

54: 32B-2

LEGISLATIVE HISTORY CHECKLIST

NJSA: 54: 32B-2

(Sales tax on
leased personal
property)

LAWS OF: 1989

CHAPTER: 123

Bill No: A4821

Sponsor(s): Frelinghuysen and Kamin

Date Introduced: June 28, 1989

Committee: Assembly: -----

Senate: -----

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P.L.1989, CHAPTER 123, *approved July 1, 1989*
1989 Assembly No. 4821

1 **AN ACT** to amend and supplement Title 54 of the Revised
Statutes and making an appropriation.

3

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

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

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

11 (a) **Person.** Person includes an individual, partnership, society,
association, joint stock company, corporation, public corporation
13 or public authority, estate, receiver, trustee, assignee, referee,
and any other person acting in a fiduciary or representative
15 capacity, whether appointed by a court or otherwise, and any
combination of the foregoing.

17 (b) **Purchase at retail.** A purchase by any person at a retail
sale.

19 (c) **Purchaser.** A person who purchases property or who
receives services.

21 (d) **Receipt.** The amount of the sales price of any property and
the charge for any service taxable under this act, valued in
23 money, whether received in money or otherwise, including any
amount for which credit is allowed by the vendor to the
purchaser, without any deduction for expenses or early payment
25 discounts, but excluding any credit for property of the same kind
that is not tangible personal property purchased for lease
27 accepted in part payment and intended for resale, excluding the
cost of transportation where such cost is separately stated in the
29 written contract, if any, and on the bill rendered to the
purchaser, and excluding the amount of the sales price for which
31 food stamps have been properly tendered in full or part payment
pursuant to the federal Food Stamp Act of 1977, Pub.L. 95-113 (7
33 U.S.C. § 2011 et seq.).

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 (e) Retail sale. (1) A sale of tangible personal property to any
2 person for any purpose, other than (A) for resale either as such or
3 as converted into or as a component part of a product produced
4 for sale by the purchaser, or (B) for use by that person in
5 performing the services subject to tax under subsection (b) of
6 section 3 where the property so sold becomes a physical
7 component part of the property upon which the services are
8 performed or where the property so sold is later actually
9 transferred to the purchaser of the service in conjunction with
10 the performance of the service subject to tax.

11 (2) For the purposes of this act, the term retail sales includes:

12 Sales of tangible personal property to all contractors,
13 subcontractors or repairmen of materials and supplies for use by
14 them in erecting structures for others, or building on, or
15 otherwise improving, altering, or repairing real property of others.

16 (3) For the purposes of this act, the term retail sale includes
17 the purchase of tangible personal property for lease.

18 ~~[(3)]~~ (4) The term retail sales does not include:

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

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

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

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

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

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

34 (G) The sale of tangible personal property where the purpose
35 of the vendee is to hold the thing transferred as security for the
36 performance of an obligation of the vendor.

37 (f) Sale, selling or purchase. Any transfer of title or
38 possession or both, exchange or barter, rental, lease or license to
39 use or consume, conditional or otherwise, in any manner or by any

1 means whatsoever for a consideration, or any agreement
therefor, including the rendering of any service, taxable under
3 this act, for a consideration or any agreement therefor.

(g) **Tangible personal property.** Corporeal personal property of
5 any nature.

(h) **Use.** The exercise of any right or power over tangible
7 personal property by the purchaser thereof and includes, but is
not limited to, the receiving, storage or any keeping or retention
9 for any length of time, withdrawal from storage, any installation,
any affixation to real or personal property, or any consumption of
11 such property.

(i) **Vendor.** (1) The term "vendor" includes:

13 (A) A person making sales of tangible personal property or
services, the receipts from which are taxed by this act;

15 (B) A person maintaining a place of business in the State and
making sales, whether at such place of business or elsewhere, to
17 persons within the State of tangible personal property or services,
the use of which is taxed by this act;

19 (C) A person who solicits business either by employees,
independent contractors, agents or other representatives or by
21 distribution of catalogs or other advertising matter and by reason
thereof makes sales to persons within the State of tangible
23 personal property or services, the use of which is taxed by this
act;

25 (D) Any other person making sales to persons within the State
of tangible personal property or services, the use of which is
27 taxed by this act, who may be authorized by the director to
collect the tax imposed by this act; and

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

35 (F) A person who purchases tangible personal property for
lease, whether in this State or elsewhere. For the purposes of
37 Title 14 of the Revised Statutes, the presence of leased tangible
personal property in this State is deemed to be a place of business
19 in this State.

1 (2) In addition, when in the opinion of the director it is
2 necessary for the efficient administration of this act to treat any
3 salesman, representative, peddler or canvasser as the agent of
4 the vendor, distributor, supervisor or employer under whom he
5 operates or from whom he obtains tangible personal property sold
6 by him or for whom he solicits business, the director may, in his
7 discretion, treat such agent as the vendor jointly responsible with
8 his principal, distributor, supervisor or employer for the
9 collection and payment over of the tax.

10 (j) Hotel. A building or portion of it which is regularly used
11 and kept open as such for the lodging of guests. The term "hotel"
12 includes an apartment hotel, a motel, boarding house or club,
13 whether or not meals are served.

14 (k) Occupancy. The use or possession or the right to the use or
15 possession, of any room in a hotel.

16 (l) Occupant. A person who, for a consideration, uses,
17 possesses, or has the right to use or possess, any room in a hotel
18 under any lease, concession, permit, right of access, license to
19 use or other agreement, or otherwise.

20 (m) Permanent resident. Any occupant of any room or rooms
21 in a hotel for at least 90 consecutive days shall be considered a
22 permanent resident with regard to the period of such occupancy.

23 (n) Room. Any room or rooms of any kind in any part or
24 portion of a hotel, which is available for or let out for any
25 purpose other than a place of assembly.

26 (o) Admission charge. The amount paid for admission,
27 including any service charge and any charge for entertainment or
28 amusement or for the use of facilities therefor.

29 (p) Amusement charge. Any admission charge, dues or charge
30 of roof garden, cabaret or other similar place.

31 (q) Charge of a roof garden, cabaret or other similar place.
32 Any charge made for admission, refreshment, service, or
33 merchandises at a roof garden, cabaret or other similar place.

34 (r) Dramatic or musical arts admission charge. Any admission
35 charge paid for admission to a theatre, opera house, concert hall
36 or other hall or place of assembly for a live, dramatic,
37 choreographic or musical performance.

38 (s) Lessor. Any person who is the owner, licensee, or lessee of
39 any premises or tangible personal property which he leases,

1 subleases, or grants a license to use to other persons.

2 (t) Place of amusement. Any place where any facilities for
3 entertainment, amusement, or sports are provided.

4 (u) Casual sale. Casual sale means an isolated or occasional
5 sale of an item, of tangible personal property by a person who is
6 not regularly engaged in the business of making sales at retail
7 where such property was obtained by the person making the sale,
8 through purchase or otherwise, for his own use in this State.

