

40:52-1.3

LEGISLATIVE HISTORY CHECKLIST
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(Sales tax--collection)

NJSA: 40:52-1.3

LAWS OF: 1993 CHAPTER: 274

BILL NO: S1165

SPONSOR(S) Scott

DATE INTRODUCED: October 1, 1992

COMMITTEE: ASSEMBLY: ---
SENATE: Budget

AMENDED DURING PASSAGE: Yes Amendments during passage
First reprint enacted denoted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: November 15, 1993
SENATE: June 10, 1993

DATE OF APPROVAL: November 24, 1993

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No
SENATE: Yes

FISCAL NOTE: Yes

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

[FIRST REPRINT]
SENATE, No. 1165

STATE OF NEW JERSEY

INTRODUCED OCTOBER 1, 1992

By Senator SCOTT

1 AN ACT concerning the collection of sales taxes by vendors
2 ¹[not having a fixed place of business]¹, amending ¹[and
3 supplementing]¹ P.L.1966, c.30, and supplementing Title 40 of
4 the Revised Statutes.

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

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

10 15. Registration. (a) On or before June 20, 1966, or in the
11 case of persons ¹[having a regular place of business in this State
12 and]¹ commencing business or opening new places of business
13 after such date, within three days after such commencement or
14 opening, ¹[or in the case of persons not having a regular place of
15 business in this State and commencing business on or after the
16 first day of the second month following enactment of P.L. ,
17 c. (now pending before the Legislature as this bill), before
18 commencing business,]¹ every person required to collect any tax
19 imposed by this act and every person purchasing tangible personal
20 property for resale or lease shall file with the director a
21 certificate of registration in a form prescribed by [him] the
22 director. ¹[In the case of a person commencing business or
23 opening a new place of business on or after the first day of the
24 third month following the enactment of P.L. , c. ,
25 (C.)(now pending before the Legislature as this bill), the
26 certificate shall be filed at least 15 business days before the
27 commencement or opening.¹ The director shall within five days
28 after such registration issue, without charge, to each registrant a
29 certificate of authority empowering [him] the registrant to
30 collect the tax and a duplicate thereof for each additional place
31 of business of such registrant. Each certificate or duplicate shall
32 state the place of business to which it is applicable. Such
33 certificate of authority shall be prominently displayed in the
34 place of business of the registrant. A registrant who has no
35 regular place of doing business shall attach such certificate to his
36 cart, stand, truck or other merchandising device. Such
37 certificates shall be nonassignable and nontransferable and shall
38 be surrendered to the director immediately upon the registrant's
39 ceasing to do business at the place named.

40 (b) Any person who is not otherwise required to collect any tax
41 imposed by this act and who makes sales to persons within the
42 State of tangible personal property or services, the use of which
43 is subject to tax under this act, may if he so elects file a

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SBA committee amendments adopted March 11, 1993.

1 certificate of registration with the director who may, in his
2 discretion and subject to such conditions as he may impose, issue
3 to him a certificate of authority to collect the compensating use
4 tax imposed by this act.

5 (cf: P.L.1989, c.123, s.8)

6 ¹[2. (New section) a. A person not having a regular place of
7 business in this State bringing or causing to be brought into this
8 State tangible personal property, other than food, food products,
9 beverages, dietary foods and health supplements sold for human
10 consumption off the premises where sold, for the person's own
11 sale at retail shall, as a part of the filing of the certificate of
12 registration required pursuant to section 15 of P.L.1966, c.30
13 (C.54:32B-15), and at the time of each importation into this State
14 of such tangible personal property for the person's own sale at
15 retail, post a bond with the director in the amount of the
16 estimated retail value of the person's tangible personal property
17 brought or caused to be brought into the State for sale at retail
18 multiplied by the sales tax rate in effect pursuant to section 3 of
19 P.L.1966, c.30 (C.54:32B-3). The director may prescribe such
20 exceptions to the bonding requirement of this subsection, based
21 on the business and sales tax collection history of a person and
22 such other classifications as the director may prescribe, as are
23 compatible with the prompt and orderly collection of the sales
24 taxes.

25 b. At such intervals after commencing business as the director
26 may prescribe and at the time the person ceases to do business in
27 State and surrenders the license a reestimate of the retail value
28 of the person's tangible personal property brought or caused to
29 be brought into the State for sale at retail shall be made as
30 prescribed by the director; the person's sales taxes due on the
31 merchandise sold under the authority of the license shall be
32 deducted from the bond posted with the director; and, unless the
33 license be surrendered, any additional amount of bond required to
34 raise the remaining bond total to an amount equal to the
35 estimated retail value of the vendor's remaining tangible
36 personal property held for sale at retail multiplied by the sales
37 tax rate in effect pursuant to section 3 of P.L.1966, c.30
38 (C.54:32B-3) shall be posted. Any amount of bond remaining
39 after the person's sales taxes due on the merchandise sold within
40 the State have been deducted and the person surrenders the
41 license shall be returned to the person.

