# 54:32B-8.53

**LEGISLATIVE HISTORY CHECKLIST**

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**LAWS OF**: 2003 **CHAPTER:** 136

**NJSA:** 54:32B-8.53 (Rentals exempt from sales and use tax)

**BILL NO**: S704 (Substituted for A3077)

**SPONSOR(S):** Lance and others

**DATE INTRODUCED:** January 15, 2002

**COMMITTEE:** **ASSEMBLY:** Appropriations; Commerce and Economic Development

**SENATE:** Budget

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:** **ASSEMBLY:** May 22, 2003

**SENATE:** November 14, 2002

**DATE OF APPROVAL:** August 1, 2003

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL** (1st reprint enacted)
(Amendments during passage denoted by superscript numbers)

**S704**

**SPONSORS STATEMENT**: (Begins on page 2 of original bill) Yes

**COMMITTEE STATEMENT:** **ASSEMBLY**: Yes 1-9-2003 (Commerce)
2-27-2003 (Approp.)

**SENATE**: Yes

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL NOTE**: Yes

**A3077**

**SPONSORS STATEMENT**: (Begins on page 2 of original bill) Yes

**COMMITTEE STATEMENT:** **ASSEMBLY**: Yes 1-9-2003 (Commerce)
2-27-2003 (Approp.)

Identical to Assembly Statements to S704

**SENATE:** No

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

| | |
|---|---|
| **VETO MESSAGE:** | No |
| **GOVERNOR'S PRESS RELEASE ON SIGNING:** | No |

**FOLLOWING WERE PRINTED:**

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|---|---|
| **REPORTS:** | No |
| **HEARINGS:** | No |
| **NEWSPAPER ARTICLES:** | No |

§1 - C.54:32B-8.53
§2 - Note

P.L. 2003, CHAPTER 136, ***approved August 1, 2003***
Senate, No. 704 ***(First Reprint)***

**AN ACT** exempting rentals between certain closely related business entities from the sales and use tax, supplementing P.L.1966, c.30 (C.54:32B-1 et seq.).

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

1. a. Receipts from the rental of tangible personal property, on which sales tax was paid or use tax obligations have been satisfied, between related persons, not engaged in the regular trade or business of renting that property to other persons, are exempt from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

b. For the purposes of this section, "related persons" means persons that are 80% or more owned by each other or that are 80% or more owned by the same third parties.

2. This act shall take effect immediately but remain inoperative until the first day of the [1] **[**second**]** <u>third</u>[1] month following enactment.

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Exempts rentals between closely related business entities from the sales and use tax.

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

**Matter underlined <u>thus</u> is new matter.**
**Matter enclosed in superscript numerals has been adopted as follows:**
**[1] Senate SBA committee amendments adopted October 24, 2002.**

# SENATE, No. 704

# STATE OF NEW JERSEY

## 210th LEGISLATURE

INTRODUCED JANUARY 15, 2002

**Sponsored by:**
**Senator LEONARD LANCE**
**District 23 (Warren and Hunterdon)**

**SYNOPSIS**

Exempts rentals between closely related business entities from the sales and use tax.

**CURRENT VERSION OF TEXT**

As introduced.

**AN ACT** exempting rentals between certain closely related business entities from the sales and use tax, supplementing P.L.1966, c.30 (C.54:32B-1 et seq.).

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

1. a. Receipts from the rental of tangible personal property, on which sales tax was paid or use tax obligations have been satisfied, between related persons, not engaged in the regular trade or business of renting that property to other persons, are exempt from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

b. For the purposes of this section, "related persons" means persons that are 80% or more owned by each other or that are 80% or more owned by the same third parties.

2. This act shall take effect immediately but remain inoperative until the first day of the second month following enactment.

STATEMENT

This bill provides a sales tax exemption for certain rental transactions between closely related parties.

Currently, purchases of tangible personal property such as business machinery and equipment are subject to sales taxes. Rentals of equipment are also subject to sales taxes. For business accounting reasons, when business equipment such as heavy construction equipment that has been purchased by one subsidiary of a business organization is loaned to another subsidiary of the same organization, the loan is frequently recorded as a rental from one subsidiary to another. This can result in sales taxes being charged twice on what is really the purchase and use of equipment by a single entity, once at the time of the sale and again at the time of the bookkeeping "rental."