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

15 (w) "Persons required to collect tax" or "persons required to
16 collect any tax imposed by this act" shall include: every vendor
17 of tangible personal property or services; every recipient of
18 amusement charges; [and] every operator of a hotel; and every
19 lessor. Said terms shall also include any officer or employee of a
20 corporation or of a dissolved corporation who as such officer or
21 employee is under a duty to act for such corporation in complying
22 with any requirement of this act and any member of a
23 partnership. Provided, however, the vendor of tangible personal
24 property to all contractors, subcontractors or repairmen,
25 consisting of materials and supplies for use by them in erecting
26 structures for others, or building on, or otherwise improving,
27 altering or repairing real property of others, shall not be deemed
28 a person required to collect tax, and the tax imposed by any
29 section of this act shall be paid directly to the director by such
30 contractors, subcontractors or repairmen.

31 (x) "Customer" shall include: every purchaser of tangible
32 personal property or services; every patron paying or liable for
33 the payment of any amusement charge; and every occupant of a
34 room or rooms in a hotel.

35 (y) "Property and services the use of which is subject to tax"
36 shall include: (a) all property sold to a person within the State,
37 whether or not the sale is made within the State, the use of which
38 property is subject to tax under section 6 or will become subject
39 to tax when such property is received by or comes into the

1 ~~possession or control of such person within the State; and (b) all~~
2 ~~services rendered to a person within the State, whether or not~~
3 ~~such services are performed within the State, upon tangible~~
4 ~~personal property the use of which is subject to tax under section~~
5 ~~6 or will become subject to tax when such property is received by~~
6 ~~or comes into possession or control of such person within the~~
7 ~~State.~~

8 (z) Director. Director means the Director of the Division of
9 Taxation of the State Department of the Treasury, or any officer,
10 employee or agency of the Division of Taxation in the
11 Department of the Treasury duly authorized by the director
(directly, or indirectly by one or more redelegations of authority)
12 to perform the functions mentioned or described in this act.

13 (aa) "Lease" means the possession or control of tangible
14 personal property by an agreement, not transferring sole title, as
15 may be evidenced by a contract, contracts, or by implication
16 from other circumstances including course of dealing or usage of
17 trade or course of performance, for a period of more than 28 days.

18 (bb) "The amount of the sales price" of tangible personal
19 property purchased for lease means, at the election of the lessor,
20 either (1) the amount of the lessor's purchase price or (2) the
21 amount of the total of the lease payments attributable to the
22 lease of such property. Tangible personal property purchased for
23 lease is subject to the provisions of subsection (a) of section 3 of
24 P.L.1966, c.30 (C.54:32B-3).

25 (cf: P.L.1967, c.254, s.1)

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

28 3. On and after July 1, 1966 and continuing through February
29 28, 1970, there is hereby imposed and there shall be paid a tax of
30 3%; on and after March 1, 1970 and continuing through January 2,
31 1963, there is hereby imposed and there shall be paid a tax of 5%;
32 and on and after January 3, 1963, there is imposed and there shall
33 be paid a tax of 6%, upon:

34 (a) The receipts from every retail sale of tangible personal
35 property, except as otherwise provided in this act. If the lessor
36 of tangible personal property purchased for lease elects to pay
37 tax on the amount of the sales price as provided in paragraph (2)
38 of subsection (bb) of section 2 of P.L.1966, c.30 (C.54:32B-3), any
39

1 and each subsequent lease or rental is a retail sale, and a
2 subsequent sale of such property is a retail sale.

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

5 (1) Producing, fabricating, processing, printing or imprinting
6 tangible personal property, performed for a person who directly
7 or indirectly furnishes the tangible personal property, not
8 purchased by him for resale, upon which such services are
9 performed.

10 (2) Installing tangible personal property, or maintaining,
11 servicing, repairing tangible personal property not held for sale in
12 the regular course of business, whether or not the services are
13 performed directly or by means of coin-operated equipment or by
14 any other means, and whether or not any tangible personal
15 property is transferred in conjunction therewith, except (i) such
16 services rendered by an individual who is engaged directly by a
17 private homeowner or lessee in or about his residence and who is
18 not in a regular trade or business offering his services to the
19 public, (ii) such services rendered with respect to personal
20 property exempt from taxation hereunder pursuant to section 13
21 of P.L.1980, c.105 (C.54:32B-8.1), (iii) services rendered with
22 respect to trucks, tractors, trailers or semitrailers by a person
23 who is not engaged, directly or indirectly through subsidiaries,
24 parents, affiliates or otherwise, in a regular trade or business
25 offering such services to the public, (iv) any receipts from
26 laundering, dry cleaning, tailoring, weaving, pressing, shoe
27 repairing and shoeshining and (v) services rendered in installing
28 property which, when installed, will constitute an addition or
29 capital improvement to real property, property or land.

30 (3) Storing all tangible personal property not held for sale in
31 the regular course of business and the rental of safe deposit boxes
32 or similar space.

33 (4) Maintaining, servicing or repairing real property, other
34 than a residential heating system unit serving not more than
35 three families living independently of each other and doing their
36 cooking on the premises, whether the services are performed in
37 or outside of a building, as distinguished from adding to or
38 improving such real property by a capital improvement, but
39 excluding services rendered by an individual who is not in a

1 regular trade or business offering his services to the public, and
2 excluding interior cleaning and maintenance services, garbage
3 removal and sewer services performed on a regular contractual
4 basis for a term not less than 30 days, other than window
5 cleaning, and rodent and pest control.

6 (5) Advertising services, except advertising services for use
7 directly and primarily for publication in newspapers and
8 magazines and except for direct-mail advertising processing
9 services in connection with distribution to out-of-State
10 recipients.

11 Wages, salaries and other compensation paid by an employer to
12 an employee for performing as an employee the services
13 described in this subsection are not receipts subject to the taxes
14 imposed under this subsection (b).

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

20 (c) Receipts from the sale of food and drink in or by
21 restaurants, taverns, vending machines or other establishments in
22 this State, or by caterers, including in the amount of such
23 receipts any cover, minimum, entertainment or other charge
24 made to patrons or customers:

25 (1) In all instances where the sale is for consumption on the
26 premises where sold;

27 (2) In those instances where the vendor or any person whose
28 services are arranged for by the vendor, after the delivery of the
29 food or drink by or on behalf of the vendor for consumption off
30 the premises of the vendor, serves or assists in serving, cooks,
31 heats or provides other services with respect to the food or drink,
32 except for meals especially prepared for and delivered to
33 homebound elderly, age 60 or older, and to disabled persons, or
34 meals prepared and served at a group-sitting at a location outside
35 of the home to otherwise homebound elderly persons, age 60 or
36 older, and otherwise homebound disabled persons, as all or part of
37 any food service project funded in whole or in part by government
38 or as part of a private, nonprofit food service project available to
39 all such elderly or disabled persons residing within an area of

1 service designated by the private nonprofit organization; and

3 (3) In those instances where the sale is for consumption off the
5 premises of the vendor, and consists of a meal, or food prepared
7 and ready to be eaten, of a kind obtainable in restaurants as the
9 main course of a meal, including a sandwich, except where food
other than sandwiches is sold in an unheated state and is of a type
commonly sold in the same form and condition in food stores
other than those which are principally engaged in selling prepared
foods;

11 (4) Sales of food and beverages sold through coin-operated
13 vending machines, at the wholesale price of such sale, which shall
15 be defined as 70% of the retail vending machine selling price,
17 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).

