SENATE, No. 1973

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:
Senator VIN GOPAL
District 11 (Monmouth)
Senator STEVEN V. OROHO
District 24 (Morris, Sussex and Warren)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 2/25/2020)

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

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

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

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

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

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

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

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

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 <u>thus</u> is new matter.

(3) Storing all tangible personal property not held for sale in the regular course of business; the rental of safe deposit boxes or similar space; and the furnishing of space for storage of tangible personal property by a person engaged in the business of furnishing space for such storage.

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

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

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

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

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

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

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

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

(11) Investigation and security services.

(12) Information services.

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

(14) Telephone answering services.

(15) Radio subscription services.

Wages, salaries, and other compensation paid by an employer to an employee for performing as an employee the services described

in this subsection are not receipts subject to the taxes imposed under subsection (b) of this section.

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

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

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

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

(3) For the purposes of this subsection:

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

"Prepared food" means:

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

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

C. food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or

straws. A plate does not include a container or packaging used to transport the food;

provided however, that

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

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

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

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

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

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

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

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

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

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

(h) Charges in the nature of initiation fees, membership fees or dues for access to or use of the property or facilities of a health and fitness, athletic, sporting, or shopping club or organization in this State, except for: (1) membership in a club or organization whose members are predominantly age 18 or under; and (2) charges in the nature of membership fees or dues for access to or use of the

property or facilities of a health and fitness, athletic, sporting, or shopping club or organization that is exempt from taxation pursuant to paragraph (1) of subsection (a) of section 9 of P.L.1966, c.30 (C.54:32B-9), or that is exempt from taxation pursuant to paragraph (1) or (2) of subsection (b) of section 9 of P.L.1966, c.30 (C.54:32B-9) and that has complied with subsection (d) of section 9 of P.L.1966, c.30 (C.54:32B-9).

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

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

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

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

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

4. (New section) Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the Director of the Division of Taxation in the Department of the Treasury may adopt immediately upon filing with the Office of Administrative Law such rules and regulations as the director determines to be necessary and appropriate to effectuate the purposes of P.L. , c. (pending before the Legislature as this bill), which shall be effective for a period not exceeding 360 days following the effective date of P.L. , c. (pending before the Legislature as this bill) and may thereafter be amended, adopted, or

readopted by the director in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

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

STATEMENT

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

Under the bill, the taxable service of "furnishing space for storage" is redefined to exclude from tax charges for the lease or rental of certain stable stalls. The bill, provides that the service of "furnishing space for storage" does not include, and the taxable service therefor does not apply to, charges for the lease or rental of a stall in a barn, stable, or other similar structure or facility for the boarding or stabling or for the keeping or holding of a horse, pony, mule, donkey, or hinny.

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

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

The bill provides that the tax exemptions established by the bill would apply to sales made and services rendered on or after the first day of the fourth month next following the date of enactment.