

NOTICE

Sales Tax and Fuel Surcharges

Fuel surcharges are becoming more common due to increasing gasoline prices. The taxability of a fuel surcharge follows the taxability of the service provided or the product sold.

The definition of “sales price” which is set forth at N.J.S.A. 54:32B-2(oo)(1) states that:

(1) Sales price is the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(A) The seller’s cost of the property sold;

(B) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and *any other expense of the seller*;...

The retail sale of motor fuels such as gasoline is exempt from sales tax. Thus, when purchased by the seller of services or property, gasoline is not subject to sales tax. However, a separately stated fuel surcharge is an expense that a seller incurs in order to perform a service or sell a product. The taxability of a fuel surcharge follows the taxability of the service provided or the product sold. Thus, if the transaction is for a service or product that is not subject to sales tax, then the fuel surcharge is also not subject to tax. If the transaction is for a service or product that is subject to sales tax, then the fuel surcharge is subject to tax.

Example:

- A landscaper performs a taxable mowing service at a customer’s location. He charges a separately stated “fuel surcharge” on the bill provided to the customer. When this expense is passed along to the customer, it becomes part of the sales price, regardless of whether it is included in a lump-sum charge for the mowing service or separately itemized to the customer, because it is part of the landscaper’s overhead cost to perform the taxable service. Therefore, since the service is taxable, the fuel surcharge is also taxable.

- A contractor installs a new roof at a customer’s location. This installation is a nontaxable service because it results in an exempt capital improvement. He charges a separately stated “fuel surcharge” on the bill provided to the customer. When this expense is passed along to the customer, it becomes part of the sales price, regardless of whether it is included in a lump-sum charge for the installation service or separately itemized to the customer, because it is part of the contractor’s overhead cost to perform the nontaxable installation service. Therefore, since the service is not subject to sales tax, the fuel surcharge is also not subject to tax.

- An appliance dealer sells a new refrigerator and has it delivered to the customer's location. The dealer charges a separately stated \$25.00 delivery charge as well as a \$10.00 "fuel surcharge" on the bill provided to the customer. When this expense is passed along to the customer, it becomes part of the sales price, regardless of whether it is included in a lump-sum charge for the sale/installation or separately itemized to the customer, because it is part of the appliance dealer's overhead cost to sell and deliver the taxable appliance. Therefore, since the appliance is subject to sales tax, the fuel surcharge is also subject to tax.