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

21 (d) The rent for every occupancy of a room or rooms in a hotel
23 in this State, except that the tax shall not be imposed upon (1) a
permanent resident, or (2) where the rent is not more than at the
rate of \$2.00 per day.

25 (e) (1) Any admission charge, where such admission charge is in
27 excess of \$0.75 to or for the use of any place of amusement in
29 the State, including charges for admission to race tracks,
31 baseball, football, basketball or exhibitions, dramatic or musical
33 arts performances, motion picture theatres, except charges for
35 admission to boxing, wrestling, kick boxing or combative sports
37 exhibitions, events, performances or contests which charges are
39 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
such 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

1 the box or seat is used or reserved by the holder, licensee or
lessee, and shall be paid by the holder, licensee or lessee.

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

(cf: P.L.1987, c.268, s.1)

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

9 7. (a) The retail sales tax imposed under subsection (a) of
section 3 and the compensating use tax imposed under section 6,
11 when computed in respect to tangible personal property wherever
manufactured, processed or assembled and used by such
13 manufacturer, processor or assembler in the regular course of
business within this State, shall be based on the price at which
15 items of the same kind of tangible personal property are offered
for sale by him.

17 (b) Tangible personal property, which has been purchased by a
resident of the State of New Jersey outside of this State for use
19 outside of this State and subsequently becomes subject to the
compensating use tax imposed under this act, shall be taxed on
21 the basis of the purchase price of such property, provided,
however:

23 (1) That where a taxpayer affirmatively shows that the
property was used outside such State by him for more than 6
25 months prior to its use within this State, such property shall be
taxed on the basis of current market value of the property at the
27 time of its first use within this State. The value of such
property, for compensating use tax purposes, may not exceed its
29 cost.

(2) That the compensating use tax on such tangible personal
31 property brought into this State (other than for complete
consumption or for incorporation into real property located in
33 this State) and used in the performance of a contract or
subcontract within this State by a purchaser or user for a period
35 of less than 6 months may be based, at the option of the
taxpayer, on the fair rental value of such property for the period
37 of use within this State.

(c) Leased tangible personal property which has been
39 purchased outside this State for lease outside of this State and

1 subsequently becomes subject to the compensating use tax
2 imposed under this act shall be taxed on the basis of the purchase
3 price of such property, provided however, that the compensating
4 use tax on such property brought into and used within this State
5 may be based, at the option of the lessor, on the total of the
6 lease payments attributable to the lease of that property
7 attributable to the period of the lease remaining after first use in
8 this State.

9 (d) Unless tangible personal property purchased for lease has
10 already been subject to the sales tax imposed under subsection (a)
11 of section 3 or the compensating use tax imposed under section 6,
12 the use tax computed with respect to such property, in the
13 discretion of the director, may be assessed against the lessee or
14 sub-lessee and shall be based on the total of the periodic
15 payments required under the lease. The fact that the lessee has
16 accepted in good faith the certificate of the lessor, in the form
17 prescribed by the director, and the fact that the tax imposed on
18 property purchased for lease in this act has been paid may be
19 considered by the director, but shall not be deemed conclusive if
20 good faith issuance or acceptance of such certificate is in
21 question.

(cf: P.L.1966, c.30, s.1)

22 4. Section 18 of P.L.1980, c.105 (C.54:32B-8.6) is amended to
23 read as follows:

24 18. Receipts from casual sales except as to sales of motor
25 vehicles, whether for use on the highways or otherwise, [and]
26 except as to sales of boats or vessels registered or subject to
27 registration under the "New Jersey Boat Act of 1962," P.L.1962,
28 c.73 (C.12:7-34.36 et seq.), and all amendments and supplements
29 thereto, and except as to sales of tangible personal property
30 purchased for lease which property was granted exemption from
31 tax pursuant to section 6 of P.L.1989, c... (C...)(now pending
32 before the Legislature as this bill), are exempt from the tax
33 imposed under the Sales and Use Tax Act. A manufactured home,
34 as defined in subsection d. of section 3 of P.L.1983, c.400
35 (C.54:4-1.4) shall not be deemed a motor vehicle for the purposes
36 of this section.

(cf: P.L.1983, c.400, s.7)

37 5. Section 11 of P.L.1986, c.30 (C. 54:32B-11) is amended to
38

1 read as follows:

11. The following uses of property shall not be subject to the
3 compensating use tax imposed under this act:

5 (1) In respect to the use of property used by the purchaser in
this State prior to July 1, 1966.

7 (2) In respect to the use of property purchased by the user
while a nonresident of this State, except in the case of tangible
9 personal property which the user, in the performance of a
contract, incorporates into real property located in the State or
11 except in the case of tangible personal property purchased for
lease. A person while engaged in any manner in carrying on in
this State any employment, trade, business or profession, not
13 entirely in interstate or foreign commerce, shall not be deemed a
nonresident with respect to the use in this State of property in
15 such employment, trade, business or profession.

17 (3) In respect to the use of property or services upon the sale
of which the purchaser would be expressly exempt from the taxes
imposed under subsection (a) or (b) of section 3.

19 (4) In respect to the use of property which is converted into or
becomes a component part of a product produced for sale or for
21 market sampling by the purchaser.

23 (5) In respect to the use of paper in the application of
newspapers and periodicals.

25 (6) In respect to the use of property or services to the extent
that a retail sales or use tax was legally due and paid thereon,
27 without any right to a refund or credit thereof, to any other State
or jurisdiction within any other State but only when it is shown
29 that such other State or jurisdiction allows a corresponding
exemption with respect to the sale or use of tangible personal
property or services upon which such a sales tax or compensating
31 use tax was paid to this State. To the extent that the tax
imposed by this act is at a higher rate than the rate of tax in the
33 first taxing jurisdiction, this exemption shall be inapplicable and
the tax imposed by section 6 of this act shall apply to the extent
35 of the difference in such rates.

(cf: P.L.1966, c.132, s.3)

37 5. (New section) Receipts from sales of tangible personal
property purchased for lease are exempt from tax if the property,
39 the use of such property or the lessee of such property is granted

1 exemption from tax under the "Sales and Use Tax Act," P.L.1966,
c.30 (C.54:32B-1 et seq.), provided however, that the tangible
3 personal property is not later leased for a nonexempt use or
leased to a nonexempt person or converted to a nonexempt use by
5 any person. If property is so leased or converted, the tax shall be
due pursuant to the provisions of the "Sales and Use Tax Act."

