



LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 1998

CHAPTER:99

NJSA: 54:32B-2

"Sales and use tax on direct mail advertising"

BILL NO: A1903 (Substituted for S1156)

SPONSOR(S): Talarico and Bagger

DATE INTRODUCED: March 30, 1998

COMMITTEE:

ASSEMBLY: Appropriations

SENATE: Economic Growth; Budget and Appropriations

AMENDED DURING PASSAGE:Yes

DATE OF PASSAGE:

ASSEMBLY: June 29, 1998

SENATE: June 25, 1998

DATE OF APPROVAL: September 4, 1998

THE FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: First reprint enacted
(Amendments during passage denoted by superscript numbers)

A1903

SPONSORS STATEMENT: *Yes* (Begins on page 12 of original bill)

COMMITTEE STATEMENT:

ASSEMBLY:*Yes*

SENATE:*Yes*

June 15, 1998

June 22, 1998

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *Yes*

S1156

SPONSORS STATEMENT: *Yes* (Begins on page 12 of original bill)
(Bill and Sponsors Statement identical to A1903)

COMMITTEE STATEMENT:

ASSEMBLY: *No*

SENATE: *Yes*

June 15, 1998

(Identical to June 15 Senate Statement for A1903)

June 22, 1998

(Identical to June 22 Senate Statement for A1903)

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *Yes*

(Identical to Legislative Fiscal Estimate for A1903)

VETO MESSAGE: *No*

GOVERNOR'S PRESS RELEASE ON SIGNING: *Yes*

THE FOLLOWING WERE PRINTED:

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ext. 102 or refdesk@njstatelib.org*

REPORTS: *No*

HEARINGS: *No*

NEWSPAPER ARTICLES: *No*

Appellate Division case cited in several statements:
Fisher-Stevens, Inc. v. Director, Div. Of Taxation,
121 N.J. Super. 513 (1972)

[First Reprint]

ASSEMBLY, No. 1903

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED MARCH 30, 1998

Sponsored by:

Assemblyman GUY F. TALARICO

District 38 (Bergen)

Assemblyman RICHARD H. BAGGER

District 22 (Middlesex, Morris, Somerset and Union)

Co-Sponsored by:

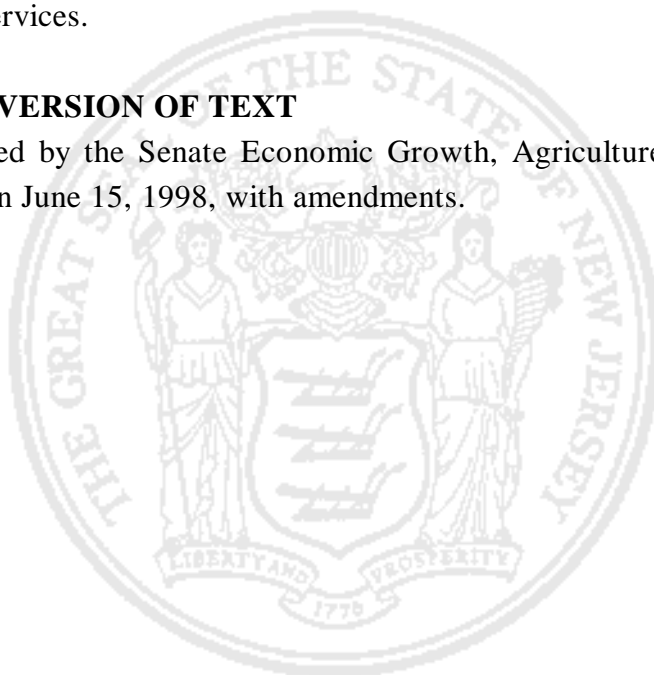
Senators Martin and Adler

SYNOPSIS

Clarifies the imposition of sales and use tax on direct-mail advertising processing services.

CURRENT VERSION OF TEXT

As reported by the Senate Economic Growth, Agriculture and Tourism Committee on June 15, 1998, with amendments.



(Sponsorship Updated As Of: 6/26/1998)

1 AN ACT concerning the sales and use taxation of direct-mail
2 advertising processing services, amending P.L.1966, c.30.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 2 of P.L.1966, c.30 (C.54:32B-2) is amended to read as
8 follows:

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

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

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

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

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

33 (e) Retail sale. (1) A sale of tangible personal property to any
34 person for any purpose, other than (A) for resale either as such or as
35 converted into or as a component part of a product produced for sale
36 by the purchaser, including the conversion of natural gas into another
37 intermediate or end product, other than electricity or thermal energy,
38 produced for sale by the purchaser, or (B) for use by that person in
39 performing the services subject to tax under subsection (b) of section
40 3 where the property so sold becomes a physical component part of
41 the property upon which the services are performed or where the
42 property so sold is later actually transferred to the purchaser of the

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:

¹ Senate SEG committee amendments adopted June 15, 1998.

1 service in conjunction with the performance of the service subject to
2 tax.

3 (2) For the purposes of this act, the term retail sales includes: sales
4 of tangible personal property to all contractors, subcontractors or
5 repairmen of materials and supplies for use by them in erecting
6 structures for others, or building on, or otherwise improving, altering,
7 or repairing real property of others.

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

10 (4) The term retail sales does not include:

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

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

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

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

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

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

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

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

35 (g) Tangible personal property. Corporeal personal property of
36 any nature including energy.

37 (h) Use. The exercise of any right or power over tangible personal
38 property by the purchaser thereof and includes, but is not limited to,
39 the receiving, storage or any keeping or retention for any length of
40 time, withdrawal from storage, any distribution, any installation, any
41 affixation to real or personal property, or any consumption of such
42 property. Use also includes the exercise of any right or power over
43 intrastate or interstate telecommunications. Use also includes the
44 exercise of any right or power over utility service.

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

46 (A) A person making sales of tangible personal property or

1 services, the receipts from which are taxed by this act;

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

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

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

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

20 (F) A person who purchases tangible personal property for lease,
21 whether in this State or elsewhere. For the purposes of Title 54 of the
22 Revised Statutes, the presence of leased tangible personal property in
23 this State is deemed to be a place of business in this State; and

24 (G) A person who sells, stores, delivers or transports energy to
25 users or customers in this State whether by mains, lines or pipes
26 located within this State or by any other means of delivery.

27 (2) In addition, when in the opinion of the director it is necessary
28 for the efficient administration of this act to treat any salesman,
29 representative, peddler or canvasser as the agent of the vendor,
30 distributor, supervisor or employer under whom he operates or from
31 whom he obtains tangible personal property sold by him or for whom
32 he solicits business, the director may, in his discretion, treat such agent
33 as the vendor jointly responsible with his principal, distributor,
34 supervisor or employer for the collection and payment over of the tax.

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

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

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

45 (m) Permanent resident. Any occupant of any room or rooms in
46 a hotel for at least 90 consecutive days shall be considered a

