

ASSEMBLY, No. 742

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

SYNOPSIS

Provides sales and use tax exemption for sales of machinery and equipment and sales of natural gas used to generate electricity in certain fuel cell facilities.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT providing an exemption from the sales and use tax for sales
2 of machinery and equipment and sales of natural gas used to
3 generate electricity in certain fuel cell facilities, amending
4 various parts of the statutory law.

5

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

8

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

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

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

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

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

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

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

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

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 another person, other than rights to redistribute based on statutory
2 or common law doctrine such as fair use.
- 3 (2) For the purposes of this act, the term "retail sale" includes:
4 sales of tangible personal property to all contractors, subcontractors
5 or repairmen of materials and supplies for use by them in erecting
6 structures for others, or building on, or otherwise improving,
7 altering, or repairing real property of others.
- 8 (3) (Deleted by amendment, P.L.2005, c.126).
- 9 (4) The term "retail sale" does not include:
- 10 (A) Professional, insurance, or personal service transactions
11 which involve the transfer of tangible personal property as an
12 inconsequential element, for which no separate charges are made.
- 13 (B) The transfer of tangible personal property to a corporation,
14 solely in consideration for the issuance of its stock, pursuant to a
15 merger or consolidation effected under the laws of New Jersey or
16 any other jurisdiction.
- 17 (C) The distribution of property by a corporation to its
18 stockholders as a liquidating dividend.
- 19 (D) The distribution of property by a partnership to its partners
20 in whole or partial liquidation.
- 21 (E) The transfer of property to a corporation upon its
22 organization in consideration for the issuance of its stock.
- 23 (F) The contribution of property to a partnership in
24 consideration for a partnership interest therein.
- 25 (G) The sale of tangible personal property where the purpose of
26 the vendee is to hold the thing transferred as security for the
27 performance of an obligation of the seller.
- 28 (f) "Sale, selling or purchase" means any transfer of title or
29 possession or both, exchange or barter, rental, lease or license to
30 use or consume, conditional or otherwise, in any manner or by any
31 means whatsoever for a consideration, or any agreement therefor,
32 including the rendering of any service, taxable under this act, for a
33 consideration or any agreement therefor.
- 34 (g) "Tangible personal property" means personal property that
35 can be seen, weighed, measured, felt, or touched, or that is in any
36 other manner perceptible to the senses. "Tangible personal
37 property" includes electricity, water, gas, steam, and prewritten
38 computer software including prewritten computer software
39 delivered electronically.
- 40 (h) "Use" means the exercise of any right or power over tangible
41 personal property, specified digital products, services to property or
42 products, or services by the purchaser thereof and includes, but is
43 not limited to, the receiving, storage or any keeping or retention for
44 any length of time, withdrawal from storage, any distribution, any
45 installation, any affixation to real or personal property, or any
46 consumption of such property or products. Use also includes the
47 exercise of any right or power over intrastate or interstate
48 telecommunications and prepaid calling services. Use also includes

1 the exercise of any right or power over utility service. Use also
2 includes the derivation of a direct or indirect benefit from a service.

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

5 (1) The term "seller" includes:

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

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

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

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

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

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

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

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

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

14 (I) A person engaged in the business of parking, storing or
15 garaging motor vehicles;

16 (J) A person making sales, leases, or rentals of tangible personal
17 property, specified digital products, or taxable services who meets
18 the criteria set forth in paragraph (1) or (2) of section 1 of P.L.2018,
19 c.132 (C.54:32B-3.5); and

20 (K) A marketplace facilitator.

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

42 (3) Notwithstanding any other provision of law or
43 administrative action to the contrary, transient space marketplaces
44 shall be required to collect and pay on behalf of persons engaged in
45 the business of providing transient accommodations or hotel rooms
46 located in this State the tax for transactions solely consummated
47 through the transient space marketplace. For not less than four years
48 following the end of the calendar year in which the transaction

1 occurred, the transient space marketplace shall maintain the
2 following data for those transactions consummated through the
3 transient space marketplace:

4 (A) The name of the person who provided the transient
5 accommodation or hotel room;

6 (B) The name of the customer who procured occupancy of the
7 transient accommodation or hotel room;

8 (C) The address, including any unit designation, of the transient
9 accommodation or hotel room;

