LEGISLATIVE HISTORY CHECKLIST

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(Pay phones--exempt cash calls from sales tax)

NJSA:

54:32B-2

LAWS OF:

1993

CHAPTER: 10

BILL NO:

A1133

SPONSOR(S)

Kamin and Doria

March 23, 1992

COMMITTEE:

ASSEMBLY:

Appropriations; Transportation

SENATE:

Budget

AMENDED DURING PASSAGE:

Yes

Amendments during passage

denoted by asterisks

DATE OF PASSAGE:

DATE INTRODUCED:

ASSEMBLY:

November 16, 1992

SENATE:

December 17, 1992

DATE OF APPROVAL:

January 15, 1993

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT:

Yes

COMMITTEE STATEMENT:

ASSEMBLY:

Yes 4-30-92 & 10-19-92

SENATE:

Yes 12-14-92

FISCAL NOTE:

Yes

VETO MESSAGE:

No

MESSAGE ON SIGNING:

No

FOLLOWING WERE PRINTED:

REPORTS:

No

HEARINGS:

No

See newspaper clippings-attached:

"Law repeals tax on local calls from pay hones." 1-16-93 Star Ledger. "Florio OKs tax exemption on pay phones." 1-16-93.

KBG:pp

[FIRST REPRINT] ASSEMBLY, No. 1133

STATE OF NEW JERSEY

INTRODUCED MARCH 23, 1992

By Assemblymen KAMIN, DORIA, Kronick and Warsh

AN ACT exempting certain telecommunications charges for coin operated telecommunications devices from the sales and use tax and amending P.L.1966, c.30.

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

- 1. Section 2 of P.L.1966, c.30 (C.54:32B-2) is amended to read as follows:
- 2. Unless the context in which they occur requires otherwise, the following terms when used in this act shall mean:
- (a) Person. Person includes an individual, partnership, society, association, joint stock company, corporation, public corporation or public authority, estate, receiver, trustee, assignee, referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of the foregoing.
- (b) Purchase at retail. A purchase by any person at a retail sale.
- (c) Purchaser. A person who purchases property or who receives services.
- (d) Receipt. The amount of the sales price of any property and the charge for any service taxable under this act, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts, but excluding any credit for property of the same kind that is not tangible personal property purchased for lease accepted in part payment and intended for resale, excluding the cost of transportation where such cost is separately stated in the written contract, if any, and on the bill rendered to the purchaser, and excluding the amount of the sales price for which food stamps have been properly tendered in full or part payment pursuant to the federal Food Stamp Act of 1977, Pub.L.95-113 (7 U.S.C. § 2011 et seq.).
- (e) Retail sale. (1) A sale of tangible personal property to any person for any purpose, other than (A) for resale either as such or as converted into or as a component part of a product produced for sale by the purchaser, or (B) for use by that person in performing the services subject to tax under subsection (b) of section 3 where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually

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

transferred to the purchaser of the service in conjunction with the performance of the service subject to tax.

- (2) For the purposes of this act, the term retail sales includes: Sales of tangible personal property to all contractors, subcontractors or repairmen of materials and supplies for use by them in erecting structures for others, or building on, or
- (3) For the purposes of this act, the term retail sale includes the purchase of tangible personal property for lease.

otherwise improving, altering, or repairing real property of others.

(4) The term retail sales does not include:

- (A) Professional, insurance, or personal service transactions which involve the transfer of tangible personal property as an inconsequential element, for which no separate charges are made.
- (B) The transfer of tangible personal property to a corporation, solely in consideration for the issuance of its stock, pursuant to a merger or consolidation effected under the laws of New Jersey or any other jurisdiction.
- (C) The distribution of property by a corporation to its stockholders as a liquidating dividend.
- (D) The distribution of property by a partnership to its partners in whole or partial liquidation.
- (E) The transfer of property to a corporation upon its organization in consideration for the issuance of its stock.
- (F) The contribution of property to a partnership in consideration for a partnership interest therein.
- (G) The sale of tangible personal property where the purpose of the vendee is to hold the thing transferred as security for the performance of an obligation of the vendor.
- (f) Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this act, for a consideration or any agreement therefor.
- (g) Tangible personal property. Corporeal personal property of any nature.
- (h) Use. The exercise of any right or power over tangible personal property by the purchaser thereof and includes, but is not limited to, the receiving, storage or any keeping or retention for any length of time, withdrawal from storage, any installation, any affixation to real or personal property, or any consumption of such property. Use also includes the exercise of any right or power over intrastate or interstate telecommunications and the benefit of advertising space in a telecommunications user or provider directory or index.
 - (i) Vendor. (1) The term "vendor" includes:
- (A) A person making sales of tangible personal property or services, the receipts from which are taxed by this act;
- (B) A person maintaining a place of business in the State and making sales, whether at such place of business or elsewhere, to persons within the State of tangible personal property or services, the use of which is taxed by this act;
- (C) A person who solicits business either by employees, independent contractors, agents or other representatives or by

