

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103 or <mailto:refdesk@njstatelib.org>.

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

RWH 3/5/08

P.L. 2006, CHAPTER 44, *approved July 8, 2006*
Assembly, No. 4901

1 AN ACT concerning the sales and use tax, amending and
2 supplementing P.L.1966, c.30, and amending P.L.1980, c.105,
3 P.L.1993, c.373, P.L.2003, c.114, and P.L.2005, c.126.
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,
11 the following terms when used in this act shall mean:

12 (a) "Person" includes an individual, trust, partnership, limited
13 partnership, limited liability company, society, association, joint
14 stock company, corporation, public corporation or public authority,
15 estate, receiver, trustee, assignee, referee, fiduciary and any other
16 legal entity.

17 (b) "Purchase at retail" means a purchase by any person at a
18 retail sale.

19 (c) "Purchaser" means a person to whom a sale of personal
20 property is made or to whom a service is furnished.

21 (d) "Receipt" means the amount of the sales price of any
22 tangible personal property or digital property or service taxable
23 under this act.

24 (e) "Retail sale" means any sale, lease, or rental for any purpose,
25 other than for resale, sublease, or subrent.

26 (1) For the purposes of this act a sale is for "resale, sublease, or
27 subrent" if it is a sale (A) for resale either as such or as converted
28 into or as a component part of a product produced for sale by the
29 purchaser, including the conversion of natural gas into another
30 intermediate or end product, other than electricity or thermal
31 energy, produced for sale by the purchaser, or (B) for use by that
32 person in performing the services subject to tax under subsection
33 (b) of section 3 where the property so sold becomes a physical
34 component part of the property upon which the services are
35 performed or where the property so sold is later actually transferred
36 to the purchaser of the service in conjunction with the performance
37 of the service subject to tax.

38 (2) For the purposes of this act, the term "retail sale" includes:
39 sales of tangible personal property to all contractors, subcontractors
40 or repairmen of materials and supplies for use by them in erecting

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 structures for others, or building on, or otherwise improving,
2 altering, or repairing real property of others.

3 (3) (Deleted by amendment, P.L.2005, c.126).

4 (4) The term "retail sale" does not include:

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

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

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

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

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

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

20 (G) The sale of tangible personal property where the purpose of
21 the vendee is to hold the thing transferred as security for the
22 performance of an obligation of the seller.

23 (f) "Sale, selling or purchase" means any transfer of title or
24 possession or both, exchange or barter, rental, lease or license to
25 use or consume, conditional or otherwise, in any manner or by any
26 means whatsoever for a consideration, or any agreement therefor,
27 including the rendering of any service, taxable under this act, for a
28 consideration or any agreement therefor.

29 (g) "Tangible personal property" means personal property that
30 can be seen, weighed, measured, felt, or touched, or that is in any
31 other manner perceptible to the senses. "Tangible personal
32 property" includes electricity, water, gas, steam, and prewritten
33 computer software including prewritten computer software
34 delivered electronically.

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

46 (i) "Seller" means a person making sales, leases or rentals of
47 personal property or services.

48 (1) The term "seller" includes:

1 (A) A person making sales, leases or rentals of tangible personal
2 property, digital property or services, the receipts from which are
3 taxed by this act;

4 (B) A person maintaining a place of business in the State or
5 having an agent 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, digital
8 property or services, the 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, digital property or services, the use of which is taxed by
14 this act;

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

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

24 (F) (Deleted by amendment, P.L.2005, c.126); **[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 (H) A person engaged in collecting charges in the nature of
29 initiation fees, membership fees or dues for access to or use of the
30 property or facilities of a health and fitness, athletic, sporting or
31 shopping club or organization;

32 (I) A person engaged in the business of parking, storing or
33 garaging motor vehicles; and

34 (2) In addition, when in the opinion of the director it is
35 necessary for the efficient administration of this act to treat any
36 salesman, representative, peddler or canvasser as the agent of the
37 seller, distributor, supervisor or employer under whom the agent
38 operates or from whom the agent obtains tangible personal property
39 or digital property sold by the agent or for whom the agent solicits
40 business, the director may, in the director's discretion, treat such
41 agent as the seller jointly responsible with the agent's principal,
42 distributor, supervisor or employer for the collection and payment
43 over of the tax. A person is an agent of a seller in all cases, but not
44 limited to such cases, that: (A) the person and the seller have the
45 relationship of a "related person" described pursuant to section 2 of
46 P.L.1993, c.170 (C.54:10A-5.5); and (B) the seller and the person
47 use an identical or substantially similar name, tradename,
48 trademark, or goodwill, to develop, promote, or maintain sales, or

1 the person and the seller pay for each other's services in whole or in
2 part contingent upon the volume or value of sales, or the person and
3 the seller share a common business plan or substantially coordinate
4 their business plans, or the person provides services to, or that inure
5 to the benefit of, the seller related to developing, promoting, or
6 maintaining the seller's market.

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

11 (k) "Occupancy" means the use or possession or the right to the
12 use or possession, of any room in a hotel.

13 (l) "Occupant" means a person who, for a consideration, uses,
14 possesses, or has the right to use or possess, any room in a hotel
15 under any lease, concession, permit, right of access, license to use
16 or other agreement, or otherwise.

17 (m) "Permanent resident" means any occupant of any room or
18 rooms in a hotel for at least 90 consecutive days shall be considered
19 a permanent resident with regard to the period of such occupancy.

20 (n) "Room" means any room or rooms of any kind in any part or
21 portion of a hotel, which is available for or let out for any purpose
22 other than a place of assembly.

23 (o) "Admission charge" means the amount paid for admission,
24 including any service charge and any charge for entertainment or
25 amusement or for the use of facilities therefor.

26 (p) "Amusement charge" means any admission charge, dues or
27 charge of roof garden, cabaret or other similar place.

28 (q) "Charge of a roof garden, cabaret or other similar place"
29 means any charge made for admission, refreshment, service, or
30 merchandise at a roof garden, cabaret or other similar place.

31 (r) "Dramatic or musical arts admission charge" means any
32 admission charge paid for admission to a theater, opera house,
33 concert hall or other hall or place of assembly for a live, dramatic,
34 choreographic or musical performance.

35 (s) "Lessor" means any person who is the owner, licensee, or
36 lessee of any premises **[or]**, tangible personal property or digital
37 property which the person leases, subleases, or grants a license to
38 use to other persons.

39 (t) "Place of amusement" means any place where any facilities
40 for entertainment, amusement, or sports are provided.

41 (u) "Casual sale" means an isolated or occasional sale of an item
42 of tangible personal property or digital property by a person who is
43 not regularly engaged in the business of making retail sales of such
44 property where the item was obtained by the person making the
45 sale, through purchase or otherwise, for the person's own use.

46 (v) "Motor vehicle" includes all vehicles propelled otherwise
47 than by muscular power (excepting such vehicles as run only upon
48 rails or tracks), trailers, semitrailers, house trailers, or any other

1 type of vehicle drawn by a motor-driven vehicle, and motorcycles,
2 designed for operation on the public highways.

3 (w) "Persons required to collect tax" or "persons required to
4 collect any tax imposed by this act" includes: every seller of
5 tangible personal property, digital property or services; every
6 recipient of amusement charges; every operator of a hotel; **[and]**
7 every seller of telecommunications; every recipient of initiation,
8 membership fees or dues for access to or use of the property or
9 facilities of a health and fitness, athletic, sporting or shopping club
10 or organization; and every recipient of charges for parking, storing
11 or garaging a motor vehicle. Said terms shall also include any
12 officer or employee of a corporation or of a dissolved corporation
13 who as such officer or employee is under a duty to act for such
14 corporation in complying with any requirement of this act and any
15 member of a partnership.

16 (x) "Customer" includes: every purchaser of tangible personal
17 property, digital property or services; every patron paying or liable
18 for the payment of any amusement charge; **[and]** every occupant of
19 a room or rooms in a hotel; every person paying charges in the
20 nature of initiation fees, membership fees or dues for access to or
21 use of the property or facilities of a health and fitness, athletic,
22 sporting or shopping club or organization; and every purchaser of
23 parking, storage or garaging a motor vehicle.

24 (y) "Property and services the use of which is subject to tax"
25 includes: (1) all property sold to a person within the State, whether
26 or not the sale is made within the State, the use of which property is
27 subject to tax under section 6 or will become subject to tax when
28 such property is received by or comes into the possession or control
29 of such person within the State; (2) all services rendered to a person
30 within the State, whether or not such services are performed within
31 the State, upon tangible personal property or digital property the use
32 of which is subject to tax under section 6 or will become subject to
33 tax when such property is distributed within the State or is received
34 by or comes into possession or control of such person within the
35 State; (3) intrastate or interstate telecommunications sourced to this
36 State pursuant to section 29 of P.L.2005, c.126 (C.54:32B-3.4); (4)
37 (Deleted by amendment, P.L.1995, c.184); (5) energy sold,
38 exchanged or delivered in this State for use in this State; (6) utility
39 service sold, exchanged or delivered in this State for use in this
40 State; (7) direct mail processing services in connection with direct
41 mail distributed in this State; **[and]** (8) (Deleted by amendment,
42 P.L.2005, c.126); and (9) services the benefit of which are received
43 in this State.

44 (z) "Director " means the Director of the Division of Taxation of
45 the State Department of the Treasury, or any officer, employee or
46 agency of the Division of Taxation in the Department of the
47 Treasury duly authorized by the director (directly, or indirectly by

1 one or more redelegations of authority) to perform the functions
2 mentioned or described in this act.

3 (aa) "Lease or rental" means any transfer of possession or control
4 of tangible personal property for a fixed or indeterminate term for
5 consideration. A "lease or rental" may include future options to
6 purchase or extend.

7 (1) "Lease or rental" does not include:

8 (A) A transfer of possession or control of property under a
9 security agreement or deferred payment plan that requires the
10 transfer of title upon completion of the required payments;

11 (B) A transfer of possession or control of property under an
12 agreement that requires the transfer of title upon completion of
13 required payments and payment of an option price does not exceed
14 the greater of \$100 or one percent of the total required payments; or

15 (C) Providing tangible personal property or digital property
16 along with an operator for a fixed or indeterminate period of time.
17 A condition of this exclusion is that the operator is necessary for the
18 equipment to perform as designed. For the purpose of this
19 subparagraph, an operator must do more than maintain, inspect, or
20 set-up the tangible personal property or digital property.

21 (2) "Lease or rental" does include agreements covering motor
22 vehicles and trailers where the amount of consideration may be
23 increased or decreased by reference to the amount realized upon
24 sale or disposition of the property as defined in 26 U.S.C.
25 s.7701(h)(1).

26 (3) The definition of "lease or rental" provided in this subsection
27 shall be used for the purposes of this act regardless of whether a
28 transaction is characterized as a lease or rental under generally
29 accepted accounting principles, the federal Internal Revenue Code
30 or other provisions of federal, state or local law.

31 (bb) (Deleted by amendment, P.L.2005, c.126).

32 (cc) "Telecommunications" means the act or privilege of
33 originating or receiving messages or information through the use of
34 any kind of one-way or two-way communication; including but not
35 limited to voice, video, facsimile, teletypewriter, computer, mobile
36 telecommunications service or any other type of communication;
37 using electronic or electromagnetic methods, and all services and
38 equipment provided in connection therewith or by means thereof.
39 "Telecommunications" shall not include:

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

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

1 (3) services provided by a person, or by that person's wholly
2 owned subsidiary, not engaged in the business of rendering or
3 offering telecommunications services to the public, for private and
4 exclusive use within its organization, provided however, that
5 "telecommunications" shall include the sale of telecommunications
6 services attributable to the excess unused telecommunications
7 capacity of that person to another;

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

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

13 (6) purchases of telecommunications using a prepaid calling
14 service.

15 (dd) "Interstate telecommunication" means any
16 telecommunication that originates or terminates inside this State,
17 including international telecommunication. In the case of mobile
18 telecommunications service, "interstate telecommunication" means
19 any mobile telecommunications service that originates in one state
20 and terminates in another state, territory, or foreign country that is
21 provided to a customer with a place of primary use in this State.

22 (ee) "Intrastate telecommunication" means any
23 telecommunication that originates and terminates within this State.
24 In the case of mobile telecommunications service, "intrastate
25 telecommunication" means any mobile telecommunications service
26 that originates and terminates within the same state that is provided
27 to a customer with a place of primary use in this State.

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

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

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

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

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

1 "qualifying facility" pursuant to the provisions of the "Public Utility
2 Regulatory Policies Act of 1978," Pub.L.95-617.

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

7 (ll) "Pre-paid calling service" means the right to purchase
8 exclusively telecommunications services, that must be paid for in
9 advance, that enables the origination of calls using an access
10 number or authorization code, whether manually or electronically
11 dialed; provided, that the remaining amount of units of service that
12 have been pre-paid shall be known by the service provider on a
13 continuous basis.

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

17 (nn) "Place of primary use" means the street address
18 representative of where the customer's use of the mobile
19 telecommunications service primarily occurs, which shall be the
20 residential street address or the primary business street address of
21 the customer and within the licensed service area of the home
22 service provider. For the purposes of determining the primary place
23 of use, the terms used shall have the meanings provided pursuant to
24 the federal "Mobile Telecommunications Sourcing Act," 4 U.S.C.
25 s.124 (Pub.L.106-252).

26 (oo) (1) "Sales price" is the measure subject to sales tax and
27 means the total amount of consideration, including cash, credit,
28 property, and services, for which personal property or services are
29 sold, leased, or rented, valued in money, whether received in money
30 or otherwise, without any deduction for the following:

31 (A) The seller's cost of the property sold;

32 (B) The cost of materials used, labor or service cost, interest,
33 losses, all costs of transportation to the seller, all taxes imposed on
34 the seller, and any other expense of the seller;

35 (C) Charges by the seller for any services necessary to complete
36 the sale;

37 (D) Delivery charges【, unless separately stated on the invoice,
38 bill or similar document given to purchaser】;

39 (E) Installation charges; and

40 (F) The value of exempt personal property given to the
41 purchaser where taxable and exempt personal property have been
42 bundled together and sold by the seller as a single product or piece
43 of merchandise.

44 (2) "Sales price" does not include:

45 (A) Discounts, including cash, term, or coupons that are not
46 reimbursed by a third party, that are allowed by a seller and taken
47 by a purchaser on a sale;

1 (B) Interest, financing, and carrying charges from credit
2 extended on the sale of personal property or services, if the amount
3 is separately stated on the invoice, bill of sale, or similar document
4 given to the purchaser;

5 (C) Any taxes legally imposed directly on the consumer that are
6 separately stated on the invoice, bill of sale, or similar document
7 given to the purchaser;

8 (D) The amount of sales price for which food stamps have been
9 properly tendered in full or part payment pursuant to the federal
10 Food Stamp Act of 1977, Pub.L. 95-113 (7 U.S.C. s.2011 et seq.);
11 or

12 (E) Credit for any trade-in of property of the same kind accepted
13 in part payment and intended for resale if the amount is separately
14 stated on the invoice, bill of sale, or similar document given to the
15 purchaser.

16 (pp) "Purchase price" means the measure subject to use tax and
17 has the same meaning as "sales price."

18 (qq) "Sales tax" means the tax imposed on certain transactions
19 pursuant to the provisions of the "Sales and Use Tax Act,"
20 P.L.1966, c.30 (C.54:32B-1 et seq.).

21 (rr) "Delivery charges" means charges by the seller for
22 preparation and delivery to a location designated by the purchaser
23 of personal property or services including, but not limited to,
24 transportation, shipping, postage, handling, crating, and packing. If
25 a shipment includes both exempt and taxable property, the seller
26 should allocate the delivery charge by using: (1) a percentage based
27 on the total sales price of the taxable property compared to the total
28 sales price of all property in the shipment; or (2) a percentage based
29 on the total weight of the taxable property compared to the total
30 weight of all property in the shipment.

31 (ss) "Direct mail" means printed material delivered or distributed
32 by United States mail or other delivery service to a mass audience
33 or to addresses on a mailing list provided by the purchaser or at the
34 direction of the purchaser in cases in which the cost of the items are
35 not billed directly to the recipients. "Direct mail" includes tangible
36 personal property or digital property supplied directly or indirectly
37 by the purchaser to the direct mail seller for inclusion in the
38 package containing the printed material. "Direct mail" does not
39 include multiple items of printed material delivered to a single
40 address.

41 (tt) "Streamlined Sales and Use Tax Agreement" means the
42 agreement entered into as governed and authorized by the "Uniform
43 Sales and Use Tax Administration Act," P.L.2001, c.431
44 (C.54:32B-44 et seq.).

45 (uu) "Alcoholic beverages" means beverages that are suitable for
46 human consumption and contain one-half of one percent or more of
47 alcohol by volume.

48 (vv) "Digital property" means electronically delivered music,

1 ringtones, movies, books, audio and video works and similar
2 products, where the customer is granted a right or license to use,
3 retain or make a copy of such item. Digital property does not
4 include video programming services, including video on demand
5 television services, and broadcasting services, including content to
6 provide such services.

7 (ww) "Landscaping services" mean services that result in a
8 capital improvement to land other than structures of any kind
9 whatsoever, such as: seeding, sodding or grass plugging of new
10 lawns; planting trees, shrubs, hedges, plants; and clearing and
11 filling land.

12 (xx) "Investigation and Security Services" means:

13 (1) investigation and detective services, including detective
14 agencies and private investigators, and fingerprint, polygraph;
15 missing person tracing and skip tracing services;

16 (2) security guard and patrol services, including bodyguard and
17 personal protection, guard dog, guard, patrol, and security services;

18 (3) armored car services; and

19 (4) security systems services, including security, burglar, and fire
20 alarm installation, repair or monitoring services.

21 (yy) "Information services" means the furnishing of information
22 of any kind, which has been collected, compiled, or analyzed by the
23 seller, and provided through any means or method, other than
24 personal or individual information which is not incorporated into
25 reports furnished to other people.

26 (cf: P.L.2005, c.126, s.1)

27

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

30 3. There is imposed and there shall be paid a tax of ~~6%~~ 7%
31 upon:

32 (a) The receipts from every retail sale of tangible personal
33 property or digital property, except as otherwise provided in this
34 act.

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

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

42 (2) Installing tangible personal property or digital property, or
43 maintaining, servicing, repairing tangible personal property or
44 digital property not held for sale in the regular course of business,
45 whether or not the services are performed directly or by means of
46 coin-operated equipment or by any other means, and whether or not
47 any tangible personal property or digital property is transferred in
48 conjunction therewith, except (i) such services rendered by an

1 individual who is engaged directly by a private homeowner or
2 lessee in or about his residence and who is not in a regular trade or
3 business offering his services to the public, (ii) such services
4 rendered with respect to personal property exempt from taxation
5 hereunder pursuant to section 13 of P.L.1980, c.105 (C.54:32B-8.1),
6 (iii) (Deleted by amendment, P.L.1990, c.40), (iv) any receipts from
7 laundering, dry cleaning, tailoring, weaving, or pressing clothing,
8 and shoe repairing and shoeshining and (v) services rendered in
9 installing property which, when installed, will constitute an addition
10 or capital improvement to real property, property or land, other than
11 landscaping services and other than installing carpeting and other
12 flooring.

13 (3) Storing all tangible personal property not held for sale in the
14 regular course of business ~~[and]~~; the rental of safe deposit boxes or
15 similar space; and the furnishing of space for storage of tangible
16 personal property by a person engaged in the business of furnishing
17 space for such storage.

18 "Space for storage" means secure areas, such as rooms, units,
19 compartments or containers, whether accessible from outside or
20 from within a building, that are designated for the use of a customer
21 and wherein the customer has free access within reasonable
22 business hours, or upon reasonable notice to the furnisher of space
23 for storage, to store and retrieve property. Space for storage shall
24 not include the lease or rental of an entire building, such as a
25 warehouse or airplane hanger.

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

36 (5) Direct-mail processing services, except for direct-mail
37 processing services in connection with distribution of direct mail to
38 out-of-State recipients.

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

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

42 (8) Tanning services, including the application of a temporary
43 tan provided by any means.

44 (9) Massage, bodywork or somatic services, except such
45 services provided pursuant to a doctor's prescription.

46 (10) Tattooing, including all permanent body art and permanent
47 cosmetic make-up applications.

48 (11) Investigation and security services.

1 (12) Information services.

2 (13) Transportation services originating in this state and
3 provided by a limousine operator, as permitted by law, except such
4 services provided in connection with funeral services.

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

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

14 (c) (1) Receipts from the sale of prepared food in or by
15 restaurants, taverns, or other establishments in this State, or by
16 caterers, including in the amount of such receipts any cover,
17 minimum, entertainment or other charge made to patrons or
18 customers, except for meals especially prepared for and delivered to
19 homebound elderly, age 60 or older, and to disabled persons, or
20 meals prepared and served at a group-sitting at a location outside of
21 the home to otherwise homebound elderly persons, age 60 or older,
22 and otherwise homebound disabled persons, as all or part of any
23 food service project funded in whole or in part by government or as
24 part of a private, nonprofit food service project available to all such
25 elderly or disabled persons residing within an area of service
26 designated by the private nonprofit organization; and

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

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

36 (3) For the purposes of this subsection:

37 "Food and beverages sold through vending machines" means
38 food and beverages dispensed from a machine or other mechanical
39 device that accepts payment; and

40 "Prepared food" means:

41 (i) A. food sold in a heated state or heated by the seller; or

42 B. two or more food ingredients mixed or combined by the
43 seller for sale as a single item, but not including food that is only
44 cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,
45 poultry, and foods containing these raw animal foods requiring
46 cooking by the consumer as recommended by the Food and Drug
47 Administration in Chapter 3, part 401.11 of its Food Code so as to
48 prevent food borne illnesses; or

1 C. food sold with eating utensils provided by the seller,
2 including plates, knives, forks, spoons, glasses, cups, napkins, or
3 straws. A plate does not include a container or packaging used to
4 transport the food;
5 provided however, that

6 (ii) "prepared food" does not include the following sold without
7 eating utensils:

8 A. food sold by a seller whose proper primary NAICS
9 classification is manufacturing in section 311, except subsector
10 3118 (bakeries);

11 B. food sold in an unheated state by weight or volume as a
12 single item; or

13 C. bakery items, including bread, rolls, buns, biscuits, bagels,
14 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,
15 muffins, bars, cookies, and tortillas.

16 (d) The rent for every occupancy of a room or rooms in a hotel
17 in this State, except that the tax shall not be imposed upon a
18 permanent resident.

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

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

39 (f) (1) The receipts from every sale, except for resale, of
40 intrastate or interstate telecommunications sourced to this State in
41 accordance with section 29 of P.L.2005, c.126 (C.54:32B-3.4).

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

1 (g) The receipts from every sale, except for resale, of prepaid
2 calling service and the recharge of prepaid calling service.

3 (h) Charges in the nature of initiation fees, membership fees or
4 dues for access to or use of the property or facilities of a health and
5 fitness, athletic, sporting or shopping club or organization in this
6 State, except for membership in a club or organization whose
7 members are predominantly age 18 or under.

8 (i) The receipts from parking, storing or garaging a motor
9 vehicle, excluding charges for the following types of parking:
10 residential parking; employee parking, when provided by an
11 employer or at a facility owned or operated by the employer;
12 municipal metered parking; and such receipts subject to tax
13 pursuant to any other law or ordinance.

