

Informational Guide

Landscaping Services and New Jersey Sales Tax

Prepared by the
New Jersey Department of Agriculture

In Cooperation with & Approved by:
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Division of Taxation

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Informational Guide on Landscaping Services and Sales Tax

The New Jersey Sales and Use Tax Act has been amended, effective October 1, 2006, to make the sale of certain services performed by landscapers subject to New Jersey sales tax. Basically, the change to the Sales and Use Tax Act for New Jersey's green industry is that 7 percent sales tax must be collected from the property owner on charges for installing plant materials, seeding, sodding, land clearing and grading related to such plantings and removing trees or stumps. Some freight and handling charges are now also subject to sales tax. That is the simple part. The difficulty for many entities is in the invoicing and paying use tax when they function as growers, wholesalers, retailers and landscapers. The purpose of this guide is to provide information and examples on how to meet the requirements for collection and remittance of sales tax.

“Landscape services” means services that result in a capital improvement to land other than structures of any kind whatsoever, such as seeding, sodding or grass plugging of new lawns; planting trees, shrubs, hedges, plants; and clearing and filling land.

“Retail sales” means the amount of the sales price of any tangible personal property or digital property or service taxable under this act. For purposes of this act “retail sale” includes sales of tangible personal property to all contractors, subcontractors, or repairmen of materials and supplies for use by them in erecting structures for others, or building on, or otherwise improving, altering, or repairing real property of others.

The Sales and Use Tax Act as amended makes the labor or installation charges for “landscape services” subject to sales tax even when the landscape service results in a capital improvement. A landscaper pays sales tax on all materials and supplies purchased (unless performing the service for an exempt public entity, “exempt organization”, or qualified urban enterprise business).

Every person required to collect sales tax shall collect the tax from the customer when collecting the price, service charge, amusement charge or rent to which it applies. If the customer is given any sales slip, invoice, receipt or other statement or memorandum of the price, service charge, amusement charge or rent paid or payable, the tax shall be stated, charged and shown separately on the first of such documents given to him. The tax shall be paid to the person required to collect it as trustee for and on account of the State.

What Has Changed

Labor charges to property owners for the installation of plant materials, seeding lawns, sodding, and clearing or filling land associated with such activities including tree and stump removal are subject to 7 percent sales or use tax. These services remain capital improvements to real property, but are now subject to sales tax.

“Delivery Charges” are charges by the seller for delivery to a location designated by the purchaser of personal property including, but not limited to, transportation, shipping, postage, handling, crating, packing and fuel costs. The law provides for the taxation of delivery charges on taxable sales and retains the exemption for delivery charges on sales that are nontaxable (either because the goods themselves are nontaxable, e.g., clothing, or because the purchaser is entitled to an exemption under the circumstance of the transaction, e.g. purchase for resale.)

What Remains the Same

Labor charges to property owners for what the industry refers to as “hardscape” services performed by a landscaper, such as the installation of pavers, stone walls, fences, landscape low-voltage lighting, underground sprinklers, walkways, driveways, retaining walls and similar structures, remain capital improvements to real property and are unaffected by the new law. Thus, the installation labor is still exempt from sales tax when the property owner issues an ST-8 to the contractor.

The tax on repair and maintenance services has not changed. The Sales and Use Tax Act imposes tax on charges for maintaining, serving, and repairing real property. The following are examples of taxable repair and maintenance services performed by landscapers: mowing lawns, reseeding lawns, tree maintenance, weed/insect control, fertilizing, soil aeration, and mulching.

Businesses that provide landscaping services are still considered contractors under the Sales and Use Tax Act. The landscaper is responsible for paying sales or use tax on its materials and supplies, including all plant materials that are installed onto real property.

Business Entities in the Ornamental Horticultural Industry

Nurseries may function as wholesalers, retailers, growers, landscape contractors, or offer a combination of these services. New Jersey sales tax responsibilities will differ according to the type of services offered. When materials are sold to landscape contractors and homeowners, the transaction is a retail sale and sales tax **must** be collected and remitted to New Jersey. However, when a nursery sells materials to another nursery for resale, the purchaser, who claims a resale exemption, supported by a properly completed resale certificate, will not be charged sales tax on the purchase.

Nurseries that install plant materials that they have grown are considered retailers for the purposes of paying, charging, and collecting sales tax. The nursery charges sales tax to the customer on the plant materials sold. Nurseries that install the plants that they have grown are treated as landscape contractors. They will owe use tax on their costs for purchasing the plants and will charge the property owner sales tax on the labor charge for planting.

