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P.L.1999, CHAPTER 248, *approved October 15, 1999*
Assembly, No. 2050 (*Second Reprint*)

1 AN ACT clarifying the imposition of the sales and use tax upon prepaid
2 telephone calling ¹**[cards]** arrangements¹, amending P.L.1966,
3 c.30.

4

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

7

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

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

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

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

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

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

34 (e) Retail sale. (1) A sale of tangible personal property to any
35 person for any purpose, other than (A) for resale either as such or as
36 converted into or as a component part of a product produced for sale
37 by the purchaser, including the conversion of natural gas into another
38 intermediate or end product, other than electricity or thermal energy,
39 produced for sale by the purchaser, or (B) for use by that person in

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 Assembly AAP committee amendments adopted March 18, 1999.

² Assembly floor amendments adopted May 10, 1999.

1 performing the services subject to tax under subsection (b) of section
2 3 where the property so sold becomes a physical component part of
3 the property upon which the services are performed or where the
4 property so sold is later actually transferred to the purchaser of the
5 service in conjunction with the performance of the service subject to
6 tax.

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

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

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

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

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

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

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

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

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

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

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

39 (g) Tangible personal property. Corporeal personal property of
40 any nature including energy.

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

1 intrastate or interstate telecommunications and prepaid telephone
2 calling ¹**【cards or authorization numbers】** arrangements¹. Use also
3 includes the exercise of any right or power over utility service.

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

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

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

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

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

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

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

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

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

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

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

46 (l) Occupant. A person who, for a consideration, uses, possesses,

1 or has the right to use or possess, any room in a hotel under any lease,
2 concession, permit, right of access, license to use or other agreement,
3 or otherwise.

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

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

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

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

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

18 (r) Dramatic or musical arts admission charge. Any admission
19 charge paid for admission to a theater, opera house, concert hall or
20 other hall or place of assembly for a live, dramatic, choreographic or
21 musical performance.

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

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

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

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

37 (w) "Persons required to collect tax" or "persons required to
38 collect any tax imposed by this act" shall include: every vendor of
39 tangible personal property or services; every recipient of amusement
40 charges; every operator of a hotel; every lessor; and every vendor of
41 telecommunications. Said terms shall also include any officer or
42 employee of a corporation or of a dissolved corporation who as such
43 officer or employee is under a duty to act for such corporation in
44 complying with any requirement of this act and any member of a
45 partnership. Provided, however, the vendor of tangible personal
46 property to all contractors, subcontractors or repairmen, consisting of

1 materials and supplies for use by them in erecting structures for others,
2 or building on, or otherwise improving, altering or repairing real
3 property of others, shall not be deemed a person required to collect
4 tax, and the tax imposed by any section of this act shall be paid
5 directly to the director by such contractors, subcontractors or
6 repairmen.

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

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

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

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

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

45 (cc) "Telecommunications" means the act or privilege of
46 originating or receiving messages or information through the use of

1 any kind of one-way or two-way communication; including but not
2 limited to voice, video, facsimile, teletypewriter, computer, cellular
3 mobile or portable telephone, specialized mobile or portable pager or
4 paging service, or any other type of communication; using electronic
5 or electromagnetic methods, and all services and equipment provided
6 in connection therewith or by means thereof. "Telecommunications"
7 shall not include:

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

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

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

22 (4) charges in the nature of subscription fees paid by subscribers
23 for cable television service; **and**

24 (5) charges subject to the local calling rate paid by inserting coins
25 into a coin operated telecommunications device available to the public;
26 and

27 (6) purchases of telecommunications using a prepaid telephone
28 **calling card or authorization number** arrangement¹.

29 (dd) "Interstate telecommunication" means any telecommunication
30 that originates or terminates inside this State, including international
31 telecommunication.

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

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

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

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

40 (ii) "Self-generation unit" means a facility located on the user's
41 property, or on property purchased or leased from the user by the
42 person owning the self-generation unit and such property is contiguous
43 to the user's property, which generates electricity to be used only by
44 that user on the user's property and is not transported to the user over
45 wires that cross a property line or public thoroughfare unless the
46 property line or public thoroughfare merely bifurcates the user's or

1 self-generation unit owner's otherwise contiguous property.

2 (jj) "Co-generation facility" means a facility the primary purpose of
3 which is the sequential production of electricity and steam or other
4 forms of useful energy which are used for industrial or commercial
5 heating or cooling purposes and which is designated by the Federal
6 Energy Regulatory Commission, or its successor, as a "qualifying
7 facility" pursuant to the provisions of the "Public Utility Regulatory
8 Policies Act of 1978," Pub.L.95-617.

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

12 (ll) "Pre-paid telephone calling ¹**【card or authorization number】**
13 arrangement¹ "means the right to exclusively purchase
14 telecommunications services, ¹that must be¹ paid for in advance, that
15 enables the origination of calls using an access number ¹**【and】** or¹
16 authorization code, whether manually or electronically dialed ¹;
17 provided, that the remaining amount of units of service that have been
18 pre-paid shall be known by the service provider on a continuous
19 basis¹.

20 (cf: P.L.1998, c.99, s.1)

21

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

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

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

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

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

38 (2) Installing tangible personal property, or maintaining, servicing,
39 repairing tangible personal property not held for sale in the regular
40 course of business, whether or not the services are performed directly
41 or by means of coin-operated equipment or by any other means, and
42 whether or not any tangible personal property is transferred in
43 conjunction therewith, except (i) such services rendered by an
44 individual who is engaged directly by a private homeowner or lessee
45 in or about his residence and who is not in a regular trade or business
46 offering his services to the public, (ii) such services rendered with

1 respect to personal property exempt from taxation hereunder pursuant
2 to section 13 of P.L.1980, c.105 (C.54:32B-8.1), (iii) (Deleted by
3 amendment, P.L.1990, c.40), (iv) any receipts from laundering, dry
4 cleaning, tailoring, weaving, pressing, shoe repairing and shoeshining
5 and (v) services rendered in installing property which, when installed,
6 will constitute an addition or capital improvement to real property,
7 property or land.

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

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

21 (5) Direct-mail advertising processing services, except for
22 direct-mail advertising processing services in connection with
23 distribution of advertising or promotional material to out-of-State
24 recipients.

