



Exemption Administration Related to Accepting Certificates

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Tax: Sales and Use Tax

This publication addresses the Division's policy on good faith, as revised by the Streamlined Sales and Use Tax Agreement (SSUTA) and its applicability to the acceptance of exemption certificates.

GOOD FAITH

To act in good faith means to act in accordance with standards of honesty. In general, registered sellers who accept exemption certificates in good faith are relieved of liability for the collection and payment of Sales Tax on the transaction covered by the exemption certificate.

Historically, the Division viewed the concept of good faith to apply to the acceptance of exemption certificates at the point of purchase. N.J.A.C. 18:24-10.4 requires that in order to be accepted in good faith, an exemption certificate "must contain no statement or entry, which the seller knows is false or misleading." In addition, the rule states that "a seller is presumed to be familiar with the law and rules regarding the business in which he or she deals."

The exemption certificate must be in the physical possession of the seller on or before the 90th day following the date of the transaction to which the certificate relates. N.J.A.C. 18:24-10.6(b). If a certificate cannot be presented within 90 days of the transaction, the seller may provide "by means of evidence other than certification of the purchases" that the transaction is exempt. N.J.A.C. 18:24-10.6(c). Relaxed Good Faith (applicable for purchases occurring from October 1, 2005 – December 31, 2007)

On October 1, 2005, New Jersey joined a national coalition of states in conforming the New Jersey Sales and Use Tax Act to the provisions of the SSUTA. See P.L. 2005, ch. 126. 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. Under Section 607E. of the SSUTA, a member state is afforded two years or one legislative session to comply with the SSUTA. Thus, the below changes are governed by amendments to the SSUTA.

One of the key principles of the SSUTA is to relieve sellers of tax collection burdens. In order to accomplish this, the provisions of the SSUTA hold the seller harmless when a purchaser issues a completed exemption certificate under certain circumstances (see below). Under the SSUTA, the burden is shifted from the seller to the State to monitor Sales Tax exemptions. A purchaser who claims an improper exemption is responsible for paying any tax, interest and penalties, and sellers will generally not be held liable for improperly claimed exemptions (see below).

In order to conform with the requirements of the Agreement, the Division published a new standard on all of its exemption certificates, referred to as "relaxed" good faith. This means that the seller is held harmless when a completed exemption certificate is accepted under the following conditions:

- (a) Certificate must contain no statement or entry which the seller knows is false or misleading;
- (b) Certificate must be an official form or a proper and substantive reproduction, including electronic;
- (c) Certificate must be filled out completely;
- (d) Certificate must be dated and include the purchaser's New Jersey tax identification number or, for a purchaser that is not registered in New Jersey, the Federal employer identification number or out-of-state registration number. Individual purchasers must include their driver's license number; and
- (e) Certificate or required data must be provided within 90 days of the sale.

For Purchases Occurring from January 1, 2008 – September 30, 2011

Based on revisions to the SSUTA, good faith as it was commonly understood and applied is no longer applicable at the point of purchase. Rather, there is only a requirement for a completed exemption certificate to be obtained by the seller within 90 days of the sale. Good faith is now only a factor during an audit situation.

POINT OF PURCHASE

Effective January 1, 2008, sellers are relieved from the tax otherwise due so long as the seller obtains a fully completed exemption certificate or captures the relevant data elements required under the SSUTA within 90 days subsequent to the date of sale. If it is determined that the purchaser improperly claimed an exemption, the purchaser will be held liable for the nonpayment of the tax. In order to "fully complete" the exemption certificate, the following information must be obtained from a purchaser:

- Purchaser's name and address;
- Type of business*;
- Reasons(s) for exemption*;
- Purchaser's New Jersey tax identification number or, for a purchaser that is not registered in New Jersey, the Federal employer identification number or out-of-state registration number. Individual purchasers must include their driver's license number;
- If a paper exemption certificate is used (including fax), the signature of the purchaser.

*The options for these requirements are mandated by the SSUTA.

Although the Division requests this information, the seller's name and address are not required and are not considered when determining if an exemption certificate is fully complete. A seller that enters data elements from paper into an electronic format is not required to retain the paper exemption certificate.

There is no longer any requirement that the seller have knowledge of the law and regulations regarding a particular exemption. For example, if a purchaser fully completes an Exempt Use Certificate (Form ST-4) claiming the production exemption (N.J.S.A. 54:32B-8.13(a)) for the

purchase of a machine, the seller has no responsibility to ascertain whether or not the machine could reasonably be used directly and primarily in production by that purchaser as the statute requires.

This relief from liability does not apply to a seller who fraudulently fails to collect tax, to a seller who solicits purchasers to participate in the unlawful claim of an exemption, or to a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption* when:

1. The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller; and
2. The state in which that location resides provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in that state (for example, striking out exemption reason types on the SSUTA uniform exemption form and posting it on a state's website is an indicator. New Jersey has indicated that the following exemptions are not available when a purchaser issues the SSUTA uniform exemption form: tribal government, charitable organization, and religious or educational organization.)

* An entity-based exemption is an exemption based on who the purchaser is (e.g., a Federal or New Jersey State governmental entity), as opposed to a use-based exemption such as manufacturing, research and development, wrapping supply, etc.

IN AN AUDIT SITUATION

From January 1, 2008 to September 30, 2011, if the seller either did not obtain an exemption certificate or the seller obtained an incomplete exemption certificate, the seller had at least 120 days after the Division's request for substantiation of the claimed exemption to obtain a fully completed exemption certificate from the purchaser. The certificate would have been taken in good faith, which, in an audit situation, means the seller is presumed to be familiar with the law and rules regarding the business in which he/she deals and the exemption certificate must not contain any statement or entry that the seller knows is false or misleading.

NEW STANDARD FOR PURCHASES OCCURRING AS OF OCTOBER 1, 2011

POINT OF PURCHASE

There has been no change to the acceptance of an exemption certificate at the point of purchase.

See standard above under "For Purchases Occurring from January 1, 2008 – September 30, 2011."

IN AN AUDIT SITUATION

On and after October 1, 2011, if the seller either did not obtain an exemption certificate or the seller obtained an incomplete exemption certificate, the seller has at least 120 days after the Division's request for substantiation of the claimed exemption to either:

1. Obtain a fully completed exemption certificate from the purchaser, taken in good faith, which, in an audit situation, means the seller accepted a certificate claiming an exemption that:

(a) was statutorily available on the date of the transaction; and

(b) could be applicable to the item being purchased; and

(c) is reasonable for the purchaser's type of business; OR

2. Obtain other information establishing that the transaction was not subject to the tax.

If the seller obtains this information, the seller is relieved of any liability for the tax on the transaction unless it is discovered through the audit process that the seller had knowledge or had reason to know at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction. The burden is on the Division to establish that the seller had knowledge or had reason to know at the time the information was provided that the information was materially false.

The Division intends to codify the contents of this notice in a regulation, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Note: A Technical Bulletin is an informational document designed to provide guidance on a topic of interest to taxpayers and describe changes to the law, regulations, or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the tax law or its interpretation may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.