

**SENATE, No. 2947**

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**STATE OF NEW JERSEY**  
**212th LEGISLATURE**

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INTRODUCED NOVEMBER 8, 2007

**Sponsored by:**

**Senator BERNARD F. KENNY, JR.**

**District 33 (Hudson)**

**SYNOPSIS**

Revises sales and use tax to conform with various provisions of multi-state Streamlined Sales and Use Tax Agreement.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT revising the sales and use tax to conform with various  
2 provisions of the Streamlined Sales and Use Tax Agreement,  
3 amending P.L.2005, c.126, P.L.1980, c.105, and P.L.1985, c.24,  
4 amending and supplementing P.L.1966, c.30, and repealing  
5 section 27 of P.L.2005, c.126 and section 1 of P.L.2006, c.41.

6  
7 **BE IT ENACTED** by the Senate and General Assembly of the State  
8 of New Jersey:

9  
10 1. Section 2 of P.L.1966, c.30 (C.54:32B-2) is amended to read  
11 as follows:

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

14 (a) "Person" includes an individual, trust, partnership, limited  
15 partnership, limited liability company, society, association, joint  
16 stock company, corporation, public corporation or public authority,  
17 estate, receiver, trustee, assignee, referee, fiduciary and any other  
18 legal entity.

19 (b) "Purchase at retail" means a purchase by any person at a  
20 retail sale.

21 (c) "Purchaser" means a person to whom a sale of personal  
22 property is made or to whom a service is furnished.

23 (d) "Receipt" means the amount of the sales price of any  
24 tangible personal property or digital property or service taxable  
25 under this act.

26 (e) "Retail sale" means any sale, lease, or rental for any purpose,  
27 other than for resale, sublease, or subrent.

28 (1) For the purposes of this act a sale is for "resale, sublease, or  
29 subrent" if it is a sale (A) for resale either as such or as converted  
30 into or as a component part of a product produced for sale by the  
31 purchaser, including the conversion of natural gas into another  
32 intermediate or end product, other than electricity or thermal  
33 energy, produced for sale by the purchaser, or (B) for use by that  
34 person in performing the services subject to tax under subsection  
35 (b) of section 3 where the property so sold becomes a physical  
36 component part of the property upon which the services are  
37 performed or where the property so sold is later actually transferred  
38 to the purchaser of the service in conjunction with the performance  
39 of the service subject to tax.

40 (2) For the purposes of this act, the term "retail sale" includes:  
41 sales of tangible personal property to all contractors, subcontractors  
42 or repairmen of materials and supplies for use by them in erecting  
43 structures for others, or building on, or otherwise improving,  
44 altering, or repairing real property of others.

45 (3) (Deleted by amendment, P.L.2005, c.126).

**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.

1       (4) The term "retail sale" does not include:

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

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

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

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

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

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

17      (G) The sale of tangible personal property where the purpose of  
18      the vendee is to hold the thing transferred as security for the  
19      performance of an obligation of the seller.

20      (f) "Sale, selling or purchase" means any transfer of title or  
21      possession or both, exchange or barter, rental, lease or license to  
22      use or consume, conditional or otherwise, in any manner or by any  
23      means whatsoever for a consideration, or any agreement therefor,  
24      including the rendering of any service, taxable under this act, for a  
25      consideration or any agreement therefor.

26      (g) "Tangible personal property" means personal property that  
27      can be seen, weighed, measured, felt, or touched, or that is in any  
28      other manner perceptible to the senses. "Tangible personal  
29      property" includes electricity, water, gas, steam, and prewritten  
30      computer software including prewritten computer software  
31      delivered electronically.

32      (h) "Use" means the exercise of any right or power over tangible  
33      personal property, digital property, services to property, or services  
34      by the purchaser thereof and includes, but is not limited to, the  
35      receiving, storage or any keeping or retention for any length of  
36      time, withdrawal from storage, any distribution, any installation,  
37      any affixation to real or personal property, or any consumption of  
38      such property. Use also includes the exercise of any right or power  
39      over intrastate or interstate telecommunications and prepaid calling  
40      services. Use also includes the exercise of any right or power over  
41      utility service. Use also includes the derivation of a direct or  
42      indirect benefit from a service.

43      (i) "Seller" means a person making sales, leases or rentals of  
44      personal property or services.

45      (1) The term "seller" includes:

46      (A) A person making sales, leases or rentals of tangible personal  
47      property, digital property or services, the receipts from which are  
48      taxed by this act;

1 (B) A person maintaining a place of business in the State or  
2 having an agent maintaining a place of business in the State and  
3 making sales, whether at such place of business or elsewhere, to  
4 persons within the State of tangible personal property, digital  
5 property or services, the use of which is taxed by this act;

6 (C) A person who solicits business either by employees,  
7 independent contractors, agents or other representatives or by  
8 distribution of catalogs or other advertising matter and by reason  
9 thereof makes sales to persons within the State of tangible personal  
10 property, digital property or services, the use of which is taxed by  
11 this act;

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

16 (E) The State of New Jersey, any of its agencies,  
17 instrumentalities, public authorities, public corporations (including  
18 a public corporation created pursuant to agreement or compact with  
19 another state) or political subdivisions when such entity sells  
20 services or property of a kind ordinarily sold by private persons;

21 (F) (Deleted by amendment, P.L.2005, c.126);

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

25 (H) A person engaged in collecting charges in the nature of  
26 initiation fees, membership fees or dues for access to or use of the  
27 property or facilities of a health and fitness, athletic, sporting or  
28 shopping club or organization; and

29 (I) A person engaged in the business of parking, storing or  
30 garaging motor vehicles.

31 (2) In addition, when in the opinion of the director it is  
32 necessary for the efficient administration of this act to treat any  
33 salesman, representative, peddler or canvasser as the agent of the  
34 seller, distributor, supervisor or employer under whom the agent  
35 operates or from whom the agent obtains tangible personal property  
36 or digital property sold by the agent or for whom the agent solicits  
37 business, the director may, in the director's discretion, treat such  
38 agent as the seller jointly responsible with the agent's principal,  
39 distributor, supervisor or employer for the collection and payment  
40 over of the tax. A person is an agent of a seller in all cases, but not  
41 limited to such cases, that: (A) the person and the seller have the  
42 relationship of a "related person" described pursuant to section 2 of  
43 P.L.1993, c.170 (C.54:10A-5.5); and (B) the seller and the person  
44 use an identical or substantially similar name, tradename,  
45 trademark, or goodwill, to develop, promote, or maintain sales, or  
46 the person and the seller pay for each other's services in whole or in  
47 part contingent upon the volume or value of sales, or the person and  
48 the seller share a common business plan or substantially coordinate

1 their business plans, or the person provides services to, or that inure  
2 to the benefit of, the seller related to developing, promoting, or  
3 maintaining the seller's market.

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

8 (k) "Occupancy" means the use or possession or the right to the  
9 use or possession, of any room in a hotel.

10 (l) "Occupant" means a person who, for a consideration, uses,  
11 possesses, or has the right to use or possess, any room in a hotel  
12 under any lease, concession, permit, right of access, license to use  
13 or other agreement, or otherwise.

14 (m) "Permanent resident" means any occupant of any room or  
15 rooms in a hotel for at least 90 consecutive days shall be considered  
16 a permanent resident with regard to the period of such occupancy.

17 (n) "Room" means any room or rooms of any kind in any part or  
18 portion of a hotel, which is available for or let out for any purpose  
19 other than a place of assembly.

20 (o) "Admission charge" means the amount paid for admission,  
21 including any service charge and any charge for entertainment or  
22 amusement or for the use of facilities therefor.

23 (p) "Amusement charge" means any admission charge, dues or  
24 charge of a roof garden, cabaret or other similar place.

25 (q) "Charge of a roof garden, cabaret or other similar place"  
26 means any charge made for admission, refreshment, service, or  
27 merchandise at a roof garden, cabaret or other similar place.

28 (r) "Dramatic or musical arts admission charge" means any  
29 admission charge paid for admission to a theater, opera house,  
30 concert hall or other hall or place of assembly for a live, dramatic,  
31 choreographic or musical performance.

32 (s) "Lessor" means any person who is the owner, licensee, or  
33 lessee of any premises, tangible personal property or digital  
34 property which the person leases, subleases, or grants a license to  
35 use to other persons.

36 (t) "Place of amusement" means any place where any facilities  
37 for entertainment, amusement, or sports are provided.

38 (u) "Casual sale" means an isolated or occasional sale of an item  
39 of tangible personal property or digital property by a person who is  
40 not regularly engaged in the business of making retail sales of such  
41 property where the item was obtained by the person making the  
42 sale, through purchase or otherwise, for the person's own use.

43 (v) "Motor vehicle" includes all vehicles propelled otherwise  
44 than by muscular power (excepting such vehicles as run only upon  
45 rails or tracks), trailers, semitrailers, house trailers, or any other  
46 type of vehicle drawn by a motor-driven vehicle, and motorcycles,  
47 designed for operation on the public highways.

