

SENATE, No. 2130

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED JUNE 24, 2010

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen, Essex and Passaic)

Senator KEVIN J. O'TOOLE

District 40 (Bergen, Essex and Passaic)

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

Assemblyman UPENDRA J. CHIVUKULA

District 17 (Middlesex and Somerset)

Co-Sponsored by:

Senator Gordon

SYNOPSIS

Revises sales and use tax to maintain compliance with certain terms and conditions of Streamlined Sales and Use Tax Agreement.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/18/2011)

1 AN ACT revising the sales and use tax to maintain compliance with
2 certain terms and conditions of the Streamlined Sales and Use
3 Tax Agreement, amending and supplementing P.L.1966, c.30
4 and amending P.L.1980, c.105, P.L.1993, c.373, and P.L.1983,
5 c.303.

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]** , specified digital
25 product or service taxable 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, (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, **[or]** (C) of telecommunications
40 service to a telecommunications service provider for use as a
41 component part of telecommunications service provided to an
42 ultimate customer, or (D) to a person who receives by contract a
43 product transferred electronically for further commercial broadcast,
44 rebroadcast, transmission, retransmission, licensing, relicensing,
45 distribution, redistribution or exhibition of the product, in whole or
46 in part, to another person, other than rights to redistribute based on

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 statutory or common law doctrine such as fair use.

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

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

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

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

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

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

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

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

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

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

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

33 (g) "Tangible personal property" means personal property that
34 can be seen, weighed, measured, felt, or touched, or that is in any
35 other manner perceptible to the senses. "Tangible personal
36 property" includes electricity, water, gas, steam, and prewritten
37 computer software including prewritten computer software
38 delivered electronically.

39 (h) "Use" means the exercise of any right or power over tangible
40 personal property, **[digital property]** specified digital products,
41 services to property or products, or services by the purchaser
42 thereof and includes, but is not limited to, the receiving, storage or
43 any keeping or retention for any length of time, withdrawal from
44 storage, any distribution, any installation, any affixation to real or
45 personal property, or any consumption of such property or products.
46 Use also includes the exercise of any right or power over intrastate
47 or interstate telecommunications and prepaid calling services. Use
48 also includes the exercise of any right or power over utility service.

1 Use also includes the derivation of a direct or indirect benefit from
2 a service.

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

5 (1) The term "seller" includes:

6 (A) A person making sales, leases or rentals of tangible personal
7 property, **[digital property]** specified digital products or services,
8 the receipts from which are taxed by this act;

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

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

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

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

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

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

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

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

40 (2) In addition, when in the opinion of the director it is
41 necessary for the efficient administration of this act to treat any
42 salesman, representative, peddler or canvasser as the agent of the
43 seller, distributor, supervisor or employer under whom the agent
44 operates or from whom the agent obtains tangible personal property
45 or **[digital property]** a specified digital product sold by the agent or
46 for whom the agent solicits business, the director may, in the
47 director's discretion, treat such agent as the seller jointly responsible

1 with the agent's principal, distributor, supervisor or employer for
2 the collection and payment over of the tax. A person is an agent of
3 a seller in all cases, but not limited to such cases, that: (A) the
4 person and the seller have the relationship of a "related person"
5 described pursuant to section 2 of P.L.1993, c.170 (C.54:10A-5.5);
6 and (B) the seller and the person use an identical or substantially
7 similar name, tradename, trademark, or goodwill, to develop,
8 promote, or maintain sales, or the person and the seller pay for each
9 other's services in whole or in part contingent upon the volume or
10 value of sales, or the person and the seller share a common business
11 plan or substantially coordinate their business plans, or the person
12 provides services to, or that inure to the benefit of, the seller related
13 to developing, promoting, or maintaining the seller's market.

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

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

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

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

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

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

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

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

38 (r) "Dramatic or musical arts admission charge" means any
39 admission charge paid for admission to a theater, opera house,
40 concert hall or other hall or place of assembly for a live, dramatic,
41 choreographic or musical performance.

42 (s) "Lessor" means any person who is the owner, licensee, or
43 lessee of any premises, tangible personal property or [digital
44 property] a specified digital product which the person leases,
45 subleases, or grants a license to use to other persons.

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

1 (u) "Casual sale" means an isolated or occasional sale of an item
2 of tangible personal property or **【digital property】** a specified
3 digital product by a person who is not regularly engaged in the
4 business of making retail sales of such property or product where
5 the item of tangible personal property or the specified digital
6 product was obtained by the person making the sale, through
7 purchase or otherwise, for the person's own use.

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

13 (w) "Persons required to collect tax" or "persons required to
14 collect any tax imposed by this act" includes: every seller of
15 tangible personal property, **【digital property】** specified digital
16 products or services; every recipient of amusement charges; every
17 operator of a hotel; every seller of a telecommunications service;
18 every recipient of initiation fees, membership fees or dues for
19 access to or use of the property or facilities of a health and fitness,
20 athletic, sporting or shopping club or organization; and every
21 recipient of charges for parking, storing or garaging a motor
22 vehicle. Said terms shall also include any officer or employee of a
23 corporation or of a dissolved corporation who as such officer or
24 employee is under a duty to act for such corporation in complying
25 with any requirement of this act and any member of a partnership.

26 (x) "Customer" includes: every purchaser of tangible personal
27 property, **【digital property】** specified digital products or services;
28 every patron paying or liable for the payment of any amusement
29 charge; every occupant of a room or rooms in a hotel; every person
30 paying charges in the nature of initiation fees, membership fees or
31 dues for access to or use of the property or facilities of a health and
32 fitness, athletic, sporting or shopping club or organization; and
33 every purchaser of parking, storage or garaging a motor vehicle.

34 (y) "Property and services the use of which is subject to tax"
35 includes: (1) all property sold to a person within the State, whether
36 or not the sale is made within the State, the use of which property is
37 subject to tax under section 6 or will become subject to tax when
38 such property is received by or comes into the possession or control
39 of such person within the State; (2) all services rendered to a person
40 within the State, whether or not such services are performed within
41 the State, upon tangible personal property or **【digital property】** a
42 specified digital product the use of which is subject to tax under
43 section 6 or will become subject to tax when such property or
44 product is distributed within the State or is received by or comes
45 into possession or control of such person within the State; (3)
46 intrastate, interstate, or international telecommunications sourced to
47 this State pursuant to section 29 of P.L.2005, c.126 (C.54:32B-3.4);
48 (4) (Deleted by amendment, P.L.1995, c.184); (5) energy sold,

1 exchanged or delivered in this State for use in this State; (6) utility
2 service sold, exchanged or delivered in this State for use in this
3 State; (7) mail processing services in connection with printed
4 advertising material distributed in this State; (8) (Deleted by
5 amendment, P.L.2005, c.126); and (9) services the benefit of which
6 are received in this State.

7 (z) "Director" means the Director of the Division of Taxation in
8 the State Department of the Treasury, or any officer, employee or
9 agency of the Division of Taxation in the Department of the
10 Treasury duly authorized by the director (directly, or indirectly by
11 one or more redelegations of authority) to perform the functions
12 mentioned or described in this act.

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

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

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

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

25 (C) Providing tangible personal property or **[digital property]** a
26 specified digital product along with an operator for a fixed or
27 indeterminate period of time. A condition of this exclusion is that
28 the operator is necessary for the equipment to perform as designed.
29 For the purpose of this subparagraph, an operator must do more
30 than maintain, inspect, or set-up the tangible personal property or
31 **[digital property]** specified digital product.

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

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

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

43 (cc) "Telecommunications service" means the electronic
44 transmission, conveyance, or routing of voice, data, audio, video, or
45 any other information or signals to a point, or between or among
46 points.

47 "Telecommunications service" shall include such transmission,
48 conveyance, or routing in which computer processing applications

1 are used to act on the form, code, or protocol of the content for
2 purposes of transmission, conveyance, or routing without regard to
3 whether such service is referred to as voice over Internet protocol
4 services or is classified by the Federal Communications
5 Commission as enhanced or value added. "Telecommunications
6 service" shall not include:

7 (1) (Deleted by amendment, P.L.2008, c.123);

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

9 (3) (Deleted by amendment, P.L.2008, c.123);

10 (4) (Deleted by amendment, P.L.2008, c.123);

11 (5) (Deleted by amendment, P.L.2008, c.123);

12 (6) (Deleted by amendment, P.L.2008, c.123);

13 (7) data processing and information services that allow data to
14 be generated, acquired, stored, processed, or retrieved and delivered
15 by an electronic transmission to a purchaser where such purchaser's
16 primary purpose for the underlying transaction is the processed data
17 or information;

18 (8) installation or maintenance of wiring or equipment on a
19 customer's premises;

20 (9) tangible personal property;

21 (10) advertising, including but not limited to directory
22 advertising;

23 (11) billing and collection services provided to third parties;

24 (12) internet access service;

25 (13) radio and television audio and video programming services,
26 regardless of the medium, including the furnishing of transmission,
27 conveyance, and routing of such services by the programming
28 service provider. Radio and television audio and video
29 programming services shall include but not be limited to cable
30 service as defined in section 47 U.S.C. s.522(6) and audio and video
31 programming services delivered by commercial mobile radio
32 service providers, as defined in section 47 C.F.R. 20.3;

33 (14) ancillary services; or

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

36 For the purposes of this subsection:

37 "ancillary service" means a service that is associated with or
38 incidental to the provision of telecommunications services,
39 including but not limited to detailed telecommunications billing,
40 directory assistance, vertical service, and voice mail service;

41 "conference bridging service" means an ancillary service that
42 links two or more participants of an audio or video conference call
43 and may include the provision of a telephone number. Conference
44 bridging service does not include the telecommunications services
45 used to reach the conference bridge;

46 "detailed telecommunications billing service" means an ancillary
47 service of separately stating information pertaining to individual
48 calls on a customer's billing statement;

1 "directory assistance" means an ancillary service of providing
2 telephone number information or address information or both;

3 "vertical service" means an ancillary service that is offered in
4 connection with one or more telecommunications services, which
5 offers advanced calling features that allow customers to identify
6 callers and to manage multiple calls and call connections, including
7 conference bridging services; and

8 "voice mail service" means an ancillary service that enables the
9 customer to store, send, or receive recorded messages. Voice mail
10 service does not include any vertical service that a customer may be
11 required to have to utilize the voice mail service.