14 (cf: P.L.2005, c.126, s.2)

15

16 3. Section 4 of P.L.1966, c.30 (C.54:32B-4) is amended to read
17 as follows:

18 4. a. For the purpose of adding and collecting the tax imposed by
19 this act, or an amount equal as nearly as possible or practicable to
20 the average equivalent thereof, to be reimbursed to the seller by the
21 purchaser, a seller shall use one of the two following options:

22 (1) a tax shall be calculated based on the following formula:

23 Amount of Sale	Amount of Tax
24	
25 【\$0.01 to \$0.10	No Tax
26 0.11 to 0.22	\$0.01
27 0.23 to 0.38	0.02
28 0.39 to 0.56	0.03
29 0.57 to 0.72	0.04
30 0.73 to 0.88	0.05
31 0.89 to \$1.10	0.06】

32

33 <u>\$0.01 to \$0.10</u>	<u>No Tax</u>
34 <u>0.11 to 0.19</u>	<u>\$0.01</u>
35 <u>0.20 to 0.32</u>	<u>0.02</u>
36 <u>0.33 to 0.47</u>	<u>0.03</u>
37 <u>0.48 to 0.62</u>	<u>0.04</u>
38 <u>0.63 to 0.77</u>	<u>0.05</u>
39 <u>0.78 to 0.90</u>	<u>0.06</u>
40 <u>0.91 to \$1.10</u>	<u>0.07</u>

41

42 and in addition to a tax of **【\$0.06】** \$0.07 on each full dollar, a
43 tax shall be collected on each part of a dollar in excess of a full
44 dollar, in accordance with the above formula; or

45 (2) tax shall be calculated to the third decimal place. One-half
46 cent (\$0.005) or higher shall be rounded up to the next cent; less
47 than \$0.005 shall be dropped in order to round the result down.

1 Sellers may compute the tax due on a transaction on either an
2 item or an invoice basis.

3 b. For charges paid by inserting coins into a coin operated
4 telecommunications device available to the public the tax shall be
5 computed to the nearest multiple of five cents of the tax otherwise
6 due pursuant to subsection a. of this section, except that, if the
7 amount of the tax is midway between multiples of five cents, the
8 next higher multiple shall apply.

9 (cf: P.L.2005, c.126, s.3)

10

11 4. Section 5 of P.L.1966, c.30 (C.54:32B-5) is amended to read
12 as follows:

13 5. Transitional provisions. a. (1) Except as otherwise provided
14 in this act, receipts received from all sales made and services
15 rendered on and after January 3, 1983 but prior to July 1, 1990, are
16 subject to the taxes imposed under subsections (a), (b), (c), and (f)
17 of section 3 of this act at the rate, if any, in effect for such sales and
18 services on June 30, 1990, except if the property so sold is delivered
19 or the services so sold are rendered on or after July 1, 1990 but
20 prior to July 1, 1992, in which case the tax shall be computed and
21 paid at the rate of 7%; provided, however, that if a service or
22 maintenance agreement taxable under this act covers any period
23 commencing on or after January 3, 1983 and ending after June 30,
24 1990 but prior to July 1, 1992, the receipts from such agreement are
25 subject to tax at the rate, if any, applicable to each period as set
26 forth hereinabove and shall be apportioned on the basis of the ratio
27 of the number of days falling within each of the said periods to the
28 total number of days covered thereby.

29 (2) Except as otherwise provided in this act, receipts received
30 from all sales made and services rendered on and after July 1, 1990
31 but prior to July 1, 1992, are subject to the taxes imposed under
32 subsections (a), (b), (c) and (f) of section 3 of this act at the rate of
33 7%, except if the property so sold is delivered or the services so
34 sold are rendered on or after July 1, 1992 but prior to July 15, 2006,
35 in which case the tax shall be computed and paid at the rate of 6%,
36 provided, however, that if a service or maintenance agreement
37 taxable under this act covers any period commencing on or after
38 July 1, 1990, and ending after July 1, 1992, the receipts from such
39 agreement are subject to tax at the rate applicable to each period as
40 set forth hereinabove and shall be apportioned on the basis of the
41 ratio of the number of days falling within each of the said periods to
42 the total number of days covered thereby.

43 (3) Except as otherwise provided in this act, receipts received
44 from all sales made and services rendered on and after July 1, 1992
45 but prior to July 15, 2006, are subject to the taxes imposed under
46 subsections (a), (b), (c), (f) and (g) of section 3 of P.L.1966, c.30
47 (C.54:32B-3) at the rate of 6%, except if the property so sold is
48 delivered or the services so sold are rendered on or after July 15,

1 2006, in which case the tax shall be computed and paid at the rate
2 of 7%, provided, however, that if a service or maintenance
3 agreement taxable under this act covers any period commencing on
4 or after July 1, 1992, and ending after July 15, 2006, the receipts
5 from such agreement are subject to tax at the rate applicable to each
6 period as set forth hereinabove and shall be apportioned on the
7 basis of the ratio of the number of days falling within each of the
8 said periods to the total number of days covered thereby; provided
9 however, if a service or maintenance agreement in effect on July 14,
10 2006 covers billing periods ending after July 15, 2006, the seller
11 shall charge and collect from the purchaser a tax on such sales at
12 the rate of 6%, unless the billing period starts on or after July 15,
13 2006 in which case the seller shall charge and collect a tax at the
14 rate of 7%.

15 b. (1) The tax imposed under subsection (d) of section 3 shall be
16 paid at the rate of 7% upon any occupancy on and after July 1, 1990
17 but prior to July 1, 1992, although such occupancy is pursuant to a
18 prior contract, lease or other arrangement. If an occupancy, taxable
19 under this act, covers any period on or after January 3, 1983 but
20 prior to July 1, 1990, the rent for the period of occupancy prior to
21 July 1, 1990 shall be taxed at the rate of 6%. If rent is paid on a
22 weekly, monthly or other term basis, the rent applicable to each
23 period as set forth hereinabove shall be apportioned on the basis of
24 the ratio of the number of days falling within each of the said
25 periods to the total number of days covered thereby.

26 (2) The tax imposed under subsection (d) of section 3 shall be
27 paid at the rate of 6% upon any occupancy on and after July 1, 1992
28 but prior to July 15, 2006, although such occupancy is pursuant to a
29 prior contract, lease or other arrangement. If an occupancy, taxable
30 under this act, covers any period on or after July 1, 1990 but prior
31 to July 1, 1992, the rent for the period of occupancy prior to July 1,
32 1992 shall be taxed at the rate of 7%. If rent is paid on a weekly,
33 monthly or other term basis, the rent applicable to each period as set
34 forth hereinabove shall be apportioned on the basis of the ratio of
35 the number of days falling within each of the said periods to the
36 total number of days covered thereby.

37 (3) The tax imposed under subsection (d) of section 3 shall be
38 paid at the rate of 7% upon any occupancy on and after July 15,
39 2006, although such occupancy is pursuant to a prior contract, lease
40 or other arrangement. If an occupancy, taxable under this act,
41 covers any period on or after July 1, 1992 but prior to July 15,
42 2006, the rent for the period of occupancy prior to July 15, 2006
43 shall be taxed at the rate of 6%. If rent is paid on a weekly,
44 monthly or other term basis, the rent applicable to each period as set
45 forth hereinabove shall be apportioned on the basis of the ratio of
46 the number of days falling within each of the said periods to the
47 total number of days covered thereby.

48 c. (1) Except as otherwise hereinafter provided, the tax imposed

1 under subsection (e) of section 3 shall be applicable at the rate of
2 7% to any admission to or for the use of facilities of a place of
3 amusement occurring on or after July 1, 1990 but prior to July 1,
4 1992, whether or not the admission charge has been paid prior to
5 July 1, 1990, unless the tickets were actually sold and delivered,
6 other than for resale, prior to July 1, 1990 and the tax imposed
7 under this act during the period January 3, 1983 through June 30,
8 1990 shall have been paid.

9 (2) Except as otherwise hereinafter provided, the tax imposed
10 under subsection (e) of section 3 shall be applicable at the rate of
11 6% to any admission to or for the use of facilities of a place of
12 amusement occurring on or after July 1, 1992 but prior to July 15,
13 2006, whether or not the admission charge has been paid prior to
14 **[that date]** July 1, 1992, unless the tickets were actually sold and
15 delivered, other than for resale, prior to July 1, 1992 and the tax
16 imposed under this act during the period July 1, 1990 through
17 December 31, 1990 shall have been paid.

18 (3) Except as otherwise hereinafter provided, the tax imposed
19 under subsection (e) of section 3 shall be applicable at the rate of
20 7% to any admission to or for the use of facilities of a place of
21 amusement occurring on or after July 15, 2006, whether or not the
22 admission charge has been paid prior to that date, unless the tickets
23 were actually sold and delivered, other than for resale, prior to July
24 15, 2006 and the tax imposed under this act during the period July
25 1, 1992 through July 14, 2006 shall have been paid.

26 d. (1) Sales made on and after July 1, 1990 but prior to July 1,
27 1992 to contractors, subcontractors or repairmen of materials,
28 supplies, or services for use in erecting structures for others, or
29 building on, or otherwise improving, altering or repairing real
30 property of others shall be subject to the taxes imposed by
31 subsections (a) and (b) of section 3 and section 6 hereof at the rate
32 of 7%; provided, however, that if such sales are made for use in
33 performance of a contract which is either of a fixed price not
34 subject to change or modification, or entered into pursuant to the
35 obligation of a formal written bid which cannot be altered or
36 withdrawn, and, in either case, such contract was entered into or
37 such bid was made on or after January 3, 1983 but prior to July 1,
38 1990, such sales shall be subject to tax at the rate of 6%, but the
39 vendor shall charge and collect from the purchaser a tax on such
40 sales at the rate of 7%.

41 (2) Sales made on or after July 1, 1992 but prior to July 15,
42 2006 to contractors, subcontractors or repairmen of materials,
43 supplies, or services for use in erecting structures for others, or
44 building on, or otherwise improving, altering or repairing real
45 property of others shall be subject to the taxes imposed by
46 subsections (a) and (b) of section 3 and section 6 hereof at the rate
47 of 6%; provided, however, that if such sales are made for use in
48 performance of a contract which is either of a fixed price not

1 subject to change or modification, or entered into pursuant to the
2 obligation of a formal written bid which cannot be altered or
3 withdrawn, and, in either case, such contract was entered into or
4 such bid was made on or after July 1, 1990, but prior to July 1,
5 1992, such sales shall be subject to tax at the rate of 7%.

6 (3) Sales made on or after July 15, 2006 to contractors,
7 subcontractors or repairmen of materials, supplies, or services for
8 use in erecting structures for others, or building on, or otherwise
9 improving, altering or repairing real property of others shall be
10 subject to the taxes imposed by subsections (a) and (b) of section 3
11 and section 6 hereof at the rate of 7%; provided, however, that if
12 such sales are made for use in performance of a contract which is
13 either of a fixed price not subject to change or modification, or
14 entered into pursuant to the obligation of a formal written bid which
15 cannot be altered or withdrawn, and, in either case, such contract
16 was entered into or such bid was made on or after July 1, 1992, but
17 prior to July 15, 2006, such sales shall be subject to tax at the rate
18 of 6%, but the vendor shall charge and collect from the purchaser a
19 tax on such sales at the rate of 7%.

20 e. (1) As to sales other than those referred to in d. above, the
21 taxes imposed under subsections (a) and (b) of section 3 and section
22 6 hereof, and the taxes imposed under subsection (f) of section 3
23 and section 6 hereof, upon receipts received on or after July 1, 1990
24 and on or before December 31, 1990, shall be at the rate in effect on
25 June 30, 1990, in case of sales made or services rendered pursuant
26 to a written contract entered on or after January 3, 1983 but prior to
27 July 1, 1990, and accompanied by a deposit or partial payment of
28 the contract price, except in the case of a contract which, in the
29 usage of trade, is not customarily accompanied by a deposit or
30 partial payment of the contract price, but the vendor shall charge
31 and collect from the purchaser on such sales at the rate of 7%,
32 which tax shall be reduced to the rate, if any, in effect on June 30,
33 1990, only by a claim for refund filed by the purchaser with the
34 director within 90 days after receipt of said receipts and otherwise
35 pursuant to the provisions of section 20 of P.L.1966, c.30
36 (C.54:32B-20). A claim for refund shall not be allowed if there has
37 been no deposit or partial payment of the contract price unless the
38 claimant shall establish by clear and convincing evidence that, in
39 the usage of trade, such contracts are not customarily accompanied
40 by a deposit or partial payment of the contract price.

41 (2) As to sales other than those referred to in d. above, the taxes
42 imposed under subsections (a) and (b) of section 3 and section 6
43 hereof, and the taxes imposed under subsections (f) and (g) of
44 section 3 and section 6 hereof, upon receipts received on or after
45 July 15, 2006 and on or before December 31, 2006, shall be at the
46 rate in effect on July 14, 2006, in case of sales made or services
47 rendered pursuant to a written contract entered on or after July 1,
48 1992 but prior to July 15, 2006, and accompanied by a deposit or

1 partial payment of the contract price, except in the case of a
2 contract which, in the usage of trade, is not customarily
3 accompanied by a deposit or partial payment of the contract price,
4 but the vendor shall charge and collect from the purchaser on such
5 sales at the rate of 7%, which tax shall be reduced to the rate, if any,
6 in effect on July 14, 2006, only by a claim for refund filed by the
7 purchaser with the director within 90 days after receipt of said
8 receipts and otherwise pursuant to the provisions of section 20 of
9 P.L.1966, c.30 (C.54:32B-20). A claim for refund shall not be
10 allowed if there has been no deposit or partial payment of the
11 contract price unless the claimant shall establish by clear and
12 convincing evidence that, in the usage of trade, such contracts are
13 not customarily accompanied by a deposit or partial payment of the
14 contract price.

15 f. (1) The taxes imposed under subsections (a), (b), (c) and (f) of
16 section 3 upon receipts received on or after July 1, 1990 but prior to
17 July 1, 1992 shall be at the rate, if any, in effect on June 30, 1990 in
18 the case of sales made or services rendered, if delivery of the
19 property which was the subject matter of the sale has been
20 completed or such services have been entirely rendered prior to July
21 1, 1990.

22 (2) The taxes imposed under subsections (a), (b), (c) and (f) of
23 section 3 upon receipts received on or after July 1, 1992 but prior to
24 July 15, 2006 shall be at the rate of 7% in the case of sales made or
25 services rendered, where delivery of the property which was the
26 subject matter of the sale has been completed or such services have
27 been entirely rendered on or after July 1, 1990 but prior to July 1,
28 1992.

29 (3) The taxes imposed under subsections (a), (b), (c), (f) and (g)
30 of section 3 upon receipts received on or after July 15, 2006 shall be
31 at the rate of 6% in the case of sales made or services rendered,
32 where delivery of the property which was the subject matter of the
33 sale has been completed or such services have been entirely
34 rendered on or after July 1, 1992 but prior to July 15, 2006.

35 g. The director is empowered to promulgate rules and
36 regulations to implement the provisions of this section.
37 (cf: P.L.1992, s.11, s.3)

38
39 5. Section 6 of P.L.1966, c.30 (C.54:32B-6) is amended to read
40 as follows:

41 6. Unless property or services have already been or will be
42 subject to the sales tax under this act, there is hereby imposed on
43 and there shall be paid by every person a use tax for the use within
44 this State of ~~6%~~ 7%, except as otherwise exempted under this act,
45 (A) of any tangible personal property or digital property purchased
46 at retail, including energy, provided however, that electricity
47 consumed by the generating facility that produced it shall not be
48 subject to tax, (B) of any tangible personal property or digital

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

1 hereinabove, of the consideration given or contracted to be given
2 for the service, including the consideration for any tangible personal
3 property or digital property transferred in conjunction with the
4 performance of the service, plus the cost of transportation, except
5 where such cost is separately stated in the written contract, if any,
6 and on the bill rendered to the purchaser. For the purposes of
7 clause (D) of this section, the tax shall be at the applicable rate on
8 the charge made by the telecommunications service provider. For
9 purposes of clause (F) of this section, the tax shall be at the
10 applicable rate on the charge made by the utility service provider.
11 For purposes of clause (G) of this section, the tax shall be at the
12 applicable rate on that proportion of the amount of all processing
13 costs charged by a direct-mail processing service provider that is
14 attributable to the service distributed in this State. For the purposes
15 of clause (H) of this section, the tax shall be at the applicable rate
16 on the consideration given or contracted to be given for the prepaid
17 calling service or the recharge of the prepaid calling service. For
18 purposes of clause (I) of this section, the tax shall be at the
19 applicable rate on the charge made by the service provider. For
20 purposes of clause (J) of this section, the tax shall be at the
21 applicable rate on the charges in the nature of initiation fees,
22 membership fees or dues.
23 (P.L.2005, c.126, s.4)

24
25 6. Section 7 of P.L.1966, c.30 (C.54:32B-7) is amended to read
26 as follows:

27 7. (a) The retail sales tax imposed under subsection (a) of section
28 3 and the compensating use tax imposed under section 6, when
29 computed in respect to tangible personal property and digital
30 property wherever manufactured, processed or assembled and used
31 by such manufacturer, processor or assembler in the regular course
32 of business within this State, shall be based on the price at which
33 items of the same kind of tangible personal property are offered for
34 sale by him.

35 (b) Tangible personal property or digital property, which has
36 been purchased by a resident of the State of New Jersey outside of
37 this State for use outside of this State and subsequently becomes
38 subject to the compensating use tax imposed under this act, shall be
39 taxed on the basis of the purchase price of such property, provided,
40 however:

41 (1) That where a taxpayer affirmatively shows that the property
42 was used outside such State by him for more than six months prior
43 to its use within this State, such property shall be taxed on the basis
44 of current market value of the property at the time of its first use
45 within this State. The value of such property, for compensating use
46 tax purposes, may not exceed its cost.

47 (2) That the compensating use tax on such tangible personal
48 property or digital property brought into this State (other than for

1 complete consumption or for incorporation into real property
2 located in this State) and used in the performance of a contract or
3 subcontract within this State by a purchaser or user for a period of
4 less than six months may be based, at the option of the taxpayer, on
5 the fair rental value of such property for the period of use within
6 this State.

7 (c) Leased tangible personal property or digital property which
8 has been purchased outside this State for lease outside of this State
9 and subsequently becomes subject to the compensating use tax
10 imposed under this act shall be taxed on the basis of the purchase
11 price of such property, provided however, that the compensating
12 use tax on such property brought into and used within this State
13 may be based on the total of the lease payments attributable to the
14 lease of that property attributable to the period of the lease
15 remaining after first use in this State.

16 (d) Sales tax imposed on the lease or rental of tangible personal
17 property or digital property in New Jersey shall be based on either
18 the total of the periodic payments required under the agreement or
19 the original purchase price of the property. The full amount of sales
20 tax due on the complete term of a lease or rental for more than six
21 months shall be remitted with the monthly or quarterly sales and use
22 tax return due for the period in which the leased personal property
23 was delivered to the lessee in this State. However, if the tax is paid
24 on a lease or rental based on the original purchase price of the
25 tangible personal property or digital property, a subsequent lease or
26 rental of the same property shall not be subject to the tax imposed
27 under P.L. 1966, c.30 (C.54:32B-1 et seq.).

28 If leased property is subsequently removed on a permanent basis
29 from this State, the lessee shall be entitled to a refund of the tax
30 allocable to the portion of the lease or rental that remains in effect
31 after the property has been removed from this State, but only if the
32 other state does not allow a credit for the sales or use tax paid to
33 this State on the lease or rental transaction, and further, in the case
34 of property removed to a state that imposes or computes tax on
35 leases or rentals based on a lump sum or accelerated basis, only if
36 the other state also allows a corresponding refund with respect to
37 the lease of property upon which a sales or use tax is due and paid
38 to this State.

39 (e) The purchase of energy shall be subject to the compensating
40 use tax imposed under section 6 on the basis of the purchase price
41 of the energy, including any charges for utility service.

42 (cf: P.L.2005, c.126, s.5)

43

44 7. Section 17 of P.L.1980, c.105 (C. 54:32B-8.5) is amended to
45 read as follows:

46 17. a. Receipts from sales of:

47 (1) newspapers,

48 (2) magazines and periodicals sold by subscription, and

1 (3) membership periodicals
2 are exempt from the tax imposed under the “Sales and Use Tax
3 Act,” whether or not accessed by electronic means.

4 b. For the purposes of this section, a “membership periodical” is
5 any periodical distributed by a nonprofit organization to its members
6 as a benefit of membership in the organization.
7 (cf: P.L.1980, c.105, s.17)

8
9 8 Section 23 of P.L.1980, c.105 (C.54:32B-8.11) is amended to
10 read as follows:

11 23. Receipts from charges for the transportation of persons or
12 property[, except of energy,] are exempt from the tax imposed
13 under the “Sales and Use Tax Act,” except for delivery charges;
14 transportation services provided by a limousine operator; and the
15 transportation of energy.
16 (cf: P.L.1997, c.162, s.22)

17
18 9. Section 27 of P.L.1980, c.105 (C.54:32B-8.15) is amended to
19 read as follows:

20 27. Sales or use of wrapping paper, wrapping twine, bags,
21 cartons, tape, rope, labels, nonreturnable containers, reusable milk
22 containers, and all other wrapping supplies when such use is
23 incidental to the delivery of any tangible personal property and
24 containers for use in a "farming enterprise" as defined pursuant to
25 section 28 of P.L.1980, c.105 (C.54:32B-8.16) are exempt from the
26 tax imposed under the Sales and Use Tax Act.
27 (cf: P.L.1999, c.314, s.1)

28
29 10. Section 31 of P.L.1980, c.105 (C.54:32B-8.19) is amended
30 to read as follows:

31 31. Receipts from sales of tangible personal property and
32 services taxable under any municipal ordinance which was adopted
33 pursuant to P.L.1947, c.71 (C.40:48-8.15 et seq.) and was in effect
34 on April 27, 1966 are exempt from the tax imposed under the Sales
35 and Use Tax Act, subject to the following conditions:

36 a. To the extent that the tax that is or would be imposed under
37 section 3 of P.L.1966, c.30 (C.54:32B-3) is greater than the tax
38 imposed by such ordinance, such sales shall not be exempt under
39 this section; and

40 b. Irrespective of the rate of tax imposed by such ordinance,
41 such sales shall be exempt only to the extent that the rate of taxation
42 imposed by the ordinance exceeds 6%, except that the combined
43 rate of taxation imposed under the ordinance and under this section
44 shall not exceed **[12%]** 13%.

45 (cf: P.L.1992, c.11, s.5)

46
47 11. Section 1 of P.L.1993, c.373 (C.54:32B-8.45) is amended to
48 read as follows:

1 1. a. Receipts of retail sales, except retail sales of motor vehicles,
2 of alcoholic beverages, of digital products, and cigarettes as defined
3 in the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.),
4 made by a seller from a place of business regularly operated by the
5 seller for the purpose of making retail sales at which items are
6 regularly exhibited and offered for retail sale and which is not
7 utilized primarily for the purpose of catalogue or mail order sales,
8 in which county is situated an entrance to an interstate bridge or
9 tunnel connecting New Jersey with a state that does not impose a
10 retail sales and use tax or imposes a retail sales and use tax at a rate
11 at least five percentage points lower than the rate in this State, are
12 exempt to the extent of 50% of the tax imposed under the "Sales
13 and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

14 b. The exemption provided by subsection a. of this section
15 shall apply unless a seller advises the director, in writing, that it
16 intends to collect the tax at the full rate imposed under the "Sales
17 and Use Tax Act".

18 (cf: P.L.2005, c.126, s.14)

19

20 12 Section 15 of P.L.2005, c.126 (C.54:32B-8.56) is amended to
21 read as follows:

22 15. Receipts from sales of prewritten software delivered
23 electronically and used directly and exclusively in the conduct of
24 the purchaser's business, trade or occupation are exempt from the
25 tax imposed under the "Sales and Use Tax Act", P.L.1966, c.30
26 (C.54:32B-1 et seq.). The exemption provided by this section shall
27 not apply to receipts from sales of prewritten software delivered by
28 a load and leave method.