To prevent such double taxation, this bill exempts from sales and use taxes rental transactions between related parties if the sales tax has already been paid or use tax obligations have been satisfied. The bill generally defines "related persons" as persons that are 80% or more owned by each other or are 80% or more owned by the same third parties.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT COMMITTEE

STATEMENT TO

[First Reprint]

**SENATE, No. 704**

# STATE OF NEW JERSEY

DATED: JANUARY 9, 2003

The Assembly Commerce and Economic Development Committee reports favorably Senate Bill No. 704 (1R) of 2002.

Senate Bill No. 704 (1R) of 2002 provides a sales tax exemption for certain rental transactions between closely related parties.

The bill exempts from the sales and use tax receipts from the rental of tangible personal property between related persons, not regularly engaged in the business of such rentals, if sales tax has already been paid or use tax obligations satisfied on the property subject to rental. "Related persons" under the bill are those that are 80 percent or more owned by each other or by the same third party.

In general, the sales tax is applicable to purchases of tangible personal property, such as business machinery and equipment. The purchase of property for *rental* to another party is exempt from the tax as a purchase for resale; the subsequent rental of the property is subject to the tax. In other words, only one of the two transactions is taxed. *Leased* property is generally taxable to the lessor at the time the property is purchased for lease or diverted from inventory to lease; the subsequent leasing of the property is not taxable. Again, only one of the two transactions is taxed.

If one subsidiary of a business organization purchases equipment, such as heavy construction equipment, and then loans it to another subsidiary of the same organization, the loan may, for cost accounting purposes, be recorded as a rental from one subsidiary to the other. This can result in sales taxes being paid once by the purchaser (on a purchase of property not intended for resale) and a second time by the person denoted as the "renter" for bookkeeping purposes. The purpose of the bill is to exempt receipts from the rental and lease of tangible personal property between related parties to prevent such multiple taxation.

Senate Bill No. 704 (1R) is identical to Assembly Bill No. 3077, which was also reported by the committee on January 9, 2003.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

**SENATE, No. 704**

# STATE OF NEW JERSEY

DATED: FEBRUARY 27, 2003

The Assembly Appropriations Committee reports favorably Senate Bill No. 704 (1R).

Senate Bill No. 704 (1R) provides a sales tax exemption for certain rental transactions between closely related parties.

The bill exempts from the sales and use tax receipts from the rental of tangible personal property between related persons, not regularly engaged in the business of such rentals, if sales tax has already been paid or use tax obligations satisfied on the property subject to rental. "Related persons" under the bill are those that are 80 percent or more owned by each other or by the same third party.

In general, the sales tax is applicable to purchases of tangible personal property, such as business machinery and equipment. The purchase of property for *rental* to another party is exempt from the tax as a purchase for resale; the subsequent rental of the property is subject to the tax. In other words, only one of the two transactions is taxed. *Leased* property is generally taxable to the lessor at the time the property is purchased for lease or diverted from inventory to lease; the subsequent leasing of the property is not taxable. Again, only one of the two transactions is taxed.

If one subsidiary of a business organization purchases equipment, such as heavy construction equipment, and then loans it to another subsidiary of the same organization, the loan may, for cost accounting purposes, be recorded as a rental from one subsidiary to the other. This can result in sales taxes being paid once by the purchaser (on a purchase of property not intended for resale) and a second time by the person denoted as the "renter" for bookkeeping purposes. The purpose of the bill is to exempt receipts from the rental and lease of tangible personal property between related parties to prevent such multiple taxation.

The Sales and Use Tax Review Commission has recommended enactment of this bill because of its promotion of horizontal equity in taxation and its low revenue impact.

As reported, this bill is identical to Assembly Bill No. 3077, as also reported by the committee.

FISCAL IMPACT:

The Division of Taxation, which noted that data are not available to estimate the loss of revenue to the State, has also noted the exceedingly special circumstances that have to be satisfied in order to qualify for the sales tax exemption, and determined that a State revenue loss would be less than $100,000 annually.

The Office of Legislative Services (OLS) has also noted that, while there are no data available to establish (i) a profile of the parties that would qualify under the bill to make sales tax exempt loans of property, or (ii) the extent to which businesses employ the cost allocation, now subject to taxation, that would become exempt from taxation under the bill, revenue loss is not anticipated to be substantial.

The OLS notes that, as explained above, while current law makes rentals taxable to the renter, leases of property are not taxable to the lessee. Assuming that the original purchaser has satisfied all sales and use tax obligations, a bookkeeping cost allocation recorded as a lease would not trigger any additional tax. It is likely that businesses currently avail themselves of this accounting method to avoid the sort of double taxation that the bill seeks to address in rental situations.

