

SENATE, No. 2587

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED FEBRUARY 26, 2009

Sponsored by:

Senator MARCIA A. KARROW

District 23 (Warren and Hunterdon)

SYNOPSIS

Removes imposition of sales tax on massage, bodywork, and somatic services.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning the imposition of the sales tax on receipts from
2 sales of massage, bodywork, and somatic services, amending
3 P.L.1966, c.30 (C.54:32B-1 et seq.).

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

7
8 1. Section 3 of P.L.1966, c.30 (C.54:32B-3) is amended to read
9 as follows:

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

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

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

16 (1) Producing, fabricating, processing, printing or imprinting
17 tangible personal property or digital property, performed for a
18 person who directly or indirectly furnishes the tangible personal
19 property or digital property, not purchased by him for resale, upon
20 which such services are performed.

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

40 (3) Storing all tangible personal property not held for sale in the
41 regular course of business; the rental of safe deposit boxes or
42 similar space; and the furnishing of space for storage of tangible
43 personal property by a person engaged in the business of furnishing
44 space for such storage.

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 "Space for storage" means secure areas, such as rooms, units,
2 compartments or containers, whether accessible from outside or
3 from within a building, that are designated for the use of a customer
4 and wherein the customer has free access within reasonable
5 business hours, or upon reasonable notice to the furnisher of space
6 for storage, to store and retrieve property. Space for storage shall
7 not include the lease or rental of an entire building, such as a
8 warehouse or airplane hanger.

9 (4) Maintaining, servicing or repairing real property, other than
10 a residential heating system unit serving not more than three
11 families living independently of each other and doing their cooking
12 on the premises, whether the services are performed in or outside of
13 a building, as distinguished from adding to or improving such real
14 property by a capital improvement, but excluding services rendered
15 by an individual who is not in a regular trade or business offering
16 his services to the public, and excluding garbage removal and sewer
17 services performed on a regular contractual basis for a term not less
18 than 30 days.

19 (5) Mail processing services for printed advertising material,
20 except for mail processing services in connection with distribution
21 of printed advertising material to out-of-State recipients.

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

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

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

27 (9) ~~【Massage, bodywork or somatic services, except such~~
28 ~~services provided pursuant to a doctor's prescription.】 (Deleted by~~
29 ~~amendment, P.L. , c.) (pending before the Legislature as this~~
30 ~~bill)~~

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

33 (11)Investigation and security services.

34 (12)Information services.

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

38 (14)Telephone answering services.

39 (15)Radio subscription services.

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

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

1 (c) (1) Receipts from the sale of prepared food in or by
2 restaurants, taverns, or other establishments in this State, or by
3 caterers, including in the amount of such receipts any cover,
4 minimum, entertainment or other charge made to patrons or
5 customers, except for meals especially prepared for and delivered to
6 homebound elderly, age 60 or older, and to disabled persons, or
7 meals prepared and served at a group-sitting at a location outside of
8 the home to otherwise homebound elderly persons, age 60 or older,
9 and otherwise homebound disabled persons, as all or part of any
10 food service project funded in whole or in part by government or as
11 part of a private, nonprofit food service project available to all such
12 elderly or disabled persons residing within an area of service
13 designated by the private nonprofit organization; and

14 (2) Receipts from sales of food and beverages sold through
15 vending machines, at the wholesale price of such sale, which shall
16 be defined as 70% of the retail vending machine selling price,
17 except sales of milk, which shall not be taxed. Nothing herein
18 contained shall affect other sales through coin-operated vending
19 machines taxable pursuant to subsection (a) above or the exemption
20 thereto provided by section 21 of P.L.1980, c.105 (C.54:32B-8.9).

