

Landscapers & New Jersey Sales Tax

Publication ANJ-4



Registration

All businesses are required to register with the State of New Jersey for tax purposes at least 15 business days before starting business. To register, a **Business Registration Application (Form NJ-REG)** must be filed. If the application indicates that the business will collect sales tax or purchase materials for resale, a **New Jersey Certificate of Authority (Form CA-1)** for sales tax is sent to the business. A Public Records Filing may also be required depending upon the type of business ownership. More information on Public Records Filing is available in the New Jersey Complete Business Registration Package (NJ REG) or by calling 609-292-9292.

Contractors

For New Jersey sales and use tax purposes, “contractor” means anyone in the business of working on the land and/or buildings of another. Landscapers are contractors. Real estate developers are the owners of the real property being improved. Under the Sales and Use Tax Act, sales of *materials and supplies* purchased by contractors for erecting or building or otherwise improving, altering, or repairing real property are taxable to the contractor because under the law the contractor is considered the final consumer (or end-user) of these items.

Since contractors are not considered retailers or resellers of materials that they install, they may not issue a **Resale Certificate (Form ST-3)** for such purchases. Thus, when a contractor performs work on the real property of a customer, he should not charge the customer sales tax on the cost of materials and supplies used for the job. The only time that the customer will be billed for tax on materials is when the bill is stated as a lump sum for a taxable installation, repair, or maintenance service, without separating the charge for materials from the charge for labor.

If the contractor chooses to separately itemize the materials and labor portion of the bill provided to the property owner in a taxable installation, repair, or maintenance service transaction, the only amount deductible from the receipt for sales tax purposes is the separately stated pass-through of the actual cost of materials. This amount may include the sales tax paid by the contractor when the materials and supplies were purchased. The remainder of the customer’s bill relates to the labor and is subject to sales tax. Since contractors are not “resellers,” they cannot mark up the materials. Thus, the markup properly belongs in the “labor” category of the bill. If the contractor performs a taxable job and chooses to separately itemize the materials from the labor portion of the bill, the Division expects a contractor to remit tax based on the amount of labor charged to the customer, which may include overhead costs.

Improvements to Land & Buildings

When the work completed on a customer’s property results in an **exempt capital improvement** (i.e., the work substantially extends the useful life of the property or increases its capital value), the property owner should not be charged sales tax for either materials or labor. The contractor pays the sales tax on the materials and the property owner should issue a **Certificate of Capital Improvement (Form ST-8)** to the contractor.

EXAMPLES OF EXEMPT CAPITAL IMPROVEMENTS

- Installation of new fence
- Installation of new underground sprinkler system
- Hardscaping (i.e., installation of deck, paver patio, walkway, driveway, swimming pool deck, retaining walls, etc.)
- Low-voltage lighting
- Drainage systems (i.e., storm water runoff)
- Ponds
- Fountains

Effective October 1, 2006, the capital improvement exemption for certain defined landscaping services is no longer available. Thus, the following types of services, which were previously exempt capital improvements to real property, are subject to tax on and after October 1, 2006:

EXAMPLES OF TAXABLE SERVICES

- **Planting:** trees, shrubs, hedges, plants, etc.
- **Lawns:** laying new sod and seeding a new lawn
- Clearing and filling land associated with seeding, sodding, grass plugging of new lawns, or planting trees, shrubs, hedges, plants, etc. This also includes tree/stump removal.

Repairs & Maintenance

When a repair is made to the property of a customer, the contractor must charge sales tax on the labor portion of the bill. Repairs and maintenance do not add to the value of the property but only maintain the existing value. **NOTE:** A landscaper must charge sales tax on labor when performing repairs and maintenance. If the charges for materials and labor are not listed separately on the invoice, the contractor must collect sales tax on the entire invoice.

EXAMPLES OF REPAIRS OR MAINTENANCE

- **Trees:** pruning, spraying, bracing, cabling, grafting, coppicing, suckering, and feeding
- **Soil:** aerating, sterilizing, and mulching
- **Controlling:** weeds and insects
- **Repairing:** walkways, patios, fountains, and walls
- **Lawn:** reseeding, fertilizing, and mowing

Service Contracts

A contract which provides for the regular care of property such as lawns, gardens, or plants at a fixed price is subject to sales tax.

Subcontractors

A contractor who agrees to perform specified tasks for a second contractor (the general contractor) is acting as a subcontractor.

A subcontractor must pay sales tax on all the materials and supplies purchased for erecting, building, or otherwise improving (by a capital improvement), altering, maintaining, or repairing real property. The subcontractor does not charge the general contractor sales tax on either the materials purchased or the labor charge. If sales tax is due on the subcontractor's taxable labor, the general contractor must collect the tax from the property owner. Taxable labor includes the following: repair or maintenance services, floor covering services, certain landscaping services, and alarm system installations. Thus, in the case of new construction, the owner of the property (e.g., a real estate developer) must pay tax when purchasing taxable landscaping services. In the case of existing improved property, the homeowner or property owner pays tax when purchasing taxable landscaping services.

