

**NOTICE**  
**Rental of Equipment With An Operator**  
New Jersey Sales and Use Tax Act – Streamlined Legislation  
(P.L. 2005, c.126)  
Effective October 1, 2005  
(Posted October 18, 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 New Jersey's law were effective on October 1, 2005.

**Background:**

Under prior law, when an equipment owner was hired to perform a specific job, such as excavation, he was treated as a subcontractor. In this situation, the equipment was under the direction and control of the operator, who performed the job that had been contracted for as he saw fit. A subcontractor who performs taxable services for a prime contractor does not bill the prime contractor for sales tax on the labor portion of his bill. The prime contractor is responsible for collecting sales tax (or an exemption certificate) from the property owner on the work performed by the subcontractor. The subcontractor should keep records to document that sales tax was not collected because the services were performed for a prime contractor. **The tax consequences of this transaction will not change on and after October 1, 2005.**

On the other hand, when equipment was provided with an operator under the direction and control of the company that hired him, the Division's prior position was if there was a separately stated charge for the operator, that amount could be excluded from the taxable receipt. The charge for the rental of the equipment was taxable. If the bill was for a lump sum amount and did not separate the charge for the equipment and the charge for the operator, the entire bill was subject to tax, as a charge for the rental of the equipment. **The tax consequences of this transaction will change as of October 1, 2005.**

**New Law:**

Effective October 1, 2005, the adoption of the SSUTA amends several provisions of the New Jersey Sales and Use Tax Act. Specifically in the area of equipment rentals with an operator, the new definition "lease or rental" states that the following is NOT a "lease or rental":

Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. An operator must do more than maintain, inspect or set-up the tangible personal property. N.J.S.A. 54:32B-2(aa)(1)(C).

Thus, on and after October 1, 2005, when a new agreement is entered into to provide equipment with an operator, it will not be treated as a lease or rental, regardless of whose direction and control the operator is under. Rather, the transaction will be viewed as a service contract, and the taxability of the charge will depend upon the service provided.

As a consequence, for transactions on and after October 1, since the equipment is no longer considered to be held out for rental, the purchaser of the equipment will no longer be able to issue a Resale Certificate (Form ST-3) when purchasing equipment that will be provided with an operator. Additionally, since the resale treatment afforded to services performed on tangible personal property held out for rental purposes will no longer be available, a Resale Certificate may no longer be issued to exempt the repair or maintenance of such equipment.

For more information on the adoption of the SSUTA, please click on the following link:  
<http://www.state.nj.us/treasury/taxation/pdf/ssutanotice.pdf>

You may view the law under “Chapter Laws” at the New Jersey Legislature’s website located at:  
[www.njleg.state.nj.us](http://www.njleg.state.nj.us)

[E-mail](#) Questions concerning the new streamlined sales and use legislation.