- 1 permanent resident with regard to the period of such occupancy.
- 2 (n) Room. Any room or rooms of any kind in any part or portion
3 of a hotel, which is available for or let out for any purpose other than
4 a place of assembly.
- 5 (o) Admission charge. The amount paid for admission, including
6 any service charge and any charge for entertainment or amusement or
7 for the use of facilities therefor.
- 8 (p) Amusement charge. Any admission charge, dues or charge of
9 roof garden, cabaret or other similar place.
- 10 (q) Charge of a roof garden, cabaret or other similar place. Any
11 charge made for admission, refreshment, service, or merchandise at a
12 roof garden, cabaret or other similar place.
- 13 (r) Dramatic or musical arts admission charge. Any admission
14 charge paid for admission to a theater, opera house, concert hall or
15 other hall or place of assembly for a live, dramatic, choreographic or
16 musical performance.
- 17 (s) Lessor. Any person who is the owner, licensee, or lessee of
18 any premises or tangible personal property which he leases, subleases,
19 or grants a license to use to other persons.
- 20 (t) Place of amusement. Any place where any facilities for
21 entertainment, amusement, or sports are provided.
- 22 (u) Casual sale. Casual sale means an isolated or occasional sale
23 of an item of tangible personal property by a person who is not
24 regularly engaged in the business of making sales at retail where such
25 property was obtained by the person making the sale, through
26 purchase or otherwise, for his own use in this State.
- 27 (v) Motor vehicle. Motor vehicle shall include all vehicles
28 propelled otherwise than by muscular power (excepting such vehicles
29 as run only upon rails or tracks), trailers, semitrailers, housetrailers, or
30 any other type of vehicle drawn by a motor-driven vehicle, and
31 motorcycles, designed for operation on the public highways.
- 32 (w) "Persons required to collect tax" or "persons required to
33 collect any tax imposed by this act" shall include: every vendor of
34 tangible personal property or services; every recipient of amusement
35 charges; every operator of a hotel; every lessor; and every vendor of
36 telecommunications. Said terms shall also include any officer or
37 employee of a corporation or of a dissolved corporation who as such
38 officer or employee is under a duty to act for such corporation in
39 complying with any requirement of this act and any member of a
40 partnership. Provided, however, the vendor of tangible personal
41 property to all contractors, subcontractors or repairmen, consisting of
42 materials and supplies for use by them in erecting structures for others,
43 or building on, or otherwise improving, altering or repairing real
44 property of others, shall not be deemed a person required to collect
45 tax, and the tax imposed by any section of this act shall be paid

1 directly to the director by such contractors, subcontractors or
2 repairmen.

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

7 (y) "Property and services the use of which is subject to tax" shall
8 include: (1) all property sold to a person within the State, whether or
9 not the sale is made within the State, the use of which property is
10 subject to tax under section 6 or will become subject to tax when such
11 property is received by or comes into the possession or control of such
12 person within the State; (2) all services rendered to a person within the
13 State, whether or not such services are performed within the State,
14 upon tangible personal property the use of which is subject to tax
15 under section 6 or will become subject to tax when such property is
16 distributed within the State or is received by or comes into possession
17 or control of such person within the State; (3) intrastate or interstate
18 telecommunications charged to a service address in this State; (4)
19 (Deleted by amendment, P.L.1995, c.184) ; (5) energy sold, exchanged
20 or delivered in this State for use in this State; **[and]** (6) utility service
21 sold, exchanged or delivered in this State for use in this State; and (7)
22 direct mail advertising processing services in connection with
23 advertising or promotional material distributed in this State .

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

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

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

41 (cc) "Telecommunications" means the act or privilege of
42 originating or receiving messages or information through the use of
43 any kind of one-way or two-way communication; including but not
44 limited to voice, video, facsimile, teletypewriter, computer, cellular
45 mobile or portable telephone, specialized mobile or portable pager or
46 paging service, or any other type of communication; using electronic

1 or electromagnetic methods, and all services and equipment provided
2 in connection therewith or by means thereof. "Telecommunications"
3 shall not include:

4 (1) one-way radio or television broadcasting transmissions
5 available universally to the general public without a fee;

6 (2) purchases of telecommunications by a telecommunications
7 provider for use as a component part of telecommunications provided
8 to an ultimate retail consumer who (A) originates or terminates the
9 taxable end-to-end communications or (B) pays charges exempt from
10 taxation pursuant to paragraph (5) of this subsection;

11 (3) services provided by a person, or by that person's wholly
12 owned subsidiary, not engaged in the business of rendering or offering
13 telecommunications services to the public, for private and exclusive
14 use within its organization, provided however, that
15 "telecommunications" shall include the sale of telecommunications
16 services attributable to the excess unused telecommunications capacity
17 of that person to another;

18 (4) charges in the nature of subscription fees paid by subscribers
19 for cable television service; and

20 (5) charges subject to the local calling rate paid by inserting coins
21 into a coin operated telecommunications device available to the public.

22 (dd) "Interstate telecommunication" means any telecommunication
23 that originates or terminates inside this State, including international
24 telecommunication.

25 (ee) "Intrastate telecommunication" means any telecommunication
26 that originates and terminates within this State.

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

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

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

33 (ii) "Self-generation unit" means a facility located on the user's
34 property, or on property purchased or leased from the user by the
35 person owning the self-generation unit and such property is contiguous
36 to the user's property, which generates electricity to be used only by
37 that user on the user's property and is not transported to the user over
38 wires that cross a property line or public thoroughfare unless the
39 property line or public thoroughfare merely bifurcates the user's or
40 self-generation unit owner's otherwise contiguous property.

41 (jj) "Co-generation facility" means a facility the primary purpose
42 of which is the sequential production of electricity and steam or other
43 forms of useful energy which are used for industrial or commercial
44 heating or cooling purposes and which is designated by the Federal
45 Energy Regulatory Commission, or its successor, as a "qualifying
46 facility" pursuant to the provisions of the "Public Utility Regulatory

1 Policies Act of 1978," Pub.L.95-617.

2 (kk) "Non-utility" means a company engaged in the sale, exchange
3 or transfer of natural gas that was not subject to the provisions of
4 P.L.1940, c.5 (C.54:30A-49 et seq.) prior to December 31, 1997.
5 (cf: P.L.1997, c.162, s.17)

6

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

9 3. There is imposed and there shall be paid a tax of 6% upon:

10 (a) The receipts from every retail sale of tangible personal
11 property, except as otherwise provided in this act. If the lessor of
12 tangible personal property purchased for lease elects to pay tax on the
13 amount of the sales price as provided in paragraph (2) of subsection
14 (bb) of section 2 of P.L.1966, c.30 (C.54:32B-2), any and each
15 subsequent lease or rental is a retail sale, and a subsequent sale of such
16 property is a retail sale.

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

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

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

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

42 (4) Maintaining, servicing or repairing real property, other than a
43 residential heating system unit serving not more than three families
44 living independently of each other and doing their cooking on the
45 premises, whether the services are performed in or outside of a
46 building, as distinguished from adding to or improving such real

1 property by a capital improvement, but excluding services rendered by
2 an individual who is not in a regular trade or business offering his
3 services to the public, and excluding garbage removal and sewer
4 services performed on a regular contractual basis for a term not less
5 than 30 days.

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

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

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

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

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

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

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

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

43 (3) In those instances where the sale is for consumption off the
44 premises of the vendor, and consists of a meal, or food prepared and
45 ready to be eaten, of a kind obtainable in restaurants as the main
46 course of a meal, including a sandwich, except where food other than

1 sandwiches is sold in an unheated state and is of a type commonly sold
2 in the same form and condition in food stores other than those which
3 are principally engaged in selling prepared foods; and

4 (4) Sales of food and beverages sold through coin-operated
5 vending machines, at the wholesale price of such sale, which shall be
6 defined as 70% of the retail vending machine selling price, except sales
7 of milk, which shall not be taxed. Nothing herein contained shall
8 affect other sales through coin-operated vending machines taxable
9 pursuant to subsection (a) above or the exemption thereto provided by
10 section 21 of P.L.1980, c.105 (C.54:32B-8.9).

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

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

17 (e) (1) Any admission charge, where such admission charge is in
18 excess of \$0.75 to or for the use of any place of amusement in the
19 State, including charges for admission to race tracks, baseball,
20 football, basketball or exhibitions, dramatic or musical arts
21 performances, motion picture theaters, except charges for admission
22 to boxing, wrestling, kick boxing or combative sports exhibitions,
23 events, performances or contests which charges are taxed under any
24 other law of this State or under section 20 of P.L.1985, c.83
25 (C.5:2A-20), and, except charges to a patron for admission to, or use
26 of, facilities for sporting activities in which such patron is to be a
27 participant, such as bowling alleys and swimming pools. For any
28 person having the permanent use or possession of a box or seat or
29 lease or a license, other than a season ticket, for the use of a box or
30 seat at a place of amusement, the tax shall be upon the amount for
31 which a similar box or seat is sold for each performance or exhibition
32 at which the box or seat is used or reserved by the holder, licensee or
33 lessee, and shall be paid by the holder, licensee or lessee.

