New Jersey Sales & Use Tax Guide for **AUTOMOBILE DEALERS**

A joint publication of the New Jersey Division of Taxation and the
New Jersey Coalition of Automotive Retailers (Revised May 2001)

TABLE OF CONTENTS

DEALER RESPONSIBILITIES - - -

DEALER RESPONSIBILITIES

1. What are an automobile dealer's primary sales and use tax responsibilities?

An automobile dealer is required to:

- Register with the New Jersey Division of Taxation;
- Collect, report and remit tax on all taxable sales of motor vehicles, parts, and/or services;
- Pay use tax on automobiles purchased for lease (more than 28 days), at the time a lease is signed, based on either the purchase price option or the lease payment option;
- Stamp either the Manufacturer's Statement of Origin or the Certificate of Ownership with the "NJ Sales Tax Satisfied" stamp for every sale, regardless of whether or not the sale is taxable. For leases, the dealer will also stamp either the Manufacturer's Statement of Origin or the Certificate of Ownership with the "NJ Sales Tax Satisfied Stamp;"
- Accept in "good faith" properly completed New Jersey exemption certificates.

2. What is the New Jersey Sales Tax Satisfied Stamp?

The stamp measures three inches by one-and-a-half inches and looks like this:

NJ SALES TAX SATISFIED

MV Ident. No. _____
Purchase Price $_____
Net Sales Amt. $_____
Sales Tax Paid $_____Ex. Code _____
Date _____
Dealer's Signature _____

SALES OF AUTOMOBILES

GENERAL

3. When is the sale of a motor vehicle in New Jersey subject to tax?

The sale of a motor vehicle is taxable whenever the purchaser meets any of the following conditions:

- Purchaser is a New Jersey resident who takes delivery in this State;
- Purchaser has a place of abode in New Jersey;
- Business purchaser is engaged in doing business in New Jersey;
- Purchaser will be using the vehicle for business purposes in this State.

4. When are sales of motor vehicles exempt from tax?

Sales of motor vehicles are exempt when they are made to:

- Nonresidents (no domicile and/or place of abode in this State);
- Other licensed dealers;
- Leasing companies registered with the Division of Taxation;
- Charitable, nonprofit organizations for their exclusive use;
- The State of New Jersey;
- All New Jersey agencies and public authorities;
- All New Jersey counties and municipalities;
- The Government of the United States of America and all of its agencies;
- The United Nations;
- Persons recognized as Foreign Diplomats by the United States of America;
- Resident customers meeting the exempt purpose as defined in the Exempt Use Certificate.

5. What items are included when determining the sales tax?

An automobile dealer must include the following items when determining the "net sales amount" of the vehicle subject to tax:

- Federal Excise Taxes but not the Federal Luxury Tax;
- Delivery charges from a manufacturer to a dealer;
- Preparation and additional charges;
- Additional accessories or equipment charges;
- Any installation, maintenance or repair services, including parts;
- Extended warranty charges;
- Any manufacturer's or credit card rebate or cash, either shown as a down payment or as a deduction from the sales price.

6. What items are excluded when determining the sales tax?

An automobile dealer may exclude the following items when determining the "net sales amount" of the vehicle subject to tax:

- Trade allowance;
- Actual cost of Motor Vehicle title and registration;
- Special equipment or accessories necessary for operation of the vehicle by a handicapped individual if separately itemized;
- Documentary fees.

7. Is the title transfer involved in assigning or refinancing an automobile loan or lease subject to sales tax?

Refinancing or assigning an automobile loan or lease, and subsequent transfer of title, is a financial transaction and does not constitute a taxable event under the New Jersey Sales Tax.

RESIDENCY/NONRESIDENCY

8. Who is considered a resident?

A resident is considered to be:

- Any person who has any place of abode in New Jersey;
- Any person who is in the Armed Forces of the United States and who has New Jersey listed as his/her home of record or who presently resides in New Jersey whether or not he is assigned to a military reservation in this state;
- Any business established under the laws of New Jersey;
- Any entity that has any place of business in New Jersey;
- Any entity engaged in any employment, trade, business or a profession in which the vehicle will be used in this state.

9. Who is considered a nonresident?

A nonresident is any person or entity that meets none of the criteria for being considered a resident.