42 c. For the purposes of this section, all tangible personal
43 property brought or caused to be brought into this State is
44 deemed to be held for sale at retail, provided however, that
45 pursuant to such regulations as the director shall prescribe bills
46 of lading or invoices indicating delivery to a person having a
47 certificate of authority to collect sales tax or bills of lading or
48 invoices held by a common carrier other than the vendor
49 indicating delivery of identified property to identified persons
50 shall be prima facie evidence that the tangible personal property
51 is not held for sale at retail by the carrier in this State.

52 d. For the purposes of this section, prima facie evidence of the
53 amount of the person's sales taxes due on the merchandise sold
54 under the authority of the license shall be the reduction in the

1 estimated retail value of the person's tangible personal property
2 brought or caused to be brought into this State held for sale at
3 retail multiplied by the sales tax rate in effect pursuant to
4 section 3 of P.L.1966, c.30, as measured from the time of the
5 most current inventory pursuant to subsection b. of this section
6 to the next prior such inventory. Evidence of breakage, theft,
7 loss, and sales at below usual retail value may be presented by a
8 person in compliance with the recordkeeping requirements of
9 section 16 of P.L.1966, c.30 (C.54:32B-16) to establish a lesser
10 amount of sales taxes due.

11 e. Every person required to post a bond under this section shall
12 keep such records in such form as the director may require to
13 calculate the amount of bond, the amount of sales taxes due and
14 the refund of bond amount, if any. Persons seeking exemption
15 from the bonding requirement of this section pursuant to
16 subsection c. of this section shall keep such records as the
17 director may prescribe. Such records shall be available for
18 inspection and examination at any time upon demand by the
19 director and shall be preserved for a period of three years, except
20 that the director may consent to their destruction within that
21 period or may require that they be kept longer.]¹

22 ¹[3.] 2.¹ (New section) The governing body of a municipality
23 shall not issue or authorize the issuance of a license to a vendor
24 of tangible personal property, other than ¹[food, food products,
25 beverages, dietary foods and health supplements sold for human
26 consumption off the premises where sold] property exempted
27 from sales and use taxation pursuant to section 14 of P.L.1980,
28 c.105 (C.54:32B-8.2)¹, having no fixed place of business in the
29 municipality under the authority of subsection c. of R.S.40:52-1
30 without the submission of a copy of a valid certificate of
31 authority issued to the vendor pursuant to section 15 of P.L.1966,
32 c.30 (C.54:32B-15), empowering the vendor to collect sales tax.
33 ¹[Within 14 days of the issuance of any such license, the
34 governing body shall provide for the forwarding of the
35 information in the vendor's certificate of authority and a copy of
36 any license issued to the Director of the Division of Taxation,
37 Department of the Treasury.]¹

38 ¹[4.] 3.¹ This act shall take effect immediately ¹[except that
39 section 2 shall apply to persons bringing, or causing to be brought,
40 into this State tangible personal property on and after the first
41 day of the second month following enactment]¹ and section ¹[3]
42 2¹ shall apply to licenses issued on and after the first day of the
43 ¹[second] third¹ month following enactment.

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48 Concerns sales and use tax collection by vendors having no fixed
49 place of business in the State.

1 to the next prior such inventory. Evidence of breakage, theft,
2 loss, and sales at below usual retail value may be presented by a
3 person in compliance with the recordkeeping requirements of
4 section 16 of P.L.1966, c.30 (C.54:32B-16) to establish a lesser
5 amount of sales taxes due.

6 e. Every person required to post a bond under this section shall
7 keep such records in such form as the director may require to
8 calculate the amount of bond, the amount of sales taxes due and
9 the refund of bond amount, if any. Persons seeking exemption
10 from the bonding requirement of this section pursuant to
11 subsection c. of this section shall keep such records as the
12 director may prescribe. Such records shall be available for
13 inspection and examination at any time upon demand by the
14 director and shall be preserved for a period of three years, except
15 that the director may consent to their destruction within that
16 period or may require that they be kept longer.

17 3. (New section) The governing body of a municipality shall not
18 issue or authorize the issuance of a license to a vendor of
19 tangible personal property, other than food, food products,
20 beverages, dietary foods and health supplements sold for human
21 consumption off the premises where sold, having no fixed place of
22 business in the municipality under the authority of subsection c.
23 of R.S.40:52-1 without the submission of a copy of a valid
24 certificate of authority issued to the vendor pursuant to section
25 15 of P.L.1966, c.30 (C.54:32B-15), empowering the vendor to
26 collect sales tax. Within 14 days of the issuance of any such
27 license, the governing body shall provide for the forwarding of
28 the information in the vendor's certificate of authority and a
29 copy of any license issued to the Director of the Division of
30 Taxation, Department of the Treasury.

31 4. This act shall take effect immediately except that section 2
32 shall apply to persons bringing, or causing to be brought, into this
33 State tangible personal property on and after the first day of the
34 second month following enactment and section 3 shall apply to
35 licenses issued on and after the first day of the second month
36 following enactment.

