

SENATE, No. 2981

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED OCTOBER 8, 2020

Sponsored by:

Senator JOSEPH P. CRYAN

District 20 (Union)

SYNOPSIS

Imposes sales and use tax on charges for concierge services.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** imposing the sales and use tax on charges for concierge
2 services, amending P.L.1966, c.30.

3

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

6

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

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

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

16 (b) "Purchase at retail" means a purchase by any person at a
17 retail sale.

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

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

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

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

45 (2) For the purposes of this act, the term "retail sale" includes:

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 sales of tangible personal property to all contractors, subcontractors
2 or repairmen of materials and supplies for use by them in erecting
3 structures for others, or building on, or otherwise improving,
4 altering, or repairing real property of others.

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

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

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

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

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

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

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

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

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

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

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

37 (h) "Use" means the exercise of any right or power over tangible
38 personal property, specified digital products, services to property or
39 products, or services by the purchaser thereof and includes, but is
40 not limited to, the receiving, storage or any keeping or retention for
41 any length of time, withdrawal from storage, any distribution, any
42 installation, any affixation to real or personal property, or any
43 consumption of such property or products. Use also includes the
44 exercise of any right or power over intrastate or interstate
45 telecommunications and prepaid calling services. Use also includes
46 the exercise of any right or power over utility service. Use also
47 includes the derivation of a direct or indirect benefit from a service.

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

3 (1) The term "seller" includes:

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

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

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

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

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

47 (E) The State of New Jersey, any of its agencies,
48 instrumentalities, public authorities, public corporations (including

1 a public corporation created pursuant to agreement or compact with
2 another state) or political subdivisions when such entity sells
3 services or property of a kind ordinarily sold by private persons;

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

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

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

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

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

18 (K) A marketplace facilitator.

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

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

- 1 (A) The name of the person who provided the transient
2 accommodation;
- 3 (B) The name of the customer who procured occupancy of the
4 transient accommodation;
- 5 (C) The address, including any unit designation, of the transient
6 accommodation;
- 7 (D) The dates and nightly rates for which the consumer procured
8 occupancy of the transient accommodation;
- 9 (E) The municipal transient accommodation registration number,
10 if applicable;
- 11 (F) A statement as to whether such booking services will be
12 provided in connection with (i) short-term rental of the entirety of
13 such unit, (ii) short-term rental of part of such unit, but not the
14 entirety of such unit, and/or (iii) short-term rental of the entirety of
15 such unit, or part thereof, in which a non-short-term occupant will
16 continue to occupy such unit for the duration of such short-term
17 rental;
- 18 (G) The individualized name or number of each such
19 advertisement or listing connected to such unit and the uniform
20 resource locator (URL) for each such listing or advertisement,
21 where applicable; and
- 22 (H) Such other information as the Division of Taxation may by
23 rule require.
- 24 The Division of Taxation may audit transient space marketplaces
25 as necessary to ensure data accuracy and enforce tax compliance.
- 26 (j) "Hotel" means a building or portion of a building which is
27 regularly used and kept open as such for the lodging of guests.
28 "Hotel" includes an apartment hotel, a motel, inn, and rooming or
29 boarding house or club, whether or not meals are served, but does
30 not include a transient accommodation.
- 31 (k) "Occupancy" means the use or possession or the right to the
32 use or possession, of any room in a hotel or transient
33 accommodation.
- 34 (l) "Occupant" means a person who, for a consideration, uses,
35 possesses, or has the right to use or possess, any room in a hotel or
36 transient accommodation under any lease, concession, permit, right
37 of access, license to use or other agreement, or otherwise.
- 38 (m) "Permanent resident" means any occupant of any room or
39 rooms in a hotel or transient accommodation for at least 90
40 consecutive days shall be considered a permanent resident with
41 regard to the period of such occupancy.
- 42 (n) "Room" means any room or rooms of any kind in any part or
43 portion of a hotel or transient accommodation, which is available
44 for or let out for any purpose other than a place of assembly.
- 45 (o) "Admission charge" means the amount paid for admission,
46 including any service charge and any charge for entertainment or
47 amusement or for the use of facilities therefor.

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

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

6 (r) "Dramatic or musical arts admission charge" means any
7 admission charge paid for admission to a theater, opera house,
8 concert hall or other hall or place of assembly for a live, dramatic,
9 choreographic or musical performance.

10 (s) "Lessor" means any person who is the owner, licensee, or
11 lessee of any premises, tangible personal property or a specified
12 digital product which the person leases, subleases, or grants a
13 license to use to other persons.

