milk-producing animals, and the production of feed for them by the owner of such animals, but does not include operations such as the making of butter, cheese, or ice cream.

“Farm animals” means animals that fall within the definition of [“]agricultural commodities[”] and animals that perform work used directly and primarily in production[,] **and** handling and preservation [for sale] of agricultural [and] or horticultural commodities **for sale**.

1. [The following are examples] **Examples** of [“]farm animals[”] as used in this subchapter] **include, but are not limited to:**

- i.-v. (No change.)

2. [The following are not examples] **Examples** of **animals not deemed to be** [“]farm animals[”] as used in this subchapter] **include, but are not limited to:**

- i. Farmer’s pet dogs, hunting dogs, **and** watch dogs;
- ii. (No change.)
- iii. Animals not raised for sale, which are used on the premises where they are maintained for purposes other than farm work[,] (for example, trout in a stream stocked for fishermen, animals in a petting zoo, horses in a riding academy).

“Farmer” means a person who owns, operates, or manages a farming enterprise for gain or profit.

“Farming enterprise” means a business or part of a business which, using land and improvements to the land, is engaged primarily in producing agricultural or horticultural commodities for sale.

1. [The following are examples] **Examples** of [“]farming enterprises[”] **include, but are not limited to:**

- i. A fruit orchard that raises apples, pears, and cherries for sale to the public;
- ii. (No change.)
- iii. A game farm that raises pheasants and other game animals for sale to butchers, supermarkets, and sporting clubs;
- iv. A fish hatchery that raises fish for sale to restaurants, food stores, and fish processors;
- v.-xii. (No change.)

2. [The following are] **Examples of businesses not deemed to be** [“]farming enterprises[”] **include, but are not limited to:**

- i. A horse boarding [enterprise] **business**;
- ii. A horse training [enterprise] **business**;
- iii.-iv. (No change.)
- v. A lake that is stocked with trout[,] for sporting and recreational use;
- vi. Farmers’ markets, produce stores, dairy product stores, **and** florist shops;
- vii. (No change.)
- viii. Rural property on which the owner may grow or raise horses, barnyard animals, flowers, vegetables, and fruits primarily for [his] **the owner’s** own use, rather than for sale.

“Handling and preservation” means the care and maintenance of farm animals and of agricultural [and] or horticultural commodities **for sale** during production [for sale] and up to the point when the commodity reaches a marketable state, and the prevention of spoilage or deterioration of agricultural [and] or horticultural commodities **for sale** during and after production until they reach a marketable state.

“Production services” means services purchased by a farmer that are part of the process of planting, breeding, propagating, feeding, fertilizing, raising, or harvesting agricultural or horticultural commodities on that farmer’s farming enterprise for the purpose of selling those commodities.

1. [The following are examples] **Examples** of [“]production services[”] **include, but are not limited to:**

- i.-v. (No change.)

2. [The following are not examples] **Examples** of **services not deemed to be** [“]production services[”] **include, but are not limited to:**

- i. Cleaning a retail store facility operated by [the] a farmer;
- ii. [Services of repairing] **Repairing** farm production equipment;
- iii.-iv. (No change.)
- v. [Renting a storage space for] **Storing** farm equipment.

18:24-19.3 Scope of exemption

(a) (No change.)

(b) The exemption applies only when the property or service is purchased for use or consumption directly and primarily **at a farming enterprise** in the production [for sale,] **and** handling [for sale or] **and** preservation [for sale] of agricultural or horticultural commodities **for sale**.

(c)-(d) (No change.)

18:24-19.4 Direct use

(a) In order to be exempt under N.J.S.A. 54:32B-8.16[,] a farmer’s purchase of qualified tangible personal property or services must be used directly **at the purchaser’s farming enterprise** in the production[,] **and** handling [or] **and** preservation [for sale] of agricultural or horticultural commodities [on the purchaser’s farming enterprise] **for sale**.

(b) In determining whether a service or an item of tangible personal property is used directly for an exempt purpose, the following factors are to be considered:

- 1. The physical proximity of the item in question to the production[,] **and** handling [or] **and** preservation [for sale] process in which it is used;
- 2. The proximity of the time of use of the property or service to the time of use of other property or services employed before or after it in the production[,] **and** handling [or] **and** preservation of agricultural or horticultural commodities **for sale**; and
- 3. The active causal relationship between the use of the property or service in question and the production[,] **and** handling [or] **and** preservation of an agricultural or horticultural commodity **for sale**.

(c) Tangible personal property and services qualify for the farm use exemption when used primarily in growing agricultural or horticultural commodities **for sale**, or in preserving agricultural commodities **for sale** from the time of harvest until they are in a marketable state, or in maintaining farm animals or handling agricultural [and] or horticultural commodities **for sale** until they reach a marketable state.

1. Tangible personal property used in planting, propagating, growing, feeding, stimulating growth, or raising plant and animal agricultural or horticultural commodities **for sale** is used directly in production [for sale], for example, tilling equipment used in a vegetable farm, seeds used in a forage crop farm, fertilizer used in a sod farm, feed scoops used in a poultry farm, bull semen used in a cattle ranch, **and an** incubator used by

a poultry farm. Repair and replacement parts for exempt farm equipment are also exempt from tax, but repair services are taxable.

2. (No change.)

3. Property used to extract or separate an agricultural or horticultural commodity from farm animals, the soil, water, or plants is used directly in production[,] (for example, milking equipment, egg collecting equipment, cherry picking devices, combines, sheep shearing tools, and ropes used by a tuna aquaculture enterprise).

4. Services of an outside service contractor of extracting agricultural or horticultural commodities from farm animals, soil, water, or plants for the farmer are used directly in production[,] (for example, picking fruit for an orchard, shearing sheep for a sheep farm, aerial spraying of pesticide on an orchard).

5. Tangible personal property or services are used directly in [“]handling and preservation[”] of agricultural or horticultural commodities for sale when used for the following purposes:

i. Maintaining the health of farm animals, handling and maintaining agricultural or horticultural commodities **for sale** during production, and preparing them until they reach a marketable state[,] (for example, equipment used to wash and pack fruit at a fruit orchard, ropes and harnesses used in moving livestock on a ranch, medicines for a sheep farmer’s herding dog, debeakers used on a poultry farm, service of washing eggs on a poultry farm, **and** grooming and shoeing service provided for a horse breeding farm); or

ii. Preventing the spoilage or deterioration of agricultural or horticultural commodities **for sale** until they reach a marketable state[,] (for example, refrigerators to cool and preserve raw milk on a dairy farm, disinfectants to sterilize milking equipment and cans on a dairy farm, cooling equipment to preserve harvested perishable fruits on an orchard, watering equipment to maintain the freshness of balled and burlapped trees on a tree farm until shipment to market, pesticide application service to preserve horticultural products being prepared for sale by a farm).

(d) A farmer’s purchase of building materials used to construct a silo, greenhouse, grain bin, or manure handling facility is exempt from sales tax if the silo, greenhouse, grain bin, or manure handling facility will be used directly and primarily in producing, handling, or maintaining the specific varieties of agricultural or horticultural commodities raised in that farmer’s farming enterprise:

1.-2. (No change.)

(e) Property or services used in producing secondary products, made from agricultural or horticultural commodities, are not deemed to be used [“]directly[”] in the production of an agricultural or horticultural commodity and [therefore] are not eligible for the farm use exemption. ([However, the] **The** manufacturing [equipment] exemption may apply in [some] **certain** circumstances. See N.J.S.A. 54:32B-[8.13a]**8.13.a** and N.J.A.C. 18:24-4.)

1. [For example, property] **Property** or services used in making butter, sausage, jellies, flour, cider, cheese, ice cream, woolen fabric, floral wreaths, herbal sachets, bees wax candles, finished lumber, furniture, and other items which are made from farm products, but which are not in themselves agricultural or horticultural commodities, are not eligible for exemption under the farm use exemption [provision, N.J.S.A. 54:32B-8.16].

2. Property and services used directly and primarily in producing an agricultural or horticultural commodity **for sale** are exempt from tax, even though the farmer may also operate another enterprise, which is not a farming enterprise, in which [he] **the farmer** produces and sells secondary products made from [his] **the farmer’s** farm products:

i. [For example, a] **Example:** A corporation which raises sheep for their wool, which it then uses to make sweaters and blankets for sale, is eligible for the farm use exemption on purchases of tangible personal property used in raising the sheep and shearing the wool[;].

ii. **Example:** A business that raises flowers and herbs in order to produce wreaths, sachets, teas, and jellies for sale is eligible for the farm use exemption on seeds, fertilizers, and farming equipment used in planting, raising, and harvesting the herbs and flowers.

(f) The fact that a particular item of tangible personal property or service may be essential to the conduct of a farmer’s business because its use is required by law or practical necessity does not, by itself, mean that the property or service is used [“]directly[”] in production[,] **and**

handling [or] **and** preservation [for sale] of agricultural or horticultural commodities **for sale**.

1. Example: A vegetable farmer’s purchase of a smoke alarm to install in farm workers’ housing is not exempt under N.J.S.A. 54:32B-8.16 because the item is not used [“]directly[”] in production[,] **and** handling [or] **and** preservation of agricultural or horticultural commodities **for sale**.

2. Example: A sod farmer’s purchase of books, CD-Roms, **information services**, and other employee training materials regarding the safe use of pesticides, although necessary, is not exempt because it is not used [“]directly[”] in production.

(g) Property and services used in personal, administrative, clerical, financial, personnel management, promotional, repair, sales, and other non-farming activities are not used directly in the production[,] **and** handling and preservation of agricultural [and] **or** horticultural commodities **for sale** and[, therefore,] are not eligible for the farm use exemption.

1. [Following are examples] **Examples** of taxable tangible personal property not used [“]directly[”] in production[,] **and** handling [or] **and** preservation of agricultural or horticultural commodities **for sale include, but are not limited to:**

i. Office furniture, equipment, and supplies; books and educational materials; and recordkeeping materials;

ii. [Advertising] **Printed advertising** materials and promotional materials;

iii. Equipment and supplies used in transporting products to market or to customers, or in displaying products for sale, or in operating a store;

iv.-v. (No change.)

vi. Property used for the personal comfort or convenience of the farmer, [his] **farm** employees, service personnel, suppliers, or customers[,] (for example, planking for crosswalks, beds and fans for migrant labor camp[;], **and** telephones).

2. [Following are examples] **Examples** of taxable services not used [“]directly[”] in the production[,] **and** handling and preservation [for sale] of agricultural [and] **or** horticultural commodities **for sale include, but are not limited to:**

i.-iii. (No change.)

iv. Grooming dogs, horses, and other animals kept for the farmer’s personal use or enjoyment;

v. (No change.)

vi. Imprinting the farmer’s stationery with [his] **the farmer’s** business logo;

vii. [Direct mail] **Mail** processing services [of promotional literature] for **printed advertising material** sent to potential New Jersey customers;

viii.-xii. (No change.)

18:24-19.5 Primary use

(a) In order to be exempt under N.J.S.A. 54:32B-8.16, a farmer’s purchase of qualified tangible personal property or services must be used primarily **at the purchaser’s farming enterprise** in the production[,] **and** handling and preservation [for sale] of agricultural or horticultural commodities [on the purchaser’s farming enterprise] **for sale**.