7 7. Section 13 of P.L.1966, c.30 (C.54:32B-13) is amended to
read as follows:

9 13. (a) The Director of the Division of Motor Vehicles in the
State Department of Law and Public Safety shall not issue a
11 registration certificate for any motor vehicle, except in the case
of a renewal of registration by the same owner, except upon
13 proof, in a form approved by the Director of the Division of
Taxation and the Director of the Division of Motor Vehicles, that
15 any tax imposed by section 3 or section 6 of this act with respect
to the sale of the motor vehicle to the registrant or to the lessor
17 or [his] the use thereof has been paid, or that no such tax is due.

(b) The Commissioner of the Department of Conservation and
19 Economic Development shall not issue a registration certificate
or an exempt certificate for any boat or vessel subject to
21 registration under the New Jersey Boat Act of 1962 (c.73, laws of
1962, and all amendments thereto) except in the case of a
23 renewal of registration by the same owner, except upon proof, in
a form approved by the Director of the Division of Taxation and
25 the Commissioner of the Department of Conservation and
Economic Development, that any tax imposed by section 3 or
27 section 6 of this act with respect to the sale of the boat or vessel
to the registrant or to the lessor or [his] the use thereof has been
29 paid, or that no such tax is due.

(cf: P.L.1966, c.30, s.13)

31 8. Section 15 of P.L.1966, c.30 (C.54:32B-15) is amended to
read as follows:

33 15. (a) On or before June 20, 1966, or in the case of persons
commencing business or opening new places of business after such
35 date, within 3 days after such commencement or opening, every
person required to collect any tax imposed by this act and every
37 person purchasing tangible personal property for resale or lease
shall file with the director a certificate of registration in a form
39 prescribed by him. The director shall within 5 days after such

1 registration issue, without charge, to each registrant a
certificate of authority empowering him to collect the tax and a
3 duplicate thereof for each additional place of business of such
registrant. Each certificate or duplicate shall state the place of
5 business to which it is applicable. Such certificate of authority
shall be prominently displayed in the place of business of the
7 registrant. A registrant who has no regular place of doing
business shall attach such certificate to his cart, stand, truck or
9 other merchandising device. Such certificates shall be
nonassignable and nontransferable and shall be surrendered to the
11 director immediately upon the registrant's ceasing to do business
at the place named.

13 (b) Any person who is not otherwise required to collect any tax
imposed by this act and who makes sales to persons within the
15 State of tangible personal property or services, the use of which
is subject to tax under this act, may if he so elects file a
17 certificate of registration with the director who may, in his
discretion and subject to such conditions as he may impose, issue
19 to him a certificate of authority to collect the compensating use
tax imposed by this act.

21 (cf: P.L.1966, c.30, s.15)

23 9. Section 16 of P.L.1966, c.30 (C.54:32B-17) is amended to
read as follows:

25 16. Every person required to collect any tax imposed by this
act shall keep records of every purchase, purchase for lease, sale
or amusement charge or occupancy and of all amounts paid,
27 charged or due thereon and of the tax payable thereon, in such
form as the director may by regulation require. Such records shall
29 include a true copy of each sales slip, invoice, receipt, statement
or memorandum upon which subsection (a) of section 12 requires
31 that the tax be stated separately. Such records shall be available
for inspection and examination at any time upon demand by the
33 director or his duly authorized agent or employee and shall be
preserved for a period of 3 years, except that the director may
35 consent to their destruction within that period or may require
that they be kept longer.

37 (cf: P.L.1966, c.30, s.16)

39 10. (New section) (a) Sections 1 through 9 of P.L.1966, c. .
(C...)(now pending before the Legislature as this bill) shall apply

1 to sales of tangible personal property for lease if the delivery of
any of the property which was the subject matter of the
3 agreement was completed on or after June 26, 1989. For the
purpose of this subsection, if the lessor does not take delivery of
5 the property, delivery to the lessee shall be deemed delivery to
the lessor.

7 (b) Notwithstanding any provisions of P.L.1989, c. . (now
pending before the Legislature as this bill) to the contrary, and
9 except as provided in subsection (c) of this section, lease
agreements for tangible personal property taxable under the sales
11 and use tax act in effect before June 26, 1989, and under which
delivery to the lessee of all the property was completed before
13 that date, shall be subject to sales or use tax on the basis of and
at the time that the periodic lease payments and other charges or
15 payments are made by the lessee under the agreement, including
but not limited to purchase options and excess usage charges.

17 (c) Upon renewal of a lease agreement which is subject to tax
as provided under subsection (b) of this section, sales or use tax
19 shall be due from the lessor on the purchase price of the
property; provided however, that credit shall be granted for the
21 tax paid with respect to the lease of such property in New Jersey
prior to that renewal.

23 11. (New section) The Director of the Division of Taxation shall
report quarterly, through the State Treasurer, commencing with
25 the calendar quarter ending September 30, 1989, on the amount
of sales and use tax collected pursuant to the amendments made
27 to the general provisions of the "Sales and Use Tax Act,"
P.L.1966, c.30 (C.54:32B-1 et seq.) by sections 1 through 10 of
29 P.L.1989, c. . (C. .) (now pending before the Legislature as this
bill).

31 12. This act shall take effect immediately and be retroactive
to June 26, 1989 and apply to purchases of tangible personal
33 property for lease if the delivery of any of such property was
completed on or after that date. Section 11 shall expire July 1,
35 1994. This act shall remain inoperative until enactment of
P.L.1989, c. . (now pending before the Legislature as Assembly
37 Bill No. 4822 of 1989) making a total appropriation in an amount
of not less than \$108,900,000.

1

STATEMENT

3 This bill changes the sales and use tax treatment of leased
4 tangible personal property. Currently, a lessor who buys property
5 to lease is not subject to sales tax; the lessor's purchase is a
6 purchase to resell. The lessee who leases the property is
7 considered the user of the property, and the lessee pays sales tax
8 on, and at the same time as, each lease payment. This bill
9 changes that treatment so that the lessor is considered the user
10 of the property, and becomes the payer of the sales or use tax at
11 the time that the property to be leased is purchased.

12 This treatment saves cost in administration of the tax and in
13 taxpayer compliance, because now instead of forwarding tax on a
14 periodic basis the tax for a particular leased item is handled in
15 one payment and because there are fewer lessors than there are
16 lessees. This treatment has the advantage of making the tax
17 payable all at once at the time of purchase, making the
18 treatment of leases more on a par with the treatment of outright
19 sales. It will also have the effect of accelerating the sales tax
20 revenue expected over the next several years from leases into the
21 current year. This effect is expected to amount to the
22 acceleration of \$110,000,000 of sales tax revenue in fiscal year
23 1980.

25

COMMERCE AND INDUSTRY

27

State Budget and Finance

29 Amends and supplements Title 54 of the Revised Statutes, and
appropriates \$750,000 for implementation.

STATE OF NEW JERSEY

INTRODUCED JUNE 28, 1989

By Assemblymen FRELINGHUYSEN and KAMIN

1 AN ACT to amend and supplement Title 54 of the Revised
Statutes and making an appropriation.

3

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

1. Section 2 of P.L.1986, c.30 (C.54:32B-2) is amended to read
7 as follows:

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

(a) Person. Person includes an individual, partnership, society,
11 association, joint stock company, corporation, public corporation
or public authority, estate, receiver, trustee, assignee, referee,
13 and any other person acting in a fiduciary or representative
capacity, whether appointed by a court or otherwise, and any
15 combination of the foregoing.

