

# ASSEMBLY, No. 4496

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED SEPTEMBER 24, 2018

**Sponsored by:**

**Assemblyman JOHN J. BURZICHELLI**  
**District 3 (Cumberland, Gloucester and Salem)**  
**Assemblyman PAUL D. MORIARTY**  
**District 4 (Camden and Gloucester)**  
**Senator TROY SINGLETON**  
**District 7 (Burlington)**

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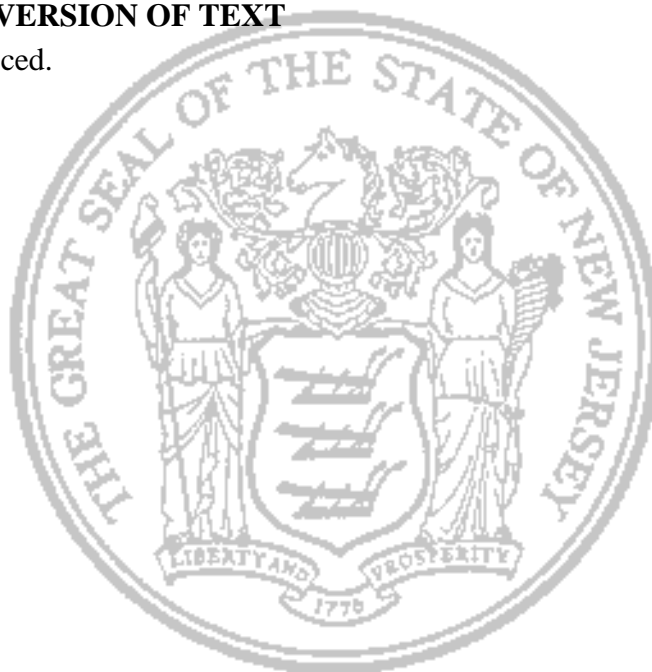
**Assemblywoman Pinkin**

**SYNOPSIS**

Provides for collection of sales tax by marketplace facilitators and certain remote sellers, and clarifies collection of taxes related to hotel and transient accommodation occupancies.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 9/28/2018)**

A4496 BURZICHELLI, MORIARTY

2

1 AN ACT concerning the collection requirements of various State  
2 taxes, supplementing P.L.1966, c.30 and amending various parts  
3 of the statutory law.

4

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

7

8 1. (New section) a. Notwithstanding the provisions of the  
9 "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) or any  
10 other law, rule, or regulation to the contrary, a seller who makes a  
11 retail sale of tangible personal property, specified digital products,  
12 or taxable services for delivery into the State and who does not have  
13 a physical presence in the State shall be subject to the tax imposed  
14 under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et  
15 seq.), and shall collect the tax in accordance with the provisions of  
16 P.L.1966, c.30 (C.54:32B-1 et seq.) if the seller meets either of the  
17 following criteria:

18 (1) The seller's gross revenue from delivery of tangible personal  
19 property, specified digital products, or taxable services into the  
20 State in the calendar year or the prior calendar year exceeds  
21 \$100,000; or

22 (2) The seller sold tangible personal property, specified digital  
23 products, or taxable services for delivery into the State in 200 or  
24 more separate transactions during the calendar year or the prior  
25 calendar year.

26 b. A taxpayer complying with the provisions of P.L.1966, c.30  
27 (C.54:32B-1 et seq.) and this section, voluntarily or otherwise, may  
28 seek a refund or credit of a tax, penalty, or interest by following the  
29 procedures set forth in section 20 of P.L.1966, c.30 (C.54:32B-20).  
30 However, the director shall not grant an application for a refund or  
31 credit submitted to the director pursuant to section 20 of P.L.1966,  
32 c.30 (C.54:32B-20) on the basis that a taxpayer lacked a physical  
33 presence in the State and complied with the provisions of P.L.1966,  
34 c.30 (C.54:32B-1 et seq.) and this section voluntarily. Nothing in  
35 this subsection shall limit the ability of a taxpayer to obtain a refund  
36 or credit on any other basis set forth in section 20 of P.L.1966, c.30  
37 (C.54:32B-20).

38 c. A seller who remits the tax imposed under the "Sales and  
39 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), voluntarily or  
40 otherwise, shall not be liable to a purchaser who claims that the  
41 sales tax has been over-collected because a provision of P.L. ,  
42 c. (C. ) (pending before the Legislature as this bill) is later  
43 deemed unlawful.

44 d. Nothing in P.L. , c. (C. ) (pending before the  
45 Legislature as this bill) shall affect the obligation of any purchaser

**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 from this State to remit use tax as to any applicable transaction in  
2 which the seller does not collect and remit the sales tax or remit an  
3 offsetting sales tax.

4 e. The tax imposed under P.L.1966, c.30 (C.54:32B-1 et seq.)  
5 upon sellers who meet the criteria set forth in this section and are  
6 not otherwise subject to the tax shall apply only to sales following  
7 the effective date of this section, and no obligation to collect and  
8 remit the tax imposed under P.L.1966, c.30 (C.54:32B-1 et seq.) by  
9 sellers who meet the criteria set forth in this section may be applied  
10 retroactively.

11

12 2. (New section) a. As used in this section:

13 "Marketplace facilitator" means a person, including any affiliate  
14 of the person, who facilitates a retail sale of tangible personal  
15 property, specified digital products, or taxable services by  
16 satisfying paragraphs (1) and (2) below:

17 (1) The person directly or indirectly does any of the following:

18 (i) Lists, makes available, or advertises tangible personal  
19 property, specified digital products, or services for sale by a  
20 marketplace seller in a forum owned, operated, or controlled by the  
21 person.

22 (ii) Facilitates the sales of a marketplace seller's product through  
23 a marketplace by transmitting or otherwise communicating an offer  
24 or acceptance of a retail sale of tangible personal property, specified  
25 digital products, or taxable services between a marketplace seller  
26 and a purchaser in a forum including a shop, store, booth, catalog,  
27 internet site, or similar forum.

28 (iii) Owns, rents, licenses, makes available, or operates any  
29 electronic or physical infrastructure or any property, process,  
30 method, copyright, trademark, or patent that connects marketplace  
31 sellers to purchasers for the purpose of making retail sales of  
32 tangible personal property, specified digital products, or taxable  
33 services.

34 (iv) Provides a marketplace for making retail sales of tangible  
35 personal property, specified digital products, or taxable services or  
36 otherwise facilitates retail sales of tangible personal property,  
37 specified digital products, or taxable services regardless of  
38 ownership or control of the tangible personal property, specified  
39 digital products, or taxable services that are the subject of the retail  
40 sale.

41 (v) Provides software development or research and development  
42 activities related to any activity described in this paragraph, if such  
43 software development or research and development activities are  
44 directly related to the physical or electronic marketplace provided  
45 by a marketplace facilitator.

46 (vi) Provides or offers fulfillment or storage services for a  
47 marketplace seller.

1 (vii) Sets prices for a marketplace seller's sale of tangible  
2 personal property, specified digital products, or taxable services.

3 (viii) Provides or offers customer service to a marketplace seller  
4 or a marketplace seller's customers, or accepts or assists with taking  
5 orders, returns, or exchanges of tangible personal property,  
6 specified digital products, or taxable services sold by a marketplace  
7 seller.