10 (D) The dates and nightly rates for which the consumer procured
11 occupancy of the transient accommodation or hotel room;

12 (E) The municipal transient accommodation registration number,
13 if applicable;

14 (F) A statement as to whether such booking services will be
15 provided in connection with (i) short-term rental of the entirety of
16 such unit, (ii) short-term rental of part of such unit, but not the
17 entirety of such unit, and/or (iii) short-term rental of the entirety of
18 such unit, or part thereof, in which a non-short-term occupant will
19 continue to occupy such unit for the duration of such short-term
20 rental;

21 (G) The individualized name or number of each such
22 advertisement or listing connected to such unit and the uniform
23 resource locator (URL) for each such listing or advertisement,
24 where applicable; and

25 (H) Such other information as the Division of Taxation may by
26 rule require.

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

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

34 (k) "Occupancy" means the use or possession or the right to the
35 use or possession, of any room in a hotel or transient
36 accommodation.

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

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

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

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

1 person paying charges in the nature of initiation fees, membership
2 fees or dues for access to or use of the property or facilities of a
3 health and fitness, athletic, sporting or shopping club or
4 organization; and every purchaser of parking, storage or garaging a
5 motor vehicle.

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

27 (z) "Director" means the Director of the Division of Taxation in
28 the State Department of the Treasury, or any officer, employee or
29 agency of the Division of Taxation in the Department of the
30 Treasury duly authorized by the director (directly, or indirectly by
31 one or more redelegations of authority) to perform the functions
32 mentioned or described in this act.

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

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

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

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

45 (C) Providing tangible personal property or a specified digital
46 product along with an operator for a fixed or indeterminate period
47 of time. A condition of this exclusion is that the operator is
48 necessary for the equipment to perform as designed. For the

1 purpose of this subparagraph, an operator must do more than
2 maintain, inspect, or set-up the tangible personal property or
3 specified digital product.

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

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

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

15 (cc) "Telecommunications service" means the electronic
16 transmission, conveyance, or routing of voice, data, audio, video, or
17 any other information or signals to a point, or between or among
18 points.

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

26 "Telecommunications service" shall not include:

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

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

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

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

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

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

33 (7) data processing and information services that allow data to
34 be generated, acquired, stored, processed, or retrieved and delivered
35 by an electronic transmission to a purchaser where such purchaser's
36 primary purpose for the underlying transaction is the processed data
37 or information;

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

40 (9) tangible personal property;

41 (10) advertising, including but not limited to directory
42 advertising;

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

44 (12) internet access service;

45 (13) radio and television audio and video programming services,
46 regardless of the medium, including the furnishing of transmission,
47 conveyance, and routing of such services by the programming
48 service provider. Radio and television audio and video

1 programming services shall include but not be limited to cable
2 service as defined in section 47 U.S.C. s.522(6) and audio and video
3 programming services delivered by commercial mobile radio
4 service providers, as defined in section 47 C.F.R. 20.3;

5 (14) ancillary services; or

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

8 For the purposes of this subsection:

9 "ancillary service" means a service that is associated with or
10 incidental to the provision of telecommunications services,
11 including but not limited to detailed telecommunications billing,
12 directory assistance, vertical service, and voice mail service;
13 "conference bridging service" means an ancillary service that links
14 two or more participants of an audio or video conference call and
15 may include the provision of a telephone number. Conference
16 bridging service does not include the telecommunications services
17 used to reach the conference bridge;

18 "detailed telecommunications billing service" means an ancillary
19 service of separately stating information pertaining to individual
20 calls on a customer's billing statement;

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

23 "vertical service" means an ancillary service that is offered in
24 connection with one or more telecommunications services, which
25 offers advanced calling features that allow customers to identify
26 callers and to manage multiple calls and call connections, including
27 conference bridging services; and

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

32 (dd) (1) "Intrastate telecommunications" means a
33 telecommunications service that originates in one United States
34 state or a United States territory or possession or federal district,
35 and terminates in the same United States state or United States
36 territory or possession or federal district.

37 (2) "Interstate telecommunications" means a
38 telecommunications service that originates in one United States
39 state or a United States territory or possession or federal district,
40 and terminates in a different United States state or United States
41 territory or possession or federal district.

