# Leases and Rentals

Tax Topic Bulletin S&U-12


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## Introduction

This publication explains how and when Sales and Use Tax is imposed on lease and rental transactions in New Jersey. It provides information on the correct procedures for charging, collecting, and remitting Sales Tax on lease and rental transactions. It also explains who is responsible for paying Sales and Use Tax and which transactions are exempt from tax.

# General Information

The rental or lease of most tangible personal property in New Jersey is subject to the State's Sales and Use Tax. Tangible personal property means physical property other than real property, such as land and buildings. The Division treats rental/lease transactions as retail sales.

A ***lessor*** is any owner of leased or rented property, including anyone who subleases the property they are leasing. A ***lessee*** is someone who leases or rents property from a lessor, and also may be referred to as a renter if the rental/lease is short-term.

## Short-Term Rentals/Leases Duration of Six Months or Less

The lessee/renter is considered the end user of the rented property and is responsible for paying Sales Tax on the amount of each rental payment. The lessor is required to collect the tax from the renter and remit it to the State.

### *Example*

*An individual rents a forklift for one week. The rental company must collect 6.625% Sales Tax from the individual on the rental charge and remit it to the State by the date the next Sales and Use Tax return is due.*

## Open-Ended Rentals

The Division will treat a transaction as a short-term agreement if it is the lessor's normal business practice, and the intent of the parties, to enter into an open-ended agreement without a defined duration. For instance, if a lessor leases property to many lessees over the life of the property, it may indicate that the lessor's normal business practice is to rent month-to-month rather than lease the property, even though a particular customer may use the property for several months before returning it. Likewise, property-use agreements that have a stated term of less than six months but that can be extended by the renter, are treated as short-term rentals/leases. The renter must pay Sales Tax on the rental payments; no accelerated collection is required.

# Long-Term Rentals/Leases Duration of More Than Six Months

Sales and Use Tax rules for long-term rentals/leases differ from rules for short-term rentals/leases. The law requires the accelerated collection of Sales Tax for agreements with a term of more than six months. The ***lessee*** is considered the end user of leased property and the one responsible for paying Sales Tax. The lessor is required to collect Sales Tax from the

lessee and remit it to the State. The lessor must choose one of the following methods to calculate the Sales Tax due:

1. The Original Purchase Price Method; or
2. The Total Lease Payments Method.

The lessor and lessee may negotiate the method to be used. Regardless of the method selected, the full tax is due upfront.

## Option 1 — Original Purchase Price Method

Using this method, the lessor collects and remits tax only once on the property. The tax is calculated on:

- The amount the lessor paid for the property being leased; ***plus***
- Any separately stated charges for transportation to the lessor's place of business; ***plus***
- The cost of any accessories or options installed or any services performed by the lessor (or others on the lessor's behalf) on or in connection with the leased property; ***less***
- The value of the lessee's trade-in, if any (see Lessee's Trade-In Credit on page 5 for more information).

When calculating the purchase price, the lessor *cannot* deduct the value of a trade-in vehicle the lessor received when acquiring the property being leased.

A lessor who also is the manufacturer of the leased property cannot use the Original Purchase Price Method to calculate the tax due from the lessee. The manufacturer didn't purchase the leased property; so there cannot be a purchase price. The manufacturer only purchased the components or parts used to manufacture the property. Thus, the manufacturer can only use the Total Lease Payments Method to calculate the tax due on a lease.

## Option 2 — Total Lease Payments Method

Using this method, the lessor must collect and remit tax *every time* the property is leased. The tax is calculated on:

- The lease amount (including depreciation, interest, or finance charges, often referred to as the "money factor"); ***plus***
- "Acquisition fees," capital cost reduction payments, and all other fees and charges paid to the lessor that represent the lessor's charge for the lease; ***plus***
- Any manufacturer's rebate or reimbursed coupon applied toward the cost of the lease; ***plus***

- Any charge for "doc fees" (documentary fees imposed by the dealership); ***less***
- The value of the lessee's trade-in, if any (see Lessee's Trade-In Credit on page 5 for more information); ***less***
- Any "negative equity" (when the market value of a trade-in vehicle is less than what is owed by a lessee) that is rolled into the lease; ***less***
- Any prior lease payment balance that is rolled into the lease; ***less***
- Sales Taxes that are rolled into the lease; ***less***
- Fees imposed by the New Jersey Motor Vehicle Commission.

