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P.L. 2002, CHAPTER 45, *approved July 30, 2002*  
Assembly, No. 2513

1 **AN ACT** implementing the sourcing rules of the federal "Mobile  
2 Telecommunications Sourcing Act" for purposes of the sales and  
3 use tax, amending P.L.1966, 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  
9 as 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  
40 performing the services subject to tax under subsection (b) of section  
41 3 where the property so sold becomes a physical component part of

**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 the property upon which the services are performed or where the  
2 property so sold is later actually transferred to the purchaser of the  
3 service in conjunction with the performance of the service subject to  
4 tax.

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

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

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

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

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

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

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

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

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

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

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

37 (g) Tangible personal property. Corporeal personal property of  
38 any nature including energy.

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

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

1 or otherwise.

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

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

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

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

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

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

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

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

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

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

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

1 property of others, shall not be deemed a person required to collect  
2 tax, and the tax imposed by any section of this act shall be paid  
3 directly to the director by such contractors, subcontractors or  
4 repairmen.

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

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

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

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

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

46 (cc) "Telecommunications" means the act or privilege of

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

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

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

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

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

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

28 (6) purchases of telecommunications using a prepaid telephone  
29 arrangement.

30 (dd) "Interstate telecommunication" means any telecommunication  
31 that originates or terminates inside this State, including international  
32 telecommunication. In the case of mobile telecommunications service,  
33 "interstate telecommunication" means any mobile telecommunications  
34 service that originates in one state and terminates in another state,  
35 territory, or foreign country that is provided to a customer with a  
36 place of primary use in this State.

37 (ee) "Intrastate telecommunication" means any telecommunication  
38 that originates and terminates within this State. In the case of mobile  
39 telecommunications service, "intrastate telecommunication" means any  
40 mobile telecommunications service that originates and terminates  
41 within the same state that is provided to a customer with a place of  
42 primary use in this State.

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

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

46 (hh) "Utility service" means the transportation or transmission of



1 natural gas or electricity by means of mains, wires, lines or pipes, to  
2 users or customers.

3 (ii) "Self-generation unit" means a facility located on the user's  
4 property, or on property purchased or leased from the user by the  
5 person owning the self-generation unit and such property is contiguous  
6 to the user's property, which generates electricity to be used only by  
7 that user on the user's property and is not transported to the user over  
8 wires that cross a property line or public thoroughfare unless the  
9 property line or public thoroughfare merely bifurcates the user's or  
10 self-generation unit owner's otherwise contiguous property.

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

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

21 (ll) "Pre-paid telephone calling arrangement "means the right to  
22 [exclusively] purchase exclusively telecommunications services, that  
23 must be paid for in advance, that enables the origination of calls using  
24 an access number or authorization code, whether manually or  
25 electronically dialed; provided, that the remaining amount of units of  
26 service that have been pre-paid shall be known by the service provider  
27 on a continuous basis.

28 (mm) "Mobile telecommunications service" means commercial  
29 mobile radio service, as defined in section 20.3 of title 47 of the Code  
30 of Federal Regulations as in effect on June 1, 1999.

31 (nn) "Place of primary use" means the street address representative  
32 of where the customer's use of the mobile telecommunications service  
33 primarily occurs, which shall be the residential street address or the  
34 primary business street address of the customer and within the licensed  
35 service area of the home service provider. For the purposes of  
36 determining the primary place of use, the terms used shall have the  
37 meanings provided pursuant to the federal "Mobile  
38 Telecommunications Sourcing Act," 4 U.S.C. s.124 (Pub.L.106-252).  
39 (cf: P.L.1999, c.248, s.1)

40

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

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

44 (a) The receipts from every retail sale of tangible personal  
45 property, except as otherwise provided in this act. If the lessor of  
46 tangible personal property purchased for lease elects to pay tax on the

1 amount of the sales price as provided in paragraph (2) of subsection  
2 (bb) of section 2 of P.L.1966, c.30 (C.54:32B-2), any and each  
3 subsequent lease or rental is a retail sale, and a subsequent sale of such  
4 property is a retail sale.

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

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

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

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

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

40 (5) Direct-mail advertising processing services, except for  
41 direct-mail advertising processing services in connection with  
42 distribution of advertising or promotional material to out-of-State  
43 recipients.

