54:32B-2

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 54:32B-2, 54:32B-6 (Taxation of certain tangible personal property)

LAWS OF: 1989 CHAPTER: 350

Bill No: S3944

Sponsor(s): Weiss

Date Introduced: November 30, 1989

Committee: Assembly: -----

Senate: Revenue, Finance & Appropriations

Amended during passage: No

Date of Passage: Assembly: January 8, 1990

Senate: December 14, 1989

Date of Approval: Janaury 16, 1990

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: No

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

KBG/SLJ

§2-T & E
§3-Approp.
§4-Note

P.L.1989, CHAPTER 350, *approved January 16, 1990*
1989 Senate No. 3944

AN ACT concerning the taxation of certain types of tangible personal property under the sales and use tax, amending P.L.1966, c.30, and P.L.1989, c.123, and making an appropriation.

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

1. Section 6 of P.L.1966, c.30 (C.54:32B-6) is amended to read as follows:

6. Imposition of compensating use tax. Unless property or services have already been or will be subject to the sales tax under this act, there is hereby imposed on and there shall be paid by every person a use tax for the use within this State of 3% on and after July 1, 1966 and continuing through February 28, 1970, and of 5% on and after March 1, 1970 and continuing through January 2, 1983, and of 6% on and after January 3, 1983, except as otherwise exempted under this act, (A) of any tangible personal property purchased at retail, (B) of any tangible personal property manufactured, processed or assembled by the user, if items of the same kind of tangible personal property are offered for sale by him in the regular course of business, <u>or if items of the same kind of tangible personal property are not offered for sale by him in the regular course of business and are used as such or incorporated into a structure, building or real property,</u> and (C) of any tangible personal property, however acquired, where not acquired for purposes of resale, upon which any taxable services described in subsection (b)(1) and (2) of section 3 have been performed. For purposes of clause (A) of this section, the tax shall be at the applicable rate, as set forth hereinabove, of the consideration given or contracted to be given for such property or for the use of such property, but excluding any credit for property of the same kind accepted in part payment and intended for resale, plus the cost of transportation, except where such cost

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

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

is separately stated in the written contract, if any, and on the bill rendered to the purchaser. For the purposes of clause (B) of this section, the tax shall be at the applicable rate, as set forth hereinabove, of the price at which items of the same kind of tangible personal property are offered for sale by the user, or if items of the same kind of tangible personal property are not offered for sale by the user in the regular course of business and are used as such or incorporated into a structure, building or real property the tax shall be at the applicable rate, as set forth hereinabove, of the consideration given or contracted to be given for the tangible personal property manufactured, processed or assembled by the user into the tangible personal property the use of which is subject to use tax pursuant to this section, and the mere storage, keeping, retention or withdrawal from storage of tangible personal property by the person who manufactured, processed or assembled such property shall not be deemed a taxable use by him. For purposes of clause (C) of this section, the tax shall be at the applicable rate, as set forth hereinabove, of the consideration given or contracted to be given for the service, including the consideration for any tangible personal property transferred in conjunction with the performance of the service, plus the cost of transportation, except where such cost is separately stated in the written contract, if any, and on the bill rendered to the purchaser.

(cf: P.L.1982, c.227, s.4)

2. Section 10 of P.L.1989, c.123 is amended to read as follows:

10. (a) Sections 1 through 9 of P.L.1989, c.123 shall apply to sales of tangible personal property for lease if the delivery of any of the property which was the subject matter of the agreement was completed on or after June 26, 1989. For the purpose of this subsection, if the lessor does not take delivery of the property, delivery to the lessee shall be deemed delivery to the lessor.

(b) Notwithstanding any provisions of P.L.1989, c.123 to the contrary, and except as provided in subsection (c) of this section, lease agreements for tangible personal property taxable under the sales and use tax act in effect before June 26, 1989, and under which delivery to the lessee of all the property was completed before 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 payments are made by the lessee under the agreement, including but not limited to purchase options and excess usage charges.