1 (w) "Persons required to collect tax" or "persons required to  
2 collect any tax imposed by this act" includes: every seller of  
3 tangible personal property, digital property or services; every  
4 recipient of amusement charges; every operator of a hotel; every  
5 seller of telecommunications; every recipient of initiation fees,  
6 membership fees or dues for access to or use of the property or  
7 facilities of a health and fitness, athletic, sporting or shopping club  
8 or organization; and every recipient of charges for parking, storing  
9 or garaging a motor vehicle. Said terms shall also include any  
10 officer or employee of a corporation or of a dissolved corporation  
11 who as such officer or employee is under a duty to act for such  
12 corporation in complying with any requirement of this act and any  
13 member of a partnership.

14 (x) "Customer" includes: every purchaser of tangible personal  
15 property, digital property or services; every patron paying or liable  
16 for the payment of any amusement charge; every occupant of a  
17 room or rooms in a hotel; every person paying charges in the nature  
18 of initiation fees, membership fees or dues for access to or use of  
19 the property or facilities of a health and fitness, athletic, sporting or  
20 shopping club or organization; and every purchaser of parking,  
21 storage or garaging a motor vehicle.

22 (y) "Property and services the use of which is subject to tax"  
23 includes: (1) all property sold to a person within the State, whether  
24 or not the sale is made within the State, the use of which property is  
25 subject to tax under section 6 or will become subject to tax when  
26 such property is received by or comes into the possession or control  
27 of such person within the State; (2) all services rendered to a person  
28 within the State, whether or not such services are performed within  
29 the State, upon tangible personal property or digital property the use  
30 of which is subject to tax under section 6 or will become subject to  
31 tax when such property is distributed within the State or is received  
32 by or comes into possession or control of such person within the  
33 State; (3) intrastate **[or]** , interstate or international  
34 telecommunications sourced to this State pursuant to section 29 of  
35 P.L.2005, c.126 (C.54:32B-3.4); (4) (Deleted by amendment,  
36 P.L.1995, c.184); (5) energy sold, exchanged or delivered in this  
37 State for use in this State; (6) utility service sold, exchanged or  
38 delivered in this State for use in this State; (7) **[direct]** mail  
39 processing services in connection with **[direct mail]** printed  
40 advertising material distributed in this State; (8) (Deleted by  
41 amendment, P.L.2005, c.126); and (9) services the benefit of which  
42 are received in this State.

43 (z) "Director " means the Director of the Division of Taxation of  
44 the State Department of the Treasury, or any officer, employee or  
45 agency of the Division of Taxation in the Department of the  
46 Treasury duly authorized by the director (directly, or indirectly by  
47 one or more redelegations of authority) to perform the functions  
48 mentioned or described in this act.

1 (aa) "Lease or rental" means any transfer of possession or control  
2 of tangible personal property for a fixed or indeterminate term for  
3 consideration. A "lease or rental" may include future options to  
4 purchase or extend.

5 (1) "Lease or rental" does not include:

6 (A) A transfer of possession or control of property under a  
7 security agreement or deferred payment plan that requires the  
8 transfer of title upon completion of the required payments;

9 (B) A transfer of possession or control of property under an  
10 agreement that requires the transfer of title upon completion of  
11 required payments and payment of an option price does not exceed  
12 the greater of \$100 or one percent of the total required payments; or

13 (C) Providing tangible personal property or digital property  
14 along with an operator for a fixed or indeterminate period of time.  
15 A condition of this exclusion is that the operator is necessary for the  
16 equipment to perform as designed. For the purpose of this  
17 subparagraph, an operator must do more than maintain, inspect, or  
18 set-up the tangible personal property or digital property.

19 (2) "Lease or rental" does include agreements covering motor  
20 vehicles and trailers where the amount of consideration may be  
21 increased or decreased by reference to the amount realized upon  
22 sale or disposition of the property as defined in 26 U.S.C.  
23 s.7701(h)(1).

24 (3) The definition of "lease or rental" provided in this subsection  
25 shall be used for the purposes of this act regardless of whether a  
26 transaction is characterized as a lease or rental under generally  
27 accepted accounting principles, the federal Internal Revenue Code  
28 or other provisions of federal, state or local law.

29 (bb) (Deleted by amendment, P.L.2005, c.126).

30 (cc) "Telecommunications service" means the [act or privilege  
31 of originating or receiving messages or information through the use  
32 of any kind of one-way or two-way communication; including but  
33 not limited to voice, video, facsimile, teletypewriter, computer,  
34 mobile telecommunications service or any other type of  
35 communication; using electronic or electromagnetic methods, and  
36 all services and equipment provided in connection therewith or by  
37 means thereof] electronic transmission, conveyance, or routing of  
38 voice, data, audio, video, or any other information or signals to a  
39 point, or between or among points.

40 "Telecommunications service" shall include such transmission,  
41 conveyance, or routing in which computer processing applications  
42 are used to act on the form, code, or protocol of the content for  
43 purposes of transmission, conveyance, or routing without regard to  
44 whether such service is referred to as voice over Internet protocol  
45 services or is classified by the Federal Communications  
46 Commission as enhanced or value added.

47 "Telecommunications service" shall not include:

- 1 (1) **【one-way radio or television broadcasting transmissions**  
2 **available universally to the general public without a fee】**(Deleted  
3 by amendment, P.L. , c. ) (pending before the Legislature as this  
4 bill);
- 5 (2) **【purchases of telecommunications by a telecommunications**  
6 **provider for use as a component part of telecommunications**  
7 **provided to an ultimate retail consumer who (A) originates or**  
8 **terminates the taxable end-to-end communications or (B) pays**  
9 **charges exempt from taxation pursuant to paragraph (5) of this**  
10 **subsection】**(Deleted by amendment, P.L. , c. ) (pending before  
11 the Legislature as this bill);
- 12 (3) **【services provided by a person, or by that person's wholly**  
13 **owned subsidiary, not engaged in the business of rendering or**  
14 **offering telecommunications services to the public, for private and**  
15 **exclusive use within its organization, provided however, that**  
16 **"telecommunications" shall include the sale of telecommunications**  
17 **services attributable to the excess unused telecommunications**  
18 **capacity of that person to another】**(Deleted by amendment, P.L. ,  
19 c. ) (pending before the Legislature as this bill);
- 20 (4) **【charges in the nature of subscription fees paid by**  
21 **subscribers for cable television service】**(Deleted by amendment,  
22 P.L. , c. ) (pending before the Legislature as this bill);
- 23 (5) **【charges subject to the local calling rate paid by inserting**  
24 **coins into a coin operated telecommunications device available to**  
25 **the public】**(Deleted by amendment, P.L. , c. ) (pending before  
26 the Legislature as this bill); **【and】**
- 27 (6) **【purchases of telecommunications using a prepaid calling**  
28 **service】**(Deleted by amendment, P.L. , c. ) (pending before the  
29 Legislature as this bill);
- 30 (7) data processing and information services that allow data to be  
31 generated, acquired, stored, processed, or retrieved and delivered by  
32 an electronic transmission to a purchaser where such purchaser's  
33 primary purpose for the underlying transaction is the processed data  
34 or information;
- 35 (8) installation or maintenance of wiring or equipment on a  
36 customer's premises;
- 37 (9) tangible personal property;
- 38 (10) advertising, including but not limited to directory  
39 advertising;
- 40 (11) billing and collection services provided to third parties;
- 41 (12) internet access service;
- 42 (13) radio and television audio and video programming services,  
43 regardless of the medium, including the furnishing of transmission,  
44 conveyance, and routing of such services by the programming  
45 service provider. Radio and television audio and video  
46 programming services shall include but not be limited to cable  
47 service as defined in section 47 U.S.C. s.522(6) and audio and video



1 programming services delivered by commercial mobile radio  
2 service providers, as defined in section 47 C.F.R. 20.3;

3 (14) ancillary services; or

4 (15) digital products delivered electronically, including but not  
5 limited to software, music, video, reading materials, or ringtones.

6 For the purposes of this subsection:

7 “ancillary service” means a service that is associated with or  
8 incidental to the provision of telecommunications services,  
9 including but not limited to detailed telecommunications billing,  
10 directory assistance, vertical service, and voice mail service;

11 “conference bridging service” means an ancillary service that  
12 links two or more participants of an audio or video conference call  
13 and may include the provision of a telephone number. Conference  
14 bridging service does not include the telecommunications services  
15 used to reach the conference bridge;

16 “detailed telecommunications billing service” means an ancillary  
17 service of separately stating information pertaining to individual  
18 calls on a customer’s billing statement;

19 “directory assistance” means an ancillary service of providing  
20 telephone number information or address information or both;

21 “vertical service” means an ancillary service that is offered in  
22 connection with one or more telecommunications services, which  
23 offers advanced calling features that allow customers to identify  
24 callers and to manage multiple calls and call connections, including  
25 conference bridging services; and

26 “voice mail service” means an ancillary service that enables the  
27 customer to store, send, or receive recorded messages. Voice mail  
28 service does not include any vertical service that a customer may be  
29 required to have to utilize the voice mail service.

30 (dd) (1) “Intrastate telecommunications” means a  
31 telecommunications service that originates in one United States  
32 state or a United States territory or possession or federal district,  
33 and terminates in the same United States state or United States  
34 territory or possession or federal district.

