

Sales and Use Taxes: New Jersey

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A Q&A guide to sales and use tax in New Jersey. This Q&A addresses key areas of sales and use tax such as tax scope, multi-state transactions and collecting taxes and filing returns.

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Contents

- ▣ **Tax Scope**
 - ▣ **Multi-state Transactions**
 - ▣ **Collecting Taxes and Filing Returns**
-

Tax Scope

1. Does the state levy sales and use taxes?

State Sales and Use Tax

New Jersey imposes a state sales tax at a rate of 7% on the retail sale in New Jersey of:

- ▣ Tangible personal property.
- ▣ Digital property.
- ▣ Certain services (including telecommunications services).
- ▣ The parking, garaging or storage of motor vehicles, subject to specific exemptions.
- ▣ Rent for occupancy of a hotel room.
- ▣ Certain admission charges.
- ▣ Certain initiation fees, membership fees or dues.
- ▣ Prepared food in restaurants, taverns and other establishments.

(*N.J. Stat. Ann. § 54:32B-3.*)

In addition, a state use tax is imposed at a rate of 7% on the exercise of any right or power over tangible personal property, specified digital products or services in New Jersey (including the receipt, storage, withdrawal from storage, use, consumption or retention of property) when sales tax is not collected or is collected at a rate less than 7% (*N.J. Stat. Ann. § 54:32B-6*).

A reduced sales tax rate of 3.5% applies to certain sales of tangible personal property made within designated Urban Enterprise Zones (UEZ) and UEZ-impacted business districts by sellers that are qualified businesses. The reduced sales tax rate does not apply to:

- ❑ Motor vehicles.
- ❑ Alcoholic beverages.
- ❑ Cigarettes.
- ❑ Manufacturing machinery, equipment or apparatus.
- ❑ Energy.

(*N.J. Stat. Ann. § 52:27H-80; N.J. Admin. Code §18:24-31.4*)

A UEZ is an economically depressed area classified by the Urban Enterprise Zone Authority (UEZA) (*N.J. Stat. Ann. §§ 52:27H-63, 52:27H-66*). A "UEZ-impacted business district" is an economically distressed business district designated by the UEZA as having experienced negative effects from at least two adjacent UEZs in which the reduced sales tax rate applies (*N.J. Stat. Ann. § 52:27H-66.2*).

To qualify for the reduced sales tax rate:

- ❑ The seller must be a "qualified business" having a valid UZ-2 certificate. To be a qualified business, a business must:
 - ❑ apply to the New Jersey Division of Taxation;
 - ❑ be actively engaged in business in a UEZ or UEZ-impacted business district when the zone is designated, or meet certain employment criteria if it becomes engaged in business in the zone after designation; and
 - ❑ show that it will create new employment in the UEZ or UEZ-impacted business district and not create unemployment in other areas (subject to certain exceptions).

(*N.J. Stat. Ann. §§ 52:27H-62, 52:27H-86.*)

- ❑ The purchase must be made in person at the place of business of the qualified business regularly operated for the purpose of making retail sales and located in a UEZ or UEZ-impacted business

district (*N.J. Admin. Code § 18:24-31.4(a)*).

- ❑ The purchaser must accept delivery at the place of business of the qualified business in the UEZ or UEZ-impacted business district, or the qualified business must deliver the goods to the purchaser from its business location in a UEZ or UEZ impacted business district. Only receipts from sales which originate and are completed by the purchaser in person at the place of business of the qualified business within a UEZ or UEZ impacted business district qualify for the reduced sales tax rate. Receipts from mail order, telephone, and similar sales transactions are subject to sales tax at the regular rate where delivery is made to a location within the state (*N.J. Admin. Code § 18:24-31.4(e)*).

A reduced sales tax rate of 3.5% applies to certain sales of tangible property in Salem County. Rules similar to those applicable to the reduced sales tax in a UEZ apply (*N.J. Stat. Ann. §54:32B-8.45*).

Special Local Sales and Use Taxes

Local jurisdictions generally do not impose a sales and use tax. However, the following special taxes apply.

Atlantic City Luxury Tax

The Atlantic City luxury tax is imposed at a general rate of 9% on certain retail sales in Atlantic City (*N.J. Stat. Ann. §§ 40:48-8.15, 40:48-8.17*).

Sales of beverages by the drink are subject to a 3% sales tax. If a sale is subject to the Atlantic City luxury tax, the New Jersey sales and use tax rate applicable to the sale is reduced to 4% except for sales of alcoholic beverages by the drink (*New Jersey Division of Taxation Publication ANJ-17*.)

Retail sales include:

- ❑ Sales of alcoholic beverages by the drink consumed on premises.
- ❑ Rentals of rooms, apartments or other facilities in:
 - ❑ hotels;
 - ❑ motels;
 - ❑ inns;
 - ❑ rooming or boarding houses; or
 - ❑ other similar establishments.
- ❑ Cover charges, minimum charges, entertainment or similar charges in:

- ▣ restaurants;

 - ▣ cafés;

 - ▣ bars;

 - ▣ hotels; or

 - ▣ other similar establishments.
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- ▣ Admission charges to any theater, show, pier exhibition or place of amusement (except for sporting events where other state taxes are collected).