10. How does a dealer, for sales tax purposes, handle sales to nonresidents?

The dealer must have the purchaser complete and sign a Form ST-10 in duplicate for any sale made to a nonresident. Both the purchaser and the dealer's representative must sign this form. (Must be completed in its entirety)

11. How should Form ST-10 be completed when an automobile is sold to a nonresident?

If an item does not apply, "none" must be written in the appropriate space. Incomplete ST-10s may result in an assessment for sales and use tax against the dealer. If a New Jersey address is indicated, the dealer should be aware that the non-residency exemption might not be available to the customer.

The individual forms should not be folded. They should be mailed flat to: New Jersey Division of Taxation, Casual Sales Section, P. O. Box 267, Trenton, NJ 08695-0267. The dealer should keep the duplicate copy of the ST-10 for four years.

Also, the dealer should enter Exemption Code #1 on the "Sales Tax Satisfied" stamp imprint.

12. A resident is defined, in part, as anyone who has a place of abode in New Jersey. What is a "place of abode"?

A place of abode is a dwelling place maintained by a person or another for him/her, whether or not owned by such person, on other than a temporary or transient basis. The dwelling may be a house, apartment, or flat, a room, including a room in a hotel, motel, boarding house or club, or at a residence hall operated by an educational or charitable institution, barracks, billets, or other housing provided by the Armed Forces of the United States, or a trailer, mobile home, houseboat or any other premises.

13. Is a person who is in the process of moving out of New Jersey at the time he purchases the vehicle considered a resident?

Yes.

14. Is a person who maintains additional places of abode in other states, but who meets one of the conditions of residency considered a New Jersey resident?

Yes.

15. Are out-of-state residents attending college in New Jersey considered residents?

If they reside in New Jersey during school months, they are considered residents for sales tax purposes.

16. Would an out-of-state resident who purchased an automobile in New Jersey and paid New Jersey sales tax also be required to pay sales tax in his/her home state? Does New Jersey have reciprocity with other states?

Whether credit is granted for sales tax paid in New Jersey is decided under the law of the state in which the vehicle is registered and garaged. An out-of-state purchaser should contact his/her home state's taxing authority for information on when or if credit will be granted before making the purchase.

New Jersey law allows credit for any sales or use tax imposed by another state or local taxing jurisdiction when legally due and paid to that state.

17. Is sales tax due if the customer is an out-of-state resident who maintains a vacation home in New Jersey?

Yes. This person is considered a resident since he maintains a place of abode in this state.

TRADE-INS

18. When is credit for a trade-in allowance permitted?

A trade-in allowance is permitted only when a vehicle is traded to a registered motor vehicle dealer who takes the trade-in for resale. The credit is allowed only if:

- The contract for purchase and the trade-in occur at the same time; and
- The vehicle traded in is also a motor vehicle as defined in the Sales and Use Tax Act.

The new vehicle delivery and respective sales tax payment may be made subsequent to the trade-in and contract of sale.

19. How does the New Jersey Sales and Use Tax Act define motor vehicles?

Motor vehicles are defined in the Act as, "all vehicles propelled otherwise than by muscular power (excepting such vehicles as run only upon rails or tracks), trailers, semi-trailers, house-trailers, or any other type of vehicle drawn by a motor-driven vehicle, and motorcycles, designed for operation on the public highways."

20. Can a customer use a motorcycle as a trade-in on an automobile?

Yes. Both are motor vehicles as defined in the Sales and Use Tax Act.

21. Are there any vehicles that can never be used as trade-ins?

Yes. For example, snowmobiles, lawn tractors, bulldozers, etc., cannot be used as trade-ins since they do not meet the definition of a motor vehicle as contained in the Sales and Use Tax Act.

22. Can an all-terrain vehicle be used as a trade-in on a motor vehicle?

No. An all-terrain vehicle is not a motor vehicle as defined in the Sales and Use Tax Act.

23. Can more than one vehicle be used as a trade in the same transaction? Does the trade vehicle have to be titled to the purchaser of the new vehicle?

More than one trade-in can be applied against the purchase of a new vehicle. However, if title to the traded vehicle is not in the name of the purchaser of the new vehicle, the Division requires the dealer to give notice of third-party titles accepted for credit. A copy of the purchaser's sales contract and a copy of the title of the trade-in vehicle will be adequate. The cash value of the trade must be clearly shown.