Wholesalers and Retailers registered with the New Jersey Division of Taxation may issue a New Jersey Resale Certificate to their supplier when purchasing materials for resale. The vendor will not charge sales tax on the purchase.

Landscapers are contractors and pay sales tax on materials and supplies. Landscapers are not considered retail sellers of the materials that they install and are not entitled to issue Resale Certificates.

Subcontractors See Division of Taxation’s publication *Landscapers & New Jersey Sales Tax*, ANJ-4 revised 01/07, for an explanation of taxable and non-taxable services performed by subcontractors (under the heading “Subcontractors”).

Invoicing Customers for Sales and Recording Use Tax

When materials or services are subject to sales tax, invoices must show that sales tax was collected. If materials and services are not separated, the entire invoice is subject to sales tax. When use tax is due, landscaper's records must show that use tax was paid.

Examples of Transactions for Landscaping Services

Example 1:

Jeff's Landscape Service purchases a Blue Spruce from Brown's Nursery for \$100. The invoice shows the item purchased, the price charged, and adds 7 percent sales tax. The total amount charged is \$107. Jeff's Landscape Service agrees to provide a fully installed tree to Mrs. Homeowner for \$300. A \$25 charge for a one-year warranty for the planting is included in the billing. Jeff's chooses to separately state on the invoice the \$107 that he actually paid for the tree (his price for the tree plus tax he paid on his retail purchase). The invoice presented to Mrs. Homeowner is as follows:

Jeff's Landscape Service INVOICE	
Blue Spruce	\$107
Warranty	25
Installation	<u>175</u>
Total	307
Sales tax at .07	<u>14*</u>
Amount Due	\$321

*($\$200$ for planting and warranty $\times .07 = \$14.00$)

The property owner pays \$14 in sales tax to Jeff's Landscape Service. Brown's Nursery submits the \$7 paid by Jeff's Landscape Service to the State of New Jersey. These are two separate transactions.

Example 2:

Jeff's Landscape Service purchases a Blue Spruce from Brown's Nursery for \$100. The invoice from Brown's Nursery shows the item purchased, the price charged, and the 7 percent sales tax collected. Jeff's installs the tree and submits the following invoice to the property owner:

Jeff's Landscape Service INVOICE	
Blue Spruce installed	\$307.00
Sales tax at .07	21.49
Amount Due	\$328.49

If the invoice does not separate the cost of materials and labor, sales tax is charged on the entire bill. Jeff's should save a record showing 7 percent sales tax was paid on the tree purchased from Brown's Nursery. Each transaction is a separate sale. A refund cannot be claimed for the \$7.

Example 3:

Transaction A: Tom purchased 1,000 Chrysanthemum plugs for 35 cents each from a plant nursery and issues an ST-3 resale certificate. Tom grows the plugs to a marketable state. The Chrysanthemum plants are offered for sale at Tom’s Garden Center for \$5.95 each. A customer purchases 100 plants. The customer then enters into a separate contract with Tom’s landscaping department to install the plants. Tom charges \$2.00 for the installation labor for each plant installed. The invoices are as follows:

Tom’s Garden Center INVOICE #1		Tom’s Garden Center INVOICE #2	
100 mums at \$5.95 each	\$595.00	Installation at \$2.00 each	\$200.00
Sales tax at .07	41.65	Sales tax at .07	14.00
Total	\$636.65	Total	\$214.00

Transaction B: The following week, Tom purchases from Brown’s nursery 100 Chrysanthemum plants for \$2.95 each and issues a ST-3 retail certificate to the nursery that grew the plants. The plants are similar in size and quality to the ones he grew and sold for \$5.95. Tom retails these plants for \$5.95 each and offers installation to property owners at \$2.00 each.

If the plants are sold at the Garden Center and Tom does not install the plants, this is considered the final sale. If Tom installs the plants, Tom is acting as a contractor and must remit 7 percent use tax on the purchase of plant material from another nursery.

Brown’s Nursery INVOICE		Tom’s Garden Center INVOICE	
100 Chrysanthemums @ 2.95	\$295.00	100 Chrysanthemums installed	\$795.00
Sales tax (ST-3 issued)	0	Sales tax at .07	55.65
Total	\$295.00	Total	\$850.65
(\$20.65 use tax due)			

Both transactions have tax implications. The first is the use of \$295 worth of plants from Brown’s Nursery that has \$20.65 in use tax due, and the second is \$55.65 in Sales Tax paid by the property owner. If the property owner asks Tom how the bill invoice was calculated, each plant costs \$5.95 and installation is \$2.00 each.

