

# SENATE, No. 2206

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# STATE OF NEW JERSEY

## 217th LEGISLATURE

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INTRODUCED MAY 16, 2016

**Sponsored by:**

**Senator JEFF VAN DREW**

**District 1 (Atlantic, Cape May and Cumberland)**

**SYNOPSIS**

Allows eligible landscape operators to make certain purchases of certain materials and supplies without payment of sales and use tax.

**CURRENT VERSION OF TEXT**

As introduced.



S2206 VAN DREW

2

1 AN ACT allowing eligible landscape operators to make certain  
2 purchases of certain materials and supplies without payment of  
3 the sales and use tax, amending and supplementing P.L.1966,  
4 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, the  
12 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, other than a contractor, subcontractor, or repairman  
6 that is an eligible landscape operator, of materials and supplies for  
7 use by them in erecting structures for others, or building on, or  
8 otherwise improving, altering, or repairing real property of others.

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

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

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

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

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

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

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

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

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

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

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

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

1 telecommunications and prepaid calling services. Use also includes  
2 the exercise of any right or power over utility service. Use also  
3 includes the derivation of a direct or indirect benefit from a service.

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

6 (1) The term "seller" includes:

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

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

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

21 A person making sales of tangible personal property, specified  
22 digital products, or services taxable under the "Sales and Use Tax  
23 Act," P.L.1966, c.30 (C.54:32B-1 et seq.) shall be presumed to be  
24 soliciting business through an independent contractor or other  
25 representative if the person making sales enters into an agreement  
26 with an independent contractor having physical presence in this  
27 State or other representative having physical presence in this State,  
28 for a commission or other consideration, under which the  
29 independent contractor or representative directly or indirectly refers  
30 potential customers, whether by a link on an internet website or  
31 otherwise, and the cumulative gross receipts from sales to  
32 customers in this State who were referred by all independent  
33 contractors or representatives that have this type of an agreement  
34 with the person making sales are in excess of \$10,000 during the  
35 preceding four quarterly periods ending on the last day of March,  
36 June, September, and December. This presumption may be rebutted  
37 by proof that the independent contractor or representative with  
38 whom the person making sales has an agreement did not engage in  
39 any solicitation in the State on behalf of the person that would  
40 satisfy the nexus requirements of the United States Constitution  
41 during the four quarterly periods in question. Nothing in this  
42 subparagraph shall be construed to narrow the scope of the terms  
43 independent contractor or other representative for purposes of any  
44 other provision of the "Sales and Use Tax Act," P.L.1966,  
45 c.30 (C.54:32B-1 et seq.);

46 (D) Any other person making sales to persons within the State of  
47 tangible personal property, specified digital products or services,

1 the use of which is taxed by this act, who may be authorized by the  
2 director to collect the tax imposed by this act;

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

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

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

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

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

18 (2) In addition, when in the opinion of the director it is  
19 necessary for the efficient administration of this act to treat any  
20 salesman, representative, peddler or canvasser as the agent of the  
21 seller, distributor, supervisor or employer under whom the agent  
22 operates or from whom the agent obtains tangible personal property  
23 or a specified digital product sold by the agent or for whom the  
24 agent solicits business, the director may, in the director's discretion,  
25 treat such agent as the seller jointly responsible with the agent's  
26 principal, distributor, supervisor or employer for the collection and  
27 payment over of the tax. A person is an agent of a seller in all  
28 cases, but not limited to such cases, that: (A) the person and the  
29 seller have the relationship of a "related person" described pursuant  
30 to section 2 of P.L.1993, c.170 (C.54:10A-5.5); and (B) the seller  
31 and the person use an identical or substantially similar name,  
32 tradename, trademark, or goodwill, to develop, promote, or  
33 maintain sales, or the person and the seller pay for each other's  
34 services in whole or in part contingent upon the volume or value of  
35 sales, or the person and the seller share a common business plan or  
36 substantially coordinate their business plans, or the person provides  
37 services to, or that inure to the benefit of, the seller related to  
38 developing, promoting, or maintaining the seller's market.