 - ▣ Charges for beach chairs, cabanas and rolling chairs.

(N.J. Stat. Ann. § 40:48-8.16.)

Cape May County Tourism Taxes

The cities of Wildwood and North Wildwood, and the borough of Wildwood Crest, levy a 2% tax on tourism related sales and levy a 1.85% tourism assessment tax (*N. J. Stat. Ann. §§ 40:54D-4, 40:54D-8*).

Tourism related sales include (if otherwise subject to New Jersey sales and use tax):

- ▣ Hotel and motel room rentals.

- ▣ Sales of food and drink by restaurants, taverns or other establishments.

- ▣ Admission charges to any place of amusement.

(N.J. Stat. Ann. § 40:54D-3.)

The tourism assessment tax is imposed on hotel and motel room rentals (if otherwise subject to the New Jersey sales and use tax) (*N.J. Stat. Ann. §40:54D-3*).

These tourism taxes are in addition to the general New Jersey sales and use tax.

State and Local Occupancy Tax

The State of New Jersey and numerous municipalities impose occupancy taxes at various rates on hotel and motel room rentals (if otherwise subject to New Jersey sales and use tax) (*N.J. Stat. Ann. §§ 40:48E-1, 40:48F-1 and 54:32D-1*). These taxes are in addition to the general New Jersey sales and use tax.

For the text of New Jersey statutes, see the New Jersey Legislature *website*. For the text of the New Jersey Administrative Code, see the New Jersey Office of Administrative Law *website*.

2. What is the taxable base or measure of tax?

Sales Tax

Sales tax is measured by the price paid for the item sold, leased or rented or service provided. The price paid generally includes the total amount of consideration paid, including cash, credit, property and services, not including discounts (*N.J. Stat. Ann. § 54:32B-2(oo)*). For leases or rentals of tangible personal property or specified digital products, the sales tax is measured by either the:

- Lessor's original purchase price of the leased property.

- Total periodic payments due on the lease or rental.

If tax is paid based on the original purchase price, a subsequent lease or rental of the same property is not subject to sales and use tax (*N.J. Stat. Ann. §54:32B-7(d)*). For leases or rentals of more than six months, the full amount of the sales tax is collected at the time when the property is delivered to the lessee in New Jersey. When the lease or rental is for six months or less, the sales tax is collected at the time of each periodic payment (*N.J. Stat. Ann. §54:32B-7(d); N.J. Admin. Code §18:24-32.4(b)*).

Use Tax

Use tax is generally measured by the amount paid for property or services subject to the use tax (*N.J. Stat. Ann. § 54:32B-6*).

Special Rules

There are special rules for computing the measure of tax in certain cases including special rules that apply to:

- Tangible personal property or specified digital products:
 - used by manufacturers, processors and assemblers;

 - purchased by New Jersey residents outside of New Jersey for use outside of New Jersey which later becomes subject to New Jersey use tax; or

 - leased outside New Jersey for use outside of New Jersey which later become subject to New Jersey use tax.

- Lease or rental of tangible personal property or specified digital products in New Jersey.

- The purchase of energy.

(*N. J. Stat. Ann. § 54:32B-7*).

For the text of New Jersey statutes, see the New Jersey Legislature *website*. For the text of the New Jersey Administrative Code, see the New Jersey Office of Administrative Law *website*.

3. What kinds of transactions are taxable?

Sales Tax

The New Jersey sales and use tax is imposed on every retail sale of tangible personal property or specified digital products. A retail sale includes any sale, lease or rental of tangible personal property or specified digital products other than for resale, sublease or sub-rent (*N.J. Stat. Ann. § 54:32B-2(e)*).

In addition to sales of traditional types of tangible personal property, the sales and use tax is imposed on sales of:

- ▣ Electricity.
- ▣ Water.
- ▣ Gas.
- ▣ Steam.
- ▣ Prewritten computer software including prewritten computer software delivered electronically.

(*N.J. Stat. Ann. § 54:32B-2(g)*.)

Specified digital products are electronically transferred digital audio and visual works (including providing digital codes allowing a purchaser to obtain such products), including:

- ▣ Music.
- ▣ Ringtones.
- ▣ Movies.
- ▣ Books.
- ▣ Other similar products.

(*N.J. Stat. Ann. § 54:32B-2(zz)*.)

Digital products do not include:

- ▣ Video programming services (including video on demand television services).

- Broadcasting services.