29 "Computer" means an electronic device that accepts information
30 in digital or similar form and manipulates it for a result based on a
31 sequence of instructions.

32 "Computer software" means a set of coded instruction designed
33 to cause a computer or automatic data processing equipment to
34 perform a task.

35 "Delivered electronically" means delivered from the seller to the
36 purchaser by means other than tangible storage media.

37 "Electronic" means relating to technology having electrical,
38 digital magnetic, wireless, optical, electromagnetic, or similar
39 capabilities.

40 "Load and leave" means delivery to the purchaser by the use of a
41 tangible storage medium where the tangible storage medium is not
42 physically transferred to the purchaser.

43 "Prewritten computer software" means computer software,
44 including prewritten upgrades, which is not designed and developed
45 by the author or other creator to the specifications of a specific
46 purchaser. The combining of two or more prewritten computer
47 software programs or pre-written portions thereof shall not cause
48 the combination to be other than prewritten computer software.

1 "Prewritten computer software" includes software designed and
2 developed by the author or other creator to the specifications of a
3 specific purchaser when it is sold to a person other than such
4 purchaser. If a person modifies or enhances computer software of
5 which that person is not the author or creator, the person shall be
6 deemed to be the author or creator only of such person's
7 modifications or enhancements. Prewritten software or a prewritten
8 portion thereof that is modified or enhanced to any degree, where
9 such modification or enhancement is designed and developed to the
10 specifications of a specific purchaser, shall remain pre-written
11 software; provided, however, that if there is a reasonable, separately
12 stated charge or an invoice or other statement of the price given to
13 the purchaser for such modification or enhancement, such
14 modification or enhancement shall not constitute pre-written
15 computer software. "Prewritten computer software" shall not
16 include software delivered electronically.

17 (cf: P.L.2005, c.126, s.15)

18

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

21 9. (a) Except as to motor vehicles sold by any of the following,
22 any sale, service or amusement charge by or to any of the following
23 or any use or occupancy by any of the following shall not be subject
24 to the sales and use taxes imposed under this act:

25 (1) The State of New Jersey, or any of its agencies,
26 instrumentalities, public authorities, public corporations (including
27 a public corporation created pursuant to agreement or compact with
28 another state) or political subdivisions where it is the purchaser,
29 user or consumer, or where it is a seller of services or property of a
30 kind not ordinarily sold by private persons;

31 (2) The United States of America, and any of its agencies and
32 instrumentalities, insofar as it is immune from taxation where it is
33 the purchaser, user or consumer, or where it sells services or
34 property of a kind not ordinarily sold by private persons;

35 (3) The United Nations or any international organization of
36 which the United States of America is a member where it is the
37 purchaser, user or consumer, or where it sells services or property
38 of a kind not ordinarily sold by private persons.

39 (b) Except as otherwise provided in this section any sale or
40 amusement charge by or to any of the following or any use or
41 occupancy by any of the following, where such sale, charge, use or
42 occupancy is directly related to the purposes for which the
43 following have been organized, shall not be subject to the sales and
44 use taxes imposed under this act: a corporation, association, trust,
45 or community chest, fund or foundation, organized and operated
46 exclusively (1) for religious, charitable, scientific, testing for public
47 safety, literary or educational purposes; or (2) for the prevention of
48 cruelty to children or animals; or (3) as a volunteer fire company,

1 rescue, ambulance, first aid or emergency company or squad; or (4)
2 as a National Guard organization, post or association, or as a post or
3 organization of war veterans, or the Marine Corps League, or as an
4 auxiliary unit or society of any such post, organization or
5 association; or (5) as an association of parents and teachers of an
6 elementary or secondary public or private school exempt under the
7 provisions of this section. Such a sale, charge, use or occupancy
8 by, or a sale or charge to, an organization enumerated in this
9 subsection, shall not be subject to the sales and use taxes only if no
10 part of the net earnings of the organization inures to the benefit of
11 any private shareholder or individual, no substantial part of the
12 activities of the organization is carrying on propaganda, or
13 otherwise attempting to influence legislation, and the organization
14 does not participate in, or intervene in (including the publishing or
15 distributing of statements), any political campaign on behalf of any
16 candidate for public office.

17 (c) Nothing in this section shall exempt from the taxes imposed
18 under the "Sales and Use Tax Act":

19 (1) the sale of a motor vehicle by an organization described in
20 subsection (b) of this section, unless the purchaser is an
21 organization exempt under this section;

22 (2) retail sales of tangible personal property or digital property
23 by any shop or store operated by an organization described in
24 subsection (b) of this section, unless the tangible personal property
25 or digital property was received by the organization as a gift or
26 contribution and the shop or store is one in which substantially all
27 the work in carrying on the business of the shop or store is
28 performed for the organization without compensation and
29 substantially all of the shop's or store's merchandise has been
30 received by the organization as gifts or contributions or unless the
31 purchaser is an organization exempt under this section; or

32 (3) the sale or use of energy or utility service to or by an
33 organization described in paragraph (1) of subsection (a) or
34 subsection (b) of this section.

35 (d) Any organization enumerated in subsection (b) of this
36 section shall not be entitled to an exemption granted pursuant to this
37 section unless it has complied with such requirements for obtaining
38 a tax immunity authorization as may be provided in this act.

39 (e) Where any organization described in subsection (b) of this
40 subsection carries on its activities in furtherance of the purposes for
41 which it was organized, in premises in which, as part of those
42 activities, it operates a hotel, occupancy of rooms in the premises
43 and rents from those rooms received by the organization shall not
44 be subject to tax under the "Sales and Use Tax Act."

45 (f) (1) Except as provided in paragraph (2) of this subsection,
46 any admissions all of the proceeds of which inure exclusively to the
47 benefit of the following organizations shall not be subject to any of

1 the taxes imposed under subsection (e) of section 3 of P.L.1966,
2 c.30 (C.54:32B-3):

3 (A) an organization described in paragraph (1) of subsection (a)
4 or subsection (b) of this section;

5 (B) a society or organization conducted for the sole purpose of
6 maintaining symphony orchestras or operas and receiving
7 substantial support from voluntary contributions; or

8 (C) (Deleted by amendment, P.L.1999, c.416).

9 (D) a police or fire department of a political subdivision of the
10 State, or a volunteer fire company, ambulance, first aid, or
11 emergency company or squad, or exclusively to a retirement,
12 pension or disability fund for the sole benefit of members of a
13 police or fire department or to a fund for the heirs of such members.

14 (2) The exemption provided under paragraph (1) of this
15 subsection shall not apply in the case of admissions to:

16 (A) Any athletic game or exhibition unless the proceeds shall
17 inure exclusively to the benefit of elementary or secondary schools
18 or unless in the case of an athletic game between two elementary or
19 secondary schools, the entire gross proceeds from such game shall
20 inure to the benefit of one or more organizations described in
21 subsection (b) of this section;

22 (B) Carnivals, rodeos, or circuses in which any professional
23 performer or operator participates for compensation;

24 (3) Admission charges for admission to the following places or
25 events shall not be subject to any of the taxes imposed under
26 subsection (e) of section 3 of P.L.1966, c.30 (C.54:32B-3):

27 (A) Any admission to agricultural fairs if no part of the net
28 earnings thereof inures to the benefit of any stockholders or
29 members of the association conducting the same; provided the
30 proceeds therefrom are used exclusively for the improvement,
31 maintenance and operation of such agricultural fairs.

32 (B) Any admission to a home or garden which is temporarily
33 open to the general public as a part of a program conducted by a
34 society or organization to permit the inspection of historical homes
35 and gardens; provided no part of the net earnings thereof inures to
36 the benefit of any private stockholder or individual.

37 (C) Any admissions to historic sites, houses and shrines, and
38 museums conducted in connection therewith, maintained and
39 operated by a society or organization devoted to the preservation
40 and maintenance of such historic sites, houses, shrines and
41 museums; provided no part of the net earnings thereof inures to the
42 benefit of any private stockholder or individual.

43 (cf: P.L.2005, c.126, s.17)

44

45 14. Section 12 of P.L.1966, c.30 (C.54:32B-12) is amended to
46 read as follows:

47 12. (a) Every person required to collect the tax shall collect the
48 tax from the customer when collecting the price, service charge,

1 amusement charge or rent to which it applies. If the customer is
2 given any sales slip, invoice, receipt or other statement or
3 memorandum of the price, service charge, amusement charge or
4 rent paid or payable, the tax shall be stated, charged and shown
5 separately on the first of such documents given to him. The tax
6 shall be paid to the person required to collect it as trustee for and on
7 account of the State.

8 (b) For the purpose of the proper administration of this act and
9 to prevent evasion of the tax hereby imposed, and subject to the
10 rules regarding the administration of exemptions authorized by the
11 Streamlined Sales and Use Tax Agreement, it shall be presumed
12 that all receipts for property or services of any type mentioned in
13 subsections (a), (b) and (c) of section 3, all rents for occupancy of
14 the type mentioned in subsection (d) of said section, and all
15 amusement charges of any type mentioned in subsection (e) of said
16 section, are subject to tax until the contrary is established, and the
17 burden of proving that any such receipt, amusement charge or rent
18 is not taxable hereunder shall be upon the person required to collect
19 tax or the customer. Unless a seller shall have taken from the
20 purchaser a certificate, signed by the purchaser if in paper form and
21 bearing the purchaser's name and address and the number of the
22 purchaser's registration certificate, to the effect that the property or
23 service was purchased for resale or the purchaser prior to taking
24 delivery, furnishes to the seller any affidavit, statement or
25 additional evidence, documentary or otherwise, which the director
26 may require demonstrating that the purchaser is an exempt
27 organization described in section 9(b)(1), the sale shall be deemed a
28 taxable retail sale. Provided however, the director may, in the
29 director's discretion, authorize a purchaser, who acquires tangible
30 personal property, digital property or services under circumstances
31 which make it impossible at the time of acquisition to determine the
32 manner in which the tangible personal property, digital property or
33 services will be used, to pay the tax directly to the director and
34 waive the collection of the tax by the seller or provide for direct pay
35 authority under rules adopted under the Streamlined Sales and Use
36 Tax Agreement. Provided further, the director shall authorize any
37 eligible person, as defined in section 34 of P.L.1997, c.162
38 (C.54:32B-14.1), who purchases natural gas from a non-utility on
39 and after January 1, 1998 through December 31, 2002, to pay the
40 tax on the commodity directly to the director and waive the
41 collection of the tax by the seller. No such authority shall be
42 granted or exercised except upon application to the director, and the
43 issuance by the director of a direct payment permit. If a direct
44 payment permit is granted, its use shall be subject to conditions
45 specified by the director, and the payment of tax on all acquisitions
46 pursuant to the permit shall be made directly to the director by the
47 permit holder.

1 (c) The director may provide by regulation that the tax upon
2 receipts from sales on the installment plan may be paid on the
3 amount of each installment and upon the date when such installment
4 is due. He may also provide by regulation for the exclusion from
5 taxable receipts, amusement charges or rents of amounts subject, as
6 applicable, to the provisions of section 30 of P.L.2005, c.126
7 (C.54:32B-12.1), representing sales where the contract of sale has
8 been canceled, the property returned or the receipt, charge or rent
9 has been ascertained to be uncollectible or, in the case the tax has
10 been paid upon such receipt, charge or rent, for refund or credit of
11 the tax so paid.

12 (cf: P.L.2005, c.126, s.20)

13

14 15. Section 17 of P.L.1966, c.30 (C.54:32B-15) is amended to
15 read as follows:

16 15. (a) On or before June 20, 1966, or in the case of persons
17 commencing business or opening new places of business after such
18 date, within three days after such commencement or opening, every
19 person required to collect any tax imposed by this act and every
20 person purchasing tangible personal property or digital property for
21 resale shall file with the director a certificate of registration in a
22 form prescribed by the director. In the case of a person
23 commencing business or opening a new place of business on or
24 after the first day of the third month following the enactment of
25 P.L.1993, c.274 (C.40:52-1.3 et al.), the certificate shall be filed at
26 least 15 business days before the commencement or opening. The
27 director shall within five days after such registration issue, without
28 charge, to each registrant a certificate of authority empowering the
29 registrant to collect the tax and a duplicate thereof for each
30 additional place of business of such registrant. Each certificate or
31 duplicate shall state the place of business to which it is applicable.
32 Such certificate of authority shall be prominently displayed in the
33 place of business of the registrant. A registrant who has no regular
34 place of doing business shall attach such certificate to his cart,
35 stand, truck or other merchandising device. Such certificates shall
36 be nonassignable and nontransferable and shall be surrendered to
37 the director immediately upon the registrant's ceasing to do business
38 at the place named.

39 (b) Any person who is not otherwise required to collect any tax
40 imposed by this act and who makes sales to persons within the State
41 of tangible personal property, digital property or services, the use of
42 which is subject to tax under this act, may if he so elects file a
43 certificate of registration with the director who may, in his
44 discretion and subject to such conditions as he may impose, issue to
45 him a certificate of authority to collect the compensating use tax
46 imposed by this act.

47 (c) A seller that registers to pay or collect and remit sales or use
48 tax in accordance with the terms of the Streamlined Sales and Use

1 Tax Agreement may select one of the following methods of
2 remittance or other method allowed by State law to remit the taxes
3 collected, subject to the liabilities and conditions established
4 pursuant to section 10 of P.L.2001, c.431 (C.54:32B-53):

5 (1) a model 1 seller, that selects a certified service provider as
6 an agent to perform all the seller's sales or use tax functions, other
7 than the seller's obligation to remit tax on its own purchases;

8 (2) a model 2 seller, that selects a certified automated system to
9 use which calculates the amount of tax due on a transaction; or

10 (3) a model 3 seller, that uses its own proprietary automated
11 sales tax system that has been certified as a certified automated
12 system.

13 (d) A certified service provider in model 1 shall be allowed a
14 monetary allowance in accordance with the terms of the contract
15 that the states participating in the Streamlined Sales and Use Tax
16 Agreement sign with the provider. The director shall prescribe the
17 allowance in accordance with the terms of the contract, which shall
18 be funded entirely from money collected in model 1.

19 A monetary allowance to a certified service provider may be
20 based on one or more of the following incentives:

21 (1) A base rate that applies to taxable transactions processed by
22 the provider.

23 (2) For a period not to exceed 24 months following a voluntary
24 seller's registration through the Streamlined Sales and Use Tax
25 Agreement's central registration process, a percentage of tax
26 revenue generated for a member state by the voluntary seller for
27 each member state for which the seller does not have a requirement
28 to register to collect the tax.

29 (e) A model 2 seller shall be allowed a monetary allowance
30 which the director shall prescribe in accordance with the terms
31 arrived at by the member states of the Streamlined Sales and Use
32 Tax Agreement. The member states initially anticipate that they will
33 provide a monetary allowance to sellers under model 2 based on the
34 following:

35 (1) Each seller shall receive a base rate for a period not to
36 exceed 24 months following the commencement of participation by
37 the seller.

38 (2) For a period not to exceed 24 months following a voluntary
39 seller's registration through the Streamlined Sales and Use Tax
40 Agreement's central registration process, a percentage of tax
41 revenue generated for a member state by the voluntary seller for
42 each member state for which the seller does not have a requirement
43 to register to collect the tax.

44 (f) A model 3 seller and all other sellers that are not under
45 model 1 or model 2 shall be allowed a monetary allowance which
46 the director shall prescribe in accordance with the terms arrived at
47 by the member states of the Streamlined Sales and Use Tax
48 Agreement. The member states initially anticipate that they will

1 provide a monetary allowance to sellers under model 3 and to all
2 other sellers that are not under models 1 or 2 will be based on the
3 following: for a period not to exceed 24 months following a
4 voluntary seller's registration through the Streamlined Sales and
5 Use Tax Agreement's central registration process, a percentage of
6 tax revenue generated for a member state by the voluntary seller for
7 each member state for which the seller does not have a requirement
8 to register to collect the tax.

9 (cf: P.L.2005, c.126, s.23)

10

11 16. Section 17 of P.L.1966, c.30 (C.54:32B-17) is amended to
12 read as follows:

13 17. (a) Every person required to collect or pay tax under this act
14 shall on or before August 28, 1966, and on or before the twentieth
15 day of each month thereafter, make and file a return for the
16 preceding month with the director. The return of a seller of tangible
17 personal property, digital property or services shall show his
18 receipts from sales and also the aggregate value of tangible personal
19 property, digital property and services sold by him, the use of which
20 is subject to tax under this act, and the amount of taxes required to
21 be collected with respect to such sales and use. The return of a
22 recipient of amusement charges shall show all such charges and the
23 amount of tax thereon, and the return of a person required to collect
24 tax on leases or rentals shall show all lease or rental payments
25 received or charged and the amount of tax thereon.

26 (b) The director may permit or require returns to be made
27 covering other periods and upon such dates as he may specify. In
28 addition, the director may require payments of tax liability at such
29 intervals and based upon such classifications as he may designate.
30 In prescribing such other periods to be covered by the return or
31 intervals or classifications for payment of tax liability, the director
32 may take into account the dollar volume of tax involved as well as
33 the need for insuring the prompt and orderly collection of the taxes
34 imposed.

35 (c) The form of returns shall be prescribed by the director and
36 shall contain such information as he may deem necessary for the
37 proper administration of this act. The director may require
38 amended returns to be filed within 20 days after notice and to
39 contain the information specified in the notice.

40 (d) Pursuant to the Streamlined Sales and Use Tax Agreement,
41 the director is authorized to accept certified automated systems and
42 certified service providers to aid in the administration of the
43 collection of the tax imposed under the "Sales and Use Tax Act".

44 (e) Subject to the limitations of this subsection and other
45 provisions of the "Sales and Use Tax Act":

46 (1) In addition to the powers of the director prescribed pursuant
47 to section 24 of P.L.1966, c.30 (C.54:32B-24) and the "State
48 Uniform Tax Procedure Law," R.S.54:48-1 et seq., and

1 notwithstanding the provisions of any other law to the contrary, the
2 director shall grant "amnesty" for uncollected or unpaid sales or use
3 tax to a seller that registers to collect and remit applicable sales or
4 use tax on sales made to purchasers in this State in accordance with
5 the terms of the Streamlined Sales and Use Tax Agreement,
6 provided that the seller was not so registered in this State in the
7 twelve-month period preceding the commencement of this State's
8 participation in the agreement.

9 (2) Under terms of the "amnesty" granted pursuant to paragraph
10 (1) of this subsection, a seller that registers shall not be assessed for
11 uncollected or unpaid sales or use tax and shall not be assessed
12 penalties or interest for sales made during the period the seller was
13 not registered in this State, provided that the seller registers
14 pursuant to paragraph (1) of this subsection within twelve months
15 of the effective date of this State's participation in the Streamlined
16 Sales and Use Tax Agreement.

17 (3) The limitations on deficiency assessments, penalties and
18 interest pursuant to paragraph (2) of this subsection shall not be
19 available to a seller with respect to any matter for which the seller
20 received notice of the commencement of an audit and which audit is
21 not yet finally resolved including any related administrative and
22 judicial processes.

23 (4) The limitations on deficiency assessments, penalties and
24 interest pursuant to paragraph (2) of this subsection shall not be
25 available for sales or use taxes already paid or remitted to the State
26 or to taxes already collected by the seller.

27 (5) The "amnesty" limitations on deficiency assessments,
28 penalties and interest pursuant to paragraph (2) of this subsection
29 shall be in full effect and the director shall not assess deficiencies
30 for uncollected or unpaid sales or use tax and shall not assess
31 penalties or interest for sales made during the period the seller was
32 not registered in this State so long as the seller continues
33 registration and continues collection and remittance of applicable
34 sales or use taxes for a period of at least 36 months: provided
35 however that the director may make such assessments by reason of
36 the seller's fraud or intentional misrepresentation of a material fact.
37 The statutes of limitations applicable to asserting a tax liabilities,
38 deficiencies, penalties and interest are tolled for this 36 month
39 period.

40 (6) The "amnesty" granted pursuant to paragraph (1) of this
41 subsection shall apply only to sales or use taxes due from a seller in
42 its capacity as a seller and shall not apply to sales or use taxes due
43 from a seller in its capacity as a buyer.

44 (cf: P.L.2005, c.126, s.24)

45

46 17 Section 33 of P.L.2005, c.126 (C.54:32B-28.1) is amended to
47 read as follows:

48 33. **[On and after October 1, 2005:]**

1 a. The effective date of any sales and use tax rate change shall
2 be the first day of ~~the~~ a calendar quarter ~~next succeeding the~~
3 expiration of one full calendar quarter immediately following
4 enactment of the rate change] and a sales and use tax rate change
5 for services covering a period starting before and ending after that
6 effective date shall first apply as follows: for a rate increase, the
7 new rate shall apply to the first billing period starting on or after the
8 effective date, and for a rate decrease, the new rate shall apply to
9 bills rendered on or after the effective date;

10 b. The State shall make a reasonable effort to: provide sellers
11 with as much advance notice as practicable of a rate change, limit
12 the effective date of a rate change to the first day of a calendar
13 quarter, and notify sellers of legislative changes in the tax base and
14 amendments to sales and use tax rules and regulations; however,
15 failure of a seller to receive notice or failure of the State to provide
16 notice or limit the effective date of a rate change shall not relieve
17 the seller of its obligation to collect sales or use taxes;

18 c. Any exemption, exception or exclusion from sales and use
19 taxation shall be enacted only in accordance with the applicable
20 provisions of the Streamlined Sales and Use Tax Agreement;

21 ~~[c.]~~ d. The State shall be subject to the uniform rules for the
22 remittance of funds as provided in the Streamlined Sales and Use
23 Tax Agreement;

24 ~~[d.]~~ e. The State shall be subject to the privacy and
25 confidentiality provisions provided in the Streamlined Sales and
26 Use Tax Agreement for participants in the system and consumers
27 who deal with Model 1 sellers;

28 ~~[e.]~~ f. The uniform rules for the recovery of bad debts contained
29 in the Streamlined Sales and Use Tax Agreement shall be in effect;
30 and

31 ~~[f.]~~ g. The State shall not use registration with the central
32 registration system and the collection of sales and use taxes in the
33 member states as a factor in determining whether the seller has
34 nexus with this State for any tax at any time.

35 (cf: P.L.2005, c.126, s.33)

36
37 18. Section 1 of P.L.2003, c.114 (C.54:32D-1) is amended to
38 read as follows:

39 1. a. In addition to any other tax, assessment or use fee
40 authorized by law, there is imposed and shall be paid a hotel and
41 motel occupancy fee of 7% for occupancies on and after August 1,
42 2003 but before July 1, 2004, and of 5% for occupancies on and
43 after July 1, 2004, upon the rent for every occupancy of a room or
44 rooms in a hotel subject to taxation pursuant to subsection (d) of
45 section 3 of P.L. 1966, c.30 (C:54:32B-3), which every person
46 required to collect tax shall collect from the customer when
47 collecting the rent to which it applies; provided however, that on

1 and after the tenth day following a certification by the Director of
2 the Division of Budget and Accounting in the Department of the
3 Treasury pursuant to subsection d. of section 2 of P.L.2003, c.114
4 (C.54:32D-2), no such fee shall be paid or collected; and provided
5 further that:

6 (1) the combined rates of the fee imposed under this section,
7 plus the tax imposed under the "Sales and Use Tax Act", P.L.1966,
8 c.30 (C.54:32B-1 et seq.), plus any tax imposed under P.L.1947,
9 c.71 (C.40:48-8.15 et seq.), shall not exceed a total rate of ~~13%~~
10 14%, and to the extent that the total combined rate of taxation for
11 the listed fees and taxes would exceed ~~13%~~ 14%, the fee imposed
12 under this section shall be reduced so that the total combined rate
13 equals ~~13%~~ 14%;

14 (2) the combined rates of the fee imposed under this section,
15 plus the tax imposed under the "Sales and Use Tax Act", P.L.1966,
16 c.30 (C.54:32B-1 et seq.), plus any tax and assessment imposed
17 under section 4 of P.L.1992, c.165 (C.40:54D-4), shall not exceed a
18 total rate of ~~13%~~ 14%, and to the extent that the total combined
19 rate of taxation for the listed fees and taxes would exceed ~~13%~~
20 14%, the fee imposed under this section shall be reduced so that the
21 total combined rate equals ~~13%~~ 14%; and

22 (3) the fee imposed under this section shall be at the rate of 1%
23 in a city in which the tax authorized under P.L.1981, c. 77
24 (C.40:48E-1 et seq.) is imposed.