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

16 (u) "Casual sale" means an isolated or occasional sale of an item
17 of tangible personal property or a specified digital product by a
18 person who is not regularly engaged in the business of making retail
19 sales of such property or product where the item of tangible
20 personal property or the specified digital product was obtained by
21 the person making the sale, through purchase or otherwise, for the
22 person's own use.

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

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

42 (x) "Customer" includes: every purchaser of tangible personal
43 property, specified digital products or services; every patron paying
44 or liable for the payment of any amusement charge; every occupant
45 of a room or rooms in a hotel or transient accommodation; every
46 person paying charges in the nature of initiation fees, membership
47 fees or dues for access to or use of the property or facilities of a
48 health and fitness, athletic, sporting or shopping club or

1 organization; and every purchaser of parking, storage or garaging a
2 motor vehicle.

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

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

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

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

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

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

42 (C) Providing tangible personal property or a specified digital
43 product along with an operator for a fixed or indeterminate period
44 of time. A condition of this exclusion is that the operator is
45 necessary for the equipment to perform as designed. For the
46 purpose of this subparagraph, an operator must do more than
47 maintain, inspect, or set-up the tangible personal property or
48 specified digital product.

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

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

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

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

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

23 "Telecommunications service" shall not include:

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

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

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

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

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

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

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

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

37 (9) tangible personal property;

38 (10) advertising, including but not limited to directory
39 advertising;

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

41 (12) internet access service;

42 (13) radio and television audio and video programming services,
43 regardless of the medium, including the furnishing of transmission,
44 conveyance, and routing of such services by the programming
45 service provider. Radio and television audio and video
46 programming services shall include but not be limited to cable
47 service as defined in section 47 U.S.C. s.522(6) and audio and video

1 programming services delivered by commercial mobile radio
2 service providers, as defined in section 47 C.F.R. 20.3;

3 (14) ancillary services; or

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

6 For the purposes of this subsection:

7 "ancillary service" means a service that is associated with or
8 incidental to the provision of telecommunications services,
9 including but not limited to detailed telecommunications billing,
10 directory assistance, vertical service, and voice mail service;

11 "conference bridging service" means an ancillary service that links
12 two or more participants of an audio or video conference call and
13 may include the provision of a telephone number. Conference
14 bridging service does not include the telecommunications services
15 used to reach the conference bridge;

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

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

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

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

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

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

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

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

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

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

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

4 (ii) "Self-generation unit" means a facility located on the user's
5 property, or on property purchased or leased from the user by the
6 person owning the self-generation unit and such property is
7 contiguous to the user's property, which generates electricity to be
8 used only by that user on the user's property and is not transported
9 to the user over wires that cross a property line or public
10 thoroughfare unless the property line or public thoroughfare merely
11 bifurcates the user's or self-generation unit owner's otherwise
12 contiguous property.

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

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

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

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

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

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

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

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

43 (C) Charges by the seller for any services necessary to complete
44 the sale;

45 (D) Delivery charges;

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

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

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

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

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

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

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

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

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

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

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

25 (C) The amount of the consideration attributable to the sale is
26 fixed and determinable by the seller at the time of the sale of the
27 item to the purchaser; and

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

29 (i) the purchaser presents a coupon, certificate, or other
30 documentation to the seller to claim a price reduction or discount
31 where the coupon, certificate, or documentation is authorized,
32 distributed, or granted by a third party with the understanding that
33 the third party will reimburse any seller to whom the coupon,
34 certificate, or documentation is presented;

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

39 (iii) the price reduction or discount is identified as a third party
40 price reduction or discount on the invoice received by the purchaser
41 or on a coupon, certificate, or other documentation presented by the
42 purchaser.

43 (4) In the case of a bundled transaction that includes a
44 telecommunications service, an ancillary service, internet access, or
45 an audio or video programming service, if the price is attributable to
46 products that are taxable and products that are nontaxable, the
47 portion of the price attributable to the nontaxable products is
48 subject to tax unless the provider can identify by reasonable and

1 verifiable standards such portion from its books and records that are
2 kept in the regular course of business for other purposes, including
3 non-tax purposes.