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

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

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

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

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

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

16 (2) In those instances where the vendor or any person whose  
17 services are arranged for by the vendor, after the delivery of the food  
18 or drink by or on behalf of the vendor for consumption off the  
19 premises of the vendor, serves or assists in serving, cooks, heats or  
20 provides other services with respect to the food or drink, except for  
21 meals especially prepared for and delivered to homebound elderly, age  
22 60 or older, and to disabled persons, or meals prepared and served at  
23 a group-sitting at a location outside of the home to otherwise  
24 homebound elderly persons, age 60 or older, and otherwise  
25 homebound disabled persons, as all or part of any food service project  
26 funded in whole or in part by government or as part of a private,  
27 nonprofit food service project available to all such elderly or disabled  
28 persons residing within an area of service designated by the private  
29 nonprofit organization;

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

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

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

46 (d) The rent for every occupancy of a room or rooms in a hotel in

1 this State, except that the tax shall not be imposed upon (1) a  
2 permanent resident, or (2) where the rent is not more than at the rate  
3 of \$2.00 per day.

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

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

24 (f) (1) The receipts from every sale, except for resale, of intrastate  
25 or interstate telecommunications (other than mobile  
26 telecommunications services) charged to an address in this State,  
27 regardless of where the services are billed or paid.

28 (2) The receipts from every sale, except for resale, of intrastate or  
29 interstate mobile telecommunications services billed by or for a  
30 customer's home service provider and provided to a customer with a  
31 place of primary use in this State. The provisions and definitions of  
32 the federal "Mobile Telecommunications Sourcing Act," 4 U.S.C. ss.  
33 116-126 (Pub.L. 106-252), are applicable herein.

34 (g) The receipts from every sale, except for resale, of prepaid  
35 telephone calling arrangements and the recharge of prepaid telephone  
36 calling arrangements. If the sale or recharge of a prepaid telephone  
37 calling arrangement does not take place at the vendor's place of  
38 business, the sale or recharge shall be conclusively determined to take  
39 place at the customer's shipping address, or if there is no item shipped,  
40 at the customer's billing address or the location associated with the  
41 customer's mobile telephone number.

42 (cf: P.L.1999, c.248, s.2)

43

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

46 6. Unless property or services have already been or will be subject

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

1 deemed a taxable use by him. For purposes of clause (C) 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 the service,  
4 including the consideration for any tangible personal property  
5 transferred in conjunction with the performance of the service, plus the  
6 cost of transportation, except where such cost is separately stated in  
7 the written contract, if any, and on the bill rendered to the purchaser.  
8 For the purposes of clause (D) of this section, the tax shall be at the  
9 applicable rate on the charge made by the telecommunications service  
10 provider. For purposes of clause (F) of this section, the tax shall be  
11 at the applicable rate on the charge made by the utility service  
12 provider. For purposes of clause (G) of this section, the tax shall be  
13 at the applicable rate on that proportion of the amount of all  
14 processing costs charged by a direct-mail advertising processing  
15 service provider that is attributable to the advertising or promotional  
16 material distributed in this State. For the purposes of clause (H) of  
17 this section, the tax shall be at the applicable rate on the consideration  
18 given or contracted to be given for the prepaid telephone calling  
19 arrangement or the recharge of the prepaid telephone calling  
20 arrangement.  
21 (cf: P.L.1999, c.248, s.3)

22

23 4. This act shall take effect immediately and shall apply to customer  
24 bills issued after August 1, 2002.

25

26

27

#### STATEMENT

28

29 This bill implements the requirements of the federal "Mobile  
30 Telecommunications Sourcing Act," 4 U.S.C.ss.116 et seq.  
31 (Pub.L.106-252), for purposes of the New Jersey sales and use tax.

32 Many state sales tax laws that apply to the sale of  
33 telecommunications services were, like New Jersey's, written to  
34 conform to the Supreme Court's decision in Goldberg v. Sweet, 488  
35 U.S. 252 (1989). That Commerce Clause case concerned the rules that  
36 could permissibly be used to decide which state will tax the charges for  
37 telecommunications initiated in one state to a party in another state.  
38 Compliance with the decision requires identifying the location from  
39 which a call is placed and to which it is made.

40 This can be almost impossible in the case of the "flat rate fee"  
41 charges that have become common in the cell phone industry. The  
42 problem led government and the telecommunications industry to  
43 cooperate in formulating the Mobile Telecommunications Sourcing  
44 Act, which requires a different uniform method for sourcing mobile  
45 telecommunications services for sales tax purposes. The new method  
46 assumes that all wireless calls are made at the service subscribers'

1 residential or business street address, whichever is the "place of  
2 primary use," and allows taxing jurisdictions to tax all the calls  
3 charged to that place of primary (even if the wireless call was not  
4 placed at, or made to, that place of primary use).