25 b. The hotel and motel occupancy fee imposed by subsection a.
26 of this section shall not be imposed on the rent for an occupancy if
27 the purchaser, user or consumer is an entity exempt from the tax
28 imposed on an occupancy under the "Sales and Use Tax Act"
29 pursuant to subsection (a) of section 9 of P.L.1966, c.30 (C.54:32B-
30 9).

31 c. Terms used in this section shall have the meaning given
32 those terms pursuant to section 2 of P.L.1966, c.30 (C.54:32B-2).
33 (cf: P.L.2003, c.114, s.1)

34
35 19. (New section) Notwithstanding the provisions of sections 3
36 and 6 of P.L.1966, c.30 (C.54:32B-3 and 54:32B-6) to the contrary,
37 from July 15, 2006 through September 30, 2006 the rate of tax
38 imposed pursuant to the "Sales and Use Tax Act," P.L.1966, c.30
39 (C.54:32B-1 et seq.) shall be 7%.

40
41 20. This act shall take effect immediately, provided however
42 that sections 3, 4, 10 and 18 shall remain inoperative until July 15,
43 2006 and provided further that sections 1, 2, 5 through 9, and 11
44 through 16 shall remain inoperative until October 1, 2006.

STATEMENT

1

2

3 This bill increases the rate of the sales and use tax from 6% to
4 7%, beginning July 15, 2006.

5 This bill also extends the base of the sales and use tax, beginning
6 October 1, 2006, encompassing product categories that have come
7 into being with new technologies, limiting some exclusions from
8 taxation, and extending the tax to new services.

9 The bill establishes the new taxable category of "digital
10 property." Digital property is electronically delivered music,
11 ringtones, movies, books, audio and video works and similar
12 products, where the customer is granted a right or license to use,
13 retain or make a copy of such item. This means that downloaded
14 music, downloaded movies and downloaded books will be subject
15 to tax in the same way that records, movie DVDs and books
16 purchased in a store are taxed now. The bill also limits the current
17 exemption for prewritten software delivered electronically to
18 electronically delivered software that is used directly and
19 exclusively in the conduct of the purchaser's business, trade or
20 occupation.

21 The bill eliminates the exemption for seller delivery charges that
22 are separately stated from the purchase price of an item. Currently,
23 separately stated delivery charges are nontaxable while "included"
24 delivery is taxable. This bill treats the cost of all items, including
25 delivery charges, as the taxable cost of the items whether separately
26 stated or not. The bill provides for the taxation of delivery charges
27 on taxable items and the exemption of delivery charges on
28 nontaxable items like food and clothing.

29 The bill specifically limits the sales tax exemptions for
30 laundering, dry cleaning, tailoring, weaving, and pressing to
31 providing those services to clothing. An old administrative decision
32 currently allows the exemption to apply to other items, like drapery
33 and carpets.

34 The bill limits the exemption for the building contractor services
35 of landscaping and the installation of carpeting and other flooring.
36 Current law provides an exemption for property installation services
37 that constitute a "capital improvement." This bill eliminates that
38 exemption for landscaping and the installation of flooring.

39 The bill extends the sales tax to charges for the following
40 services:

- 41 • furnishing of space for storage, such as charges for self-
42 storage rentals;
- 43 • tanning services;
- 44 • massage services, exempting medically prescribed services;
- 45 • tattooing, including permanent body art and permanent
46 cosmetic make-up;
- 47 • investigation and security services;
- 48 • information services;

- 1 • limousine services originating in this State, except as
2 provided in connection with funeral services;
3 • initiation fees, membership fees or dues for access to or use
4 of the property or facilities of a health and fitness, athletic,
5 sporting or shopping club or organization, except for
6 membership in a club or organization whose members are
7 predominantly age 18 or under;
8 • parking, storing or garaging a motor vehicle (other than
9 employee parking, municipal metered parking and parking
10 subject to municipal parking taxes); and
11

12 The bill makes two technical changes. First, the bill includes a
13 provision that clarifies the sales and use tax collection responsibility
14 of a corporation that does not maintain a place of business in New
15 Jersey but, through another corporation that is related through
16 common ownership, conducts business activity in New Jersey
17 through the actions of the related New Jersey agent corporation in
18 furtherance of common marketing, promotion, selling or service
19 activity.

20 Second, the bill incorporates several rate change provisions of
21 the Streamlined Sales and Use Tax Agreement, in which New
22 Jersey is a participant, into the New Jersey sales and use tax. The
23 agreement requires a rate change for services to first apply for a rate
24 increase to the first billing period starting on or after the effective
25 date of the increase and for a rate decrease to first apply to bills
26 rendered on or after the effective date of the decrease. Under the
27 agreement, this State shall make a reasonable effort to: provide
28 sellers with as much advance notice as practicable of a rate change,
29 limit the effective date of a rate change to the first day of a calendar
30 quarter, and notify sellers of legislative changes in the tax base and
31 amendments to sales and use tax rules and regulations; however,
32 failure of a seller to receive notice or failure of the State to provide
33 notice or limit the effective date of a rate change shall not relieve
34 the seller of its obligation to collect sales or use taxes.

35

36

37

38

39 Increases sales and use tax from 6% to 7% on July 15, 2006 and
40 expands base of sales and use tax on October 1, 2006.

ASSEMBLY, No. 4901

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JULY 6, 2006

Sponsored by:

Assemblyman WILLIAM D. PAYNE

District 29 (Essex and Union)

Assemblywoman NILSA CRUZ-PEREZ

District 5 (Camden and Gloucester)

Co-Sponsored by:

Senator Kenny

SYNOPSIS

Increases sales and use tax from 6% to 7% on July 15, 2006 and expands base of sales and use tax on October 1, 2006.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 7/10/2006)

1 AN ACT concerning the sales and use tax, amending and
2 supplementing P.L.1966, c.30, and amending P.L.1980, c.105,
3 P.L.1993, c.373, P.L.2003, c.114, and P.L.2005, c.126.

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,
11 the following terms when used in this act shall mean:

12 (a) "Person" includes an individual, trust, partnership, limited
13 partnership, limited liability company, society, association, joint
14 stock company, corporation, public corporation or public authority,
15 estate, receiver, trustee, assignee, referee, fiduciary and any other
16 legal entity.

17 (b) "Purchase at retail" means a purchase by any person at a
18 retail sale.

19 (c) "Purchaser" means a person to whom a sale of personal
20 property is made or to whom a service is furnished.

21 (d) "Receipt" means the amount of the sales price of any
22 tangible personal property or digital property or service taxable
23 under this act.

24 (e) "Retail sale" means any sale, lease, or rental for any purpose,
25 other than for resale, sublease, or subrent.

26 (1) For the purposes of this act a sale is for "resale, sublease, or
27 subrent" if it is a sale (A) for resale either as such or as converted
28 into or as a component part of a product produced for sale by the
29 purchaser, including the conversion of natural gas into another
30 intermediate or end product, other than electricity or thermal
31 energy, produced for sale by the purchaser, or (B) for use by that
32 person in performing the services subject to tax under subsection
33 (b) of section 3 where the property so sold becomes a physical
34 component part of the property upon which the services are
35 performed or where the property so sold is later actually transferred
36 to the purchaser of the service in conjunction with the performance
37 of the service subject to tax.

38 (2) For the purposes of this act, the term "retail sale" includes:
39 sales of tangible personal property to all contractors, subcontractors
40 or repairmen of materials and supplies for use by them in erecting
41 structures for others, or building on, or otherwise improving,
42 altering, or repairing real property of others.

43 (3) (Deleted by amendment, P.L.2005, c.126).

44 (4) The term "retail sale" does not include:

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 (A) Professional, insurance, or personal service transactions
2 which involve the transfer of tangible personal property as an
3 inconsequential element, for which no separate charges are made.
- 4 (B) The transfer of tangible personal property to a corporation,
5 solely in consideration for the issuance of its stock, pursuant to a
6 merger or consolidation effected under the laws of New Jersey or
7 any other jurisdiction.
- 8 (C) The distribution of property by a corporation to its
9 stockholders as a liquidating dividend.
- 10 (D) The distribution of property by a partnership to its partners
11 in whole or partial liquidation.
- 12 (E) The transfer of property to a corporation upon its
13 organization in consideration for the issuance of its stock.
- 14 (F) The contribution of property to a partnership in
15 consideration for a partnership interest therein.
- 16 (G) The sale of tangible personal property where the purpose of
17 the vendee is to hold the thing transferred as security for the
18 performance of an obligation of the seller.
- 19 (f) "Sale, selling or purchase" means any transfer of title or
20 possession or both, exchange or barter, rental, lease or license to
21 use or consume, conditional or otherwise, in any manner or by any
22 means whatsoever for a consideration, or any agreement therefor,
23 including the rendering of any service, taxable under this act, for a
24 consideration or any agreement therefor.
- 25 (g) "Tangible personal property" means personal property that
26 can be seen, weighed, measured, felt, or touched, or that is in any
27 other manner perceptible to the senses. "Tangible personal
28 property" includes electricity, water, gas, steam, and prewritten
29 computer software including prewritten computer software
30 delivered electronically.
- 31 (h) "Use" means the exercise of any right or power over tangible
32 personal property, digital property, services to property, or services
33 by the purchaser thereof and includes, but is not limited to, the
34 receiving, storage or any keeping or retention for any length of
35 time, withdrawal from storage, any distribution, any installation,
36 any affixation to real or personal property, or any consumption of
37 such property. Use also includes the exercise of any right or power
38 over intrastate or interstate telecommunications and prepaid calling
39 services. Use also includes the exercise of any right or power over
40 utility service. Use also includes the derivation of a direct or
41 indirect benefit from a service.
- 42 (i) "Seller" means a person making sales, leases or rentals of
43 personal property or services.
- 44 (1) The term "seller" includes:
- 45 (A) A person making sales, leases or rentals of tangible personal
46 property, digital property or services, the receipts from which are
47 taxed by this act;

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

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

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

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

21 (F) (Deleted by amendment, P.L.2005, c.126); **[and]**

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

25 (H) A person engaged in collecting charges in the nature of
26 initiation fees, membership fees or dues for access to or use of the
27 property or facilities of a health and fitness, athletic, sporting or
28 shopping club or organization;

29 (I) A person engaged in the business of parking, storing or
30 garaging motor vehicles; and

31 (2) In addition, when in the opinion of the director it is
32 necessary for the efficient administration of this act to treat any
33 salesman, representative, peddler or canvasser as the agent of the
34 seller, distributor, supervisor or employer under whom the agent
35 operates or from whom the agent obtains tangible personal property
36 or digital property sold by the agent or for whom the agent solicits
37 business, the director may, in the director's discretion, treat such
38 agent as the seller jointly responsible with the agent's principal,
39 distributor, supervisor or employer for the collection and payment
40 over of the tax. A person is an agent of a seller in all cases, but not
41 limited to such cases, that: (A) the person and the seller have the
42 relationship of a "related person" described pursuant to section 2 of
43 P.L.1993, c.170 (C.54:10A-5.5); and (B) the seller and the person
44 use an identical or substantially similar name, tradename,
45 trademark, or goodwill, to develop, promote, or maintain sales, or
46 the person and the seller pay for each other's services in whole or in
47 part contingent upon the volume or value of sales, or the person and
48 the seller share a common business plan or substantially coordinate

1 their business plans, or the person provides services to, or that inure
2 to the benefit of, the seller related to developing, promoting, or
3 maintaining the seller's market.

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

8 (k) "Occupancy" means the use or possession or the right to the
9 use or possession, of any room in a hotel.

10 (l) "Occupant" means a person who, for a consideration, uses,
11 possesses, or has the right to use or possess, any room in a hotel
12 under any lease, concession, permit, right of access, license to use
13 or other agreement, or otherwise.

14 (m) "Permanent resident" means any occupant of any room or
15 rooms in a hotel for at least 90 consecutive days shall be considered
16 a permanent resident with regard to the period of such occupancy.

17 (n) "Room" means any room or rooms of any kind in any part or
18 portion of a hotel, which is available for or let out for any purpose
19 other than a place of assembly.

20 (o) "Admission charge" means the amount paid for admission,
21 including any service charge and any charge for entertainment or
22 amusement or for the use of facilities therefor.

23 (p) "Amusement charge" means any admission charge, dues or
24 charge of roof garden, cabaret or other similar place.

25 (q) "Charge of a roof garden, cabaret or other similar place"
26 means any charge made for admission, refreshment, service, or
27 merchandise at a roof garden, cabaret or other similar place.

28 (r) "Dramatic or musical arts admission charge" means any
29 admission charge paid for admission to a theater, opera house,
30 concert hall or other hall or place of assembly for a live, dramatic,
31 choreographic or musical performance.

32 (s) "Lessor" means any person who is the owner, licensee, or
33 lessee of any premises or, tangible personal property or digital
34 property which the person leases, subleases, or grants a license to
35 use to other persons.

36 (t) "Place of amusement" means any place where any facilities
37 for entertainment, amusement, or sports are provided.

38 (u) "Casual sale" means an isolated or occasional sale of an item
39 of tangible personal property or digital property by a person who is
40 not regularly engaged in the business of making retail sales of such
41 property where the item was obtained by the person making the
42 sale, through purchase or otherwise, for the person's own use.

43 (v) "Motor vehicle" includes all vehicles propelled otherwise
44 than by muscular power (excepting such vehicles as run only upon
45 rails or tracks), trailers, semitrailers, house trailers, or any other
46 type of vehicle drawn by a motor-driven vehicle, and motorcycles,
47 designed for operation on the public highways.

1 (w) "Persons required to collect tax" or "persons required to
2 collect any tax imposed by this act" includes: every seller of
3 tangible personal property, digital property or services; every
4 recipient of amusement charges; every operator of a hotel; **[and]**
5 every seller of telecommunications; every recipient of initiation,
6 membership fees or dues for access to or use of the property or
7 facilities of a health and fitness, athletic, sporting or shopping club
8 or organization; and every recipient of charges for parking, storing
9 or garaging a motor vehicle. Said terms shall also include any
10 officer or employee of a corporation or of a dissolved corporation
11 who as such officer or employee is under a duty to act for such
12 corporation in complying with any requirement of this act and any
13 member of a partnership.

14 (x) "Customer" includes: every purchaser of tangible personal
15 property, digital property or services; every patron paying or liable
16 for the payment of any amusement charge; **[and]** every occupant of
17 a room or rooms in a hotel; every person paying charges in the
18 nature of initiation fees, membership fees or dues for access to or
19 use of the property or facilities of a health and fitness, athletic,
20 sporting or shopping club or organization; and every purchaser of
21 parking, storage or garaging a motor vehicle.

22 (y) "Property and services the use of which is subject to tax"
23 includes: (1) all property sold to a person within the State, whether
24 or not the sale is made within the State, the use of which property is
25 subject to tax under section 6 or will become subject to tax when
26 such property is received by or comes into the possession or control
27 of such person within the State; (2) all services rendered to a person
28 within the State, whether or not such services are performed within
29 the State, upon tangible personal property or digital property the use
30 of which is subject to tax under section 6 or will become subject to
31 tax when such property is distributed within the State or is received
32 by or comes into possession or control of such person within the
33 State; (3) intrastate or interstate telecommunications sourced to this
34 State pursuant to section 29 of P.L.2005, c.126 (C.54:32B-3.4); (4)
35 (Deleted by amendment, P.L.1995, c.184); (5) energy sold,
36 exchanged or delivered in this State for use in this State; (6) utility
37 service sold, exchanged or delivered in this State for use in this
38 State; (7) direct mail processing services in connection with direct
39 mail distributed in this State; **[and]** (8) (Deleted by amendment,
40 P.L.2005, c.126); and (9) services the benefit of which are received
41 in this State.

42 (z) "Director " means the Director of the Division of Taxation of
43 the State Department of the Treasury, or any officer, employee or
44 agency of the Division of Taxation in the Department of the
45 Treasury duly authorized by the director (directly, or indirectly by
46 one or more redelegations of authority) to perform the functions
47 mentioned or described in this act.

1 (aa) "Lease or rental" means any transfer of possession or control
2 of tangible personal property for a fixed or indeterminate term for
3 consideration. A "lease or rental" may include future options to
4 purchase or extend.

5 (1) "Lease or rental" does not include:

6 (A) A transfer of possession or control of property under a
7 security agreement or deferred payment plan that requires the
8 transfer of title upon completion of the required payments;

9 (B) A transfer of possession or control of property under an
10 agreement that requires the transfer of title upon completion of
11 required payments and payment of an option price does not exceed
12 the greater of \$100 or one percent of the total required payments; or

13 (C) Providing tangible personal property or digital property
14 along with an operator for a fixed or indeterminate period of time.
15 A condition of this exclusion is that the operator is necessary for the
16 equipment to perform as designed. For the purpose of this
17 subparagraph, an operator must do more than maintain, inspect, or
18 set-up the tangible personal property or digital property.

19 (2) "Lease or rental" does include agreements covering motor
20 vehicles and trailers where the amount of consideration may be
21 increased or decreased by reference to the amount realized upon
22 sale or disposition of the property as defined in 26 U.S.C.
23 s.7701(h)(1).

24 (3) The definition of "lease or rental" provided in this subsection
25 shall be used for the purposes of this act regardless of whether a
26 transaction is characterized as a lease or rental under generally
27 accepted accounting principles, the federal Internal Revenue Code
28 or other provisions of federal, state or local law.

29 (bb) (Deleted by amendment, P.L.2005, c.126).

30 (cc) "Telecommunications" means the act or privilege of
31 originating or receiving messages or information through the use of
32 any kind of one-way or two-way communication; including but not
33 limited to voice, video, facsimile, teletypewriter, computer, mobile
34 telecommunications service or any other type of communication;
35 using electronic or electromagnetic methods, and all services and
36 equipment provided in connection therewith or by means thereof.
37 "Telecommunications" shall not include:

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

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

46 (3) services provided by a person, or by that person's wholly
47 owned subsidiary, not engaged in the business of rendering or
48 offering telecommunications services to the public, for private and

1 exclusive use within its organization, provided however, that
2 "telecommunications" shall include the sale of telecommunications
3 services attributable to the excess unused telecommunications
4 capacity of that person to another;

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

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

10 (6) purchases of telecommunications using a prepaid calling
11 service.

12 (dd) "Interstate telecommunication" means any
13 telecommunication that originates or terminates inside this State,
14 including international telecommunication. In the case of mobile
15 telecommunications service, "interstate telecommunication" means
16 any mobile telecommunications service that originates in one state
17 and terminates in another state, territory, or foreign country that is
18 provided to a customer with a place of primary use in this State.

19 (ee) "Intrastate telecommunication" means any
20 telecommunication that originates and terminates within this State.
21 In the case of mobile telecommunications service, "intrastate
22 telecommunication" means any mobile telecommunications service
23 that originates and terminates within the same state that is provided
24 to a customer with a place of primary use in this State.

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

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

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

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

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

47 (kk) "Non-utility" means a company engaged in the sale,
48 exchange or transfer of natural gas that was not subject to the

1 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to
2 December 31, 1997.

3 (ll) "Pre-paid calling service" means the right to purchase
4 exclusively telecommunications services, that must be paid for in
5 advance, that enables the origination of calls using an access
6 number or authorization code, whether manually or electronically
7 dialed; provided, that the remaining amount of units of service that
8 have been pre-paid shall be known by the service provider on a
9 continuous basis.

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

13 (nn) "Place of primary use" means the street address
14 representative of where the customer's use of the mobile
15 telecommunications service primarily occurs, which shall be the
16 residential street address or the primary business street address of
17 the customer and within the licensed service area of the home
18 service provider. For the purposes of determining the primary place
19 of use, the terms used shall have the meanings provided pursuant to
20 the federal "Mobile Telecommunications Sourcing Act," 4 U.S.C.
21 s.124 (Pub.L.106-252).

22 (oo) (1) "Sales price" is the measure subject to sales tax and
23 means the total amount of consideration, including cash, credit,
24 property, and services, for which personal property or services are
25 sold, leased, or rented, valued in money, whether received in money
26 or otherwise, without any deduction for the following:

27 (A) The seller's cost of the property sold;

28 (B) The cost of materials used, labor or service cost, interest,
29 losses, all costs of transportation to the seller, all taxes imposed on
30 the seller, and any other expense of the seller;

31 (C) Charges by the seller for any services necessary to complete
32 the sale;

33 (D) Delivery charges【, unless separately stated on the invoice,
34 bill or similar document given to purchaser】;

35 (E) Installation charges; and

36 (F) The value of exempt personal property given to the
37 purchaser where taxable and exempt personal property have been
38 bundled together and sold by the seller as a single product or piece
39 of merchandise.

40 (2) "Sales price" does not include:

41 (A) Discounts, including cash, term, or coupons that are not
42 reimbursed by a third party, that are allowed by a seller and taken
43 by a purchaser on a sale;

44 (B) Interest, financing, and carrying charges from credit
45 extended on the sale of personal property or services, if the amount
46 is separately stated on the invoice, bill of sale, or similar document
47 given to the purchaser;

1 (C) Any taxes legally imposed directly on the consumer that are
2 separately stated on the invoice, bill of sale, or similar document
3 given to the purchaser;

4 (D) The amount of sales price for which food stamps have been
5 properly tendered in full or part payment pursuant to the federal
6 Food Stamp Act of 1977, Pub.L. 95-113 (7 U.S.C. s.2011 et seq.);
7 or

8 (E) Credit for any trade-in of property of the same kind accepted
9 in part payment and intended for resale if the amount is separately
10 stated on the invoice, bill of sale, or similar document given to the
11 purchaser.

12 (pp) "Purchase price" means the measure subject to use tax and
13 has the same meaning as "sales price."

14 (qq) "Sales tax" means the tax imposed on certain transactions
15 pursuant to the provisions of the "Sales and Use Tax Act,"
16 P.L.1966, c.30 (C.54:32B-1 et seq.).

17 (rr) "Delivery charges" means charges by the seller for
18 preparation and delivery to a location designated by the purchaser
19 of personal property or services including, but not limited to,
20 transportation, shipping, postage, handling, crating, and packing. If
21 a shipment includes both exempt and taxable property, the seller
22 should allocate the delivery charge by using: (1) a percentage based
23 on the total sales price of the taxable property compared to the total
24 sales price of all property in the shipment; or (2) a percentage based
25 on the total weight of the taxable property compared to the total
26 weight of all property in the shipment.

27 (ss) "Direct mail" means printed material delivered or distributed
28 by United States mail or other delivery service to a mass audience
29 or to addresses on a mailing list provided by the purchaser or at the
30 direction of the purchaser in cases in which the cost of the items are
31 not billed directly to the recipients. "Direct mail" includes tangible
32 personal property or digital property supplied directly or indirectly
33 by the purchaser to the direct mail seller for inclusion in the
34 package containing the printed material. "Direct mail" does not
35 include multiple items of printed material delivered to a single
36 address.

37 (tt) "Streamlined Sales and Use Tax Agreement" means the
38 agreement entered into as governed and authorized by the "Uniform
39 Sales and Use Tax Administration Act," P.L.2001, c.431
40 (C.54:32B-44 et seq.).