## Example

*A lessor agrees to pay $16,500 for a new vehicle after an $800 trade-in credit on an older vehicle. The dealer charges $975 in transportation costs. The manufacturer's suggested retail price (sticker price) of the new vehicle is $19,100. The lessor enters into a 60-month lease with a lessee who requests that the lessor install $1,800 worth of additional options in the vehicle. The lessee makes a $2,500 cash down payment, and the lessor pays off the $3,210 balance of the lessee's existing lease. Fees amount to $1,000, and the lease amount is $20,340.*

The lessor may choose either of the following methods to determine the amount of tax due:

**Option 1 - Original Purchase Price Method**

| | |
|---|---|
| Lessor's purchase price | $16,500.00 |
| Lessor's trade-in credit | + 800.00 |
| | 17,300.00 |
| Transportation charge | + 975.00 |
| | 18,275.00 |
| Lessor-installed options | + 1,800.00 |
| Tax base | 20,075.00 |
| New Jersey Tax @ 6.625% | x .06625 |
| Lessee's tax due | $1,329.97 |

If tax is paid on the purchase price of leased property, it is not due on any subsequent lease of that particular item, no matter how many times the property is subsequently leased.

**Option 2 - Total Lease Payments Method**

| | |
|---|---|
| Lease amount | $20,340.00 |
| Fees | + 1,000.00 |
| | 21,340.00 |
| Cash down payment | + 2,500.00 |
| | 23,840.00 |
| Trade deficit | - 3,210.00 |
| Tax Base | $20,630.00 |
| New Jersey Tax @ 6.625% | x .06625 |
| Lessee's tax due | $1,366.74 |

If tax is paid on the total of the lease payments, each time a lease ends and a new lease begins, the lessor must choose whether to collect tax on the purchase price (not the fair market value at the time) or on the total of the new lease payments.

**Lessee's Trade-In Credit.** If the lessor accepts trade-in property of the same kind as partial payment for a lease, the value of the property can be used to reduce the tax base only if the purchase and trade-in occur at the same time. The tax base *can't* be reduced if the lessee trades in leased or rented property for the credit, or if the lessor won't hold the property for sale, lease, or rental. If the lease involves motor vehicles, the trade-in credit is only available if the lessor is a dealer of motor vehicles registered with both the New Jersey Motor Vehicle Commission and the New Jersey Division of Taxation. The dealer must obtain the certificate of title for the trade-in vehicle and retain a copy of it as part of the lease transaction.

The trade-in credit can be used when calculating the Sales Tax due from the lessee using either the Original Purchase Price Method or the Total Lease Payments Method. Dealers are **required by law to separately state Sales Tax on all invoices** provided to the customer. This includes the **initial invoice** that outlines a transaction price negotiated with the customer *and* the final invoice provided to the customer when they take delivery of the vehicle.

## Remitting Sales and Use Tax

The lessor must remit the full amount of tax due to the State by the due date of the next quarterly Sales and Use Tax return or monthly remittance. Filing Sales and Use Tax Returns provides information on how and when to remit Sales and Use Tax.

## Assigned Leases

A lease assignment occurs when the lessor (assignor) assigns the rights and title to the leased property to a new lessor (assignee).

A lease assignment doesn't affect Sales Tax because it results in a new lessor, not a new lease.

When the original lessor assigns the rights to a lease to a new lessor, additional tax is not due from the lessee because the lessee was already charged Sales Tax.

## Assumption of Leases

A lease assumption allows one person (new lessee) to assume an existing lease from another person.

As long as the terms and conditions of the lease remain intact, (e.g., same lease payment, same interest rate, same term) *and* the new lessee isn't required to sign a lease contract, the lease assumption is not treated as a new lease.

However, if a lessor requires that the new lessee enter into a lease agreement for the remainder of the term, the agreement creates a new lease and tax is due from the new lessee.

## Conditional and Installment Sales

Certain property-use agreements, even if in the form of a lease, may be treated as conditional or installment sales contracts. An agreement that requires the transfer of title after the purchaser/lessee makes all required payments and pays an option price that does not exceed the greater of $100, or 1 percent of the total required payments, is considered to be a sale rather than a lease. Thus, the purchaser/lessee is not required to pay Sales Tax until the transfer of possession or control of the property occurs. The seller *must collect* Sales Tax from the purchaser/lessee on the contract price and remit the full amount to the State by the due date of the seller's next quarterly Sales and Use Tax return or monthly remittance.

## Purchasing Property Intended for Rent/Lease

Lessors do not pay Sales Tax when purchasing property they intend to rent or lease, as long as they issue a fully completed New Jersey Resale Certificate (Form ST-3) or the Streamlined Sales and Use Tax Agreement Certificate of Exemption (Form ST-SST) to their registered supplier.

## Exempt Transactions

Generally, transactions that qualify for an exemption as a sale will qualify for an exemption as a rental or lease.

For every exempt transaction, the lessee must fully complete the appropriate exemption certificate and provide it to the lessor. When a valid exemption certificate is issued, no New Jersey Sales or Use Tax is due.

Sales Tax is due if the leased property was subsequently leased for or converted to a nonexempt use or is leased to a nonexempt lessee.