5 The federal act forbids the State taxation of mobile  
6 telecommunications after August 1, 2002, under any other system.  
7 The federal act also provides standards by which the primary place of  
8 use will be determined and protections to mobile telecommunications  
9 service providers who follow its provisions.

10 The new procedure under the bill applies to customer bills issued  
11 after August 1, 2002, as required by federal law.

12

13

14

15

16 Implements the federal "Mobile Telecommunications Sourcing Act"  
17 for purposes of the sales and use tax.

# ASSEMBLY, No. 2513

## STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED JUNE 6, 2002

**Sponsored by:**

**Assemblyman WILFREDO CARABALLO**  
**District 29 (Essex and Union)**

**Co-Sponsored by:**

**Senators Kyrillos and Bryant**

**SYNOPSIS**

Implements the federal "Mobile Telecommunications Sourcing Act" for purposes of the sales and use tax.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/25/2002)**



A2513 CARABALLO

2

1 AN ACT implementing the sourcing rules of the federal "Mobile  
2 Telecommunications Sourcing Act" for purposes of the sales and  
3 use tax, amending P.L.1966, 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  
9 as 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  
40 performing the services subject to tax under subsection (b) of section  
41 3 where the property so sold becomes a physical component part of  
42 the property upon which the services are performed or where the  
43 property so sold is later actually transferred to the purchaser of the

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

**Matter underlined thus is new matter.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (cc) "Telecommunications" means the act or privilege of  
45 originating or receiving messages or information through the use of  
46 any kind of one-way or two-way communication; including but not

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

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

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

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

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

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

26 (6) purchases of telecommunications using a prepaid telephone  
27 arrangement.

28 (dd) "Interstate telecommunication" means any telecommunication  
29 that originates or terminates inside this State, including international  
30 telecommunication. In the case of mobile telecommunications service,  
31 "interstate telecommunication" means any mobile telecommunications  
32 service that originates in one state and terminates in another state,  
33 territory, or foreign country that is provided to a customer with a  
34 place of primary use in this State.

35 (ee) "Intrastate telecommunication" means any telecommunication  
36 that originates and terminates within this State. In the case of mobile  
37 telecommunications service, "intrastate telecommunication" means any  
38 mobile telecommunications service that originates and terminates  
39 within the same state that is provided to a customer with a place of  
40 primary use in this State.

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

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

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

1 (ii) "Self-generation unit" means a facility located on the user's  
2 property, or on property purchased or leased from the user by the  
3 person owning the self-generation unit and such property is contiguous  
4 to the user's property, which generates electricity to be used only by  
5 that user on the user's property and is not transported to the user over  
6 wires that cross a property line or public thoroughfare unless the  
7 property line or public thoroughfare merely bifurcates the user's or  
8 self-generation unit owner's otherwise contiguous property.

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

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

19 (ll) "Pre-paid telephone calling arrangement "means the right to  
20 [exclusively] purchase exclusively telecommunications services, that  
21 must be paid for in advance, that enables the origination of calls using  
22 an access number or authorization code, whether manually or  
23 electronically dialed; provided, that the remaining amount of units of  
24 service that have been pre-paid shall be known by the service provider  
25 on a continuous basis.

26 (mm) "Mobile telecommunications service" means commercial  
27 mobile radio service, as defined in section 20.3 of title 47 of the Code  
28 of Federal Regulations as in effect on June 1, 1999.

29 (nn) "Place of primary use" means the street address representative  
30 of where the customer's use of the mobile telecommunications service  
31 primarily occurs, which shall be the residential street address or the  
32 primary business street address of the customer and within the licensed  
33 service area of the home service provider. For the purposes of  
34 determining the primary place of use, the terms used shall have the  
35 meanings provided pursuant to the federal "Mobile  
36 Telecommunications Sourcing Act," 4 U.S.C. s.124 (Pub.L.106-252).  
37 (cf: P.L.1999, c.248, s.1)

38  
39 2. Section 3 of P.L.1966, c.30 (C.54:32B-3) is amended to read  
40 as follows:

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

42 (a) The receipts from every retail sale of tangible personal  
43 property, except as otherwise provided in this act. If the lessor of  
44 tangible personal property purchased for lease elects to pay tax on the  
45 amount of the sales price as provided in paragraph (2) of subsection  
46 (bb) of section 2 of P.L.1966, c.30 (C.54:32B-2), any and each

1 subsequent lease or rental is a retail sale, and a subsequent sale of such  
2 property is a retail sale.