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

23 (3) For the purposes of this subsection:

24 "Food and beverages sold through vending machines" means
25 food and beverages dispensed from a machine or other mechanical
26 device that accepts payment; and

27 "Prepared food" means:

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

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

36 C. food sold with eating utensils provided by the seller,
37 including plates, knives, forks, spoons, glasses, cups, napkins, or
38 straws. A plate does not include a container or packaging used to
39 transport the food;
40 provided however, that

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

43 A. food sold by a seller whose proper primary NAICS
44 classification is manufacturing in section 311, except subsector
45 3118 (bakeries);

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

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

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

7 (e) (1) Any admission charge to or for the use of any place of
8 amusement in the State, including charges for admission to race
9 tracks, baseball, football, basketball or exhibitions, dramatic or
10 musical arts performances, motion picture theaters, except charges
11 for admission to boxing, wrestling, kick boxing or combative sports
12 exhibitions, events, performances or contests which charges are
13 taxed under any other law of this State or under section 20 of
14 P.L.1985, c.83 (C.5:2A-20), and, except charges to a patron for
15 admission to, or use of, facilities for sporting activities in which
16 such patron is to be a participant, such as bowling alleys and
17 swimming pools. For any person having the permanent use or
18 possession of a box or seat or lease or a license, other than a season
19 ticket, for the use of a box or seat at a place of amusement, the tax
20 shall be upon the amount for which a similar box or seat is sold for
21 each performance or exhibition at which the box or seat is used or
22 reserved by the holder, licensee or lessee, and shall be paid by the
23 holder, licensee or lessee.

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

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

31 (2) (Deleted by amendment, P.L.2008, c.123)

32 (g) (Deleted by amendment, P.L.2008, c.123)

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

45 (i) The receipts from parking, storing or garaging a motor
46 vehicle, excluding charges for the following: residential parking;
47 employee parking, when provided by an employer or at a facility
48 owned or operated by the employer; municipal parking, storing or

1 garaging; receipts from charges or fees imposed pursuant to section
2 3 of P.L.1993, c.159 (C.5:12-173.3) or pursuant to an agreement
3 between the Casino Reinvestment Development Authority and a
4 casino operator in effect on the date of enactment of P.L.2007,
5 c.105; and receipts from parking, storing or garaging a motor
6 vehicle subject to tax pursuant to any other law or ordinance.

7 For the purposes of this subsection, "municipal parking, storing
8 or garaging" means any motor vehicle parking, storing or garaging
9 provided by a municipality or county, or a parking authority
10 thereof.

11 (cf: P.L.2008, c.123, s.2)

12
13 2. This act shall take effect immediately and apply to massage,
14 bodywork, and somatic services rendered on or after the first day of
15 the third month following the date of enactment.

16 17 18 STATEMENT

19
20 This bill eliminates the imposition of the State's seven percent
21 sales tax on receipts from sales of massage, bodywork, and somatic
22 services, which was first imposed under P.L.2006, c.44.

23 Under current law, "massage, bodywork, and somatic services"
24 are defined as systems of activity of structured touch, which include
25 holding, applying pressure, positioning and mobilizing soft tissue of
26 the body by manual technique and use of visual, kinesthetic,
27 auditory and palpating skills to assess the body for purposes of
28 applying massage, bodywork or somatic principles. For purposes of
29 taxation, these services may include the use of therapies, such as
30 heliotherapy or hydrotherapy, the use of moist hot and cold external
31 applications and external application of herbal or topical
32 preparations.

33 However, current regulations stipulate that taxable services do
34 not include: (1) massage, bodywork, and somatic services rendered
35 by certain licensed medical and medical-related personnel acting
36 within the scope of their licensure; (2) acupuncture; or (3) cosmetic
37 and beauty services primarily designed to enhance appearance or
38 cleanliness. Massage services rendered by a doctor, acupuncture
39 treatments performed by an acupuncturist, and manicures provided
40 by a beautician are not subject to tax and are not affected by this
41 bill.

42 The sales tax imposed on massage, bodywork, and somatic
43 services has had a negative impact on practitioners as well as
44 consumers of massage therapies. Since October 2006, the tax has
45 created an administrative burden on massage therapists by requiring
46 the collection and retention of certain financial and medical records,
47 and increased costs associated with the purchase of these services.
48 The elimination of the seven percent tax will not only alleviate the

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- 1 administrative burden, but also put more money back in the pockets
- 2 of State residents during the current economic decline.