42 (3) "International telecommunications" means a
43 telecommunications service that originates or terminates in the
44 United States and terminates or originates outside the United States,
45 respectively. "United States" includes the District of Columbia or a
46 United States territory or possession.

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

- 1 (ff) "Natural gas" means any gaseous fuel distributed through a
2 pipeline system.
- 3 (gg) "Energy" means natural gas or electricity.
- 4 (hh) "Utility service" means the transportation or transmission of
5 natural gas or electricity by means of mains, wires, lines or pipes, to
6 users or customers.
- 7 (ii) "Self-generation unit" means a facility located on the user's
8 property, or on property purchased or leased from the user by the
9 person owning the self-generation unit and such property is
10 contiguous to the user's property, which generates electricity to be
11 used only by that user on the user's property and is not transported
12 to the user over wires that cross a property line or public
13 thoroughfare unless the property line or public thoroughfare merely
14 bifurcates the user's or self-generation unit owner's otherwise
15 contiguous property.
- 16 (jj) "Co-generation facility" means a facility the primary
17 purpose of which is the sequential production of electricity and
18 steam or other forms of useful energy which are used for industrial
19 or commercial heating or cooling purposes and which is designated
20 by the Federal Energy Regulatory Commission, or its successor, as
21 a "qualifying facility" pursuant to the provisions of the "Public
22 Utility Regulatory Policies Act of 1978," Pub.L.95-617.
- 23 (kk) "Non-utility" means a company engaged in the sale,
24 exchange or transfer of natural gas that was not subject to the
25 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to
26 December 31, 1997.
- 27 (ll) "Pre-paid calling service" means the right to access
28 exclusively telecommunications services, which shall be paid for in
29 advance and which enables the origination of calls using an access
30 number or authorization code, whether manually or electronically
31 dialed, and that is sold in predetermined units or dollars of which
32 the number declines with use in a known amount.
- 33 (mm) "Mobile telecommunications service" means the same as
34 that term is defined in the federal "Mobile Telecommunications
35 Sourcing Act," 4 U.S.C. s.124 (Pub.L.106-252).
- 36 (nn) (Deleted by amendment, P.L.2008, c.123)
- 37 (oo) (1) "Sales price" is the measure subject to sales tax and
38 means the total amount of consideration, including cash, credit,
39 property, and services, for which personal property or services are
40 sold, leased, or rented, valued in money, whether received in money
41 or otherwise, without any deduction for the following:
- 42 (A) The seller's cost of the property sold;
- 43 (B) The cost of materials used, labor or service cost, interest,
44 losses, all costs of transportation to the seller, all taxes imposed on
45 the seller, and any other expense of the seller;
- 46 (C) Charges by the seller for any services necessary to complete
47 the sale;
- 48 (D) Delivery charges;

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

1 products that are taxable and products that are nontaxable, the
2 portion of the price attributable to the nontaxable products is
3 subject to tax unless the provider can identify by reasonable and
4 verifiable standards such portion from its books and records that are
5 kept in the regular course of business for other purposes, including
6 non-tax purposes.

