



<b>FLOOR AMENDMENT STATEMENT:</b>	No
<b>LEGISLATIVE FISCAL NOTE:</b>	Yes
<b>VETO MESSAGE:</b>	No
<b>GOVERNOR'S PRESS RELEASE ON SIGNING:</b>	No

**FOLLOWING WERE PRINTED:**

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<b>REPORTS:</b>	No
<b>HEARINGS:</b>	No
<b>OTHER</b>	Yes
<b>NEWSPAPER ARTICLES:</b>	Yes

"Casagrande Bill Giving Tax Relief for Cosmetic Services Following Breast Reconstruction Surgery Clears Committee," [insurancenewsnet.com](http://insurancenewsnet.com), 1-9-14

Sales and Use Tax Review Commission 2011 Annual Report dated December 31, 2011, [p.24].  
(Commission recommendation for bill S2921 from 2011 Legislative Session)

LAW/KR

P.L.2013, CHAPTER 193, *approved January 17, 2014*  
Senate, No. 374 (*First Reprint*)

1 AN ACT concerning a sales tax exemption for certain services  
2 <sup>1</sup>**[and]** <sup>1</sup> amending P.L.1966, c.30 <sup>1</sup>, and designated as Jen's  
3 Law<sup>1</sup> .  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

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

10 3. There is imposed and there shall be paid a tax of 7% upon:

11 (a) The receipts from every retail sale of tangible personal  
12 property or a specified digital product for permanent use or less  
13 than permanent use, and regardless of whether continued payment is  
14 required, except as otherwise provided in this act.

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

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

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

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SHH committee amendments adopted December 5, 2013.

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

6 "Space for storage" means secure areas, such as rooms, units,  
7 compartments or containers, whether accessible from outside or  
8 from within a building, that are designated for the use of a customer  
9 and wherein the customer has free access within reasonable  
10 business hours, or upon reasonable notice to the furnisher of space  
11 for storage, to store and retrieve property. Space for storage shall  
12 not include the lease or rental of an entire building, such as a  
13 warehouse or airplane hanger.

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

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

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

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

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

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

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

38 (11) Investigation and security services.

39 (12) Information services.

40 (13) Transportation services originating in this State and  
41 provided by a limousine operator, as permitted by law, except such  
42 services provided in connection with funeral services.

43 (14) Telephone answering services.

44 (15) Radio subscription services.

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

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

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

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

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

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

30 (3) For the purposes of this subsection:

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

34 "Prepared food" means:

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

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

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

47 provided however, that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (cf: P.L.2011, c.49, s.2)

20

21 2. This act shall take effect <sup>1</sup>**[July 1, 2011]** immediately, and  
22 shall be applicable to prescribed services that are provided on or  
23 after the act's effective date. The act shall not be retroactively  
24 applied to any services that were provided prior to this effective  
25 date.<sup>1</sup>

26

27

28

29

30 Exempts from sales tax cosmetic makeup services provided in  
31 conjunction with reconstructive breast surgery; designated as "Jen's  
32 Law."

# SENATE, No. 374

## STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

**Sponsored by:**

**Senator JAMES BEACH**

**District 6 (Burlington and Camden)**

**Senator DIANE B. ALLEN**

**District 7 (Burlington)**

**SYNOPSIS**

Exempts cosmetic makeup services in conjunction with reconstructive breast surgery from sales tax.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



**(Sponsorship Updated As Of: 12/6/2013)**



1 AN ACT concerning a sales tax exemption for certain services and  
2 amending P.L.1966, c.30.

3

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

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11 property or a specified digital product for permanent use or less  
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15 following services:

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

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

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

**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.

S374 BEACH, ALLEN

1 "Space for storage" means secure areas, such as rooms, units,  
2 compartments or containers, whether accessible from outside or  
3 from within a building, that are designated for the use of a customer  
4 and wherein the customer has free access within reasonable  
5 business hours, or upon reasonable notice to the furnisher of space  
6 for storage, to store and retrieve property. Space for storage shall  
7 not include the lease or rental of an entire building, such as a  
8 warehouse or airplane hanger.