Taxable Services

The sales and use tax is also imposed on every sale, except for resale, of the following services:

- Producing, fabricating, processing, printing or imprinting tangible personal property or a specified digital product, when furnished by the consumer for whom the service is performed (*N.J. Stat. Ann. § 54:32B-3(b)(1)*).
- Installing tangible personal property or a specified digital product, or maintaining, servicing or repairing tangible personal property or a specified digital product not held for sale in the regular course of business, subject to specific exceptions (*N.J. Stat. Ann. § 54:32B-3(b)(2)*).
- Storage of tangible personal property not held for sale in the regular course of business (including the rental of safe deposit boxes) and providing space for storage of tangible personal property (*N.J. Stat. Ann. § 54:32B-3(b)(3)*).
- Maintaining, servicing or repairing real property (other than a residential heating system unit serving three or less families living independently of each other and doing their cooking on the premises), excluding:
 - services resulting in a capital improvement to real property;
 - services rendered by an individual who is not in a regular trade or business offering his services to the public; or
 - garbage removal and sewer services performed on a regular contractual basis for a term not less than 30 days.

(*N.J. Stat. Ann. § 54:32B-3(b)(4)*.)

- Mail processing services for printed advertising material, except in connection with distribution of printed advertising material to out-of-state recipients (*N. J. Stat. Ann. § 54:32B-3(b)(5)*).
- Utility service provided to persons in New Jersey (*N.J. Stat. Ann. § 54:32B-3(b)(7)*).
- Tanning, massage, bodywork, somatic and tattooing services (*N.J. Stat. Ann. §§ 54:32B-3(b)(8), 54:32B-3(b)(9) and 54:32B-3(b)(10)*).
- Investigation and security services (*N.J. Stat. Ann. § 54:32B-3(b)(11)*).

- ❑ Information services (*N.J. Stat. Ann. §54:32B-3(b)(12)*).
- ❑ Transportation services originating in New Jersey and provided by a limousine operator (*N.J. Stat. Ann. § 54:32B-3(b)(13)*).
- ❑ Telephone answering services (*N.J. Stat. Ann. § 54:32B-3(b)(14)*).
- ❑ Radio subscription services (*N.J. Stat. Ann. § 54:32B-3(b)(15)*).
- ❑ Landscaping even if it results in a capital improvement to land, including:
 - ❑ seeding;
 - ❑ sodding or grass plugging of new lawns;
 - ❑ planting trees, shrubs, hedges and plants; and
 - ❑ clearing and filling land.

(*N.J. Stat. Ann. § 54:32B-2(ww)*.)

Wages, salaries and other compensation paid by an employer to an employee for performing any of the taxable services listed above are not receipts subject to tax (*N.J. Stat. Ann. § 54:32B-3(b)*).

A complete list of transactions and charges that qualify as sales subject to the sale tax is found at *N.J. Stat. Ann. §54:32B-3*.

Use Tax

Unless tangible personal property or services have already been or will be subject to the New Jersey sales tax, a use tax is imposed for the use (including storage and installation) within New Jersey of:

- ❑ Any tangible personal property or specified digital product:
 - ❑ purchased at retail, including energy (except for electricity consumed by the generating facility that produced it);
 - ❑ manufactured, processed or assembled by the user, if items of the same kind of tangible personal property or specified digital products are offered for sale by the user in the regular course of business (or if the items are used or incorporated into a structure, building or real property); or
 - ❑ not acquired for resale, on which any taxable services described in New Jersey Statutes Annotated Section 54:32B-3(b)(1) or (2) have been performed.

- ❑ Intrastate, interstate, or international telecommunications services.
- ❑ Utility service provided to persons in New Jersey for use in New Jersey.
- ❑ Mail processing services.
- ❑ Any investigation and security services, information services, transportation services originating in New Jersey provided by a limousine operator, telephone answering services and radio subscription services.
- ❑ Access to or use of the property or facilities of a health and fitness, athletic, sporting or shopping club or organization in New Jersey.

(*N.J. Stat. Ann. § 54:32B-6.*)

For the text of New Jersey statutes, see the New Jersey Legislature *website*. For the text of the New Jersey Administrative Code, see the New Jersey Office of Administrative Law *website*.

4. What are the most common exclusions from the tax base, tax-exempt transactions or tax deductible items?

There are a number of common exemptions from sales and use tax for:

- ❑ Specified transactions.
- ❑ Sales to or by certain exempt entities.
- ❑ Sales of certain items and services.
- ❑ Specified uses of property.

Additionally, a seller may be allowed a deduction or exclusion from its sales tax liability for bad debts and returned or repossessed property. A purchaser required to pay use tax for the use of tangible property or services in New Jersey may be able to claim a credit for sales tax paid to another state.

Transactional Exemptions

There are a number of transactions that are exempt from the state sales and use tax. If a sale of property or services is exempt from sales tax pursuant to New Jersey Statutes Annotated Section 54:32B-3(a) or (b), the subsequent use of such property or services is not subject to tax (*N.J. Stat. Ann. § 54:32B-11(3)*).

Sales for Resale

Sales of tangible personal property and services where the purchaser intends to resell the item or

service in the same form as received are not subject to the sales tax. The seller in a sale for resale must obtain a resale certificate (New Jersey Division of Taxation Form ST-3 or ST-3NR) from the purchaser in connection with the sale for the exemption to apply. A sale for resale also includes transactions where property is purchased for lease (*N.J. Stat. Ann. § 54:32B-2(e)*).

