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P.L. 2007, CHAPTER 105, *approved June 28, 2007*
Senate Committee Substitute (*Third Reprint*) for
Senate, Nos. 2269 and 2289

1 AN ACT concerning the sales and use tax on ²[initiation fees,]²
2 ¹[certain]¹ certain² membership fees and dues and certain
3 parking services, ³[and]³ amending ³[and supplementing]³
4 P.L.1966, c.30.

5

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

8

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

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

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

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

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

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

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

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

39 (2) For the purposes of this act, the term "retail sale" includes:
40 sales of tangible personal property to all contractors, subcontractors
41 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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted March 5, 2007.

² Assembly floor amendments adopted June 11, 2007.

³ Assembly floor amendments adopted June 21, 2007.

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.

1 (1) The term "seller" includes:

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

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

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

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

20 (E) The State of New Jersey, 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 when such entity sells
24 services or property of a kind ordinarily sold by private persons;

25 (F) (Deleted by amendment, P.L.2005, c.126);

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

29 (H) ¹ **[A person engaged in collecting charges in the nature of**
30 **[initiation fees,] membership fees or dues for access to or use of**
31 **the property or facilities of a health and fitness, athletic, sporting or**
32 **shopping club or organization] Deleted by amendment, P.L. _____,**
33 **c. (pending before the Legislature as this bill)**¹; and

34 (I) A person engaged in the business of parking, storing or
35 garaging motor vehicles.

36 (2) In addition, when in the opinion of the director it is
37 necessary for the efficient administration of this act to treat any
38 salesman, representative, peddler or canvasser as the agent of the
39 seller, distributor, supervisor or employer under whom the agent
40 operates or from whom the agent obtains tangible personal property
41 or digital property sold by the agent or for whom the agent solicits
42 business, the director may, in the director's discretion, treat such
43 agent as the seller jointly responsible with the agent's principal,
44 distributor, supervisor or employer for the collection and payment
45 over of the tax. A person is an agent of a seller in all cases, but not
46 limited to such cases, that: (A) the person and the seller have the
47 relationship of a "related person" described pursuant to section 2 of

1 P.L.1993, c.170 (C.54:10A-5.5); and (B) the seller and the person
2 use an identical or substantially similar name, tradename,
3 trademark, or goodwill, to develop, promote, or maintain sales, or
4 the person and the seller pay for each other's services in whole or in
5 part contingent upon the volume or value of sales, or the person and
6 the seller share a common business plan or substantially coordinate
7 their business plans, or the person provides services to, or that inure
8 to the benefit of, the seller related to developing, promoting, or
9 maintaining the seller's market.

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

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

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

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

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

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

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

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

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

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

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

44 (u) "Casual sale" means an isolated or occasional sale of an item
45 of tangible personal property or digital property by a person who is
46 not regularly engaged in the business of making retail sales of such

1 property where the item was obtained by the person making the
2 sale, through purchase or otherwise, for the person's own use.

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

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

21 (x) "Customer" includes: every purchaser of tangible personal
22 property, digital property or services; every patron paying or liable
23 for the payment of any amusement charge; every occupant of a
24 room or rooms in a hotel; ¹[every person paying charges in the
25 nature of [initiation fees,] membership fees or dues for access to or
26 use of the property or facilities of a health and fitness, athletic,
27 sporting or shopping club or organization;]¹ and every purchaser of
28 parking, storage or garaging a motor vehicle.

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

1 c.126); and (9) services the benefit of which are received in this
2 State.

3 (z) "Director " means the Director of the Division of Taxation of
4 the State Department of the Treasury, or any officer, employee or
5 agency of the Division of Taxation in the Department of the
6 Treasury duly authorized by the director (directly, or indirectly by
7 one or more redelegations of authority) to perform the functions
8 mentioned or described in this act.

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

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

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

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

21 (C) Providing tangible personal property or digital property
22 along with an operator for a fixed or indeterminate period of time.
23 A condition of this exclusion is that the operator is necessary for the
24 equipment to perform as designed. For the purpose of this
25 subparagraph, an operator must do more than maintain, inspect, or
26 set-up the tangible personal property or digital property.

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

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

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

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

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

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

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

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

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

19 (6) purchases of telecommunications using a prepaid calling
20 service.

21 (dd) "Interstate telecommunication" means any
22 telecommunication that originates or terminates inside this State,
23 including international telecommunication. In the case of mobile
24 telecommunications service, "interstate telecommunication" means
25 any mobile telecommunications service that originates in one state
26 and terminates in another state, territory, or foreign country that is
27 provided to a customer with a place of primary use in this State.

28 (ee) "Intrastate telecommunication" means any
29 telecommunication that originates and terminates within this State.
30 In the case of mobile telecommunications service, "intrastate
31 telecommunication" means any mobile telecommunications service
32 that originates and terminates within the same state that is provided
33 to a customer with a place of primary use in this State.

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

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

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

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

1 bifurcates the user's or self-generation unit owner's otherwise
2 contiguous property.

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

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

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

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

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

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

- 38 (A) The seller's cost of the property sold;
- 39 (B) The cost of materials used, labor or service cost, interest,
40 losses, all costs of transportation to the seller, all taxes imposed on
41 the seller, and any other expense of the seller;
- 42 (C) Charges by the seller for any services necessary to complete
43 the sale;
- 44 (D) Delivery charges;
- 45 (E) Installation charges; and
- 46 (F) The value of exempt personal property given to the
47 purchaser where taxable and exempt personal property have been

1 bundled together and sold by the seller as a single product or piece
2 of merchandise.

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

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

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

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

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

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

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

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

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

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

46 (tt) "Streamlined Sales and Use Tax Agreement" means the
47 agreement entered into as governed and authorized by the "Uniform

1 Sales and Use Tax Administration Act," P.L.2001, c.431
2 (C.54:32B-44 et seq.).

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

6 (vv) "Digital property" means electronically delivered music,
7 ringtones, movies, books, audio and video works and similar
8 products, where the customer is granted a right or license to use,
9 retain or make a copy of such item. Digital property does not
10 include video programming services, including video on demand
11 television services, and broadcasting services, including content to
12 provide such services.

13 (ww) "Landscaping services" means services that result in a
14 capital improvement to land other than structures of any kind
15 whatsoever, such as: seeding, sodding or grass plugging of new
16 lawns; planting trees, shrubs, hedges, plants; and clearing and
17 filling land.