24. Can the value of a trade vehicle be split and applied to the purchase of two vehicles, in a situation when the value of the trade-in exceeds the value of either vehicle being purchased?

Yes, as long as the purchase of the two vehicles occur at the same time.

REPLACEMENT MOTOR VEHICLES

25. A customer accepts a replacement vehicle in lieu of a cash refund from the manufacturer under the lemon law. The value of the vehicle is greater than the value of the vehicle the customer is exchanging. Is additional sales tax due?

These exchanges are not considered sale transactions under the Sales and Use Tax Act. They are viewed as cancelled sales with a refund in property rather than cash. The "extra" value is viewed as a discount. No additional sales tax is due in this instance.

Any consideration that is paid to the dealer for any additional value is subject to the sales tax. If a cash refund is given to the customer, who then purchases a new vehicle, sales tax is due on the full purchase price of the new vehicle.

26. A customer receives a check from his/her insurance company for an automobile, which has been declared a total loss. He wants to buy a replacement vehicle. Is credit allowed for the amount of tax paid on the original vehicle?

No. The purchase of the replacement vehicle is a separate transaction. Sales tax is due on the purchase price of the replacement vehicle. (For lease see #76)

ACCEPTING EXEMPTION CERTIFICATES

27. When can a dealer accept a Resale Certificate (Form ST-3)?

A dealer can accept a Resale Certificate when an automobile is sold to a leasing company, which is registered with the New Jersey Division of Taxation. The Resale Certificate must be dated, contain the purchaser's NJ Tax ID number and be completed fully, truthfully and accurately.

Originals of the Resale Certificates accepted from anyone other than another registered dealer must be sent to the Division of Taxation along with the dealer's normal mailing of Form ST-10 reports. Resale Certificates accepted from registered dealers should be kept in case of audit.

Code #9 should be entered on the "Sales Tax Satisfied" stamp imprint for sales of automobiles to another dealer for resale.

28. Must a New Jersey dealer who is registered with the Division of Taxation complete a Resale Certificate when he purchases an automobile from another registered dealer for resale?

No.

29. What is an Exempt Organization? Are purchases made by an Exempt Organization always exempt from tax?

An exempt organization must meet the specific criteria outlined in the Sales and Use Tax Law and must be registered with the New Jersey Division of Taxation as an Exempt Organization. It must have an Exempt Organization Certificate (Form ST-5), which contains a 12-digit number preceded by the letters "EO."

When a sale is made to an organization that issues an ST-5, it is exempt from tax. Exemption code #3 should be entered on the "Sales Tax Satisfied" stamp imprint.

30. Are officials or employees of an exempt organization who register an automobile in their own name exempt from tax?

No. The vehicle must be titled and registered in the name of the exempt organization for the sale to be exempt from tax.

31. An exempt organization purchases a car to be used as a prize in a fund-raising raffle. Is this purchase exempt from tax?

Yes.

32. Is the winner of the car required to pay sales tax?

No. The winner is not required to pay sales tax provided the title is transferred from the exempt organization to the winner. If the title is transferred from the dealer directly to the raffle winner, sales tax is due from the winner based on the price paid for the vehicle by the organization on behalf of the winner.

33. Can a dealer accept an exemption organization certificate or permit issued by a state other than New Jersey?

No. However, the out of state organization can apply to the Division of Taxation for a New Jersey exemption certificate.

34. Must the dealer receive a separate exemption certificate for each vehicle purchased by the same exemption certificate holder?

No. Making reference to the first exemption certificate issued covers additional purchases that qualify for exemption.

35. How long must dealers keep the exemption certificates they accept?

Exemption certificates must be kept for four years from the date of the last transaction covered by the certificate.

36. Do government agencies issue exemption certificates?

No. Federal, State, County and Municipal agencies do not issue exemption certificates. A purchase order on government letterhead should be kept in the dealer's files in case of an audit. Exemption code #2 should be entered on the "Sales Tax Satisfied" stamp imprint for these sales.

37. When can a dealer accept an Exempt Use Certificate (Form ST-4)?

A dealer can accept an Exempt Use Certificate (ST-4) from a customer who is purchasing, renting, or leasing a commercial truck, truck tractor, tractor, semi-trailer and vehicles used in combination therewith, as defined in N.J.S.A. 39:1-1, which are registered in New Jersey and either:

a) Have a gross vehicle weight rating (gvwr) in excess of 26,000 pounds (as specified by the manufacturer); or

b) are operated actively and exclusively for the carriage of interstate freight pursuant to ICC certificate or permit; or

c) are registered as farm vehicles pursuant to N.J.S.A. 39:3-24 or 25, and have a gross vehicle weight rating in excess of 18,000 pounds.