Casual Sales

A "casual sale" is an isolated or occasional sale of tangible personal property or specified digital products by a person who is not in the regular business of making retail sales of that property, where the seller acquired the property for its own use (*N.J. Stat. Ann. § 54:32B-2(u)*).

The casual sale exemption does not apply to the sale of motor vehicles. The casual sale exemption is often applicable to exempt sales of business assets. However, to the extent that inventory is included in the sale of a business, the seller should secure a Resale Certificate (New Jersey Division of Taxation Form ST-3 or ST-3NR) from the purchaser.

Certain Sale-leaseback Transactions

A sale-leaseback is exempt from sales tax if the owner of tangible personal property sells the property to a person that leases it back to the owner within 180 days from the date that the owner originally placed the property in service (*N.J. Stat. Ann. § 54:32B-8.57*).

Certain Transfers between Corporations, Partnerships and their Owners

The following are exempt:

- Transfer of tangible personal property to a corporation under a merger or consolidation solely in consideration for the issuance of its stock.

- Distribution of property by a:
 - corporation to its shareholders as a liquidating dividend; or

 - partnership to its partners in complete or partial liquidation.

- Transfer of property to a corporation on its organization in consideration for the issuance of its stock.

- Contribution of property to a partnership in consideration for a partnership interest in the partnership.

(*N.J. Stat. Ann. § 54:32B-2(e)(4)(B)-(F)*.)

Exemptions for Exempt Sellers or Purchasers

A number of sales and use tax exemptions are based on the identity of the seller or purchaser.

Governmental Entities

Any sale (except for vehicles sold by), provision of a service or amusement charge by or to any of the

following governments or international organizations, or any use or occupancy by any of the following are exempt:

- The State of New Jersey or any of its agencies, instrumentalities, public authorities or corporations, or political subdivisions.
- The US and any of its agencies and instrumentalities.
- The United Nations or any international organization of which the US is a member.

(N.J. Stat. Ann. § 54:32B-9(a).)

However, in the case of sales or the provision of services by these entities, the exemption only applies if the services provided or property sold is not of a kind ordinarily sold by private persons *(N.J. Stat. Ann. § 54:32B-9(a)).*

Sales to contractors or repairmen of materials, supplies and services for the exclusive use in building or improving, repairing or altering real property of the listed governmental entities in New Jersey Statutes Annotated Section 54:32B-9(a) or certain charitable and other listed organizations in New Jersey Statutes Annotated Section 54:32B-9(b) are exempt from sales tax *(N.J. Stat. Ann. § 54:32B-8.22)*. A Contractor's Exempt Purchase Certificate (New Jersey Division of Taxation Form ST-13) must be provided to sellers in connection with this exemption.

Tax-Exempt Organizations

Any sale or amusement charge by or to, or any use or occupancy by any IRC Section 501(c)(3) tax-exempt organization and certain other enumerated organizations are exempt from sales and use tax if the sale, charge, use or occupancy is directly related to the organization's tax-exempt purpose *(N.J. Stat. Ann. § 54:32B-9(b))*. The exemption does not apply in certain cases *(N.J. Stat. Ann. § 54:32B-9)*.

A seller must obtain an Exempt Organization Certificate (New Jersey Division of Taxation Form ST-5) in connection with any sale or provision of services to a tax-exempt organization.

Qualified Businesses

Qualified businesses (see *Question 1*) in a UEZ (but not in a UEZ-impacted business district) receive the following sales tax exemptions:

- Sales, rentals and leases to a qualified business of tangible personal property (other than motor vehicles and energy) and services (other than telecommunication services and utility services) that are used or consumed exclusively by the business within a UEZ are exempt from sales or use tax provided that the exemption is made available by the Urban Enterprise Zone Authority when the UEZ is designated and a UEZ Exempt Purchase Certificate (New Jersey Division of Taxation Form UZ-5) is issued to the seller *(N.J. Stat. Ann. § 52:27H-79; N.J. Admin. Code § 18:24-31.3)*.
- Sales of materials, supplies or services to contractors or repairmen for exclusive use in erecting structures, or building on, or improving, altering or repairing real property of a qualified business within a UEZ are exempt from sales and use tax. To qualify for the exemption, sellers must obtain

a Contractor's Exempt Purchase Certificate, Urban Enterprise Zone (New Jersey Division of Taxation Form UZ-4), from the purchaser (*N.J. Stat. Ann. § 54:32B-8.22(b)*; *N.J. Admin. Code § 18:24-31.6*).

Certain qualified businesses located in a UEZ and engaged in manufacturing may be eligible for a sales tax exemption for the purchase of energy and utility services (*N.J. Stat. Ann. § 52:27H-87.1(a)*). If eligible, the qualified business must provide an Urban Enterprise Zone – Energy Exemption Certificate (New Jersey Division of Taxation Form UZ-6) to the seller.

