

FOLLOWING WERE PRINTED:

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

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Corzine wraps up weeklong effort of business-tax reform," Courier News, 12-20-08, p. __

"Enacted bill will change corporate tax rules," Asbury Park Press, 12-20-08, p. B4

"Corzine signs measure to cut business tax." Courier-Post, 12-20-08, p. 5B

"N.J.'s corporate tax rules changed," Home News Tribune, 12-20-08, p. __

LAW/IS 3/11/09

§16 -
C.54:32B-8.58
§17 -
C.54:32B-8.59
§18 - Note to
54:32G-1
§19 - Note to
§§1-18

P.L. 2008, CHAPTER 123, *approved December 19, 2008*
Assembly No. 3111
(CORRECTED COPY)

1 **AN ACT** revising the sales and use tax to conform with the
2 Streamlined Sales and Use Tax Agreement, amending P.L.2005,
3 c.126, P.L.1980, c.105, and P.L.1985, c.24, amending and
4 supplementing P.L.1966, c.30, and repealing section 27 of
5 P.L.2005, c.126 and section 1 of P.L.2006, c.41.

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

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

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

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

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

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

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

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

28 (1) For the purposes of this act a sale is for "resale, sublease, or
29 subrent" if it is a sale (A) for resale either as such or as converted
30 into or as a component part of a product produced for sale by the
31 purchaser, including the conversion of natural gas into another
32 intermediate or end product, other than electricity or thermal
33 energy, produced for sale by the purchaser, **[or]** (B) for use by that

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 person in performing the services subject to tax under subsection
2 (b) of section 3 where the property so sold becomes a physical
3 component part of the property upon which the services are
4 performed or where the property so sold is later actually transferred
5 to the purchaser of the service in conjunction with the performance
6 of the service subject to tax, or (C) of telecommunications service
7 to a telecommunications service provider for use as a component
8 part of telecommunications service provided to an ultimate
9 customer.

10 (2) For the purposes of this act, the term "retail sale" includes:
11 sales of tangible personal property to all contractors, subcontractors
12 structures for others, or building on, or otherwise improving,
13 altering, or repairing real property of others.

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

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

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

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

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

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

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

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

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

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

40 (g) "Tangible personal property" means personal property that
41 can be seen, weighed, measured, felt, or touched, or that is in any
42 other manner perceptible to the senses. "Tangible personal
43 property" includes electricity, water, gas, steam, and prewritten
44 computer software including prewritten computer software
45 delivered electronically.

46 (h) "Use" means the exercise of any right or power over tangible
47 personal property, digital property, services to property, or services
48 by the purchaser thereof and includes, but is not limited to, the

1 receiving, storage or any keeping or retention for any length of
2 time, withdrawal from storage, any distribution, any installation,
3 any affixation to real or personal property, or any consumption of
4 such property. Use also includes the exercise of any right or power
5 over intrastate or interstate telecommunications and prepaid calling
6 services. Use also includes the exercise of any right or power over
7 utility service. Use also includes the derivation of a direct or
8 indirect benefit from a service.

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

11 (1) The term "seller" includes:

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

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

20 (C) A person who solicits business either by employees,
21 independent contractors, agents or other representatives or by
22 distribution of catalogs or other advertising matter and by reason
23 thereof makes sales to persons within the State of tangible personal
24 property, digital property or services, the use of which is taxed by
25 this act;

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

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

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

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

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

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

45 (2) In addition, when in the opinion of the director it is
46 necessary for the efficient administration of this act to treat any
47 salesman, representative, peddler or canvasser as the agent of the
48 seller, distributor, supervisor or employer under whom the agent

1 operates or from whom the agent obtains tangible personal property
2 or digital property sold by the agent or for whom the agent solicits
3 business, the director may, in the director's discretion, treat such
4 agent as the seller jointly responsible with the agent's principal,
5 distributor, supervisor or employer for the collection and payment
6 over of the tax. A person is an agent of a seller in all cases, but not
7 limited to such cases, that: (A) the person and the seller have the
8 relationship of a "related person" described pursuant to section 2 of
9 P.L.1993, c.170 (C.54:10A-5.5); and (B) the seller and the person
10 use an identical or substantially similar name, tradename,
11 trademark, or goodwill, to develop, promote, or maintain sales, or
12 the person and the seller pay for each other's services in whole or in
13 part contingent upon the volume or value of sales, or the person and
14 the seller share a common business plan or substantially coordinate
15 their business plans, or the person provides services to, or that inure
16 to the benefit of, the seller related to developing, promoting, or
17 maintaining the seller's market.

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

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

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

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

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

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

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

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

42 (r) "Dramatic or musical arts admission charge" means any
43 admission charge paid for admission to a theater, opera house,
44 concert hall or other hall or place of assembly for a live, dramatic,
45 choreographic or musical performance.

46 (s) "Lessor" means any person who is the owner, licensee, or
47 lessee of any premises, tangible personal property or digital

1 property which the person leases, subleases, or grants a license to
2 use to other persons.

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

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

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

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

28 (x) "Customer" includes: every purchaser of tangible personal
29 property, digital property or services; every patron paying or liable
30 for the payment of any amusement charge; every occupant of a
31 room or rooms in a hotel; every person paying charges in the nature
32 of initiation fees, membership fees or dues for access to or use of
33 the property or facilities of a health and fitness, athletic, sporting or
34 shopping club or organization; and every purchaser of parking,
35 storage or garaging a motor vehicle.

36 (y) "Property and services the use of which is subject to tax"
37 includes: (1) all property sold to a person within the State, whether
38 or not the sale is made within the State, the use of which property is
39 subject to tax under section 6 or will become subject to tax when
40 such property is received by or comes into the possession or control
41 of such person within the State; (2) all services rendered to a person
42 within the State, whether or not such services are performed within
43 the State, upon tangible personal property or digital property the use
44 of which is subject to tax under section 6 or will become subject to
45 tax when such property is distributed within the State or is received
46 by or comes into possession or control of such person within the
47 State; (3) intrastate **[or]** , interstate, or international
48 telecommunications sourced to this State pursuant to section 29 of

1 P.L.2005, c.126 (C.54:32B-3.4); (4) (Deleted by amendment,
2 P.L.1995, c.184); (5) energy sold, exchanged or delivered in this
3 State for use in this State; (6) utility service sold, exchanged or
4 delivered in this State for use in this State; (7) **[direct]** mail
5 processing services in connection with **[direct mail]** printed
6 advertising material distributed in this State; (8) (Deleted by
7 amendment, P.L.2005, c.126); and (9) services the benefit of which
8 are received in this State.

9 (z) "Director " means the Director of the Division of Taxation of
10 the State Department of the Treasury, or any officer, employee or
11 agency of the Division of Taxation in the Department of the
12 Treasury duly authorized by the director (directly, or indirectly by
13 one or more redelegations of authority) to perform the functions
14 mentioned or described in this act.

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

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

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

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

27 (C) Providing tangible personal property or digital property
28 along with an operator for a fixed or indeterminate period of time.
29 A condition of this exclusion is that the operator is necessary for the
30 equipment to perform as designed. For the purpose of this
31 subparagraph, an operator must do more than maintain, inspect, or
32 set-up the tangible personal property or digital property.

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

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

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

44 (cc) "Telecommunications service" means the **[act or privilege**
45 **of originating or receiving messages or information through the use**
46 **of any kind of one-way or two-way communication; including but**
47 **not limited to voice, video, facsimile, teletypewriter, computer,**
48 **mobile telecommunications service or any other type of**

1 communication; using electronic or electromagnetic methods, and
2 all services and equipment provided in connection therewith or by
3 means thereof] electronic transmission, conveyance, or routing of
4 voice, data, audio, video, or any other information or signals to a
5 point, or between or among points.

6 "Telecommunications service" shall include such transmission,
7 conveyance, or routing in which computer processing applications
8 are used to act on the form, code, or protocol of the content for
9 purposes of transmission, conveyance, or routing without regard to
10 whether such service is referred to as voice over Internet protocol
11 services or is classified by the Federal Communications
12 Commission as enhanced or value added.

13 "Telecommunications service" shall not include:

14 (1) **[one-way radio or television broadcasting transmissions**
15 **available universally to the general public without a fee]**~~(Deleted~~
16 ~~by amendment, P.L. , c.)~~ (pending before the Legislature as this
17 bill);

18 (2) **[purchases of telecommunications by a telecommunications**
19 **provider for use as a component part of telecommunications**
20 **provided to an ultimate retail consumer who (A) originates or**
21 **terminates the taxable end-to-end communications or (B) pays**
22 **charges exempt from taxation pursuant to paragraph (5) of this**
23 **subsection]**~~(Deleted by amendment, P.L. , c.)~~ (pending before
24 the Legislature as this bill);

25 (3) **[services provided by a person, or by that person's wholly**
26 **owned subsidiary, not engaged in the business of rendering or**
27 **offering telecommunications services to the public, for private and**
28 **exclusive use within its organization, provided however, that**
29 **"telecommunications" shall include the sale of telecommunications**
30 **services attributable to the excess unused telecommunications**
31 **capacity of that person to another]**~~(Deleted by amendment, P.L. ,~~
32 ~~c.)~~ (pending before the Legislature as this bill);

33 (4) **[charges in the nature of subscription fees paid by**
34 **subscribers for cable television service]**~~(Deleted by amendment,~~
35 ~~P.L. , c.)~~ (pending before the Legislature as this bill);

36 (5) **[charges subject to the local calling rate paid by inserting**
37 **coins into a coin operated telecommunications device available to**
38 **the public]**~~(Deleted by amendment, P.L. , c.)~~ (pending before
39 the Legislature as this bill); **[and]**

40 (6) **[purchases of telecommunications using a prepaid calling**
41 **service]**~~(Deleted by amendment, P.L. , c.)~~ (pending before the
42 Legislature as this bill);

43 (7) data processing and information services that allow data to be
44 generated, acquired, stored, processed, or retrieved and delivered by
45 an electronic transmission to a purchaser where such purchaser's
46 primary purpose for the underlying transaction is the processed data
47 or information;

- 1 (8) installation or maintenance of wiring or equipment on a
2 customer's premises;
- 3 (9) tangible personal property;
- 4 (10) advertising, including but not limited to directory
5 advertising;
- 6 (11) billing and collection services provided to third parties;
- 7 (12) internet access service;
- 8 (13) radio and television audio and video programming services,
9 regardless of the medium, including the furnishing of transmission,
10 conveyance, and routing of such services by the programming
11 service provider. Radio and television audio and video
12 programming services shall include but not be limited to cable
13 service as defined in section 47 U.S.C. s.522(6) and audio and video
14 programming services delivered by commercial mobile radio
15 service providers, as defined in section 47 C.F.R. 20.3;
- 16 (14) ancillary services; or
- 17 (15) digital products delivered electronically, including but not
18 limited to software, music, video, reading materials, or ringtones.
- 19 For the purposes of this subsection:
- 20 "ancillary service" means a service that is associated with or
21 incidental to the provision of telecommunications services,
22 including but not limited to detailed telecommunications billing,
23 directory assistance, vertical service, and voice mail service;
- 24 "conference bridging service" means an ancillary service that
25 links two or more participants of an audio or video conference call
26 and may include the provision of a telephone number. Conference
27 bridging service does not include the telecommunications services
28 used to reach the conference bridge;
- 29 "detailed telecommunications billing service" means an ancillary
30 service of separately stating information pertaining to individual
31 calls on a customer's billing statement;
- 32 "directory assistance" means an ancillary service of providing
33 telephone number information or address information or both;
- 34 "vertical service" means an ancillary service that is offered in
35 connection with one or more telecommunications services, which
36 offers advanced calling features that allow customers to identify
37 callers and to manage multiple calls and call connections, including
38 conference bridging services; and
- 39 "voice mail service" means an ancillary service that enables the
40 customer to store, send, or receive recorded messages. Voice mail
41 service does not include any vertical service that a customer may be
42 required to have to utilize the voice mail service.
- 43 (dd) (1) "Intrastate telecommunications" means a
44 telecommunications service that originates in one United States
45 state or a United States territory or possession or federal district,
46 and terminates in the same United States state or United States
47 territory or possession or federal district.

1 (2) "Interstate ~~telecommunication~~ telecommunications" means
2 ~~any~~ a ~~telecommunication~~ telecommunications service that
3 originates in one United States state or a United States territory or
4 possession or federal district, and [or] terminates [inside this State,
5 including international telecommunication. In the case of mobile
6 telecommunications service, "interstate telecommunication" means
7 any mobile telecommunications service that originates in one state
8 and terminates in another state, territory, or foreign country that is
9 provided to a customer with a place of primary use in this State] in
10 a different United States state or United States territory or
11 possession or federal district.

12 (3) "International telecommunications" means a
13 telecommunications service that originates or terminates in the
14 United States and terminates or originates outside the United States,
15 respectively. "United States" includes the District of Columbia or a
16 United States territory or possession.

17 (ee) ["Intrastate telecommunication" means any
18 telecommunication that originates and terminates within this State.
19 In the case of mobile telecommunications service, "intrastate
20 telecommunication" means any mobile telecommunications service
21 that originates and terminates within the same state that is provided
22 to a customer with a place of primary use in this State.] (Deleted by
23 amendment, P.L. , c.) (pending before the Legislature as this
24 bill)

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.

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

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

14 (mm) "Mobile telecommunications service" **[means commercial**
15 **mobile radio service, as defined in section 20.3 of title 47 of the**
16 **Code of Federal Regulations as in effect on June 1, 1999] means**
17 the same as that term is defined in the federal "Mobile
18 Telecommunications Sourcing Act," 4 U.S.C. s.124 (Pub.L.106-
19 252).

20 (nn) **["Place of primary use" means the street address**
21 **representative of where the customer's use of the mobile**
22 **telecommunications service primarily occurs, which shall be the**
23 **residential street address or the primary business street address of**
24 **the customer and within the licensed service area of the home**
25 **service provider. For the purposes of determining the primary place**
26 **of use, the terms used shall have the meanings provided pursuant to**
27 **the federal "Mobile Telecommunications Sourcing Act," 4 U.S.C.**
28 **s.124 (Pub.L.106-252).] (Deleted by amendment, P.L. , c.)**
29 **(pending before the Legislature as this bill)**

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

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

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

39 (C) Charges by the seller for any services necessary to complete
40 the sale;

41 (D) Delivery charges;

42 (E) Installation charges; and

43 (F) **[The value of exempt personal property given to the**
44 **purchaser where taxable and exempt personal property have been**
45 **bundled together and sold by the seller as a single product or piece**
46 **of merchandise] (Deleted by amendment, P.L. , c.) (pending**
47 **before the Legislature as this bill).**

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

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

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

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

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

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

20 (3) "Sales price" includes consideration received by the seller
21 from third parties if:

22 (A) The seller actually receives consideration from a party other
23 than the purchaser and the consideration is directly related to a price
24 reduction or discount on the sale;

25 (B) The seller has an obligation to pass the price reduction or
26 discount through to the purchaser;

27 (C) The amount of the consideration attributable to the sale is
28 fixed and determinable by the seller at the time of the sale of the
29 item to the purchaser; and

30 (D) One of the following criteria is met:

31 (i) the purchaser presents a coupon, certificate, or other
32 documentation to the seller to claim a price reduction or discount
33 where the coupon, certificate, or documentation is authorized,
34 distributed, or granted by a third party with the understanding that
35 the third party will reimburse any seller to whom the coupon,
36 certificate, or documentation is presented;

37 (ii) the purchaser identifies himself to the seller as a member of a
38 group or organization entitled to a price reduction or discount;
39 provided however, that a preferred customer card that is available to
40 any patron does not constitute membership in such a group; or

41 (iii) the price reduction or discount is identified as a third party
42 price reduction or discount on the invoice received by the purchaser
43 or on a coupon, certificate, or other documentation presented by the
44 purchaser.

45 (4) In the case of a bundled transaction that includes a
46 telecommunication service, an ancillary service, internet access, or
47 an audio or video programming service, if the price is attributable to
48 products that are taxable and products that are nontaxable, the

1 portion of the price attributable to the nontaxable products is
2 subject to tax unless the provider can identify by reasonable and
3 verifiable standards such portion from its books and records that are
4 kept in the regular course of business for other purposes, including
5 non-tax purposes.

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

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

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

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

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

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

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

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

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

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

10 (2) security guard and patrol services, including bodyguard and
11 personal protection, guard dog, guard, patrol, and security services;

12 (3) armored car services; and

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

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

20 (cf: P.L.2006, c.44, s.1)

21

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

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

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

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

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

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

1 and shoe repairing and shoeshining and (v) services rendered in
2 installing property which, when installed, will constitute an addition
3 or capital improvement to real property, property or land, other than
4 landscaping services and other than installing carpeting and other
5 flooring.

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

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

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

29 (5) **【Direct-mail】** Mail processing services for printed
30 advertising material, except for **【direct-mail】** mail processing
31 services in connection with distribution of 【direct mail】 printed
32 advertising material to out-of-State recipients.

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

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

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

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

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

42 (11) Investigation and security services.

43 (12) Information services.

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

47 (14) Telephone answering services.

48 (15) Radio subscription 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, or international telecommunications
37 services and ancillary services sourced to this State in accordance
38 with section 29 of P.L.2005, c.126 (C.54:32B-3.4).

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

1 (g) **【The receipts from every sale, except for resale, of prepaid**
2 **calling service and the recharge of prepaid calling service.】**
3 **(Deleted by amendment, P.L. _____, c. _____) (pending before the**
4 **Legislature as this bill)**

5 (h) Charges in the nature of initiation fees, membership fees or
6 dues for 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, except for: (1) membership in a club or organization whose
9 members are predominantly age 18 or under; and (2) charges in the
10 nature of membership fees or dues for access to or use of the
11 property or facilities of a health and fitness, athletic, sporting or
12 shopping club or organization that is exempt from taxation pursuant
13 to paragraph (1) of subsection (a) of section 9 of P.L.1966, c.30
14 (C.54:32B-9), or that is exempt from taxation pursuant to paragraph
15 (1) or (2) of subsection (b) of section 9 of P.L.1966, c.30 and that
16 has complied with subsection (d) of section 9 of P.L.1966, c.30.

17 (i) The receipts from parking, storing or garaging a motor
18 vehicle, excluding charges for the following: residential parking;
19 employee parking, when provided by an employer or at a facility
20 owned or operated by the employer; municipal parking, storing or
21 garaging; receipts from charges or fees imposed pursuant to section
22 3 of P.L.1993, c.159 (C.5:12-173.3) or pursuant to an agreement
23 between the Casino Reinvestment Development Authority and a
24 casino operator in effect on the date of enactment of P.L.2007,
25 c.105; and receipts from parking, storing or garaging a motor
26 vehicle subject to tax pursuant to any other law or ordinance.

27 For the purposes of this subsection, "municipal parking, storing
28 or garaging" means any motor vehicle parking, storing or garaging
29 provided by a municipality or county, or a parking authority
30 thereof.

31 (cf: P.L.2007, c.105, s.1)

32

33 3. Section 29 of P.L.2005, c.126 (C.54:32B-3.4) is amended to
34 reads as follows:

35 29. a. Notwithstanding the general sourcing provisions of
36 section 26 of P.L.2005, c.126 (C.54:32B-3.1), except for the
37 telecommunication services enumerated in subsection c. of this
38 section, the sale of telecommunication service sold on a call-by-call
39 basis shall be sourced to:

40 (1) each level of taxing jurisdiction where the call originates and
41 terminates in that jurisdiction; or

42 (2) each level of taxing jurisdiction where the call either
43 originates or terminates and in which the service address is also
44 located.

45 b. Except for the telecommunication services enumerated in
46 subsection c. of this section, a sale of telecommunications services
47 sold on a basis other than a call-by-call basis shall be sourced to the
48 customer's place of primary use.

1 c. The sale of the following telecommunication services shall
2 be sourced to each level of taxing jurisdiction as follows:

3 (1) A sale of mobile telecommunications services other than air-
4 to-ground radiotelephone service and prepaid calling service shall
5 be sourced to the customer's place of primary use as required by the
6 federal "Mobile Telecommunications Sourcing Act," 4 U.S.C. s.116
7 et seq.

8 (2) A sale of post-paid calling service shall be sourced to the
9 origination point of the telecommunications signal as first identified
10 by either:

11 (a) the seller's telecommunications system; or

12 (b) information received by the seller from its service provider,
13 if the system used to transport such signals is not that of the seller.

14 (3) A sale of prepaid calling service or a sale of a prepaid
15 wireless calling service shall be sourced in accordance with the
16 general sourcing provisions of section 26 of P.L.2005, c.126
17 (C.54:32B-3.1); provided however, that in the case of a sale of
18 **【mobile telecommunications service that is a】** prepaid
19 **【telecommunications】** wireless calling service, the rule provided in
20 paragraph (5) of subsection (a) of that section shall include as an
21 option the location associated with the mobile telephone number.

22 (4) A sale of a private communication service shall be sourced
23 as follows:

24 (a) Service for a separate charge related to a customer channel
25 termination point shall be sourced to each level of jurisdiction in
26 which such customer channel termination point is located.

27 (b) Service for which all customer termination points are located
28 entirely within one jurisdiction or levels of jurisdiction shall be
29 sourced to such jurisdiction in which the customer channel
30 termination points are located.

31 (c) Service for segments of a channel between two customer
32 channel termination points located in different jurisdictions and
33 which segments of channel are separately charged shall be sourced
34 fifty percent to each level of jurisdiction in which the customer
35 channel termination points are located.

36 (d) Service for segments of a channel located in more than one
37 jurisdiction or levels of jurisdiction and which segments of channel
38 are not separately billed shall be sourced to each jurisdiction based
39 on the percentage determined by dividing the number of customer
40 channel termination points in such jurisdiction by the total number
41 of customer channel termination points.

42 (5) A sale of an ancillary service shall be sourced to the
43 customer's place of primary use.

44 d. For the purposes of this section:

45 "Air-to-ground radiotelephone service" means a radio service, as
46 that term is defined in 47 CFR 22.99, in which common carriers are
47 authorized to offer and provide radio telecommunications service
48 for hire to subscribers in aircraft;

1 "Ancillary service" means a service that is associated with or
2 incidental to the provision of telecommunication services, including
3 but not limited to detailed telecommunications billing, directory
4 assistance, vertical service, and voice mail services;

5 "Call-by-call basis" means any method of charging for
6 telecommunications services in which the price is measured by
7 individual calls;

8 "Communications channel" means a physical or virtual path of
9 communications over which signals are transmitted between or
10 among customer channel termination points;

11 "Customer" means the person or entity that contracts with the
12 seller of telecommunications services. If the end user of
13 telecommunications services is not the contracting party, then the
14 end user of the telecommunications service is the customer of the
15 telecommunication service, but this provision applies only for the
16 purpose of sourcing sales of telecommunications services under this
17 section. "Customer" does not include a reseller of
18 telecommunications service or, for mobile telecommunications
19 service **[of]** , a serving carrier under an agreement to serve the
20 customer outside the home service provider's licensed service area;

21 "Customer channel termination point" means the location where
22 the customer either inputs or receives the communications;

23 "End user" means the person who utilizes the telecommunication
24 service. In the case of an entity, "end user" means the individual
25 who utilizes the service on behalf of the entity;

26 "Home service provider" has the same meaning as that term is
27 defined by the federal "Mobile Telecommunications Sourcing Act,"
28 4 U.S.C. s.124;

29 "Mobile telecommunications service" has the same meaning as
30 that term is defined by the federal "Mobile Telecommunications
31 Sourcing Act," 4 U.S.C. s.124;

32 "Place of primary use" means the street address representative of
33 where the customer's use of the telecommunications service
34 primarily occurs, which shall be the residential street address or the
35 primary business street address of the customer. In the case of
36 mobile telecommunications services, "place of primary use" shall
37 be within the licensed service area of the home service provider;

38 "Post-paid calling service" means the telecommunications
39 service obtained by making a payment on a call-by-call basis either
40 through the use of a credit card or payment mechanism such as a
41 bank card, travel card, credit card, or debit card, or by a charge
42 made to a telephone number which is not associated with the
43 origination or termination of the telecommunications service. A
44 post-paid calling service includes a telecommunications service,
45 except a prepaid wireless calling service, that would be a prepaid
46 calling service except it is not exclusively a telecommunications
47 service;

1 "Prepaid calling service" means the right to access exclusively
 2 telecommunications services, which shall be paid for in advance
 3 **[that] and which** enables the origination of calls using an access
 4 number or authorization code, whether manually or electronically
 5 dialed, and that is sold in predetermined units or dollars of which
 6 the number declines with use in a known amount;

7 "Prepaid wireless calling service" means a telecommunications
 8 service that provides the right to utilize mobile wireless service as
 9 well as other non-telecommunications services, including the
 10 download of digital products delivered electronically, content, and
 11 ancillary services, which must be paid for in advance and that is
 12 sold in predetermined units or dollars of which the number declines
 13 with use in a known amount;

14 "Private communication service" means a telecommunication
 15 service that entitles the customer to exclusive or priority use of a
 16 communications channel or group of channels between or among
 17 termination points, regardless of the manner in which such channel
 18 or channels are connected, and includes switching capacity,
 19 extension lines, stations, and any other associated services that are
 20 provided in connection with the use of such channel or channels;
 21 and

22 "Service address" means

23 (1) The location of the telecommunications equipment to which
 24 a customer's call is charged and from which the call originates or
 25 terminates, regardless of where the call is billed or paid;

26 (2) If the location in paragraph (1) of this definition is not
 27 known, "service address" means the origination point of the signal
 28 of the telecommunications services first identified by either the
 29 seller's telecommunications system or in information received by
 30 the seller from its service provider, in the case that the system used
 31 to transport such signals is not that of the seller; or

32 (3) If the locations in paragraphs (1) and (2) of this definition
 33 are not known, "service address" means the location of the
 34 customer's place of primary use.