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11 families living independently of each other and doing their cooking  
12 on the premises, whether the services are performed in or outside of  
13 a building, as distinguished from adding to or improving such real  
14 property by a capital improvement, but excluding services rendered  
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16 his services to the public, and excluding garbage removal and sewer  
17 services performed on a regular contractual basis for a term not less  
18 than 30 days.

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32 reconstructive breast surgery.

33 (11) Investigation and security services.

34 (12) Information services.

35 (13) Transportation services originating in this State and  
36 provided by a limousine operator, as permitted by law, except such  
37 services provided in connection with funeral services.

38 (14) Telephone answering services.

39 (15) Radio subscription services.

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

44 Services otherwise taxable under paragraph (1) or (2) of this  
45 subsection (b) are not subject to the taxes imposed under this  
46 subsection, where the tangible personal property or specified digital

1 product upon which the services were performed is delivered to the  
2 purchaser outside this State for use outside this State.

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

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

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

25 (3) For the purposes of this subsection:

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

29 "Prepared food" means:

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

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

38 C. food sold with eating utensils provided by the seller,  
39 including plates, knives, forks, spoons, glasses, cups, napkins, or  
40 straws. A plate does not include a container or packaging used to  
41 transport the food;  
42 provided however, that

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

45 A. food sold by a seller whose proper primary NAICS  
46 classification is manufacturing in section 311, except subsector  
47 3118 (bakeries);

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

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

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

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

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

29 (f) (1) The receipts from every sale, except for resale, of  
30 intrastate, interstate, or international telecommunications services  
31 and ancillary services sourced to this State in accordance with  
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33 (2) (Deleted by amendment, P.L.2008, c.123)

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35 (h) Charges in the nature of initiation fees, membership fees or  
36 dues for access to or use of the property or facilities of a health and  
37 fitness, athletic, sporting or shopping club or organization in this  
38 State, except for: (1) membership in a club or organization whose  
39 members are predominantly age 18 or under; and (2) charges in the  
40 nature of membership fees or dues for access to or use of the  
41 property or facilities of a health and fitness, athletic, sporting or  
42 shopping club or organization that is exempt from taxation pursuant  
43 to paragraph (1) of subsection (a) of section 9 of P.L.1966, c.30  
44 (C.54:32B-9), or that is exempt from taxation pursuant to paragraph  
45 (1) or (2) of subsection (b) of section 9 of P.L.1966, c.30 and that  
46 has complied with subsection (d) of section 9 of P.L.1966, c.30.

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

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

15 (cf: P.L.2011, c.49, s.2)

16

17 2. This act shall take effect July 1, 2011.

18

19

20

#### STATEMENT

21

22 This bill provides an exemption from the State sales tax for  
23 permanent cosmetic make-up services (tattooing) that are provided  
24 pursuant to a doctor's prescription in conjunction with  
25 reconstructive breast surgery.

26 In doing so, the bill creates a sales tax exemption that parallels  
27 the one provided in existing law for massage, bodywork or somatic  
28 services that are provided pursuant to a doctor's prescription.

29 This bill is intended to address a "loophole" in P.L.1983, c.50,  
30 the statute that requires health insurers to cover the costs of  
31 reconstructive breast surgery following a mastectomy, under which  
32 insurers have declined to pay for the sales tax charged for cosmetic  
33 make-up services that are provided in conjunction with such surgery  
34 and thereby obligated patients to pay the sales tax amount out-of-  
35 pocket. This bill will relieve patients of that expense by exempting  
36 the receipts from the sale of these services from the sales tax.

SENATE HEALTH, HUMAN SERVICES AND SENIOR  
CITIZENS COMMITTEE

STATEMENT TO

**SENATE, No. 374**

with committee amendments

**STATE OF NEW JERSEY**

DATED: DECEMBER 5, 2013

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with amendments Senate Bill No. 374.

As amended by the committee, this bill provides an exemption from the State sales tax for permanent cosmetic make-up (tattooing) services that are provided pursuant to a doctor's prescription in conjunction with reconstructive breast surgery.

In so doing, the amended bill creates a sales tax exemption that parallels the one provided in existing law for massage, bodywork or somatic services that are provided pursuant to a doctor's prescription.