Most Common Exempt Items

There are a number of specific items and services that are exempt from tax (*N.J. Stat. Ann. § 54:32B-8.1 to 54:32B-8.62*). In some cases the exemption applies only if the applicable property or service is used for a designated use. In these cases the seller must obtain an Exempt Use Certificate (New Jersey Division of Taxation Form ST-4) from the purchaser.

The following are some common items and services excluded from the sales and use tax:

- Clothing and footwear, subject to certain exceptions (*N.J. Stat. Ann. § 54:32B-8.4*).
- Food, food ingredients and dietary supplements sold for human consumption off the premises where sold, subject to certain exceptions (*N.J. Stat. Ann. § 54:32B-8.2*).
- Services rendered resulting in a capital improvement to real property (*N.J. Stat. Ann. § 54:32B-3(b) (2), (4)*). A person providing services resulting in a capital improvement must obtain a Certificate of Capital Improvement (New Jersey Division of Taxation Form ST-8) from the purchaser.

It is not uncommon for a sale to involve receipts and charges that are exempt as well as receipts and charges that are taxable. In these cases the seller must separately state on any invoice or receipt the taxable and exempt charges and show the sales tax relating to taxable charges.

Exemptions for Specified Uses

The following uses of property are not subject to use tax:

- Property purchased by the user while a nonresident of New Jersey, subject to certain exceptions.
- The use of property or services which are exempt from the New Jersey sales tax.
- The use of property which is converted into or becomes a component part of a product produced for sale or for market sampling by the purchaser.
- The use of property or services to the extent sales or use tax was appropriately paid to another state or jurisdiction within any other state, but only where the other state or jurisdiction allows a

corresponding tax exemption regarding the sale or use of tangible personal property or services if sales or use tax is paid to New Jersey.

(*N.J. Stat. Ann. § 54:32B-11.*)

For a complete list of use tax exemptions see New Jersey Statutes Annotated Section 54:32B-11.

Bad Debts, Returned or Repossessed Property and Tax Credits

A seller can reduce its sales and use tax liability by claiming:

- **Deduction for bad debt.** A seller is allowed a deduction (not including interest) from taxable sales for bad debts (*N. J. Stat. Ann. § 54:32B-12.1(a) and (b)*). For purposes of claiming the deduction, "bad debt" has the same meaning as provided in IRC Section 166, subject to certain adjustments (*N. J. Stat. Ann. § 54:32B-12.1(c)*).
- **Exclusion for returned or repossessed property.** For returned and repossessed property, the New Jersey Division of Taxation is authorized to provide for the exclusion from taxable receipts, amusement charges or rents of amounts representing sales if the contract of sale has been canceled, the property returned or the seller determines the receipt, charge or rent is uncollectible. If tax has already been paid, the seller may claim a refund or credit of the tax paid (*N.J. Stat. Ann. § 54:32B-12(c)*).
- **Credit for taxes paid to other states.** New Jersey allows a credit for sales and use taxes properly paid to another state or jurisdiction within a state (for more information, see *Question 6*).

For the text of New Jersey statutes, see the New Jersey Legislature *website*. For the text of the New Jersey Administrative Code, see the New Jersey Office of Administrative Law *website*.

Multi-state Transactions

5. What types of business activities create "nexus" for sales and use tax liability in the state?

New Jersey broadly construes the types of activities that result in "nexus" for New Jersey sales and use tax liability. A number of activities conducted by out-of-state sellers can result in nexus. New Jersey's position is that an out-of-state business must have no physical presence within New Jersey to be exempt from sales tax collection obligations (see *New Jersey Division of Taxation Bulletin S&U-5*).

New Jersey has indicated that certain out-of-state sellers may not be required to collect sales tax if their only contact with New Jersey is limited to:

- Maintaining a website outside New Jersey that can be accessed by New Jersey residents.

- ▣ Mailing catalogs, flyers or other advertisements to potential customers in New Jersey.
- ▣ Shipping merchandise to a New Jersey destination by common carrier or US mail.

(See *New Jersey Division of Taxation Bulletin S&U-5*.)

Activities or contacts, in New Jersey, that New Jersey deems sufficient to create nexus for an out-of-state seller include:

- ▣ Maintaining a place of business.
- ▣ Having employees (with certain limited exceptions).
- ▣ Owning or leasing property.
- ▣ Delivery of property by other than common carrier or US mail.
- ▣ Providing repairs or maintenance.
- ▣ Collection activities or repossessing property.
- ▣ Installation of property.
- ▣ Taking customer inventory.
- ▣ Training.
- ▣ Resolution of customer complaints.
- ▣ Accepting customer orders.
- ▣ Exhibiting at trade shows.
- ▣ Picking up damaged or returned property.

Activities and contacts of independent contractors, affiliates and agents can in certain circumstances result in nexus for out-of-state sellers. Therefore, out-of-state sellers must carefully review the New Jersey activities and contacts of their independent contractors, affiliates and agents.

Entities formed under New Jersey law must collect New Jersey sales tax.

Additionally, out-of-state sellers must collect New Jersey sales tax if they are persons:

- ▣ That register to collect New Jersey sales tax.

