

## New Jersey Landscaping Services and Sales Tax

N.J.S.A. 54:32B-3(b)(2)

The law defines “Landscaping Services” as services that result in a capital improvement to land, other than structures of any kind whatsoever, such as: seeding, sodding or grass plugging of new lawns; planting trees, shrubs, hedges, plants; and clearing and filling land. (N.J.S.A. 54:32B-2(w)). Previously, certain landscaping services that resulted in a capital improvement were exempt. The law eliminates the capital improvement exemption for landscaping services, so now the labor is taxable. Businesses that provide landscaping services are still treated as contractors under the law.

### 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, c. 44. The tax is applicable whether a landscaper is hired by a property owner or by a general contractor.

Thus, 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.

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.**

### 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% 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.

### **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.**

**The following examples are offered to provide a better understanding of the new requirements (“E” means exempt, “T” means taxable)**

#### **Example 1:**

Jeff’s Landscape Service purchases a tree from Brown’s Nursery for \$100.00. The invoice shows the item purchased, the price charged, and adds 7% sales tax. The total amount charged is \$107.00. Jeff’s Landscape Service agrees to provide a fully installed tree to Mrs. Homeowner for \$300.00. A \$25.00 charge for a one-year warranty for the planting is included in the billing. Jeff’s chooses to separately state on the invoice the \$107.00 that he actually paid for the tree (his price for the tree plus tax he paid on his retail purchase). The invoice presented to Mrs. Homeowner is as follows:

Tree	\$107.00 (E)
Warranty	25.00 (T)
Installation	175.00 (T)
Total	307.00
Sales tax (7%)	<u>14.00*</u>
Amount due	\$321.00

\*(\$200.00 for planting and warranty X .07 = \$14.00)

(Brown's Nursery submits the \$7.00 paid by Jeff's Landscape Service to the State of New Jersey, and Jeff's Landscape Service submits \$14.00 paid by Mrs. Homeowner to the State of New Jersey.)

*Although the installation of a tree results in a capital improvement, it is the type of landscaping improvement work that is no longer covered by the capital improvement exemption and therefore the installation labor will be subject to sales tax as of October 1, 2006.*

**Example 2:**

Holly Leaf Landscape has registered as a new business and has requested a review of its sales and use tax collection procedures for the following invoice:

Invoice:

Fully installed Little Leaf Linden	\$400.00 (T)
NJ Sales Tax	<u>28.00</u>
Total	\$428.00

*If the invoice does not separate the cost of materials and labor, sales tax is charged on the entire bill. Note that landscapers are contractors and must therefore pay sales tax on all plants and materials purchased for installation on their customers' property. For audit purposes, Holly Leaf Landscape should save a record showing that it paid 7% sales tax on its purchase of the Little Leaf Linden.*

**Example 3:**

Bob's Backhoe Service is asked for an estimate to install a retaining wall on a property with a slope that has an erosion problem. The slope will need to be graded to properly install the wall. Bob's Backhoe Service establishes the cost for stone and drainage supplies to be \$10,000 plus \$700 for sales tax. It is estimated that it will take 4 hours to grade the property at a rate of \$250 per hour. The price estimate given for building the wall and the grading is \$30,000. The property owner will issue a Certificate of Capital Improvement (Form ST-8) to support its exemption from sales tax on the installation labor. The \$1,000 charge for grading labor is exempt. The itemized charge of \$10,700 is not taxable to the property owner because the contractor is considered the retail purchaser of the materials and was obligated to pay the sales tax.

Invoice:

Materials	\$10,700.00 (E)
Grading	1,000.00 (E)
Installation Labor	<u>18,300.00 (E)</u>
	\$30,000.00

*When a landscaper or other contractor purchases materials for an installation, the landscaper pays the sales tax at the time of purchase. When the landscaper itemizes its cost of materials on*

*its invoice to the property owner, the property owner is not charged sales tax on that item. The grading work and installation work in this example are not related to plantings, and are therefore the type of capital improvement work that still qualifies for exemption from sales tax.*

**Example 4:**

Bob's Backhoe Service (BBS) is asked to grade a property for purposes of lawn installation and to install sod. The cost to BBS for the sod from Cultivated Sod Inc. was \$3,000 plus \$210 for sales tax. The invoice BBS gives to the customer is as follows:

Grading (for lawn installation purposes)	\$1,000.00 (T)
Sod	3,210.00 (E)
Sod installation	2,300.00 (T)
Sales Tax (\$3,300.00 X .07)	<u>231.00</u>
Amount due	\$6,441.00*

\*BBS paid \$210 in sales tax on the \$3,000 sod, and the customer pays \$231 on \$3,300 of taxable services of grading and installing the sod, but does not pay sales tax on the separately stated cost of the sod. (In this example, the grading is related to plantings, so it is the type of capital improvement work no longer covered by the sales tax exemption as of October 1, 2006.) BBS and Cultivated Sod, Inc. are each responsible to collect sales tax and to remit sales tax electronically to the New Jersey Division of Taxation. If BBS separately states the materials (sod) on his invoice to the customer, it may show the amount he actually paid, i.e. \$3,210 (the sod for \$3,000 plus the \$210 tax paid).

