

54:32B-2

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2005 **CHAPTER:** 126

NJSA: 54:32B-2 (Conforms the sales and use tax to the Streamlined Sales and Use Tax Agreement)

BILL NO: A3473 (Substituted for S1958)

SPONSOR(S): Greenwald and others

DATE INTRODUCED: November 4, 2004

COMMITTEE: **ASSEMBLY:** Budget
SENATE

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** June 30, 2005

SENATE: June 30, 2005

DATE OF APPROVAL: July 2, 2005

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Assembly Committee Substitute for A3473 enacted)

A3473

[SPONSOR'S STATEMENT](#): (Begins on page 49 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

S1958

[SPONSOR'S STATEMENT](#): (Begins on page 49 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes [3-7-2005 \(Bud & App\)](#)
[7-1-2005 \(Bud & App\)](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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No

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IS 7/9/07

§§15,16 -
C.54:32B-8.56 &
54:32B-8.57
§§26-29 -
C.54:32B-3.1 to
54:32B-3.4
§30 - C.54:32B-12.1
§§33,34 -
C.54:32B-28.1
& 54:32B-28.2
§§35,36 -
C.54:32B-54 &
54:32B-55
§37 - Repealer
§38 - Note to §§1-37

P.L. 2005, CHAPTER 126, *approved July 2, 2005*
Assembly Committee Substitute for
Assembly, No. 3473

1 AN ACT conforming the sales and use tax to the Streamlined Sales and
2 Use Tax Agreement to provide for entry therein, amending
3 P.L.1980, c.105, P.L.1981, c.546, P.L.1985, c.24, P.L.1993,
4 c.226, P.L.1993. c.373, and P.L.1997, c.162, amending and
5 supplementing P.L.1966, c.30, and repealing section 6 of
6 P.L.1989, c.123.

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

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

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

15 (a) "Person [~~. Person~~]" includes an individual, trust, partnership,
16 limited partnership, limited liability company, society, association, joint
17 stock company, corporation, public corporation or public authority,
18 estate, receiver, trustee, assignee, referee, fiduciary and any other
19 **[person acting in a fiduciary or representative capacity, whether**
20 **appointed by a court or otherwise, and any combination of the**
21 **foregoing]** legal entity.

22 (b) "Purchase at retail [~~. A~~]" means a purchase by any person at a
23 retail sale.

24 (c) "Purchaser [~~. A~~]" means a person to whom a sale of personal
25 property is made or to whom a service is furnished **[who purchases**
26 **property or who receives services]**.

27 (d) "Receipt [~~. The~~]" means the amount of the sales price of any
28 tangible personal property **[and the charge for any]**or service taxable

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 under this act[, valued in money, whether received in money or
2 otherwise, including any amount for which credit is allowed by the
3 vendor to the purchaser, without any deduction for expenses or early
4 payment discounts, but excluding any credit for property of the same
5 kind that is not tangible personal property purchased for lease
6 accepted in part payment and intended for resale, excluding the cost
7 of transportation where such cost is separately stated in the written
8 contract, if any, and on the bill rendered to the purchaser, and
9 excluding the amount of the sales price for which food stamps have
10 been properly tendered in full or part payment pursuant to the federal
11 Food Stamp Act of 1977, Pub.L.95-113 (7 U.S.C. s.2011 et seq.)].

12 (e) "Retail sale [. (1) A] "means any sale, lease, or rental [of
13 tangible personal property to any person] for any purpose, other than
14 for resale, sublease, or subrent.

15 (1) For the purposes of this act a sale is for "resale, sublease, or
16 subrent" if it is a sale (A) for resale either as such or as converted into
17 or as a component part of a product produced for sale by the
18 purchaser, including the conversion of natural gas into another
19 intermediate or end product, other than electricity or thermal energy,
20 produced for sale by the purchaser, or (B) for use by that person in
21 performing the services subject to tax under subsection (b) of section
22 3 where the property so sold becomes a physical component part of
23 the property upon which the services are performed or where the
24 property so sold is later actually transferred to the purchaser of the
25 service in conjunction with the performance of the service subject to
26 tax.

27 (2) For the purposes of this act, the term "retail sale" includes: sales
28 of tangible personal property to all contractors, subcontractors or
29 repairmen of materials and supplies for use by them in erecting
30 structures for others, or building on, or otherwise improving, altering,
31 or repairing real property of others.

32 (3) [For the purposes of this act, the term retail sale includes the
33 purchase of tangible personal property for lease] (Deleted by
34 amendment, P.L. _____, c. _____)(now pending before the Legislature as
35 this bill).

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

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

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

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

46 (D) The distribution of property by a partnership to its partners in

1 whole or partial liquidation.

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

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

6 (G) The sale of tangible personal property where the purpose of the
7 vendee is to hold the thing transferred as security for the performance
8 of an obligation of the [vendor] seller.

9 (f) "Sale, selling or purchase [. Any] " means any transfer of title
10 or possession or both, exchange or barter, rental, lease or license to
11 use or consume, conditional or otherwise, in any manner or by any
12 means whatsoever for a consideration, or any agreement therefor,
13 including the rendering of any service, taxable under this act, for a
14 consideration or any agreement therefor.

15 (g) "Tangible personal property [. Corporeal personal property of
16 any nature including energy] " means personal property that can be
17 seen, weighed, measured, felt, or touched, or that is in any other
18 manner perceptible to the senses. "Tangible personal property"
19 includes electricity, water, gas, steam, and prewritten computer
20 software.

21 (h) "Use [. The] " means the exercise of any right or power over
22 tangible personal property by the purchaser thereof and includes, but
23 is not limited to, the receiving, storage or any keeping or retention for
24 any length of time, withdrawal from storage, any distribution, any
25 installation, any affixation to real or personal property, or any
26 consumption of such property. Use also includes the exercise of any
27 right or power over intrastate or interstate telecommunications and
28 prepaid [telephone] calling [arrangements] services. Use also
29 includes the exercise of any right or power over utility service.

30 (i) [Vendor. (1) The term "vendor"] "Seller" means a person
31 making sales, leases or rentals of personal property or services.

32 (1) The term "seller" includes:

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

35 (B) A person maintaining a place of business in the State and
36 making sales, whether at such place of business or elsewhere, to
37 persons within the State of tangible personal property or services, the
38 use of which is taxed by this act;

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

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

1 by this act;

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

7 (F) [A person who purchases tangible personal property for lease,
8 whether in this State or elsewhere. For the purposes of Title 54 of the
9 Revised Statutes, the presence of leased tangible personal property in
10 this State is deemed to be a place of business in this State] (~~Deleted by~~
11 ~~amendment, P.L. _____, c. _____~~) (now pending before the Legislature as
12 this bill); and

13 (G) A person who sells, stores, delivers or transports energy to
14 users or customers in this State whether by mains, lines or pipes
15 located within this State or by any other means of delivery.

16 (2) In addition, when in the opinion of the director it is necessary
17 for the efficient administration of this act to treat any salesman,
18 representative, peddler or canvasser as the agent of the [vendor]
19 seller, distributor, supervisor or employer under whom [he] the agent
20 operates or from whom [he] the agent obtains tangible personal
21 property sold by [him] the agent or for whom [he] the agent solicits
22 business, the director may, in [his] the directors's discretion, treat
23 such agent as the [vendor] seller jointly responsible with [his] the
24 agent's principal, distributor, supervisor or employer for the collection
25 and payment over of the tax.

26 (j) "Hotel [. A] " means a building or portion of it which is
27 regularly used and kept open as such for the lodging of guests. The
28 term "hotel" includes an apartment hotel, a motel, boarding house or
29 club, whether or not meals are served.

30 (k) "Occupancy [. The] " means the use or possession or the right
31 to the use or possession, of any room in a hotel.

32 (l) "Occupant [. A] " means a person who, for a consideration,
33 uses, possesses, or has the right to use or possess, any room in a hotel
34 under any lease, concession, permit, right of access, license to use or
35 other agreement, or otherwise.

36 (m) "Permanent resident [. Any] " means any occupant of any room
37 or rooms in a hotel for at least 90 consecutive days shall be considered
38 a permanent resident with regard to the period of such occupancy.