8 (ix) Brands or otherwise identifies sales as those of the  
9 marketplace facilitator.

10 (2) The person directly or indirectly does any of the following:

11 (i) Collects the sales price of a retail sale of tangible personal  
12 property, specified digital products, or taxable services.

13 (ii) Provides payment processing services for a retail sale of  
14 tangible personal property, specified digital products, or taxable  
15 services.

16 (iii) Charges, collects, or otherwise receives selling fees, listing  
17 fees, referral fees, closing fees, fees for inserting or making  
18 available tangible personal property, specified digital products, or  
19 taxable services on a marketplace, or other consideration from the  
20 facilitation of a retail sale of tangible personal property, specified  
21 digital products, or taxable services, regardless of ownership or  
22 control of the tangible personal property, specified digital products,  
23 or taxable services that are the subject of the retail sale.

24 (iv) Through terms and conditions, agreements, or arrangements  
25 with a third party, collects payment in connection with a retail sale  
26 of tangible personal property, specified digital products, or taxable  
27 services from a purchaser and transmits that payment to the  
28 marketplace seller, regardless of whether the person collecting and  
29 transmitting such payment receives compensation or other  
30 consideration in exchange for the service.

31 (v) Provides a virtual currency that purchasers are allowed or  
32 required to use to purchase tangible personal property, specified  
33 digital products, or taxable services.

34 "Marketplace seller" means a seller that makes retail sales  
35 through any physical or electronic marketplace owned, operated, or  
36 controlled by a marketplace facilitator, even if such seller would not  
37 have been required to collect and pay the tax imposed under  
38 P.L.1966, c.30 (C.54:32B-1 et seq.) had the sale not been made  
39 through such marketplace.

40 b. Following the effective date of P.L. , c. (C. )  
41 (pending before the Legislature as this bill), a marketplace  
42 facilitator shall collect and pay to the director the tax imposed under  
43 P.L.1966, c.30 (C.54:32B-1 et seq.) any retail sale made or  
44 facilitated to a purchaser in this State, regardless of whether the  
45 marketplace seller has or is required to have a certificate of  
46 registration or would have been required to collect the tax imposed  
47 under P.L.1966, c.30 (C.54:32B-1 et seq.) had the sale not been  
48 facilitated by the marketplace facilitator, and regardless of the

1 amount of the sales price that will ultimately accrue to or benefit  
2 the marketplace facilitator, the marketplace seller, or any other  
3 person.

4 c. Nothing in this section shall be construed to interfere with  
5 the ability of a marketplace facilitator and a marketplace seller to  
6 enter into an agreement with each other regarding the collection and  
7 payment of tax imposed under P.L.1966, c.30 (C.54:32B -1 et seq.).

8 d. If the marketplace facilitator demonstrates to the satisfaction  
9 of the division that the marketplace facilitator has made a  
10 reasonable effort to obtain accurate information from the  
11 marketplace seller about a retail sale and that the failure to collect  
12 and pay the correct amount of tax imposed under P.L.1966, c.30  
13 (C.54:32B-1 et seq.) was due to incorrect information provided to  
14 the marketplace facilitator by the marketplace seller, then the  
15 marketplace facilitator shall be relieved of liability of the tax for  
16 that retail sale. This subsection does not apply with regard to a retail  
17 sale for which the marketplace facilitator is the seller or if the  
18 marketplace facilitator and seller are affiliates. Where the  
19 marketplace facilitator is relieved under this subsection, the seller is  
20 liable for the tax imposed under P.L.1966, c.30 (C.54:32B-1 et  
21 seq.).

22 e. Following each retail sale made, the marketplace facilitator  
23 shall provide to the purchaser a sales slip, invoice, receipt, or other  
24 statement or memorandum of the price paid or payable, which shall  
25 state, charge, and show the tax separately.

26 f. A marketplace facilitator shall be subject to audit by the  
27 division with respect to all retail sales for which it is required to  
28 collect and pay the tax imposed under P.L.1966, c.30 (C.54:32B-1  
29 et seq.). Where the division audits the marketplace facilitator, the  
30 division is prohibited from auditing the marketplace seller for the  
31 same retail sales unless the marketplace facilitator seeks relief  
32 under subsection d. of this section.

33 g. Upon written application and for good cause shown, in order  
34 to ensure the accurate and timely collection of taxes due, the  
35 director shall have the discretion to temporarily suspend or delay  
36 the collection or reporting requirements, or both, of a marketplace  
37 facilitator for a period not to exceed 180 days. The director shall  
38 annually report to the Governor, and to the Legislature pursuant to  
39 section 2 of P.L.1991, c.164 (C.52:14-19.1), on the number of  
40 marketplace facilitators granted a suspension or delay of tax  
41 collection or reporting requirements pursuant to this subsection and  
42 the duration of each suspension or delay, except in a year in which  
43 no such suspension or delay was granted.

44

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

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

1 (a) "Person" includes an individual, trust, partnership, limited  
2 partnership, limited liability company, society, association, joint  
3 stock company, corporation, public corporation or public authority,  
4 estate, receiver, trustee, assignee, referee, fiduciary and any other  
5 legal entity.

6 (b) "Purchase at retail" means a purchase by any person at a  
7 retail sale.

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

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

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

15 (1) For the purposes of this act a sale is for "resale, sublease, or  
16 subrent" if it is a sale (A) for resale either as such or as converted  
17 into or as a component part of a product produced for sale by the  
18 purchaser, including the conversion of natural gas into another  
19 intermediate or end product, other than electricity or thermal  
20 energy, produced for sale by the purchaser, (B) for use by that  
21 person in performing the services subject to tax under subsection  
22 (b) of section 3 where the property so sold becomes a physical  
23 component part of the property upon which the services are  
24 performed or where the property so sold is later actually transferred  
25 to the purchaser of the service in conjunction with the performance  
26 of the service subject to tax, (C) of telecommunications service to a  
27 telecommunications service provider for use as a component part of  
28 telecommunications service provided to an ultimate customer, or  
29 (D) to a person who receives by contract a product transferred  
30 electronically for further commercial broadcast, rebroadcast,  
31 transmission, retransmission, licensing, relicensing, distribution,  
32 redistribution or exhibition of the product, in whole or in part, to  
33 another person, other than rights to redistribute based on statutory  
34 or common law doctrine such as fair use.

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

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

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

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

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

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

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

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

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

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

12 (f) "Sale, selling or purchase" means any transfer of title or  
13 possession or both, exchange or barter, rental, lease or license to  
14 use or consume, conditional or otherwise, in any manner or by any  
15 means whatsoever for a consideration, or any agreement therefor,  
16 including the rendering of any service, taxable under this act, for a  
17 consideration or any agreement therefor.

18 (g) "Tangible personal property" means personal property that  
19 can be seen, weighed, measured, felt, or touched, or that is in any  
20 other manner perceptible to the senses. "Tangible personal  
21 property" includes electricity, water, gas, steam, and prewritten  
22 computer software including prewritten computer software  
23 delivered electronically.