The bill, as amended, would close a "loophole" in P.L.1983, c.50 – the statute that requires health insurers to cover the costs of reconstructive breast surgery following a mastectomy – under which insurers have declined to pay the sales tax charged for cosmetic make-up services provided in conjunction with reconstructive breast surgery, and have thereby obligated patients to pay the sales tax amount out-of-pocket. This bill will relieve patients of that expense by exempting from the State sales tax the receipts from sale of these services.

This bill was pre-filed for introduction in the 2012-2013 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

The committee amended the bill to:

- (1) include a notation in the bill title and synopsis designating the bill as "Jen's Law";
- (2) establish an immediate effective date; and
- (3) specify that the bill will apply only to those services that are provided on or after its effective date, and will not be subject to retroactive application.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

**SENATE, No. 374**

# **STATE OF NEW JERSEY**

DATED: DECEMBER 12, 2013

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 374 (1R).

The bill, designated as “Jen’s Law,” provides a State sales tax exemption for permanent cosmetic make-up services (tattooing) that are provided pursuant to a doctor's prescription in conjunction with reconstructive breast surgery. In doing so, the bill creates a sales tax exemption that parallels the one provided in existing law for massage, bodywork or somatic services that are provided pursuant to a doctor's prescription.

The bill is intended to address a “loophole” in P.L.1983, c.50, the statute that requires health insurers to cover the costs of reconstructive breast surgery following a mastectomy, under which insurers have declined to pay for the sales tax charged for cosmetic make-up services that are provided in conjunction with such surgery and thereby obligated patients to pay the sales tax amount out-of-pocket. This bill will relieve patients of that expense by exempting the receipts from the sale of these services from the sales tax.

### FISCAL IMPACT

The Office of Legislative Services (OLS) estimates the bill will produce a recurring annual State revenue loss of \$24,000 to \$143,000 per year, but notes actual losses may fall above or below the estimated range of potential loss in fiscal years following enactment dependent on a variety of factors, including the incidence of new breast cancer cases, the rate at which individuals who undergo reconstructive surgery elect to have an areola and nipple restored by tattoo, and the number of tattoo applications required to be reapplied over time.

In addition, the OLS notes that losses may vary dependent on the number of providers currently collecting the sales tax. It is not known how many service providers currently collect the tax on tattoo services provided pursuant to a doctor’s prescription.

**FISCAL NOTE**  
 [First Reprint]  
**SENATE, No. 374**  
**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

DATED: DECEMBER 16, 2013

**SUMMARY**

- Synopsis:** Exempts from sales tax cosmetic makeup services provided in conjunction with reconstructive breast surgery; designated as “Jen’s Law.”
- Type of Impact:** Recurring Annual State Revenue Loss to General Fund and Property Tax Relief Fund.
- Agencies Affected:** Division of Taxation, Department of the Treasury.

**Executive Estimate**

<b>Fiscal Impact</b>	<u><b>Year 1</b></u>	<u><b>Year 2</b></u>	<u><b>Year 3</b></u>
<b>State Revenue Loss</b>	(Less than \$1,000,000 per year)		

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<u><b>Year 1</b></u>	<u><b>Year 2</b></u>	<u><b>Year 3</b></u>
<b>State Revenue Loss</b>	(\$23,856 - \$143,136 per year)		

- The Office of Legislative Services (OLS) generally **concurs** with the Executive’s estimate. The exemption provided by the bill will produce a recurring annual State revenue loss of less than \$1,000,000 per year.
- The OLS notes, however, that actual losses may fall above or below the estimated range of potential loss in fiscal years following enactment dependent on a variety of factors, including the incidence of new breast cancer cases, the rate at which individuals who undergo reconstructive surgery elect to have an areola and nipple restored by tattoo, and the number of tattoo applications required to be reapplied over time.
- The OLS also notes that losses may vary dependent on the number of providers currently collecting the sales tax. It is entirely unclear how many service providers are currently



registered as a seller and collect the tax on tattoo services provided pursuant to a doctor's prescription.

## **BILL DESCRIPTION**

Senate Bill No. 374 (1R) of 2012, designated as "Jen's Law," provides an exemption from the sales tax for permanent cosmetic make-up (tattooing) services that are provided pursuant to a doctor's prescription in conjunction with reconstructive breast surgery.