39 (n) "Room [. Any] " means any room or rooms of any kind in any
40 part or portion of a hotel, which is available for or let out for any
41 purpose other than a place of assembly.

42 (o) "Admission charge [. The] " means the amount paid for
43 admission, including any service charge and any charge for
44 entertainment or amusement or for the use of facilities therefor.

45 (p) "Amusement charge [. Any] " means any admission charge,

- 1 dues or charge of roof garden, cabaret or other similar place.
- 2 (q) "Charge of a roof garden, cabaret or other similar place [. Any]
3 " means any charge made for admission, refreshment, service, or
4 merchandise at a roof garden, cabaret or other similar place.
- 5 (r) "Dramatic or musical arts admission charge [. Any] "means
6 any admission charge paid for admission to a theater, opera house,
7 concert hall or other hall or place of assembly for a live, dramatic,
8 choreographic or musical performance.
- 9 (s) "Lessor [. Any] "means any person who is the owner, licensee,
10 or lessee of any premises or tangible personal property which [he] the
11 person leases, subleases, or grants a license to use to other persons.
- 12 (t) "Place of amusement [. Any] "means any place where any
13 facilities for entertainment, amusement, or sports are provided.
- 14 (u) "Casual sale [. Casual sale]" means an isolated or occasional
15 sale of an item of tangible personal property by a person who is not
16 regularly engaged in the business of making retail sales [at retail] of
17 such property where [such property] the item was obtained by the
18 person making the sale, through purchase or otherwise, for [his] the
19 person's own use [in this State].
- 20 (v) "Motor vehicle [. Motor vehicle shall include] "includes all
21 vehicles propelled otherwise than by muscular power (excepting such
22 vehicles as run only upon rails or tracks), trailers, semitrailers, house
23 trailers, or any other type of vehicle drawn by a motor-driven vehicle,
24 and motorcycles, designed for operation on the public highways.
- 25 (w) "Persons required to collect tax" or "persons required to collect
26 any tax imposed by this act" [shall include] includes: every [vendor]
27 seller of tangible personal property or services; every recipient of
28 amusement charges; every operator of a hotel; [every lessor;] and
29 every [vendor] seller of telecommunications. Said terms shall also
30 include any officer or employee of a corporation or of a dissolved
31 corporation who as such officer or employee is under a duty to act for
32 such corporation in complying with any requirement of this act and
33 any member of a partnership. [Provided, however, the vendor of
34 tangible personal property to all contractors, subcontractors or
35 repairmen, consisting of materials and supplies for use by them in
36 erecting structures for others, or building on, or otherwise improving,
37 altering or repairing real property of others, shall not be deemed a
38 person required to collect tax, and the tax imposed by any section of
39 this act shall be paid directly to the director by such contractors,
40 subcontractors or repairmen.]
- 41 (x) "Customer" [shall include] includes: every purchaser of
42 tangible personal property or services; every patron paying or liable
43 for the payment of any amusement charge; and every occupant of a
44 room or rooms in a hotel.
- 45 (y) "Property and services the use of which is subject to tax" [shall

1 include] includes: (1) all property sold to a person within the State,
 2 whether or not the sale is made within the State, the use of which
 3 property is subject to tax under section 6 or will become subject to tax
 4 when such property is received by or comes into the possession or
 5 control of such person within the State; (2) all services rendered to a
 6 person within the State, whether or not such services are performed
 7 within the State, upon tangible personal property the use of which is
 8 subject to tax under section 6 or will become subject to tax when such
 9 property is distributed within the State or is received by or comes into
 10 possession or control of such person within the State; (3) intrastate or
 11 interstate telecommunications [, other than mobile telecommunications
 12 services, charged to a service address in this State] sourced to this
 13 State pursuant to section 29 of P.L. , c. (C.) (now pending
 14 before the Legislature as this bill); (4) (Deleted by amendment,
 15 P.L.1995, c.184); (5) energy sold, exchanged or delivered in this State
 16 for use in this State; (6) utility service sold, exchanged or delivered in
 17 this State for use in this State; (7) direct mail [advertising] processing
 18 services in connection with [advertising or promotional material]
 19 direct mail distributed in this State; and (8) [intrastate and interstate
 20 mobile telecommunications services provided to a customer with a
 21 place of primary use in this State] (Deleted by amendment, P.L. ,
 22 c. (pending before the Legislature as this bill).

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

29 (aa) "Lease or rental" means [the possession or control of tangible
 30 personal property by an agreement, not transferring sole title, as may
 31 be evidenced by a contract, contracts, or by implication from other
 32 circumstances including course of dealing or usage of trade or course
 33 of performance, for a period of more than 28 days] any transfer of
 34 possession or control of tangible personal property for a fixed or
 35 indeterminate term for consideration. A "lease or rental" may include
 36 future options to purchase or extend.

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

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

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

45 (C) Providing tangible personal property along with an operator for

1 a fixed or indeterminate period of time. A condition of this exclusion
2 is that the operator is necessary for the equipment to perform as
3 designed. For the purpose of this subparagraph, an operator must do
4 more than maintain, inspect, or set-up the tangible personal property.

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

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

14 (bb) ["The amount of the sales price" of tangible personal property
15 purchased for lease means, at the election of the lessor, either (1) the
16 amount of the lessor's purchase price or (2) the amount of the total of
17 the lease payments attributable to the lease of such property. Tangible
18 personal property purchased for lease is subject to the provisions of
19 subsection (a) of section 3 of P.L.1966, c.30 (C.54:32B-3)] (Deleted
20 by amendment, P.L. _____, c. _____)(now pending before the Legislature
21 as this bill).

22 (cc) "Telecommunications" means the act or privilege of originating
23 or receiving messages or information through the use of any kind of
24 one-way or two-way communication; including but not limited to
25 voice, video, facsimile, teletypewriter, computer, mobile
26 telecommunications service or any other type of communication; using
27 electronic or electromagnetic methods, and all services and equipment
28 provided in connection therewith or by means thereof.
29 "Telecommunications" shall not include:

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

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

37 (3) services provided by a person, or by that person's wholly owned
38 subsidiary, not engaged in the business of rendering or offering
39 telecommunications services to the public, for private and
40 exclusive use within its organization, provided however, that
41 "telecommunications" shall include the sale of telecommunications
42 services attributable to the excess unused telecommunications capacity
43 of that person to another;

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

46 (5) charges subject to the local calling rate paid by inserting coins

1 into a coin operated telecommunications device available to the public;
2 and

3 (6) purchases of telecommunications using a prepaid [telephone
4 arrangement] calling service.

5 (dd) "Interstate telecommunication" means any telecommunication
6 that originates or terminates inside this State, including international
7 telecommunication. In the case of mobile telecommunications service,
8 "interstate telecommunication" means any mobile telecommunications
9 service that originates in one state and terminates in another state,
10 territory, or foreign country that is provided to a customer with a
11 place of primary use in this State.

12 (ee) "Intrastate telecommunication" means any telecommunication
13 that originates and terminates within this State. In the case of mobile
14 telecommunications service, "intrastate telecommunication" means any
15 mobile telecommunications service that originates and terminates
16 within the same state that is provided to a customer with a place of
17 primary use in this State.

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

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

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

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

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

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

42 (ll) "Pre-paid [telephone] calling [arrangement] service" means the
43 right to purchase exclusively telecommunications services, that must
44 be paid for in advance, that enables the origination of calls using an
45 access number or authorization code, whether manually or
46 electronically dialed; provided, that the remaining amount of units of

1 service that have been pre-paid shall be known by the service provider
2 on a continuous basis.

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

6 (nn) "Place of primary use" means the street address representative
7 of where the customer's use of the mobile telecommunications service
8 primarily occurs, which shall be the residential street address or the
9 primary business street address of the customer and within the licensed
10 service area of the home service provider. For the purposes of
11 determining the primary place of use, the terms used shall have the
12 meanings provided pursuant to the federal "Mobile
13 Telecommunications Sourcing Act," 4 U.S.C. s.124 (Pub.L.106-252).

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

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

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

23 (C) Charges by the seller for any services necessary to complete the
24 sale;

25 (D) Delivery charges, unless separately stated on the invoice, bill or
26 similar document given to purchaser;

27 (E) Installation charges; and

28 (F) The value of exempt personal property given to the purchaser
29 where taxable and exempt personal property have been bundled
30 together and sold by the seller as a single product or piece of
31 merchandise.

