



Items sold to food service providers

LR: 2013-2-SUT – Issued September 6, 2013

Tax: Sales and Use Tax

Taxpayer requested a Letter Ruling on the application of the New Jersey Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) to charges for various items sold to food service providers.

Facts

Taxpayer is a wholesale supplier of food products to restaurants and other food establishments.

Taxpayer sells the following:

1. Plastic delivery bags
 - Used for delivery or take out sales by a restaurant.
 - Food items are contained within these bags.
2. Plastic plates
 - Used for service or delivery of prepared food to patrons.
 - Food items are directly situated on these plates for portability and consumption.
3. Paper plates
 - Used for service or delivery of prepared food to patrons.
 - Food items are directly situated on these plates for portability and consumption.
4. Styrofoam plates, cups, and bowls
 - Used for service or delivery of prepared food and drinks to patrons.
 - Food and drink items are contained within or upon these plates, cups, and bowls for portability and consumption.

Issue

Whether Taxpayer's sales of plastic delivery bags, plastic plates, paper plates, and Styrofoam plates, cups, and bowls to restaurants and other food establishments are subject to tax.

Discussion

The New Jersey Sales and Use Tax Act imposes tax on the retail sale of tangible personal property unless a valid exemption exists. N.J.S.A. 54:32B-3(a).

In general, restaurants, caterers and other food service establishments must pay Sales Tax on purchases of taxable items used in their business which are not resold or which are not otherwise exempt. Examples of taxable purchases include: utensils, straws, tablecloths, napkins, placemats, janitorial supplies, etc. N.J.S.A. 54:32B-3(a).

The Act also provides an exemption for sales of products which are: (1) nonreturnable containers or wrapping supplies and used (2) incidental to the delivery of prepared food to the customer.

N.J.S.A. 54:32B-8.15. When purchasing these items, the restaurant or other food establishment issues the supplier a fully completed New Jersey Exempt Use Certificate ([Form ST-4](#)) or the Streamlined Sales and Use Tax Certificate of Exemption ([Form ST-SST](#)) and does not pay Sales Tax.

Conclusion

Taxpayer's sales of plastic delivery bags, plastic plates, paper plates, and Styrofoam plates, cups, and bowls to restaurants or other food establishments are exempt wrapping supplies because these nonreturnable items are used in the delivery of prepared food to the end consumer. The customer should issue Taxpayer a fully completed Exempt Use Certificate ([Form ST-4](#)) or the Streamlined Sales and Use Tax Certificate of Exemption ([Form ST-SST](#)) in lieu of paying Sales Tax.

A Letter Ruling is limited to the facts set forth therein and is binding on the Division of Taxation only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. A Letter Ruling is based on the law, regulations, and Division policies in effect as of the date the Letter Ruling is issued or for the specific time period at issue in the Letter Ruling.