

54:32B-2

LEGISLATIVE FACT SHEET

ON

N.J.R.S. 54:32B-2

(1972 Amendment)

LAWS OF 1972

CHAPTER 27 May 17, 1972

SENATE

ASSEMBLY 973

INTRODUCED April 6 1972

BY DeKorte

STATEMENT

YES

NO

AMENDED DURING PASSAGE

YES

NO

HEARING

VETO

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ASSEMBLY, No. 973

STATE OF NEW JERSEY

INTRODUCED APRIL 6, 1972

By Assemblyman DE KORTE

Referred to the Committee on Taxation

AN ACT to amend the "Sales and Use Tax Act," approved April 27, 1966 (P. L. 1966, c. 30).

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

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

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

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

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

12 (c) Purchaser. A person who purchases property or who re-
13 ceives services.

14 (d) Receipt. The amount of the sales price of any property and
15 the charge for any service taxable under this act, valued in money,
16 whether received in money or otherwise, including any amount for
17 which credit is allowed by the vendor to the purchaser, without any
18 deduction for expenses or early payment discounts, but excluding
19 any credit for property of the same kind accepted in part payment
20 and intended for resale and excluding the cost of transportation
21 where such cost is separately stated in the written contract, in any,
22 and on the bill rendered to the purchaser. *For the purposes of this*
23 *act, receipts from the sale of alcoholic beverages, as defined in the*
24 *Alcoholic Beverage Tax Law, shall be deemed to be the minimum*
25 *consumer resale price as ***[promulgated by]*** *filed with* the New*
26 *Jersey Division of Alcoholic Beverage Control pursuant to N. J.*
27 *A. C. 13:2-286 et seq., as amended.*

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

28 (e) Retail sale. (1) A sale of tangible personal property to any
 29 person for any purpose, other than (A) for resale either as such
 30 or as converted into or as a component part of a product produced
 31 for sale by the purchaser, or (B) for use by that person in perform-
 32 ing the services subject to tax under subsection (b) of section 3
 33 where the property so sold becomes a physical component part of
 34 the property upon which the services are performed or where the
 35 property so sold is later actually transferred to the purchaser of
 36 the service in conjunction with the performance of the service sub-
 37 ject to tax.

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

39 (A) **[sales]** *Sales of tangible personal property to all con-*
 40 *tractors, subcontractors or repairmen of materials and supplies*
 41 *for use by them in erecting structures for others, or building*
 42 *on, or otherwise improving, altering, or repairing real property*
 43 *of others [are deemed to be retail sales].*

44 (B) *Sales of alcoholic beverage as defined in the Alcoholic*
 45 *Beverage Tax Law, except draught beer sold by the barrel, to*
 46 *any "retail licensee" by any person who is a taxpayer pur-*
 47 *suant to the said Alcoholic Beverage Tax Law. For the purpose*
 48 *of this act, "retail licensee" means any person holding a valid*
 49 *and unrevoked Plenary Retail Consumption, Plenary Retail*
 50 *Distribution, Limited Retail Distribution, Seasonal Retail*
 51-52 *Consumption or Club License issued by a municipality *or the*
 53 *Director of the Division of Alcoholic Beverage Control* or*
 53A *Special Permit to sell at retail.*

54 (3) **[(2)]** The term retail sales does not include:

55 (A) Professional, insurance, or personal service transac-
 56 tions which involve the transfer of tangible personal property
 57 as an inconsequential element, for which no separate charges
 58 are made.

59 (B) The transfer of tangible personal property to a corpora-
 60 tion, solely in consideration for the issuance of its stock, pursu-
 61 ant to a merger or consolidation effected under the laws of New
 62 Jersey or any other jurisdiction.

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

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

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

69 (F) The contribution of property to a partnership in con-
 70 sideration for a partnership interest therein.

71 (G) The sale of tangible personal property where the pur-
72 pose of the vendee is to hold the thing transferred as security
73 for the performance of an obligation of the vendor.

74 (f) Sale, selling or purchase. Any transfer of title or possession
75 or both, exchange or barter, rental, lease or license to use or con-
76 sume, conditional or otherwise, in any manner or by any means
77 whatsoever for a consideration, or any agreement therefor, includ-
78 ing the rendering of any service, taxable under this act, for a
79 consideration or any agreement therefor.

80 (g) Tangible personal property. Corporeal personal property
81 of any nature.

82 (h) Use. The exercise of any right or power over tangible per-
83 sonal property by the purchaser thereof and includes, but is not
84 limited to, the receiving, storage or any keeping or retention for any
85 length of time, withdrawal from storage, any installation, any affixa-
86 tion to real or personal property, or any consumption of such
87 property.