EXAMPLES

1. A developer is constructing a home to sell to the public. The developer hires a landscaper to perform taxable landscaping services. The developer is the property owner, and thus the end consumer of the landscaping services, and must pay tax on the amount charged by the landscaper.
2. A developer is constructing a home to sell to the public. The developer hires a general contractor. The general contractor hires a subcontractor landscaper to perform taxable landscaping services. The developer is the property owner, and thus the end consumer of the landscaping services, and must pay tax on the amount charged by the general contractor for the landscaping service. The amount charged to the general contractor by the subcontractor landscaper is not a taxable receipt.
3. A landscaper has a contract with a property owner for the installation of planting materials, such as trees and shrubs, on existing construction. The landscaper hires a subcontractor to perform the taxable planting service. Since the landscaper is charging the property owner for a taxable service, the landscaper collects tax from the property owner. The amount charged to the landscaper by the subcontractor is not a taxable receipt.

Tools/Equipment

Tools and equipment purchased or rented by a landscaper, contractor, or subcontractor are subject to sales tax even if the equipment is used on a job for an exempt organization.

Nurseries

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.

WHOLESALE AND RETAILERS

When purchasing materials for resale, a buyer may issue a **Resale Certificate (Form ST-3)** to the seller. The seller will not charge sales tax.

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 materials are sold to other nurseries for resale, a purchaser issues a completed **Resale Certificate (Form ST-3)** to the seller and will not be charged sales tax.

Qualified Out-of-State Vendors: Qualified out-of-State vendors may make tax-exempt purchases in New Jersey of goods and services purchased for resale. When the qualified out-of-State vendor carries the goods away from the point of sale, or sends its own vehicle or messenger to pick them up in New Jersey, the qualified out-of-State vendor may use the **Resale Certificate for Non-New Jersey Vendors (Form ST-3NR)**. The ST-3NR requires the person picking up the merchandise to provide acceptable identification (i.e., driver's license of any state in the United States, major credit card including photograph, or any identification card which includes a number **and** a photograph **and** the bearer's address). "Qualified out-of-State vendors" are vendors that (1) are not registered with New Jersey, (2) are not required to be registered with New Jersey *and* (3) are registered with another state. An out-of-State vendor may not use an ST-3NR unless the purchase qualifies for exemption under New Jersey law. Therefore, out-of-State contractors may not make exempt purchases in New Jersey of materials to be used on their customers' real property, even if they might qualify for the resale exemption under the laws of their own state.

GROWERS

When materials are sold to nurseries for resale, sales tax need not be collected provided the purchaser issues a completed **Resale Certificate (Form ST-3)**. However, when materials are sold to landscape contractors and homeowners, sales tax **must** be collected and remitted to the State. A resale certificate should not be accepted from someone that does not operate a facility engaged in making sales at retail.

The following are examples of nonfood items that are subject to tax when sold at retail. A grower of nursery stock that sells such items is required to register as a vendor and collect sales tax:

- All nursery stock • Animal bedding • Christmas trees • Compost • Mulch • Wreaths
- Grave blankets • Holly branches • Pine cones • Needled evergreen branches • Gourds
- Painted pumpkins

NURSERY & LANDSCAPING SERVICES

When the nursery/landscaper installs materials (shrubs, trees, flowers, etc.) that were grown by the nursery/landscaper, the nursery/landscaper is acting as a contractor and must remit use tax to the State of New Jersey based on the cost of the materials used. If the nursery/landscaper chooses to purchase the shrubs, trees, or flowers to be installed from another nursery, New Jersey sales or use tax is due based on the purchase price of the items. Sales tax on these items should not be charged to the property owner. Since the installation of items such as trees, shrubs, and flowers is subject to tax, a property owner may *not* issue a **Certificate of Capital Improvement (Form ST-8)** to the nursery/landscaper in order to be exempt from paying sales tax on the labor charges. **NOTE:** If the nursery/landscaper chooses to charge a lump sum for the plant material and the labor to install such materials, the nursery/landscaper must charge the property owner tax on the entire amount.

However, a property owner may issue a **Certificate of Capital Improvement (Form ST-8)** to the nursery/landscaper in order to be exempt from paying sales tax on the labor charges for the installation of items which constitute an exempt capital improvement once installed (see "Examples of Exempt Capital Improvements" on page 1).

Materials and supplies purchased by landscape contractors in another state are subject to use tax when the materials are brought into New Jersey if no sales tax was paid to the state where they were purchased. If the tax was paid to the other state at a rate less than New Jersey's sales tax rate and the other state has sales tax reciprocity with New Jersey, the difference must be remitted to the State of New Jersey as use tax.

Materials and supplies purchased in New Jersey by out-of-State landscapers and nurseries for use out-of-State are not subject to New Jersey sales or use tax if the materials are delivered out-of-State by the seller. If the materials are picked up in New Jersey, the sale is subject to sales tax unless the purchaser is a "qualified non-New Jersey vendor," in which case the purchaser may issue a **Resale Certificate for Non-New Jersey Vendors (Form ST-3NR)** to exempt the purchase from sales tax. Out-of-State nurseries may also purchase materials in New Jersey for resale with the use of a **Resale Certificate (Form ST-3)** or the **Streamlined Sales and Use Tax Certificate of Exemption (Form ST-SST)**.

Out-of-State Purchases & Sales

**For More
Information**

For more information on landscapers and New Jersey sales tax, contact the Division's Customer Service Center at 609-292-6400, e-mail us at nj.taxation@treas.state.nj.us, or write to:

NEW JERSEY DIVISION OF TAXATION
INFORMATION AND PUBLICATIONS BRANCH
PO BOX 281
TRENTON NJ 08695-0281

Many State tax forms and publications are available by fax and on our Web site. Call NJ TaxFax at 609-826-4500 from your fax machine's phone, or access the Division's home page at:
www.state.nj.us/treasury/taxation/