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

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

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

- 1 (m) "Permanent resident" means any occupant of any room or  
2 rooms in a hotel for at least 90 consecutive days shall be considered  
3 a permanent resident with regard to the period of such occupancy.
- 4 (n) "Room" means any room or rooms of any kind in any part or  
5 portion of a hotel, which is available for or let out for any purpose  
6 other than a place of assembly.
- 7 (o) "Admission charge" means the amount paid for admission,  
8 including any service charge and any charge for entertainment or  
9 amusement or for the use of facilities therefor.
- 10 (p) "Amusement charge" means any admission charge, dues or  
11 charge of a roof garden, cabaret or other similar place.
- 12 (q) "Charge of a roof garden, cabaret or other similar place"  
13 means any charge made for admission, refreshment, service, or  
14 merchandise at a roof garden, cabaret or other similar place.
- 15 (r) "Dramatic or musical arts admission charge" means any  
16 admission charge paid for admission to a theater, opera house,  
17 concert hall or other hall or place of assembly for a live, dramatic,  
18 choreographic or musical performance.
- 19 (s) "Lessor" means any person who is the owner, licensee, or  
20 lessee of any premises, tangible personal property or a specified  
21 digital product which the person leases, subleases, or grants a  
22 license to use to other persons.
- 23 (t) "Place of amusement" means any place where any facilities  
24 for entertainment, amusement, or sports are provided.
- 25 (u) "Casual sale" means an isolated or occasional sale of an item  
26 of tangible personal property or a specified digital product by a  
27 person who is not regularly engaged in the business of making retail  
28 sales of such property or product where the item of tangible  
29 personal property or the specified digital product was obtained by  
30 the person making the sale, through purchase or otherwise, for the  
31 person's own use.
- 32 (v) "Motor vehicle" includes all vehicles propelled otherwise  
33 than by muscular power (excepting such vehicles as run only upon  
34 rails or tracks), trailers, semitrailers, house trailers, or any other  
35 type of vehicle drawn by a motor-driven vehicle, and motorcycles,  
36 designed for operation on the public highways.
- 37 (w) "Persons required to collect tax" or "persons required to  
38 collect any tax imposed by this act" includes: every seller of  
39 tangible personal property, specified digital products or services;  
40 every recipient of amusement charges; every operator of a hotel;  
41 every seller of a telecommunications service; every recipient of  
42 initiation fees, membership fees or dues for access to or use of the  
43 property or facilities of a health and fitness, athletic, sporting or  
44 shopping club or organization; and every recipient of charges for  
45 parking, storing or garaging a motor vehicle. Said terms shall also  
46 include any officer or employee of a corporation or of a dissolved  
47 corporation who as such officer or employee is under a duty to act

1 for such corporation in complying with any requirement of this act  
2 and any member of a partnership.

3 (x) "Customer" includes: every purchaser of tangible personal  
4 property, specified digital products or services; every patron paying  
5 or liable for the payment of any amusement charge; every occupant  
6 of a room or rooms in a hotel; every person paying charges in the  
7 nature 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; and every purchaser of  
10 parking, storage or garaging a motor vehicle.

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

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

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

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

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

46 (B) A transfer of possession or control of property under an  
47 agreement that requires the transfer of title upon completion of

1 required payments and payment of an option price does not exceed  
2 the greater of \$100 or one percent of the total required payments; or

3 (C) Providing tangible personal property or a specified digital  
4 product along with an operator for a fixed or indeterminate period  
5 of time. A condition of this exclusion is that the operator is  
6 necessary for the equipment to perform as designed. For the  
7 purpose of this subparagraph, an operator must do more than  
8 maintain, inspect, or set-up the tangible personal property or  
9 specified digital product.

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

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

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

21 (cc) "Telecommunications service" means the electronic  
22 transmission, conveyance, or routing of voice, data, audio, video, or  
23 any other information or signals to a point, or between or among  
24 points.

25 "Telecommunications service" shall include such transmission,  
26 conveyance, or routing in which computer processing applications  
27 are used to act on the form, code, or protocol of the content for  
28 purposes of transmission, conveyance, or routing without regard to  
29 whether such service is referred to as voice over Internet protocol  
30 services or is classified by the Federal Communications  
31 Commission as enhanced or value added.