38. When would a farmer use a Farmer's Exemption Certificate (Form ST-7) to purchase a vehicle without paying tax?

A farmer is entitled to use a Farmer's Exemption Certificate when the vehicle (other than an automobile) being purchased will be used exclusively on the farm in the production for sale of food or other items. (Example: a truck or a jeep used to transport plants from one area of a nursery to another.)

The farmer must apply for Farm Use plates for the vehicle.

Exemption code #8 should be entered on the "Sales Tax Satisfied" stamp imprint for exempt sales made to farmers.

REPAIRS

39. Are repairs made to motor vehicles subject to tax?

Yes. Tax is due on the charges for both parts and labor. This includes any charges for hazardous waste or tire removal. In addition, use tax is due from the dealer for any parts provided in conjunction with a "free" repair.

40. Are repairs made to motor vehicles owned by nonresidents subject to tax?

Yes. As long as the repair work is performed in this state, New Jersey sales tax is due.

41. Are repairs made to a motor vehicle that either is under warranty or covered by a service contract subject to tax?

These repairs are exempt from tax up to the amount of the warranty or contract. Any charges in excess of the amount covered by the warranty or contract, including a deductible, are taxable.

42. Are repairs made to a vehicle registered in New Jersey with a gross vehicle weight in excess of 26,000 pounds, or operated exclusively for the carriage of interstate freight subject to sales tax?

Repair parts and replacement parts for these vehicles are exempt, provided the customer issues a completed Exempt Use Certificate (ST-4). Labor and service charges are taxable.

43. Are repairs made to a vehicle damaged in shipment taxable to the dealer?

No. The dealer issues a Resale Certificate (Form ST-3) to the repairer and pays no tax on the repair bill.

44. Are repairs made to vehicles held for lease (agreements for more than 28 days) by a dealer subject to tax?

Under the lease law in New Jersey, the lessor is considered to be the retail purchaser of property purchased for lease. Therefore, if the lessor is responsible for repairs/maintenance to the vehicle, either under the terms of the lease contract or during a period when the vehicle is not being leased, the lessor must pay sales tax on such charges. A lessor can only issue a Resale Certificate (ST-3) to the repairer if the lessor has separately stated a charge for such services to the lessee as part of the lease agreement. Sales tax must be collected on these separate charges made to the lessee.

45. Are charges for towing, including charges for the use of special equipment such as a dolly or tilt-bed truck, subject to tax?

These charges are not taxable provided they are separately stated on the repair order or other invoice.

46. Can "shop supplies" be purchased with a Resale Certificate?

Shop supplies that are used and consumed by the repair shop in the performance of a taxable service are subject to tax upon purchase. Items that are actually transferred to the customer in conjunction with the repair service may be purchased with a resale certificate.

EXTENDED WARRANTY CONTRACTS

47. Are sales of extended warranty contracts taxable?

Yes, as agreements to perform taxable repair or maintenance services.

48. Are sales of extended warranty contracts sold to a nonresident taxable?

If the extended warranty contract is for a vehicle registered in New Jersey, it is taxable. If it is for a vehicle registered in another state, it is not taxable. For example, if the purchaser can complete an ST-10 Exemption Report for the sale of the vehicle, then the purchase of the extended warranty contract in conjunction with such sale is also exempt from tax.

49. Are repairs made under extended warranty contracts taxable?

Repairs that are covered by the extended warranty contract are not taxable. If customer is responsible for paying a deductible, such charge is subject to sales tax. Any repairs made to the vehicle, which are not covered by the extended warranty contract, are taxable.

REBATES

50. Is a manufacturer's rebate or credit card rebate program, which is included in the sales price of the vehicle, subject to tax?

Yes.

51. Is a manufacturer's rebate or credit card rebate program, which is shown as a down payment, subject to tax?

Yes.