(b) When a service or [piece of] tangible personal property is put to use in more than one way, the [item of] service or property is not exempt [under this section] unless it is used more than 50 percent of the time directly in the production[,] **and** handling and preservation [for sale] of agricultural or horticultural commodities **for sale**.

(c) Examples:

1. A farmer is in the business of raising vegetable plants for sale to garden centers and other retail sellers of plants. [He] **The farmer** buys tilling equipment which [he uses] **is used** to prepare the soil for planting. The equipment is used directly in the production of the horticultural commodities [he raises] **raised** for sale. The farmer also occasionally uses the tiller to prepare a small decorative flower border at the entrance of [his] **the** farm, adjacent to the road. The tiller is used approximately 90 percent of the time in preparing the growing areas for plants raised for sale, and 10 percent in preparing the decorative border.

The tiller qualifies for exemption because it is used directly in **the** production of **horticultural commodities** for sale more than 50 percent of the time.

2. A partnership breeds and raises horses for sale. It also uses a portion of its property as a boarding and training facility for customers' horses. It makes the following purchases: food additives, horse shoeing tools, **and** grooming equipment. The food additives are used approximately 60 percent of the time in feeding the horses used for breeding for sale and 40 percent in feeding the horses being boarded; the horse shoeing tools are used approximately 75 percent of the time on the horses being bred for sale and 25 percent on the horses boarded for customers; the grooming equipment is used approximately 20 percent on the horses bred for sale[,] **and** 80 percent on the horses boarded or trained for customers.

The food additives and horse shoeing tools qualify for exemption because they are used more than 50 percent of the time directly in the production[,] **and** handling and preservation of an agricultural product **for sale**, that is, horses[, for sale]. The grooming equipment does not qualify because it is used directly for exempt purposes only 20 percent of the time; its use in the boarding and training of customers' horses is not a use in the production[,] **and** handling and preservation of horses for sale.

3. A corporation is in the business of operating a botanical garden. It charges the public a fee for admission to its greenhouses to view the plant collections and displays. Part of each greenhouse is used for propagating and growing plants. Most of the plants are grown for display in the portions of the greenhouses open to the public. Approximately 15 percent of the plants are grown for sale in the botanical garden's gift shop or for sale to plant stores. The corporation is purchasing materials to construct an additional greenhouse in the complex, which will be used in the same way as the existing greenhouses.

The materials purchased to construct a greenhouse will not qualify for exemption because they will not be used more than 50 percent of the time in the production[, preservation or] **and** handling **and** preservation of horticultural products for sale.

4. (No change.)

5. A tree nursery and landscaping business grows shade trees which it installs for its customers as part of its landscaping operation. It purchases tree seedlings, watering equipment, and digging equipment. The watering equipment is used during the growing process, and the digging equipment is used approximately 70 percent in the growing operations and 30 percent in the landscaping operations.

The purchase of the watering equipment is eligible for the [farming] **farm** use exemption because it is used directly in production in the nursery's farming operations. The digging equipment also qualifies for exemption because, although it is used part of the time in the landscaping operations, it is used more than 50 percent of the time, that is, primarily, in production of an agricultural commodity **for sale** (trees). The seedlings are not eligible for exemption because they become the property which the business installs in its landscaping operation. When this business installs trees or performs other landscaping jobs on its customers' real property, it is acting as a contractor, rather than as a farmer. Contractors are liable for sales or use tax on the materials they install on their customers' real property.

(d) The eligibility of a particular purchase for exemption under the farm use exemption [provision] (N.J.S.A. 54:32B-8.16) depends upon the nature and extent of its use in the farming enterprise.

1. (No change.)

2. Examples:

i. A vegetable farmer raises vegetables for sale. [He] **The farmer** also raises a goat, a sheep, and several ducks for the enjoyment of [his] **the farmer's** family and guests, but does not sell the animals or their products. [His] **The farmer's** purchases of feed for the animals are not exempt.

ii. A neighboring farmer raises goats, sheep, and ducks for their meat, milk, wool, and eggs for sale. [He] **The farmer** also grows vegetables solely for his family's consumption. [His] **The farmer's** purchases of fertilizer and a hoe for [his] **the** vegetable garden are not eligible for exemption.

iii. Three farms maintain horses on their premises. Farm No. 1 breeds and raises horses for sale. Farm No. 2 raises corn and beans for sale, and also boards a few horses for customers. Farm No. 3 raises horticultural products for sale in a greenhouse and also has a few horses which it [raised] **raises** for the use and enjoyment of the farmer's family. The purchases of feed, equine medicine, and horse grooming supplies by

Farm No. 1 qualify for the farm use exemption. Purchases of the same items by Farm No. 2 and Farm No. 3 are taxable, because the items are not used directly and primarily in the production[,] **and** handling and preservation of horses ([“]agricultural product[“]) for sale by that farm.

iv. [A sod farmer] **Farmer Bob** grows most of his sod for sale to landscaping contractors. However, [he] **Farmer Bob** sometimes acts as a [“]contractor[“] by supplying fully installed sod to his customers. [The farmer] **Farmer Bob** purchased [two pieces of equipment:] a cutting implement used to cut and harvest mature sod for sale[,] and a roller used in planting and installing sod on customers' property. The cutter is eligible for the farm use exemption. The roller is not **eligible for the farm use exemption**[,] because it is used in contracting work, not in the farming operation.

18:24-19.6 Exclusions; exceptions to exclusions

(a) The exemption provided by N.J.S.A. 54:32B-8.16 does not apply to purchases of the following categories of tangible personal property, even if they are used directly and primarily in the production of agricultural [and] **or** horticultural commodities **for sale**:

1.-2. (No change.)

3. Materials used to construct a building or structure, with the exception of the following single-use agricultural facilities: silos, greenhouses, grain bins, **and** manure handling facilities.

(b) The exclusion from exemption for materials used to construct a building or structure does not apply to farming equipment used directly and primarily in the production[,] **and** handling and preservation of agricultural or horticultural commodities **for sale**, even if the equipment must be permanently affixed to an existing building or structure. Purchases of such equipment are deemed to be exempt purchases of farming equipment; they are not deemed to be purchases of materials used to construct a building or structure.

(c) Examples:

1. A vegetable farmer makes the following [three] purchases: a farm tractor used in preparing fields for planting, a commercial truck with manufacturer's gross vehicle weight rating over 18,000 pounds which [he] **the farmer** registers with **the** Motor Vehicle [Services] **Commission** as a farm vehicle, and an all-terrain vehicle which [he] **is** used to transport workers and farming implements to the work site.

The all-terrain vehicle does not qualify for exemption; as an [“]automobile[“] it is excluded from the scope of the exemption. The commercial farm truck is not an [“]automobile.[“] The commercial truck qualifies for exemption under the commercial truck exemption [provision,] N.J.S.A. 54:32B-8.43, regardless of whether it is used [“]directly and primarily[“] in production. The farm tractor, which is not required to be registered as a motor vehicle, is not an [“]automobile.[“] It is farm equipment, which is exempt when used directly and primarily in production.

2. A poultry farmer purchases animal feeders which must be permanently installed onto an existing farm building.

The purchase qualifies for exemption as tangible personal property used directly and primarily in production of agricultural products **for sale**.

3. A farmer, who grows horticultural products **for sale**, in greenhouses purchases building materials which [he] **the farmer** intends to use to construct a permanent addition to [his] **the** greenhouse.

The farmer's purchase qualifies for exemption as tangible personal property used directly and primarily in production. Because the materials will be used to construct a greenhouse, they are not the kind of building materials that are excluded from the scope of the exemption.

4. The same farmer hires a contractor to build a new greenhouse [for him]. The contractor purchases materials to construct the greenhouse for the farmer.

The contractor must pay tax on [his] **the** purchase of materials. The farm use exemption is available only to the farmer and does not pass through to the contractor.

5. A farmer purchases lumber and other materials to build a barn.

The farmer must pay tax on [his] **the** purchase of **these** materials. The exemption does not apply to materials used to construct a building, with certain exceptions; barns are not among the four exceptions enumerated in the statute.

6. A farmer uses electric and gas utility services directly and primarily in some [of his] production activities.

The electric and gas utility services are subject to sales tax. The exemption does not apply to purchases of energy even when used directly and primarily in production.

7. A farmer purchases fuel oil and water utility services for [use in his] business **use** and [his] home **use**.

Oil, water, and other fuels and utilities, except natural gas and electricity, are exempt from sales tax under N.J.S.A. 54:32B-8.7. They need not be used in farming in order to qualify for exemption, and they do not fall within the definition of ["energy"] in N.J.S.A. 54:32B-8.16.

18:24-19.7 Farmer's Exemption Certificate: **Form ST-7**

(a) A farmer claiming exemption from sales tax pursuant to N.J.S.A. 54:32B-8.16 on a purchase of qualified tangible personal property or service[s] must present the seller with a [signed,] fully completed Farmer's Exemption Certificate (**Form ST-7**) or **other approved form** disclosing a proper basis for exemption.

(b) The Division shall relieve a seller of the tax otherwise applicable, if it obtains a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. The Division may not request from the seller renewal of blanket certificates or updates of exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this subsection, a ["recurring business relationship"] exists when a period of no more than 12 months elapses between sales transactions. [See] (see N.J.A.C. 18:24-10.4(g).)

(c)-(d) (No change.)

18:24-19.8 Other exemptions specifically for farmers

(a) Containers, wrapping supplies, and packing supplies are exempt from sales and use tax when purchased by a farmer for any use in that farmer's farming enterprise. N.J.S.A. 54:32B-8.15.

1. The use of the containers in the farming enterprise need not be ["direct"] or ["primary"] in order for the purchase to qualify for exemption.

2. Examples **that qualify for exemption include, but are not limited to:**

i. Crates used to store farming implements on the farm [qualify for the container exemption];

ii. Returnable and nonreturnable pallets used by a sod farmer to ship sod to market [qualify for the container exemption]; and

iii. Burlap used to wrap the root balls of trees [dug] for sale on a tree farm [qualify for the container exemption].

(b) The sale, rental, or lease of a commercial truck, having a manufacturer's gross vehicle weight rating in excess of 18,000 pounds, and registered as a farm vehicle pursuant to N.J.S.A. 39:3-24 or N.J.S.A. 39:3-25 is exempt from sales or use tax pursuant to N.J.S.A. 54:32B-8.43(a)(3). [See] (see N.J.A.C. 18:24-7.18[.])

(c) A [properly executed] **fully completed** Exempt Use Certificate (**Form ST-4**) or **other approved form** shall be used to support a claim for exemption based on (a) or (b) [of this subsection] **above**.

18:24-19.9 Other exemptions not specifically for farming enterprises

(a) (No change.)

(b) [Following are examples] **Examples** of items that [will be] **are** exempt from sales tax even though not used directly and primarily in the production[,] **and** handling [or] **and** preservation [for sale] of agricultural commodities **for sale include, but are not limited to:**

1. Protective equipment, [such as] **for example**, protective masks;

2. Clothing, including work clothing, [such as] **for example**, gloves and boots; and

3. Electronically transmitted software that is used directly and exclusively in the conduct of the farmer's business, even though not used directly and primarily in the production[,] **and** handling[,] **and** preservation [for sale] of agricultural commodities **for sale**.

