

viii. Delegates and alternates will be reimbursed for actual travel expenses incurred in connection with the meeting of delegates in accordance with State of New Jersey, Department of the Treasury reimbursement schedules. Mileage reimbursement shall not exceed 150 miles each way.

4. The candidate that receives the highest number of votes cast by the selected county delegates, or the delegate’s qualified alternate, shall be appointed as a member-trustee.

5. The Board Secretary will notify each county superintendent’s office of the election results. In addition, the election results will be posted on the Division’s website.

(h) In the event that no member is deemed to receive a majority of votes in any election, the incumbent trustee shall serve until a successor is elected in accordance with (f) or (g) above. If necessary, the Secretary may conduct a run-off election using any method specified in (g)1 above.

(i) In the event an active or retired trustee elected by the membership is unable to complete his or her term, the vacancy shall be filled in accordance with (k) below. The term of this position shall be the remainder of the unexpired term.

(j) In the event a newly-elected candidate becomes unable or unwilling to serve as member-trustee prior to the beginning of the candidate’s term as trustee, the Board shall conduct a new election to fill the Board vacancy, in accordance with (k) below. For purposes of this subsection, a member-trustee’s term will terminate in accordance with the regular election cycle for that county’s grouping.

(k) If a member-trustee cannot complete a term in accordance with (i) or (j) above, the following will apply:

1. The Board Secretary will open nominations for new member-trustee candidates. Interested parties will submit a letter of interest within 45 days of the date of notification of the vacancy.

2. If only one candidate registers for the vacant member-trustee position, that candidate will be deemed elected without ballot, and announcement of the newly elected trustee will occur in accordance with (g)5 above.

3. If more than one candidate registers for the vacant member-trustee position, election by delegate vote will be conducted, according to (g) above.

TREASURY — TAXATION

(a)

DIVISION OF TAXATION

Sales and Use Tax

Streamlined Sales and Use Tax Rules and Procedures

Proposed Amendments: N.J.A.C. 18:24-5.16, 7.17, 10.2, 10.3, 10.4, 10.6, 11.2, and 19.7; and 18:24B-1.1, 1.5, 1.6, 1.7, and 1.9

Proposed Repeals: N.J.A.C. 18:24-10.5 and 18:24B-1.2

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

Authority: N.J.S.A. 54:32B-24 and 54:50-1.

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

Proposal Number: PRN 2013-071.

Submit written comments by July 5, 2013 to:

Mitchell Smith
 Administrative Practice Officer
 Division of Taxation
 50 Barrack Street
 P.O. Box 269
 Trenton, New Jersey 08695-0269

The agency proposal follows:

Summary

N.J.A.C. 18:24B, Streamlined Sales and Use Tax Rules and Procedures, provide sellers and purchasers with guidance and assistance in the administration and implementation 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, including N.J.A.C. 18:24B, into New Jersey law, rule, and policies.

Following is a summary of the proposed amendments to N.J.A.C. 18:24B:

At N.J.A.C. 18:24B-1.1, Definitions, in order to be in compliance with the SSUTA, “Model 1 seller,” “Model 2 seller,” and “Model 3 seller” definitions are amended to state that these sellers must be registered under the Agreement. A definition of “Model 4 seller” is added.

At N.J.A.C. 18:24B-1.2, Administration of exemptions, the language in this section is proposed for repeal because it overlaps with N.J.A.C. 18:24-10 of the sales and use tax rules. The information is relocated to N.J.A.C. 18:24-10.4 and 10.5 (as discussed in this Summary below).

At N.J.A.C. 18:24B-1.5, Certification of service providers and automated systems, the colons after subsections (b) and (c) are changed to periods to fix typographical errors. “Sale” was changed to “sales” in (a) to correct a typographical error.

At N.J.A.C. 18:24B-1.6, Registration of sellers, the section is amended by adding language from the SSUTA regarding the registration of sellers in order to be in compliance with the Agreement. The section is also reorganized for clarity purposes.

At N.J.A.C. 18:24B-1.7, State review and approval of certified automated system software and certain liability relief, the word “the” is added to the last sentence of subsection (e) for grammatical correctness, so the sentence now begins “Upon expiration of the 10 days, ‘the’ CSP.” The cross-reference in subsection (c) is changed from N.J.A.C. 18:24B-1.2 to N.J.A.C. 18:24-10, as the former is proposed for repeal.

N.J.A.C. 18:24B-1.9, Relief from certain liability for purchasers confidentiality and privacy protections under Model 1, an apostrophe is added to the word “purchasers” to read “purchasers’” in the heading.