12 (dd) (1) "Intrastate telecommunications" means a
13 telecommunications service that originates in one United States
14 state or a United States territory or possession or federal district,
15 and terminates in the same United States state or United States
16 territory or possession or federal district.

17 (2) "Interstate telecommunications" means a
18 telecommunications service that originates in one United States
19 state or a United States territory or possession or federal district,
20 and terminates in a different United States state or United States
21 territory or possession or federal district.

22 (3) "International telecommunications" means a
23 telecommunications service that originates or terminates in the
24 United States and terminates or originates outside the United States,
25 respectively. "United States" includes the District of Columbia or a
26 United States territory or possession.

27 (ee) (Deleted by amendment, P.L.2008, c.123)

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

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

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

34 (ii) "Self-generation unit" means a facility located on the user's
35 property, or on property purchased or leased from the user by the
36 person owning the self-generation unit and such property is
37 contiguous to the user's property, which generates electricity to be
38 used only by that user on the user's property and is not transported
39 to the user over wires that cross a property line or public
40 thoroughfare unless the property line or public thoroughfare merely
41 bifurcates the user's or self-generation unit owner's otherwise
42 contiguous property.

43 (jj) "Co-generation facility" means a facility the primary purpose
44 of which is the sequential production of electricity and steam or
45 other forms of useful energy which are used for industrial or
46 commercial heating or cooling purposes and which is designated by
47 the Federal Energy Regulatory Commission, or its successor, as a

1 "qualifying facility" pursuant to the provisions of the "Public Utility
2 Regulatory Policies Act of 1978," Pub.L.95-617.

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

7 (ll) "Pre-paid calling service" means the right to access
8 exclusively telecommunications services, which shall be paid for in
9 advance and which enables the origination of calls using an access
10 number or authorization code, whether manually or electronically
11 dialed, and that is sold in predetermined units or dollars of which
12 the number declines with use in a known amount.

13 (mm) "Mobile telecommunications service" means the same as
14 that term is defined in the federal "Mobile Telecommunications
15 Sourcing Act," 4 U.S.C. s.124 (Pub.L.106-252).

16 (nn) (Deleted by amendment, P.L.2008, c.123)

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

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

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

26 (C) Charges by the seller for any services necessary to complete
27 the sale;

28 (D) Delivery charges;

29 (E) 【Installation charges】 (Deleted by amendment, P.L. __, c. __)
30 (pending before the Legislature as this bill); and

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

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

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

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

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

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

46 (E) Credit for any trade-in of property of the same kind accepted
47 in part payment and intended for resale if the amount is separately

1 stated on the invoice, bill of sale, or similar document given to the
2 purchaser.

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

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

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

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

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

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

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

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

28 (4) In the case of a bundled transaction that includes a
29 telecommunications service, an ancillary service, internet access, or
30 an audio or video programming service, if the price is attributable to
31 products that are taxable and products that are nontaxable, the
32 portion of the price attributable to the nontaxable products is
33 subject to tax unless the provider can identify by reasonable and
34 verifiable standards such portion from its books and records that are
35 kept in the regular course of business for other purposes, including
36 non-tax purposes.

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

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

42 (rr) "Delivery charges" means charges by the seller for
43 preparation and delivery to a location designated by the purchaser
44 of personal property or services including, but not limited to,
45 transportation, shipping, postage, handling, crating, and packing. If
46 a shipment includes both exempt and taxable property, the seller
47 should allocate the delivery charge by using: (1) a percentage based
48 on the total sales price of the taxable property compared to the total

1 sales price of all property in the shipment; or (2) a percentage based
2 on the total weight of the taxable property compared to the total
3 weight of all property in the shipment. The seller shall tax the
4 percentage of the delivery charge allocated to the taxable property
5 but is not required to tax the percentage allocated to the exempt
6 property.

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

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

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

24 (vv) **【"Digital property" means electronically delivered music,**
25 **ringtones, movies, books, audio and video works and similar**
26 **products, where the customer is granted a right or license to use,**
27 **retain or make a copy of such item. Digital property does not**
28 **include video programming services, including video on demand**
29 **television services, and broadcasting services, including content to**
30 **provide such services.】** (Deleted by amendment, P.L.____, c.____)
31 (pending before the Legislature as this bill)

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

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

38 (1) investigation and detective services, including detective
39 agencies and private investigators, and fingerprint, polygraph,
40 missing person tracing and skip tracing services;

41 (2) security guard and patrol services, including bodyguard and
42 personal protection, guard dog, guard, patrol, and security services;

43 (3) armored car services; and

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

46 (yy) "Information services" means the furnishing of information
47 of any kind, which has been collected, compiled, or analyzed by the
48 seller, and provided through any means or method, other than

1 personal or individual information which is not incorporated into
2 reports furnished to other people.

3 (zz) “Specified digital product” means an electronically
4 transferred digital audio-visual work, digital audio work, or digital
5 book; provided however, that a digital code which provides a
6 purchaser with a right to obtain the product shall be treated in the
7 same manner as a specified digital product.

8 (aaa) “Digital audio-visual work” means a series of related
9 images which, when shown in succession, impart an impression of
10 motion, together with accompanying sounds, if any.

11 (bbb) “Digital audio work” means a work that results from the
12 fixation of a series of musical, spoken, or other sounds, including a
13 ringtone.

14 (ccc) “Digital book” means a work that is generally recognized
15 in the ordinary and usual sense as a book.

16 (ddd) “Transferred electronically” means obtained by the
17 purchaser by means other than tangible storage media.

18 (eee) “Ringtone” means a digitized sound file that is downloaded
19 onto a device and that may be used to alert the purchaser with
20 respect to a communication.

21 (cf: P.L.2008, c.123, s.1)

22

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

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

26 (a) The receipts from every retail sale of tangible personal
27 property or **[digital property]** a specified digital product for
28 permanent use or less than permanent use, and regardless of
29 whether continued payment is required, except as otherwise
30 provided in this act.

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

33 (1) Producing, fabricating, processing, printing or imprinting
34 tangible personal property or **[digital property]** a specified digital
35 product, performed for a person who directly or indirectly furnishes
36 the tangible personal property or **[digital property]** specified digital
37 product, not purchased by him for resale, upon which such services
38 are performed.

39 (2) Installing tangible personal property or **[digital property]** a
40 specified digital product, or maintaining, servicing, repairing
41 tangible personal property or **[digital property]** a specified digital
42 product not held for sale in the regular course of business, whether
43 or not the services are performed directly or by means of coin-
44 operated equipment or by any other means, and whether or not any
45 tangible personal property or **[digital property]** specified digital
46 product is transferred in conjunction therewith, except (i) such
47 services rendered by an individual who is engaged directly by a

1 private homeowner or lessee in or about his residence and who is
2 not in a regular trade or business offering his services to the public,
3 (ii) such services rendered with respect to personal property exempt
4 from taxation hereunder pursuant to section 13 of P.L.1980, c.105
5 (C.54:32B-8.1), (iii) (Deleted by amendment, P.L.1990, c.40), (iv)
6 any receipts from laundering, dry cleaning, tailoring, weaving, or
7 pressing clothing, and shoe repairing and shoeshining and (v)
8 services rendered in installing property which, when installed, will
9 constitute an addition or capital improvement to real property,
10 property or land, other than landscaping services and other than
11 installing carpeting and other flooring.

12 (3) Storing all tangible personal property not held for sale in the
13 regular course of business; the rental of safe deposit boxes or
14 similar space; and the furnishing of space for storage of tangible
15 personal property by a person engaged in the business of furnishing
16 space for such storage.

17 "Space for storage" means secure areas, such as rooms, units,
18 compartments or containers, whether accessible from outside or
19 from within a building, that are designated for the use of a customer
20 and wherein the customer has free access within reasonable
21 business hours, or upon reasonable notice to the furnisher of space
22 for storage, to store and retrieve property. Space for storage shall
23 not include the lease or rental of an entire building, such as a
24 warehouse or airplane hanger.

25 (4) Maintaining, servicing or repairing real property, other than
26 a residential heating system unit serving not more than three
27 families living independently of each other and doing their cooking
28 on the premises, whether the services are performed in or outside of
29 a building, as distinguished from adding to or improving such real
30 property by a capital improvement, but excluding services rendered
31 by an individual who is not in a regular trade or business offering
32 his services to the public, and excluding garbage removal and sewer
33 services performed on a regular contractual basis for a term not less
34 than 30 days.

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

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

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

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

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

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

47 (11) Investigation and security services.

48 (12) Information services.

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

4 (14) Telephone answering services.

5 (15) Radio subscription services.

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

10 Services otherwise taxable under paragraph (1) or (2) of this
11 subsection (b) are not subject to the taxes imposed under this
12 subsection, where the tangible personal property or [digital
13 property] specified digital product upon which the services were
14 performed is delivered to the purchaser outside this State for use
15 outside this State.

