

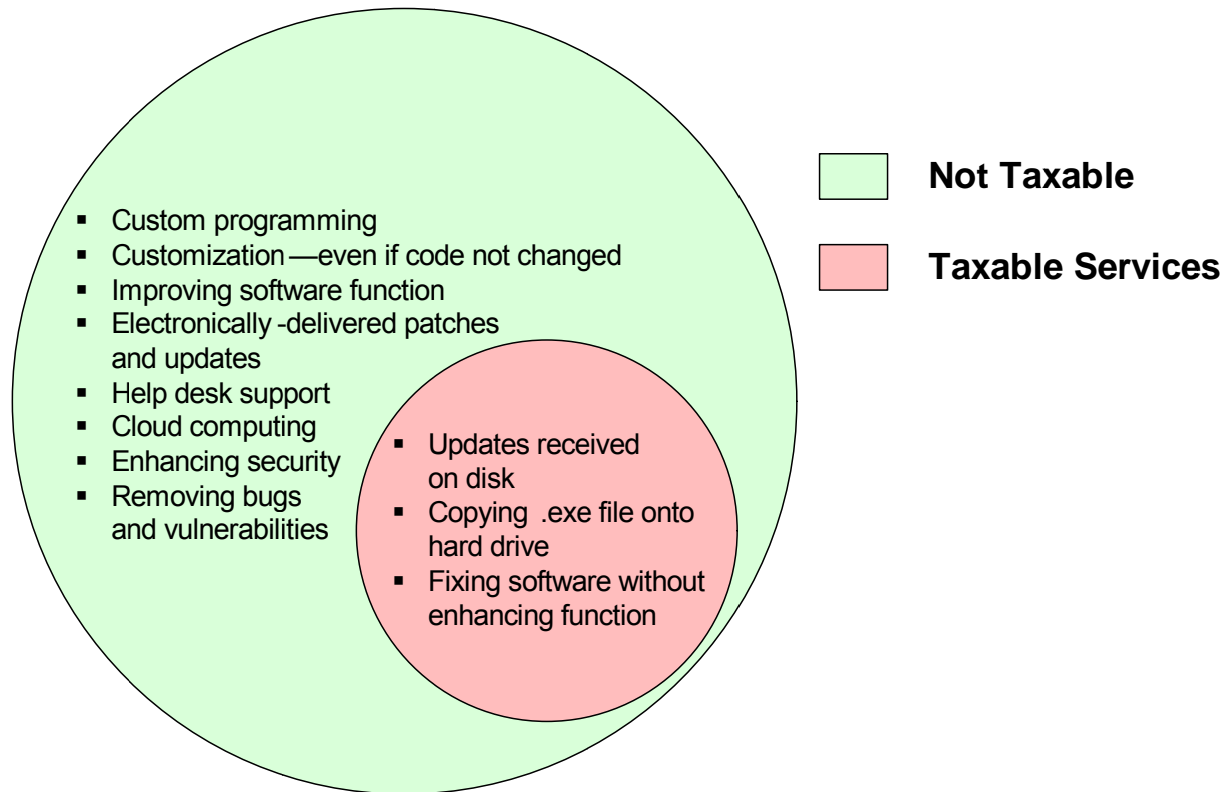
New Jersey Sales Tax Guide: Software and Related Services

Electronically-Delivered Business Software: NOT TAXABLE

- Tax imposed on sale of tangible personal property (including prewritten computer software) but statutory exemption for electronically-delivered business software
- Exemption applies even if provided with written manuals or training materials, but not if back-up copy received on disk or if software installed by “load-and-leave” method

Services to Software: GENERALLY NOT TAXABLE

- Tax on “installing, maintaining, servicing, repairing” software (even if software is exempt)
- But despite inconsistency among auditors, taxable services narrowly defined:
 - ✓ *Installing.* Limited to “act of loading an executable file ... containing a prewritten computer software application or program onto a device or equipment”
 - ✓ *Repairing.* Restoring software to original state without improving function
 - ✓ *Servicing.* Limited to maintaining compatibility of software with hardware or other software and corrective services (without changing computer code)
 - ✓ *Maintaining.* Software maintenance contracts providing updates not taxable if updates delivered electronically and used for business purposes



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New Jersey Audit Defense and Opportunities

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New Jersey Overview

- State-level tax of 7% imposed on:
 - ✓ Transferring, services, storing tangible personal property
 - ✓ Servicing realty (not capital improvements)
 - ✓ Utilities and telecommunications
- Sources of authority and guidance
 - ✓ Letter rulings unpublished
 - ✓ SSUTA member state
 - ✓ Audit manual?

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New Jersey

Audit and Refund Procedures

- Audits performed by Field Audit Branch
 - ✓ May include other tax types
 - ✓ Documentation and responsiveness
 - ✓ Audit versus appeal issues
- Refund claims reviewed by Audit Services Branch
 - ✓ Timing—extra six months if audited
 - ✓ What to file (perfecting your claim)
 - ✓ Retaliatory audits?
- Division hierarchy and resolving problems

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New Jersey

Audit Projections

- General policies and practices
 - ✓ Statistical vs. non-statistical
 - ✓ Selecting which accounts and periods
 - ✓ Overpayments during sample period
- Potential problems and solutions
 - ✓ Non-representative sample periods
 - ✓ How to identify and deal with outliers
 - ✓ Changes in law
- What if you've consented to method?

