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SENATE, No. 2628

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED JUNE 16, 2005

Sponsored by:
Senator BERNARD F. KENNY, JR.
District 33 (Hudson)

SYNOPSIS

Modernizes the sales and use tax.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on June 20, 2005, with amendments.



1 AN ACT modernizing the sales and use tax, amending and
2 supplementing P.L.1966, c.30 and amending P.L.1980, c.105.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 2 of P.L.1966, c.30 (C.54:32B-2) is amended to read
8 as follows:

9 2. Unless the context in which they occur requires otherwise, the
10 following terms when used in this act shall mean:

11 (a) Person. Person includes an individual, partnership, society,
12 association, joint stock company, corporation, public corporation or
13 public authority, estate, receiver, trustee, assignee, referee, and any
14 other person acting in a fiduciary or representative capacity, whether
15 appointed by a court or otherwise, and any combination of the
16 foregoing.

17 (b) Purchase at retail. A purchase by any person at a retail sale.

18 (c) Purchaser. A person who purchases property or who receives
19 services.

20 (d) Receipt. The amount of the sales price of any property or
21 digital good and the charge for any service taxable under this act,
22 valued in money, whether received in money or otherwise, including
23 any amount for which credit is allowed by the vendor to the purchaser,
24 without any deduction for expenses or early payment discounts, and
25 including delivery charges, but excluding any credit for property or
26 digital good of the same kind that is not tangible personal property or
27 digital goods, as applicable, purchased for lease accepted in part
28 payment and intended for resale, [excluding the cost of transportation
29 where such cost is separately stated in the written contract, if any, and
30 on the bill rendered to the purchaser,] and excluding the amount of the
31 sales price for which food stamps have been properly tendered in full
32 or part payment pursuant to the federal Food Stamp Act of 1977,
33 Pub.L.95-113 (7 U.S.C. s.2011 et seq.).

34 (e) Retail sale. (1) A sale of tangible personal property or a sale
35 of digital goods to any person for any purpose, other than (A) for
36 resale either as such or as converted into or as a component part of a
37 product or digital good produced for sale by the purchaser, including
38 the conversion of natural gas into another intermediate or end product,
39 other than electricity or thermal energy, produced for sale by the
40 purchaser, or (B) for use by that person in performing the services
41 subject to tax under subsection (b) of section 3 where the property so

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SBA committee amendments adopted June 20, 2005.

1 sold becomes a physical component part of the property upon which
2 the services are performed or where the property so sold is later
3 actually transferred to the purchaser of the service in conjunction with
4 the performance of the service subject to tax.

5 (2) For the purposes of this act, the term retail sales includes: Sales
6 of tangible personal property to all contractors, subcontractors or
7 repairmen of materials and supplies for use by them in erecting
8 structures for others, or building on, or otherwise improving, altering,
9 or repairing real property of others.

10 (3) For the purposes of this act, the term retail sale includes the
11 purchase of tangible personal property for lease.

12 (4) The term retail sales does not include:

13 (A) Professional, insurance, or personal service transactions which
14 involve the transfer of tangible personal property as an inconsequential
15 element, for which no separate charges are made.

16 (B) The transfer of tangible personal property to a corporation,
17 solely in consideration for the issuance of its stock, pursuant to a
18 merger or consolidation effected under the laws of New Jersey or any
19 other jurisdiction.

20 (C) The distribution of property by a corporation to its
21 stockholders as a liquidating dividend.

22 (D) The distribution of property by a partnership to its partners in
23 whole or partial liquidation.

24 (E) The transfer of property to a corporation upon its organization
25 in consideration for the issuance of its stock.

26 (F) The contribution of property to a partnership in consideration
27 for a partnership interest therein.

28 (G) The sale of tangible personal property where the purpose of the
29 vendee is to hold the thing transferred as security for the performance
30 of an obligation of the vendor.

31 (f) Sale, selling or purchase. Any transfer of title or possession or
32 both, exchange or barter, rental, lease or license to use or consume,
33 conditional or otherwise, in any manner or by any means whatsoever
34 for a consideration, or any agreement therefor, including the rendering
35 of any service, taxable under this act, for a consideration or any
36 agreement therefor.

37 (g) Tangible personal property. Corporeal personal property of
38 any nature including energy.

39 (h) Use. The exercise of any right or power over tangible personal
40 property, a digital good or services to property by the purchaser
41 thereof and includes, but is not limited to, the receiving, storage or any
42 keeping or retention for any length of time, withdrawal from storage,
43 any distribution, any installation, any affixation to real or personal
44 property, or any consumption of such property. Use includes a
45 substantial benefit enjoyed in this State from the purchase of¹ [private
46 investigation services.]¹ courier and messenger services¹ [.]¹ and the

1 services or privileges enumerated in subsections (h), (i), (j) and (k) of
2 section 3 of P.L.1966, c.30 (C.54:32B-3). Use also includes the
3 exercise of any right or power over intrastate or interstate
4 telecommunications, mobile telecommunications services, and prepaid
5 telephone calling arrangements. Use also includes the exercise of any
6 right or power over utility service.

7 (i) Vendor. (1) The term "vendor" includes:

8 (A) A person making sales of tangible personal property, digital
9 goods or services, the receipts from which are taxed by this act;

10 (B) A person maintaining a place of business in the State or having
11 an agent maintaining a place of business in the State and making sales,
12 whether at such place of business or elsewhere, to persons within the
13 State of tangible personal property, digital goods or services, the use
14 of which is taxed by this act;

15 (C) A person who solicits business either by employees,
16 independent contractors, agents or other representatives or by
17 distribution of catalogs or other advertising matter and by reason
18 thereof makes sales to persons within the State of tangible personal
19 property, digital goods or services, the use of which is taxed by this
20 act;

21 (D) Any other person making sales to persons within the State of
22 tangible personal property, digital goods or services, the use of which
23 is taxed by this act, who may be authorized by the director to collect
24 the tax imposed by this act;