35 (2) “Interstate telecommunications” means [any] a  
36 telecommunications service that originates in one United States  
37 state, or a United States territory or possession or federal district,  
38 and [or] terminates [inside this State, including international  
39 telecommunication. In the case of mobile telecommunications  
40 service, “interstate telecommunication” means any mobile  
41 telecommunications service that originates in one state and  
42 terminates in another state, territory, or foreign country that is  
43 provided to a customer with a place of primary use in this State] in  
44 a different United States state or United States territory or  
45 possession or federal district.

46 (3) “International telecommunications” means a  
47 telecommunications service that originates or terminates in the  
48 United States and terminates or originates outside the United States,

1 respectively. "United States" includes the District of Columbia or a  
2 United States territory or possession.

3 (ee) **["Intrastate telecommunication"** means any  
4 telecommunication that originates and terminates within this State.  
5 In the case of mobile telecommunications service, "intrastate  
6 telecommunication" means any mobile telecommunications service  
7 that originates and terminates within the same state that is provided  
8 to a customer with a place of primary use in this State.] (Deleted by  
9 amendment, P.L. , c. ) (pending before the Legislature as this  
10 bill)

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

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

14 (hh) "Utility service" means the transportation or transmission of  
15 natural gas or electricity by means of mains, wires, lines or pipes, to  
16 users or customers.

17 (ii) "Self-generation unit" means a facility located on the user's  
18 property, or on property purchased or leased from the user by the  
19 person owning the self-generation unit and such property is  
20 contiguous to the user's property, which generates electricity to be  
21 used only by that user on the user's property and is not transported  
22 to the user over wires that cross a property line or public  
23 thoroughfare unless the property line or public thoroughfare merely  
24 bifurcates the user's or self-generation unit owner's otherwise  
25 contiguous property.

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

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

37 (ll) "Pre-paid calling service" means the right to **[purchase]**  
38 access exclusively telecommunications services, **[that must]** which  
39 shall be paid for in advance **[, that]** and which enables the  
40 origination of calls using an access number or authorization code,  
41 whether manually or electronically dialed**;** provided, that the  
42 remaining amount of units of service that have been pre-paid shall  
43 be known by the service provider on a continuous basis**]** , and that  
44 is sold in predetermined units or dollars of which the number  
45 declines with use in a known amount.

46 (mm) "Mobile telecommunications service" **[means commercial**  
47 mobile radio service, as defined in section 20.3 of title 47 of the

1 Code of Federal Regulations as in effect on June 1, 1999】 means  
2 the same as that term is defined in the federal "Mobile  
3 Telecommunications Sourcing Act," 4 U.S.C. s.124 (Pub.L.106-  
4 252).

5 (nn) 【"Place of primary use" means the street address  
6 representative of where the customer's use of the mobile  
7 telecommunications service primarily occurs, which shall be the  
8 residential street address or the primary business street address of  
9 the customer and within the licensed service area of the home  
10 service provider. For the purposes of determining the primary place  
11 of use, the terms used shall have the meanings provided pursuant to  
12 the federal "Mobile Telecommunications Sourcing Act," 4 U.S.C.  
13 s.124 (Pub.L.106-252).】 (Deleted by amendment, P.L. , c. )  
14 (pending before the Legislature as this bill)

15 (oo) (1)"Sales price" is the measure subject to sales tax and  
16 means the total amount of consideration, including cash, credit,  
17 property, and services, for which personal property or services are  
18 sold, leased, or rented, valued in money, whether received in money  
19 or otherwise, without any deduction for the following:

20 (A) The seller's cost of the property sold;

21 (B) The cost of materials used, labor or service cost, interest,  
22 losses, all costs of transportation to the seller, all taxes imposed on  
23 the seller, and any other expense of the seller;

24 (C) Charges by the seller for any services necessary to complete  
25 the sale;

26 (D) Delivery charges;

27 (E) Installation charges; and

28 (F) 【The value of exempt personal property given to the  
29 purchaser where taxable and exempt personal property have been  
30 bundled together and sold by the seller as a single product or piece  
31 of merchandise】 (Deleted by amendment, P.L. , c. ) (pending  
32 before the Legislature as this bill).

33 (2) "Sales price" does not include:

34 (A) Discounts, including cash, term, or coupons that are not  
35 reimbursed by a third party, that are allowed by a seller and taken  
36 by a purchaser on a sale;

37 (B) Interest, financing, and carrying charges from credit  
38 extended on the sale of personal property or services, if the amount  
39 is separately stated on the invoice, bill of sale, or similar document  
40 given to the purchaser;

41 (C) Any taxes legally imposed directly on the consumer that are  
42 separately stated on the invoice, bill of sale, or similar document  
43 given to the purchaser;

44 (D) The amount of sales price for which food stamps have been  
45 properly tendered in full or part payment pursuant to the federal  
46 Food Stamp Act of 1977, Pub.L. 95-113 (7 U.S.C. s.2011 et seq.);  
47 or

1 (E) Credit for any trade-in of property of the same kind accepted  
2 in part payment and intended for resale if the amount is separately  
3 stated on the invoice, bill of sale, or similar document given to the  
4 purchaser.

5 (3) "Sales price" includes consideration received by the seller  
6 from third parties if:

7 (A) The seller actually receives consideration from a party other  
8 that the purchaser and the consideration is directly related to a price  
9 reduction or discount on the sale;

10 (B) The seller has an obligation to pass the price reduction or  
11 discount through to the purchaser;

12 (C) The amount of the consideration attributable to the sale is  
13 fixed and determinable by the seller at the time of the sale of the  
14 item to the purchaser; and

15 (D) One of the following criteria is met:

16 (i) the purchaser presents a coupon, certificate, or other  
17 documentation to the seller to claim a prize reduction or discount  
18 where the coupon, certificate, or documentation is authorized,  
19 distributed, or granted by a third party with the understanding that  
20 the third party will reimburse any seller to whom the coupon,  
21 certificate, or documentation is presented;

22 (ii) the purchaser identifies himself to the seller as a member of a  
23 group or organization entitled to a price reduction or discount;  
24 provided however, that a preferred customer card that is available to  
25 any patron does not constitute membership in such a group; or

26 (iii) the price reduction or discount is identified as a third party  
27 price reduction or discount on the invoice received by the purchaser  
28 or on a coupon, certificate, or other documentation presented by the  
29 purchaser.

30 (pp) "Purchase price" means the measure subject to use tax and  
31 has the same meaning as "sales price."

32 (qq) "Sales tax" means the tax imposed on certain transactions  
33 pursuant to the provisions of the "Sales and Use Tax Act,"  
34 P.L.1966, c.30 (C.54:32B-1 et seq.).

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

1 (ss) "Direct mail" means printed material delivered or distributed  
2 by United States mail or other delivery service to a mass audience  
3 or to addresses on a mailing list provided by the purchaser or at the  
4 direction of the purchaser in cases in which the cost of the items are  
5 not billed directly to the recipients. "Direct mail" includes tangible  
6 personal property or digital property supplied directly or indirectly  
7 by the purchaser to the direct mail seller for inclusion in the  
8 package containing the printed material. "Direct mail" does not  
9 include multiple items of printed material delivered to a single  
10 address.

11 (tt) "Streamlined Sales and Use Tax Agreement" means the  
12 agreement entered into as governed and authorized by the "Uniform  
13 Sales and Use Tax Administration Act," P.L.2001, c.431  
14 (C.54:32B-44 et seq.).

15 (uu) "Alcoholic beverages" means beverages that are suitable for  
16 human consumption and contain one-half of one percent or more of  
17 alcohol by volume.

18 (vv) "Digital property" means electronically delivered music,  
19 ringtones, movies, books, audio and video works and similar  
20 products, where the customer is granted a right or license to use,  
21 retain or make a copy of such item. Digital property does not  
22 include video programming services, including video on demand  
23 television services, and broadcasting services, including content to  
24 provide such services.

25 (ww) "Landscaping services" means services that result in a  
26 capital improvement to land other than structures of any kind  
27 whatsoever, such as: seeding, sodding or grass plugging of new  
28 lawns; planting trees, shrubs, hedges, plants; and clearing and  
29 filling land.

30 (xx) "Investigation and security services" means:

31 (1) investigation and detective services, including detective  
32 agencies and private investigators, and fingerprint, polygraph  
33 missing person tracing and skip tracing services;

34 (2) security guard and patrol services, including bodyguard and  
35 personal protection, guard dog, guard, patrol, and security services;

36 (3) armored car services; and

37 (4) security systems services, including security, burglar, and fire  
38 alarm installation, repair or monitoring services.

39 (yy) "Information services" means the furnishing of information  
40 of any kind, which has been collected, compiled, or analyzed by the  
41 seller, and provided through any means or method, other than  
42 personal or individual information which is not incorporated into  
43 reports furnished to other people.

44 (cf: P.L.2006, c.44, s.1)

45

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

48 3. There is imposed and there shall be paid a tax of 7% upon:

1 (a) The receipts from every retail sale of tangible personal  
2 property or digital property, except as otherwise provided in this  
3 act.