41 (uu) "Alcoholic beverages" means beverages that are suitable for
42 human consumption and contain one-half of one percent or more of
43 alcohol by volume.

44 (vv) "Digital property" means electronically delivered music,
45 ringtones, movies, books, audio and video works and similar
46 products, where the customer is granted a right or license to use,
47 retain or make a copy of such item. Digital property does not
48 include video programming services, including video on demand

1 television services, and broadcasting services, including content to
2 provide such services.

3 (ww) "Landscaping services" mean services that result in a
4 capital improvement to land other than structures of any kind
5 whatsoever, such as: seeding, sodding or grass plugging of new
6 lawns; planting trees, shrubs, hedges, plants; and clearing and
7 filling land.

8 (xx) "Investigation and Security Services" means:

9 (1) investigation and detective services, including detective
10 agencies and private investigators, and fingerprint, polygraph;
11 missing person tracing and skip tracing services;

12 (2) security guard and patrol services, including bodyguard and
13 personal protection, guard dog, guard, patrol, and security services;

14 (3) armored car services; and

15 (4) security systems services, including security, burglar, and fire
16 alarm installation, repair or monitoring services.

17 (yy) "Information services" means the furnishing of information
18 of any kind, which has been collected, compiled, or analyzed by the
19 seller, and provided through any means or method, other than
20 personal or individual information which is not incorporated into
21 reports furnished to other people.

22 (cf: P.L.2005, c.126, s.1)

23

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

26 3. There is imposed and there shall be paid a tax of ~~6%~~ 7%
27 upon:

28 (a) The receipts from every retail sale of tangible personal
29 property or digital property, except as otherwise provided in this
30 act.

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

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

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

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

9 (3) Storing all tangible personal property not held for sale in the
10 regular course of business ~~[and];~~ the rental of safe deposit boxes or
11 similar space; and the furnishing of space for storage of tangible
12 personal property by a person engaged in the business of furnishing
13 space for such storage.

14 "Space for storage" means secure areas, such as rooms, units,
15 compartments or containers, whether accessible from outside or
16 from within a building, that are designated for the use of a customer
17 and wherein the customer has free access within reasonable
18 business hours, or upon reasonable notice to the furnisher of space
19 for storage, to store and retrieve property. Space for storage shall
20 not include the lease or rental of an entire building, such as a
21 warehouse or airplane hanger.

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

32 (5) Direct-mail processing services, except for direct-mail
33 processing services in connection with distribution of direct mail to
34 out-of-State 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 (8) Tanning services, including the application of a temporary
39 tan provided by any means.

40 (9) Massage, bodywork or somatic services, except such
41 services provided pursuant to a doctor's prescription.

42 (10) Tattooing, including all permanent body art and permanent
43 cosmetic make-up applications.

44 (11) Investigation and security services.

45 (12) Information services.

46 (13) Transportation services originating in this state and
47 provided by a limousine operator, as permitted by law, except such
48 services provided in connection with funeral services.

1 Wages, salaries and other compensation paid by an employer to
2 an employee for performing as an employee the services described
3 in this subsection are not receipts subject to the taxes imposed
4 under this 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 or digital property
8 upon which the services were performed is delivered to the
9 purchaser outside this State for use outside this State.

10 (c) (1) Receipts from the sale of prepared food in or by
11 restaurants, taverns, or other establishments in this State, or by
12 caterers, including in the amount of such receipts any cover,
13 minimum, entertainment or other charge made to patrons or
14 customers, except for meals especially prepared for and delivered to
15 homebound elderly, age 60 or older, and to disabled persons, or
16 meals prepared and served at a group-sitting at a location outside of
17 the home to otherwise homebound elderly persons, age 60 or older,
18 and otherwise homebound disabled persons, as all or part of any
19 food service project funded in whole or in part by government or as
20 part of a private, nonprofit food service project available to all such
21 elderly or disabled persons residing within an area of service
22 designated by the private nonprofit organization; and

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

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

32 (3) For the purposes of this subsection:

33 "Food and beverages sold through vending machines" means
34 food and beverages dispensed from a machine or other mechanical
35 device that accepts payment; and

36 "Prepared food" means:

37 (i) A. food sold in a heated state or heated by the seller; or

38 B. two or more food ingredients mixed or combined by the
39 seller for sale as a single item, but not including food that is only
40 cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,
41 poultry, and foods containing these raw animal foods requiring
42 cooking by the consumer as recommended by the Food and Drug
43 Administration in Chapter 3, part 401.11 of its Food Code so as to
44 prevent food borne illnesses; or

45 C. food sold with eating utensils provided by the seller,
46 including plates, knives, forks, spoons, glasses, cups, napkins, or
47 straws. A plate does not include a container or packaging used to
48 transport the food;

1 provided however, that

2 (ii) "prepared food" does not include the following sold without
3 eating utensils:

4 A. food sold by a seller whose proper primary NAICS
5 classification is manufacturing in section 311, except subsector
6 3118 (bakeries);

7 B. food sold in an unheated state by weight or volume as a
8 single item; or

9 C. bakery items, including bread, rolls, buns, biscuits, bagels,
10 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,
11 muffins, bars, cookies, and tortillas.

12 (d) The rent for every occupancy of a room or rooms in a hotel
13 in this State, except that the tax shall not be imposed upon a
14 permanent resident.

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

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

35 (f) (1) The receipts from every sale, except for resale, of
36 intrastate or interstate telecommunications sourced to this State in
37 accordance with section 29 of P.L.2005, c.126 (C.54:32B-3.4).

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

44 (g) The receipts from every sale, except for resale, of prepaid
45 calling service and the recharge of prepaid calling service.

46 (h) Charges in the nature of initiation fees, membership fees or
47 dues for access to or use of the property or facilities of a health and
48 fitness, athletic, sporting or shopping club or organization in this

1 State, except for membership in a club or organization whose
 2 members are predominantly age 18 or under.

3 (i) The receipts from parking, storing or garaging a motor
 4 vehicle, excluding charges for the following types of parking:
 5 residential parking; employee parking, when provided by an
 6 employer or at a facility owned or operated by the employer;
 7 municipal metered parking; and such receipts subject to tax
 8 pursuant to any other law or ordinance.

9 (cf: P.L.2005, c.126, s.2)

10

11 3. Section 4 of P.L.1966, c.30 (C.54:32B-4) is amended to read
 12 as follows:

13 4. a. For the purpose of adding and collecting the tax imposed by
 14 this act, or an amount equal as nearly as possible or practicable to
 15 the average equivalent thereof, to be reimbursed to the seller by the
 16 purchaser, a seller shall use one of the two following options:

17 (1) a tax shall be calculated based on the following formula:

18 Amount of Sale	Amount of Tax
19	
20 【\$0.01 to \$0.10	No Tax
21 0.11 to 0.22	\$0.01
22 0.23 to 0.38	0.02
23 0.39 to 0.56	0.03
24 0.57 to 0.72	0.04
25 0.73 to 0.88	0.05
26 0.89 to \$1.10	0.06】

27

28 <u>\$0.01 to \$0.10</u>	<u>No Tax</u>
29 <u>0.11 to 0.19</u>	<u>\$0.01</u>
30 <u>0.20 to 0.32</u>	<u>0.02</u>
31 <u>0.33 to 0.47</u>	<u>0.03</u>
32 <u>0.48 to 0.62</u>	<u>0.04</u>
33 <u>0.63 to 0.77</u>	<u>0.05</u>
34 <u>0.78 to 0.90</u>	<u>0.06</u>
35 <u>0.91 to \$1.10</u>	<u>0.07</u>

36

37 and in addition to a tax of **【\$0.06】** \$0.07 on each full dollar, a
 38 tax shall be collected on each part of a dollar in excess of a full
 39 dollar, in accordance with the above formula; or

40 (2) tax shall be calculated to the third decimal place. One-half
 41 cent (\$0.005) or higher shall be rounded up to the next cent; less
 42 than \$0.005 shall be dropped in order to round the result down.

43 Sellers may compute the tax due on a transaction on either an
 44 item or an invoice basis.

45 b. For charges paid by inserting coins into a coin operated
 46 telecommunications device available to the public the tax shall be
 47 computed to the nearest multiple of five cents of the tax otherwise
 48 due pursuant to subsection a. of this section, except that, if the

1 amount of the tax is midway between multiples of five cents, the
2 next higher multiple shall apply.

3 (cf: P.L.2005, c.126, s.3)

4

5 4. Section 5 of P.L.1966, c.30 (C.54:32B-5) is amended to read
6 as follows:

7 5. Transitional provisions. a. (1) Except as otherwise provided
8 in this act, receipts received from all sales made and services
9 rendered on and after January 3, 1983 but prior to July 1, 1990, are
10 subject to the taxes imposed under subsections (a), (b), (c), and (f)
11 of section 3 of this act at the rate, if any, in effect for such sales and
12 services on June 30, 1990, except if the property so sold is delivered
13 or the services so sold are rendered on or after July 1, 1990 but
14 prior to July 1, 1992, in which case the tax shall be computed and
15 paid at the rate of 7%; provided, however, that if a service or
16 maintenance agreement taxable under this act covers any period
17 commencing on or after January 3, 1983 and ending after June 30,
18 1990 but prior to July 1, 1992, the receipts from such agreement are
19 subject to tax at the rate, if any, applicable to each period as set
20 forth hereinabove and shall be apportioned on the basis of the ratio
21 of the number of days falling within each of the said periods to the
22 total number of days covered thereby.

23 (2) Except as otherwise provided in this act, receipts received
24 from all sales made and services rendered on and after July 1, 1990
25 but prior to July 1, 1992, are subject to the taxes imposed under
26 subsections (a), (b), (c) and (f) of section 3 of this act at the rate of
27 7%, except if the property so sold is delivered or the services so
28 sold are rendered on or after July 1, 1992 but prior to July 15, 2006,
29 in which case the tax shall be computed and paid at the rate of 6%,
30 provided, however, that if a service or maintenance agreement
31 taxable under this act covers any period commencing on or after
32 July 1, 1990, and ending after July 1, 1992, the receipts from such
33 agreement are subject to tax at the rate applicable to each period as
34 set forth hereinabove and shall be apportioned on the basis of the
35 ratio of the number of days falling within each of the said periods to
36 the total number of days covered thereby.

37 (3) Except as otherwise provided in this act, receipts received
38 from all sales made and services rendered on and after July 1, 1992
39 but prior to July 15, 2006, are subject to the taxes imposed under
40 subsections (a), (b), (c), (f) and (g) of section 3 of P.L.1966, c.30
41 (C.54:32B-3) at the rate of 6%, except if the property so sold is
42 delivered or the services so sold are rendered on or after July 15,
43 2006, in which case the tax shall be computed and paid at the rate
44 of 7%, provided, however, that if a service or maintenance
45 agreement taxable under this act covers any period commencing on
46 or after July 1, 1992, and ending after July 15, 2006, the receipts
47 from such agreement are subject to tax at the rate applicable to each
48 period as set forth hereinabove and shall be apportioned on the

1 basis of the ratio of the number of days falling within each of the
2 said periods to the total number of days covered thereby; provided
3 however, if a service or maintenance agreement in effect on July 14,
4 2006 covers billing periods ending after July 15, 2006, the seller
5 shall charge and collect from the purchaser a tax on such sales at
6 the rate of 6%, unless the billing period starts on or after July 15,
7 2006 in which case the seller shall charge and collect a tax at the
8 rate of 7%.

9 b. (1) The tax imposed under subsection (d) of section 3 shall be
10 paid at the rate of 7% upon any occupancy on and after July 1, 1990
11 but prior to July 1, 1992, although such occupancy is pursuant to a
12 prior contract, lease or other arrangement. If an occupancy, taxable
13 under this act, covers any period on or after January 3, 1983 but
14 prior to July 1, 1990, the rent for the period of occupancy prior to
15 July 1, 1990 shall be taxed at the rate of 6%. If rent is paid on a
16 weekly, monthly or other term basis, the rent applicable to each
17 period as set forth hereinabove shall be apportioned on the basis of
18 the ratio of the number of days falling within each of the said
19 periods to the total number of days covered thereby.

20 (2) The tax imposed under subsection (d) of section 3 shall be
21 paid at the rate of 6% upon any occupancy on and after July 1, 1992
22 but prior to July 15, 2006, although such occupancy is pursuant to a
23 prior contract, lease or other arrangement. If an occupancy, taxable
24 under this act, covers any period on or after July 1, 1990 but prior
25 to July 1, 1992, the rent for the period of occupancy prior to July 1,
26 1992 shall be taxed at the rate of 7%. If rent is paid on a weekly,
27 monthly or other term basis, the rent applicable to each period as set
28 forth hereinabove shall be apportioned on the basis of the ratio of
29 the number of days falling within each of the said periods to the
30 total number of days covered thereby.

31 (3) The tax imposed under subsection (d) of section 3 shall be
32 paid at the rate of 7% upon any occupancy on and after July 15,
33 2006, although such occupancy is pursuant to a prior contract, lease
34 or other arrangement. If an occupancy, taxable under this act,
35 covers any period on or after July 1, 1992 but prior to July 15,
36 2006, the rent for the period of occupancy prior to July 15, 2006
37 shall be taxed at the rate of 6%. If rent is paid on a weekly,
38 monthly or other term basis, the rent applicable to each period as set
39 forth hereinabove shall be apportioned on the basis of the ratio of
40 the number of days falling within each of the said periods to the
41 total number of days covered thereby.

42 c. (1) Except as otherwise hereinafter provided, the tax imposed
43 under subsection (e) of section 3 shall be applicable at the rate of
44 7% to any admission to or for the use of facilities of a place of
45 amusement occurring on or after July 1, 1990 but prior to July 1,
46 1992, whether or not the admission charge has been paid prior to
47 July 1, 1990, unless the tickets were actually sold and delivered,
48 other than for resale, prior to July 1, 1990 and the tax imposed

1 under this act during the period January 3, 1983 through June 30,
2 1990 shall have been paid.

3 (2) Except as otherwise hereinafter provided, the tax imposed
4 under subsection (e) of section 3 shall be applicable at the rate of
5 6% to any admission to or for the use of facilities of a place of
6 amusement occurring on or after July 1, 1992 but prior to July 15,
7 2006, whether or not the admission charge has been paid prior to
8 **[that date]** July 1, 1992, unless the tickets were actually sold and
9 delivered, other than for resale, prior to July 1, 1992 and the tax
10 imposed under this act during the period July 1, 1990 through
11 December 31, 1990 shall have been paid.

12 (3) Except as otherwise hereinafter provided, the tax imposed
13 under subsection (e) of section 3 shall be applicable at the rate of
14 7% to any admission to or for the use of facilities of a place of
15 amusement occurring on or after July 15, 2006, whether or not the
16 admission charge has been paid prior to that date, unless the tickets
17 were actually sold and delivered, other than for resale, prior to July
18 15, 2006 and the tax imposed under this act during the period July
19 1, 1992 through July 14, 2006 shall have been paid.

20 d. (1) Sales made on and after July 1, 1990 but prior to July 1,
21 1992 to contractors, subcontractors or repairmen of materials,
22 supplies, or services for use in erecting structures for others, or
23 building on, or otherwise improving, altering or repairing real
24 property of others shall be subject to the taxes imposed by
25 subsections (a) and (b) of section 3 and section 6 hereof at the rate
26 of 7%; provided, however, that if such sales are made for use in
27 performance of a contract which is either of a fixed price not
28 subject to change or modification, or entered into pursuant to the
29 obligation of a formal written bid which cannot be altered or
30 withdrawn, and, in either case, such contract was entered into or
31 such bid was made on or after January 3, 1983 but prior to July 1,
32 1990, such sales shall be subject to tax at the rate of 6%, but the
33 vendor shall charge and collect from the purchaser a tax on such
34 sales at the rate of 7%.

35 (2) Sales made on or after July 1, 1992 but prior to July 15,
36 2006 to contractors, subcontractors or repairmen of materials,
37 supplies, or services for use in erecting structures for others, or
38 building on, or otherwise improving, altering or repairing real
39 property of others shall be subject to the taxes imposed by
40 subsections (a) and (b) of section 3 and section 6 hereof at the rate
41 of 6%; provided, however, that if such sales are made for use in
42 performance of a contract which is either of a fixed price not
43 subject to change or modification, or entered into pursuant to the
44 obligation of a formal written bid which cannot be altered or
45 withdrawn, and, in either case, such contract was entered into or
46 such bid was made on or after July 1, 1990, but prior to July 1,
47 1992, such sales shall be subject to tax at the rate of 7%.

48 (3) Sales made on or after July 15, 2006 to contractors,

1 subcontractors or repairmen of materials, supplies, or services for
2 use in erecting structures for others, or building on, or otherwise
3 improving, altering or repairing real property of others shall be
4 subject to the taxes imposed by subsections (a) and (b) of section 3
5 and section 6 hereof at the rate of 7%; provided, however, that if
6 such sales are made for use in performance of a contract which is
7 either of a fixed price not subject to change or modification, or
8 entered into pursuant to the obligation of a formal written bid which
9 cannot be altered or withdrawn, and, in either case, such contract
10 was entered into or such bid was made on or after July 1, 1992, but
11 prior to July 15, 2006, such sales shall be subject to tax at the rate
12 of 6%, but the vendor shall charge and collect from the purchaser a
13 tax on such sales at the rate of 7%.

14 e. (1) As to sales other than those referred to in d. above, the
15 taxes imposed under subsections (a) and (b) of section 3 and section
16 6 hereof, and the taxes imposed under subsection (f) of section 3
17 and section 6 hereof, upon receipts received on or after July 1, 1990
18 and on or before December 31, 1990, shall be at the rate in effect on
19 June 30, 1990, in case of sales made or services rendered pursuant
20 to a written contract entered on or after January 3, 1983 but prior to
21 July 1, 1990, and accompanied by a deposit or partial payment of
22 the contract price, except in the case of a contract which, in the
23 usage of trade, is not customarily accompanied by a deposit or
24 partial payment of the contract price, but the vendor shall charge
25 and collect from the purchaser on such sales at the rate of 7%,
26 which tax shall be reduced to the rate, if any, in effect on June 30,
27 1990, only by a claim for refund filed by the purchaser with the
28 director within 90 days after receipt of said receipts and otherwise
29 pursuant to the provisions of section 20 of P.L.1966, c.30
30 (C.54:32B-20). A claim for refund shall not be allowed if there has
31 been no deposit or partial payment of the contract price unless the
32 claimant shall establish by clear and convincing evidence that, in
33 the usage of trade, such contracts are not customarily accompanied
34 by a deposit or partial payment of the contract price.

35 (2) As to sales other than those referred to in d. above, the taxes
36 imposed under subsections (a) and (b) of section 3 and section 6
37 hereof, and the taxes imposed under subsections (f) and (g) of
38 section 3 and section 6 hereof, upon receipts received on or after
39 July 15, 2006 and on or before December 31, 2006, shall be at the
40 rate in effect on July 14, 2006, in case of sales made or services
41 rendered pursuant to a written contract entered on or after July 1,
42 1992 but prior to July 15, 2006, and accompanied by a deposit or
43 partial payment of the contract price, except in the case of a
44 contract which, in the usage of trade, is not customarily
45 accompanied by a deposit or partial payment of the contract price,
46 but the vendor shall charge and collect from the purchaser on such
47 sales at the rate of 7%, which tax shall be reduced to the rate, if any,
48 in effect on July 14, 2006, only by a claim for refund filed by the

1 purchaser with the director within 90 days after receipt of said
2 receipts and otherwise pursuant to the provisions of section 20 of
3 P.L.1966, c.30 (C.54:32B-20). A claim for refund shall not be
4 allowed if there has been no deposit or partial payment of the
5 contract price unless the claimant shall establish by clear and
6 convincing evidence that, in the usage of trade, such contracts are
7 not customarily accompanied by a deposit or partial payment of the
8 contract price.

9 f. (1) The taxes imposed under subsections (a), (b), (c) and (f) of
10 section 3 upon receipts received on or after July 1, 1990 but prior to
11 July 1, 1992 shall be at the rate, if any, in effect on June 30, 1990 in
12 the case of sales made or services rendered, if delivery of the
13 property which was the subject matter of the sale has been
14 completed or such services have been entirely rendered prior to July
15 1, 1990.

16 (2) The taxes imposed under subsections (a), (b), (c) and (f) of
17 section 3 upon receipts received on or after July 1, 1992 but prior to
18 July 15, 2006 shall be at the rate of 7% in the case of sales made or
19 services rendered, where delivery of the property which was the
20 subject matter of the sale has been completed or such services have
21 been entirely rendered on or after July 1, 1990 but prior to July 1,
22 1992.

23 (3) The taxes imposed under subsections (a), (b), (c), (f) and (g)
24 of section 3 upon receipts received on or after July 15, 2006 shall be
25 at the rate of 6% in the case of sales made or services rendered,
26 where delivery of the property which was the subject matter of the
27 sale has been completed or such services have been entirely
28 rendered on or after July 1, 1992 but prior to July 15, 2006.

29 g. The director is empowered to promulgate rules and
30 regulations to implement the provisions of this section.
31 (cf: P.L.1992, s.11, s.3)

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

35 6. Unless property or services have already been or will be
36 subject to the sales tax under this act, there is hereby imposed on
37 and there shall be paid by every person a use tax for the use within
38 this State of ~~6%~~ 7%, except as otherwise exempted under this act,
39 (A) of any tangible personal property or digital property purchased
40 at retail, including energy, provided however, that electricity
41 consumed by the generating facility that produced it shall not be
42 subject to tax, (B) of any tangible personal property or digital
43 property manufactured, processed or assembled by the user, if items
44 of the same kind of tangible personal property or digital property
45 are offered for sale by him in the regular course of business, or if
46 items of the same kind of tangible personal property are not offered
47 for sale by him in the regular course of business and are used as
48 such or incorporated into a structure, building or real property, (C)

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

1 clause (D) of this section, the tax shall be at the applicable rate on
2 the charge made by the telecommunications service provider. For
3 purposes of clause (F) of this section, the tax shall be at the
4 applicable rate on the charge made by the utility service provider.
5 For purposes of clause (G) of this section, the tax shall be at the
6 applicable rate on that proportion of the amount of all processing
7 costs charged by a direct-mail processing service provider that is
8 attributable to the service distributed in this State. For the purposes
9 of clause (H) of this section, the tax shall be at the applicable rate
10 on the consideration given or contracted to be given for the prepaid
11 calling service or the recharge of the prepaid calling service. For
12 purposes of clause (I) of this section, the tax shall be at the
13 applicable rate on the charge made by the service provider. For
14 purposes of clause (J) of this section, the tax shall be at the
15 applicable rate on the charges in the nature of initiation fees,
16 membership fees or dues.

17 (P.L.2005, c.126, s.4)

18

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

21 7. (a) The retail sales tax imposed under subsection (a) of section
22 3 and the compensating use tax imposed under section 6, when
23 computed in respect to tangible personal property and digital
24 property wherever manufactured, processed or assembled and used
25 by such manufacturer, processor or assembler in the regular course
26 of business within this State, shall be based on the price at which
27 items of the same kind of tangible personal property are offered for
28 sale by him.

29 (b) Tangible personal property or digital property, which has
30 been purchased by a resident of the State of New Jersey outside of
31 this State for use outside of this State and subsequently becomes
32 subject to the compensating use tax imposed under this act, shall be
33 taxed on the basis of the purchase price of such property, provided,
34 however:

35 (1) That where a taxpayer affirmatively shows that the property
36 was used outside such State by him for more than six months prior
37 to its use within this State, such property shall be taxed on the basis
38 of current market value of the property at the time of its first use
39 within this State. The value of such property, for compensating use
40 tax purposes, may not exceed its cost.