16 (c) (1) Receipts from the sale of prepared food in or by
17 restaurants, taverns, or other establishments in this State, or by
18 caterers, including in the amount of such receipts any cover,
19 minimum, entertainment or other charge made to patrons or
20 customers, except for meals especially prepared for and delivered to
21 homebound elderly, age 60 or older, and to disabled persons, or
22 meals prepared and served at a group-sitting at a location outside of
23 the home to otherwise homebound elderly persons, age 60 or older,
24 and otherwise homebound disabled persons, as all or part of any
25 food service project funded in whole or in part by government or as
26 part of a private, nonprofit food service project available to all such
27 elderly or disabled persons residing within an area of service
28 designated by the private nonprofit organization; and

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

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

38 (3) For the purposes of this subsection:

39 "Food and beverages sold through vending machines" means
40 food and beverages dispensed from a machine or other mechanical
41 device that accepts payment; and

42 "Prepared food" means:

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

44 B. two or more food ingredients mixed or combined by the
45 seller for sale as a single item, but not including food that is only
46 cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,
47 poultry, and foods containing these raw animal foods requiring
48 cooking by the consumer as recommended by the Food and Drug

1 Administration in Chapter 3, part 401.11 of its Food Code so as to
2 prevent food borne illnesses; or

3 C. food sold with eating utensils provided by the seller,
4 including plates, knives, forks, spoons, glasses, cups, napkins, or
5 straws. A plate does not include a container or packaging used to
6 transport the food;
7 provided however, that

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

10 A. food sold by a seller whose proper primary NAICS
11 classification is manufacturing in section 311, except subsector
12 3118 (bakeries);

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

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

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

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

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

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

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

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

47 (h) Charges in the nature of initiation fees, membership fees or
48 dues for access to or use of the property or facilities of a health and

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

11 (i) The receipts from parking, storing or garaging a motor
12 vehicle, excluding charges for the following: residential parking;
13 employee parking, when provided by an employer or at a facility
14 owned or operated by the employer; municipal parking, storing or
15 garaging; receipts from charges or fees imposed pursuant to section
16 3 of P.L.1993, c.159 (C.5:12-173.3) or pursuant to an agreement
17 between the Casino Reinvestment Development Authority and a
18 casino operator in effect on the date of enactment of P.L.2007,
19 c.105; and receipts from parking, storing or garaging a motor
20 vehicle subject to tax pursuant to any other law or ordinance.

21 For the purposes of this subsection, "municipal parking, storing
22 or garaging" means any motor vehicle parking, storing or garaging
23 provided by a municipality or county, or a parking authority
24 thereof.

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

26

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

29 5. **【Transitional provisions.】** a. (1) Except as otherwise
30 provided in this act, receipts received from all sales made and
31 services rendered on and after January 3, 1983 but prior to July 1,
32 1990, are subject to the taxes imposed under subsections (a), (b),
33 (c), and (f) of section 3 of this act at the rate, if any, in effect for
34 such sales and services on June 30, 1990, except if the property so
35 sold is delivered or the services so sold are rendered on or after July
36 1, 1990 but prior to July 1, 1992, in which case the tax shall be
37 computed and paid at the rate of 7%; provided, however, that if a
38 service or maintenance agreement taxable under this act covers any
39 period commencing on or after January 3, 1983 and ending after
40 June 30, 1990 but prior to July 1, 1992, the receipts from such
41 agreement are subject to tax at the rate, if any, applicable to each
42 period as set forth hereinabove and shall be apportioned on the
43 basis of the ratio of the number of days falling within each of the
44 said periods to the total number of days covered thereby.

45 (2) Except as otherwise provided in this act, receipts received
46 from all sales made and services rendered on and after July 1, 1990
47 but prior to July 1, 1992, are subject to the taxes imposed under
48 subsections (a), (b), (c) and (f) of section 3 of this act at the rate of

1 7%, except if the property so sold is delivered or the services so
2 sold are rendered on or after July 1, 1992 but prior to July 15, 2006,
3 in which case the tax shall be computed and paid at the rate of 6%,
4 provided, however, that if a service or maintenance agreement
5 taxable under this act covers any period commencing on or after
6 July 1, 1990, and ending after July 1, 1992, the receipts from such
7 agreement are subject to tax at the rate applicable to each period as
8 set forth hereinabove and shall be apportioned on the basis of the
9 ratio of the number of days falling within each of the said periods to
10 the total number of days covered thereby.

11 (3) Except as otherwise provided in this act, receipts received
12 from all sales made and services rendered on and after July 1, 1992
13 but prior to July 15, 2006, are subject to the taxes imposed under
14 subsections (a), (b), (c), (f) and (g) of section 3 of P.L.1966, c.30
15 (C.54:32B-3) at the rate of 6%, except if the property so sold is
16 delivered or the services so sold are rendered on or after July 15,
17 2006, in which case the tax shall be computed and paid at the rate
18 of 7%, provided, however, that if a service or maintenance
19 agreement taxable under this act covers any period commencing on
20 or after July 1, 1992, and ending after July 15, 2006, the receipts
21 from such agreement are subject to tax at the rate applicable to each
22 period as set forth hereinabove and shall be apportioned on the
23 basis of the ratio of the number of days falling within each of the
24 said periods to the total number of days covered thereby; provided
25 however, if a service or maintenance agreement in effect on July 14,
26 2006 covers billing periods ending after July 15, 2006, the seller
27 shall charge and collect from the purchaser a tax on such sales at
28 the rate of 6%, unless the billing period starts on or after July 15,
29 2006 in which case the seller shall charge and collect a tax at the
30 rate of 7%.

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

42 (2) The tax imposed under subsection (d) of section 3 shall be
43 paid at the rate of 6% upon any occupancy on and after July 1, 1992
44 but prior to July 15, 2006, although such occupancy is pursuant to a
45 prior contract, lease or other arrangement. If an occupancy, taxable
46 under this act, covers any period on or after July 1, 1990 but prior
47 to July 1, 1992, the rent for the period of occupancy prior to July 1,
48 1992 shall be taxed at the rate of 7%. If rent is paid on a weekly,

1 monthly or other term basis, the rent applicable to each period as set
2 forth hereinabove shall be apportioned on the basis of the ratio of
3 the number of days falling within each of the said periods to the
4 total number of days covered thereby.

5 (3) The tax imposed under subsection (d) of section 3 shall be
6 paid at the rate of 7% upon any occupancy on and after July 15,
7 2006, although such occupancy is pursuant to a prior contract, lease
8 or other arrangement. If an occupancy, taxable under this act,
9 covers any period on or after July 1, 1992 but prior to July 15,
10 2006, the rent for the period of occupancy prior to July 15, 2006
11 shall be taxed at the rate of 6%. If rent is paid on a weekly,
12 monthly or other term basis, the rent applicable to each period as set
13 forth hereinabove shall be apportioned on the basis of the ratio of
14 the number of days falling within each of the said periods to the
15 total number of days covered thereby.

16 c. (1) Except as otherwise hereinafter provided, the tax imposed
17 under subsection (e) of section 3 shall be applicable at the rate of
18 7% to any admission to or for the use of facilities of a place of
19 amusement occurring on or after July 1, 1990 but prior to July 1,
20 1992, whether or not the admission charge has been paid prior to
21 July 1, 1990, unless the tickets were actually sold and delivered,
22 other than for resale, prior to July 1, 1990 and the tax imposed
23 under this act during the period January 3, 1983 through June 30,
24 1990 shall have been paid.

25 (2) Except as otherwise hereinafter provided, the tax imposed
26 under subsection (e) of section 3 shall be applicable at the rate of
27 6% to any admission to or for the use of facilities of a place of
28 amusement occurring on or after July 1, 1992 but prior to July 15,
29 2006, whether or not the admission charge has been paid prior to
30 July 1, 1992, unless the tickets were actually sold and delivered,
31 other than for resale, prior to July 1, 1992 and the tax imposed
32 under this act during the period July 1, 1990 through December 31,
33 1990 shall have been paid.

34 (3) Except as otherwise hereinafter provided, the tax imposed
35 under subsection (e) of section 3 shall be applicable at the rate of
36 7% to any admission to or for the use of facilities of a place of
37 amusement occurring on or after July 15, 2006, whether or not the
38 admission charge has been paid prior to that date, unless the tickets
39 were actually sold and delivered, other than for resale, prior to July
40 15, 2006 and the tax imposed under this act during the period July
41 1, 1992 through July 14, 2006 shall have been paid.

42 d. (1) Sales made on and after July 1, 1990 but prior to July 1,
43 1992 to contractors, subcontractors or repairmen of materials,
44 supplies, or services for use in erecting structures for others, or
45 building on, or otherwise improving, altering or repairing real
46 property of others shall be subject to the taxes imposed by
47 subsections (a) and (b) of section 3 and section 6 hereof at the rate
48 of 7%; provided, however, that if such sales are made for use in

1 performance of a contract which is either of a fixed price not
2 subject to change or modification, or entered into pursuant to the
3 obligation of a formal written bid which cannot be altered or
4 withdrawn, and, in either case, such contract was entered into or
5 such bid was made on or after January 3, 1983 but prior to July 1,
6 1990, such sales shall be subject to tax at the rate of 6%, but the
7 vendor shall charge and collect from the purchaser a tax on such
8 sales at the rate of 7%.

9 (2) Sales made on or after July 1, 1992 but prior to July 15,
10 2006 to contractors, subcontractors or repairmen of materials,
11 supplies, or services for use in erecting structures for others, or
12 building on, or otherwise improving, altering or repairing real
13 property of others shall be subject to the taxes imposed by
14 subsections (a) and (b) of section 3 and section 6 hereof at the rate
15 of 6%; provided, however, that if such sales are made for use in
16 performance of a contract which is either of a fixed price not
17 subject to change or modification, or entered into pursuant to the
18 obligation of a formal written bid which cannot be altered or
19 withdrawn, and, in either case, such contract was entered into or
20 such bid was made on or after July 1, 1990, but prior to July 1,
21 1992, such sales shall be subject to tax at the rate of 7%.