**Example 5:**

Brenda's Nursery LLC sells \$18,000 worth of plant material to a garden center. The LLC delivers the material and charges for \$500 for freight. An ST-3 (resale certificate) is provided by the garden center on the plant material because it is purchasing the material for resale in its store and is therefore entitled to a resale exemption. The shipping charge is also exempt because the sale of plant material is not taxable to the retail garden center that is purchasing it for resale.

*“Delivery Charges” are charges by the seller for delivery to a location designated by the purchaser of personal property including, but not limited to, transportation, shipping, postage, handling, crating, packing and fuel costs. The law provides for the taxation of delivery charges on taxable sales and retains the exemption for delivery charges on sales that are nontaxable (either because the goods themselves are nontaxable, e.g., clothing, or because the purchaser is entitled to an exemption under the circumstances of the transaction, e.g., purchase for resale.)*

**Example 6:**

Tom’s Nursery sells \$40,000 of plant material to a contractor that is landscaping a new housing development. Tom’s Nursery adds 7% sales tax to the invoice plus a delivery charge of \$250.00. Because the plant material is taxable, and the contractor is not entitled to any exemption, the delivery charge is also subject to sales tax as a shipping charge.  $\$40,250 \times .07 = \$43,067.50$  is the cost to the contractor. The developer (customer) issues an ST-8 (Capital Improvement Certificate) to the contractor for the portion of the bill charging for exempt capital improvement work (installing pavers, drainage pipe, lighting, irrigation system.) The invoice from the contractor is as follows:

Plant Materials	\$43,067.50* (E)
Installation of Plant Materials	30,000.00 (T)
Installation of Pavers	175,000.00 (E)
Installation of drainage pipe	25,000.00 (E)
Installation of landscape lighting	35,000.00 (E)
Sales Tax	<u>2,100.00</u> ** (tax on \$30,000 installation of plants)
Amount due	\$325,167.50

\*The separately stated cost of plant materials on the bill from the contractor must be limited to what the contractor actually paid for the plant material. (It may include the sales tax and delivery charge that the contractor actually paid on the purchase.)

\*\*The developer must be charged sales tax on the labor for installation of plant materials (\$30,000), because installation of plant materials is a type of capital improvement work that is no longer exempt from sales tax as of October 1, 2006.

**Example 7:**

ABC Growers & Landscape Inc. purchases 10,000 evergreen liners from a Pennsylvania nursery for \$12,000. The liners will be grown by ABC and sold through their landscaping division. ABC pays \$720 (6%) in sales tax to the Pennsylvania nursery. Because New Jersey allows a credit for the tax paid to Pennsylvania, but New Jersey tax is 1% more than Pennsylvania’s, the landscaper owes the 1% balance of use tax to New Jersey. Using an ST-50, ABC electronically transfers \$120 (1%) in use tax to the New Jersey Division of Taxation. The sales tax obligations for plant materials that will be installed by a contractor (in this case ABC’s landscape division) at a later date have been met.

**Example 8:**

ABC Growers & Landscape Inc. purchases 5,000 evergreen transplants costing \$4,800 for Christmas tree production from a New Jersey nursery. ABC issues an ST-3 (Resale Certificate) to the nursery and is not charged sales tax. When ABC sells the Christmas trees at their retail outlet, sales tax will be charged on each tree sold.

**Example 9:**

ABC Growers & Landscape Inc. is the primary contractor for installing plant material for a warehouse development. ABC subcontracts the installation to Large Tree LLC as a subcontractor. Large Tree pays \$7,000 in sales tax on the \$100,000 of plant material it purchased. When Large Tree bills ABC for its work, \$107,000 for plant material and \$200,000 for installation, sales tax is not charged for either the plant material or the labor for installation. (On its invoice to ABC, Large Tree should indicate that the bill is from subcontractor to prime contractor.) When ABC bills the warehouse development, sales tax is charged on the installation service.

Purchase of Plant Materials by Large Tree LLC:  
\$100,000 for plants plus \$7,000 sales tax =\$107,000

Large Tree's Invoice to ABC:

Plant Materials	\$107,000
Installation	<u>200,000</u>
Total due	\$307,000

(Not taxable because billed from subcontractor to general contractor)

ABC's Invoice to Developer:

Plant Materials	\$107,000 (E)
Installation	<u>293,000</u> (T)
	400,000
Sales Tax	<u>20,510</u> (on \$293,000 taxable installation of plants)
Total due	\$420,510

**For More Information**  
**[www.state.nj.us/treasury/taxation/index.html](http://www.state.nj.us/treasury/taxation/index.html)**

**NJ Division of Taxation at (609) 292-5995**  
**Robert Bruch, New Jersey Department of Agriculture at (609) 984-2503**

*This information was compiled on September 27, 2006.*