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

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

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

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

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

46 (E) Credit for any trade-in of property of the same kind accepted in

1 part payment and intended for resale if the amount is separately stated
2 on the invoice, bill of sale, or similar document given to the purchaser.

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

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

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

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

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

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

34 (cf: P.L.2002, c.45, s.1)

35

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

38 3. There is imposed and there shall be paid a tax of 6% upon:

39 (a) The receipts from every retail sale of tangible personal property,
40 except as otherwise provided in this act. [If the lessor of tangible
41 personal property purchased for lease elects to pay tax on the amount
42 of the sales price as provided in paragraph (2) of subsection
43 (bb) of section 2 of P.L.1966, c.30 (C.54:32B-2), any and each
44 subsequent lease or rental is a retail sale, and a subsequent sale of such
45 property is a retail sale.]

46 (b) The receipts from every sale, except for resale, of the following

1 services:

2 (1) Producing, fabricating, processing, printing or imprinting
3 tangible personal property, performed for a person who directly or
4 indirectly furnishes the tangible personal property, not purchased by
5 him for resale, upon which such services are performed.

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

22 (3) Storing all tangible personal property not held for sale in the
23 regular course of business and the rental of safe deposit boxes or
24 similar space.

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

35 (5) Direct-mail **[advertising]** processing services, except for
36 direct-mail **[advertising]** processing services in connection with
37 distribution of **[advertising or promotional material]** direct mail to
38 out-of-State recipients.

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

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

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

46 Services otherwise taxable under paragraph (1) or (2) of this

1 subsection (b) are not subject to the taxes imposed under this
2 subsection, where the tangible personal property upon which the
3 services were performed is delivered to the purchaser outside this
4 State for use outside this State.

5 (c) (1) Receipts from the sale of prepared food [and drink] in or by
6 restaurants, taverns, [vending machines] or other establishments in
7 this State, or by caterers, including in the amount of such receipts any
8 cover, minimum, entertainment or other charge made to patrons or
9 customers[:

10 (1) In all instances where the sale is for consumption on the
11 premises where sold;

12 (2) In those instances where the vendor or any person whose
13 services are arranged for by the vendor, after the delivery of the food
14 or drink by or on behalf of the vendor for consumption off the
15 premises of the vendor, serves or assists in serving, cooks, heats or
16 provides other services with respect to the food or drink], except for
17 meals especially prepared for and delivered to homebound elderly, age
18 60 or older, and to disabled persons, or meals prepared and served at
19 a group-sitting at a location outside of the home to otherwise
20 homebound elderly persons, age 60 or older, and otherwise
21 homebound disabled persons, as all or part of any food service project
22 funded in whole or in part by government or as part of a private,
23 nonprofit food service project available to all such elderly or disabled
24 persons residing within an area of service designated by the private
25 nonprofit organization[;

26 (3) In those instances where the sale is for consumption off the
27 premises of the vendor, and consists of a meal, or food prepared and
28 ready to be eaten, of a kind obtainable in restaurants as the main
29 course of a meal, including a sandwich, except where food other than
30 sandwiches is sold in an unheated state and is of a type commonly sold
31 in the same form and condition in food stores other than those which
32 are principally engaged in selling prepared foods]; and

33 [(4) Sales] (2) Receipts from sales of food and beverages sold
34 through [coin-operated] vending machines, at the wholesale price of
35 such sale, which shall be defined as 70% of the retail vending machine
36 selling price, except sales of milk, which shall not be taxed. Nothing
37 herein contained shall affect other sales through coin-operated vending
38 machines taxable pursuant to subsection (a) above or the exemption
39 thereto provided by section 21 of P.L.1980, c.105 (C.54:32B-8.9).

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

42 (3) For the purposes of this subsection:

43 "Food and beverages sold through vending machines" means food
44 and beverages dispensed from a machine or other mechanical device
45 that accepts payment; and

46 "Prepared food," means:

- 1 A. food sold in a heated state or heated by the seller; or
2 B. two or more food ingredients mixed or combined by the seller
3 for sale as a single item, but not including food that is only cut,
4 repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry,
5 and foods containing these raw animal foods requiring cooking by the
6 consumer as recommended by the Food and Drug Administration in
7 Chapter 3, part 401.11 of its Food Code so as to prevent food borne
8 illnesses; or
9 C. food sold with eating utensils provided by the seller, including
10 plates, knives, forks, spoons, glasses, cups, napkins, or straws. A
11 plate does not include a container or packaging used to transport the
12 food;
13 provided however, that "prepared food" does not include the following
14 sold without eating utensils:
15 A. food sold by a seller whose proper primary NAICS classification
16 is manufacturing in section 311, except subsector 3118 (bakeries);
17 B. food sold in an unheated state by weight or volume as a single
18 item; or
19 C. bakery items, including bread, rolls, buns, biscuits, bagels,
20 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins,
21 bars, cookies, and tortillas.
- 22 (d) The rent for every occupancy of a room or rooms in a hotel in
23 this State, except that the tax shall not be imposed upon [(1)] a
24 permanent resident[, or (2) where the rent is not more than at the rate
25 of \$2.00 per day].
- 26 (e) (1) Any admission charge[, where such admission charge is in
27 excess of \$0.75] to or for the use of any place of amusement in the
28 State, including charges for admission to race tracks, baseball,
29 football, basketball or exhibitions, dramatic or musical arts
30 performances, motion picture theaters, except charges for admission
31 to boxing, wrestling, kick boxing or combative sports exhibitions,
32 events, performances or contests which charges are taxed under any
33 other law of this State or under section 20 of P.L.1985, c.83
34 (C.5:2A-20), and, except charges to a patron for admission to, or use
35 of, facilities for sporting activities in which such patron is to be a
36 participant, such as bowling alleys and swimming pools. For any
37 person having the permanent use or possession of a box or seat or
38 lease or a license, other than a season ticket, for the use of a box or
39 seat at a place of amusement, the tax shall be upon the amount for
40 which a similar box or seat is sold for each performance or exhibition
41 at which the box or seat is used or reserved by the holder, licensee or
42 lessee, and shall be paid by the holder, licensee or lessee.
- 43 (2) The amount paid as charge of a roof garden, cabaret or other
44 similar place in this State, to the extent that a tax upon such charges
45 has not been paid pursuant to subsection (c) hereof.
- 46 (f) (1) The receipts from every sale, except for resale, of

1 intrastate or interstate telecommunications [(other than mobile
 2 telecommunications services) charged to an address in this State,
 3 regardless of where the services are billed or paid] sourced to this
 4 State in accordance with section 29 of P.L. , c. (C.)(now
 5 pending before the Legislature as this bill).

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

12 (g) The receipts from every sale, except for resale, of prepaid
 13 [telephone] calling [arrangements] service and the recharge of
 14 prepaid [telephone] calling [arrangements] service. [If the sale or
 15 recharge of a prepaid telephone calling arrangement does not take
 16 place at the vendor's place of business, the sale or recharge shall be
 17 conclusively determined to take place at the customer's shipping
 18 address, or if there is no item shipped, at the customer's billing address
 19 or the location associated with the customer's mobile telephone
 20 number.]

21 (cf: P.L.2002, c.45, s.2)

22

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

25 4. a. For the purpose of adding and collecting the tax imposed by
 26 this act, or an amount equal as nearly as possible or practicable to the
 27 average equivalent thereof, to be reimbursed to the [vendor] seller by
 28 the purchaser, [the following formula shall be in force and effect] a
 29 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	
33 \$0.01 to \$0.10	No Tax
34 0.11 to 0.22	\$0.01
35 0.23 to 0.38	0.02
36 0.39 to 0.56	0.03
37 0.57 to 0.72	0.04
38 0.73 to 0.88	0.05
39 0.89 to \$1.10	0.06

40

41 [In] and in addition to a tax of \$0.06 on each full dollar, a tax shall
 42 be collected on each part of a dollar in excess of a full dollar, in
 43 accordance with the above formula; or

44 (2) tax shall be calculated to the third decimal place. One-half cent
 45 (\$0.005) or higher shall be rounded up to the next cent; less than
 46 \$0.005 shall be dropped in order to round the result down.