Following is a summary of the changes made to each section of N.J.A.C. 18:24:

At N.J.A.C. 18:24-5.16, Certificate issuance and acceptance procedures, subparagraphs (a)6vi and vii are deleted in order to be in compliance with the Agreement. Subparagraphs (a)6vi and vii are not replaced because the identical information is provided in N.J.A.C. 18:24-10. The word “vendor” is proposed to be replaced with “seller” at paragraph (a) since that is the term used in the Agreement.

At N.J.A.C. 18:24-7.17, Retention of records, the reference to “good faith” in subsection (b) is deleted in order to be in compliance with the Agreement.

At N.J.A.C. 18:24-10.2, General requirements, the reference to “properly completed certificate” is changed to “fully completed certificate” in order to be in compliance with the Agreement.

At N.J.A.C. 18:24-10.3, Responsibility, the reference to “good faith” is deleted and “properly completed certificate” is changed to “fully completed certificate” in order to be in compliance with the Agreement. “[P]ursuant to conditions set forth in N.J.A.C. 18:24-10.4” is added to the end of the section.

N.J.A.C. 18:24-10.4, Acceptance in good faith, is amended by incorporating the information from N.J.A.C. 18:24B-1.2(a)1, 2, 3, and 5, (b), and (c) in order to be in compliance with the Agreement. This section is further amended by adding language, in order to be in compliance with the Agreement, regarding issuing and accepting exemption certificates. The rule explains the different standards that apply to different time periods when an exemption certificate is issued at the point of purchase and upon audit. Prior to October 1, 2005, a properly completed exemption certificate that contains no statement or entry that the seller knows to be false or misleading is considered to be accepted in good faith. The seller is presumed to be familiar with the law and rules regarding the business in which he or she deals. The certificate was required to be in the physical possession of the seller on or before the 90th day following the date of the transaction to which the certificate related. The seller was held liable for the tax due on the transaction, unless the seller provided other evidence to prove that the transaction was exempt.

For transactions entered into between October 1, 2005 and December 31, 2007, an exemption certificate is properly accepted and the seller is held harmless if the following conditions are met: (1) the certificate must contain no statement or entry that the seller knows is false or misleading; (2) the certificate must be an official form (or proper and substantive reproduction); (3) the certificate must be filled out completely; (4) the certificate must be dated and include the purchaser's tax identification number; and (5) the certificate or required data must be provided within 90 days of the sale.

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. In other words, effective January 1, 2008, "good faith" no longer applies at the point of purchase. Rather, there is only a requirement for a completed exemption certificate to be obtained by the seller within 90 days of the sale. The new subsection sets forth the requirements for an exemption certificate to be "fully completed" as well. Good faith is now only a factor during an audit situation. Under the SSUTA, there are two time periods dealing with the acceptance of an exemption certificate in an audit situation. From January 1, 2008 through September 30, 2011, if the seller either has not obtained an exemption certificate or the seller has obtained an incomplete exemption certificate, the seller has at least 120 days after the Division's request for substantiation of the claimed exemption to 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 law and rules regarding the business in which he or she deals and the exemption certificate must not contain any statement or entry, which the seller knows is false or misleading. On and after October 1, 2011, if the seller either has not obtained an exemption certificate or the seller has obtained an incomplete exemption certificate, the seller has at least 120 days after the Division's request for substantiation of the claimed exemption, to either: (1) obtain a fully completed exemption certificate from the purchaser, taken in good faith, which means that the seller obtains a certificate that claims an exemption that: (i) was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced; (ii) could be applicable to the item being purchased; and (iii) is reasonable for the purchaser's type of business; or (2) obtain other information establishing that the transaction was not subject to the tax.

N.J.A.C. 18:24-10.5, Disclosure of proper exemption basis, is proposed for repeal. The information in paragraphs (a)1, 2, 3, 4, and 6, dealing with the acceptance of exemption certificates was relocated to N.J.A.C. 18:24B-10.4, as revised. Subsection (a) is amended by deleting the phrase "good faith" in order to be in compliance with the Agreement. Subsection (b) was amended by replacing the word "vendors" with "sellers"; the phrase "good faith" was deleted; and the phrase "properly completed" was replaced with "fully completed" in order to be in compliance with the Agreement. The reference to the Streamlined Sales and Use Tax Certificate of Exemption was clarified to be Streamlined Sales and Use Tax Agreement Certificate of Exemption – New Jersey. New subsections (c) through (i) are relocated from existing N.J.A.C. 18:24B-1.2, which is proposed for repeal.