18 (xx) "Investigation and security services" means:

19 (1) investigation and detective services, including detective
20 agencies and private investigators, and fingerprint, polygraph
21 missing person tracing and skip tracing services;

22 (2) security guard and patrol services, including bodyguard and
23 personal protection, guard dog, guard, patrol, and security services;

24 (3) armored car services; and

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

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

32 (cf: P.L.2006, c.44, s.1)]²

33

34 ²[2.] 1.² Section 3 of P.L.1966, c.30 (C.54:32B-3) is amended
35 to read as follows:

36 3. There is imposed and there shall be paid a tax of 7% upon:

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

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

42 (1) Producing, fabricating, processing, printing or imprinting
43 tangible personal property or digital property, performed for a
44 person who directly or indirectly furnishes the tangible personal
45 property or digital property, not purchased by him for resale, upon
46 which such services are performed.

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

20 (3) Storing all tangible personal property not held for sale in the
21 regular course of business; the rental of safe deposit boxes or
22 similar space; and the furnishing of space for storage of tangible
23 personal property by a person engaged in the business of furnishing
24 space for such storage.

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

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

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

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

- 1 (7) Utility service provided to persons in this State, any right or
2 power over which is exercised in this State.
- 3 (8) Tanning services, including the application of a temporary
4 tan provided by any means.
- 5 (9) Massage, bodywork or somatic services, except such
6 services provided pursuant to a doctor's prescription.
- 7 (10) Tattooing, including all permanent body art and permanent
8 cosmetic make-up applications.
- 9 (11) Investigation and security services.
- 10 (12) Information services.
- 11 (13) Transportation services originating in this State and
12 provided by a limousine operator, as permitted by law, except such
13 services provided in connection with funeral services.
- 14 Wages, salaries and other compensation paid by an employer to
15 an employee for performing as an employee the services described
16 in this subsection are not receipts subject to the taxes imposed
17 under this subsection (b).
- 18 Services otherwise taxable under paragraph (1) or (2) of this
19 subsection (b) are not subject to the taxes imposed under this
20 subsection, where the tangible personal property or digital property
21 upon which the services were performed is delivered to the
22 purchaser outside this State for use outside this State.
- 23 (c) (1) Receipts from the sale of prepared food in or by
24 restaurants, taverns, or other establishments in this State, or by
25 caterers, including in the amount of such receipts any cover,
26 minimum, entertainment or other charge made to patrons or
27 customers, except for meals especially prepared for and delivered to
28 homebound elderly, age 60 or older, and to disabled persons, or
29 meals prepared and served at a group-sitting at a location outside of
30 the home to otherwise homebound elderly persons, age 60 or older,
31 and otherwise homebound disabled persons, as all or part of any
32 food service project funded in whole or in part by government or as
33 part of a private, nonprofit food service project available to all such
34 elderly or disabled persons residing within an area of service
35 designated by the private nonprofit organization; and
- 36 (2) Receipts from sales of food and beverages sold through
37 vending machines, at the wholesale price of such sale, which shall
38 be defined as 70% of the retail vending machine selling price,
39 except sales of milk, which shall not be taxed. Nothing herein
40 contained shall affect other sales through coin-operated vending
41 machines taxable pursuant to subsection (a) above or the exemption
42 thereto provided by section 21 of P.L.1980, c.105 (C.54:32B-8.9).
- 43 The tax imposed by this subsection (c) shall not apply to food or
44 drink which is sold to an airline for consumption while in flight.
- 45 (3) For the purposes of this subsection:

1 "Food and beverages sold through vending machines" means
2 food and beverages dispensed from a machine or other mechanical
3 device that accepts payment; and

4 "Prepared food" means:

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

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

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

17 provided however, that

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

20 A. food sold by a seller whose proper primary NAICS
21 classification is manufacturing in section 311, except subsector
22 3118 (bakeries);

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

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

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

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

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

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

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

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

15 (h) ¹~~Charges in the nature of initiation fees,~~ membership fees
16 or dues for access to or use of the property or facilities of a health
17 and fitness, athletic, sporting or shopping club or organization in
18 this State, except for: (1) membership in a club or organization
19 whose members are predominantly age 18 or under; and (2) charges
20 in the nature of membership fees or dues for access to or use of the
21 property or facilities of a health and fitness, athletic, sporting, or
22 shopping club or organization that is exempt from taxation pursuant
23 to paragraph (1) of subsection (a) of section 9 of P.L.1966, c.30
24 (C.54:32B-9), or that is exempt from taxation pursuant to paragraph
25 (1) or (2) of subsection (b) of section 9 of P.L.1966, c.30 and that
26 has complied with subsection (d) of section 9 of P.L.1966, c.30.]

27 ²~~Deleted by amendment, P.L. _____, c. _____ (pending before the~~
28 Legislature as this bill)¹ Charges in the nature of initiation fees,
29 membership fees or dues for access to or use of the property or
30 facilities of a health and fitness, athletic, sporting or shopping club
31 or organization in this State, except for: (1) membership in a club or
32 organization whose members are predominantly age 18 or under;
33 and (2) charges in the nature of membership fees or dues for access
34 to or use of the property or facilities of a health and fitness, athletic,
35 sporting or shopping club or organization that is exempt from
36 taxation pursuant to paragraph (1) of subsection (a) of section 9 of
37 P.L.1966, c.30 (C.54:32B-9), or that is exempt from taxation
38 pursuant to paragraph (1) or (2) of subsection (b) of section 9 of
39 P.L.1966, c.30 and that has complied with subsection (d) of section
40 9 of P.L.1966, c.30. ²

41 (i) The receipts from parking, storing or garaging a motor
42 vehicle, excluding charges for the following ~~types of parking~~:
43 residential parking; employee parking, when provided by an
44 employer or at a facility owned or operated by the employer; and
45 municipal metered parking, storing or garaging; ²~~higher~~
46 education parking, storing or garaging; ¹² ³receipts from charges or
47 fees imposed pursuant to section 3 of P.L.1993, c.159 (C.5:12-

1 173.3) or pursuant to an agreement between the Casino
2 Reinvestment Development Authority and a casino operator in
3 effect on the date of enactment of P.L. , c. (pending before the
4 Legislature as this bill);³and [such] receipts from parking, storing
5 or garaging a motor vehicle subject to tax pursuant to any other law
6 or ordinance.

7 For the purposes of this subsection, “municipal parking, storing
8 or garaging” means any motor vehicle parking, storing or garaging
9 provided by a municipality or county, or a parking authority thereof
10 ²[¹and “higher education parking, storing or garaging” means any
11 motor vehicle parking, storing or garaging provided by: a public
12 institution of higher education created pursuant to N.J.S.18A:64-1
13 et seq.; a county community college created pursuant to
14 N.J.S.18A:64A-1 et seq.; an independent institution of higher
15 education eligible to receive funding under the “Independent
16 College and University Assistance Act,” P.L.1979, c.132
17 (C.18A:72B-15 et seq.); the University of Medicine and Dentistry
18 of New Jersey; the New Jersey Institute of Technology; and
19 Rutgers, the State University¹]² .