DEMONSTRATORS AND COMPANY CARS

52. Must a dealer pay tax on vehicles removed from stock and used as demonstrators?

Yes. The tax shall be computed and paid monthly by the retail dealer as part of the regular monthly report of taxes due on the sale and use of taxable property or services. (see question #54)

The basis for the tax shall be determined by multiplying .25 times the sum of the manufacturer's suggested list price of the motor vehicle plus $500. If the motor vehicle is used, the basis for the tax shall be determined by multiplying .25 times the sum of the average retail price listed for the vehicle in the NADA Official Used Car Guide, or similar NADA official guides for other categories of used vehicles, for the year and month of withdrawal, plus $500.

In computing the tax, the basis for the tax as computed above shall be divided by 12 and the result multiplied by .06 to effectuate the six- percent tax imposed under the sales tax statute.

53. Is the dealer required to notify the Division of Taxation when a vehicle is withdrawn from stock for demo purposes?

Yes. Form C-1003-ST must be completed and filed along with the automobile dealer's sales tax return which covers the period during which the vehicle was removed from inventory. (See Appendix for copy of Form C-1003-ST.)

54. Is tax due on vehicles that are taken out of stock and used for business or personal purposes by the owner, a relative of the owner, or an official or employee of the dealer's company?

Yes, unless the vehicle is withdrawn from inventory and assigned to, and used by, a full-time salesperson. If a vehicle is removed from stock and sold to a salesperson, partner or other official of the dealer's company, tax is due.

SALES TO NONRESIDENT MILITARY PERSONNEL

55. Is a person serving in the military, stationed in New Jersey, whose home of record is outside this state, required to pay tax on the purchase of a motor vehicle?

All nonresident military personnel, whether they live on or off a military reservation within the territorial limits of New Jersey, must pay New Jersey tax on vehicles purchased in this state.

56. Are veterans exempt from paying tax on motor vehicles?

No. Neither veterans nor disabled veterans are exempt from paying tax on the purchase, lease or rental of motor vehicles.

SALES TO FOREIGN DIPLOMATS

57. Are sales of automobiles to foreign diplomats exempt from tax?

Sales to foreign diplomatic or consular personnel are exempt from tax provided the customer presents to the dealer a U.S. State Department Exemption Card. These cards are white plastic photo identification cards indicating the individual's name, home nation and other relevant personal data for proper identification. The cards also contain an expiration date and a tax exemption number; the first two letters of which denote the diplomat's home nation.

58. Are there different types of exemption cards?

There are four types of exemption cards.

a) **Blue Striped Cards** - bearer is exempt from all taxes, personal as well as official purchases.

b) **Green Striped Cards** - bearer is exempt from all taxes except taxes on hotel/motel occupancy, or as noted on the card.

c) **Red Striped Cards** - bearer is exempt from all taxes, only if taxable single transaction exceeds the specified dollar amount on the back of the card - $50, $100, $150 or $200.

d) **Mission Cards** - These cards may have blue, green or red stripes. They entitle the bearer to the same exemptions as listed above for each particular color, but they can be used for official mission purchases only. They may not be used for individual, personal purchases. Sales tax exemption is only provided to the mission representative that is authorized to make purchases for the mission whose photo appears on the mission card.

59. How should dealers handle these sales?

Dealers must make note on the file copy of the bill of sale of the following information:

a) The tax exemption number (including the first two letters) on the back of the identification card;
b) the color of the stripes on the card;
c) the amount of the transaction to be tax exempt.

This information should be retained for four years in case of audit.

60. Are there any instances in which dealers should collect sales tax on automobile sales made to diplomatic or consular personnel?

Dealers should collect sales tax if:

a) The tax exemption card has expired;
b) the amount of the purchase is less than the minimum level of exemption shown on the red striped card;
c) the purchaser identified on the card is not the payer of record in case of a mission card;
d) a tax exemption card is being used by someone other than the identified individual (these cards are not transferable).

61. Where can a dealer get more information about these types of sales?

Questions about the eligibility of diplomatic or consular personnel to sales tax exemption should be directed to the Office of Foreign Missions, U.S. Department of State, 202.895.3563, or the New York Office at 212.826.4500. Questions about the New Jersey Sales and Use Tax should be directed to the New Jersey Division of Taxation, Taxpayer Information Service, 609.292.5996.