25 (E) The State of New Jersey, any of its agencies, instrumentalities,
26 public authorities, public corporations (including a public corporation
27 created pursuant to agreement or compact with another state) or
28 political subdivisions when such entity sells services, digital goods or
29 property of a kind ordinarily sold by private persons;

30 (F) A person who purchases tangible personal property or digital
31 goods for lease, whether in this State or elsewhere. For the purposes
32 of Title 54 of the Revised Statutes, the presence of leased tangible
33 personal property in this State is deemed to be a place of business in
34 this State; [and]

35 (G) A person who sells, stores, delivers or transports energy to
36 users or customers in this State whether by mains, lines or pipes
37 located within this State or by any other means of delivery; and

38 (H) A person engaged in collecting charges in the nature of
39 initiation fees, membership fees or dues for access to or use of the
40 property or facilities of a health and fitness, athletic or sporting club
41 or organization; a person engaged in the business of air commerce or
42 air transportation; a person engaged in the business of limousine
43 transportation; or a person engaged in issuing surety bonds for the
44 purpose of bail and which services or privileges are provided in this
45 State.

46 (2) In addition, when in the opinion of the director it is necessary

1 for the efficient administration of this act to treat any salesman,
2 representative, peddler or canvasser as the agent of the vendor,
3 distributor, supervisor or employer under whom he operates or from
4 whom he obtains tangible personal property or digital goods sold by
5 him or for whom he solicits business, the director may, in his
6 discretion, treat such agent as the vendor jointly responsible with his
7 principal, distributor, supervisor or employer for the collection and
8 payment over of the tax. A person is an agent of a vendor in all cases,
9 but not limited to such cases, that: (A) the person and the vendor have
10 the relationship of a "related person" described pursuant to section 2
11 of P.L.1993, c.170 (C.54:10A-5.5); and (B) the vendor and the person
12 use an identical or substantially similar name, tradename, trademark,
13 or goodwill, to develop, promote, or maintain sales, or the person and
14 the vendor pay for each other's services in whole or in part contingent
15 upon the volume or value of sales, or the person and the vendor share
16 a common business plan or substantially coordinate their business
17 plans, or the person provides services to, or that inure to the benefit
18 of, the vendor related to developing, promoting, or maintaining the
19 vendor's market.

20 (j) Hotel. A building or portion of it which is regularly used and
21 kept open as such for the lodging of guests. The term "hotel" includes
22 an apartment hotel, a motel, boarding house or club, whether or not
23 meals are served.

24 (k) Occupancy. The use or possession or the right to the use or
25 possession, of any room in a hotel.

26 (l) Occupant. A person who, for a consideration, uses, possesses,
27 or has the right to use or possess, any room in a hotel under any lease,
28 concession, permit, right of access, license to use or other agreement,
29 or otherwise.

30 (m) Permanent resident. Any occupant of any room or rooms in a
31 hotel for at least 90 consecutive days shall be considered a permanent
32 resident with regard to the period of such occupancy.

33 (n) Room. Any room or rooms of any kind in any part or portion
34 of a hotel, which is available for or let out for any purpose other than
35 a place of assembly.

36 (o) Admission charge. The amount paid for admission, including
37 any service charge and any charge for entertainment or amusement or
38 for the use of facilities therefor.

39 (p) Amusement charge. Any admission charge, dues or charge of
40 roof garden, cabaret or other similar place.

41 (q) Charge of a roof garden, cabaret or other similar place. Any
42 charge made for admission, refreshment, service, or merchandise at a
43 roof garden, cabaret or other similar place.

44 (r) Dramatic or musical arts admission charge. Any admission
45 charge paid for admission to a theater, opera house, concert hall or
46 other hall or place of assembly for a live, dramatic, choreographic or

1 musical performance.

2 (s) Lessor. Any person who is the owner, licensee, or lessee of
3 any premises or tangible personal property which he leases, subleases,
4 or grants a license to use to other persons.

5 (t) Place of amusement. Any place where any facilities for
6 entertainment, amusement, or sports are provided.

7 (u) Casual sale. Casual sale means an isolated or occasional sale
8 of an item of tangible personal property or a digital good by a person
9 who is not regularly engaged in the business of making sales at retail
10 where such property or digital good was obtained by the person
11 making the sale, through purchase or otherwise, for his own use in this
12 State.

13 (v) Motor vehicle. Motor vehicle shall include all vehicles
14 propelled otherwise than by muscular power (excepting such vehicles
15 as run only upon rails or tracks), trailers, semitrailers, housetrailers, or
16 any other type of vehicle drawn by a motor-driven vehicle, and
17 motorcycles, designed for operation on the public highways.

18 (w) "Persons required to collect tax" or "persons required to collect
19 any tax imposed by this act" shall include: every vendor of tangible
20 personal property, digital goods or services; every recipient of
21 amusement charges; every operator of a hotel; every lessor; and every
22 vendor of telecommunications. Said terms shall also include any
23 officer or employee of a corporation or of a dissolved corporation who
24 as such officer or employee is under a duty to act for such corporation
25 in complying with any requirement of this act and any member of a
26 partnership. Provided, however, the vendor of tangible personal
27 property to all contractors, subcontractors or repairmen, consisting of
28 materials and supplies for use by them in erecting structures for others,
29 or building on, or otherwise improving, altering or repairing real
30 property of others, shall not be deemed a person required to collect
31 tax, and the tax imposed by any section of this act shall be paid
32 directly to the director by such contractors, subcontractors or
33 repairmen.

34 (x) "Customer" shall include: every purchaser of tangible personal
35 property, digital goods or services; every patron paying or liable for
36 the payment of any amusement charge; [and] every occupant of a
37 room or rooms in a hotel; every person paying charges in the nature
38 of initiation fees, membership fees or dues for access to or use of the
39 property or facilities of a health and fitness, athletic or sporting club
40 or organization; every purchaser of air commerce or air transportation;
41 every purchaser of transportation services provided by a limousine
42 operator; and every purchaser of a surety bond for bail purposes.