The bill takes effect immediately and applies to services provided on or after the bill's effective date.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

The Office of Revenue and Economic Analysis (OREA) in the Department of the Treasury estimates State revenue losses resulting from the bill will approximate \$1,000,000 annually. This estimate is based on data which indicate 5,600 individuals diagnosed with breast cancer are eligible for reconstructive surgery in New Jersey each year, and data which indicate each areola tattooing application may cost \$600 per person per reconstructed breast.

The estimate assumes each person diagnosed with breast cancer will have both breasts surgically removed, and assumes each person who undergoes double mastectomy will have both breasts surgically reconstructed. Additionally, the estimate assumes each reconstructive surgery will result in the application of a nipple and areola by tattoo, and that each tattoo application will be performed at a location in New Jersey.

The OREA notes, however, that not all "impacted people will have both breasts operated on or have the procedure done in New Jersey." Consequently, annual State revenue losses may total less than \$1,000,000.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS estimates the bill will produce a recurring annual State revenue loss of \$23,856 to \$143,136 per year. Actual losses incurred by the State may, however, fall above or below the estimated range of potential loss in fiscal years following enactment dependent on a variety of factors described in greater detail below.

The OLS notes the American Cancer Society expects 232,340 new cases of invasive breast cancer and 64,640 new cases of *in situ* breast cancer to occur among women, and expects 2,240 new cases of breast cancer to occur among men in the United States in 2013. In 2012, the United States Census Bureau estimated New Jersey's population (8,864,590) to be approximately 2.82 percent of the population of the United States (313,914,040).

The OLS notes data derived from an article published in *Breast Cancer Online* in October 2005 indicate the occurrence of a diagnosis of breast cancer in both breasts at the same time is uncommon (0.3 percent to 12 percent of reported occurrences). Data derived from an article published in the *Journal of Clinical Oncology* in July 2010 indicate the majority of women diagnosed with breast cancer in the United States elect breast conserving surgery (61.5 percent) over mastectomy (34.4 percent unilateral, 4.1 percent bilateral).

The OLS notes data derived from an article published in the *Annals of Surgical Oncology* in June 2011 indicate a majority of breast cancer patients (52.6 percent) selected for study chose not to undergo reconstruction following mastectomy; the remainder of those sampled elected immediate (35.9 percent) or delayed (11.5 percent) breast reconstruction. A variety of price guides consulted suggest each restoration of a nipple and areola by tattoo may cost \$200 to \$1,200.

Based on these data, it is possible there may be 8,438 new breast cancer cases reported each year in New Jersey, 3,249 mastectomies performed as a result of 8,438 new breast cancer cases, and 1,540 breast reconstructions performed as a result of 3,249 mastectomies. If each person who undergoes breast reconstruction undergoes the restoration of the nipple and areola by tattoo, 1,704 tattoo applications may be performed at a cost of \$200 to \$1,200 per application each year in New Jersey and the State may lose \$23,856 to \$143,136 per year as a result of the bill.

The OLS notes this estimate assumes the rate of breast cancer occurrence in New Jersey is static and is proportionate to the State's share of the population of the United States. The estimate assumes mastectomy rates for men and the rates of mastectomy for women diagnosed with bilateral breast cancer are identical to the rates reported for women diagnosed with unilateral breast cancer.

In addition, the OLS notes the estimate assumes each breast reconstruction includes a procedure to restore the nipple and areola by tattoo. The estimate assumes each nipple and areola restored by tattoo is permanent. The estimate assumes each person restoring a nipple and areola by tattoo is registered as a seller for purposes of the sales and use tax and will assess a charge or fee for each application provided.

However, the OLS notes that breast cancer rates of occurrence in New Jersey may fluctuate (and may outpace rates reported in other states), and notes that mastectomy rates for men and for women diagnosed with bilateral breast cancer may be greater than rates reported for women with unilateral breast cancer. Additionally, it is possible that some individuals who undergo breast reconstruction following mastectomy may forgo the restoration of a nipple and areola by tattoo, that pigmentation applied by tattoo may fade over time, and that some medical tattoo technicians may not be registered as a seller or may be registered but provide services free of charge to breast cancer survivors.