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

37 (f) The receipts from every sale, except for resale, of intrastate or
38 interstate telecommunications charged to an address in this State,
39 regardless of where the services are billed or paid.

40 (cf: P.L.1997, c.162, s.18)

41

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

44 6. Unless property or services have already been or will be subject
45 to the sales tax under this act, there is hereby imposed on and there
46 shall be paid by every person a use tax for the use within this State of

1 6%, except as otherwise exempted under this act, (A) of any tangible
2 personal property purchased at retail, including energy, provided
3 however, that electricity consumed by the generating facility that
4 produced it shall not be subject to tax, (B) of any tangible personal
5 property manufactured, processed or assembled by the user, if items
6 of the same kind of tangible personal property are offered for sale by
7 him in the regular course of business, or if items of the same kind of
8 tangible personal property are not offered for sale by him in the regular
9 course of business and are used as such or incorporated into a
10 structure, building or real property, (C) of any tangible personal
11 property, however acquired, where not acquired for purposes of
12 resale, upon which any taxable services described in paragraphs (1)
13 and (2) of subsection (b) of section 3 of P.L.1966, c.30 (C.54:32B-3)
14 have been performed, (D) of interstate or intrastate
15 telecommunications described in subsection (f) of section 3 of
16 P.L.1966, c.30, (E) (Deleted by amendment, P.L.1995, c.184), [and]
17 (F) of utility service provided to persons in this State for use in this
18 State, provided however, that utility service used by the facility that
19 provides the service shall not be subject to tax, and (G) ¹of¹ direct-
20 mail advertising processing services described in paragraph (5) of
21 subsection (b) of section 3 of P.L.1966, c.30 (C.54:32B-3) ¹[have
22 been performed]¹. For purposes of clause (A) of this section, the tax
23 shall be at the applicable rate, as set forth hereinabove, of the
24 consideration given or contracted to be given for such property or for
25 the use of such property, but excluding any credit for property of the
26 same kind accepted in part payment and intended for resale, plus the
27 cost of transportation, except where such cost is separately stated in
28 the written contract, if any, and on the bill rendered to the purchaser,
29 provided however, that there shall be no exclusion for the cost of the
30 utility service. For the purposes of clause (B) of this section, the tax
31 shall be at the applicable rate, as set forth hereinabove, of the price at
32 which items of the same kind of tangible personal property are offered
33 for sale by the user, or if items of the same kind of tangible personal
34 property are not offered for sale by the user in the regular course of
35 business and are used as such or incorporated into a structure, building
36 or real property the tax shall be at the applicable rate, as set forth
37 hereinabove, of the consideration given or contracted to be given for
38 the tangible personal property manufactured, processed or assembled
39 by the user into the tangible personal property the use of which is
40 subject to use tax pursuant to this section, and the mere storage,
41 keeping, retention or withdrawal from storage of tangible personal
42 property by the person who manufactured, processed or assembled
43 such property shall not be deemed a taxable use by him. For purposes
44 of clause (C) of this section, the tax shall be at the applicable rate, as
45 set forth hereinabove, of the consideration given or contracted to be
46 given for the service, including the consideration for any tangible

1 personal property transferred in conjunction with the performance of
2 the service, plus the cost of transportation, except where such cost is
3 separately stated in the written contract, if any, and on the bill
4 rendered to the purchaser. For the purposes of clause (D) of this
5 section, the tax shall be at the applicable rate on the charge made by
6 the telecommunications service provider. For purposes of clause (F)
7 of this section, the tax shall be at the applicable rate on the charge
8 made by the utility service provider. For purposes of clause (G) of
9 this section, the tax shall be at the applicable rate on that proportion
10 of the amount of all processing costs charged by a direct-mail
11 advertising processing service provider that is attributable to the
12 advertising or promotional material distributed in this State.

13 (cf: P.L.1997, c.162, s.19)

14

15 4. This act shall take effect immediately but sections 1 through 3
16 shall remain inoperative until the first day of the second month
17 following enactment.

ASSEMBLY, No. 1903

STATE OF NEW JERSEY

208th LEGISLATURE

INTRODUCED MARCH 30, 1998

Sponsored by:

Assemblyman GUY F. TALARICO

District 38 (Bergen)

Assemblyman RICHARD H. BAGGER

District 22 (Middlesex, Morris, Somerset and Union)

SYNOPSIS

Clarifies the imposition of sales and use tax on direct-mail advertising processing services.

CURRENT VERSION OF TEXT

As introduced.



A1903 TALARICO, BAGGER

2

1 AN ACT concerning the sales and use taxation of direct-mail
2 advertising processing services, amending P.L.1966, c.30.

3

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

6

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

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

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

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

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

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

33 (e) Retail sale. (1) A sale of tangible personal property to any
34 person for any purpose, other than (A) for resale either as such or as
35 converted into or as a component part of a product produced for sale
36 by the purchaser, including the conversion of natural gas into another
37 intermediate or end product, other than electricity or thermal energy,
38 produced for sale by the purchaser, or (B) for use by that person in
39 performing the services subject to tax under subsection (b) of section
40 3 where the property so sold becomes a physical component part of
41 the property upon which the services are performed or where the
42 property so sold is later actually transferred to the purchaser of the

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 service in conjunction with the performance of the service subject to
2 tax.

3 (2) For the purposes of this act, the term retail sales includes: sales
4 of tangible personal property to all contractors, subcontractors or
5 repairmen of materials and supplies for use by them in erecting
6 structures for others, or building on, or otherwise improving, altering,
7 or repairing real property of others.

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

10 (4) The term retail sales does not include:

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

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

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

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

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

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

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

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

35 (g) Tangible personal property. Corporeal personal property of
36 any nature including energy.

37 (h) Use. The exercise of any right or power over tangible personal
38 property by the purchaser thereof and includes, but is not limited to,
39 the receiving, storage or any keeping or retention for any length of
40 time, withdrawal from storage, any distribution, any installation, any
41 affixation to real or personal property, or any consumption of such
42 property. Use also includes the exercise of any right or power over
43 intrastate or interstate telecommunications. Use also includes the
44 exercise of any right or power over utility service.

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

46 (A) A person making sales of tangible personal property or

1 services, the receipts from which are taxed by this act;

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

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

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

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

20 (F) A person who purchases tangible personal property for lease,
21 whether in this State or elsewhere. For the purposes of Title 54 of the
22 Revised Statutes, the presence of leased tangible personal property in
23 this State is deemed to be a place of business in this State; and

24 (G) A person who sells, stores, delivers or transports energy to
25 users or customers in this State whether by mains, lines or pipes
26 located within this State or by any other means of delivery.

27 (2) In addition, when in the opinion of the director it is necessary
28 for the efficient administration of this act to treat any salesman,
29 representative, peddler or canvasser as the agent of the vendor,
30 distributor, supervisor or employer under whom he operates or from
31 whom he obtains tangible personal property sold by him or for whom
32 he solicits business, the director may, in his discretion, treat such agent
33 as the vendor jointly responsible with his principal, distributor,
34 supervisor or employer for the collection and payment over of the tax.