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

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

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

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

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

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

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

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

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

- 1 (1) investigation and detective services, including detective
2 agencies and private investigators, and fingerprint, polygraph,
3 missing person tracing and skip tracing services;
- 4 (2) security guard and patrol services, including bodyguard and
5 personal protection, guard dog, guard, patrol, and security services;
- 6 (3) armored car services; and
- 7 (4) security systems services, including security, burglar, and
8 fire alarm installation, repair or monitoring services.
- 9 (yy) "Information services" means the furnishing of information
10 of any kind, which has been collected, compiled, or analyzed by the
11 seller, and provided through any means or method, other than
12 personal or individual information which is not incorporated into
13 reports furnished to other people.
- 14 (zz) "Specified digital product" means an electronically
15 transferred digital audio-visual work, digital audio work, or digital
16 book; provided however, that a digital code which provides a
17 purchaser with a right to obtain the product shall be treated in the
18 same manner as a specified digital product.
- 19 (aaa) "Digital audio-visual work" means a series of related
20 images which, when shown in succession, impart an impression of
21 motion, together with accompanying sounds, if any.
- 22 (bbb) "Digital audio work" means a work that results from the
23 fixation of a series of musical, spoken, or other sounds, including a
24 ringtone.
- 25 (ccc) "Digital book" means a work that is generally recognized
26 in the ordinary and usual sense as a book.
- 27 (ddd) "Transferred electronically" means obtained by the
28 purchaser by means other than tangible storage media.
- 29 (eee) "Ringtone" means a digitized sound file that is downloaded
30 onto a device and that may be used to alert the purchaser with
31 respect to a communication.
- 32 (fff) "Residence" means a house, condominium, or other
33 residential dwelling unit in a building or structure or part of a
34 building or structure that is designed, constructed, leased, rented, let
35 or hired out, or otherwise made available for use as a residence.
- 36 (ggg) "Transient accommodation" means a room, group of
37 rooms, or other living or sleeping space for the lodging of
38 occupants, including but not limited to residences or buildings used
39 as residences. "Transient accommodation" does not include: a hotel
40 or hotel room; a room, group of rooms, or other living or sleeping
41 space used as a place of assembly; a dormitory or other similar
42 residential facility of an elementary or secondary school or a
43 college or university; a hospital, nursing home, or other similar
44 residential facility of a provider of services for the care, support and
45 treatment of individuals that is licensed by the State; a campsite,
46 cabin, lean-to, or other similar residential facility of a campground
47 or an adult or youth camp; a furnished or unfurnished private
48 residential property, including but not limited to condominiums,

1 bungalows, single-family homes and similar living units, where no
2 maid service, room service, linen changing service or other
3 common hotel services are made available by the lessor and where
4 the keys to the furnished or unfurnished private residential property,
5 whether a physical key, access to a keyless locking mechanism, or
6 other means of physical ingress to the furnished or unfurnished
7 private residential property, are provided to the lessee at the
8 location of an offsite real estate broker licensed by the New Jersey
9 Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases
10 of real property with a term of at least 90 consecutive days.

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

23 (iii) "Fuel cell facility" means a facility the primary purpose of
24 which is to generate electricity, or to generate electricity and
25 produce other forms of useful energy, directly from hydrogen or
26 hydrocarbon fuel through a non-combustive electrochemical
27 process using a fuel cell device, and which is: owned or operated
28 under contract by a person other than the person that is the end user
29 of such electricity, or such electricity and energy; installed on the
30 end user's property or on property purchased or leased from the end
31 user by the owner or operator of the facility and such property is
32 contiguous to the end user's property; placed in service on or after
33 the effective date of P.L. , c. (C.) (pending before the
34 Legislature as this bill); and used on a regular basis thereafter to
35 generate electricity, or to generate electricity and produce other
36 forms of useful energy, for the industrial or commercial purposes of
37 the end user.

38 (cf: P.L.2018, c.132, s.3)

39

40 2. Section 25 of P.L.1980, c.105 (C.54:32B-8.13) is amended
41 to read as follows:

42 25. Receipts from the following are exempt from the tax
43 imposed under the Sales and Use Tax Act:

44 a. Sales of machinery, apparatus or equipment for use or
45 consumption directly and primarily in the production of tangible
46 personal property by manufacturing, processing, assembling or
47 refining;

1 b. Sales of machinery, apparatus or equipment for use or
2 consumption directly and primarily in the production, generation,
3 transmission or distribution of gas, electricity, refrigeration, steam
4 or water for sale or in the operation of sewerage systems;

5 c. Sales of telephones, telephone lines, cables, central office
6 equipment or station apparatus, or other machinery, equipment or
7 apparatus, or comparable telegraph equipment to a service provider
8 subject to the jurisdiction of the Board of Public Utilities or the
9 Federal Communications Commission, for use directly and
10 primarily in receiving at destination or initiating, transmitting and
11 switching telephone, telegraph or interactive telecommunications
12 service for sale to the general public;

13 d. Sales of machinery, apparatus, equipment, building
14 materials, or structures or portions thereof, used directly and
15 primarily for cogeneration in a cogeneration facility. As used in
16 this subsection, "cogeneration facility" means a facility the primary
17 purpose of which is the sequential production of electricity and
18 steam or other forms of useful energy which are used for industrial
19 or commercial heating or cooling purposes and which is designated
20 by the Federal Energy Regulatory Commission, or its successor, as
21 a "qualifying facility" pursuant to the provisions of the "Public
22 Utility Regulatory Policies Act of 1978," Pub.L.95-617. The
23 Director of the Office of Energy in the Department of
24 Environmental Protection, in consultation with the Director of the
25 Division of Taxation, shall adopt, pursuant to the "Administrative
26 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
27 regulations establishing technical specifications for eligibility for
28 the exemption provided in this subsection;