35 (cf: P.L.2005, c.126, s.29)

36

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

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

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

44	Amount of Sale	Amount of Tax
45	\$0.01 to \$0.10	No Tax
46	0.11 to 0.19	\$0.01
47	0.20 to 0.32	0.02
48	0.33 to 0.47	0.03

1	0.48 to 0.62	0.04
2	0.63 to 0.77	0.05
3	0.78 to 0.90	0.06
4	0.91 to \$1.10	0.07

5 and in addition to a tax of \$0.07 on each full dollar, a tax shall be
6 collected on each part of a dollar in excess of a full dollar, in
7 accordance with the above formula; or

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

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

13 b. **【For charges paid by inserting coins into a coin operated**
14 **telecommunications device available to the public the tax shall be**
15 **computed to the nearest multiple of five cents of the tax otherwise**
16 **due pursuant to subsection a. of this section, except that, if the**
17 **amount of the tax is midway between multiples of five cents, the**
18 **next higher multiple shall apply.】** (Deleted by amendment, P.L. ____,
19 c.) (pending before the Legislature as this bill)
20 (cf: P.L.2006, c.44, s.3)

21
22 5. Section 6 of P.L.1966, c.30 (C.54:32B-6) is amended to read
23 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, interstate, or
43 international telecommunications services **【and mobile**
44 **telecommunications】** described in subsection (f) of section 3 of
45 P.L.1966, c.30, (E) (Deleted by amendment, P.L.1995, c.184), (F)
46 of utility service provided to persons in this State for use in this
47 State, provided however, that utility service used by the facility that

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

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

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

14

15 6. Section 13 of P.L.1980, c.105 (C.54:32B-8.1) is amended to
16 read as follows:

17 13. a. Receipts from sales of the following sold for human use
18 are exempt from the tax imposed under the "Sales and Use Tax
19 Act":

- 20 (1) drugs sold pursuant to a doctor's prescription;
- 21 (2) over-the-counter drugs;
- 22 (3) diabetic supplies;
- 23 (4) prosthetic devices;
- 24 (5) tampons or like products;
- 25 (6) medical oxygen;
- 26 (7) human blood and its derivatives;
- 27 (8) durable medical equipment for home use;
- 28 (9) mobility enhancing equipment sold by prescription; and
- 29 (10) repair and replacement parts for any of the foregoing
30 exempt devices and equipment.

31 b. As used in this section:

32 "Drug" means a compound, substance or preparation, and any
33 component of a compound, substance or preparation, other than
34 food and food ingredients, dietary supplements or alcoholic
35 beverages:

36 (1) recognized in the official United States Pharmacopoeia,
37 official Homeopathic Pharmacopoeia of the United States, or
38 official National Formulary, and supplement to any of them; or

39 (2) intended for use in the diagnosis, cure, mitigation, treatment,
40 or prevention of disease; or

41 (3) intended to affect the structure or any function of the body.

42 "Over-the-counter-drug" means a drug that contains a label
43 which identifies the product as a drug, required by 21 CFR 201.66.

44 The label includes:

45 (1) a "Drug Facts" panel or

46 (2) a statement of the "active ingredient" or "active ingredients"
47 with a list of those ingredients contained in the compound,

1 substance or preparation. "Over-the-counter drug" does not include
2 a grooming and hygiene product.

3 "Grooming and hygiene product" is soap or cleaning solution,
4 shampoo, toothpaste, mouthwash, anti-perspirant, or sun tan lotion
5 or screen, regardless of whether the item meets the definition of
6 "over-the-counter drug."

7 "Prescription" means an order, formula or recipe issued in any
8 form of oral, written, electronic, or other means of transmission by
9 a duly licensed practitioner authorized by the laws of this State.

10 "Prosthetic device" means a replacement, corrective, or
11 supportive device including repair and replacement parts for same
12 worn on or in the body in order to:

- 13 (1) artificially replace a missing portion of the body; or
- 14 (2) prevent or correct a physical deformity or malfunction; or
- 15 (3) support a weak or deformed portion of the body.

16 "Durable medical equipment" means equipment, including repair
17 and replacement parts, but not including mobility enhancing
18 equipment, that:

- 19 (1) can withstand repeated use;
- 20 (2) is primarily and customarily used to serve a medical
21 purpose;
- 22 3. is generally not useful to a person in the absence of illness or
23 injury; and
- 24 4. is not worn in or on the body.

25 "Mobility enhancing equipment" means equipment, including
26 repair and replacement parts, other than durable medical equipment,
27 that:

- 28 1. is primarily and customarily used to provide or increase the
29 ability to move from one place to another and which is appropriate
30 for use either at home or in a motor vehicle; and
- 31 2. is not generally used by persons with normal mobility; and
- 32 3. does not include any motor vehicle or equipment on a motor
33 vehicle normally provided by a motor vehicle manufacturer.

34 c. Receipts from sales of [medical equipment, durable medical
35 equipment, and] supplies [other than medicines and drugs,]
36 purchased for use in providing medical services for compensation,
37 but not transferred to the purchaser of the service in conjunction
38 with the performance of the service, shall be considered taxable
39 receipts from retail sales notwithstanding the exemption from the
40 tax imposed under the "Sales and Use Tax Act" provided under this
41 section.

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

43

44 7. Section 14 of P.L.1980, c.105 (C.54:32B-8.2) is amended to
45 read as follows:

46 14. a. Receipts from the following are exempt from the tax
47 imposed under the "Sales and Use Tax Act:" sales of food and food
48 ingredients and dietary supplements, sold for human consumption

1 off the premises where sold but not including (1) candy, and (2) soft
2 drinks, all of which shall be subject to the retail sales and
3 compensating use taxes[, whether or not the item is sold in liquid
4 form].

5 b. The exemption in this section is not applicable to prepared
6 food subject to tax under subsection (c) of section 3 of the Sales and
7 Use Tax Act (C.54:32B-3).

8 c. As used in this section:

9 "Candy" means a preparation of sugar, honey, or other natural or
10 artificial sweeteners in combination with chocolate, fruits, nuts or
11 other ingredients or flavorings in the form of bars, drops, or pieces.
12 "Candy" does not include any preparation containing flour or
13 requiring refrigeration;

14 "Dietary supplement" means any product, other than tobacco,
15 intended to supplement the diet, that:

16 (1) contains one or more of the following dietary ingredients: a
17 vitamin; a mineral; an herb or other botanical; an amino acid; a
18 dietary substance for use by humans to supplement the diet by
19 increasing the total dietary intake; a concentrate, metabolite,
20 constituent, extract, or combination of any ingredient described
21 herein;

22 (2) is intended for ingestion in tablet, capsule, powder, softgel,
23 gelcap, or liquid form, or if not intended for ingestion in such a
24 form, is not represented as conventional food and is not represented
25 for use as a sole item of a meal or of the diet; and

26 (3) is required to be labeled as a dietary supplement, identifiable
27 by the "Supplemental Facts" box found on the label and as required
28 pursuant to 21 C.F.R. s.101.36;

29 "Food and food ingredients" means substances, whether in
30 liquid, concentrated, solid, frozen, dried, or dehydrated form, that
31 are sold for ingestion or chewing by humans and are consumed for
32 their taste or nutritional value, "Food and food ingredients" does not
33 include alcoholic beverages or tobacco;

34 "Soft drinks" means non-alcoholic beverages that contain natural
35 or artificial sweeteners. "Soft drinks" does not include beverages
36 that contain: milk or milk products; soy, rice or similar milk
37 substitutes; or greater than fifty percent of vegetable or fruit juice
38 by volume; and

39 "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or
40 any other item that contains tobacco.

41 (cf: P.L.2005, c.126, s.8)

42

43 8. Section 16 of P.L.1980, c.105 (C.54:32B-8.4) is amended to
44 read as follows:

45 16. a. Receipts from sales of articles of clothing and footwear
46 for human use are exempt from the tax imposed under the "Sales
47 and Use Tax Act." This exemption does not apply to fur clothing,

1 clothing accessories or equipment, sport or recreational equipment,
2 or protective equipment.

3 b. Receipts from sales of protective equipment necessary for
4 the daily work of the user are exempt from the tax imposed under
5 the "Sales and Use Tax Act."

6 c. Receipts from sales of sewing materials, such as fabrics,
7 thread, knitting yarn, buttons and zippers, purchased by
8 noncommercial purchasers for incorporation into clothing as a
9 constituent part thereof, are exempt from the tax imposed under the
10 "Sales and Use Tax Act."

11 d. As used in this section:

12 "Clothing" means all human wearing apparel suitable for general
13 use. Clothing shall not include: clothing accessories or equipment,
14 sport or recreational equipment, protective equipment, sewing
15 equipment and supplies, or sewing materials that become part of
16 clothing.

17 "Clothing accessories or equipment" means incidental items
18 worn on the person or in conjunction with clothing.

19 "Fur clothing" means clothing that is required to be labeled as a
20 fur product under 15 U.S.C. s.69, and the value of the fur
21 components in the product is more than three times the value of the
22 next most valuable tangible component. For the purposes of this
23 section, "fur" means any animal skin or part thereof with hair,
24 fleece, or fur fibers attached thereto, either in its raw or processed
25 state, but shall not include such skins that have been converted into
26 leather or suede, or which in processing the hair, fleece, or fur fiber
27 has been completely removed.

28 "Protective equipment" means items for human wear and
29 designed as protection of the wearer against injury or disease or as
30 protections against damage or injury of other persons or property
31 but not suitable for general use.

32 "Sport or recreational equipment" means items designed for
33 human use and worn in conjunction with an athletic or recreational
34 activity that are not suitable for general use.

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

36

37 9. Section 26 of P.L.1980, c.105 (C.54:32B-8.14) is amended
38 to read as follows:

39 26. Receipts from sales of tangible personal property, except
40 energy, and digital property purchased for use or consumption
41 directly and exclusively in research and development in the
42 experimental or laboratory sense are exempt from the tax imposed
43 under the Sales and Use Tax Act. Such research and development
44 shall not be deemed to include the ordinary testing or inspection of
45 materials or products for quality control, efficiency surveys,
46 management studies, consumer surveys, advertising, promotions or
47 research in connection with literary, historical or similar projects.

48 (cf: P.L.1997, c.162, s.24)

1 10. Section 1 of P.L.1985, c.24 (C.54:32B-8.39) is amended to
2 read as follows:

3 1. Receipts from sales of **【direct mail】** printed advertising
4 material for distribution to out-of-State recipients and receipts from
5 sales of **【direct-mail】** processing services in connection with
6 distribution of **【direct mail】** printed advertising material to out-of-
7 State recipients are exempt from the tax imposed under the "Sales
8 and Use Tax Act." The exemption provided by this section shall
9 apply to receipts from charges for the printing or production of
10 **【direct mail】** printed advertising material whether prepared in, or
11 shipped into New Jersey after preparation and stored for subsequent
12 shipment to out-of-State customers. The **【direct-mail】** mail
13 processing services exemption provided by this section shall apply
14 to receipts from charges for all **【direct】** mail processing services for
15 distribution to out-of-State recipients, including but not limited to
16 the following: preparing and maintaining mailing lists, addressing,
17 separating, folding, inserting, sorting and packaging **【direct mail】**
18 printed advertising materials and transporting to the point of
19 shipment by the mail service or other carrier.

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

21

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

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

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

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

37 "Delivered electronically" means delivered **【from the seller】** to
38 the purchaser by means other than tangible storage media.

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

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

45 "Prewritten computer software" means computer software,
46 including prewritten upgrades, which is not designed and developed
47 by the author or other creator to the specifications of a specific

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

20 (cf: P.L.2006, c.44, s.12)

21

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

24 12. (a) Every person required to collect the tax shall collect the
25 tax from the customer when collecting the price, service charge,
26 amusement charge or rent to which it applies. If the customer is
27 given any sales slip, invoice, receipt or other statement or
28 memorandum of the price, service charge, amusement charge or
29 rent paid or payable, the tax shall be stated, charged and shown
30 separately on the first of such documents given to him. The tax
31 shall be paid to the person required to collect it as trustee for and on
32 account of the State.

33 (b) For the purpose of the proper administration of this act and
34 to prevent evasion of the tax hereby imposed, and subject to the
35 rules regarding the administration of exemptions authorized by the
36 Streamlined Sales and Use Tax Agreement, it shall be presumed
37 that all receipts for property or services of any type mentioned in
38 subsections (a), (b) **[and]** , (c), and (f) of section 3, all rents for
39 occupancy of the type mentioned in subsection (d) of said section,
40 **[and]** all amusement charges of any type mentioned in subsection
41 (e) of said section, all charges in the nature of initiation fees,
42 membership fees or dues mentioned in subsection (h) of said
43 section, and all receipts from parking, storing or garaging a motor
44 vehicle mentioned in subsection (i) of said section are subject to tax
45 until the contrary is established, and the burden of proving that any
46 such receipt, **[amusement]** charge or rent is not taxable hereunder
47 shall be upon the person required to collect tax or the customer.

1 Unless a seller shall have taken from the purchaser a certificate,
2 signed by the purchaser if in paper form, and bearing the
3 purchaser's name and address and the number of the purchaser's
4 registration certificate, to the effect that the property or service was
5 purchased for resale or was otherwise exempt pursuant to the
6 provisions of the "Sales and Use Tax Act," P.L.1966, c.30
7 (C.54:32B-1 et seq.), or the purchaser, prior to taking delivery,
8 furnishes to the seller any affidavit, statement or additional
9 evidence, documentary or otherwise, which the director may require
10 demonstrating that the purchaser is an exempt organization
11 described in section 9(b)(1), the sale shall be deemed a taxable
12 retail sale. Provided however, the director may, in the director's
13 discretion, authorize a purchaser, who acquires tangible personal
14 property, digital property or services under circumstances which
15 make it impossible at the time of acquisition to determine the
16 manner in which the tangible personal property, digital property or
17 services will be used, to pay the tax directly to the director and
18 waive the collection of the tax by the seller or provide for direct pay
19 authority under rules adopted under the Streamlined Sales and Use
20 Tax Agreement. Provided further, the director shall authorize any
21 eligible person, as defined in section 34 of P.L.1997, c.162
22 (C.54:32B-14.1), who purchases natural gas from a non-utility on
23 and after January 1, 1998 through December 31, 2002, to pay the
24 tax on the commodity directly to the director and waive the
25 collection of the tax by the seller. No such authority shall be
26 granted or exercised except upon application to the director, and the
27 issuance by the director of a direct payment permit. If a direct
28 payment permit is granted, its use shall be subject to conditions
29 specified by the director, and the payment of tax on all acquisitions
30 pursuant to the permit shall be made directly to the director by the
31 permit holder.

32 (c) The director may provide by regulation that the tax upon
33 receipts from sales on the installment plan may be paid on the
34 amount of each installment and upon the date when such installment
35 is due. He may also provide by regulation for the exclusion from
36 taxable receipts, amusement charges or rents of amounts subject, as
37 applicable, to the provisions of section 30 of P.L.2005, c.126
38 (C.54:32B-12.1), representing sales where the contract of sale has
39 been canceled, the property returned or the receipt, charge or rent
40 has been ascertained to be uncollectible or, in the case the tax has
41 been paid upon such receipt, charge or rent, for refund or credit of
42 the tax so paid.

43 (cf: P.L.2006, c.44, s.14)

44

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

47 14. (a) Every person required to collect any tax imposed by this
48 act shall be personally liable for the tax imposed, collected or

1 required to be collected under this act. Any such person shall have
2 the same right in respect to collecting the tax from that person's
3 customer or in respect to non-payment of the tax by the customer as
4 if the tax were a part of the purchase price of the property or
5 service, amusement charge or rent, as the case may be, and payable
6 at the same time; provided, however, that the director shall be
7 joined as a party in any action or proceeding brought to collect the
8 tax.

9 (b) Where any customer has failed to pay a tax imposed by this
10 act to the person required to collect the same, then in addition to all
11 other rights, obligations and remedies provided, such tax shall be
12 payable by the customer directly to the director and it shall be the
13 duty of the customer to file a return with the director and to pay the
14 tax to the director within 20 days of the date the tax was required to
15 be paid.

16 (c) The director may, whenever the director deems it necessary
17 for the proper enforcement of this act, provide by regulation that
18 customers shall file returns and pay directly to the director any tax
19 herein imposed, at such times as returns are required to be filed and
20 payment over made by persons required to collect the tax.

21 (d) No person required to collect any tax imposed by this act
22 shall advertise or hold out to any person or to the public in general,
23 in any manner, directly or indirectly, that the tax is not considered
24 as an element in the price, amusement charge or rent payable by the
25 customer, or except as provided by subsection (f) of this section that
26 the person required to collect the tax will pay the tax, that the tax
27 will not be separately charged and stated to the customer or that the
28 tax will be refunded to the customer. Upon written application duly
29 made and proof duly presented to the satisfaction of the director
30 showing that in the particular business of the person required to
31 collect the tax it would be impractical for the seller to separately
32 charge the tax to the customer, the director may waive the
33 application of the requirement herein as to such seller.

34 (e) All sellers of energy or utility service shall include the tax
35 imposed by the "Sales and Use Tax Act" within the purchase price
36 of the tangible personal property or service.

37 (f) A vendor other than a vendor subject to subsection (e) of this
38 section making retail sales of tangible personal property or sales of
39 services may advertise that the vendor will pay the tax for the
40 customer subject to the conditions of this subsection.

41 (1) The advertising shall indicate that the vendor is, in fact,
42 paying the tax for the customer and shall not indicate or imply that
43 the sale or charge is exempt from taxation.

44 (2) Notwithstanding the provisions of section 12 of P.L.1966,
45 c.30 (C.54:32B-12) to the contrary, any sales slip, invoice, receipt
46 or other statement or memorandum of the price or service charge
47 paid or payable given to the customer shall state that the tax will be
48 paid by the vendor; provided however that such record shall be

1 otherwise subject to the provisions of section 12 of P.L.1966, c.30
2 (C.54:32B-12).

3 (3) The vendor shall pay the amount of tax due on the retail sale
4 or service receipt, as determined pursuant to section 4 of P.L.1966,
5 c.30 (C.54:32B-4), as trustee for and on account of the State, and
6 shall have the same liability for that amount of tax pursuant to the
7 "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), as
8 for an amount collected from a customer.

9 (g) No person required to collect any tax imposed by this act
10 shall be held liable for having charged and collected the incorrect
11 amount of sales and use tax by reason of reliance on erroneous data
12 provided by the director with respect to tax rates, boundaries or
13 taxing jurisdiction assignments or contained in the taxability matrix.

14 (h) In connection with a purchaser's request from a seller of
15 over-collected sales or use taxes, a seller shall be presumed to have
16 a reasonable business practice, if in the collection of such sales or
17 use taxes, the seller: (1) uses either a provider or a system,
18 including a proprietary system, that is certified by the State; and (2)
19 has remitted to the State all taxes collected less any deductions,
20 credits, or collection allowances.

21 (i) No purchaser shall be held liable for any tax, interest or
22 penalty for failure to pay the correct amount of tax by reason of:

23 (1) the reliance of the purchaser's seller or certified service
24 provider on erroneous data provided by the director with respect to
25 tax rates, boundaries or taxing jurisdiction assignments or contained
26 in the taxability matrix;

27 (2) the reliance of the purchaser holding a direct pay permit on
28 erroneous data provided by the director with respect to tax rates,
29 boundaries or taxing jurisdiction assignments or contained in the
30 taxability matrix;

31 (3) the reliance of the purchaser on erroneous data provided by
32 the director with respect to the taxability matrix; or

33 (4) the reliance of a purchaser using databases of taxing
34 jurisdiction assignments on erroneous data provided by the director
35 with respect to tax rates, boundaries or taxing jurisdiction
36 assignments, provided however that, to the extent that the director
37 provides or certifies an address-based database for assigning tax
38 rates and jurisdictions and upon appropriate notice, no relief from
39 liability shall be allowed for errors resulting from reliance on a zip
40 code database for assigning tax rates and jurisdictions.

41 Provided however, that as to the relief from liability for tax, the
42 relief from liability for tax by reason of reliance on the taxability
43 matrix shall be limited to the director's erroneous classification in
44 the taxability matrix of terms "taxable" or "exempt," "included in
45 sales price" or "excluded from sales price" or "included in the
46 definition" or "excluded from the definition."

47 (cf. P.L.2005, c.126, s.21.)

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

3 16. Every person required to collect any tax imposed by this act
4 shall keep records of every purchase, purchase for lease, sale or
5 amusement charge or occupancy and of all amounts paid, charged
6 or due thereon and of the tax payable thereon, in such form as the
7 director may by regulation require. Such records shall include a true
8 copy of each sales slip, invoice, receipt, statement or memorandum
9 upon which subsection (a) of section 12 requires that the tax be
10 stated separately. Such records shall be available for inspection and
11 examination at any time upon demand by the director or his duly
12 authorized agent or employee and shall be preserved for a period of
13 **[three]** four years, except that the director may consent to their
14 destruction within that period or may require that they be kept
15 longer.

16 (cf: P.L.1989, c.123, s.9)

17

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

20 17. (a) Every person required to collect or pay tax under this act
21 shall on or before August 28, 1966, and on or before the twentieth
22 day of each month thereafter, make and file a return for the
23 preceding month with the director. The return of a seller of tangible
24 personal property, digital property or services shall show his
25 receipts from sales and also the aggregate value of tangible personal
26 property, digital property and services sold by him, the use of which
27 is subject to tax under this act, and the amount of taxes required to
28 be collected with respect to such sales and use. The return of a
29 recipient of amusement charges shall show all such charges and the
30 amount of tax thereon, and the return of a person required to collect
31 tax on leases or rentals shall show all lease or rental payments
32 received or charged and the amount of tax thereon. The return of a
33 recipient of initiation fees, membership fees or dues for access to or
34 use of the property or facilities of a health and fitness, athletic,
35 sporting or shopping club or organization shall show all such
36 charges and the amount of tax thereon. The return of the recipient
37 of charges from parking, storing or garaging a motor vehicle shall
38 show all such charges and the amount of tax thereon.

39 (b) The director may permit or require returns to be made
40 covering other periods and upon such dates as he may specify. In
41 addition, the director may require payments of tax liability at such
42 intervals and based upon such classifications as he may designate.
43 In prescribing such other periods to be covered by the return or
44 intervals or classifications for payment of tax liability, the director
45 may take into account the dollar volume of tax involved as well as
46 the need for insuring the prompt and orderly collection of the taxes
47 imposed.

1 (c) The form of returns shall be prescribed by the director and
2 shall contain such information as he may deem necessary for the
3 proper administration of this act. The director may require
4 amended returns to be filed within 20 days after notice and to
5 contain the information specified in the notice.

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

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

12 (1) In addition to the powers of the director prescribed pursuant
13 to section 24 of P.L.1966, c.30 (C.54:32B-24) and the "State
14 Uniform Tax Procedure Law," R.S.54:48-1 et seq., and
15 notwithstanding the provisions of any other law to the contrary, the
16 director shall grant "amnesty" for uncollected or unpaid sales or use
17 tax to a seller that registers to collect and remit applicable sales or
18 use tax on sales made to purchasers in this State in accordance with
19 the terms of the Streamlined Sales and Use Tax Agreement,
20 provided that the seller was not so registered in this State in the
21 twelve-month period preceding the commencement of this State's
22 participation in the agreement.

23 (2) Under terms of the "amnesty" granted pursuant to paragraph
24 (1) of this subsection, a seller that registers shall not be assessed for
25 uncollected or unpaid sales or use tax and shall not be assessed
26 penalties or interest for sales made during the period the seller was
27 not registered in this State, provided that the seller registers
28 pursuant to paragraph (1) of this subsection within twelve months
29 of the effective date of this State's participation in the Streamlined
30 Sales and Use Tax Agreement.