Transaction C: After installation of the 100 Chrysanthemum plants, the property owner asks Tom to spread mulch. Tom purchases mulch for \$200 that is delivered to the site and pays \$14 sales tax to the mulch supplier. Tom separately states on the invoice to the property owner the \$214 that he paid for the mulch and charges \$300 for the labor for spreading. The invoice is as follows:

Tom’s Garden Center INVOICE	
Mulch delivered	\$214.00
Spreading Charge	300.00
Sales tax at .07	21.00
Total	\$535.00

Example 4:

An order is placed by a property owner for 300 azaleas, installed. ABC operates a garden center, is a grower, and provides landscaping services. The price ABC charges for each azalea (in quantity) is \$22.95 and installation is \$10 per plant. ABC buys 100 azaleas from Monmouth Nursery that cost \$10 each. ABC is functioning as a contractor and is deemed to be the retail purchaser of the azaleas.

Monmouth Nursery	
INVOICE	
100 Azaleas @ \$10 each	\$1,000
Sales tax at .07	70
Total	\$1,070

ABC has 100 azaleas in stock at its Garden Center that were purchased from Middlesex Nursery at \$12 each.

Middlesex Nursery	
INVOICE	
100 Azaleas @ \$12 each	\$1,200
Sales tax (ST-3 submitted)	0
Total	\$1,200
(\$84 use tax due)	

In that ABC will install the 100 Azaleas purchased from Middlesex Nursery instead of reselling them, a use tax of \$84 is owed to the State of New Jersey (\$1,200 times .07).

ABC has 100 azaleas that they grew themselves from cuttings at their nursery. ABC owes use tax on the 100 azaleas based on the cost of materials used. ABC determines its cost basis to be \$5 per plant. ABC remits \$35 to the State of New Jersey on these 100 azaleas.

ABC Garden Center	
INVOICE	
300 Azaleas at 22.95 ea.	\$6,885.00
Installation at 10.00 ea.	3,000.00
Total	9,885.00
Sales tax at .07	691.95
Amount Due	\$10,576.95

ABC acting as a landscaper paid sales tax on the plant materials purchased at their nursery. ABC did not want to state the wholesale cost of plants to the customer. ABC charged sales tax on the retail price of the plant material and labor.

Example 5:

Al is asked for an estimate to landscape a 12-unit housing development. Al establishes the cost for plants and materials to be \$10,000 plus \$700 for sales tax. It is estimated that it will take 10 hours to grade the property at a rate of \$250 per hour. The price estimate given for design, grading and installation is \$30,000. On the invoice to the developer, Al itemizes and lump sums the charges as follows.

Al's Landscaping	
INVOICE	
Design	\$ 3,000
Plants, materials, grading & installation	27,000
Total	30,000
Sales tax at .07 (on 27,000)	1,890
Amount Due	\$31,890

When a landscaper or other contractor purchases materials for an installation, the landscaper pays the sales tax at the time of purchase. Landscape design is a service that is not taxable. The charges for plants, materials, grading and labor are all taxable charges. Charges for plants, materials, grading and installation are being lumped together. If a landscaper marks up the prices paid for plants and materials and states them separately on the customer's invoice, then use tax would be owed in that the landscaper is not making a retail sale of those materials.

Example 6:

Bob's Grading is asked to grade a property and install sod. The cost to Bob's for the sod from Cultivated Sod Inc. was \$2,000 plus \$140 for sales tax. The invoice Bob's gives to the customer is as follows:

Bob's Grading	
INVOICE	
Sod	\$2,140
Grading	1,000
Installation & maintenance	2,300
Sales tax at .07 (on 3,300)	231
Amount Due	\$5,671

Bob's paid \$140 in sales tax on the \$2,000 sod, and the customer pays \$231 on \$3,300 of taxable services of grading and installing the sod, but does not pay sales tax on the separately stated cost of the sod. (In this example, the grading is related to plantings, so it is the type of capital improvement work no longer covered by the sales tax exemption as of October 1, 2006.) Bob's and Cultivated Sod, Inc. are each responsible to collect sales tax and to remit sales tax electronically to the New Jersey Division of Taxation.

Example 7:

Brenda's Nursery sells \$18,000 worth of plant material to a garden center. The nursery delivers the material and charges \$1,500 for freight.

Brenda's Nursery	
INVOICE	
300 Norway Spruce 7'-8' @ 60 ea.	\$18,000
Delivery charge	1,500
Sales Tax	0
Amount Due	\$19,500

An ST-3 (resale certificate) is provided by the garden center for the plant material because it is purchasing the material for resale in its store and is therefore entitled to a resale exemption. The shipping charge is also exempt because the sale of plant material is not taxable to the retail garden center, which is purchasing it for resale.

