

NOTICE
Amendments to Sales and Use Tax Act
(P.L. 2008, c. 123)
Effective January 1, 2009

P.L. 2008, c. 123 revises the New Jersey Sales and Use Tax Act to conform with various provisions of the Streamlined Sales and Use Tax Agreement (SSUTA). As a result of these amendments, technical and substantive changes to the Sales and Use Tax Act take effect on January 1, 2009. The following are the significant changes created by P.L. 2008, c. 123:

Fur clothing

The law adds a new definition of “fur clothing” and excludes fur clothing from the clothing exemption. N.J.S.A. 54:32B-8.4. In addition, the law repeals the 6% Fur Clothing Retail Gross Receipts Tax. N.J.S.A. 54:32G-1. Thus, fur clothing is now subject to sales and use tax at a rate of 7%. For more information on this topic please see:

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

Telecommunications

- The law adds a revised definition of “telecommunications service”. “Telecommunications service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. “Telecommunications service” shall include such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. N.J.S.A. 54:32B-2(cc).
- Since 1990, New Jersey imposes tax on telephone answering services and radio subscription services pursuant to the prior definition of telecommunications. However, since the SSUTA telecommunications definition excludes these services, tax must be separately imposed. Telephone answering services (N.J.S.A. 54:32B-3(b)(14)) and radio subscription services (N.J.S.A. 54:32B-3(b)(15)) thus remain taxable.
- The law provides a new definition of “ancillary services” which includes many services that New Jersey has always taxed as telecommunications services (e.g., directory assistance, vertical service, voice mail, conference bridging service). Since the SSUTA distinguishes between ancillary services and telecommunications services, the tax must be separately imposed. See N.J.S.A. 54:32B-3(f)(1). Language was added to source these ancillary services to the place of primary use which is the street address where the customer’s use of the telecommunications service primarily occurs, which is the residential street address or the primary business street address of the customer. N.J.S.A. 54:32B-3.4(d); N.J.S.A. 54:32B-3(f)(1); N.J.S.A. 54:32B-3.4(c)(5).

- The law provides definitions of “conference bridging service”, “detailed telecommunications billing service”, “directory assistance”, “vertical service”, and “voice mail service”. N.J.S.A. 54:32B-2(cc). The taxability of these services has not changed.
- The law provides an expanded exemption for all telephone calls paid by inserting coins in a coin operated telecommunications device, rather than only those calls subject to the local calling rate.
- “In house” use of telecommunications services provided by a user or by the user’s subsidiary, not in the business of providing telecommunications to the public, was excluded from the prior definition of telecommunications. The SSUTA definition of telecommunications does not provide an exception for “in house” use of telecommunications. Thus in order to retain this treatment, the new law provides a specific exemption for this service.
- The law revises definitions of “intrastate telecommunications”, “interstate telecommunications”, and “international telecommunications”. N.J.S.A. 54:32B-2(dd). This does not result in a change of taxability from previous law.
- The law revises the definition of “pre-paid calling service” N.J.S.A. 54:32B-2(ll); N.J.S.A. 54:32B-3.4(d). This does not result in a change of taxability from previous law.
- The law revises the definition of “mobile telecommunications service” N.J.S.A. 54:32B-2(mm). This does not result in a change of taxability from previous law.
- Resale of telecommunications – the law moves the telecommunications resale language from the telecommunications definition to the resale provision. N.J.S.A. 54:32B-2(e)(1). This does not result in a change of taxability from previous law; the resale of telecommunications services for use as a component part of telecommunications services provided to an end-user remains not taxable.

Food

The law eliminates the language that imposed tax on non-liquid soft drinks (e.g., powdered beverage mixes). N.J.S.A. 54:32B-8.2. This is a technical amendment and does not result in a change in taxability of such products. Since October 1, 2005, powdered beverage mixes have been exempt as food ingredients, pursuant to the SSUTA.

Research and development

The law clarifies that the research and development exemption explicitly includes sales of digital property in the exemption. N.J.S.A. 54:32B-8.14.

Recordkeeping

The law extends the length of time during which sales and use tax records must be maintained from three to four years. N.J.S.A. 54:32B-16. This is a technical revision since records are currently required to be kept for four years, which is the statute of limitations for sales tax.

Definition of “sales price”

- The law adds language in the definition of “sales price” which sets forth the specific criteria to be met in order for third party consideration received by the seller to be included within the definition of sales price. N.J.S.A. 54:32B-2(oo)(3).
- The law adopts the SSUTA telecommunications bundled transaction administrative rule for unbundling the taxable and nontaxable components of a sale of mixed telecommunications services that relies on the service provider’s internal records. N.J.S.A. 54:32B-2(oo)(4).

Definition of “delivery charges”

The law clarifies that if delivering taxable and non-taxable property, the seller is required to tax the percentage of the delivery charge allocated to the taxable property but is not required to tax the percentage allocated to the exempt property. N.J.S.A. 54:32B-2(rr).

Direct mail

- The law replaces the term “direct mail” with the term “printed advertising material”. This does not result in a change of taxability from prior law because the change is consistent with the Division’s application and use of the term since October 1, 2005. The SSUTA definition of “direct mail” was never intended to define a product, but it was erroneously incorporated into New Jersey law as such. This amendment fixes that error. N.J.S.A. 54:32B-3(b(5)); N.J.S.A. 54:32B-8.39.
- The law replaces the term “direct mail processing service” with “mail processing services” for the reason stated above. N.J.S.A. 54:32B-3(b(5)); N.J.S.A. 54:32B-8.39.

Medical - mobility enhancing equipment

The law adds a prescription requirement to the exemption for mobility enhancing equipment. This is intended to clarify that there is no exemption for such equipment when purchased by a medical services provider (e.g., grab bars, wheelchairs, and shower handles are taxable when purchased by a for-profit hospital, doctor’s office, etc.). N.J.S.A. 54:32B-8.1.

Relief from liability of tax

The law amends N.J.S.A. 54:32B-14 to provide situations where a purchaser is not liable for tax, interest, or penalty, such as reliance by a certified service provider on erroneous data provided by the Division and reliance on erroneous data in the Division’s taxability matrix. The relief from liability is limited to the erroneous classification of certain terms in the Taxability Matrix.

Multiple points of use (MPU)

By repealing N.J.S.A. 54:32B-3.2, the law repeals the MPU sourcing provision which was repealed in the SSUTA. Computer software and related services are sourced according to the Streamlined Sales Tax Governing Board’s Rules and Procedures (amended June 18, 2008).

[Email us](#) questions concerning the information in this Notice. The SSUTA's Rules and Procedures are available at: www.streamlinedsalestax.org.