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

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

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

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

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

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

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

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

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

45 (1) investigation and detective services, including detective
46 agencies and private investigators, and fingerprint, polygraph,
47 missing person tracing and skip tracing services;

- 1 (2) security guard and patrol services, including bodyguard and
2 personal protection, guard dog, guard, patrol, and security services;
3 (3) armored car services; and
4 (4) security systems services, including security, burglar, and
5 fire alarm installation, repair or monitoring services.
- 6 (yy) "Information services" means the furnishing of information
7 of any kind, which has been collected, compiled, or analyzed by the
8 seller, and provided through any means or method, other than
9 personal or individual information which is not incorporated into
10 reports furnished to other people.
- 11 (zz) "Specified digital product" means an electronically
12 transferred digital audio-visual work, digital audio work, or digital
13 book; provided however, that a digital code which provides a
14 purchaser with a right to obtain the product shall be treated in the
15 same manner as a specified digital product.
- 16 (aaa) "Digital audio-visual work" means a series of related
17 images which, when shown in succession, impart an impression of
18 motion, together with accompanying sounds, if any.
- 19 (bbb) "Digital audio work" means a work that results from the
20 fixation of a series of musical, spoken, or other sounds, including a
21 ringtone.
- 22 (ccc) "Digital book" means a work that is generally recognized
23 in the ordinary and usual sense as a book.
- 24 (ddd) "Transferred electronically" means obtained by the
25 purchaser by means other than tangible storage media.
- 26 (eee) "Ringtone" means a digitized sound file that is
27 downloaded onto a device and that may be used to alert the
28 purchaser with respect to a communication.
- 29 (fff) "Residence" means a house, condominium, or other
30 residential dwelling unit in a building or structure or part of a
31 building or structure that is designed, constructed, leased, rented, let
32 or hired out, or otherwise made available for use as a residence.
- 33 (ggg) "Transient accommodation" means a room, group of
34 rooms, or other living or sleeping space for the lodging of
35 occupants, including but not limited to residences or buildings used
36 as residences, that is obtained through a transient space marketplace
37 or is a professionally managed unit. "Transient accommodation"
38 does not include: a hotel or hotel room; a room, group of rooms, or
39 other living or sleeping space used as a place of assembly; a
40 dormitory or other similar residential facility of an elementary or
41 secondary school or a college or university; a hospital, nursing
42 home, or other similar residential facility of a provider of services
43 for the care, support and treatment of individuals that is licensed by
44 the State; a campsite, cabin, lean-to, or other similar residential
45 facility of a campground or an adult or youth camp; a furnished or
46 unfurnished private residential property, including but not limited to
47 condominiums, bungalows, single-family homes and similar living
48 units, where no maid service, room service, linen changing service

1 or other common hotel services are made available by the lessor and
2 where the keys to the furnished or unfurnished private residential
3 property, whether a physical key, access to a keyless locking
4 mechanism, or other means of physical ingress to the furnished or
5 unfurnished private residential property, are provided to the lessee
6 at the location of an offsite real estate broker licensed by the New
7 Jersey Real Estate Commission pursuant to R.S.45:15-1 et seq.; or
8 leases of real property with a term of at least 90 consecutive days.

9 (hhh) "Transient space marketplace" means a marketplace or
10 travel agency through which a person may offer transient
11 accommodations to customers and through which customers may
12 arrange for occupancies of transient accommodations. "Transient
13 space marketplace" does not include a marketplace or travel agency
14 that exclusively offers transient accommodations in the State owned
15 by the owner of the marketplace or travel agency.

16 (iii) "Professionally managed unit" means a room, group of
17 rooms, or other living or sleeping space for the lodging of
18 occupants in the State, that is offered for rent as a rental unit that
19 does not share any living or sleeping space with any other rental
20 unit, and that is directly or indirectly owned or controlled by a
21 person offering for rent two or more other units during the calendar
22 year.

23 (jjj) "Obtained through a transient space marketplace" means
24 that payment for the accommodation is made through a means
25 provided by the marketplace or travel agency, either directly or
26 indirectly, regardless of which person or entity receives the
27 payment, and where the contracting for the accommodation is made
28 through the marketplace or travel agency.

29 (kkk) "Concierge services" includes, but is not limited to,
30 concierge services provided by hotels or apartment buildings or by
31 third-party providers for use by the occupant of a hotel or apartment
32 building.

33 (cf: P.L.2019, c.235, s.13)
34

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

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

41 (a) The receipts from every retail sale of tangible personal
42 property or a specified digital product for permanent use or less
43 than permanent use, and regardless of whether continued payment is
44 required, except as otherwise provided in P.L.1966, c.30 (C.54:32B-
45 1 et seq.).