32 "Telecommunications service" shall not include:

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

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

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

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

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

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

39 (7) data processing and information services that allow data to  
40 be generated, acquired, stored, processed, or retrieved and delivered  
41 by an electronic transmission to a purchaser where such purchaser's  
42 primary purpose for the underlying transaction is the processed data  
43 or information;

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

46 (9) tangible personal property;

47 (10) advertising, including but not limited to directory  
48 advertising;



- 1 (11) billing and collection services provided to third parties;
- 2 (12) internet access service;
- 3 (13) radio and television audio and video programming services,  
4 regardless of the medium, including the furnishing of transmission,  
5 conveyance, and routing of such services by the programming  
6 service provider. Radio and television audio and video  
7 programming services shall include but not be limited to cable  
8 service as defined in section 47 U.S.C. s.522(6) and audio and video  
9 programming services delivered by commercial mobile radio  
10 service providers, as defined in section 47 C.F.R. 20.3;
- 11 (14) ancillary services; or
- 12 (15) digital products delivered electronically, including but not  
13 limited to software, music, video, reading materials, or ringtones.
- 14 For the purposes of this subsection:
- 15 "ancillary service" means a service that is associated with or  
16 incidental to the provision of telecommunications services,  
17 including but not limited to detailed telecommunications billing,  
18 directory assistance, vertical service, and voice mail service;
- 19 "conference bridging service" means an ancillary service that  
20 links two or more participants of an audio or video conference call  
21 and may include the provision of a telephone number. Conference  
22 bridging service does not include the telecommunications services  
23 used to reach the conference bridge;
- 24 "detailed telecommunications billing service" means an ancillary  
25 service of separately stating information pertaining to individual  
26 calls on a customer's billing statement;
- 27 "directory assistance" means an ancillary service of providing  
28 telephone number information or address information or both;
- 29 "vertical service" means an ancillary service that is offered in  
30 connection with one or more telecommunications services, which  
31 offers advanced calling features that allow customers to identify  
32 callers and to manage multiple calls and call connections, including  
33 conference bridging services; and
- 34 "voice mail service" means an ancillary service that enables the  
35 customer to store, send, or receive recorded messages. Voice mail  
36 service does not include any vertical service that a customer may be  
37 required to have to utilize the voice mail service.
- 38 (dd) (1) "Intrastate telecommunications" means a  
39 telecommunications service that originates in one United States  
40 state or a United States territory or possession or federal district,  
41 and terminates in the same United States state or United States  
42 territory or possession or federal district.
- 43 (2) "Interstate telecommunications" means a  
44 telecommunications service that originates in one United States  
45 state or a United States territory or possession or federal district,  
46 and terminates in a different United States state or United States  
47 territory or possession or federal district.

1 (3) "International telecommunications" means a  
2 telecommunications service that originates or terminates in the  
3 United States and terminates or originates outside the United States,  
4 respectively. "United States" includes the District of Columbia or a  
5 United States territory or possession.