N.J.A.C. 18:24-10.6, Acceptance of exemption certificates; conditions, retention and inspection; use of certificates by out-of-State vendors, is recodified as N.J.A.C. 18:24-10.5. Subsection (a) is amended by deleting the phrase "good faith" in order to be in compliance with the Agreement. Subsection (b) was amended by replacing the word "vendors" with "sellers"; the phrase "good faith" was deleted; and the phrase "properly completed" was replaced with "fully completed" in order to be in compliance with the Agreement. The reference to the Streamlined Sales and Use Tax Certificate of Exemption was clarified to be Streamlined Sales and Use Tax Agreement Certificate of Exemption – New Jersey. New subsections (c) through (i) are relocated from existing N.J.A.C. 18:24B-1.2, which is proposed for repeal.

N.J.A.C. 18:24-11.2, Filing of monthly remittance and quarterly returns, is amended because it conflicts with N.J.A.C. 18:24B-1.4. Pursuant to N.J.A.C. 18:24-11.2, a seller must file a monthly remittance and payment when the amount of tax due for either of the first two months of the calendar quarter exceeds \$500.00. However, effective August 3, 2009, New Jersey adopted N.J.A.C. 18:24B-1.4, in order to be

in compliance with the Agreement. This rule requires a seller that collects more than \$30,000 in New Jersey sales and use tax during the preceding calendar year to file a monthly remittance for the first and second months of each calendar quarter if the amount of tax due for that month exceeds \$500.00. N.J.A.C. 18:24-11.2 must be amended in order for New Jersey to be in compliance with the Agreement and to harmonize the two conflicting rules. In addition, information from N.J.A.C. 18:24B-1.3, regarding the filing of returns has been incorporated into N.J.A.C. 18:24-11.2 for simplicity purposes.

N.J.A.C. 18:24-19.7, Farmer's Exemption Certificate: ST-7, is amended by removing the phrase "good faith" in order to be in compliance with the Agreement. The word "vendors" is replaced with "sellers" since that is the term used in the Agreement. Subsections (b) is proposed for deletion in order to be in compliance with the Agreement, since if an improper exemption certificate is issued by a purchaser, the burden will fall to the purchaser, not the seller, involved in the transaction. The information from N.J.A.C. 18:24-10.4(f) regarding blanket exemption certificates is added as new subsection (b), in order to be consistent with N.J.A.C. 18:24-10.4 and the Agreement. Existing subsection (c) pertaining to the acceptance of blanket certificates is proposed for deletion.

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

Social Impact

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 SSUTA. 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 P.L. 2001, c. 421 (N.J.S.A. 54:32B-44 et seq.) to enter into multistate discussions concerning the SSUTA to provide a streamlined sales tax system. Effective August 3, 2009, the Division enacted Chapter 24B in order to comply with the administrative aspects of the SSUTA.

The two parts to the Project's proposed streamlined sales tax system are: 1) a uniform sales and use tax administration system to reduce the burden of tax compliance for all sellers and all types of commerce; and 2) a sales tax law simplification and uniformity system. These simplifications apply to all sellers. Sellers who do not have a physical presence (or "use tax collection nexus") are not required to collect sales and use taxes unless the United States Congress should choose to require collection from all sellers for all types of commerce. However, absent Congressional action, sellers without a physical presence can volunteer to collect under the simplifications proposed in the SSUTA.

The SSUTA has been amended 11 times since the enactment of Chapter 24B. The amendments to N.J.A.C. 18:24 and 18:24B are necessary in order for the rules to be in conformity with the current provisions of the SSUTA. The amendments of N.J.A.C. 18:24 are also necessary specifically in order to harmonize N.J.A.C. 18:24, dealing with the acceptance of exemption certificates, the removal of the standard of good faith at the point of purchase, and the monetary threshold amount for filing a sales and use tax monthly remittance and payment, with both the SSUTA and N.J.A.C. 18:24B.

Economic Impact

New Jersey chose to participate in the SSUTA in order to assist New Jersey businesses that operate in multiple states by simplifying sales and use tax administrative procedures. The SSUTA is intended to reduce the sales and use tax burdens for such businesses. The SSUTA provides 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.