43 (y) "Property and services the use of which is subject to tax" shall
44 include: (1) all property sold to a person within the State, whether or
45 not the sale is made within the State, the use of which property is
46 subject to tax under section 6 or will become subject to tax when such

1 property is received by or comes into the possession or control of such
2 person within the State; (2) all services rendered to a person within the
3 State, whether or not such services are performed within the State,
4 upon tangible personal property the use of which is subject to tax
5 under section 6 or will become subject to tax when such property is
6 distributed within the State or is received by or comes into possession
7 or control of such person within the State; (3) intrastate or interstate
8 telecommunications, other than mobile telecommunications services,
9 charged to a service address in this State; (4) (Deleted by amendment,
10 P.L.1995, c.184); (5) energy sold, exchanged or delivered in this State
11 for use in this State; (6) utility service sold, exchanged or delivered in
12 this State for use in this State; (7) direct mail advertising processing
13 services in connection with advertising or promotional material
14 distributed in this State; [and] (8) intrastate and interstate mobile
15 telecommunications services provided to a customer with a place of
16 primary use in this State; (9) a digital good sold to a person within the
17 State, whether or not the sale is made within the State, the use of
18 which digital good is subject to tax under section 6 or will become
19 subject to tax when such digital good is received by or comes into the
20 possession or control of such person within the State; (10) ¹[private
21 investigation services performed in this State ; (11)]¹ courier and
22 messenger services performed in this State; ¹[(12)] (11)¹ access to
23 or use of the property or facilities located in this State of a health and
24 fitness, athletic or sporting club or organization; ¹[(13)] (12)¹ air
25 commerce or air transportation originating and terminating in this
26 State; ¹[(14)] (13)¹ limousine service originating in this State ; and
27 ¹[(15)] (14)¹ premiums paid for a surety bond for bail purposes issued
28 in this State.

29 (z) Director. Director means the Director of the Division of
30 Taxation of the State Department of the Treasury, or any officer,
31 employee or agency of the Division of Taxation in the Department of
32 the Treasury duly authorized by the director (directly, or indirectly by
33 one or more redelegations of authority) to perform the functions
34 mentioned or described in this act.

35 (aa) "Lease" means the possession or control of tangible personal
36 property by an agreement, not transferring sole title, as may be
37 evidenced by a contract, contracts, or by implication from other
38 circumstances including course of dealing or usage of trade or course
39 of performance, for a period of more than 28 days.

40 (bb) "The amount of the sales price" of tangible personal property
41 purchased for lease means, at the election of the lessor, either (1) the
42 amount of the lessor's purchase price or (2) the amount of the total of
43 the lease payments attributable to the lease of such property. Tangible
44 personal property purchased for lease is subject to the provisions of
45 subsection (a) of section 3 of P.L.1966, c.30 (C.54:32B-3).

46 (cc) "Telecommunications" means the act or privilege of originating

1 or receiving messages or information through the use of any kind of
2 one-way or two-way communication; including but not limited to
3 voice, video, facsimile, teletypewriter, computer, mobile
4 telecommunications service or any other type of communication; using
5 electronic or electromagnetic methods, and all services and equipment
6 provided in connection therewith or by means thereof.
7 "Telecommunications" shall not include:

8 (1) one-way radio or television broadcasting transmissions
9 available universally to the general public without a fee;

10 (2) purchases of telecommunications by a telecommunications
11 provider for use as a component part of telecommunications provided
12 to an ultimate retail consumer who (A) originates or terminates the
13 taxable end-to-end communications or (B) pays charges exempt from
14 taxation pursuant to paragraph (5) of this subsection;

15 (3) services provided by a person, or by that person's wholly
16 owned subsidiary, not engaged in the business of rendering or offering
17 telecommunications services to the public, for private and exclusive
18 use within its organization, provided however, that
19 "telecommunications" shall include the sale of telecommunications
20 services attributable to the excess unused telecommunications capacity
21 of that person to another;

22 (4) charges in the nature of subscription fees paid by subscribers
23 for cable television service;

24 (5) charges subject to the local calling rate paid by inserting coins
25 into a coin operated telecommunications device available to the public;
26 and

27 (6) purchases of telecommunications using a prepaid telephone
28 arrangement.

29 (dd) "Interstate telecommunication" means any telecommunication
30 that originates or terminates inside this State, including international
31 telecommunication. In the case of mobile telecommunications service,
32 "interstate telecommunication" means any mobile telecommunications
33 service that originates in one state and terminates in another state,
34 territory, or foreign country that is provided to a customer with a
35 place of primary use in this State.

36 (ee) "Intrastate telecommunication" means any telecommunication
37 that originates and terminates within this State. In the case of mobile
38 telecommunications service, "intrastate telecommunication" means any
39 mobile telecommunications service that originates and terminates
40 within the same state that is provided to a customer with a place of
41 primary use in this State.

42 (ff) "Natural gas" means any gaseous fuel distributed through a
43 pipeline system.

44 (gg) "Energy" means natural gas or electricity.

45 (hh) "Utility service" means the transportation or transmission of
46 natural gas or electricity by means of mains, wires, lines or pipes, to

1 users or customers.

2 (ii) "Self-generation unit" means a facility located on the user's
3 property, or on property purchased or leased from the user by the
4 person owning the self-generation unit and such property is contiguous
5 to the user's property, which generates electricity to be used only by
6 that user on the user's property and is not transported to the user over
7 wires that cross a property line or public thoroughfare unless the
8 property line or public thoroughfare merely bifurcates the user's or
9 self-generation unit owner's otherwise contiguous property.

10 (jj) "Co-generation facility" means a facility the primary purpose of
11 which is the sequential production of electricity and steam or other
12 forms of useful energy which are used for industrial or commercial
13 heating or cooling purposes and which is designated by the Federal
14 Energy Regulatory Commission, or its successor, as a "qualifying
15 facility" pursuant to the provisions of the "Public Utility Regulatory
16 Policies Act of 1978," Pub.L.95-617.

17 (kk) "Non-utility" means a company engaged in the sale, exchange
18 or transfer of natural gas that was not subject to the provisions of
19 P.L.1940, c.5 (C.54:30A-49 et seq.) prior to December 31, 1997.