AUTOMOBILE LEASES

GENERAL

62. How is an automobile lease defined for lease purposes?

An automobile lease is an agreement for the use and possession of an automobile for a period of more than 28 days. (For definition of rental, see question #88)

63. How are leases taxed?

Effective June 26, 1989, dealers who lease cars to customers for more than 28 days should not charge tax on the lease payments. The dealers themselves are responsible for paying the 6% use tax on these vehicles based on either:

- The purchase price of the vehicle less a separately stated charge for transportation to the dealer's place of business; or

- the total of the lease payments attributable to the property, less the total interest service charge of a financial institution and/or the amount of the customer's trade deficit paid off through the lease. To the extent that any balance owed on a trade vehicle is rolled over into the lease of another vehicle, such amount is not part of the receipt subject to tax.

64. When is the motor vehicle dealer considered the lessor?

When the dealer has title to a motor vehicle and executes a lease agreement, the dealer is considered the lessor. If this lease agreement is assigned to a bank or financial institution after it is executed by the dealer, the dealer is still considered the lessor for tax purposes. For example, Dealer X negotiates and enters into a lease for a motor vehicle and then assigns the lease to Bank Y. Dealer X is the lessor.

When a dealer has title to a motor vehicle and transfers the title to another person who then executes the lease agreement, the dealer is not considered the lessor for tax purposes. For example, Dealer X sells a motor vehicle to Leasing Company Y. Leasing Company Y then enters into a lease agreement. Leasing Company Y is the lessor.

When a broker negotiates a lease and the dealer has title to a motor vehicle and transfers the title to a third person who accepts the assignment of a lease agreement, the dealer is not the lessor. The person who negotiated and executed the lease is the lessor for tax purposes.

For example, Dealer X transfers title of a motor vehicle to Bank Y. Bank Y accepts the lease agreement for that vehicle which has been negotiated and executed by Broker Z who paid for the motor vehicle and specified that title pass directly to Bank Y. Broker Z is the lessor.

65. A dealer executes a lease agreement but the name of the finance company appears on the lease agreement and the finance company has the right to approve or deny the lease. Is the finance company considered the lessor?

No. The dealer is considered the lessor unless the dealer has signed an agency agreement with the finance company and the company has not taken the vehicle under an assignment clause in the lease.

66. How does the purchaser of a signed lease know that the seller of the lease has paid the required use tax?

The seller of the lease must issue to the purchaser of the lease a properly completed Lessor Certification certificate (Form ST-40). The purchaser of the lease should keep this certificate in his/her records to show that the lessor paid the tax on the leased property.

However, if the purchaser of the lease knows that the ST-40 is fraudulent or otherwise false, he may be held liable for the tax under the law.

67. Must the lessor provide the lessee with a "Lessor Certification" (Form ST-40) for every transaction?

Yes. The lessor must certify to the lessee, in every lease transaction, that the lessor will pay the use tax on the leased property or that the lease is otherwise exempt from tax. The lessor does this by issuing to the lessee a Form ST-40.

68. Should ST-40 Forms be sent to the Division of Taxation?

No. The original of the form should be given to the lessee and a copy of the form should be kept in the dealer's files in case of audit. In addition, a copy of Form ST-40 should be given to anyone to whom the lease is assigned.

69. Can the lessor separately state the tax he is required to pay on the leased property and collect it from the customer?

No. The law imposes the tax on the lessor and the lessee is no longer liable for the sales tax on the lease transaction. Such amounts can be recouped as a cost of the lease, but should not be invoiced as "sales tax."

70. Does the Division require special worksheets to be completed by the lessor to show the calculation of use tax on leased vehicles?

No. In the absence of evidence to the contrary, the Division will accept the lease transaction worksheet used by the lessor as documentation of the use tax calculation. These worksheets must be kept by the lessor for four years from the date the quarterly return on which the transaction is reported is due, or the length of the lease, whichever is greater.

71. If the lease agreement is cancelled before the expiration of the term, is the lessor entitled to a refund of any portion of the tax paid?

No. The law makes no provision for a refund of the tax imposed on and paid by the lessor by reason of the cancellation of the lease before the term expires.

72. A lessor purchases an automobile for lease and pays use tax at the time the lease is signed. At the expiration of the lease, he decides to rent the vehicle. Must he charge sales tax on the rental payments?

Yes. The motor vehicle rental payments are taxable (see question #89).

73. A lessor purchases an automobile for lease and pays use tax at the time the lease is signed. At the termination of the lease, the lessee decides to purchase the automobile at book value. Is the sale of the automobile taxable?

