

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1968 SESSION

By Senator BATEMAN

AN ACT to amend the "Sales and Use Tax Act," approved April 27, 1966 (P. L. 1966, c. 30).

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

3 1. Section 2 of the act of which this act is amendatory is amended
4 to read as follows:

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

7 (a) Person. Person includes an individual, partnership, society,
8 association, joint stock company, corporation, public corporation,
9 or public authority, estate, receiver, trustee, assignee, referee, and
10 any other person acting in a fiduciary or representative capacity,
11 whether appointed by a court or otherwise, and any combination of
12 the foregoing.

13 (b) Purchase at retail. A purchase by any person at a retail sale.

14 (c) Purchaser. A person who purchases property or who receives
15 services.

16 (d) Receipt. The amount of the sales price of any property and
17 the charge for any service taxable under this act, valued in money,
18 whether received in money or otherwise, including any amount for
19 which credit is allowed by the vendor to the purchaser, without any
20 deduction for expenses or early payment discounts, but excluding
21 any credit for property of the same kind accepted in part payment
22 and intended for resale and excluding the cost of transportation
23 where such cost is separately stated in the written contract, if any,
24 and on the bill rendered to the purchaser.

25 (e) Retail sale. (1) A sale of tangible personal property to any
26 person for any purpose, other than (A) for resale either as such
27 or as converted into or as a component part of a product produced
28 for sale by the purchaser, or (B) for use by that person in perform-

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

1 ing the services subject to tax under subsection (b) of section 3
2 where the property so sold becomes a physical component part of
3 the property upon which the services are performed or where the
4 property so sold is later actually transferred to the purchaser of
5 the service in conjunction with the performance of the service sub-
6 ject to tax. For the purposes of this act, sales of tangible per-
7 sonal property to all contractors, subcontractors or repairmen of
8 materials and supplies for use by them in erecting structures for
9 others, or building on, or otherwise improving, altering, or repair-
10 ing real property of others are deemed to be retail sales.

11 (2) The term retail sales does not include :

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

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

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

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

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

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

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

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

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

39 (h) Use. The exercise of any right or power over tangible per-
40 sonal property by the purchaser thereof and includes, but is not
41 limited to, the receiving, storage or any keeping or retention for any
42 length of time, withdrawal from storage, any installation, any affixa-
43 tion to real or personal property, or any consumption of such
44 property.

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

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

4 (B) A person maintaining a place of business in the State
5 and making sales, whether at such place of business or else-
6 where, to persons within the State of tangible personal prop-
7 erty or services, the use of which is taxed by this act;

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

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

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

24 (2) In addition, when in the opinion of the director it is neces-
25 sary for the efficient administration of this act to treat any sales-
26 man, representative, peddler or canvasser as the agent of the
27 vendor, distributor, supervisor or employer under whom he
28 operates or from whom he obtains tangible personal property sold
29 by him or for whom he solicits business, the director may, in his
30 discretion, treat such agent as the vendor jointly responsible with
31 his principal, distributor, supervisor or employer for the collection
32 and payment over of the tax.

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

37 (k) Occupancy. The use or possession or the right to the use
38 or possession, of any room in a hotel.

39 (l) Occupant. A person who, for a consideration, uses, pos-
40 sesses, or has the right to use or possess, any room in a hotel under
41 any lease, concession, permit, right of access, license to use or other
42 agreement, or otherwise.

43 (m) Permanent resident. Any occupant of any room or rooms

1 in a hotel for at least 90 consecutive days shall be considered a
2 permanent resident with regard to the period of such occupancy.

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

6 (o) Admission charge. The amount paid for admission, includ-
7 ing any service charge and any charge for entertainment or amuse-
8 ment or for the use of facilities therefor.

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

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

14 (r) Dramatic or musical arts admission charge. Any admission
15 charge paid for admission to a theatre, opera house, concert hall
16 or other hall or place of assembly for a live dramatic, choreo-
17 graphic or musical performance.

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

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

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

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

34 (w) "Persons required to collect tax" or "persons required to
35 collect any tax imposed by this act" shall include: every vendor
36 of tangible personal property or services; every recipient of
37 amusement charges; and every operator of a hotel. Said terms
38 shall also include any officer or employee of a corporation or of a
39 dissolved corporation who as such officer or employee is under
40 a duty to act for such corporation in complying with any require-
41 ment of this act and any member of a partnership. *Provided how-*
42 *ever, the vendor of tangible personal property to all contractors,*
43 *subcontractors or repairmen consisting of materials and supplies*

1 *for use by them in erecting structures for others, or building on, or*
2 *otherwise improving, altering or repairing real property of others,*
3 *shall not be deemed a person required to collect tax, and the tax*
4 *imposed by any section of this act shall be paid directly to the*
5 *director by such contractors, subcontractors or repairmen.*

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

10 (y) "Property and services the use of which is subject to tax"
11 shall include: (a) all property sold to a person within the State,
12 whether or not the sale is made within the State, the use of which
13 property is subject to tax under section 6 or will become subject
14 to tax when such property is received by or comes into the posses-
15 sion or control of such person within the State; and (b) all services
16 rendered to a person within the State, whether or not such services
17 are performed within the State, upon tangible personal property
18 the use of which is subject to tax under section 6 or will become
19 subject to tax when such property is received by or comes into
20 possession or control of such person within the State.