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

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

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

45 (m) Permanent resident. Any occupant of any room or rooms in
46 a hotel for at least 90 consecutive days shall be considered a

- 1 permanent resident with regard to the period of such occupancy.
- 2 (n) Room. Any room or rooms of any kind in any part or portion
3 of a hotel, which is available for or let out for any purpose other than
4 a place of assembly.
- 5 (o) Admission charge. The amount paid for admission, including
6 any service charge and any charge for entertainment or amusement or
7 for the use of facilities therefor.
- 8 (p) Amusement charge. Any admission charge, dues or charge of
9 roof garden, cabaret or other similar place.
- 10 (q) Charge of a roof garden, cabaret or other similar place. Any
11 charge made for admission, refreshment, service, or merchandise at a
12 roof garden, cabaret or other similar place.
- 13 (r) Dramatic or musical arts admission charge. Any admission
14 charge paid for admission to a theater, opera house, concert hall or
15 other hall or place of assembly for a live, dramatic, choreographic or
16 musical performance.
- 17 (s) Lessor. Any person who is the owner, licensee, or lessee of
18 any premises or tangible personal property which he leases, subleases,
19 or grants a license to use to other persons.
- 20 (t) Place of amusement. Any place where any facilities for
21 entertainment, amusement, or sports are provided.
- 22 (u) Casual sale. Casual sale means an isolated or occasional sale
23 of an item of tangible personal property by a person who is not
24 regularly engaged in the business of making sales at retail where such
25 property was obtained by the person making the sale, through
26 purchase or otherwise, for his own use in this State.
- 27 (v) Motor vehicle. Motor vehicle shall include all vehicles
28 propelled otherwise than by muscular power (excepting such vehicles
29 as run only upon rails or tracks), trailers, semitrailers, housetrailers, or
30 any other type of vehicle drawn by a motor-driven vehicle, and
31 motorcycles, designed for operation on the public highways.
- 32 (w) "Persons required to collect tax" or "persons required to
33 collect any tax imposed by this act" shall include: every vendor of
34 tangible personal property or services; every recipient of amusement
35 charges; every operator of a hotel; every lessor; and every vendor of
36 telecommunications. Said terms shall also include any officer or
37 employee of a corporation or of a dissolved corporation who as such
38 officer or employee is under a duty to act for such corporation in
39 complying with any requirement of this act and any member of a
40 partnership. Provided, however, the vendor of tangible personal
41 property to all contractors, subcontractors or repairmen, consisting of
42 materials and supplies for use by them in erecting structures for others,
43 or building on, or otherwise improving, altering or repairing real
44 property of others, shall not be deemed a person required to collect
45 tax, and the tax imposed by any section of this act shall be paid

1 directly to the director by such contractors, subcontractors or
2 repairmen.

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

7 (y) "Property and services the use of which is subject to tax" shall
8 include: (1) all property sold to a person within the State, whether or
9 not the sale is made within the State, the use of which property is
10 subject to tax under section 6 or will become subject to tax when such
11 property is received by or comes into the possession or control of such
12 person within the State; (2) all services rendered to a person within the
13 State, whether or not such services are performed within the State,
14 upon tangible personal property the use of which is subject to tax
15 under section 6 or will become subject to tax when such property is
16 distributed within the State or is received by or comes into possession
17 or control of such person within the State; (3) intrastate or interstate
18 telecommunications charged to a service address in this State; (4)
19 (Deleted by amendment, P.L.1995, c.184) ; (5) energy sold, exchanged
20 or delivered in this State for use in this State; **[and]** (6) utility service
21 sold, exchanged or delivered in this State for use in this State; and (7)
22 direct mail advertising processing services in connection with
23 advertising or promotional material distributed in this State .

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

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

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

41 (cc) "Telecommunications" means the act or privilege of
42 originating or receiving messages or information through the use of
43 any kind of one-way or two-way communication; including but not
44 limited to voice, video, facsimile, teletypewriter, computer, cellular
45 mobile or portable telephone, specialized mobile or portable pager or
46 paging service, or any other type of communication; using electronic

1 or electromagnetic methods, and all services and equipment provided
2 in connection therewith or by means thereof. "Telecommunications"
3 shall not include:

4 (1) one-way radio or television broadcasting transmissions
5 available universally to the general public without a fee;

6 (2) purchases of telecommunications by a telecommunications
7 provider for use as a component part of telecommunications provided
8 to an ultimate retail consumer who (A) originates or terminates the
9 taxable end-to-end communications or (B) pays charges exempt from
10 taxation pursuant to paragraph (5) of this subsection;

11 (3) services provided by a person, or by that person's wholly
12 owned subsidiary, not engaged in the business of rendering or offering
13 telecommunications services to the public, for private and exclusive
14 use within its organization, provided however, that
15 "telecommunications" shall include the sale of telecommunications
16 services attributable to the excess unused telecommunications capacity
17 of that person to another;

18 (4) charges in the nature of subscription fees paid by subscribers
19 for cable television service; and

20 (5) charges subject to the local calling rate paid by inserting coins
21 into a coin operated telecommunications device available to the public.

22 (dd) "Interstate telecommunication" means any telecommunication
23 that originates or terminates inside this State, including international
24 telecommunication.

25 (ee) "Intrastate telecommunication" means any telecommunication
26 that originates and terminates within this State.

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

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

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

33 (ii) "Self-generation unit" means a facility located on the user's
34 property, or on property purchased or leased from the user by the
35 person owning the self-generation unit and such property is contiguous
36 to the user's property, which generates electricity to be used only by
37 that user on the user's property and is not transported to the user over
38 wires that cross a property line or public thoroughfare unless the
39 property line or public thoroughfare merely bifurcates the user's or
40 self-generation unit owner's otherwise contiguous property.

41 (jj) "Co-generation facility" means a facility the primary purpose
42 of which is the sequential production of electricity and steam or other
43 forms of useful energy which are used for industrial or commercial
44 heating or cooling purposes and which is designated by the Federal
45 Energy Regulatory Commission, or its successor, as a "qualifying
46 facility" pursuant to the provisions of the "Public Utility Regulatory

1 Policies Act of 1978," Pub.L.95-617.

2 (kk) "Non-utility" means a company engaged in the sale, exchange
3 or transfer of natural gas that was not subject to the provisions of
4 P.L.1940, c.5 (C.54:30A-49 et seq.) prior to December 31, 1997.
5 (cf: P.L.1997, c.162, s.17)

6

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

9 3. There is imposed and there shall be paid a tax of 6% upon:

10 (a) The receipts from every retail sale of tangible personal
11 property, except as otherwise provided in this act. If the lessor of
12 tangible personal property purchased for lease elects to pay tax on the
13 amount of the sales price as provided in paragraph (2) of subsection
14 (bb) of section 2 of P.L.1966, c.30 (C.54:32B-2), any and each
15 subsequent lease or rental is a retail sale, and a subsequent sale of such
16 property is a retail sale.

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

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

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

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

42 (4) Maintaining, servicing or repairing real property, other than a
43 residential heating system unit serving not more than three families
44 living independently of each other and doing their cooking on the
45 premises, whether the services are performed in or outside of a
46 building, as distinguished from adding to or improving such real

1 property by a capital improvement, but excluding services rendered by
2 an individual who is not in a regular trade or business offering his
3 services to the public, and excluding garbage removal and sewer
4 services performed on a regular contractual basis for a term not less
5 than 30 days.

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

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

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

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

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

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

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

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

43 (3) In those instances where the sale is for consumption off the
44 premises of the vendor, and consists of a meal, or food prepared and
45 ready to be eaten, of a kind obtainable in restaurants as the main
46 course of a meal, including a sandwich, except where food other than

1 sandwiches is sold in an unheated state and is of a type commonly sold
2 in the same form and condition in food stores other than those which
3 are principally engaged in selling prepared foods; and

4 (4) Sales of food and beverages sold through coin-operated
5 vending machines, at the wholesale price of such sale, which shall be
6 defined as 70% of the retail vending machine selling price, except sales
7 of milk, which shall not be taxed. Nothing herein contained shall
8 affect other sales through coin-operated vending machines taxable
9 pursuant to subsection (a) above or the exemption thereto provided by
10 section 21 of P.L.1980, c.105 (C.54:32B-8.9).

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

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

17 (e) (1) Any admission charge, where such admission charge is in
18 excess of \$0.75 to or for the use of any place of amusement in the
19 State, including charges for admission to race tracks, baseball,
20 football, basketball or exhibitions, dramatic or musical arts
21 performances, motion picture theaters, except charges for admission
22 to boxing, wrestling, kick boxing or combative sports exhibitions,
23 events, performances or contests which charges are taxed under any
24 other law of this State or under section 20 of P.L.1985, c.83
25 (C.5:2A-20), and, except charges to a patron for admission to, or use
26 of, facilities for sporting activities in which such patron is to be a
27 participant, such as bowling alleys and swimming pools. For any
28 person having the permanent use or possession of a box or seat or
29 lease or a license, other than a season ticket, for the use of a box or
30 seat at a place of amusement, the tax shall be upon the amount for
31 which a similar box or seat is sold for each performance or exhibition
32 at which the box or seat is used or reserved by the holder, licensee or
33 lessee, and shall be paid by the holder, licensee or lessee.