31 (3) The limitations on deficiency assessments, penalties and
32 interest pursuant to paragraph (2) of this subsection shall not be
33 available to a seller with respect to any matter for which the seller
34 received notice of the commencement of an audit and which audit is
35 not yet finally resolved including any related administrative and
36 judicial processes.

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

41 (5) The "amnesty" limitations on deficiency assessments,
42 penalties and interest pursuant to paragraph (2) of this subsection
43 shall be in full effect and the director shall not assess deficiencies
44 for uncollected or unpaid sales or use tax and shall not assess
45 penalties or interest for sales made during the period the seller was
46 not registered in this State so long as the seller continues
47 registration and continues collection and remittance of applicable
48 sales or use taxes for a period of at least 36 months: provided

1 however that the director may make such assessments by reason of
2 the seller's fraud or intentional misrepresentation of a material fact.
3 The statutes of limitations applicable to asserting tax liabilities,
4 deficiencies, penalties and interest are tolled for this 36 month
5 period.

6 (6) The "amnesty" granted pursuant to paragraph (1) of this
7 subsection shall apply only to sales or use taxes due from a seller in
8 its capacity as a seller and shall not apply to sales or use taxes due
9 from a seller in its capacity as a buyer.
10 (cf: P.L.2006, c.44, s.16)

11

12 16. (New section) a. Receipts from sales of coin-operated
13 telephone service are exempt from the tax imposed under the "Sales
14 and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

15 b. For purposes of this section:

16 "Coin-operated telephone service" means a telecommunications
17 service paid for by inserting money into a telephone accepting
18 direct deposits of money to operate.

19

20 17. (New section) Receipts from telecommunications services
21 provided by a person, or by that person's wholly owned subsidiary,
22 not engaged in the business of rendering or offering
23 telecommunications services to the public, for private and exclusive
24 use within its organization, are exempt from the tax imposed under
25 the Sales and Use Tax Act; provided however, that the exemption
26 provided by this section shall not apply to sales of
27 telecommunications services attributable to the excess unused
28 telecommunications capacity of that person to another.

29

30 18. a. Section 27 of P.L.2005, c.126 (C.54:32B-3.2) and section
31 1 of P.L.2006, c.41 (C.54:32G-1) are repealed.

32 b. Notwithstanding the repeal of section 1 of P.L.2006, c.41,
33 the repeal shall not affect any obligation, lien, or duty to pay taxes,
34 interest or penalties which have accrued or may accrue by virtue of
35 any taxes imposed pursuant to the provisions of P.L.2006, c.41 or
36 which may be imposed with respect to any redetermination,
37 correction, recomputation, or deficiency assessment; and provided
38 that all taxes and returns which would be due and payable prior to
39 the effective date of P.L. , c. (C.) (pending before the
40 Legislature as this bill) shall be due and payable as if P.L.2006,
41 c.41 were in effect; and provided that this repeal shall not affect the
42 legal authority of the State to audit records and assess and collect
43 taxes due or which may be due, together with such interest and
44 penalties as have accrued or would have accrued thereon under the
45 provisions of the law repealed; and provided that the repeal by
46 subsection a. of this section, shall not affect any determination of,
47 or affect any proceeding for, the enforcement thereof.

1 19. This act shall take effect immediately; provided however,
2 that sections 1 through 18 shall remain inoperative until January 1,
3 2009.

4
5 STATEMENT

6
7 This bill revises the State's sales and use tax to conform with
8 various provisions of the multi-state Streamlined Sales and Use Tax
9 Agreement (SSUTA). Specifically, the bill incorporates a series of
10 technical and substantive changes to the SSUTA which have been
11 adopted by the Streamlined Sales Tax Governing Board since the
12 State first entered the agreement in 2005. The changes are intended
13 to simplify and modernize the State's tax collection and
14 administrative procedures, and to ensure New Jersey remains
15 compliant with the provisions of the SSUTA.

16 Since 2005, the SSUTA has reorganized and elaborated the
17 taxation of telecommunications; compliance requires New Jersey to
18 reorganize and replace its current definitions of telecommunications
19 with the defined terms provided under the agreement. This bill
20 allows the State to maintain compliance by: (1) replacing the
21 current "telecommunications" term with a more specific, narrowly
22 focused definition of "telecommunications service;" (2) redefining
23 "intrastate, interstate, and international telecommunications;" (3)
24 revising pre-paid calling and mobile telecommunications; and (4)
25 incorporating "ancillary service," "directory assistance," "detailed
26 telecommunications billing service" and "voice mail service" into
27 the statutes of defined terms.

28 The reorganization of telecommunications definitions requires
29 the elimination of current explicit language imposing taxation on
30 mobile telecommunications and certain prepaid calling services, and
31 requires the explicit imposition of tax on telephone answering and
32 radio subscription services. These changes do not extend the base
33 of the sales and use tax to new services or omit previously taxed
34 telecommunications from coverage.

35 Similarly, the reorganization of telecommunications definitions
36 requires the State to: (1) adopt the SSUTA telecommunications
37 bundled transaction administrative rule for unbundling the taxable
38 and nontaxable components of a sale of mixed telecommunications
39 services that relies on the service providers internal records; (2)
40 clarify the imposition of the use tax on radio subscription services;
41 and (3) reorganize the telecommunications definition that requires
42 the deletion of a use tax measurement rule for prepaid calling
43 services which is currently taxed separately from
44 telecommunications.

45 Beyond telecommunications, the changes to the definition of
46 "sales price" reflect another reorganization in the SSUTA
47 definitions, but essentially codify the policy on the effect of
48 coupons and rebates that has been used under the State's sales tax

1 for the last 20 years. Additionally, the changes to the direct mail
2 definitions allow the maintenance of the New Jersey taxation of
3 mail processing services in compliance with SSUTA definitions.

4 Another SSUTA reorganizational change that requires a
5 corresponding New Jersey change is the elimination of a “non-
6 distinction” between solid and liquid food.

7 For reasons of compliance with SSUTA provisions concerning
8 the medical products exemption, the bill narrows a broad limitation
9 currently affecting all medical equipment to affect only certain
10 medical supplies, while limiting the exemption for mobility
11 enhancing equipment to that sold by prescription.

12 For reasons of compliance with SSUTA provisions, the bill
13 provides a full sales and use tax exemption for receipts from coin-
14 paid sales of telecommunications service using pay phones. The bill
15 expands the current exemption, which only provides an exemption
16 for coin-operated calls at the local calling rate (coin-paid long-
17 distance phone calls are currently subject to tax).

18 For reasons of compliance with SSUTA provisions, the bill
19 repeals the 6 percent gross receipts tax on retail sales of fur
20 clothing, imposed under the provisions of P.L.2006, c.41
21 (C.54:32G-1), and imposes the 7 percent sales tax on sales of “fur
22 clothing” as defined by the SSUTA.

23 For reasons of compliance with SSUTA provisions, the bill
24 repeals the multiple points of use (MPU) exemption.

25 In addition, this bill revises the State’s sales and use tax to make
26 technical clarifications to the research and development exemption
27 to explicitly include as exempt the receipts from sales of digital
28 property, and to the business prewritten software exemption to
29 delete contradictory language about prewritten computer software
30 delivered electronically. Technical clarifications under the bill also
31 include a provision extending the length of time during which tax
32 records must be maintained under the sales and use tax, and an
33 additional reference stipulating the process of providing returns for
34 initiation and membership fees and dues as well as storing or
35 garaging motor vehicles.

36 Further changes to the State’s sales and use tax under the bill
37 include a provision to make explicit the “purchase for resale”
38 exemption for purchases of telecommunications services for use as
39 a component part of telecommunications services provided to a
40 final end user, and the insertion of additional language reinstating
41 an exemption for the “in house” use of telecommunications services
42 provided by a user not in the business of providing
43 telecommunications to the public or by the user’s subsidiary.

44

45

46

47 Revises sales and use tax to conform with Streamlined Sales and
48 Use Tax Agreement.

[Corrected Copy]

ASSEMBLY, No. 3111

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED SEPTEMBER 15, 2008

Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

Assemblywoman NELLIE POU

District 35 (Bergen and Passaic)

Assemblyman UPENDRA J. CHIVUKULA

District 17 (Middlesex and Somerset)

Co-Sponsored by:

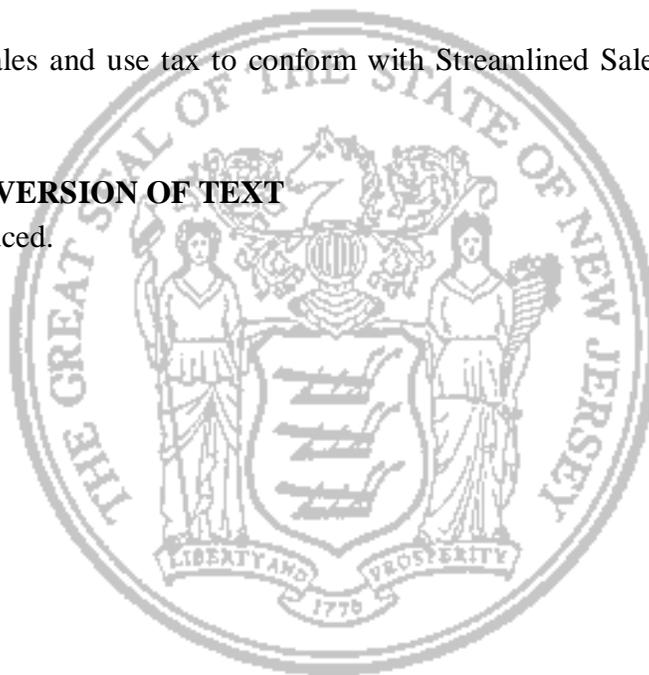
Senator Sarlo

SYNOPSIS

Revises sales and use tax to conform with Streamlined Sales and Use Tax Agreement.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/16/2008)

A3111 GREENWALD, POU

2

1 AN ACT revising the sales and use tax to conform with the
2 Streamlined Sales and Use Tax Agreement, amending P.L.2005,
3 c.126, P.L.1980, c.105, and P.L.1985, c.24, amending and
4 supplementing P.L.1966, c.30, and repealing section 27 of
5 P.L.2005, c.126 and section 1 of P.L.2006, c.41.

6

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

9

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

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

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

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

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

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

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

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

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

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

Matter underlined thus is new matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 (1) The term "seller" includes:

A3111 GREENWALD, POU

- 1 (A) A person making sales, leases or rentals of tangible personal
2 property, digital property or services, the receipts from which are
3 taxed by this act;
- 4 (B) A person maintaining a place of business in the State or
5 having an agent maintaining a place of business in the State and
6 making sales, whether at such place of business or elsewhere, to
7 persons within the State of tangible personal property, digital
8 property or services, the use of which is taxed by this act;
- 9 (C) A person who solicits business either by employees,
10 independent contractors, agents or other representatives or by
11 distribution of catalogs or other advertising matter and by reason
12 thereof makes sales to persons within the State of tangible personal
13 property, digital property or services, the use of which is taxed by
14 this act;
- 15 (D) Any other person making sales to persons within the State of
16 tangible personal property, digital property or services, the use of
17 which is taxed by this act, who may be authorized by the director to
18 collect the tax imposed by this act;
- 19 (E) The State of New Jersey, any of its agencies,
20 instrumentalities, public authorities, public corporations (including
21 a public corporation created pursuant to agreement or compact with
22 another state) or political subdivisions when such entity sells
23 services or property of a kind ordinarily sold by private persons;
- 24 (F) (Deleted by amendment, P.L.2005, c.126);
- 25 (G) A person who sells, stores, delivers or transports energy to
26 users or customers in this State whether by mains, lines or pipes
27 located within this State or by any other means of delivery;
- 28 (H) A person engaged in collecting charges in the nature of
29 initiation fees, membership fees or dues for access to or use of the
30 property or facilities of a health and fitness, athletic, sporting or
31 shopping club or organization; and
- 32 (I) A person engaged in the business of parking, storing or
33 garaging motor vehicles.
- 34 (2) In addition, when in the opinion of the director it is
35 necessary for the efficient administration of this act to treat any
36 salesman, representative, peddler or canvasser as the agent of the
37 seller, distributor, supervisor or employer under whom the agent
38 operates or from whom the agent obtains tangible personal property
39 or digital property sold by the agent or for whom the agent solicits
40 business, the director may, in the director's discretion, treat such
41 agent as the seller jointly responsible with the agent's principal,
42 distributor, supervisor or employer for the collection and payment
43 over of the tax. A person is an agent of a seller in all cases, but not
44 limited to such cases, that: (A) the person and the seller have the
45 relationship of a "related person" described pursuant to section 2 of
46 P.L.1993, c.170 (C.54:10A-5.5); and (B) the seller and the person
47 use an identical or substantially similar name, tradename,
48 trademark, or goodwill, to develop, promote, or maintain sales, or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (cc) "Telecommunications service" means the [act or privilege
33 of originating or receiving messages or information through the use
34 of any kind of one-way or two-way communication; including but
35 not limited to voice, video, facsimile, teletypewriter, computer,
36 mobile telecommunications service or any other type of
37 communication; using electronic or electromagnetic methods, and
38 all services and equipment provided in connection therewith or by
39 means thereof] electronic transmission, conveyance, or routing of
40 voice, data, audio, video, or any other information or signals to a
41 point, or between or among points.

42 "Telecommunications service" shall include such transmission,
43 conveyance, or routing in which computer processing applications
44 are used to act on the form, code, or protocol of the content for
45 purposes of transmission, conveyance, or routing without regard to
46 whether such service is referred to as voice over Internet protocol
47 services or is classified by the Federal Communications
48 Commission as enhanced or value added.

1 "Telecommunications service" shall not include:

2 (1) ~~【one-way radio or television broadcasting transmissions~~
3 ~~available universally to the general public without a fee】(Deleted~~
4 ~~by amendment, P.L. , c.) (pending before the Legislature as this~~
5 ~~bill);~~

6 (2) ~~【purchases of telecommunications by a telecommunications~~
7 ~~provider for use as a component part of telecommunications~~
8 ~~provided to an ultimate retail consumer who (A) originates or~~
9 ~~terminates the taxable end-to-end communications or (B) pays~~
10 ~~charges exempt from taxation pursuant to paragraph (5) of this~~
11 ~~subsection】(Deleted by amendment, P.L. , c.) (pending before~~
12 ~~the Legislature as this bill);~~

13 (3) ~~【services provided by a person, or by that person's wholly~~
14 ~~owned subsidiary, not engaged in the business of rendering or~~
15 ~~offering telecommunications services to the public, for private and~~
16 ~~exclusive use within its organization, provided however, that~~
17 ~~"telecommunications" shall include the sale of telecommunications~~
18 ~~services attributable to the excess unused telecommunications~~
19 ~~capacity of that person to another】(Deleted by amendment, P.L. ,~~
20 ~~c.) (pending before the Legislature as this bill);~~

21 (4) ~~【charges in the nature of subscription fees paid by~~
22 ~~subscribers for cable television service】(Deleted by amendment,~~
23 ~~P.L. , c.) (pending before the Legislature as this bill);~~

24 (5) ~~【charges subject to the local calling rate paid by inserting~~
25 ~~coins into a coin operated telecommunications device available to~~
26 ~~the public】(Deleted by amendment, P.L. , c.) (pending before~~
27 ~~the Legislature as this bill); ~~【and】~~~~

28 (6) ~~【purchases of telecommunications using a prepaid calling~~
29 ~~service】(Deleted by amendment, P.L. , c.) (pending before the~~
30 ~~Legislature as this bill);~~

31 ~~(7) data processing and information services that allow data to be~~
32 ~~generated, acquired, stored, processed, or retrieved and delivered by~~
33 ~~an electronic transmission to a purchaser where such purchaser's~~
34 ~~primary purpose for the underlying transaction is the processed data~~
35 ~~or information;~~

36 ~~(8) installation or maintenance of wiring or equipment on a~~
37 ~~customer's premises;~~

38 ~~(9) tangible personal property;~~

39 ~~(10) advertising, including but not limited to directory~~
40 ~~advertising;~~

41 ~~(11) billing and collection services provided to third parties;~~

42 ~~(12) internet access service;~~

43 ~~(13) radio and television audio and video programming services,~~
44 ~~regardless of the medium, including the furnishing of transmission,~~
45 ~~conveyance, and routing of such services by the programming~~
46 ~~service provider. Radio and television audio and video~~
47 ~~programming services shall include but not be limited to cable~~

1 service as defined in section 47 U.S.C. s.522(6) and audio and video
2 programming services delivered by commercial mobile radio
3 service providers, as defined in section 47 C.F.R. 20.3;

4 (14) ancillary services; or

5 (15) digital products delivered electronically, including but not
6 limited to software, music, video, reading materials, or ringtones.

7 For the purposes of this subsection:

8 “ancillary service” means a service that is associated with or
9 incidental to the provision of telecommunications services,
10 including but not limited to detailed telecommunications billing,
11 directory assistance, vertical service, and voice mail service;

12 “conference bridging service” means an ancillary service that
13 links two or more participants of an audio or video conference call
14 and may include the provision of a telephone number. Conference
15 bridging service does not include the telecommunications services
16 used to reach the conference bridge;

17 “detailed telecommunications billing service” means an ancillary
18 service of separately stating information pertaining to individual
19 calls on a customer’s billing statement;

20 “directory assistance” means an ancillary service of providing
21 telephone number information or address information or both;

22 “vertical service” means an ancillary service that is offered in
23 connection with one or more telecommunications services, which
24 offers advanced calling features that allow customers to identify
25 callers and to manage multiple calls and call connections, including
26 conference bridging services; and

27 “voice mail service” means an ancillary service that enables the
28 customer to store, send, or receive recorded messages. Voice mail
29 service does not include any vertical service that a customer may be
30 required to have to utilize the voice mail service.

31 (dd) (1) “Intrastate telecommunications” means a
32 telecommunications service that originates in one United States
33 state or a United States territory or possession or federal district,
34 and terminates in the same United States state or United States
35 territory or possession or federal district.

36 (2) “Interstate [telecommunication] telecommunications” means
37 [any] a [telecommunication] telecommunications service that
38 originates in one United States state or a United States territory or
39 possession or federal district, and [or] terminates [inside this State,
40 including international telecommunication. In the case of mobile
41 telecommunications service, “interstate telecommunication” means
42 any mobile telecommunications service that originates in one state
43 and terminates in another state, territory, or foreign country that is
44 provided to a customer with a place of primary use in this State] in
45 a different United States state or United States territory or
46 possession or federal district.

47 (3) “International telecommunications” means a
48 telecommunications service that originates or terminates in the

1 United States and terminates or originates outside the United States,
2 respectively. "United States" includes the District of Columbia or a
3 United States territory or possession.

4 (ee) **["Intrastate telecommunication" means any**
5 **telecommunication that originates and terminates within this State.**
6 **In the case of mobile telecommunications service, "intrastate**
7 **telecommunication" means any mobile telecommunications service**
8 **that originates and terminates within the same state that is provided**
9 **to a customer with a place of primary use in this State.]** (Deleted by
10 amendment, P.L. , c.) (pending before the Legislature as this
11 bill)

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

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

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

18 (ii) "Self-generation unit" means a facility located on the user's
19 property, or on property purchased or leased from the user by the
20 person owning the self-generation unit and such property is
21 contiguous to the user's property, which generates electricity to be
22 used only by that user on the user's property and is not transported
23 to the user over wires that cross a property line or public
24 thoroughfare unless the property line or public thoroughfare merely
25 bifurcates the user's or self-generation unit owner's otherwise
26 contiguous property.

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

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

38 (ll) "Pre-paid calling service" means the right to **[purchase]**
39 access exclusively telecommunications services, **[that must] which**
40 shall be paid for in advance **[, that] and which** enables the
41 origination of calls using an access number or authorization code,
42 whether manually or electronically dialed**[:provided, that the**
43 **remaining amount of units of service that have been pre-paid shall**
44 **be known by the service provider on a continuous basis] , and that**
45 is sold in predetermined units or dollars of which the number
46 declines with use in a known amount.

1 (mm) "Mobile telecommunications service" **【**means commercial
2 mobile radio service, as defined in section 20.3 of title 47 of the
3 Code of Federal Regulations as in effect on June 1, 1999**】** means
4 the same as that term is defined in the federal "Mobile
5 Telecommunications Sourcing Act," 4 U.S.C. s.124 (Pub.L.106-
6 252).

7 (nn) **【**"Place of primary use" means the street address
8 representative of where the customer's use of the mobile
9 telecommunications service primarily occurs, which shall be the
10 residential street address or the primary business street address of
11 the customer and within the licensed service area of the home
12 service provider. For the purposes of determining the primary place
13 of use, the terms used shall have the meanings provided pursuant to
14 the federal "Mobile Telecommunications Sourcing Act," 4 U.S.C.
15 s.124 (Pub.L.106-252).**】** (Deleted by amendment, P.L. , c.)
16 (pending before the Legislature as this bill)

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

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

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

26 (C) Charges by the seller for any services necessary to complete
27 the sale;

28 (D) Delivery charges;

29 (E) Installation charges; and

30 (F) **【**The value of exempt personal property given to the
31 purchaser where taxable and exempt personal property have been
32 bundled together and sold by the seller as a single product or piece
33 of merchandise**】** (Deleted by amendment, P.L. , c.) (pending
34 before the Legislature as this bill).

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

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

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

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

46 (D) The amount of sales price for which food stamps have been
47 properly tendered in full or part payment pursuant to the federal

1 Food Stamp Act of 1977, Pub.L. 95-113 (7 U.S.C. s.2011 et seq.);
2 or

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

7 (3) "Sales price" includes consideration received by the seller
8 from third parties if:

9 (A) The seller actually receives consideration from a party other
10 than the purchaser and the consideration is directly related to a price
11 reduction or discount on the sale;

12 (B) The seller has an obligation to pass the price reduction or
13 discount through to the purchaser;

14 (C) The amount of the consideration attributable to the sale is
15 fixed and determinable by the seller at the time of the sale of the
16 item to the purchaser; and

17 (D) One of the following criteria is met:

18 (i) the purchaser presents a coupon, certificate, or other
19 documentation to the seller to claim a price reduction or discount
20 where the coupon, certificate, or documentation is authorized,
21 distributed, or granted by a third party with the understanding that
22 the third party will reimburse any seller to whom the coupon,
23 certificate, or documentation is presented;

24 (ii) the purchaser identifies himself to the seller as a member of a
25 group or organization entitled to a price reduction or discount;
26 provided however, that a preferred customer card that is available to
27 any patron does not constitute membership in such a group; or

28 (iii) the price reduction or discount is identified as a third party
29 price reduction or discount on the invoice received by the purchaser
30 or on a coupon, certificate, or other documentation presented by the
31 purchaser.

32 (4) In the case of a bundled transaction that includes a
33 telecommunication service, an ancillary service, internet access, or
34 an audio or video programming service, if the price is attributable to
35 products that are taxable and products that are nontaxable, the
36 portion of the price attributable to the nontaxable products is
37 subject to tax unless the provider can identify by reasonable and
38 verifiable standards such portion from its books and records that are
39 kept in the regular course of business for other purposes, including
40 non-tax purposes.

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

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

46 (rr) "Delivery charges" means charges by the seller for
47 preparation and delivery to a location designated by the purchaser
48 of personal property or services including, but not limited to,

1 transportation, shipping, postage, handling, crating, and packing. If
2 a shipment includes both exempt and taxable property, the seller
3 should allocate the delivery charge by using: (1) a percentage based
4 on the total sales price of the taxable property compared to the total
5 sales price of all property in the shipment; or (2) a percentage based
6 on the total weight of the taxable property compared to the total
7 weight of all property in the shipment. The seller shall tax the
8 percentage of the delivery charge allocated to the taxable property
9 but is not required to tax the percentage allocated to the exempt
10 property.

11 (ss) "Direct mail" means printed material delivered or distributed
12 by United States mail or other delivery service to a mass audience
13 or to addresses on a mailing list provided by the purchaser or at the
14 direction of the purchaser in cases in which the cost of the items are
15 not billed directly to the recipients. "Direct mail" includes tangible
16 personal property or digital property supplied directly or indirectly
17 by the purchaser to the direct mail seller for inclusion in the
18 package containing the printed material. "Direct mail" does not
19 include multiple items of printed material delivered to a single
20 address.

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

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

28 (vv) "Digital property" means electronically delivered music,
29 ringtones, movies, books, audio and video works and similar
30 products, where the customer is granted a right or license to use,
31 retain or make a copy of such item. Digital property does not
32 include video programming services, including video on demand
33 television services, and broadcasting services, including content to
34 provide such services.