24 (h) "Use" means the exercise of any right or power over tangible  
25 personal property, specified digital products, services to property or  
26 products, or services by the purchaser thereof and includes, but is  
27 not limited to, the receiving, storage or any keeping or retention for  
28 any length of time, withdrawal from storage, any distribution, any  
29 installation, any affixation to real or personal property, or any  
30 consumption of such property or products. Use also includes the  
31 exercise of any right or power over intrastate or interstate  
32 telecommunications and prepaid calling services. Use also includes  
33 the exercise of any right or power over utility service. Use also  
34 includes the derivation of a direct or indirect benefit from a service.

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

37 (1) The term "seller" includes:

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

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

46 (C) A person who solicits business either by employees,  
47 independent contractors, agents or other representatives or by  
48 distribution of catalogs or other advertising matter and by reason

1 thereof makes sales to persons within the State of tangible personal  
2 property, specified digital products or services, the use of which is  
3 taxed by this act.

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

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

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

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

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

42 (H) A person engaged in collecting charges in the nature of  
43 initiation fees, membership fees or dues for access to or use of the  
44 property or facilities of a health and fitness, athletic, sporting or  
45 shopping club or organization; **[and]**

46 (I) A person engaged in the business of parking, storing or  
47 garaging motor vehicles **[.]**;



1        (J) A person making sales, leases, or rentals of tangible personal  
2 property, specified digital products, or taxable services who meets  
3 the criteria set forth in paragraph (1) or (2) of section 1 of P.L. \_\_\_\_\_,  
4 c. (C. \_\_\_\_\_) (pending before the Legislature as this bill); and

5        (K) A marketplace facilitator.

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

27        (3) Notwithstanding any other provision of law or  
28 administrative action to the contrary, transient space marketplaces  
29 shall be required to collect and pay on behalf of persons engaged in  
30 the business of providing transient accommodations or hotel rooms  
31 located in this State the tax for transactions solely consummated  
32 through the transient space marketplace. For not less than four years  
33 following the end of the calendar year in which the transaction  
34 occurred, the transient space marketplace shall maintain the  
35 following data for those transactions consummated through the  
36 transient space marketplace:

37        **[(1)]** (A) The name of the person who provided the transient  
38 accommodation or hotel room;

39        **[(2)]** (B) The name of the customer who procured occupancy  
40 of the transient accommodation or hotel room;

41        **[(3)]** (C) The address, including any unit designation, of the  
42 transient accommodation or hotel room;

43        **[(4)]** (D) The dates and nightly rates for which the consumer  
44 procured occupancy of the transient accommodation or hotel room;

45        **[(5)]** (E) The municipal transient accommodation registration  
46 number, if applicable;

1       **[(6)] (F)** A statement as to whether such booking services will  
2 be provided in connection with (i) short-term rental of the entirety  
3 of such unit, (ii) short-term rental of part of such unit, but not the  
4 entirety of such unit, and/or (iii) short-term rental of the entirety of  
5 such unit, or part thereof, in which a non-short-term occupant will  
6 continue to occupy such unit for the duration of such short-term  
7 rental;

8       **[(7)] (G)** The individualized name or number of each such  
9 advertisement or listing connected to such unit and the uniform  
10 resource locator (URL) for each such listing or advertisement,  
11 where applicable; and

12       **[(8)] (H)** Such other information as the Division of Taxation  
13 may by rule require.

14       The Division of Taxation may audit transient space marketplaces  
15 as necessary to ensure data accuracy and enforce tax compliance.

16       (j) "Hotel" means a building or portion of a building which is  
17 regularly used and kept open as such for the lodging of guests.  
18 "Hotel" includes an apartment hotel, a motel, inn, and rooming or  
19 boarding house or club, whether or not meals are served, but does  
20 not include a transient accommodation.

21       (k) "Occupancy" means the use or possession or the right to the  
22 use or possession, of any room in a hotel or transient  
23 accommodation.

24       (l) "Occupant" means a person who, for a consideration, uses,  
25 possesses, or has the right to use or possess, any room in a hotel or  
26 transient accommodation under any lease, concession, permit, right  
27 of access, license to use or other agreement, or otherwise.

28       (m) "Permanent resident" means any occupant of any room or  
29 rooms in a hotel or transient accommodation for at least 90  
30 consecutive days shall be considered a permanent resident with  
31 regard to the period of such occupancy.

32       (n) "Room" means any room or rooms of any kind in any part or  
33 portion of a hotel or transient accommodation, which is available  
34 for or let out for any purpose other than a place of assembly.

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

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

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

43       (r) "Dramatic or musical arts admission charge" means any  
44 admission charge paid for admission to a theater, opera house,  
45 concert hall or other hall or place of assembly for a live, dramatic,  
46 choreographic or musical performance.

47       (s) "Lessor" means any person who is the owner, licensee, or  
48 lessee of any premises, tangible personal property or a specified

1 digital product which the person leases, subleases, or grants a  
2 license to use to other persons.

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

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

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

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

31 (x) "Customer" includes: every purchaser of tangible personal  
32 property, specified digital products or services; every patron paying  
33 or liable for the payment of any amusement charge; every occupant  
34 of a room or rooms in a hotel or transient accommodation; every  
35 person paying charges in the nature of initiation fees, membership  
36 fees or dues for access to or use of the property or facilities of a  
37 health and fitness, athletic, sporting or shopping club or  
38 organization; and every purchaser of parking, storage or garaging a  
39 motor vehicle.

40 (y) "Property and services the use of which is subject to tax"  
41 includes: (1) all property sold to a person within the State, whether  
42 or not the sale is made within the State, the use of which property is  
43 subject to tax under section 6 or will become subject to tax when  
44 such property is received by or comes into the possession or control  
45 of such person within the State; (2) all services rendered to a person  
46 within the State, whether or not such services are performed within  
47 the State, upon tangible personal property or a specified digital  
48 product the use of which is subject to tax under section 6 or will

1 become subject to tax when such property or product is distributed  
2 within the State or is received by or comes into possession or  
3 control of such person within the State; (3) intrastate, interstate, or  
4 international telecommunications sourced to this State pursuant to  
5 section 29 of P.L.2005, c.126 (C.54:32B-3.4); (4) (Deleted by  
6 amendment, P.L.1995, c.184); (5) energy sold, exchanged or  
7 delivered in this State for use in this State; (6) utility service sold,  
8 exchanged or delivered in this State for use in this State; (7) mail  
9 processing services in connection with printed advertising material  
10 distributed in this State; (8) (Deleted by amendment, P.L.2005,  
11 c.126); and (9) services the benefit of which are received in this  
12 State.

13 (z) "Director" means the Director of the Division of Taxation in  
14 the State Department of the Treasury, or any officer, employee or  
15 agency of the Division of Taxation in the Department of the  
16 Treasury duly authorized by the director (directly, or indirectly by  
17 one or more redelegations of authority) to perform the functions  
18 mentioned or described in this act.

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

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

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

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

31 (C) Providing tangible personal property or a specified digital  
32 product along with an operator for a fixed or indeterminate period  
33 of time. A condition of this exclusion is that the operator is  
34 necessary for the equipment to perform as designed. For the  
35 purpose of this subparagraph, an operator must do more than  
36 maintain, inspect, or set-up the tangible personal property or  
37 specified digital product.