- ❑ Maintaining or having an agent maintaining a place of business in New Jersey and making sales to persons within New Jersey.
- ❑ Who solicit business by employees, independent contractors, agents or other representatives, or by distribution of catalogs or other advertising material and by that reason makes sales to persons within New Jersey (*N.J. Stat. Ann. §§ 54:32B-2(i)(1)(B), (C), 54:32B-2(w)*).

For the text of New Jersey statutes, see the New Jersey Legislature *website*. For the text of the New Jersey Administrative Code, see the New Jersey Office of Administrative Law *website*.

6. Are there special rules for sales and use taxes on multi-state transactions?

If a sale involves an out-of-state seller or purchaser, special sourcing rules apply to determine whether the sale is subject to New Jersey sales tax. If a sale is sourced to New Jersey, the sale is subject to New Jersey sales tax. If the sale is not sourced to New Jersey, the purchaser may be required to pay sales tax to another state or to pay New Jersey use tax if it uses the acquired property in New Jersey.

The sale of a product or service is generally sourced as follows:

- ❑ If received (generally meaning taking possession or making first use of) by the purchaser at a business location of the seller, then the sale is sourced to that business location.
- ❑ If not received by the purchaser at a business location of the seller, then the sale is sourced to the location where received by the purchaser.
- ❑ If neither of the above sourcing rules apply, then the sale is sourced to the purchaser's address indicated in the seller's business records or if there is no such address, the address provided in connection with the sale. If this information is not available, the location of sale is determined by the address from which:
 - ❑ tangible personal property is shipped;
 - ❑ the digital good or the computer software delivered electronically is first available for transmission by the seller; or
 - ❑ the service is provided (*N.J. Stat. Ann. §54:32B-3.1(a)*).

Special rules apply for sourcing the following:

- ❑ Lease or rental of:
 - ❑ tangible personal property (*N.J. Stat. Ann. § 54:32B-3.1(b)*); or
 - ❑ motor vehicles, trailers, semi-trailers or aircraft that do not qualify as transportation equipment (*N.J. Stat. Ann. § 54:32B-3.1(c)*).

- Sale, including lease or rental, of transportation equipment (*N.J. Stat. Ann. § 54:32B-3.1(d)*).
- Certain telecommunication services (*N.J. Stat. Ann. § 54:32B-3.4*).
- Direct mail (*N.J. Stat. Ann. § 54:32B-3.3*).

A purchaser required to pay New Jersey use tax for the use of property or services in New Jersey can credit the amount of any sales or use tax appropriately paid to another state against its New Jersey use tax liability if the other state allows a corresponding credit for sale or use tax paid to New Jersey. The credit is the amount of the sales and use tax paid to another state or jurisdiction with respect to the applicable sale or use, but not more than the New Jersey use tax that would otherwise be imposed (*N.J. Stat. Ann. § 54:32B-11(6)*).

New Jersey has not yet adopted a so-called "Amazon Law" to subject certain internet sellers to sales tax collection and payment obligations. A typical "Amazon Law" creates a presumption that a remote seller is subject to sales tax collection and payment obligations in the taxing state if the seller enters into an agreement with a resident of the taxing state under which the resident directly or indirectly refers potential customers to the seller for a consideration, whether by a link, an internet website or otherwise.

For a discussion regarding out-of-state sellers, see *Question 5*.

For the text of New Jersey statutes, see the New Jersey Legislature *website*. For the text of the New Jersey Administrative Code, see the New Jersey Office of Administrative Law *website*.

Collecting Taxes and Filing Returns

7. Who has a duty to collect and pay sales and use taxes?

The sales and use tax is generally imposed on the purchaser or consumer. However, the seller or provider of services (including an out-of-state seller with sufficient nexus with New Jersey) must collect and remit the tax. Failure to do so results in personal liability for the tax, (*N.J. Stat. Ann. § 54:32B-14*). In certain cases owners, officers or employees of a seller may also be personally liable for the tax (*N.J. Stat. Ann. § 54:32B-2(w)*). If the purchaser or consumer fails to pay the tax to the seller, the purchaser or consumer must pay the tax due (*N.J. Stat. Ann. § 54:32B-14(b)*).

In certain circumstances, an agent of the seller (for example, a salesman or representative) may be jointly liable with the seller for the collection and payment of sales and use tax (*N.J. Stat. Ann. § 54:32B-2(i)(2)*).

A purchaser or consumer must pay use tax for the use of property or services in New Jersey unless the property or services has been subject to the New Jersey sales tax (*N.J. Stat. Ann. § 54:32B-6*). For a discussion of the credit to use tax for taxes paid to other states or jurisdictions, see *Question 6*.

Any seller or provider of services required to collect New Jersey sales and use tax must register with the New Jersey Division of Taxation at least 15 days before starting business on a form prescribed by

the New Jersey Division of Taxation (*N.J. Stat. Ann. § 54:32B-15*).

