

ASSEMBLY, No. 4102

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MAY 7, 2020

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Clarifies sales tax collection responsibilities of horse boarding businesses in New Jersey.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT clarifying the sales tax collection responsibilities of horse
2 boarding businesses in New Jersey, amending and supplementing
3 P.L.1966, c.30.

4

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

7

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

10 3. There is imposed and there shall be paid a tax of 7% on or
11 before December 31, 2016, 6.875% on and after January 1, 2017 but
12 before January 1, 2018, and 6.625% on and after January 1, 2018
13 upon:

14 (a) The receipts from every retail sale of tangible personal
15 property or a specified digital product for permanent use or less
16 than permanent use, and regardless of whether continued payment is
17 required, except as otherwise provided in P.L.1966, c.30 (C.54:32B-
18 1 et seq.).

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

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

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

45 (3) Storing all tangible personal property not held for sale in the

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 regular course of business; the rental of safe deposit boxes or
2 similar space; and the furnishing of space for storage of tangible
3 personal property by a person engaged in the business of furnishing
4 space for such storage.

5 "Space for storage" means secure areas, such as rooms, units,
6 compartments, or containers, whether accessible from outside or
7 from within a building, that are designated for the use of a customer
8 and wherein the customer has free access within reasonable
9 business hours, or upon reasonable notice to the furnisher of space
10 for storage, to store and retrieve property. Space for storage shall
11 not include the lease or rental of an entire building, such as a
12 warehouse or airplane hangar, or the lease or rental of a stall in a
13 barn, stable, or other similar structure or facility for the boarding or
14 stabling or for the keeping or holding of a horse, pony, mule,
15 donkey, or hinny.

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

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

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

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

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

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

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

40 (11) Investigation and security services.

41 (12) Information services.

42 (13) (Deleted by amendment, P.L.2017, c.27)

43 (14) Telephone answering services.

44 (15) Radio subscription services.

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

1 Services otherwise taxable under paragraph (1) or (2) of
2 subsection (b) of this section are not subject to the taxes imposed
3 under this subsection, where the tangible personal property or
4 specified digital product upon which the services were performed is
5 delivered to the purchaser outside this State for use outside this
6 State.

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

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

28 The tax imposed by subsection (c) of this section shall not apply
29 to food or drink which is sold to an airline for consumption while in
30 flight.

31 (3) For the purposes of this subsection:

32 "Food and beverages sold through vending machines" means
33 food and beverages dispensed from a machine or other mechanical
34 device that accepts payment; and

35 "Prepared food" means:

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

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

44 C. food sold with eating utensils provided by the seller,
45 including plates, knives, forks, spoons, glasses, cups, napkins, or
46 straws. A plate does not include a container or packaging used to
47 transport the food;
48 provided however, that

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

3 A. food sold by a seller whose proper primary NAICS
4 classification is manufacturing in section 311, except subsector
5 3118 (bakeries);

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

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

11 (d) The rent for every occupancy of a room or rooms in a hotel
12 or transient accommodation in this State, except that the tax shall
13 not be imposed upon a permanent resident.

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

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

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

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

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

40 (h) Charges in the nature of initiation fees, membership fees or
41 dues for access to or use of the property or facilities of a health and
42 fitness, athletic, sporting, or shopping club or organization in this
43 State, except for: (1) membership in a club or organization whose
44 members are predominantly age 18 or under; and (2) charges in the
45 nature of membership fees or dues for access to or use of the
46 property or facilities of a health and fitness, athletic, sporting, or
47 shopping club or organization that is exempt from taxation pursuant
48 to paragraph (1) of subsection (a) of section 9 of P.L.1966, c.30

1 (C.54:32B-9), or that is exempt from taxation pursuant to paragraph
2 (1) or (2) of subsection (b) of section 9 of P.L.1966, c.30
3 (C.54:32B-9) and that has complied with subsection (d) of section 9
4 of P.L.1966, c.30 (C.54:32B-9).

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

15 For the purposes of this subsection, "municipal parking, storing,
16 or garaging" means any motor vehicle parking, storing, or garaging
17 provided by a municipality or county, or a parking authority
18 thereof.