(b) Purchase at retail. A purchase by any person at a retail
17 sale.

(c) Purchaser. A person who purchases property or who
19 receives services.

(d) Receipt. The amount of the sales price of any property and
21 the charge for any service taxable under this act, valued in
money, whether received in money or otherwise, including any
23 amount for which credit is allowed by the vendor to the
purchaser, without any deduction for expenses or early payment
25 discounts, but excluding any credit for property of the same kind
that is not tangible personal property purchased for lease
27 accepted in part payment and intended for resale, excluding the
cost of transportation where such cost is separately stated in the
29 written contract, if any, and on the bill rendered to the
purchaser, and excluding the amount of the sales price for which
31 food stamps have been properly tendered in full or part payment
pursuant to the federal Food Stamp Act of 1977, Pub.L. 95-113 (7
33 U.S.C. § 2011 et seq.).

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 (e) Retail sale. (1) A sale of tangible personal property to any
2 person for any purpose, other than (A) for resale either as such or
3 as converted into or as a component part of a product produced
4 for sale by the purchaser, or (B) for use by that person in
5 performing the services subject to tax under subsection (b) of
6 section 3 where the property so sold becomes a physical
7 component part of the property upon which the services are
8 performed or where the property so sold is later actually
9 transferred to the purchaser of the service in conjunction with
10 the performance of the service subject to tax.

11 (2) For the purposes of this act, the term retail sales includes:

12 Sales of tangible personal property to all contractors,
13 subcontractors or repairmen of materials and supplies for use by
14 them in erecting structures for others, or building on, or
15 otherwise improving, altering, or repairing real property of others.

16 (3) For the purposes of this act, the term retail sale includes
17 the purchase of tangible personal property for lease.

18 ~~(3)~~ (4) The term retail sales does not include:

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

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

26 (C) The distribution of property by a corporation to its
27 stockholder as a liquidating dividend.

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

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

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

34 (G) The sale of tangible personal property where the purpose
35 of the vendor is to hold the thing transferred as security for the
36 performance of an obligation of the vendor.

37 (H) Sale, selling or purchase. Any transfer of title or
38 possession or both, exchange or barter, rental, lease or license to
39 use or consume, conditional or otherwise, in any manner or by any

1 means whatsoever for a consideration, or any agreement
therefor, including the rendering of any service, taxable under
3 this act, for a consideration or any agreement therefor.

(g) **Tangible personal property.** Corporeal personal property of
5 any nature.

(h) **Use.** The exercise of any right or power over tangible
7 personal property by the purchaser thereof and includes, but is
not limited to, the receiving, storage or any keeping or retention
9 for any length of time, withdrawal from storage, any installation,
any affixation to real or personal property, or any consumption of
11 such property.

(i) **Vendor.** (1) The term "vendor" includes:

13 (A) A person making sales of tangible personal property or
services, the receipts from which are taxed by this act;

15 (B) A person maintaining a place of business in the State and
making sales, whether at such place of business or elsewhere, to
17 persons within the State of tangible personal property or services,
the use of which is taxed by this act;

19 (C) A person who solicits business either by employees,
independent contractors, agents or other representatives or by
21 distribution of catalogs or other advertising matter and by reason
thereof makes sales to persons within the State of tangible
23 personal property or services, the use of which is taxed by this
act:

25 (D) Any other person making sales to persons within the State
of tangible personal property or services, the use of which is
27 taxed by this act, who may be authorized by the director to
collect the tax imposed by this act; and

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

35 (F) A person who purchases tangible personal property for
lease, whether in this State or elsewhere. For the purposes of
37 Title 17 of the Revised Statutes, the purchase of leased tangible
personal property in this State is deemed to be a place of business
39 in this State.

1 (2) In addition, when in the opinion of the director it is
2 necessary for the efficient administration of this act to treat any
3 salesman, representative, peddler or canvasser as the agent of
4 the vendor, distributor, supervisor or employer under whom he
5 operates or from whom he obtains tangible personal property sold
6 by him or for whom he solicits business, the director may, in his
7 discretion, treat such agent as the vendor jointly responsible with
8 his principal, distributor, supervisor or employer for the
9 collection and payment over of the tax.

10 (j) Hotel. A building or portion of it which is regularly used
11 and kept open as such for the lodging of guests. The term "hotel"
12 includes an apartment hotel, a motel, boarding house or club,
13 whether or not meals are served.

14 (k) Occupancy. The use or possession or the right to the use or
15 possession, of any room in a hotel.

16 (l) Occupant. A person who, for a consideration, uses,
17 possesses, or has the right to use or possess, any room in a hotel
18 under any lease, concession, permit, right of access, license to
19 use or other agreement, or otherwise.

20 (m) Permanent resident. Any occupant of any room or rooms
21 in a hotel for at least 90 consecutive days shall be considered a
22 permanent resident with regard to the period of such occupancy.

23 (n) Room. Any room or rooms of any kind in any part or
24 portion of a hotel, which is available for or let out for any
25 purpose other than a place of assembly.

26 (o) Admission charge. The amount paid for admission,
27 including any service charge and any charge for entertainment or
28 amusement or for the use of facilities therefor.

29 (p) Amusement charge. Any admission charge, dues or charge
30 of roof garden, cabaret or other similar place.

31 (q) Charge of a roof garden, cabaret or other similar place.
32 Any charge made for admission, refreshment, service, or
33 merchandise at a roof garden, cabaret or other similar place.

34 (r) Dramatic or musical arts admission charge. Any admission
35 charge paid for admission to a theatre, opera house, concert hall
36 or other hall or place of assembly for a live, dramatic,
37 choreographic or musical performance.

38 (s) Lessor. Any person who is the owner, licensee, or lessee of
39 any premises or tangible personal property which he leases,

1 subleases, or grants a license to use to other persons.

2 (t) Place of amusement. Any place where any facilities for
3 entertainment, amusement, or sports are provided.

4 (u) Casual sale. Casual sale means an isolated or occasional
5 sale of an item of tangible personal property by a person who is
6 not regularly engaged in the business of making sales at retail
7 where such property was obtained by the person making the sale,
8 through purchase or otherwise, for his own use in this State.

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

15 (w) "Persons required to collect tax" or "persons required to
16 collect any tax imposed by this act" shall include: every vendor
17 of tangible personal property or services; every recipient of
18 amusement charges; and every operator of a hotel; and every
19 lessee. Said terms shall also include any officer or employee of a
20 corporation or of a dissolved corporation who as such officer or
21 employee is under a duty to act for such corporation in complying
22 with any requirement of this act and any member of a
23 partnership. Provided, however, the vendor of tangible personal
24 property to all contractors, subcontractors or repairmen,
25 consisting of materials and supplies for use by them in erecting
26 structures for others, or building on, or otherwise improving,
27 altering or repairing real property of others, shall not be deemed
28 a person required to collect tax, and the tax imposed by any
29 section of this act shall be paid directly to the director by such
30 contractors, subcontractors or repairmen.