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

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

9 (cf: P.L.1993, c.10, s.2)

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

13 6. Unless property or services have already been or will be subject
14 to the sales tax under this act, there is hereby imposed on and there
15 shall be paid by every person a use tax for the use within this State of
16 6%, except as otherwise exempted under this act, (A) of any tangible
17 personal property purchased at retail, including energy, provided
18 however, that electricity consumed by the generating facility that
19 produced it shall not be subject to tax, (B) of any tangible personal
20 property manufactured, processed or assembled by the user, if items
21 of the same kind of tangible personal property are offered for sale by
22 him in the regular course of business, or if items of the same kind of
23 tangible personal property are not offered for sale by him in the regular
24 course of business and are used as such or incorporated into a
25 structure, building or real property, (C) of any tangible personal
26 property, however acquired, where not acquired for purposes of
27 resale, upon which any taxable services described in paragraphs (1)
28 and (2) of subsection (b) of section 3 of P.L.1966, c.30 (C.54:32B-3)
29 have been performed, (D) of interstate or intrastate
30 telecommunications and mobile telecommunications described in
31 subsection (f) of section 3 of P.L.1966, c.30, (E) (Deleted by
32 amendment, P.L.1995, c.184), (F) of utility service provided to
33 persons in this State for use in this State, provided however, that
34 utility service used by the facility that provides the service shall not be
35 subject to tax, (G) of direct-mail [advertising] processing services
36 described in paragraph (5) of subsection (b) of section 3 of P.L.1966,
37 c.30 (C.54:32B-3) and (H) of prepaid [telephone] calling service
38 [arrangements] and the recharge of prepaid [telephone] calling
39 [arrangements] service. For purposes of clause (A) of this section,
40 the tax shall be at the applicable rate, as set forth hereinabove, of the
41 consideration given or contracted to be given for such property or for
42 the use of such property, but excluding any credit for property of the
43 same kind accepted in part payment and intended for resale, plus the
44 cost of transportation, except where such cost is separately stated in
45 the written contract, if any, and on the bill rendered to the purchaser,
46 provided however, that there shall be no exclusion for the cost of the

1 utility service. For the purposes of clause (B) of this section, the tax
2 shall be at the applicable rate, as set forth hereinabove, of the price at
3 which items of the same kind of tangible personal property are offered
4 for sale by the user, or if items of the same kind of tangible personal
5 property are not offered for sale by the user in the regular course of
6 business and are used as such or incorporated into a structure, building
7 or real property the tax shall be at the applicable rate, as set forth
8 hereinabove, of the consideration given or contracted to be given for
9 the tangible personal property manufactured, processed or assembled
10 by the user into the tangible personal property the use of which is
11 subject to use tax pursuant to this section, and the mere storage,
12 keeping, retention or withdrawal from storage of tangible personal
13 property by the person who manufactured, processed or assembled
14 such property shall not be deemed a taxable use by him. For purposes
15 of clause (C) of this section, the tax shall be at the applicable rate, as
16 set forth hereinabove, of the consideration given or contracted to be
17 given for the service, including the consideration for any tangible
18 personal property transferred in conjunction with the performance of
19 the service, plus the cost of transportation, except where such cost is
20 separately stated in the written contract, if any, and on the bill
21 rendered to the purchaser. For the purposes of clause (D) of this
22 section, the tax shall be at the applicable rate on the charge made by
23 the telecommunications service provider. For purposes of clause (F)
24 of this section, the tax shall be at the applicable rate on the charge
25 made by the utility service provider. For purposes of clause (G) of
26 this section, the tax shall be at the applicable rate on that proportion
27 of the amount of all processing costs charged by a direct-mail
28 [advertising] processing service provider that is attributable to the
29 [advertising or promotional material] service distributed in this State.
30 For the purposes of clause (H) of this section, the tax shall be at the
31 applicable rate on the consideration given or contracted to be given for
32 the prepaid [telephone] calling [arrangement] service or the recharge
33 of the prepaid [telephone] calling [arrangement] service.

34 (cf: P.L.2002, c.45, s.3)

35

36 5. Section 7 of P.L.1966, c.30 (C.54:32B-7) is amended to read
37 as follows:

38 7. (a) The retail sales tax imposed under subsection (a) of section
39 3 and the compensating use tax imposed under section 6, when
40 computed in respect to tangible personal property wherever
41 manufactured, processed or assembled and used by such manufacturer,
42 processor or assembler in the regular course of business within this
43 State, shall be based on the price at which items of the same kind of
44 tangible personal property are offered for sale by him.

45 (b) Tangible personal property, which has been purchased by a
46 resident of the State of New Jersey outside of this State for use

1 outside of this State and subsequently becomes subject to the
2 compensating use tax imposed under this act, shall be taxed on the
3 basis of the purchase price of such property, provided, however:

4 (1) That where a taxpayer affirmatively shows that the property was
5 used outside such State by him for more than six months prior to its
6 use within this State, such property shall be taxed on the basis of
7 current market value of the property at the time of its first use within
8 this State. The value of such property, for compensating use tax
9 purposes, may not exceed its cost.

10 (2) That the compensating use tax on such tangible personal
11 property brought into this State (other than for complete consumption
12 or for incorporation into real property located in this State) and used
13 in the performance of a contract or subcontract within this State by a
14 purchaser or user for a period of less than six months may be based,
15 at the option of the taxpayer, on the fair rental value of such property
16 for the period of use within this State.

17 (c) Leased tangible personal property which has been purchased
18 outside this State for lease outside of this State and subsequently
19 becomes subject to the compensating use tax imposed under this act
20 shall be taxed on the basis of the purchase price of such property,
21 provided however, that the compensating use tax on such property
22 brought into and used within this State may be based [, at the option
23 of the lessor,] on the total of the lease payments attributable to the
24 lease of that property attributable to the period of the lease remaining
25 after first use in this State.

26 (d) [Unless tangible personal property purchased for lease has
27 already been subject to the sales tax imposed under subsection (a) of
28 section 3 or the compensating use tax imposed under section 6, the use
29 tax computed with respect to such property, in the discretion of the
30 director, may be assessed against the lessee or sub-lessee and] Sales
31 tax imposed on the lease or rental of tangible personal property in
32 New Jersey shall be based on either the total of the periodic payments
33 required under the [lease] agreement or the original purchase price of
34 the property. [The fact that the lessee has accepted in good faith the
35 certificate of the lessor, in the form prescribed by the director, and the
36 fact that the tax imposed on property purchased for lease in this act
37 has been paid may be considered by the director, but shall not be
38 deemed conclusive if good faith issuance or acceptance of such
39 certificate is in question.] The full amount of sales tax due on the
40 complete term of a lease or rental for more than six months shall be
41 remitted with the monthly or quarterly sales and use tax return due for
42 the period in which the leased personal property was delivered to the
43 lessee in this State. However, if the tax is paid on a lease or rental
44 based on the original purchase price of the tangible personal property,
45 a subsequent lease or rental of the same property shall not be subject
46 to the tax imposed under P.L. 1966, c.30 (C.54:32B-1 et seq.).

1 If leased property is subsequently removed on a permanent basis
2 from this State, the lessee shall be entitled to a refund of the tax
3 allocable to the portion of the lease or rental that remains in effect
4 after the property has been removed from this State, but only if the
5 other state does not allow a credit for the sales or use tax paid to this
6 State on the lease or rental transaction, and further, in the case of
7 property removed to a state that imposes or computes tax on leases or
8 rentals based on a lump sum or accelerated basis, only if the other
9 state also allows a corresponding refund with respect to the lease of
10 property upon which a sales or use tax is due and paid to this State.

11 (e) The purchase of energy shall be subject to the compensating use
12 tax imposed under section 6 on the basis of the purchase price of the
13 energy, including any charges for utility service.

14 (cf: P.L.1997, c.162, s.20)

15 6. Section 1 of P.L.1993, c.226 (C.54:32B-7.1) is amended to read
16 as follows:

17 1. a. [Notwithstanding the provisions of section 3 of P.L.1966,
18 c.30 (C.54:32B-3) to the contrary, the] The sale of a race
19 [horses]horse through a claiming [races] race within the State shall
20 be subject to the sales tax imposed by [that] section [only] 3 of
21 P.L.1966, c.30 (C.54:32B-3) on the sales price.