SUBCHAPTER 20. COMMERCIAL ADVERTISING FILM NEGATIVES, ORIGINAL PRODUCTION VIDEO TAPE, AND SIMILAR MATERIALS

18:24-20.2 Taxability

(a) Where, after the original commercial advertising motion picture negative is finally edited and completed outside of the State of New Jersey, and after one or more duplicate negatives and/or one or more fine grain master positives are made outside the State, the original negative, with or without said dupes or fine grain masters, is or may be brought into New Jersey for various purposes, including the storage thereof, the person bringing the same into the State is subject to the New Jersey compensating use tax on the use of each of such original negatives, duplicate negatives, or fine grain master positives at the time each of them is brought into the State, regardless of the nature or extent of the subsequent use of each of said original negatives, dupe negatives, or fine grain master positives.]

(a) If after the original commercial advertising motion picture negative is finally edited and completed outside of New Jersey, and after one or more duplicate negatives and/or one or more fine grain master positives are made outside this State, and the original negative, with or without duplicates or fine grain masters is brought into New Jersey, the State compensating use tax is due. Use tax is imposed regardless of the nature or extent of the subsequent use, including storage, of the original negatives, duplicate negatives, or fine grain master positives.

(b) (No change.)

(c) Where, after the commercial original production video tape is finally edited and completed outside of the State of New Jersey, and after one or more original [protection] **production** duplicates and/or one or more air master tapes applicable to both high band and low band video tape recording, are made outside the State, the original production video tape with or without said original [protection] **production** duplicates or air master tapes is or may be brought into New Jersey for various purposes including the storage thereof, the person bringing the same into the State is subject to [the New Jersey compensating] use tax on the use of such original production video tapes, original production duplicates, or air master tapes at the time each of them is brought into the State regardless of the nature or extent of the subsequent use of each of said original production tapes, original [protection] **production** duplicates, or air master tapes.

(d) Under the circumstances described in [subsection] (c) [of this Section] **above**, whether original production video tape, original [protection] **production** duplicate, or air master tape, [the State compensating] use tax shall be computed upon the raw stock cost of the tape plus the cost of machine time (processing of video tape) of each original production video tape, original [protection] **production** duplicate, or air master tape brought into the State. The raw stock cost of the tape is the price paid for the quantity of tape brought into the State without the cost of machine time. The cost of machine time is that paid to an outside laboratory. If the machine time is in and by the user's own laboratory and/or affiliated laboratory, the cost of the machine time may be determined from its own records or, in lieu thereof, the cost shall be the compensation for similar cost of machine time by another outside laboratory in the same area at the time rendered. Where the original [protection] **production** duplicate or air master tape is made by an outside laboratory which also furnishes the raw stock tape, the cost with respect to such original [protection] **production** duplicate or air master tape shall be the laboratory's total charge therefor.

SUBCHAPTER 22. SALES MADE BY FLOOR COVERING DEALERS

18:24-22.1 Scope of subchapter

This subchapter is designed to clarify the tax obligations of persons who sell and/or install floor coverings including, but not limited to, carpeting, linoleum, tile, hardwood, marble, **epoxy**, **laminated**, and padding.

18:24-22.2 Floor covering dealer transactions

(a) (No change.)

(b) When an installation service is rendered in conjunction with the sale of floor coverings by a floor covering dealer, the agreement for such service is treated as a transaction separate and distinct from the sale of the floor covering. Sales of floor coverings are, therefore, subject to [the] New Jersey sales and use tax regardless of whether the floor covering dealer also agrees to install the floor covering. The floor covering dealer must collect the sales tax from his or her customer on the sales price of the floor covering.

(c) The sales tax collection obligations of a floor covering dealer/installer, who [as] is both a seller of tangible personal property and a contractor are as follows:

1.-2. (No change.)

18:24-22.3 Installation services

(a) Every person who installs floor covering is a contractor.

1. When a floor covering dealer performs an installation service, he or she is required either to pay sales tax at the time supplies for use in the installation service are purchased or to remit use tax upon the cost of supplies withdrawn from his or her sales inventory for use in the installation service. Supplies include, but are not limited to[, underlayment, nails, staples, plywood strips, adhesive tape and cement.]:

- i. Underlayment;
- ii. Nails;
- iii. Staples;
- iv. Plywood strips;
- v. Adhesive tape; and
- vi. Cement.

2. A contractor who is not also a floor covering dealer is required to pay sales or use tax on the floor coverings he or she purchases for installation, as well as on supplies. [See] (see N.J.A.C. 18:24-5.3[.])

(b) (No change.)

SUBCHAPTER 23. BAD DEBTS

18:24-23.4 Procedure for claiming credit for bad debts

(a) [As] A seller may deduct a bad debt on the sales and use tax return for the period during which the bad debt is written off as uncollectable in the claimant's books and records and is eligible to be deducted for Federal income tax purposes. A claimant who is not required to file Federal income tax returns may deduct a bad debt on the sales and use tax return filed for the period in which the bad debt is written off as uncollectable in the claimant's books and records and would have been eligible for a bad debt deduction for Federal income tax purposes if the claimant had been required to file a Federal income tax return.

(b) (No change.)

(c) When the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within [four-years] **four years** from the due date of the return on which the bad debt could first be claimed.

(d) (No change.)

(e) For the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are **first** applied [first] proportionally to the taxable price of the property or service and the sales tax thereon, and [secondly] **then** to interest, service charges, and any other charges.

SUBCHAPTER 25. SALES OF COMPUTER SOFTWARE AND RELATED SERVICES

18:24-25.1 Scope

This subchapter is intended to clarify the application of the Sales and Use Tax Act, [(N.J.S.A. 54:32B-1 et seq.)], to sales of **computer** software and **computer** software related-services. This subchapter does not address the sale of clerical, data entry, or accounting services, etc., which may be performed with the use of **computer** software.

18:24-25.1A Definitions

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

...
 "Custom software" means **computer** software created, written, and designed for the exclusive use of a specific purchaser and sold to the

purchaser for whom it was designed. The use of development languages or prewritten functions or routines does not necessarily cause **computer** software, designed for a specific purchaser, to become taxable prewritten computer software.

...
 "**First available for transmission**" means the location from which the **computer** software originated.

"Installing" **computer** software means the act of loading an executable file, whether tangible or electronic, containing a prewritten computer software application or program onto a device or equipment. The mere act of electronic delivery does not constitute installation.

"Load-and-leave" is a method of **computer** software delivery whereby a seller or its representative installs **computer** software on a purchaser's computer by using a tangible storage medium, which is then removed and not left in the purchaser's possession.

"Modifying" **computer** software means any action, other than installing or servicing **computer** software, performed to enhance, improve, or customize **computer** software, regardless of whether the computer code is changed.

"Prewritten computer software" means any computer software, including prewritten upgrades and updates and combinations of two or more prewritten **computer** software programs, or prewritten portions thereof, that is not designed and developed to meet the unique requirements of a specific purchaser, and sold to that specific purchaser for the purchaser's exclusive use.

"Servicing" **computer** software means any action to maintain the compatibility of computer software with other **computer** hardware and **computer** software products and performing other corrective services that do not involve changing computer code.

...
 "Software term license" means a transaction in which the purchaser's right to continue to use prewritten **computer** software is dependent on periodic payments.

18:24-25.2 Prewritten computer software taxed as tangible personal property

(a) The retail sale of prewritten computer software, including prewritten **computer** software transmitted electronically, is subject to sales or use tax unless a specific statutory exemption applies under the circumstances of the transaction.

(b) (No change.)

18:24-25.3 Development of custom **computer** software treated as nontaxable service transaction

(a) [Software] **Computer** software created, written, and designed for the exclusive use of a specific purchaser and sold to the purchaser for whom it was created is not prewritten **computer** software.

(b) The purchase of entirely custom-made **computer** software, by the purchaser for whom it was created, is treated as the purchase of a nontaxable **computer** software design service.

18:24-25.4 Treatment of modified **computer** software

(a) The sale of prewritten **computer** software that has been modified to meet the purchaser's special need or combined with other prewritten **computer** software is treated as the sale of prewritten **computer** software.

(b) Separately stated, commercially reasonable fees for the service of modifying prewritten **computer** software for a purchaser are not taxable.

18:24-25.5 Retail sales of electronically delivered prewritten **computer** software; business-use exemption

(a) [Effective October 1, 2006, retail] **Retail** sales of electronically delivered prewritten **computer** software are treated as retail sales of tangible personal property.

(b) Retail sales of electronically delivered prewritten **computer** software are taxable, except as provided in this subsection.

1. Sales of electronically delivered prewritten **computer** software are exempt from sales and use tax if the **computer** software is to be used directly and exclusively in the conduct of the purchaser's business, trade, or occupation.

2. In the following situations, **computer** software is not deemed to be delivered electronically, and [therefore] the business-use exemption does not apply:

- i. [Software] **Computer software** delivered by [“load-and-leave”] method; or
- ii. Purchaser receives the **computer** software in some tangible storage medium in addition to receiving it by electronic delivery.

(c) The sale of music, ringtones, movies, books, and audio and video works delivered through electronic means is not deemed to be the sale of electronically delivered **computer** software.

18:24-25.6 Treatment of **computer** software-related services

(a) Since prewritten computer software is defined as tangible personal property under the Sales and Use Tax Act, servicing, installing, or maintaining **computer** software is subject to tax pursuant to N.J.S.A. 54:32B-3(b)(2), whether the **computer** software is serviced, installed, or maintained at the purchaser’s location or from or at a seller or service provider’s remote location.

Example: Upon purchase of prewritten computer software, and for a separate additional cost, a technician goes to a customer’s business location to download (install) **computer** software to the business’s server. The charge for this installation service is subject to sales tax.

(b) Modifying prewritten computer software for a purchaser is treated as a sale of non-enumerated services and is not subject to sales tax.

Example: A computer technician creates a string of code to “bridge” two **computer** software platforms already in place at the location of the business customer. This requires the entry of computer code programming. The charge for modifying the existing **computer** software is not subject to sales tax.

(c) Customer support services are treated as a sale of a non-enumerated service and are not subject to sales tax.

Example: A **computer** software developer provides customers the opportunity to call a manned hot-line whereby customers who are experiencing issues/problems may receive verbal advice or advice by email about how to resolve their issues/problems. The charge for this service is not subject to sales tax.

(d) Clerical, data entry, or accounting services, etc., which may be performed with the use of **computer** software are not considered to be servicing **computer** software. The charge for these services is not subject to sales tax.

Example: An accountant assists one of his business customers by creating an Excel template spreadsheet that may be used as a basis for day-to-day inventory tracking. The charge for this service is clerical or professional in nature. It is not considered the servicing of **computer** software and is not subject to sales tax.

18:24-25.7 [Software] **Computer software** maintenance contracts

(a) [Software] **Computer software** maintenance contracts are taxed as follows:

1. A **computer** software maintenance contract that only provides upgrades and updates is treated as a sale of prewritten computer software and is subject to tax regardless of whether the **computer** software is delivered on tangible storage media (for example, disk, CD-ROM) or electronically; however, if the upgrades and updates are delivered only electronically and for use directly and exclusively in the conduct of the purchaser’s business, trade, or occupation, the **computer** software maintenance contract is not taxable.

2. A **computer** software maintenance contract that only provides customer support services is treated as a sale of non-enumerated services and is not subject to sales tax.