20 (ll) "Pre-paid telephone calling arrangement "means the right to
21 purchase exclusively telecommunications services, that must be paid
22 for in advance, that enables the origination of calls using an access
23 number or authorization code, whether manually or electronically
24 dialed; provided, that the remaining amount of units of service that
25 have been pre-paid shall be known by the service provider on a
26 continuous basis.

27 (mm) "Mobile telecommunications service" means commercial
28 mobile radio service, as defined in section 20.3 of title 47 of the Code
29 of Federal Regulations as in effect on June 1, 1999.

30 (nn) "Place of primary use" means the street address representative
31 of where the customer's use of the mobile telecommunications service
32 primarily occurs, which shall be the residential street address or the
33 primary business street address of the customer and within the licensed
34 service area of the home service provider. For the purposes of
35 determining the primary place of use, the terms used shall have the
36 meanings provided pursuant to the federal "Mobile
37 Telecommunications Sourcing Act," 4 U.S.C. s.124 (Pub.L.106-252).

38 (oo) "Delivery charges" means charges by the seller for preparation
39 and delivery to a location designated by the purchaser of personal
40 property or services including, but not limited to, transportation,
41 shipping, postage, handling, crating, and packing. If a shipment
42 includes both exempt and taxable property, the seller shall allocate the
43 delivery charge by using: (1) a percentage based on the total sales
44 price of the taxable property compared to the total sales price of all
45 property in the shipment; or (2) a percentage based on the total weight
46 of the taxable property compared to the total weight of all property in

1 the shipment.

2 (pp) "Digital good" means access to, receipt of, subscription to,
3 or the right or license to use digital data or information that are
4 delivered electronically that can be seen, heard or perceived as a code
5 or other signal, that is in the form of coded instructions designed to
6 cause a computer, network, automatic data processing equipment or
7 device, or any other systems or means, to perform a task, including but
8 not limited to software, audio works, audiovisual works, finished
9 artwork, and literary and intellectual works.

10 As used in this subsection (pp).

11 "Audio works" means works that result from the fixation of a series
12 of musical, spoken, or other sounds, including prerecorded or live
13 music, prerecorded or live readings of books or other written
14 materials, prerecorded or live speeches, and digitized sound files,
15 provided however that "audio works" shall not include broadcast radio
16 services or sounds accompanying an audiovisual work;

17 "Audiovisual work" means a series of related images that, when
18 shown in succession, impart an impression of motion, together with
19 sound, including motion pictures, musical videos, and live events,
20 provided however, that "audiovisual works" shall not include
21 broadcast television services or cable television system services;

22 "Finished artwork" means the final art used for actual reproduction
23 by photomechanical or other processes or for display purposes and
24 shall include but shall not be limited to the following, regardless of
25 whether the items are reproduced: drawings, paintings, designs,
26 photographs, lettering, paste-ups, mechanicals, assemblies, charts,
27 graphs, and illustrative materials; and

28 "Literary and intellectual works" means works, not including
29 audiovisual works, audio works, and computer software, that are
30 expressed in words, numbers, or other verbal or numerical symbols or
31 indicia, including but not limited to books, pamphlets, compilations,
32 collections, analysis and reports of information or data of any kind or
33 nature.

34 (qq) "Landscaping services" mean services that result in a capital
35 improvement to land other than structures of any kind whatsoever,
36 such as seeding, sodding or grass plugging of new lawns, planting
37 trees, shrubs, hedges, plants; and clearing and filling land.

38 (rr) "Courier and messenger service" means the service of picking
39 up and carrying messages, documents, packages and other property
40 between locations, traveling by foot, motorcycle, bicycle, automobile,
41 or public conveyance.

42 (cf: P.L.2002, c.45, s.1)

43

44 2. Section 3 of P.L.1966, c.30 (C.54:32B-3) is amended to read as
45 follows:

46 3. There is imposed and there shall be paid a tax of 6% upon:

1 (a) The receipts from every retail sale of tangible personal property
2 or a digital good, except as otherwise provided in this act. If the
3 lessor of tangible personal property purchased for lease elects to pay
4 tax on the amount of the sales price as provided in paragraph (2) of
5 subsection (bb) of section 2 of P.L.1966, c.30 (C.54:32B-2), any and
6 each subsequent lease or rental is a retail sale, and a subsequent sale
7 of such property is a retail sale.

8 (b) The receipts from every sale, except for resale, of the following
9 services:

10 (1) Producing, fabricating, processing, printing or imprinting
11 tangible personal property, performed for a person who directly or
12 indirectly furnishes the tangible personal property, not purchased by
13 him for resale, upon which such services are performed.

14 (2) Installing tangible personal property, or maintaining, servicing,
15 repairing tangible personal property not held for sale in the regular
16 course of business, whether or not the services are performed directly
17 or by means of coin-operated equipment or by any other means, and
18 whether or not any tangible personal property is transferred in
19 conjunction therewith, except (i) such services rendered by an
20 individual who is engaged directly by a private homeowner or lessee
21 in or about his residence and who is not in a regular trade or business
22 offering his services to the public, (ii) such services rendered with
23 respect to personal property exempt from taxation hereunder pursuant
24 to section 13 of P.L.1980, c.105 (C.54:32B-8.1), (iii) (Deleted by
25 amendment, P.L.1990, c.40), (iv) any receipts from laundering, dry
26 cleaning, tailoring, weaving, or pressing clothing, and shoe repairing
27 and shoeshining and (v) services rendered in installing property which,
28 when installed, will constitute an addition or capital improvement to
29 real property, property or land other than landscaping services
30 performed more than 12 months after the issuance of an initial
31 certificate of occupancy; and other than installing carpeting and other
32 flooring after the issuance of an initial certificate of occupancy.

33 (3) Storing all tangible personal property not held for sale in the
34 regular course of business [and]; the rental of safe deposit boxes or
35 similar space; and the furnishing of space for storage of tangible
36 personal property by a person engaged in the business of furnishing
37 space for such storage.