88 (i) Vendor. (1) The term "vendōr" includes:

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

91 (B) A person maintaining a place of business in the State
92 and making sales, whether at such place of business or else-
93 where, to persons within the State of tangible personal prop-
94 erty or services, the use of which is taxed by this act;

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

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

105 (E) The State of New Jersey, any of its agencies, instru-
106 mentalities, public authorities, public corporations (including
107 a public corporation created pursuant to agreement or compact
108 with another state) or political subdivisions when such entity
109 sells services or property of a kind ordinarily sold by private
110 persons.

111 (2) In addition, when in the opinion of the director it is neces-
112 sary for the efficient administration of this act to treat any sales-
113 man, representative, peddler or canvasser as the agent of the

114 vendor, distributor, supervisor or employer under whom he
115 operates or from whom he obtains tangible personal property sold
116 by him or for whom he solicits business, the director may, in his
117 discretion, treat such agent as the vendor jointly responsible with
118 his principal, distributor, supervisor or employer for the collection
119 and payment over of the tax.

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

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

126 (l) Occupant. A person who, for a consideration, uses, pos-
127 sesses, or has the right to use or possess, any room in a hotel under
128 any lease, concession, permit, right of access, license to use or other
129 agreement, or otherwise.

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

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

136 (o) Admission charge. The amount paid for admission, includ-
137 ing any service charge and any charge for entertainment or amuse-
138 ment or for the use of facilities therefor.

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

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

144 (r) Dramatic or musical arts admission charge. Any admission
145 charge paid for admission to a theatre, opera house, concert hall
146 or other hall or place of assembly for a live, dramatic, choreo-
147 graphic or musical performance.

148 (s) Lessor. Any person who is the owner, licensee, or lessee
149 of any premises or tangible personal property which he leases,
150 subleases, or grants a license to use to other persons.

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

153 (u) Casual sale. Casual sale means an isolated or occasional
154 sale of an item of tangible personal property by a person who is
155 not regularly engaged in the business of making sales at retail

156 where such property was obtained by the person making the sale,
157 through purchase or otherwise, for his own use in this State.

158 (v) Motor vehicle. Motor vehicle shall include all vehicles
159 propelled otherwise than by muscular power (excepting such
160 vehicles as run only upon rails or tracks), trailers, semitrailers,
161 housetrailers, or any other type of vehicle drawn by a motor-
162 driven vehicle, and motorcycles, designed for operation on the
163 public highways.

164 (w) "Persons required to collect tax" or "persons required to
165 collect any tax imposed by this act" shall include: every vendor
166 of tangible personal property or services; every recipient of
167 amusement charges; and every operator of a hotel. Said terms
168 shall also include any officer or employee of a corporation or of a
169 dissolved corporation who as such officer or employee is under
170 a duty to act for such corporation in complying with any require-
171 ment of this act and any member of a partnership. Provided, how-
172 ever, the vendor of tangible personal property to all contractors,
173 subcontractors or repairmen, consisting of materials and supplies
174 for use by them in erecting structures for others, or building on, or
175 otherwise improving, altering or repairing real property of others,
176 shall not be deemed a person required to collect tax, and the tax
177 imposed by any section of this act shall be paid directly to the
178 director by such contractors, subcontractors or repairmen.

179 (x) "Customer" shall include: every purchaser of tangible per-
180 sonal property or services; every patron paying or liable for the
181 payment of any amusement charge; and every occupant of a room
182 or rooms in a hotel.

183 (y) "Property and services the use of which is subject to tax"
184 shall include: (a) all property sold to a person within the State,
185 whether or not the sale is made within the State, the use of which
186 property is subject to tax under section 6 or will become subject
187 to tax when such property is received by or comes into the posses-
188 sion or control of such person within the State; and (b) all services
189 rendered to a person within the State, whether or not such services
190 are performed within the State, upon tangible personal property
191 the use of which is subject to tax under section 6 or will become
192 subject to tax when such property is received by or comes into
193 possession or control of such person within the State.

194 (z) Director. Director means the Director of the Division of
195 Taxation of the State Department of the Treasury, or any officer,
196 employee or agency of the Division of Taxation in the Department
197 of the Treasury duly authorized by the director (directly, or

198 indirectly by one or more redelegations of authority) to perform
199 the functions mentioned or described in this act.