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

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

41 (1) investigation and detective services, including detective
42 agencies and private investigators, and fingerprint, polygraph
43 missing person tracing and skip tracing services;

44 (2) security guard and patrol services, including bodyguard and
45 personal protection, guard dog, guard, patrol, and security services;

46 (3) armored car services; and

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

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

6 (cf: P.L.2006, c.44, s.1)

7
8 2. 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.

45 "Space for storage" means secure areas, such as rooms, units,
46 compartments or containers, whether accessible from outside or
47 from within a building, that are designated for the use of a customer
48 and wherein the customer has free access within reasonable

1 business hours, or upon reasonable notice to the furnisher of space
2 for storage, to store and retrieve property. Space for storage shall
3 not include the lease or rental of an entire building, such as a
4 warehouse or airplane hanger.

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

15 (5) ~~【Direct-mail】~~ Mail processing services for printed
16 advertising material, except for ~~【direct-mail】~~ mail processing
17 services in connection with distribution of ~~【direct mail】~~ printed
18 advertising material to out-of-State recipients.

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

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

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

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

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

28 (11) Investigation and security services.

29 (12) Information services.

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

33 (14) Telephone answering services.

34 (15) Radio subscription services.

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

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

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

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

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

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

18 (3) For the purposes of this subsection:

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

22 "Prepared food" means:

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

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

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

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

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

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

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

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

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

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

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

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

33 (g) ~~【The receipts from every sale, except for resale, of prepaid~~
34 ~~calling service and the recharge of prepaid calling service.】~~
35 ~~(Deleted by amendment, P.L. , c.) (pending before the~~
36 ~~Legislature as this bill)~~

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

1 (1) or (2) of subsection (b) of section 9 of P.L.1966, c.30 and that
2 has complied with subsection (d) of section 9 of P.L.1966, c.30.

3 (i) The receipts from parking, storing or garaging a motor
4 vehicle, excluding charges for the following: residential parking;
5 employee parking, when provided by an employer or at a facility
6 owned or operated by the employer; municipal parking, storing or
7 garaging; receipts from charges or fees imposed pursuant to section
8 3 of P.L.1993, c.159 (C.5:12-173.3) or pursuant to an agreement
9 between the Casino Reinvestment Development Authority and a
10 casino operator in effect on the date of enactment of P.L.2007,
11 c.105; and receipts from parking, storing or garaging a motor
12 vehicle subject to tax pursuant to any other law or ordinance.

13 For the purposes of this subsection, "municipal parking, storing
14 or garaging" means any motor vehicle parking, storing or garaging
15 provided by a municipality or county, or a parking authority
16 thereof.

17 (cf: P.L.2007, c.105, s.1)

18

19 3. Section 29 of P.L.2005, c.126 (C.54:32B-3.4) is amended to
20 reads as follows:

21 29. a. Notwithstanding the general sourcing provisions of
22 section 26 of P.L.2005, c.126 (C.54:32B-3.1), except for the
23 telecommunication services enumerated in subsection c. of this
24 section, the sale of telecommunication service sold on a call-by-call
25 basis shall be sourced to:

26 (1) each level of taxing jurisdiction where the call originates and
27 terminates in that jurisdiction; or

28 (2) each level of taxing jurisdiction where the call either
29 originates or terminates and in which the service address is also
30 located.

31 b. Except for the telecommunication services enumerated in
32 subsection c. of this section, a sale of telecommunications services
33 sold on a basis other than a call-by-call basis shall be sourced to the
34 customer's place of primary use.

35 c. The sale of the following telecommunication services shall
36 be sourced to each level of taxing jurisdiction as follows:

37 (1) A sale of mobile telecommunications services other than air-
38 to-ground radiotelephone service and prepaid calling service shall
39 be sourced to the customer's place of primary use as required by the
40 federal "Mobile Telecommunications Sourcing Act," 4 U.S.C. s.116
41 et seq.

42 (2) A sale of post-paid calling service shall be sourced to the
43 origination point of the telecommunications signal as first identified
44 by either:

45 (a) the seller's telecommunications system; or

46 (b) information received by the seller from its service provider,
47 if the system used to transport such signals is not that of the seller.

1 (3) A sale of prepaid calling service or a sale of a prepaid
2 wireless calling service shall be sourced in accordance with the
3 general sourcing provisions of section 26 of P.L.2005, c.126
4 (C.54:32B-3.1); provided however, that in the case of a sale of
5 **【mobile telecommunications service that is a】** prepaid
6 **【telecommunications】** wireless calling service, the rule provided in
7 paragraph (5) of subsection (a) of that section shall include as an
8 option the location associated with the mobile telephone number.

9 (4) A sale of a private communication service shall be sourced
10 as follows:

11 (a) Service for a separate charge related to a customer channel
12 termination point shall be sourced to each level of jurisdiction in
13 which such customer channel termination point is located.

14 (b) Service for which all customer termination points are located
15 entirely within one jurisdiction or levels of jurisdiction shall be
16 sourced to such jurisdiction in which the customer channel
17 termination points are located.

18 (c) Service for segments of a channel between two customer
19 channel termination points located in different jurisdictions and
20 which segments of channel are separately charged shall be sourced
21 fifty percent to each level of jurisdiction in which the customer
22 channel termination points are located.

23 (d) Service for segments of a channel located in more than one
24 jurisdiction or levels of jurisdiction and which segments of channel
25 are not separately billed shall be sourced to each jurisdiction based
26 on the percentage determined by dividing the number of customer
27 channel termination points in such jurisdiction by the total number
28 of customer channel termination points.

29 (5) A sale of an ancillary service shall be sourced to the
30 customer's place of primary use.

31 d. For the purposes of this section:

32 "Air-to-ground radiotelephone service" means a radio service, as
33 that term is defined in 47 CFR 22.99, in which common carriers are
34 authorized to offer and provide radio telecommunications service
35 for hire to subscribers in aircraft;

36 "Ancillary service" means a service that is associated with or
37 incidental to the provision of telecommunication services, including
38 but not limited to detailed telecommunications billing, directory
39 assistance, vertical service, and voice mail services;

40 "Call-by-call basis" means any method of charging for
41 telecommunications services in which the price is measured by
42 individual calls;

43 "Communications channel" means a physical or virtual path of
44 communications over which signals are transmitted between or
45 among customer channel termination points;

46 "Customer" means the person or entity that contracts with the
47 seller of telecommunications services. If the end user of
48 telecommunications services is not the contracting party, then the

1 end user of the telecommunications service is the customer of the
2 telecommunication service, but this provision applies only for the
3 purpose of sourcing sales of telecommunications services under this
4 section. "Customer" does not include a reseller of
5 telecommunications service or, for mobile telecommunications
6 service **[of]** , a serving carrier under an agreement to serve the
7 customer outside the home service provider's licensed service area;

8 "Customer channel termination point" means the location where
9 the customer either inputs or receives the communications;

10 "End user" means the person who utilizes the telecommunication
11 service. In the case of an entity, "end user" means the individual
12 who utilizes the service on behalf of the entity;

13 "Home service provider" has the same meaning as that term is
14 defined by the federal "Mobile Telecommunications Sourcing Act,"
15 4 U.S.C. s.124;

16 "Mobile telecommunications service" has the same meaning as
17 that term is defined by the federal "Mobile Telecommunications
18 Sourcing Act," 4 U.S.C. s.124;

19 "Place of primary use" means the street address representative of
20 where the customer's use of the telecommunications service
21 primarily occurs, which shall be the residential street address or the
22 primary business street address of the customer. In the case of
23 mobile telecommunications services, "place of primary use" shall
24 be within the licensed service area of the home service provider;

25 "Post-paid calling service" means the telecommunications
26 service obtained by making a payment on a call-by-call basis either
27 through the use of a credit card or payment mechanism such as a
28 bank card, travel card, credit card, or debit card, or by a charge
29 made to a telephone number which is not associated with the
30 origination or termination of the telecommunications service. A
31 post-paid calling service includes a telecommunications service,
32 except a prepaid wireless calling service, that would be a prepaid
33 calling service except it is not exclusively a telecommunications
34 service;

35 "Prepaid calling service" means the right to access exclusively
36 telecommunications services, which shall be paid for in advance
37 **[that] and which** enables the origination of calls using an access
38 number or authorization code, whether manually or electronically
39 dialed, and that is sold in predetermined units or dollars of which
40 the number declines with use in a known amount;

41 "Prepaid wireless calling service" means a telecommunications
42 service that provides the right to utilize mobile wireless service as
43 well as other non-telecommunications services, including the
44 download of digital products delivered electronically, content, and
45 ancillary services, which must be paid for in advance and that is
46 sold in predetermined units or dollars of which the number declines
47 with use in a known amount;

1 "Private communication service" means a telecommunication
 2 service that entitles the customer to exclusive or priority use of a
 3 communications channel or group of channels between or among
 4 termination points, regardless of the manner in which such channel
 5 or channels are connected, and includes switching capacity,
 6 extension lines, stations, and any other associated services that are
 7 provided in connection with the use of such channel or channels;
 8 and

9 "Service address" means

10 (1) The location of the telecommunications equipment to which
 11 a customer's call is charged and from which the call originates or
 12 terminates, regardless of where the call is billed or paid;

13 (2) If the location in paragraph (1) of this definition is not
 14 known, "service address" means the origination point of the signal
 15 of the telecommunications services first identified by either the
 16 seller's telecommunications system or in information received by
 17 the seller from its service provider, in the case that the system used
 18 to transport such signals is not that of the seller; or

19 (3) If the locations in paragraphs (1) and (2) of this definition
 20 are not known, "service address" means the location of the
 21 customer's place of primary use.

22 (cf: P.L.2005, c.126, s.29)

23

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

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

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

31 Amount of Sale	Amount of Tax
32 \$0.01 to \$0.10	No Tax
33 0.11 to 0.19	\$0.01
34 0.20 to 0.32	0.02
35 0.33 to 0.47	0.03
36 0.48 to 0.62	0.04
37 0.63 to 0.77	0.05
38 0.78 to 0.90	0.06
39 0.91 to \$1.10	0.07

40 and in addition to a tax of \$0.07 on each full dollar, a tax shall be
 41 collected on each part of a dollar in excess of a full dollar, in
 42 accordance with the above formula; or

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

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

1 b. **【**For charges paid by inserting coins into a coin operated
2 telecommunications device available to the public the tax shall be
3 computed to the nearest multiple of five cents of the tax otherwise
4 due pursuant to subsection a. of this section, except that, if the
5 amount of the tax is midway between multiples of five cents, the
6 next higher multiple shall apply. **】** (Deleted by amendment, P.L. ,
7 c.) (pending before the Legislature as this bill)
8 (cf: P.L.2006, c.44, s.3)

9
10 5. Section 6 of P.L.1966, c.30 (C.54:32B-6) is amended to read
11 as follows:

12 6. Unless property or services have already been or will be
13 subject to the sales tax under this act, there is hereby imposed on
14 and there shall be paid by every person a use tax for the use within
15 this State of 7%, except as otherwise exempted under this act, (A)
16 of any tangible personal property or digital property purchased at
17 retail, including energy, provided however, that electricity
18 consumed by the generating facility that produced it shall not be
19 subject to tax, (B) of any tangible personal property or digital
20 property manufactured, processed or assembled by the user, if items
21 of the same kind of tangible personal property or digital property
22 are offered for sale by him in the regular course of business, or if
23 items of the same kind of tangible personal property are not offered
24 for sale by him in the regular course of business and are used as
25 such or incorporated into a structure, building or real property, (C)
26 of any tangible personal property or digital property, however
27 acquired, where not acquired for purposes of resale, upon which any
28 taxable services described in paragraphs (1) and (2) of subsection
29 (b) of section 3 of P.L.1966, c.30 (C.54:32B-3) have been
30 performed, (D) of **【**interstate or**】** intrastate, interstate, or
31 international telecommunications services **【**and mobile
32 telecommunications**】** described in subsection (f) of section 3 of
33 P.L.1966, c.30, (E) (Deleted by amendment, P.L.1995, c.184), (F)
34 of utility service provided to persons in this State for use in this
35 State, provided however, that utility service used by the facility that
36 provides the service shall not be subject to tax, (G) of **【**direct-mail
37 mail processing services described in paragraph (5) of subsection
38 (b) of section 3 of P.L.1966, c.30 (C.54:32B-3), (H) **【**of prepaid
39 calling service and the recharge of prepaid calling service**】** (Deleted
40 by amendment, P.L. , c.) (pending before the Legislature as this
41 bill), (I) of any services subject to tax pursuant to subsection (11),
42 (12), **【**or**】** (13), (14) or (15) of subsection (b) of section 3 of
43 P.L.1966, c.30 (C.54:32B-3), and (J) of access to or use of the
44 property or facilities of a health and fitness, athletic, sporting or
45 shopping club or organization in this State. For purposes of clause
46 (A) of this section, the tax shall be at the applicable rate, as set forth
47 hereinabove, of the consideration given or contracted to be given

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

1 applicable rate on the charges in the nature of initiation fees,
2 membership fees or dues.

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

4

5 6. Section 13 of P.L.1980, c.105 (C.54:32B-8.1) is amended to
6 read as follows:

7 13. a. Receipts from sales of the following sold for human use
8 are exempt from the tax imposed under the "Sales and Use Tax
9 Act":

10 (1) drugs sold pursuant to a doctor's prescription;

11 (2) over-the-counter drugs;

12 (3) diabetic supplies;

13 (4) prosthetic devices;

14 (5) tampons or like products;

15 (6) medical oxygen;

16 (7) human blood and its derivatives;

17 (8) durable medical equipment for home use;

18 (9) mobility enhancing equipment sold by prescription; and

19 (10) repair and replacement parts for any of the foregoing
20 exempt devices and equipment.

21 b. As used in this section:

22 "Drug" means a compound, substance or preparation, and any
23 component of a compound, substance or preparation, other than
24 food and food ingredients, dietary supplements or alcoholic
25 beverages:

26 (1) recognized in the official United States Pharmacopoeia,
27 official Homeopathic Pharmacopoeia of the United States, or
28 official National Formulary, and supplement to any of them; or

29 (2) intended for use in the diagnosis, cure, mitigation, treatment,
30 or prevention of disease; or

31 (3) intended to affect the structure or any function of the body.

32 "Over-the-counter-drug" means a drug that contains a label
33 which identifies the product as a drug, required by 21 CFR 201.66.

34 The label includes:

35 (1) a "Drug Facts" panel or

36 (2) a statement of the "active ingredient" or "active ingredients"
37 with a list of those ingredients contained in the compound,
38 substance or preparation. "Over-the-counter drug" does not include
39 a grooming and hygiene product.

40 "Grooming and hygiene product" is soap or cleaning solution,
41 shampoo, toothpaste, mouthwash, anti-perspirant, or sun tan lotion
42 or screen, regardless of whether the item meets the definition of
43 "over-the-counter drug."

44 "Prescription" means an order, formula or recipe issued in any
45 form of oral, written, electronic, or other means of transmission by
46 a duly licensed practitioner authorized by the laws of this State.

1 "Prosthetic device" means a replacement, corrective, or
2 supportive device including repair and replacement parts for same
3 worn on or in the body in order to:

- 4 (1) artificially replace a missing portion of the body; or
- 5 (2) prevent or correct a physical deformity or malfunction; or
- 6 (3) support a weak or deformed portion of the body.

7 "Durable medical equipment" means equipment, including repair
8 and replacement parts, but not including mobility enhancing
9 equipment, that:

- 10 (1) can withstand repeated use;
- 11 (2) is primarily and customarily used to serve a medical
12 purpose;
- 13 3. is generally not useful to a person in the absence of illness or
14 injury; and
- 15 4. is not worn in or on the body.

16 "Mobility enhancing equipment" means equipment, including
17 repair and replacement parts, other than durable medical equipment,
18 that:

- 19 1. is primarily and customarily used to provide or increase the
20 ability to move from one place to another and which is appropriate
21 for use either at home or in a motor vehicle; and
- 22 2. is not generally used by persons with normal mobility; and
- 23 3. does not include any motor vehicle or equipment on a motor
24 vehicle normally provided by a motor vehicle manufacturer.

25 c. Receipts from sales of [medical equipment, durable medical
26 equipment, and] supplies [other than medicines and drugs,]
27 purchased for use in providing medical services for compensation,
28 but not transferred to the purchaser of the service in conjunction
29 with the performance of the service, shall be considered taxable
30 receipts from retail sales notwithstanding the exemption from the
31 tax imposed under the "Sales and Use Tax Act" provided under this
32 section.

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

34

35 7. Section 14 of P.L.1980, c.105 (C.54:32B-8.2) is amended to
36 read as follows:

37 14. a. Receipts from the following are exempt from the tax
38 imposed under the "Sales and Use Tax Act:" sales of food and food
39 ingredients and dietary supplements, sold for human consumption
40 off the premises where sold but not including (1) candy, and (2) soft
41 drinks, all of which shall be subject to the retail sales and
42 compensating use taxes[, whether or not the item is sold in liquid
43 form].

44 b. The exemption in this section is not applicable to prepared
45 food subject to tax under subsection (c) of section 3 of the Sales and
46 Use Tax Act (C.54:32B-3).

47 c. As used in this section:

1 "Candy" means a preparation of sugar, honey, or other natural or
2 artificial sweeteners in combination with chocolate, fruits, nuts or
3 other ingredients or flavorings in the form of bars, drops, or pieces.
4 "Candy" does not include any preparation containing flour or
5 requiring refrigeration;

6 "Dietary supplement" means any product, other than tobacco,
7 intended to supplement the diet, that:

8 (1) contains one or more of the following dietary ingredients: a
9 vitamin; a mineral; an herb or other botanical; an amino acid; a
10 dietary substance for use by humans to supplement the diet by
11 increasing the total dietary intake; a concentrate, metabolite,
12 constituent, extract, or combination of any ingredient described
13 herein;

14 (2) is intended for ingestion in tablet, capsule, powder, softgel,
15 gelcap, or liquid form, or if not intended for ingestion in such a
16 form, is not represented as conventional food and is not represented
17 for use as a sole item of a meal or of the diet; and

18 (3) is required to be labeled as a dietary supplement, identifiable
19 by the "Supplemental Facts" box found on the label and as required
20 pursuant to 21 C.F.R. s.101.36;

21 "Food and food ingredients" means substances, whether in
22 liquid, concentrated, solid, frozen, dried, or dehydrated form, that
23 are sold for ingestion or chewing by humans and are consumed for
24 their taste or nutritional value, "Food and food ingredients" does not
25 include alcoholic beverages or tobacco;

26 "Soft drinks" means non-alcoholic beverages that contain natural
27 or artificial sweeteners. "Soft drinks" does not include beverages
28 that contain: milk or milk products; soy, rice or similar milk
29 substitutes; or greater than fifty percent of vegetable or fruit juice
30 by volume; and

31 "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or
32 any other item that contains tobacco.

33 (cf: P.L.2005, c.126, s.8)

34

35 8. Section 16 of P.L.1980, c.105 (C.54:32B-8.4) is amended to
36 read as follows:

37 16. a. Receipts from sales of articles of clothing and footwear
38 for human use are exempt from the tax imposed under the "Sales
39 and Use Tax Act." This exemption does not apply to fur clothing,
40 clothing accessories or equipment, sport or recreational equipment,
41 or protective equipment.

42 b. Receipts from sales of protective equipment necessary for
43 the daily work of the user are exempt from the tax imposed under
44 the "Sales and Use Tax Act."

45 c. Receipts from sales of sewing materials, such as fabrics,
46 thread, knitting yarn, buttons and zippers, purchased by
47 noncommercial purchasers for incorporation into clothing as a

1 constituent part thereof, are exempt from the tax imposed under the
2 "Sales and Use Tax Act."

3 d. As used in this section:

4 "Clothing" means all human wearing apparel suitable for general
5 use. Clothing shall not include: clothing accessories or equipment,
6 sport or recreational equipment, protective equipment, sewing
7 equipment and supplies, or sewing materials that become part of
8 clothing.

9 "Clothing accessories or equipment" means incidental items
10 worn on the person or in conjunction with clothing.

11 "Fur clothing" means clothing that is required to be labeled as a
12 fur product under 15 U.S.C. s.69, and the value of the fur
13 components in the product is more than three times the value of the
14 next most valuable tangible component. For the purposes of this
15 section, "fur" means any animal skin or part thereof with hair,
16 fleece, or fur fibers attached thereto, either in its raw or processed
17 state, but shall not include such skins that have been converted into
18 leather or suede, or which in processing the hair, fleece, or fur fiber
19 has been completely removed.

20 "Protective equipment" means items for human wear and
21 designed as protection of the wearer against injury or disease or as
22 protections against damage or injury of other persons or property
23 but not suitable for general use.

24 "Sport or recreational equipment" means items designed for
25 human use and worn in conjunction with an athletic or recreational
26 activity that are not suitable for general use.

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

28

29 9. Section 26 of P.L.1980, c.105 (C.54:32B-8.14) is amended
30 to read as follows:

31 26. Receipts from sales of tangible personal property, except
32 energy, and digital property purchased for use or consumption
33 directly and exclusively in research and development in the
34 experimental or laboratory sense are exempt from the tax imposed
35 under the Sales and Use Tax Act. Such research and development
36 shall not be deemed to include the ordinary testing or inspection of
37 materials or products for quality control, efficiency surveys,
38 management studies, consumer surveys, advertising, promotions or
39 research in connection with literary, historical or similar projects.

40 (cf: P.L.1997, c.162, s.24)

41

42 10. Section 1 of P.L.1985, c.24 (C.54:32B-8.39) is amended to
43 read as follows:

44 1. Receipts from sales of **【direct mail】** printed advertising
45 material for distribution to out-of-State recipients and receipts from
46 sales of **【direct-mail】** processing services in connection with
47 distribution of **【direct mail】** printed advertising material to out-of-
48 State recipients are exempt from the tax imposed under the "Sales

1 and Use Tax Act." The exemption provided by this section shall
2 apply to receipts from charges for the printing or production of
3 **【direct mail】** printed advertising material whether prepared in, or
4 shipped into New Jersey after preparation and stored for subsequent
5 shipment to out-of-State customers. The **【direct-mail】** mail
6 processing services exemption provided by this section shall apply
7 to receipts from charges for all **【direct】** mail processing services for
8 distribution to out-of-State recipients, including but not limited to
9 the following: preparing and maintaining mailing lists, addressing,
10 separating, folding, inserting, sorting and packaging **【direct mail】**
11 printed advertising materials and transporting to the point of
12 shipment by the mail service or other carrier.

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

14

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

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

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

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

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

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

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

38 "Prewritten computer software" means computer software,
39 including prewritten upgrades, which is not designed and developed
40 by the author or other creator to the specifications of a specific
41 purchaser. The combining of two or more prewritten computer
42 software programs or prewritten portions thereof shall not cause the
43 combination to be other than prewritten computer software.

44 "Prewritten computer software" includes software designed and
45 developed by the author or other creator to the specifications of a
46 specific purchaser when it is sold to a person other than such
47 purchaser. If a person modifies or enhances computer software of

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

13 (cf: P.L.2006, c.44, s.12)

14

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

17 12. (a) Every person required to collect the tax shall collect the
18 tax from the customer when collecting the price, service charge,
19 amusement charge or rent to which it applies. If the customer is
20 given any sales slip, invoice, receipt or other statement or
21 memorandum of the price, service charge, amusement charge or
22 rent paid or payable, the tax shall be stated, charged and shown
23 separately on the first of such documents given to him. The tax
24 shall be paid to the person required to collect it as trustee for and on
25 account of the State.