3. A **computer** software maintenance contract that includes both taxable and nontaxable or exempt products that are not separately itemized on the invoice or similar billing document is a bundled transaction and shall be treated as taxable unless the seller can demonstrate, using a reasonable and verifiable method based on its books and records as of the time of sale, the portion of the contract that is for nontaxable or exempt products. The method selected by the seller shall be binding on the purchaser.

18:24-25.8 Sourcing

(a) Sourcing of receipts from sales of prewritten computer software is governed by the following [principles]:

1. (No change.)

2. If prewritten computer software is not received by the purchaser at a business location of the seller, the retail sale is sourced to the location(s) where receipt by the purchaser occurs. Receipt may occur at multiple locations if the seller delivers the **computer** software to multiple locations. The transaction is sourced to those locations if the seller receives delivery information from the purchaser by the time of the invoice.

3.-4. (No change.)

5. If (a)1, 2, 3, or 4 above [of this rule] do not apply, including circumstances in which the seller is without sufficient information to apply those paragraphs, then the retail sale is sourced to the jurisdiction for the address of the location from which the prewritten computer software was shipped, or, if delivered electronically, was first available for transmission by the seller.

[i. “First available for transmission” means the location from which the software originated.]

(b) Sourcing of receipts from sales of services to prewritten **computer** software is governed by the following [principles]:

1. A retail sale of a computer-related service is sourced where the purchaser makes first use of the service. The purchaser may make first use of a service in more than one location[; and],

2. A retail sale of a post-sale support agreement, sold by the seller of **computer** software at the same time as the sale of the **computer** software itself, is sourced to the same address(es) as the retail sale of the underlying **computer** software.

(c) Sourcing of payments made in connection with a software term license or subscription is governed by the following [principles]:

1. Initial payments are sourced in the same manner as the sale of the **computer** software. (See (a) above[.])

2. If the initial payment is sourced based on the location where receipt by the purchaser (or the purchaser’s donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery known to the seller, then [one of] the following [apply] **applies**:

i. If the seller receives information from the purchaser indicating that the location of the underlying **computer** software has changed, a subsequent payment made in connection with a software term license or renewal of a software subscription is sourced to such new location[; or].

ii. If the seller has not received information from the purchaser indicating a change in the location of the underlying **computer** software, sourcing a subsequent license payment made in connection with a software term license or the renewal of a software subscription to the same location where the initial payment was sourced will not constitute bad faith.

SUBCHAPTER 26. SOLAR ENERGY DEVICES OR SYSTEMS; EXEMPTION FROM SALES AND USE TAXATION

18:24-26.1 Scope of subchapter

This subchapter is intended to clarify the application of the Sales and Use Tax Act, [(N.J.S.A. 54:32B-1[.] et seq.)], to the purchase, rental, lease, or use of solar energy devices or systems designed to provide heating or cooling, or electrical or mechanical power by collecting and transferring solar-generated energy and including mechanical or chemical devices for storage of solar-generated energy.

18:24-26.2 Technical sufficiency standards of solar energy systems; devices for storing solar-generated energy

The technical sufficiency standards of solar energy systems, devices for storing solar-generated energy as established and promulgated [under N.J.A.C. 14:25¹] by the [Department of Environmental Protection and Energy] **Board of Public Utilities** shall be used to determine eligibility for exemption from sales and use tax of such solar energy systems. **In the absence of such standards, the Division will make determinations on a case-by-case basis.**

[¹ See N.J.A.C. 14:25-1.1 et seq.]

18:24-26.4 Procedure for exemption

For purposes of exemption from tax, the purchaser of a solar energy device or system shall issue to the seller an Exempt Use Certificate (Form ST-4) or other approved form. The certificate should indicate on its face that the purchase qualifies for exemption [under the technical sufficiency standards of] as a solar energy system. [(See N.J.A.C. 18:24-26.2.)] The purchaser must insert the address of the property upon which the solar energy device or system will be installed. In those cases where the purchaser is not registered with the Division of Taxation, a New Jersey tax identification number is not required. However, for purposes of verification, either a Federal employer identification number, out-of-State tax identification number for businesses, or a driver’s license number for individuals purchasing for personal use is to be furnished and written clearly on the certificate.

SUBCHAPTER 27. TRANSPORTATION OF PERSONS AND OF TANGIBLE PERSONAL PROPERTY

18:24-27.1 Nontaxability of transportation services; exceptions

(a)-(b) (No change.)

(c) Examples of nontaxable transportation services include, but are not limited to: [transporting household belongings to a new home, bus rides, services provided to retailers to transport their merchandise to customers, free-floating balloon rides, document delivery services, taxi rides, transportation of mourners and of the deceased in connection with funeral services, train rides and ferry service.]

- 1. **Transporting household belongings to a new home;**
- 2. **Bus rides;**
- 3. **Services provided to retailers to transport their merchandise to customers;**
- 4. **Free-floating balloon rides;**
- 5. **Document delivery services;**
- 6. **Taxi rides;**
- 7. **Transportation of mourners and of the deceased in connection with funeral services;**
- 8. **Train rides; and**
- 9. **Ferry service.**

18:24-27.2 Delivery charges

(a) “Delivery charges” means charges by the seller of tangible personal property or services for the preparation and delivery to a location designated by the purchaser of tangible personal property or [the purchaser of] services performed upon tangible personal property. [Delivery] **Examples of delivery** charges include, but are not limited to, [transportation, shipping, postage, handling, crating, and packing.]:

- 1. **Transportation;**
- 2. **Shipping;**
- 3. **Postage;**
- 4. **Handling;**
- 5. **Crating; and**
- 6. **Packing.**

(b) Delivery charges are part of [a “the receipt[”] or [“]sales price[”] for the retail sale of tangible personal property delivered to a New Jersey location or for the retail sale of services performed on tangible personal property delivered to New Jersey.

1.-2. (No change.)

(c) If a shipment includes both exempt and taxable property, the seller should charge the sales tax proportionately according to either the percentage of:

1.-2. (No change.)

Example 1: Customer makes a retail purchase of clothing from a mail order seller and has the items shipped to his home in New Jersey. Invoice is as follows:

Sweater.....	\$30.00
Gloves.....	\$10.00
Hat.....	\$15.00
Merchandise Total.....	\$55.00
Shipping.....	\$4.00

No sales tax will be imposed on this purchase. The purchase of clothing [items] is exempt from tax. Therefore, the shipping charge will be exempt as well.

Example 2: (No change.)

Example 3: Parents make a retail purchase from an online seller and ask to have the merchandise shipped to their son’s college dormitory [address] in New Jersey. Invoice is as follows:

Boots.....	\$50.00
Backpack.....	\$35.00
Clock.....	\$15.00
Merchandise Total.....	\$100.00
Shipping and handling.....	\$6.00
[N.J.] NJ sales tax.....	\$3.71

In this example, the tax on the shipping charge was allocated according to the proportion of the total sale that was taxable. Half of the \$100.00 sale was for taxable items (backpack and clock). Therefore, sales tax was collected on the taxable merchandise and on half of the \$6.00 shipping and handling charge[.] (7% tax on \$50.00 merchandise is \$3.50[.] and 7% tax on \$3.00 shipping and handling charge is \$.21, for a total of \$3.71 sales tax[.]

18:24-27.3 Transportation services provided by limousine operators

(a) [The retail sale of] **Charges for** transportation services provided by a limousine operator and both originating and ending within New Jersey [is] **are** subject to sales tax.

(b)-(c) (No change.)

(d) Receipts for [“]transportation services[”] include the charge for physically transporting a passenger or passengers, as well as any charges that may be itemized for amenities, individualized services, and components of the limousine operator’s overhead, which are billed to the purchaser of the transportation service.

1. Additional amounts charged, beyond the base rate, for services, amenities, and expenses, such as the following, are treated as part of the receipt for the transportation service and, therefore, subject to sales tax payable by the purchaser of the transportation service:

i.-v. (No change.)

vi. Reimbursement of expenses incurred [incident] **incidental** to providing the transportation service, such as tolls and parking charges;

vii. (No change.)

viii. Providing access to in-vehicle television, telephone, [internet] **Internet** service, or videos.

2. (No change.)

3. The following are not deemed to be receipts for transportation services provided by a limousine operator and, therefore, are not subject to sales tax:

i. Cancellation and [“]no-show[”] charges; and

ii. The transportation of tangible personal property, including packages, pets, [and] medical supplies, and human organs when [any of these are] not accompanied by a human passenger.

(e) “Services originating in New Jersey” means services in which the trip begins with pick-up of the passenger or passengers in New Jersey. The location from which the limousine is dispatched, the office location of the limousine operator, and the purchaser’s billing address are all irrelevant to the determination of where the service originates.

Example 1: The passenger is picked up by a limousine in Hackensack, New Jersey, and dropped off at the airport in Newark, **New Jersey**. The limousine operator itemizes extra charges for luggage and for parkway tolls.

The charges are taxable because the service begins and ends in New Jersey. The extra charges for luggage and tolls are treated as part of the transportation service and therefore are taxed as well.

Example 2: The passenger is picked up by limousine in Red Bank, New Jersey, and dropped off at J.F. Kennedy Airport in New York.

The charges are not taxable[,] because the service ends outside New Jersey.

Example 3: (No change.)

Example 4: A passenger contracts with a limousine operator to provide him with round trip service from his home to a meeting in Pennsylvania and back. The passenger is picked up in Cherry Hill, New Jersey[,] in the morning and taken to a location in Philadelphia, Pennsylvania. Then, several hours later, the passenger is taken back home to Cherry Hill, **New Jersey**.

The services provided are not taxable. The morning service is not taxable because it ends outside New Jersey, and the afternoon service is not taxable because it originates outside New Jersey.

Example 5: Three tourists staying in Morristown, New Jersey, plan a group trip to visit Ellis Island and the Statue of Liberty in New York City. They arrange for a limousine operator to take them from Morristown to the Jersey City, New Jersey ferry terminal in the morning and then to pick them up in New York City in the evening and take them back to Morristown. They are charged extra for 20 minutes of waiting time in the morning in Morristown[,] and for an hour of waiting time in New York City.

They are charged for two transportation services provided by a limousine operator. The service from Morristown to Jersey City, including the charge for 20 minutes of waiting time in Morristown, is taxable, because the service both originates and ends in New Jersey. The service from New York City back to Morristown, including the waiting time in New York City, is not taxable, because that service originates outside New Jersey.

Example 6: Pursuant to a reservation made in advance, a passenger is taken by limousine from Matawan, New Jersey to J.F. Kennedy Airport, New York and is then picked up at the same airport and returned to Matawan a week later.

The charges are not taxable because the first service ends outside New Jersey and the second service originates outside New Jersey.

Example 7: A family of five arranges for limousine transportation from their home in Stockton, New Jersey. On the way they arrange to stop briefly to get a package awaiting pick-up in New Hope, Pennsylvania[,] and then they proceed to their destination in Cape May, New Jersey.

The charges are not taxable, because the trip does not take place entirely in New Jersey, since it includes a requested stop in Pennsylvania.

Example 8: A purchaser decides to hire a limousine to take her from her home in Cherry Hill, New Jersey[,] to a hospital in Camden, New Jersey[,] where she will be having surgery.

The charges are taxable because the trip begins and ends in New Jersey.