If breast cancer occurrence rates reported in New Jersey outpace rates reported in other states, mastectomy rates for men or for women diagnosed with bilateral breast cancer are greater than the rates reported for women diagnosed with unilateral breast cancer, or some patients require additional applications of pigmentation over time, State revenue losses may exceed the estimated range of potential loss. If some breast cancer patients who undergo breast reconstruction following mastectomy forgo nipple and areola restoration or some technicians are not registered as a seller or otherwise provide services free of charge, State revenue losses may fall below the estimated range of potential loss.

*Section:* Revenue, Finance, and Appropriations

*Analyst:* Luke E. Wolff  
Senior Research Analyst

*Approved:* David J. Rosen  
Legislative Budget and Finance Officer

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

[First Reprint]

**SENATE, No. 374**

# STATE OF NEW JERSEY

DATED: JANUARY 9, 2014

The Assembly Budget Committee reports favorably Senate Bill No. 374 (1R).

The bill provides an exemption from the sales tax for tattooing services, including all permanent body art and permanent cosmetic make-up applications, that are provided pursuant to a doctor's prescription in conjunction with reconstructive breast surgery.

The bill takes effect immediately, and applies to prescribed services that are provided on or after the bill's effective date.

The bill is designated as "Jen's Law" in honor of Jennifer Dubrow Weiss, who elected to undergo a preventative double mastectomy to reduce her chance of developing breast cancer.

As reported, this bill is identical to Assembly Bill No. 4526, as also reported by the committee.

### FISCAL IMPACT:

The Office of Revenue and Economic Analysis in the Department of the Treasury and the Office of Legislative Services have estimated that the exemption provided by the bill will produce a recurring annual State revenue loss of less than \$1 million per year.

# ASSEMBLY, No. 4526

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED DECEMBER 12, 2013

**Sponsored by:**

**Assemblywoman PAMELA R. LAMPITT**

**District 6 (Burlington and Camden)**

**Assemblywoman CAROLINE CASAGRANDE**

**District 11 (Monmouth)**

**Co-Sponsored by:**

**Assemblywomen Mosquera, Vainieri Huttie and Assemblyman Diegnan**

**SYNOPSIS**

Exempts from sales tax cosmetic makeup services provided in conjunction with reconstructive breast surgery; designated as “Jen’s Law.”

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 1/14/2014)**

1 AN ACT concerning a sales tax exemption for certain services,  
2 amending P.L.1966, c.30, and designated as Jen's Law.

3

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

6

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

9 3. There is imposed and there shall be paid a tax of 7% upon:

10 (a) The receipts from every retail sale of tangible personal  
11 property or a specified digital product for permanent use or less  
12 than permanent use, and regardless of whether continued payment is  
13 required, except as otherwise provided in this act.

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

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

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

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

**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 "Space for storage" means secure areas, such as rooms, units,  
2 compartments or containers, whether accessible from outside or  
3 from within a building, that are designated for the use of a customer  
4 and wherein the customer has free access within reasonable  
5 business hours, or upon reasonable notice to the furnisher of space  
6 for storage, to store and retrieve property. Space for storage shall  
7 not include the lease or rental of an entire building, such as a  
8 warehouse or airplane hanger.

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

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

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

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

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

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

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

33 (11) Investigation and security services.

34 (12) Information services.

35 (13) Transportation services originating in this State and  
36 provided by a limousine operator, as permitted by law, except such  
37 services provided in connection with funeral services.

38 (14) Telephone answering services.

39 (15) Radio subscription services.

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

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

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

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

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

23 (3) For the purposes of this subsection:

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

27 "Prepared food" means:

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

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

36 C. food sold with eating utensils provided by the seller,  
37 including plates, knives, forks, spoons, glasses, cups, napkins, or  
38 straws. A plate does not include a container or packaging used to  
39 transport the food;

40 provided however, that

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

43 A. food sold by a seller whose proper primary NAICS  
44 classification is manufacturing in section 311, except subsector  
45 3118 (bakeries);

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

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

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

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

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

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

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

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

33 (h) Charges in the nature of initiation fees, membership fees or  
34 dues for access to or use of the property or facilities of a health and  
35 fitness, athletic, sporting or shopping club or organization in this  
36 State, except for: (1) membership in a club or organization whose  
37 members are predominantly age 18 or under; and (2) charges in the  
38 nature of membership fees or dues for access to or use of the  
39 property or facilities of a health and fitness, athletic, sporting or  
40 shopping club or organization that is exempt from taxation pursuant  
41 to paragraph (1) of subsection (a) of section 9 of P.L.1966, c.30  
42 (C.54:32B-9), or that is exempt from taxation pursuant to paragraph  
43 (1) or (2) of subsection (b) of section 9 of P.L.1966, c.30 and that  
44 has complied with subsection (d) of section 9 of P.L.1966, c.30.