22 (3) Sales made on or after July 15, 2006 to contractors,
23 subcontractors or repairmen of materials, supplies, or services for
24 use in erecting structures for others, or building on, or otherwise
25 improving, altering or repairing real property of others shall be
26 subject to the taxes imposed by subsections (a) and (b) of section 3
27 and section 6 hereof at the rate of 7%; provided, however, that if
28 such sales are made for use in performance of a contract which is
29 either of a fixed price not subject to change or modification, or
30 entered into pursuant to the obligation of a formal written bid which
31 cannot be altered or withdrawn, and, in either case, such contract
32 was entered into or such bid was made on or after July 1, 1992, but
33 prior to July 15, 2006, such sales shall be subject to tax at the rate
34 of 6%, but the [vendor] seller shall charge and collect from the
35 purchaser a tax on such sales at the rate of 7%.

36 e. (1) As to sales other than those referred to in d. above, the
37 taxes imposed under subsections (a) and (b) of section 3 and section
38 6 hereof, and the taxes imposed under subsection (f) of section 3
39 and section 6 hereof, upon receipts received on or after July 1, 1990
40 and on or before December 31, 1990, shall be at the rate in effect on
41 June 30, 1990, in case of sales made or services rendered pursuant
42 to a written contract entered on or after January 3, 1983 but prior to
43 July 1, 1990, and accompanied by a deposit or partial payment of
44 the contract price, except in the case of a contract which, in the
45 usage of trade, is not customarily accompanied by a deposit or
46 partial payment of the contract price, but the vendor shall charge
47 and collect from the purchaser on such sales at the rate of 7%,
48 which tax shall be reduced to the rate, if any, in effect on June 30,

1 1990, only by a claim for refund filed by the purchaser with the
2 director within 90 days after receipt of said receipts and otherwise
3 pursuant to the provisions of section 20 of P.L.1966, c.30
4 (C.54:32B-20). A claim for refund shall not be allowed if there has
5 been no deposit or partial payment of the contract price unless the
6 claimant shall establish by clear and convincing evidence that, in
7 the usage of trade, such contracts are not customarily accompanied
8 by a deposit or partial payment of the contract price.

9 (2) As to sales other than those referred to in d. above, the taxes
10 imposed under subsections (a) and (b) of section 3 and section 6
11 hereof, and the taxes imposed under subsections (f) and (g) of
12 section 3 and section 6 hereof, upon receipts received on or after
13 July 15, 2006 and on or before December 31, 2006, shall be at the
14 rate in effect on July 14, 2006, in case of sales made or services
15 rendered pursuant to a written contract entered on or after July 1,
16 1992 but prior to July 15, 2006, and accompanied by a deposit or
17 partial payment of the contract price, except in the case of a
18 contract which, in the usage of trade, is not customarily
19 accompanied by a deposit or partial payment of the contract price,
20 but the [vendor] seller shall charge and collect from the purchaser
21 on such sales at the rate of 7%, which tax shall be reduced to the
22 rate, if any, in effect on July 14, 2006, only by a claim for refund
23 filed by the purchaser with the director within 90 days after receipt
24 of said receipts and otherwise pursuant to the provisions of section
25 20 of P.L.1966, c.30 (C.54:32B-20). A claim for refund shall not
26 be allowed if there has been no deposit or partial payment of the
27 contract price unless the claimant shall establish by clear and
28 convincing evidence that, in the usage of trade, such contracts are
29 not customarily accompanied by a deposit or partial payment of the
30 contract price.

31 f. (1) The taxes imposed under subsections (a), (b), (c) and (f)
32 of section 3 upon receipts received on or after July 1, 1990 but prior
33 to July 1, 1992 shall be at the rate, if any, in effect on June 30, 1990
34 in the case of sales made or services rendered, if delivery of the
35 property which was the subject matter of the sale has been
36 completed or such services have been entirely rendered prior to July
37 1, 1990.

38 (2) The taxes imposed under subsections (a), (b), (c) and (f) of
39 section 3 upon receipts received on or after July 1, 1992 but prior to
40 July 15, 2006 shall be at the rate of 7% in the case of sales made or
41 services rendered, where delivery of the property which was the
42 subject matter of the sale has been completed or such services have
43 been entirely rendered on or after July 1, 1990 but prior to July 1,
44 1992.

45 (3) The taxes imposed under subsections (a), (b), (c), (f) and (g)
46 of section 3 upon receipts received on or after July 15, 2006 shall be
47 at the rate of 6% in the case of sales made or services rendered,
48 where delivery of the property which was the subject matter of the

1 sale has been completed or such services have been entirely
2 rendered on or after July 1, 1992 but prior to July 15, 2006.

3 g. The director is empowered to promulgate rules and
4 regulations to implement the provisions of this section.

5 (cf: P.L.2006, c.44, s.4)

6

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

9 6. Unless property or services have already been or will be
10 subject to the sales tax under this act, there is hereby imposed on
11 and there shall be paid by every person a use tax for the use within
12 this State of 7%, except as otherwise exempted under this act, (A)
13 of any tangible personal property or **【digital property】** specified
14 digital product purchased at retail, including energy, provided
15 however, that electricity consumed by the generating facility that
16 produced it shall not be subject to tax, (B) of any tangible personal
17 property or **【digital property】** specified digital product
18 manufactured, processed or assembled by the user, if items of the
19 same kind of tangible personal property or **【digital property】**
20 specified digital products are offered for sale by him in the regular
21 course of business, or if items of the same kind of tangible personal
22 property are not offered for sale by him in the regular course of
23 business and are used as such or incorporated into a structure,
24 building or real property, (C) of any tangible personal property or
25 **【digital property】** specified digital product, however acquired,
26 where not acquired for purposes of resale, upon which any taxable
27 services described in paragraphs (1) and (2) of subsection (b) of
28 section 3 of P.L.1966, c.30 (C.54:32B-3) have been performed, (D)
29 of intrastate, interstate, or international telecommunications
30 services described in subsection (f) of section 3 of P.L.1966, c.30,
31 (E) (Deleted by amendment, P.L.1995, c.184), (F) of utility service
32 provided to persons in this State for use in this State, provided
33 however, that utility service used by the facility that provides the
34 service shall not be subject to tax, (G) of mail processing services
35 described in paragraph (5) of subsection (b) of section 3 of
36 P.L.1966, c.30 (C.54:32B-3), (H) (Deleted by amendment,
37 P.L.2008, c.123), (I) of any services subject to tax pursuant to
38 subsection (11), (12), (13), (14) or (15) of subsection (b) of section
39 3 of P.L.1966, c.30 (C.54:32B-3), and (J) of access to or use of the
40 property or facilities of a health and fitness, athletic, sporting or
41 shopping club or organization in this State. For purposes of clause
42 (A) of this section, the tax shall be at the applicable rate, as set forth
43 hereinabove, of the consideration given or contracted to be given
44 for such property or for the use of such property including delivery
45 charges made by the seller, but excluding any credit for property of
46 the same kind accepted in part payment and intended for resale. For
47 the purposes of clause (B) of this section, the tax shall be at the
48 applicable rate, as set forth hereinabove, of the price at which items

1 of the same kind of tangible personal property or **digital property**
2 specified digital products are offered for sale by the user, or if items
3 of the same kind of tangible personal property are not offered for
4 sale by the user in the regular course of business and are used as
5 such or incorporated into a structure, building or real property the
6 tax shall be at the applicable rate, as set forth hereinabove, of the
7 consideration given or contracted to be given for the tangible
8 personal property manufactured, processed or assembled by the user
9 into the tangible personal property the use of which is subject to use
10 tax pursuant to this section, and the mere storage, keeping, retention
11 or withdrawal from storage of tangible personal property or **digital**
12 **property** specified digital products by the person who
13 manufactured, processed or assembled such property shall not be
14 deemed a taxable use by him. For purposes of clause (C) of this
15 section, the tax shall be at the applicable rate, as set forth
16 hereinabove, of the consideration given or contracted to be given
17 for the service, including the consideration for any tangible personal
18 property or **digital property** specified digital product transferred
19 in conjunction with the performance of the service, including
20 delivery charges made by the seller. For the purposes of clause (D)
21 of this section, the tax shall be at the applicable rate on the charge
22 made by the telecommunications service provider; provided
23 however, that for prepaid calling services and prepaid wireless
24 calling services the tax shall be at the applicable rate on the
25 consideration given or contracted to be given for the prepaid calling
26 service or prepaid wireless calling service or the recharge of the
27 prepaid calling service or prepaid wireless calling service. For
28 purposes of clause (F) of this section, the tax shall be at the
29 applicable rate on the charge made by the utility service provider.
30 For purposes of clause (G) of this section, the tax shall be at the
31 applicable rate on that proportion of the amount of all processing
32 costs charged by a mail processing service provider that is
33 attributable to the service distributed in this State. For purposes of
34 clause (I) of this section, the tax shall be at the applicable rate on
35 the charge made by the service provider. For purposes of clause (J)
36 of this section, the tax shall be at the applicable rate on the charges
37 in the nature of initiation fees, membership fees or dues.

38 (cf: P.L.2008, c.123, s.5)

39
40 5. Section 7 of P.L.1966, c.30 (C.54:32B-7) is amended to read
41 as follows:

42 7. (a) The retail sales tax imposed under subsection (a) of
43 section 3 and the compensating use tax imposed under section 6,
44 when computed in respect to tangible personal property and **digital**
45 **property** specified digital products wherever manufactured,
46 processed or assembled and used by such manufacturer, processor
47 or assembler in the regular course of business within this State,

1 shall be based on the price at which items of the same kind of
2 tangible personal property or specified digital products are offered
3 for sale by him.