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

3 8. Exempt sales. Receipts from the following shall be exempt
4 from the tax on retail sales imposed under subsection (a) of section
5 3 and the use tax imposed under section 6:

6 (a) Sales of medicines and drugs sold pursuant to a doctor's
7 prescription for human use; crutches, artificial limbs, artificial
8 eyes, artificial hearing devices, corrective eyeglasses, prosthetic
9 aids, artificial teeth or dentures, braces, tampons or like products,
10 orthopedic appliances and artificial devices designed to correct or
11 alleviate physical incapacity, medical oxygen, human blood and its
12 derivatives when sold for human use, wheel chairs, and replacement
13 parts for any of the foregoing;

14 (b) Sales of food, food products, beverages except [liquors,
15 wines and sparkling wines] *alcoholic beverages, excluding draught*
16 *beer sold by the barrel*, as defined in the Alcoholic Beverage Tax
17 Law, dietary foods and health supplements, sold for human con-
18 sumption off the premises where sold but not including (i) candy
19 and confectionery, and (ii) carbonated soft drinks and beverages
20 all of which shall be subject to the retail sales and compensating use
21 taxes, whether or not the item is sold in liquid form. Nothing
22 herein shall be construed as exempting food or drink from the tax
23 imposed under subsection (c) of section 3;

24 (c) Sales of food sold in an elementary or secondary school
25 cafeteria, sales of food sold in an institution of higher education
26 or in a fraternity, sorority or eating club operated in connection
27 therewith, to students of such an institution;

28 (d) Sales of articles of clothing and footwear for human use
29 except articles made of fur on the hide or pelt of an animal or
30 animals where such fur is the component material of chief value of
31 the article. "Clothing" as used herein, shall also mean and include
32 sales to noncommercial purchasers of common wearing apparel
33 materials intended to be incorporated into wearing apparel as a
34 constituent part thereof, such as fabrics, thread, knitting yarn,
35 buttons and zippers. The director shall prescribe regulations to
36 carry out the provisions of this subsection;

37 (e) Sales of newspapers, magazines and periodicals;

38 (f) Casual sales except as to sales of motor vehicles, whether
39 for use on the highways or otherwise, and except as to sales of boats
40 or vessels registered or subject to registration under the New

41 Jersey Boat Act of 1962 (chapter 73, laws of 1962 and all amend-
42 ments thereto);

43 (g) Sales of gas, water, steam, fuel, electricity, telephone or
44 telegraph services delivered to consumers through mains, lines,
45 pipe, or in containers or bulk;

46 (h) Sales of motor fuels as motor fuels are defined for purposes
47 of the New Jersey Motor Fuel Tax Law; and sales of fuel to an
48 airline for use in its airplanes or to a railroad for use in its
49 locomotives;

50 (i) Tangible personal property sold through coin-operated vend-
51 ing machines at \$0.10 or less, provided the retailer is primarily
52 engaged in making such sales and maintains records satisfactory to
53 the director;

54 (j) Sales not within the taxing power of this State under the
55 Constitution of the United States;

56 (k) The transportation of persons or property;

57 (l) Sales, repairs, alterations or conversion of commercial
58 ships, barges and other vessels of 50-ton burden or over, primarily
59 engaged in interstate or foreign commerce, and of governmentally-
60 owned ships, barges and other vessels and property used by or pur-
61 chased for the use of such vessels for fuel, provisions, supplies,
62 maintenance and repairs (other than articles purchased for the
63 original equipping of a new ship);

64 (m) (1) (Deleted by amendment.) *P. L. 1970, c. 7, s. 5.*

65 (2) Sales of machinery, apparatus or equipment for use or
66 consumption directly and primarily in the production, generation,
67 transmission or distribution of gas, electricity, refrigeration, steam
68 or water for sale or in the operation of sewerage systems;

69 (3) Sales of telephone lines, cables, central office equipment or
70 station apparatus, or other machinery, equipment or apparatus,
71 or comparable telegraph equipment, for use directly and primarily
72 in receiving at destination or initiating, transmitting and switching
73 telephone or telegraph communication;

74 (4) The exemptions granted under this subsection shall not be
75 construed to apply to sales, otherwise taxable, of machinery, equip-
76 ment or apparatus whose use is incidental to the activities described
77 in paragraphs (2) and (3) of this subsection;

78 (5) The exemptions granted in this subsection (m) shall not
79 apply to motor vehicles or to parts with a useful life of 1 year or
80 less or tools or supplies used in connection with the machinery,
81 equipment or apparatus described in this subsection;

82 (n) Sales of tangible personal property purchased for use or
83 consumption directly and exclusively in research and development

84 in the experimental or laboratory sense. Such research and de-
85 velopment shall not be deemed to include the ordinary testing or
86 inspection of materials or products for quality control, efficiency
87 surveys, management studies, consumer surveys, advertising, pro-
88 motions or research in connection with literary, historical or similar
89 projects;

90 (o) sales or use of wrapping paper, wrapping twine, bags, car-
91 tons, tape, rope, labels, nonreturnable containers, reusable milk
92 containers and all other wrapping supplies when such use is in-
93 cidental to the delivery of any personal property;

94 (p) Sales of tangible personal property (except automobiles,
95 trucks, trailers, and truck-trailer combinations, and except prop-
96 erty incorporated in a building or structure) for use and consump-
97 tion directly and exclusively in the production for sale of tangible
98 personal property on farms, including stock, dairy, poultry, fruit,
99 fur-bearing animals, and truck farms, ranches, nurseries, green-
100 houses or other similar structures used primarily for the raising
101 of agricultural or horticultural commodities, and orchards;