The OLS notes further that under current law, to the extent that substantial rentals to any party, including a related party, occur within the four-year period following the original taxable purchase (there is a four-year statute of limitation on sales tax refunds), the title holder might apply for refund on the original transaction, on the grounds that the original purchase was an exempt purchase for resale on which tax was erroneously paid, retroactively avoiding double taxation.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

# SENATE, No. 704

with committee amendments

# STATE OF NEW JERSEY

DATED: OCTOBER 24, 2002

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 704.

This bill provides a sales tax exemption for certain rental transactions between closely related parties.

The bill exempts from the sales and use tax receipts from the rental of tangible personal property between related persons, not regularly engaged in the business of such rentals, if sales tax has already been paid or use tax obligations satisfied on the property subject to rental. "Related persons" under the bill are those that are 80 percent or more owned by each other or by the same third party.

In general, the sales tax is applicable to purchases of tangible personal property, such as business machinery and equipment. The purchase of property for *rental* to another party is exempt from the tax as a purchase for resale; the subsequent rental of the property is subject to the tax. In other words, only one of the two transactions is taxed. *Leased* property is generally taxable to the lessor at the time the property is purchased for lease or diverted from inventory to lease; the subsequent leasing of the property is not taxable. Again, only one of the two transactions is taxed.

If one subsidiary of a business organization purchases equipment, such as heavy construction equipment, and then loans it to another subsidiary of the same organization, the loan may, for cost accounting purposes, be recorded as a rental from one subsidiary to the other. This can result in sales taxes being paid once by the purchaser (on a purchase of property not intended for resale) and a second time by the person denoted as the "renter" for bookkeeping purposes. The purpose of the bill is to exempt receipts from the rental and lease of tangible personal property between related parties to prevent such multiple taxation.

COMMITTEE AMENDMENTS

Committee amendments defer implementation of the sales tax exemption from the second to the third month following enactment.

FISCAL IMPACT

The Office of Legislative Services (OLS) has noted that, while there are no data available to establish (i) a profile of the parties that would qualify under the bill to make sales tax exempt loans of property, or (ii) the extent to which businesses employ the cost allocation, now subject to taxation, that would become exempt from taxation under the bill, revenue loss is not anticipated to be substantial.

The OLS notes that, as explained above, while current law makes rentals taxable to the renter, leases of property are not taxable to the lessee. Assuming that the original purchaser has satisfied all sales and use tax obligations, a bookkeeping cost allocation recorded as a lease would not trigger any additional tax. It is likely that businesses currently avail themselves of this accounting method to avoid the sort of double taxation that the bill seeks to address in rental situations.

The OLS notes further that under current law, to the extent that substantial rentals to any party, including a related party, occur within the four-year period following the original taxable purchase (there is a four-year statute of limitation on sales tax refunds), the title holder might apply for refund on the original transaction, on the grounds that the original purchase was an exempt purchase for resale on which tax was erroneously paid, retroactively avoiding double taxation.

# FISCAL NOTE
# SENATE, No. 704
# STATE OF NEW JERSEY
# 210th LEGISLATURE

DATED: JULY 3, 2002

## SUMMARY


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|---|---|
| **Synopsis:** | Exempts rentals between closely related business entities from the sales and use tax. |
| **Type of Impact:** | Indeterminate loss to the General Fund. |
| **Agencies Affected:** | Department of the Treasury. |

**Executive Estimate**

| Fiscal Impact | Year 1 | Year 2 | Year 3 |
|---|---|---|---|
| **State Revenue** | | Minimal-See Comments Below | |

! The Office of Legislative Services (OLS) **concurs** with the Executive estimate. Data are not available to specify this tax reduction opportunity.


## BILL DESCRIPTION

Senate Bill No. 704 of 2002 provides a sales tax exemption for rental transactions between closely related parties. The bill exempts from the sales and use tax receipts from the rental of tangible personal property between related parties if sales taxes have already been paid or use tax obligations satisfied on the property subject to rental. The bill defines related parties as those that are 80 percent or more owned by each other or are 80 percent or more owned by the same third parties, such as subsidiaries of corporations charted in other states or foreign nations.

Currently, property purchased for the purpose of being rented to another party is exempt, as a purchase for resale; however, the subsequent rental of such property is subject to sales tax. Only one of the two transactions is taxed. Leased property is generally taxable to the lessor at the time the property is purchased for lease or diverted from inventory to lease; however, the subsequent lease to a lessee is not taxable. Again, only one of the two transactions is taxed.

