

SENATE, No. 1799

STATE OF NEW JERSEY
216th LEGISLATURE

INTRODUCED MARCH 17, 2014

Sponsored by:

Senator DIANE B. ALLEN

District 7 (Burlington)

Co-Sponsored by:

Senators Oroho and A.R.Bucco

SYNOPSIS

Eliminates imposition of sales and use tax on charges for initiation fees, membership fees, or dues for access to or use of certain health and fitness clubs and organizations.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/13/2014)

1 **AN ACT** eliminating the imposition of the sales and use tax on
2 charges for initiation fees, membership fees, or dues for access to
3 or use of certain health and fitness clubs and organizations,
4 amending P.L.1966, c.30.

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

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

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

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

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

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

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

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

27 (1) For the purposes of this act a sale is for "resale, sublease, or
28 subrent" if it is a sale (A) for resale either as such or as converted
29 into or as a component part of a product produced for sale by the
30 purchaser, including the conversion of natural gas into another
31 intermediate or end product, other than electricity or thermal
32 energy, produced for sale by the purchaser, (B) for use by that
33 person in performing the services subject to tax under subsection
34 (b) of section 3 where the property so sold becomes a physical
35 component part of the property upon which the services are
36 performed or where the property so sold is later actually transferred
37 to the purchaser of the service in conjunction with the performance
38 of the service subject to tax, (C) of telecommunications service to a
39 telecommunications service provider for use as a component part of
40 telecommunications service provided to an ultimate customer, or
41 (D) to a person who receives by contract a product transferred
42 electronically for further commercial broadcast, rebroadcast,
43 transmission, retransmission, licensing, relicensing, distribution,
44 redistribution or exhibition of the product, in whole or in part, to

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 another person, other than rights to redistribute based on statutory
2 or common law doctrine such as fair use.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the exercise of any right or power over utility service. Use also
2 includes the derivation of a direct or indirect benefit from 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, specified digital products or services, the receipts from
8 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, specified
13 digital products or services, the use of which is taxed by this act;

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

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

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

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

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

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

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

39 (2) In addition, when in the opinion of the director it is
40 necessary for the efficient administration of this act to treat any
41 salesman, representative, peddler or canvasser as the agent of the
42 seller, distributor, supervisor or employer under whom the agent
43 operates or from whom the agent obtains tangible personal property
44 or a specified digital product sold by the agent or for whom the
45 agent solicits business, the director may, in the director's discretion,
46 treat such agent as the seller jointly responsible with the agent's
47 principal, distributor, supervisor or employer for the collection and
48 payment over of the tax. A person is an agent of a seller in all

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

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

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

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

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

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

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

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

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

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

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

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

46 (u) "Casual sale" means an isolated or occasional sale of an item
47 of tangible personal property or a specified digital product by a
48 person who is not regularly engaged in the business of making retail

1 sales of such property or product where the item of tangible
2 personal property or the specified digital product was obtained by
3 the person making the sale, through purchase or otherwise, for the
4 person's own use.

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

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

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

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

1 distributed in this State; (8) (Deleted by amendment, P.L.2005,
2 c.126); and (9) services the benefit of which are received in this
3 State.

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

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

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

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

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

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

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

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

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

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

44 "Telecommunications service" shall include such transmission,
45 conveyance, or routing in which computer processing applications
46 are used to act on the form, code, or protocol of the content for
47 purposes of transmission, conveyance, or routing without regard to
48 whether such service is referred to as voice over Internet protocol

1 services or is classified by the Federal Communications
2 Commission as enhanced or value added. "Telecommunications
3 service" shall not include:

- 4 (1) (Deleted by amendment, P.L.2008, c.123);
- 5 (2) (Deleted by amendment, P.L.2008, c.123);
- 6 (3) (Deleted by amendment, P.L.2008, c.123);
- 7 (4) (Deleted by amendment, P.L.2008, c.123);
- 8 (5) (Deleted by amendment, P.L.2008, c.123);
- 9 (6) (Deleted by amendment, P.L.2008, c.123);
- 10 (7) data processing and information services that allow data to
11 be generated, acquired, stored, processed, or retrieved and delivered
12 by an electronic transmission to a purchaser where such purchaser's
13 primary purpose for the underlying transaction is the processed data
14 or information;
- 15 (8) installation or maintenance of wiring or equipment on a
16 customer's premises;
- 17 (9) tangible personal property;
- 18 (10) advertising, including but not limited to directory
19 advertising;
- 20 (11) billing and collection services provided to third parties;
- 21 (12) internet access service;
- 22 (13) radio and television audio and video programming services,
23 regardless of the medium, including the furnishing of transmission,
24 conveyance, and routing of such services by the programming
25 service provider. Radio and television audio and video
26 programming services shall include but not be limited to cable
27 service as defined in section 47 U.S.C. s.522(6) and audio and video
28 programming services delivered by commercial mobile radio
29 service providers, as defined in section 47 C.F.R. 20.3;
- 30 (14) ancillary services; or
- 31 (15) digital products delivered electronically, including but not
32 limited to software, music, video, reading materials, or ringtones.

33 For the purposes of this subsection:

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

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

43 "detailed telecommunications billing service" means an ancillary
44 service of separately stating information pertaining to individual
45 calls on a customer's billing statement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (D) Delivery charges;

27 (E) (Deleted by amendment, P.L.2011, c.49); and

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

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

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

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

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

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

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

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

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

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

6 (C) The amount of the consideration attributable to the sale is
7 fixed and determinable by the seller at the time of the sale of the
8 item to the purchaser; and

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

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

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

20 (iii) the price reduction or discount is identified as a third party
21 price reduction or discount on the invoice received by the purchaser
22 or on a coupon, certificate, or other documentation presented by the
23 purchaser.

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

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

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

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

1 but is not required to tax the percentage allocated to the exempt
2 property.

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

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

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

19 (vv) (Deleted by amendment, P.L.2011, c.49)

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

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

26 (1) investigation and detective services, including detective
27 agencies and private investigators, and fingerprint, polygraph,
28 missing person tracing and skip tracing services;

29 (2) security guard and patrol services, including bodyguard and
30 personal protection, guard dog, guard, patrol, and security services;

31 (3) armored car services; and

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

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

39 (zz) "Specified digital product" means an electronically
40 transferred digital audio-visual work, digital audio work, or digital
41 book; provided however, that a digital code which provides a
42 purchaser with a right to obtain the product shall be treated in the
43 same manner as a specified digital product.

44 (aaa) "Digital audio-visual work" means a series of related
45 images which, when shown in succession, impart an impression of
46 motion, together with accompanying sounds, if any.

1 (bbb) "Digital audio work" means a work that results from the
2 fixation of a series of musical, spoken, or other sounds, including a
3 ringtone.

4 (ccc) "Digital book" means a work that is generally recognized in
5 the ordinary and usual sense as a book.

6 (ddd) "Transferred electronically" means obtained by the
7 purchaser by means other than tangible storage media.

8 (eee) "Ringtone" means a digitized sound file that is downloaded
9 onto a device and that may be used to alert the purchaser with
10 respect to a communication.

11 (cf: P.L.2011, c.49, s.1)

12

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

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

16 (a) The receipts from every retail sale of tangible personal
17 property or a specified digital product for permanent use or less
18 than permanent use, and regardless of whether continued payment is
19 required, except as otherwise provided in this act.

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

22 (1) Producing, fabricating, processing, printing or imprinting
23 tangible personal property or a specified digital product, performed
24 for a person who directly or indirectly furnishes the tangible
25 personal property or specified digital product, not purchased by him
26 for resale, upon which such services are performed.

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

46 (3) Storing all tangible personal property not held for sale in the
47 regular course of business; the rental of safe deposit boxes or
48 similar space; and the furnishing of space for storage of tangible

1 personal property by a person engaged in the business of furnishing
2 space for such storage.

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

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

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

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

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

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

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

31 (10) Tattooing, including all permanent body art and permanent
32 cosmetic make-up applications, except such services provided
33 pursuant to a doctor's prescription in conjunction with
34 reconstructive breast surgery.

35 (11) Investigation and security services.

36 (12) Information services.

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

40 (14) Telephone answering services.

41 (15) Radio subscription services.

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

46 Services otherwise taxable under paragraph (1) or (2) of this
47 subsection (b) are not subject to the taxes imposed under this
48 subsection, where the tangible personal property or specified digital

1 product upon which the services were performed is delivered to the
2 purchaser outside this State for use outside this State.