For the text of New Jersey statutes, see the New Jersey Legislature *website*. For the text of the New Jersey Administrative Code, see the New Jersey Office of Administrative Law *website*.

8. Do out-of-state sellers have a duty to collect sales and use taxes?

Out-of-state sellers have an obligation to collect New Jersey sales and use tax if sufficient nexus with New Jersey exists. For a discussion of the activities and contacts that create nexus with New Jersey, see *Question 5*.

For the text of New Jersey statutes, see the New Jersey Legislature *website*. For the text of the New Jersey Administrative Code, see the New Jersey Office of Administrative Law *website*.

9. What is the last day payment of sales and use tax can be made without incurring a penalty and to whom is payment made?

All payments of New Jersey sales and use tax must be made to the New Jersey Division of Taxation no later than the due date for the filing of the applicable sales and use tax return, otherwise interest and penalties apply (*N.J. Stat. Ann. §§ 54:32B-18, 54:32B-26*). Different filing obligations and due dates apply depending on the amount of the sales and use tax liability.

The New Jersey Division of Taxation now requires all sellers to file sales and use tax returns electronically either online or by phone and submit payment electronically by electronic check, electronic funds transfer or credit card. Taxpayers with a prior year tax liability of \$10,000 or more in any tax must make payment for all taxes by electronic funds transfer.

The following filing obligations and due dates apply.

Quarterly Returns

The following persons must file a quarterly sales and use tax return (New Jersey Division of Taxation Form ST-50) and pay all sales and use tax due on or before the 20th day of the month following the calendar quarter covered by the return:

- All sellers required to collect and remit New Jersey sales and use tax (*N.J. Admin. Code § 18:24-11.2(a)*).
- Every individual, corporation or unincorporated entity engaged in the conduct of a trade, business, profession or occupation within New Jersey but not making sales subject to sales tax (or purchasing tangible personal property for lease) if the person's average annual use tax liability for the previous three calendar years was greater than \$2,000 (*N.J. Admin. Code § 18:24-11.3(a)*).

Monthly Returns

Businesses that collect more than \$30,000 in New Jersey sales and use tax during the preceding calendar year, in addition to filing a quarterly return, must:

- ❑ File a monthly sales and use tax return (New Jersey Division of Taxation Form ST-51) for each of the first and second months of each calendar quarter.

- ❑ Pay monthly all New Jersey sales and use tax due, if the amount of the tax due for the month exceeds \$500.

The monthly return must be filed, and all tax due paid, by the 20th day of the month following the month for which the return is filed. The tax for the third month in each calendar quarter is paid with the filing of the taxpayer's quarterly Form ST-50.

Annual Returns

Every individual, corporation or unincorporated entity engaged in the conduct of any trade, business, profession or occupation within New Jersey but not making sales subject to sales tax (or purchasing tangible personal property for lease) must:

- ❑ File the annual business use tax return (Division of Taxation Form ST-18B).

- ❑ Pay use tax due by May 1 of the year following the calendar year in which liability is incurred.

Annual filing is only available if the taxpayer's annual average use tax liability for the previous three calendar years did not exceed \$2,000. No return is required for any year in which no use tax liability is incurred (*N.J. Admin. Code § 18:24-11.3(a)*).

For the text of New Jersey statutes, see the New Jersey Legislature *website*. For the text of the New Jersey Administrative Code, see the New Jersey Office of Administrative Law *website*.

10. What are the penalties for failure to comply with the sales and use tax statute(s)?

New Jersey imposes a number of late filing and payment penalties, and in some cases charges taxpayers for the cost of collecting an overdue or unpaid sales or use tax. Penalties for failure to timely pay sales or use tax or file a tax return can be abated in whole or in part if the taxpayer shows reasonable cause for the failure. Reasonable cause is determined on an evaluation of the facts and the taxpayer's previous compliance record. Examples of grounds for reasonable cause are set out in regulations (*N.J. Admin. Code § 18:2-2.7*).

In certain cases, criminal penalties can also be imposed. A list of possible criminal penalties is set out in New Jersey Administrative Code Section 18:2-2.8.

A late filing penalty applies to the failure to timely file a sales and use tax return. The penalty is \$100 for each month (or portion of it) that the return is delinquent, plus 5% of any underpayment of tax per month (or portion of it) that the return is delinquent (subject to a maximum percentage penalty of 25%).

However, if the taxpayer does not file the sales and use tax return within 30 days of the date that a notice of delinquency is sent, the penalty is 5% per month (or any portion of it) of the total tax liability (instead of the underpayment of tax), subject to a maximum penalty of 25% of the tax liability (*N.J.*

Stat. Ann. § 54:49-4(a); N.J. Admin. Code § 18.2-2.3(c)).

A late payment penalty also applies to the failure to timely pay sales and use tax. The penalty is 5% of the amount of the underpayment (*N.J. Stat. Ann. § 54:49-4(a); N.J. Admin. Code § 18.2-2.4(a)(2)*). Interest is also imposed at the rate of 3% above the prime interest rate, compounded annually, from the date the tax is due until the date of payment (*N.J. Stat. Ann. § 54:49-3*).