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (B) The cost of materials used, labor or service cost, interest,  
2 losses, all costs of transportation to the seller, all taxes imposed on  
3 the seller, and any other expense of the seller;
- 4 (C) Charges by the seller for any services necessary to complete  
5 the sale;
- 6 (D) Delivery charges;
- 7 (E) (Deleted by amendment, P.L.2011, c.49); and
- 8 (F) (Deleted by amendment, P.L.2008, c.123).
- 9 (2) "Sales price" does not include:
- 10 (A) Discounts, including cash, term, or coupons that are not  
11 reimbursed by a third party, that are allowed by a seller and taken  
12 by a purchaser on a sale;
- 13 (B) Interest, financing, and carrying charges from credit  
14 extended on the sale of personal property or services, if the amount  
15 is separately stated on the invoice, bill of sale, or similar document  
16 given to the purchaser;
- 17 (C) Any taxes legally imposed directly on the consumer that are  
18 separately stated on the invoice, bill of sale, or similar document  
19 given to the purchaser;
- 20 (D) The amount of sales price for which food stamps have been  
21 properly tendered in full or part payment pursuant to the federal  
22 Food Stamp Act of 1977, Pub.L.95-113 (7 U.S.C. s.2011 et seq.); or
- 23 (E) Credit for any trade-in of property of the same kind accepted  
24 in part payment and intended for resale if the amount is separately  
25 stated on the invoice, bill of sale, or similar document given to the  
26 purchaser.
- 27 (3) "Sales price" includes consideration received by the seller  
28 from third parties if:
- 29 (A) The seller actually receives consideration from a party other  
30 than the purchaser and the consideration is directly related to a price  
31 reduction or discount on the sale;
- 32 (B) The seller has an obligation to pass the price reduction or  
33 discount through to the purchaser;
- 34 (C) The amount of the consideration attributable to the sale is  
35 fixed and determinable by the seller at the time of the sale of the  
36 item to the purchaser; and
- 37 (D) One of the following criteria is met:
- 38 (i) the purchaser presents a coupon, certificate, or other  
39 documentation to the seller to claim a price reduction or discount  
40 where the coupon, certificate, or documentation is authorized,  
41 distributed, or granted by a third party with the understanding that  
42 the third party will reimburse any seller to whom the coupon,  
43 certificate, or documentation is presented;
- 44 (ii) the purchaser identifies himself to the seller as a member of  
45 a group or organization entitled to a price reduction or discount;  
46 provided however, that a preferred customer card that is available to  
47 any patron does not constitute membership in such a group; or

1 (iii) the price reduction or discount is identified as a third party  
2 price reduction or discount on the invoice received by the purchaser  
3 or on a coupon, certificate, or other documentation presented by the  
4 purchaser.

5 (4) In the case of a bundled transaction that includes a  
6 telecommunications service, an ancillary service, internet access, or  
7 an audio or video programming service, if the price is attributable to  
8 products that are taxable and products that are nontaxable, the  
9 portion of the price attributable to the nontaxable products is  
10 subject to tax unless the provider can identify by reasonable and  
11 verifiable standards such portion from its books and records that are  
12 kept in the regular course of business for other purposes, including  
13 non-tax purposes.

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

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

19 (rr) "Delivery charges" means charges by the seller for  
20 preparation and delivery to a location designated by the purchaser  
21 of personal property or services including, but not limited to,  
22 transportation, shipping, postage, handling, crating, and packing. If  
23 a shipment includes both exempt and taxable property, the seller  
24 should allocate the delivery charge by using: (1) a percentage based  
25 on the total sales price of the taxable property compared to the total  
26 sales price of all property in the shipment; or (2) a percentage based  
27 on the total weight of the taxable property compared to the total  
28 weight of all property in the shipment. The seller shall tax the  
29 percentage of the delivery charge allocated to the taxable property  
30 but is not required to tax the percentage allocated to the exempt  
31 property.

32 (ss) "Direct mail" means printed material delivered or  
33 distributed by United States mail or other delivery service to a mass  
34 audience or to addresses on a mailing list provided by the purchaser  
35 or at the direction of the purchaser in cases in which the cost of the  
36 items are not billed directly to the recipients. "Direct mail"  
37 includes tangible personal property supplied directly or indirectly  
38 by the purchaser to the direct mail seller for inclusion in the  
39 package containing the printed material. "Direct mail" does not  
40 include multiple items of printed material delivered to a single  
41 address.

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

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

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

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

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

8 (1) investigation and detective services, including detective  
9 agencies and private investigators, and fingerprint, polygraph,  
10 missing person tracing and skip tracing services;

11 (2) security guard and patrol services, including bodyguard and  
12 personal protection, guard dog, guard, patrol, and security services;

13 (3) armored car services; and

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

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

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

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

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

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

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

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

39 (fff) "Eligible landscape operator" means a contractor,  
40 subcontractor, or repairman that:

41 (1) holds a valid certificate of authority issued by the director  
42 pursuant to section 15 of P.L.1966, c.30 (C.54:32B-15);

43 (2) is principally engaged in the provision of landscaping for  
44 consideration from others; and

45 (3) is not delinquent or deficient with respect to the payment of  
46 a State tax and is not otherwise indebted to any agency or institution  
47 of State government.