If one subsidiary of a business organization purchases equipment, and then loans it to another subsidiary of the same organization, the loan may, for cost allocation purposes, be recorded as a rental from one subsidiary to the other. This could result in two sales taxable events: one for the purchaser and a second time for the subsidiary entity denoted as the "renter" for bookkeeping purposes. In this example, separate entities engage in separate transactions, which involve the same property. The purpose of the bill is to exempt from taxation one of these transactions.

# FISCAL ANALYSIS

***EXECUTIVE BRANCH***

According to the Division of Taxation, data are not available to estimate the loss of revenue to the State. There is no way of telling how much the annual revenue impact would be; however, the exceedingly special circumstances that have to be satisfied in order to qualify for the sales tax exemption, would be less than $100,000 annually.

***OFFICE OF LEGISLATIVE SERVICES***

The OLS notes that because of the large number of national and international subsidiary arrangements within and among corporations, there are no data available to determine the parties that would qualify under the bill to make sales tax exempt loans of property, or the amount of the cost allocations now subject to taxation that would become exempt from taxation under the bill. To the extent that substantial rentals to any party, including a related party, occur within the four year period following the original taxable purchase (there is a four year statute of limitation on sales tax refunds), the title holder might apply for refund on the original transaction, on the grounds that the original purchase was an exempt purchase for resale on which tax was erroneously paid. As it may also be supposed that short term transfers denoted as "rentals" or through more inventive bookkeeping entries are more common than the collection of sales taxes on those temporary transfers, revenue impact is not expected to be substantial.

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|---|---|
| Section: | *Revenue, Finance and Appropriations* |
| Analyst: | *Mark J. Trease*<br>*Assistant Fiscal Analyst* |
| Approved: | *Alan R. Kooney*<br>*Legislative Budget and Finance Officer* |

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

# ASSEMBLY, No. 3077

# STATE OF NEW JERSEY

## 210th LEGISLATURE

INTRODUCED DECEMBER 9, 2002

**Sponsored by:**
**Assemblyman LOUIS D. GREENWALD**
**District 6 (Camden)**
**Assemblywoman NELLIE POU**
**District 35 (Bergen and Passaic)**
**Assemblyman MIMS HACKETT, JR.**
**District 27 (Essex)**
**Assemblyman GUY R. GREGG**
**District 24 (Sussex, Hunterdon and Morris)**

**Co-Sponsored by:**
**Assemblymen Eagler, Burzichelli, Cryan and Assemblywoman Watson Coleman**

**SYNOPSIS**

Exempts rentals between closely related business entities from the sales and use tax.

**CURRENT VERSION OF TEXT**

As introduced.

**(Sponsorship Updated As Of: 2/28/2003)**

**AN ACT** exempting rentals between certain closely related business entities from the sales and use tax, supplementing P.L.1966, c.30 (C.54:32B-1 et seq.).

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

1. a. Receipts from the rental of tangible personal property, on which sales tax was paid or use tax obligations have been satisfied, between related persons, not engaged in the regular trade or business of renting that property to other persons, are exempt from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

b. For the purposes of this section, "related persons" means persons that are 80% or more owned by each other or that are 80% or more owned by the same third parties.

2. This act shall take effect immediately but remain inoperative until the first day of the third month following enactment.

STATEMENT

This bill provides a sales tax exemption for certain rental transactions between closely related parties.

The bill exempts from the sales and use tax receipts from the rental of tangible personal property between related persons, not regularly engaged in the business of such rentals, if sales tax has already been paid or use tax obligations satisfied on the property subject to rental. "Related persons" under the bill are those that are 80 percent or more owned by each other or by the same third party.

In general, the sales tax is applicable to purchases of tangible personal property, such as business machinery and equipment. The purchase of property for rental to another party is exempt from the tax as a purchase for resale; the subsequent rental of the property is subject to the tax. In other words, only one of the two transactions is taxed. Leased property is generally taxable to the lessor at the time the property is purchased for lease or diverted from inventory to lease; the subsequent leasing of the property is not taxable. Again, only one of the two transactions is taxed.