31 (x) "Customer" shall include: every purchaser of tangible
32 personal property or services; every patron paying or liable for
33 the payment of any amusement charge; and every occupant of a
34 room or rooms in a hotel.

35 (y) "Property and services the use of which is subject to tax"
36 shall include: (a) all property sold to a person within the State,
37 whether or not the sale is made within the State, the use of which
38 property is subject to tax under section 6 or will become subject
39 to tax when such property is received by or comes into the

1 possession or control of such person within the State; and (b) all
2 services rendered to a person within the State, whether or not
3 such services are performed within the State, upon tangible
4 personal property the use of which is subject to tax under section
5 6 or will become subject to tax when such property is received by
6 or comes into possession or control of such person within the
7 State.

(z) Director. Director means the Director of the Division of
8 Taxation of the State Department of the Treasury, or any officer,
9 employee or agency of the Division of Taxation in the
10 Department of the Treasury duly authorized by the director
11 (directly, or indirectly by one or more redelegations of authority)
12 to perform the functions mentioned or described in this act.
13

(aa) "Lease" means the possession or control of tangible
14 personal property by an agreement, not transferring sole title, as
15 may be evidenced by a contract, contracts, or by implication
16 from other circumstances including course of dealing or usage of
17 trade or course of performance, for a period of more than 28 days.

(bb) "The amount of the sales price" of tangible personal
18 property purchased for lease means, at the election of the lessor,
19 either (1) the amount of the lessor's purchase price or (2) the
20 amount of the total of the lease payments attributable to the
21 lease of such property. Tangible personal property purchased for
22 lease is subject to the provisions of subsection (a) of section 3 of
23 P.L.1966, c.30 (C.54:32B-3).

(cf: P.L.1967, c.254, s.1)

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

26 3. On and after July 1, 1966 and continuing through February
27 28, 1970, there is hereby imposed and there shall be paid a tax of
28 3%; on and after March 1, 1970 and continuing through January 2,
29 1983, there is hereby imposed and there shall be paid a tax of 5%;
30 and on and after January 3, 1983, there is imposed and there shall
31 be paid a tax of 6%, upon:

32 (a) The receipts from every retail sale of tangible personal
33 property, except as otherwise provided in this act. If the lessor
34 of tangible personal property purchased for lease elects to pay
35 tax on the amount of the sales price as provided in paragraph (2)
36 of subsection (b) of section 2 of P.L.1966, c.30 (C.54:32B-3), any
37
38
39
40

1 and each subsequent lease or rental is a retail sale, and a
2 subsequent sale of such property is a retail sale.

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

5 (1) Producing, fabricating, processing, printing or imprinting
6 tangible personal property, performed for a person who directly
7 or indirectly furnishes the tangible personal property, not
8 purchased by him for resale, upon which such services are
9 performed.

10 (2) Installing tangible personal property, or maintaining,
11 servicing, repairing tangible personal property not held for sale in
12 the regular course of business, whether or not the services are
13 performed directly or by means of coin-operated equipment or by
14 any other means, and whether or not any tangible personal
15 property is transferred in conjunction therewith, except (i) such
16 services rendered by an individual who is engaged directly by a
17 private homeowner or lessee in or about his residence and who is
18 not in a regular trade or business offering his services to the
19 public, (ii) such services rendered with respect to personal
20 property exempt from taxation hereunder pursuant to section 13
21 of P.L.1960, c.105 (C.54:32B-8.1), (iii) services rendered with
22 respect to trucks, tractors, trailers or semitrailers by a person
23 who is not engaged, directly or indirectly through subsidiaries,
24 parents, affiliates or otherwise, in a regular trade or business
25 offering such services to the public, (iv) any receipts from
26 laundering, dry cleaning, tailoring, weaving, pressing, shoe
27 repairing and shoeshining and (v) services rendered in installing
28 property which, when installed, will constitute an addition or
29 capital improvement to real property, property or land.

30 (3) Storing all tangible personal property not held for sale in
31 the regular course of business and the rental of safe deposit boxes
32 or similar space.

33 (4) Maintaining, servicing or repairing real property, other
34 than a residential heating system unit serving not more than
35 three families living independently of each other and doing their
36 cooking on the premises, whether the services are performed in
37 or outside of a building, as distinguished from adding to or
38 improving such real property by a capital improvement, but
39 excluding services rendered by an individual who is not in a

1 regular trade or business offering his services to the public, and
2 excluding interior cleaning and maintenance services, garbage
3 removal and sewer services performed on a regular contractual
4 basis for a term not less than 30 days, other than window
5 cleaning, and rodent and pest control.

6 (5) Advertising services, except advertising services for use
7 directly and primarily for publication in newspapers and
8 magazines and except for direct-mail advertising processing
9 services in connection with distribution to out-of-State
10 recipients.

11 Wages, salaries and other compensation paid by an employer to
12 an employee for performing as an employee the services
13 described in this subsection are not receipts subject to the taxes
14 imposed under this subsection (b).

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

20 (c) Receipts from the sale of food and drink in or by
21 restaurants, taverns, vending machines or other establishments in
22 this State, or by caterers, including in the amount of such
23 receipts any cover, minimum, entertainment or other charge
24 made to patrons or customers:

25 (1) in all instances where the sale is for consumption on the
26 premises where sold;

27 (2) in those instances where the vendor or any person whose
28 services are arranged for by the vendor, after the delivery of the
29 food or drink by or on behalf of the vendor for consumption off
30 the premises of the vendor, serves or assists in serving, cooks,
31 heats or provides other services with respect to the food or drink,
32 except for meals especially prepared for and delivered to
33 homebound elderly, age 60 or older, and to disabled persons, or
34 meals prepared and served at a group-sitting at a location outside
35 of the home to otherwise homebound elderly persons, age 60 or
36 older, and otherwise homebound disabled persons, as all or part of
37 any food service project funded in whole or in part by government
38 or as part of a private, nonprofit food service project available to
39 all such elderly or disabled persons residing within an area of

1 service designated by the private nonprofit organization; and

2 (3) In those instances where the sale is for consumption off the
3 premises of the vendor, and consists of a meal, or food prepared
4 and ready to be eaten, of a kind obtainable in restaurants as the
5 main course of a meal, including a sandwich, except where food
6 other than sandwiches is sold in an unheated state and is of a type
7 commonly sold in the same form and condition in food stores
8 other than those which are principally engaged in selling prepared
9 foods;

10 (4) Sales of food and beverages sold through coin-operated
11 vending machines, at the wholesale price of such sale, which shall
12 be defined as 70% of the retail vending machine selling price,
13 except sales of milk, which shall not be taxed. Nothing herein
14 contained shall affect other sales through coin-operated vending
15 machines taxable pursuant to subsection (a) above or the
16 exemption thereto provided by section 21 of P.L.1982, c.185
17 (C.54:32B-8.9).

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

20 (d) The rent for every occupancy of a room or rooms in a hotel
21 in this State, except that the tax shall not be imposed upon (1) a
22 permanent resident, or (2) where the rent is not more than at the
23 rate of \$2.00 per day.