By conforming New Jersey’s Sales and Use Tax Act rules to the administrative provisions of the SSUTA, these amendments and repeals are similarly intended to reduce the compliance burden of New Jersey businesses while protecting the current sales tax base. The proposed amendments and repeals will not cause a taxpayer to pay more tax. The proposed amendments and repeals will not require any taxpayer that was not previously liable to pay tax to now pay tax. As a result of New Jersey’s participation with the Streamlined Sales and Use Tax Agreement and the enactment N.J.A.C. 18:24 and 18:24B, out-of-State sellers may be encouraged to register and collect and remit sales tax to the State because of the uniformity among the states of tax administration procedures and definitions set forth in the Agreement and implemented by N.J.A.C. 18:24 and 18:24B. As a member state, New Jersey is required to be in compliance with the Streamlined Sales and Use Tax Agreement through the incorporation of its provisions, including these rules and procedures, into New Jersey law, rules, and policies.

The proposed amendments and repeals are intended to assist sellers, purchasers, and their tax advisors by clarifying these detailed tax administration policies. The proposed amendments and repeals will thus facilitate public compliance by clarifying sales tax obligations, sales tax exemption procedures, and administrative and privacy issues. The amendments and repeals have a beneficial impact on taxpayers because they simplify the procedures for compliance.

Federal Standards Statement

A Federal standards analysis is not required because the rulemaking authority is based on N.J.S.A. 54:32B-24, the New Jersey Sales and Use Tax Act. There are no Federal regulatory requirements or standards that affect this rulemaking. The proposed amendments and repeals are derived from New Jersey’s membership in the SSUTA, which is a compact between a number of states and does not involve the Federal government.

Jobs Impact

The Division does not anticipate that jobs will be generated or lost as a result of the proposed amendments and repeals.

Agriculture Industry Impact

Although N.J.A.C. 18:24-19.7 is amended to read that if an improper exemption certificate is issued by a purchaser, the burden will fall to the purchaser, not the seller involved in the transaction, the proposed amendments and repeals will not have a specific impact on the agriculture industry since all businesses have the same duties whether or not they are agricultural in nature.

Since sellers who accept the Farmer’s Exemption Certificate (Form ST-7) are already required to file returns and remit New Jersey sales tax, the proposed amendments and repeals do not impose any new burdens. In fact, the proposed amendments and repeals lessen the burden on such sellers since the burden will fall to the purchaser, not the seller involved in the transaction if an improper exemption certificate is issued by a purchaser. In addition, these proposed amendments and repeals lessen a particular filing requirement. The proposed amendments and repeals require a seller that collects more than \$30,000 in New Jersey sales and use tax during the preceding calendar year to file a monthly remittance for the first and second months of each calendar quarter if the amount of tax due for that month exceeds \$500.00. Under the existing rules, sellers were required to file a monthly remittance and payment when the amount of tax due for either of the first two months of the calendar quarter exceeded \$500.00. Thus, the monthly remittance requirement is lessened for sellers who did not collect \$30,000 in New Jersey sales and use tax during the preceding calendar year.

Regulatory Flexibility Statement

New Jersey chose to participate in the SSUTA in order to assist New Jersey businesses that operate in multiple states. The SSUTA simplifies the sales and use tax burdens for such businesses by providing 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.

The proposed amendments and repeals are procedural in nature. The proposed amendments and repeals, implementing P.L. 2005, c. 126 and subsequent additions to the SSUTA, will have a positive effect in clarifying the extensive changes enacted in 2005. The proposed

amendments and repeals enable taxpayers and their advisors to learn about the changes in sales tax procedures and to keep up with the details of policy changes that were required to be made whenever new interpretations were issued by the Streamlined Sales Tax Governing Board. The proposed amendments and repeals are intended to assist sellers, purchasers, and their tax advisors by clarifying these detailed tax administration policies and procedures. The amendments and repeals should not require any reporting, recordkeeping, or compliance requirements, beyond those already required under existing law; in fact, the proposed amendments and repeals lessen a particular filing requirement. The proposed amendments and repeals require a seller that collects more than \$30,000 in New Jersey sales and use tax during the preceding calendar year to file a monthly remittance for the first and second months of each calendar quarter if the amount of tax due for that month exceeds \$500.00. Under the existing rules, sellers were required to file a monthly remittance and payment when the amount of tax due for either of the first two months of the calendar quarter exceeded \$500.00. Thus, the monthly remittance requirement is lessened for sellers who did not collect \$30,000 in New Jersey sales and use tax during the preceding calendar year. Although professional services, including legal and accounting services, may be required in order to comply with the amendments and repeal, the amendments and repeals should make compliance easier for sellers by facilitating public compliance by clarifying sales tax obligations, sales tax exemptions, administrative, and privacy issues.