21 (z) Director. Director means the Director of the Division of
22 Taxation of the State Department of the Treasury, or any officer,
23 employee or agency of the Division of Taxation in the Department
24 of the Treasury duly authorized by the director (directly, or
25 indirectly by one or more redelegations of authority) to perform
26 the functions mentioned or described in this act.

27 2. Section 12 of the act of which this act is amendatory is
28 amended to read as follows:

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

38 (b) For the purpose of the proper administration of this act
39 and to prevent evasion of the tax hereby imposed, it shall be pre-
40 sumed that all receipts for property or services of any type men-
41 tioned in subsections (a), (b) and (c) of section 3, all rents for
42 occupancy of the type mentioned in subsection (d) of said section,
43 and all amusement charges of any type mentioned in subsection (e)

1 of said section, are subject to tax until the contrary is established,
2 and the burden of proving that any such receipt, amusement
3 charge or rent is not taxable hereunder shall be upon the person
4 required to collect tax or the customer. Unless a vendor shall have
5 taken from the purchaser a certificate, signed by the purchaser
6 and bearing his name and address and the number of his registra-
7 tion certificate, to the effect that the property or service was pur-
8 chased for resale or the purchaser prior to taking delivery,
9 furnishes to the vendor any affidavit, statement or additional
10 evidence, documentary or otherwise, which the director may require
11 demonstrating that the purchaser is an exempt organization de-
12 scribed in section 9 (b) (1), the sale shall be deemed a taxable sale
13 at retail. Provided however, the director may, *in his discretion*,
14 authorize a purchaser, who acquires tangible personal property or
15 services under circumstances which make it impossible at the time
16 of acquisition to determine the manner in which the tangible per-
17 sonal property or services will be used, to pay the tax directly to
18 the director and waive the collection of the tax by the vendor.
19 *Provided, further, the director shall authorize any contractor, sub-*
20 *contractor or repairman who acquires tangible personal property*
21 *consisting of materials and supplies for use by him in erecting*
22 *structures for others, or building on, or otherwise improving, alter-*
23 *ing, or repairing real property of others, to pay the tax directly to*
24 *the director and waive the collection of the tax by the vendor.*
25 No such authority shall be granted or exercised except upon ap-
26 plication to the director, and the issuance by the director[]], in his
27 discretion,[]] of a direct payment permit. If a direct payment permit
28 is granted, its use shall be subject to conditions specified by the
29 director, and the payment of tax on all acquisitions pursuant to
30 the permit shall be made directly to the director by the permit
31 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 repre-
37 senting sales where the contract of sale has been canceled, the
38 property returned or the receipt, charge or rent has been ascer-
39 tained to be uncollectible or, in the case the tax has been paid upon
40 such receipt, charge or rent, for refund or credit of the tax so paid.

41 3. This act shall take effect immediately.

STATEMENT

The Legislature has recommended a review by the State Tax Policy Commission of a number of unresolved problems dealing with the application of the Sales and Use Tax. One of the most serious of these problems is the treatment of sales of building materials to contractors, subcontractors or repairmen.

This bill is designed to facilitate and expedite the commission's review of this specific problem by offering a reasonable solution, and, simultaneously, stimulate discussion and response from the affected wholesalers and contractors. Simply stated, this bill establishes a method of "direct payment" from the contractors to the State. It eliminates the building supply wholesaler as the middleman responsible for collecting the taxes from the contractors and sending them to Trenton. This proposed shift, however, would not relieve the building supply wholesaler from continuing to collect sales taxes from his industrial and commercial customers, who are end users in the true sense of the New Jersey Sales and Use Tax Act.

Adoption of the "direct payment" method should lessen, not add to the burden of the Sales Tax Bureau. Contractors are now required to file reports with the department each month and are currently subject to audit. Furthermore, the "direct payment" method should increase the tax yield since it would effectively eliminate the spreading practice of purchasing building supplies from out-of-State wholesalers who refuse to pay the New Jersey Sales and Use Tax.

FISCAL NOTE TO
SENATE, No. 102

STATE OF NEW JERSEY

DATED: MAY 6, 1968

Senate Bill No. 102 would amend the State Sales Tax Act, P. L. 1966, c. 30, by excluding from the definition of persons required to collect the tax, vendors of tangible personal property (consisting of materials and supplies) to all contractors, subcontractors or repairmen, for use by them in erecting structures for others, or building on, or otherwise improving, altering or repairing real property of others. The bill further requires the director to authorize such contractors, subcontractors or repairmen to pay the tax directly to the director.

The Division of Taxation in the Treasury Department is of the opinion that direct payments by contractors would endanger revenue now collected by the building supply industry, but is unable to estimate the extent thereof.

In compliance with written request received, there is hereby submitted a fiscal estimate for the above bill, pursuant to P. L. 1962, c. 27.