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

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

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

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

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

38 (5) Direct-mail advertising processing services, except for  
39 direct-mail advertising processing services in connection with  
40 distribution of advertising or promotional material to out-of-State  
41 recipients.

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

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



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

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

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

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

16 (2) In those instances where the vendor or any person whose  
17 services are arranged for by the vendor, after the delivery of the food  
18 or drink by or on behalf of the vendor for consumption off the  
19 premises of the vendor, serves or assists in serving, cooks, heats or  
20 provides other services with respect to the food or drink, except for  
21 meals especially prepared for and delivered to homebound elderly, age  
22 60 or older, and to disabled persons, or meals prepared and served at  
23 a group-sitting at a location outside of the home to otherwise  
24 homebound elderly persons, age 60 or older, and otherwise  
25 homebound disabled persons, as all or part of any food service project  
26 funded in whole or in part by government or as part of a private,  
27 nonprofit food service project available to all such elderly or disabled  
28 persons residing within an area of service designated by the private  
29 nonprofit organization;

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

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

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

46 (d) The rent for every occupancy of a room or rooms in a hotel in

1 this State, except that the tax shall not be imposed upon (1) a  
2 permanent resident, or (2) where the rent is not more than at the rate  
3 of \$2.00 per day.

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

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

24 (f) (1) The receipts from every sale, except for resale, of intrastate  
25 or interstate telecommunications (other than mobile  
26 telecommunications services) charged to an address in this State,  
27 regardless of where the services are billed or paid.

28 (2) The receipts from every sale, except for resale, of intrastate or  
29 interstate mobile telecommunications services billed by or for a  
30 customer's home service provider and provided to a customer with a  
31 place of primary use in this State. The provisions and definitions of  
32 the federal "Mobile Telecommunications Sourcing Act," 4 U.S.C. ss.  
33 116-126 (Pub.L. 106-252), are applicable herein.

34 (g) The receipts from every sale, except for resale, of prepaid  
35 telephone calling arrangements and the recharge of prepaid telephone  
36 calling arrangements. If the sale or recharge of a prepaid telephone  
37 calling arrangement does not take place at the vendor's place of  
38 business, the sale or recharge shall be conclusively determined to take  
39 place at the customer's shipping address, or if there is no item shipped,  
40 at the customer's billing address or the location associated with the  
41 customer's mobile telephone number.

42 (cf: P.L.1999, c.248, s.2)

43

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

46 6. Unless property or services have already been or will be subject

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

1 deemed a taxable use by him. For purposes of clause (C) 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 the service,  
4 including the consideration for any tangible personal property  
5 transferred in conjunction with the performance of the service, plus the  
6 cost of transportation, except where such cost is separately stated in  
7 the written contract, if any, and on the bill rendered to the purchaser.  
8 For the purposes of clause (D) of this section, the tax shall be at the  
9 applicable rate on the charge made by the telecommunications service  
10 provider. For purposes of clause (F) of this section, the tax shall be  
11 at the applicable rate on the charge made by the utility service  
12 provider. For purposes of clause (G) of this section, the tax shall be  
13 at the applicable rate on that proportion of the amount of all  
14 processing costs charged by a direct-mail advertising processing  
15 service provider that is attributable to the advertising or promotional  
16 material distributed in this State. For the purposes of clause (H) of  
17 this section, the tax shall be at the applicable rate on the consideration  
18 given or contracted to be given for the prepaid telephone calling  
19 arrangement or the recharge of the prepaid telephone calling  
20 arrangement.

21 (cf: P.L.1999, c.248, s.3)

22

23 4. This act shall take effect immediately and shall apply to customer  
24 bills issued after August 1, 2002.

25

26

27

#### STATEMENT

28

29 This bill implements the requirements of the federal "Mobile  
30 Telecommunications Sourcing Act," 4 U.S.C.ss.116 et seq.  
31 (Pub.L.106-252), for purposes of the New Jersey sales and use tax.

32 Many state sales tax laws that apply to the sale of  
33 telecommunications services were, like New Jersey's, written to  
34 conform to the Supreme Court's decision in Goldberg v. Sweet, 488  
35 U.S. 252 (1989). That Commerce Clause case concerned the rules that  
36 could permissibly be used to decide which state will tax the charges for  
37 telecommunications initiated in one state to a party in another state.  
38 Compliance with the decision requires identifying the location from  
39 which a call is placed and to which it is made.