20 (cf: P.L.2006, c.44, s.2)

21

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

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

1 processing services described in paragraph (5) of subsection (b) of
2 section 3 of P.L.1966, c.30 (C.54:32B-3), (H) of prepaid calling
3 service and the recharge of prepaid calling service, (I) of any
4 services subject to tax pursuant to subsection (11), (12) or (13) of
5 subsection (b) of section 3 of P.L.1966, c.30 (C.54:32B-3), and (J)
6 ¹ [of access to or use of the property or facilities of a health and
7 fitness, athletic, sporting or shopping club or organization in this
8 State] Deleted by amendment, P.L. , c. (pending before the
9 Legislature as this bill)¹. For purposes of clause (A) of this section,
10 the tax shall be at the applicable rate, as set forth hereinabove, of
11 the consideration given or contracted to be given for such property
12 or for the use of such property including delivery charges made by
13 the seller, but excluding any credit for property of the same kind
14 accepted in part payment and intended for resale. For the purposes
15 of clause (B) of this section, the tax shall be at the applicable rate,
16 as set forth hereinabove, of the price at which items of the same
17 kind of tangible personal property or digital property are offered for
18 sale by the user, or if items of the same kind of tangible personal
19 property are not offered for sale by the user in the regular course of
20 business and are used as such or incorporated into a structure,
21 building or real property the tax shall be at the applicable rate, as
22 set forth hereinabove, of the consideration given or contracted to be
23 given for the tangible personal property manufactured, processed or
24 assembled by the user into the tangible personal property the use of
25 which is subject to use tax pursuant to this section, and the mere
26 storage, keeping, retention or withdrawal from storage of tangible
27 personal property or digital property by the person who
28 manufactured, processed or assembled such property shall not be
29 deemed a taxable use by him. For purposes of clause (C) of this
30 section, the tax shall be at the applicable rate, as set forth
31 hereinabove, of the consideration given or contracted to be given
32 for the service, including the consideration for any tangible personal
33 property or digital property transferred in conjunction with the
34 performance of the service, plus the cost of transportation, except
35 where such cost is separately stated in the written contract, if any,
36 and on the bill rendered to the purchaser. For the purposes of
37 clause (D) of this section, the tax shall be at the applicable rate on
38 the charge made by the telecommunications service provider. For
39 purposes of clause (F) of this section, the tax shall be at the
40 applicable rate on the charge made by the utility service provider.
41 For purposes of clause (G) of this section, the tax shall be at the
42 applicable rate on that proportion of the amount of all processing
43 costs charged by a direct-mail processing service provider that is
44 attributable to the service distributed in this State. For the purposes
45 of clause (H) of this section, the tax shall be at the applicable rate
46 on the consideration given or contracted to be given for the prepaid
47 calling service or the recharge of the prepaid calling service. For

1 purposes of clause (I) of this section, the tax shall be at the
2 applicable rate on the charge made by the service provider. [For
3 purposes of clause (J) of this section, the tax shall be at the
4 applicable rate on the charges in the nature of [initiation fees,]
5 membership fees or dues].

6 (cf: P.L.2006, c.44, s.5)]²

7

8 ³[²[4.] 2.² (New section) Notwithstanding the provisions of
9 any law to the contrary, any tax due and paid by a customer on or
10 after October 1, 2006 pursuant to the provisions of P.L.2006, c.44,
11 upon:

12 a. ²[charges in the nature of initiation fees for access to or use
13 of the property or facilities of a health and fitness, athletic, sporting
14 or shopping club or organization in this State;

15 b.]² charges in the nature of ²[initiation fees,]² membership fees
16 or dues ²[pursuant to subsection (h) of section 3 of P.L.1966, c.30
17 (C.54:32B-3)] for access to or use of the property or facilities of a
18 health and fitness, athletic, sporting or shopping club or
19 organization that is exempt from taxation pursuant to paragraph (1)
20 of subsection (a) of section 9 of P.L.1966, c.30 (C.54:32B-9), or
21 that is exempt from taxation pursuant to paragraph (1) or (2) of
22 subsection (b) of section 9 of P.L.1966, c.30 and that has complied
23 with subsection (d) of section 9 of P.L.1966, c.30² ¹[, that are
24 excluded from tax pursuant to that subsection as amended by
25 section 1 of P.L. , c. (pending before the Legislature as this bill);
26 and]¹ ²; and²

27 ²[c.] b.² receipts for municipal parking, storing or garaging ²[¹;
28 and

29 d. receipts for higher education parking, storing or garaging¹]²
30 shall be refunded upon application for a refund pursuant to section
31 20 of P.L.1966, c.30 (C.54:32B-20).]³

32

33 ²[5.] ³[3.²] 2.³ This act shall take effect ³[immediately and
34 ²[sections] section² 1 ²[, 2, and 3]² shall be retroactive to October
35 1, 2006] July 1, 2007³.

36

37

38

39

40 Excludes membership fees and dues of certain governmental and
41 charitable clubs and organizations and certain parking services from
42 sales and use tax.

SENATE, No. 2269

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED OCTOBER 23, 2006

Sponsored by:

Senator BARBARA BUONO

District 18 (Middlesex)

Senator ANDREW R. CIESLA

District 10 (Monmouth and Ocean)

Co-Sponsored by:

**Senators Asselta, Bark, Bucco, Gormley, Kavanaugh, Lance, Littell, Sarlo,
Sweeney and Turner**

SYNOPSIS

Excludes charges for fees and dues of certain public and nonprofit clubs and organizations from sales and use tax.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/12/2006)

1 AN ACT excluding charges for fees and dues of certain public and
2 nonprofit clubs and organizations from the sales and use tax, and
3 amending P.L.1966, c.30.

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

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

10 3. There is imposed and there shall be paid a tax of 7% upon:

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

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

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

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

40 (3) Storing all tangible personal property not held for sale in the
41 regular course of business; the rental of safe deposit boxes or
42 similar space; and the furnishing of space for storage of tangible
43 personal property by a person engaged in the business of furnishing
44 space for such storage.

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 "Space for storage" means secure areas, such as rooms, units,
2 compartments or containers, whether accessible from outside or
3 from within a building, that are designated for the use of a customer
4 and wherein the customer has free access within reasonable
5 business hours, or upon reasonable notice to the furnisher of space
6 for storage, to store and retrieve property. Space for storage shall
7 not include the lease or rental of an entire building, such as a
8 warehouse or airplane hanger.

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

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

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

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

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

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

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

31 (11) Investigation and security services.

32 (12) Information services.

33 (13) Transportation services originating in this State and
34 provided by a limousine operator, as permitted by law, except such
35 services provided in connection with funeral services.