29 e. Sales of machinery, apparatus or equipment, including
30 transponders, earth stations, microwave dishes, transmitters and
31 receivers which have a useful life exceeding one year, other than
32 that used in the construction or operation of towers, to a commercial
33 broadcaster operating under a broadcasting license issued by the
34 Federal Communications Commission or to a provider of
35 cable/satellite television program services who may or may not
36 operate under a broadcasting license issued by the Federal
37 Communications Commission for use or consumption directly and
38 primarily in the production or transmission of radio or television
39 information transmitted, delivered or archived through any medium
40 or method.

41 f. Sales of machinery, apparatus, equipment, building
42 materials, or structures or portions thereof, used directly and
43 primarily to generate electricity, or to generate electricity and
44 produce other forms of useful energy, in a fuel cell facility.

45 The exemptions granted under this section shall not be construed
46 to apply to sales, otherwise taxable, of machinery, equipment or
47 apparatus whose use is incidental to the activities described in
48 subsections a., b., c., d. **[and]** , e. , and f. of this section.

1 The exemptions granted in this section shall not apply to energy,
2 motor vehicles, or to parts with a useful life of one year or less or
3 tools or supplies used in connection with the machinery, equipment
4 or apparatus described in this section.

5 (cf: P.L.1997, c.162, s.23)

6

7 3. Section 26 of P.L.1997, c.162 (C.54:32B-8.46) is amended
8 to read as follows:

9 26. a. Receipts from the sale, exchange, delivery or use of
10 electricity are exempt from the tax imposed under the "Sales and
11 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) if the electricity:

12 (1) (a) Is sold by a municipal electric corporation in existence
13 as of December 31, 1995 and used within its municipal boundaries
14 except if the customer is located within a franchise area served by
15 an electric public utility other than the municipal electric
16 corporation. If a municipal electric corporation makes sales of
17 electricity used outside of its municipal boundaries or within a
18 franchise area served by an electric public utility other than the
19 municipal electric corporation, then receipts from those sales of
20 electricity by the municipal electric corporation shall be subject to
21 tax under P.L.1966, c.30; or

22 (b) Is sold by a municipal electric utility in existence as of
23 December 31, 1995, and used within its municipal boundaries.
24 However, a municipal electric utility's receipts from the sale,
25 exchange, delivery or use of electricity used by customers outside
26 of its municipal boundaries and within its franchise area existing as
27 of December 31, 1995 shall be subject to tax. If a municipal
28 electric utility makes sales of electricity used outside of its
29 franchise area existing as of December 31, 1995, then receipts from
30 those sales of electricity by the municipal electric utility shall be
31 subject to tax under P.L.1966, c.30;

32 (2) Was generated by a facility located on the user's property or
33 property purchased or leased from the user by the person owning
34 the generation facility and such property is contiguous to the user's
35 property, and the electricity was consumed by the one on-site end
36 user on the user's property, and was not transported to the user over
37 wires that cross a property line or public thoroughfare unless the
38 property line or public thoroughfare merely bifurcated the user's or
39 generation facility owner's otherwise contiguous property or the
40 electricity was consumed by an affiliated user on the same site, or
41 by a non-affiliated user on the same site with an electric distribution
42 system which is integrated and interconnected with the user on or
43 before March 10, 1997; the director may promulgate rules and
44 regulations and issue guidance with respect to all issues related to
45 affiliated users; or

46 (3) Is sold for resale.

47 For the purpose of electric sales by an on-site generation facility
48 pursuant to this subsection, an end use customer's property shall be

1 considered contiguous to the property on which the on-site
2 generation facility serving that customer is located if the customer
3 is purchasing thermal energy services produced by the facility, for
4 use for heating or cooling, or both, regardless of any intervening
5 property, public thoroughfare, or transportation or utility-owned
6 right-of-way.