distribution of catalogs or other advertising matter and by reason thereof makes sales to persons within the State of tangible personal property or services, the use of which is taxed by this act:

- (D) Any other person making sales to persons within the State of tangible personal property or services, the use of which is taxed by this act, who may be authorized by the director to collect the tax imposed by this act; and
- (E) The State of New Jersey, any of its agencies, instrumentalities, public authorities, public corporations (including a public corporation created pursuant to agreement or compact with another state) or political subdivisions when such entity sells services or property of a kind ordinarily sold by private persons.
- (F) A person who purchases tangible personal property for lease, whether in this State or elsewhere. For the purposes of Title 54 of the Revised Statutes, the presence of leased tangible personal property in this State is deemed to be a place of business in this State.
- (2) In addition, when in the opinion of the director it is necessary for the efficient administration of this act to treat any salesman, representative, peddler or canvasser as the agent of the vendor, distributor, supervisor or employer under whom he operates or from whom he obtains tangible personal property sold by him or for whom he solicits business, the director may, in his discretion, treat such agent as the vendor jointly responsible with his principal, distributor, supervisor or employer for the collection and payment over of the tax.
- (j) Hotel. A building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel, boarding house or club, whether or not meals are served.
- (k) Occupancy. The use or possession or the right to the use or possession, of any room in a hotel.
- (l) Occupant. A person who, for a consideration, uses, possesses, or has the right to use or possess, any room in a hotel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.
- (m) Permanent resident. Any occupant of any room or rooms in a hotel for at least 90 consecutive days shall be considered a permanent resident with regard to the period of such occupancy.
- (n) Room. Any room or rooms of any kind in any part or portion of a hotel, which is available for or let out for any purpose other than a place of assembly.
- (o) Admission charge. The amount paid for admission, including any service charge and any charge for entertainment or amusement or for the use of facilities therefor.
- (p) Amusement charge. Any admission charge, dues or charge of roof garden, cabaret or other similar place.
- (q) Charge of a roof garden, cabaret or other similar place. Any charge made for admission, refreshment, service, or merchandise at a roof garden, cabaret or other similar place.
- (r) Dramatic or musical arts admission charge. Any admission charge paid for admission to a theatre, opera house, concert hall

or other hall or place of assembly for a live, dramatic, choreographic or musical performance.

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- (s) Lessor. Any person who is the owner, licensee, or lessee of any premises or tangible personal property which he leases, subleases, or grants a license to use to other persons.
- (t) Place of amusement. Any place where any facilities for entertainment, amusement, or sports are provided.
- (u) Casual sale. Casual sale means an isolated or occasional sale of an item of tangible personal property by a person who is not regularly engaged in the business of making sales at retail where such property was obtained by the person making the sale, through purchase or otherwise, for his own use in this State.
- (v) Motor vehicle. Motor vehicle shall include all vehicles propelled otherwise than by muscular power (excepting such vehicles as run only upon rails or tracks), trailers, semitrailers, housetrailers, or any other type of vehicle drawn by a motor-driven vehicle, and motorcycles, designed for operation on the public highways.
- (w) "Persons required to collect tax" or "persons required to collect any tax imposed by this act" shall include: every vendor of tangible personal property or services; every recipient of amusement charges; every operator of a hotel; every lessor; and every vendor of telecommunications. Said terms shall also include any officer or employee of a corporation or of a dissolved corporation who as such officer or employee is under a duty to act for such corporation in complying with any requirement of this act and any member of a partnership. Provided, however, the of tangible personal property to all contractors, subcontractors or repairmen, consisting of materials and supplies for use by them in erecting structures for others, or building on, or otherwise improving, altering or repairing real property of others, shall not be deemed a person required to collect tax, and the tax imposed by any section of this act shall be paid directly to the director by such contractors, subcontractors or repairmen.
- (x) "Customer" shall include: every purchaser of tangible personal property or services; every patron paying or liable for the payment of any amusement charge; and every occupant of a room or rooms in a hotel.
- (y) "Property and services the use of which is subject to tax" shall include: (1) all property sold to a person within the State, whether or not the sale is made within the State, the use of which property is subject to tax under section 6 or will become subject to tax when such property is received by or comes into the possession or control of such person within the State; (2) all services rendered to a person within the State, whether or not such services are performed within the State, upon tangible personal property the use of which is subject to tax under section 6 or will become subject to tax when such property is received by or comes into possession or control of such person within the State; (3) intrastate or interstate telecommunications charged to a service address in this State; and (4) advertising space in a telecommunications user or provider directory or index distributed in this State.
 - (z) Director. Director means the Director of the Division of