24 (e) (1) Any admission charge, where such admission charge is in
25 excess of \$0.75 to or for the use of any place of amusement in
26 the State, including charges for admission to race tracks,
27 baseball, football, basketball or exhibitions, dramatic or musical
28 arts performances, motion picture theatres, except charges for
29 admission to boxing, wrestling, kick boxing or combative sports
30 exhibitions, events, performances or contests which charges are
31 taxed under any other law of this State or under section 26 of
32 P.L.1985, c.81 (C.5:2A-26), and, except charges to a patron for
33 admission to, or use of, facilities for sporting activities in which
34 such patron is to be a participant, such as bowling alleys and
35 swimming pools. For any person having the permanent use or
36 possession of a box or seat or lease or a license, other than a
37 season ticket, for the use of a box or seat at a place of
38 amusement, the tax shall be upon the amount for which a similar
39 box or seat is sold for each performance or exhibition at which

1 the bus or seat is used or reserved by the holder, licensee or
2 lessee, and shall be paid by the holder, licensee or lessee.

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

(cf: P.L.1987, c.268, s.1)

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

9 7. (a) The retail sales tax imposed under subsection (a) of
10 section 3 and the compensating use tax imposed under section 6,
11 when computed in respect to tangible personal property wherever
12 manufactured, processed or assembled and used by such
13 manufacturer, processor or assembler in the regular course of
14 business within this State, shall be based on the price at which
15 items of the same kind of tangible personal property are offered
16 for sale by him.

17 (b) Tangible personal property, which has been purchased by a
18 resident of the State of New Jersey outside of this State for use
19 outside of this State and subsequently becomes subject to the
20 compensating use tax imposed under this act, shall be taxed on
21 the basis of the purchase price of such property, provided,
22 however:

23 (1) That where a taxpayer affirmatively shows that the
24 property was used outside such State by him for more than 6
25 months prior to its use within this State, such property shall be
26 taxed on the basis of current market value of the property at the
27 time of its first use within this State. The value of such
28 property, for compensating use tax purposes, may not exceed its
29 cost.

30 (2) That the compensating use tax on such tangible personal
31 property brought into this State (other than for complete
32 consumption or for incorporation into real property located in
33 this State) and used in the performance of a contract or
34 subcontract within this State by a purchaser or user for a period
35 of less than 6 months may be based, at the option of the
36 taxpayer, on the fair rental value of such property for the period
37 of use within this State.

38 (c) Leased tangible personal property which has been
purchased outside this State for lease outside of this State and

1 subsequently becomes subject to the compensating use tax
 2 imposed under this act shall be taxed on the basis of the purchase
 3 price of such property, provided however, that the compensating
 4 use tax on such property brought into and used within this State
 5 may be based, at the option of the lessee, on the total of the
 6 lease payments attributable to the lease of that property
 7 attributable to the period of the lease remaining after first use in
 8 this State.

9 (d) Unless tangible personal property purchased for lease has
 10 already been subject to the sales tax imposed under subsection (a)
 11 of section 3 or the compensating use tax imposed under section 6,
 12 the use tax computed with respect to such property, in the
 13 discretion of the director, may be assessed against the lessee or
 14 sub-lessee and shall be based on the total of the periodic
 15 payments required under the lease. The fact that the lessee has
 16 accepted in good faith the certificate of the lessor, in the form
 17 prescribed by the director, and the fact that the tax imposed on
 18 property purchased for lease in this act has been paid may be
 19 considered by the director, but shall not be deemed conclusive if
 20 good faith issuance or acceptance of such certificate is in
 21 question.

(cf: P.L.1966, c.30, s.1)

22 4. Section 18 of P.L.1960, c.105 (C.54:32B-2.6) is amended to
 23 read as follows:

24 18. Receipts from casual sales except as to sales of motor
 25 vehicles, whether for use on the highways or otherwise, [and]
 26 except as to sales of boats or vessels registered or subject to
 27 registration under the "New Jersey Boat Act of 1962," P.L.1962,
 28 c.73 (C.12:7-34.36 et seq.), and all amendments and supplements
 29 thereto, and except as to sales of ~~tangible personal property~~
 30 purchased for lease which property was granted exemption from
 31 tax pursuant to section 6 of P.L.1960, c. , (C. . . . Now pending
 32 before the Legislature as this bill), are exempt from the tax
 33 imposed under the Sales and Use Tax Act. A manufactured home,
 34 as defined in subsection d. of section 3 of P.L.1963, c.499
 35 (C.54:4-1.4) shall not be deemed a motor vehicle for the purposes
 36 of this section.

(cf: P.L.1963, c.400, s.7)

37 5. Section 11 of P.L.1966, c.30 (C. 54:32B-11) is amended to
 38

1 read as follows:

2 11. The following uses of property shall not be subject to the
3 compensating use tax imposed under this act:

4 (1) In respect to the use of property used by the purchaser in
5 this State prior to July 1, 1966.

6 (2) In respect to the use of property purchased by the user
7 while a nonresident of this State, except in the case of tangible
8 personal property which the user, in the performance of a
9 contract, incorporates into real property located in the State or
10 except in the case of tangible personal property purchased for
11 lease. A person while engaged in any manner in carrying on in
12 this State any employment, trade, business or profession, not
13 entirely in interstate or foreign commerce, shall not be deemed a
14 nonresident with respect to the use in this State of property in
15 such employment, trade, business or profession.

16 (3) In respect to the use of property or services upon the sale
17 of which the purchaser would be expressly exempt from the taxes
18 imposed under subsection (a) or (b) of section 3.

19 (4) In respect to the use of property which is converted into or
20 becomes a component part of a product produced for sale or for
21 market sampling by the purchaser.

22 (5) In respect to the use of paper in the application of
23 newspapers and periodicals.

24 (6) In respect to the use of property or services to the extent
25 that a retail sales or use tax was legally due and paid thereon,
26 without any right to a refund or credit thereof, to any other State
27 or jurisdiction within any other State but only when it is shown
28 that such other State or jurisdiction allows a corresponding
29 exemption with respect to the sale or use of tangible personal
30 property or services upon which such a sales tax or compensating
31 use tax was paid to this State. To the extent that the tax
32 imposed by this act is at a higher rate than the rate of tax in the
33 first taxing jurisdiction, this exemption shall be inapplicable and
34 the tax imposed by section 6 of this act shall apply to the extent
35 of the difference in such rates.

(cf: P.L.1966, c.132, s.3)

36 6. (New section) Receipts from sales of tangible personal
37 property purchased for lease are exempt from tax if the property,
38 the use of such property or the lessee of such property is granted

1 exemption from tax under the "Sales and Use Tax Act," P.L.1966,
c.30 (C.54:32B-1 et seq.), provided however, that the tangible
3 personal property is not later leased for a nonexempt use or
leased to a nonexempt person or converted to a nonexempt use by
5 any person. If property is so leased or converted, the tax shall be
due pursuant to the provisions of the "Sales and Use Tax Act."