22 b. Notwithstanding the provisions of subsection a. of this section,
23 the purchaser of the horse in the second or a subsequent sale through
24 a claiming race of that horse within the State during a single calendar
25 year shall be allowed a refund on that portion of the tax paid by the
26 purchaser on the amount of the total [purchase] sales price that
27 [exceeds] does not exceed the highest of any prior [purchase
28 prices]sales price paid for the same horse within the State during [the
29 same] that calendar year. Such claim for refund may be made by the
30 purchaser by filing a claim, within four years of the date of purchase,
31 with the New Jersey Division of Taxation for a refund of that part of
32 the sales tax paid. If no previous purchases have been made within the
33 calendar year, [the full purchase price shall be subject to the sales tax]
34 no such refund shall be allowed.

35 c. Each holder of a permit to conduct horse racing in this State
36 pursuant to P.L.1940, c.17 (C.5:5-22 et seq.) shall maintain and make
37 available to the Division of Taxation, upon reasonable request, an
38 accurate and detailed list of those sales that may result in a refund
39 claim pursuant to this section.

40 (cf: P.L.1993, c.226, s.1)

41

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

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

- 1 [sales of medicines and]
- 2 (1) drugs sold pursuant to a doctor's prescription [for human use];
- 3 (2) over-the-counter drugs [recommended and generally sold for
- 4 the relief of pain, ailments, distresses or disorders of the human body];
- 5 (3) diabetic supplies; [crutches,]
- 6 (4) [artificial limbs, artificial eyes, artificial hearing devices,
- 7 corrective eyeglasses, prosthetic aids, artificial teeth or dentures,
- 8 braces,] prosthetic devices;
- 9 (5) tampons or like products[.,,];
- 10 [orthopedic appliances and artificial devices designed to correct or
- 11 alleviate physical incapacity;]
- 12 (6) medical oxygen[.,,];
- 13 [respiratory equipment,]
- 14 (7) human blood and its derivatives [when sold for human use,
- 15 transcutaneous electro-neuro stimulators (TENS units),]
- 16 (8) durable medical equipment for home use[.,,];
- 17 (9) mobility enhancing equipment; and
- 18 (10) repair and replacement parts for any of the foregoing exempt
- 19 devices and equipment.
- 20 b. As used in this section[., durable] .:
- 21 "Drug" means a compound, substance or preparation, and any
- 22 component of a compound, substance or preparation, other than food
- 23 and food ingredients, dietary supplements or alcoholic beverages:
- 24 (1) recognized in the official United States Pharmacopoeia, official
- 25 Homeopathic Pharmacopoeia of the United States, or official National
- 26 Formulary, and supplement to any of them; or
- 27 (2) intended for use in the diagnosis, cure, mitigation, treatment, or
- 28 prevention of disease; or
- 29 (3) intended to affect the structure or any function of the body.
- 30 "Over-the-counter-drug" means a drug that contains a label which
- 31 identifies the product as a drug, required by 21 CFR 201.66. The label
- 32 includes:
- 33 (1) a "Drug Facts" panel or
- 34 (2) a statement of the "active ingredient" or "active ingredients"
- 35 with a list of those ingredients contained in the compound, substance
- 36 or preparation. "Over-the-counter drug" does not include a grooming
- 37 and hygiene product.
- 38 "Grooming and hygiene product" is soap or cleaning solution,
- 39 shampoo, toothpaste, mouthwash, anti-perspirant, or sun tan lotion or
- 40 screen, regardless of whether the item meets the definition of
- 41 "over-the-counter drug."
- 42 "Prescription" means an order, formula or recipe issued in any form
- 43 of oral, written, electronic, or other means of transmission by a duly
- 44 licensed practitioner authorized by the laws of this State.
- 45 "Prosthetic device" means a replacement, corrective, or supportive

1 device including repair and replacement parts for same worn on or in
 2 the body in order to:

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

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

9 [a.] (1) can withstand repeated use;

10 [b.] (2) is primarily and customarily used to serve a medical
 11 purpose;

12 [c.] 3. is generally not useful to a person in the absence of illness
 13 or injury; and

14 [d.] 4. [is appropriate for use in the home] is not worn in or on the
 15 body.

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

18 1. is primarily and customarily used to provide or increase the
 19 ability to move from one place to another and which is appropriate for
 20 use either at home or in a motor vehicle; and

21 2. is not generally used by persons with normal mobility; and

22 3. does not include any motor vehicle or equipment on a motor
 23 vehicle normally provided by a motor vehicle manufacturer.

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

32 (cf: P.L.1987, c.383, s.1)

33
 34 8. Section 14 of P.L.1980, c.105 (C.54:32B-8.2) is amended to
 35 read as follows:

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

44 b. The exemption in this section is not applicable to prepared food
 45 [and drink] subject to tax under subsection (c) of section 3 of the

1 Sales and Use Tax Act (C.54:32B-3(c)).

2 c. As used in this section:

3 "Candy" means a preparation of sugar, honey, or other natural or
4 artificial sweeteners in combination with chocolate, fruits, nuts or

5 other ingredients or flavorings in the form of bars, drops, or pieces.
6 "Candy" does not include any preparation containing flour or requiring
7 refrigeration;

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

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

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

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

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

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

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

33 (cf: P.L.1980, c.107, s.2)

34

35 9. 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 for
38 human use [except articles made of fur on the hide or pelt of an animal
39 or animals where such fur is the component material of chief value of
40 the article] are exempt from the tax imposed under the "Sales and Use
41 Tax Act." ["Clothing" as used in this section shall also mean and
42 include sales to noncommercial purchasers of common wearing apparel
43 materials intended to be incorporated into wearing apparel as a
44 constituent part thereof, such as fabrics, thread, knitting yarn, buttons
45 and zippers. The director shall prescribe regulations to carry out the
46 provisions of this section.] This exemption does not apply to clothing

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

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

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

10 d. As used in this section:

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

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

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

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

25 (cf: P.L.1980, c.105, s.16)

26

27 10. Section 18 of P.L.1980, c.105 (C.54:32B-8.6) is amended to
28 read as follows:

29 18. Receipts from casual sales except as to sales of motor vehicles,
30 whether for use on the highways or otherwise, except as to sales of
31 boats or vessels registered or subject to registration under the "New
32 Jersey Boat Act of 1962," P.L.1962, c.73 (C.12:7-34.36 et seq.), and
33 all amendments and supplements thereto, [and except as to sales of
34 tangible personal property purchased for lease which property was
35 granted exemption from tax pursuant to section 6 of P.L.1989, c.123
36 (C.54:32B-8.40),] are exempt from the tax imposed under the "Sales
37 and Use Tax Act." A manufactured home, as defined in subsection d.
38 of section 3 of P.L.1983, c.400 (C.54:4-1.4) shall not be deemed a
39 motor vehicle for the purposes of this section.

40 (cf: P.L.1989, c.123, s.4)

41

42 11. Section 33 of P.L.1980, c.105 (C.54:32B-8.21) is amended to
43 read as follows:

44 33. Receipts from sales of school textbooks for use by students in
45 a school, college, university or other educational institution, approved
46 as such by the Department of Education or by the Department of

1 Higher Education, when the educational institution, upon forms and
2 pursuant to regulations prescribed by the director, has declared the
3 books are required for school purposes and the purchaser has supplied
4 the [vendor] seller with the form at the time of the sale are exempt
5 from the tax imposed under the Sales and Use Tax Act.
6 (cf: P.L.1980, c.105, s.33)

7

8 12. Section 1 of P.L.1981, c.546 (C.54:32B-8.36) is amended to
9 read as follows:

10 1. a. Receipts from the sales of recycling equipment are exempt
11 from the tax imposed under the "Sales and Use Tax Act." For
12 purposes of this subsection "recycling equipment" means any
13 equipment which is used exclusively to sort and prepare solid waste
14 for recycling or in the recycling of solid waste. "Recycling equipment"
15 does not include conventional motor vehicles, or any equipment used
16 in a process after the first marketable product is produced, or in the
17 case of recycling iron or steel, any equipment used to reduce the waste
18 to molten state and in any process thereafter.