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

37 (f) The receipts from every sale, except for resale, of intrastate or
38 interstate telecommunications charged to an address in this State,
39 regardless of where the services are billed or paid.

40 (cf: P.L.1997, c.162, s.18)

41

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

44 6. Unless property or services have already been or will be subject
45 to the sales tax under this act, there is hereby imposed on and there
46 shall be paid by every person a use tax for the use within this State of

1 6%, except as otherwise exempted under this act, (A) of any tangible
2 personal property purchased at retail, including energy, provided
3 however, that electricity consumed by the generating facility that
4 produced it shall not be subject to tax, (B) of any tangible personal
5 property manufactured, processed or assembled by the user, if items
6 of the same kind of tangible personal property are offered for sale by
7 him in the regular course of business, or if items of the same kind of
8 tangible personal property are not offered for sale by him in the regular
9 course of business and are used as such or incorporated into a
10 structure, building or real property, (C) of any tangible personal
11 property, however acquired, where not acquired for purposes of
12 resale, upon which any taxable services described in paragraphs (1)
13 and (2) of subsection (b) of section 3 of P.L.1966, c.30 (C.54:32B-3)
14 have been performed, (D) of interstate or intrastate
15 telecommunications described in subsection (f) of section 3 of
16 P.L.1966, c.30, (E) (Deleted by amendment, P.L.1995, c.184), [and]
17 (F) of utility service provided to persons in this State for use in this
18 State, provided however, that utility service used by the facility that
19 provides the service shall not be subject to tax, and (G) direct-mail
20 advertising processing services described in paragraph (5) of
21 subsection (b) of section 3 of P.L.1966, c.30 (C.54:32B-3) have been
22 performed. For purposes of clause (A) of this section, the tax shall be
23 at the applicable rate, as set forth hereinabove, of the consideration
24 given or contracted to be given for such property or for the use of
25 such property, but excluding any credit for property of the same kind
26 accepted in part payment and intended for resale, plus the cost of
27 transportation, except where such cost is separately stated in the
28 written contract, if any, and on the bill rendered to the purchaser,
29 provided however, that there shall be no exclusion for the cost of the
30 utility service. For the purposes of clause (B) of this section, the tax
31 shall be at the applicable rate, as set forth hereinabove, of the price at
32 which items of the same kind of tangible personal property are offered
33 for sale by the user, or if items of the same kind of tangible personal
34 property are not offered for sale by the user in the regular course of
35 business and are used as such or incorporated into a structure, building
36 or real property the tax shall be at the applicable rate, as set forth
37 hereinabove, of the consideration given or contracted to be given for
38 the tangible personal property manufactured, processed or assembled
39 by the user into the tangible personal property the use of which is
40 subject to use tax pursuant to this section, and the mere storage,
41 keeping, retention or withdrawal from storage of tangible personal
42 property by the person who manufactured, processed or assembled
43 such property shall not be deemed a taxable use by him. For purposes
44 of clause (C) of this section, the tax shall be at the applicable rate, as
45 set forth hereinabove, of the consideration given or contracted to be
46 given for the service, including the consideration for any tangible

1 personal property transferred in conjunction with the performance of
2 the service, plus the cost of transportation, except where such cost is
3 separately stated in the written contract, if any, and on the bill
4 rendered to the purchaser. For the purposes of clause (D) of this
5 section, the tax shall be at the applicable rate on the charge made by
6 the telecommunications service provider. For purposes of clause (F)
7 of this section, the tax shall be at the applicable rate on the charge
8 made by the utility service provider. For purposes of clause (G) of
9 this section, the tax shall be at the applicable rate on that proportion
10 of the amount of all processing costs charged by a direct-mail
11 advertising processing service provider that is attributable to the
12 advertising or promotional material distributed in this State.
13 (cf: P.L.1997, c.162, s.19)

14

15 4. This act shall take effect immediately but sections 1 through 3
16 shall remain inoperative until the first day of the second month
17 following enactment.

18

19

20

STATEMENT

21

22 This bill clarifies the imposition of sales and use taxes on direct-mail
23 advertising processing services.

24 In 1970 the sales and use tax was amended to impose the tax on the
25 receipts from every sale, except for resale, of "advertising services."
26 The statute did not define the term, and in 1972 the Superior Court of
27 New Jersey in *Fisher-Stevens, Inc. v. Dir., Div. of Taxation*, 121 N.J.
28 *Super* 513 (1972) defined advertising services as the service of "calling
29 something (as a commodity for sale, a service offered or desired) to
30 the attention of the public. . . ." This nontechnical definition was not
31 of much service to taxpayers, and the courts and the Division of
32 Taxation have relied on the case result rather than its stated holding.
33 Fisher-Stevens, Inc., was a direct mailing services company. It
34 provided services consisting of preparing mailing labels and folding
35 and inserting advertising material supplied by its customers into
36 mailing envelopes. The sales tax law has been implemented with the
37 certainty that, whatever "advertising services" are, direct-mail
38 advertising processing services are included.

39 This bill replaces the imposition of the sales and use tax on
40 indistinct "advertising services" with an imposition on "direct-mail
41 advertising processing services in connection with distribution of
42 advertising or promotional material." This revision, which basically
43 codifies current administrative practice, will assist taxpayers in
44 understanding and complying with the law. Because the revision
45 largely accords with the current administration of the statute, it is not
46 expected to have a significant revenue impact.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1903

STATE OF NEW JERSEY

DATED: MAY 4, 1998

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1903.

Assembly Bill No. 1903 clarifies the imposition of sales and use taxes on direct-mail advertising processing services.

In 1970 the sales and use tax was amended to impose the tax on the receipts from every sale, except for resale, of "advertising services." The statute did not define the term, and while the definition has remained indistinct, the Division of Taxation enforcement policy has consistently treated advertising services as synonymous with direct-mail advertising processing services.

This bill replaces the imposition of the sales and use tax on "advertising services" with an imposition on "direct-mail advertising processing services in connection with distribution of advertising or promotional material." This revision codifies current administrative practice.

FISCAL IMPACT:

Because the bill codifies current administrative practice it is not expected to have a significant revenue impact.

SENATE ECONOMIC GROWTH, AGRICULTURE AND
TOURISM COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1903

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 15, 1998

The Senate Economic Growth, Agriculture and Tourism Committee reports favorably Assembly Bill No. 1903 with amendments.

This bill, as amended, clarifies the imposition of sales and use taxes on direct-mail advertising processing services.

This bill replaces the imposition of the sales and use tax on indistinct "advertising services" with an imposition on "direct-mail advertising processing services in connection with distribution of advertising or promotional material." This revision, which basically codifies current administrative practice, is intended to assist taxpayers in understanding and complying with the law. Because the revision largely accords with the current administration of the statute, it is not expected to have a significant revenue impact.

The committee amended the bill to further clarify the provision which exempts the imposition of a 6% use tax as it applies to direct mail advertising processing services.

As amended, Assembly Bill No. 1903 is identical to Senate Bill No. 1156, as amended.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1903

STATE OF NEW JERSEY

DATED: JUNE 22, 1998

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 1903 (1R)

This bill clarifies the imposition of sales and use taxes on direct-mail advertising processing services.

In 1970 the sales and use tax was amended to impose the tax on the receipts from every sale, except for resale, of "advertising services." The statute did not define the term, and in 1972 the Superior Court of New Jersey in *Fisher-Stevens, Inc. v. Dir., Div. of Taxation*, 121 N.J. Super 513 (1972) defined advertising services as the service of "calling something (as a commodity for sale, a service offered or desired) to the attention of the public. . . ." This nontechnical definition was not of much service to taxpayers, and the courts and the Division of Taxation have relied on the case result rather than its stated holding. *Fisher-Stevens, Inc.*, was a direct mailing services company. It provided services consisting of preparing mailing labels and folding and inserting advertising material supplied by its customers into mailing envelopes. The sales tax law has been implemented with the certainty that, whatever "advertising services" are, direct-mail advertising processing services are included.

