



Medical Marijuana Alternative Treatment Centers

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Tax: Sales and Use Tax

The information in this Bulletin is based on current New Jersey law and governs regulations regarding the medical use of marijuana. The Division reserves the right to revise or supplement this information based on subsequent amendments to State or Federal laws or regulations.

Effective October 1, 2010, P.L. 2009, c. 307, amended by P.L. 2010, c. 36, authorizes a “medical marijuana alternative treatment center” to sell medical marijuana to a “qualifying patient” or his/her “primary caregiver” under certain circumstances. For information on this law, please see the Department of Health’s website located at:

http://www.state.nj.us/health/med_marijuana.shtml

PURCHASES OF MEDICAL MARIJUANA

Retail sales of medical marijuana are subject to tax. N.J.S.A. 54:32B-3(a).

PURCHASES OF PRODUCTION EQUIPMENT

Medical marijuana alternative treatment centers that produce medical marijuana may purchase machinery, apparatus, or equipment that is used directly and primarily in the production of medical marijuana without paying tax pursuant to N.J.S.A. 54:32B-8.13(a).

The exemption also includes parts with a useful life of greater than one year. The exemption does not apply to supplies or tools which are simple, hand-held, manually operated instruments used in connection with the production machinery or equipment. A treatment center should issue a properly completed Exempt Use Certificate (Form ST-4) to its supplier to document the exemption. Form ST-4 may be acquired at:

http://www.state.nj.us/treasury/taxation/pdf/other_forms/sales/st4.pdf

PURCHASES OF TANGIBLE PERSONAL PROPERTY AND SERVICES BY FARMING ENTERPRISES

A farming enterprise is a facility used primarily for raising agricultural or horticultural commodities for sale, which includes property produced through the raising of plants useful to people or animals. A medical marijuana alternative treatment center operating as a farming enterprise which grows or cultivates medical marijuana may claim an exemption for sales of tangible personal property and production and conservation services for use and consumption directly and primarily in the production, handling, and preservation for sale of medical marijuana. N.J.S.A. 54:32B-8.16.

A medical marijuana alternative treatment center which qualifies for this exemption may make exempt purchases of farm equipment used for tilling, planting, maintaining, or harvesting medical marijuana. Purchases of property such as seeds, plants, liners, fertilizer, lime, pesticides, and drip irrigation are exempt when used directly at the farming enterprise for the purpose of producing and selling medical marijuana. Production services purchased by a medical marijuana alternative center that are part of the process of planting, breeding, propagating, feeding,

fertilizing, raising, or harvesting medical marijuana at the medical marijuana alternative treatment center's farming enterprise for the purpose of selling medical marijuana are also exempt. A treatment center should issue a properly completed Farmer's Exemption Certificate (Form ST-7) to its supplier to document the exemption. Form ST-7 may be acquired at: http://www.state.nj.us/treasury/taxation/pdf/other_forms/sales/st7.pdf

For more information on farmers and Sales Tax, please see: <http://www.state.nj.us/agriculture/pdf/farmingsalesandusetaxguide.pdf>

PURCHASES OF WRAPPING SUPPLIES

A medical marijuana alternative treatment center's purchase of materials used to contain, protect, wrap, and deliver medical marijuana to customers is exempt from New Jersey Sales Tax pursuant to N.J.S.A. 54:32B-8.15. The exemption applies to "wrapping paper, wrapping twine, bags, cartons, tape, rope, labels, nonreturnable containers, reusable milk containers, and all other wrapping supplies when such use is incidental to the delivery of any personal property." An example of an item which may qualify for exemption under this section includes a bag in which the medical marijuana is placed for delivery to purchasers. In order to document the exemption, the treatment center should issue its supplier an Exempt Use Certificate (Form ST-4).

MEDICAL MARIJUANA ALTERNATIVE TREATMENT CENTERS

Under the law, patients may purchase medical marijuana from authorized alternative treatment centers which are responsible for producing and distributing the marijuana. The Act requires that there will be at least six centers in the State (two each in the southern, central, and northern areas of the State) and the first two centers permitted in each region must be non-profit entities. Centers subsequently issued permits may be non-profit or for-profit entities.

A non-profit organization which has been designated by the IRS as a §501(c)(3) organization may apply to the New Jersey Division of Taxation to receive exempt status for Sales and Use Tax on certain purchases that are directly related to the organization's purposes. However, it does not appear that a medical marijuana alternative treatment center can qualify as a §501(c)(3) organization based upon State and Federal laws and regulations that are currently in effect. Non-IRS §501(c)(3) organizations are treated in the same manner as for-profit organizations with regard to paying Sales Tax or remitting Use Tax on purchases.

If a medical marijuana alternative treatment center is a for-profit entity or a non-profit entity other than one organized under IRS §501(c)(3), it is required to pay Sales Tax on purchases of tangible personal property and services used in the business (unless a valid exemption under the law applies, e.g., farmer's exemption, wrapping supply exemption, etc.).

Medical marijuana alternative treatment centers are required to register the business with the New Jersey Division of Taxation by filing an Application for Business Registration (Form NJREG).

Registration information is accessible from the Division of Revenue and Enterprise Service's website at:

http://www.state.nj.us/cgi-bin/treasury/revenue/dcr/reg/sos_dcrnew01_page1.cgi

ADDITIONAL INFORMATION

Non-profit organizations that are incorporated and registered as non-profit corporations, whether or not designated as an IRS §501(c) (3) entity, are exempt from New Jersey Corporation Business Tax. N.J.S.A. 54:10A-3(e).

Note: A Technical Bulletin is an informational document designed to provide guidance on a topic of interest to taxpayers and describe changes to the law, regulations, or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the tax law or its interpretation may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.