If one subsidiary of a business organization purchases equipment, such as heavy construction equipment, and then loans it to another subsidiary of the same organization, the loan may, for cost accounting purposes, be recorded as a rental from one subsidiary to the other. This can result in sales taxes being paid once by the purchaser (on a purchase of property not intended for resale) and a second time by the person denoted as the "renter" for bookkeeping purposes. The purpose of the bill is to exempt receipts from the rental and lease of tangible personal property between related parties to prevent such multiple taxation.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT COMMITTEE

STATEMENT TO

# ASSEMBLY, No. 3077

# STATE OF NEW JERSEY

DATED: JANUARY 9, 2003

The Assembly Commerce and Economic Development Committee reports favorably Assembly Bill No. 3077 of 2002.

Assembly Bill No. 3077 of 2002 provides a sales tax exemption for certain rental transactions between closely related parties.

The bill exempts from the sales and use tax receipts from the rental of tangible personal property between related persons, not regularly engaged in the business of such rentals, if sales tax has already been paid or use tax obligations satisfied on the property subject to rental. "Related persons" under the bill are those that are 80 percent or more owned by each other or by the same third party.

In general, the sales tax is applicable to purchases of tangible personal property, such as business machinery and equipment. The purchase of property for *rental* to another party is exempt from the tax as a purchase for resale; the subsequent rental of the property is subject to the tax. In other words, only one of the two transactions is taxed. *Leased* property is generally taxable to the lessor at the time the property is purchased for lease or diverted from inventory to lease; the subsequent leasing of the property is not taxable. Again, only one of the two transactions is taxed.

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Assembly Bill No. 3077 is identical to Senate Bill No. 704 (1R), which was also reported by the committee on January 9, 2003.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

# ASSEMBLY, No. 3077

# STATE OF NEW JERSEY

DATED: FEBRUARY 27, 2003

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3077.

Assembly Bill No. 3077 provides a sales tax exemption for certain rental transactions between closely related parties.

The bill exempts from the sales and use tax receipts from the rental of tangible personal property between related persons, not regularly engaged in the business of such rentals, if sales tax has already been paid or use tax obligations satisfied on the property subject to rental. "Related persons" under the bill are those that are 80 percent or more owned by each other or by the same third party.

In general, the sales tax is applicable to purchases of tangible personal property, such as business machinery and equipment. The purchase of property for *rental* to another party is exempt from the tax as a purchase for resale; the subsequent rental of the property is subject to the tax. In other words, only one of the two transactions is taxed. *Leased* property is generally taxable to the lessor at the time the property is purchased for lease or diverted from inventory to lease; the subsequent leasing of the property is not taxable. Again, only one of the two transactions is taxed.

If one subsidiary of a business organization purchases equipment, such as heavy construction equipment, and then loans it to another subsidiary of the same organization, the loan may, for cost accounting purposes, be recorded as a rental from one subsidiary to the other. This can result in sales taxes being paid once by the purchaser (on a purchase of property not intended for resale) and a second time by the person denoted as the "renter" for bookkeeping purposes. The purpose of the bill is to exempt receipts from the rental and lease of tangible personal property between related parties to prevent such multiple taxation.

The Sales and Use Tax Review Commission has recommended enactment of this bill because of its promotion of horizontal equity in taxation and its low revenue impact.

As reported, this bill is identical to Senate Bill No. 704 (1R), as also reported by the committee.

FISCAL IMPACT:

The Division of Taxation, which noted that data are not available to estimate the loss of revenue to the State, has also noted the exceedingly special circumstances that have to be satisfied in order to qualify for the sales tax exemption, and determined that a State revenue loss would be less than $100,000 annually.

The Office of Legislative Services (OLS) has also noted noted that, while there are no data available to establish (i) a profile of the parties that would qualify under the bill to make sales tax exempt loans of property, or (ii) the extent to which businesses employ the cost allocation, now subject to taxation, that would become exempt from taxation under the bill, revenue loss is not anticipated to be substantial.

The OLS notes that, as explained above, while current law makes rentals taxable to the renter, leases of property are not taxable to the lessee. Assuming that the original purchaser has satisfied all sales and use tax obligations, a bookkeeping cost allocation recorded as a lease would not trigger any additional tax. It is likely that businesses currently avail themselves of this accounting method to avoid the sort of double taxation that the bill seeks to address in rental situations.

The OLS notes further that under current law, to the extent that substantial rentals to any party, including a related party, occur within the four-year period following the original taxable purchase (there is a four-year statute of limitation on sales tax refunds), the title holder might apply for refund on the original transaction, on the grounds that the original purchase was an exempt purchase for resale on which tax was erroneously paid, retroactively avoiding double taxation.