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

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

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

25 (3) For the purposes of this subsection:

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

29 "Prepared food" means:

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

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

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

42 provided however, that

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

45 A. food sold by a seller whose proper primary NAICS
46 classification is manufacturing in section 311, except subsector
47 3118 (bakeries);

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

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

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

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

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

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

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

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

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

1 (i) The receipts from parking, storing or garaging a motor
2 vehicle, excluding charges for the following: residential parking;
3 employee parking, when provided by an employer or at a facility
4 owned or operated by the employer; municipal parking, storing or
5 garaging; receipts from charges or fees imposed pursuant to section
6 3 of P.L.1993, c.159 (C.5:12-173.3) or pursuant to an agreement
7 between the Casino Reinvestment Development Authority and a
8 casino operator in effect on the date of enactment of P.L.2007,
9 c.105; and receipts from parking, storing or garaging a motor
10 vehicle subject to tax pursuant to any other law or ordinance.

11 For the purposes of this subsection, "municipal parking, storing
12 or garaging" means any motor vehicle parking, storing or garaging
13 provided by a municipality or county, or a parking authority
14 thereof.

15 (cf: P.L.2013, c.193, s.1)

16

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

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

1 of [a health and fitness,] an athletic, sporting or shopping club or
2 organization in this State. For purposes of clause (A) of this
3 section, the tax shall be at the applicable rate, as set forth
4 hereinabove, of the consideration given or contracted to be given
5 for such property or for the use of such property including delivery
6 charges made by the seller, but excluding any credit for property of
7 the same kind accepted in part payment and intended for resale. For
8 the purposes of clause (B) of this section, the tax shall be at the
9 applicable rate, as set forth hereinabove, of the price at which items
10 of the same kind of tangible personal property or specified digital
11 products are offered for sale by the user, or if items of the same
12 kind of tangible personal property are not offered for sale by the
13 user in the regular course of business and are used as such or
14 incorporated into a structure, building or real property the tax shall
15 be at the applicable rate, as set forth hereinabove, of the
16 consideration given or contracted to be given for the tangible
17 personal property manufactured, processed or assembled by the user
18 into the tangible personal property the use of which is subject to use
19 tax pursuant to this section, and the mere storage, keeping, retention
20 or withdrawal from storage of tangible personal property or
21 specified digital products by the person who manufactured,
22 processed or assembled such property shall not be deemed a taxable
23 use by him. For purposes of clause (C) of this section, the tax shall
24 be at the applicable rate, as set forth hereinabove, of the
25 consideration given or contracted to be given for the service,
26 including the consideration for any tangible personal property or
27 specified digital product transferred in conjunction with the
28 performance of the service, including delivery charges made by the
29 seller. For the purposes of clause (D) of this section, the tax shall
30 be at the applicable rate on the charge made by the
31 telecommunications service provider; provided however, that for
32 prepaid calling services and prepaid wireless calling services the tax
33 shall be at the applicable rate on the consideration given or
34 contracted to be given for the prepaid calling service or prepaid
35 wireless calling service or the recharge of the prepaid calling
36 service or prepaid wireless calling service. For purposes of clause
37 (F) of this section, the tax shall be at the applicable rate on the
38 charge made by the utility service provider. For purposes of clause
39 (G) of this section, the tax shall be at the applicable rate on that
40 proportion of the amount of all processing costs charged by a mail
41 processing service provider that is attributable to the service
42 distributed in this State. For purposes of clause (I) of this section,
43 the tax shall be at the applicable rate on the charge made by the
44 service provider. For purposes of clause (J) of this section, the tax
45 shall be at the applicable rate on the charges in the nature of
46 initiation fees, membership fees or dues.
47 (cf: P.L.2011, c.49, s.4)

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

3 17. (a) Every person required to collect or pay tax under this act
4 shall on or before August 28, 1966, and on or before the twentieth
5 day of each month thereafter, make and file a return for the
6 preceding month with the director. The return of a seller of tangible
7 personal property, specified digital products or services shall show
8 his receipts from sales and also the aggregate value of tangible
9 personal property, specified digital products and services sold by
10 him, the use of which is subject to tax under this act, and the
11 amount of taxes required to be collected with respect to such sales
12 and use. The return of a recipient of amusement charges shall show
13 all such charges and the amount of tax thereon, and the return of a
14 person required to collect tax on leases or rentals shall show all
15 lease or rental payments received or charged and the amount of tax
16 thereon. The return of a recipient of initiation fees, membership fees
17 or dues for access to or use of the property or facilities of [a health
18 and fitness,] an athletic, sporting or shopping club or organization
19 shall show all such charges and the amount of tax thereon. The
20 return of the recipient of charges from parking, storing or garaging
21 a motor vehicle shall show all such charges and the amount of tax
22 thereon.