Yes. The sale is not exempt as a casual sale. Sales tax is due from the purchaser (lessee) based on the price paid for the automobile.

74. A lease agreement is extended for an additional term beyond the contract. How should the sales tax be remitted?

When the lease is extended for an additional one to six months with no new agreement entered into, the lessor may remit tax on a monthly basis. If the extension is treated as a new lease (i.e., new terms or conditions), the tax should be paid up front by the lessor.

75. A lessor leases an automobile to an entity, which is registered as an Exempt Organization with the New Jersey Division of Taxation. Is the lessor required to remit use tax on the automobile at the time the lease agreement is signed?

No. The tax exemption provided to the entity would pass through to the lessor. When completing the Lessor Certification (Form ST-40), the lessor should check both box 3b and the box which reads "Lease to Exempt Lessee under N.J.S.A. 54:32B-9." The lessor should also keep a copy of the entity's Exempt Organization Certificate (Form ST-5) in his/her files.

76. A leased vehicle is stolen or destroyed during the term of the lease. If a vehicle is substituted for the remainder of the term, is sales tax due on the vehicle?

The lessor is treated as an ultimate consumer with respect to property purchased for lease. Each purchase made for lease purposes is a separate transaction and is subject to sales and use tax.

Where the purchase price option is elected, tax would be computed on the amount paid to the vendor. Where the lease payment method is elected by the lessor for tax computation purposes, the contract lease price may be adjusted to decrease the tax computation base by the amount attributable to the expired period under the lease agreement. Thus, the lessor's use tax in the substituted lease property situation would only relate to and be computed on the portion of the lease agreement remaining after the date of the property substitution.

LEASES TO NONRESIDENTS

77. A New Jersey lessor leases an automobile to a nonresident for use outside New Jersey. The lessor assigns the lease to another party. The nonresident then brings the vehicle into New Jersey for use here. Will the original New Jersey lessor be held responsible for the Use Tax?

No. As long as the nonresident lessee completed Form ST-10 and the lessor accepted it in good faith. However, the assignee, as the lessor, is responsible for the use tax based on the remaining term of the lease once the vehicle enters this State. (See question #78.)

78. An out-of-state lessor registered with the New Jersey Division of Taxation leases an automobile to a nonresident who then brings the vehicle into this state for use. Does the lessor owe use tax?

Yes. The lessor in this case may elect to calculate the tax for the entire length of the lease using the lease payment option. Tax must be paid based only on the number of months the vehicle is used in this state. For example, if the lease payment option calculation results in a $400 tax on a 48-month lease and the vehicle will be used in New Jersey for one year, the lessor would pay a tax of $100.

DETERMINING LESSOR'S TAX BASE UNDER LEASE PAYMENT OPTION

79. Is the interest portion of a lease payment subject to tax?

No. The interest charge of a financial institution (sometimes called a lease service charge or lease fee) is not included in the tax base when the lease payment option is used to compute the lessor's tax liability.

80. Is any excess mileage or repair of damage on the leased vehicle subject to sales tax?

Yes.

81. Is the value of the lessee's trade-in deducted from the amount upon which the tax is computed?

No. Since the lessee is not the taxpayer in this instance, there is no taxable receipt from which the value of a trade-in can be deducted. The lessor, who is the taxpayer, is not entitled to claim the lessee's trade-in as a deduction against his/her tax liability. This is true even though the capitalized value is being reduced and monthly payment attributed to the vehicle being leased will be lower.

82. The charge for a service contract is included in the cost of a lease. Does the lessor pay tax on this amount?

Yes. Where the service contract or extended warranty agreement is not treated under the agreement as a separate and distinct transaction, the lessor is required to include the charge for the service contract in the tax base when electing the lease payment option. If a service contract or extended warranty agreement is separately stated and charged, the amount is subject to sales tax as an agreement to provide taxable services.

83. Is a cash payment made by the lessee to reduce the cost of the lease deducted from the amount on which the tax is computed?

No. The cash payment is treated as a prepayment of the lease and is part of the lessor's tax base when the lease payment option is elected.

84. Is an "out-of-equity" trade-in deficit paid off through the lease included in the tax base when the lessor chooses to pay tax on leased automobiles using the lease payment option?

No. This amount, which is the balance due on a previous lease or on a motor vehicle and which is built into a new lease negotiated between a lessor and a lessee, is not considered part of the base on which the lessor's use tax is calculated.