The Sales and Use Tax Act applies to all sellers of tangible personal property and services. Thus, all businesses have the same duties whether or not they are a small business as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Any exemption for small businesses would not be in compliance with the statute.

Housing Affordability Impact Analysis

The proposed amendments and repeals will not result in a change in the average costs associated with housing. The proposed amendments and repeals have no impact on any aspect of housing because they deal with sales and use taxation.

Smart Growth Development Impact Analysis

The proposed amendments 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 proposed amendments and repeals have nothing to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey. The proposed amendments and repeal only deal with sales and use taxation.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 18:24-10.5 and 18:24B-1.2.

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

CHAPTER 24
SALES AND USE TAX ACT

SUBCHAPTER 5. CONTRACTORS AND SERVICES PERFORMED ON REAL PROPERTY

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) 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 to his **or her** suppliers on all purchases of materials that become component parts of the items he or she fabricates.

2. Exempt Use Certificate (Form ST-4) 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 8.13; 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. Exempt Organization Certificates (Form ST-5) may not be issued by a contractor or fabricator/contractor in connection with any purchase. The Exempt Organization Certificate should be obtained by a contractor or fabricator/contractor in all instances where he **or she** has performed any of the taxable services enumerated in [Sections] N.J.A.C. 18:24-5.6, 5.7, and 5.8 [of this Chapter].

4.-5. (No change.)

6. Certificates of Exempt Capital Improvement (Form ST-8) 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 capital improvement to real property. A contractor or a fabricator/contractor may accept Certificates of Exempt Capital Improvement 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 deciding whether to collect tax on a contractor's services.

i.-v. (No change.)

[vi. In general, a contractor who accepts a Certificate of Exempt Capital Improvement in "good faith" is relieved of liability for collection or payment of tax upon transactions covered by the certificate. In order to establish "good faith", the following conditions must be met:

(1) The certificate must contain no statement or entry, which the contractor knows is false or misleading;

(2) The certificate must be an officially promulgated form or a substantial and proper reproduction, including electronic copies of certificates;

(3) The certificate must be dated and filled out completely in accordance with the published instructions; and

(4) The certificate must include the purchaser's New Jersey tax identification number or, for a purchaser not registered in New Jersey, the Federal employer identification number or out-of-State registration number. Individual, nonbusiness purchasers must include their driver's license numbers.

vii. The contractor may, therefore accept this "good faith" Certificate of Exempt Capital Improvement as a basis for not collecting sales tax with respect to service or labor charges.]

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

[ix.] vii. The use of the Certificate of Exempt Capital Improvement[,] (Form ST-8[.]) is required in all applicable transactions.

7. (No change.)

8. An Exempt Qualified Business Permit/Exempt Purchase Permit (Form UZ-4A/5A) 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 UZ-4 is obtainable only from the qualified business. After completing the UZ-4, the contractor must issue copies to its [vendors] **sell**ers and its subcontractors. Any subcontractor receiving a 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 UZ-4 and attachments to its [vendors] **sell**ers. "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.

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] **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.

SUBCHAPTER 7. MOTOR VEHICLES

18:24-7.17 Retention of records

(a) (No change.)

(b) All certificates, affidavits, or other documentary evidence accepted [in good faith] 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 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.)

SUBCHAPTER 10. ISSUANCE AND ACCEPTANCE OF EXEMPTION CERTIFICATES

18:24-10.2 General requirements

(a) A seller of taxable goods, 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 a [properly] **fully** completed certificate, signed by the purchaser and bearing his or her name, address, and certificate of authority number, to the effect that the goods, 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 (Form ST-5), a seller may 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.

18:24-10.3 Responsibility

A seller who accepts [in good faith] any **fully** [properly] completed exemption certificate[, which upon its face discloses a proper basis for exemption] is relieved of any liability for collection or payment of tax upon transactions covered by the certificate **pursuant to the conditions set forth in N.J.A.C. 18:24-10.4.**

18:24-10.4 Acceptance [in good faith] 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:

[(a)] 1. An exemption certificate to be accepted in good faith must contain no statement or entry, which the seller knows is false or misleading[.];

[(b)] 2. A seller is presumed to be familiar with the law and rules regarding the business in which he or she deals[.];

[(c)] 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. The certificate must be in the physical possession of the seller, and available for appropriate inspection on or before the 90th day following the date of the transaction to which the certificate relates; and

5. Where a certificate is not made available for inspection on or before the date in (a)4 above, the seller must provide to the satisfaction of the Director, by means of evidence other than certification of the purchases, that the sale in question is, in fact, exempt.