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

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

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

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

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

43 (4) Maintaining, servicing or repairing real property, other than  
44 a residential heating system unit serving not more than three  
45 families living independently of each other and doing their cooking  
46 on the premises, whether the services are performed in or outside of  
47 a building, as distinguished from adding to or improving such real  
48 property by a capital improvement, but excluding services rendered

1 by an individual who is not in a regular trade or business offering  
2 his services to the public, and excluding garbage removal and sewer  
3 services performed on a regular contractual basis for a term not less  
4 than 30 days.

5 (5) ~~【Direct-mail】~~ Mail processing services for printed  
6 advertising material, except for ~~【direct-mail】~~ mail processing  
7 services in connection with distribution of ~~【direct mail】~~ printed  
8 advertising material to out-of-State recipients.

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

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

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

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

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

18 (11) Investigation and security services.

19 (12) Information services.

20 (13) Transportation services originating in this State and  
21 provided by a limousine operator, as permitted by law, except such  
22 services provided in connection with funeral services.

23 (14) Telephone answering services.

24 (15) Radio subscription services.

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

29 Services otherwise taxable under paragraph (1) or (2) of this  
30 subsection (b) are not subject to the taxes imposed under this  
31 subsection, where the tangible personal property or digital property  
32 upon which the services were performed is delivered to the  
33 purchaser outside this State for use outside this State.

34 (c) (1) Receipts from the sale of prepared food in or by  
35 restaurants, taverns, or other establishments in this State, or by  
36 caterers, including in the amount of such receipts any cover,  
37 minimum, entertainment or other charge made to patrons or  
38 customers, except for meals especially prepared for and delivered to  
39 homebound elderly, age 60 or older, and to disabled persons, or  
40 meals prepared and served at a group-sitting at a location outside of  
41 the home to otherwise homebound elderly persons, age 60 or older,  
42 and otherwise homebound disabled persons, as all or part of any  
43 food service project funded in whole or in part by government or as  
44 part of a private, nonprofit food service project available to all such  
45 elderly or disabled persons residing within an area of service  
46 designated by the private nonprofit organization; and

47 (2) Receipts from sales of food and beverages sold through  
48 vending machines, at the wholesale price of such sale, which shall

1 be defined as 70% of the retail vending machine selling price,  
2 except sales of milk, which shall not be taxed. Nothing herein  
3 contained shall affect other sales through coin-operated vending  
4 machines taxable pursuant to subsection (a) above or the exemption  
5 thereto provided by section 21 of P.L.1980, c.105 (C.54:32B-8.9).

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

8 (3) For the purposes of this subsection:

9 "Food and beverages sold through vending machines" means  
10 food and beverages dispensed from a machine or other mechanical  
11 device that accepts payment; and

12 "Prepared food" means:

13 (i) A. food sold in a heated state or heated by the seller; or

14 B. two or more food ingredients mixed or combined by the  
15 seller for sale as a single item, but not including food that is only  
16 cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,  
17 poultry, and foods containing these raw animal foods requiring  
18 cooking by the consumer as recommended by the Food and Drug  
19 Administration in Chapter 3, part 401.11 of its Food Code so as to  
20 prevent food borne illnesses; or

21 C. food sold with eating utensils provided by the seller,  
22 including plates, knives, forks, spoons, glasses, cups, napkins, or  
23 straws. A plate does not include a container or packaging used to  
24 transport the food;

25 provided however, that

26 (ii) "prepared food" does not include the following sold without  
27 eating utensils:

28 A. food sold by a seller whose proper primary NAICS  
29 classification is manufacturing in section 311, except subsector  
30 3118 (bakeries);

31 B. food sold in an unheated state by weight or volume as a  
32 single item; or

33 C. bakery items, including bread, rolls, buns, biscuits, bagels,  
34 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,  
35 muffins, bars, cookies, and tortillas.

36 (d) The rent for every occupancy of a room or rooms in a hotel  
37 in this State, except that the tax shall not be imposed upon a  
38 permanent resident.

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



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

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

11 (f) (1) The receipts from every sale, except for resale, of  
12 intrastate, ~~【or】~~ interstate, or international telecommunications  
13 services and ancillary services sourced to this State in accordance  
14 with section 29 of P.L.2005, c.126 (C.54:32B-3.4).

15 (2) ~~【The receipts from every sale, except for resale, of intrastate~~  
16 ~~or interstate mobile telecommunications services billed by or for a~~  
17 ~~customer's home service provider and provided to a customer with a~~  
18 ~~place of primary use in this State. The provisions and definitions of~~  
19 ~~the federal "Mobile Telecommunications Sourcing Act," 4 U.S.C.~~  
20 ~~ss.116-126 (Pub.L.106-252), are applicable herein.】(Deleted by~~  
21 ~~amendment, P.L. , c. ) (pending before the Legislature as this~~  
22 ~~bill)~~

23 (g) ~~【The receipts from every sale, except for resale, of prepaid~~  
24 ~~calling service and the recharge of prepaid calling service.】~~  
25 ~~(Deleted by amendment, P.L. , c. ) (pending before the~~  
26 ~~Legislature as this bill)~~

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, sporting or shopping club or organization in this  
30 State, except for: (1) membership in a club or organization whose  
31 members are predominantly age 18 or under; and (2) charges in the  
32 nature of membership fees or dues for access to or use of the  
33 property or facilities of a health and fitness, athletic, sporting or  
34 shopping club or organization that is exempt from taxation pursuant  
35 to paragraph (1) of subsection (a) of section 9 of P.L.1966, c.30  
36 (C.54:32B-9), or that is exempt from taxation pursuant to paragraph  
37 (1) or (2) of subsection (b) of section 9 of P.L.1966, c.30 and that  
38 has complied with subsection (d) of section 9 of P.L.1966, c.30.

39 (i) The receipts from parking, storing or garaging a motor  
40 vehicle, excluding charges for the following: residential parking;  
41 employee parking, when provided by an employer or at a facility  
42 owned or operated by the employer; municipal parking, storing or  
43 garaging; receipts from charges or fees imposed pursuant to section  
44 3 of P.L.1993, c.159 (C.5:12-173.3) or pursuant to an agreement  
45 between the Casino Reinvestment Development Authority and a  
46 casino operator in effect on the date of enactment of P.L.2007,

1 c.105; and receipts from parking, storing or garaging a motor  
2 vehicle subject to tax pursuant to any other law or ordinance.

3 For the purposes of this subsection, "municipal parking, storing  
4 or garaging" means any motor vehicle parking, storing or garaging  
5 provided by a municipality or county, or a parking authority  
6 thereof.

7 (cf: P.L.2007, c.105, s.1)

8  
9 3. Section 29 of P.L.2005, c.126 (C.54:32B-3.4) is amended to  
10 reads as follows:

11 29. a. Notwithstanding the general sourcing provisions of  
12 section 26 of P.L.2005, c.126 (C.54:32B-3.1), except for the  
13 telecommunication services enumerated in subsection c. of this  
14 section, the sale of telecommunication service sold on a call-by-call  
15 basis shall be sourced to:

16 (1) each level of taxing jurisdiction where the call originates and  
17 terminates in that jurisdiction; or

18 (2) each level of taxing jurisdiction where the call either  
19 originates or terminates and in which the service address is also  
20 located.

21 b. Except for the telecommunication services enumerated in  
22 subsection c. of this section, a sale of telecommunications services  
23 sold on a basis other than a call-by-call basis shall be sourced to the  
24 customer's place of primary use.

25 c. The sale of the following telecommunication services shall  
26 be sourced to each level of taxing jurisdiction as follows:

27 (1) A sale of mobile telecommunications services other than air-  
28 to-ground radiotelephone service and prepaid calling service shall  
29 be sourced to the customer's place of primary use as required by the  
30 federal "Mobile Telecommunications Sourcing Act," 4 U.S.C. s.116  
31 et seq.

32 (2) A sale of post-paid calling service shall be sourced to the  
33 origination point of the telecommunications signal as first identified  
34 by either:

35 (a) the seller's telecommunications system; or

36 (b) information received by the seller from its service provider,  
37 if the system used to transport such signals is not that of the seller.

38 (3) A sale of prepaid calling service or a sale of a prepaid  
39 wireless calling service shall be sourced in accordance with the  
40 general sourcing provisions of section 26 of P.L.2005, c.126  
41 (C.54:32B-3.1); provided however, that in the case of a sale of  
42 **【mobile telecommunications service that is a】** prepaid  
43 **【telecommunications】** wireless calling service, the rule provided in  
44 paragraph (5) of subsection (a) of that section shall include as an  
45 option the location associated with the mobile telephone number.

46 (4) A sale of a private communication service shall be sourced  
47 as follows:

1 (a) Service for a separate charge related to a customer channel  
2 termination point shall be sourced to each level of jurisdiction in  
3 which such customer channel termination point is located.

4 (b) Service for which all customer termination points are located  
5 entirely within one jurisdiction or levels of jurisdiction shall be  
6 sourced to such jurisdiction in which the customer channel  
7 termination points are located.

8 (c) Service for segments of a channel between two customer  
9 channel termination points located in different jurisdictions and  
10 which segments of channel are separately charged shall be sourced  
11 fifty percent to each level of jurisdiction in which the customer  
12 channel termination points are located.