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39 STATEMENT
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41 This bill provides for improved enforcement of the collection
42 of sales and use tax by vendors who have no regular place of
43 business in this State. All persons making retail sales of tangible
44 personal property in New Jersey have an obligation to collect and
45 remit the sales tax. Currently, vendors need not register as
46 persons required to collect the sales tax until three days after
47 commencement of business, which may lead to problems in the
48 case of transient vendors. This bill requires that persons having
49 no fixed place of business in this State register before
50 commencing business.

51 This bill requires that a person having no fixed place of
52 business in this State and importing tangible personal property
53 (other than food) into this State for resale post a bond in the
54 amount of the sales tax that would be collected if all of the

1 persons's goods were sold. The bill allows for exemption from
2 the bonding requirement based on the collection compliance
3 history of the vendor and the assurance of prompt collection of
4 the tax.

5 The bill creates a presumption that all tangible personal
6 property brought or caused to be brought into this State is held
7 for sale at retail and is subject to the bonding requirement; that
8 presumption is overcome if the person importing goods can
9 document intended delivery to a licensed vendor or, if the
10 importer is a common carrier and not a vendor, if the importer
11 can document intended delivery to any customer.

12 Under current law municipalities may license and regulate the
13 sales of goods by stores located in the municipality or by peddlers
14 vending in the municipality to protect the health and safety of
15 the residents of the municipality, and a municipality is authorized
16 to charge fees for licensing that are related to its regulatory
17 costs. This bill requires that municipalities that license vendors
18 having no fixed place of business in the municipality require
19 submission of a copy of a valid certificate of authority to collect
20 sales tax as a condition of the issuance of a license.

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25 Concerns sales and use tax collection by vendors having no fixed
26 place of business in the State.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1165

with Senate committee amendments

STATE OF NEW JERSEY

DATED: MARCH 11, 1993

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1165, with committee amendments.

Senate Bill No. 1165, as amended, requires that a person file a certificate of registration with the Division of Taxation at least 15 business days before commencing business or opening a new place of business in this State. This requirement will apply to all persons who have a regular place of business in this State, as well as to persons who do not have a regular place of business in this State.

This bill will provide for improved enforcement of sales tax collection by vendors, especially those who do not have a regular place of business in this State. All persons making retail sales of tangible personal property in New Jersey have an obligation to collect and remit sales tax to the State. Currently, vendors need not register as persons required to collect the sales tax until three days after commencement of business, which may lead to problems in the case of transient vendors. This bill addresses that problem and makes the filing time period the same for all vendors.

In addition, this bill requires municipalities that license vendors having no fixed place of business in the municipality to require submission of a copy of a valid certificate of authority to collect sales tax as a condition of the issuance of a license. Under current law, municipalities may license and regulate the sale of goods by stores located in the municipality or by peddlers vending in the municipality to protect the health and safety of the residents of the municipality. This bill would ensure that any person obtaining a municipal license would also have obtained the certificate of authority to collect sales tax from the Division of Taxation.

COMMITTEE AMENDMENTS

The committee amended the bill to specify that all persons must register with the Division of Taxation at least 15 business days before commencing business or opening a new place of business in this State. In addition, the amendments delete section 2 of the bill which would have required a person with no regular place of business in this State to post a bond in the amount of the sales tax that the person would have collected if the person sold all the goods brought into the State. This section was deleted because its implementation would have been too complex and costly given the current resources of the Division of Taxation. Additional amendments were made to clarify the provisions of the bill.

FISCAL IMPACT

Because the purpose of this bill is to ensure that persons with no regular place of business in this State register with the Division of Taxation and obtain authorization to collect sales tax, the result may be an increase in sales tax revenues. However, information is not available to make an estimate of the bill's impact on State revenues.

LEGISLATIVE FISCAL ESTIMATE TO

[FIRST REPRINT]

SENATE, No. 1165

STATE OF NEW JERSEY

DATED: July 7, 1993

Senate Bill No. 1165 (1R) of 1992 requires that a person register with the Division of Taxation in the Department of Treasury at least 15 business days before commencing business or opening a new place of business in this State in order to obtain a certificate of authority to collect sales tax. Although this requirement will apply to all persons who conduct business in this State, the purpose of the bill is to address the problem of transient vendors who make sales in this State but do not collect sales tax.

Currently, a vendor with or without a fixed place of business in this State is required to register with the Division of Taxation within three days after commencing business.

In addition, the bill requires municipalities that license vendors having no fixed place of business in the municipality to require submission of a valid certificate of authority to collect sales tax as a condition of the issuance of a license. The purpose of this requirement is to ensure that a transient vendor obtaining a municipal license would also have obtained the certificate of authority to collect sales tax from the Division of Taxation.

The Office of Legislative Services (OLS) cannot estimate the amount of additional sales tax revenues which may be collected as a result of the enactment of this bill because information is not available upon which to determine the amount of sales of taxable property currently being made by vendors who have no fixed place of business in this State and consequently, the amount of sales tax not being collected. To the extent that, as a result of this bill, vendors with no regular place of business in this State will obtain authorization to collect sales tax and actually collect the tax and remit it to the State, there may be an increase in sales tax revenues.

OLS does not anticipate any additional costs to the State as a result of the enactment of this bill.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

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