26 (b) For the purpose of the proper administration of this act and
27 to prevent evasion of the tax hereby imposed, and subject to the
28 rules regarding the administration of exemptions authorized by the
29 Streamlined Sales and Use Tax Agreement, it shall be presumed
30 that all receipts for property or services of any type mentioned in
31 subsections (a), (b) ~~and~~, (c), and (f) of section 3, all rents for
32 occupancy of the type mentioned in subsection (d) of said section,
33 ~~and~~ all amusement charges of any type mentioned in subsection
34 (e) of said section, all charges in the nature of initiation fees,
35 membership fees or dues mentioned in subsection (h) of said
36 section, and all receipts from parking, storing or garaging a motor
37 vehicle mentioned in subsection (i) of said section are subject to tax
38 until the contrary is established, and the burden of proving that any
39 such receipt, ~~amusement~~ charge or rent is not taxable hereunder
40 shall be upon the person required to collect tax or the customer.
41 Unless a seller shall have taken from the purchaser a certificate,
42 signed by the purchaser if in paper form, and bearing the
43 purchaser's name and address and the number of the purchaser's
44 registration certificate, to the effect that the property or service was
45 purchased for resale or was otherwise exempt pursuant to the
46 provisions of the "Sales and Use Tax Act," P.L.1966, c.30
47 (C.54:32B-1 et seq.), or the purchaser, prior to taking delivery,

1 furnishes to the seller any affidavit, statement or additional
2 evidence, documentary or otherwise, which the director may require
3 demonstrating that the purchaser is an exempt organization
4 described in section 9(b)(1), the sale shall be deemed a taxable
5 retail sale. Provided however, the director may, in the director's
6 discretion, authorize a purchaser, who acquires tangible personal
7 property, digital property or services under circumstances which
8 make it impossible at the time of acquisition to determine the
9 manner in which the tangible personal property, digital property or
10 services will be used, to pay the tax directly to the director and
11 waive the collection of the tax by the seller or provide for direct pay
12 authority under rules adopted under the Streamlined Sales and Use
13 Tax Agreement. Provided further, the director shall authorize any
14 eligible person, as defined in section 34 of P.L.1997, c.162
15 (C.54:32B-14.1), who purchases natural gas from a non-utility on
16 and after January 1, 1998 through December 31, 2002, to pay the
17 tax on the commodity directly to the director and waive the
18 collection of the tax by the seller. No such authority shall be
19 granted or exercised except upon application to the director, and the
20 issuance by the director of a direct payment permit. If a direct
21 payment permit is granted, its use shall be subject to conditions
22 specified by the director, and the payment of tax on all acquisitions
23 pursuant to the permit shall be made directly to the director by the
24 permit holder.

25 (c) The director may provide by regulation that the tax upon
26 receipts from sales on the installment plan may be paid on the
27 amount of each installment and upon the date when such installment
28 is due. He may also provide by regulation for the exclusion from
29 taxable receipts, amusement charges or rents of amounts subject, as
30 applicable, to the provisions of section 30 of P.L.2005, c.126
31 (C.54:32B-12.1), representing sales where the contract of sale has
32 been canceled, the property returned or the receipt, charge or rent
33 has been ascertained to be uncollectible or, in the case the tax has
34 been paid upon such receipt, charge or rent, for refund or credit of
35 the tax so paid.

36 (cf: P.L.2006, c.44, s.14)

37

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

40 14. (a) Every person required to collect any tax imposed by this
41 act shall be personally liable for the tax imposed, collected or
42 required to be collected under this act. Any such person shall have
43 the same right in respect to collecting the tax from that person's
44 customer or in respect to non-payment of the tax by the customer as
45 if the tax were a part of the purchase price of the property or
46 service, amusement charge or rent, as the case may be, and payable
47 at the same time; provided, however, that the director shall be

1 joined as a party in any action or proceeding brought to collect the
2 tax.

3 (b) Where any customer has failed to pay a tax imposed by this
4 act to the person required to collect the same, then in addition to all
5 other rights, obligations and remedies provided, such tax shall be
6 payable by the customer directly to the director and it shall be the
7 duty of the customer to file a return with the director and to pay the
8 tax to the director within 20 days of the date the tax was required to
9 be paid.

10 (c) The director may, whenever the director deems it necessary
11 for the proper enforcement of this act, provide by regulation that
12 customers shall file returns and pay directly to the director any tax
13 herein imposed, at such times as returns are required to be filed and
14 payment over made by persons required to collect the tax.

15 (d) No person required to collect any tax imposed by this act
16 shall advertise or hold out to any person or to the public in general,
17 in any manner, directly or indirectly, that the tax is not considered
18 as an element in the price, amusement charge or rent payable by the
19 customer, or except as provided by subsection (f) of this section that
20 the person required to collect the tax will pay the tax, that the tax
21 will not be separately charged and stated to the customer or that the
22 tax will be refunded to the customer. Upon written application duly
23 made and proof duly presented to the satisfaction of the director
24 showing that in the particular business of the person required to
25 collect the tax it would be impractical for the seller to separately
26 charge the tax to the customer, the director may waive the
27 application of the requirement herein as to such seller.

28 (e) All sellers of energy or utility service shall include the tax
29 imposed by the "Sales and Use Tax Act" within the purchase price
30 of the tangible personal property or service.

31 (f) A vendor other than a vendor subject to subsection (e) of this
32 section making retail sales of tangible personal property or sales of
33 services may advertise that the vendor will pay the tax for the
34 customer subject to the conditions of this subsection.

35 (1) The advertising shall indicate that the vendor is, in fact,
36 paying the tax for the customer and shall not indicate or imply that
37 the sale or charge is exempt from taxation.

38 (2) Notwithstanding the provisions of section 12 of P.L.1966,
39 c.30 (C.54:32B-12) to the contrary, any sales slip, invoice, receipt
40 or other statement or memorandum of the price or service charge
41 paid or payable given to the customer shall state that the tax will be
42 paid by the vendor; provided however that such record shall be
43 otherwise subject to the provisions of section 12 of P.L.1966, c.30
44 (C.54:32B-12).

45 (3) The vendor shall pay the amount of tax due on the retail sale
46 or service receipt, as determined pursuant to section 4 of P.L.1966,
47 c.30 (C.54:32B-4), as trustee for and on account of the State, and
48 shall have the same liability for that amount of tax pursuant to the

1 "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), as
2 for an amount collected from a customer.

3 (g) No person required to collect any tax imposed by this act
4 shall be held liable for having charged and collected the incorrect
5 amount of sales and use tax by reason of reliance on erroneous data
6 provided by the director with respect to tax rates, boundaries or
7 taxing jurisdiction assignments or contained in the taxability matrix.

8 (h) In connection with a purchaser's request from a seller of
9 over-collected sales or use taxes, a seller shall be presumed to have
10 a reasonable business practice, if in the collection of such sales or
11 use taxes, the seller: (1) uses either a provider or a system,
12 including a proprietary system, that is certified by the State; and (2)
13 has remitted to the State all taxes collected less any deductions,
14 credits, or collection allowances.

15 (i) No purchaser shall be held liable for any tax, interest or
16 penalty for failure to pay the correct amount of tax by reason of:

17 (1) the reliance of the purchaser's seller or certified service
18 provider on erroneous data provided by the director with respect to
19 tax rates, boundaries or taxing jurisdiction assignments or contained
20 in the taxability matrix;

21 (2) the reliance of the purchaser holding a direct pay permit on
22 erroneous data provided by the director with respect to tax rates,
23 boundaries or taxing jurisdiction assignments or contained in the
24 taxability matrix;

25 (3) the reliance of the purchaser on erroneous data provided by
26 the director with respect to the taxability matrix; or

27 (4) the reliance of a purchaser using databases of taxing
28 jurisdiction assignments on erroneous data provided by the director
29 with respect to tax rates, boundaries or taxing jurisdiction
30 assignments, provided however that, to the extent that the director
31 provides or certifies an address-based database for assigning tax
32 rates and jurisdictions and upon appropriate notice, no relief from
33 liability shall be allowed for errors resulting from reliance on a zip
34 code database for assigning tax rates and jurisdictions.

35 Provided however, that as to the relief from liability for tax, the
36 relief from liability for tax by reason of reliance on the taxability
37 matrix shall be limited to the director's erroneous classification in
38 the taxability matrix of terms "taxable" or "exempt," "included in
39 sales price" or "excluded from sales price" or "included in the
40 definition" or "excluded from the definition."

41 (cf. P.L.2005, c.126, s.21.)

42

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

45 16. Every person required to collect any tax imposed by this act
46 shall keep records of every purchase, purchase for lease, sale or
47 amusement charge or occupancy and of all amounts paid, charged
48 or due thereon and of the tax payable thereon, in such form as the

1 director may by regulation require. Such records shall include a true
2 copy of each sales slip, invoice, receipt, statement or memorandum
3 upon which subsection (a) of section 12 requires that the tax be
4 stated separately. Such records shall be available for inspection and
5 examination at any time upon demand by the director or his duly
6 authorized agent or employee and shall be preserved for a period of
7 ~~three~~ four years, except that the director may consent to their
8 destruction within that period or may require that they be kept
9 longer.

10 (cf: P.L.1989, c.123, s.9)

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

14 17. (a) Every person required to collect or pay tax under this act
15 shall on or before August 28, 1966, and on or before the twentieth
16 day of each month thereafter, make and file a return for the
17 preceding month with the director. The return of a seller of tangible
18 personal property, digital property or services shall show his
19 receipts from sales and also the aggregate value of tangible personal
20 property, digital property and services sold by him, the use of which
21 is subject to tax under this act, and the amount of taxes required to
22 be collected with respect to such sales and use. The return of a
23 recipient of amusement charges shall show all such charges and the
24 amount of tax thereon, and the return of a person required to collect
25 tax on leases or rentals shall show all lease or rental payments
26 received or charged and the amount of tax thereon. The return of a
27 recipient of initiation fees, membership fees or dues for access to or
28 use of the property or facilities of a health and fitness, athletic,
29 sporting or shopping club or organization shall show all such
30 charges and the amount of tax thereon. The return of the recipient
31 of charges from parking, storing or garaging a motor vehicle shall
32 show all such charges and the amount of tax thereon.

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

42 (c) The form of returns shall be prescribed by the director and
43 shall contain such information as he may deem necessary for the
44 proper administration of this act. The director may require
45 amended returns to be filed within 20 days after notice and to
46 contain the information specified in the notice.

47 (d) Pursuant to the Streamlined Sales and Use Tax Agreement,
48 the director is authorized to accept certified automated systems and

1 certified service providers to aid in the administration of the
2 collection of the tax imposed under the "Sales and Use Tax Act".

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

5 (1) In addition to the powers of the director prescribed pursuant
6 to section 24 of P.L.1966, c.30 (C.54:32B-24) and the "State
7 Uniform Tax Procedure Law," R.S.54:48-1 et seq., and
8 notwithstanding the provisions of any other law to the contrary, the
9 director shall grant "amnesty" for uncollected or unpaid sales or use
10 tax to a seller that registers to collect and remit applicable sales or
11 use tax on sales made to purchasers in this State in accordance with
12 the terms of the Streamlined Sales and Use Tax Agreement,
13 provided that the seller was not so registered in this State in the
14 twelve-month period preceding the commencement of this State's
15 participation in the agreement.

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

24 (3) The limitations on deficiency assessments, penalties and
25 interest pursuant to paragraph (2) of this subsection shall not be
26 available to a seller with respect to any matter for which the seller
27 received notice of the commencement of an audit and which audit is
28 not yet finally resolved including any related administrative and
29 judicial processes.

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

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

47 (6) The "amnesty" granted pursuant to paragraph (1) of this
48 subsection shall apply only to sales or use taxes due from a seller in

1 its capacity as a seller and shall not apply to sales or use taxes due
2 from a seller in its capacity as a buyer.

3 (cf: P.L.2006, c.44, s.16)

4

5 16. (New section) a. Receipts from sales of coin-operated
6 telephone service are exempt from the tax imposed under the "Sales
7 and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

8 b. For purposes of this section:

9 "Coin-operated telephone service" means a telecommunications
10 service paid for by inserting money into a telephone accepting
11 direct deposits of money to operate.

12

13 17. (New section) Receipts from telecommunications services
14 provided by a person, or by that person's wholly owned subsidiary,
15 not engaged in the business of rendering or offering
16 telecommunications services to the public, for private and exclusive
17 use within its organization, are exempt from the tax imposed under
18 the Sales and Use Tax Act; provided however, that the exemption
19 provided by this section shall not apply to sales of
20 telecommunications services attributable to the excess unused
21 telecommunications capacity of that person to another.

22

23 18. a. Section 27 of P.L.2005, c.126 (C.54:32B-3.2) and section
24 1 of P.L.2006, c.41 (C.54:32G-1) are repealed.

25 b. Notwithstanding the repeal of section 1 of P.L.2006, c.41,
26 the repeal shall not affect any obligation, lien, or duty to pay taxes,
27 interest or penalties which have accrued or may accrue by virtue of
28 any taxes imposed pursuant to the provisions of P.L.2006, c.41 or
29 which may be imposed with respect to any redetermination,
30 correction, recomputation, or deficiency assessment; and provided
31 that all taxes and returns which would be due and payable prior to
32 the effective date of P.L. , c. (C.) (pending before the
33 Legislature as this bill) shall be due and payable as if P.L.2006,
34 c.41 were in effect; and provided that this repeal shall not affect the
35 legal authority of the State to audit records and assess and collect
36 taxes due or which may be due, together with such interest and
37 penalties as have accrued or would have accrued thereon under the
38 provisions of the law repealed; and provided that the repeal by
39 subsection a. of this section, shall not affect any determination of,
40 or affect any proceeding for, the enforcement thereof.

41

42 19. This act shall take effect immediately; provided however,
43 that sections 1 through 18 shall remain inoperative until January 1,
44 2009.

STATEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

This bill revises the State's sales and use tax to conform with various provisions of the multi-state Streamlined Sales and Use Tax Agreement (SSUTA). Specifically, the bill incorporates a series of technical and substantive changes to the SSUTA which have been adopted by the Streamlined Sales Tax Governing Board since the State first entered the agreement in 2005. The changes are intended to simplify and modernize the State's tax collection and administrative procedures, and to ensure New Jersey remains compliant with the provisions of the SSUTA.

Since 2005, the SSUTA has reorganized and elaborated the taxation of telecommunications; compliance requires New Jersey to reorganize and replace its current definitions of telecommunications with the defined terms provided under the agreement. This bill allows the State to maintain compliance by: (1) replacing the current "telecommunications" term with a more specific, narrowly focused definition of "telecommunications service;" (2) redefining "intrastate, interstate, and international telecommunications;" (3) revising pre-paid calling and mobile telecommunications; and (4) incorporating "ancillary service," "directory assistance," "detailed telecommunications billing service" and "voice mail service" into the statutes of defined terms.

The reorganization of telecommunications definitions requires the elimination of current explicit language imposing taxation on mobile telecommunications and certain prepaid calling services, and requires the explicit imposition of tax on telephone answering and radio subscription services. These changes do not extend the base of the sales and use tax to new services or omit previously taxed telecommunications from coverage.

Similarly, the reorganization of telecommunications definitions requires the State to: (1) adopt the SSUTA telecommunications bundled transaction administrative rule for unbundling the taxable and nontaxable components of a sale of mixed telecommunications services that relies on the service providers internal records; (2) clarify the imposition of the use tax on radio subscription services; and (3) reorganize the telecommunications definition that requires the deletion of a use tax measurement rule for prepaid calling services which is currently taxed separately from telecommunications.

Beyond telecommunications, the changes to the definition of "sales price" reflect another reorganization in the SSUTA definitions, but essentially codify the policy on the effect of coupons and rebates that has been used under the State's sales tax for the last 20 years. Additionally, the changes to the direct mail definitions allow the maintenance of the New Jersey taxation of mail processing services in compliance with SSUTA definitions.

1 Another SSUTA reorganizational change that requires a
2 corresponding New Jersey change is the elimination of a “non-
3 distinction” between solid and liquid food.

4 For reasons of compliance with SSUTA provisions concerning
5 the medical products exemption, the bill narrows a broad limitation
6 currently affecting all medical equipment to affect only certain
7 medical supplies, while limiting the exemption for mobility
8 enhancing equipment to that sold by prescription.

9 For reasons of compliance with SSUTA provisions, the bill
10 provides a full sales and use tax exemption for receipts from coin-
11 paid sales of telecommunications service using pay phones. The bill
12 expands the current exemption, which only provides an exemption
13 for coin-operated calls at the local calling rate (coin-paid long-
14 distance phone calls are currently subject to tax).

15 For reasons of compliance with SSUTA provisions, the bill
16 repeals the 6 percent gross receipts tax on retail sales of fur
17 clothing, imposed under the provisions of P.L.2006, c.41
18 (C.54:32G-1), and imposes the 7 percent sales tax on sales of “fur
19 clothing” as defined by the SSUTA.

20 For reasons of compliance with SSUTA provisions, the bill
21 repeals the multiple points of use (MPU) exemption.

22 In addition, this bill revises the State’s sales and use tax to make
23 technical clarifications to the research and development exemption
24 to explicitly include as exempt the receipts from sales of digital
25 property, and to the business prewritten software exemption to
26 delete contradictory language about prewritten computer software
27 delivered electronically. Technical clarifications under the bill also
28 include a provision extending the length of time during which tax
29 records must be maintained under the sales and use tax, and an
30 additional reference stipulating the process of providing returns for
31 initiation and membership fees and dues as well as storing or
32 garaging motor vehicles.

33 Further changes to the State’s sales and use tax under the bill
34 include a provision to make explicit the “purchase for resale”
35 exemption for purchases of telecommunications services for use as
36 a component part of telecommunications services provided to a
37 final end user, and the insertion of additional language reinstating
38 an exemption for the “in house” use of telecommunications services
39 provided by a user not in the business of providing
40 telecommunications to the public or by the user’s subsidiary.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3111

STATE OF NEW JERSEY

DATED: SEPTEMBER 15, 2008

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3111.

The bill revises the sales and use tax to conform with changes to the Streamlined Sales and Use Tax Agreement (SSUTA) which have been adopted by the Streamlined Sales Tax Governing Board since the State entered the agreement in 2005.

Since 2005, the governing board has reorganized and elaborated the taxation of telecommunications. To conform, New Jersey is required to implement corresponding changes which reorganize and elaborate the State's taxation of telecommunications in compliance with the provisions of the agreement. As a result, this bill:

- Reorganizes and replaces current definitions of telecommunications with the defined terms under the agreement;
- Eliminates current explicit language imposing taxation on mobile telecommunications and certain prepaid calling services;
- Explicitly imposes taxation on telephone answering and radio subscription services;
- Clarifies the imposition of the use tax on radio subscription services;
- Revises a use tax measurement for prepaid calling services;
- Adopts an administrative rule for unbundling taxable and nontaxable components of sales of mixed telecommunications services; and
- Provides a sales and use tax exemption for coin-paid sales of telecommunications services using pay phones, regardless of whether call is charged at the local or long-distance rate.

The bill, reorganizes and replaces telecommunications definitions by: (1) exchanging the current "telecommunications" term with a more specific, narrowly focused definition of "telecommunications service;" (2) redefining "intrastate, interstate, and international telecommunications;" (3) revising "pre-paid calling services" and "mobile telecommunications service;" and (4) incorporating SSUTA's

definitions, “ancillary service,” “directory assistance,” “detailed telecommunications billing service,” and “voice mail service,” into the statute of defined terms. These changes do not extend the base of the sales and use tax to new services or omit previously taxed telecommunications from coverage.

Since 2005, the governing board has also revised the taxation of goods and services unrelated to telecommunications, such as direct mail processing services, sales of food for human consumption, and sales of medical and mobility enhancing equipment, and expanded the definition of “sales price;” revised the multiple points of use (MPU) exemption; and found New Jersey’s six percent gross receipts tax on retail sales of fur clothing to violate the spirit of the SSUTA. To ensure uniformity and maintain compliance, this bill:

- Amends the direct mail definitions to allow for the maintenance of the New Jersey taxation of mail processing services;
- Eliminates the differentiation between sales of food, food ingredients, and dietary supplements sold in liquid or solid form;
- Narrows a broad limitation currently affecting all medical equipment to affect only certain medical supplies, while limiting the exemption for mobility enhancing equipment to that sold by prescription;
- Modifies the definition of “sales price” to codify the policy on the effect of coupons and rebates that has been used by the State under the sales tax for the last 20 years;
- Repeals the multiple points of use (MPU) exemption; and
- Replaces the six percent gross receipts tax on retail sales of fur clothing, imposed under the provisions of P.L.2006, c.41 (N.J.S.A.54:32G-1), with a seven percent sales and use tax on sales of “fur clothing” as that term is defined under the agreement.

Beyond substantive changes required for compliance, this bill also makes certain technical modifications to the sales and use tax to revise inconsistencies and clarify omissions related to previous statutory revisions. These modifications and clarifications extend to: (1) the research and development exemption to explicitly include as exempt receipts from sales of digital property; (2) the business prewritten software exemption to eliminate contradictory language concerning prewritten computer software delivered electronically; (3) the inclusion of a provision extending the length of time during which tax records must be maintained; (4) an extension of the current hold harmless provision for vendors to certain purchasers who rely on tax rates, boundaries, or the taxability matrix provided by the State; and (5) an additional reference stipulating the process of providing returns

for sales and use tax imposed on charges for initiation and membership fees and dues and charges for parking, storing, or garaging motor vehicles.

The SSUTA is one of two components of the sales tax system under development by the Streamlined Sales Tax Project, an effort created by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. Forty-two states and the District of Columbia are involved in the project, and New Jersey has been involved as a participating state since 2001, when the State Treasurer was authorized, pursuant to P.L.2001, c.421 (N.J.S.A.54:32B-44 et seq.) to enter multistate discussions concerning the development of a streamlined sales tax system.

FISCAL IMPACT:

The Executive has estimated this bill will have a limited fiscal impact on State revenues. According to their analysis, the elimination of a six percent gross receipts tax on retail sales of fur clothing and the imposition of a seven percent sales and use tax on sales of fur clothing will generate an additional \$350,000 of State revenues in fiscal year 2009 and each fiscal year thereafter.

The Office of Legislative Services (OLS) generally agrees with the Executive's analysis: in transitioning from a six percent gross receipts tax to a seven percent sales and use tax on sales of fur clothing the State may generate an additional \$175,000 of State revenues during six months of activity in fiscal year 2009 and an additional \$350,000 of State revenues each fiscal year thereafter.

In addition, the OLS cautions that the bill may have two additional fiscal implications beyond the one percent fur tax increase identified by the Executive. The OLS notes that the sales and use tax exemption provided for sales of coin-operated telephone services may decrease sales tax collections, and notes the prescription requirement imposed on sales of mobility enhancing equipment may increase sales tax collections in future fiscal years. However, the lack of data precludes the OLS from quantifying the full financial impact of these two changes.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3111

STATE OF NEW JERSEY

DATED: DECEMBER 11, 2008

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 3111.

The bill revises the sales and use tax to conform to technical and substantive changes to the Streamlined Sales and Use Tax Agreement (SSUTA) which have been adopted by the Streamlined Governing Board since the State entered the multistate agreement in 2005.

Telecommunications. Under the bill, the largest segment of changes is related to telecommunications. Since 2005, the governing board has reorganized and elaborated the taxation of telecommunications and required member states to implement corresponding tax code changes by January 1, 2009. Compliance requires New Jersey to revise the taxation of telecommunications, replacing certain terms and conditions which have defined telecommunications taxation since tax was imposed on its services.

In particular, compliance requires the State to revise or replace its current telecommunications definitions with the defined terms under the agreement. As a result, the bill: (1) replaces the current, broad-based sales and use tax definition of “telecommunications” with a more specific, narrowly focused definition of “telecommunications services;” (2) redefines “intrastate” and “interstate” telecommunications; (3) revises “pre-paid calling” and “mobile telecommunications” services; and (4) incorporates a series of previously undefined terms, including “international telecommunications,” “ancillary service,” “directory assistance,” and “voice mail service,” into the statute of defined terms.

The reorganization and elaboration of telecommunications definitions also requires subsequent changes explicitly imposing or explicitly excluding the imposition of tax on certain enumerated services. In compliance with the SSUTA, the bill eliminates explicit statutory language concerning, but does not change the imposition of tax on, mobile telecommunications and certain prepaid calling services, and provides explicit statutory language concerning, but does not change the imposition of tax on, telephone answering services and radio subscription services. These changes do not extend the tax base or omit previously taxed telecommunications from coverage.

In addition, the bill makes certain other telecommunications changes that allow New Jersey to incorporate SSUTA provisions

within the State's existing telecommunications framework. Under the bill, these changes include: (1) the adoption of SSUTA's administrative rule for unbundling taxable and nontaxable components of a sale of mixed telecommunications services; (2) the clarification of use tax imposition on radio subscription services; (3) the reorganization of the telecommunications definition that requires the deletion of a use tax measurement rule for prepaid calling services; (4) a provision to make explicit the "purchase for resale" exemption for purchases of telecommunications services for use as a component part of telecommunications services provided to a final end user; (5) an exemption for certain "in house" use of telecommunications services; and (6) a full exemption for receipts from coin-paid sales of telecommunications services using pay phone devices.

Non-Telecommunications. Since 2005, the Streamlined Sales Tax Governing Board has also reorganized and elaborated the taxation of goods and services unrelated to telecommunications. Compliance requires New Jersey to revise and expand certain product based definitions and administrative procedures previously incorporated into the sales and use tax to conform to the SSUTA.

To ensure uniformity, the bill: (1) amends the direct mail definitions to allow for the continuation of taxation on mail processing services; (2) eliminates the differentiation between sales of food, food ingredients, and dietary supplements sold in liquid or solid form; (3) narrows a broad limitation affecting all medical equipment to affect only certain medical supplies, while limiting the exemption for mobility enhancing equipment to that sold by prescription; (4) modifies the definition of "sales price" to codify the policy on the effect of coupons and rebates that has been used under the State's sales tax for the last 20 years; (5) incorporates use tax provisions for delivery charges made by a seller; and (6) repeals the multiple points of use (MPU) exemption.