13 (d) Service for segments of a channel located in more than one  
14 jurisdiction or levels of jurisdiction and which segments of channel  
15 are not separately billed shall be sourced to each jurisdiction based  
16 on the percentage determined by dividing the number of customer  
17 channel termination points in such jurisdiction by the total number  
18 of customer channel termination points.

19 (5) A sale of an ancillary service shall be sourced to the  
20 customer's place of primary use.

21 d. For the purposes of this section:

22 "Air-to-ground radiotelephone service" means a radio service, as  
23 that term is defined in 47 CFR 22.99, in which common carriers are  
24 authorized to offer and provide radio telecommunications service  
25 for hire to subscribers in aircraft;

26 "Ancillary service" means a service that is associated with or  
27 incidental to the provision of telecommunication services, including  
28 but not limited to detailed telecommunications billing, directory  
29 assistance, vertical service, and voice mail services;

30 "Call-by-call basis" means any method of charging for  
31 telecommunications services in which the price is measured by  
32 individual calls;

33 "Communications channel" means a physical or virtual path of  
34 communications over which signals are transmitted between or  
35 among customer channel termination points;

36 "Customer" means the person or entity that contracts with the  
37 seller of telecommunications services. If the end user of  
38 telecommunications services is not the contracting party, then the  
39 end user of the telecommunications service is the customer of the  
40 telecommunication service, but this provision applies only for the  
41 purpose of sourcing sales of telecommunications services under this  
42 section. "Customer" does not include a reseller of  
43 telecommunications service or, for mobile telecommunications  
44 service [of] , a serving carrier under an agreement to serve the  
45 customer outside the home service provider's licensed service area;

46 "Customer channel termination point" means the location where  
47 the customer either inputs or receives the communications;

1 "End user" means the person who utilizes the telecommunication  
2 service. In the case of an entity, "end user" means the individual  
3 who utilizes the service on behalf of the entity;

4 "Home service provider" has the same meaning as that term is  
5 defined by the federal "Mobile Telecommunications Sourcing Act,"  
6 4 U.S.C. s.124;

7 "Mobile telecommunications service" has the same meaning as  
8 that term is defined by the federal "Mobile Telecommunications  
9 Sourcing Act," 4 U.S.C. s.124;

10 "Place of primary use" means the street address representative of  
11 where the customer's use of the telecommunications service  
12 primarily occurs, which shall be the residential street address or the  
13 primary business street address of the customer. In the case of  
14 mobile telecommunications services, "place of primary use" shall  
15 be within the licensed service area of the home service provider;

16 "Post-paid calling service" means the telecommunications  
17 service obtained by making a payment on a call-by-call basis either  
18 through the use of a credit card or payment mechanism such as a  
19 bank card, travel card, credit card, or debit card, or by a charge  
20 made to a telephone number which is not associated with the  
21 origination or termination of the telecommunications service. A  
22 post-paid calling service includes a telecommunications service,  
23 except a prepaid wireless calling service, that would be a prepaid  
24 calling service except it is not exclusively a telecommunications  
25 service;

26 "Prepaid calling service" means the right to access exclusively  
27 telecommunications services, which shall be paid for in advance  
28 **[that]** and which enables the origination of calls using an access  
29 number or authorization code, whether manually or electronically  
30 dialed, and that is sold in predetermined units or dollars of which  
31 the number declines with use in a known amount;

32 "Prepaid wireless calling service" means a telecommunications  
33 service that provides the right to utilize mobile wireless service as  
34 well as other non-telecommunications services, including the  
35 download of digital products delivered electronically, content, and  
36 ancillary services, which must be paid for in advance and that is  
37 sold in predetermined units or dollars of which the number declines  
38 with use in a known amount;

39 "Private communication service" means a telecommunication  
40 service that entitles the customer to exclusive or priority use of a  
41 communications channel or group of channels between or among  
42 termination points, regardless of the manner in which such channel  
43 or channels are connected, and includes switching capacity,  
44 extension lines, stations, and any other associated services that are  
45 provided in connection with the use of such channel or channels;  
46 and

47 "Service address" means

1 (1) The location of the telecommunications equipment to which  
 2 a customer's call is charged and from which the call originates or  
 3 terminates, regardless of where the call is billed or paid;

4 (2) If the location in paragraph (1) of this definition is not  
 5 known, "service address" means the origination point of the signal  
 6 of the telecommunications services first identified by either the  
 7 seller's telecommunications system or in information received by  
 8 the seller from its service provider, in the case that the system used  
 9 to transport such signals is not that of the seller; or

10 (3) If the locations in paragraphs (1) and (2) of this definition  
 11 are not known, "service address" means the location of the  
 12 customer's place of primary use.

13 (cf: P.L.2005, c.126, s.29)

14

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

17 4. a. For the purpose of adding and collecting the tax imposed by  
 18 this act, or an amount equal as nearly as possible or practicable to  
 19 the average equivalent thereof, to be reimbursed to the seller by the  
 20 purchaser, a seller shall use one of the two following options:

21 (1) a tax shall be calculated based on the following formula:

22 Amount of Sale	Amount of Tax
23 \$0.01 to \$0.10	No Tax
24 0.11 to 0.19	\$0.01
25 0.20 to 0.32	0.02
26 0.33 to 0.47	0.03
27 0.48 to 0.62	0.04
28 0.63 to 0.77	0.05
29 0.78 to 0.90	0.06
30 0.91 to \$1.10	0.07

31 and in addition to a tax of \$0.07 on each full dollar, a tax shall be  
 32 collected on each part of a dollar in excess of a full dollar, in  
 33 accordance with the above formula; or

34 (2) tax shall be calculated to the third decimal place. One-half  
 35 cent (\$0.005) or higher shall be rounded up to the next cent; less  
 36 than \$0.005 shall be dropped in order to round the result down.

37 Sellers may compute the tax due on a transaction on either an  
 38 item or an invoice basis.

39 b. **【For charges paid by inserting coins into a coin operated**  
 40 **telecommunications device available to the public the tax shall be**  
 41 **computed to the nearest multiple of five cents of the tax otherwise**  
 42 **due pursuant to subsection a. of this section, except that, if the**  
 43 **amount of the tax is midway between multiples of five cents, the**  
 44 **next higher multiple shall apply.】** (Deleted by amendment, P.L. \_\_,  
 45 c. ) (pending before the Legislature as this bill)

46 (cf: P.L.2006, c.44, s.3)

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

3       6. Unless property or services have already been or will be  
4 subject to the sales tax under this act, there is hereby imposed on  
5 and there shall be paid by every person a use tax for the use within  
6 this State of 7%, except as otherwise exempted under this act, (A)  
7 of any tangible personal property or digital property purchased at  
8 retail, including energy, provided however, that electricity  
9 consumed by the generating facility that produced it shall not be  
10 subject to tax, (B) of any tangible personal property or digital  
11 property manufactured, processed or assembled by the user, if items  
12 of the same kind of tangible personal property or digital property  
13 are offered for sale by him in the regular course of business, or if  
14 items of the same kind of tangible personal property are not offered  
15 for sale by him in the regular course of business and are used as  
16 such or incorporated into a structure, building or real property, (C)  
17 of any tangible personal property or digital property, however  
18 acquired, where not acquired for purposes of resale, upon which any  
19 taxable services described in paragraphs (1) and (2) of subsection  
20 (b) of section 3 of P.L.1966, c.30 (C.54:32B-3) have been  
21 performed, (D) of ~~interstate or~~ intrastate, interstate, or  
22 international telecommunications services ~~and mobile~~  
23 ~~telecommunications~~ described in subsection (f) of section 3 of  
24 P.L.1966, c.30, (E) (Deleted by amendment, P.L.1995, c.184), (F)  
25 of utility service provided to persons in this State for use in this  
26 State, provided however, that utility service used by the facility that  
27 provides the service shall not be subject to tax, (G) of ~~direct-mail~~  
28 mail processing services described in paragraph (5) of subsection  
29 (b) of section 3 of P.L.1966, c.30 (C.54:32B-3), (H) ~~of prepaid~~  
30 ~~calling service and the recharge of prepaid calling service~~ ~~(Deleted~~  
31 ~~by amendment, P.L. , c. ) (pending before the Legislature as this~~  
32 ~~bill)~~, (I) of any services subject to tax pursuant to subsection (11),  
33 (12), ~~or~~ (13), or (14) of subsection (b) of section 3 of P.L.1966,  
34 c.30 (C.54:32B-3), and (J) of access to or use of the property or  
35 facilities of a health and fitness, athletic, sporting or shopping club  
36 or organization in this State. For purposes of clause (A) of this  
37 section, the tax shall be at the applicable rate, as set forth  
38 hereinabove, of the consideration given or contracted to be given  
39 for such property or for the use of such property including delivery  
40 charges made by the seller, but excluding any credit for property of  
41 the same kind accepted in part payment and intended for resale. For  
42 the purposes of clause (B) of this section, the tax shall be at the  
43 applicable rate, as set forth hereinabove, of the price at which items  
44 of the same kind of tangible personal property or digital property  
45 are offered for sale by the user, or if items of the same kind of  
46 tangible personal property are not offered for sale by the user in the  
47 regular course of business and are used as such or incorporated into

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

33 (cf: P.L.2006, c.44, s.5)

34  
35 6. Section 13 of P.L.1980, c.105 (C.54:32B-8.1) is amended to  
36 read as follows:

37 13. a. Receipts from sales of the following sold for human use  
38 are exempt from the tax imposed under the "Sales and Use Tax  
39 Act":

- 40 (1) drugs sold pursuant to a doctor's prescription;
- 41 (2) over-the-counter drugs;
- 42 (3) diabetic supplies;
- 43 (4) prosthetic devices;
- 44 (5) tampons or like products;
- 45 (6) medical oxygen;
- 46 (7) human blood and its derivatives;
- 47 (8) durable medical equipment for home use;
- 48 (9) mobility enhancing equipment sold by prescription; and

1 (10) repair and replacement parts for any of the foregoing  
2 exempt devices and equipment.