45 (i) The receipts from parking, storing or garaging a motor  
46 vehicle, excluding charges for the following: residential parking;  
47 employee parking, when provided by an employer or at a facility  
48 owned or operated by the employer; municipal parking, storing or



1 garaging; receipts from charges or fees imposed pursuant to section  
2 3 of P.L.1993, c.159 (C.5:12-173.3) or pursuant to an agreement  
3 between the Casino Reinvestment Development Authority and a  
4 casino operator in effect on the date of enactment of P.L.2007,  
5 c.105; and receipts from parking, storing or garaging a motor  
6 vehicle subject to tax pursuant to any other law or ordinance.

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

11 (cf: P.L.2011, c.49, s.2)

12

13 2. This act shall take effect immediately, and shall be  
14 applicable to prescribed services that are provided on or after the  
15 act's effective date. The act shall not be retroactively applied to  
16 any services that were provided prior to the effective date.

17

18

19

#### STATEMENT

20

21 This bill provides an exemption from the State sales tax for  
22 permanent cosmetic make-up services (tattooing) that are provided  
23 pursuant to a doctor's prescription in conjunction with  
24 reconstructive breast surgery.

25 In so doing, the bill creates a sales tax exemption that parallels  
26 the one provided in existing law for massage, bodywork, or somatic  
27 services that are provided pursuant to a doctor's prescription.

28 This bill is intended to address a "loophole" in P.L.1983, c.50,  
29 the statute that requires health insurers to cover the costs of  
30 reconstructive breast surgery following a mastectomy, under which  
31 insurers have declined to pay for the sales tax charged for cosmetic  
32 make-up services that are provided in conjunction with such surgery  
33 and thereby obligated patients to pay the sales tax amount out-of-  
34 pocket. This bill will relieve patients of that expense by exempting  
35 the receipts from the sale of these services from the sales tax.

ASSEMBLY WOMEN AND CHILDREN COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 4526**

**STATE OF NEW JERSEY**

DATED: DECEMBER 16, 2013

The Assembly Women and Children Committee reports favorably Assembly Bill No. 4526.

This bill provides an exemption from the State sales tax for permanent cosmetic make-up (tattooing) services that are provided pursuant to a doctor's prescription in conjunction with reconstructive breast surgery, on or after the bill's effective date.

The bill creates a sales tax exemption that parallels the one provided in existing law for massage, bodywork or somatic services that are provided pursuant to a doctor's prescription.

The bill would close a "loophole" in P.L.1983, c.50, the statute that requires health insurers to cover the costs of reconstructive breast surgery following a mastectomy, under which insurers have declined to pay the sales tax charged for cosmetic make-up services provided in conjunction with reconstructive breast surgery. Consequently, patients have been obligated to pay the sales tax amount out-of-pocket. This bill will relieve patients of that expense by exempting from the State sales tax the receipts from sale of these services.

**FISCAL NOTE**  
**ASSEMBLY, No. 4526**  
**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

DATED: DECEMBER 27, 2013

**SUMMARY**

- Synopsis:** Exempts from sales tax cosmetic makeup services provided in conjunction with reconstructive breast surgery; designated as “Jen’s Law.”
- Type of Impact:** Recurring Annual State Revenue Loss to General Fund and Property Tax Relief Fund.
- Agencies Affected:** Division of Taxation, Department of the Treasury.

**Executive Estimate**

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
<b>State Revenue Loss</b>	(Less than \$1,000,000 per year)		

**Office of Legislative Services Estimate**

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
<b>State Revenue Loss</b>	(\$23,856 - \$143,136 per year)		

- The Office of Legislative Services (OLS) generally **concurs** with the Executive’s estimate. The exemption provided by the bill will produce a recurring annual State revenue loss of less than \$1,000,000 per year.
- The OLS notes, however, that actual losses may fall above or below the estimated range of potential loss in fiscal years following enactment dependent on a variety of factors, including the incidence of new breast cancer cases, the rate at which individuals who undergo reconstructive surgery elect to have an areola and nipple restored by tattoo, and the number of tattoo applications required to be reapplied over time.
- The OLS also notes that losses may vary dependent on the number of providers currently collecting the sales tax. It is entirely unclear how many service providers are currently registered as a seller and collect the tax on tattoo services provided pursuant to a doctor’s prescription.