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

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

45 (c) (1) Receipts from the sale of prepared food in or by
46 restaurants, taverns, or other establishments in this State, or by
47 caterers, including in the amount of such receipts any cover,
48 minimum, entertainment or other charge made to patrons or

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

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

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

19 (3) For the purposes of this subsection:

20 "Food and beverages sold through vending machines" means
21 food and beverages dispensed from a machine or other mechanical
22 device that accepts payment; and

23 "Prepared food" means:

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

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

32 C. food sold with eating utensils provided by the seller,
33 including plates, knives, forks, spoons, glasses, cups, napkins, or
34 straws. A plate does not include a container or packaging used to
35 transport the food;
36 provided however, that

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

39 A. food sold by a seller whose proper primary NAICS
40 classification is manufacturing in section 311, except subsector
41 3118 (bakeries);

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

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

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

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

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

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

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

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

35 (h) Charges in the nature of initiation fees, membership fees or
36 dues for access to or use of the property or facilities of a health and
37 fitness, athletic, sporting or shopping club or organization in this
38 State, except for: (1) membership in a club or organization whose
39 members are predominantly age 18 or under; and (2) charges in the
40 nature of initiation fees, membership fees, or dues for access to or
41 use of the property or facilities of a health and fitness, athletic,
42 sporting, or shopping club or organization that is exempt from
43 taxation pursuant to paragraph (1) of subsection (a) of section 9 of
44 P.L.1966, c.30 (C.54:32B-9), or that is exempt from taxation
45 pursuant to paragraph (1) or (2) of subsection (b) of section 9 of
46 P.L.1966, c.30 and that has complied with subsection (d) of section
47 9 of P.L.1966, c.30.

1 (i) The receipts from parking, storing or garaging a motor
2 vehicle, excluding charges for the following types of parking:
3 residential parking; employee parking, when provided by an
4 employer or at a facility owned or operated by the employer;
5 municipal metered parking; and such receipts subject to tax
6 pursuant to any other law or ordinance.
7 (cf: P.L.2006, c.44, s.2)

8
9 2. This act shall take effect immediately and apply to
10 membership periods beginning on or after the first day of the fourth
11 month next following the date of enactment.

12
13
14 STATEMENT
15

16 This bill excludes the charges for fees and dues of certain public
17 and nonprofit clubs and organizations from the sales and use tax. In
18 particular, this bill exempts the fees and dues that are charged for
19 access to health and fitness, athletic, sporting, and shopping clubs
20 and facilities of nonprofit organizations and local units of
21 government, which were made taxable under the provisions of the
22 new law P.L.2006, c.44.

23 As of October 1, 2006, the State of New Jersey imposes a sales
24 and use tax on the charges for initiation fees, membership fees, or
25 dues for access to or use of the property or facilities of a health and
26 fitness, athletic, sporting, or shopping club or organization. While
27 the new law, P.L.2006, c.44, established a specific exclusion for
28 clubs and organizations whose members are predominately age 18
29 or under, it did not extend the exclusion to exempt public and
30 nonprofit clubs or organizations. Organizations such as municipal
31 athletic clubs, community swimming pools, and nonprofit fitness
32 facilities that are maintained for the benefit of residents and
33 communities are subject to the seven percent sales tax.

34 This bill permits public and nonprofit clubs and organizations to
35 continue to serve communities and residents of the State without the
36 additional burden of a seven percent tax on charges for initiation
37 fees, membership fees, or dues. The sales tax imposed by the new
38 law has increased the overall cost and made membership fees and
39 dues significantly more expensive. The imposition of the sales tax
40 has further impeded the ability of public and nonprofit clubs and
41 organizations to deliver services, and restricted access for
42 individuals throughout the State who are most in need.

SENATE, No. 2289

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED OCTOBER 23, 2006

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Co-Sponsored by:

**Senators Gormley, T.Kean, Inverso, Weinberg, Bark, Lance, Allen and
Girgenti**

SYNOPSIS

Exempts initiation fees, membership fees, and dues of certain municipal, county, and nonprofit clubs and organizations from sales and use tax.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/15/2006)

S2289 VITALE, SCUTARI

2

1 AN ACT exempting initiation fees, membership fees, and dues of
2 certain municipal, county, and nonprofit clubs and organizations
3 from the sales and use tax, and amending P.L.1966, c.30.

4

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

7

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

10 3. There is imposed and there shall be paid a tax of 7% upon:

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

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

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

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

40 (3) Storing all tangible personal property not held for sale in the
41 regular course of business; the rental of safe deposit boxes or
42 similar space; and the furnishing of space for storage of tangible
43 personal property by a person engaged in the business of furnishing
44 space for such storage.

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 "Space for storage" means secure areas, such as rooms, units,
2 compartments or containers, whether accessible from outside or
3 from within a building, that are designated for the use of a customer
4 and wherein the customer has free access within reasonable
5 business hours, or upon reasonable notice to the furnisher of space
6 for storage, to store and retrieve property. Space for storage shall
7 not include the lease or rental of an entire building, such as a
8 warehouse or airplane hanger.

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

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

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

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

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

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

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

31 (11) Investigation and security services.

32 (12) Information services.

33 (13) Transportation services originating in this State and
34 provided by a limousine operator, as permitted by law, except such
35 services provided in connection with funeral services.

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

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

45 (c) (1) Receipts from the sale of prepared food in or by
46 restaurants, taverns, or other establishments in this State, or by
47 caterers, including in the amount of such receipts any cover,
48 minimum, entertainment or other charge made to patrons or

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

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

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

19 (3) For the purposes of this subsection:

20 "Food and beverages sold through vending machines" means
21 food and beverages dispensed from a machine or other mechanical
22 device that accepts payment; and

23 "Prepared food" means:

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

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

32 C. food sold with eating utensils provided by the seller,
33 including plates, knives, forks, spoons, glasses, cups, napkins, or
34 straws. A plate does not include a container or packaging used to
35 transport the food;
36 provided however, that

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

39 A. food sold by a seller whose proper primary NAICS
40 classification is manufacturing in section 311, except subsector
41 3118 (bakeries);

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

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

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

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

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

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

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

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

35 (h) Charges in the nature of initiation fees, membership fees or
36 dues for access to or use of the property or facilities of a health and
37 fitness, athletic, sporting or shopping club or organization in this
38 State, except for: (1) membership in a club or organization whose
39 members are predominantly age 18 or under; and (2) charges in the
40 nature of initiation fees, membership fees, or dues for access to or
41 use of the property or facilities of a health and fitness, athletic, or
42 sporting club or organization that is exempt from taxation pursuant
43 to paragraph (1) of subsection (a) of section 9 of P.L.1966, c.30
44 (C.54:32B-9), or that is exempt from taxation pursuant to paragraph
45 (1) or (2) of subsection (b) of section 9 of P.L.1966, c.30 and that
46 has complied with subsection (d) of section 9 of P.L.1966, c.30.