This bill replaces the imposition of the sales and use tax on indistinct "advertising services" with an imposition on "direct-mail advertising processing services in connection with distribution of advertising or promotional material" to in-State recipients. This revision will assist taxpayers in understanding and complying with the law.

FISCAL IMPACT

The revision that this bill proposes to make in existing law will have the effect of eliminating sales tax liability for a small class of advertising services arguably subject to taxation under current law. The Division of Taxation's attempts to assess tax for these services have generally resulted in compromise recoveries, but also in administrative costs to the Division that have substantially offset the amounts recovered. Consequently, it is expected that enactment of the bill will not have a significant net fiscal impact.

LEGISLATIVE FISCAL ESTIMATE

ASSEMBLY, No. 1903

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: MAY 27, 1998

Assembly Bill No. 1903 of 1998 clarifies the imposition of sales and use taxes on direct-mail advertising processing services. In 1970 the sales and use tax was amended to impose the tax on the receipts from every sale, except for resale, of "advertising services." The statute did not define the term. While court decisions attempting a clarification have resulted in a definition that might be best described as indistinct, the Division of Taxation enforcement policy has consistently treated "advertising services" as synonymous with direct-mail advertising processing services.

This bill replaces the imposition of the sales and use tax on advertising services with an imposition on "direct-mail advertising processing services in connection with distribution of advertising or promotional material." This revision codifies current administrative practice. Because the bill codifies current administrative practice it is not expected to have a significant revenue impact.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

SENATE, No. 1156

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED MAY 28, 1998

Sponsored by:

Senator ROBERT J. MARTIN

District 26 (Essex, Morris and Passaic)

Senator JOHN H. ADLER

District 6 (Camden)

SYNOPSIS

Clarifies the imposition of sales and use tax on direct-mail advertising processing services.

CURRENT VERSION OF TEXT

As introduced.



S1156 MARTIN, ADLER

2

1 AN ACT concerning the sales and use taxation of direct-mail
2 advertising processing services, amending P.L.1966, c.30.

3

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

6

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

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

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

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

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

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

33 (e) Retail sale. (1) A sale of tangible personal property to any
34 person for any purpose, other than (A) for resale either as such or as
35 converted into or as a component part of a product produced for sale
36 by the purchaser, including the conversion of natural gas into another
37 intermediate or end product, other than electricity or thermal energy,
38 produced for sale by the purchaser, or (B) for use by that person in
39 performing the services subject to tax under subsection (b) of section
40 3 where the property so sold becomes a physical component part of
41 the property upon which the services are performed or where the
42 property so sold is later actually transferred to the purchaser of the

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

Matter underlined thus is new matter.

1 service in conjunction with the performance of the service subject to
2 tax.

3 (2) For the purposes of this act, the term retail sales includes: sales
4 of tangible personal property to all contractors, subcontractors or
5 repairmen of materials and supplies for use by them in erecting
6 structures for others, or building on, or otherwise improving, altering,
7 or repairing real property of others.

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

10 (4) The term retail sales does not include:

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

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

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

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

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

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

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

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

35 (g) Tangible personal property. Corporeal personal property of
36 any nature including energy.

37 (h) Use. The exercise of any right or power over tangible personal
38 property by the purchaser thereof and includes, but is not limited to,
39 the receiving, storage or any keeping or retention for any length of
40 time, withdrawal from storage, any distribution, any installation, any
41 affixation to real or personal property, or any consumption of such
42 property. Use also includes the exercise of any right or power over
43 intrastate or interstate telecommunications. Use also includes the
44 exercise of any right or power over utility service.

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

46 (A) A person making sales of tangible personal property or

1 services, the receipts from which are taxed by this act;

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

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

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

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

20 (F) A person who purchases tangible personal property for lease,
21 whether in this State or elsewhere. For the purposes of Title 54 of the
22 Revised Statutes, the presence of leased tangible personal property in
23 this State is deemed to be a place of business in this State; and

24 (G) A person who sells, stores, delivers or transports energy to
25 users or customers in this State whether by mains, lines or pipes
26 located within this State or by any other means of delivery.

27 (2) In addition, when in the opinion of the director it is necessary
28 for the efficient administration of this act to treat any salesman,
29 representative, peddler or canvasser as the agent of the vendor,
30 distributor, supervisor or employer under whom he operates or from
31 whom he obtains tangible personal property sold by him or for whom
32 he solicits business, the director may, in his discretion, treat such agent
33 as the vendor jointly responsible with his principal, distributor,
34 supervisor or employer for the collection and payment over of the tax.

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

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

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

45 (m) Permanent resident. Any occupant of any room or rooms in
46 a hotel for at least 90 consecutive days shall be considered a

- 1 permanent resident with regard to the period of such occupancy.
- 2 (n) Room. Any room or rooms of any kind in any part or portion
3 of a hotel, which is available for or let out for any purpose other than
4 a place of assembly.
- 5 (o) Admission charge. The amount paid for admission, including
6 any service charge and any charge for entertainment or amusement or
7 for the use of facilities therefor.
- 8 (p) Amusement charge. Any admission charge, dues or charge of
9 roof garden, cabaret or other similar place.
- 10 (q) Charge of a roof garden, cabaret or other similar place. Any
11 charge made for admission, refreshment, service, or merchandise at a
12 roof garden, cabaret or other similar place.
- 13 (r) Dramatic or musical arts admission charge. Any admission
14 charge paid for admission to a theater, opera house, concert hall or
15 other hall or place of assembly for a live, dramatic, choreographic or
16 musical performance.
- 17 (s) Lessor. Any person who is the owner, licensee, or lessee of
18 any premises or tangible personal property which he leases, subleases,
19 or grants a license to use to other persons.
- 20 (t) Place of amusement. Any place where any facilities for
21 entertainment, amusement, or sports are provided.
- 22 (u) Casual sale. Casual sale means an isolated or occasional sale
23 of an item of tangible personal property by a person who is not
24 regularly engaged in the business of making sales at retail where such
25 property was obtained by the person making the sale, through
26 purchase or otherwise, for his own use in this State.
- 27 (v) Motor vehicle. Motor vehicle shall include all vehicles
28 propelled otherwise than by muscular power (excepting such vehicles
29 as run only upon rails or tracks), trailers, semitrailers, housetrailers, or
30 any other type of vehicle drawn by a motor-driven vehicle, and
31 motorcycles, designed for operation on the public highways.
- 32 (w) "Persons required to collect tax" or "persons required to
33 collect any tax imposed by this act" shall include: every vendor of
34 tangible personal property or services; every recipient of amusement
35 charges; every operator of a hotel; every lessor; and every vendor of
36 telecommunications. Said terms shall also include any officer or
37 employee of a corporation or of a dissolved corporation who as such
38 officer or employee is under a duty to act for such corporation in
39 complying with any requirement of this act and any member of a
40 partnership. Provided, however, the vendor of tangible personal
41 property to all contractors, subcontractors or repairmen, consisting of
42 materials and supplies for use by them in erecting structures for others,
43 or building on, or otherwise improving, altering or repairing real
44 property of others, shall not be deemed a person required to collect
45 tax, and the tax imposed by any section of this act shall be paid

1 directly to the director by such contractors, subcontractors or
2 repairmen.

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

7 (y) "Property and services the use of which is subject to tax" shall
8 include: (1) all property sold to a person within the State, whether or
9 not the sale is made within the State, the use of which property is
10 subject to tax under section 6 or will become subject to tax when such
11 property is received by or comes into the possession or control of such
12 person within the State; (2) all services rendered to a person within the
13 State, whether or not such services are performed within the State,
14 upon tangible personal property the use of which is subject to tax
15 under section 6 or will become subject to tax when such property is
16 distributed within the State or is received by or comes into possession
17 or control of such person within the State; (3) intrastate or interstate
18 telecommunications charged to a service address in this State; (4)
19 (Deleted by amendment, P.L.1995, c.184); (5) energy sold, exchanged
20 or delivered in this State for use in this State; **[and]** (6) utility service
21 sold, exchanged or delivered in this State for use in this State; and (7)
22 direct mail advertising processing services in connection with
23 advertising or promotional material distributed in this State .