41 (2) That the compensating use tax on such tangible personal
42 property or digital property brought into this State (other than for
43 complete consumption or for incorporation into real property
44 located in this State) and used in the performance of a contract or
45 subcontract within this State by a purchaser or user for a period of
46 less than six months may be based, at the option of the taxpayer, on
47 the fair rental value of such property for the period of use within
48 this State.

1 (c) Leased tangible personal property or digital property which
2 has been purchased outside this State for lease outside of this State
3 and subsequently becomes subject to the compensating use tax
4 imposed under this act shall be taxed on the basis of the purchase
5 price of such property, provided however, that the compensating
6 use tax on such property brought into and used within this State
7 may be based on the total of the lease payments attributable to the
8 lease of that property attributable to the period of the lease
9 remaining after first use in this State.

10 (d) Sales tax imposed on the lease or rental of tangible personal
11 property or digital property in New Jersey shall be based on either
12 the total of the periodic payments required under the agreement or
13 the original purchase price of the property. The full amount of sales
14 tax due on the complete term of a lease or rental for more than six
15 months shall be remitted with the monthly or quarterly sales and use
16 tax return due for the period in which the leased personal property
17 was delivered to the lessee in this State. However, if the tax is paid
18 on a lease or rental based on the original purchase price of the
19 tangible personal property or digital property, a subsequent lease or
20 rental of the same property shall not be subject to the tax imposed
21 under P.L. 1966, c.30 (C.54:32B-1 et seq.).

22 If leased property is subsequently removed on a permanent basis
23 from this State, the lessee shall be entitled to a refund of the tax
24 allocable to the portion of the lease or rental that remains in effect
25 after the property has been removed from this State, but only if the
26 other state does not allow a credit for the sales or use tax paid to
27 this State on the lease or rental transaction, and further, in the case
28 of property removed to a state that imposes or computes tax on
29 leases or rentals based on a lump sum or accelerated basis, only if
30 the other state also allows a corresponding refund with respect to
31 the lease of property upon which a sales or use tax is due and paid
32 to this State.

33 (e) The purchase of energy shall be subject to the compensating
34 use tax imposed under section 6 on the basis of the purchase price
35 of the energy, including any charges for utility service.

36 (cf: P.L.2005, c.126, s.5)

37

38 7. Section 17 of P.L.1980, c.105 (C. 54:32B-8.5) is amended to
39 read as follows:

40 17. a. Receipts from sales of:

41 (1) newspapers,

42 (2) magazines and periodicals sold by subscription, and

43 (3) membership periodicals

44 are exempt from the tax imposed under the “Sales and Use Tax
45 Act,” whether or not accessed by electronic means.

46 b. For the purposes of this section, a “membership periodical” is
47 any periodical distributed by a nonprofit organization to its

1 members as a benefit of membership in the organization.

2 (cf: P.L.1980, c.105, s.17)

3

4 8 Section 23 of P.L.1980, c.105 (C.54:32B-8.11) is amended to
5 read as follows:

6 23. Receipts from charges for the transportation of persons or
7 property[, except of energy,] are exempt from the tax imposed
8 under the "Sales and Use Tax Act," except for delivery charges;
9 transportation services provided by a limousine operator; and the
10 transportation of energy.

11 (cf: P.L.1997, c.162, s.22)

12

13 9. Section 27 of P.L.1980, c.105 (C.54:32B-8.15) is amended to
14 read as follows:

15 27. Sales or use of wrapping paper, wrapping twine, bags,
16 cartons, tape, rope, labels, nonreturnable containers, reusable milk
17 containers, and all other wrapping supplies when such use is
18 incidental to the delivery of any tangible personal property and
19 containers for use in a "farming enterprise" as defined pursuant to
20 section 28 of P.L.1980, c.105 (C.54:32B-8.16) are exempt from the
21 tax imposed under the Sales and Use Tax Act.

22 (cf: P.L.1999, c.314, s.1)

23

24 10. Section 31 of P.L.1980, c.105 (C.54:32B-8.19) is amended
25 to read as follows:

26 31. Receipts from sales of tangible personal property and
27 services taxable under any municipal ordinance which was adopted
28 pursuant to P.L.1947, c.71 (C.40:48-8.15 et seq.) and was in effect
29 on April 27, 1966 are exempt from the tax imposed under the Sales
30 and Use Tax Act, subject to the following conditions:

31 a. To the extent that the tax that is or would be imposed under
32 section 3 of P.L.1966, c.30 (C.54:32B-3) is greater than the tax
33 imposed by such ordinance, such sales shall not be exempt under
34 this section; and

35 b. Irrespective of the rate of tax imposed by such ordinance,
36 such sales shall be exempt only to the extent that the rate of taxation
37 imposed by the ordinance exceeds 6%, except that the combined
38 rate of taxation imposed under the ordinance and under this section
39 shall not exceed ~~12%~~ 13%.

40 (cf: P.L.1992, c.11, s.5)

41

42 11. Section 1 of P.L.1993, c.373 (C.54:32B-8.45) is amended to
43 read as follows:

44 1. a. Receipts of retail sales, except retail sales of motor vehicles,
45 of alcoholic beverages, of digital products, and cigarettes as defined
46 in the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.),
47 made by a seller from a place of business regularly operated by the
48 seller for the purpose of making retail sales at which items are

1 regularly exhibited and offered for retail sale and which is not
2 utilized primarily for the purpose of catalogue or mail order sales,
3 in which county is situated an entrance to an interstate bridge or
4 tunnel connecting New Jersey with a state that does not impose a
5 retail sales and use tax or imposes a retail sales and use tax at a rate
6 at least five percentage points lower than the rate in this State, are
7 exempt to the extent of 50% of the tax imposed under the "Sales
8 and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

9 b. The exemption provided by subsection a. of this section
10 shall apply unless a seller advises the director, in writing, that it
11 intends to collect the tax at the full rate imposed under the "Sales
12 and Use Tax Act".

13 (cf: P.L.2005, c.126, s.14)

14

15 12 Section 15 of P.L.2005, c.126 (C.54:32B-8.56) is amended to
16 read as follows:

17 15. Receipts from sales of prewritten software delivered
18 electronically and used directly and exclusively in the conduct of
19 the purchaser's business, trade or occupation are exempt from the
20 tax imposed under the "Sales and Use Tax Act", P.L.1966, c.30
21 (C.54:32B-1 et seq.). The exemption provided by this section shall
22 not apply to receipts from sales of prewritten software delivered by
23 a load and leave method.

24 "Computer" means an electronic device that accepts information
25 in digital or similar form and manipulates it for a result based on a
26 sequence of instructions.

27 "Computer software" means a set of coded instruction designed
28 to cause a computer or automatic data processing equipment to
29 perform a task.

30 "Delivered electronically" means delivered from the seller to the
31 purchaser by means other than tangible storage media.

32 "Electronic" means relating to technology having electrical,
33 digital magnetic, wireless, optical, electromagnetic, or similar
34 capabilities.

35 "Load and leave" means delivery to the purchaser by the use of a
36 tangible storage medium where the tangible storage medium is not
37 physically transferred to the purchaser.

38 "Prewritten computer software" means computer software,
39 including prewritten upgrades, which is not designed and developed
40 by the author or other creator to the specifications of a specific
41 purchaser. The combining of two or more prewritten computer
42 software programs or pre-written portions thereof shall not cause
43 the combination to be other than prewritten computer software.
44 "Prewritten computer software" includes software designed and
45 developed by the author or other creator to the specifications of a
46 specific purchaser when it is sold to a person other than such
47 purchaser. If a person modifies or enhances computer software of
48 which that person is not the author or creator, the person shall be

1 deemed to be the author or creator only of such person's
2 modifications or enhancements. Prewritten software or a prewritten
3 portion thereof that is modified or enhanced to any degree, where
4 such modification or enhancement is designed and developed to the
5 specifications of a specific purchaser, shall remain pre-written
6 software; provided, however, that if there is a reasonable, separately
7 stated charge or an invoice or other statement of the price given to
8 the purchaser for such modification or enhancement, such
9 modification or enhancement shall not constitute pre-written
10 computer software. "Prewritten computer software" shall not
11 include software delivered electronically.

12 (cf: P.L.2005, c.126, s.15)

13

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

16 9. (a) Except as to motor vehicles sold by any of the following,
17 any sale, service or amusement charge by or to any of the following
18 or any use or occupancy by any of the following shall not be subject
19 to the sales and use taxes imposed under this act:

20 (1) The State of New Jersey, or any of its agencies,
21 instrumentalities, public authorities, public corporations (including
22 a public corporation created pursuant to agreement or compact with
23 another state) or political subdivisions where it is the purchaser,
24 user or consumer, or where it is a seller of services or property of a
25 kind not ordinarily sold by private persons;

26 (2) The United States of America, and any of its agencies and
27 instrumentalities, insofar as it is immune from taxation where it is
28 the purchaser, user or consumer, or where it sells services or
29 property of a kind not ordinarily sold by private persons;

30 (3) The United Nations or any international organization of
31 which the United States of America is a member where it is the
32 purchaser, user or consumer, or where it sells services or property
33 of a kind not ordinarily sold by private persons.

34 (b) Except as otherwise provided in this section any sale or
35 amusement charge by or to any of the following or any use or
36 occupancy by any of the following, where such sale, charge, use or
37 occupancy is directly related to the purposes for which the
38 following have been organized, shall not be subject to the sales and
39 use taxes imposed under this act: a corporation, association, trust,
40 or community chest, fund or foundation, organized and operated
41 exclusively (1) for religious, charitable, scientific, testing for public
42 safety, literary or educational purposes; or (2) for the prevention of
43 cruelty to children or animals; or (3) as a volunteer fire company,
44 rescue, ambulance, first aid or emergency company or squad; or (4)
45 as a National Guard organization, post or association, or as a post or
46 organization of war veterans, or the Marine Corps League, or as an
47 auxiliary unit or society of any such post, organization or
48 association; or (5) as an association of parents and teachers of an

1 elementary or secondary public or private school exempt under the
2 provisions of this section. Such a sale, charge, use or occupancy
3 by, or a sale or charge to, an organization enumerated in this
4 subsection, shall not be subject to the sales and use taxes only if no
5 part of the net earnings of the organization inures to the benefit of
6 any private shareholder or individual, no substantial part of the
7 activities of the organization is carrying on propaganda, or
8 otherwise attempting to influence legislation, and the organization
9 does not participate in, or intervene in (including the publishing or
10 distributing of statements), any political campaign on behalf of any
11 candidate for public office.

12 (c) Nothing in this section shall exempt from the taxes imposed
13 under the "Sales and Use Tax Act":

14 (1) the sale of a motor vehicle by an organization described in
15 subsection (b) of this section, unless the purchaser is an
16 organization exempt under this section;

17 (2) retail sales of tangible personal property or digital property
18 by any shop or store operated by an organization described in
19 subsection (b) of this section, unless the tangible personal property
20 or digital property was received by the organization as a gift or
21 contribution and the shop or store is one in which substantially all
22 the work in carrying on the business of the shop or store is
23 performed for the organization without compensation and
24 substantially all of the shop's or store's merchandise has been
25 received by the organization as gifts or contributions or unless the
26 purchaser is an organization exempt under this section; or

27 (3) the sale or use of energy or utility service to or by an
28 organization described in paragraph (1) of subsection (a) or
29 subsection (b) of this section.

30 (d) Any organization enumerated in subsection (b) of this
31 section shall not be entitled to an exemption granted pursuant to this
32 section unless it has complied with such requirements for obtaining
33 a tax immunity authorization as may be provided in this act.

34 (e) Where any organization described in subsection (b) of this
35 subsection carries on its activities in furtherance of the purposes for
36 which it was organized, in premises in which, as part of those
37 activities, it operates a hotel, occupancy of rooms in the premises
38 and rents from those rooms received by the organization shall not
39 be subject to tax under the "Sales and Use Tax Act."

40 (f) (1) Except as provided in paragraph (2) of this subsection,
41 any admissions all of the proceeds of which inure exclusively to the
42 benefit of the following organizations shall not be subject to any of
43 the taxes imposed under subsection (e) of section 3 of P.L.1966,
44 c.30 (C.54:32B-3):

45 (A) an organization described in paragraph (1) of subsection (a)
46 or subsection (b) of this section;

1 (B) a society or organization conducted for the sole purpose of
2 maintaining symphony orchestras or operas and receiving
3 substantial support from voluntary contributions; or

4 (C) (Deleted by amendment, P.L.1999, c.416).

5 (D) a police or fire department of a political subdivision of the
6 State, or a volunteer fire company, ambulance, first aid, or
7 emergency company or squad, or exclusively to a retirement,
8 pension or disability fund for the sole benefit of members of a
9 police or fire department or to a fund for the heirs of such members.

10 (2) The exemption provided under paragraph (1) of this
11 subsection shall not apply in the case of admissions to:

12 (A) Any athletic game or exhibition unless the proceeds shall
13 inure exclusively to the benefit of elementary or secondary schools
14 or unless in the case of an athletic game between two elementary or
15 secondary schools, the entire gross proceeds from such game shall
16 inure to the benefit of one or more organizations described in
17 subsection (b) of this section;

18 (B) Carnivals, rodeos, or circuses in which any professional
19 performer or operator participates for compensation;

20 (3) Admission charges for admission to the following places or
21 events shall not be subject to any of the taxes imposed under
22 subsection (e) of section 3 of P.L.1966, c.30 (C.54:32B-3):

23 (A) Any admission to agricultural fairs if no part of the net
24 earnings thereof inures to the benefit of any stockholders or
25 members of the association conducting the same; provided the
26 proceeds therefrom are used exclusively for the improvement,
27 maintenance and operation of such agricultural fairs.

28 (B) Any admission to a home or garden which is temporarily
29 open to the general public as a part of a program conducted by a
30 society or organization to permit the inspection of historical homes
31 and gardens; provided no part of the net earnings thereof inures to
32 the benefit of any private stockholder or individual.

33 (C) Any admissions to historic sites, houses and shrines, and
34 museums conducted in connection therewith, maintained and
35 operated by a society or organization devoted to the preservation
36 and maintenance of such historic sites, houses, shrines and
37 museums; provided no part of the net earnings thereof inures to the
38 benefit of any private stockholder or individual.

39 (cf: P.L.2005, c.126, s.17)

40

41 14. Section 12 of P.L.1966, c.30 (C.54:32B-12) is amended to
42 read as follows:

43 12. (a) Every person required to collect the tax shall collect the
44 tax from the customer when collecting the price, service charge,
45 amusement charge or rent to which it applies. If the customer is
46 given any sales slip, invoice, receipt or other statement or
47 memorandum of the price, service charge, amusement charge or
48 rent paid or payable, the tax shall be stated, charged and shown

1 separately on the first of such documents given to him. The tax
2 shall be paid to the person required to collect it as trustee for and on
3 account of the State.

4 (b) For the purpose of the proper administration of this act and
5 to prevent evasion of the tax hereby imposed, and subject to the
6 rules regarding the administration of exemptions authorized by the
7 Streamlined Sales and Use Tax Agreement, it shall be presumed
8 that all receipts for property or services of any type mentioned in
9 subsections (a), (b) and (c) of section 3, all rents for occupancy of
10 the type mentioned in subsection (d) of said section, and all
11 amusement charges of any type mentioned in subsection (e) of said
12 section, are subject to tax until the contrary is established, and the
13 burden of proving that any such receipt, amusement charge or rent
14 is not taxable hereunder shall be upon the person required to collect
15 tax or the customer. Unless a seller shall have taken from the
16 purchaser a certificate, signed by the purchaser if in paper form and
17 bearing the purchaser's name and address and the number of the
18 purchaser's registration certificate, to the effect that the property or
19 service was purchased for resale or the purchaser prior to taking
20 delivery, furnishes to the seller any affidavit, statement or
21 additional evidence, documentary or otherwise, which the director
22 may require demonstrating that the purchaser is an exempt
23 organization described in section 9(b)(1), the sale shall be deemed a
24 taxable retail sale. Provided however, the director may, in the
25 director's discretion, authorize a purchaser, who acquires tangible
26 personal property, digital property or services under circumstances
27 which make it impossible at the time of acquisition to determine the
28 manner in which the tangible personal property, digital property or
29 services will be used, to pay the tax directly to the director and
30 waive the collection of the tax by the seller or provide for direct pay
31 authority under rules adopted under the Streamlined Sales and Use
32 Tax Agreement. Provided further, the director shall authorize any
33 eligible person, as defined in section 34 of P.L.1997, c.162
34 (C.54:32B-14.1), who purchases natural gas from a non-utility on
35 and after January 1, 1998 through December 31, 2002, to pay the
36 tax on the commodity directly to the director and waive the
37 collection of the tax by the seller. No such authority shall be
38 granted or exercised except upon application to the director, and the
39 issuance by the director of a direct payment permit. If a direct
40 payment permit is granted, its use shall be subject to conditions
41 specified by the director, and the payment of tax on all acquisitions
42 pursuant to the permit shall be made directly to the director by the
43 permit holder.

44 (c) The director may provide by regulation that the tax upon
45 receipts from sales on the installment plan may be paid on the
46 amount of each installment and upon the date when such installment
47 is due. He may also provide by regulation for the exclusion from
48 taxable receipts, amusement charges or rents of amounts subject, as

1 applicable, to the provisions of section 30 of P.L.2005, c.126
2 (C.54:32B-12.1), representing sales where the contract of sale has
3 been canceled, the property returned or the receipt, charge or rent
4 has been ascertained to be uncollectible or, in the case the tax has
5 been paid upon such receipt, charge or rent, for refund or credit of
6 the tax so paid.

7 (cf: P.L.2005, c.126, s.20)

8

9 15. Section 17 of P.L.1966, c.30 (C.54:32B-15) is amended to
10 read as follows:

11 15. (a) On or before June 20, 1966, or in the case of persons
12 commencing business or opening new places of business after such
13 date, within three days after such commencement or opening, every
14 person required to collect any tax imposed by this act and every
15 person purchasing tangible personal property or digital property for
16 resale shall file with the director a certificate of registration in a
17 form prescribed by the director. In the case of a person
18 commencing business or opening a new place of business on or
19 after the first day of the third month following the enactment of
20 P.L.1993, c.274 (C.40:52-1.3 et al.), the certificate shall be filed at
21 least 15 business days before the commencement or opening. The
22 director shall within five days after such registration issue, without
23 charge, to each registrant a certificate of authority empowering the
24 registrant to collect the tax and a duplicate thereof for each
25 additional place of business of such registrant. Each certificate or
26 duplicate shall state the place of business to which it is applicable.
27 Such certificate of authority shall be prominently displayed in the
28 place of business of the registrant. A registrant who has no regular
29 place of doing business shall attach such certificate to his cart,
30 stand, truck or other merchandising device. Such certificates shall
31 be nonassignable and nontransferable and shall be surrendered to
32 the director immediately upon the registrant's ceasing to do business
33 at the place named.

34 (b) Any person who is not otherwise required to collect any tax
35 imposed by this act and who makes sales to persons within the State
36 of tangible personal property, digital property or services, the use of
37 which is subject to tax under this act, may if he so elects file a
38 certificate of registration with the director who may, in his
39 discretion and subject to such conditions as he may impose, issue to
40 him a certificate of authority to collect the compensating use tax
41 imposed by this act.

42 (c) A seller that registers to pay or collect and remit sales or use
43 tax in accordance with the terms of the Streamlined Sales and Use
44 Tax Agreement may select one of the following methods of
45 remittance or other method allowed by State law to remit the taxes
46 collected, subject to the liabilities and conditions established
47 pursuant to section 10 of P.L.2001, c.431 (C.54:32B-53):

1 (1) a model 1 seller, that selects a certified service provider as
2 an agent to perform all the seller's sales or use tax functions, other
3 than the seller's obligation to remit tax on its own purchases;

4 (2) a model 2 seller, that selects a certified automated system to
5 use which calculates the amount of tax due on a transaction; or

6 (3) a model 3 seller, that uses its own proprietary automated
7 sales tax system that has been certified as a certified automated
8 system.

9 (d) A certified service provider in model 1 shall be allowed a
10 monetary allowance in accordance with the terms of the contract
11 that the states participating in the Streamlined Sales and Use Tax
12 Agreement sign with the provider. The director shall prescribe the
13 allowance in accordance with the terms of the contract, which shall
14 be funded entirely from money collected in model 1.

15 A monetary allowance to a certified service provider may be
16 based on one or more of the following incentives:

17 (1) A base rate that applies to taxable transactions processed by
18 the provider.

19 (2) For a period not to exceed 24 months following a voluntary
20 seller's registration through the Streamlined Sales and Use Tax
21 Agreement's central registration process, a percentage of tax
22 revenue generated for a member state by the voluntary seller for
23 each member state for which the seller does not have a requirement
24 to register to collect the tax.

25 (e) A model 2 seller shall be allowed a monetary allowance
26 which the director shall prescribe in accordance with the terms
27 arrived at by the member states of the Streamlined Sales and Use
28 Tax Agreement. The member states initially anticipate that they will
29 provide a monetary allowance to sellers under model 2 based on the
30 following:

31 (1) Each seller shall receive a base rate for a period not to
32 exceed 24 months following the commencement of participation by
33 the seller.

34 (2) For a period not to exceed 24 months following a voluntary
35 seller's registration through the Streamlined Sales and Use Tax
36 Agreement's central registration process, a percentage of tax
37 revenue generated for a member state by the voluntary seller for
38 each member state for which the seller does not have a requirement
39 to register to collect the tax.

40 (f) A model 3 seller and all other sellers that are not under
41 model 1 or model 2 shall be allowed a monetary allowance which
42 the director shall prescribe in accordance with the terms arrived at
43 by the member states of the Streamlined Sales and Use Tax
44 Agreement. The member states initially anticipate that they will
45 provide a monetary allowance to sellers under model 3 and to all
46 other sellers that are not under models 1 or 2 will be based on the
47 following: for a period not to exceed 24 months following a
48 voluntary seller's registration through the Streamlined Sales and

1 Use Tax Agreement's central registration process, a percentage of
2 tax revenue generated for a member state by the voluntary seller for
3 each member state for which the seller does not have a requirement
4 to register to collect the tax.

5 (cf: P.L.2005, c.126, s.23)

6

7 16. Section 17 of P.L.1966, c.30 (C.54:32B-17) is amended to
8 read as follows:

9 17. (a) Every person required to collect or pay tax under this act
10 shall on or before August 28, 1966, and on or before the twentieth
11 day of each month thereafter, make and file a return for the
12 preceding month with the director. The return of a seller of tangible
13 personal property, digital property or services shall show his
14 receipts from sales and also the aggregate value of tangible personal
15 property, digital property and services sold by him, the use of which
16 is subject to tax under this act, and the amount of taxes required to
17 be collected with respect to such sales and use. The return of a
18 recipient of amusement charges shall show all such charges and the
19 amount of tax thereon, and the return of a person required to collect
20 tax on leases or rentals shall show all lease or rental payments
21 received or charged and the amount of tax thereon.

22 (b) The director may permit or require returns to be made
23 covering other periods and upon such dates as he may specify. In
24 addition, the director may require payments of tax liability at such
25 intervals and based upon such classifications as he may designate.
26 In prescribing such other periods to be covered by the return or
27 intervals or classifications for payment of tax liability, the director
28 may take into account the dollar volume of tax involved as well as
29 the need for insuring the prompt and orderly collection of the taxes
30 imposed.

31 (c) The form of returns shall be prescribed by the director and
32 shall contain such information as he may deem necessary for the
33 proper administration of this act. The director may require
34 amended returns to be filed within 20 days after notice and to
35 contain the information specified in the notice.