(b) For transactions entered into between October 1, 2005 and December 31, 2007, an exemption certificate is properly accepted and the seller is held harmless if the following conditions are met:

1. The certificate must contain no statement or entry, which the seller knows is false or misleading;

2. The certificate must be an official form or a proper and substantive reproduction, including electronic;

3. The certificate must be filled out completely;

4. The certificate must be dated and include the purchaser's New Jersey tax identification number or, for a purchaser that is not registered in New Jersey, the Federal employer identification number or out-of-State registration number. Individual purchasers must include their driver's license number; and

5. The certificate or required data must be provided within 90 days of the sale.

(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. The following information must be obtained from a purchaser in order for the exemption certificate to be "fully completed":

i. The purchaser's name and address;

ii. The type of business;

iii. The reason(s) for the exemption;

iv. The purchaser's New Jersey tax identification number or, for a purchaser that is not registered in New Jersey, the Federal employer identification number or out-of-State registration number. Individual purchasers must include their driver's license number; and

v. The signature of the purchaser, if a paper exemption certificate is used, including facsimile.

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 paper 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 law 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. On and after October 1, 2011, either:

i. Obtain a fully completed exemption certificate from the purchaser, taken in good faith, which means that the seller obtains a certificate that claims an exemption that:

(1) Was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced;

(2) Could be applicable to the item being purchased; and

(3) Is reasonable for the purchaser's type of business; or

ii. Obtain other information establishing that the transaction was not subject to the tax.

(e) If the seller obtains the information described in (d) above, the Division shall relieve the seller of any liability for the tax on the transaction, unless it is discovered through the audit process that the seller had knowledge or had reason to know, at the time such information was provided, that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction. The Division must establish that the seller had knowledge or had reason to know, at the time the information was provided, that the information was materially false.

18:24-[10.6]10.5 [Acceptance of exemption] Exemption certificates; conditions, retention, and inspection; use of resale certificates by out-of-State [vendors] sellers

(a) All certificates, whether single purchase or blanket, accepted [in good faith] by a seller 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 the seller for a period of not less than four years from the date of the last use of such certificate as a basis for exemption.

(b) The certificate must be in the physical possession of the seller and available for appropriate inspection on or before the 90th day following the date of the transaction to which the certificate relates.

(c) Where a certificate is not made available for inspection on or before that time, the seller must provide to the satisfaction of the Director, by means of evidence other than certification of the purchases, that the sale in question is, in fact, exempt.]

[(d)] (b) Whenever the sale for resale exemption is claimed by an unregistered out-of-State seller, either the [properly] 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, including evidence that the purchaser is a licensed seller in one or more jurisdictions, accepted [in good faith] 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 [vendors] sellers, accepted [in good faith] by the seller.

[(e) In the absence of such proof the transaction will be deemed taxable and assessed as such.]

(c) The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.

(d) The seller shall maintain proper records of exempt transactions and provide them to the Division when requested.

(e) In the case of drop-shipment sales, the Division will allow a third-party seller (for example, drop shipper) to claim a resale exemption based on an exemption certificate provided by its customer/reseller or any other acceptable information available to the third-party seller evidencing qualification for a resale exemption, regardless of whether the customer/reseller is registered to collect and remit sales and use tax in the state where the sale is sourced.

(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. The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller; and

2. New Jersey has indicated on the Streamlined Sales and Use Tax Agreement Certificate of Exemption – New Jersey, that the claimed exemption is unavailable.

(g) The Division shall relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate or captures the relevant data elements required under the Agreement within 90 days subsequent to the date of sale.

(h) The Division shall relieve a seller of the tax otherwise applicable if the seller obtains a blanket exemption certificate for 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 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.

(i) The Division may require purchasers to update exemption certificate information or to reapply with the State to claim certain exemptions.

18:24-10.6 (Reserved)

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

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

(a) (No change.)

(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 (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) Effective August 3, 2009, sellers that collect more than \$30,000 in sales and use tax in New Jersey during the preceding calendar year must file a monthly remittance for the first and second months of each calendar quarter if the amount of tax due for that month exceeds \$500.00. See N.J.A.C. 18:24B-1.4. If less than \$30,000 in sales and use tax is collected by the seller in New Jersey during the preceding calendar year, a monthly remittance is not required to be remitted regardless of the amount of tax due for that particular month.

(d) Only a single return is required to be filed for each taxing period for each seller.