(c) Upon renewal of a lease agreement which is subject to tax as provided under subsection (b) of this section, sales or use tax shall be due from the lessor either, at the election of the lessor, (1) on the purchase price of the property[;], provided however, that credit shall be granted for the tax paid with respect to the lease of such property in New Jersey prior to that renewal, or (2) on the amount of the total of the lease payments attributable to the lease of such property.

If the lessor of tangible personal property purchased for lease elects to pay tax as provided in paragraph (2) of this subsection, any and each subsequent lease or rental is a retail sale, and a subsequent sale of such property is a retail sale.

(cf: P.L.1989, c.123, s.10)

3. There is appropriated from the General Fund $750,000 to the Division of Taxation in the Department of the Treasury to effectuate the purposes of P.L.1989, c.123.

4. This act shall take effect immediately and section 1 shall apply to uses of tangible personal property delivered into the State on and after January 1, 1985 and section 2 shall be retroactive to June 26, 1989.

STATEMENT

This bill clarifies the imposition of sales and use tax on tangible personal property for two specialized types of vendors.

The bill enacts into statutory law the regulation, N.J.A.C. 18:24-5.11, which has since 1970 explained the sales and use taxation of property manufactured outside of the State and brought into the State for incorporation into realty by contractors. According to that regulation, persons who manufacture building components outside New Jersey and who act as contractors in erecting structures or building on, altering, improving, or repairing real property but who do not offer such building components for sale pay use tax on the building components based on the amount paid for the raw materials of the components used. This concept is sufficiently important that it should be reflected in statutory form. This bill will ensure that New Jersey building component manufacturers will not be disadvantaged by an interpretation of law which would favor out of State manufacture or manufacturers.

This bill also amends the transition section of the act, P.L.1989, c.123, which changed the payment of sales and use tax on leased tangible personal property from the lessee to the lessor. That act provided an option, at the election of the lessor, for basing the amount of tax either on the lessor's purchase price of the property or the sum of the lessee's payments required under the lease. That option was not included in the transition section, which governs the taxation of leases in effect before that act and the renewal of such leases. This bill makes the same option available to lessors who renew leases in effect before that act.

This bill also appropriates $750,000 to the Division of Taxation in the Department of the Treasury for the purpose of effectuating the sales tax administration changes made pursuant to P.L.1989, c.123.

TAXATION - SALES

Commerce and Industry

Imposes use tax on certain property, provides optional sales tax assessment base for certain property and appropriates $750,000 for implementaion of P.L.1989, c.123.

SENATE REVENUE, FINANCE AND
APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 3944

STATE OF NEW JERSEY

DATED: NOVEMBER 30, 1989

The Senate Revenue, Finance and Appropriations Committee favorably reports Senate Bill No. 3944.

Senate Bill No. 3944 clarifies the imposition of sales and use tax on tangible personal property for two specialized types of vendors.

The bill enacts into statutory law the sales and use tax regulation which explains the use tax imposition upon property manufactured outside of the State and brought into the State for incorporation into realty by contractors. According to that regulation and under this bill, persons who manufacture building components outside New Jersey and who act as contractors in making capital improvements upon real property in New Jersey, but who do not offer such building components for sale in the regular course of their business, must pay use tax on the building components based on the amount paid for the raw materials of the components used. The incorporation of this use tax provision in the sales and use tax statute will ensure that New Jersey building component manufacturers will not be disadvantaged by an interpretation of law which would favor out-of-State manufacture or manufacturers.

This bill also amends the transition section of the act, P.L.1989, c.123, which changed the payment of sales and use tax on leased tangible personal property from the lessee to the lessor. That act provided an option, at the election of the lessor, for basing the amount of tax either on the lessor's purchase price of the property or the sum of the lessee's payments required under the lease. That option was not included in the transition section, which governs the taxation of leases in effect before that act and the renewal of such leases. This bill makes the same option available to lessors who renew leases in effect before that act.

This bill also appropriates $750,000 to the Division of Taxation in the Department of the Treasury.

FISCAL IMPACT:

This bill appropriates $750,000 from the General Fund to the Division of Taxation in the Department of the Treasury for the purpose of effectuating the sales tax administration changes made pursuant to P.L.1989, c.123.