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

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

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

32 Services otherwise taxable under paragraph (1) or (2) of this
33 subsection (b) are not subject to the taxes imposed under this
34 subsection, where the tangible personal property upon which the
35 services were performed is delivered to the purchaser outside this
36 State for use outside this State.

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

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

43 (2) In those instances where the vendor or any person whose
44 services are arranged for by the vendor, after the delivery of the food
45 or drink by or on behalf of the vendor for consumption off the
46 premises of the vendor, serves or assists in serving, cooks, heats or

1 provides other services with respect to the food or drink, except for
2 meals especially prepared for and delivered to homebound elderly, age
3 60 or older, and to disabled persons, or meals prepared and served at
4 a group-sitting at a location outside of the home to otherwise
5 homebound elderly persons, age 60 or older, and otherwise
6 homebound disabled persons, as all or part of any food service project
7 funded in whole or in part by government or as part of a private,
8 nonprofit food service project available to all such elderly or disabled
9 persons residing within an area of service designated by the private
10 nonprofit organization;

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

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

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

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

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

1 lessee, and shall be paid by the holder, licensee or lessee.

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

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

8 ~~(g) The receipts from every sale, except for resale, of prepaid~~
9 ~~telephone calling ¹ [cards or authorization numbers] arrangements¹~~
10 ~~and the recharge of prepaid telephone calling ¹ [cards or authorization~~
11 ~~numbers] arrangements¹. If the sale or recharge of a prepaid~~
12 ~~telephone calling ¹ [card or authorization number] arrangement¹ does~~
13 ~~not take place at the vendor's place of business, the sale or recharge~~
14 ~~shall be conclusively determined to take place at the customer's~~
15 ~~shipping address, or if there is no item shipped, at the customer's~~
16 ~~billing address ¹ or the location associated with the customer's mobile~~
17 ~~telephone number¹ .~~

18 (cf: P.L.1998, c.99, s.2)

19

20 ²3. Section 6 of P.L.1966, c.30 (C54:32B-6) is amended to read
21 as follows:

22 6. Unless property or services have already been or will be subject
23 to the sales tax under this act, there is hereby imposed on and there
24 shall be paid by every person a use tax for the use within this State of
25 6%, except as otherwise exempted under this act, (A) of any tangible
26 personal property purchased at retail, including energy, provided
27 however, that electricity consumed by the generating facility that
28 produced it shall not be subject to tax, (B) of any tangible personal
29 property manufactured, processed or assembled by the user, if items
30 of the same kind of tangible personal property are offered for sale by
31 him in the regular course of business, or if items of the same kind of
32 tangible personal property are not offered for sale by him in the regular
33 course of business and are used as such or incorporated into a
34 structure, building or real property, (C) of any tangible personal
35 property, however acquired, where not acquired for purposes of
36 resale, upon which any taxable services described in paragraphs (1)
37 and (2) of subsection (b) of section 3 of P.L.1966, c.30 (C.54:32B-3)
38 have been performed, (D) of interstate or intrastate
39 telecommunications described in subsection (f) of section 3 of
40 P.L.1966, c.30, (E) (Deleted by amendment, P.L.1995, c.184), (F) of
41 utility service provided to persons in this State for use in this State,
42 provided however, that utility service used by the facility that provides
43 the service shall not be subject to tax, [and] (G) of direct-mail
44 advertising processing services described in paragraph (5) of
45 subsection (b) of section 3 of P.L.1966, c.30 (C.54:32B-3) and (H) of
46 prepaid telephone calling arrangements and the recharge of prepaid

1 telephone calling arrangements. For purposes of clause (A) of this
2 section, the tax shall be at the applicable rate, as set forth hereinabove,
3 of the consideration given or contracted to be given for such property
4 or for the use of such property, but excluding any credit for property
5 of the same kind accepted in part payment and intended for resale, plus
6 the cost of transportation, except where such cost is separately stated
7 in the written contract, if any, and on the bill rendered to the
8 purchaser, provided however, that there shall be no exclusion for the
9 cost of the utility service. For the purposes of clause (B) of this
10 section, the tax shall be at the applicable rate, as set forth hereinabove,
11 of the price at which items of the same kind of tangible personal
12 property are offered for sale by the user, or if items of the same kind
13 of tangible personal property are not offered for sale by the user in the
14 regular course of business and are used as such or incorporated into
15 a structure, building or real property the tax shall be at the applicable
16 rate, as set forth hereinabove, of the consideration given or contracted
17 to be given for the tangible personal property manufactured, processed
18 or assembled by the user into the tangible personal property the use of
19 which is subject to use tax pursuant to this section, and the mere
20 storage, keeping, retention or withdrawal from storage of tangible
21 personal property by the person who manufactured, processed or
22 assembled such property shall not be deemed a taxable use by him.
23 For purposes of clause (C) of this section, the tax shall be at the
24 applicable rate, as set forth hereinabove, of the consideration given or
25 contracted to be given for the service, including the consideration for
26 any tangible personal property transferred in conjunction with the
27 performance of the service, plus the cost of transportation, except
28 where such cost is separately stated in the written contract, if any, and
29 on the bill rendered to the purchaser. For the purposes of clause (D)
30 of this section, the tax shall be at the applicable rate on the charge
31 made by the telecommunications service provider. For purposes of
32 clause (F) of this section, the tax shall be at the applicable rate on the
33 charge made by the utility service provider. For purposes of clause
34 (G) of this section, the tax shall be at the applicable rate on that
35 proportion of the amount of all processing costs charged by a
36 direct-mail advertising processing service provider that is attributable
37 to the advertising or promotional material distributed in this State.
38 For the purposes of clause (H) of this section, the tax shall be at the
39 applicable rate on the consideration given or contracted to be given for
40 the prepaid telephone calling arrangement or the recharge of the
41 prepaid telephone calling arrangement.²

42 (cf: P.L.1998, c.99, s.3)

43

44 ²[3.] 4.² This act shall take effect on the first day of the third
45 month following enactment.

1

2

3 Clarifies sales and use tax imposition upon prepaid telephone calling

4 arrangements.