40 This can be almost impossible in the case of the "flat rate fee"  
41 charges that have become common in the cell phone industry. The  
42 problem led government and the telecommunications industry to  
43 cooperate in formulating the Mobile Telecommunications Sourcing  
44 Act, which requires a different uniform method for sourcing mobile  
45 telecommunications services for sales tax purposes. The new method  
46 assumes that all wireless calls are made at the service subscribers'

**A2513 CARABALLO**

14

1 residential or business street address, whichever is the "place of  
2 primary use," and allows taxing jurisdictions to tax all the calls  
3 charged to that place of primary (even if the wireless call was not  
4 placed at, or made to, that place of primary use).

5 The federal act forbids the State taxation of mobile  
6 telecommunications after August 1, 2002, under any other system.  
7 The federal act also provides standards by which the primary place of  
8 use will be determined and protections to mobile telecommunications  
9 service providers who follow its provisions.

10 The new procedure under the bill applies to customer bills issued  
11 after August 1, 2002, as required by federal law.

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 2513

# STATE OF NEW JERSEY

DATED: JUNE 17, 2002

The Assembly Budget Committee reports favorably Assembly Bill No. 2513.

Assembly Bill No. 2513 implements the requirements of the federal "Mobile Telecommunications Sourcing Act," 4 U.S.C.ss.116 et seq. (Pub.L.106-252), for purposes of the New Jersey sales and use tax.

Many state sales tax laws that apply to the sale of telecommunications services were, like New Jersey's, written to conform to the Supreme Court's decision in Goldberg v. Sweet, 488 U.S.252 (1989). That Commerce Clause case concerned the rules that could permissibly be used to decide which state will tax the charges for telecommunications initiated in one state to a party in another state. Compliance with the decision requires identifying the location from which a call is placed and to which it is made.

This can be almost impossible in the case of the "flat rate fee" charges that have become common in the cell phone industry. The problem led government and the telecommunications industry to cooperate in formulating the Mobile Telecommunications Sourcing Act, which requires a different uniform method for sourcing mobile telecommunications services for sales tax purposes. The new method assumes that all wireless calls are made at the service subscribers' residential or business street address, whichever is the "place of primary use," and allows taxing jurisdictions to tax all the calls charged to that place of primary (even if the wireless call was not placed at, or made to, that place of primary use).

The federal act forbids the State taxation of mobile telecommunications after August 1, 2002, under any other system. The federal act also provides standards by which the primary place of use will be determined and protections to mobile telecommunications service providers who follow its provisions.

The new procedure under the bill applies to customer bills issued after August 1, 2002, as required by federal law.

#### FISCAL IMPACT:

While the Executive branch has not supplied a formal analysis, staff of the Division of Taxation has indicated that the shift from the old tax

base to the new tax base will encompass roughly equivalent total charges and will therefore be approximately revenue-neutral, and that there will be some administrative expenses to administering the change in tax bases.

**SENATE, No. 1620**

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**STATE OF NEW JERSEY**  
**210th LEGISLATURE**

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INTRODUCED JUNE 6, 2002

**Sponsored by:**

**Senator JOSEPH M. KYRILLOS, JR.**  
**District 13 (Middlesex and Monmouth)**  
**Senator WAYNE R. BRYANT**  
**District 5 (Camden and Gloucester)**

**SYNOPSIS**

Implements the federal "Mobile Telecommunications Sourcing Act" for purposes of the sales and use tax.

**CURRENT VERSION OF TEXT**

As introduced.





**S1620 KYRILLOS, BRYANT**

2

1 **AN ACT** implementing the sourcing rules of the federal "Mobile  
2 Telecommunications Sourcing Act" for purposes of the sales and  
3 use tax, amending P.L.1966, 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  
40 performing the services subject to tax under subsection (b) of section  
41 3 where the property so sold becomes a physical component part of  
42 the property upon which the services are performed or where the  
43 property so sold is later actually transferred to the purchaser of the

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

**Matter underlined thus is new matter.**

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (h) Use. The exercise of any right or power over tangible personal  
38 property by the purchaser thereof and includes, but is not limited to,  
39 the receiving, storage or any keeping or retention for any length of  
40 time, withdrawal from storage, any distribution, any installation, any  
41 affixation to real or personal property, or any consumption of such  
42 property. Use also includes the exercise of any right or power over  
43 intrastate or interstate telecommunications and prepaid telephone  
44 calling arrangements. 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 distributed within the State or is received by or comes into possession  
18 or control of such person within the State; (3) intrastate or interstate  
19 telecommunications charged to a service address in this State; (4)  
20 (Deleted by amendment, P.L.1995, c.184); (5) energy sold, exchanged  
21 or delivered in this State for use in this State; (6) utility service sold,  
22 exchanged or delivered in this State for use in this State; [and] (7)  
23 direct mail advertising processing services in connection with  
24 advertising or promotional material distributed in this State; and (8)  
25 mobile telecommunications services provided to a customer with a  
26 place of primary use in this State.