38 "Space for storage" means secure areas, such as rooms, units,
39 compartments or containers, whether accessible from outside or from
40 within a building, that are designated for the use of a customer and
41 wherein the customer has free access within reasonable business hours,
42 or upon reasonable notice to the furnisher of space for storage, to
43 store and retrieve property. Space for storage shall not include the
44 lease or rental of an entire building, such as a warehouse or airplane
45 hanger.

46 (4) Maintaining, servicing or repairing real property, other than a

1 residential heating system unit serving not more than three families
2 living independently of each other and doing their cooking on the
3 premises, whether the services are performed in or outside of a
4 building, as distinguished from adding to or improving such real
5 property by a capital improvement, but excluding services rendered by
6 an individual who is not in a regular trade or business offering his
7 services to the public, and excluding garbage removal and sewer
8 services performed on a regular contractual basis for a term not less
9 than 30 days.

10 (5) Direct-mail advertising processing services, except for
11 direct-mail advertising processing services in connection with
12 distribution of advertising or promotional material to out-of-State
13 recipients.

14 (6) (Deleted by amendment, P.L.1995, c.184).

15 (7) Utility service provided to persons in this State, any right or
16 power over which is exercised in this State.

17 (8) Tanning services, including the application of a temporary tan
18 provided by any means.

19 (9) Massage, bodywork or somatic services, except such services
20 provided pursuant to a doctor's prescription.

21 (10) Tattooing, including all permanent body art and permanent
22 cosmetic make-up applications.

23 (11) ¹[Private investigation services, which means the services
24 included in the conduct of a "private detective business," as defined
25 pursuant to section 2 of P.L.1939, c.369 (C.45:19-9), whether or not
26 the services are performed by a person licensed to conduct such a
27 business.

28 (12)]¹ Courier and messenger services, including but not limited
29 to: subpoena, summons and complaint services; title, mortgage,
30 attorney, and accountant messengers; private and commercial bank,
31 mail and payroll routes; and medical records.

32 Wages, salaries and other compensation paid by an employer to an
33 employee for performing as an employee the services described in this
34 subsection are not receipts subject to the taxes imposed under this
35 subsection (b).

36 Services otherwise taxable under paragraph (1) or (2) of this
37 subsection (b) are not subject to the taxes imposed under this
38 subsection, where the tangible personal property upon which the
39 services were performed is delivered to the purchaser outside this
40 State for use outside this State.

41 (c) Receipts from the sale of food and drink in or by restaurants,
42 taverns, vending machines or other establishments in this State, or by
43 caterers, including in the amount of such receipts any cover, minimum,
44 entertainment or other charge made to patrons or customers:

45 (1) In all instances where the sale is for consumption on the
46 premises where sold;

1 (2) In those instances where the vendor or any person whose
2 services are arranged for by the vendor, after the delivery of the food
3 or drink by or on behalf of the vendor for consumption off the
4 premises of the vendor, serves or assists in serving, cooks, heats or
5 provides other services with respect to the food or drink, except for
6 meals especially prepared for and delivered to homebound elderly, age
7 60 or older, and to disabled persons, or meals prepared and served at
8 a group-sitting at a location outside of the home to otherwise
9 homebound elderly persons, age 60 or older, and otherwise
10 homebound disabled persons, as all or part of any food service project
11 funded in whole or in part by government or as part of a private,
12 nonprofit food service project available to all such elderly or disabled
13 persons residing within an area of service designated by the private
14 nonprofit organization;

15 (3) In those instances where the sale is for consumption off the
16 premises of the vendor, and consists of a meal, or food prepared and
17 ready to be eaten, of a kind obtainable in restaurants as the main
18 course of a meal, including a sandwich, except where food other than
19 sandwiches is sold in an unheated state and is of a type commonly sold
20 in the same form and condition in food stores other than those which
21 are principally engaged in selling prepared foods; and

22 (4) Sales of food and beverages sold through coin-operated
23 vending machines, at the wholesale price of such sale, which shall be
24 defined as 70% of the retail vending machine selling price, except sales
25 of milk, which shall not be taxed. Nothing herein contained shall
26 affect other sales through coin-operated vending machines taxable
27 pursuant to subsection (a) above or the exemption thereto provided by
28 section 21 of P.L.1980, c.105 (C.54:32B-8.9).

29 The tax imposed by this subsection (c) shall not apply to food or
30 drink which is sold to an airline for consumption while in flight.

31 (d) The rent for every occupancy of a room or rooms in a hotel in
32 this State, except that the tax shall not be imposed upon (1) a
33 permanent resident, or (2) where the rent is not more than at the rate
34 of \$2.00 per day.

35 (e) (1) Any admission charge, where such admission charge is in
36 excess of \$0.75 to or for the use of any place of amusement in the
37 State, including charges for admission to race tracks, baseball,
38 football, basketball or exhibitions, dramatic or musical arts
39 performances, motion picture theaters, except charges for admission
40 to boxing, wrestling, kick boxing or combative sports exhibitions,
41 events, performances or contests which charges are taxed under any
42 other law of this State or under section 20 of P.L.1985, c.83
43 (C.5:2A-20), and, except charges to a patron for admission to, or use
44 of, facilities for sporting activities in which such patron is to be a
45 participant, such as bowling alleys and swimming pools. For any
46 person having the permanent use or possession of a box or seat or

1 lease or a license, other than a season ticket, for the use of a box or
2 seat at a place of amusement, the tax shall be upon the amount for
3 which a similar box or seat is sold for each performance or exhibition
4 at which the box or seat is used or reserved by the holder, licensee or
5 lessee, and shall be paid by the holder, licensee or lessee.

6 (2) The amount paid as charge of a roof garden, cabaret or other
7 similar place in this State, to the extent that a tax upon such charges
8 has not been paid pursuant to subsection (c) hereof.

9 (f) (1) The receipts from every sale, except for resale, of intrastate
10 or interstate telecommunications (other than mobile
11 telecommunications services) charged to an address in this State,
12 regardless of where the services are billed or paid.