ASSEMBLY, No. 2050

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED MAY 28, 1998

Sponsored by:

Assemblyman NICHOLAS R. FELICE

District 40 (Bergen and Passaic)

Assemblywoman CAROL J. MURPHY

District 26 (Essex, Morris and Passaic)

SYNOPSIS

Clarifies sales and use tax imposition upon prepaid telephone calling cards.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/29/1998)

A2050 FELICE, MURPHY

2

1 AN ACT clarifying the imposition of the sales and use tax upon prepaid
2 telephone calling cards, 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:

4 Sales of tangible personal property to all contractors,
5 subcontractors or repairmen of materials and supplies for use by them
6 in erecting structures for others, or building on, or otherwise
7 improving, altering, 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 installation, any affixation to real
41 or personal property, or any consumption of such property. Use also
42 includes the exercise of any right or power over intrastate or interstate
43 telecommunications and prepaid telephone calling cards or
44 authorization numbers. Use also includes the exercise of any right or
45 power over utility service.

- 1 (i) Vendor. (1) The term "vendor" includes:
- 2 (A) A person making sales of tangible personal property or
3 services, the receipts from which are taxed by this act;
- 4 (B) A person maintaining a place of business in the State and
5 making sales, whether at such place of business or elsewhere, to
6 persons within the State of tangible personal property or services, the
7 use of which is taxed by this act;
- 8 (C) A person who solicits business either by employees,
9 independent contractors, agents or other representatives or by
10 distribution of catalogs or other advertising matter and by reason
11 thereof makes sales to persons within the State of tangible personal
12 property or services, the use of which is taxed by this act;
- 13 (D) Any other person making sales to persons within the State of
14 tangible personal property or services, the use of which is taxed by this
15 act, who may be authorized by the director to collect the tax imposed
16 by this act;
- 17 (E) The State of New Jersey, any of its agencies, instrumentalities,
18 public authorities, public corporations (including a public corporation
19 created pursuant to agreement or compact with another state) or
20 political subdivisions when such entity sells services or property of a
21 kind ordinarily sold by private persons;
- 22 (F) A person who purchases tangible personal property for lease,
23 whether in this State or elsewhere. For the purposes of Title 54 of the
24 Revised Statutes, the presence of leased tangible personal property in
25 this State is deemed to be a place of business in this State; and
- 26 (G) A person who sells, stores, delivers or transports energy to
27 users or customers in this State whether by mains, lines or pipes
28 located within this State or by any other means of delivery.
- 29 (2) In addition, when in the opinion of the director it is necessary
30 for the efficient administration of this act to treat any salesman,
31 representative, peddler or canvasser as the agent of the vendor,
32 distributor, supervisor or employer under whom he operates or from
33 whom he obtains tangible personal property sold by him or for whom
34 he solicits business, the director may, in his discretion, treat such agent
35 as the vendor jointly responsible with his principal, distributor,
36 supervisor or employer for the collection and payment over of the tax.
- 37 (j) Hotel. A building or portion of it which is regularly used and
38 kept open as such for the lodging of guests. The term "hotel" includes
39 an apartment hotel, a motel, boarding house or club, whether or not
40 meals are served.
- 41 (k) Occupancy. The use or possession or the right to the use or
42 possession, of any room in a hotel.
- 43 (l) Occupant. A person who, for a consideration, uses, possesses,
44 or has the right to use or possess, any room in a hotel under any lease,
45 concession, permit, right of access, license to use or other agreement,
46 or otherwise.

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

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

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

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

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

15 (r) Dramatic or musical arts admission charge. Any admission
16 charge paid for admission to a theater, opera house, concert hall or
17 other hall or place of assembly for a live, dramatic, choreographic or
18 musical performance.

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

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

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

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

34 (w) "Persons required to collect tax" or "persons required to
35 collect any tax imposed by this act" shall include: every vendor of
36 tangible personal property or services; every recipient of amusement
37 charges; every operator of a hotel; every lessor; and every vendor of
38 telecommunications. Said terms shall also include any officer or
39 employee of a corporation or of a dissolved corporation who as such
40 officer or employee is under a duty to act for such corporation in
41 complying with any requirement of this act and any member of a
42 partnership. Provided, however, the vendor of tangible personal
43 property to all contractors, subcontractors or repairmen, consisting of
44 materials and supplies for use by them in erecting structures for others,
45 or building on, or otherwise improving, altering or repairing real
46 property of others, shall not be deemed a person required to collect

1 tax, and the tax imposed by any section of this act shall be paid
2 directly to the director by such contractors, subcontractors or
3 repairmen.

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

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

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

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

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

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

1 in connection therewith or by means thereof. "Telecommunications"
2 shall not include:

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

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

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

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

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

22 (6) purchases of telecommunications using a prepaid telephone
23 calling card or authorization number.

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

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

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

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

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

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

43 (jj) "Co-generation facility" means a facility the primary purpose of
44 which is the sequential production of electricity and steam or other
45 forms of useful energy which are used for industrial or commercial
46 heating or cooling purposes and which is designated by the Federal

1 Energy Regulatory Commission, or its successor, as a "qualifying
2 facility" pursuant to the provisions of the "Public Utility Regulatory
3 Policies Act of 1978," Pub.L.95-617.

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

7 (ll) "Pre-paid telephone calling card or authorization number"
8 means the right to exclusively purchase telecommunications services,
9 paid for in advance, that enables the origination of calls using an
10 access number and authorization code, whether manually or
11 electronically dialed.

12 (cf: P.L.1997, c.162, s.17)

13

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

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

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

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

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

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

46 (3) Storing all tangible personal property not held for sale in the

1 regular course of business and the rental of safe deposit boxes or
2 similar space.

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

13 (5) Advertising services, except advertising services for use
14 directly and primarily for publication in newspapers and magazines and
15 except for direct-mail advertising processing services in connection
16 with distribution to out-of-State recipients.

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

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

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

24 Services otherwise taxable under paragraph (1) or (2) of this
25 subsection (b) are not subject to the taxes imposed under this
26 subsection, where the tangible personal property upon which the
27 services were performed is delivered to the purchaser outside this
28 State for use outside this State.

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

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

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

1 persons residing within an area of service designated by the private
2 nonprofit organization;

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

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

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

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

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

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

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

46 (g) The receipts from every sale, except for resale, of prepaid

1 telephone calling cards or authorization numbers and the recharge of
2 prepaid telephone calling cards or authorization numbers. If the sale
3 or recharge of a prepaid telephone calling card or authorization
4 number does not take place at the vendor's place of business, the sale
5 or recharge shall be conclusively determined to take place at the
6 customer's shipping address, or if there is no item shipped, at the
7 customer's billing address.

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

9
10 3. This act shall take effect on the first day of the third month
11 following enactment.