19 (cf: P.L.2018, c.49, s.20)

20
21 2. (New section) Charges for storing a horse, pony, mule,
22 donkey, or hinny in a barn, stable, or other similar structure or
23 facility by a person engaged in the business of boarding or stabling
24 or otherwise keeping or holding horses, ponies, mules, donkeys, or
25 hinnies are exempt from the tax imposed pursuant to the "Sales and
26 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

27
28 3. (New section) Charges for maintaining or servicing a horse,
29 pony, mule, donkey, or hinny that is boarded or stabled or that is
30 kept or held in a barn, stable, or other similar structure or facility by
31 a person engaged in the business of boarding or stabling or
32 otherwise keeping or holding horses, ponies, mules, donkeys, or
33 hinnies are exempt from the tax imposed pursuant to the "Sales and
34 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

35
36 4. This act shall take effect immediately and apply to lease and
37 rental agreements entered into, and to charges for services rendered,
38 on or after the first day of the first month of the first calendar
39 quarter beginning at least 90 calendar days after the date of
40 enactment; provided however, that if a lease or rental or service
41 agreement taxable pursuant to the "Sales and Use Tax Act,"
42 P.L.1966, c.30 (C.54:32B-1 et seq.), covers any period beginning
43 prior to the first day of the first month of the first calendar quarter
44 beginning at least 90 calendar days after the date of enactment and
45 ending on or after the first day of the first month of the first
46 calendar quarter beginning at least 90 calendar days after the date of
47 enactment, receipts from the lease or rental or service agreement are
48 subject to tax pursuant to P.L.1966, c.30 at the rate applicable to

1 each period and shall be apportioned on the basis of the ratio of the
2 number of days falling within each period to the total number of
3 days covered thereby.

4
5
6 STATEMENT
7

8 This bill clarifies the sales tax collection responsibilities of horse
9 boarding businesses in New Jersey by providing an exemption from
10 the sales and use tax for the lease or rental of stable stalls and
11 charges for horse boarding and other related services.

12 Under the bill, the taxable service of “furnishing space for
13 storage” is redefined to exclude from tax charges for the lease or
14 rental of stable stalls. The bill provides that the service of
15 “furnishing space for storage” does not include, and the taxable
16 service therefore does not apply to, charges for the lease or rental of
17 a stall in a barn, stable, or other similar structure or facility for the
18 boarding or stabling or for the keeping or holding of a horse, pony,
19 mule, donkey, or hinny.

20 The bill similarly exempts from tax charges for boarding a horse.
21 The bill provides that charges for storing a horse, pony, mule,
22 donkey, or hinny in a barn, stable, or other similar structure or
23 facility by a person engaged in the business of boarding or stabling
24 or otherwise keeping or holding horses, ponies, mules, donkeys, or
25 hinnies are exempt from the sales tax.

26 In addition, the bill exempts from tax services that are provided
27 for the care of horses, ponies, mules, donkeys, or hinnies boarded
28 by persons engaged in the business of boarding horses. The bill
29 provides that charges for maintaining or servicing a horse, pony,
30 mule, donkey, or hinny that is boarded or stabled or that is kept or
31 held in a barn, stable, or other similar structure or facility by a
32 person engaged in the business of boarding or stabling or otherwise
33 keeping or holding horses, ponies, mules, donkeys, or hinnies are
34 exempt from the sales tax.

35 The bill takes effect immediately and applies to lease and rental
36 agreements entered into, and to charges for services rendered, on or
37 after the first day of the first month of the first calendar quarter
38 beginning at least 90 calendar days after the date of enactment. The
39 bill provides transitional rules that apply to agreements covering
40 periods beginning and ending before and on or after the date the
41 exemptions provided by the bill first apply.

42 The purpose of this bill is to clarify the tax collection
43 responsibilities of horse boarding businesses, and to provide for a
44 more equitable treatment of livestock kept under the care of farmers
45 in this State. The Division of Taxation in the Department of the
46 Treasury has failed to provide clear and consistent guidance on the
47 taxability of boarding and other services provided to horses that are
48 boarded for a variety of different purposes by different types of

1 boarding businesses, and has adopted rules and regulations that
2 have led to differences in the tax treatment of boarding horses in
3 comparison to other livestock that receive more favorable treatment
4 as farm animals.

5 These actions have created confusion within the agricultural
6 community and increased the cost of doing businesses for horse
7 boarding and other farm businesses attempting to maintain
8 compliance with current law. The actions have also placed New
9 Jersey horse boarding and other farm businesses at a competitive
10 disadvantage with similar businesses in surrounding states that do
11 not require businesses to collect tax on charges for boarding horses.

12 By providing an exemption for all horse boarding and related
13 services, this bill eliminates the confusion and reduces the overall
14 cost of doing business within this State. Moreover, by providing an
15 exemption, the bill levels the playing field for New Jersey horse
16 boarding businesses and their out-of-State counterparts, and
17 provides for a more equitable treatment of all livestock kept under
18 the care of farmers.