19 b. (1) Receipts from the sales of treatment equipment or
20 conveyance equipment are exempt from the tax imposed under the
21 "Sales and Use Tax Act," provided that the Commissioner of the
22 Department of Environmental Protection has determined that the
23 operation of the system in which the equipment is being or is to be
24 used, and the reuse of wastewater effluent that results from that
25 operation, are or will be beneficial to the environment. For purposes
26 of this subsection, "treatment equipment" means any equipment that is
27 used exclusively to treat effluent from a primary wastewater treatment
28 facility, which effluent would otherwise have been discharged into the
29 waters of the State, for purposes of reuse in an industrial process
30 thereafter, and "conveyance equipment" means any equipment that is
31 used exclusively to transport that effluent to the facility in which the
32 treatment equipment has been or is to be installed and to transport the
33 product of that further treatment to the site of that reuse.

34 (2) Notwithstanding the provisions of paragraph (1) of this
35 subsection, the [vendor] seller shall charge and collect the tax from
36 the purchaser on such sales at the rate then in effect, and the tax shall
37 be refunded to the purchaser by the filing of a claim, within three years
38 of the date of purchase, with the New Jersey Division of Taxation for
39 a refund of sales or use tax paid. Proof of claim for refund shall be
40 demonstrated by a copy of a determination of environmental benefit
41 issued to the purchaser by the Commissioner of the Department of
42 Environmental Protection pursuant to section 1 of P.L.2001, c.321
43 (C.54:10A-5.31), and by any additional information as the director
44 may require, including but not limited to proof of tax paid.
45 (cf: P.L.2001, c.322, s.1)

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

23 (cf: P.L.1987, c.268, s.2)

24

25 14. Section 1 of P.L.1993, c.373 (C.54:32B-8.45) is amended to
26 read as follows:

27 1. a. Receipts of retail sales, except retail sales of motor vehicles,
28 of alcoholic beverages [as defined in the "Alcoholic Beverage Tax
29 Law," R.S.54:41-1 et seq.], and cigarettes as defined in the "Cigarette
30 Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.), made by a [vendor]
31 seller from a place of business regularly operated by the [vendor]
32 seller for the purpose of making retail sales at which items are
33 regularly exhibited and offered for retail sale and which is not utilized
34 primarily for the purpose of catalogue or mail order sales, in which
35 county is situated an entrance to an interstate bridge or tunnel
36 connecting New Jersey with a state that does not impose a retail sales
37 and use tax or imposes a retail sales and use tax at a rate at least five
38 percentage points lower than the rate in this State, are exempt to the
39 extent of 50% of the tax imposed under the "Sales and Use Tax Act,"
40 P.L.1966, c.30 (C.54:32B-1 et seq.). [The State Treasurer shall
41 annually designate the county or counties in which this exemption shall
42 apply.]

43 b. The exemption provided by subsection a. of this section shall
44 apply unless a seller advises the director, in writing, that it intends to
45 collect the tax at the full rate imposed under the "Sales and Use Tax

1 Act.

2 (cf: P.L.1993, c.373, s.1)

3

4 15. (New section) Receipts from sales of prewritten software
5 delivered electronically are exempt from the tax imposed under the
6 "Sales and Use Tax Act", P.L.1966, c.30 (C.54:32B-1 et seq.). The
7 exemption provided by this section shall not apply to receipts from
8 sales of prewritten software delivered by a load and leave method.

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

12 "Computer software" means a set of coded instruction designed to
13 cause a computer or automatic data processing equipment to perform
14 a task.

15 "Delivered electronically" means delivered from the seller to the
16 purchaser by means other than tangible storage media.

17 "Electronic" means relating to technology having electrical, digital
18 magnetic, wireless, optical, electromagnetic, or similar capabilities.

19 "Load and leave" means delivery to the purchaser by the use of a
20 tangible storage medium where the tangible storage medium is not
21 physically transferred to the purchaser.

22 "Prewritten computer software" means computer software,
23 including prewritten upgrades, which is not designed and developed by
24 the author or other creator to the specifications of a specific
25 purchaser. The combining of two or more prewritten computer
26 software programs or pre-written portions thereof shall not cause the
27 combination to be other than prewritten computer software.

28 "Prewritten computer software" includes software designed and
29 developed by the author or other creator to the specifications of a
30 specific purchaser when it is sold to a person other than such
31 purchaser. If a person modifies or enhances computer software of
32 which that person is not the author or creator, the person shall be
33 deemed to be the author or creator only of such person's modifications
34 or enhancements. Prewritten software or a prewritten portion thereof
35 that is modified or enhanced to any degree, where such modification
36 or enhancement is designed and developed to the specifications of a
37 specific purchaser, shall remain pre-written software; provided,
38 however, that if there is a reasonable, separately stated charge or an
39 invoice or other statement of the price given to the purchaser for such
40 modification or enhancement, such modification or enhancement shall
41 not constitute pre-written computer software. "Prewritten computer
42 software" shall not include software delivered electronically.

43

44 16. (New section) Receipts from a sale-leaseback transaction are
45 exempt from the tax imposed under the "Sales and Use Tax Act",
46 P.L.1966, c.30 (C.54:32B-1 et seq.). For purposes of this section, a

1 "sale-leaseback" means a transaction where the owner of tangible
2 property sells the property to a lessor, who leases it back to the owner
3 within 180 days from when the property was originally placed in
4 service by the owner. A sale-leaseback shall be considered a financing
5 arrangement and shall not be considered a separate sale, use, or lease
6 of the property.

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

10 9. (a) Except as to motor vehicles sold by any of the following, any
11 sale, service or amusement charge by or to any of the following or any
12 use or occupancy by any of the following shall not be subject to the
13 sales and use taxes imposed under this act:

14 (1) The State of New Jersey, or any of its agencies,
15 instrumentalities, public authorities, public corporations (including a
16 public corporation created pursuant to agreement or compact with
17 another state) or political subdivisions where it is the purchaser, user
18 or consumer, or where it is a [vendor] seller of services or property
19 of a kind not ordinarily sold by private persons;

20 (2) The United States of America, and any of its agencies and
21 instrumentalities, insofar as it is immune from taxation where it is the
22 purchaser, user or consumer, or where it sells services or property of
23 a kind not ordinarily sold by private persons;

24 (3) The United Nations or any international organization of which
25 the United States of America is a member where it is the purchaser,
26 user or consumer, or where it sells services or property of a kind not
27 ordinarily sold by private persons.

28 (b) Except as otherwise provided in this section any sale or
29 amusement charge by or to any of the following or any use or
30 occupancy by any of the following, where such sale, charge, use or
31 occupancy is directly related to the purposes for which the following
32 have been organized, shall not be subject to the sales and use taxes
33 imposed under this act: a corporation, association, trust, or
34 community chest, fund or foundation, organized and operated
35 exclusively (1) for religious, charitable, scientific, testing for public
36 safety, literary or educational purposes; or (2) for the prevention of
37 cruelty to children or animals; or (3) as a volunteer fire company,
38 rescue, ambulance, first aid or emergency company or squad; or (4) as
39 a National Guard organization, post or association, or as a post or
40 organization of war veterans, or the Marine Corps League, or as an
41 auxiliary unit or society of any such post, organization or association;
42 or (5) as an association of parents and teachers of an elementary or
43 secondary public or private school exempt under the provisions of this
44 section. Such a sale, charge, use or occupancy by, or a sale or charge
45 to, an organization enumerated in this subsection, shall not be subject
46 to the sales and use taxes only if no part of the net earnings of the

1 organization inures to the benefit of any private shareholder or
2 individual, no substantial part of the activities of the organization is
3 carrying on propaganda, or otherwise attempting to influence
4 legislation, and the organization does not participate in, or intervene
5 in (including the publishing or distributing of statements), any political
6 campaign on behalf of any candidate for public office.