12 13 14 STATEMENT

15
16 This bill clarifies the imposition of the New Jersey sales and use tax
17 on the retail sale of prepaid telephone calling cards and authorization
18 numbers. The retail sale of a prepaid telephone calling card or
19 authorization number in this State will be subject to the sales and use
20 tax as a sale at retail. The retail vendor will collect the tax from the
21 customer at the rate of 6% upon the retail charge imposed when the
22 card or authorization number is sold. Currently, the collection of the
23 tax upon the use of a prepaid telephone calling card or authorization
24 number, to make a telephone call that is subject to the State's sales
25 and use tax as a taxable telecommunications service, is the
26 responsibility of the telecommunications service provider. The
27 telecommunications provider has the duty of identifying the taxable
28 calls that are made through the access number on the card and is
29 supposed to collect the tax from the wholesaler, sponsor or retailer of
30 the card after the taxable calls are made by the end user.

31 Several states tax the sales of prepaid telephone calling cards and
32 authorization numbers as a telecommunications service but have varied
33 in their policies about when the sales tax is levied, who should remit
34 the tax, and on what price the tax is to be paid. Under a variety of
35 circumstances this approach has produced practical difficulties for
36 states and the industry offering this telecommunications product. This
37 is because the factors that different states generally use to determine
38 point of origin, service address or billing address may not be
39 ascertainable with the use of a prepaid card or authorization number.
40 This is also true as to the geographic point of destination with the use
41 of a prepaid telephone calling card or authorization number used for
42 calls to mobile phones or pagers. Simplicity in tax collection and
43 administration will be served by requiring vendors to collect the tax on
44 the retail sale of the cards and authorization numbers based upon the
45 retail sale price.

ASSEMBLY POLICY AND REGULATORY OVERSIGHT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2050

STATE OF NEW JERSEY

DATED: OCTOBER 5, 1998

The Assembly Policy and Regulatory Oversight Committee reports favorably Assembly Bill No. 2050.

Assembly Bill No. 2050 amends section 2 and 3 of P.L.1966, c.30 (C.54:32B-2 and 54:32B-3) to clarify the imposition of the New Jersey sales and use tax on the retail sale of prepaid telephone calling cards and authorization numbers. The bill also simplifies the tax collection and payment process by requiring retail vendors to collect the sales tax on the retail sale price of the card.

The retail sale of a prepaid telephone calling card or authorization number in this State will be subject to the sales and use tax as a sale at retail. The retail vendor will collect the tax from the customer at the rate of 6% upon the retail charge imposed when the card or authorization number is sold. Currently, the collection of the tax upon the use of a prepaid telephone calling card or authorization number, to make a telephone call that is subject to the State's sales and use tax as a taxable telecommunications service, is the responsibility of the telecommunications service provider. The telecommunications provider has the duty of identifying the taxable calls that are made through the access number on the card and is supposed to collect the tax from the wholesaler, sponsor or retailer of the card after the taxable calls are made by the end user.

Several states tax the sales of prepaid telephone calling cards and authorization numbers as a telecommunications service but have varied in their policies about when the sales tax is levied, who should remit the tax, and on what price the tax is to be paid. Under a variety of circumstances this approach has produced practical difficulties for states and the industry offering this telecommunications product. This is because the factors that different states generally use to determine point of origin, service address or billing address may not be ascertainable with the use of a prepaid card or authorization number. This is also true as to the geographic point of destination with the use of a prepaid telephone calling card or authorization number used for calls to mobile phones or pagers. Simplicity in tax collection and administration will be served by requiring vendors to collect the tax on the retail sale of the cards and authorization numbers based upon the

retail sale price.

It is the committee's understanding that at least 21 other states have moved to have the retail vendors, rather than the telecommunications service provider, be responsible for the collection and remittance of taxes due and payable on the sale of prepaid telephone calling cards and authorization numbers.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2050

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MARCH 18, 1999

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2050 with committee amendments.

Assembly Bill No. 2050, as amended, clarifies the imposition of the New Jersey sales and use tax on the retail sale of prepaid telephone calling arrangements.

Currently, sales tax on the prepaid telephone calling arrangements is collected each time the arrangement is used to make a telephone call subject to New Jersey sales and use tax. Tracking the use of the arrangement and accounting for the tax is the responsibility of the telecommunications service provider. The telecommunications provider has the duty of identifying the taxable calls that are made through the arrangement and should collect the tax from the wholesaler, sponsor or retailer of the arrangement after the taxable calls are made by the end user.

This bill shifts the imposition of the tax from the point at which the arrangement is used to the point at which it is sold to a consumer. The bill simplifies the tax collection and payment process by requiring retail vendors to collect the sales tax on the price at which the arrangement is sold to the consumer.

Several states tax the sales of prepaid telephone calling arrangements as a telecommunications service but have varied in their policies about when the sales tax is levied, who should remit the tax, and on what price the tax is to be paid. Under a variety of circumstances this approach has produced practical difficulties for states and the industry offering this telecommunications product.

The trend among states is a shift to have retail vendors, rather than the telecommunications service provider, be responsible for the collection and remittance of taxes due and payable on the sale of prepaid telephone calling arrangements. This trend has been given impetus by recent amendments to the 3 percent federal excise tax on telecommunications, which since November 1 1997 applies at the time of the sale of the arrangement itself. Simplicity in tax collection and administration of the State and taxpayers will be served by the interstate consistency in taxation of requiring retail vendors, rather than the telecommunications service providers, to be responsible for

the collection and remittance of sales taxes on prepaid telephone calling arrangements.

FISCAL IMPACT:

Representatives of the Department of the Treasury, the telecommunications industry, and the Office of Legislative Services (OLS) have met to analyze the fiscal impact of the bill on the current market for pre-paid calling arrangements and the fiscal implications of the a pre-paid calling arrangement market that could come into being under the provisions of the bill. Using national market data proportionalized to New Jersey, OLS estimates that current potential sales and use tax collections on pre-paid calling arrangements are on the order of \$10 million annually. There are no data on actual collections, and it is believed that a substantial portion of that potential amount remains uncollected: the State lacks jurisdiction to require many companies to collect and pay over taxes on the use of their customers' pre-paid calls. The expected revenue impact of the bill's shift to a tax collected at retail with an expected improvement in efficiency of collection is a slight revenue increase.