(e) Returns are due on the 20th day of the month following the month in which the transaction occurred. When the due date for a return falls on a Saturday, Sunday, or legal holiday in New Jersey, the return shall be due on the next business day. If the return is filed in conjunction with a remittance and the remittance cannot be made because the Federal Reserve Bank is closed on a due date that prohibits a person from being able to make a payment by the automated clearing house (ACH) debit or credit, the return shall be accepted as timely filed on the same day as the remittance.

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

18:24-19.7 Farmer's Exemption Certificate: 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 services must present the [vendor] seller with a signed, [properly] fully completed Farmer's Exemption Certificate (ST-7) disclosing a proper basis for exemption.

(b) Purchases which are not supported by a properly executed exemption certificate shall be treated as taxable retail sales by the vendor.

(c) A signed, completed blanket Farmer's Exemption Certificate may be furnished to the vendor by the farmer to cover additional purchases of the same type of goods or services.

1. The blanket certificate may be used only as long as all of the information furnished on the certificate remains unchanged.]

(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 N.J.A.C. 18:24-10.4(g).

[2.] (c) Each sales slip or invoice based on such blanket certificate must show the farmer's name, address, and New Jersey tax registration number.

(d) (No change.)

CHAPTER 24B
STREAMLINED SALES AND USE TAX RULES AND PROCEDURES

SUBCHAPTER 1. STREAMLINED SALES AND USE TAX RULES AND PROCEDURES

18:24B-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

...
"Model 1 seller" means a seller registered under the Agreement that has selected a CSP as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

"Model 2 seller" means a seller registered under the Agreement that has selected a CAS to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

"Model 3 seller" means a seller registered under the Agreement that has sales in at least five member states, has total annual sales revenue of at least 500 million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

"Model 4 seller" means a seller that is registered under the Agreement and is not a Model 1 seller, a Model 2 seller, or a Model 3 seller.

...
"Registered under the Agreement" means registration by a seller with the member states under the central registration system provided in Article IV of [this] the Agreement.

18:24B-1.2 (Reserved)

18:24B-1.5 Certification of service providers and automated systems

(a) The Governing Board shall certify automated systems and service providers to aid in the administration of sales and use tax collections.

(b) The Governing Board may certify a person as a CSP if the person meets all of the Governing Board's requirements[.].

(c) The Governing Board may certify a software program as a CAS if the Governing Board determines that the program meets all of the Governing Board's requirements[.].

(d) (No change.)

18:24B-1.6 Registration of sellers

(a) (No change.)

(b) A seller registering under the Agreement shall be registered in each of the member states.

[1.] (c) (No change in text.)

(d) A Model 2 seller, Model 3 seller, or Model 4 seller may elect to be registered in one or more states as a seller that anticipates making no sales into such state(s) if it has not had sales into such state(s) for the preceding 12 months. Such election does not relieve the seller of its agreement pursuant to Section 401(B) of the Agreement (Seller Participation) to collect taxes on all sales into such states or its liability for remitting to the proper states any taxes collected.

(e) The Division does not require the payment of any registration fees or other charges for a seller to register.

(f) A written signature from the seller is not required.

(g) An agent may register a seller under uniform procedures adopted by the member states.

(h) A seller may cancel its registration under the system at any time under uniform procedures adopted by the Governing Board. Cancellation does not relieve the seller of its liability for remitting any taxes collected to the Division.

Recodify existing (b), (c), and (d) as (i), (j), and (k) (No change in text.)

- 18:24B-1.7 State review and approval of certified automated system software and certain liability relief
- (a)-(b) (No change.)
 - (c) The Division shall provide relief from liability to CSPs for not collecting sales and use taxes in the same manner as provided to sellers under the provisions of N.J.A.C. [18:24B-1.2] **18:24-10.**
 - (d) (No change.)
 - (e) If the Division determines that an item or transaction is incorrectly classified as to its taxability, it shall notify the CSP or Model 2 seller of the incorrect classification. The CSP or Model 2 seller shall have 10 days to revise the classification after receipt of notice from the Division of the determination. Upon expiration of the 10 days, **the** CSP or Model 2 seller shall be liable for the failure to collect the correct amount of sales or use taxes due and owing to the Division.
- 18:24B-1.9 Relief from certain liability for [purchasers] **purchasers'** confidentiality and privacy protections under Model 1
- (a)-(d) (No change.)