7 (c) Nothing in this section shall exempt from the taxes imposed
8 under the "Sales and Use Tax Act":

9 (1) the sale of a motor vehicle by an organization described in
10 subsection (b) of this section, unless the purchaser is an organization
11 exempt under this section;

12 (2) retail sales of tangible personal property by any shop or store
13 operated by an organization described in subsection (b) of this section,
14 unless the tangible personal property was received by the organization
15 as a gift or contribution and the shop or store is one in which
16 substantially all the work in carrying on the business of the shop or
17 store is performed for the organization without compensation and
18 substantially all of the shop's or store's merchandise has been received
19 by the organization as gifts or contributions or unless the purchaser is
20 an organization exempt under this section; or

21 (3) the sale or use of energy or utility service to or by an
22 organization described in paragraph (1) of subsection (a) or subsection
23 (b) of this section.

24 (d) Any organization enumerated in subsection (b) of this section
25 shall not be entitled to an exemption granted pursuant to this section
26 unless it has complied with such requirements for obtaining a tax
27 immunity authorization as may be provided in this act.

28 (e) Where any organization described in subsection (b) of this
29 subsection carries on its activities in furtherance of the purposes for
30 which it was organized, in premises in which, as part of those
31 activities, it operates a hotel, occupancy of rooms in the premises and
32 rents from those rooms received by the organization shall not be
33 subject to tax under the "Sales and Use Tax Act."

34 (f) (1) Except as provided in paragraph (2) of this subsection, any
35 admissions all of the proceeds of which inure exclusively to the benefit
36 of the following organizations shall not be subject to any of the taxes
37 imposed under subsection (e) of section 3 of P.L.1966, c.30
38 (C.54:32B-3):

39 (A) an organization described in paragraph (1) of subsection (a) or
40 subsection (b) of this section;

41 (B) a society or organization conducted for the sole purpose of
42 maintaining symphony orchestras or operas and receiving substantial
43 support from voluntary contributions; or

44 (C) (Deleted by amendment, P.L.1999, c.416).

45 (D) a police or fire department of a political subdivision of the
46 State, or a volunteer fire company, ambulance, first aid, or emergency

1 company or squad, or exclusively to a retirement, pension or disability
2 fund for the sole benefit of members of a police or fire department or
3 to a fund for the heirs of such members.

4 (2) The exemption provided under paragraph (1) of this subsection
5 shall not apply in the case of admissions to:

6 (A) Any athletic game or exhibition unless the proceeds shall inure
7 exclusively to the benefit of elementary or secondary schools or unless
8 in the case of an athletic game between two elementary or secondary
9 schools, the entire gross proceeds from such game shall inure to the
10 benefit of one or more organizations described in subsection (b) of this
11 section;

12 (B) Carnivals, rodeos, or circuses in which any professional
13 performer or operator participates for compensation;

14 (3) Admission charges for admission to the following places or
15 events shall not be subject to any of the taxes imposed under
16 subsection (e) of section 3 of P.L.1966, c.30 (C.54:32B-3):

17 (A) Any admission to agricultural fairs if no part of the net earnings
18 thereof inures to the benefit of any stockholders or members of the
19 association conducting the same; provided the proceeds therefrom are
20 used exclusively for the improvement, maintenance and operation of
21 such agricultural fairs.

22 (B) Any admission to a home or garden which is temporarily open
23 to the general public as a part of a program conducted by a society or
24 organization to permit the inspection of historical homes and gardens;
25 provided no part of the net earnings thereof inures to the benefit of
26 any private stockholder or individual.

27 (C) Any admissions to historic sites, houses and shrines, and
28 museums conducted in connection therewith, maintained and operated
29 by a society or organization devoted to the preservation and
30 maintenance of such historic sites, houses, shrines and museums;
31 provided no part of the net earnings thereof inures to the benefit of
32 any private stockholder or individual.

33 (cf: P.L.1999, c.416, s.1)

34

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

37 10. (a) Receipts from any sale of a motor vehicle, an aircraft or a
38 boat or other vessel shall not be subject to the retail sales tax imposed
39 under subsection (a) of section 3, despite the taking of physical
40 possession by the purchaser within this State, provided that the
41 purchaser, at the time of taking delivery:

42 (1) is a nonresident of this State,

43 (2) has no permanent place of abode in this State,

44 (3) is not engaged in carrying on in this State any employment,
45 trade, business or profession in which the motor vehicle, aircraft or
46 boat or other vessel will be used in this State,

1 (4) prior to taking delivery, furnishes to the [vendor] seller: any
2 affidavit, statement or additional evidence, documentary or otherwise,
3 which the director may require to assure proper administration of the
4 tax imposed upon subsection (a) of section 3, and

5 (5) will not house, moor, base or otherwise place the aircraft, boat
6 or other vessel in this State for use on other than a transient basis or
7 for repairs at any time within 12 months from the date of purchase. In
8 the event that any of the conditions specified in this subsection (a)
9 have not been met, the exemption herein granted shall not be
10 applicable and the purchaser shall be liable for the payment of the
11 sales tax.

12 (b) A [vendor] seller shall not be liable for failure to collect tax on
13 receipts from any sale of a motor vehicle, an aircraft or a boat or
14 other vessel; provided that the [vendor] seller prior to making
15 delivery obtains and keeps available for inspection by the director any
16 affidavit, statement or additional evidence, documentary or otherwise,
17 as may be required to be furnished under subsection (a) above;
18 provided, that such affidavit, statement or additional evidence is not
19 known by the [vendor] seller, prior to making physical delivery of the
20 motor vehicle, aircraft or boat or other vessel, to be false.

21 (cf: P.L.1981, c.332, s.1)

22

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

25 11. The following uses of property shall not be subject to the
26 compensating use tax imposed under this act:

27 (1) In respect to the use of property used by the purchaser in this
28 State prior to July 1, 1966.

29 (2) In respect to the use of property purchased by the user while a
30 nonresident of this State, except in the case of tangible personal
31 property which the user, in the performance of a contract, incorporates
32 into real property located in the State [or except in the case of
33 tangible personal property purchased for lease]. A person while
34 engaged in any manner in carrying on in this State any employment,
35 trade, business or profession, not entirely in interstate or foreign
36 commerce, shall not be deemed a nonresident with respect to the use
37 in this State of property in such employment, trade, business or
38 profession.

39 (3) In respect to the use of property or services upon the sale of
40 which the purchaser would be expressly exempt from the taxes
41 imposed under subsection (a) or (b) of section 3.

42 (4) In respect to the use of property which is converted into or
43 becomes a component part of a product produced for sale or for
44 market sampling by the purchaser.

45 (5) In respect to the use of paper in the application of newspapers

1 and periodicals.

2 (6) In respect to the use of property or services to the extent that
3 a retail sales or use tax was legally due and paid thereon, without any
4 right to a refund or credit thereof, to any other State or jurisdiction
5 within any other state but only when it is shown that such other State
6 or jurisdiction allows a corresponding exemption with respect to the
7 sale or use of tangible personal property or services upon which such
8 a sales tax or compensating use tax was paid to this State. To the
9 extent that the tax imposed by this act is at a higher rate than the rate
10 of tax in the first taxing jurisdiction, this exemption shall be
11 inapplicable and the tax imposed by section 6 of this act shall apply to
12 the extent of the difference in such rates.

13 (7) In respect to the use of natural gas by an eligible person, other
14 than a co-generation facility, as defined in section 34 of
15 P.L.1997,c.162 (C.54:32B-14.1), up to the base level of volume as
16 defined in section 34 of P.L.1997, c.162, but only as long as the
17 eligible person remains at the same physical site that was occupied on
18 December 31, 1995.

19 (cf: P.L.1997, c.162, s.28)

20

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

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

31 (b) For the purpose of the proper administration of this act and to
32 prevent evasion of the tax hereby imposed, and subject to the rules
33 regarding the administration of exemptions authorized by the
34 Streamlined Sales and Use Tax Agreement, it shall be presumed that
35 all receipts for property or services of any type mentioned in
36 subsections (a), (b) and (c) of section 3, all rents for occupancy of the
37 type mentioned in subsection (d) of said section, and all amusement
38 charges of any type mentioned in subsection (e) of said section, are
39 subject to tax until the contrary is established, and the burden of
40 proving that any such receipt, amusement charge or rent is not taxable
41 hereunder shall be upon the person required to collect tax or the
42 customer. Unless a [vendor] seller shall have taken from the
43 purchaser a certificate, signed by the purchaser if in paper form and
44 bearing [his] the purchaser's name and address and the number of
45 [his] the purchaser's registration certificate, to the effect that the
46 property or service was purchased for resale or the purchaser prior to

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

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

41 (cf: P.L.1997, c.162, s.29)

42

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

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

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

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

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

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

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

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

40 (g) In connection with a purchaser's request from a seller of
41 over-collected sales or use taxes, a seller shall be presumed to have a
42 reasonable business practice, if in the collection of such sales or use
43 taxes, the seller: (1) uses either a provider or a system, including a
44 proprietary system, that is certified by the State; and (2) has remitted
45 to the State all taxes collected less any deductions, credits, or

1 collection allowances.