102 (q) Sales of tangible personal property sold by a mortician,
103 undertaker or funeral director. However, all tangible personal
104 property sold to a mortician, undertaker or funeral director for
105 use in the conducting of funerals shall not be deemed a sale for
106 resale and shall not be exempt from the tax imposed by this act;

107 (r) Sales of films, records, tapes or any type of visual or sound
108 transcriptions to, or produced for exhibition in or use through the
109 medium of, theatres and radio and television broadcasting stations
110 or networks, and not used for advertising purposes;

111 (s) Sales of tangible personal property and services taxable
112 under any municipal ordinance heretofore adopted pursuant to
113 chapter 71, laws of 1947, which is in effect on April 27, 1966, but
114 only to the extent such sales are taxable under said ordinance;

115 (t) Sales of materials, such as chemicals and catalysts, used to
116 induce or cause a refining or chemical process, where such materials
117 are an integral or essential part of the processing operation, but
118 do not become a component part of the finished product;

119 (u) Sales of school textbooks for use by students in a school,
120 college, university or other educational institution, approved as
121 such by the Department of Education or by the Department of
122 Higher Education, when the educational institution, upon forms
123 and pursuant to regulations prescribed by the director, has declared
124 the books are required for school purposes and the purchaser has
125 supplied the vendor with the form at the time of the sale;

126 (v) (Deleted by amendment.) *P. L. 1970, c. 7, s. 5.*

127 (w) Sales made to contractors, subcontractors or repairmen of
128 materials, supplies or services for exclusive use in erecting struc-
129 tures, or building on, or otherwise improving, altering or repairing
130 real property of organizations described in subsections (a) and
131 (b) of section 9 of this act, provided any person seeking to qualify
132 for this exemption shall do so pursuant to such rules and regula-
133 tions and upon such forms as shall be prescribed by the director;

134 (x) The renting, leasing, licensing or interchanging of trucks,
135 tractors, trailers or semitrailers by persons not engaged in a reg-
136 ular trade or business offering such renting, leasing, licensing or
137 interchanging to the public, provided, that such renting, leasing,
138 licensing or interchanging is carried on with persons engaged in a
139 regular trade or business involving carriage of freight by such
140 vehicles, and further provided, that in the case of any such motor
141 vehicle acquired by the owner or first used by the owner in this State
142 on or after July 1, 1966, any tax presumptively imposed by this act
143 on such acquisition or use shall have been paid at the time of such
144 acquisition or use without claim for exemption;

145 (y) Sales of cigarettes subject to tax under the Cigarette Tax
146 Act;

147 (z) Sales of the Bible or similar sacred scripture of a bona fide
148 church or religious denomination;

149 (aa) Sales of the flag of the United States of America and of
150 the flag of the State of New Jersey;

151 (bb) Sales of locomotives, railroad cars and other railroad roll-
152 ing stock, including repair and replacement parts therefor, to a
153 railroad whose rates are regulated by the Interstate Commerce
154 Commission or by the Board of Public Utility Commissioners of
155 New Jersey;

156 (cc) Sales of buses for public passenger transportation, including
157 repair and replacement parts therefor, to bus companies whose
158 rates are regulated by the Interstate Commerce Commission or the
159 Board of Public Utility Commissioners of New Jersey or to an
160 affiliate of said bus companies or to common or contract carriers for
161 their use in the transportation of children to and from school. For
162 the purposes of this subsection "affiliate" shall mean a corporation
163 whose stock is wholly owned by the regulated bus company or whose
164 stock is wholly owned by the same persons who own all of the stock
165 of the regulated bus company.

166 (dd) (Deleted by amendment.) *P. L. 1970, c. 7, s. 5.*

167 (ee) The sale of advertising to be published in a newspaper.

1 3. This act shall take effect July 1, 1972.

FISCAL NOTE TO
ASSEMBLY, No. 973

STATE OF NEW JERSEY

DATED: APRIL 27, 1972

Assembly Bill No. 973 would amend the Sales Tax Act by imposing a tax on alcoholic beverages, except draught beer sold by the barrel, on sales to retail licensees. Under the bill, the 5% tax would be applicable to liquor and packaged beer to be levied at the wholesale level.

The Division of Taxation estimates that enactment of this legislation would increase the revenues of the State by \$25.6 million in fiscal 1972-73 and by \$26.6 million in fiscal 1973-74.

The present sales tax on liquor for off-premises consumption would be repealed. The new imposition on liquor is estimated to yield \$13.6 million and the tax on packaged beer is estimated to yield \$12 million.

In compliance with written request received, there is hereby submitted a fiscal estimate for the above bill, pursuant to P. L. 1962, c. 27.