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

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

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

41 (cc) "Telecommunications" means the act or privilege of
42 originating or receiving messages or information through the use of
43 any kind of one-way or two-way communication; including but not
44 limited to voice, video, facsimile, teletypewriter, computer, cellular
45 mobile or portable telephone, specialized mobile or portable pager or
46 paging service, or any other type of communication; using electronic

1 or electromagnetic methods, and all services and equipment provided
2 in connection therewith or by means thereof. "Telecommunications"
3 shall not include:

4 (1) one-way radio or television broadcasting transmissions
5 available universally to the general public without a fee;

6 (2) purchases of telecommunications by a telecommunications
7 provider for use as a component part of telecommunications provided
8 to an ultimate retail consumer who (A) originates or terminates the
9 taxable end-to-end communications or (B) pays charges exempt from
10 taxation pursuant to paragraph (5) of this subsection;

11 (3) services provided by a person, or by that person's wholly
12 owned subsidiary, not engaged in the business of rendering or offering
13 telecommunications services to the public, for private and exclusive
14 use within its organization, provided however, that
15 "telecommunications" shall include the sale of telecommunications
16 services attributable to the excess unused telecommunications capacity
17 of that person to another;

18 (4) charges in the nature of subscription fees paid by subscribers
19 for cable television service; and

20 (5) charges subject to the local calling rate paid by inserting coins
21 into a coin operated telecommunications device available to the public.

22 (dd) "Interstate telecommunication" means any telecommunication
23 that originates or terminates inside this State, including international
24 telecommunication.

25 (ee) "Intrastate telecommunication" means any telecommunication
26 that originates and terminates within this State.

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

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

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

33 (ii) "Self-generation unit" means a facility located on the user's
34 property, or on property purchased or leased from the user by the
35 person owning the self-generation unit and such property is contiguous
36 to the user's property, which generates electricity to be used only by
37 that user on the user's property and is not transported to the user over
38 wires that cross a property line or public thoroughfare unless the
39 property line or public thoroughfare merely bifurcates the user's or
40 self-generation unit owner's otherwise contiguous property.

41 (jj) "Co-generation facility" means a facility the primary purpose
42 of which is the sequential production of electricity and steam or other
43 forms of useful energy which are used for industrial or commercial
44 heating or cooling purposes and which is designated by the Federal
45 Energy Regulatory Commission, or its successor, as a "qualifying
46 facility" pursuant to the provisions of the "Public Utility Regulatory

1 Policies Act of 1978," Pub.L.95-617.

2 (kk) "Non-utility" means a company engaged in the sale, exchange
3 or transfer of natural gas that was not subject to the provisions of
4 P.L.1940, c.5 (C.54:30A-49 et seq.) prior to December 31, 1997.
5 (cf: P.L.1997, c.162, s.17)

6

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

9 3. There is imposed and there shall be paid a tax of 6% upon:

10 (a) The receipts from every retail sale of tangible personal
11 property, except as otherwise provided in this act. If the lessor of
12 tangible personal property purchased for lease elects to pay tax on the
13 amount of the sales price as provided in paragraph (2) of subsection
14 (bb) of section 2 of P.L.1966, c.30 (C.54:32B-2), any and each
15 subsequent lease or rental is a retail sale, and a subsequent sale of such
16 property is a retail sale.

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

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

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

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

42 (4) Maintaining, servicing or repairing real property, other than a
43 residential heating system unit serving not more than three families
44 living independently of each other and doing their cooking on the
45 premises, whether the services are performed in or outside of a
46 building, as distinguished from adding to or improving such real

1 property by a capital improvement, but excluding services rendered by
2 an individual who is not in a regular trade or business offering his
3 services to the public, and excluding garbage removal and sewer
4 services performed on a regular contractual basis for a term not less
5 than 30 days.

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

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

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

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

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

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

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

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

43 (3) In those instances where the sale is for consumption off the
44 premises of the vendor, and consists of a meal, or food prepared and
45 ready to be eaten, of a kind obtainable in restaurants as the main
46 course of a meal, including a sandwich, except where food other than

1 sandwiches is sold in an unheated state and is of a type commonly sold
2 in the same form and condition in food stores other than those which
3 are principally engaged in selling prepared foods; and

4 (4) Sales of food and beverages sold through coin-operated
5 vending machines, at the wholesale price of such sale, which shall be
6 defined as 70% of the retail vending machine selling price, except sales
7 of milk, which shall not be taxed. Nothing herein contained shall
8 affect other sales through coin-operated vending machines taxable
9 pursuant to subsection (a) above or the exemption thereto provided by
10 section 21 of P.L.1980, c.105 (C.54:32B-8.9).

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

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

17 (e) (1) Any admission charge, where such admission charge is in
18 excess of \$0.75 to or for the use of any place of amusement in the
19 State, including charges for admission to race tracks, baseball,
20 football, basketball or exhibitions, dramatic or musical arts
21 performances, motion picture theaters, except charges for admission
22 to boxing, wrestling, kick boxing or combative sports exhibitions,
23 events, performances or contests which charges are taxed under any
24 other law of this State or under section 20 of P.L.1985, c.83
25 (C.5:2A-20), and, except charges to a patron for admission to, or use
26 of, facilities for sporting activities in which such patron is to be a
27 participant, such as bowling alleys and swimming pools. For any
28 person having the permanent use or possession of a box or seat or
29 lease or a license, other than a season ticket, for the use of a box or
30 seat at a place of amusement, the tax shall be upon the amount for
31 which a similar box or seat is sold for each performance or exhibition
32 at which the box or seat is used or reserved by the holder, licensee or
33 lessee, and shall be paid by the holder, licensee or lessee.

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

37 (f) The receipts from every sale, except for resale, of intrastate or
38 interstate telecommunications charged to an address in this State,
39 regardless of where the services are billed or paid.

40 (cf: P.L.1997, c.162, s.18)

41

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

44 6. Unless property or services have already been or will be subject
45 to the sales tax under this act, there is hereby imposed on and there
46 shall be paid by every person a use tax for the use within this State of

1 6%, except as otherwise exempted under this act, (A) of any tangible
2 personal property purchased at retail, including energy, provided
3 however, that electricity consumed by the generating facility that
4 produced it shall not be subject to tax, (B) of any tangible personal
5 property manufactured, processed or assembled by the user, if items
6 of the same kind of tangible personal property are offered for sale by
7 him in the regular course of business, or if items of the same kind of
8 tangible personal property are not offered for sale by him in the regular
9 course of business and are used as such or incorporated into a
10 structure, building or real property, (C) of any tangible personal
11 property, however acquired, where not acquired for purposes of
12 resale, upon which any taxable services described in paragraphs (1)
13 and (2) of subsection (b) of section 3 of P.L.1966, c.30 (C.54:32B-3)
14 have been performed, (D) of interstate or intrastate
15 telecommunications described in subsection (f) of section 3 of
16 P.L.1966, c.30, (E) (Deleted by amendment, P.L.1995, c.184), [and]
17 (F) of utility service provided to persons in this State for use in this
18 State, provided however, that utility service used by the facility that
19 provides the service shall not be subject to tax, and (G) advertising or
20 promotional material distributed in this State on which direct-mail
21 advertising processing services described in paragraph (5) of
22 subsection (b) of section 3 of P.L.1966, c.30 (C.54:32B-3) have been
23 performed. For purposes of clause (A) of this section, the tax shall be
24 at the applicable rate, as set forth hereinabove, of the consideration
25 given or contracted to be given for such property or for the use of
26 such property, but excluding any credit for property of the same kind
27 accepted in part payment and intended for resale, plus the cost of
28 transportation, except where such cost is separately stated in the
29 written contract, if any, and on the bill rendered to the purchaser,
30 provided however, that there shall be no exclusion for the cost of the
31 utility service. For the purposes of clause (B) of this section, the tax
32 shall be at the applicable rate, as set forth hereinabove, of the price at
33 which items of the same kind of tangible personal property are offered
34 for sale by the user, or if items of the same kind of tangible personal
35 property are not offered for sale by the user in the regular course of
36 business and are used as such or incorporated into a structure, building
37 or real property the tax shall be at the applicable rate, as set forth
38 hereinabove, of the consideration given or contracted to be given for
39 the tangible personal property manufactured, processed or assembled
40 by the user into the tangible personal property the use of which is
41 subject to use tax pursuant to this section, and the mere storage,
42 keeping, retention or withdrawal from storage of tangible personal
43 property by the person who manufactured, processed or assembled
44 such property shall not be deemed a taxable use by him. For purposes
45 of clause (C) of this section, the tax shall be at the applicable rate, as
46 set forth hereinabove, of the consideration given or contracted to be