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

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

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

44 (cc) "Telecommunications" means the act or privilege of originating  
45 or receiving messages or information through the use of any kind of  
46 one-way or two-way communication; including but not limited to

1 voice, video, facsimile, teletypewriter, computer, [cellular mobile or  
2 portable telephone, specialized mobile or portable pager or paging  
3 service,] mobile telecommunications service or any other type of  
4 communication; using electronic or electromagnetic methods, and all  
5 services and equipment provided in connection therewith or by means  
6 thereof. "Telecommunications" shall not include:

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

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

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

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

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

26 (6) purchases of telecommunications using a prepaid telephone  
27 arrangement.

28 (dd) "Interstate telecommunication" means any telecommunication  
29 that originates or terminates inside this State, including international  
30 telecommunication, that is not mobile telecommunications service.

31 (ee) "Intrastate telecommunication" means any telecommunication  
32 that originates and terminates within this State that is not mobile  
33 telecommunications service.

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  
3 of 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 arrangement "means the right to  
13 exclusively purchase telecommunications services, that must be paid  
14 for in advance, that enables the origination of calls using an access  
15 number or authorization code, whether manually or electronically  
16 dialed; provided, that the remaining amount of units of service that  
17 have been pre-paid shall be known by the service provider on a  
18 continuous basis.

19 (mm) "Mobile telecommunications service" means commercial  
20 mobile radio service, as defined in section 20.3 of title 47 of the Code  
21 of Federal Regulations as in effect on June 1, 1999.

22 (nn) "Place of primary use" means the street address representative  
23 of where the customer's use of the mobile telecommunications service  
24 primarily occurs, which shall be the residential street address or the  
25 primary business street address of the customer and within the licensed  
26 service area of the home service provider. For the purposes of  
27 determining the primary place of use, the terms used shall have the  
28 meanings provided pursuant to the federal "Mobile  
29 Telecommunications Sourcing Act," 4 U.S.C. s.124 (Pub.L.106-252).  
30 (cf: P.L.1999, c.248, s.1)

31

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

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

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

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

44 (1) Producing, fabricating, processing, printing or imprinting  
45 tangible personal property, performed for a person who directly or  
46 indirectly furnishes the tangible personal property, not purchased by

1 him for resale, upon which such services are performed.

2 (2) Installing tangible personal property, or maintaining, servicing,  
3 repairing tangible personal property not held for sale in the regular  
4 course of business, whether or not the services are performed directly  
5 or by means of coin-operated equipment or by any other means, and  
6 whether or not any tangible personal property is transferred in  
7 conjunction therewith, except (i) such services rendered by an  
8 individual who is engaged directly by a private homeowner or lessee  
9 in or about his residence and who is not in a regular trade or business  
10 offering his services to the public, (ii) such services rendered with  
11 respect to personal property exempt from taxation hereunder pursuant  
12 to section 13 of P.L.1980, c.105 (C.54:32B-8.1), (iii) (Deleted by  
13 amendment, P.L.1990, c.40), (iv) any receipts from laundering, dry  
14 cleaning, tailoring, weaving, pressing, shoe repairing and shoeshining  
15 and (v) services rendered in installing property which, when installed,  
16 will constitute an addition or capital improvement to real property,  
17 property or land.

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

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

31 (5) Direct-mail advertising processing services, except for  
32 direct-mail advertising processing services in connection with  
33 distribution of advertising or promotional material to out-of-State  
34 recipients.

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

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

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

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



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

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

7 (2) In those instances where the vendor or any person whose  
8 services are arranged for by the vendor, after the delivery of the food  
9 or drink by or on behalf of the vendor for consumption off the  
10 premises of the vendor, serves or assists in serving, cooks, heats or  
11 provides other services with respect to the food or drink, except for  
12 meals especially prepared for and delivered to homebound elderly, age  
13 60 or older, and to disabled persons, or meals prepared and served at  
14 a group-sitting at a location outside of the home to otherwise  
15 homebound elderly persons, age 60 or older, and otherwise  
16 homebound disabled persons, as all or part of any food service project  
17 funded in whole or in part by government or as part of a private,  
18 nonprofit food service project available to all such elderly or disabled  
19 persons residing within an area of service designated by the private  
20 nonprofit organization;