Example 9: A family in Belle Mead, New Jersey[,] arranges for a limousine service to drive their son to and from his private school in Lawrenceville, New Jersey.

The charges are taxable because the rides begin and end in New Jersey.

SUBCHAPTER 28. RACE HORSES

18:24-28.1 Scope of subchapter

This subchapter is intended to clarify the application of the New Jersey Sales and Use Tax Act, [(N.J.S.A. 54:32B-1[,] et seq.)], to the imposition of sales and compensating use tax on race horses purchased or used within New Jersey.

18:24-28.2 Purchase of race horses

(a)-(b) (No change.)

(c) The residency of the purchaser is not considered for purposes of imposing the tax where delivery is made to the purchaser in this State.

Example 1: (No change.)

Example 2: The facts are the same as in Example 1, except the horse is shipped by the auctioneer [on] by a common carrier to the purchaser's farm in Kentucky. There is no New Jersey sales or use tax due on the transaction. However, [should] if the horse [be] is returned to New Jersey, it may be subject to a compensating use tax.

18:24-28.3 Claiming races

(a) (No change.)

(b) A ["claim"] or purchase of a horse is made when a person acquires a horse as a result of a successful bid placed prior to a claiming race. Title is passed once the race begins.

(c) For purposes of computing the sales tax due, if no previous purchases have been made within the calendar year, the full purchase price is subject to sales tax. If previous purchases have been made in the calendar year, the sales tax is imposed only on the portion of the total purchase price that exceeds the highest of any prior purchase prices paid

for the same horse within the State in the same calendar year. The sales tax is collected at the track at the time the claim is paid.

Example 1: Horse X is entered in a \$10,000 claiming race at Monmouth Park. ABC Farms claims the horse. Horse X has not been previously claimed in the same calendar year. A taxable transaction has taken place and the tax due is \$700.00.

Example 2: Same facts as Example 1, but Horse X had previously been claimed twice in the same calendar year for \$3,000 and \$5,000. A taxable transaction has taken place and the tax due is \$350.00 (\$10,000 - \$5,000 = \$5,000; [7% of] \$5,000 x .07 = \$350.00).

18:24-28.4 Compensating use tax

(a) [The] **A race horse purchased outside of New Jersey is subject to the compensating use tax** [is imposed] on the use of a race horse within this State if the race horse would have been subject to the sales tax [when] if purchased in this State. The compensating use tax will not be imposed on the use of a race horse within this State if the horse was purchased by the user while a nonresident of this State. (See N.J.A.C. 18:24-28.5 regarding the term ["resident".])

(b) (No change.)

18:24-28.5 Resident

(a) For the purpose of this subchapter, the following will apply for determining **who is** a resident.

1. Any individual who maintains a permanent place of abode in this State is a resident. A permanent place of abode is a dwelling place maintained by a person, or by another for him **or her**, whether or not owned by such person, on other than a temporary or transient basis. The dwelling may be a house, apartment, or flat; a room, including a room at a hotel, motel, boarding house, or club; or a residence hall operated by an educational or charitable institution, or a trailer, mobile home, house boat, or any other premises.

2. Any corporation incorporated under the laws of New Jersey and any corporation, association, partnership, or other entity doing business in the State or maintaining a place of business in the State, or operating a hotel, place of amusement, or social or athletic club in this State is a resident.

3. Any person while engaged in any manner in carrying on in this State any employment, trade, business, or profession shall be deemed a resident with respect to the use in this State of tangible personal property or services in such employment, trade, business, or profession.

4. A person is considered to be engaged in carrying on business within New Jersey if he **or she** carries on activity preparatory to racing, maintains a stable, or races horses on tracks within New Jersey.

5. Activities preparatory to racing are those acts of a person which enable him **or her** to pursue a racing operation, such as the possession of a license to race in New Jersey and, in conjunction therewith, the entry of horses in racing; the hiring of grooms, trainers, jockeys, or drivers[,] and registration with a jockey club at various tracks. The possession of a license by a nonresident, which is not accompanied simultaneously by one or more of the other activities described above will not result in a resident status until one or more of the additional [acts] **activities** occur.

18:24-28.7 Trades

(a) (No change.)

(b) Trading of horses outside of New Jersey will cause the parties to the trade to be liable for a compensating use tax if they meet the resident requirements set forth in N.J.A.C. 18:24-28.5 at the time of the trade and subsequently race the horse in New Jersey. Compensating use tax is to be computed on the market value, as provided in N.J.A.C. 18:24-28.4, of the horse accepted in trade.

18:24-28.8 Homebreds

(a) (No change.)

(b) [Upon] **Sales tax is due upon** reacquisition of the horse in New Jersey for racing purposes[, a sales tax is due]. If the horse is reacquired outside of New Jersey and is subsequently raced in New Jersey, the user will be subject to a compensating use tax if [he] **the purchaser** met the resident requirements set forth in N.J.A.C. 18:24-28.5 at the time of reacquisition.

18:24-28.9 Syndication

(a) The syndication of a horse within New Jersey, with the exception of [one] a horse used exclusively for breeding purposes, is considered a sale of [the] a horse and is subject to the sales tax.

(b) (No change.)

SUBCHAPTER 29. DISPOSABLE HOUSEHOLD PAPER PRODUCTS: EXEMPTION FROM SALES AND USE TAX

18:24-29.1 Scope of subchapter

This subchapter is intended to clarify the application of the Sales and Use Tax Act, [(N.J.S.A. 54:32B-1[, et seq.]), to the purchase and use of disposable household paper products.

18:24-29.4 Household paper products

(a) [The] **Receipts from the sale of disposable paper products**[, such as paper towels, paper napkins, toilet tissue, facial tissue, diapers, paper plates and cups, purchased for household use is] **are exempt from sales and use tax.**

[Example: The sale of paper place mats, paper bags, wax paper, paper freezer wrap, paper tablecloths and paper straws is exempt from sales and use tax.]

(b) Examples of household paper products include, but are not limited to:

1. **Baby wipes and personal care wipes;**
2. **Diapers;**
3. **Facial tissue;**
4. **Paper bags;**
5. **Paper freezer wrap;**
6. **Paper place mats;**
7. **Paper plates and cups;**
8. **Paper napkins;**
9. **Paper straws;**
10. **Paper tablecloths;**
11. **Paper towels; and**
12. **Toilet tissue.**

18:24-29.5 Business use

The exemption[s] from sales and use tax provided by this subchapter does not apply to the sale or any use of disposable paper products for industrial, commercial, or other business purposes, or for the use of any person consuming them in a capacity related to such purposes.

SUBCHAPTER 31. URBAN ENTERPRISE ZONES ACT

18:24-31.1 General provisions

(a) [The] **This subchapter explains certain sales and use tax benefits provided pursuant to the New Jersey Urban Enterprise Zones Act (the UEZ Act)**, [Chapter 303, Laws of 1983,] N.J.S.A. 52:27H-60 et seq., [approved August 15, 1983,] **which provides for the establishment of urban enterprise zones ([also known as] 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 and districts are designated by [an] **the Urban Enterprise Zone Authority (the Authority) in the Department of Community Affairs, which is responsible for administering the UEZ Act.** The Authority [may grant] **determines the benefits, such as certain sales tax and other tax benefits, that are available to businesses existing in or formed in designated 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 by a qualified business, and an exemption for sales of building materials and services used in constructing or maintaining buildings or [realty] **real property of a qualified business.**

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

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:

“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.

“Qualified business” means:

1. (No change.)

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

i. [Residents] **Reside** within the zone or district, within another zone, or within the 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] **Were determined** to be low income individuals, pursuant to the Workforce Investment Act of 1998, [P.L. 105-220] (29 U.S.C. [§ 2811] §§ **2801 et seq.**).

[“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.]

“Urban enterprise zone-impacted business district,” “UEZ-impacted [business] district,” or “district” means an economically-distressed business district classified by the Urban Enterprise Zone 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] [(N.J.S.A. 52:27H-80)].

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 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.] **Sales of specified digital products, as defined by N.J.S.A. 54:32B-2(zz) are not eligible for exemption.**

[(b)] 1. [Tangible] **Examples of tangible personal property that qualify for exemption when used or consumed exclusively within the enterprise zone include[s, for example, items such as office], but are not limited to:**

i. **Office supplies and stationery**[, office];

ii. **Office or business equipment**[, office];

iii. **Office and store furnishings**[, trade];

iv. **Trade fixtures**[,]; and [cash]

v. **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.]

2. **Examples of services that qualify for exemption when used or consumed exclusively within the enterprise zone include, but are not limited to:**

i. **Installing, maintaining, or repairing tangible personal property used in business (other than a motor vehicle);**

ii. **Maintaining, servicing, or repairing real property used in business, including janitorial, landscaping, and security guard services; and**

iii. **Information services.**

(c) **3.** [Qualified] **A qualified** business[es] 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] **issue** a [properly] **fully** completed Urban Enterprise Exempt Purchase Certificate, [subject to the provisions of P.L. 2006, c. 34, and P.L. 2007, c. 328] **(Form UZ-5), to the seller, lessor, or supplier.**

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

(e) **(c)** Notwithstanding [the provisions in] (a)-(c) above, **and in accordance with the provisions in N.J.S.A. 52:27H-87.1**, a qualified business may [be exempt] **receive exemption** from sales and use tax on **charges for energy and utility service** [in accordance with the provisions in N.J.S.A. 52:27H-87.1] **purchases**. 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.] **meeting certain eligibility requirements must apply for the exemption by submitting an application to the New Jersey Economic Development Authority (EDA) as set forth in 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 partial **sales tax** exemption does not [extend] **apply to retail** sales of motor vehicles, cigarettes, alcoholic beverages, or energy.

(c) The [provisions of this] partial **sales tax** exemption [do] **does not** apply to retail sales, **rentals, or leases** of manufacturing machinery, [equipment or] apparatus, **or equipment**. 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 **online**, catalog, or mail order sales.

(e) [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] qualify for the partial sales tax exemption. Either** the purchaser must accept delivery at the seller's place of business within an enterprise zone or district, or the seller must deliver the tangible personal property **directly** from [his or her] **the seller's** place of business within an 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] **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.

1. Receipts from mail order, telephone, [telex] **online, 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 place of business in the zone or district**, to a location within this State.

18:24-31.5 No partial sales tax exemption for retail sales of taxable services by a qualifying business

The partial sales tax exemption does not apply to the sale of taxable services.

18:24-31.6 Exemption 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] **real property** of a qualified business[es] within an enterprise zone shall [furnish to their sellers or suppliers] **issue** a [properly] **fully** completed [UZ-4] Contractor's Exempt Purchase Certificate, Urban Enterprise Zone, **(Form UZ-4) to the seller or supplier.**

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

SUBCHAPTER 32. LEASES AND RENTALS OF TANGIBLE PERSONAL PROPERTY

18:24-32.1 Scope of subchapter

[Except where otherwise explicitly provided, the] **The** provisions of this subchapter apply to the sales and use tax treatment of leases [beginning on or after October 1, 2005, the effective date of P.L. 2005, c. 126].

18:24-32.2 Definitions [of "lease or rental"]

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

[(a) A lease] **"Lease"** or "rental" [is] **means** a transfer of possession or control of tangible personal property, for either a fixed or an indeterminate term and for consideration. [(b) A lease] **Lease** or rental does not include any of the following types of transactions:

1.-3. (No change.)