1 given for the service, including the consideration for any tangible
2 personal property transferred in conjunction with the performance of
3 the service, plus the cost of transportation, except where such cost is
4 separately stated in the written contract, if any, and on the bill
5 rendered to the purchaser. For the purposes of clause (D) of this
6 section, the tax shall be at the applicable rate on the charge made by
7 the telecommunications service provider. For purposes of clause (F)
8 of this section, the tax shall be at the applicable rate on the charge
9 made by the utility service provider. For purposes of clause (G) of
10 this section, the tax shall be at the applicable rate on that proportion
11 of the amount of all processing costs charged by a direct-mail
12 advertising processing service provider that is attributable to the
13 advertising or promotional material distributed in this State.
14 (cf: P.L.1997, c.162, s.19)

15

16 4. This act shall take effect immediately but sections 1 through 3
17 shall remain inoperative until the first day of the second month
18 following enactment.

19

20

STATEMENT

21

22 This bill clarifies the imposition of sales and use taxes on direct-mail
23 advertising processing services.

24 In 1970 the sales and use tax was amended to impose the tax on the
25 receipts from every sale, except for resale, of "advertising services."
26 The statute did not define the term, and in 1972 the Superior Court of
27 New Jersey in *Fisher-Stevens, Inc. v. Dir., Div. of Taxation*, 121 N.J.
28 *Super* 513 (1972) defined advertising services as the service of "calling
29 something (as a commodity for sale, a service offered or desired) to
30 the attention of the public. . . ." This nontechnical definition was not
31 of much service to taxpayers, and the courts and the Division of
32 Taxation have relied on the case result rather than its stated holding.
33 Fisher-Stevens, Inc., was a direct mailing services company. It
34 provided services consisting of preparing mailing labels and folding
35 and inserting advertising material supplied by its customers into
36 mailing envelopes. The sales tax law has been implemented with the
37 certainty that, whatever "advertising services" are, direct-mail
38 advertising processing services are included.

39 This bill replaces the imposition of the sales and use tax on
40 indistinct "advertising services" with an imposition on "direct-mail
41 advertising processing services in connection with distribution of
42 advertising or promotional material." This revision, which basically
43 codifies current administrative practice, will assist taxpayers in
44 understanding and complying with the law. Because the revision
45 largely accords with the current administration of the statute, it is not
46 expected to have a significant revenue impact.

SENATE ECONOMIC GROWTH, AGRICULTURE AND
TOURISM COMMITTEE

STATEMENT TO

SENATE, No. 1156

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 15, 1998

The Senate Economic Growth, Agriculture and Tourism Committee reports favorably Senate Bill No. 1156 with amendments. This bill, as amended, clarifies the imposition of sales and use taxes on direct-mail advertising processing services.

This bill replaces the imposition of the sales and use tax on indistinct "advertising services" with an imposition on "direct-mail advertising processing services in connection with distribution of advertising or promotional material." This revision, which basically codifies current administrative practice, is intended to assist taxpayers in understanding and complying with the law. Because the revision largely accords with the current administration of the statute, it is not expected to have a significant revenue impact.

The committee amended the bill to further clarify the provision which exempts the imposition of a 6% use tax as it applies to direct mail advertising processing services.

As amended, Senate Bill No.1156 is identical to Assembly Bill No. 1903, as amended.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1156

STATE OF NEW JERSEY

DATED: JUNE 22, 1998

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1156 (1R).

This bill clarifies the imposition of sales and use taxes on direct-mail advertising processing services.

In 1970 the sales and use tax was amended to impose the tax on the receipts from every sale, except for resale, of "advertising services." The statute did not define the term, and in 1972 the Superior Court of New Jersey in *Fisher-Stevens, Inc. v. Dir., Div. of Taxation*, 121 N.J. Super 513 (1972) defined advertising services as the service of "calling something (as a commodity for sale, a service offered or desired) to the attention of the public. . . ." This nontechnical definition was not of much service to taxpayers, and the courts and the Division of Taxation have relied on the case result rather than its stated holding. *Fisher-Stevens, Inc.*, was a direct mailing services company. It provided services consisting of preparing mailing labels and folding and inserting advertising material supplied by its customers into mailing envelopes. The sales tax law has been implemented with the certainty that, whatever "advertising services" are, direct-mail advertising processing services are included.

This bill replaces the imposition of the sales and use tax on indistinct "advertising services" with an imposition on "direct-mail advertising processing services in connection with distribution of advertising or promotional material" to in-State recipients. This revision will assist taxpayers in understanding and complying with the law.

FISCAL IMPACT

The revision that this bill proposes to make in existing law will have the effect of eliminating sales tax liability for a small class of advertising services arguably subject to taxation under current law. The Division of Taxation's attempts to assess tax for these services have generally resulted in compromise recoveries, but also in administrative costs to the Division that have substantially offset the amounts recovered. Consequently, it is expected that enactment of the bill will not have a significant net fiscal impact.

LEGISLATIVE FISCAL ESTIMATE

SENATE, No. 1156

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: JULY 20, 1998

Senate Bill No. 1156 of 1998 clarifies the imposition of sales and use taxes on direct-mail advertising processing services. In 1970 the sales and use tax was amended to impose the tax on the receipts from every sale, except for resale, of "advertising services." The statute did not define the term. While court decisions attempting a clarification have resulted in a definition that might be best described as indistinct, the Division of Taxation enforcement policy has consistently treated "advertising services" as synonymous with direct-mail advertising processing services.

This bill replaces the imposition of the sales and use tax on advertising services with an imposition on "direct-mail advertising processing services in connection with distribution of advertising or promotional material." This revision codifies current administrative practice. Because the bill codifies current administrative practice it is not expected to have a significant revenue impact.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

Office of the Governor
NEWS RELEASE

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RELEASE: September 4, 1998

**Gov. Whitman Signs Bill Ensuring
Health Coverage for Domestic Violence Injuries**

Gov. Christie Whitman today signed the following bills:

S-706, sponsored by Senators Robert Singer (R-Burlington/Monmouth/Ocean) and Martha Bark (R-Atlantic/Burlington/Camden) and Assembly Members Rose Heck (R-Bergen) and Neil Cohen (D-Union), prohibits insurers from denying health benefits to victims of domestic violence. The bill addresses the concern that health insurers may be denying coverage for the treatment of domestic violence injuries.

A-1964, sponsored by Assembly Member Bonnie Watson-Coleman (D-Mercer) and Senators Joseph Vitale (D-Middlesex) and Peter Inverso (R-Mercer/Middlesex), limits the amount check cashers may charge to cash Social Security checks. The amount will be limited to one and one-half percent of the amount of the check or 90 cents, whichever is greater. Currently, check cashers can charge two percent.

A-1903, sponsored by Assembly Members Guy Talarico (R-Bergen) and Richard Bagger (R-Middlesex/Morris/Somerset/Union) and Senator Robert Martin (R-Essex/Morris/Passaic), clarifies the imposition of sales and use tax on direct mail advertising. The prior statute imposed a tax on "advertising services," but did not define the services. The new law taxes "direct mail advertising processing services in connection with distribution of advertising or promotional material."