4 (b) Tangible personal property or **【digital property】** a specified
5 digital product, which has been purchased by a resident of the State
6 of New Jersey outside of this State for use outside of this State and
7 subsequently becomes subject to the compensating use tax imposed
8 under this act, shall be taxed on the basis of the purchase price of
9 such property or product, provided, however:

10 (1) That where a taxpayer affirmatively shows that the property
11 or the product was used outside such State by him for more than six
12 months prior to its use within this State, such property or product
13 shall be taxed on the basis of current market value of the property
14 or the product at the time of its first use within this State. The value
15 of such property or product, for compensating use tax purposes,
16 may not exceed its cost.

17 (2) That the compensating use tax on such tangible personal
18 property or **【digital property】** specified digital product brought into
19 this State (other than for complete consumption or for incorporation
20 into real property located in this State) and used in the performance
21 of a contract or subcontract within this State by a purchaser or user
22 for a period of less than six months may be based, at the option of
23 the taxpayer, on the fair rental value of such property or product for
24 the period of use within this State.

25 (c) Leased tangible personal property or **【digital property】**
26 specified digital product which has been purchased outside this
27 State for lease outside of this State and subsequently becomes
28 subject to the compensating use tax imposed under this act shall be
29 taxed on the basis of the purchase price of such property or product,
30 provided however, that the compensating use tax on such property
31 or product brought into and used within this State may be based on
32 the total of the lease payments attributable to the lease of that
33 property or product attributable to the period of the lease remaining
34 after first use in this State.

35 (d) Sales tax imposed on the lease or rental of tangible personal
36 property or **【digital property】** a specified digital product in New
37 Jersey shall be based on either the total of the periodic payments
38 required under the agreement or the original purchase price of the
39 property or product. The full amount of sales tax due on the
40 complete term of a lease or rental for more than six months shall be
41 remitted with the monthly or quarterly sales and use tax return due
42 for the period in which the leased personal property or product was
43 delivered to the lessee in this State. However, if the tax is paid on a
44 lease or rental based on the original purchase price of the tangible
45 personal property or **【digital property】** specified digital product, a
46 subsequent lease or rental of the same property or product shall not

1 be subject to the tax imposed under P.L.1966, c.30 (C.54:32B-1 et
2 seq.).

3 If leased property or a product is subsequently removed on a
4 permanent basis from this State, the lessee shall be entitled to a
5 refund of the tax allocable to the portion of the lease or rental that
6 remains in effect after the property or the product has been removed
7 from this State, but only if the other state does not allow a credit for
8 the sales or use tax paid to this State on the lease or rental
9 transaction, and further, in the case of property or a product
10 removed to a state that imposes or computes tax on leases or rentals
11 based on a lump sum or accelerated basis, only if the other state
12 also allows a corresponding refund with respect to the lease of
13 property or product upon which a sales or use tax is due and paid to
14 this State.

15 (e) The purchase of energy shall be subject to the compensating
16 use tax imposed under section 6 on the basis of the purchase price
17 of the energy, including any charges for utility service.
18 (cf: P.L.2006, c.44, s.6)

19
20 6. Section 26 of P.L.1980, c.105 (C.54:32B-8.14) is amended
21 to read as follows:

22 26. Receipts from sales of tangible personal property, except
23 energy, and **【digital property】** specified digital products purchased
24 for use or consumption directly and exclusively in research and
25 development in the experimental or laboratory sense are exempt
26 from the tax imposed under the Sales and Use Tax Act. Such
27 research and development shall not be deemed to include the
28 ordinary testing or inspection of materials or products for quality
29 control, efficiency surveys, management studies, consumer surveys,
30 advertising, promotions or research in connection with literary,
31 historical or similar projects.

32 (cf: P.L.2008, c.123, s.9)

33

34 7. Section 1 of P.L.1993, c.373 (C.54:32B-8.45) is amended to
35 read as follows:

36 1. a. Receipts of retail sales, except retail sales of motor
37 vehicles, of alcoholic beverages, of specified digital products, and
38 cigarettes as defined in the "Cigarette Tax Act," P.L.1948, c.65
39 (C.54:40A-1 et seq.), made by a seller from a place of business
40 regularly operated by the seller for the purpose of making retail
41 sales at which items are regularly exhibited and offered for retail
42 sale and which is not utilized primarily for the purpose of catalogue
43 or mail order sales, in which county is situated an entrance to an
44 interstate bridge or tunnel connecting New Jersey with a state that
45 does not impose a retail sales and use tax or imposes a retail sales
46 and use tax at a rate at least five percentage points lower than the
47 rate in this State, are exempt to the extent of 50% of the tax

1 imposed under the "Sales and Use Tax Act," P.L.1966, c.30
2 (C.54:32B-1 et seq.).

3 b. The exemption provided by subsection a. of this section
4 shall apply unless a seller advises the director, in writing, that it
5 intends to collect the tax at the full rate imposed under the "Sales
6 and Use Tax Act".
7 (cf: P.L.2006, c.44, s.11)

8
9 8. (New section) Receipts from sales of video programming
10 services, including video on demand television services, and
11 broadcasting services, including content to provide such services,
12 are exempt from the tax imposed under the "Sales and Use Tax
13 Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

14
15 9. (New section) a. Receipts from sales of a specified digital
16 product that is accessed but not delivered electronically to the
17 purchaser are exempt from the tax imposed under the "Sales and
18 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

19 b. For purposes of this section, "delivered electronically" means
20 delivered to the purchaser by means other than tangible storage
21 media.

22
23 10. Section 9 of P.L.1966, c.30 (C.54:32B-9) is amended to read
24 as follows:

25 9. (a) Except as to motor vehicles sold by any of the following,
26 any sale, service or amusement charge by or to any of the following
27 or any use or occupancy by any of the following shall not be subject
28 to the sales and use taxes imposed under this act:

29 (1) The State of New Jersey, or any of its agencies,
30 instrumentalities, public authorities, public corporations (including
31 a public corporation created pursuant to agreement or compact with
32 another state) or political subdivisions where it is the purchaser,
33 user or consumer, or where it is a seller of services or property of a
34 kind not ordinarily sold by private persons;

35 (2) The United States of America, and any of its agencies and
36 instrumentalities, insofar as it is immune from taxation where it is
37 the purchaser, user or consumer, or where it sells services or
38 property of a kind not ordinarily sold by private persons;

39 (3) The United Nations or any international organization of
40 which the United States of America is a member where it is the
41 purchaser, user or consumer, or where it sells services or property
42 of a kind not ordinarily sold by private persons.

43 (b) Except as otherwise provided in this section any sale or
44 amusement charge by or to any of the following or any use or
45 occupancy by any of the following, where such sale, charge, use or
46 occupancy is directly related to the purposes for which the
47 following have been organized, shall not be subject to the sales and
48 use taxes imposed under this act: a corporation, association, trust,

1 or community chest, fund or foundation, organized and operated
2 exclusively (1) for religious, charitable, scientific, testing for public
3 safety, literary or educational purposes; or (2) for the prevention of
4 cruelty to children or animals; or (3) as a volunteer fire company,
5 rescue, ambulance, first aid or emergency company or squad; or (4)
6 as a National Guard organization, post or association, or as a post or
7 organization of war veterans, or the Marine Corps League, or as an
8 auxiliary unit or society of any such post, organization or
9 association; or (5) as an association of parents and teachers of an
10 elementary or secondary public or private school exempt under the
11 provisions of this section. Such a sale, charge, use or occupancy
12 by, or a sale or charge to, an organization enumerated in this
13 subsection, shall not be subject to the sales and use taxes only if no
14 part of the net earnings of the organization inures to the benefit of
15 any private shareholder or individual, no substantial part of the
16 activities of the organization is carrying on propaganda, or
17 otherwise attempting to influence legislation, and the organization
18 does not participate in, or intervene in (including the publishing or
19 distributing of statements), any political campaign on behalf of any
20 candidate for public office.

21 (c) Nothing in this section shall exempt from the taxes imposed
22 under the "Sales and Use Tax Act":

23 (1) the sale of a motor vehicle by an organization described in
24 subsection (b) of this section, unless the purchaser is an
25 organization exempt under this section;

26 (2) retail sales of tangible personal property or **digital**
27 **property** specified digital products by any shop or store operated
28 by an organization described in subsection (b) of this section, unless
29 the tangible personal property or **digital property** specified digital
30 product was received by the organization as a gift or contribution
31 and the shop or store is one in which substantially all the work in
32 carrying on the business of the shop or store is performed for the
33 organization without compensation and substantially all of the
34 shop's or store's merchandise has been received by the organization
35 as gifts or contributions or unless the purchaser is an organization
36 exempt under this section; or

37 (3) the sale or use of energy or utility service to or by an
38 organization described in paragraph (1) of subsection (a) or
39 subsection (b) of this section.

40 (d) Any organization enumerated in subsection (b) of this
41 section shall not be entitled to an exemption granted pursuant to this
42 section unless it has complied with such requirements for obtaining
43 a tax immunity authorization as may be provided in this act.

44 (e) Where any organization described in subsection (b) of this
45 subsection carries on its activities in furtherance of the purposes for
46 which it was organized, in premises in which, as part of those
47 activities, it operates a hotel, occupancy of rooms in the premises

1 and rents from those rooms received by the organization shall not
2 be subject to tax under the "Sales and Use Tax Act."