Concerns were expressed about tax-avoidance motivated expansion of the pre-paid calling arrangements market with the potential of substantially impacting sales tax revenues from current non-prepaid market; however, amendments adding restrictions to the arrangements qualified as prepaid remove those economic incentives and no impact on current revenues in the non-prepaid market is anticipated.

COMMITTEE AMENDMENTS:

The amendments to change the term "card and authorization number" to "arrangement," a term used in the 1997 pre-paid calling card amendments to the federal excise tax on telecommunications. The amendments add restrictions to the arrangements qualified as prepaid, that they "must be" pre-paid and that the remaining amount of units of service that have been pre-paid shall be known by the service provider on a continuous basis. The amendments clarify the tax jurisdiction of pre-paid arrangements associated with certain mobile phone services as the location associated with the customer's mobile telephone number.

The committee also made a technical amendment to reflect the intervening enactment of a statute.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[Second Reprint]
ASSEMBLY, No. 2050

STATE OF NEW JERSEY

DATED: JUNE 14, 1999

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 2050 (2R).

This bill clarifies the imposition of the New Jersey sales and use tax on the retail sale of prepaid telephone calling arrangements.

Currently, sales tax on prepaid telephone calling arrangements is collected each time the arrangement is used to make a telephone call subject to the tax. Tracking the use of the arrangement and accounting for the tax is the responsibility of the telecommunications service provider. The telecommunications provider has the duty of identifying the taxable calls that are made through the arrangement and should collect the tax from the wholesaler, sponsor or retailer of the arrangement after the taxable calls are made by the end user.

This bill shifts the imposition of the tax from the point at which the arrangement is used to the point at which it is sold to a consumer. The bill simplifies the tax collection and payment process by requiring retail vendors to collect the sales tax on the price at which the arrangement is sold to the consumer.

Several states tax the sales of prepaid telephone calling arrangements as a telecommunications service but have varied in their policies about when the tax is levied, who should remit the tax, and on what price the tax is to be paid. Under a variety of circumstances this approach has produced practical difficulties for states and the industry offering this telecommunications product.

The trend among states is a shift to requiring retail vendors, rather than the telecommunications service provider, to be responsible for the collection and remittance of taxes due and payable on the sale of prepaid telephone calling arrangements. This trend has been given impetus by recent amendments to the 3 percent federal excise tax on telecommunications, which since November 1, 1997 applies at the time of the sale of the arrangement itself. Simplicity in tax collection and administration for the State and taxpayers will be served by the interstate consistency in taxation of requiring retail vendors, rather than the telecommunications service providers, to be responsible for the collection and remittance of sales taxes on prepaid telephone calling arrangements.

This bill is identical to Senate Bill No. 1033 (1R).

FISCAL IMPACT:

Representatives of the Department of the Treasury, the telecommunications industry, and the Office of Legislative Services (OLS) have met to analyze the fiscal impact of the bill on the current market for pre-paid calling arrangements and the fiscal implications of the a pre-paid calling arrangement market that could come into being under the provisions of the bill. Using national market data proportionalized to New Jersey, OLS estimates that current potential sales and use tax collections on pre-paid calling arrangements are on the order of \$10 million annually. There are no data on actual collections, and it is believed that a substantial portion of that potential amount remains uncollected: the State lacks jurisdiction to require many companies to collect and pay over taxes on the use of their customers' pre-paid calls. The expected revenue impact of the bill's shift to a tax collected at retail with an expected improvement in efficiency of collection is a slight revenue increase.

Concerns were expressed about tax-avoidance motivated expansion of the pre-paid calling arrangements market with the potential of substantially impacting sales tax revenues from current non-prepaid market; however, amendments adding restrictions to the arrangements qualified as prepaid remove those economic incentives and no impact on current revenues in the non-prepaid market is anticipated.

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2050

with Assembly Floor Amendments
(Proposed By Assemblyman FELICE)

ADOPTED: MAY 10, 1999

This amendment clarifies that prepaid telephone calling arrangements and the recharge of prepaid telephone calling arrangements are subject to the use tax component of the New Jersey sales and use tax.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 2050

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: MAY 4, 1999

BILL SUMMARY

Assembly Bill No. 2050 (1R) of 1998 clarifies the imposition of the New Jersey sales and use tax on the retail sale of prepaid telephone calling arrangements.

Currently, sales tax on the prepaid telephone calling arrangements is collected each time the arrangement is used to make a telephone call subject to New Jersey sales and use tax. Tracking the use of the arrangement and accounting for the tax is the responsibility of the telecommunications service provider. The telecommunications provider has the duty of identifying the taxable calls that are made through the arrangement and should collect the tax from the wholesaler, sponsor or retailer of the arrangement after the taxable calls are made by the end user.

This bill shifts the imposition of the tax from the point at which the arrangement is used to the point at which it is sold to a consumer. The bill simplifies the tax collection and payment process by requiring retail vendors to collect the sales tax on the price at which the arrangement is sold to the consumer.

Several states tax the sales of prepaid telephone calling arrangements as a telecommunications service but have varied in their policies about when the sales tax is levied, who should remit the tax, and on what price the tax is to be paid. Under a variety of circumstances this approach has produced practical difficulties for states and the industry offering this telecommunications product.

The trend among states is a shift to have retail vendors, rather than the telecommunications service provider, be responsible for the collection and remittance of taxes due and payable on the sale of prepaid telephone calling arrangements. This trend has been given impetus by recent amendments to the 3 percent federal excise tax on telecommunications, which since November 1 1997 applies at the time of the sale of the arrangement itself. Simplicity in tax collection and administration of the State and taxpayers will be served by the

interstate consistency in taxation of requiring retail vendors, rather than the telecommunications service providers, to be responsible for the collection and remittance of sales taxes on prepaid telephone calling arrangements.

OFFICE OF LEGISLATIVE SERVICES COMMENTS

Using national market data proportionalized to New Jersey, the Office of Legislative Services (OLS) estimates that current maximum potential sales and use tax collections on pre-paid calling arrangements are on the order of \$10 million annually. There are no data on actual collections, and it is believed that a substantial portion of that potential amount remains uncollected: the State lacks jurisdiction to require many companies to collect and pay over taxes on the use of their customers' pre-paid calls. The expected revenue impact of the bill's shift to a tax collected at retail with an expected improvement in efficiency of collection is a slight revenue increase.