## Property Exempt Due to Its Use

Certain property is exempt from tax when rented/leased for a particular purpose. For example, certain machinery and equipment are exempt if used directly and primarily to produce tangible personal property. Buses for public transportation are exempt, as are commercial trucks, truck tractors, tractors, semitrailers, and vehicles used in combination therewith that have a gross vehicle weight rating in excess of 26,000 pounds or are operated actively and exclusively in interstate commerce. When renting or leasing such property, the lessee must issue a fully completed Exempt Use Certificate (Form ST-4) or the Streamlined Sales and Use Tax Agreement Certificate of Exemption (Form ST-SST) to the lessor.

See the New Jersey Sales Tax Guide for more information about which products and services are subject to tax. See Sales Tax Exemption Administration for information about exemption certificates.

## Exempt Organizations and Governmental Agencies

Some organizations such as churches, hospitals, veterans' organizations, and fire companies are not required to pay Sales Tax when they rent or lease property for the exclusive use of the organization. The Division of Taxation issues an Exempt Organization Certificate (Form ST-5) only to those organizations that qualify for exempt status with the State of New Jersey. A lessor who rents or leases to such an organization must obtain a photocopy of the organization's ST-5 certificate as evidence of the exempt nature of the transaction.

Agencies of the federal government and the United Nations, as well as the State of New Jersey and its political subdivisions, such as counties and municipalities, also are exempt from paying Sales Tax. However, these organizations do not use ST-5 certificates. Instead, they must provide the lessor with a copy of a valid purchase order or contract, signed by an authorized official. When the amount of the transaction is $150 or less, the lessor may accept a fully completed Exempt Use Certificate (Form ST-4) from these organizations in place of a purchase order or contract.

Federal employees are exempt from Sales Tax on leases and rentals when payment is made by federal check or voucher. Such transactions also are exempt if payment is made with a GSA SmartPay credit card having a 0, 6, 7, 8, or 9 as the sixth digit of the account number (credit card centrally billed to and paid by the federal government). If payment is made with a GSA

SmartPay card having a 1, 2, 3, or 4 as the sixth digit, the card is individually billed to and paid by the employee, and the federal government exemption does not apply.

- If payment is made with a GSA SmartPay credit card having a 5 as the sixth digit, the taxability of the transaction depends on the purchase, since expenses can be either centrally or individually billed. Car rentals are centrally billed to and paid by the federal government, and are exempt from Sales Tax. Other travel-related incidentals are subject to tax as they are individually billed to and paid by the employee.

Certain lease and rental transactions by foreign diplomatic and consular personnel residing in the United States also are exempt from Sales Tax. There are two types of Sales Tax exemption cards issued by the U.S. Department of State, Office of Foreign Missions, that are acceptable as proof of the exemption. Personal Sales Tax exemption cards are issued for the sole benefit of the individual identified on the card. Mission tax exemption cards are issued to embassies, consulates, and international organizations for official purchases only and for the sole benefit of the mission identified on the card.

For more information, see Tax Treatment of Nonprofit Organizations and Government Entities and Diplomatic/Consular Sales Tax Exemptions. Also visit the U.S. Department of State, Office of Foreign Missions' website.

## Urban Enterprise Zones

A qualified business located within a designated Urban Enterprise Zone is exempt from paying Sales Tax on many items it rents or leases for its own use. When renting or leasing to one of these businesses, the lessor must obtain a fully completed Urban Enterprise Zone Exempt Purchase Certificate (Form UZ-5) from the lessee.

The Urban Enterprise Zone exemption is *not valid* for transactions that involve motor vehicles, telecommunications services, room rentals, or admissions.

## Out-of-State Lessees

No tax is due when a New Jersey lessor leases property to an out-of-state lessee who takes delivery of the property outside New Jersey. The lessor is only responsible for collecting New Jersey Sales Tax if the lessee brings the property into New Jersey for use in this State.

## Property Leased Out of State Brought Into New Jersey for Use in This State

If a lessee brings property leased outside New Jersey into New Jersey for use in this State, the lessee must pay Sales Tax. However, the lessee may take credit for taxes paid to the other state

if the lessee can document that they were paid. The credit for taxes paid to the other state is available *only* if the other state taxes leases in the same manner as New Jersey, i.e., taxes the lessee.

*For example: An out-of-state lessee brings an automobile into New Jersey mid-lease. The lessor elects to charge Sales Tax using the Total Lease Payments Method and determines the tax to be $400 on a 48-month lease. If there are 12 months remaining on the lease, the lessee must pay New Jersey Sales Tax of $100 (12/48 times $400). The lessor must collect tax from the lessee on each monthly payment and remit the tax to the State.*

### Property Leased in New Jersey Transferred Out of State

If a lessee transfers property leased in New Jersey out of state, and the lessee paid New Jersey all the Sales Tax at the beginning of the lease, the lessee is eligible for a refund of tax for the period of time that the property is not located in the state.

## Registration

Sellers of tangible personal property for lease or rent in New Jersey are required to register with the State as a seller and must collect and remit Sales and Use Tax to the State. Businesses can register online through the Division of Revenue and Enterprise Services' NJ Business Gateway Services website.

For more information about starting a business in New Jersey, see our Starting a Business Tax Guide.

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