3 (f) (1) Except as provided in paragraph (2) of this subsection,
4 any admissions all of the proceeds of which inure exclusively to the
5 benefit of the following organizations shall not be subject to any of
6 the taxes imposed under subsection (e) of section 3 of P.L.1966,
7 c.30 (C.54:32B-3):

8 (A) an organization described in paragraph (1) of subsection (a)
9 or subsection (b) of this section;

10 (B) a society or organization conducted for the sole purpose of
11 maintaining symphony orchestras or operas and receiving
12 substantial support from voluntary contributions; or

13 (C) (Deleted by amendment, P.L.1999, c.416).

14 (D) a police or fire department of a political subdivision of the
15 State, or a volunteer fire company, ambulance, first aid, or
16 emergency company or squad, or exclusively to a retirement,
17 pension or disability fund for the sole benefit of members of a
18 police or fire department or to a fund for the heirs of such members.

19 (2) The exemption provided under paragraph (1) of this
20 subsection shall not apply in the case of admissions to:

21 (A) Any athletic game or exhibition unless the proceeds shall
22 inure exclusively to the benefit of elementary or secondary schools
23 or unless in the case of an athletic game between two elementary or
24 secondary schools, the entire gross proceeds from such game shall
25 inure to the benefit of one or more organizations described in
26 subsection (b) of this section;

27 (B) Carnivals, rodeos, or circuses in which any professional
28 performer or operator participates for compensation;

29 (3) Admission charges for admission to the following places or
30 events shall not be subject to any of the taxes imposed under
31 subsection (e) of section 3 of P.L.1966, c.30 (C.54:32B-3):

32 (A) Any admission to agricultural fairs if no part of the net
33 earnings thereof inures to the benefit of any stockholders or
34 members of the association conducting the same; provided the
35 proceeds therefrom are used exclusively for the improvement,
36 maintenance and operation of such agricultural fairs.

37 (B) Any admission to a home or garden which is temporarily
38 open to the general public as a part of a program conducted by a
39 society or organization to permit the inspection of historical homes
40 and gardens; provided no part of the net earnings thereof inures to
41 the benefit of any private stockholder or individual.

42 (C) Any admissions to historic sites, houses and shrines, and
43 museums conducted in connection therewith, maintained and
44 operated by a society or organization devoted to the preservation
45 and maintenance of such historic sites, houses, shrines and
46 museums; provided no part of the net earnings thereof inures to the
47 benefit of any private stockholder or individual.

48 (cf: P.L.2006, c.44, s.13)

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

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

12 (b) For the purpose of the proper administration of this act and
13 to prevent evasion of the tax hereby imposed, and subject to the
14 rules regarding the administration of exemptions authorized by the
15 Streamlined Sales and Use Tax Agreement, it shall be presumed
16 that all receipts for property or services of any type mentioned in
17 subsections (a), (b), (c), and (f) of section 3, all rents for occupancy
18 of the type mentioned in subsection (d) of said section, all
19 amusement charges of any type mentioned in subsection (e) of said
20 section, all charges in the nature of initiation fees, membership fees
21 or dues mentioned in subsection (h) of said section, and all receipts
22 from parking, storing or garaging a motor vehicle mentioned in
23 subsection (i) of said section are subject to tax until the contrary is
24 established, and the burden of proving that any such receipt, charge
25 or rent is not taxable hereunder shall be upon the person required to
26 collect tax or the customer. Unless a seller shall have taken from
27 the purchaser a certificate, signed by the purchaser if in paper form,
28 and bearing the purchaser's name and address and the number of the
29 purchaser's registration certificate, to the effect that the property or
30 service was purchased for resale or was otherwise exempt pursuant
31 to the provisions of the "Sales and Use Tax Act," P.L.1966, c.30
32 (C.54:32B-1 et seq.), or the purchaser, prior to taking delivery,
33 furnishes to the seller any affidavit, statement or additional
34 evidence, documentary or otherwise, which the director may require
35 demonstrating that the purchaser is an exempt organization
36 described in section 9(b)(1), the sale shall be deemed a taxable
37 retail sale. Provided however, the director may, in the director's
38 discretion, authorize a purchaser, who acquires tangible personal
39 property, **【digital property】** specified digital products or services
40 under circumstances which make it impossible at the time of
41 acquisition to determine the manner in which the tangible personal
42 property, **【digital property】** specified digital products or services
43 will be used, to pay the tax directly to the director and waive the
44 collection of the tax by the seller or provide for direct pay authority
45 under rules adopted under the Streamlined Sales and Use Tax
46 Agreement. Provided further, the director shall authorize any
47 eligible person, as defined in section 34 of P.L.1997, c.162
48 (C.54:32B-14.1), who purchases natural gas from a non-utility on

1 and after January 1, 1998 through December 31, 2002, to pay the
2 tax on the commodity directly to the director and waive the
3 collection of the tax by the seller. No such authority shall be
4 granted or exercised except upon application to the director, and the
5 issuance by the director of a direct payment permit. If a direct
6 payment permit is granted, its use shall be subject to conditions
7 specified by the director, and the payment of tax on all acquisitions
8 pursuant to the permit shall be made directly to the director by the
9 permit holder.

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

21 (cf: P.L.2008, c.123, s.12)

22

23 12. Section 14 of P.L.1966, c.30 (C.54:32B-14) is amended to
24 read as follows:

25 14. (a) Every person required to collect any tax imposed by this
26 act shall be personally liable for the tax imposed, collected or
27 required to be collected under this act. Any such person shall have
28 the same right in respect to collecting the tax from that person's
29 customer or in respect to non-payment of the tax by the customer as
30 if the tax were a part of the purchase price of the property or
31 service, amusement charge or rent, as the case may be, and payable
32 at the same time; provided, however, that the director shall be
33 joined as a party in any action or proceeding brought to collect the
34 tax.

35 (b) Where any customer has failed to pay a tax imposed by this
36 act to the person required to collect the same, then in addition to all
37 other rights, obligations and remedies provided, such tax shall be
38 payable by the customer directly to the director and it shall be the
39 duty of the customer to file a return with the director and to pay the
40 tax to the director within 20 days of the date the tax was required to
41 be paid.

42 (c) The director may, whenever the director deems it necessary
43 for the proper enforcement of this act, provide by regulation that
44 customers shall file returns and pay directly to the director any tax
45 herein imposed, at such times as returns are required to be filed and
46 payment over made by persons required to collect the tax.

47 (d) No person required to collect any tax imposed by this act
48 shall advertise or hold out to any person or to the public in general,

1 in any manner, directly or indirectly, that the tax is not considered
2 as an element in the price, amusement charge or rent payable by the
3 customer, or except as provided by subsection (f) of this section that
4 the person required to collect the tax will pay the tax, that the tax
5 will not be separately charged and stated to the customer or that the
6 tax will be refunded to the customer. Upon written application duly
7 made and proof duly presented to the satisfaction of the director
8 showing that in the particular business of the person required to
9 collect the tax it would be impractical for the seller to separately
10 charge the tax to the customer, the director may waive the
11 application of the requirement herein as to such seller.

12 (e) All sellers of energy or utility service shall include the tax
13 imposed by the "Sales and Use Tax Act" within the purchase price
14 of the tangible personal property or service.

15 (f) A **["vendor"] seller** other than a **["vendor"] seller** subject to
16 subsection (e) of this section making retail sales of tangible
17 personal property or sales of services may advertise that the
18 **["vendor"] seller** will pay the tax for the customer subject to the
19 conditions of this subsection.

20 (1) The advertising shall indicate that the **["vendor"] seller** is, in
21 fact, paying the tax for the customer and shall not indicate or imply
22 that the sale or charge is exempt from taxation.

23 (2) Notwithstanding the provisions of section 12 of P.L.1966,
24 c.30 (C.54:32B-12) to the contrary, any sales slip, invoice, receipt
25 or other statement or memorandum of the price or service charge
26 paid or payable given to the customer shall state that the tax will be
27 paid by the **["vendor"] seller**; provided however that such record
28 shall be otherwise subject to the provisions of section 12 of
29 P.L.1966, c.30 (C.54:32B-12).

30 (3) The **["vendor"] seller** shall pay the amount of tax due on the
31 retail sale or service receipt, as determined pursuant to section 4 of
32 P.L.1966, c.30 (C.54:32B-4), as trustee for and on account of the
33 State, and shall have the same liability for that amount of tax
34 pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-
35 1 et seq.), as for an amount collected from a customer.

36 (g) No person required to collect any tax imposed by this act
37 shall be held liable for having charged and collected the incorrect
38 amount of sales and use tax by reason of reliance on erroneous data
39 provided by the director with respect to tax rates, boundaries or
40 taxing jurisdiction assignments or contained in the taxability matrix.

41 (h) In connection with a purchaser's request from a seller of
42 over-collected sales or use taxes, a seller shall be presumed to have
43 a reasonable business practice, if in the collection of such sales or
44 use taxes, the seller: (1) uses either a provider or a system,
45 including a proprietary system, that is certified by the State; and (2)
46 has remitted to the State all taxes collected less any deductions,
47 credits, or collection allowances.

(i) No purchaser shall be held liable for any tax, interest or penalty for failure to pay the correct amount of tax by reason of:

(1) the reliance of the purchaser's seller or certified service provider on erroneous data provided by the director with respect to tax rates, boundaries or taxing jurisdiction assignments or contained in the taxability matrix;

(2) the reliance of the purchaser holding a direct pay permit on erroneous data provided by the director with respect to tax rates, boundaries or taxing jurisdiction assignments or contained in the taxability matrix;

(3) the reliance of the purchaser on erroneous data provided by the director with respect to the taxability matrix; or

(4) the reliance of a purchaser using databases of taxing jurisdiction assignments on erroneous data provided by the director with respect to tax rates, boundaries or taxing jurisdiction assignments, provided however that, to the extent that the director provides or certifies an address-based database for assigning tax rates and jurisdictions and upon appropriate notice, no relief from liability shall be allowed for errors resulting from reliance on a zip code database for assigning tax rates and jurisdictions.