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

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

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

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

41 (e) (1) Any admission charge, where such admission charge is in  
42 excess of \$0.75 to or for the use of any place of amusement in the  
43 State, including charges for admission to race tracks, baseball,  
44 football, basketball or exhibitions, dramatic or musical arts  
45 performances, motion picture theaters, except charges for admission  
46 to boxing, wrestling, kick boxing or combative sports exhibitions,

1 events, performances or contests which charges are taxed under any  
2 other law of this State or under section 20 of P.L.1985, c.83  
3 (C.5:2A-20), and, except charges to a patron for admission to, or use  
4 of, facilities for sporting activities in which such patron is to be a  
5 participant, such as bowling alleys and swimming pools. For any  
6 person having the permanent use or possession of a box or seat or  
7 lease or a license, other than a season ticket, for the use of a box or  
8 seat at a place of amusement, the tax shall be upon the amount for  
9 which a similar box or seat is sold for each performance or exhibition  
10 at which the box or seat is used or reserved by the holder, licensee or  
11 lessee, and shall be paid by the holder, licensee or lessee.

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

15 (f) (1) The receipts from every sale, except for resale, of intrastate  
16 or interstate telecommunications charged to an address in this State,  
17 regardless of where the services are billed or paid.

18 (2) The charges for mobile telecommunications services billed by  
19 or for the customer's home service provider and provided to a  
20 customer with a place of primary use in this State.

21 (g) The receipts from every sale, except for resale, of prepaid  
22 telephone calling arrangements and the recharge of prepaid telephone  
23 calling arrangements. If the sale or recharge of a prepaid telephone  
24 calling arrangement does not take place at the vendor's place of  
25 business, the sale or recharge shall be conclusively determined to take  
26 place at the customer's shipping address, or if there is no item shipped,  
27 at the customer's billing address or the location associated with the  
28 customer's mobile telephone number.

29 (cf: P.L.1999, c.248, s.2)

30

31 3. This act shall take effect immediately and shall apply to  
32 customer bills issued after August 1, 2002.

33

34

35

#### STATEMENT

36

37 This bill implements the requirements of the federal "Mobile  
38 Telecommunications Sourcing Act," 4 U.S.C. ss.116 et seq.  
39 (Pub.L.106-252), for purposes of the New Jersey sales and use tax.

40 Many state sales tax laws that apply to the sale of  
41 telecommunications services were, like New Jersey's, written to  
42 conform to the Supreme Court's decision in Goldberg v. Sweet, 488  
43 U.S. 252 (1989). That Commerce Clause case concerned the rules that  
44 could permissibly be used to decide which state will tax the charges for  
45 telecommunications initiated in one state to a party in another state.  
46 Compliance with the decision requires identifying the location from

1 which a call is placed and to which it is made.

2 This can be almost impossible in the case of the "flat rate fee"  
3 charges that have become common in the cell phone industry. The  
4 problem led government and the telecommunications industry to  
5 cooperate in formulating the Mobile Telecommunications Sourcing  
6 Act, which requires a different uniform method for sourcing mobile  
7 telecommunications services for sales tax purposes. The new method  
8 assumes that all wireless calls are made at the service subscribers'  
9 residential or business street address, whichever is the "place of  
10 primary use," and allows taxing jurisdictions to tax all the calls  
11 charged to that place of primary (even if the wireless call was not  
12 placed at, or made to, that place of primary use).

13 The federal act forbids the State taxation of mobile  
14 telecommunications after August 1, 2002, under any other system.  
15 The federal act also provides standards by which the primary place of  
16 use will be determined and protections to mobile telecommunications  
17 service providers who follow its provisions.

18 The new procedure under the bill applies to customer bills issued  
19 after August 1, 2002, as required by federal law.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **SENATE, No. 1620**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 17, 2002

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 1620.

This bill implements the requirements of the federal "Mobile Telecommunications Sourcing Act," 4 U.S.C.ss.116 et seq. (Pub.L.106-252), for purposes of the New Jersey sales and use tax.

As in other states, New Jersey's sales tax on the sale of telecommunications services is designed to conform to the United States Supreme Court's decision in Goldberg v. Sweet, 488 U.S.252 (1989). That Commerce Clause case concerned the rules that could be used to decide which state will tax the charges for telecommunications initiated in one state to a party in another state. Compliance with the decision has required identification of the location from which a call is placed and that to which it is made.