7 7. Section 13 of P.L.1966, c.30 (C.54:32B-13) is amended to
read as follows:

9 13. (a) The Director of the Division of Motor Vehicles in the
State Department of Law and Public Safety shall not issue a
11 registration certificate for any motor vehicle, except in the case
of a renewal of registration by the same owner, except upon
13 proof, in a form approved by the Director of the Division of
Taxation and the Director of the Division of Motor Vehicles, that
15 any tax imposed by section 3 or section 6 of this act with respect
to the sale of the motor vehicle to the registrant or to the lessor
17 or [his] the use thereof has been paid, or that no such tax is due.

19 (b) The Commissioner of the Department of Conservation and
Economic Development shall not issue a registration certificate
or an exempt certificate for any boat or vessel subject to
21 registration under the New Jersey Boat Act of 1962 (c.73, laws of
1962, and all amendments thereto) except in the case of a
23 renewal of registration by the same owner, except upon proof, in
a form approved by the Director of the Division of Taxation and
25 the Commissioner of the Department of Conservation and
Economic Development, that any tax imposed by section 3 or
27 section 6 of this act with respect to the sale of the boat or vessel
to the registrant or to the lessor or [his] the use thereof has been
29 paid, or that no such tax is due.

(cf: P.L.1966, c.30, s.13)

31 8. Section 15 of P.L.1966, c.30 (C.54:32B-15) is amended to
read as follows:

33 15. (a) On or before June 20, 1966, or in the case of persons
commencing business, or opening new places of business after such
35 date, within 3 days after such commencement or opening, every
person required to collect any tax imposed by this act and every
37 person purchasing tangible personal property for resale or lease
shall file with the director a certificate of registration in a form
39 prescribed by him. The director shall within 5 days after such

1 registration issue, without charge, to each registrant a
2 certificate of authority empowering him to collect the tax and a
3 duplicate thereof for each additional place of business of such
4 registrant. Each certificate or duplicate shall state the place of
5 business to which it is applicable. Such certificate of authority
6 shall be prominently displayed in the place of business of the
7 registrant. A registrant who has no regular place of doing
8 business shall attach such certificate to his cart, stand, truck or
9 other merchandising device. Such certificates shall be
10 nonassignable and nontransferable and shall be surrendered to the
11 director immediately upon the registrant's ceasing to do business
12 at the place named.

13 (b) Any person who is not otherwise required to collect any tax
14 imposed by this act and who makes sales to persons within the
15 State of tangible personal property or services, the use of which
16 is subject to tax under this act, may if he so elects file a
17 certificate of registration with the director who may, in his
18 discretion and subject to such conditions as he may impose, issue
19 to him a certificate of authority to collect the compensating use
20 tax imposed by this act.

21 (cf: P.L.1966, c.30, s.15)

22 9. Section 16 of P.L.1966, c.30 (C.54:32B-17) is amended to
23 read as follows:

24 16. Every person required to collect any tax imposed by this
25 act shall keep records of every purchase, purchase for lease, sale
26 or amusement charge or occupancy and of all amounts paid,
27 charged or due thereon and of the tax payable thereon, in such
28 form as the director may by regulation require. Such records shall
29 include a true copy of each sales slip, invoice, receipt, statement
30 or memorandum upon which subsection (a) of section 12 requires
31 that the tax be stated separately. Such records shall be available
32 for inspection and examination at any time upon demand by the
33 director or his duly authorized agent or employee and shall be
34 preserved for a period of 3 years, except that the director may
35 consent to their destruction within that period or may require
36 that they be kept longer.

37 (cf: P.L.1966, c.30, s.16)

38 10. (New section) (a) Sections 1 through 9 of P.L.1966, c. .
39 (C...)(now pending before the Legislature as this bill) shall apply

1 to sales of tangible personal property for lease if the delivery of
2 any of the property which was the subject matter of the
3 agreement was completed on or after June 26, 1989. For the
4 purpose of this subsection, if the lessor does not take delivery of
5 the property, delivery to the lessee shall be deemed delivery to
6 the lessor.

7 (b) Notwithstanding any provisions of P.L.1989, c. . (now
8 pending before the Legislature as this bill) to the contrary, and
9 except as provided in subsection (c) of this section, lease
10 agreements for tangible personal property taxable under the sales
11 and use tax act in effect before June 26, 1989, and under which
12 delivery to the lessee of all the property was completed before
13 that date, shall be subject to sales or use tax on the basis of and
14 at the time that the periodic lease payments and other charges or
15 payments are made by the lessee under the agreement, including
16 but not limited to purchase options and excess usage charges.

17 (c) Upon renewal of a lease agreement which is subject to tax
18 as provided under subsection (b) of this section, sales or use tax
19 shall be due from the lessor on the purchase price of the
20 property, provided however, that credit shall be granted for the
21 tax paid with respect to the lease of such property in New Jersey
22 prior to that renewal.

23 11. (New section) The Director of the Division of Taxation shall
24 report quarterly, through the State Treasurer, commencing with
25 the calendar quarter ending September 30, 1989, on the amount
26 of sales and use tax collected pursuant to the amendments made
27 to the general provisions of the "Sales and Use Tax Act,"
28 P.L.1966, c.30 (C.54:32B-1 et seq.) by sections 1 through 10 of
29 P.L.1989, c. . (C. .) (now pending before the Legislature as this
30 bill).

31 12. This act shall take effect immediately and be retroactive
32 to June 26, 1989 and apply to purchases of tangible personal
33 property for lease if the delivery of any of such property was
34 completed on or after that date. Section 11 shall expire July 1,
35 1994. This act shall remain inoperative until enactment of
36 P.L.1989, c. . (now pending before the Legislature as Assembly
37 Bill No. 4822 of 1989) making a total appropriation in an amount
of not less than \$108,900,000.

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STATEMENT

3 This bill changes the sales and use tax treatment of leased
4 tangible personal property. Currently, a lessor who buys property
5 to lease is not subject to sales tax; the lessor's purchase is a
6 purchase to resell. The lessee who leases the property is
7 considered the user of the property, and the lessee pays sales tax
8 on, and at the same time as, each lease payment. This bill
9 changes that treatment so that the lessor is considered the user
10 of the property, and becomes the payer of the sales or use tax at
11 the time that the property to be leased is purchased.

12 This treatment saves cost in administration of the tax and in
13 taxpayer compliance, because now instead of forwarding tax on a
14 periodic basis the tax for a particular leased item is handled in
15 one payment and because there are fewer lessors than there are
16 lessees. This treatment has the advantage of making the tax
17 payable all at once at the time of purchase, making the
18 treatment of leases more on a par with the treatment of outright
19 sales. It will also have the effect of accelerating the sales tax
20 revenue expected over the next several years from leases into the
21 current year. This effect is expected to amount to the
22 acceleration of \$110,000,000 of sales tax revenue in fiscal year
23 1980.

25

COMMERCE AND INDUSTRY

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State Budget and Finance

28 Amends and supplements Title 54 of the Revised Statutes, and
29 appropriates \$750,000 for implementation.

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