OTHER AGENCIES

(a)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Technology Business Tax Certificate Transfer Program

Proposed Amendments: N.J.A.C. 19:31-12.2, 12.3, 12.4, and 12.7

Authorized By: New Jersey Economic Development Authority, Michele Brown, Chief Executive Officer.
 Authority: N.J.S.A. 34:1B-7.42a et seq.
 Calendar Reference: See Summary below for explanation of exception to calendar requirement.
 Proposal Number: PRN 2013-072.

Submit written comments by July 5, 2013 to:
 Maureen Hassett, Senior Vice President
 New Jersey Economic Development Authority
 PO Box 990
 Trenton, NJ 08625-0990

The agency proposal follows:

Summary

The New Jersey Economic Development Authority (“EDA” or “Authority”) is proposing amendments to its rules implementing the Technology Business Tax Certificate Transfer Program to clarify certain terms and provisions pertaining to program eligibility, as follows:

N.J.A.C. 19:31-12.2 Definitions

The definition of “full-time employee” is revised to 1. pertain to employees hired on a permanent bases or indefinite basis; or employed under a formal written agreement with an institution of higher education, if employed by the technology or biotechnology company on a permanent basis within a single position in which all of the other requirements of “full-time employee” are met; and 2. exclude any person who works as an intern, as a temporary employee, or in a temporary position.

The definition of “license” is revised to apply only to exclusive licenses, and thereby require that the license must grant the applicant exclusive control over the development of the protected proprietary intellectual property. Also, duplicative language pertaining to “protected proprietary intellectual property” is deleted.

The definition of “protected proprietary intellectual property” is revised to mean the technology of the applicant’s primary business as a technology or biotechnology business. The purpose is to clarify that the “protected proprietary intellectual property” owned or licensed by the applicant must be the technology the applicant is seeking to commercialize and must also be the primary business of the applicant.

N.J.A.C. 19:31-12.3 Eligibility

Proposed new N.J.A.C. 19:31-12.3(b)3, would state that any business that has failed to submit a timely application shall not be approved for participation in the program.

N.J.A.C. 19:31-12.4 Application to the program

The proposed amendment at N.J.A.C. 19:31-12.4(c)4 deletes language pertaining to the requirement that completed applications shall include the two most recent full years of separate financial statements for all affiliates and subsidiaries as this information is not required for application purposes.

The proposed amendments at N.J.A.C. 19:31-12.4(c)5 and 6 delete references to “corporations” and replace them with the term “entities.”

The proposed amendments at N.J.A.C. 19:31-12.4(c)9 delete a reference to New Jersey, which is replaced with the term “this State” to conform to terminology in the existing definition of “full-time employee working in this State”; delete outdated language referring to employees in the United States at the time of application; and add a requirement that applicants provide the address given by each employee, and other information including whether the employee has submitted a Certificate of Non-residence for an exemption from the New Jersey Gross Income Tax, whether any employee is pursuing a higher education degree (if known), and whether any employee is related, as defined in Section 152(d)(2) of the Internal Revenue Code, to any other employee, shareholder, or investor if so known to the applicant.

Proposed new N.J.A.C. 19:31-12.4(c)10 requires applicants provide the employment offer letter, resume, and job description for every employee hired in the current year.

The proposed amendment at recodified N.J.A.C. 19:31-12.4(c)12 clarifies that the applicant shall provide a copy of the certificate of incorporation “or formation” for the applicant and its earliest predecessor entity.

N.J.A.C. 19:31-12.7 Allocation of tax benefits

The proposed amendments at N.J.A.C. 19:31-12.7(a)1, 2, 2i, and ii, and 3iii are technical and intended to provide uniformity of all references to dollar amounts throughout the section.

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

Social Impact

The Technology Business Tax Certificate Transfer Program (Program) allows technology and biotechnology companies with fewer than 225 employees to sell their net operating losses and/or research and development credits to profitable corporate entities. The proposed amendments would have a positive social impact as the terms and provisions pertaining to eligibility, and particularly delineation of full-time employees, are strengthened to ensure that the Program fully targets businesses whose protected, proprietary intellectual property is the technology of their primary business and that employ non-temporary full-time employees.

Economic Impact

The proposed amendments are intended to have a positive economic benefit as the clarification of eligibility requirements will ensure the available benefits under the Technology Business Tax Certificate Transfer Program are fully-targeted to businesses complying with the employment and other key requirements, as defined by statute.

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal requirements or standards applicable to the proposed amendments.

Jobs Impact

The proposed amendments will result in the continued creation of an indeterminate number of new full-time, private sector jobs at emerging technology and biotechnology businesses in New Jersey because the rules clarify eligibility.