Provided however, that as to the relief from liability for tax, the relief from liability for tax by reason of reliance on the taxability matrix shall be limited to the director's erroneous classification in the taxability matrix of terms "taxable" or "exempt," "included in sales price" or "excluded from sales price" or "included in the definition" or "excluded from the definition."

(j) If the director provides less than 30 days between the date a rate change is enacted and the date that change takes effect, the director shall relieve the seller of liability for failing to collect tax at the new rate if: (1) the seller collected tax at the immediately preceding effective rate; and (2) the seller's failure to collect tax at the newly effective rate does not extend more than 30 days after the date of enactment of the new rate.

(k) Notwithstanding the provisions of subsection (j) of this section, if the director establishes that a seller fraudulently failed to collect tax due at the new rate or solicits purchasers based on the immediately preceding effective tax rate, this relief from liability shall not apply.

(cf: P.L.2008, c.123, s.13)

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

15. (a) On or before June 20, 1966, or in the case of persons commencing business or opening new places of business after such date, within three days after such commencement or opening, every person required to collect any tax imposed by this act and every person purchasing tangible personal property or **[digital property]** a specified digital product for resale shall file with the director a

1 certificate of registration in a form prescribed by the director. In
2 the case of a person commencing business or opening a new place
3 of business on or after the first day of the third month following the
4 enactment of P.L.1993, c.274 (C.40:52-1.3 et al.), the certificate
5 shall be filed at least 15 business days before the commencement or
6 opening. The director shall within five days after such registration
7 issue, without charge, to each registrant a certificate of authority
8 empowering the registrant to collect the tax and a duplicate thereof
9 for each additional place of business of such registrant. Each
10 certificate or duplicate shall state the place of business to which it is
11 applicable. Such certificate of authority shall be prominently
12 displayed in the place of business of the registrant. A registrant
13 who has no regular place of doing business shall attach such
14 certificate to his cart, stand, truck or other merchandising device.
15 Such certificates shall be nonassignable and nontransferable and
16 shall be surrendered to the director immediately upon the
17 registrant's ceasing to do business at the place named.

18 (b) Any person who is not otherwise required to collect any tax
19 imposed by this act and who makes sales to persons within the State
20 of tangible personal property, **[digital property]** specified digital
21 products or services, the use of which is subject to tax under this
22 act, may if he so elects file a certificate of registration with the
23 director who may, in his discretion and subject to such conditions as
24 he may impose, issue to him a certificate of authority to collect the
25 compensating use tax imposed by this act.

26 (c) A seller that registers to pay or collect and remit sales or use
27 tax in accordance with the terms of the Streamlined Sales and Use
28 Tax Agreement may select one of the following methods of
29 remittance or other method allowed by State law to remit the taxes
30 collected, subject to the liabilities and conditions established
31 pursuant to section 10 of P.L.2001, c.431 (C.54:32B-53):

32 (1) a model 1 seller, that selects a certified service provider as
33 an agent to perform all the seller's sales or use tax functions, other
34 than the seller's obligation to remit tax on its own purchases;

35 (2) a model 2 seller, that selects a certified automated system to
36 use which calculates the amount of tax due on a transaction; or

37 (3) a model 3 seller, that uses its own proprietary automated
38 sales tax system that has been certified as a certified automated
39 system.

40 (d) A certified service provider in model 1 shall be allowed a
41 monetary allowance in accordance with the terms of the contract
42 that the states participating in the Streamlined Sales and Use Tax
43 Agreement sign with the provider. The director shall prescribe the
44 allowance in accordance with the terms of the contract, which shall
45 be funded entirely from money collected in model 1.

46 A monetary allowance to a certified service provider may be
47 based on one or more of the following incentives:

1 (1) A base rate that applies to taxable transactions processed by
2 the provider.

3 (2) For a period not to exceed 24 months following a voluntary
4 seller's registration through the Streamlined Sales and Use Tax
5 Agreement's central registration process, a percentage of tax
6 revenue generated for a member state by the voluntary seller for
7 each member state for which the seller does not have a requirement
8 to register to collect the tax.

9 (e) A model 2 seller shall be allowed a monetary allowance
10 which the director shall prescribe in accordance with the terms
11 arrived at by the member states of the Streamlined Sales and Use
12 Tax Agreement. The member states initially anticipate that they will
13 provide a monetary allowance to sellers under model 2 based on the
14 following:

15 (1) Each seller shall receive a base rate for a period not to
16 exceed 24 months following the commencement of participation by
17 the seller.

18 (2) For a period not to exceed 24 months following a voluntary
19 seller's registration through the Streamlined Sales and Use Tax
20 Agreement's central registration process, a percentage of tax
21 revenue generated for a member state by the voluntary seller for
22 each member state for which the seller does not have a requirement
23 to register to collect the tax.

24 (f) A model 3 seller and all other sellers that are not under
25 model 1 or model 2 shall be allowed a monetary allowance which
26 the director shall prescribe in accordance with the terms arrived at
27 by the member states of the Streamlined Sales and Use Tax
28 Agreement. The member states initially anticipate that they will
29 provide a monetary allowance to sellers under model 3 and to all
30 other sellers that are not under models 1 or 2 will be based on the
31 following: for a period not to exceed 24 months following a
32 voluntary seller's registration through the Streamlined Sales and
33 Use Tax Agreement's central registration process, a percentage of
34 tax revenue generated for a member state by the voluntary seller for
35 each member state for which the seller does not have a requirement
36 to register to collect the tax.

37 (cf: P.L.2006, c.44, s.15)

38

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

41 17. (a) Every person required to collect or pay tax under this act
42 shall on or before August 28, 1966, and on or before the twentieth
43 day of each month thereafter, make and file a return for the
44 preceding month with the director. The return of a seller of tangible
45 personal property, **[digital property]** specified digital proucts or
46 services shall show his receipts from sales and also the aggregate
47 value of tangible personal property, **[digital property]** specified
48 digital products and services sold by him, the use of which is

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

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

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

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

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

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

44 (2) Under terms of the "amnesty" granted pursuant to paragraph
45 (1) of this subsection, a seller that registers shall not be assessed for
46 uncollected or unpaid sales or use tax and shall not be assessed
47 penalties or interest for sales made during the period the seller was
48 not registered in this State, provided that the seller registers

1 pursuant to paragraph (1) of this subsection within twelve months
2 of the effective date of this State's participation in the Streamlined
3 Sales and Use Tax Agreement.

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

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

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

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

31 (cf: P.L.2008, c.123, s.15)

32
33 15. Section 21 of P.L.1983, c.303 (C.52:27H-80) is amended to
34 read as follows:

35 21. Receipts of retail sales, except retail sales of motor vehicles,
36 of alcoholic beverages as defined in the "Alcoholic Beverage Tax
37 Law," R.S.54:41-1 et seq., of cigarettes as defined in the "Cigarette
38 Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.), of manufacturing
39 machinery, equipment or apparatus, and of energy, made by a
40 certified **[vendor]** seller from a place of business owned or leased
41 and regularly operated by the **[vendor]** seller for the purpose of
42 making retail sales, and located in a designated enterprise zone
43 established pursuant to the "New Jersey Urban Enterprise Zones
44 Act," P.L.1983, c.303 (C.52:27H-60 et al.), or a UEZ-impacted
45 business district established pursuant to section 3 of P.L.2001,
46 c.347 (C.52:27H-66.2), are exempt to the extent of 50% of the tax
47 imposed under the "Sales and Use Tax Act," P.L.1966, c.30
48 (C.54:32B-1 et seq.).

1 Any **[vendor]** seller, which is a qualified business having a place
2 of business located in a designated enterprise zone or in a
3 designated UEZ-impacted business district, may apply to the
4 Director of the Division of Taxation in the Department of the
5 Treasury for certification pursuant to this section. The director
6 shall certify a **[vendor]** seller if **[he]** the director shall find that the
7 **[vendor]** seller owns or leases and regularly operates a place of
8 business located in the designated enterprise zone or in the
9 designated UEZ-impacted business district for the purpose of
10 making retail sales, that items are regularly exhibited and offered
11 for retail sale at that location, and that the place of business is not
12 utilized primarily for the purpose of catalogue or mail order sales.
13 The certification under this section shall remain in effect during the
14 time the business retains its status as a qualified business meeting
15 the eligibility criteria of section 27 of P.L.1983, c.303 (C.52:27H-
16 86). However, the director may at any time revoke a certification
17 granted pursuant to this section if **[he]** the director shall determine
18 that the **[vendor]** seller no longer complies with the provisions of
19 this section.

20 Notwithstanding the provisions of this act to the contrary, except
21 as may otherwise be provided by section 7 of P.L.1983, c.303
22 (C.52:27H-66), the authority may, in its discretion, determine
23 **[whether or not]** if the provisions of this section shall apply to any
24 enterprise zone designated after the effective date of P.L.1985,
25 c.142 (C.52:27H-66 et al.); provided, however, that the authority
26 may make such a determination only where the authority finds that
27 the award of an exemption of 50 percent of the tax imposed under
28 the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.)
29 will not have any adverse economic impact upon any other urban
30 enterprise zone.