"Long-term lease or rental" means those agreements for a term of more than six months.

[(c) As used in this subchapter, "short-term"] **"Short-term** lease or rental" [agreements] means those **agreements** for a term of six months or less[, and "long-term lease or rental" agreements means those for a term of more than six months].

"Transportation equipment" means **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 these. It does not include passenger cars and most motor vehicles or boats.**

18:24-32.3 Tax base and calculation of tax

(a) The tax base and method of calculating the tax, which depend upon whether the lease or rental agreement is short-term or long-term is as follows:

1. Agreements for a term of six months or less. The tax base for these short-term rentals and leases is either the total [amount] of the periodic payments due under the agreement, that is, the amount of rent due, or the **lessor's** original purchase price of the property; and

2. (No change.)

(b) (No change.)

(c) The treatment of trade-ins is as follows:

1. (No change.)

2. Reduction of the tax base through trade-in credit is available only when the lessee trades in property that is owned and not merely leased.

i. (No change.)

ii. Reduction of the tax base through trade-in is not allowed if the property [traded in] **traded-in** will not be held for sale (including lease or rental) by the lessor.

(d)-(e) (No change.)

(f) The treatment of special charges in motor vehicle leases for terms of more than six months is as follows:

1.-5. (No change.)

6. Fees commonly known as [“]motor vehicle fees,[”] which are imposed by the State, including title and registration fees, are not included in the tax base;

7. (No change.)

8. The allowed value of a trade-in vehicle, which was owned by the customer and is taken by the dealer for resale is [credited against] **not included** in the tax base for purposes of computing the sales tax;

9. [“]Gap coverage[”] sold by and the premium collected by the leasing company is included in the tax base;

10. [“]Gap coverage[”] sold to the buyer directly by a third-party insurer is not included in the tax base; and

11. (No change.)

18:24-32.4 Payments, collection, and remittance of tax

(a) (No change.)

(b) [Lessor’s] **The lessor’s** collection and remittance obligations are as follows:

1. (No change.)

2. The lessor must separately state the sales tax on invoices, billing slips, and similar documents given to the [customer] **lessee**;

3. When the lease agreement is for a term of more than six months, the lessor must remit the full amount of tax due on the lease at the time of filing the monthly or quarterly sales and use tax return for the period when the leased property was delivered to the lessee in New Jersey, regardless of whether the tax is calculated on the **lessor’s** original purchase price of the property or on the total of the periodic payments required under the lease agreement;

4. When the lease is for a term of six months or less, the lessor must charge the [customer] **lessee** sales tax at the time of each periodic payment and must remit the tax at the time of filing the monthly or quarterly sales and use tax returns for the periods when the periodic payments are charged to the [customer] **lessee**; **and**

[5. Since the lessor collects sales tax from the lessee on both short-term and long-term lease and rental agreements beginning on or after October 1, 2005, the Lessor Certification, Form ST-40, should no longer be used; and]

[6.] **5.** (No change in text.)

18:24-32.5 Treatment of leases when property is relocated to or from New Jersey before expiration of the lease

(a) 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 is due on each of the subsequent lease payments attributable to the period of the agreement remaining after the first use in this State. Lessee’s tax liability is reduced by credit for sales tax paid to the state where the lease began, if the tax on the full lease was due and paid to that state at the inception of the lease, with no right [of] **to a** refund of that state’s sales tax under that state’s law.

(b) (No change.)

18:24-32.6 Sourcing

(a) The general rule, for leases or rentals of tangible personal property other than motor vehicles, trailers, or aircraft, or [“]transportation equipment[”] is as follows:

1.-2. (No change.)

(b) Sourcing for leases and rentals of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as [“]transportation equipment[”] is treated as follows[.]:

1.-3. (No change.)

(c) Sourcing for leases and rentals of [“]transportation equipment[”] is treated as follows[.]:

[1. “Transportation equipment” includes 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 these. It does not include passenger cars and most motor vehicles or boats.]

[2.] **1.** (No change in text.)

18:24-32.7 (Reserved)

SUBCHAPTER 33. MASSAGE, BODYWORK, AND SOMATIC SERVICES

18:24-33.1 Scope of the subchapter

This subchapter is intended to clarify the application of the Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq., to receipts from sales of massage, bodywork, and somatic services.

18:24-33.3 Definitions [of “massage, bodywork, and somatic services”]

[(a)] “Massage, bodywork, and somatic services” means systems of activity of structured touch, which include holding, applying pressure, positioning and mobilizing soft tissue of the body by manual technique, and use of visual, kinesthetic, auditory, and palpating skills to assess the body for purposes of applying massage, bodywork, or somatic principles. Such application may, for example, include the use of therapies, such as heliotherapy or hydrotherapy, the use of moist hot and cold external applications, and external application of herbal or topical preparations.

[(b)] For purposes of the Sales and Use Tax Act, [“]massage, bodywork, and somatic services[”] do not include:

1. Services rendered by persons in the following medical and medical-related fields, when they are performing services they are authorized to perform within the scope of their specific professional licenses: medical doctors (M.D.), doctors of osteopathy [(O.D.)] **(D.O.)**, dentists, chiropractors, physical therapists, registered nurses (R.N.), podiatrists (D.P.M.), **or** certified midwives;

2. (No change.)

3. Cosmetic and beauty services, such as manicures, [and] pedicures, cosmetic facials, [and] cosmetic wraps, depilatory services, hair styling, sauna baths, and other services that are designed primarily to enhance appearance or cleanliness.

18:24-33.4 Doctor’s prescription

(a) (No change.)

(b) To qualify for the prescription [exemption] **exclusion** from the imposition of sales tax on massage, bodywork, or somatic services, a doctor’s prescription must satisfy the following requirements:

1.-2. (No change.)

3. It must contain the name of the patient and **the** name and signature of the referring doctor;

4. The referring doctor must be [one of the following] **a licensed professional. Examples of licensed professionals include, but are not limited to:** [medical doctor (M.D.), osteopath (O.D.), chiropractor, podiatrist (D.P.M.), psychologist with a doctorate in psychology, or dentist; and]

i. Medical doctor (M.D.);

ii. Doctor of osteopathy (D.O.);

iii. Chiropractor;

iv. Podiatrist (D.P.M.);

v. Psychologist with a doctorate in psychology; or

vi. Dentist; and

5. (No change.)

18:24-33.5 Type of facility does not affect taxability

The taxability of the services does not depend upon the type of facility where the services are performed. Massage, bodywork, and somatic services are taxable regardless of whether they are performed in a massage-only facility, a clinic, a spa, an athletic facility, or other location in New Jersey, unless they are performed pursuant to a doctor’s prescription.

18:24-33.6 Contracted services and employee services

(a) Massage, bodywork, and somatic therapists, masseurs, and other service providers who are employed to perform these services do not collect sales tax **from their employers** on their **wages or salaries**.

(b) (No change.)

(c) A business, such as a medical office, spa, health club, massage facility, or clinic that offers massage, bodywork, or somatic services provided by its employees or contract workers, and that bills clients for such services provided, is the [“]seller[”] of the services and must collect

and remit the sales tax on the receipts for taxable massage, bodywork, and somatic services.

SUBCHAPTER 34. INVESTIGATION AND SECURITY SERVICES

18:24-34.1 Scope of the subchapter

The provisions of this subchapter implement N.J.S.A. 54:32B-3(b)(11) [of the Sales and Use Tax Act,] and clarify the scope of the imposition of sales tax on investigation and security services, as authorized by N.J.S.A. 54:32B-24.

18:24-34.3 Investigation and detective services

(a)-(b) (No change.)

(c) Examples of services taxed as investigation and detective services include, but are not limited to:

1.-3. (No change.)

4. Online or [“real-life”] **in-person** research services to track down unclaimed assets; and

5. Online or [“real-life”] **in-person** research services to track down birth parents, kidnap victims, debtors, lost pets, missing persons, or others.

(d) The following are not deemed to be investigative or detective services and are not taxable:

1.-3. (No change.)

4. Insurance claim adjustment services, for example, evaluation of liability or damages, settlement negotiations, trial preparation, or settlement of claim.

(e) The amount of the receipt subject to sales tax includes the fee charged for the investigation and security service, as well as any expenses and overhead costs incurred by the seller, which are passed on to the purchaser of the service, regardless of whether they are separately itemized. For examples, charges for transportation, employees, telephone, [and] Internet, and other expenses incurred by the seller and billed to the purchaser of **the** service are subject to tax as part of the receipt for the taxable investigation and security service.

(f) Investigation and detective services are sourced for sales tax purposes to the jurisdiction where the purchaser of the service makes first use of the service. “First use” is deemed to be the location where the investigative report is delivered, or, if the report is delivered electronically, to the purchaser’s billing address.

(g) The service provider may claim a resale exemption from sales tax when purchasing property and services that are actually transferred to the purchaser of the services, such as photographs, [video cassettes] **DVDs** for surveillance records, printing and copy charges related to the investigative report, and when purchasing investigative and detective services subcontracted to another service provider.

18:24-34.4 Security guard and patrol services

(a) Security guard and patrol services include, [for example, bodyguard, personal protection, guard dog, guard, patrol, and security services.] **but are not limited to:**

1. **Bodyguard;**
2. **Personal protection;**
3. **Guard dog;**
4. **Guard;**
5. **Patrol; and**
6. **Security services.**

(b) Security guard and patrol services are sourced to the jurisdiction where the purchaser of the service makes first use of the service. Security guard and patrol services provided for a specific location[,] are sourced based on the location of the property being guarded. Thus, security guard and patrol services performed at a location in New Jersey are subject to tax.

18:24-34.5 Armored car services

(a)-(b) (No change.)

(c) Separately stated, commercially reasonable charges for cash management services are not taxable.

1. Examples of cash management services include:

i.-iii. (No change.)

iv. Deposit processing. Counting, verifying, and consolidating (wrapping, banding, and rolling) customer deposits; and

v. Envelope processing. Verifying commercial drop envelope deposits, counting currency, coin, and checks, and consolidating (wrapping, banding, and rolling currency and coin) for deposit.

(d) Charges for armored car services are sourced as follows[.]: If the armored car service is performed entirely within New Jersey, it is subject to sales tax. If the service is not performed entirely within this State, then the service is sourced to the jurisdiction in which the purchaser of the service is located. Thus, if the location of the purchaser of the service is in New Jersey, regardless of whether goods are picked up or delivered to that location, the service is subject to sales tax.

18:24-34.6 Security systems services

(a)-(b) (No change.)

(c) Alarm monitoring services [have been] **are** taxable pursuant to N.J.S.A. 54:32B-[(b)(11) and (3)(f)]**3(b)(11) and (f)**.

SUBCHAPTER 35. INFORMATION SERVICES

18:24-35.1 Scope of the subchapter

This subchapter is intended to clarify the scope of N.J.S.A. 54:32B-3(b)(12) [of the Sales and Use Tax Act], which imposes tax on [“information services.”]

18:24-35.2 Taxability of information services

(a) (No change.)