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

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

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

1 (cc) "Telecommunications service" means the electronic  
2 transmission, conveyance, or routing of voice, data, audio, video, or  
3 any other information or signals to a point, or between or among  
4 points.

5 "Telecommunications service" shall include such transmission,  
6 conveyance, or routing in which computer processing applications  
7 are used to act on the form, code, or protocol of the content for  
8 purposes of transmission, conveyance, or routing without regard to  
9 whether such service is referred to as voice over Internet protocol  
10 services or is classified by the Federal Communications  
11 Commission as enhanced or value added.

12 "Telecommunications service" shall not include:

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

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

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

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

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

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

19 (7) data processing and information services that allow data to  
20 be generated, acquired, stored, processed, or retrieved and delivered  
21 by an electronic transmission to a purchaser where such purchaser's  
22 primary purpose for the underlying transaction is the processed data  
23 or information;

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

26 (9) tangible personal property;

27 (10) advertising, including but not limited to directory  
28 advertising;

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

30 (12) internet access service;

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

39 (14) ancillary services; or

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

42 For the purposes of this subsection:

43 "ancillary service" means a service that is associated with or  
44 incidental to the provision of telecommunications services,  
45 including but not limited to detailed telecommunications billing,  
46 directory assistance, vertical service, and voice mail service;

47 "conference bridging service" means an ancillary service that links  
48 two or more participants of an audio or video conference call and

1 may include the provision of a telephone number. Conference  
2 bridging service does not include the telecommunications services  
3 used to reach the conference bridge;

4 "detailed telecommunications billing service" means an ancillary  
5 service of separately stating information pertaining to individual  
6 calls on a customer's billing statement;

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

9 "vertical service" means an ancillary service that is offered in  
10 connection with one or more telecommunications services, which  
11 offers advanced calling features that allow customers to identify  
12 callers and to manage multiple calls and call connections, including  
13 conference bridging services; and

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

18 (dd) (1) "Intrastate telecommunications" means a  
19 telecommunications service that originates in one United States  
20 state or a United States territory or possession or federal district,  
21 and terminates in the same United States state or United States  
22 territory or possession or federal district.

23 (2) "Interstate telecommunications" means a  
24 telecommunications service that originates in one United States  
25 state or a United States territory or possession or federal district,  
26 and terminates in a different United States state or United States  
27 territory or possession or federal district.

28 (3) "International telecommunications" means a  
29 telecommunications service that originates or terminates in the  
30 United States and terminates or originates outside the United States,  
31 respectively. "United States" includes the District of Columbia or a  
32 United States territory or possession.

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (C) Charges by the seller for any services necessary to complete  
32 the sale;

33 (D) Delivery charges;

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

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

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

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

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

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

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

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

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

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

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

15 (C) The amount of the consideration attributable to the sale is  
16 fixed and determinable by the seller at the time of the sale of the  
17 item to the purchaser; and

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

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

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

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

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

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

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

47 (rr) "Delivery charges" means charges by the seller for  
48 preparation and delivery to a location designated by the purchaser



1 of personal property or services including, but not limited to,  
2 transportation, shipping, postage, handling, crating, and packing. If  
3 a shipment includes both exempt and taxable property, the seller  
4 should allocate the delivery charge by using: (1) a percentage based  
5 on the total sales price of the taxable property compared to the total  
6 sales price of all property in the shipment; or (2) a percentage based  
7 on the total weight of the taxable property compared to the total  
8 weight of all property in the shipment. The seller shall tax the  
9 percentage of the delivery charge allocated to the taxable property  
10 but is not required to tax the percentage allocated to the exempt  
11 property.

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

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

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

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

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

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

35 (1) investigation and detective services, including detective  
36 agencies and private investigators, and fingerprint, polygraph,  
37 missing person tracing and skip tracing services;

38 (2) security guard and patrol services, including bodyguard and  
39 personal protection, guard dog, guard, patrol, and security services;

40 (3) armored car services; and

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

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

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

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

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

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

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

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

19 (fff) "Residence" means a house, condominium, or other  
20 residential dwelling unit in a building or structure or part of a  
21 building or structure that is designed, constructed, leased, rented, let  
22 or hired out, or otherwise made available for use as a residence.

23 (ggg) "Transient accommodation" means a room, group of  
24 rooms, or other living or sleeping space for the lodging of  
25 occupants, including but not limited to residences or buildings used  
26 as residences. "Transient accommodation" does not include: a hotel  
27 or hotel room; a room, group of rooms, or other living or sleeping  
28 space used as a place of assembly; a dormitory or other similar  
29 residential facility of an elementary or secondary school or a  
30 college or university; a hospital, nursing home, or other similar  
31 residential facility of a provider of services for the care, support and  
32 treatment of individuals that is licensed by the State; a campsite,  
33 cabin, lean-to, or other similar residential facility of a campground  
34 or an adult or youth camp; a furnished or unfurnished private  
35 residential property, including but not limited to condominiums,  
36 bungalows, single-family homes and similar living units, where no  
37 maid service, room service, linen changing service or other  
38 common hotel services are made available by the lessor and where  
39 the keys to the furnished or unfurnished private residential property,  
40 whether a physical key, access to a keyless locking mechanism, or  
41 other means of physical ingress to the furnished or unfurnished  
42 private residential property, are provided to the lessee at the  
43 location of an offsite real estate broker licensed by the New Jersey  
44 Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases  
45 of real property with a term of at least 90 consecutive days.

46 (hhh) "Transient space marketplace" means an online  
47 marketplace through which a person may offer transient  
48 accommodations or hotel rooms to individuals. A "transient space

1 marketplace" allows transient accommodations or hotel rooms to be  
2 advertised or listed through an online marketplace in exchange for  
3 consideration or provides a means for a customer to arrange for the  
4 occupancy of the transient accommodation or hotel room in  
5 exchange for consideration. A 'transient space marketplace' shall  
6 not include an online marketplace operated by or on behalf of a  
7 hotel or hotel corporation that facilitates customer occupancy solely  
8 for the hotel or hotel corporation's owned or managed hotels and  
9 franchisees, and shall not include a travel agency or an online travel  
10 agency.

11 (cf: P.L.2018, c.49, s.19)

12

13 4. Section 84 of P.L.2015, c.19 (C.5:10A-84) is amended to  
14 read as follows:

15 84. As used in sections 82 through 85 of P.L.2015, c.19  
16 (C.5:10A-82 et seq.):

17 "Commission" means the New Jersey Sports and Exposition  
18 Authority, which may be referred to as the "Meadowlands Regional  
19 Commission," as established by section 6 of P.L.2015, c.19  
20 (C.5:10A-6).

21 "Constituent municipality" means any of the following  
22 municipalities: Carlstadt, East Rutherford, Little Ferry, Lyndhurst,  
23 Moonachie, North Arlington, Ridgefield, Rutherford, South  
24 Hackensack, and Teterboro in Bergen county; and Jersey City,  
25 Kearny, North Bergen, and Secaucus in Hudson county.

26 "Meadowlands district" means the Hackensack Meadowlands  
27 District, the area delineated within section 5 of P.L.2015, c.19  
28 (C.5:10A-5).