13 (2) The receipts from every sale, except for resale, of intrastate or
14 interstate mobile telecommunications services billed by or for a
15 customer's home service provider and provided to a customer with a
16 place of primary use in this State. The provisions and definitions of
17 the federal "Mobile Telecommunications Sourcing Act," 4 U.S.C. ss.
18 116-126 (Pub.L. 106-252), are applicable herein.

19 (g) The receipts from every sale, except for resale, of prepaid
20 telephone calling arrangements and the recharge of prepaid telephone
21 calling arrangements. If the sale or recharge of a prepaid telephone
22 calling arrangement does not take place at the vendor's place of
23 business, the sale or recharge shall be conclusively determined to take
24 place at the customer's shipping address, or if there is no item shipped,
25 at the customer's billing address or the location associated with the
26 customer's mobile telephone number.

27 (h) Charges in the nature of initiation fees, membership fees or
28 dues for access to or use of the property or facilities of a health and
29 fitness, athletic or sporting club or organization in this State, except
30 for membership in a club or organization whose members are
31 predominantly age 18 or under.

32 (i) The receipts from every sale, except for resale, of air commerce
33 or air transportation which originates and terminates in this State.

34 (j) The receipts from every sale, except for resale, of transportation
35 services originating in this State and provided by a limousine operator,
36 except such services provided in connection with funeral services.

37 (k) The receipts of premiums paid for the issuance of a surety bond
38 for the purpose of bail.

39 (cf: P.L.2002, c.45, s.2)

40

41 3. Section 6 of P.L.1966, c.30 (C.54:32B-6) is amended to read as
42 follows:

43 6. Unless property, digital goods or services have already been or
44 will be subject to the sales tax under this act, there is hereby imposed
45 on and there shall be paid by every person a use tax for the use within
46 this State of 6%, except as otherwise exempted under this act, (A) of

1 any tangible personal property or digital goods purchased at retail,
2 including energy, provided however, that electricity consumed by the
3 generating facility that produced it shall not be subject to tax, (B) of
4 any tangible personal property manufactured, processed or assembled
5 by the user, if items of the same kind of tangible personal property are
6 offered for sale by him in the regular course of business, or if items of
7 the same kind of tangible personal property are not offered for sale by
8 him in the regular course of business and are used as such or
9 incorporated into a structure, building or real property, (C) of any
10 tangible personal property, however acquired, where not acquired for
11 purposes of resale, upon which any taxable services described in
12 paragraphs (1) and (2) of subsection (b) of section 3 of P.L.1966, c.30
13 (C.54:32B-3) have been performed, (D) of interstate or intrastate
14 telecommunications and mobile telecommunications described in
15 subsection (f) of section 3 of P.L.1966, c.30, (E) (Deleted by
16 amendment, P.L.1995, c.184), (F) of utility service provided to
17 persons in this State for use in this State, provided however, that
18 utility service used by the facility that provides the service shall not be
19 subject to tax, (G) of direct-mail advertising processing services
20 described in paragraph (5) of subsection (b) of section 3 of P.L.1966,
21 c.30 (C.54:32B-3) [and] (H) of prepaid telephone calling
22 arrangements and the recharge of prepaid telephone calling
23 arrangements, ¹(I) ¹[of private investigation services, (J) ¹courier
24 and messenger services, ¹[(K)] (J) ¹ access to or use of the property
25 or facilities of a health and fitness, athletic or sporting club or
26 organization, ¹[(L)] (K) ¹ air commerce or air transportation services,
27 ¹[(M)] (L) ¹ transportation services provided by a limousine operator,
28 and ¹[(N)] (M) ¹ premiums paid for obtaining a surety bond for bail
29 purposes. For purposes of clause (A) of this section, the tax shall be
30 at the applicable rate, as set forth hereinabove, of the consideration
31 given or contracted to be given for such property or digital goods or
32 for the use of such property or digital goods, and including delivery
33 charges made by the vendor, but excluding any credit for property of
34 the same kind accepted in part payment and intended for resale, [plus
35 the cost of transportation, except where such cost is separately stated
36 in the written contract, if any, and on the bill rendered to the
37 purchaser,] provided however, that there shall be no exclusion for the
38 cost of the utility service. For the purposes of clause (B) of this
39 section, the tax shall be at the applicable rate, as set forth hereinabove,
40 of the price at which items of the same kind of tangible personal
41 property are offered for sale by the user, or if items of the same kind
42 of tangible personal property are not offered for sale by the user in the
43 regular course of business and are used as such or incorporated into
44 a structure, building or real property the tax shall be at the applicable
45 rate, as set forth hereinabove, of the consideration given or contracted
46 to be given for the tangible personal property manufactured, processed

1 or assembled by the user into the tangible personal property the use of
2 which is subject to use tax pursuant to this section, and the mere
3 storage, keeping, retention or withdrawal from storage of tangible
4 personal property by the person who manufactured, processed or
5 assembled such property shall not be deemed a taxable use by him.
6 For purposes of clause (C) of this section, the tax shall be at the
7 applicable rate, as set forth hereinabove, of the consideration given or
8 contracted to be given for the service, including the consideration for
9 any tangible personal property transferred in conjunction with the
10 performance of the service, plus the cost of transportation, except
11 where such cost is separately stated in the written contract, if any, and
12 on the bill rendered to the purchaser. For the purposes of clause (D)
13 of this section, the tax shall be at the applicable rate on the charge
14 made by the telecommunications service provider. For purposes of
15 clause (F) of this section, the tax shall be at the applicable rate on the
16 charge made by the utility service provider. For purposes of clause
17 (G) of this section, the tax shall be at the applicable rate on that
18 proportion of the amount of all processing costs charged by a
19 direct-mail advertising processing service provider that is attributable
20 to the advertising or promotional material distributed in this State.
21 For the purposes of clause (H) of this section, the tax shall be at the
22 applicable rate on the consideration given or contracted to be given for
23 the prepaid telephone calling arrangement or the recharge of the
24 prepaid telephone calling arrangement. For purposes of clause (I) of
25 this section, the tax shall be at the applicable rate on the charge made
26 ¹[for private investigation services. For purposes of clause (J) of this
27 section, the tax shall be at the applicable rate on the charges]¹ for
28 courier and messenger services. For purposes of clause ¹[(K)] (J)¹ of
29 this section, the tax shall be at the applicable rate on the charges in the
30 nature of initiation fees, membership fees or dues. For purposes of
31 clause ¹[(L)] (K)¹ of this section, the tax shall be at the applicable
32 rate on the charge made for the air commerce or air transportation.
33 For purposes of clause ¹[(M)] (L)¹ of this section, the tax shall be at
34 the applicable rate on the charge made by the limousine operator. For
35 purposes of clause ¹[(N)] (M)¹ of this section, the tax shall be at the
36 applicable rate on the charge paid as a premium for the issuance of a
37 surety bond for bail purposes.