47 (i) The receipts from parking, storing or garaging a motor
48 vehicle, excluding charges for the following types of parking:

1 residential parking; employee parking, when provided by an
2 employer or at a facility owned or operated by the employer;
3 municipal metered parking; and such receipts subject to tax
4 pursuant to any other law or ordinance.

5 (cf: P.L.2006, c.44, s.2)

6

7 2. This act shall take effect immediately and apply to
8 membership periods beginning on or after the first day of the fourth
9 month next following the date of enactment.

10

11

12

STATEMENT

13

14 This bill removes the imposition of the sales and use tax on the
15 charges for initiation fees, membership fees, and dues of certain
16 municipal, county, and nonprofit clubs and organizations. It
17 specifically exempts the fees and dues charged for access to or use
18 of a health and fitness, athletic, or sporting club or facility of a
19 municipal, county, or nonprofit organization, which were made
20 taxable under the new law P.L.2006, c.44.

21 While the new law currently provides an exclusion for clubs and
22 organizations whose members are predominately age 18 or under, it
23 does not contain a similar exclusion to exempt municipal, county,
24 or nonprofit clubs and organizations. As a result, organizations and
25 facilities such as municipal baseball clubs, community swimming
26 pools, and nonprofit health and fitness clubs are subject to the seven
27 percent sales tax.

28 Unlike businesses which operate health and fitness, athletic, and
29 sporting clubs or organizations for economic incentives, municipal,
30 county, and nonprofit clubs and organizations provide these
31 services and facilities as a benefit to their respective communities.
32 This bill permits municipal, county, and nonprofit clubs and
33 organizations to continue to serve residents of the State without the
34 additional burden of a seven percent tax on charges for initiation
35 fees, membership fees, and dues. The sales tax imposed by the new
36 law has increased the overall cost and made membership fees and
37 dues significantly more expensive. The additional cost has been
38 passed along to consumers, and created a disincentive for joining
39 clubs and organizations that allow residents to engage in an active
40 and healthy lifestyle.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 2269 and 2289**

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 5, 2007

The Assembly Appropriations Committee reports favorably Senate Bill Nos. 2269 and 2289 (SCS), with committee amendments.

The exemption in this bill removes from taxation certain services that were first taxed under P.L.2006, c.44.

As of October 1, 2006, the State of New Jersey broadened the base of the sales and use tax to include the charges for 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. While the new law, P.L.2006, c.44, established a specific exclusion for clubs and organizations whose members are predominately age 18 or under, the exemption does not extend to the facilities of charitable organizations or local government recreation facilities. Private nonprofit clubs that charge fees and dues for access to their facilities are required to collect sales tax as are for-profit fitness centers that charge fees for use. This bill provides an exemption from the sales and use tax for initiation fees, membership fees and dues of all clubs and organizations, regardless of the entity organizing the club or its profit status.

P.L.2006, c.44 subjects most parking services to the sales and use tax, but does provide exemptions for residential parking and municipal metered parking, in addition to certain other exemptions. The provisions for municipal and residential parking have been difficult to interpret and posed difficulties in many municipalities. This bill eliminates the ambiguity by exempting all municipal and county parking, storing, and garaging services from the tax, whether the charges are collected directly by the municipality or through a municipal or county parking authority.

This bill also exempts from taxation "higher education parking, storing and garaging" which includes all receipts for parking, storing or garaging a motor vehicle collected by a public college or university, a county community college, a qualified independent institution of higher education; the University of Medicine and Dentistry of New

Jersey; the New Jersey Institute of Technology; or Rutgers, the State University.

The exemptions provided by the bill are retroactive to October 1, 2006. The bill establishes a refund process for customers who were charged sales tax on the purchase of services that are now exempt, and under law customers have four years from the date of their purchase to apply for a refund.

As amended and reported, this bill is identical to Assembly Bill No. 4065, as also reported by the committee.

FISCAL IMPACT:

The Department of the Treasury has not provided an official estimate for this bill, but the original estimate for the enactment of the tax on charges for 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 was \$75 million annually.

Department of the Treasury has indicated for similar bills that the municipal parking exemption would result in a revenue loss of between \$4 million and \$5 million annually. As this bill exempts higher education parking in addition to the activities that the other bills analyzed by the Treasury exempted, the potential State revenue reductions may be somewhat higher, perhaps in the range of an additional \$0.5 million to \$1.5 million annually.

COMMITTEE AMENDMENTS:

The amendments omit some complex initiation fee and membership fee exemptions and replace those with the complete exemption from the sales and use tax of initiation fees, membership fees and dues of all clubs and organizations, regardless of the entity organizing the club or its profit status.

The amendments also add the provisions concerning higher education parking.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 2269 and 2289**

STATE OF NEW JERSEY

DATED: DECEMBER 11, 2006

The Senate Budget and Appropriations Committee reports favorably the Senate Committee Substitute for Senate Bill Nos. 2269 and 2289.

The substitute provides an exemption from the sales and use tax for membership fees and dues charged by municipal, county, and nonprofit health and fitness, athletic, sporting, and shopping clubs and organizations in New Jersey as well as for municipal and county parking, storing, and garaging services. In addition, the substitute provides an exemption from the sales and use tax for the initiation fees of all clubs and organizations, regardless of their membership restrictions or profit status. The exemptions in this substitute remove taxation from services that were first imposed under P.L.2006, c.44.

As of October 1, 2006, the State of New Jersey broadened the base of the sales and use tax to include the charges for 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. While the new law, P.L.2006, c.44, establishes a specific exclusion for clubs and organizations whose members are predominately age 18 or under, it does not extend the exclusion to exempt nonprofit, municipal, and county clubs and organizations that charge fees and dues for access to their facilities. As a result, organizations such as county golf clubs, municipal swimming pools, and nonprofit fitness centers are subject to the seven percent sales tax.

P.L.2006, c.44 subjects most parking services to the sales and use tax, but does provide exemptions for residential parking and municipal metered parking, in addition to certain other exemptions. The provisions for municipal and residential parking have been difficult to interpret and posed difficulties in many municipalities. This substitute eliminates the ambiguity by exempting all municipal and county parking, storing, and garaging services from the tax.

The exemptions provided by the substitute are retroactive to October 1, 2006. The substitute establishes a refund process for customers who were charged sales tax on the purchase of services that are now exempt, and provides customers four years from the date of their purchase to apply for a refund.

FISCAL IMPACT:

According to the Department of Treasury, this substitute may reduce State revenues by between \$54.0 million and \$60.0 million annually.