If a taxpayer required to use electronic filing or make electronic payment fails to do so, the taxpayer is liable for a \$50 penalty for each failure to electronically file or pay (*N.J. Stat. Ann. § 54:49-4(b)*).

If any part of an assessment is due to civil fraud, a penalty in the amount of 50% of the assessment can be applied in lieu of other penalties (*N.J. Stat. Ann. § 54:49-9.1*).

If an amount of tax due is referred to a private company for collection, a referral cost recovery fee in the amount of 10% of the amount referred for collection can be imposed (*N.J. Admin. Code § 18.2-2.5 (d)*). Also, if the New Jersey Division of Taxation issues a certificate of debt for unpaid tax, it can impose costs of collection on the taxpayer. The amount imposed can be the actual costs of collection incurred or a percentage of the tax. If the cost of collection is based on a percentage of tax, the percentage can range from 5% to 20% (*N.J. Stat. Ann. § 54:49-12.1; N.J. Admin. Code § 18.2-2.5*).

For the text of New Jersey statutes, see the New Jersey Legislature *website*. For the text of the New Jersey Administrative Code, see the New Jersey Office of Administrative Law *website*.

11. Is the purchaser, transferee or assignee of the assets of a business liable for the seller's unpaid sales tax?

A purchaser, transferee or assignee (Purchaser) of the assets of a business in a sale, transfer or assignment subject to the New Jersey bulk sales law is jointly and severally liable with the seller for all of the seller's New Jersey taxes (including interest, penalties and additions) unless the Purchaser complies with the provisions of the bulk sales law. This liability includes all taxes paid to or administered by the New Jersey Division of Taxation and is not limited to sales and use tax. The joint and several tax liability resulting from a failure to comply with the bulk sales law is not limited to the purchase price or other consideration paid for the assets that are the subject of the sale.

The New Jersey bulk sales law applies to any sale, transfer or assignment (Sale) in bulk of any part or all of a person's "business assets," other than in the ordinary course of business (for example, the bulk sales law would not apply to Sales of assets considered inventory) (*N. J. Stat. Ann. § 54:50-38*). The New Jersey Division of Taxation's interpretation of the term "business assets" is very broad and includes any asset used in any endeavor from which revenue or consideration is realized for generating a profit or loss. This includes both tangible and intangible assets (and could possibly include an equity interest) (*New Jersey Division of Taxation Technical Bulletin TB-60R*). Also, short sales and deed in lieu of foreclosure transfers are subject to the bulk sales law (*New Jersey Division of Taxation, Frequently Asked Questions – Law and Procedures for the Filing of Form C-9600, Q&A 42, 43, 44*).

The Sale of all of a Seller's business assets is not required for the bulk sales law to apply. The New Jersey Division of Taxation's position is that partial sales are covered by the bulk sales law (*New Jersey Division of Taxation Technical Bulletin TB-60R*). However, the New Jersey Division of Taxation

has not clarified when a sale of business assets would be too insignificant to be subject to the bulk sales law.

If a Sale is subject to the bulk sales law:

- ❑ The Purchaser must notify the New Jersey Division of Taxation of the proposed Sale and, among other things, the price, terms and conditions of the Sale, by filing New Jersey Division of Taxation Form C-9600 along with an executed contract for the sale or other applicable transfer agreement. The notice must be delivered by:
 - ❑ registered mail;
 - ❑ certified mail;
 - ❑ overnight mail;
 - ❑ Federal Express; or
 - ❑ UPS.
- ❑ The New Jersey Division of Taxation must receive the notice at least ten business days before Purchaser takes possession of or pays for the assets. (*New Jersey Division of Taxation, Frequently Asked Questions – Law and Procedures for the Filing of Form C-9600, Q&A5*).
- ❑ If the New Jersey Division of Taxation provides timely notice to the Purchaser that there is a possible claim for New Jersey taxes, the Purchaser may not transfer to the seller, transferor or assignor an amount of the purchase price or other consideration equal to the amount set out in the notice, and may have to place this amount in escrow. The New Jersey Division of Taxation generally notifies a Purchaser by mail of any possible claim for New Jersey taxes within ten business days of receipt of the Purchaser's notice.

If the New Jersey Division of Taxation receives a complete and timely bulk sale notice from the Purchaser and fails to provide timely notice to the Purchaser that a possible claim for New Jersey taxes exists, the Purchaser is deemed to have complied with the bulk sales law and has no liability imposed under the bulk sales law. However, if a Purchaser has not received the New Jersey Division of Taxation's notice within ten business days of the Division of Taxation's receipt of the bulk sales notice, the Purchaser should not close the Sale without first:

- ❑ Contacting the New Jersey Division of Taxation to determine if it has mailed the notice.
- ❑ If notice has been mailed, obtaining a copy of the notice.

For the text of New Jersey statutes, see the New Jersey Legislature *website*. For the text of the New Jersey Administrative Code, see the New Jersey Office of Administrative Law *website*.

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