

## New Jersey Division of Taxation Tax Notes – Landscaping Services

### —Background—

#### Capital Improvements Performed by Landscapers and Similar Businesses

Effective October 1, 2006, charges for certain defined landscaping services are subject to tax. See N.J.S.A. 54:32B-3(b)(2), as amended, and P.L. 2006, ch. 44. The tax is applicable to sales by a landscaper to a property owner or to a general contractor. See examples from the New Jersey Department of Taxation below.

### —New Sales Tax—

The labor to install the following types of capital improvements to real property, which was previously exempt, is **subject to tax** on and after October 1, 2006:

- Seeding
- Sodding
- Grass plugging of new lawns
- Planting trees, shrubs, hedges, plants, etc.
- Clearing and filling land associated with seeding, sodding, grass plugging of new lawns, or planting trees, shrubs, hedges, plants, etc. This also includes tree/stump removal. Any clearing and filling of land that is not associated with the installation of the above property is not subject to tax, for example, clearing land for a new development. Since the installation of structures remains exempt (see below), clearing and filling land performed in connection with the installation of structures remains exempt from tax.

### —Continued Exemptions—

Other services which may be performed by a landscaper such as the installation of a new fence, low-voltage lighting, a pond, underground sprinkler system, hardscaping (i.e., installation of deck, paver patio, walkway, driveway, swimming pool deck, retaining walls, etc.), and similar structures, remain capital improvements to real property and are unaffected by the new law. **Thus, the installation labor is still exempt from sales tax.**

### —Examples—

ABC Landscaper has a contract with a homeowner for the installation of planting materials, such as trees and shrubs. ABC Landscaper hires a subcontractor to perform the taxable planting service. Since ABC is charging the

homeowner for a taxable service, ABC must collect tax from the homeowner. The amount charged to ABC by the subcontractor is not subject to tax.

XYZ home builder is constructing a home to sell to the public. XYZ hires ABC Landscaper to perform taxable landscaping services. Since XYZ is selling a home (not a landscaping service), XYZ is the end-consumer of the landscaping services and must pay tax on the amount charged by ABC Landscaper.

—*Transition*—

**Transition from Exempt Capital Improvement to Taxable Service**

If a landscaper performs a taxable service which was previously exempt as a capital improvement and such service began prior to October 1 and continues on and after October 1, 2006, the landscaper must charge 7 percent tax on the sale of the services **that are completed on and after October 1, 2006**. This rule applies whether or not payment has been made in whole or in part prior to the performance of the service.

—*Other Issues*—

**Repair and Maintenance Services**

The Sales and Use Tax Act currently imposes tax on charges for maintaining, servicing, and repairing real property. (N.J.S.A. 54:32B-3(b)(4)). Repair and maintenance services performed by landscapers are subject to tax under this provision. The following are examples of taxable repair and maintenance services performed by landscapers:

- Lawn mowing
- Lawn reseeding
- Lawn fertilizing
- Tree maintenance (trimming, pruning, spraying, bracing, cabling, grafting, coppicing, suckering and feeding)
- Weed/Insect control
- Soil aerating, sterilizing and mulching

**The law has not changed in this regard and these services remain subject to tax.**

**Material Purchases**

Businesses which provide landscaping services are still considered contractors under the law.

Thus, the landscaper is responsible for paying sales or use tax on the materials that are installed onto real property.

**The law has not changed in this regard.**

**Collecting Tax from Customers**

A contractor performing “landscaping services” for an end-user must collect 7 percent sales tax on the gross sales receipt. However, at the option of the landscaper, the actual cost of materials used and upon which the landscaper paid tax may be separately stated on the invoice. The separate statement of the actual cost of materials would not be subject to the collection of tax. The law has not changed in this regard. Whenever a contractor performs a taxable

service, if the customer is billed a lump sum amount, the entire receipt is taxable. If the contractor separately states the actual cost of materials from the taxable labor, the customer would only be charged tax on the labor portion.

*—For More Information—*

For more information, please visit <http://www.state.nj.us/treasury/taxation/landscape.shtml>

If you need additional information, please contact Andrew Musick at 609-393-7707, ext. 9512, or via e-mail at [amusick@njbja.org](mailto:amusick@njbja.org).

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