This can be almost impossible in the case of the "flat rate fee" charges that have become common in the cell phone industry. The problem led the federal government and the telecommunications industry to cooperate in formulating the Mobile Telecommunications Sourcing Act, enacted in 2000, which requires a different uniform method for sourcing mobile telecommunications services for sales tax purposes. The new method assigns all wireless calls, for taxable situs purposes, to the service subscribers' residential or business street address, whichever is the "place of primary use" ("PPU"), and allows taxing jurisdictions to tax all wireless calls charged to that address, even if the call was not placed at or made to that address.

The federal law bars state taxation of mobile telecommunications after August 1, 2002 under any other jurisdictional regime. It also provides standards by which the primary place of use will be determined and protections to mobile telecommunications service providers who follow its provisions.

The new procedure under the bill applies to customer bills issued after August 1, 2002, in accordance with the federal law.

The provisions of this bill, as amended, are identical to those of Assembly Bill No. 2513, now pending before the Legislature.

COMMITTEE AMENDMENTS

Committee amendments to this bill are technical in nature.

FISCAL IMPACT

Adoption of the jurisdictional regime for which this bill provides is not expected either to increase or to decrease from current levels State revenue from the taxation of mobile telecommunications services under the sales tax. Failure to adopt the regime by August 1, 2002, however, would jeopardize the State's ability to collect that revenue, estimated at \$120 million per year. The Division of Taxation has informally indicated that implementation of the change in tax bases will entail some administrative costs.

**LEGISLATIVE FISCAL ESTIMATE**  
**SENATE, No. 1620**  
**STATE OF NEW JERSEY**  
**210th LEGISLATURE**

DATED: JULY 17, 2002

**SUMMARY**

**Synopsis:** Implements the federal "Mobile Telecommunications Sourcing Act" for purposes of the sales and use tax.

**Type of Impact:** Prevents sales and use tax revenue loss.

**Agencies Affected:** Department of the Treasury, Division of Taxation.

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	Minimal	No Impact	No Impact
<b>State Revenue</b>	Minimal- See Comments Below		

- ! The bill changes the system of taxing mobile telecommunications (e.g., cell phone calls) under the sales and use tax from one imposing the tax based on the location of the call to one based on the "home address" of the customer. This shift in tax imposition is anticipated to be roughly revenue-neutral.
- ! This new system is required under federal law. After August 1, 2002, mobile telecommunications are only taxable under the new national method, and without the change *revenue loss could be substantial.*

**BILL DESCRIPTION**

Senate Bill No. 1620 of 2002 implements the requirements of the federal "Mobile Telecommunications Sourcing Act," 4 U.S.C. ss.116 et seq. (Pub.L.106-252), for purposes of the New Jersey sales and use tax.

Currently, the New Jersey sales and use tax employs a system for determining which telephone calls are subject to State taxation that is based on identifying the location from which a call is placed and to which it is made. This can be extremely difficult to determine, particularly in the case of the flat rate usage charges that are common in the cell phone industry. The problem led government and the telecommunications industry to cooperate in formulating the

Mobile Telecommunications Sourcing Act, which requires a different uniform method for sourcing mobile telecommunications services for sales tax purposes. The new method assumes that all wireless calls are made at the service subscriber's residential or business street address, whichever is the "place of primary use," and allows taxing jurisdictions to tax all the mobile calls charged to that place of primary use (even if the call was not placed at, or made to, that place of primary use).

The federal act forbids the State taxation of mobile telecommunications after August 1, 2002, under any other system. The federal act also provides standards by which the primary place of use will be determined and protections to mobile telecommunications service providers who follow its provisions.

The new procedure under the bill applies to customer bills issued after August 1, 2002, as required by federal law.

## FISCAL ANALYSIS

### *EXECUTIVE BRANCH*

While the Executive branch has not supplied a formal analysis, staff of the Division of Taxation has indicated that the shift from the old tax base to the new tax base will encompass roughly equivalent total charges and will therefore be approximately revenue-neutral, and that there will be some administrative expenses to administering the change in tax bases.

### *OFFICE OF LEGISLATIVE SERVICES*

The Office of Legislative Services (OLS) concurs with the conclusion that the change in tax bases will be approximately revenue neutral. This new system is required under federal law. After August 1, 2002, mobile telecommunications are only taxable under the new national method, and without the change ***revenue loss could be substantial.***

Section: *Revenue Finance and Appropriations*

Analyst: *Philip Liloia*  
*Lead Counsel*

Approved: *Alan R. Kooney*  
*Legislative Budget and Finance Officer*

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