Taxation of the State Department of the Treasury, or any officer, employee or agency of the Division of Taxation in the Department of the Treasury duly authorized by the director (directly, or indirectly by one or more redelegations of authority) to perform the functions mentioned or described in this act.

- (aa) "Lease" means the possession or control of tangible personal property by an agreement, not transferring sole title, as may be evidenced by a contract, contracts, or by implication from other circumstances including course of dealing or usage of trade or course of performance, for a period of more than 28 days.
- (bb) "The amount of the sales price" of tangible personal property purchased for lease means, at the election of the lessor, either (1) the amount of the lessor's purchase price or (2) the amount of the total of the lease payments attributable to the lease of such property. Tangible personal property purchased for lease is subject to the provisions of subsection (a) of section 3 of P.L.1966, c.30 (C.54:32B-3).
- (cc) "Telecommunications" means the act or privilege of originating or receiving messages or information through the use of any kind of one-way or two-way communication; including but not limited to voice, video, facsimile, teletypewriter, computer, cellular mobile or portable telephone, specialized mobile or portable pager or paging service, or any other type of communication; using electronic or electromagnetic methods, and all services and equipment provided in connection therewith or by means thereof. "Telecommunications" shall not include:
- (1) one-way radio or television broadcasting transmissions available universally to the general public without a fee;
- (2) purchases of telecommunications by a telecommunications provider for use as a component part of telecommunications provided to an ultimate retail consumer who (A) originates or terminates the taxable end-to-end communications or (B) pays charges exempt from taxation pursuant to paragraph (5) of this subsection;
- (3) services provided by a person, or by that person's wholly owned subsidiary, not engaged in the business of rendering or offering telecommunications services to the public, for private and exclusive use within its organization, provided however, that "telecommunications" shall include the sale of telecommunications services attributable to the excess unused telecommunications capacity of that person to another; and
- (4) charges in the nature of subscription fees paid by subscribers for cable television service; and
- (5) charges subject to the local calling rate paid by inserting coins into a coin operated telecommunications device available to the public.
- (dd) "Interstate telecommunication" means any telecommunication that originates or terminates inside this State, including international telecommunication.
- 50 (ee) "Intrastate telecommunication" means any 51 telecommunication that originates and terminates within this 52 State.
- 53 (cf: P.L.1990, c.40, s.1)
- ¹[2. Section 4 of P.L.1966, c.30 (C.54:32B-4) is amended to

1 read as follows:

4. Tax bracket schedule. For the purpose of adding and collecting the tax imposed by this act, or an amount equal as nearly as possible or practicable to the average equivalent thereof, to be reimbursed to the vendor by the purchaser, the following formulas shall be in force and effect:

a. Generally:

8	Amount of Sale	Amount of Tax
9	\$0.01 to \$0.10	No tax
10	0.11 to 0.21	\$0.01
11	0.22 to 0.35	0.02
12	0.36 to 0.50	0.03
13	0.51 to 0.64	0.04
14	0.65 to 0.78	0.05
15	0.79 to 0.92	0.06
16	0.93 to \$1.00	0.07