Taxation of Fur Clothing. For purposes of compliance, the bill repeals the six percent gross receipts tax on retail sales of fur clothing, imposed under P.L.2006, c.41 (C.54:32G-1), and imposes a seven percent sales and use tax on sales of "fur clothing" as that term is defined by the SSUTA. The transition from a six percent gross receipts tax to a seven percent sales and use tax on retail sales of fur clothing is intended to mitigate concerns that the gross receipts tax may violate the spirit of the SSUTA.

Technical Revisions. Beyond substantive changes required for compliance, the bill makes certain technical modifications to the sales and use tax to revise inconsistencies and clarify omissions related to previous statutory revisions.

Under the bill, these modifications and clarifications extend to: (1) the research and development exemption to explicitly include as exempt receipts from sales of digital property; (2) the business prewritten software exemption to eliminate contradictory language

concerning prewritten computer software delivered electronically; (3) administrative provisions regarding tax records to lengthen, from three to four years, the period of time during which tax records must be maintained; (4) an extension of the current hold harmless provision for vendors to certain purchasers who rely on tax rates, boundaries, or the taxability matrix provided by the State; and (5) administrative provisions concerning the collection and return of tax to stipulate the process of collecting and providing returns for tax imposed on charges in the nature of initiation and membership fees and dues as well as charges for parking, storing, or garaging motor vehicles.

As reported, this bill is identical to Senate Bill No. 1418, as also amended and reported by the committee.

FISCAL IMPACT:

The Executive has estimated this bill will have a limited fiscal impact on State revenues. The elimination of the six percent gross receipts tax and the imposition of a seven percent sales and use tax on sales of fur clothing will generate an additional \$350,000 of State revenues in fiscal year 2009 and each fiscal year thereafter. According to their analysis, all other tax code changes required for SSUTA compliance “appear to have no additional impact on State revenues.”

The Office of Legislative Services (OLS) generally agrees with the Executive’s analysis. The one percent fur tax increase may generate an additional \$175,000 of State revenues during fiscal year 2009 and an additional \$350,000 of State revenues each fiscal year thereafter.

However, the OLS cautions that the bill may have two additional fiscal implications. The OLS notes that the sales and use tax exemption for sales of coin-operated telephone services may decrease sales tax collections, and suggests that the prescription requirement imposed on sales of mobility enhancing equipment may increase sales tax collections in future fiscal years.

FISCAL NOTE
CORRECTED COPY
ASSEMBLY, No. 3111
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: SEPTEMBER 18, 2008

SUMMARY

Synopsis: Revises sales and use tax to conform with Streamlined Sales and Use Tax Agreement.

Type of Impact: Annual Revenue Change to State General Fund and Property Tax Relief Fund.

Agencies Affected: Department of Treasury.

Executive Estimate

Fiscal Impact	<u>Fiscal Year 2009</u>	<u>Fiscal Year 2010</u>	<u>Fiscal Year 2011</u>
State Revenue Gain		\$350,000 Per Year	

Office of Legislative Services Estimate

Fiscal Impact	<u>Fiscal Year 2009</u>	<u>Fiscal Year 2010</u>	<u>Fiscal Year 2011</u>
	At Least	At Least	At Least
State Revenue Gain	\$175,000	\$350,000	\$350,000

- The Office of Legislative Services (OLS) generally **concurs** with Executive projections which suggest the bill will have a limited fiscal impact. In eliminating the six percent gross receipts tax and imposing a seven percent sales and use tax on sales of fur clothing, this bill may generate an additional \$175,000 of revenue during the remainder of fiscal year 2009 and an additional \$350,000 each year thereafter.
- However, the OLS **does not concur** with the Executive's assertion that all other, technical modifications required for Streamlined Sales and Use Tax Agreement (SSUTA) compliance have no impact on revenue collections. While the fur tax increase may be the only quantifiable impact, the OLS cautions that the legislation has two additional fiscal implications overlooked by the Executive: (1) the sales and use tax exemption for coin-operated telephone services, which may decrease sales tax collections; and (2) the prescription requirement for the sales and use tax exemption for mobility enhancing equipment, which may increase sales tax collections.

BILL DESCRIPTION

Assembly Bill No. 3111 of 2008 revises the sales and use tax to incorporate a series of changes to the SSUTA which have been adopted since the State entered the multi-state agreement in 2005.

The bill reorganizes and elaborates the taxation of telecommunications, revises the statutory definition of “sales price,” modifies the definition of direct mail processing services, eliminates the “non-distinction” between solid and liquid food, and repeals the multiple points of use exemption. For purposes of compliance, the bill narrows a broad limitation affecting all medical equipment to affect only certain medical supplies, while limiting the exemption for mobility enhancing equipment to that sold by prescription; provides a sales and use tax exemption for coin-paid sales of payphone phone calls; and replaces the six percent gross receipts fur tax with a seven percent sales and use tax on sales of fur clothing.

Beyond changes for compliance, the bill makes certain technical modifications to the sales and use tax to revise inconsistencies and omissions which stem from previous revisions. These modifications include: the research and development exemption to explicitly include as exempt receipts from sales of digital property; the business prewritten software exemption to eliminate contradictory language concerning prewritten computer software delivered electronically; a provision extending the length of time during which tax records must be maintained; an extension of the current hold harmless provision for vendors to certain purchasers who rely on tax rates, boundaries, or the taxability matrix provided by the State; and an additional reference stipulating the process of providing returns for sales and use tax imposed on charges for initiation and membership fees and dues and charges from parking, storing, or garaging motor vehicles.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Division of Taxation in the Department of Treasury anticipates Assembly Bill No. 3111 of 2008 will have a limited fiscal impact.

According to their analysis, the transition from a six percent gross receipts tax to a seven percent sales and use tax on sales of fur clothing will generate an additional \$350,000 of General Fund revenue in fiscal year 2009 and each fiscal year thereafter.

Beyond the fur tax transition, Taxation asserts technical modifications required for SSUTA compliance, “appear to have no additional impact on State revenues.”

OFFICE OF LEGISLATIVE SERVICES

The OLS generally concurs with Taxation’s analysis. Assuming sales of fur clothing increase beyond figures achieved over the previous fiscal year, the transition from a six percent gross receipts tax to a seven percent sales and use tax may generate an additional \$175,000 of revenue during the remainder of fiscal year 2009 and an additional \$350,000 of revenue each fiscal year thereafter. However, the OLS cautions that the bill has two additional fiscal implications beyond the one percent fur tax increase identified by Taxation. The OLS notes that the exemption for coin-operated telephone services may decrease sales tax collections, and suggests that a prescription requirement imposed on the sales and use tax exemption for mobility enhancing equipment may increase sales tax collections in future fiscal years.

Coin-Operated Telephone Services:

Since 1990, the State of New Jersey has imposed sales tax on coin-paid sales of long-distance phone calls while providing a statutory exclusion for coin-paid sales of phone calls charged at the local calling rate. In reorganizing telecommunications for SSUTA compliance, however, the seven percent tax on long distance phone calls is rescinded, the exclusion for local phone calls is eliminated, and a separate, distinct sales and use tax exemption is provided for coin-operated telephone services. Regardless of whether the call is charged at the local or long-distance rate, coin-paid phone calls are exempt from taxation under the provisions of this bill.

At the height of AT&T's control of the market, an exemption for coin-operated telephone services may have represented a multi-million dollar proposition. Since then, the prevalence of pre-paid phone cards coupled with the growth of the cell phone industry has led to a dramatic decline in the availability and the use of public payphones. Although residents continue to rely on payphones to connect with friends and family, to conduct business, or to reach help in the event of an emergency, their use has significantly diminished, limiting the extent to which tax revenues are expected to decline over time.

While precise figures are unavailable, information obtained from the Federal Communications Commission (FCC) illustrates the decline in availability and, presumably, the use of payphones. Data released by the commission in February 2007, suggested that the number of public payphones owned and operated in the State of New Jersey dropped roughly 49 percent over a seven year period, from 99,355 active payphones in March of 1999 to 50,730 in March of 2006. While the FCC has not released revised figures, a representative with the American Public Communications Council (APCC) estimates that the number of payphones in New Jersey has continued to decline, falling below figures achieved in 2006.

Mobility Enhancing Equipment:

Under current law, the State of New Jersey provides a sales and use tax exemption for sales of mobility enhancing equipment. The receipts from sales of walkers and wheelchairs, motorized carts and crutches, and chairlifts and canes are exempt from taxation, irrespective of whether they are sold with or without a prescription. Under the bill, however, sales of mobility enhancing equipment are exempt only if the equipment is sold pursuant to the prescription of a "duly licensed practitioner" who is "authorized by the laws of this State."

The fiscal implications of the prescription requirement are largely unknown. Taxation appears unaware that the requirement will impact State revenues, and the OLS does not have sales data from medical supply distributors to quantify the impact on State revenues at this time. However, the office notes that the prescription requirement has the potential to increase tax collections in future fiscal years. Any effort restricting or limiting the size of the population eligible to receive an exemption will increase the likelihood that a sale of mobility enhancing equipment will result in a taxable transaction and, in turn, will increase sales and use tax collections. Sales of walkers to for-profit nursing homes, sales of wheelchairs to families of individuals with disabilities, and sales of chair lifts to businesses that had been exempt may be subject to taxation under the parameters of this bill.

A3111

4

Section: Revenue, Finance, and Appropriations

*Analyst: Luke Wolff
Associate Research Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-1 et seq.).

SENATE, No. 1418

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED MARCH 3, 2008

Sponsored by:
Senator PAUL A. SARLO
District 36 (Bergen, Essex and Passaic)

SYNOPSIS

Revises sales and use tax to conform with Streamlined Sales and Use Tax Agreement.

CURRENT VERSION OF TEXT

As introduced.



S1418 SARLO

2

1 AN ACT revising the sales and use tax to conform with the
2 Streamlined Sales and Use Tax Agreement, amending P.L.2005,
3 c.126, P.L.1980, c.105, and P.L.1985, c.24, amending and
4 supplementing P.L.1966, c.30, and repealing section 27 of
5 P.L.2005, c.126 and section 1 of P.L.2006, c.41.

6

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

9

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

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

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

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

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

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

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

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

43 (2) For the purposes of this act, the term "retail sale" includes:
44 sales of tangible personal property to all contractors, subcontractors
45 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.

S1418 SARLO

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 (1) The term "seller" includes:

S1418 SARLO

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

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

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

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

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

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

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

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

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

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

S1418 SARLO

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S1418 SARLO

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

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

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

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

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

S1418 SARLO

7

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

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

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

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

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

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

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

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

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

32 (cc) "Telecommunications service" means the [act or privilege
33 of originating or receiving messages or information through the use
34 of any kind of one-way or two-way communication; including but
35 not limited to voice, video, facsimile, teletypewriter, computer,
36 mobile telecommunications service or any other type of
37 communication; using electronic or electromagnetic methods, and
38 all services and equipment provided in connection therewith or by
39 means thereof] electronic transmission, conveyance, or routing of
40 voice, data, audio, video, or any other information or signals to a
41 point, or between or among points.

42 "Telecommunications service" shall include such transmission,
43 conveyance, or routing in which computer processing applications
44 are used to act on the form, code, or protocol of the content for
45 purposes of transmission, conveyance, or routing without regard to
46 whether such service is referred to as voice over Internet protocol
47 services or is classified by the Federal Communications
48 Commission as enhanced or value added.

1 "Telecommunications service" shall not include:

2 (1) ~~【one-way radio or television broadcasting transmissions~~
3 ~~available universally to the general public without a fee】~~~~(Deleted~~
4 ~~by amendment, P.L. , c.) (pending before the Legislature as this~~
5 ~~bill);~~

6 (2) ~~【purchases of telecommunications by a telecommunications~~
7 ~~provider for use as a component part of telecommunications~~
8 ~~provided to an ultimate retail consumer who (A) originates or~~
9 ~~terminates the taxable end-to-end communications or (B) pays~~
10 ~~charges exempt from taxation pursuant to paragraph (5) of this~~
11 ~~subsection】~~~~(Deleted by amendment, P.L. , c.) (pending before~~
12 ~~the Legislature as this bill);~~

13 (3) ~~【services provided by a person, or by that person's wholly~~
14 ~~owned subsidiary, not engaged in the business of rendering or~~
15 ~~offering telecommunications services to the public, for private and~~
16 ~~exclusive use within its organization, provided however, that~~
17 ~~"telecommunications" shall include the sale of telecommunications~~
18 ~~services attributable to the excess unused telecommunications~~
19 ~~capacity of that person to another】~~~~(Deleted by amendment, P.L. ,~~
20 ~~c.) (pending before the Legislature as this bill);~~

21 (4) ~~【charges in the nature of subscription fees paid by~~
22 ~~subscribers for cable television service】~~~~(Deleted by amendment,~~
23 ~~P.L. , c.) (pending before the Legislature as this bill);~~

24 (5) ~~【charges subject to the local calling rate paid by inserting~~
25 ~~coins into a coin operated telecommunications device available to~~
26 ~~the public】~~~~(Deleted by amendment, P.L. , c.) (pending before~~
27 ~~the Legislature as this bill);~~ ~~【and】~~

28 (6) ~~【purchases of telecommunications using a prepaid calling~~
29 ~~service】~~~~(Deleted by amendment, P.L. , c.) (pending before the~~
30 ~~Legislature as this bill);~~

31 ~~(7) data processing and information services that allow data to be~~
32 ~~generated, acquired, stored, processed, or retrieved and delivered by~~
33 ~~an electronic transmission to a purchaser where such purchaser's~~
34 ~~primary purpose for the underlying transaction is the processed data~~
35 ~~or information;~~

36 ~~(8) installation or maintenance of wiring or equipment on a~~
37 ~~customer's premises;~~

38 ~~(9) tangible personal property;~~

39 ~~(10) advertising, including but not limited to directory~~
40 ~~advertising;~~

41 ~~(11) billing and collection services provided to third parties;~~

42 ~~(12) internet access service;~~

43 ~~(13) radio and television audio and video programming services,~~
44 ~~regardless of the medium, including the furnishing of transmission,~~
45 ~~conveyance, and routing of such services by the programming~~
46 ~~service provider. Radio and television audio and video~~
47 ~~programming services shall include but not be limited to cable~~

1 service as defined in section 47 U.S.C. s.522(6) and audio and video
2 programming services delivered by commercial mobile radio
3 service providers, as defined in section 47 C.F.R. 20.3;

4 (14) ancillary services; or

5 (15) digital products delivered electronically, including but not
6 limited to software, music, video, reading materials, or ringtones.

7 For the purposes of this subsection:

8 “ancillary service” means a service that is associated with or
9 incidental to the provision of telecommunications services,
10 including but not limited to detailed telecommunications billing,
11 directory assistance, vertical service, and voice mail service;

12 “conference bridging service” means an ancillary service that
13 links two or more participants of an audio or video conference call
14 and may include the provision of a telephone number. Conference
15 bridging service does not include the telecommunications services
16 used to reach the conference bridge;

17 “detailed telecommunications billing service” means an ancillary
18 service of separately stating information pertaining to individual
19 calls on a customer’s billing statement;

20 “directory assistance” means an ancillary service of providing
21 telephone number information or address information or both;

22 “vertical service” means an ancillary service that is offered in
23 connection with one or more telecommunications services, which
24 offers advanced calling features that allow customers to identify
25 callers and to manage multiple calls and call connections, including
26 conference bridging services; and

27 “voice mail service” means an ancillary service that enables the
28 customer to store, send, or receive recorded messages. Voice mail
29 service does not include any vertical service that a customer may be
30 required to have to utilize the voice mail service.

31 (dd) (1) “Intrastate telecommunications” means a
32 telecommunications service that originates in one United States
33 state or a United States territory or possession or federal district,
34 and terminates in the same United States state or United States
35 territory or possession or federal district.

36 (2) “Interstate [telecommunication] telecommunications” means
37 [any] a [telecommunication] telecommunications service that
38 originates in one United States state or a United States territory or
39 possession or federal district, and [or] terminates [inside this State,
40 including international telecommunication. In the case of mobile
41 telecommunications service, “interstate telecommunication” means
42 any mobile telecommunications service that originates in one state
43 and terminates in another state, territory, or foreign country that is
44 provided to a customer with a place of primary use in this State] in
45 a different United States state or United States territory or
46 possession or federal district.

47 (3) “International telecommunications” means a
48 telecommunications service that originates or terminates in the

1 United States and terminates or originates outside the United States,
2 respectively. "United States" includes the District of Columbia or a
3 United States territory or possession.

4 (ee) **["Intrastate telecommunication" means any**
5 **telecommunication that originates and terminates within this State.**
6 **In the case of mobile telecommunications service, "intrastate**
7 **telecommunication" means any mobile telecommunications service**
8 **that originates and terminates within the same state that is provided**
9 **to a customer with a place of primary use in this State.]** (Deleted by
10 amendment, P.L. , c.) (pending before the Legislature as this
11 bill)

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

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

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

18 (ii) "Self-generation unit" means a facility located on the user's
19 property, or on property purchased or leased from the user by the
20 person owning the self-generation unit and such property is
21 contiguous to the user's property, which generates electricity to be
22 used only by that user on the user's property and is not transported
23 to the user over wires that cross a property line or public
24 thoroughfare unless the property line or public thoroughfare merely
25 bifurcates the user's or self-generation unit owner's otherwise
26 contiguous property.

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

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

38 (ll) "Pre-paid calling service" means the right to **[purchase]**
39 access exclusively telecommunications services, **[that must] which**
40 shall be paid for in advance **[, that] and which** enables the
41 origination of calls using an access number or authorization code,
42 whether manually or electronically dialed**[:provided, that the**
43 **remaining amount of units of service that have been pre-paid shall**
44 **be known by the service provider on a continuous basis] , and that**
45 is sold in predetermined units or dollars of which the number
46 declines with use in a known amount.

1 (mm) "Mobile telecommunications service" **【**means commercial
2 mobile radio service, as defined in section 20.3 of title 47 of the
3 Code of Federal Regulations as in effect on June 1, 1999**】** means
4 the same as that term is defined in the federal "Mobile
5 Telecommunications Sourcing Act," 4 U.S.C. s.124 (Pub.L.106-
6 252).

7 (nn) **【**"Place of primary use" means the street address
8 representative of where the customer's use of the mobile
9 telecommunications service primarily occurs, which shall be the
10 residential street address or the primary business street address of
11 the customer and within the licensed service area of the home
12 service provider. For the purposes of determining the primary place
13 of use, the terms used shall have the meanings provided pursuant to
14 the federal "Mobile Telecommunications Sourcing Act," 4 U.S.C.
15 s.124 (Pub.L.106-252).**】** (Deleted by amendment, P.L. , c.)
16 (pending before the Legislature as this bill)

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

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

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

26 (C) Charges by the seller for any services necessary to complete
27 the sale;

28 (D) Delivery charges;

29 (E) Installation charges; and

30 (F) **【**The value of exempt personal property given to the
31 purchaser where taxable and exempt personal property have been
32 bundled together and sold by the seller as a single product or piece
33 of merchandise**】** (Deleted by amendment, P.L. , c.) (pending
34 before the Legislature as this bill).

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

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

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

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

46 (D) The amount of sales price for which food stamps have been
47 properly tendered in full or part payment pursuant to the federal

S1418 SARLO

12

1 Food Stamp Act of 1977, Pub.L. 95-113 (7 U.S.C. s.2011 et seq.);
2 or

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

7 (3) "Sales price" includes consideration received by the seller
8 from third parties if:

9 (A) The seller actually receives consideration from a party other
10 than the purchaser and the consideration is directly related to a price
11 reduction or discount on the sale;

12 (B) The seller has an obligation to pass the price reduction or
13 discount through to the purchaser;

14 (C) The amount of the consideration attributable to the sale is
15 fixed and determinable by the seller at the time of the sale of the
16 item to the purchaser; and

17 (D) One of the following criteria is met:

18 (i) the purchaser presents a coupon, certificate, or other
19 documentation to the seller to claim a price reduction or discount
20 where the coupon, certificate, or documentation is authorized,
21 distributed, or granted by a third party with the understanding that
22 the third party will reimburse any seller to whom the coupon,
23 certificate, or documentation is presented;

24 (ii) the purchaser identifies himself to the seller as a member of a
25 group or organization entitled to a price reduction or discount;
26 provided however, that a preferred customer card that is available to
27 any patron does not constitute membership in such a group; or

28 (iii) the price reduction or discount is identified as a third party
29 price reduction or discount on the invoice received by the purchaser
30 or on a coupon, certificate, or other documentation presented by the
31 purchaser.

32 (4) In the case of a bundled transaction that includes a
33 telecommunication service, an ancillary service, internet access, or
34 an audio or video programming service, if the price is attributable to
35 products that are taxable and products that are nontaxable, the
36 portion of the price attributable to the nontaxable products is
37 subject to tax unless the provider can identify by reasonable and
38 verifiable standards such portion from its books and records that are
39 kept in the regular course of business for other purposes, including
40 non-tax purposes.

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

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

46 (rr) "Delivery charges" means charges by the seller for
47 preparation and delivery to a location designated by the purchaser
48 of personal property or services including, but not limited to,

1 transportation, shipping, postage, handling, crating, and packing. If
2 a shipment includes both exempt and taxable property, the seller
3 should allocate the delivery charge by using: (1) a percentage based
4 on the total sales price of the taxable property compared to the total
5 sales price of all property in the shipment; or (2) a percentage based
6 on the total weight of the taxable property compared to the total
7 weight of all property in the shipment. The seller shall tax the
8 percentage of the delivery charge allocated to the taxable property
9 but is not required to tax the percentage allocated to the exempt
10 property.

11 (ss) "Direct mail" means printed material delivered or distributed
12 by United States mail or other delivery service to a mass audience
13 or to addresses on a mailing list provided by the purchaser or at the
14 direction of the purchaser in cases in which the cost of the items are
15 not billed directly to the recipients. "Direct mail" includes tangible
16 personal property or digital property supplied directly or indirectly
17 by the purchaser to the direct mail seller for inclusion in the
18 package containing the printed material. "Direct mail" does not
19 include multiple items of printed material delivered to a single
20 address.

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

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

28 (vv) "Digital property" means electronically delivered music,
29 ringtones, movies, books, audio and video works and similar
30 products, where the customer is granted a right or license to use,
31 retain or make a copy of such item. Digital property does not
32 include video programming services, including video on demand
33 television services, and broadcasting services, including content to
34 provide such services.

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

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

41 (1) investigation and detective services, including detective
42 agencies and private investigators, and fingerprint, polygraph
43 missing person tracing and skip tracing services;

44 (2) security guard and patrol services, including bodyguard and
45 personal protection, guard dog, guard, patrol, and security services;

46 (3) armored car services; and

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

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

6 (cf: P.L.2006, c.44, s.1)

7
8 2. 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.

45 "Space for storage" means secure areas, such as rooms, units,
46 compartments or containers, whether accessible from outside or
47 from within a building, that are designated for the use of a customer
48 and wherein the customer has free access within reasonable

1 business hours, or upon reasonable notice to the furnisher of space
2 for storage, to store and retrieve property. Space for storage shall
3 not include the lease or rental of an entire building, such as a
4 warehouse or airplane hanger.

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

15 (5) ~~【Direct-mail】~~ Mail processing services for printed
16 advertising material, except for ~~【direct-mail】~~ mail processing
17 services in connection with distribution of ~~【direct mail】~~ printed
18 advertising material to out-of-State recipients.

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

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

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

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

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

28 (11) Investigation and security services.

29 (12) Information services.

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

33 (14) Telephone answering services.

34 (15) Radio subscription services.

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

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

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

S1418 SARLO

16

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

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

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

18 (3) For the purposes of this subsection:

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

22 "Prepared food" means:

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

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

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

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

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

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

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

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

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

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

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

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

33 (g) ~~【The receipts from every sale, except for resale, of prepaid~~
34 ~~calling service and the recharge of prepaid calling service.】~~
35 ~~(Deleted by amendment, P.L. , c.) (pending before the~~
36 ~~Legislature as this bill)~~

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

1 (1) or (2) of subsection (b) of section 9 of P.L.1966, c.30 and that
2 has complied with subsection (d) of section 9 of P.L.1966, c.30.

3 (i) The receipts from parking, storing or garaging a motor
4 vehicle, excluding charges for the following: residential parking;
5 employee parking, when provided by an employer or at a facility
6 owned or operated by the employer; municipal parking, storing or
7 garaging; receipts from charges or fees imposed pursuant to section
8 3 of P.L.1993, c.159 (C.5:12-173.3) or pursuant to an agreement
9 between the Casino Reinvestment Development Authority and a
10 casino operator in effect on the date of enactment of P.L.2007,
11 c.105; and receipts from parking, storing or garaging a motor
12 vehicle subject to tax pursuant to any other law or ordinance.