(b) “Information services” means [as defined in N.J.S.A. 54:32B-2(yy)] **the furnishing of information of any kind, which has been collected, compiled, or analyzed by the seller, and provided through any means or method, other than personal or individual information which is not incorporated into reports furnished to other people.**

18:24-35.3 Information services distinguished from information-related services

(a) Information services do not include professional and personal services, such as the services of lawyers, physicians, accountants, engineers, or architects, in which the service provider may collect and review information in preparation for doing the work that is the true object of the service, such as **the** preparation of legal briefs, medical treatment plans, tax returns, blueprints, **and** architectural designs. These services continue to be nontaxable[,] because they are not deemed to fall within any of the categories of services enumerated as taxable in N.J.S.A. 54:32B-3.

(b) A business, which sells access to any type of information, other than personal or individual information, through any means (for example, an electronic database or subscription to a hard copy report) is selling an information service, because what the customer seeks in that transaction is the information itself. For example, sales of access to stock quotes, legal research resources, local property tax values, and marketing trends, through electronic databases or through subscriptions to hard copy reports, are sales of information services.

18:24-35.4 Examples of taxable information services

(a) The following are examples of information services subject to tax under N.J.S.A. 54:32B-3(b)(12):

Example 1: (No change.)

Example 2: A business sells credit reports both to individuals seeking their own report[,] and to businesses that will use the information for reviewing credit history.

This service is an information service and is subject to tax. The information is furnished in reports sold to persons other than the individual whose personal information is contained in the report.

Example 3: A business collects and compiles information from different sources regarding new construction projects. It provides the information to purchasers of its services in abstracts or reports. The abstracted information may be accessed from the business’s website[,] or the purchaser can obtain the information via email or by facsimile.

This service is an information service and is subject to tax. The information is not personal or individual.

Example 4: A business maintains a computer database of statistical information, which is sold to purchasers. A purchaser pays a fee for a period of time during which the purchaser can access the information

online[,] with the option either to view it or to download and/or print it. No disk or other information is sent to the customer.

This service is an information service and is subject to tax. The information is not personal or individual.

Examples 5- 6 (No change.)

Example 7: A web-based business gathers statistics concerning the characteristics and activities of [internet] **Internet** users and publishes these statistics on its website. This information is available to anyone subscribing to the service.

This service is an information service and is subject to tax. The information is not personal or individual.

Example 8 (No change.)

18:24-35.5 Examples of services that are not treated as information services

(a) The following are examples of services that are not treated as [“]information services[”] under N.J.S.A. 54:32B-3(b)(2)(12) [of the Sales and Use Tax Act] because they consist of furnishing “personal” or “individual” information specific to the particular purchaser and not furnished to others:

Example 1: A service provider assembles data provided by both its purchaser and its purchaser’s suppliers. The data pertains to the purchaser’s transactions buying and selling telecommunication services. The data is then put into a common format and entered into a database managed by the service provider. The data used to provide the service is not made available to any other potential purchaser. The database and certain software is accessible online[,] only to the specific purchaser. The service provider’s software allows the purchaser to view the data and manipulate and analyze the data in many different ways to help them reduce costs and maximize revenue.

The information in the database is personal or individual to the purchaser[,] and not furnished to others by the service provider, and [therefore] is not an information service[, as defined in the Act].

Example 2: A business is involved in producing custom market research reports to assist its purchasers in making marketing decisions. The business develops a questionnaire specific to the needs of each individual purchaser, interviews random respondents, tabulates and analyzes the data, and communicates the findings to the purchaser in a report. The business is prohibited from disclosing any part of the project to anyone else.

The information is personal or individual to each customer, it is not provided to others, and thus the service is not an information service.

Example 3: A web-based business allows purchasers to obtain up-to-date information about their own websites, such as viewers’ online behavior. The information is collected by the business by embedding code into the purchaser’s website design, which causes the information to be sent to the business’s server. Purchasers can request reports based on their needs, such as the amount of time their customers spend viewing, length of time on the website, etc.

The information is personal or individual in nature, and thus, the service is not an information service.

Example 4 (No change.)

(b) The following are examples of services that are based on information, but are not taxed as information services under N.J.S.A. 54:32B-3(b)(2)(12):

Examples 1-3 (No change.)

Example 4: A business sells [“]contract programming[“] services, which consist of the design, development, and implementation of computer programs based on the purchaser’s particular computer system.

The consulting service is not an information service and is not subject to tax.

Example 5: An attorney consults with a purchaser of his professional services, gathers information, and draws up a legal document, such as a will, a contract, a power of attorney, etc.

The service is not an information service and is not subject to tax.

Example 6: A business performs environmental testing services and issues a report on factors, such as the condition of the property, levels of a particular substance, or habitability.

The testing service is not an information service and is not subject to tax.

Examples 7-9 (No change.)

Example 10: A title insurance company performs a title search on real property, examines the information, and determines whether to issue a title insurance policy to the purchaser.

The issuance of a title policy, which includes the pass-through of costs associated with obtaining and examining the information[,] is not an information service and is not subject to tax.

Example 11 (No change.)

Example 12: A company, professional organization, or trade school offers educational seminars, classes, or courses attended by individuals seeking continuing education credits, required pre-licensing education, or to advance their expertise in a particular profession. Written and published educational material may or may not be distributed to participants attending these educational programs.

The educational seminar, class, or course is not an information service and is not subject to tax.

(c) Fees paid to New Jersey or Federal governmental agencies to obtain documents, records, or other information, which the agency is required to maintain as part of its regulatory or administrative function are not subject to tax. Examples include, **but are not limited to:**

1.-2. (No change.)

3. Fees paid to the [State] **New Jersey** Division of Taxation to obtain a copy of a tax return previously filed.

SUBCHAPTER 36. SALES PRICE

18:24-36.1 Scope of the subchapter

This subchapter clarifies the application of the [“]sales price[”] definition in N.J.S.A. 54:32B-2(oo) and [at] N.J.A.C. 18:24-1.2.

18:24-36.2 Application of [“]sales price[”]

(a) [The taxable receipt or sales] **Sales price** includes all taxes imposed on the seller.

1. Excise taxes, which are imposed on manufacturers, importers, producers, distributors, or other sellers are included in the [receipt on which sales or use tax is computed] **sales price**, even though the excise tax may be separately stated to the purchaser. [Thus] **For example**, the Federal manufacturer excise tax[es] imposed on the sale or lease of certain automobiles (gas guzzlers) are included in the [taxable receipt] **sales price**, as are the excise taxes **imposed** on tires, sporting goods, and firearms.

2. Excise taxes, which are imposed on the purchaser are excluded from the [taxable receipt; for] **sales price**. **For example**, the Federal retail excise tax[es] **imposed** on heavy trucks and trailers sold at retail[, and the Federal luxury tax on certain retail purchases] **are excluded from the sales price**.

(b) Expenses billed to a purchaser but incurred by a seller in making a sale of taxable [goods] **tangible personal property** or services, regardless of whether the expenses are taxable or nontaxable, and regardless of whether the expenses are separately billed to a purchaser, are not deductible from the [receipt] **sales price** on which sales tax is computed.

Example 1: An equipment repairman charges \$20.00 per hour plus certain expenses [when on] **for** a service call. The purchaser is billed as follows:

Repair time-2 hours @ \$20.00	\$40.00
Travel time	10.00
Parts	20.00
Meals	5.00
Sales price	\$75.00

The [receipt] **sales price** subject to 7 % tax is \$75.00.

Example 2: A photographer contracts with a purchaser to sell photographs at \$50.00 each, in addition to the reimbursement of certain expenses. The purchaser is billed as follows:

Photographs - [(12)] @ \$50.00	\$100.00
Model fees	60.00
Meals	10.00
Travel	25.00
Props (Flowers)	5.00
Sales price	\$200.00

The [receipt] **sales price** subject to 7% tax is \$200.00.

(c) Term discounts, which are given by a seller for the purpose of encouraging prompt payment on an account, **also** known as [“]early payment discounts, [”] are deductible from [receipts] **the sales price**.

Example: A seller gives a purchaser a two percent discount for paying the price of a \$100.00 camera within 10 days. If the purchaser pays within 10 days, the sales tax is to be computed on the taxable [receipt] **sales price** of \$98.00.

Merchandise price	\$100.00
Less 2% early payment discount	2.00
Sales price	\$98.00
Sales tax at 7%	6.86
Amount due	\$104.86

(d) Discounts that represent a reduction in price, such as a trade discount, volume discount, or cash and carry discount, are deductible in computing the taxable [receipt] **sales price**.

Example 1: A seller gives a purchaser a 30 percent discount for purchasing 1,000 light bulbs. The discounted price charged is the taxable [receipt] **sales price**. The purchaser is billed as follows:

1,000 bulbs @\$0.50	\$500.00
Less 30% volume discount	150.00
Sales price	350.00
Sales tax at 7%	24.50
Amount due	\$374.50

Example 2: A seller gives a purchaser a 10 percent cash and carry discount. The discounted price [will be] is the [taxable receipt] **sales price**. The purchaser is billed as follows:

Merchandise	\$50.00
Less 10% [carry] cash and carry discount	5.00
Sales price	45.00
Sales tax at 7%	3.15
Amount due	\$48.15

(e) When a seller issues a coupon entitling a purchaser to receive a discount upon presentation, and the seller receives no reimbursement from [any person] **a manufacturer, distributor, or any other third-party**, the sales tax is due from the purchaser [only] **based** on the discounted price[, which is the actual receipt].

Example 1: A store issues a coupon entitling the holder to purchase a product for \$0.20 less than the regular selling price. The purchaser is billed as follows:

Regular price	\$1.00
[Store] Less store coupon	.20
Sales price	.80
Sales tax at 7%	.06
Amount due	\$.86

Example 2: A store issues a coupon entitling the purchaser to receive two items for the price of one. The purchaser is billed as follows:

Regular price - [for one item] 2 @ \$1.00	[\$1.00] \$2.00
[Store] Less store coupon for free item	1.00
Sales price	1.00
Sales tax at 7%	.07
Amount due	\$1.07

(f) When a seller issues a coupon entitling a purchaser to pay a reduced price on an item purchased, and the seller is reimbursed by a manufacturer, distributor, or any other third party, the tax is due on the full price of the item. The [receipt] **sales price** is composed of the amount paid plus the amount of the coupon’s stated value.

Example: A store issues a coupon labeled “mfr” entitling the holder to purchase an item for \$1.00 less than the stated purchase price. The seller [would] **bills the purchaser** as follows:

Regular price	\$10.00
Sales tax at 7%	.70
Sales price	10.70
Manufacturer coupon	1.00
Amount due from purchaser	\$9.70

(g) If a manufacturer issues a coupon entitling a purchaser to pay a reduced price on an item purchased, the tax is due on the full price of the item. The [receipt] **sales price** is composed of the amount paid and the amount of the coupon’s stated value. The coupon value reflects the payment or reimbursement by another party to the seller.

Example: A manufacturer issues a coupon entitling the purchaser to purchase an item from a seller for \$0.20 less than the purchase price. The seller bills **the purchaser** as follows:

Regular price	\$1.00
Sales tax at 7%	.07
Sales price	1.07
Less manufacturer coupon	.20
Amount due from purchaser	\$.87

(h) When a manufacturer or a seller issues a coupon involving a reimbursement but does not disclose that fact to the purchaser on the coupon or in an accompanying advertisement, the seller [will] collect [from the purchaser] only the tax due on the reduced price **from the purchaser**, but [will be] is required to pay the tax applicable to the entire [receipt] **sales price**, that is, the amount of the price paid and the reimbursement received from the manufacturer. The abbreviation “mfr” appearing on the coupon shall constitute adequate notice that it is reimbursable by a third party.