7 The State Treasurer shall monitor monies deposited into the
8 Energy Tax Receipts Property Tax Relief Fund on an annual basis
9 and may report the results of the State Treasurer's analysis on the
10 fund to the Governor and the Legislature, along with any
11 recommendations on the exemptions in this subsection.

12 b. Receipts from the purchase or use of the following are
13 exempt from the tax imposed under the "Sales and Use Tax Act,"
14 P.L.1966, c.30 (C.54:32B-1 et seq.):

15 (1) Natural gas or utility service that is used to generate
16 electricity that is sold for resale or to an end user other than the end
17 user upon whose property is located a co-generation facility or self-
18 generation unit that generated the electricity or upon the property
19 purchased or leased from the end user by the person owning the co-
20 generation facility or self-generation unit if such property is
21 contiguous to the user's property and is the property upon which is
22 located a co-generation facility or self-generation unit that
23 generated the electricity;

24 (2) Natural gas and utility service that is used for co-generation
25 at any site at which a co-generation facility was in operation on or
26 before March 10, 1997, or for which an application for an operating
27 permit or a construction permit and a certificate of operation in
28 order to comply with air quality standards under P.L.1954, c.212
29 (C.26:2C-1 et seq.) has been filed with the Department of
30 Environmental Protection on or before March 10, 1997, to produce
31 electricity for use on that site; **[and]**

32 (3) Natural gas and utility service that is used for co-generation
33 at a co-generation facility that is constructed after January 1, 2010;
34 and

35 (4) Natural gas and utility service that is used to generate
36 electricity, or to generate electricity and produce other forms of
37 useful energy, in a fuel cell facility.

38 c. Notwithstanding any provisions of this section to the
39 contrary, any co-generation facility that was in operation prior to
40 January 1, 2010 and was subject to the tax imposed under the "Sales
41 and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) for the
42 purchase and use of natural gas and utility service for co-generation
43 purposes shall continue to be subject to, and responsible for
44 payment of, such tax after the effective date of P.L.2009, c.240
45 (C.48:3-77.1 et al.).

46 (cf: P.L.2009, c.240, s.3)

1 4. This act shall take effect immediately; provided, however,
2 that section 2 shall apply to sales made on or after the first day of
3 the fourth month next following the date of enactment and section 3
4 shall apply to billing periods starting on or after the first day of the
5 fourth month next following the date of enactment.

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STATEMENT

10 This bill provides an exemption from the sales and use tax for
11 sales of machinery and equipment and sales of natural gas used to
12 generate electricity in certain fuel cell facilities. The purpose of
13 this bill is to provide a targeted tax break to encourage the
14 development and deployment of fuel cell technologies in this State
15 that have the capacity to provide clean, safe, and reliable energy for
16 a variety of industrial and commercial applications and to reduce
17 fossil fuel emissions.

18 Under the bill, receipts from sales of machinery, apparatus,
19 equipment, building materials, or structures that are used directly
20 and primarily to generate electricity, or to generate electricity and
21 produce other forms of useful energy, in a fuel cell facility are
22 exempt from the sales and use tax. In addition, the bill exempts
23 from the sales and use tax receipts from sales of natural gas and
24 utility service (i.e. the charges to transport natural gas by means of
25 mains or pipes) that are used to generate electricity, or to generate
26 electricity and produce other forms of useful energy, in a fuel cell
27 facility.

28 For purposes of the bill, a fuel cell facility is as a facility the
29 primary purpose of which is to generate electricity, or to generate
30 electricity and produce other forms of useful energy, directly from
31 hydrogen or hydrocarbon fuel through a non-combustive
32 electrochemical process using a fuel cell device, and which is:

33 -- owned or operated under contract by a person other than the
34 person that is the end user of such electricity, or such electricity and
35 energy;

36 -- is installed on the end user's property or on property
37 purchased or leased from the end user by the owner or operator of
38 the facility and such property is contiguous to the end user's
39 property;

40 -- placed in service on or after the effective date of the bill; and

41 -- used on a regular basis thereafter to generate electricity, or to
42 generate electricity and produce other forms of useful energy, for
43 the industrial or commercial purposes of the end user.

44 The bill takes effect immediately upon enactment and provides
45 for the sales and use tax exemptions to apply to sales made and
46 billing periods starting on or after the first day of the fourth month
47 next following the date of enactment.