13 For the purposes of this subsection, "municipal parking, storing
14 or garaging" means any motor vehicle parking, storing or garaging
15 provided by a municipality or county, or a parking authority
16 thereof.

17 (cf: P.L.2007, c.105, s.1)

18

19 3. Section 29 of P.L.2005, c.126 (C.54:32B-3.4) is amended to
20 reads as follows:

21 29. a. Notwithstanding the general sourcing provisions of
22 section 26 of P.L.2005, c.126 (C.54:32B-3.1), except for the
23 telecommunication services enumerated in subsection c. of this
24 section, the sale of telecommunication service sold on a call-by-call
25 basis shall be sourced to:

26 (1) each level of taxing jurisdiction where the call originates and
27 terminates in that jurisdiction; or

28 (2) each level of taxing jurisdiction where the call either
29 originates or terminates and in which the service address is also
30 located.

31 b. Except for the telecommunication services enumerated in
32 subsection c. of this section, a sale of telecommunications services
33 sold on a basis other than a call-by-call basis shall be sourced to the
34 customer's place of primary use.

35 c. The sale of the following telecommunication services shall
36 be sourced to each level of taxing jurisdiction as follows:

37 (1) A sale of mobile telecommunications services other than air-
38 to-ground radiotelephone service and prepaid calling service shall
39 be sourced to the customer's place of primary use as required by the
40 federal "Mobile Telecommunications Sourcing Act," 4 U.S.C. s.116
41 et seq.

42 (2) A sale of post-paid calling service shall be sourced to the
43 origination point of the telecommunications signal as first identified
44 by either:

45 (a) the seller's telecommunications system; or

46 (b) information received by the seller from its service provider,
47 if the system used to transport such signals is not that of the seller.

1 (3) A sale of prepaid calling service or a sale of a prepaid
2 wireless calling service shall be sourced in accordance with the
3 general sourcing provisions of section 26 of P.L.2005, c.126
4 (C.54:32B-3.1); provided however, that in the case of a sale of
5 **【mobile telecommunications service that is a】** prepaid
6 **【telecommunications】** wireless calling service, the rule provided in
7 paragraph (5) of subsection (a) of that section shall include as an
8 option the location associated with the mobile telephone number.

9 (4) A sale of a private communication service shall be sourced
10 as follows:

11 (a) Service for a separate charge related to a customer channel
12 termination point shall be sourced to each level of jurisdiction in
13 which such customer channel termination point is located.

14 (b) Service for which all customer termination points are located
15 entirely within one jurisdiction or levels of jurisdiction shall be
16 sourced to such jurisdiction in which the customer channel
17 termination points are located.

18 (c) Service for segments of a channel between two customer
19 channel termination points located in different jurisdictions and
20 which segments of channel are separately charged shall be sourced
21 fifty percent to each level of jurisdiction in which the customer
22 channel termination points are located.

23 (d) Service for segments of a channel located in more than one
24 jurisdiction or levels of jurisdiction and which segments of channel
25 are not separately billed shall be sourced to each jurisdiction based
26 on the percentage determined by dividing the number of customer
27 channel termination points in such jurisdiction by the total number
28 of customer channel termination points.

29 (5) A sale of an ancillary service shall be sourced to the
30 customer's place of primary use.

31 d. For the purposes of this section:

32 "Air-to-ground radiotelephone service" means a radio service, as
33 that term is defined in 47 CFR 22.99, in which common carriers are
34 authorized to offer and provide radio telecommunications service
35 for hire to subscribers in aircraft;

36 "Ancillary service" means a service that is associated with or
37 incidental to the provision of telecommunication services, including
38 but not limited to detailed telecommunications billing, directory
39 assistance, vertical service, and voice mail services;

40 "Call-by-call basis" means any method of charging for
41 telecommunications services in which the price is measured by
42 individual calls;

43 "Communications channel" means a physical or virtual path of
44 communications over which signals are transmitted between or
45 among customer channel termination points;

46 "Customer" means the person or entity that contracts with the
47 seller of telecommunications services. If the end user of
48 telecommunications services is not the contracting party, then the

1 end user of the telecommunications service is the customer of the
2 telecommunication service, but this provision applies only for the
3 purpose of sourcing sales of telecommunications services under this
4 section. "Customer" does not include a reseller of
5 telecommunications service or, for mobile telecommunications
6 service **[of]** , a serving carrier under an agreement to serve the
7 customer outside the home service provider's licensed service area;

8 "Customer channel termination point" means the location where
9 the customer either inputs or receives the communications;

10 "End user" means the person who utilizes the telecommunication
11 service. In the case of an entity, "end user" means the individual
12 who utilizes the service on behalf of the entity;

13 "Home service provider" has the same meaning as that term is
14 defined by the federal "Mobile Telecommunications Sourcing Act,"
15 4 U.S.C. s.124;

16 "Mobile telecommunications service" has the same meaning as
17 that term is defined by the federal "Mobile Telecommunications
18 Sourcing Act," 4 U.S.C. s.124;

19 "Place of primary use" means the street address representative of
20 where the customer's use of the telecommunications service
21 primarily occurs, which shall be the residential street address or the
22 primary business street address of the customer. In the case of
23 mobile telecommunications services, "place of primary use" shall
24 be within the licensed service area of the home service provider;

25 "Post-paid calling service" means the telecommunications
26 service obtained by making a payment on a call-by-call basis either
27 through the use of a credit card or payment mechanism such as a
28 bank card, travel card, credit card, or debit card, or by a charge
29 made to a telephone number which is not associated with the
30 origination or termination of the telecommunications service. A
31 post-paid calling service includes a telecommunications service,
32 except a prepaid wireless calling service, that would be a prepaid
33 calling service except it is not exclusively a telecommunications
34 service;

35 "Prepaid calling service" means the right to access exclusively
36 telecommunications services, which shall be paid for in advance
37 **[that] and which** enables the origination of calls using an access
38 number or authorization code, whether manually or electronically
39 dialed, and that is sold in predetermined units or dollars of which
40 the number declines with use in a known amount;

41 "Prepaid wireless calling service" means a telecommunications
42 service that provides the right to utilize mobile wireless service as
43 well as other non-telecommunications services, including the
44 download of digital products delivered electronically, content, and
45 ancillary services, which must be paid for in advance and that is
46 sold in predetermined units or dollars of which the number declines
47 with use in a known amount;

S1418 SARLO

1 "Private communication service" means a telecommunication
2 service that entitles the customer to exclusive or priority use of a
3 communications channel or group of channels between or among
4 termination points, regardless of the manner in which such channel
5 or channels are connected, and includes switching capacity,
6 extension lines, stations, and any other associated services that are
7 provided in connection with the use of such channel or channels;
8 and

9 "Service address" means

10 (1) The location of the telecommunications equipment to which
11 a customer's call is charged and from which the call originates or
12 terminates, regardless of where the call is billed or paid;

13 (2) If the location in paragraph (1) of this definition is not
14 known, "service address" means the origination point of the signal
15 of the telecommunications services first identified by either the
16 seller's telecommunications system or in information received by
17 the seller from its service provider, in the case that the system used
18 to transport such signals is not that of the seller; or

19 (3) If the locations in paragraphs (1) and (2) of this definition
20 are not known, "service address" means the location of the
21 customer's place of primary use.

22 (cf: P.L.2005, c.126, s.29)

23

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

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

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

31 Amount of Sale	Amount of Tax
32 \$0.01 to \$0.10	No Tax
33 0.11 to 0.19	\$0.01
34 0.20 to 0.32	0.02
35 0.33 to 0.47	0.03
36 0.48 to 0.62	0.04
37 0.63 to 0.77	0.05
38 0.78 to 0.90	0.06
39 0.91 to \$1.10	0.07

40 and in addition to a tax of \$0.07 on each full dollar, a tax shall be
41 collected on each part of a dollar in excess of a full dollar, in
42 accordance with the above formula; or

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

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

1 b. **【**For charges paid by inserting coins into a coin operated
2 telecommunications device available to the public the tax shall be
3 computed to the nearest multiple of five cents of the tax otherwise
4 due pursuant to subsection a. of this section, except that, if the
5 amount of the tax is midway between multiples of five cents, the
6 next higher multiple shall apply. **】** (Deleted by amendment, P.L. ____,
7 c. __) (pending before the Legislature as this bill)
8 (cf: P.L.2006, c.44, s.3)

9
10 5. Section 6 of P.L.1966, c.30 (C.54:32B-6) is amended to read
11 as follows:

12 6. Unless property or services have already been or will be
13 subject to the sales tax under this act, there is hereby imposed on
14 and there shall be paid by every person a use tax for the use within
15 this State of 7%, except as otherwise exempted under this act, (A)
16 of any tangible personal property or digital property purchased at
17 retail, including energy, provided however, that electricity
18 consumed by the generating facility that produced it shall not be
19 subject to tax, (B) of any tangible personal property or digital
20 property manufactured, processed or assembled by the user, if items
21 of the same kind of tangible personal property or digital property
22 are offered for sale by him in the regular course of business, or if
23 items of the same kind of tangible personal property are not offered
24 for sale by him in the regular course of business and are used as
25 such or incorporated into a structure, building or real property, (C)
26 of any tangible personal property or digital property, however
27 acquired, where not acquired for purposes of resale, upon which any
28 taxable services described in paragraphs (1) and (2) of subsection
29 (b) of section 3 of P.L.1966, c.30 (C.54:32B-3) have been
30 performed, (D) of **【**interstate or**】** intrastate, interstate, or
31 international telecommunications services **【**and mobile
32 telecommunications**】** described in subsection (f) of section 3 of
33 P.L.1966, c.30, (E) (Deleted by amendment, P.L.1995, c.184), (F)
34 of utility service provided to persons in this State for use in this
35 State, provided however, that utility service used by the facility that
36 provides the service shall not be subject to tax, (G) of **【**direct-mail
37 mail processing services described in paragraph (5) of subsection
38 (b) of section 3 of P.L.1966, c.30 (C.54:32B-3), (H) **【**of prepaid
39 calling service and the recharge of prepaid calling service**】** (Deleted
40 by amendment, P.L. ____, c. __) (pending before the Legislature as this
41 bill), (I) of any services subject to tax pursuant to subsection (11),
42 (12), **【**or**】** (13), (14) or (15) of subsection (b) of section 3 of
43 P.L.1966, c.30 (C.54:32B-3), and (J) of access to or use of the
44 property or facilities of a health and fitness, athletic, sporting or
45 shopping club or organization in this State. For purposes of clause
46 (A) of this section, the tax shall be at the applicable rate, as set forth
47 hereinabove, of the consideration given or contracted to be given

S1418 SARLO

23

1 for such property or for the use of such property including delivery
2 charges made by the seller, but excluding any credit for property of
3 the same kind accepted in part payment and intended for resale. For
4 the purposes of clause (B) of this section, the tax shall be at the
5 applicable rate, as set forth hereinabove, of the price at which items
6 of the same kind of tangible personal property or digital property
7 are offered for sale by the user, or if items of the same kind of
8 tangible personal property are not offered for sale by the user in the
9 regular course of business and are used as such or incorporated into
10 a structure, building or real property the tax shall be at the
11 applicable rate, as set forth hereinabove, of the consideration given
12 or contracted to be given for the tangible personal property
13 manufactured, processed or assembled by the user into the tangible
14 personal property the use of which is subject to use tax pursuant to
15 this section, and the mere storage, keeping, retention or withdrawal
16 from storage of tangible personal property or digital property by the
17 person who manufactured, processed or assembled such property
18 shall not be deemed a taxable use by him. For purposes of clause
19 (C) of this section, the tax shall be at the applicable rate, as set forth
20 hereinabove, of the consideration given or contracted to be given
21 for the service, including the consideration for any tangible personal
22 property or digital property transferred in conjunction with the
23 performance of the service, plus the cost of transportation, except
24 where such cost is separately stated in the written contract, if any,
25 and on the bill rendered to the purchaser. For the purposes of
26 clause (D) of this section, the tax shall be at the applicable rate on
27 the charge made by the telecommunications service provider;
28 provided however, that for prepaid calling services and prepaid
29 wireless calling services the tax shall be at the applicable rate on the
30 consideration given or contracted to be given for the prepaid calling
31 service or prepaid wireless calling service or the recharge of the
32 prepaid calling service or prepaid wireless calling service. For
33 purposes of clause (F) of this section, the tax shall be at the
34 applicable rate on the charge made by the utility service provider.
35 For purposes of clause (G) of this section, the tax shall be at the
36 applicable rate on that proportion of the amount of all processing
37 costs charged by a **direct-mail** mail processing service provider
38 that is attributable to the service distributed in this State. **For the**
39 **purposes of clause (H) of this section, the tax shall be at the**
40 **applicable rate on the consideration given or contracted to be given**
41 **for the prepaid calling service or the recharge of the prepaid calling**
42 **service.** **For purposes of clause (I) of this section, the tax shall be**
43 **at the applicable rate on the charge made by the service provider.**
44 **For purposes of clause (J) of this section, the tax shall be at the**
45 **applicable rate on the charges in the nature of initiation fees,**
46 **membership fees or dues.**
47 (cf: P.L.2006, c.44, s.5)

1 6. Section 13 of P.L.1980, c.105 (C.54:32B-8.1) is amended to
2 read as follows:

3 13. a. Receipts from sales of the following sold for human use
4 are exempt from the tax imposed under the "Sales and Use Tax
5 Act":

- 6 (1) drugs sold pursuant to a doctor's prescription;
- 7 (2) over-the-counter drugs;
- 8 (3) diabetic supplies;
- 9 (4) prosthetic devices;
- 10 (5) tampons or like products;
- 11 (6) medical oxygen;
- 12 (7) human blood and its derivatives;
- 13 (8) durable medical equipment for home use;
- 14 (9) mobility enhancing equipment sold by prescription; and
- 15 (10) repair and replacement parts for any of the foregoing
16 exempt devices and equipment.

17 b. As used in this section:

18 "Drug" means a compound, substance or preparation, and any
19 component of a compound, substance or preparation, other than
20 food and food ingredients, dietary supplements or alcoholic
21 beverages:

- 22 (1) recognized in the official United States Pharmacopoeia,
23 official Homeopathic Pharmacopoeia of the United States, or
24 official National Formulary, and supplement to any of them; or
- 25 (2) intended for use in the diagnosis, cure, mitigation, treatment,
26 or prevention of disease; or
- 27 (3) intended to affect the structure or any function of the body.

28 "Over-the-counter-drug" means a drug that contains a label
29 which identifies the product as a drug, required by 21 CFR 201.66.
30 The label includes:

- 31 (1) a "Drug Facts" panel or
- 32 (2) a statement of the "active ingredient" or "active ingredients"
33 with a list of those ingredients contained in the compound,
34 substance or preparation. "Over-the-counter drug" does not include
35 a grooming and hygiene product.

36 "Grooming and hygiene product" is soap or cleaning solution,
37 shampoo, toothpaste, mouthwash, anti-perspirant, or sun tan lotion
38 or screen, regardless of whether the item meets the definition of
39 "over-the-counter drug."

40 "Prescription" means an order, formula or recipe issued in any
41 form of oral, written, electronic, or other means of transmission by
42 a duly licensed practitioner authorized by the laws of this State.

43 "Prosthetic device" means a replacement, corrective, or
44 supportive device including repair and replacement parts for same
45 worn on or in the body in order to:

- 46 (1) artificially replace a missing portion of the body; or
- 47 (2) prevent or correct a physical deformity or malfunction; or
- 48 (3) support a weak or deformed portion of the body.

1 "Durable medical equipment" means equipment, including repair
2 and replacement parts, but not including mobility enhancing
3 equipment, that:

- 4 (1) can withstand repeated use;
- 5 (2) is primarily and customarily used to serve a medical
6 purpose;
- 7 3. is generally not useful to a person in the absence of illness or
8 injury; and
- 9 4. is not worn in or on the body.

10 "Mobility enhancing equipment" means equipment, including
11 repair and replacement parts, other than durable medical equipment,
12 that:

- 13 1. is primarily and customarily used to provide or increase the
14 ability to move from one place to another and which is appropriate
15 for use either at home or in a motor vehicle; and
- 16 2. is not generally used by persons with normal mobility; and
- 17 3. does not include any motor vehicle or equipment on a motor
18 vehicle normally provided by a motor vehicle manufacturer.

19 c. Receipts from sales of [medical equipment, durable medical
20 equipment, and] supplies [other than medicines and drugs,]
21 purchased for use in providing medical services for compensation,
22 but not transferred to the purchaser of the service in conjunction
23 with the performance of the service, shall be considered taxable
24 receipts from retail sales notwithstanding the exemption from the
25 tax imposed under the "Sales and Use Tax Act" provided under this
26 section.

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

28
29 7. Section 14 of P.L.1980, c.105 (C.54:32B-8.2) is amended to
30 read as follows:

31 14. a. Receipts from the following are exempt from the tax
32 imposed under the "Sales and Use Tax Act:" sales of food and food
33 ingredients and dietary supplements, sold for human consumption
34 off the premises where sold but not including (1) candy, and (2) soft
35 drinks, all of which shall be subject to the retail sales and
36 compensating use taxes[, whether or not the item is sold in liquid
37 form].

38 b. The exemption in this section is not applicable to prepared
39 food subject to tax under subsection (c) of section 3 of the Sales and
40 Use Tax Act (C.54:32B-3).

41 c. As used in this section:

42 "Candy" means a preparation of sugar, honey, or other natural or
43 artificial sweeteners in combination with chocolate, fruits, nuts or
44 other ingredients or flavorings in the form of bars, drops, or pieces.
45 "Candy" does not include any preparation containing flour or
46 requiring refrigeration;

47 "Dietary supplement" means any product, other than tobacco,
48 intended to supplement the diet, that:

S1418 SARLO

26

1 (1) contains one or more of the following dietary ingredients: a
2 vitamin; a mineral; an herb or other botanical; an amino acid; a
3 dietary substance for use by humans to supplement the diet by
4 increasing the total dietary intake; a concentrate, metabolite,
5 constituent, extract, or combination of any ingredient described
6 herein;

7 (2) is intended for ingestion in tablet, capsule, powder, softgel,
8 gelcap, or liquid form, or if not intended for ingestion in such a
9 form, is not represented as conventional food and is not represented
10 for use as a sole item of a meal or of the diet; and

11 (3) is required to be labeled as a dietary supplement, identifiable
12 by the "Supplemental Facts" box found on the label and as required
13 pursuant to 21 C.F.R. s.101.36;

14 "Food and food ingredients" means substances, whether in
15 liquid, concentrated, solid, frozen, dried, or dehydrated form, that
16 are sold for ingestion or chewing by humans and are consumed for
17 their taste or nutritional value, "Food and food ingredients" does not
18 include alcoholic beverages or tobacco;

19 "Soft drinks" means non-alcoholic beverages that contain natural
20 or artificial sweeteners. "Soft drinks" does not include beverages
21 that contain: milk or milk products; soy, rice or similar milk
22 substitutes; or greater than fifty percent of vegetable or fruit juice
23 by volume; and

24 "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or
25 any other item that contains tobacco.

26 (cf: P.L.2005, c.126, s.8)

27

28 8. Section 16 of P.L.1980, c.105 (C.54:32B-8.4) is amended to
29 read as follows:

30 16. a. Receipts from sales of articles of clothing and footwear
31 for human use are exempt from the tax imposed under the "Sales
32 and Use Tax Act." This exemption does not apply to fur clothing,
33 clothing accessories or equipment, sport or recreational equipment,
34 or protective equipment.

35 b. Receipts from sales of protective equipment necessary for
36 the daily work of the user are exempt from the tax imposed under
37 the "Sales and Use Tax Act."

38 c. Receipts from sales of sewing materials, such as fabrics,
39 thread, knitting yarn, buttons and zippers, purchased by
40 noncommercial purchasers for incorporation into clothing as a
41 constituent part thereof, are exempt from the tax imposed under the
42 "Sales and Use Tax Act."

43 d. As used in this section:

44 "Clothing" means all human wearing apparel suitable for general
45 use. Clothing shall not include: clothing accessories or equipment,
46 sport or recreational equipment, protective equipment, sewing
47 equipment and supplies, or sewing materials that become part of
48 clothing.

1 "Clothing accessories or equipment" means incidental items
2 worn on the person or in conjunction with clothing.

3 "Fur clothing" means clothing that is required to be labeled as a
4 fur product under 15 U.S.C. s.69, and the value of the fur
5 components in the product is more than three times the value of the
6 next most valuable tangible component. For the purposes of this
7 section, "fur" means any animal skin or part thereof with hair,
8 fleece, or fur fibers attached thereto, either in its raw or processed
9 state, but shall not include such skins that have been converted into
10 leather or suede, or which in processing the hair, fleece, or fur fiber
11 has been completely removed.

12 "Protective equipment" means items for human wear and
13 designed as protection of the wearer against injury or disease or as
14 protections against damage or injury of other persons or property
15 but not suitable for general use.

16 "Sport or recreational equipment" means items designed for
17 human use and worn in conjunction with an athletic or recreational
18 activity that are not suitable for general use.

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

20

21 9. Section 26 of P.L.1980, c.105 (C.54:32B-8.14) is amended
22 to read as follows:

23 26. Receipts from sales of tangible personal property, except
24 energy, and digital property purchased for use or consumption
25 directly and exclusively in research and development in the
26 experimental or laboratory sense are exempt from the tax imposed
27 under the Sales and Use Tax Act. Such research and development
28 shall not be deemed to include the ordinary testing or inspection of
29 materials or products for quality control, efficiency surveys,
30 management studies, consumer surveys, advertising, promotions or
31 research in connection with literary, historical or similar projects.

32 (cf: P.L.1997, c.162, s.24)

33

34 10. Section 1 of P.L.1985, c.24 (C.54:32B-8.39) is amended to
35 read as follows:

36 1. Receipts from sales of **【direct mail】** printed advertising
37 material for distribution to out-of-State recipients and receipts from
38 sales of **【direct-mail】** processing services in connection with
39 distribution of **【direct mail】** printed advertising material to out-of-
40 State recipients are exempt from the tax imposed under the "Sales
41 and Use Tax Act." The exemption provided by this section shall
42 apply to receipts from charges for the printing or production of
43 **【direct mail】** printed advertising material whether prepared in, or
44 shipped into New Jersey after preparation and stored for subsequent
45 shipment to out-of-State customers. The **【direct-mail】** mail
46 processing services exemption provided by this section shall apply
47 to receipts from charges for all **【direct】** mail processing services for

1 distribution to out-of-State recipients, including but not limited to
2 the following: preparing and maintaining mailing lists, addressing,
3 separating, folding, inserting, sorting and packaging **【direct mail】**
4 printed advertising materials and transporting to the point of
5 shipment by the mail service or other carrier.

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

7

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

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

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

20 "Computer software" means a set of coded instruction designed
21 to cause a computer or automatic data processing equipment to
22 perform a task.

23 "Delivered electronically" means delivered **【from the seller】** to
24 the purchaser by means other than tangible storage media.

25 "Electronic" means relating to technology having electrical,
26 digital magnetic, wireless, optical, electromagnetic, or similar
27 capabilities.

28 "Load and leave" means delivery to the purchaser by the use of a
29 tangible storage medium where the tangible storage medium is not
30 physically transferred to the purchaser.

31 "Prewritten computer software" means computer software,
32 including prewritten upgrades, which is not designed and developed
33 by the author or other creator to the specifications of a specific
34 purchaser. The combining of two or more prewritten computer
35 software programs or prewritten portions thereof shall not cause the
36 combination to be other than prewritten computer software.

37 "Prewritten computer software" includes software designed and
38 developed by the author or other creator to the specifications of a
39 specific purchaser when it is sold to a person other than such
40 purchaser. If a person modifies or enhances computer software of
41 which that person is not the author or creator, the person shall be
42 deemed to be the author or creator only of such person's
43 modifications or enhancements. Prewritten software or a prewritten
44 portion thereof that is modified or enhanced to any degree, where
45 such modification or enhancement is designed and developed to the
46 specifications of a specific purchaser, shall remain prewritten
47 software; provided, however, that if there is a reasonable, separately
48 stated charge or an invoice or other statement of the price given to

1 the purchaser for such modification or enhancement, such
2 modification or enhancement shall not constitute pre-written
3 computer software. ["Prewritten computer software" shall not
4 include software delivered electronically].