29 "Public venue" means any place located within the Meadowlands  
30 district, whether publicly or privately owned, where any facilities  
31 for entertainment, amusement, or sports are provided, but shall not  
32 include a movie theater.

33 "Public event" means any spectator sporting event, trade show,  
34 exposition, concert, amusement, or other event open to the public  
35 that takes place at a public venue, but shall not include a major  
36 league football game.

37 "Residence" means a house, condominium, or other residential  
38 dwelling unit in a building or structure or part of a building or  
39 structure that is designed, constructed, leased, rented, let or hired  
40 out, or otherwise made available for use as a residence.

41 "Transient accommodation" means a room, group of rooms, or  
42 other living or sleeping space for the lodging of occupants,  
43 including but not limited to residences or buildings used as  
44 residences. "Transient accommodation" does not include: a hotel or  
45 hotel room; a room, group of rooms, or other living or sleeping  
46 space used as a place of assembly; a dormitory or other similar  
47 residential facility of an elementary or secondary school or a  
48 college or university; a hospital, nursing home, or other similar

1 residential facility of a provider of services for the care, support and  
2 treatment of individuals that is licensed by the State; a campsite,  
3 cabin, lean-to, or other similar residential facility of a campground  
4 or an adult or youth camp; a furnished or unfurnished private  
5 residential property, including but not limited to condominiums,  
6 bungalows, single-family homes and similar living units, where no  
7 maid service, room service, linen changing service or other  
8 common hotel services are made available by the lessor and where  
9 the keys to the furnished or unfurnished private residential property,  
10 whether a physical key, access to a keyless locking mechanism, or  
11 other means of physical ingress to the furnished or unfurnished  
12 private residential property, are provided to the lessee at the  
13 location of an offsite real estate broker licensed by the New Jersey  
14 Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases  
15 of real property with a term of at least 90 consecutive days.

16 "Transient space marketplace" means an online marketplace  
17 through which a person may offer transient accommodations or  
18 hotel rooms to individuals. A "transient space marketplace" allows  
19 transient accommodations or hotel rooms to be advertised or listed  
20 through an online marketplace in exchange for consideration or  
21 provides a means for a customer to arrange for the occupancy of the  
22 transient accommodation or hotel room in exchange for  
23 consideration. A 'transient space marketplace' shall not include an  
24 online marketplace operated by or on behalf of a hotel or hotel  
25 corporation that facilitates customer occupancy solely for the hotel  
26 or hotel corporation's owned or managed hotels and franchisees,  
27 and shall not include a travel agency or an online travel agency.

28 (cf: P.L.2018, c.52, s.1)

29

30 5. Section 3 of P.L.2007, c.30 (C.34:1B-192) is amended to  
31 read as follows:

32 3. As used in this act:

33 "Authority" means the New Jersey Economic Development  
34 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et  
35 seq.).

36 "Developer" means any person or entity, whether public or  
37 private, including a State entity, that proposes to undertake a project  
38 pursuant to a development agreement.

39 "District" or "sports and entertainment district" means a  
40 geographic area which includes a project as set forth in the  
41 ordinance pursuant to section 4 of P.L.2007, c.30 (C.34:1B-193).

42 "Eligible municipality" means a municipality: (1) in which is  
43 located part of an urban enterprise zone that has been designated  
44 pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.) or any  
45 supplement thereto; and (2) which has a population greater than  
46 25,000 and less than 29,000 according to the latest federal decennial  
47 census in a county of the third class with a population density

1 greater than 295 and less than 304 persons per square mile  
2 according to the latest federal decennial census.

3 "Infrastructure improvements" means the construction or  
4 rehabilitation of any street, highway, utility, transportation or  
5 parking facilities, or other similar improvements; the acquisition of  
6 any interest in land as necessary or convenient for the acquisition of  
7 any right-of-way or other easement for the purpose of constructing  
8 infrastructure improvements; the acquisition, construction or  
9 reconstruction of land and site improvements, including demolition,  
10 clearance, removal, construction, reconstruction, fill, environmental  
11 enhancement or abatement, or other site preparation for  
12 development of a sports and entertainment district.

13 "Project" means a sports and entertainment facility and may  
14 include infrastructure improvements that are associated with the  
15 sports and entertainment facility.

16 "Project cost" means the cost of a project, including the  
17 financing, acquisition, development, construction, redevelopment,  
18 rehabilitation, reconstruction and improvement costs thereof,  
19 financing costs and the administrative costs, including any  
20 administrative costs of the authority if bonds are issued pursuant to  
21 section 16 of P.L.2007, c.30 (C.34:1B-205) and incurred in  
22 connection with a sports and entertainment facility which is  
23 financed, in whole or in part, by the revenues dedicated by a  
24 municipality to a project as authorized pursuant to section 5 of  
25 P.L.2007, c.30 (C.34:1B-194).

26 "Residence" means a house, condominium, or other residential  
27 dwelling unit in a building or structure or part of a building or  
28 structure that is designed, constructed, leased, rented, let or hired  
29 out, or otherwise made available for use as a residence.

30 "Sports and entertainment facility" means any privately or  
31 publicly owned or operated facility located in a sports and  
32 entertainment district that is used primarily for sports contests,  
33 entertainment, or both, such as a theater, stadium, museum, arena,  
34 automobile racetrack, or other place where performances, concerts,  
35 exhibits, games or contests are held.

36 "State Treasurer" or "treasurer" means the treasurer of the State  
37 of New Jersey.

38 "Transient accommodation" means a room, group of rooms, or  
39 other living or sleeping space for the lodging of occupants,  
40 including but not limited to residences or buildings used as  
41 residences. "Transient accommodation" does not include: a hotel or  
42 hotel room; a room, group of rooms, or other living or sleeping  
43 space used as a place of assembly; a dormitory or other similar  
44 residential facility of an elementary or secondary school or a  
45 college or university; a hospital, nursing home, or other similar  
46 residential facility of a provider of services for the care, support and  
47 treatment of individuals that is licensed by the State; a campsite,  
48 cabin, lean-to, or other similar residential facility of a campground

1 or an adult or youth camp; a furnished or unfurnished private  
2 residential property, including but not limited to condominiums,  
3 bungalows, single-family homes and similar living units, where no  
4 maid service, room service, linen changing service or other  
5 common hotel services are made available by the lessor and where  
6 the keys to the furnished or unfurnished private residential property,  
7 whether a physical key, access to a keyless locking mechanism, or  
8 other means of physical ingress to the furnished or unfurnished  
9 private residential property, are provided to the lessee at the  
10 location of an offsite real estate broker licensed by the New Jersey  
11 Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases  
12 of real property with a term of at least 90 consecutive days.

13 "Transient space marketplace" means an online marketplace  
14 through which a person may offer transient accommodations or  
15 hotel rooms to individuals. A "transient space marketplace" allows  
16 transient accommodations or hotel rooms to be advertised or listed  
17 through an online marketplace in exchange for consideration or  
18 provides a means for a customer to arrange for the occupancy of the  
19 transient accommodation or hotel room in exchange for  
20 consideration. A 'transient space marketplace' shall not include an  
21 online marketplace operated by or on behalf of a hotel or hotel  
22 corporation that facilitates customer occupancy solely for the hotel  
23 or hotel corporation's owned or managed hotels and franchisees,  
24 and shall not include a travel agency or an online travel agency.