The department estimates that the elimination of initiation fees from the sales and use tax may reduce State revenues by \$30.0 million, and that the exemption provided by the substitute for membership fees and dues charged by municipal, county, and nonprofit clubs and organizations may reduce State revenues by an additional \$20.0 to \$25.0 million annually. The elimination of the sales tax on municipal and county parking, storing, and garaging services may reduce State revenue by \$4 to \$5 million.

STATEMENT TO

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 2269 and 2289**

Assembly Floor Amendments
(Proposed By Assemblyman MANZO)

ADOPTED: JUNE 11, 2007

These amendments convert the bill from a blanket elimination of all sales taxes on initiation fees, membership fees and dues for access to or use of the property or facilities of a health and fitness, athletic, sporting or shopping club or organization to a sales tax exemption for the membership fees and dues of charitable and governmental organization charges for access to those facilities.

The bill as amended eliminates the ambiguity in the taxability of municipal parking by exempting all municipal and county parking, storing, and garaging services from the tax, whether the charges are collected directly by the municipality or through a municipal or county parking authority. However, the amendments omit a provision that would have provided an exemption for parking provided by institutions of higher education.

STATEMENT TO

[Second Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2269

with Assembly Floor Amendments
(Proposed By Assemblyman VAN DREW)

ADOPTED: JUNE 21, 2007

These amendments eliminate the imposition of the sales and use tax on the casino charges and fees imposed by law as a minimum parking fee at an Atlantic City casino hotel and the fee for parking paid under an agreement between the Casino Reinvestment Development Authority and casino hotels.

In addition, the amendments eliminate a provision that would have made the effects of the bill retroactive to October 1, 2006, and eliminate the provisions which would have provided a refund to taxpayers who paid or remitted sales and use tax for certain membership fees and dues and certain parking services between October 1, 2006 and the effective date of this bill.

FISCAL NOTE
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 2269 and 2289
STATE OF NEW JERSEY
212th LEGISLATURE

DATED: JANUARY 4, 2007

SUMMARY

Synopsis: Exempts sales and use tax on initiation fees, certain membership fees and dues, and certain parking services.

Type of Impact: Annual Reduction in General Fund Revenue

Agencies Affected: Treasury Department

Executive Estimate

| Fiscal Impact | Annual Impact |
|----------------------|----------------------------------|
| State Revenue | (\$54,000,000) to (\$60,000,000) |

- The Office of Legislative Services (OLS) **concurs** with the Executive estimate. The OLS believes the Treasury estimate falls within a reasonable range, given the limited data.

BILL DESCRIPTION

Senate Committee Substitute for Senate Bill Nos. 2269 and 2289 of 2006 removes the imposition of the sales and use tax from the charges for all initiation fees, for membership fees and dues of certain municipal, county, and nonprofit clubs and organizations, and for certain parking fees. It amends the current law, P.L.2006, c.44, to exempt these fees from the seven percent sales tax which took effect on October 1, 2006.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Department of the Treasury has not provided an official estimate for the substitute bill. However, the Department has indicated informally that the substitute could reduce State

revenues by between \$54.0 million and \$60.0 million annually. The components of this range include: \$30.0 million for initiation fees; between \$20.0 to \$25.0 million for non-profit health and fitness club membership fees; and between \$4.0 and \$5.0 million for certain parking facilities.

OFFICE OF LEGISLATIVE SERVICES

The OLS concurs with the Executive estimate. Precise tax data are not available, and the OLS has no independent means to confirm or dispute the Treasury's estimate of between \$54.0 million and \$60.0 million as the annual State revenue loss. However, Budget estimates from the spring indicate an estimated \$82.0 million revenue gain from the expansion of the sales tax base to various membership fees, initiation fees, and parking fees under P.L.2006, c.44. The substitute bill affects only a portion of this estimated amount. Limited *national* survey data indicate that about 40 percent of health clubs are not-for-profit (such as YMCA or municipal agencies), so exempting the membership fees for these clubs, for shopping clubs, for the initiation fees of all clubs, and for certain parking fees, would generate significant annual State revenue reductions. The OLS believes the Treasury estimate falls within a reasonable range, given the limited data.

Section: Revenue, Finance and Appropriations

Analyst: Martin Poethke
Lead Fiscal Analyst

Approved: David J. Rosen
Legislative Budget and Finance Officer

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

FISCAL NOTE
[Second Reprint]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 2269 and 2289
STATE OF NEW JERSEY
212th LEGISLATURE

DATED: JULY 9, 2007

SUMMARY

Synopsis: Excludes membership fees and dues of certain governmental and charitable clubs and organizations and certain municipal parking services from sales and use tax.

Type of Impact: Annual Reduction in General Fund Revenue

Agencies Affected: Treasury Department

Executive Estimate

| Fiscal Impact | Annual Impact |
|----------------------|----------------------|
| State Revenue | (\$20,000,000) |

- The Office of Legislative Services **concurs** with the Executive estimate.

BILL DESCRIPTION

Senate Committee Substitute for Senate Bill Nos. 2269 and 2289 (2R) of 2006 exempts from the sales and use tax the membership fees and dues of charitable and governmental organizations for access to facilities of a health and fitness, athletic, sporting or shopping club or organization. The bill also exempts all municipal and county parking, storing, and garaging services from the tax, whether the charges are collected directly by the municipality or through a municipal or county. The bill is retroactive to October 1, 2006, and provides a refund process for sales and use taxes paid.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Department of the Treasury has indicated in budget discussions that the provisions of this bill may reduce State General Fund revenues collected under the sales and use tax by about

\$20.0 million annually. The Fiscal Year 2007-08 Appropriations Act includes the assumption of a \$20.0 million revenue reduction. Based on prior fiscal estimates, about \$4.0 million to \$5.0 million is attributable to the parking services portion of the bill.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services concurs with the Executive estimate. Precise tax data are not available, since the provisions affected by this bill only became subject to the sales and use tax on October 1, 2006, of the current fiscal year. However, the Executive's estimate is not inconsistent with independent analyses provided by related business organizations.

Section: Revenue, Finance and Appropriations

Analyst: Martin Poethke
Lead Fiscal Analyst

Approved: David J. Rosen
Legislative Budget and Finance Officer

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

ASSEMBLY, No. 4065

STATE OF NEW JERSEY

212th LEGISLATURE

INTRODUCED MARCH 5, 2007

Sponsored by:

Assemblyman JEFF VAN DREW
District 1 (Cape May, Atlantic and Cumberland)
Assemblyman LOUIS M. MANZO
District 31 (Hudson)
Assemblyman REED GUSCIORA
District 15 (Mercer)
Assemblyman PATRICK J. DIEGNAN, JR.
District 18 (Middlesex)
Assemblyman FRANCIS J. BLEE
District 2 (Atlantic)
Assemblyman JAMES W. HOLZAPFEL
District 10 (Monmouth and Ocean)
Assemblyman NELSON T. ALBANO
District 1 (Cape May, Atlantic and Cumberland)
Assemblywoman LINDA STENDER
District 22 (Middlesex, Somerset and Union)

Co-Sponsored by:

Assemblywoman Lampitt, Assemblymen Greenwald, Hackett, McKeon, Bateman, Bramnick, Corodemus, Rumpf, Connors, Connors, Panter, Wolfe, Conaway, Burzichelli and Assemblywoman Greenstein

SYNOPSIS

Exempts sales and use tax on initiation fees, membership fees and dues and certain parking services.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 6/12/2007)

1 AN ACT concerning the sales and use tax on initiation fees,
2 membership fees and dues and certain parking services, and
3 amending and supplementing P.L.1966, c.30.