5 (cf: P.L.2006, c.44, s.12)

6
7 12. Section 12 of P.L.1966, c.30 (C.54:32B-12) is amended to
8 read as follows:

9 12. (a) Every person required to collect the tax shall collect the
10 tax from the customer when collecting the price, service charge,
11 amusement charge or rent to which it applies. If the customer is
12 given any sales slip, invoice, receipt or other statement or
13 memorandum of the price, service charge, amusement charge or
14 rent paid or payable, the tax shall be stated, charged and shown
15 separately on the first of such documents given to him. The tax
16 shall be paid to the person required to collect it as trustee for and on
17 account of the State.

18 (b) For the purpose of the proper administration of this act and
19 to prevent evasion of the tax hereby imposed, and subject to the
20 rules regarding the administration of exemptions authorized by the
21 Streamlined Sales and Use Tax Agreement, it shall be presumed
22 that all receipts for property or services of any type mentioned in
23 subsections (a), (b) ~~and~~, (c), and (f) of section 3, all rents for
24 occupancy of the type mentioned in subsection (d) of said section,
25 ~~and~~ all amusement charges of any type mentioned in subsection
26 (e) of said section, all charges in the nature of initiation fees,
27 membership fees or dues mentioned in subsection (h) of said
28 section, and all receipts from parking, storing or garaging a motor
29 vehicle mentioned in subsection (i) of said section are subject to tax
30 until the contrary is established, and the burden of proving that any
31 such receipt, ~~amusement~~ charge or rent is not taxable hereunder
32 shall be upon the person required to collect tax or the customer.
33 Unless a seller shall have taken from the purchaser a certificate,
34 signed by the purchaser if in paper form, and bearing the
35 purchaser's name and address and the number of the purchaser's
36 registration certificate, to the effect that the property or service was
37 purchased for resale or was otherwise exempt pursuant to the
38 provisions of the "Sales and Use Tax Act," P.L.1966, c.30
39 (C.54:32B-1 et seq.), or the purchaser, prior to taking delivery,
40 furnishes to the seller any affidavit, statement or additional
41 evidence, documentary or otherwise, which the director may require
42 demonstrating that the purchaser is an exempt organization
43 described in section 9(b)(1), the sale shall be deemed a taxable
44 retail sale. Provided however, the director may, in the director's
45 discretion, authorize a purchaser, who acquires tangible personal
46 property, digital property or services under circumstances which
47 make it impossible at the time of acquisition to determine the

1 manner in which the tangible personal property, digital property or
2 services will be used, to pay the tax directly to the director and
3 waive the collection of the tax by the seller or provide for direct pay
4 authority under rules adopted under the Streamlined Sales and Use
5 Tax Agreement. Provided further, the director shall authorize any
6 eligible person, as defined in section 34 of P.L.1997, c.162
7 (C.54:32B-14.1), who purchases natural gas from a non-utility on
8 and after January 1, 1998 through December 31, 2002, to pay the
9 tax on the commodity directly to the director and waive the
10 collection of the tax by the seller. No such authority shall be
11 granted or exercised except upon application to the director, and the
12 issuance by the director of a direct payment permit. If a direct
13 payment permit is granted, its use shall be subject to conditions
14 specified by the director, and the payment of tax on all acquisitions
15 pursuant to the permit shall be made directly to the director by the
16 permit holder.

17 (c) The director may provide by regulation that the tax upon
18 receipts from sales on the installment plan may be paid on the
19 amount of each installment and upon the date when such installment
20 is due. He may also provide by regulation for the exclusion from
21 taxable receipts, amusement charges or rents of amounts subject, as
22 applicable, to the provisions of section 30 of P.L.2005, c.126
23 (C.54:32B-12.1), representing sales where the contract of sale has
24 been canceled, the property returned or the receipt, charge or rent
25 has been ascertained to be uncollectible or, in the case the tax has
26 been paid upon such receipt, charge or rent, for refund or credit of
27 the tax so paid.

28 (cf: P.L.2006, c.44, s.14)

29

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

32 16. Every person required to collect any tax imposed by this act
33 shall keep records of every purchase, purchase for lease, sale or
34 amusement charge or occupancy and of all amounts paid, charged
35 or due thereon and of the tax payable thereon, in such form as the
36 director may by regulation require. Such records shall include a true
37 copy of each sales slip, invoice, receipt, statement or memorandum
38 upon which subsection (a) of section 12 requires that the tax be
39 stated separately. Such records shall be available for inspection and
40 examination at any time upon demand by the director or his duly
41 authorized agent or employee and shall be preserved for a period of
42 **[three]** four years, except that the director may consent to their
43 destruction within that period or may require that they be kept
44 longer.

45 (cf: P.L.1989, c.123, s.9)

46

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

1 17. (a) Every person required to collect or pay tax under this act
2 shall on or before August 28, 1966, and on or before the twentieth
3 day of each month thereafter, make and file a return for the
4 preceding month with the director. The return of a seller of tangible
5 personal property, digital property or services shall show his
6 receipts from sales and also the aggregate value of tangible personal
7 property, digital property and services sold by him, the use of which
8 is subject to tax under this act, and the amount of taxes required to
9 be collected with respect to such sales and use. The return of a
10 recipient of amusement charges shall show all such charges and the
11 amount of tax thereon, and the return of a person required to collect
12 tax on leases or rentals shall show all lease or rental payments
13 received or charged and the amount of tax thereon. The return of a
14 recipient of initiation fees, membership fees or dues for access to or
15 use of the property or facilities of a health and fitness, athletic,
16 sporting or shopping club or organization shall show all such
17 charges and the amount of tax thereon. The return of the recipient
18 of charges from parking, storing or garaging a motor vehicle shall
19 show all such charges and the amount of tax thereon.

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

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

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

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

40 (1) In addition to the powers of the director prescribed pursuant
41 to section 24 of P.L.1966, c.30 (C.54:32B-24) and the "State
42 Uniform Tax Procedure Law," R.S.54:48-1 et seq., and
43 notwithstanding the provisions of any other law to the contrary, the
44 director shall grant "amnesty" for uncollected or unpaid sales or use
45 tax to a seller that registers to collect and remit applicable sales or
46 use tax on sales made to purchasers in this State in accordance with
47 the terms of the Streamlined Sales and Use Tax Agreement,
48 provided that the seller was not so registered in this State in the

1 twelve-month period preceding the commencement of this State's
2 participation in the agreement.

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

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

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

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

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

38 (cf: P.L.2006, c.44, s.16)

39

40 15. (New section) a. Receipts from sales of coin-operated
41 telephone service are exempt from the tax imposed under the "Sales
42 and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

43 b. For purposes of this section:

44 "Coin-operated telephone service" means a telecommunications
45 service paid for by inserting money into a telephone accepting
46 direct deposits of money to operate.

1 16. (New section) Receipts from telecommunications services
2 provided by a person, or by that person's wholly owned subsidiary,
3 not engaged in the business of rendering or offering
4 telecommunications services to the public, for private and exclusive
5 use within its organization, are exempt from the tax imposed under
6 the Sales and Use Tax Act; provided however, that the exemption
7 provided by this section shall not apply to sales of
8 telecommunications services attributable to the excess unused
9 telecommunications capacity of that person to another.

10

11 17. a. Section 27 of P.L.2005, c.126 (C.54:32B-3.2) and section
12 1 of P.L.2006, c.41 (C.54:32G-1) are repealed.

13 b. Notwithstanding the repeal of section 1 of P.L.2006, c.41,
14 the repeal shall not affect any obligation, lien, or duty to pay taxes,
15 interest or penalties which have accrued or may accrue by virtue of
16 any taxes imposed pursuant to the provisions of P.L.2006, c.41 or
17 which may be imposed with respect to any redetermination,
18 correction, recomputation, or deficiency assessment; and provided
19 that all taxes and returns which would be due and payable prior to
20 the effective date of P.L. , c. (C.) (pending before the
21 Legislature as this bill) shall be due and payable as if P.L.2006,
22 c.41 were in effect; and provided that this repeal shall not affect the
23 legal authority of the State to audit records and assess and collect
24 taxes due or which may be due, together with such interest and
25 penalties as have accrued or would have accrued thereon under the
26 provisions of the law repealed; and provided that the repeal by
27 subsection a. of this section, shall not affect any determination of,
28 or affect any proceeding for, the enforcement thereof.

29

30 18. This act shall take effect immediately; provided however,
31 that sections 1 through 17 shall remain inoperative until July 1,
32 2008.

33

34

35

STATEMENT

36

37 This bill revises the State's sales and use tax to conform with
38 various provisions of the multi-state Streamlined Sales and Use Tax
39 Agreement (SSUTA). Specifically, the bill incorporates a series of
40 technical and substantive changes to the SSUTA which have been
41 adopted by the Streamlined Sales Tax Governing Board since the
42 State first entered the agreement in 2005. The changes are intended
43 to simplify and modernize the State's tax collection and
44 administrative procedures, and to ensure New Jersey remains
45 compliant with the provisions of the SSUTA.

46 Since 2005, the SSUTA has reorganized and elaborated the
47 taxation of telecommunications; compliance requires New Jersey to
48 reorganize and replace its current definitions of telecommunications

1 with the defined terms provided under the agreement. This bill
2 allows the State to maintain compliance by: (1) replacing the
3 current “telecommunications” term with a more specific, narrowly
4 focused definition of “telecommunications service;” (2) redefining
5 “intrastate, interstate, and international telecommunications;” (3)
6 revising pre-paid calling and mobile telecommunications; and (4)
7 incorporating “ancillary service,” “directory assistance,” “detailed
8 telecommunications billing service” and “voice mail service” into
9 the statutes of defined terms.

10 The reorganization of telecommunications definitions requires
11 the elimination of current explicit language imposing taxation on
12 mobile telecommunications and certain prepaid calling services, and
13 requires the explicit imposition of tax on telephone answering and
14 radio subscription services. These changes do not extend the base
15 of the sales and use tax to new services or omit previously taxed
16 telecommunications from coverage.

17 Similarly, the reorganization of telecommunications definitions
18 requires the State to: (1) adopt the SSUTA telecommunications
19 bundled transaction administrative rule for unbundling the taxable
20 and nontaxable components of a sale of mixed telecommunications
21 services that relies on the service providers internal records; (2)
22 clarify the imposition of the use tax on radio subscription services;
23 and (3) reorganize the telecommunications definition that requires
24 the deletion of a use tax measurement rule for prepaid calling
25 services which is currently taxed separately from
26 telecommunications.

27 Beyond telecommunications, the changes to the definition of
28 “sales price” reflect another reorganization in the SSUTA
29 definitions, but essentially codify the policy on the effect of
30 coupons and rebates that has been used under the State’s sales tax
31 for the last 20 years. Additionally, the changes to the direct mail
32 definitions allow the maintenance of the New Jersey taxation of
33 mail processing services in compliance with SSUTA definitions.

34 Another SSUTA reorganizational change that requires a
35 corresponding New Jersey change is the elimination of a “non-
36 distinction” between solid and liquid food.

37 For reasons of compliance with SSUTA provisions concerning
38 the medical products exemption, the bill narrows a broad limitation
39 currently affecting all medical equipment to affect only certain
40 medical supplies, while limiting the exemption for mobility
41 enhancing equipment to that sold by prescription.

42 For reasons of compliance with SSUTA provisions, the bill
43 provides a full sales and use tax exemption for receipts from coin-
44 paid sales of telecommunications service using pay phones. The bill
45 expands the current exemption, which only provides an exemption
46 for coin-operated calls at the local calling rate (coin-paid long-
47 distance phone calls are currently subject to tax).

S1418 SARLO

35

1 For reasons of compliance with SSUTA provisions, the bill
2 repeals the 6 percent gross receipts tax on retail sales of fur
3 clothing, imposed under the provisions of P.L.2006, c.41
4 (C.54:32G-1), and imposes the 7 percent sales tax on sales of “fur
5 clothing” as defined by the SSUTA.

6 For reasons of compliance with SSUTA provisions, the bill
7 repeals the multiple points of use (MPU) exemption.

8 In addition, this bill revises the State’s sales and use tax to make
9 technical clarifications to the research and development exemption
10 to explicitly include as exempt the receipts from sales of digital
11 property, and to the business prewritten software exemption to
12 delete contradictory language about prewritten computer software
13 delivered electronically. Technical clarifications under the bill also
14 include a provision extending the length of time during which tax
15 records must be maintained under the sales and use tax, and an
16 additional reference stipulating the process of providing returns for
17 initiation and membership fees and dues as well as storing or
18 garaging motor vehicles.

19 Further changes to the State’s sales and use tax under the bill
20 include a provision to make explicit the “purchase for resale”
21 exemption for purchases of telecommunications services for use as
22 a component part of telecommunications services provided to a
23 final end user, and the insertion of additional language reinstating
24 an exemption for the “in house” use of telecommunications services
25 provided by a user not in the business of providing
26 telecommunications to the public or by the user’s subsidiary.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1418

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 11, 2008

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1418, with committee amendments.

The bill, as amended, revises the sales and use tax to conform to technical and substantive changes to the Streamlined Sales and Use Tax Agreement (SSUTA) which have been adopted by the Streamlined Governing Board since the State entered the multistate agreement in 2005.

Telecommunications. Under the bill, the largest segment of changes is related to telecommunications. Since 2005, the governing board has reorganized and elaborated the taxation of telecommunications and required member states to implement corresponding tax code changes by January 1, 2009. Compliance requires New Jersey to revise the taxation of telecommunications, replacing certain terms and conditions which have defined telecommunications taxation since tax was imposed on its services.

In particular, compliance requires the State to revise or replace its current telecommunications definitions with the defined terms under the agreement. As a result, the bill: (1) replaces the current, broad-based sales and use tax definition of “telecommunications” with a more specific, narrowly focused definition of “telecommunications services;” (2) redefines “intrastate” and “interstate” telecommunications; (3) revises “pre-paid calling” and “mobile telecommunications” services; and (4) incorporates a series of previously undefined terms, including “international telecommunications,” “ancillary service,” “directory assistance,” and “voice mail service,” into the statute of defined terms.

The reorganization and elaboration of telecommunications definitions also requires subsequent changes explicitly imposing or explicitly excluding the imposition of tax on certain enumerated services. In compliance with the SSUTA, the bill eliminates explicit statutory language concerning, but does not change the imposition of tax on, mobile telecommunications and certain prepaid calling services, and provides explicit statutory language concerning, but does not change the imposition of tax on, telephone answering services and

radio subscription services. These changes do not extend the tax base or omit previously taxed telecommunications from coverage.

In addition, the bill makes certain other telecommunications changes that allow New Jersey to incorporate SSUTA provisions within the State's existing telecommunications framework. Under the bill, these changes include: (1) the adoption of SSUTA's administrative rule for unbundling taxable and nontaxable components of a sale of mixed telecommunications services; (2) the clarification of use tax imposition on radio subscription services; (3) the reorganization of the telecommunications definition that requires the deletion of a use tax measurement rule for prepaid calling services; (4) a provision to make explicit the "purchase for resale" exemption for purchases of telecommunications services for use as a component part of telecommunications services provided to a final end user; (5) an exemption for certain "in house" use of telecommunications services; and (6) a full exemption for receipts from coin-paid sales of telecommunications services using pay phone devices.

Non-Telecommunications. Since 2005, the Streamlined Sales Tax Governing Board has also reorganized and elaborated the taxation of goods and services unrelated to telecommunications. Compliance requires New Jersey to revise and expand certain product based definitions and administrative procedures previously incorporated into the sales and use tax to conform to the SSUTA.

To ensure uniformity, the bill: (1) amends the direct mail definitions to allow for the continuation of taxation on mail processing services; (2) eliminates the differentiation between sales of food, food ingredients, and dietary supplements sold in liquid or solid form; (3) narrows a broad limitation affecting all medical equipment to affect only certain medical supplies, while limiting the exemption for mobility enhancing equipment to that sold by prescription; (4) modifies the definition of "sales price" to codify the policy on the effect of coupons and rebates that has been used under the State's sales tax for the last 20 years; and (5) repeals the multiple points of use (MPU) exemption.

Taxation of Fur Clothing. For purposes of compliance, the bill repeals the six percent gross receipts tax on retail sales of fur clothing, imposed under P.L.2006, c.41 (C.54:32G-1), and imposes a seven percent sales and use tax on sales of "fur clothing" as that term is defined by the SSUTA. The transition from a six percent gross receipts tax to a seven percent sales and use tax on retail sales of fur clothing is intended to mitigate concerns that the gross receipts tax may violate the spirit of the SSUTA.

Technical Revisions. Beyond substantive changes required for compliance, the bill makes certain technical modifications to the sales and use tax to revise inconsistencies and clarify omissions related to previous statutory revisions.

Under the bill, these modifications and clarifications extend to: (1) the research and development exemption to explicitly include as exempt receipts from sales of digital property; (2) the business prewritten software exemption to eliminate contradictory language concerning prewritten computer software delivered electronically; (3) administrative provisions regarding tax records to lengthen, from three to four years, the period of time during which tax records must be maintained; and (4) administrative provisions concerning the collection and return of tax to stipulate the process of collecting and providing returns for tax imposed on charges in the nature of initiation and membership fees and dues as well as charges for parking, storing, or garaging motor vehicles.

As amended and reported, this bill is identical to Assembly Bill No. 3111, as also reported by the committee.

FISCAL IMPACT:

The Executive has estimated this bill will have a limited fiscal impact on State revenues. The elimination of the six percent gross receipts tax and the imposition of a seven percent sales and use tax on sales of fur clothing will generate an additional \$350,000 of State revenues in fiscal year 2009 and each fiscal year thereafter. According to their analysis, all other tax code changes required for SSUTA compliance “appear to have no additional impact on State revenues.”

The Office of Legislative Services (OLS) generally agrees with the Executive’s analysis. The one percent fur tax increase may generate an additional \$175,000 of State revenues during fiscal year 2009 and an additional \$350,000 of State revenues each fiscal year thereafter.

However, the OLS cautions that the bill may have two additional fiscal implications. The OLS notes that the sales and use tax exemption for sales of coin-operated telephone services may decrease sales tax collections, and suggests that the prescription requirement imposed on sales of mobility enhancing equipment may increase sales tax collections in future fiscal years.

COMMITTEE AMENDMENTS:

The committee amendments make substantive revisions to the bill to: (1) incorporate use tax provisions for delivery charges made by a seller; and (2) provide an extension of the current hold harmless provision for vendors to certain purchasers who rely on tax rates, boundaries, or the taxability matrix provided by the State as required under the SSUTA.

FISCAL NOTE
SENATE, No. 1418
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: JULY 24, 2008

SUMMARY

Synopsis: Revises sales and use tax to conform with Streamlined Sales and Use Tax Agreement.

Type of Impact: Annual State General Fund Revenue Change.

Agencies Affected: Department of the Treasury.

Executive Estimate

Fiscal Impact	<u>Fiscal Year 2009</u>	<u>Fiscal Year 2010</u>	<u>Fiscal Year 2011</u>
State Revenue Gain	\$350,000	\$350,000	\$350,000

Office of Legislative Services Estimate

Fiscal Impact	<u>Fiscal Year 2009</u>	<u>Fiscal Year 2010</u>	<u>Fiscal Year 2011</u>
State Revenue Gain	Minimal - At Least \$350,000 Per Year		

- The Office of Legislative Services (OLS) generally **concurs** with Executive projections which suggest the bill will have a limited fiscal impact. In eliminating the six percent gross receipts tax and imposing a seven percent sales and use tax on sales of fur clothing, Senate Bill No. 1418 of 2008 may generate an additional \$350,000 of General Fund revenue in fiscal year 2009 and an additional sum each year thereafter.
- However, the OLS **does not concur** with the Executive's assertion that all other, technical modifications required for Streamlined Sales and Use Tax Agreement (SSUTA) compliance have no impact on State revenues. While the fur tax increase is the only quantifiable impact, the OLS cautions that the legislation has two additional fiscal implications overlooked by the Executive: (1) the extension of a sales and use tax exemption for sales of coin-operated telephone services, which may decrease sales tax collections; and (2) the prescription requirement for the sales and use tax exemption for mobility enhancing equipment, which may increase sales tax collections.

BILL DESCRIPTION

Senate Bill No. 1418 of 2008 revises the sales and use tax to incorporate a series of changes to the SSUTA which have been adopted since the State entered the multi-state agreement in 2005.

The bill reorganizes and elaborates the taxation of telecommunications, revises the statutory definition of “sales price,” modifies the definition of direct mail processing services, eliminates the “non-distinction” between solid and liquid food, and repeals the multiple points of use exemption. For purposes of compliance, the bill also narrows a broad limitation affecting all medical equipment to affect only certain medical supplies, while limiting the exemption for mobility enhancing equipment to that sold by prescription; provides a sales and use tax exemption for coin-paid sales of payphone phone calls; and replaces the current six percent gross receipts fur tax with a seven percent sales and use tax on sales of fur clothing.

Beyond changes required for compliance, the bill makes several modifications to the sales and use tax to revise technical inconsistencies and omissions which stem from previous statutory revisions. These revisions include changes to: the research and development exemption to explicitly include as exempt receipts from sales of digital property; the business prewritten software exemption to eliminate contradictory language pertaining to prewritten computer software delivered electronically; a provision extending the length of time during which tax records must be maintained; and an additional reference stipulating the process of providing returns for initiation and membership fees and dues as well as the storing or garaging of motor vehicles.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Division of Taxation in the Department of the Treasury anticipates Senate Bill No. 1418 of 2008 will have a limited fiscal impact on State General Fund revenues.

According to their analysis, the elimination of the gross receipts tax on fur clothing and the imposition of the sales and use tax on sales of fur clothing will generate an additional \$350,000 of General Fund revenue in fiscal year 2009 and each fiscal year thereafter.

Beyond the tax increase on fur clothing, the division asserts that the additional, technical modifications required for SSUTA compliance, “appear to have no additional impact on State revenues.”

OFFICE OF LEGISLATIVE SERVICES

The OLS generally agrees with the Division of Taxation’s analysis. Assuming sales of fur clothing increase beyond figures achieved over the current fiscal year, the transition from a six percent gross receipts tax to a seven percent sales and use tax has the potential to generate an additional \$350,000 of General Fund revenue in fiscal year 2009 and may conceivably generate an additional sum each year thereafter. However, the OLS cautions that the bill has two additional fiscal implications beyond the one percent fur tax increase identified by the division. The OLS notes that the exemption for sales of coin-operated telephone services may decrease

sales tax collections, and suggests that restrictions imposed on the current exemption for sales of mobility enhancing equipment may generate additional State revenues in future fiscal years.

With respect to coin-operated telephone services, the OLS notes that under current law coin-paid sales of long-distance payphone phone calls are subject to the sales and use tax, while coin-paid sales of local payphone phone calls are excluded from taxation. However, in reorganizing telecommunications, the current exclusion for local phone calls is eliminated and a separate, distinct sales and use tax exemption is provided for coin-paid sales of local and long-distance calls. In creating an additional exemption, the bill provides a full exemption for coin-paid phone calls, regardless of whether the call is charged at the local or long-distance rate.

At the height of AT&T's control of the market, the additional exemption may have represented a multi-million dollar proposition. However, the prevalence of pre-paid phone cards coupled with the growth of cellular technologies has led to a decline in the availability and the use of public payphones. While residents rely on payphones to connect with friends and family, to conduct business, or to reach help in an emergency, their use has significantly diminished, limiting the extent to which State tax revenues are expected to decline over time.

Figures obtained from the Federal Communications Commission (FCC) illustrate this trend. Data released in February 2007, suggested that the number of public payphones owned and operated in New Jersey dropped roughly 49 percent over a seven year period, from 99,355 active payphones in March of 1999 to 50,730 in March of 2006. While the FCC has not released revised figures, a representative with the American Public Communications Council (APCC) estimates that the number of payphones in New Jersey has fallen below figures achieved in 2006, continuing to decline at levels that correspond with national averages.

As to mobility enhancing equipment, the OLS notes that the bill amends the current medical exemption to restrict sales of mobility enhancing equipment sold without a prescription. Under current law, sales of walkers and wheelchairs, motorized carts and crutches, chairlifts and canes, are exempt from taxation, irrespective of whether they are sold with or without a prescription. Under the bill, however, these sales are exempt only if the items are sold under the prescription of a "duly licensed practitioner" who is "authorized by the laws of this State."

While the OLS does not have data on sales of mobility enhancing equipment or information on the implementation of the prescription requirement, the office notes that the additional restriction imposed on the exemption has the potential to increase tax collections. Any effort restricting or limiting the size of the population eligible to receive an exemption will increase the likelihood that a sale of mobility enhancing equipment will result in a taxable transaction and, in turn, will generate additional State revenues. Sales of walkers to for-profit nursing homes, sales of wheelchairs to families of individuals with disabilities, and sales of chair lifts to businesses that had been exempt are subject to taxation under the parameters of this bill.

Section: Revenue, Finance and Appropriations

*Analyst: Luke Wolff
Associate Research Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-1 et seq.).