25 (cf: P.L.2018, c.49, s.3)

26

27 6. Section 2 of P.L.1947, c.71 (C.40:48-8.16) is amended to  
28 read as follows:

29 2. As used in this act:

30 "Retail sale" or "sale at retail" means and includes:

31 (1) Any sale in the ordinary course of business for consumption  
32 of whiskey, beer or other alcoholic beverages by the drink in  
33 restaurants, cafes, bars, hotels and other similar establishments;

34 (2) Any cover charge, minimum charge, entertainment, or other  
35 similar charge made to any patron of any restaurant, cafe, bar, hotel  
36 or other similar establishment;

37 (3) The hiring, with or without service, of any room in any  
38 hotel, transient accommodation, inn, rooming or boarding house;

39 (4) The hiring of any rolling chair, beach chair or cabana; and

40 (5) The granting or sale of any ticket, license or permit for  
41 admission to any theatre, moving picture exhibition or show, pier,  
42 exhibition, or place of amusement, except charges for admission to  
43 boxing, wrestling, kick boxing or combative sports events, matches,  
44 or exhibitions, which charges are taxed pursuant to section 20 of  
45 P.L.1985, c.83 (C.5:2A-20).

46 "Vendor" means any person selling or hiring property or services  
47 to another person upon the receipts from which a tax is imposed.

1 "Purchaser" means any person purchasing or hiring property or  
2 services from another person, the receipts from which are taxable.

3 "Residence" means a house, condominium, or other residential  
4 dwelling unit in a building or structure or part of a building or  
5 structure that is designed, constructed, leased, rented, let or hired  
6 out, or otherwise made available for use as a residence.

7 "Transient accommodation" means a room, group of rooms, or  
8 other living or sleeping space for the lodging of occupants,  
9 including but not limited to residences or buildings used as  
10 residences. "Transient accommodation" does not include: a hotel or  
11 hotel room; a room, group of rooms, or other living or sleeping  
12 space used as a place of assembly; a dormitory or other similar  
13 residential facility of an elementary or secondary school or a  
14 college or university; a hospital, nursing home, or other similar  
15 residential facility of a provider of services for the care, support and  
16 treatment of individuals that is licensed by the State; a campsite,  
17 cabin, lean-to, or other similar residential facility of a campground  
18 or an adult or youth camp; a furnished or unfurnished private  
19 residential property, including but not limited to condominiums,  
20 bungalows, single-family homes and similar living units, where no  
21 maid service, room service, linen changing service or other  
22 common hotel services are made available by the lessor and where  
23 the keys to the furnished or unfurnished private residential property,  
24 whether a physical key, access to a keyless locking mechanism, or  
25 other means of physical ingress to the furnished or unfurnished  
26 private residential property, are provided to the lessee at the  
27 location of an offsite real estate broker licensed by the New Jersey  
28 Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases  
29 of real property with a term of at least 90 consecutive days.

30 "Transient space marketplace" means an online marketplace  
31 through which a person may offer transient accommodations or  
32 hotel rooms to individuals. A "transient space marketplace" allows  
33 transient accommodations or hotel rooms to be advertised or listed  
34 through an online marketplace in exchange for consideration or  
35 provides a means for a customer to arrange for the occupancy of the  
36 transient accommodation or hotel room in exchange for  
37 consideration. A 'transient space marketplace' shall not include an  
38 online marketplace operated by or on behalf of a hotel or hotel  
39 corporation that facilitates customer occupancy solely for the hotel  
40 or hotel corporation's owned or managed hotels and franchisees,  
41 and shall not include a travel agency or an online travel agency.

42 (cf: P.L.2018, c.49, s.6)

43

44 7. Section 1 of P.L.1991, c.376 (C.40:48-8.45) is amended to  
45 read as follows:

46 1. As used in this act:

47 a. "Convention center operating authority" means, in the case  
48 of any eligible municipality, the public authority or other

- 1 governmental entity empowered to operate convention hall and the  
2 convention center facilities in the eligible municipality.
- 3 b. "Director" means the Director of the Division of Taxation in  
4 the Department of the Treasury.
- 5 c. "Eligible municipality" means any municipality in which any  
6 portion of the proceeds of a retail sales tax levied by ordinance  
7 adopted by the municipality pursuant to section 1 of P.L.1947, c.71  
8 (C.40:48-8.15) is applied as authorized by law to the payment of  
9 costs of convention center facilities located in the municipality.
- 10 d. "Hotel" means a building or a portion of a building which is  
11 regularly used and kept open as such for the lodging of guests.  
12 "Hotel" includes an apartment hotel, a motel, inn, and rooming or  
13 boarding house or club, whether or not meals are served, but does  
14 not include a transient accommodation.
- 15 e. "Occupied room" means a room or rooms of any kind in any  
16 part of a hotel or transient accommodation, other than a place of  
17 assembly, which is used or possessed by a guest or guests, whether  
18 or not for consideration.
- 19 f. "Residence" means a house, condominium, or other  
20 residential dwelling unit in a building or structure or part of a  
21 building or structure that is designed, constructed, leased, rented, let  
22 or hired out, or otherwise made available for use as a residence.
- 23 g. "Transient accommodation" means a room, group of rooms,  
24 or other living or sleeping space for the lodging of occupants,  
25 including but not limited to residences or buildings used as  
26 residences. "Transient accommodation" does not include: a hotel or  
27 hotel room; a room, group of rooms, or other living or sleeping  
28 space used as a place of assembly; a dormitory or other similar  
29 residential facility of an elementary or secondary school or a  
30 college or university; a hospital, nursing home, or other similar  
31 residential facility of a provider of services for the care, support and  
32 treatment of individuals that is licensed by the State; a campsite,  
33 cabin, lean-to, or other similar residential facility of a campground  
34 or an adult or youth camp; a furnished or unfurnished private  
35 residential property, including but not limited to condominiums,  
36 bungalows, single-family homes and similar living units, where no  
37 maid service, room service, linen changing service or other  
38 common hotel services are made available by the lessor and where  
39 the keys to the furnished or unfurnished private residential property,  
40 whether a physical key, access to a keyless locking mechanism, or  
41 other means of physical ingress to the furnished or unfurnished  
42 private residential property, are provided to the lessee at the  
43 location of an offsite real estate broker licensed by the New Jersey  
44 Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases  
45 of real property with a term of at least 90 consecutive days.
- 46 h. "Transient space marketplace" means an online marketplace  
47 through which a person may offer transient accommodations or  
48 hotel rooms to individuals. A "transient space marketplace" allows



1 transient accommodations or hotel rooms to be advertised or listed  
2 through an online marketplace in exchange for consideration or  
3 provides a means for a customer to arrange for the occupancy of the  
4 transient accommodation or hotel room in exchange for  
5 consideration. A 'transient space marketplace' shall not include an  
6 online marketplace operated by or on behalf of a hotel or hotel  
7 corporation that facilitates customer occupancy solely for the hotel  
8 or hotel corporation's owned or managed hotels and franchisees,  
9 and shall not include a travel agency or an online travel agency.  
10 (cf: P.L.2018, c.49, s.8)  
11

12 8. Section 2 of P.L.1981, c.77 (C.40:48E-2) is amended to read  
13 as follows:

14 2. As used in this act "hotel" means a building or portion of a  
15 building which is regularly used and kept open as such for the  
16 lodging of guests. "Hotel" includes an apartment hotel, a motel, inn,  
17 and rooming or boarding house or club, whether or not meals are  
18 served, but does not include a transient accommodation.