85. Are acquisition charges (up-front fees) required by finance companies excluded from the tax base by the lessor when calculating the use tax under the lease payment option?

The lessor's tax is based upon either the original purchase price or the total of the lease payments attributable to the lease. If the bank acquisition fee is separately charged to the lessee (i.e., he pays it up front, outside of the lease payment computation), then the fee is not subject to tax under any provisions of the Sales and Use Tax Act. However, if the acquisition fee is rolled into the lease payments, it becomes subject to the lessor's tax as it is an element of the tax base (the total of the lease payments attributable to the lease).

86. If the lessor amortizes the use tax as part of the lease, is a tax imposed on the tax?

No. The lessor should calculate the lease payment first without the tax in order to determine the tax amount. In making this calculation, the lessor must consider all the factors the lessor will take into account in setting the payments under the lease, except the tax.

Once the amount of the tax has been calculated and assuming the lessor will amortize the tax as part of the lease agreement, the lessor can then add the tax amount to other amounts to be amortized in the lease and calculate the actual lease payments to the lessee. No tax is due on the additional lease payment attributable to the tax.

87. A lessor chooses to pay tax on a leased automobile on the basis of the total of the lease payments. After several leases to different customers, he has remitted tax equal to the amount of tax that would have been due if he had originally selected the original purchase price option. Must he still continue to pay tax on future leases?

Yes.

AUTOMOBILE RENTALS

88. How is an automobile rental defined for tax purposes?

An automobile rental is an agreement for the use and possession of an automobile for a period of 28 days or less.

89. Are rental payments subject to tax?

Yes. Sales tax must be collected on each rental payment as it is made.

90. A customer who has rented an automobile for 28 days wants to extend the rental period for two additional weeks. Does the transaction become a lease after the 28th day?

No. The fact that a rental can be extended for any number of successive rental periods does not in itself make the transaction a lease. In this instance, the dealer would continue to collect sales tax from the customer on each rental payment as it is made.

91. A motor vehicle is rented in New Jersey for use on a two-week vacation to Florida. Are the rental payments taxable?

Yes.

92. Are charges for a damage waiver or collision and trip insurance taxable?

Yes. These charges are taxable unless they represent premiums actually paid to a licensed insurance company.

93. Are charges for gas consumed taxable?

Charges for gas purchases are not taxable if they are separately stated.

94. Are charges for the privilege of dropping a vehicle off in another city taxable?

Yes. These charges are considered part of the rental fee and are subject to tax.

95. Are registration fees and license fees taxable?

Registration fees and license fees are not taxable if they are separately stated.

96. Are rentals to government agencies subject to tax?

No. For sales tax purposes, a rental is considered a sale and is treated in the same manner. All of the exemptions listed in Question #4 also apply to rentals of property.

97. Are vehicles removed from inventory to be used by the dealership as courtesy vehicles subject to sales tax?

Yes. However, the dealership may claim a trade-in credit when the courtesy vehicle is replaced by another vehicle. At that point, sales tax would be paid on the difference between the invoice price of the new vehicle and the wholesale price of the courtesy vehicle being replaced.

98. Are repairs to rental cars subject to sales tax?

No. The rental company may use a resale certificate to purchase parts and repair service for vehicles held out as rental vehicles.

99. Are limousines subject to sales tax?

No. Receipts from the sale of a limousine to a person licensed to operate a limousine service, and receipts from the repair, including replacement parts, of a limousine operated by a person licensed in New Jersey or by a person licensed under the laws of another state are exempt from the sales and use tax.

APPENDIX

Tax Forms and Certifications:

- Form ST-3 — Resale Certificate
- Form ST-3NR — Resale Certificate for Non-New Jersey Vendors
- Form ST-4 — Exempt Use Certificate
- Form ST-5 — View publication M-5014 concerning Form ST-5
- Form ST-7 — Farmer's Exemption Certificate
- Form ST-10 — Motor Vehicle Sales and Use Tax Exemption Report
- Form ST-18 — Use Tax
- Form ST-18B — Annual Use Tax Return
- Form ST-40 — Sales and Use Tax Lessor Certification
- REG-1E — Application for Exempt Organization Certificate
- Form ST-50 — File ST-50 Sales and Use Tax Online
- Form A-3730 — Claim for Refund