In addition to a tax of \$0.07 on each full dollar, a tax shall be collected on each part of a dollar in excess of a full dollar, in accordance with the following formula:

20	Amount of Sale	Amount of Tax
21		No additional
22	\$0.01 to \$0.07	tax
23	0.08 to 0.21	\$0.01
24	0.22 to 0.35	0.02
25	0.36 to 0.50	0.03
26	0.51 to 0.64	0.04
27	0.65 to 0.78	0.05
28	0.79 to 0.92	0.06
29	0.93 to \$1.07	0.07

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

 $(cf: P.L.1990, c.40, s.3.)]^{1}$

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

4. Tax bracket schedule. <u>a.</u> For the purpose of adding and collecting the tax imposed by this act, or an amount equal as nearly as possible or practicable to the average equivalent thereof, to be reimbursed to the vendor by the purchaser, the following formula shall be in force and effect:

44	Amount of Sale	Amount of Tax
45	\$0.01 to \$0.10	No Tax
46	0.11 to 0.22	\$0.01
47	0.23 to 0.38	0.02
48	0.39 to 0.56	0.03
49	0.57 to 0.72	0.04
50	0.73 to 0.88	0.05
51	0.89 to \$1.10	0.06

In addition to a tax of \$0.06 on each full dollar, a tax shall be collected on each part of a dollar in excess of a full dollar, in

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accordance with the above formula.

b. For charges paid by inserting coins into a coin operated telecommunications device available to the public the tax shall be computed to the nearest multiple of five cents of the tax otherwise due pursuant to subsection a. of this section, except that, if the amount of the tax is midway between multiples of five cents, the next higher multiple shall apply. 1

(cf: P.L.1992, c.11, s.2)

3. This act shall take effect immediately and be retroactive to July 1, 1990.

Exempts coin paid charges subject to the local calling rate for coin operated telecommunications devices from the sales and use tax; provides special tax table.

as follows:

4. Tax bracket schedule. For the purpose of adding and collecting the tax imposed by this act, or an amount equal as nearly as possible or practicable to the average equivalent thereof, to be reimbursed to the vendor by the purchaser, the following formulas shall be in force and effect:

a. Generally:

•	a. Gonorany.	
8	Amount of Sale	Amount of Tax
9	\$0.01 to \$0.10	No tax
10	0.11 to 0.21	\$0.01
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12	0.36 to 0.50	0.03
13	0.51 to 0.64	0.04
14	0.65 to 0.78	0.05
15	0.79 to 0.92	0.06
16	0.93 to \$1.00	0.07

In addition to a tax of \$0.07 on each full dollar, a tax shall be collected on each part of a dollar in excess of a full dollar, in accordance with the following formula:

20	Amount of Sale	Amount of Tax
21		No additional
22	\$0.01 to \$0.07	tax
23	0.08 to 0.21	\$0.01
24	0.22 to 0.35	0.02
25	0.36 to 0.50	0.03
26	0.51 to 0.64	0.04
27	0.65 to 0.78	0.05
28	0.79 to 0.92	0.06
29	0.93 to \$1.07	0.07

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

(cf: P.L.1990, c.40, s.3.)

3. This act shall take effect immediately and be retroactive to July 1, 1990.

STATEMENT

This bill exempts charges subject to the local calling rate that are paid by inserting coins in coin operated telecommunications devices from the sales and use tax. The bill also provides for the computation of the sales and use tax for coin operated toll calls in five cent multiples. The provisions of the bill are retroactive to July 1, 1990.

 Exempts coin paid charges subject to the local calling rate for coin operated telecommunications devices from the sales and use tax; provides special tax table.

ASSEMBLY TRANSPORTATION AND COMMUNICATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1133 STATE OF NEW JERSEY

DATED: APRIL 30, 1992

The Assembly Transportation and Communications Committee favorably reports Assembly Bill No. 1133.

This bill exempts charges subject to the local calling rate that are paid by inserting coins in coin operated telecommunications devices from the sales and use tax. The bill also provides for the computation of the sales and use tax for coin operated toll calls in five cent multiples. The provisions of the bill are retroactive to July 1, 1990.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1133

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 19, 1992

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1133 with committee amendments.