19 "Residence" means a house, condominium, or other residential  
20 dwelling unit in a building or structure or part of a building or  
21 structure that is designed, constructed, leased, rented, let or hired  
22 out, or otherwise made available for use as a residence.

23 "Transient accommodation" means a room, group of rooms, or  
24 other living or sleeping space for the lodging of occupants,  
25 including but not limited to residences or buildings used as  
26 residences. "Transient accommodation" does not include: a hotel or  
27 hotel room; a room, group of rooms, or other living or sleeping  
28 space used as a place of assembly; a dormitory or other similar  
29 residential facility of an elementary or secondary school or a  
30 college or university; a hospital, nursing home, or other similar  
31 residential facility of a provider of services for the care, support and  
32 treatment of individuals that is licensed by the State; a campsite,  
33 cabin, lean-to, or other similar residential facility of a campground  
34 or an adult or youth camp; a furnished or unfurnished private  
35 residential property, including but not limited to condominiums,  
36 bungalows, single-family homes and similar living units, where no  
37 maid service, room service, linen changing service or other  
38 common hotel services are made available by the lessor and where  
39 the keys to the furnished or unfurnished private residential property,  
40 whether a physical key, access to a keyless locking mechanism, or  
41 other means of physical ingress to the furnished or unfurnished  
42 private residential property, are provided to the lessee at the  
43 location of an offsite real estate broker licensed by the New Jersey  
44 Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases  
45 of real property with a term of at least 90 consecutive days.

46 "Transient space marketplace" means an online marketplace  
47 through which a person may offer transient accommodations or  
48 hotel rooms to individuals. A "transient space marketplace" allows

1 transient accommodations or hotel rooms to be advertised or listed  
2 through an online marketplace in exchange for consideration or  
3 provides a means for a customer to arrange for the occupancy of the  
4 transient accommodation or hotel room in exchange for  
5 consideration. A 'transient space marketplace' shall not include an  
6 online marketplace operated by or on behalf of a hotel or hotel  
7 corporation that facilitates customer occupancy solely for the hotel  
8 or hotel corporation's owned or managed hotels and franchisees,  
9 and shall not include a travel agency or an online travel agency.  
10 (cf: 2018, c.49, s.12)

11  
12 9. Section 3 of P.L.1992, c.165 (C.40:54D-3) is amended to  
13 read as follows:

14 3. As used in this act:

15 "Authority" means a tourism improvement and development  
16 authority created pursuant to section 18 of this act, P.L.1992, c.165  
17 (C.40:54D-18).

18 "Beach operation offset payment " means a payment made by an  
19 authority to municipalities in its district for tourism development  
20 activities related to operating and maintaining public beaches within  
21 a zone to seaward of a line of demarcation located not more than  
22 1,000 feet from the mean high water line.

23 "Bond" means any bond or note issued by an authority pursuant  
24 to the provisions of this act.

25 "Commissioner" means the Commissioner of the Department of  
26 Commerce and Economic Development.

27 "Construction" means the planning, designing, construction,  
28 reconstruction, rehabilitation, replacement, repair, extension,  
29 enlargement, improvement and betterment of a project, and includes  
30 the demolition, clearance and removal of buildings or structures on  
31 land acquired, held, leased or used for a project.

32 "Convention center facility" means any convention hall or center  
33 or like structure or building, and shall include all facilities,  
34 including commercial, office, community service, parking facilities  
35 and all property rights, easements and interests, and other facilities  
36 constructed for the accommodation and entertainment of tourists  
37 and visitors, constructed in conjunction with a convention center  
38 facility and forming reasonable appurtenances thereto but does not  
39 mean the Wildwood convention center facility as defined in this  
40 section.

41 "Tourism project" means the convention center facility or  
42 outdoor special events arena, or both, located in the territorial limits  
43 of the district, and any costs associated therewith but does not mean  
44 the Wildwood convention center facility as defined in this section.

45 "Cost" means all or any part of the expenses incurred in  
46 connection with the acquisition, construction and maintenance of  
47 any real property, lands, structures, real or personal property rights,  
48 rights-of-way, franchises, easements, and interests acquired or used

1 for a project; any financing charges and reserves for the payment of  
2 principal and interest on bonds or notes; the expenses of  
3 engineering, appraisal, architectural, accounting, financial and legal  
4 services; and other expenses as may be necessary or incident to the  
5 acquisition, construction and maintenance of a project, the  
6 financing thereof and the placing of the project into operation.

7 "County" means a county of the sixth class.

8 "Director" means the Director of the Division of Taxation in the  
9 Department of the Treasury.

10 "Fund" means a Reserve Fund created pursuant to section 13 of  
11 P.L.1992, c.165 (C.40:54D-13).

12 "Outdoor special events arena" means a facility or structure for  
13 the holding outdoors of public events, entertainments, sporting  
14 events, concerts or similar activities, and shall include all facilities,  
15 property rights and interests, and all appurtenances reasonably  
16 related thereto, constructed for the accommodation and  
17 entertainment of tourists and visitors.

18 "Participant amusement" means a sporting activity or amusement  
19 the charge for which is exempt from taxation under the "Sales and  
20 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) by virtue of the  
21 participation of the patron in the activity or amusement, such as  
22 bowling alleys, swimming pools, water slides, miniature golf,  
23 boardwalk or carnival games and amusements, baseball batting  
24 cages, tennis courts, and fishing and sightseeing boats.

25 "Predominantly tourism related retail receipts" means:

26 a. The rent for every occupancy of a room or rooms in a hotel  
27 or transient accommodation subject to taxation pursuant to  
28 subsection (d) of section 3 of the "Sales and Use Tax Act,"  
29 P.L.1966, c.30 (C.54:32B-3);

30 b. Receipts from the sale of food and drink in or by restaurants,  
31 taverns, or other establishments in the district, or by caterers,  
32 including in the amount of such receipt any cover, minimum,  
33 entertainment or other charge made to patrons or customers, subject  
34 to taxation pursuant to subsection (c) of section 3 of the "Sales and  
35 Use Tax Act," P.L.1966, c.30 (C.54:32B-3) but excluding receipts  
36 from sales of food and beverages sold through coin operated  
37 vending machines; and

38 c. Admissions charges to or the use of any place of amusement  
39 or of any roof garden, cabaret or similar place, subject to taxation  
40 pursuant to subsection (e) of section 3 of the "Sales and Use Tax  
41 Act," P.L.1966, c.30 (C.54:32B-3).

42 "Purchaser" means any person purchasing or hiring property or  
43 services from another person, the receipts or charges from which  
44 are taxable by an ordinance authorized under P.L.1992, c.165  
45 (C.40:54D-1 et seq.).