The Department of the Treasury expressed concerns about possible tax-avoidance motivated expansion of the pre-paid calling arrangements market with the potential of substantially impacting sales tax revenues from current non-prepaid market; however, OLS believes amendments adding restrictions to the arrangements qualified as prepaid remove those economic incentives and no impact on current revenues in the non-prepaid market is anticipated.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

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

SENATE, No. 1033

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED MAY 14, 1998

Sponsored by:

Senator PETER A. INVERSO

District 14 (Mercer and Middlesex)

SYNOPSIS

Clarifies sales and use tax imposition upon prepaid telephone calling cards.

CURRENT VERSION OF TEXT

As introduced.



S1033 INVERSO

2

1 **AN ACT** clarifying the imposition of the sales and use tax upon prepaid
2 telephone calling cards, 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.

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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:

4 Sales of tangible personal property to all contractors,
5 subcontractors or repairmen of materials and supplies for use by them
6 in erecting structures for others, or building on, or otherwise
7 improving, altering, 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 installation, any affixation to real
41 or personal property, or any consumption of such property. Use also
42 includes the exercise of any right or power over intrastate or interstate
43 telecommunications and prepaid telephone calling cards or
44 authorization numbers. Use also includes the exercise of any right or
45 power over utility service.

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- 1 (i) Vendor. (1) The term "vendor" includes:
- 2 (A) A person making sales of tangible personal property or
3 services, the receipts from which are taxed by this act;
- 4 (B) A person maintaining a place of business in the State and
5 making sales, whether at such place of business or elsewhere, to
6 persons within the State of tangible personal property or services, the
7 use of which is taxed by this act;
- 8 (C) A person who solicits business either by employees,
9 independent contractors, agents or other representatives or by
10 distribution of catalogs or other advertising matter and by reason
11 thereof makes sales to persons within the State of tangible personal
12 property or services, the use of which is taxed by this act;
- 13 (D) Any other person making sales to persons within the State of
14 tangible personal property or services, the use of which is taxed by this
15 act, who may be authorized by the director to collect the tax imposed
16 by this act;
- 17 (E) The State of New Jersey, any of its agencies, instrumentalities,
18 public authorities, public corporations (including a public corporation
19 created pursuant to agreement or compact with another state) or
20 political subdivisions when such entity sells services or property of a
21 kind ordinarily sold by private persons;
- 22 (F) A person who purchases tangible personal property for lease,
23 whether in this State or elsewhere. For the purposes of Title 54 of the
24 Revised Statutes, the presence of leased tangible personal property in
25 this State is deemed to be a place of business in this State; and
- 26 (G) A person who sells, stores, delivers or transports energy to
27 users or customers in this State whether by mains, lines or pipes
28 located within this State or by any other means of delivery.
- 29 (2) In addition, when in the opinion of the director it is necessary
30 for the efficient administration of this act to treat any salesman,
31 representative, peddler or canvasser as the agent of the vendor,
32 distributor, supervisor or employer under whom he operates or from
33 whom he obtains tangible personal property sold by him or for whom
34 he solicits business, the director may, in his discretion, treat such agent
35 as the vendor jointly responsible with his principal, distributor,
36 supervisor or employer for the collection and payment over of the tax.
- 37 (j) Hotel. A building or portion of it which is regularly used and
38 kept open as such for the lodging of guests. The term "hotel" includes
39 an apartment hotel, a motel, boarding house or club, whether or not
40 meals are served.
- 41 (k) Occupancy. The use or possession or the right to the use or
42 possession, of any room in a hotel.
- 43 (l) Occupant. A person who, for a consideration, uses, possesses,
44 or has the right to use or possess, any room in a hotel under any lease,
45 concession, permit, right of access, license to use or other agreement,
46 or otherwise.

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- 1 (m) Permanent resident. Any occupant of any room or rooms in
2 a hotel for at least 90 consecutive days shall be considered a
3 permanent resident with regard to the period of such occupancy.
- 4 (n) Room. Any room or rooms of any kind in any part or portion
5 of a hotel, which is available for or let out for any purpose other than
6 a place of assembly.
- 7 (o) Admission charge. The amount paid for admission, including
8 any service charge and any charge for entertainment or amusement or
9 for the use of facilities therefor.
- 10 (p) Amusement charge. Any admission charge, dues or charge of
11 roof garden, cabaret or other similar place.
- 12 (q) Charge of a roof garden, cabaret or other similar place. Any
13 charge made for admission, refreshment, service, or merchandise at a
14 roof garden, cabaret or other similar place.
- 15 (r) Dramatic or musical arts admission charge. Any admission
16 charge paid for admission to a theater, opera house, concert hall or
17 other hall or place of assembly for a live, dramatic, choreographic or
18 musical performance.
- 19 (s) Lessor. Any person who is the owner, licensee, or lessee of any
20 premises or tangible personal property which he leases, subleases, or
21 grants a license to use to other persons.
- 22 (t) Place of amusement. Any place where any facilities for
23 entertainment, amusement, or sports are provided.
- 24 (u) Casual sale. Casual sale means an isolated or occasional sale
25 of an item of tangible personal property by a person who is not
26 regularly engaged in the business of making sales at retail where such
27 property was obtained by the person making the sale, through
28 purchase or otherwise, for his own use in this State.
- 29 (v) Motor vehicle. Motor vehicle shall include all vehicles
30 propelled otherwise than by muscular power (excepting such vehicles
31 as run only upon rails or tracks), trailers, semitrailers, housetrailers, or
32 any other type of vehicle drawn by a motor-driven vehicle, and
33 motorcycles, designed for operation on the public highways.
- 34 (w) "Persons required to collect tax" or "persons required to
35 collect any tax imposed by this act" shall include: every vendor of
36 tangible personal property or services; every recipient of amusement
37 charges; every operator of a hotel; every lessor; and every vendor of
38 telecommunications. Said terms shall also include any officer or
39 employee of a corporation or of a dissolved corporation who as such
40 officer or employee is under a duty to act for such corporation in
41 complying with any requirement of this act and any member of a
42 partnership. Provided, however, the vendor of tangible personal
43 property to all contractors, subcontractors or repairmen, consisting of
44 materials and supplies for use by them in erecting structures for others,
45 or building on, or otherwise improving, altering or repairing real
46 property of others, shall not be deemed a person required to collect

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1 tax, and the tax imposed by any section of this act shall be paid
2 directly to the director by such contractors, subcontractors or
3 repairmen.