23 (b) The director may permit or require returns to be made
24 covering other periods and upon such dates as he may specify. In
25 addition, the director may require payments of tax liability at such
26 intervals and based upon such classifications as he may designate.
27 In prescribing such other periods to be covered by the return or
28 intervals or classifications for payment of tax liability, the director
29 may take into account the dollar volume of tax involved as well as
30 the need for insuring the prompt and orderly collection of the taxes
31 imposed.

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

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

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

43 (1) In addition to the powers of the director prescribed pursuant
44 to section 24 of P.L.1966, c.30 (C.54:32B-24) and the "State
45 Uniform Tax Procedure Law," R.S.54:48-1 et seq., and
46 notwithstanding the provisions of any other law to the contrary, the
47 director shall grant "amnesty" for uncollected or unpaid sales or use
48 tax to a seller that registers to collect and remit applicable sales or

1 use tax on sales made to purchasers in this State in accordance with
2 the terms of the Streamlined Sales and Use Tax Agreement,
3 provided that the seller was not so registered in this State in the
4 twelve-month period preceding the commencement of this State's
5 participation in the agreement.

6 (2) Under terms of the "amnesty" granted pursuant to paragraph
7 (1) of this subsection, a seller that registers shall not be assessed for
8 uncollected or unpaid sales or use tax and shall not be assessed
9 penalties or interest for sales made during the period the seller was
10 not registered in this State, provided that the seller registers
11 pursuant to paragraph (1) of this subsection within twelve months
12 of the effective date of this State's participation in the Streamlined
13 Sales and Use Tax Agreement.

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

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

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

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

41 (cf: P.L.2011, c.49, s.14)

42
43 5. This act shall take effect immediately and apply to
44 membership periods beginning on or after the first day of the fourth
45 month next following the date of enactment.

STATEMENT

1
2
3 This bill eliminates the imposition of the sales and use tax on
4 charges in the nature of initiation fees, membership fees, or dues for
5 access to or the use of health and fitness clubs and organizations
6 within this State.

7 Charges in the nature of initiation and membership fees and dues
8 were first subject to the sales and use tax under P.L.2006, c.44.
9 That law broadened the base of the State's sales and use tax to
10 impose the tax on a wide-range of services that previously had not
11 been subject to taxation.

12 Since the law was implemented, the tax on charges in the nature
13 of initiation and membership fees and dues has made access to New
14 Jersey's health and fitness clubs and organizations more expensive.
15 The additional cost has created a disincentive for joining clubs and
16 organizations that allow residents to take part in an active and
17 healthy lifestyle that helps improve physical fitness, reduce stress
18 and anxiety, and promote overall well being.

19 Additionally, tax law changes that were made since P.L.2006,
20 c.44 was implemented have placed the State's for-profit health and
21 fitness clubs and organizations at a competitive disadvantage with
22 their nonprofit counterparts. P.L.2007, c.105 established a specific
23 statutory exclusion from tax for charges in the nature of
24 membership fees or dues for access to or the use of the property or
25 facilities of certain governmental and charitable, nonprofit clubs
26 and organizations, while leaving the tax imposed on similar charges
27 for for-profit clubs and organizations intact.

28 This bill eliminates the sales and use tax on charges in the nature
29 of initiation fees, membership fees, or dues for access to or the use
30 of health and fitness clubs and organizations so that all initiation
31 and membership fees and dues charged for access to or the use of
32 the property or facilities of a health or fitness club or organization
33 within this State are excluded from taxation, regardless of the club
34 or organization's profit status. In doing so, the bill removes the
35 current disincentive for joining health and fitness clubs and
36 organizations, and levels the playing field between for-profit and
37 non-profit clubs and organizations.

38 The bill takes effect immediately and applies to membership
39 periods beginning on or after the first day of the fourth month next
40 following the date of enactment.