46 "Residence" means a house, condominium, or other residential  
47 dwelling unit in a building or structure or part of a building or

1 structure that is designed, constructed, leased, rented, let or hired  
2 out, or otherwise made available for use as a residence.

3 "Sports authority" means the New Jersey Sports and Exposition  
4 Authority established pursuant to P.L.1971, c.137 (C.5:10-1 et  
5 seq.).

6 "Tourism" means activities involved in providing and marketing  
7 services and products, including accommodations, for nonresidents  
8 and residents who travel to and in New Jersey for recreation and  
9 pleasure.

10 "Tourism assessment" means an assessment on the rent for every  
11 occupancy of a room or rooms in a hotel or transient  
12 accommodation subject to taxation pursuant to subsection (d) of  
13 section 3 of the "Sales and Use Tax Act," P.L.1966, c.30  
14 (C.54:32B-3).

15 "Tourism development activities" include operations of the  
16 authority to carry out its statutory duty to promote, advertise and  
17 market the district, including making beach operation offset  
18 payments.

19 "Tourism development fee" means a fee imposed by ordinance  
20 pursuant to section 15 of P.L.1992, c.165 (C.40:54D-15).

21 "Tourism improvement and development district" or "district"  
22 means an area within two or more contiguous municipalities within  
23 a county of the sixth class established pursuant to ordinance enacted  
24 by those municipalities, for the purposes of promoting the  
25 acquisition, construction, maintenance, operation and support of a  
26 tourism project, and to devote the revenue and the proceeds from  
27 taxes upon predominantly tourism related retail receipts and from  
28 tourism development fees to the purposes as herein defined.

29 "Tourist industry" means the industry consisting of private and  
30 public organizations which directly or indirectly provide services  
31 and products to nonresidents and residents who travel to and in New  
32 Jersey for recreation and pleasure.

33 "Tourism lodging" means any dwelling unit, other than a  
34 dwelling unit in a hotel the rent for which is subject to taxation  
35 under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et  
36 seq.), regardless of the form of ownership of the unit, rented with or  
37 without a lease, whether rented by the owner or by an agent for the  
38 owner.

39 "Transient accommodation" means a room, group of rooms, or  
40 other living or sleeping space for the lodging of occupants,  
41 including but not limited to residences or buildings used as  
42 residences. "Transient accommodation" does not include: a hotel or  
43 hotel room; a room, group of rooms, or other living or sleeping  
44 space used as a place of assembly; a dormitory or other similar  
45 residential facility of an elementary or secondary school or a  
46 college or university; a hospital, nursing home, or other similar  
47 residential facility of a provider of services for the care, support and  
48 treatment of individuals that is licensed by the State; a campsite,

1 cabin, lean-to, or other similar residential facility of a campground  
2 or an adult or youth camp; a furnished or unfurnished private  
3 residential property, including but not limited to condominiums,  
4 bungalows, single-family homes and similar living units, where no  
5 maid service, room service, linen changing service or other  
6 common hotel services are made available by the lessor and where  
7 the keys to the furnished or unfurnished private residential property,  
8 whether a physical key, access to a keyless locking mechanism, or  
9 other means of physical ingress to the furnished or unfurnished  
10 private residential property, are provided to the lessee at the  
11 location of an offsite real estate broker licensed by the New Jersey  
12 Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases  
13 of real property with a term of at least 90 consecutive days.

14 "Transient space marketplace" means an online marketplace  
15 through which a person may offer transient accommodations or  
16 hotel rooms to individuals. A "transient space marketplace" allows  
17 transient accommodations or hotel rooms to be advertised or listed  
18 through an online marketplace in exchange for consideration or  
19 provides a means for a customer to arrange for the occupancy of the  
20 transient accommodation or hotel room in exchange for  
21 consideration. A 'transient space marketplace' shall not include an  
22 online marketplace operated by or on behalf of a hotel or hotel  
23 corporation that facilitates customer occupancy solely for the hotel  
24 or hotel corporation's owned or managed hotels and franchisees,  
25 and shall not include a travel agency or an online travel agency.

26 "Vendor" means a person selling or hiring property or services to  
27 another person, the receipts or charges from which are taxable by an  
28 ordinance authorized under P.L.1992, c.165 (C.40:54D-1 et seq.).

29 "Wildwood convention center facility" means the project  
30 authorized by paragraph (12) of subsection a. of section 6 of  
31 P.L.1971, c.137 (C.5:10-6).

32 (cf: P.L.2018, c.49, s.17)

33

34 10. Notwithstanding the provisions of the "Administrative  
35 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the  
36 contrary, the Director of the Division of Taxation may adopt  
37 immediately upon filing with the Office of Administrative Law  
38 such rules and regulations as the director determines to be necessary  
39 to effectuate the purposes of P.L. , c. (C. ) (pending before  
40 the Legislature as this bill), which rules and regulations shall be  
41 effective for a period not to exceed 360 days following the effective  
42 date of P.L. , c. (C. ) (pending before the Legislature as this  
43 bill) and may thereafter be amended, adopted, or readopted by the  
44 director in accordance with the requirements of the "Administrative  
45 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

46

47 11. This act shall take effect November 1, 2018, provided  
48 however, the Director of the Division of Taxation shall take such

1 anticipatory action in advance of that date as may be necessary for  
2 the timely implementation of this act.

3

4

5

STATEMENT

6

7 This bill imposes collection of sales tax requirements on  
8 marketplace facilitators and certain sellers who do not have a  
9 physical presence in the State, and clarifies that travel agencies are  
10 not required to collect sales tax or various hotel taxes.

11 Pursuant to section 1 of the bill, if a seller does not have a  
12 physical presence in the State but has revenue from sales into the  
13 State in the calendar year, or prior year, in excess of \$100,000, the  
14 seller must collect sales tax. The same applies to a seller with 200  
15 or more separate transactions into the State in a calendar year or in  
16 the prior year.

17 These provisions of the bill reflect the 2018 decision of the U.S.  
18 Supreme Court in South Dakota v. Wayfair, in which the Court  
19 determined that physical presence within a state was not a  
20 prerequisite for the collection of sales tax. In that case, the Court  
21 held that imposing sales tax on a seller that delivers more than  
22 \$100,000 worth of sales into a state or delivers 200 or more  
23 separate transactions into a state has a sufficient nexus with the  
24 state for the state to impose sales tax on the seller.

25 Pursuant to section 2 of the bill, marketplace facilitators must  
26 collect tax on sales they facilitate for marketplace sellers. However,  
27 in order to ensure the accurate and timely collection of taxes due,  
28 the Director of Taxation has the discretion to temporarily suspend  
29 or delay the collection of a marketplace facilitator for a period not  
30 to exceed 180 days. The director must report on any grant of a  
31 suspension or delay to the Governor and the Legislature.

32 Section 3 incorporates sections 1 and 2 of the bill into the  
33 definitions section of the Sales and Use Tax Act.

34 The remaining sections of the bill clarify that travel agencies and  
35 online travel agencies are not transient space marketplaces. This  
36 clarification is intended to ensure that these businesses will not be  
37 required to collect and pay sales tax or various hotel taxes for sales  
38 on their platforms.