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

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

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

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

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

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

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1 in connection therewith or by means thereof. "Telecommunications"
2 shall not include:

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

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

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

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

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

22 (6) purchases of telecommunications using a prepaid telephone
23 calling card or authorization number.

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

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

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

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

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

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

43 (jj) "Co-generation facility" means a facility the primary purpose of
44 which is the sequential production of electricity and steam or other
45 forms of useful energy which are used for industrial or commercial
46 heating or cooling purposes and which is designated by the Federal

S1033 INVERSO

1 Energy Regulatory Commission, or its successor, as a "qualifying
2 facility" pursuant to the provisions of the "Public Utility Regulatory
3 Policies Act of 1978," Pub.L. 95-617.

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

7 (ll) "Pre-paid telephone calling card or authorization number"
8 means the right to exclusively purchase telecommunications services,
9 paid for in advance, that enables the origination of calls using an
10 access number and authorization code, whether manually or
11 electronically dialed.

12 (cf: P.L.1997, c.162, s.17)

13

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

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

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

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

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

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

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

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

14 (5) Advertising services, except advertising services for use
15 directly and primarily for publication in newspapers and magazines and
16 except for direct-mail advertising processing services in connection
17 with distribution to out-of-State recipients.

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

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

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

25 Services otherwise taxable under paragraph (1) or (2) of this
26 subsection (b) are not subject to the taxes imposed under this
27 subsection, where the tangible personal property upon which the
28 services were performed is delivered to the purchaser outside this
29 State for use outside this State.

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

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

36 (2) In those instances where the vendor or any person whose
37 services are arranged for by the vendor, after the delivery of the food
38 or drink by or on behalf of the vendor for consumption off the
39 premises of the vendor, serves or assists in serving, cooks, heats or
40 provides other services with respect to the food or drink, except for
41 meals especially prepared for and delivered to homebound elderly, age
42 60 or older, and to disabled persons, or meals prepared and served at
43 a group-sitting at a location outside of the home to otherwise
44 homebound elderly persons, age 60 or older, and otherwise
45 homebound disabled persons, as all or part of any food service project
46 funded in whole or in part by government or as part of a private,

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1 nonprofit food service project available to all such elderly or disabled
2 persons residing within an area of service designated by the private
3 nonprofit organization;

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

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

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

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

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

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

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

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1033

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 14, 1999

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 1033.

This bill clarifies the imposition of the New Jersey sales and use tax on the retail sale of prepaid telephone calling arrangements.

Currently, sales tax on prepaid telephone calling arrangements is collected each time the arrangement is used to make a telephone call subject to the tax. Tracking the use of the arrangement and accounting for the tax is the responsibility of the telecommunications service provider. The telecommunications provider has the duty of identifying the taxable calls that are made through the arrangement and should collect the tax from the wholesaler, sponsor or retailer of the arrangement after the taxable calls are made by the end user.

This bill shifts the imposition of the tax from the point at which the arrangement is used to the point at which it is sold to a consumer. The bill simplifies the tax collection and payment process by requiring retail vendors to collect the sales tax on the price at which the arrangement is sold to the consumer.

Several states tax the sales of prepaid telephone calling arrangements as a telecommunications service but have varied in their policies about when the tax is levied, who should remit the tax, and on what price the tax is to be paid. Under a variety of circumstances this approach has produced practical difficulties for states and the industry offering this telecommunications product.

The trend among states is a shift to requiring retail vendors, rather than the telecommunications service provider, to be responsible for the collection and remittance of taxes due and payable on the sale of prepaid telephone calling arrangements. This trend has been given impetus by recent amendments to the 3 percent federal excise tax on telecommunications, which since November 1, 1997 applies at the time of the sale of the arrangement itself. Simplicity in tax collection and administration for the State and taxpayers will be served by the interstate consistency in taxation of requiring retail vendors, rather than the telecommunications service providers, to be responsible for the collection and remittance of sales taxes on prepaid telephone calling arrangements.

COMMITTEE AMENDMENTS:

Committee amendments to the bill change the term "card or authorization number" to "arrangement," a term used in the 1997 pre-paid calling card amendments to the federal excise tax on telecommunications. The amendments add restrictions to the arrangements qualified as prepaid, that they "must be" pre-paid and that the remaining amount of units of service that have been pre-paid shall be known by the service provider on a continuous basis. The amendments clarify the tax jurisdiction of pre-paid arrangements associated with certain mobile phone services as the location associated with the customer's mobile telephone number.

The amendments also include technical changes to clarify that prepaid telephone calling arrangements and the recharge of prepaid telephone calling arrangements are subject to the use tax component of the New Jersey sales and use tax.

As amended, the bill is identical to Assembly Bill No. 2050 (2R).

FISCAL IMPACT:

Representatives of the Department of the Treasury, the telecommunications industry, and the Office of Legislative Services (OLS) have met to analyze the fiscal impact of the bill on the current market for pre-paid calling arrangements and the fiscal implications of the a pre-paid calling arrangement market that could come into being under the provisions of the bill. Using national market data proportionalized to New Jersey, OLS estimates that current potential sales and use tax collections on pre-paid calling arrangements are on the order of \$10 million annually. There are no data on actual collections, and it is believed that a substantial portion of that potential amount remains uncollected: the State lacks jurisdiction to require many companies to collect and pay over taxes on the use of their customers' pre-paid calls. The expected revenue impact of the bill's shift to a tax collected at retail with an expected improvement in efficiency of collection is a slight revenue increase.

Concerns were expressed about tax-avoidance motivated expansion of the pre-paid calling arrangements market with the potential of substantially impacting sales tax revenues from current non-prepaid market; however, amendments adding restrictions to the arrangements qualified as prepaid remove those economic incentives and no impact on current revenues in the non-prepaid market is anticipated.

SENATE ECONOMIC GROWTH, AGRICULTURE AND
TOURISM COMMITTEE

STATEMENT TO

SENATE, No. 1033

STATE OF NEW JERSEY

DATED: JUNE 15, 1998

The Senate Economic Growth, Agriculture and Tourism Committee reports favorably Senate Bill No. 1033.