31 Notwithstanding any other provisions of law to the contrary,
32 except as provided in subsection b. of section 6 of P.L.1996, c.124
33 (C.13:1E-116.6), after first depositing 10 percent of the gross
34 amount of all revenues received from the taxation of retail sales
35 made by certified **[vendors]** sellers from business locations in
36 designated enterprise zones to which this exemption shall apply into
37 the account created in the name of the authority in the enterprise
38 zone assistance fund pursuant to section 29 of P.L.1983, c.303
39 (C.52:27H-88), the remaining 90 percent shall be deposited
40 immediately upon collection by the Department of the Treasury, as
41 follows:

42 a. In the first five-year period during which the State shall have
43 collected reduced rate revenues within an enterprise zone, all such
44 revenues shall be deposited in the enterprise zone assistance fund
45 created pursuant to section 29 of P.L.1983, c.303 (C.52:27H-88);

46 b. In the second five-year period during which the State shall
47 have collected reduced rate revenues within an enterprise zone, 66

1 2/3% of all those revenues shall be deposited in the enterprise zone
2 assistance fund, and 33 1/3% shall be deposited in the General
3 Fund;

4 c. In the third five-year period during which the State shall
5 have collected reduced rate revenues within an enterprise zone, 33
6 1/3% of all those revenues shall be deposited in the enterprise zone
7 assistance fund, and 66 2/3% shall be deposited in the General
8 Fund;

9 d. In the final five-year period during which the State shall
10 have collected reduced rate revenues within an enterprise zone, but
11 not to exceed the life of the enterprise zone, all those revenues shall
12 be deposited in the General Fund.

13 Commencing on the effective date of P.L.1993, c.144, all
14 revenues in any enterprise zone to which the provisions of this
15 section have been extended prior to the enactment of P.L.1993,
16 c.144 shall be deposited into the enterprise zone assistance fund
17 until there shall have been deposited all revenues into that fund for
18 a total of five full years, as set forth in subsection a. of this section.
19 The State Treasurer then shall proceed to deposit funds into the
20 enterprise zone assistance fund according to the schedule set forth
21 in subsections b. through d. of this section, beginning at the point
22 where the enterprise zone was located on that schedule on the
23 effective date of P.L.1993, c.144. No enterprise zone shall receive
24 the deposit benefit granted by any one subsection of this section for
25 more than five cumulative years.

26 The revenues required to be deposited in the enterprise zone
27 assistance fund under this section shall be used for the purposes of
28 that fund and for the uses prescribed in section 29 of P.L.1983,
29 c.303 (C.52:27H-88), subject to annual appropriations being made
30 for those purposes and uses.

31 (cf: P.L.2001, c.347, s.9)

32

33 16. This act shall take effect immediately; provided however,
34 that sections 1 through 15 shall remain inoperative until the first
35 day of the first month next following the date of enactment.

36

37

38

STATEMENT

39

40 This bill revises the sales and use tax on digital property,
41 provides certain relief from liability due to tax rate changes, and
42 makes various other technical changes and clarifications to the tax
43 to maintain compliance with the Streamlined Sales and Use Tax
44 Agreement (SSUTA).

45 For purposes of compliance, the bill removes the current
46 definition of, and eliminates references to, "digital property" under
47 the sales and use tax and replaces it with "specified digital
48 product," the defined term for electronically transferred digital

1 products under the SSUTA. This change technically modifies but
2 does not substantively affect the taxability of digitally downloaded
3 music, movies, books, and certain other goods currently subject to
4 the sales and use tax.

5 “Digital property” is electronically delivered music, ringtones,
6 movies, books, audio and video works and products where the
7 customer is granted a right or license to use, retain, or make a copy
8 of such item, and has been subject to the sales and use tax since
9 2006. The tax on digital property is separate yet related to the
10 existing tax on tangible personal property and services, and allows
11 certain electronically delivered digital property, and any services to
12 that property, to be treated, for tax purposes, in a similar form and
13 manner as their tangible counterparts.

14 At the time the tax was imposed, New Jersey was one of a
15 handful of states that subjected certain digital downloads to
16 taxation. Since then, a number of other states have expanded the
17 base of their sales and use tax to impose tax on digital products.
18 The governing board of the SSUTA has responded to this change
19 and attempted to maintain uniformity among member states by
20 incorporating a standard, uniform definition of digital products into
21 the agreement. Compliance now requires member states that elect
22 to impose tax on digital goods to adopt the agreement’s definition
23 of “specified digital product” and to adhere to certain other
24 conditions related to specified digital products under the SSUTA.

25 This bill adopts the standard, uniform definition in place of
26 “digital property” and conforms to various other conditions of the
27 agreement to allow the State to continue to tax digital products in
28 compliance with the SSUTA. Under the bill, a “specified digital
29 product” is an electronically transferred digital audio-visual work,
30 digital audio work, or digital book, where (1) a “digital audio-video
31 work” is a series of related images which, when shown in
32 succession, impart an impression of motion, together with
33 accompanying sounds, if any; (2) a “digital audio work” is a work
34 that results from the fixation of a series of musical, spoken, or other
35 sounds, including a ringtone; and (3) a “digital book” is a work that
36 is generally recognized in the ordinary and usual sense as a book.

37 The definition of “specified digital product” is, in general,
38 broader and lacks the same clarity and specificity that characterized
39 “digital property.” To conform the State’s current tax treatment of
40 digital goods within the parameters of the defined term under the
41 agreement, the bill make certain other ancillary changes in addition
42 to the adoption of the new SSUTA definition. Specifically, the bill:
43 (1) revises the definition of “retail sale” to reiterate that sales of
44 specified digital products are only taxable to end users (sales for
45 resale are excluded from tax); (2) specifies that a digital code which
46 provides a purchaser the right to obtain the product will be treated
47 as a specified digital product for purposes of taxation; (3) stipulates
48 that specified digital products are subject to tax regardless of

1 whether the sale of the product is for permanent or less than
2 permanent use and regardless of whether continued payment for the
3 product is required; and (4) carves out a specific statutory
4 exemption for all video programming services, including video on
5 demand television services, and broadcasting services to ensure
6 sales of those services are not taxable as specified digital products.

7 The bill also provides a separate statutory exemption for
8 specified digital products that are accessed but not delivered
9 electronically to the consumer. Currently, New Jersey excludes
10 from tax digital property that is streamed or uploaded, temporarily,
11 to a consumer to access certain digital content. However,
12 “specified digital products” includes electronically transferred
13 digital audio-visual works, digital audio works, and digital books,
14 where “transferred electronically” means obtained by the purchaser
15 by means other than tangible storage media. Presumably,
16 transferred electronically includes instances where specified digital
17 products are streamed or uploaded, and the exemption, therefore,
18 ensures that access alone is not used to determine the taxability of
19 specified digital products.

20 For purposes of compliance, the bill incorporates SSUTA
21 provisions that relieve certain sellers from liability due to changes
22 in the sales and use tax rate. Under the bill, the Director of the
23 Division of Taxation in the Department of Treasury may not hold a
24 seller liable for failure to collect tax that may be due at a new tax
25 rate, if the director provides less than 30 days between the date a
26 change in rate is enacted and the date that change takes effect.

27 The relief from liability is, however, limited. The director is not
28 required to provide relief in instances where the seller collected the
29 tax at a rate other than the immediately preceding sales and use tax
30 rate, and in instances where the seller’s failure to collect tax at the
31 new tax rate extends more than 30 days after the date the new rate is
32 enacted. Moreover, the director is not required to provide relief if a
33 seller fraudulently failed to collect tax at the new tax rate, or if a
34 seller solicits purchasers using the immediately preceding tax rate.

35 For purposes of compliance, the bill makes technical changes
36 and clarifications to the tax by removing remaining references to
37 the previously defined term “vendor,” and eliminating charges for
38 installation as part of the enumerated charges included in the
39 definition of “sales price.” “Vendor” had been New Jersey’s defined
40 term for persons making taxable sales of goods or services at the
41 time the tax was adopted in 1966 and until the State entered the
42 SSUTA in 2005. As part of the statutory changes for compliance,
43 New Jersey largely replaced “vendor” with the SSUTA approved
44 term “seller.” This bill removes remaining statutory references to
45 “vendor” not previously replaced or otherwise adopted after the
46 defined term no longer applied.

47 The elimination of installation charges from the definition of
48 “sales price” clarifies the imposition of tax on charges for

1 installation. Similar to the transition from “vendor” to “seller,” the
2 State’s definition of “sales price” was substantively revised in 2005
3 to comply with the SSUTA. In attempting to conform to the
4 agreement and maintain the existing taxing scheme, the State
5 adopted a definition of “sales price” that included installation
6 charges; charges for installing tangible personal property had been
7 subject to the sales and use tax and the inclusion of charges for
8 installation in the definition of “sales price” was intended to ensure
9 those charges remained taxable after entering the agreement.

10 However, the inclusion of installation charges in the definition
11 of “sales price” is unnecessary. The inclusion of installation
12 charges in the definition of “sales price” is ancillary to what makes
13 charges associated with the installation of a new car stereo or the
14 installation of a prewritten computer software program on a laptop
15 computer taxable. A separate statutory provision specifies that
16 installation charges are an enumerated service subject to the sales
17 and use tax, regardless of how “sales price” is defined. This bill
18 removes the reference to installation charges from “sales price” so
19 that charges for installation of tangible personal property and
20 specified digital products remain subject to tax even if the purchase
21 of the property or product is exempt from taxation.

22 The SSUTA is a multi-state sales and use tax compact that was
23 developed over several years through the joint efforts of 42 states
24 participating in the Streamlined Sales Tax Project. The underlying
25 purpose of the SSUTA is to simplify and modernize the
26 administration of the sales and use tax laws, rules, and regulations
27 of member states, and to facilitate multi-state tax administration and
28 compliance.

29 Since entering the agreement in 2005, New Jersey has taken a
30 series of steps to conform the State’s sales and use tax to, and
31 remain in compliance with, the SSUTA. The State has previously
32 revised the tax to conform to SSUTA provisions concerning
33 uniform tax base definitions, rate simplification, sourcing rules,
34 exemption administration, and administrative procedures. This bill
35 represents the fifth time the State has amended the sales and use tax
36 to comply with the SSUTA.