3 b. As used in this section:

4 "Drug" means a compound, substance or preparation, and any  
5 component of a compound, substance or preparation, other than  
6 food and food ingredients, dietary supplements or alcoholic  
7 beverages:

8 (1) recognized in the official United States Pharmacopoeia,  
9 official Homeopathic Pharmacopoeia of the United States, or  
10 official National Formulary, and supplement to any of them; or

11 (2) intended for use in the diagnosis, cure, mitigation, treatment,  
12 or prevention of disease; or

13 (3) intended to affect the structure or any function of the body.

14 "Over-the-counter-drug" means a drug that contains a label  
15 which identifies the product as a drug, required by 21 CFR 201.66.  
16 The label includes:

17 (1) a "Drug Facts" panel or

18 (2) a statement of the "active ingredient" or "active ingredients"  
19 with a list of those ingredients contained in the compound,  
20 substance or preparation. "Over-the-counter drug" does not include  
21 a grooming and hygiene product.

22 "Grooming and hygiene product" is soap or cleaning solution,  
23 shampoo, toothpaste, mouthwash, anti-perspirant, or sun tan lotion  
24 or screen, regardless of whether the item meets the definition of  
25 "over-the-counter drug."

26 "Prescription" means an order, formula or recipe issued in any  
27 form of oral, written, electronic, or other means of transmission by  
28 a duly licensed practitioner authorized by the laws of this State.

29 "Prosthetic device" means a replacement, corrective, or  
30 supportive device including repair and replacement parts for same  
31 worn on or in the body in order to:

32 (1) artificially replace a missing portion of the body; or

33 (2) prevent or correct a physical deformity or malfunction; or

34 (3) support a weak or deformed portion of the body.

35 "Durable medical equipment" means equipment, including repair  
36 and replacement parts, but not including mobility enhancing  
37 equipment, that:

38 (1) can withstand repeated use;

39 (2) is primarily and customarily used to serve a medical  
40 purpose;

41 3. is generally not useful to a person in the absence of illness or  
42 injury; and

43 4. is not worn in or on the body.

44 "Mobility enhancing equipment" means equipment, including  
45 repair and replacement parts, other than durable medical equipment,  
46 that:



1       1. is primarily and customarily used to provide or increase the  
2 ability to move from one place to another and which is appropriate  
3 for use either at home or in a motor vehicle; and

4       2. is not generally used by persons with normal mobility; and

5       3. does not include any motor vehicle or equipment on a motor  
6 vehicle normally provided by a motor vehicle manufacturer.

7       c. Receipts from sales of [medical equipment, durable medical  
8 equipment, and] supplies [other than medicines and drugs,]  
9 purchased for use in providing medical services for compensation,  
10 but not transferred to the purchaser of the service in conjunction  
11 with the performance of the service, shall be considered taxable  
12 receipts from retail sales notwithstanding the exemption from the  
13 tax imposed under the "Sales and Use Tax Act" provided under this  
14 section.

15 (cf: P.L.2005, c.126, s.7)

16  
17       7. Section 14 of P.L.1980, c.105 (C.54:32B-8.2) is amended to  
18 read as follows:

19       14. a. Receipts from the following are exempt from the tax  
20 imposed under the "Sales and Use Tax Act:" sales of food and food  
21 ingredients and dietary supplements, sold for human consumption  
22 off the premises where sold but not including (1) candy, and (2) soft  
23 drinks, all of which shall be subject to the retail sales and  
24 compensating use taxes[, whether or not the item is sold in liquid  
25 form].

26       b. The exemption in this section is not applicable to prepared  
27 food subject to tax under subsection (c) of section 3 of the Sales and  
28 Use Tax Act (C.54:32B-3).

29       c. As used in this section:

30       "Candy" means a preparation of sugar, honey, or other natural or  
31 artificial sweeteners in combination with chocolate, fruits, nuts or  
32 other ingredients or flavorings in the form of bars, drops, or pieces.  
33 "Candy" does not include any preparation containing flour or  
34 requiring refrigeration;

35       "Dietary supplement" means any product, other than tobacco,  
36 intended to supplement the diet, that:

37       (1) contains one or more of the following dietary ingredients: a  
38 vitamin; a mineral; an herb or other botanical; an amino acid; a  
39 dietary substance for use by humans to supplement the diet by  
40 increasing the total dietary intake; a concentrate, metabolite,  
41 constituent, extract, or combination of any ingredient described  
42 herein;

43       (2) is intended for ingestion in tablet, capsule, powder, softgel,  
44 gelcap, or liquid form, or if not intended for ingestion in such a  
45 form, is not represented as conventional food and is not represented  
46 for use as a sole item of a meal or of the diet; and

1 (3) is required to be labeled as a dietary supplement, identifiable  
2 by the "Supplemental Facts" box found on the label and as required  
3 pursuant to 21 C.F.R. s.101.36;

4 "Food and food ingredients" means substances, whether in  
5 liquid, concentrated, solid, frozen, dried, or dehydrated form, that  
6 are sold for ingestion or chewing by humans and are consumed for  
7 their taste or nutritional value, "Food and food ingredients" does not  
8 include alcoholic beverages or tobacco;

9 "Soft drinks" means non-alcoholic beverages that contain natural  
10 or artificial sweeteners. "Soft drinks" does not include beverages  
11 that contain: milk or milk products; soy, rice or similar milk  
12 substitutes; or greater than fifty percent of vegetable or fruit juice  
13 by volume; and

14 "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or  
15 any other item that contains tobacco.

16 (cf: P.L.2005, c.126, s.8)

17  
18 8. Section 16 of P.L.1980, c.105 (C.54:32B-8.4) is amended to  
19 read as follows:

20 16. a. Receipts from sales of articles of clothing and footwear for  
21 human use are exempt from the tax imposed under the "Sales and  
22 Use Tax Act." This exemption does not apply to fur clothing,  
23 clothing accessories or equipment, sport or recreational equipment,  
24 or protective equipment.

25 b. Receipts from sales of protective equipment necessary for  
26 the daily work of the user are exempt from the tax imposed under  
27 the "Sales and Use Tax Act."

28 c. Receipts from sales of sewing materials, such as fabrics,  
29 thread, knitting yarn, buttons and zippers, purchased by  
30 noncommercial purchasers for incorporation into clothing as a  
31 constituent part thereof, are exempt from the tax imposed under the  
32 "Sales and Use Tax Act."

33 d. As used in this section:

34 "Clothing" means all human wearing apparel suitable for general  
35 use. Clothing shall not include: clothing accessories or equipment,  
36 sport or recreational equipment, protective equipment, sewing  
37 equipment and supplies, or sewing materials that become part of  
38 clothing.

39 "Clothing accessories or equipment" means incidental items  
40 worn on the person or in conjunction with clothing.

41 "Fur clothing" means "clothing" that is required to be labeled as  
42 a fur product under 15 U.S.C. s.69, and the value of the fur  
43 components in the product is more than three times the value of the  
44 next most valuable tangible component. For the purposes of this  
45 section, "fur" means any animal skin or part thereof with hair,  
46 fleece, or fur fibers attached thereto, either in its raw or processed  
47 state, but shall not include such skins that have been converted into

1 leather or suede, or which in processing the hair, fleece, or fur fiber  
2 has been completely removed.

3 "Protective equipment" means items for human wear and  
4 designed as protection of the wearer against injury or disease or as  
5 protections against damage or injury of other persons or property  
6 but not suitable for general use.

7 "Sport or recreational equipment" means items designed for  
8 human use and worn in conjunction with an athletic or recreational  
9 activity that are not suitable for general use.

10 (cf: P.L.2005, c.126, s.9)

11

12 9. Section 26 of P.L.1980, c.105 (C.54:32B-8.14) is amended to  
13 read as follows:

14 26. Receipts from sales of tangible personal property, except  
15 energy, and digital property purchased for use or consumption  
16 directly and exclusively in research and development in the  
17 experimental or laboratory sense are exempt from the tax imposed  
18 under the Sales and Use Tax Act. Such research and development  
19 shall not be deemed to include the ordinary testing or inspection of  
20 materials or products for quality control, efficiency surveys,  
21 management studies, consumer surveys, advertising, promotions or  
22 research in connection with literary, historical or similar projects.