Assembly Bill No. 1133, as amended, exempts certain charges for telecommunications from the sales and use tax. The exemption applies to charges subject to the local calling rate paid by inserting coins into a coin operated telecommunications device available to the public. At present, the only such devices operating in New Jersey are pay telephones. The exemption does not apply to charges paid by credit card or charged to another service number. The bill also provides for the computation for the sales and use tax for coin operated toll calls in 5 cent multiples. The provisions of the bill are retroactive to July 1, 1990.

FISCAL IMPACT:

Based on information supplied by New Jersey Bell Telephone and the New Jersey Independent Telephone Operators Association, and assuming that an independently operated pay telephone earns as much in coin charges at the local calling rate as an average Bell Network phone (probably an overestimate), it has been estimated that exempting coin paid local calling rate telephone calls retroactively for fiscal years 1991 and 1992 would result in a revenue loss of no more than \$6.62 million. Assuming the use of coin operated telephones remains constant, the revenue loss for fiscal years 1993 and thereafter is estimated to be \$2.84 million annually, reflecting the reduction in the sales tax rate effective July 1, 1992.

COMMITTEE AMENDMENTS:

The committee amendments are technical in nature, and reflect the changes to the sales tax rates effective July 1, 1992.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT] ASSEMBLY, No. 1133

STATE OF NEW JERSEY

DATED: DECEMBER 14, 1992

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 1133 (1R).

Assembly Bill No. 1133 (1R) exempts certain charges for telecommunications from the sales and use tax. The exemption applies to charges subject to the local calling rate paid by inserting coins into a coin operated telecommunications device available to the public. At present, the only such devices operating in New Jersey are pay telephones.

The exemption does not apply to charges paid by credit card or charged to another service number. The bill also provides for the computation for the sales and use tax for coin operated toll calls in 5 cent multiples. The provisions of the bill are retroactive to July 1, 1990.

This bill is identical to Senate Bill 1429 of 1992.

FISCAL IMPACT

Based on information supplied by New Jersey Bell Telephone and the New Jersey Independent Telephone Operators Association, and assuming that an independently operated pay telephone earns as much in coin charges at the local calling rate as an average Bell Network phone (probably an overestimate), it has been estimated that exempting coin paid local calling rate telephone calls retroactively for fiscal years 1991 and 1992 would result in a revenue loss of no more than \$6.62 million. Assuming the use of coin operated telephones remains constant, the revenue loss for fiscal years 1993 and thereafter is estimated to be \$2.84 million annually, reflecting the reduction in the sales tax rate effective July 1, 1992.

ASSEMBLY, No. 1133

STATE OF NEW JERSEY

DATED: June 2, 1992

Assembly Bill No. 1133 of 1992 exempts certain charges for telecommunications from the sales and use tax. The exemption applies to charges subject to the local calling rate paid by inserting coins into a coin operated telecommunications device available to the public. At present, the only such devices operating in New Jersey are pay telephones. The exemption does not apply to charges paid by credit card or charged to another service number. The bill also provides for the computation for the sales and use tax for coin operated toll calls in 5 cent multiples. The provisions of the bill are retroactive to July 1, 1990.

The Department of Treasury, Division of Taxation, and the Office of Management and Budget have not provided fiscal information on this bill.

The Office of Legislative Services (OLS) notes that without specific data available on the subject, it is not possible to determine exactly the revenue loss to the State. However, New Jersey Bell Telephone has supplied the information that its coin collections for calls subject to the local calling rate were \$43 million in calendar year 1990, from approximately 90,000 pay telephones. The New Jersey Independent Telephone Operators Association members control about 8,700 telephones. Not all independent operators are association members, but by assuming that there are 9,000 independently owned pay telephones and that each independently owned pay phone earns as much in coin charges at the local calling rate as an average Bell Network phone (probably an overestimate), the total New Jersey coin telephone sales at the local calling rate would equal \$47.3 million. Exempting that volume of gross sales from the telecommunications otherwise subject to the 7 percent sales and use tax would result in an annual revenue loss of \$3.31 million for fiscal year 1991.

Loss projections for fiscal year 1992 and future years are highly speculative. Industry trends in the issuance of proprietary phone credit cards tend to decrease the volume of coin sales, whereas recessionary trends may lead to the disconnection of some home telephones and the increased use of public pay telephones. OLS notes that whatever the trend, the loss would be a continuing one.

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.