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Software, Digital Products and Information Services

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New Jersey

Software

- Exemption for electronic delivery
- Concurrently used software
- Services to software
 - ✓ What is taxable installation and repair?
 - ✓ Help desk, updates, upgrades
- SAAS and hosting services

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New Jersey

Digital Property and Products

- Tax imposed on:
 - ✓ Digital Property (Pre-5/1/2011)
 - ✓ Specified Digital Product (After 5/1/2011)
- Intent of change?
- Accessing digital property not taxable
- Digital photographs and computer-generated images
- Video production

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Information Services

- What are taxable information services?
- How to source
 - ✓ Does multiple points of use still apply?
 - ✓ Options for computing % use in NJ
- What if bundled with exempt software?
- Resale of information services used to perform nontaxable services

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Manufacturing and Research Exemptions

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New Jersey

Manufacturing Exemption

- Equipment used >50% to initiate, sustain, or terminate process; no sale required
- Process ends when product in final form
 - ✓ Interim manufacturing—what is final form?
 - ✓ Equipment used to maintain form exempt
 - ✓ What's primary function *Comcast* (02/03/13)
- Services to exempt equipment
 - ✓ Don't pay use tax if services outside NJ
 - ✓ Calibration services

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R&D Exemption

- Distinct from manufacturing exemption
 - ✓ Taxpayer doesn't need to produce TPP
 - ✓ Any TPP except energy and digital products can qualify, but 100% use required
- Avoid mixed use property (e.g., servers)
- Somewhat arbitrary rulings:
 - ✓ Lab benches qualify, but not desks
 - ✓ Testing prototypes qualifies, but not QA
 - ✓ Clean rooms qualify, but not HVAC

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New Jersey

Catalyst Exemption

- Materials essential to processing, but don't become component part of product
 - ✓ Exempt: "true" catalysts, filters, dynamite
 - ✓ Not exempt: grinders, sanitizers
 - ✓ Electricity and natural gas
- Is sale requirement still good law?
- Does exemption apply to services?
 - ✓ Historically, taxpayer had to produce TPP
 - ✓ After SSUTA, "product" includes services

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Wrapping Supplies

- Just need to deliver TPP, not sell it
- Containers exempt only if nonreturnable
- CHEP pallets—not containers
 - ✓ Constitutes “other wrapping supply,” so nonreturnable requirement doesn’t apply
 - ✓ Is “nonreusable” requirement good law?
- Wrapping supplies used internally
 - ✓ *Burlington Coat*—shipped to affiliates
 - ✓ What if within same legal entity?

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Services and Capital Improvements

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Services Generally

- Scope of taxable services
 - ✓ Testing, management, and supervision
 - ✓ Travel and meals
- Bundled transactions
 - ✓ Exception if true object is nontaxable service
 - ✓ De minimus rule—mandatory maintenance
- Management contracts for subsidized employee cafeterias

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New Jersey

Advertising and Direct Mail

- No tax on advertising (design) services
- Exemption for printed advertising material distributed to out-of-state recipients
 - ✓ What is "printed advertising material"? (narrow definition of "direct mail" obsolete)
 - ✓ Estimating out-of-state percentage
- Mail processing services for out-of-state recipients also exempt

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Capital Improvements

- Permanent installation not enough:
 - ✓ Significant increase in useful life of realty and increase value of realty
 - ✓ Landscaping, alarms, and flooring taxable
- Repairs and services to realty taxable
 - ✓ Exclude separately stated materials charge
 - ✓ Mere "addition ... to real property" exempt? *See Burlington Coat (11/26/13)*
- Exemption certificates: ST-8 and ST-4

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Storage and Removal Services

- Sourcing services generally
- Waste removal
- Storage services
 - ✓ What's taxable
 - ✓ Multistate service contracts—estimating performance in NJ
- Scanning and storage services
 - ✓ Taxpayer server
 - ✓ Vendor server

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New Jersey

Temporary Help

- Employee wages exempt—even if service performed otherwise taxable
- Limited to employment agencies?
- Employee-employer factors:
 - ✓ Supervision and training
 - ✓ Control over hiring and firing
 - ✓ Exclusivity
 - ✓ Benefits and length of service

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Wrap-Up

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Taking Control of Audit Cycle

- New Jersey—effective use tax rate agreement
 - ✓ Effective rate applied to all applicable purchases; no sales tax paid to vendor
 - ✓ Up to 3 year term; rate re-evaluated periodically
 - ✓ No audits or refunds for covered transactions

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New Jersey Take-Aways

- Software services and other maintenance contracts
- Marketing, promotional, or informational videos
- Out-of-state repair services to manufacturing or R&D equipment
- Calibration Services
- Any installation services to realty—even if not capital improvement
- Marketing materials shipped to employees in bulk
- Information services used in multiple locations
- Returnable or reusable pallets

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