

## **NOTICE (REVISED 10/18/05)**

### **New Jersey Enacts Streamlined Sales and Use Tax Agreement Legislation (P.L. 2005, c. 126, amending N.J.S.A. 54:32B-1 et seq.) Effective October 1, 2005**

Through the enactment of Public Law 2005, chapter 126, New Jersey joined a national coalition of states in conforming the New Jersey Sales and Use Tax Act to the provisions of the Streamlined Sales and Use Tax Agreement (SSUTA). The SSUTA was developed over the course of several years through the joint effort of over forty states participating in the Streamlined Sales and Use Tax Project. The underlying purpose of the Agreement is to simplify and modernize the administration of the sales and use tax laws of the member states in order to facilitate multi-state tax administration and compliance. The provisions of the new law were effective on October 1, 2005.

The Agreement provides for uniformity in the following areas: each state and their local jurisdiction's tax bases; major tax base definitions; sourcing of taxable transactions. It also contains simplifications in the areas of: centralized vendor registration system; administration of exemptions; tax returns and remittances.

The following information summarizes the more significant changes made to the New Jersey Sales and Use Tax Act in order to be in compliance with the provisions of the SSUTA. **For purposes of this Notice, the law that was in effect through September 30, 2005 is referred to as the "prior law."**

#### **LIBRARY OF DEFINITIONS**

A major part of the simplification effort of the SSUTA is the requirement that each member state adopt the uniform product definitions developed by the Project, which will ease the compliance burden on multi-state vendors. Although each state must use the same definition for the defined terms, each state remains free to either impose tax or to provide an exemption for all products within a definition. Many terms were not previously defined in New Jersey law, so a new statutory definition may result in changes to the taxability of specific products. The most significant new definitions are as follows:

**"Candy"** is defined as a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces; candy does not include any preparation containing flour or requiring refrigeration. (N.J.S.A. 54:32B-8.2 (c))

Candy remains subject to sales tax. As a result of the new definition, products such as Twix bars, Milky Ways and Twizzlers licorice, which have been subject to tax as candy, will now be exempt from tax because they contain flour. The taxability of a candy-like product will depend upon whether it meets the definition of "candy," which will require knowledge of the ingredients.

**"Soft drinks"** are defined as non-alcoholic beverages that contain natural or artificial sweeteners, but do not contain milk or milk products; soy, rice or similar milk substitutes; or more than 50% fruit or vegetable juice. (N.J.S.A. 54:32B-8.2 (c))

Under prior law, a distinction was made between the retail sale of carbonated (taxable) and non-carbonated (exempt) beverages. Beverages such as iced teas and various juice drinks that contain only a small percentage of juice were exempt because they are non-carbonated. As a result of adopting the new definition, this distinction is no longer relevant.

Thus, if non-carbonated beverages meet the above definition, they will be subject to tax as soft drinks. Although bottled water sold at retail remains exempt, flavored water products are now taxable if they contain

artificial or natural sweeteners. The taxability of any canned, bottled or boxed beverage depends upon whether it is a soft drink, which will require knowledge of the ingredients.

**“Prepared food,”** which includes beverages, is defined as: 1) food sold in a heated state or heated by the vendor; or 2) two or more ingredients combined by the seller and sold as a single item; or 3) food sold with eating utensils provided by the seller. Food that is only cut, repackaged or pasteurized by the seller, as well as eggs, fish, meat, poultry, and foods that contain these raw animal foods, that require cooking by the consumer are not treated as prepared food.

The following are NOT treated as “prepared food,” **unless** served by the seller with eating utensils: food sold by a seller that is a manufacturer; food sold in an unheated state by weight or volume as a single item; and bakery items sold as such, including bread, rolls, buns, bagels, donuts, cookies, muffins, etc. (N.J.S.A. 54:32B-3(c)(3)) “Eating utensils” are plates, knives, forks, spoons, glasses, cups, napkins or straws. The sale of prepared food by restaurants, taverns or other establishments engaged in selling food that fits within the above definition is subject to sales tax.