## **BILL DESCRIPTION**

Assembly Bill No. 4526 of 2013, designated as “Jen’s Law,” provides an exemption from the sales tax for permanent cosmetic make-up (tattooing) services that are provided pursuant to a doctor’s prescription in conjunction with reconstructive breast surgery.

The bill takes effect immediately and applies to services provided on or after the bill’s effective date.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

The Office of Revenue and Economic Analysis (OREA) in the Department of the Treasury estimates State revenue losses resulting from the bill will approximate \$1,000,000 annually. This estimate is based on data which indicate 5,600 individuals diagnosed with breast cancer are eligible for reconstructive surgery in New Jersey each year, and data which indicate each areola tattooing application may cost \$600 per person per reconstructed breast.

The estimate assumes each person diagnosed with breast cancer will have both breasts surgically removed, and assumes each person who undergoes double mastectomy will have both breasts surgically reconstructed. Additionally, the estimate assumes each reconstructive surgery will result in the application of a nipple and areola by tattoo, and that each tattoo application will be performed at a location in New Jersey.

The OREA notes, however, that not all “impacted people will have both breasts operated on or have the procedure done in New Jersey.” Consequently, annual State revenue losses may total less than \$1,000,000.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS estimates the bill will produce a recurring annual State revenue loss of \$23,856 to \$143,136 per year. Actual losses incurred by the State may, however, fall above or below the estimated range of potential loss in fiscal years following enactment dependent on a variety of factors described in greater detail below.

The OLS notes the American Cancer Society expects 232,340 new cases of invasive breast cancer and 64,640 new cases of *in situ* breast cancer to occur among women, and expects 2,240 new cases of breast cancer to occur among men in the United States in 2013. In 2012, the United States Census Bureau estimated New Jersey’s population (8,864,590) to be approximately 2.82 percent of the population of the United States (313,914,040).

The OLS notes data derived from an article published in *Breast Cancer Online* in October 2005 indicate the occurrence of a diagnosis of breast cancer in both breasts at the same time is uncommon (0.3 percent to 12 percent of reported occurrences). Data derived from an article published in the *Journal of Clinical Oncology* in July 2010 indicate the majority of women diagnosed with breast cancer in the United States elect breast conserving surgery (61.5 percent) over mastectomy (34.4 percent unilateral, 4.1 percent bilateral).

The OLS notes data derived from an article published in the *Annals of Surgical Oncology* in June 2011 indicate a majority of breast cancer patients (52.6 percent) selected for study chose not to undergo reconstruction following mastectomy; the remainder of those sampled elected immediate (35.9 percent) or delayed (11.5 percent) breast reconstruction. A variety of price guides consulted suggest each restoration of a nipple and areola by tattoo may cost \$200 to \$1,200.

Based on these data, it is possible there may be 8,438 new breast cancer cases reported each year in New Jersey, 3,249 mastectomies performed as a result of 8,438 new breast cancer cases, and 1,540 breast reconstructions performed as a result of 3,249 mastectomies. If each person who undergoes breast reconstruction undergoes the restoration of the nipple and areola by tattoo, 1,704 tattoo applications may be performed at a cost of \$200 to \$1,200 per application each year in New Jersey and the State may lose \$23,856 to \$143,136 per year as a result of the bill.

The OLS notes this estimate assumes the rate of breast cancer occurrence in New Jersey is static and is proportionate to the State's share of the population of the United States. The estimate assumes mastectomy rates for men and the rates of mastectomy for women diagnosed with bilateral breast cancer are identical to the rates reported for women diagnosed with unilateral breast cancer.

In addition, the OLS notes the estimate assumes each breast reconstruction includes a procedure to restore the nipple and areola by tattoo. The estimate assumes each nipple and areola restored by tattoo is permanent. The estimate assumes each person restoring a nipple and areola by tattoo is registered as a seller for purposes of the sales and use tax and will assess a charge or fee for each application provided.