38 (cf: P.L.2002, c.45, s.3)

39

40 4. Section 5 of P.L.1966, c.30 (C.54:32B-5) is amended to read as
41 follows:

42 5. Transitional provisions. a. (1) Except as otherwise provided
43 in this act, receipts received from all sales made and services rendered
44 on and after January 3, 1983 but prior to July 1, 1990, are subject to
45 the taxes imposed under subsections (a), (b), (c), and (f) of section 3
46 of this act at the rate, if any, in effect for such sales and services on

1 June 30, 1990, except if the property so sold is delivered or the
2 services so sold are rendered on or after July 1, 1990 but prior to July
3 1, 1992, in which case the tax shall be computed and paid at the rate
4 of 7%; provided, however, that if a service or maintenance agreement
5 taxable under this act covers any period commencing on or after
6 January 3, 1983 and ending after June 30, 1990 but prior to July 1,
7 1992, the receipts from such agreement are subject to tax at the rate,
8 if any, applicable to each period as set forth hereinabove and shall be
9 apportioned on the basis of the ratio of the number of days falling
10 within each of the said periods to the total number of days covered
11 thereby.

12 (2) Except as otherwise provided in this act, receipts received from
13 all sales made and services rendered on and after July 1, 1990 but prior
14 to July 1, 1992, are subject to the taxes imposed under subsections (a),
15 (b), (c) and (f) of section 3 of this act at the rate of 7%, except if the
16 property so sold is delivered or the services so sold are rendered on or
17 after July 1, 1992, in which case the tax shall be computed and paid at
18 the rate of 6%, provided, however, that if a service or maintenance
19 agreement taxable under this act covers any period commencing on or
20 after July 1, 1990, and ending after July 1, 1992, the receipts from
21 such agreement are subject to tax at the rate applicable to each period
22 as set forth hereinabove and shall be apportioned on the basis of the
23 ratio of the number of days falling within each of the said periods to
24 the total number of days covered thereby.

25 b. (1) The tax imposed under subsection (d) of section 3 shall be
26 paid at the rate of 7% upon any occupancy on and after July 1, 1990
27 but prior to July 1, 1992, although such occupancy is pursuant to a
28 prior contract, lease or other arrangement. If an occupancy, taxable
29 under this act, covers any period on or after January 3, 1983 but prior
30 to July 1, 1990, the rent for the period of occupancy prior to July 1,
31 1990 shall be taxed at the rate of 6%. If rent is paid on a weekly,
32 monthly or other term basis, the rent applicable to each period as set
33 forth hereinabove shall be apportioned on the basis of the ratio of the
34 number of days falling within each of the said periods to the total
35 number of days covered thereby.

36 (2) The tax imposed under subsection (d) of section 3 shall be paid
37 at the rate of 6% upon any occupancy on and after July 1, 1992,
38 although such occupancy is pursuant to a prior contract, lease or other
39 arrangement. If an occupancy, taxable under this act, covers any
40 period on or after July 1, 1990 but prior to July 1, 1992, the rent for
41 the period of occupancy prior to July 1, 1992 shall be taxed at the rate
42 of 7%. If rent is paid on a weekly, monthly or other term basis, the
43 rent applicable to each period as set forth hereinabove shall be
44 apportioned on the basis of the ratio of the number of days falling
45 within each of the said periods to the total number of days covered
46 thereby.

1 c. (1) Except as otherwise hereinafter provided, the tax imposed
2 under subsection (e) of section 3 shall be applicable at the rate of 7%
3 to any admission to or for the use of facilities of a place of amusement
4 occurring on or after July 1, 1990 but prior to July 1, 1992, whether
5 or not the admission charge has been paid prior to July 1, 1990, unless
6 the tickets were actually sold and delivered, other than for resale, prior
7 to July 1, 1990 and the tax imposed under this act during the period
8 January 3, 1983 through June 30, 1990 shall have been paid.

9 (2) Except as otherwise hereinafter provided, the tax imposed
10 under subsection (e) of section 3 shall be applicable at the rate of 6%
11 to any admission to or for the use of facilities of a place of amusement
12 occurring on or after July 1, 1992, whether or not the admission
13 charge has been paid prior to that date, unless the tickets were actually
14 sold and delivered, other than for resale, prior to July 1, 1992 and the
15 tax imposed under this act during the period July 1, 1990 through
16 December 31, 1990 shall have been paid.

17 d. (1) Sales made on and after July 1, 1990 but prior to July 1, 1992
18 to contractors, subcontractors or repairmen of materials, supplies, or
19 services for use in erecting structures for others, or building on, or
20 otherwise improving, altering or repairing real property of others shall
21 be subject to the taxes imposed by subsections (a) and (b) of section
22 3 and section 6 hereof at the rate of 7%; provided, however, that if
23 such sales are made for use in performance of a contract which is
24 either of a fixed price not subject to change or modification, or entered
25 into pursuant to the obligation of a formal written bid which cannot be
26 altered or withdrawn, and, in either case, such contract was entered
27 into or such bid was made on or after January 3, 1983 but prior to July
28 1, 1990, such sales shall be subject to tax at the rate of 6%, but the
29 vendor shall charge and collect from the purchaser a tax on such sales
30 at the rate of 7%.