“Food and food ingredients” and “dietary supplements” remain exempt from tax, and both terms are specifically defined in the new law. (N.J.S.A. 54:32B-8.2 (c)). For additional information, see the Notice on food at: <http://www.state.nj.us/treasury/taxation/pdf/ssutfood.pdf>

**“Clothing”** is defined as all human wearing apparel suitable for general use. Sales of clothing are exempt from tax. Under the prior law, sales of clothing and footwear that were made essentially of fur were subject to tax. (N.J.S.A. 54:32B-8.4(d))

Under the new law, **fur clothing and footwear** and both children’s and **adult costumes** are exempt from tax. There is also a new definition of **“protective equipment,”** and a specific exemption for such equipment when necessary for the daily work of the user. Under prior law, protective equipment was generally considered to be exempt clothing when worn as part of a work uniform, so the new definition should not affect the taxability of such work-related items. A new definition of **“sports or recreational equipment”** supports the position that goods worn for athletic or recreational activity, but not suitable for general use, are subject to tax. (e.g. bowling shoes, cleats, ski boots). For additional information, see the Notice on Clothing at: <http://www.state.nj.us/treasury/taxation/pdf/saletaxcloth.pdf>

**“Lease or rental”** is defined as a transfer of possession or control for consideration, excluding financing transactions and installment sales. (N.J.S.A. 54:32B-2(aa))

The provisions of the lease law that have been in effect since 1989 have been repealed, resulting in changes in the way that leases are treated. The leasing company is no longer the retail purchaser of property purchased for lease and is no longer the party legally responsible for paying the tax on the transaction. The 28-day criterion used to determine whether a transaction is a lease or a rental is no longer applicable. Rather, sales tax must be collected by the lessor from the lessee. For leases or rentals with a term of more than six months, the tax continues to be due upfront, in the period in which the lessee takes delivery of the property. The basis for calculating the tax continues to be either the total of the periodic payments required under the agreement, or the original purchase price of the property. The new law does not affect the treatment of leases or rentals entered into prior to October 1, 2005, regardless of whether the property is either removed from or brought into New Jersey after October 1. Specific sourcing rules for leases and rentals are provided in the new law. For additional information on leases and rentals, see the Notice at: <http://www.state.nj.us/treasury/taxation/pdf/ssutlease.pdf>

**“Computers and software”** The new law adds definitions of previously undefined terms such as “computer software,” “delivered electronically,” “load and leave,” and “prewritten computer software.”

(N.J.S.A. 54:32B-8.56) Prewritten computer software is treated as “tangible personal property” and an exemption for software delivered electronically is specifically included in the law. Under prior law, software delivered electronically was also not taxable. The definitions do not result in any significant change in the taxability of software, which is set forth in Technical Bulletin 51 (TB-51), available at:

<http://www.state.nj.us/treasury/taxation/publtb.shtml>

### **Health Care Terms (N.J.S.A. 54:32B-8.1(b)):**

**“Durable medical equipment”** remains exempt from tax, and is defined so as to remove the requirement under prior law that the equipment be appropriate for use in the home, and adds the requirement that it not be worn in or on the body.

**“Mobility enhancing equipment”** remains exempt from tax, and is defined as a separate category of property and refers to property used to provide or increase the ability to move from place to place. (e.g. wheelchairs)

**“Grooming and hygiene products”** are defined as soap or cleaning solution, shampoo, toothpaste, mouthwash, anti-perspirant, or sun tan lotion or screen, regardless of whether the item meets the definition of over the counter drug. Under prior law, some of these types of products were deemed to be exempt from tax as over the counter drugs if they were “medicated.” Under the new law, all grooming and hygiene products will be subject to tax, regardless of medicinal ingredients, unless sold pursuant to a doctor’s prescription. e.g. medicated soaps, dandruff shampoo

In the health care area, other defined product terms are “prescription,” “prosthetic device,” “drug,” and “over-the-counter drug.” All products within these defined categories also remain exempt from tax.

### **ADDITIONAL AREAS AFFECTED BY THE NEW LAW:**

**“Delivery charges”** are defined as charges by the seller for preparation and delivery to a location designated by the purchaser of personal property or services, including transportation, shipping, postage, handling, crating and packing. (N.J.S.A. 54:32B-2(rr))

Under prior law, although the charge for the delivery of goods was exempt, a separate charge for handling and/or packing may have been treated as part of the sale of the goods, and therefore was subject to tax if the goods were subject to tax. Under the new law, these services are included within the definition of delivery charges, and therefore are exempt from tax when the delivery charges are separately stated to the purchaser.

**“Direct Mail”** is defined as printed material delivered by the U.S. Mail or other delivery service to a mass audience or to addresses on a mailing list, including items of tangible property supplied by the purchaser and included in the packaging. Direct mail does not include multiple items of printed material delivered to a single address, e.g a shipment of flyers in bulk to the purchaser. (N.J.S.A. 54:32B-2(ss))

Under prior law, both the printed material and the direct mail processing service were subject to tax when the material was delivered to New Jersey recipients. Both remain subject to tax under the new law. A new multi-state Certificate of Exemption is available for use by the purchaser of direct mail. The new law also contains specific sourcing rules for direct mail. For additional information on direct mail, see the Notice at:

<http://www.state.nj.us/treasury/taxation/pdf/ssutdirectmail.pdf>

**Bad debts** are defined by reference to federal law and if sales tax has been remitted, sellers are permitted to take a deduction from taxable sales in the period in which the bad debt is written off as uncollectible and is or would be eligible to be deducted for federal income tax purposes. There will not be a separate line on the New Jersey sales and use tax return; rather, a taxpayer should include the amount on the “Deductions” line of the quarterly sales tax return for the period in which the bad debt is written off as uncollectible. Businesses are responsible for fully documenting the deduction, and retaining this information for at least four years.