However, the OLS notes that breast cancer rates of occurrence in New Jersey may fluctuate (and may outpace rates reported in other states), and notes that mastectomy rates for men and for women diagnosed with bilateral breast cancer may be greater than rates reported for women with unilateral breast cancer. Additionally, it is possible that some individuals who undergo breast reconstruction following mastectomy may forgo the restoration of a nipple and areola by tattoo, that pigmentation applied by tattoo may fade over time, and that some medical tattoo technicians may not be registered as a seller or may be registered but provide services free of charge to breast cancer survivors.

If breast cancer occurrence rates reported in New Jersey outpace rates reported in other states, mastectomy rates for men or for women diagnosed with bilateral breast cancer are greater than the rates reported for women diagnosed with unilateral breast cancer, or some patients require additional applications of pigmentation over time, State revenue losses may exceed the estimated range of potential loss. If some breast cancer patients who undergo breast reconstruction following mastectomy forgo nipple and areola restoration or some technicians are not registered as a seller or otherwise provide services free of charge, State revenue losses may fall below the estimated range of potential loss.

*Section: Revenue, Finance, and Appropriations*

*Analyst: Luke E. Wolff  
Senior Research Analyst*

*Approved: David J. Rosen  
Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4526

**STATE OF NEW JERSEY**

DATED: JANUARY 9, 2014

The Assembly Budget Committee reports favorably Assembly Bill No. 4526.

The bill provides an exemption from the sales tax for tattooing services, including all permanent body art and permanent cosmetic make-up applications, that are provided pursuant to a doctor's prescription in conjunction with reconstructive breast surgery.

The bill takes effect immediately, and applies to prescribed services that are provided on or after the bill's effective date.

The bill is designated as "Jen's Law" in honor of Jennifer Dubrow Weiss, who elected to undergo a preventative double mastectomy to reduce her chance of developing breast cancer.

As reported, this bill is identical to Senate Bill No. 374 (1R), as also reported by the committee.

FISCAL IMPACT:

The Office of Revenue and Economic Analysis in the Department of the Treasury and the Office of Legislative Services have estimated that the exemption provided by the bill will produce a recurring annual State revenue loss of less than \$1 million per year.

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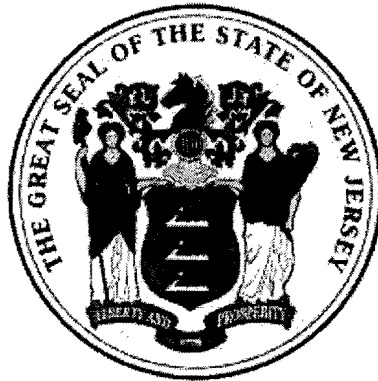
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# **Sales and Use Tax Review Commission**

## **2011 Annual Report**

ANNUAL REPORT TO THE NEW JERSEY LEGISLATURE

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Issued pursuant to N.J.S.A. 54:32B-43

DECEMBER 31, 2011



**SALES AND USE TAX REVIEW COMMISSION**

**RECOMMENDATION PURSUANT TO P.L. 1999, C. 416**

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Bill Number: S-2921

Date of Introduction: 06/02/11

Sponsor(s): Senator James Beach

Date of Consideration: 08/31/11

Co-Sponsor(s):

Identical Bill:

Committee: Senate Budget and Appropriations Committee

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**Description**

The bill would exempt cosmetic makeup services performed in conjunction with reconstructive breast surgery from sales and use tax subjectivity.

**Analysis**

The exemption of the sales and use tax on tattooing for certain permanent cosmetic makeup applications provided pursuant to a doctor's prescription in conjunction with reconstructive surgery is in keeping with already established tax policies. They are clearly distinguishable from the purely aesthetic services of tanning services and tattooing, including permanent body art and permanent cosmetic application, which are taxable under N.J.S.A. 54:32B-3(b)(8) and (10), respectively. New Jersey exempts massage, bodywork, and somatic services from subjectivity to sales tax if such services are provided pursuant to a doctor's prescription. It would be consistent to include a medically based exemption for this area of tattooing.

**Recommendation**

The Commission supports enactment of the bill.