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

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

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

1 the seller share a common business plan or substantially coordinate
2 their business plans, or the person provides services to, or that inure
3 to the benefit of, the seller related to developing, promoting, or
4 maintaining the seller's market.

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

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

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

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

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

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

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

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

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

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

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

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

44 (v) "Motor vehicle" includes all vehicles propelled otherwise
45 than by muscular power (excepting such vehicles as run only upon
46 rails or tracks), trailers, semitrailers, house trailers, or any other
47 type of vehicle drawn by a motor-driven vehicle, and motorcycles,
48 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; every
5 seller of telecommunications; [every recipient of initiation fees,
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; every occupant of a
17 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; (8) (Deleted by amendment, P.L.2005,
40 c.126); and (9) services the benefit of which are received in this
41 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;
34 (E) Installation charges; and
35 (F) The value of exempt personal property given to the
36 purchaser where taxable and exempt personal property have been
37 bundled together and sold by the seller as a single product or piece
38 of merchandise.

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

- 40 (A) Discounts, including cash, term, or coupons that are not
41 reimbursed by a third party, that are allowed by a seller and taken
42 by a purchaser on a sale;
43 (B) Interest, financing, and carrying charges from credit
44 extended on the sale of personal property or services, if the amount
45 is separately stated on the invoice, bill of sale, or similar document
46 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" means 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.2006, c.44, 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 7% upon:

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

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

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

37 (2) Installing tangible personal property or digital property, or
38 maintaining, servicing, repairing tangible personal property or
39 digital property not held for sale in the regular course of business,
40 whether or not the services are performed directly or by means of
41 coin-operated equipment or by any other means, and whether or not
42 any tangible personal property or digital property is transferred in
43 conjunction therewith, except (i) such services rendered by an
44 individual who is engaged directly by a private homeowner or
45 lessee in or about his residence and who is not in a regular trade or
46 business offering his services to the public, (ii) such services
47 rendered with respect to personal property exempt from taxation
48 hereunder pursuant to section 13 of P.L.1980, c.105 (C.54:32B-8.1),

1 (iii) (Deleted by amendment, P.L.1990, c.40), (iv) any receipts from
2 laundering, dry cleaning, tailoring, weaving, or pressing clothing,
3 and shoe repairing and shoeshining and (v) services rendered in
4 installing property which, when installed, will constitute an addition
5 or capital improvement to real property, property or land, other than
6 landscaping services and other than installing carpeting and other
7 flooring.

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

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

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

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

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

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

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

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

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

43 (11) Investigation and security services.

44 (12) Information services.

45 (13) Transportation services originating in this State and
46 provided by a limousine operator, as permitted by law, except such
47 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.] Deleted by
3 amendment, P.L. , c. (pending before the Legislature as this bill)

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

12 For the purposes of this subsection, “municipal parking, storing
13 or garaging” means any motor vehicle parking, storing or garaging
14 provided by a municipality or county, or a parking authority thereof
15 and “higher education parking, storing or garaging” means any
16 motor vehicle parking, storing or garaging provided by: a public
17 institution of higher education created pursuant to N.J.S.18A:64-1
18 et seq.; a county community college created pursuant to
19 N.J.S.18A:64A-1 et seq.; an independent institution of higher
20 education eligible to receive funding under the “Independent
21 College and University Assistance Act,” P.L.1979, c.132 (C.
22 18A:72B-15 et seq.); the University of Medicine and Dentistry of
23 New Jersey; the New Jersey Institute of Technology; and Rutgers,
24 the State University.

25 (cf: P.L.2006, c.44, s.2)

26

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

29 6. Unless property or services have already been or will be
30 subject to the sales tax under this act, there is hereby imposed on
31 and there shall be paid by every person a use tax for the use within
32 this State of 7%, except as otherwise exempted under this act, (A)
33 of any tangible personal property or digital property purchased at
34 retail, including energy, provided however, that electricity
35 consumed by the generating facility that produced it shall not be
36 subject to tax, (B) of any tangible personal property or digital
37 property manufactured, processed or assembled by the user, if items
38 of the same kind of tangible personal property or digital property
39 are offered for sale by him in the regular course of business, or if
40 items of the same kind of tangible personal property are not offered
41 for sale by him in the regular course of business and are used as
42 such or incorporated into a structure, building or real property, (C)
43 of any tangible personal property or digital property, however
44 acquired, where not acquired for purposes of resale, upon which any
45 taxable services described in paragraphs (1) and (2) of subsection
46 (b) of section 3 of P.L.1966, c.30 (C.54:32B-3) have been
47 performed, (D) of interstate or intrastate telecommunications and
48 mobile telecommunications described in subsection (f) of section 3

1 of P.L.1966, c.30, (E) (Deleted by amendment, P.L.1995, c.184),
2 (F) of utility service provided to persons in this State for use in this
3 State, provided however, that utility service used by the facility that
4 provides the service shall not be subject to tax, (G) of direct-mail
5 processing services described in paragraph (5) of subsection (b) of
6 section 3 of P.L.1966, c.30 (C.54:32B-3), (H) of prepaid calling
7 service and the recharge of prepaid calling service, (I) of any
8 services subject to tax pursuant to subsection (11), (12) or (13) of
9 subsection (b) of section 3 of P.L.1966, c.30 (C.54:32B-3), and (J)
10 **[of access to or use of the property or facilities of a health and**
11 **fitness, athletic, sporting or shopping club or organization in this**
12 **State]** Deleted by amendment, P.L. _____, c. _____ (pending before the
13 Legislature as this bill). For purposes of clause (A) of this section,
14 the tax shall be at the applicable rate, as set forth hereinabove, of
15 the consideration given or contracted to be given for such property
16 or for the use of such property including delivery charges made by
17 the seller, but excluding any credit for property of the same kind
18 accepted in part payment and intended for resale. For the purposes
19 of clause (B) of this section, the tax shall be at the applicable rate,
20 as set forth hereinabove, of the price at which items of the same
21 kind of tangible personal property or digital property are offered for
22 sale by the user, or if items of the same kind of tangible personal
23 property are not offered for sale by the user in the regular course of
24 business and are used as such or incorporated into a structure,
25 building or real property the tax shall be at the applicable rate, as
26 set forth hereinabove, of the consideration given or contracted to be
27 given for the tangible personal property manufactured, processed or
28 assembled by the user into the tangible personal property the use of
29 which is subject to use tax pursuant to this section, and the mere
30 storage, keeping, retention or withdrawal from storage of tangible
31 personal property or digital property by the person who
32 manufactured, processed or assembled such property shall not be
33 deemed a taxable use by him. For purposes of clause (C) of this
34 section, the tax shall be at the applicable rate, as set forth
35 hereinabove, of the consideration given or contracted to be given
36 for the service, including the consideration for any tangible personal
37 property or digital property transferred in conjunction with the
38 performance of the service, plus the cost of transportation, except
39 where such cost is separately stated in the written contract, if any,
40 and on the bill rendered to the purchaser. For the purposes of
41 clause (D) of this section, the tax shall be at the applicable rate on
42 the charge made by the telecommunications service provider. For
43 purposes of clause (F) of this section, the tax shall be at the
44 applicable rate on the charge made by the utility service provider.
45 For purposes of clause (G) of this section, the tax shall be at the
46 applicable rate on that proportion of the amount of all processing
47 costs charged by a direct-mail processing service provider that is
48 attributable to the service distributed in this State. For the purposes