36 (d) Pursuant to the Streamlined Sales and Use Tax Agreement,
37 the director is authorized to accept certified automated systems and
38 certified service providers to aid in the administration of the
39 collection of the tax imposed under the "Sales and Use Tax Act".

40 (e) Subject to the limitations of this subsection and other
41 provisions of the "Sales and Use Tax Act":

42 (1) In addition to the powers of the director prescribed pursuant
43 to section 24 of P.L.1966, c.30 (C.54:32B-24) and the "State
44 Uniform Tax Procedure Law," R.S.54:48-1 et seq., and
45 notwithstanding the provisions of any other law to the contrary, the
46 director shall grant "amnesty" for uncollected or unpaid sales or use
47 tax to a seller that registers to collect and remit applicable sales or
48 use tax on sales made to purchasers in this State in accordance with

1 the terms of the Streamlined Sales and Use Tax Agreement,
2 provided that the seller was not so registered in this State in the
3 twelve-month period preceding the commencement of this State's
4 participation in the agreement.

5 (2) Under terms of the "amnesty" granted pursuant to paragraph
6 (1) of this subsection, a seller that registers shall not be assessed for
7 uncollected or unpaid sales or use tax and shall not be assessed
8 penalties or interest for sales made during the period the seller was
9 not registered in this State, provided that the seller registers
10 pursuant to paragraph (1) of this subsection within twelve months
11 of the effective date of this State's participation in the Streamlined
12 Sales and Use Tax Agreement.

13 (3) The limitations on deficiency assessments, penalties and
14 interest pursuant to paragraph (2) of this subsection shall not be
15 available to a seller with respect to any matter for which the seller
16 received notice of the commencement of an audit and which audit is
17 not yet finally resolved including any related administrative and
18 judicial processes.

19 (4) The limitations on deficiency assessments, penalties and
20 interest pursuant to paragraph (2) of this subsection shall not be
21 available for sales or use taxes already paid or remitted to the State
22 or to taxes already collected by the seller.

23 (5) The "amnesty" limitations on deficiency assessments,
24 penalties and interest pursuant to paragraph (2) of this subsection
25 shall be in full effect and the director shall not assess deficiencies
26 for uncollected or unpaid sales or use tax and shall not assess
27 penalties or interest for sales made during the period the seller was
28 not registered in this State so long as the seller continues
29 registration and continues collection and remittance of applicable
30 sales or use taxes for a period of at least 36 months: provided
31 however that the director may make such assessments by reason of
32 the seller's fraud or intentional misrepresentation of a material fact.
33 The statutes of limitations applicable to asserting a tax liabilities,
34 deficiencies, penalties and interest are tolled for this 36 month
35 period.

36 (6) The "amnesty" granted pursuant to paragraph (1) of this
37 subsection shall apply only to sales or use taxes due from a seller in
38 its capacity as a seller and shall not apply to sales or use taxes due
39 from a seller in its capacity as a buyer.

40 (cf: P.L.2005, c.126, s.24)

41

42 17 Section 33 of P.L.2005, c.126 (C.54:32B-28.1) is amended to
43 read as follows:

44 33. **【On and after October 1, 2005:】**

45 a. The effective date of any sales and use tax rate change shall
46 be the first day of **【the】** a calendar quarter **【next succeeding the**
47 **expiration of one full calendar quarter immediately following**
48 **enactment of the rate change】** and a sales and use tax rate change

1 for services covering a period starting before and ending after that
2 effective date shall first apply as follows: for a rate increase, the
3 new rate shall apply to the first billing period starting on or after the
4 effective date, and for a rate decrease, the new rate shall apply to
5 bills rendered on or after the effective date;

6 b. The State shall make a reasonable effort to: provide sellers
7 with as much advance notice as practicable of a rate change, limit
8 the effective date of a rate change to the first day of a calendar
9 quarter, and notify sellers of legislative changes in the tax base and
10 amendments to sales and use tax rules and regulations; however,
11 failure of a seller to receive notice or failure of the State to provide
12 notice or limit the effective date of a rate change shall not relieve
13 the seller of its obligation to collect sales or use taxes;

14 c. Any exemption, exception or exclusion from sales and use
15 taxation shall be enacted only in accordance with the applicable
16 provisions of the Streamlined Sales and Use Tax Agreement;

17 [c.] d. The State shall be subject to the uniform rules for the
18 remittance of funds as provided in the Streamlined Sales and Use
19 Tax Agreement;

20 [d.] e. The State shall be subject to the privacy and
21 confidentiality provisions provided in the Streamlined Sales and
22 Use Tax Agreement for participants in the system and consumers
23 who deal with Model 1 sellers;

24 [e.] f. The uniform rules for the recovery of bad debts contained
25 in the Streamlined Sales and Use Tax Agreement shall be in effect;
26 and

27 [f.] g. The State shall not use registration with the central
28 registration system and the collection of sales and use taxes in the
29 member states as a factor in determining whether the seller has
30 nexus with this State for any tax at any time.

31 (cf: P.L.2005, c.126, s.33)

32
33 18. Section 1 of P.L.2003, c.114 (C.54:32D-1) is amended to
34 read as follows:

35 1. a. In addition to any other tax, assessment or use fee
36 authorized by law, there is imposed and shall be paid a hotel and
37 motel occupancy fee of 7% for occupancies on and after August 1,
38 2003 but before July 1, 2004, and of 5% for occupancies on and
39 after July 1, 2004, upon the rent for every occupancy of a room or
40 rooms in a hotel subject to taxation pursuant to subsection (d) of
41 section 3 of P.L. 1966, c.30 (C:54:32B-3), which every person
42 required to collect tax shall collect from the customer when
43 collecting the rent to which it applies; provided however, that on
44 and after the tenth day following a certification by the Director of
45 the Division of Budget and Accounting in the Department of the
46 Treasury pursuant to subsection d. of section 2 of P.L.2003, c.114
47 (C.54:32D-2), no such fee shall be paid or collected; and provided
48 further that:

1 (1) the combined rates of the fee imposed under this section,
2 plus the tax imposed under the "Sales and Use Tax Act", P.L.1966,
3 c.30 (C.54:32B-1 et seq.), plus any tax imposed under P.L.1947,
4 c.71 (C.40:48-8.15 et seq.), shall not exceed a total rate of ~~13%~~
5 14%, and to the extent that the total combined rate of taxation for
6 the listed fees and taxes would exceed ~~13%~~ 14%, the fee imposed
7 under this section shall be reduced so that the total combined rate
8 equals ~~13%~~ 14%;

9 (2) the combined rates of the fee imposed under this section,
10 plus the tax imposed under the "Sales and Use Tax Act", P.L.1966,
11 c.30 (C.54:32B-1 et seq.), plus any tax and assessment imposed
12 under section 4 of P.L.1992, c.165 (C.40:54D-4), shall not exceed a
13 total rate of ~~13%~~ 14%, and to the extent that the total combined
14 rate of taxation for the listed fees and taxes would exceed ~~13%~~
15 14%, the fee imposed under this section shall be reduced so that the
16 total combined rate equals ~~13%~~ 14%; and

17 (3) the fee imposed under this section shall be at the rate of 1%
18 in a city in which the tax authorized under P.L.1981, c. 77
19 (C.40:48E-1 et seq.) is imposed.

20 b. The hotel and motel occupancy fee imposed by subsection a.
21 of this section shall not be imposed on the rent for an occupancy if
22 the purchaser, user or consumer is an entity exempt from the tax
23 imposed on an occupancy under the "Sales and Use Tax Act"
24 pursuant to subsection (a) of section 9 of P.L.1966, c.30 (C.54:32B-
25 9).

26 c. Terms used in this section shall have the meaning given
27 those terms pursuant to section 2 of P.L.1966, c.30 (C.54:32B-2).
28 (cf: P.L.2003, c.114, s.1)

29

30 19. (New section) Notwithstanding the provisions of sections 3
31 and 6 of P.L.1966, c.30 (C.54:32B-3 and 54:32B-6) to the contrary,
32 from July 15, 2006 through September 30, 2006 the rate of tax
33 imposed pursuant to the "Sales and Use Tax Act," P.L.1966, c.30
34 (C.54:32B-1 et seq.) shall be 7%.

35

36 20. This act shall take effect immediately, provided however
37 that sections 3, 4, 10 and 18 shall remain inoperative until July 15,
38 2006 and provided further that sections 1, 2, 5 through 9, and 11
39 through 16 shall remain inoperative until October 1, 2006.

40

41

42

STATEMENT

43

44 This bill increases the rate of the sales and use tax from 6% to
45 7%, beginning July 15, 2006.

46 This bill also extends the base of the sales and use tax, beginning
47 October 1, 2006, encompassing product categories that have come

1 into being with new technologies, limiting some exclusions from
2 taxation, and extending the tax to new services.

3 The bill establishes the new taxable category of "digital
4 property." Digital property is electronically delivered music,
5 ringtones, movies, books, audio and video works and similar
6 products, where the customer is granted a right or license to use,
7 retain or make a copy of such item. This means that downloaded
8 music, downloaded movies and downloaded books will be subject
9 to tax in the same way that records, movie DVDs and books
10 purchased in a store are taxed now. The bill also limits the current
11 exemption for prewritten software delivered electronically to
12 electronically delivered software that is used directly and
13 exclusively in the conduct of the purchaser's business, trade or
14 occupation.

15 The bill eliminates the exemption for seller delivery charges that
16 are separately stated from the purchase price of an item. Currently,
17 separately stated delivery charges are nontaxable while "included"
18 delivery is taxable. This bill treats the cost of all items, including
19 delivery charges, as the taxable cost of the items whether separately
20 stated or not. The bill provides for the taxation of delivery charges
21 on taxable items and the exemption of delivery charges on
22 nontaxable items like food and clothing.

23 The bill specifically limits the sales tax exemptions for
24 laundering, dry cleaning, tailoring, weaving, and pressing to
25 providing those services to clothing. An old administrative decision
26 currently allows the exemption to apply to other items, like drapery
27 and carpets.

28 The bill limits the exemption for the building contractor services
29 of landscaping and the installation of carpeting and other flooring.
30 Current law provides an exemption for property installation services
31 that constitute a "capital improvement." This bill eliminates that
32 exemption for landscaping and the installation of flooring.

33 The bill extends the sales tax to charges for the following
34 services:

- 35 • furnishing of space for storage, such as charges for self-
36 storage rentals;
- 37 • tanning services;
- 38 • massage services, exempting medically prescribed services;
- 39 • tattooing, including permanent body art and permanent
40 cosmetic make-up;
- 41 • investigation and security services;
- 42 • information services;
- 43 • limousine services originating in this State, except as
44 provided in connection with funeral services;
- 45 • initiation fees, membership fees or dues for access to or use
46 of the property or facilities of a health and fitness, athletic,
47 sporting or shopping club or organization, except for
48 membership in a club or organization whose members are

- 1 predominantly age 18 or under;
- 2 • parking, storing or garaging a motor vehicle (other than
- 3 employee parking, municipal metered parking and parking
- 4 subject to municipal parking taxes); and
- 5

6 The bill makes two technical changes. First, the bill includes a

7 provision that clarifies the sales and use tax collection responsibility

8 of a corporation that does not maintain a place of business in New

9 Jersey but, through another corporation that is related through

10 common ownership, conducts business activity in New Jersey

11 through the actions of the related New Jersey agent corporation in

12 furtherance of common marketing, promotion, selling or service

13 activity.

14 Second, the bill incorporates several rate change provisions of

15 the Streamlined Sales and Use Tax Agreement, in which New

16 Jersey is a participant, into the New Jersey sales and use tax. The

17 agreement requires a rate change for services to first apply for a rate

18 increase to the first billing period starting on or after the effective

19 date of the increase and for a rate decrease to first apply to bills

20 rendered on or after the effective date of the decrease. Under the

21 agreement, this State shall make a reasonable effort to: provide

22 sellers with as much advance notice as practicable of a rate change,

23 limit the effective date of a rate change to the first day of a calendar

24 quarter, and notify sellers of legislative changes in the tax base and

25 amendments to sales and use tax rules and regulations; however,

26 failure of a seller to receive notice or failure of the State to provide

27 notice or limit the effective date of a rate change shall not relieve

28 the seller of its obligation to collect sales or use taxes.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4901

STATE OF NEW JERSEY

DATED: JULY 7, 2006

The Assembly Budget Committee reports favorably Assembly Bill No. 4901.

Assembly Bill No. 4901 increases the rate of the sales and use tax from 6% to 7%, beginning July 15, 2006.

This bill also extends the base of the sales and use tax, beginning October 1, 2006, encompassing product categories that have come into being with new technologies, limiting some exclusions from taxation, and extending the tax to new services.

The bill establishes the new taxable category of "digital property." Digital property is electronically delivered music, ringtones, movies, books, audio and video works and similar products, where the customer is granted a right or license to use, retain or make a copy of such item. This means that downloaded music, downloaded movies and downloaded books will be subject to tax in the same way that records, movie DVDs and books purchased in a store are taxed now. The bill also limits the current exemption for prewritten software delivered electronically to electronically delivered software that is used directly and exclusively in the conduct of the purchaser's business, trade or occupation.

The bill eliminates the exemption for seller delivery charges that are separately stated from the purchase price of an item. Currently, separately stated delivery charges are nontaxable while "included" delivery is taxable. This bill treats the cost of all items, including delivery charges, as the taxable cost of the items whether separately stated or not. The bill provides for the taxation of delivery charges on taxable items and the exemption of delivery charges on nontaxable items like food and clothing.

The bill specifically limits the sales tax exemptions for laundering, dry cleaning, tailoring, weaving, and pressing to providing those services to clothing. An old administrative decision currently allows the exemption to apply to other items, like drapery and carpets.

The bill limits the exemption for the building contractor services of landscaping and the installation of carpeting and other flooring. Current law provides an exemption for property installation services that constitute a "capital improvement." This bill eliminates that exemption for landscaping and the installation of flooring.

The bill extends the sales tax to charges for the following services:

- furnishing of space for storage, such as charges for self-storage rentals;
- tanning services;
- massage services, exempting medically prescribed services;
- tattooing, including permanent body art and permanent cosmetic make-up;
- investigation and security services;
- information services;
- limousine services originating in this State, except as provided in connection with funeral services;
- initiation fees, membership fees or dues for access to or use of the property or facilities of a health and fitness, athletic, sporting or shopping club or organization, except for membership in a club or organization whose members are predominantly age 18 or under;
- parking, storing or garaging a motor vehicle (other than employee parking, municipal metered parking and parking subject to municipal parking taxes); and

The bill makes two technical changes. First, the bill includes a provision that clarifies the sales and use tax collection responsibility of a corporation that does not maintain a place of business in New Jersey but, through another corporation that is related through common ownership, conducts business activity in New Jersey through the actions of the related New Jersey agent corporation in furtherance of common marketing, promotion, selling or service activity.

Second, the bill incorporates several rate change provisions of the Streamlined Sales and Use Tax Agreement, in which New Jersey is a participant, into the New Jersey sales and use tax. The agreement requires a rate change for services to first apply for a rate increase to the first billing period starting on or after the effective date of the increase and for a rate decrease to first apply to bills rendered on or after the effective date of the decrease. Under the agreement, this State shall make a reasonable effort to: provide sellers with as much advance notice as practicable of a rate change, limit the effective date of a rate change to the first day of a calendar quarter, and notify sellers of legislative changes in the tax base and amendments to sales and use tax rules and regulations; however, failure of a seller to receive notice or failure of the State to provide notice or limit the effective date of a rate change shall not relieve the seller of its obligation to collect sales or use taxes.

FISCAL IMPACT:

The increase in the sales tax rate from 6% to 7% has been estimated to yield approximately \$1.2 billion annually.

The changes to the tax base under the bill take effect October 1, 2006. For the nine months of State Fiscal Year 2006-2007 remaining

thereafter, the following revenues have been estimated, expressed in millions of dollars:

Digital property	\$09.6
Delivery charges	\$32.7
Flooring and carpeting installation	\$08.8
Storage space	\$10.2
Tanning, massage and tattooing	\$08.8
Information services	\$12.3
Limousine service.	\$27.1
Membership fees	\$74.7
Parking	\$07.0
Non-clothing cleaning services	\$04.4
Landscaping services	\$81.7
Magazines and periodicals	\$12.0
Investigation and security services	\$43.0
Total	\$332.3 million

SENATE, No. 1996

STATE OF NEW JERSEY
212th LEGISLATURE

INTRODUCED JUNE 26, 2006

Sponsored by:

Senator BERNARD F. KENNY, JR.

District 33 (Hudson)

SYNOPSIS

Increases sales and use tax from 6% to 7% on July 1, 2006.

CURRENT VERSION OF TEXT

As introduced.



S1996 KENNY

2

1 AN ACT concerning the sales and use tax, amending P.L.1966, c.30,
2 P.L.1980, c.105, P.L.2005, c.126 and P.L.2003, c.114.

3

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

6

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

9 3. There is imposed and there shall be paid a tax of **[6%]** 7%
10 upon:

11 (a) The receipts from every retail sale of tangible personal
12 property, except as otherwise provided in this act.

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

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

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

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

38 (4) Maintaining, servicing or repairing real property, other than
39 a residential heating system unit serving not more than three
40 families living independently of each other and doing their cooking
41 on the premises, whether the services are performed in or outside of
42 a building, as distinguished from adding to or improving such real
43 property by a capital improvement, but excluding services rendered
44 by an individual who is not in a regular trade or business offering
45 his services to the public, and excluding garbage removal and sewer

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 services performed on a regular contractual basis for a term not less
2 than 30 days.

3 (5) Direct-mail processing services, except for direct-mail
4 processing services in connection with distribution of direct mail to
5 out-of-State recipients.

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

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

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

13 Services otherwise taxable under paragraph (1) or (2) of this
14 subsection (b) are not subject to the taxes imposed under this
15 subsection, where the tangible personal property upon which the
16 services were performed is delivered to the purchaser outside this
17 State for use outside this State.

18 (c) (1) Receipts from the sale of prepared food in or by
19 restaurants, taverns, or other establishments in this State, or by
20 caterers, including in the amount of such receipts any cover,
21 minimum, entertainment or other charge made to patrons or
22 customers, except for meals especially prepared for and delivered to
23 homebound elderly, age 60 or older, and to disabled persons, or
24 meals prepared and served at a group-sitting at a location outside of
25 the home to otherwise homebound elderly persons, age 60 or older,
26 and otherwise homebound disabled persons, as all or part of any
27 food service project funded in whole or in part by government or as
28 part of a private, nonprofit food service project available to all such
29 elderly or disabled persons residing within an area of service
30 designated by the private nonprofit organization; and

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

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

40 (3) For the purposes of this subsection:

41 "Food and beverages sold through vending machines" means
42 food and beverages dispensed from a machine or other mechanical
43 device that accepts payment; and

44 "Prepared food" means:

45 (i) A. food sold in a heated state or heated by the seller; or

46 B. two or more food ingredients mixed or combined by the
47 seller for sale as a single item, but not including food that is only
48 cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,
49 poultry, and foods containing these raw animal foods requiring

1 cooking by the consumer as recommended by the Food and Drug
2 Administration in Chapter 3, part 401.11 of its Food Code so as to
3 prevent food borne illnesses; or
4 C. food sold with eating utensils provided by the seller,
5 including plates, knives, forks, spoons, glasses, cups, napkins, or
6 straws. A plate does not include a container or packaging used to
7 transport the food;
8 provided however, that "prepared food" does not include the
9 following sold without eating utensils:
10 (ii) A. food sold by a seller whose proper primary NAICS
11 classification is manufacturing in section 311, except subsector
12 3118 (bakeries);
13 B. food sold in an unheated state by weight or volume as a
14 single item; or
15 C. bakery items, including bread, rolls, buns, biscuits, bagels,
16 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,
17 muffins, bars, cookies, and tortillas.
18 (d) The rent for every occupancy of a room or rooms in a hotel
19 in this State, except that the tax shall not be imposed upon a
20 permanent resident.
21 (e) (1) Any admission charge to or for the use of any place of
22 amusement in the State, including charges for admission to race
23 tracks, baseball, football, basketball or exhibitions, dramatic or
24 musical arts performances, motion picture theaters, except charges
25 for admission to boxing, wrestling, kick boxing or combative sports
26 exhibitions, events, performances or contests which charges are
27 taxed under any other law of this State or under section 20 of
28 P.L.1985, c.83 (C.5:2A-20), and, except charges to a patron for
29 admission to, or use of, facilities for sporting activities in which
30 such patron is to be a participant, such as bowling alleys and
31 swimming pools. For any person having the permanent use or
32 possession of a box or seat or lease or a license, other than a season
33 ticket, for the use of a box or seat at a place of amusement, the tax
34 shall be upon the amount for which a similar box or seat is sold for
35 each performance or exhibition at which the box or seat is used or
36 reserved by the holder, licensee or lessee, and shall be paid by the
37 holder, licensee or lessee.
38 (2) The amount paid as charge of a roof garden, cabaret or other
39 similar place in this State, to the extent that a tax upon such charges
40 has not been paid pursuant to subsection (c) hereof.
41 (f) (1) The receipts from every sale, except for resale, of
42 intrastate or interstate telecommunications sourced to this State in
43 accordance with section 29 of P.L.2005, c.126 (C.54:32B-3.4).
44 (2) The receipts from every sale, except for resale, of intrastate
45 or interstate mobile telecommunications services billed by or for a
46 customer's home service provider and provided to a customer with a
47 place of primary use in this State. The provisions and definitions of
48 the federal "Mobile Telecommunications Sourcing Act," 4 U.S.C.
49 ss.116-126 (Pub.L.106-252), are applicable herein.

S1996 KENNY

1 (g) The receipts from every sale, except for resale, of prepaid
2 calling service and the recharge of prepaid calling service.
3 (cf: P.L.2005, c.126, s.2).

4
5 2. Section 4 of P.L.1966, c.30 (C.54:32B-4) is amended to read
6 as follows:

7 4. a. For the purpose of adding and collecting the tax imposed
8 by this act, or an amount equal as nearly as possible or practicable
9 to the average equivalent thereof, to be reimbursed to the seller by
10 the purchaser, a seller shall use one of the two following options:

11 (1) a tax shall be calculated based on the following formula:

12 Amount of Sale	Amount of Tax
13	
14 【\$0.01 to \$0.10	No Tax
15 0.11 to 0.22	\$0.01
16 0.23 to 0.38	0.02
17 0.39 to 0.56	0.03
18 0.57 to 0.72	0.04
19 0.73 to 0.88	0.05
20 0.89 to \$1.10	0.06】

21	
22 <u>\$0.01 to \$0.10</u>	No Tax
23 <u>0.11 to 0.19</u>	<u>\$0.01</u>
24 <u>0.20 to 0.32</u>	<u>0.02</u>
25 <u>0.33 to 0.47</u>	<u>0.03</u>
26 <u>0.48 to 0.62</u>	<u>0.04</u>
27 <u>0.63 to 0.77</u>	<u>0.05</u>
28 <u>0.78 to 0.90</u>	<u>0.06</u>
29 <u>0.91 to \$1.10</u>	<u>0.07</u>

30
31 and in addition to a tax of **【\$0.06】** \$0.07 on each full dollar, a
32 tax shall be collected on each part of a dollar in excess of a full
33 dollar, in accordance with the above formula; or

34 (2) tax shall be calculated to the third decimal place. One-half
35 cent (\$0.005) or higher shall be rounded up to the next cent; less
36 than \$0.005 shall be dropped in order to round the result down.

37 Sellers may compute the tax due on a transaction on either an
38 item or an invoice basis.

39 b. For charges paid by inserting coins into a coin operated
40 telecommunications device available to the public the tax shall be
41 computed to the nearest multiple of five cents of the tax otherwise
42 due pursuant to subsection a. of this section, except that, if the
43 amount of the tax is midway between multiples of five cents, the
44 next higher multiple shall apply.