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

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

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

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

30 "Space for storage" means secure areas, such as rooms, units,
31 compartments, or containers, whether accessible from outside or
32 from within a building, that are designated for the use of a customer
33 and wherein the customer has free access within reasonable
34 business hours, or upon reasonable notice to the furnisher of space
35 for storage, to store and retrieve property. Space for storage shall
36 not include the lease or rental of an entire building, such as a
37 warehouse or airplane hangar.

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

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

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

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

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

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

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

15 (11) Investigation and security services.

16 (12) Information services.

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

18 (14) Telephone answering services.

19 (15) Radio subscription services.

20 (16) Concierge services.

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

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

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

45 (2) Receipts from sales of food and beverages sold through
46 vending machines, at the wholesale price of such sale, which shall
47 be defined as 70% of the retail vending machine selling price,
48 except sales of milk, which shall not be taxed. Nothing herein

1 contained shall affect other sales through coin-operated vending
2 machines taxable pursuant to subsection (a) above or the exemption
3 thereto provided by section 21 of P.L.1980, c.105 (C.54:32B-8.9).

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

7 (3) For the purposes of this subsection:

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

11 "Prepared food" means:

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

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

20 C. food sold with eating utensils provided by the seller,
21 including plates, knives, forks, spoons, glasses, cups, napkins, or
22 straws. A plate does not include a container or packaging used to
23 transport the food;
24 provided however, that

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

27 A. food sold by a seller whose proper primary NAICS
28 classification is manufacturing in section 311, except subsector
29 3118 (bakeries);

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

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

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

38 (e) (1) Any admission charge to or for the use of any place of
39 amusement in the State, including charges for admission to race
40 tracks, baseball, football, basketball or exhibitions, dramatic or
41 musical arts performances, motion picture theaters, except charges
42 for admission to boxing, wrestling, kick boxing, or combative
43 sports exhibitions, events, performances, or contests which charges
44 are taxed under any other law of this State or under section 20 of
45 P.L.1985, c.83 (C.5:2A-20), and, except charges to a patron for
46 admission to, or use of, facilities for sporting activities in which the
47 patron is to be a participant, such as bowling alleys and swimming
48 pools. For any person having the permanent use or possession of a

1 box or seat or lease or a license, other than a season ticket, for the
2 use of a box or seat at a place of amusement, the tax shall be upon
3 the amount for which a similar box or seat is sold for each
4 performance or exhibition at which the box or seat is used or
5 reserved by the holder, licensee, or lessee, and shall be paid by the
6 holder, licensee, or lessee.

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

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

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

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

16 (h) Charges in the nature of initiation fees, membership fees or
17 dues for access to or use of the property or facilities of a health and
18 fitness, athletic, sporting, or shopping club or organization in this
19 State, except for: (1) membership in a club or organization whose
20 members are predominantly age 18 or under; and (2) charges in the
21 nature of membership fees or dues for access to or use of the
22 property or facilities of a health and fitness, athletic, sporting, or
23 shopping club or organization that is exempt from taxation pursuant
24 to paragraph (1) of subsection (a) of section 9 of P.L.1966, c.30
25 (C.54:32B-9), or that is exempt from taxation pursuant to paragraph
26 (1) or (2) of subsection (b) of section 9 of P.L.1966, c.30
27 (C.54:32B-9) and that has complied with subsection (d) of section 9
28 of P.L.1966, c.30 (C.54:32B-9).

29 (i) The receipts from parking, storing, or garaging a motor
30 vehicle, excluding charges for the following: residential parking;
31 employee parking, when provided by an employer or at a facility
32 owned or operated by the employer; municipal parking, storing, or
33 garaging; receipts from charges or fees imposed pursuant to section
34 3 of P.L.1993, c.159 (C.5:12-173.3) or pursuant to an agreement
35 between the Casino Reinvestment Development Authority and a
36 casino operator in effect on the date of enactment of P.L.2007,
37 c.105; and receipts from parking, storing, or garaging a motor
38 vehicle subject to tax pursuant to any other law or ordinance.

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

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

44
45 3. This act shall take effect immediately.

1 STATEMENT

2

3 This bill imposes the sales and use tax on charges for concierge
4 services. Under the bill, “concierge services” includes, but is not
5 limited to, concierge services provided by hotels or apartment
6 buildings or by third-party providers for use by the occupant of a
7 hotel or apartment building.

8 Under current law, the State imposes a sales and use tax on the
9 sale of certain products and services at a rate of 6.625 percent. The
10 sale of concierge services by third-party providers, a growing
11 industry in New Jersey, is currently not subject to the State’s sales
12 and use tax.