Example 8:

Tom's Nursery sells \$40,000 of plant material to a contractor that is landscaping a new housing development. Tom's Nursery adds 7 percent sales tax to the invoice plus a delivery charge of \$250.00. Because the plant material is taxable, and the contractor is not entitled to any exemption, the delivery charge is also subject to sales tax as a shipping charge. $\$40,250 \times 1.07 = \$43,067.50$ is the cost to the contractor. The developer (customer) issues an ST-8 (Capital Improvement Certificate) to the contractor for the portion of the bill charging for exempt capital improvement work (installing pavers, drainage pipe, lighting, irrigation system.) The invoice from the contractor is as follows:

Tom's Nursery	
INVOICE	
Plant materials	\$43,067.50*
Installation of plants	30,000.00
Pavers, installed	175,000.00
Drainage pipes, installed	25,000.00
Lighting, installed	35,000.00
Sales tax at .07	2,100.00 **
Amount Due	310,167.50

**The contractor invoiced the actual cost of materials and tax. If the cost were increased to the property owner, Use Tax would be due.*

***The developer must be charged sales tax on the labor for installation of plant materials (\$30,000), because installation of plant materials is a type of capital improvement work that is no longer exempt from sales tax as of October 1, 2006.*

Example 9:

ABC Growers & Landscape Design purchases 10,000 evergreen liners from a Pennsylvania Nursery for \$12,000. The liners will be grown by ABC and installed by their landscaping division. ABC pays \$720 (6%) in sales tax to the Pennsylvania nursery. Because New Jersey allows a credit for the tax paid to Pennsylvania, but New Jersey tax is 1% more than Pennsylvania's, the landscaper owes the 1% balance of use tax to New Jersey. Using an ST-50, ABC electronically transfers \$120 (1%) in use tax to the New Jersey Division of Taxation.

Pennsylvania Nursery	
Invoice	
10,000 Blue Spruce transplants	\$12,000
Pennsylvania sales tax at .06	720
Amount Due	\$12,720

Use Tax submitted NJ Division of Taxation @ .01 \$120

The Division of Taxation has determined when a nursery pays sales tax at the time of purchase of plant material that will be grown out and installed at a later date by that nursery, the use tax obligation has been met.

Example 10:

ABC Growers & Landscape Design purchases 5,000 evergreen transplants costing \$4,800 for Christmas tree production from New Jersey Nursery. ABC issues an ST-3 (Resale Certificate) to the nursery and is not charged sales tax.

New Jersey Nursery	
Invoice	
5,000 Douglas-fir transplants	\$4,800
Sales tax	0
Amount Due	\$4,800

When ABC sells the Christmas trees at their retail outlet, sales tax will be charged on each tree sold.

Example 11:

Internet Plants and Materials (IPM) is a company located in New Jersey that offers professional landscape design services as well as selling and delivering plants and materials through its web based operation. IPM maintains a retail price list on its website for both plant materials and hardscape supplies. IPM does not have a retail site, but has a staging area for deliveries.

Planting Plants in NJ is an affiliated company that installs hardscape, greenscape and waterscape projects. A developer contacts IPM through its website and requests a design for landscaping project. Invoices generated by this project are as follows:

Brown's Nursery invoice to IPM:

Brown's Nursery INVOICE	
10 Norway Spruce @\$50 each	\$500
15 Red Maple @ \$100 each	\$1,500
Mulch 100 yards	\$1,000
Sales Tax (ST-3 submitted)	0
Total	\$3,000

IPM invoice to Developer:

Internet Plants and Materials INVOICE	
Design	\$ 500*
10 Norway Spruce @\$100 each	1,000
15 Red Maple @ \$200 each	3,000
Mulch	2,000
Total	\$6,500
Sales tax at .07	\$420
Amount Due	\$6,920

* Nontaxable service

Planting Plants in New Jersey invoice to Developer:

Planting Plants in New Jersey INVOICE	
Installation of Plants and Materials	
8 hours @ \$100 per hour	\$800
Sales tax at .07	56
Amount Due	\$856

Contacts for Additional Information or Questions

The Division of Taxation may be contacted at (609) 292-5995.

The New Jersey Department of Agriculture may be contacted at (609) 984-2503 or by e-mail to: Robert.Bruch@ag.state.nj.us

Appendix

Publication ANJ - 4

Landscapers & New Jersey Sales Tax

Found on the web at

www.state.nj.us/treasury/taxation/pdf/pubs/sales/anj4.pdf