23 (cf: P.L.1997, c.162, s.24)

24

25 10. Section 1 of P.L.1985, c.24 (C.54:32B-8.39) is amended to  
26 read as follows:

27 1. Receipts from sales of **【direct mail】** printed advertising  
28 material for distribution to out-of-State recipients and receipts from  
29 sales of **【direct-mail】** processing services in connection with  
30 distribution of **【direct mail】** printed advertising material to out-of-  
31 State recipients are exempt from the tax imposed under the "Sales  
32 and Use Tax Act." The exemption provided by this section shall  
33 apply to receipts from charges for the printing or production of  
34 **【direct mail】** printed advertising material whether prepared in, or  
35 shipped into New Jersey after preparation and stored for subsequent  
36 shipment to out-of-State customers. The **【direct-mail】** mail  
37 processing services exemption provided by this section shall apply  
38 to receipts from charges for all **【direct】** mail processing services for  
39 distribution to out-of-State recipients, including but not limited to  
40 the following: preparing and maintaining mailing lists, addressing,  
41 separating, folding, inserting, sorting and packaging **【direct mail】**  
42 printed advertising materials and transporting to the point of  
43 shipment by the mail service or other carrier.

44 (cf: P.L.2005, c.126, s.13)

45

46 11. Section 15 of P.L.2005, c.126 (C.54:32B-8.56) is amended  
47 to read as follows:

1       15. Receipts from sales of prewritten software delivered  
2 electronically and used directly and exclusively in the conduct of  
3 the purchaser's business, trade or occupation are exempt from the  
4 tax imposed under the "Sales and Use Tax Act", P.L.1966, c.30  
5 (C.54:32B-1 et seq.). The exemption provided by this section shall  
6 not apply to receipts from sales of prewritten software delivered by  
7 a load and leave method.

8       "Computer" means an electronic device that accepts information  
9 in digital or similar form and manipulates it for a result based on a  
10 sequence of instructions.

11       "Computer software" means a set of coded instruction designed  
12 to cause a computer or automatic data processing equipment to  
13 perform a task.

14       "Delivered electronically" means delivered **【from the seller】** to  
15 the purchaser by means other than tangible storage media.

16       "Electronic" means relating to technology having electrical,  
17 digital magnetic, wireless, optical, electromagnetic, or similar  
18 capabilities.

19       "Load and leave" means delivery to the purchaser by the use of a  
20 tangible storage medium where the tangible storage medium is not  
21 physically transferred to the purchaser.

22       "Prewritten computer software" means computer software,  
23 including prewritten upgrades, which is not designed and developed  
24 by the author or other creator to the specifications of a specific  
25 purchaser. The combining of two or more prewritten computer  
26 software programs or prewritten portions thereof shall not cause the  
27 combination to be other than prewritten computer software.

28       "Prewritten computer software" includes software designed and  
29 developed by the author or other creator to the specifications of a  
30 specific purchaser when it is sold to a person other than such  
31 purchaser. If a person modifies or enhances computer software of  
32 which that person is not the author or creator, the person shall be  
33 deemed to be the author or creator only of such person's  
34 modifications or enhancements. Prewritten software or a prewritten  
35 portion thereof that is modified or enhanced to any degree, where  
36 such modification or enhancement is designed and developed to the  
37 specifications of a specific purchaser, shall remain prewritten  
38 software; provided, however, that if there is a reasonable, separately  
39 stated charge or an invoice or other statement of the price given to  
40 the purchaser for such modification or enhancement, such  
41 modification or enhancement shall not constitute pre-written  
42 computer software. **【"Prewritten computer software" shall not**  
43 **include software delivered electronically】**.

44 (cf: P.L.2006, c.44, s.12)

45  
46       12. Section 12 of P.L.1966, c.30 (C.54:32B-12) is amended to  
47 read as follows:

1       12. (a) Every person required to collect the tax shall collect the  
2 tax from the customer when collecting the price, service charge,  
3 amusement charge or rent to which it applies. If the customer is  
4 given any sales slip, invoice, receipt or other statement or  
5 memorandum of the price, service charge, amusement charge or  
6 rent paid or payable, the tax shall be stated, charged and shown  
7 separately on the first of such documents given to him. The tax  
8 shall be paid to the person required to collect it as trustee for and on  
9 account of the State.

10       (b) For the purpose of the proper administration of this act and  
11 to prevent evasion of the tax hereby imposed, and subject to the  
12 rules regarding the administration of exemptions authorized by the  
13 Streamlined Sales and Use Tax Agreement, it shall be presumed  
14 that all receipts for property or services of any type mentioned in  
15 subsections (a), (b), ~~and~~ (c), ~~and~~ (f) of section 3, all rents for  
16 occupancy of the type mentioned in subsection (d) of said section,  
17 ~~and~~ all amusement charges of any type mentioned in subsection  
18 (e) of said section, all charges in the nature of initiation fees,  
19 membership fees or dues mentioned in section (h) of said section,  
20 and all receipts from parking, storing or garaging a motor vehicle  
21 mentioned in subsection (i) of said section are subject to tax until  
22 the contrary is established, and the burden of proving that any such  
23 receipt, ~~amusement~~ charge or rent is not taxable hereunder shall  
24 be upon the person required to collect tax or the customer. Unless a  
25 seller shall have taken from the purchaser a certificate, signed by  
26 the purchaser if in paper form, and bearing the purchaser's name  
27 and address and the number of the purchaser's registration  
28 certificate, to the effect that the property or service was purchased  
29 for resale or was otherwise exempt pursuant to the provisions of the  
30 "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), or  
31 the purchaser prior to taking delivery, furnishes to the seller any  
32 affidavit, statement or additional evidence, documentary or  
33 otherwise, which the director may require demonstrating that the  
34 purchaser is an exempt organization described in section 9(b)(1),  
35 the sale shall be deemed a taxable retail sale. Provided however,  
36 the director may, in the director's discretion, authorize a purchaser,  
37 who acquires tangible personal property, digital property or services  
38 under circumstances which make it impossible at the time of  
39 acquisition to determine the manner in which the tangible personal  
40 property, digital property or services will be used, to pay the tax  
41 directly to the director and waive the collection of the tax by the  
42 seller or provide for direct pay authority under rules adopted under  
43 the Streamlined Sales and Use Tax Agreement. Provided further,  
44 the director shall authorize any eligible person, as defined in section  
45 34 of P.L.1997, c.162 (C.54:32B-14.1), who purchases natural gas  
46 from a non-utility on and after January 1, 1998 through December  
47 31, 2002, to pay the tax on the commodity directly to the director  
48 and waive the collection of the tax by the seller. No such authority

1 shall be granted or exercised except upon application to the  
2 director, and the issuance by the director of a direct payment  
3 permit. If a direct payment permit is granted, its use shall be subject  
4 to conditions specified by the director, and the payment of tax on all  
5 acquisitions pursuant to the permit shall be made directly to the  
6 director by the permit holder.

7 (c) The director may provide by regulation that the tax upon  
8 receipts from sales on the installment plan may be paid on the  
9 amount of each installment and upon the date when such installment  
10 is due. He may also provide by regulation for the exclusion from  
11 taxable receipts, amusement charges or rents of amounts subject, as  
12 applicable, to the provisions of section 30 of P.L.2005, c.126  
13 (C.54:32B-12.1), representing sales where the contract of sale has  
14 been canceled, the property returned or the receipt, charge or rent  
15 has been ascertained to be uncollectible or, in the case the tax has  
16 been paid upon such receipt, charge or rent, for refund or credit of  
17 the tax so paid.

18 (cf: P.L.2006, c.44, s.14)

19  
20 13. Section 16 of P.L.1966, c.30 (C.54:32B-16) is amended to  
21 read as follows:

22 16. Every person required to collect any tax imposed by this act  
23 shall keep records of every purchase, purchase for lease, sale or  
24 amusement charge or occupancy and of all amounts paid, charged  
25 or due thereon and of the tax payable thereon, in such form as the  
26 director may by regulation require. Such records shall include a true  
27 copy of each sales slip, invoice, receipt, statement or memorandum  
28 upon which subsection (a) of section 12 requires that the tax be  
29 stated separately. Such records shall be available for inspection and  
30 examination at any time upon demand by the director or his duly  
31 authorized agent or employee and shall be preserved for a period of  
32 **[three]** four years, except that the director may consent to their  
33 destruction within that period or may require that they be kept  
34 longer.

35 (cf: P.L.1989, c.123, s.9)

36  
37 14. Section 17 of P.L.1966, c.30 (C.54:32B-17) is amended to  
38 read as follows:

39 17. (a) Every person required to collect or pay tax under this act  
40 shall on or before August 28, 1966, and on or before the twentieth  
41 day of each month thereafter, make and file a return for the  
42 preceding month with the director. The return of a seller of tangible  
43 personal property, digital property or services shall show his  
44 receipts from sales and also the aggregate value of tangible personal  
45 property, digital property and services sold by him, the use of which  
46 is subject to tax under this act, and the amount of taxes required to  
47 be collected with respect to such sales and use. The return of a  
48 recipient of amusement charges shall show all such charges and the

1 amount of tax thereon, and the return of a person required to collect  
2 tax on leases or rentals shall show all lease or rental payments  
3 received or charged and the amount of tax thereon. The return of a  
4 recipient of initiation fees, membership fees or dues for access to or  
5 use of the property or facilities of a health and fitness, athletic,  
6 sporting or shopping club or organization shall show all such  
7 charges and the amount of tax thereon. The return of the recipient  
8 of charges from parking, storing or garaging a motor vehicle shall  
9 show all such charges and the amount of tax thereon.