Prior law and regulations required a seller to apply for a refund and did not allow an allocation between purchase price and tax, for any payments received on the account. (N.J.S.A. 54:32B-12.1)

**Sale-leaseback transactions:** The new law provides a specific exemption for these transactions, which are defined as transactions where the owner of property sells the property to a lessor, who leases it back to the owner within 180 days from when the property was originally placed in service by the owner. A sale-leaseback is treated as a financing transaction, rather than a true lease. Although these transactions were not taxed under prior law, the prior law did not have a specific definition or a 180-day threshold. (N.J.S.A. 32B-8.57)

**Sourcing:** The definition of “sale” is any transfer of title or possession, for consideration. New Jersey is a destination state, so whether a sale of property is subject to New Jersey sales or use tax is generally based upon where delivery occurs. The new law provides specific sourcing rules which determine the location where the sale, lease or rental is deemed to occur for purposes of applying each state’s sales and use tax. In addition to general sourcing rules for sale transactions, there are additional rules for lease and rentals of tangible personal property; of motor vehicles, trucks and certain aircraft; and for sales, lease and rentals of transportation equipment. Sales continue to be sourced based on the location where delivery is taken by the purchaser. (N.J.S.A. 54:32B-3.1; 3.2; 3.3; 3.4)

**Central Registration System:** Another key aspect of the new law is the development of a SSUTA central online registration system which can be used as an alternative to the traditional registration system currently available through the Division of Revenue’s website. Registering through this central system is VOLUNTARY, unless the seller seeks to take advantage of the amnesty program (see below.) Central registration constitutes registration with every member state, including those that adopt the Agreement after the seller registers. By registering through this system, sellers agree to collect and remit tax on all sales sourced to any member state.

Sellers that register through the central system have the option of choosing between three methods of calculating, reporting and remitting the tax. These methods involve the selection of a Certified Service Provider (CSP), a Certified Automated System (CAS), or using the seller’s own proprietary system. Sellers may also report and remit based on traditional means, but there are benefits to utilizing one of the other systems that will not be available for traditional systems. Privacy and confidentiality protections are also addressed.

Additional information concerning the Central Registration System, the identification and certification of CSPs and CASs, and other administrative simplifications will be provided as it becomes available from the SSUTA’s Governing Board. The Central Registration system may be accessed at:  
<http://www.state.nj.us/treasury/taxation/streamregpro.shtml>

**Amnesty:** In order to encourage out of state and Internet businesses to register, sellers that use the central registration system to register to collect and remit sales and use tax on sales made to purchasers in members state may be granted amnesty for uncollected or unpaid sales and use tax, provided that the seller was not registered in the state during the twelve month period preceding participation in the Agreement. (N.J.S.A.

54:32B-17(e)(1)) Amnesty will be offered in New Jersey through September 30, 2006. Information concerning Amnesty is available at: <http://www.state.nj.us/treasury/taxation/streamregpro.shtml>

**Exemption Certificates:** In keeping with the goal of relieving the burdens on sellers, another administrative reform is the standardization of exemption administration and the abandonment of the good faith requirement for sellers who accept exemption certificates. Absent fraud or collusion, sellers who accept a properly completed exemption certificate are relieved of liability for improperly claimed exemptions. The exemption certificate must contain specific identifying information about the purchaser and the type of exemption claimed, e.g. resale, manufacturing. The Division's exemption forms currently in use (such as Forms ST-3, ST-4, ST-5, ST-6) remain acceptable evidence of a claim for exemption, unless businesses are notified otherwise.

Additional information concerning the administration of exemptions and the use of the uniform exemption certificate will be provided as it becomes available. The Certificate of Exemption may be obtained at: <http://www.streamlinedsalestax.org/>

**Many of the provisions mentioned in this Notice are discussed in further detail in specific Notices targeted for particular taxpayers or industries. As additional information becomes available, it will be posted under "News" on the Division's website, as well as on the Streamlined legislation page:** <http://www.state.nj.us/treasury/taxation/streamchanges.shtml>

**E-mail questions concerning the new streamlined sales and use tax legislation.**