(i) Any allowance or credit for property of the same kind accepted in part payment by a seller on the purchase of tangible personal property and intended for resale by such seller [shall be] is excluded when [arriving at] **calculating** the [receipt] **sales price** subject to tax. Only the net sales price of tangible personal property is subject to tax.

Example 1: An automobile dealer allows a purchaser a \$2,000 trade-in for a used automobile, accepted in part payment against the purchase price of \$20,000 for a new automobile. The dealer will hold the used automobile for resale. The purchaser is billed as follows:

New automobile	\$20,000
Trade-in	2,000
Sales price	\$18,000
Sales tax at 7%	1,260
Amount due	\$19,260

Example 2: A motor vehicle dealer allows a customer \$500.00 for a used boat, accepted in part payment against the purchase price of \$20,000 for a new automobile. A boat is not property of the same kind as an automobile. The customer is billed as follows:

New automobile	\$20,000
Sales tax at 7%	1,400
Sales price	21,400
[Trade-in] Less trade-in	500.00
Amount due	\$20,900

(j) Any charge made by a seller of tangible personal property subject to tax for the shipping or delivery of [such] property is included in the [receipt] **sales price** subject to tax, unless the property is not taxable or the sale is entitled to exemption from tax (see N.J.A.C. 18:24-27).

(k) Any charge for credit imposed by a seller and paid by a purchaser in addition to the purchase price, under a designation, such as interest, finance, or carrying charge, is not deemed to be part of the sales price of tangible personal property or charge for services rendered, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser. Such charges constitute consideration for the extension of credit and [shall] **are** not [be] included in the [receipt] **sales price** subject to sales tax.

Example: A seller sells furniture for \$1,000 and charges one and a half percent interest per month on the outstanding balance. [Only t]The \$1,000 selling price is [a receipt] subject to tax.

(l) Charges imposed by a credit card company that are deducted from a participating seller’s account are charges for financial services rendered [Such charges], **which** have no bearing on the computation of [receipts subject to] tax.

Example: A seller sells furniture for \$1,000. The purchaser uses a bank credit card. The bank, when remitting to the seller, deducts a five percent service charge (\$50.00). The seller is required to charge and remit tax on \$1,000.

(m) The amount of the sales price of items of property paid in, or eligible for payment with, food stamps issued in accordance with the Federal Food Stamp Act of 1977, 7 U.S.C. [§] §§ 2011 et seq., is excluded from **the taxable [receipts] sales price**. In the case of food stamp eligible purchases, otherwise taxable items [will be] **are** exempt from sales tax when food stamps are presented in full payment or when cash is submitted with food stamps used as a partial payment. Food and

food ingredients exempt from sales tax under N.J.S.A. 54:32B-8.2 remain exempt whether or not purchased with food stamps.

Example: If a purchaser presents \$10.00 in food stamps and \$32.00 in cash as payment for \$42.00 worth of food stamp eligible items, the entire \$42.00 is exempt from tax. [Under these facts, the exemption applies] **This is the case** even if the [\$42.00 worth of food stampable] items consist[ed] of food stamp eligible, but [sales] taxable, food and food ingredients, such as candy. The purchase of taxable items, which are not food [stampable remains] **stamp eligible, are** subject to sales tax.

(n) A manufacturer's rebate, whether or not paid directly to the purchaser, is not deductible from the [receipt on which sales tax is computed] **sales price**.

Example: An automobile dealer [agrees to] sells an automobile to a purchaser for \$20,000. As a sales incentive, the manufacturer agrees to give a rebate of \$500.00 to a purchaser who purchases an automobile during the month of December. The purchaser elects to have the rebate paid to the dealer. The purchaser is billed as follows:

Sales price	\$20,000
Sales tax at 7%	1,400
Amount due	21,400
[Manufacturer's] Less manufacturer's rebate	[-]500.00
Net cost to purchaser	\$20,900

(o) For examples of how delivery charges affect the [taxable receipt] **sales price**, see N.J.A.C. 18:24-27.2(d).

SUBCHAPTER 37. MEDICAL

18:24-37.1 Scope of subchapter

This subchapter [provides guidance as to the scope of N.J.S.A. 54:32B-8.1] **clarifies the application** of the Sales and Use Tax Act, **N.J.S.A. 54:32B-8.1**, [which provides an exemption for] **to the sale of** drugs and certain medical equipment for human use.

18:24-37.2 Definitions

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

...

"Grooming and hygiene product" means a soap or cleaning solution, shampoo, toothpaste, mouthwash, anti-perspirant, or [sun tan] **suntan** lotion or [screen] **sunscreen**, regardless of whether the item meets the definition of ["over-the-counter drug.["

"Home use" means that the equipment is sold to an individual for use where the individual resides. This may include residential facilities, such as a nursing home, **an** assisted care center, or **a** school dormitory.

...

"Over-the-counter-drug" means a drug that contains a label that identifies the product as a drug, as required by 21 CFR 201.66. The label must include:

1. A ["Drug Facts["] panel; or
2. A statement of the ["active ingredient["] or ["active ingredients["] with a list of those ingredients contained in the compound, substance, or preparation. ["Over-the-counter drug["] does not include a grooming and hygiene product.

...

"Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for same, worn on or in the body in order to:

- 1.-3. (No change.)
- "**Transferred to the purchaser**" means that the patient must **actually leave the hospital, medical, office, etc. with the property.**

18:24-37.3 Drugs and over-the-counter-drugs

(a) Sales of drugs sold pursuant to a doctor's prescription for human use and over-the-counter-drugs when sold for human use are exempt from sales and use tax. In order to determine if an over-the-counter product is an exempt over-the-counter-drug, the label must be examined to verify that it includes a ["Drug Facts["] panel or a list of ["active ingredients.["]

- (b) (No change.)
- (c) Examples of drugs and over-the-counter-drugs, [the sales of] which are exempt from sales and use tax, include, but are not limited to:

- 1.-7. (No change.)
8. Birth control (pills, patches, IUD, **etc.**);
- 9.-16. (No change.)
17. Drug solutions (ad mixture, irrigation, IV, **etc.**);
18. (No change.)
19. Gases (medical grade nitrous oxide, helium, air, carbon dioxide, oxygen, **etc.**);
- 20.-32. (No change.)

18:24-37.4 Grooming and hygiene products

- (a) (No change.)
- (b) If the product meets the definition of a ["drug["] and is sold pursuant to a doctor's prescription, it is exempt from tax [under N.J.S.A. 54:32B-8.1.] as a drug.
- (c)-(d) (No change.)

18:24-37.5 Durable medical equipment

- (a) Sales of durable medical equipment [for home use] when sold for human use are exempt from sales and use tax.
- (b) Repair and replacement parts for qualifying durable medical equipment [for home use] are exempt. Disposable or single use items used in conjunction with **qualifying** durable medical equipment are not exempt as repair or replacement parts.
- (c) Charges for servicing, repairing, or maintaining [qualified] qualifying durable medical equipment [for home use] are not subject to tax. See N.J.S.A. 54:32B-3(b)(2)(ii).
- (d) An exemption certificate is not required to purchase **qualifying** durable medical equipment [for home use].
- (e) Examples of durable medical equipment, **which are exempt from sales and use tax** include, but are not limited to:

1. (No change.)
2. Aqua K pumps and therapeutic heating or cooling pads, compresses, [or] **and** packs;
3. (No change.)
4. Bed pans, commodes, urinals, **and** collection bags;
- 5.-10. (No change.)
11. Enteral – feeding bags, feeding connectors, feeding tubing, **and** pumps - not worn on the body;
- 12.-20. (No change.)
21. Monitors **for medical use**;
- 22.-37. (No change.)

- (f) [Items] **Examples of items** commonly used by people without a medical condition, **which** are not exempt as durable medical equipment[. Examples] include, but are not limited to:
- 1.-11. (No change.)

18:24-37.6 Mobility enhancing equipment

- (a) Sales of mobility enhancing equipment when sold **by prescription** for human use [and pursuant to a doctor's prescription] are exempt from sales and use tax.
- (b) Charges for **mobility enhancing** equipment and labor to modify a vehicle post-production to make it handicapped accessible are exempt from tax.
- (c) (No change.)
- (d) Charges for servicing, repairing, or maintaining [qualified] **qualifying** mobility enhancing equipment are not subject to tax. See N.J.S.A. 54:32B-3(b)(2)(ii).
- (e) Examples of mobility enhancing equipment include, but are not limited to:

1. (No change.)
2. Bath aids (raised toilet seat, tub, [and] shower stool, **etc.**);
- 3.-12. (No change.)
13. Trapeze bars[,] **and** bed pull-up T;
- 14.-15. (No change.)
16. Wheelchairs (including batteries, cushions, [and] safety belts, **etc.**); **and**
17. (No change.)
- (f) (No change.)

18:24-37.7 Prosthetic devices

- (a)-(b) (No change.)

(c) Charges for servicing, repairing, or maintaining [qualified] **qualifying** prosthetic devices are not subject to tax. [See] (**see** N.J.S.A. 54:32B-3(b)(2)(ii)[.])

(d) Examples of prosthetic devices include, but are not limited to:

- 1.-7. (No change.)
- 8. Artificial eyes, heart valves, larynx, limbs, **and** valves;
- 9.-14. (No change.)
- 15. Casts, **including** foam padding inside any part of cast;
- 16. Catheters (foley, feeding, drainage, ostomy, urinary, dialysis, **etc.**);
- 17.-23. (No change.)
- 24. Drainage drains[,] **and** shunts;
- 25. Grafts (vascular, Dacron, **etc.**);
- 26.-36. (No change.)
- 37. Orthopedic shoes, shoe lifts, inserts, arch supports, **and** heel protectors;
- 38. Ostomy products (adhesives, barriers, collection bag and pouches, drain tube and valve, tubing, **and** hernia belt);
- 39.-40. (No change.)
- 41. Pressure garments (edema gloves, mast pants, **and** burn garments);
- 42.-51. (No change.)
- 52. Traction devices (cervical, pelvic, **etc.**) – worn on the body;
- 53.-54. (No change.)

18:24-37.9 Purchases by medical service providers

(a) Supplies are taxable when purchased for use in providing medical services for compensation and not transferred to the purchaser of the service. [1. “Transferred to the purchaser” means that the patient must actually leave the hospital, medical, office, etc. with the property. 2.] Examples of supplies that are not transferred to the purchaser include, **but are not limited to:**

Recodify existing i.-iii. as **1.-3.** (No change in text.)

(b) (No change.)

(c) A nursing home, hospital, or other medical service provider may purchase tangible personal property that will be resold to a patient without the payment of tax by issuing a fully completed [resale certificate] **Resale Certificate (Form ST-3) or other approved form** to the seller. [The nursing home, hospital, or other medical service provider will not collect tax from the patient if the tangible personal property is exempt from tax.]

18:24-37.10 Purchases or reimbursement of property by Medicaid or Medicare

(a) (No change.)

(b) The purchase of property reimbursed by the Federal government (for example, Medicaid or Medicare) **is not exempt under N.J.S.A. 54:32B-9(a). The property** is subject to tax unless the property meets N.J.S.A. 54:32B-8.1[, as N.J.S.A. 54:32B-9(a) is not applicable].