10 (b) The director may permit or require returns to be made  
11 covering other periods and upon such dates as he may specify. In  
12 addition, the director may require payments of tax liability at such  
13 intervals and based upon such classifications as he may designate.  
14 In prescribing such other periods to be covered by the return or  
15 intervals or classifications for payment of tax liability, the director  
16 may take into account the dollar volume of tax involved as well as  
17 the need for insuring the prompt and orderly collection of the taxes  
18 imposed.

19 (c) The form of returns shall be prescribed by the director and  
20 shall contain such information as he may deem necessary for the  
21 proper administration of this act. The director may require  
22 amended returns to be filed within 20 days after notice and to  
23 contain the information specified in the notice.

24 (d) Pursuant to the Streamlined Sales and Use Tax Agreement,  
25 the director is authorized to accept certified automated systems and  
26 certified service providers to aid in the administration of the  
27 collection of the tax imposed under the "Sales and Use Tax Act".

28 (e) Subject to the limitations of this subsection and other  
29 provisions of the "Sales and Use Tax Act":

30 (1) In addition to the powers of the director prescribed pursuant  
31 to section 24 of P.L.1966, c.30 (C.54:32B-24) and the "State  
32 Uniform Tax Procedure Law," R.S.54:48-1 et seq., and  
33 notwithstanding the provisions of any other law to the contrary, the  
34 director shall grant "amnesty" for uncollected or unpaid sales or use  
35 tax to a seller that registers to collect and remit applicable sales or  
36 use tax on sales made to purchasers in this State in accordance with  
37 the terms of the Streamlined Sales and Use Tax Agreement,  
38 provided that the seller was not so registered in this State in the  
39 twelve-month period preceding the commencement of this State's  
40 participation in the agreement.

41 (2) Under terms of the "amnesty" granted pursuant to paragraph  
42 (1) of this subsection, a seller that registers shall not be assessed for  
43 uncollected or unpaid sales or use tax and shall not be assessed  
44 penalties or interest for sales made during the period the seller was  
45 not registered in this State, provided that the seller registers  
46 pursuant to paragraph (1) of this subsection within twelve months  
47 of the effective date of this State's participation in the Streamlined  
48 Sales and Use Tax Agreement.

1 (3) The limitations on deficiency assessments, penalties and  
2 interest pursuant to paragraph (2) of this subsection shall not be  
3 available to a seller with respect to any matter for which the seller  
4 received notice of the commencement of an audit and which audit is  
5 not yet finally resolved including any related administrative and  
6 judicial processes.

7 (4) The limitations on deficiency assessments, penalties and  
8 interest pursuant to paragraph (2) of this subsection shall not be  
9 available for sales or use taxes already paid or remitted to the State  
10 or to taxes already collected by the seller.

11 (5) The "amnesty" limitations on deficiency assessments,  
12 penalties and interest pursuant to paragraph (2) of this subsection  
13 shall be in full effect and the director shall not assess deficiencies  
14 for uncollected or unpaid sales or use tax and shall not assess  
15 penalties or interest for sales made during the period the seller was  
16 not registered in this State so long as the seller continues  
17 registration and continues collection and remittance of applicable  
18 sales or use taxes for a period of at least 36 months: provided  
19 however that the director may make such assessments by reason of  
20 the seller's fraud or intentional misrepresentation of a material fact.  
21 The statutes of limitations applicable to asserting tax liabilities,  
22 deficiencies, penalties and interest are tolled for this 36 month  
23 period.

24 (6) The "amnesty" granted pursuant to paragraph (1) of this  
25 subsection shall apply only to sales or use taxes due from a seller in  
26 its capacity as a seller and shall not apply to sales or use taxes due  
27 from a seller in its capacity as a buyer.

28 (cf: P.L.2006, c.44, s.16)

29

30 15. (New section) a. Receipts from sales of coin-operated  
31 telephone service are exempt from the tax imposed under the "Sales  
32 and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

33 b. For purposes of this section:

34 "Coin-operated telephone service" means a telecommunications  
35 service paid for by inserting money into a telephone accepting  
36 direct deposits of money to operate.

37

38 16. a. Section 27 of P.L.2005, c.126 (C.54:32B-3.2) and section  
39 1 of P.L.2006, c.41 (C.54:32G-1) are repealed.

40 b. Notwithstanding the repeal of section 1 of P.L.2006, c.41, the  
41 repeal shall not affect any obligation, lien, or duty to pay taxes,  
42 interest or penalties which have accrued or may accrue by virtue of  
43 any taxes imposed pursuant to the provisions of P.L.2006, c.41 or  
44 which may be imposed with respect to any redetermination,  
45 correction, recomputation, or deficiency assessment; and provided  
46 that all taxes and returns which would be due and payable prior to  
47 the effective date of P.L. , c. (C. ) (pending before the  
48 Legislature as this bill) shall be due and payable as if P.L.2006,



1 c.41 were in effect; and provided that this repeal shall not affect the  
2 legal authority of the State to audit records and assess and collect  
3 taxes due or which may be due, together with such interest and  
4 penalties as have accrued or would have accrued thereon under the  
5 provisions of the law repealed; and provided that the repeal by  
6 subsection a. of section 16 of P.L. , c. (C. ) (pending before the  
7 Legislature as this bill), shall not affect any determination of, or  
8 affect any proceeding for, the enforcement thereof.

9  
10 17. This act shall take effect immediately; provided however,  
11 that sections 1 through 16 shall remain inoperative until January 1,  
12 2008.

#### 13 14 15 STATEMENT

16  
17 This bill revises the “Sales and Use Tax Act,” to incorporate  
18 recent changes to the Streamlined Sales and Use Tax Agreement  
19 (SSUTA), adopted since the State entered into the compact in June  
20 of 2005. These changes further the State’s effort to simplify and  
21 modernize sales and use tax collection and administrative  
22 procedures and ensure New Jersey maintains uniformity with  
23 member states and remains in compliance with the provisions of the  
24 SSUTA. According to the most recent agreement, member states  
25 must integrate the changes into their statutes on or before January 1,  
26 2008 to preserve compliance with the multi-state accord.

27 The SSUTA has reorganized and elaborated the definitions  
28 relating to the taxation of telecommunications; compliance requires  
29 New Jersey to reorganize and replace its definitions. This bill  
30 replaces the current “telecommunications” term with a more  
31 specific, narrowly focused definition of “telecommunications  
32 service.” As a result, the bill redefines “intrastate, interstate, and  
33 international telecommunications;” and revises current definitions  
34 for pre-paid calling, mobile telecommunications, and incorporates  
35 the new terms “ancillary service,” “directory assistance,” “detailed  
36 telecommunications billing service” and “voice mail service.”  
37 These new terms identify and delineate the range of taxable and  
38 nontaxable telecommunications services.

39 The reorganization of telecommunications definitions requires  
40 the elimination of current explicit language imposing taxation on  
41 mobile telecommunications and certain prepaid calling services  
42 (because they are now included in “telecommunications services”)  
43 and requires the explicit imposition of tax on telephone answering  
44 and radio subscription services (because they are currently subject  
45 to tax, but will no longer be included in “telecommunications  
46 services”). These changes do not extend the base of the sales and  
47 use tax to new services or omit previously taxed  
48 telecommunications from coverage.

1       Similarly, the changes to the definition of “sales price” in the bill  
2       reflect another reorganization in the SSUTA definitions, but  
3       basically codify the policy on the effect of coupons and rebates that  
4       has been used under the New Jersey sales tax for the last 20 years,  
5       and the changes to the direct mail definitions allow the maintenance  
6       of the New Jersey taxation of mail processing services in  
7       compliance with SSUTA definitions.

8       Another SSUTA reorganizational change that requires  
9       corresponding a New Jersey change is the elimination of a “non-  
10      distinction” between solid and liquid food.

11      The bill also make technical clarifications to the research and  
12      development exemption to explicitly include as exempt the receipts  
13      from sales of digital property and to the business prewritten  
14      software exemption to delete contradictory language about  
15      prewritten computer software delivered electronically.

16      For reasons of compliance with SSUTA provisions about the  
17      exemption of medical products, the bill narrows a broad limitation  
18      currently affecting all medical equipment to affect only certain  
19      medical supplies, while limiting the exemption for mobility  
20      enhancing equipment to that sold by prescription.

21      For reasons of compliance with SSUTA provisions, the bill  
22      provides a full sales and use tax for receipts from coin-paid sales of  
23      pay phones. The expands the current exemption, which only  
24      provides an exemption for coin-operated calls at the local calling  
25      rate (coin-paid long-distance phone calls are currently subject to  
26      tax).

27      For reasons of compliance with SSUTA provisions, the bill  
28      repeals the 6% gross receipts tax on retail sales of fur clothing,  
29      imposed under the provisions of P.L.2006, c.41 (C.54:32G-1), and  
30      imposes the 7% sales tax on sales of “fur clothing” as defined by  
31      the SSUTA.

32      Finally, this bill repeals the multiple points of use (MPU)  
33      exemption.