This bill clarifies the imposition of the New Jersey sales and use tax on the retail sale of prepaid telephone calling cards and authorization numbers. Under the provisions of the bill, the retail sale of a prepaid telephone calling card or authorization number in this State will be subject to the sales and use tax as a sale at retail. The retail vendor would be required to collect the tax from the customer at the rate of 6% upon the retail charge imposed when the card or authorization number is sold. Currently, the collection of the tax upon the use of a prepaid telephone calling card or authorization number, to make a telephone call that is subject to the State's sales and use tax as a taxable telecommunications service, is the responsibility of the telecommunications service provider.

Office of the Governor
NEWS RELEASE

CONTACT: Jayne O'Connor
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RELEASE: October 15, 1999

Governor Christie Whitman today signed the following legislation:

A-1447, sponsored by Assembly Speaker Jack Collins, requires legislative counsel to provide prime sponsors of legislation with advice of legal defects at the same time the counsel provides a written response to a request for a confidential written opinion on a bill.

A-170, sponsored by Assembly Members John Kelly (R-Bergen/Essex/Passaic) and Louis Romano (D-Hudson), eliminates the dual-licensing requirement for rooming and boarding houses and it increases the fee that may be charged by the Department of Community Affairs to license rooming and boarding houses.

A-1670, sponsored by Assemblywomen Marion Crecco (R-Essex/Passaic) and Charlotte Vandervalk (R-Bergen) and Senator Diane Allen (R- Burlington/Camden), establishes the neighborhood-Based Child Care Incentive Demonstration Program. This program expands the availability of safe, affordable child care to low and middle income families by encouraging the use of volunteer networks in the delivery of neighborhood-based child care services. The demonstration program, administered by the Department of Human Services, will operate in five counties, two of which will be in municipalities targeted by the Governor's Urban Coordinating Council.

A-2023, sponsored by Assembly Members Arline Friscia (D-Middlesex) and Reed Gusciora (D-Mercer), requires public employers to promptly pay amounts due certain employee annuity programs to ensure there is no loss of interest earnings . This bill would ensure that amounts payable by an employer on behalf of an employee be transmitted on, and credited as of, the fifth day after the employee is paid for that pay period.

A-3025, sponsored by Assemblymen Jerry Green (D- Middlesex/Somerset/Union) and John Kelly (R-Bergen/Essex/Passaic) and Senators Andrew Ciesla (R-Monmouth/Ocean) and John Matheussen (R-Camden/Gloucester), makes various changes to the "Map Filing Law." The bill eliminates the requirement that outside tract line monuments be installed by the developer prior to filing a map and it requires the developer to post a guarantee, to ensure that that developer eventually installs the outbound monuments.

A-307, sponsored by Assemblywoman Nia Gill (D-Essex) and LeRoy J. Jones, Jr. (D-Essex), allows senior citizens with personal lines of insurance to designate third parties to receive insurance cancellation and nonrenewal notices. Envelopes including such information must be labeled clearly "Important Insurance Policy Information; Open Immediately."

A-2636, sponsored by Assembly Members Anthony Impreveduto (D- Bergen/Hudson) and Joseph R. Malone III (R- Burlington/Monmouth/Ocean), eliminates prohibition against a school official action on certain matters. The bill specifically defines "personal involvement" and provides that no school official can act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the official or his family member.

A-2050, sponsored by Assembly Members Nicholas Felice (R-Bergen/Passaic) and Carol Murphy (R- Essex/Morris/Passaic) and Senator Peter Inverso (R-Mercer/Middlesex), clarifies sales and use tax imposition upon prepaid telephone calling cards. The bill requires that sellers collect sales tax for the value of the card and remit it to the state.

A-2255, sponsored by Assemblymen Christopher "Kip" Bateman (R- Morris/Somerset) and Neil Cohen (D-Union) and Senator Peter Inverso (R-Mercer/Middlesex), makes certain changes in the "New Jersey Licensed Lenders Act." The bill changes the definition of "principal amount" as applied to secondary mortgage loans. The bill prohibits including the amount of discount points in the amount to be financed. In addition, the bill increases the cap on the application fee for sales finance companies from \$300 to \$500.

A-2302, sponsored by Assemblymen Nicholas Asselta (R-Cape May/Atlantic/Cumberland) and Jack Gibson (R-Cape May/Atlantic/Cumberland) and Senators James Cafiero (R-Cape May/ Atlantic/Cumberland) and John Matheussen (R-Camden/Gloucester), provides immunities and other benefits to personnel who participate in search and rescue teams. The bill also ensures that members of search and rescue teams accrue their employment benefits while working with the teams.

A-2393, sponsored by Assemblymen Christopher "Kip" Bateman (R- Morris/Somerset) and Neil Cohen (D-Union) and Senator Walter Kavanaugh (R-Morris/Somerset), simplifies certain banking procedures to conform the state's laws to federal ones.

A-2469, sponsored by Assembly Speaker Jack Collins (R-Salem/Cumberland/Gloucester) and Assemblyman Neil Cohen (D-Union), makes permanent the \$5 instant rebate program for purchases of trigger locks that the Governor introduced as part of her anti- school violence initiatives.

A-2806, sponsored by Assemblymen Alan Augustine (R-Middlesex/Morris/Somerset/Union) and Christopher "Kip" Bateman (R- Morris/Somerset) and Senator Walter Kavanaugh (R-Morris/ Somerset), provides standards for retention of records of certain financial institutions. The bill will assist regulators in their supervisory role as well as prevent fraud against financial institutions.

A-3040, sponsored by Assemblymen Paul DiGaetano (R-Bergen/Essex/Passaic) and Neil Cohen (D- Union), clarifies the tenant rebate provisions of the NJ SAVER and Homestead Rebate Act. The clarification ensures that benefits provided to tenants who are 65 years of age or older, or who are eligible to claim a deduction as a blind or disabled taxpayer, are equal to the benefits provided to other eligible tenants.

A-722, sponsored by Assembly Members Paul Kramer (R-Mercer/Middlesex) and Barbara Wright (R-Mercer/Middlesex), establishes a regulatory scheme for certain private facilities under contract with

the Department of Corrections. The bill enhances communications between halfway houses and municipal officials and residents and supplements the criteria used to determine whether an inmate is eligible for a halfway house. Primarily, the bill establishes: community relations advisory boards, a procedure for notifying local law enforcement officials of an inmates transfer to their community, supplements the department's regulations regarding the procedure for reporting an escape and codifies and supplements the department's regulations that set forth criteria used to determine whether an inmate is eligible for a halfway house.