45 (cf: P.L.2005, c.126, s.3)

1 3. Section 5 of P.L.1966, c.30 (C.54:32B-5) is amended to read
2 as follows:

3 5. Transitional provisions. a. (1) Except as otherwise provided
4 in this act, receipts received from all sales made and services
5 rendered on and after January 3, 1983 but prior to July 1, 1990, are
6 subject to the taxes imposed under subsections (a), (b), (c), and (f)
7 of section 3 of this act at the rate, if any, in effect for such sales and
8 services on June 30, 1990, except if the property so sold is delivered
9 or the services so sold are rendered on or after July 1, 1990 but
10 prior to July 1, 1992, in which case the tax shall be computed and
11 paid at the rate of 7%; provided, however, that if a service or
12 maintenance agreement taxable under this act covers any period
13 commencing on or after January 3, 1983 and ending after June 30,
14 1990 but prior to July 1, 1992, the receipts from such agreement are
15 subject to tax at the rate, if any, applicable to each period as set
16 forth hereinabove and shall be apportioned on the basis of the ratio
17 of the number of days falling within each of the said periods to the
18 total number of days covered thereby.

19 (2) Except as otherwise provided in this act, receipts received
20 from all sales made and services rendered on and after July 1, 1990
21 but prior to July 1, 1992, are subject to the taxes imposed under
22 subsections (a), (b), (c) and (f) of section 3 of this act at the rate of
23 7%, except if the property so sold is delivered or the services so
24 sold are rendered on or after July 1, 1992 but prior to July 1, 2006,
25 in which case the tax shall be computed and paid at the rate of 6%,
26 provided, however, that if a service or maintenance agreement
27 taxable under this act covers any period commencing on or after
28 July 1, 1990, and ending after July 1, 1992, the receipts from such
29 agreement are subject to tax at the rate applicable to each period as
30 set forth hereinabove and shall be apportioned on the basis of the
31 ratio of the number of days falling within each of the said periods to
32 the total number of days covered thereby.

33 (3) Except as otherwise provided in this act, receipts received
34 from all sales made and services rendered on and after July 1, 1992
35 but prior to July 1, 2006, are subject to the taxes imposed under
36 subsections (a), (b), (c), (f) and (g) of section 3 of P.L.1966, c.30
37 (C.54:32B-3) at the rate of 6%, except if the property so sold is
38 delivered or the services so sold are rendered on or after July 1,
39 2006, in which case the tax shall be computed and paid at the rate
40 of 7%, provided, however, that if a service or maintenance
41 agreement taxable under this act covers any period commencing on
42 or after July 1, 1992, and ending after July 1, 2006, the receipts
43 from such agreement are subject to tax at the rate applicable to each
44 period as set forth hereinabove and shall be apportioned on the
45 basis of the ratio of the number of days falling within each of the
46 said periods to the total number of days covered thereby.

47 b. (1) The tax imposed under subsection (d) of section 3 shall be
48 paid at the rate of 7% upon any occupancy on and after July 1, 1990
49 but prior to July 1, 1992, although such occupancy is pursuant to a

1 prior contract, lease or other arrangement. If an occupancy, taxable
2 under this act, covers any period on or after January 3, 1983 but
3 prior to July 1, 1990, the rent for the period of occupancy prior to
4 July 1, 1990 shall be taxed at the rate of 6%. If rent is paid on a
5 weekly, monthly or other term basis, the rent applicable to each
6 period as set forth hereinabove shall be apportioned on the basis of
7 the ratio of the number of days falling within each of the said
8 periods to the total number of days covered thereby.

9 (2) The tax imposed under subsection (d) of section 3 shall be
10 paid at the rate of 6% upon any occupancy on and after July 1, 1992
11 but prior to July 1, 2006, although such occupancy is pursuant to a
12 prior contract, lease or other arrangement. If an occupancy, taxable
13 under this act, covers any period on or after July 1, 1990 but prior
14 to July 1, 1992, the rent for the period of occupancy prior to July 1,
15 1992 shall be taxed at the rate of 7%. If rent is paid on a weekly,
16 monthly or other term basis, the rent applicable to each period as set
17 forth hereinabove shall be apportioned on the basis of the ratio of
18 the number of days falling within each of the said periods to the
19 total number of days covered thereby.

20 (3) The tax imposed under subsection (d) of section 3 shall be
21 paid at the rate of 7% upon any occupancy on and after July 1,
22 2006, although such occupancy is pursuant to a prior contract, lease
23 or other arrangement. If an occupancy, taxable under this act,
24 covers any period on or after July 1, 1992 but prior to July 1, 2006,
25 the rent for the period of occupancy prior to July 1, 2006 shall be
26 taxed at the rate of 6%. If rent is paid on a weekly, monthly or
27 other term basis, the rent applicable to each period as set forth
28 hereinabove shall be apportioned on the basis of the ratio of the
29 number of days falling within each of the said periods to the total
30 number of days covered thereby.

31 c. (1) Except as otherwise hereinafter provided, the tax imposed
32 under subsection (e) of section 3 shall be applicable at the rate of
33 7% to any admission to or for the use of facilities of a place of
34 amusement occurring on or after July 1, 1990 but prior to July 1,
35 1992, whether or not the admission charge has been paid prior to
36 July 1, 1990, unless the tickets were actually sold and delivered,
37 other than for resale, prior to July 1, 1990 and the tax imposed
38 under this act during the period January 3, 1983 through June 30,
39 1990 shall have been paid.

40 (2) Except as otherwise hereinafter provided, the tax imposed
41 under subsection (e) of section 3 shall be applicable at the rate of
42 6% to any admission to or for the use of facilities of a place of
43 amusement occurring on or after July 1, 1992 but prior to July 1,
44 2006, whether or not the admission charge has been paid prior to
45 **[that date]** July 1, 1992, unless the tickets were actually sold and
46 delivered, other than for resale, prior to July 1, 1992 and the tax
47 imposed under this act during the period July 1, 1990 through
48 December 31, 1990 shall have been paid.

49 (3) Except as otherwise hereinafter provided, the tax imposed

S1996 KENNY

1 under subsection (e) of section 3 shall be applicable at the rate of
2 7% to any admission to or for the use of facilities of a place of
3 amusement occurring on or after July 1, 2006, whether or not the
4 admission charge has been paid prior to that date, unless the tickets
5 were actually sold and delivered, other than for resale, prior to July
6 1, 2006 and the tax imposed under this act during the period July 1,
7 1992 through June 30, 2006 shall have been paid.

8 d. (1) Sales made on and after July 1, 1990 but prior to July 1,
9 1992 to contractors, subcontractors or repairmen of materials,
10 supplies, or services for use in erecting structures for others, or
11 building on, or otherwise improving, altering or repairing real
12 property of others shall be subject to the taxes imposed by
13 subsections (a) and (b) of section 3 and section 6 hereof at the rate
14 of 7%; provided, however, that if such sales are made for use in
15 performance of a contract which is either of a fixed price not
16 subject to change or modification, or entered into pursuant to the
17 obligation of a formal written bid which cannot be altered or
18 withdrawn, and, in either case, such contract was entered into or
19 such bid was made on or after January 3, 1983 but prior to July 1,
20 1990, such sales shall be subject to tax at the rate of 6%, but the
21 vendor shall charge and collect from the purchaser a tax on such
22 sales at the rate of 7%.

23 (2) Sales made on or after July 1, 1992 but prior to July 1, 2006
24 to contractors, subcontractors or repairmen of materials, supplies, or
25 services for use in erecting structures for others, or building on, or
26 otherwise improving, altering or repairing real property of others
27 shall be subject to the taxes imposed by subsections (a) and (b) of
28 section 3 and section 6 hereof at the rate of 6%; provided, however,
29 that if such sales are made for use in performance of a contract
30 which is either of a fixed price not subject to change or
31 modification, or entered into pursuant to the obligation of a formal
32 written bid which cannot be altered or withdrawn, and, in either
33 case, such contract was entered into or such bid was made on or
34 after July 1, 1990, but prior to July 1, 1992, such sales shall be
35 subject to tax at the rate of 7%.

36 (3) Sales made on or after July 1, 2006 to contractors,
37 subcontractors or repairmen of materials, supplies, or services for
38 use in erecting structures for others, or building on, or otherwise
39 improving, altering or repairing real property of others shall be
40 subject to the taxes imposed by subsections (a) and (b) of section 3
41 and section 6 hereof at the rate of 7%; provided, however, that if
42 such sales are made for use in performance of a contract which is
43 either of a fixed price not subject to change or modification, or
44 entered into pursuant to the obligation of a formal written bid which
45 cannot be altered or withdrawn, and, in either case, such contract
46 was entered into or such bid was made on or after July 1, 1992, but
47 prior to July 1, 2006, such sales shall be subject to tax at the rate of
48 6%, but the vendor shall charge and collect from the purchaser a tax
49 on such sales at the rate of 7%.

1 e. (1) As to sales other than those referred to in d. above, the
2 taxes imposed under subsections (a) and (b) of section 3 and section
3 6 hereof, and the taxes imposed under subsection (f) of section 3
4 and section 6 hereof, upon receipts received on or after July 1, 1990
5 and on or before December 31, 1990, shall be at the rate in effect on
6 June 30, 1990, in case of sales made or services rendered pursuant
7 to a written contract entered on or after January 3, 1983 but prior to
8 July 1, 1990, and accompanied by a deposit or partial payment of
9 the contract price, except in the case of a contract which, in the
10 usage of trade, is not customarily accompanied by a deposit or
11 partial payment of the contract price, but the vendor shall charge
12 and collect from the purchaser on such sales at the rate of 7%,
13 which tax shall be reduced to the rate, if any, in effect on June 30,
14 1990, only by a claim for refund filed by the purchaser with the
15 director within 90 days after receipt of said receipts and otherwise
16 pursuant to the provisions of section 20 of P.L.1966, c.30
17 (C.54:32B-20). A claim for refund shall not be allowed if there has
18 been no deposit or partial payment of the contract price unless the
19 claimant shall establish by clear and convincing evidence that, in
20 the usage of trade, such contracts are not customarily accompanied
21 by a deposit or partial payment of the contract price.

22 (2) As to sales other than those referred to in d. above, the taxes
23 imposed under subsections (a) and (b) of section 3 and section 6
24 hereof, and the taxes imposed under subsections (f) and (g) of
25 section 3 and section 6 hereof, upon receipts received on or after
26 July 1, 2006 and on or before December 31, 2006, shall be at the
27 rate in effect on June 30, 2006, in case of sales made or services
28 rendered pursuant to a written contract entered on or after July 1,
29 1992 but prior to July 1, 2006, and accompanied by a deposit or
30 partial payment of the contract price, except in the case of a
31 contract which, in the usage of trade, is not customarily
32 accompanied by a deposit or partial payment of the contract price,
33 but the vendor shall charge and collect from the purchaser on such
34 sales at the rate of 7%, which tax shall be reduced to the rate, if any,
35 in effect on June 30, 2006, only by a claim for refund filed by the
36 purchaser with the director within 90 days after receipt of said
37 receipts and otherwise pursuant to the provisions of section 20 of
38 P.L.1966, c.30 (C.54:32B-20). A claim for refund shall not be
39 allowed if there has been no deposit or partial payment of the
40 contract price unless the claimant shall establish by clear and
41 convincing evidence that, in the usage of trade, such contracts are
42 not customarily accompanied by a deposit or partial payment of the
43 contract price.

44 f. (1) The taxes imposed under subsections (a), (b), (c) and (f) of
45 section 3 upon receipts received on or after July 1, 1990 but prior to
46 July 1, 1992 shall be at the rate, if any, in effect on June 30, 1990 in
47 the case of sales made or services rendered, if delivery of the
48 property which was the subject matter of the sale has been
49 completed or such services have been entirely rendered prior to July

1 1, 1990.

2 (2) The taxes imposed under subsections (a), (b), (c) and (f) of
3 section 3 upon receipts received on or after July 1, 1992 but prior to
4 July 1, 2006 shall be at the rate of 7% in the case of sales made or
5 services rendered, where delivery of the property which was the
6 subject matter of the sale has been completed or such services have
7 been entirely rendered on or after July 1, 1990 but prior to July 1,
8 1992.

9 (3) The taxes imposed under subsections (a), (b), (c), (f) and (g)
10 of section 3 upon receipts received on or after July 1, 2006 shall be
11 at the rate of 6% in the case of sales made or services rendered,
12 where delivery of the property which was the subject matter of the
13 sale has been completed or such services have been entirely
14 rendered on or after July 1, 1992 but prior to July 1, 2006.

15 g. The director is empowered to promulgate rules and
16 regulations to implement the provisions of this section.

17 (cf: P.L.1992, s.11, s.3)

18

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

21 6. Unless property or services have already been or will be
22 subject to the sales tax under this act, there is hereby imposed on
23 and there shall be paid by every person a use tax for the use within
24 this State of **【6%】** 7%, except as otherwise exempted under this act,
25 (A) of any tangible personal property purchased at retail, including
26 energy, provided however, that electricity consumed by the
27 generating facility that produced it shall not be subject to tax, (B) of
28 any tangible personal property manufactured, processed or
29 assembled by the user, if items of the same kind of tangible
30 personal property are offered for sale by him in the regular course
31 of business, or if items of the same kind of tangible personal
32 property are not offered for sale by him in the regular course of
33 business and are used as such or incorporated into a structure,
34 building or real property, (C) of any tangible personal property,
35 however acquired, where not acquired for purposes of resale, upon
36 which any taxable services described in paragraphs (1) and (2) of
37 subsection (b) of section 3 of P.L.1966, c.30 (C.54:32B-3) have
38 been performed, (D) of interstate or intrastate telecommunications
39 and mobile telecommunications described in subsection (f) of
40 section 3 of P.L.1966, c.30, (E) (Deleted by amendment, P.L.1995,
41 c.184), (F) of utility service provided to persons in this State for use
42 in this State, provided however, that utility service used by the
43 facility that provides the service shall not be subject to tax, (G) of
44 direct-mail processing services described in paragraph (5) of
45 subsection (b) of section 3 of P.L.1966, c.30 (C.54:32B-3) and (H)
46 of prepaid calling service and the recharge of prepaid calling
47 service. For purposes of clause (A) of this section, the tax shall be
48 at the applicable rate, as set forth hereinabove, of the consideration

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

40 (cf: P.L.2005, c.126, s.4)

41

42 5. Section 31 of P.L.1980, c.105 (C.54:32B-8.19) is amended to
43 read as follows:

44 31. Receipts from sales of tangible personal property and
45 services taxable under any municipal ordinance which was adopted
46 pursuant to P.L.1947, c.71 (C.40:48-8.15 et seq.) and was in effect
47 on April 27, 1966 are exempt from the tax imposed under the Sales
48 and Use Tax Act, subject to the following conditions:

1 a. To the extent that the tax that is or would be imposed under
2 section 3 of P.L.1966, c.30 (C.54:32B-3) is greater than the tax
3 imposed by such ordinance, such sales shall not be exempt under
4 this section; and

5 b. Irrespective of the rate of tax imposed by such ordinance,
6 such sales shall be exempt only to the extent that the rate of taxation
7 imposed by the ordinance exceeds 6%, except that the combined
8 rate of taxation imposed under the ordinance and under this section
9 shall not exceed ~~12%~~ 13%.
10 (cf: P.L.1992, c.11, s.5)

11
12 6. Section 33 of P.L.2005, c.126 (C.54:32B-28.1) is amended to
13 read as follows:

14 33. On and after October 1, 2005:

15 a. The effective date of any sales and use tax rate change shall
16 be the first day of ~~the~~ a calendar quarter ~~next succeeding the~~
17 expiration of one full calendar quarter immediately following
18 enactment of the rate change];

19 b. Any exemption, exception or exclusion from sales and use
20 taxation shall be enacted only in accordance with the applicable
21 provisions of the Streamlined Sales and Use Tax Agreement;

22 c. The State shall be subject to the uniform rules for the
23 remittance of funds as provided in the Streamlined Sales and Use
24 Tax Agreement;

25 d. The State shall be subject to the privacy and confidentiality
26 provisions provided in the Streamlined Sales and Use Tax
27 Agreement for participants in the system and consumers who deal
28 with Model 1 sellers;

29 e. The uniform rules for the recovery of bad debts contained in
30 the Streamlined Sales and Use Tax Agreement shall be in effect;
31 and

32 f. The State shall not use registration with the central
33 registration system and the collection of sales and use taxes in the
34 member states as a factor in determining whether the seller has
35 nexus with this State for any tax at any time.

36 (cf: P.L.2005, c.126, s.33)

37
38 7. Section 1 of P.L.2003, c.114 (C.54:32D-1) is amended to read
39 as follows:

40 1. a. In addition to any other tax, assessment or use fee
41 authorized by law, there is imposed and shall be paid a hotel and
42 motel occupancy fee of 7% for occupancies on and after August 1,
43 2003 but before July 1, 2004, and of 5% for occupancies on and
44 after July 1, 2004, upon the rent for every occupancy of a room or
45 rooms in a hotel subject to taxation pursuant to subsection (d) of
46 section 3 of P.L.1966, c.30 (C.54:32B-3), which every person
47 required to collect tax shall collect from the customer when
48 collecting the rent to which it applies; provided however, that on
49 and after the tenth day following a certification by the Director of

1 the Division of Budget and Accounting in the Department of the
2 Treasury pursuant to subsection d. of section 2 of P.L.2003, c.114
3 (C.54:32D-2), no such fee shall be paid or collected; and provided
4 further that:

5 (1) the combined rates of the fee imposed under this section,
6 plus the tax imposed under the "Sales and Use Tax Act", P.L.1966,
7 c.30 (C.54:32B-1 et seq.), plus any tax imposed under P.L.1947,
8 c.71 (C.40:48-8.15 et seq.), shall not exceed a total rate of **【13%】**
9 14%, and to the extent that the total combined rate of taxation for
10 the listed fees and taxes would exceed **【13%】** 14%, the fee imposed
11 under this section shall be reduced so that the total combined rate
12 equals **【13%】** 14%;

13 (2) the combined rates of the fee imposed under this section,
14 plus the tax imposed under the "Sales and Use Tax Act", P.L.1966,
15 c.30 (C.54:32B-1 et seq.), plus any tax and assessment imposed
16 under section 4 of P.L.1992, c.165 (C.40:54D-4), shall not exceed a
17 total rate of **【13%】** 14%, and to the extent that the total combined
18 rate of taxation for the listed fees and taxes would exceed **【13%】**
19 14%, the fee imposed under this section shall be reduced so that the
20 total combined rate equals **【13%】** 14%; and

21 (3) the fee imposed under this section shall be at the rate of 1%
22 in a city in which the tax authorized under P.L.1981, c.77
23 (C.40:48E-1 et seq.) is imposed.

24 b. The hotel and motel occupancy fee imposed by subsection a.
25 of this section shall not be imposed on the rent for an occupancy if
26 the purchaser, user or consumer is an entity exempt from the tax
27 imposed on an occupancy under the "Sales and Use Tax Act"
28 pursuant to subsection (a) of section 9 of P.L.1966, c.30 (C.54:32B-
29 9).

30 c. Terms used in this section shall have the meaning given
31 those terms pursuant to section 2 of P.L.1966, c.30 (C.54:32B-2).
32 (cf: P.L.2003, c.114, s.1)

33

34 8. This act shall take effect immediately, but sections 1 through 7
35 shall remain inoperative until July 1, 2006.

36

37

38

STATEMENT

39

40 This bill increases the rate of the sales and use tax from 6% to
41 7%, beginning July 1, 2006.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1996**

STATE OF NEW JERSEY

DATED: JULY 7, 2006

The Senate Budget and Appropriations Committee reports favorably Senate Committee Substitute for Senate Bill No. 1996.

The Senate Committee Substitute for Senate Bill No. 1996 increases the rate of the sales and use tax from 6% to 7%, beginning July 15, 2006.

This bill also extends the base of the sales and use tax, beginning October 1, 2006, encompassing product categories that have come into being with new technologies, limiting some exclusions from taxation, and extending the tax to new services.

The bill establishes the new taxable category of "digital property." Digital property is electronically delivered music, ringtones, movies, books, audio and video works and similar products, where the customer is granted a right or license to use, retain or make a copy of such item. This means that downloaded music, downloaded movies and downloaded books will be subject to tax in the same way that records, movie DVDs and books purchased in a store are taxed now. The bill also limits the current exemption for prewritten software delivered electronically to electronically delivered software that is used directly and exclusively in the conduct of the purchaser's business, trade or occupation.

The bill eliminates the exemption for seller delivery charges that are separately stated from the purchase price of an item. Currently, separately stated delivery charges are nontaxable while "included" delivery is taxable. This bill treats the cost of all items, including delivery charges, as the taxable cost of the items whether separately stated or not. The bill provides for the taxation of delivery charges on taxable items and the exemption of delivery charges on nontaxable items like food and clothing.

The bill specifically limits the sales tax exemptions for laundering, dry cleaning, tailoring, weaving, and pressing to providing those services to clothing. An old administrative decision currently allows the exemption to apply to other items, like drapery and carpets.

The bill limits the exemption for the building contractor services of landscaping and the installation of carpeting and other flooring. Current law provides an exemption for property installation services that constitute a "capital improvement." This bill eliminates that

exemption for landscaping and the installation of flooring.

The bill extends the sales tax to charges for the following services:

- furnishing of space for storage, such as charges for self-storage rentals;
- tanning services;
- massage services, exempting medically prescribed services;
- tattooing, including permanent body art and permanent cosmetic make-up;
- investigation and security services;
- information services;
- limousine services originating in this State, except as provided in connection with funeral services;
- initiation fees, membership fees or dues for access to or use of the property or facilities of a health and fitness, athletic, sporting or shopping club or organization, except for membership in a club or organization whose members are predominantly age 18 or under;
- parking, storing or garaging a motor vehicle (other than employee parking, municipal metered parking and parking subject to municipal parking taxes); and

The bill makes two technical changes. First, the bill includes a provision that clarifies the sales and use tax collection responsibility of a corporation that does not maintain a place of business in New Jersey but, through another corporation that is related through common ownership, conducts business activity in New Jersey through the actions of the related New Jersey agent corporation in furtherance of common marketing, promotion, selling or service activity.

Second, the bill incorporates several rate change provisions of the Streamlined Sales and Use Tax Agreement, in which New Jersey is a participant, into the New Jersey sales and use tax. The agreement requires a rate change for services to first apply for a rate increase to the first billing period starting on or after the effective date of the increase and for a rate decrease to first apply to bills rendered on or after the effective date of the decrease. Under the agreement, this State shall make a reasonable effort to: provide sellers with as much advance notice as practicable of a rate change, limit the effective date of a rate change to the first day of a calendar quarter, and notify sellers of legislative changes in the tax base and amendments to sales and use tax rules and regulations; however, failure of a seller to receive notice or failure of the State to provide notice or limit the effective date of a rate change shall not relieve the seller of its obligation to collect sales or use taxes.

FISCAL IMPACT:

The increase in the sales tax rate from 6% to 7% has been estimated to yield approximately \$1.2 billion annually.

The changes to the tax base under the bill take effect October 1, 2006. For the nine months of State Fiscal Year 2006-2007 remaining thereafter, the following revenues have been estimated, expressed in millions of dollars:

Digital property	\$09.6
Delivery charges	\$32.7
Flooring and carpeting installation	\$08.8
Storage space	\$10.2
Tanning, massage and tattooing	\$08.8
Information services	\$12.3
Limousine service.	\$27.1
Membership fees	\$74.7
Parking	\$07.0
Non-clothing cleaning services	\$04.4
Landscaping services	\$81.7
Magazines and periodicals	\$12.0
Investigation and security services	\$43.0
Total	\$332.30 million