31 (2) Sales made on or after July 1, 1992 to contractors,
32 subcontractors or repairmen of materials, supplies, or services for use
33 in erecting structures for others, or building on, or otherwise
34 improving, altering or repairing real property of others shall be subject
35 to the taxes imposed by subsections (a) and (b) of section 3 and
36 section 6 hereof at the rate of 6%; provided, however, that if such
37 sales are made for use in performance of a contract which is either of
38 a fixed price not subject to change or modification, or entered into
39 pursuant to the obligation of a formal written bid which cannot be
40 altered or withdrawn, and, in either case, such contract was entered
41 into or such bid was made on or after July 1, 1990, but prior to July
42 1, 1992, such sales shall be subject to tax at the rate of 7%.

43 e. As to sales other than those referred to in d. above, the taxes
44 imposed under subsections (a) and (b) of section 3 and section 6
45 hereof, and the taxes imposed under subsection (f) of section 3 and
46 section 6 hereof, upon receipts received on or after July 1, 1990 and

1 on or before December 31, 1990, shall be at the rate in effect on June
2 30, 1990, in case of sales made or services rendered pursuant to a
3 written contract entered on or after January 3, 1983 but prior to July
4 1, 1990, and accompanied by a deposit or partial payment of the
5 contract price, except in the case of a contract which, in the usage of
6 trade, is not customarily accompanied by a deposit or partial payment
7 of the contract price, but the vendor shall charge and collect from the
8 purchaser on such sales at the rate of 7%, which tax shall be reduced
9 to the rate, if any, in effect on June 30, 1990, only by a claim for
10 refund filed by the purchaser with the director within 90 days after
11 receipt of said receipts and otherwise pursuant to the provisions of
12 section 20 of P.L.1966, c.30 (C.54:32B-20). A claim for refund shall
13 not be allowed if there has been no deposit or partial payment of the
14 contract price unless the claimant shall establish by clear and
15 convincing evidence that, in the usage of trade, such contracts are not
16 customarily accompanied by a deposit or partial payment of the
17 contract price.

18 f. (1) The taxes imposed under subsections (a), (b), (c) and (f) of
19 section 3 upon receipts received on or after July 1, 1990 but prior to
20 July 1, 1992 shall be at the rate, if any, in effect on June 30, 1990 in
21 the case of sales made or services rendered, if delivery of the property
22 which was the subject matter of the sale has been completed or such
23 services have been entirely rendered prior to July 1, 1990.

24 (2) The taxes imposed under subsections (a), (b), (c) and (f) of
25 section 3 upon receipts received on or after July 1, 1992 shall be at the
26 rate of 7% in the case of sales made or services rendered, where
27 delivery of the property which was the subject matter of the sale has
28 been completed or such services have been entirely rendered on or
29 after July 1, 1990 but prior to July 1, 1992.

30 g. (1) The tax imposed pursuant to subsection (a) of section 3 of
31 P.L.1966, c.30 (C.54:32B-3) shall be imposed upon all sales of digital
32 goods made on or after October 1, 2005 although made on a prior
33 contract, except that access to, receipt of, or use of a digital good
34 after that date pursuant to an agreement for sale of that digital good
35 made before the effective date of P.L.2005, c. (now pending before
36 the Legislature as this bill) shall not be subject to tax if: (1) the
37 agreement for the sale of the digital good was made or saved in
38 written form, (2) the particular digital good so sold or agreed to be so
39 sold was segregated, before the effective date of P.L.2005, c. (now
40 pending before the Legislature as this bill), from any other similar
41 digital good in the possession of the vendor and identified as having
42 been appropriated to such sale or agreement of sale, and (3) the
43 purchaser, before October 1, 2005, shall have paid the vendor not less
44 than 10% of the sale price of that digital good.

45 (2) The tax imposed on landscaping and on installing carpeting and
46 other flooring pursuant to paragraph (2) of subsection (b) of section

1 3 of P.L.1966, c.30 (C.54:32B-3); the tax impose on storage pursuant
2 to paragraph (3) of subsection (b) of section 3 of P.L.1966, c.30;
3 ¹[the tax imposed on private investigation services] ¹and the tax
4 imposed on courier and messenger services pursuant to ¹[paragraphs]
5 paragraph¹ (11) ¹[and (12)]¹ of subsection (b) of section 3 of
6 P.L.1966, c.30; and the tax imposed on initiation fees, membership
7 fees or dues for access to or use of the property or facilities of a health
8 and fitness, athletic or sporting club or organization, the tax imposed
9 on air commerce or air transportation; the tax imposed on services
10 provided by a limousine operator; and the tax imposed on premiums
11 paid for the issuance of a surety bond pursuant to subsections (h), (i),
12 (j) and (k) of section 3 of P.L.1966, c.30 shall be imposed upon each
13 of those services performed on or after October 1, 2005; provided
14 however, that if those services are provided pursuant to a prior
15 contract, then the rules of this section that apply to similar contracts
16 shall be applied to the imposition of tax on those contracts.

17 [g.] h. The director is empowered to promulgate rules and
18 regulations to implement the provisions of this section.
19 (cf: P.L.1992, s.11, s.3)

20

21 5. (New section) Notwithstanding any provision of P.L.1966, c.30
22 (C.54:32B-1 et seq.) to the contrary, any exemption or administrative
23 provision that applies to tangible personal property pursuant to
24 P.L.1966, c.30 or any rules or regulations promulgated thereunder,
25 shall apply to the digital goods equivalent thereof to the extent such
26 identical treatment under that provision may be reasonably applied, as
27 the director shall prescribe.

28

29 6. Section 23 of P.L.1980, c.105 (C.54:32B-8.11) is amended to
30 read as follows:

31 23. Receipts from charges for the transportation of persons or
32 property[, except of energy,] are exempt from the tax imposed under
33 the Sales and Use Tax Act, P.L.1966, c.30 (C.54:32B-1 et seq.),
34 except for delivery charges, and except for charges for transportation
35 services provided by a limousine operator, the transportation of
36 energy, air commerce or air transportation services, and courier and
37 messenger services.

38 (cf: P.L.1997, c.162, s.22)

39

40 7. This act shall take effect immediately and sections 1 through 6
41 shall remain inoperative until October 1, 2005 .