48 (cf: P.L.2014, c.13, s.4)

1       2. (New section) Notwithstanding any provisions of the  
2 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et  
3 seq.), to the contrary, the Director of the Division of Taxation in the  
4 Department of the Treasury may adopt immediately upon filing  
5 with the Office of Administrative Law such rules and regulations as  
6 the director determines to be necessary to effectuate the purposes of  
7 P.L. , c. (C. ) (pending before the Legislature as this bill),  
8 which rules and regulations shall be effective for a period not to  
9 exceed 360 calendar days following the effective date of P.L. ,  
10 c. (C. ) (pending before the Legislature as this bill) and may  
11 thereafter be amended, adopted, or readopted by the director  
12 pursuant to the requirements of P.L.1968, c.410 (C.52:14B-1 et  
13 seq.).

14

15       3. This act shall take effect immediately; provided however, that  
16 section 1 shall remain inoperative until the first day of the seventh  
17 month next following the date of enactment.

18

19

20

#### STATEMENT

21

22       This bill allows eligible landscape operators to make certain  
23 purchases of certain materials and supplies used in erecting  
24 structures, or building on, or otherwise improving, altering, or  
25 repairing real property of others without payment of the sales and  
26 use tax that is ordinarily due and required to be paid. The purpose  
27 of this bill is to simplify tax collection and payment procedures for  
28 individuals and businesses engaged in landscaping, and to reduce  
29 the potential for double taxation when materials and supplies are  
30 used in the performance of taxable services.

31       Under current law, landscapers and other similar service  
32 providers are treated as contractors for purposes of the sales and use  
33 tax. As contractors, they are considered the actual consumer and  
34 generally must pay sales and use tax on purchases of the materials  
35 and supplies that are used in construction or in improving, altering,  
36 or repairing the real property of others at the time the purchase is  
37 made.

38       Current law, however, also requires landscapers to collect tax  
39 under certain circumstances. The law provides that when invoicing  
40 home owners and other non-residential customers for taxable  
41 landscaping services, landscapers must charge and collect tax on the  
42 materials and supplies used in conjunction with the taxable services  
43 if the invoice does not separately state the cost of the materials and  
44 the taxable labor.

45       This bill amends current law to provide landscapers with an  
46 avenue to avoid this potential for double taxation by removing  
47 eligible landscape operators from the group of contractors,  
48 subcontractors, and repairman that are treated as the consumer and

1 must pay tax on purchases of materials and supplies from  
2 wholesalers and other suppliers at the point of purchase. Under the  
3 bill, eligible landscape operators must collect tax on the materials  
4 and supplies used in construction or in improving, altering, or  
5 repairing the real property of others from customers when services  
6 are performed, but are relieved from the responsibility to pay tax on  
7 those materials and supplies at the time the purchase is initially  
8 made.

9 The bill establishes certain criteria that must be met for  
10 contractors, subcontractors, and repairmen to benefit from the  
11 special treatment. The bill provides that to be an eligible landscape  
12 operator a contractor, subcontractor, or repairman must:

13 -- hold a valid certificate of authority to collect the sales and use  
14 tax;

15 -- be principally engaged in the provision of landscaping for  
16 consideration from others; and

17 -- not be delinquent or deficient with respect to the payment of a  
18 State tax and not be indebted to any agency or institution of State  
19 government.

20 The bill authorizes the director to adopt rules and regulations  
21 necessary to effectuate the purposes of the bill, and allows for the  
22 immediate filing of those rules and regulations with the Office of  
23 Administrative Law, effective for a period not to exceed 360 days  
24 following the bill's effective date.

25 The bill takes effect immediately but provides for a delay in the  
26 change in law that allows eligible landscape operators to purchase  
27 materials and supplies without the payment of tax until the first day  
28 of the seventh month next following the date of enactment.