1 of clause (H) of this section, the tax shall be at the applicable rate
2 on the consideration given or contracted to be given for the prepaid
3 calling service or the recharge of the prepaid calling service. For
4 purposes of clause (I) of this section, the tax shall be at the
5 applicable rate on the charge made by the service provider. [For
6 purposes of clause (J) of this section, the tax shall be at the
7 applicable rate on the charges in the nature of initiation fees,
8 membership fees or dues].

9 (cf: P.L.2006, c.44, s.5)

10
11 4. (New section) Notwithstanding the provisions of any law to
12 the contrary, any tax due and paid by a customer on or after October
13 1, 2006 pursuant to the provisions of P.L.2006, c.44, upon:

14 a. charges in the nature of initiation fees for access to or use of
15 the property or facilities of a health and fitness, athletic, sporting or
16 shopping club or organization in this State;

17 b. charges in the nature of initiation fees, membership fees or
18 dues pursuant to subsection (h) of section 3 of P.L.1966, c.30
19 (C.54:32B-3);

20 c. receipts for municipal parking, storing or garaging; and

21 d. receipts for higher education parking, storing or garaging
22 shall be refunded upon application for a refund pursuant to
23 section 20 of P.L.1966, c.30 (C.54:32B-20).

24
25 5. This act shall take effect immediately and sections 1, 2, and
26 3 shall be retroactive to October 1, 2006.

27
28
29 STATEMENT

30
31 The bill provides an exemption from the sales and use tax for
32 initiation, membership fees and dues charged by health and fitness,
33 athletic, sporting, and shopping clubs and organizations in New
34 Jersey as well as for municipal and county parking, storing, and
35 garaging services and higher education parking, storing and
36 garaging services. The exemptions in this bill remove from taxation
37 services that were first taxed under P.L.2006, c.44.

38 As of October 1, 2006, the State of New Jersey broadened the
39 base of the sales and use tax to include the charges for initiation
40 fees, membership fees, or dues for access to or use of the property
41 or facilities of a health and fitness, athletic, sporting, or shopping
42 club or organization. This bill does away with the taxation of those
43 charges.

44 P.L.2006, c.44 subjects most parking services to the sales and
45 use tax, but does provide exemptions for residential parking and
46 municipal metered parking, in addition to certain other exemptions.
47 The provisions for municipal and residential parking have been
48 difficult to interpret and posed difficulties in many municipalities.

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1 This bill eliminates the ambiguity by exempting all municipal and
2 county parking, storing, and garaging services from the tax.

3 This bill also exempts from taxation “higher education parking,
4 storing and garaging” which includes all receipts for parking,
5 storing or garaging a motor vehicle collected by a public college or
6 university, a county community college, a qualified independent
7 institution of higher education; the University of Medicine and
8 Dentistry of New Jersey; the New Jersey Institute of Technology; or
9 Rutgers, the State University.

10 The exemptions provided by the bill are retroactive to October
11 1, 2006. The bill establishes a refund process for customers who
12 were charged sales tax on the purchase of services that are now
13 exempt, and under law customers have four years from the date of
14 their purchase to apply for a refund.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4065

STATE OF NEW JERSEY

DATED: MARCH 5, 2007

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4065.

The exemption in this bill removes from taxation certain services that were first taxed under P.L.2006, c.44.

As of October 1, 2006, the State of New Jersey broadened the base of the sales and use tax to include the charges for 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. While the new law, P.L.2006, c.44, established a specific exclusion for clubs and organizations whose members are predominately age 18 or under, the exemption does not extend to the facilities of charitable organizations or local government recreation facilities. Private nonprofit clubs that charge fees and dues for access to their facilities are required to collect sales tax as are for-profit fitness centers that charge fees for use. This bill provides an exemption from the sales and use tax for initiation fees, membership fees and dues of all clubs and organizations, regardless of the entity organizing the club or its profit status.

P.L.2006, c.44 subjects most parking services to the sales and use tax, but does provide exemptions for residential parking and municipal metered parking, in addition to certain other exemptions. The provisions for municipal and residential parking have been difficult to interpret and posed difficulties in many municipalities. This bill eliminates the ambiguity by exempting all municipal and county parking, storing, and garaging services from the tax, whether the charges are collected directly by the municipality or through a municipal or county parking authority.

This bill also exempts from taxation "higher education parking, storing and garaging" which includes all receipts for parking, storing or garaging a motor vehicle collected by a public college or university, a county community college, a qualified independent institution of higher education; the University of Medicine and Dentistry of New Jersey; the New Jersey Institute of Technology; or Rutgers, the State University.

The exemptions provided by the bill are retroactive to October 1, 2006. The bill establishes a refund process for customers who were charged sales tax on the purchase of services that are now exempt, and

under law customers have four years from the date of their purchase to apply for a refund.

As reported, this bill is identical to Senate Bill No. 2269/2289 (SCS), as amended and reported by the committee.

FISCAL IMPACT:

The Department of the Treasury has not provided an official estimate for this bill, but the original estimate for the enactment of the tax on charges for 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 was \$75 million annually.

Department of the Treasury has indicated for similar bills that the municipal parking exemption would result in a revenue loss of between \$4 million and \$5 million annually. As this bill exempts higher education parking in addition to the activities that the other bills analyzed by the Treasury exempted, the potential State revenue reductions may be somewhat higher, perhaps in the range of an additional \$0.5 million to \$1.5 million annually.