2 (cf: P.L.2003, c.42, s.1)

3

4 22. Section 34 of P.L.1997, c.162 (C.54:32B-14.1) is amended to
5 read as follows:

6 34. a. As used in this act, "eligible person" means any person other
7 than a co-generation facility as defined in this act whose last purchase
8 and delivery of natural gas on or before December 31, 1995 was from
9 a non-utility, or a cogeneration facility which ceased operation in 1996
10 and subsequently began to purchase non-utility natural gas, and who
11 satisfactorily documents such purchase to the director.

12 b. An eligible person shall determine and certify to the director, and
13 satisfactorily document to the director, a base level of volume as of
14 December 31, 1995 or December 31, 1996 in the case of a
15 co-generation facility which ceased operation in 1996 and
16 subsequently began to purchase non-utility natural gas, which shall be
17 equal to the average annual volume of natural gas units purchased by
18 the eligible person from any non-utility and delivered, but such
19 computation shall not include any purchases delivered prior to
20 January 1, 1992, provided however, that the base level of volume of
21 an eligible person other than a co-generation facility shall be reduced
22 on an annual basis beginning in 1999 by multiplying the base level of
23 volume as of December 31, 1995 by the following reduction ratios:
24 0.8 in 1999, 0.6 in 2000, 0.4 in 2001 and 0.2 in 2002. In 2003 and
25 thereafter there shall be no exemption for purchases of natural gas by
26 an eligible person other than a co-generation facility.

27 c. For purchases of natural gas from a non-utility on and after
28 January 1, 1998 through December 31, 2002, an eligible person shall
29 issue a direct payment certificate to the non-utility and shall pay any
30 sales or use tax due pursuant to the method prescribed by this section.
31 Unless specifically exempt from the tax imposed under the Sales and
32 Use Tax Act pursuant to subsection b. of section 26 of P.L.1997,
33 c.162 (C.54:32B-8.46), utility service is subject to the tax imposed
34 pursuant to section 3 of P.L.1966, c.30 (C.54:32B-3).

35 d. On an annual basis, each eligible person, other than a
36 co-generation facility, shall be required to file with the director:

37 (1) An energy volume report, which shall contain a certification as
38 to the gross annual volume of gas (in units) purchased and delivered
39 in the previous 12-month period from any non-utility and utility, the
40 purchase price per unit, and any additional information that the
41 director deems necessary to effectuate the provisions herein; and

42 (2) An energy use tax return, wherein any tax due on natural gas
43 purchased from a utility or non-utility shall be reported and remitted
44 as follows:

45 (a) If the certified gross annual volume (in units) was purchased
46 solely from a non-utility, and does not exceed the base level of

1 volume, no sales and use tax shall be due on purchases of natural gas
2 in that calendar year;

3 (b) If the certified gross annual volume (in units) was purchased
4 solely from a non-utility, and exceeds the base level of volume, the
5 sales and use tax shall be remitted on the purchases of natural gas that
6 exceed the base level of volume, based on the purchase price of the
7 gas; and

8 (c) If the certified gross annual volume in units was purchased from
9 both a utility and non-utility [vendor] seller or solely from a utility
10 [vendor] seller, the director shall refund to the eligible person all sales
11 taxes paid on purchases not in excess of the base level of volume. The
12 eligible person shall remit to the director all unpaid sales taxes on the
13 purchases of natural gas that exceed the base level of volume, based
14 on the purchase price.

15 (cf: P.L.1997, c.162, s.34)

16

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

19 15. (a) On or before June 20, 1966, or in the case of persons
20 commencing business or opening new places of business after such
21 date, within three days after such commencement or opening, every
22 person required to collect any tax imposed by this act and every
23 person purchasing tangible personal property for resale [or lease]
24 shall file with the director a certificate of registration in a form
25 prescribed by the director. In the case of a person commencing
26 business or opening a new place of business on or after the first day of
27 the third month following the enactment of P.L.1993, c.274
28 (C.40:52-1.3 et al.), the certificate shall be filed at least 15 business
29 days before the commencement or opening. The director shall within
30 five days after such registration issue, without charge, to each
31 registrant a certificate of authority empowering the registrant to
32 collect the tax and a duplicate thereof for each additional place of
33 business of such registrant. Each certificate or duplicate shall state the
34 place of business to which it is applicable. Such certificate of
35 authority shall be prominently displayed in the place of business of the
36 registrant. A registrant who has no regular place of doing business
37 shall attach such certificate to his cart, stand, truck or other
38 merchandising device. Such certificates shall be nonassignable and
39 nontransferable and shall be surrendered to the director immediately
40 upon the registrant's ceasing to do business at the place named.

41 (b) Any person who is not otherwise required to collect any tax
42 imposed by this act and who makes sales to persons within the State
43 of tangible personal property or services, the use of which is subject
44 to tax under this act, may if he so elects file a certificate of registration
45 with the director who may, in his discretion and subject to such
46 conditions as he may impose, issue to him a certificate of authority to

1 collect the compensating use tax imposed by this act.

2 (c) A seller that registers to pay or collect and remit sales or use tax
3 in accordance with the terms of the Streamlined Sales and Use Tax
4 Agreement may select one of the following methods of remittance or
5 other method allowed by State law to remit the taxes collected, subject
6 to the liabilities and conditions established pursuant to section 10 of
7 P.L.2001, c.431 (C.54:32B-53):

8 (1) a model 1 seller, that selects a certified service provider as an
9 agent to perform all the seller's sales or use tax functions, other than
10 the seller's obligation to remit tax on its own purchases;

11 (2) a model 2 seller, that selects a certified automated system to use
12 which calculates the amount of tax due on a transaction; or

13 (3) a model 3 seller, that uses its own proprietary automated sales
14 tax system that has been certified as a certified automated system.

15 (d) A certified service provider in model 1 shall be allowed a
16 monetary allowance in accordance with the terms of the contract that
17 the states participating in the Streamlined Sales and Use Tax
18 Agreement sign with the provider. The director shall prescribe the
19 allowance in accordance with the terms of the contract, which shall be
20 funded entirely from money collected in model 1.

21 A monetary allowance to a certified service provider may be based
22 on one or more of the following incentives:

23 (1) A base rate that applies to taxable transactions processed by the
24 provider.

25 (2) For a period not to exceed 24 months following a voluntary
26 seller's registration through the Streamlined Sales and Use Tax
27 Agreement's central registration process, a percentage of tax revenue
28 generated for a member state by the voluntary seller for each member
29 state for which the seller does not have a requirement to register to
30 collect the tax.

31 (e) A model 2 seller shall be allowed a monetary allowance which
32 the director shall prescribe in accordance with the terms arrived at by
33 the member states of the Streamlined Sales and Use Tax Agreement.
34 The member states initially anticipate that they will provide a monetary
35 allowance to sellers under model 2 based on the following:

36 (1) Each seller shall receive a base rate for a period not to exceed
37 24 months following the commencement of participation by the seller.

38 (2) For a period not to exceed 24 months following a voluntary
39 seller's registration through the Streamlined Sales and Use Tax
40 Agreement's central registration process, a percentage of tax revenue
41 generated for a member state by the voluntary seller for each member
42 state for which the seller does not have a requirement to register to
43 collect the tax.

44 (f) A model 3 seller and all other sellers that are not under model 1
45 or model 2 shall be allowed a monetary allowance which the director
46 shall prescribe in accordance with the terms arrived at by the member

1 states of the Streamlined Sales and Use Tax Agreement. The member
2 states initially anticipate that they will provide a monetary allowance
3 to sellers under model 3 and to all other sellers that are not under
4 models 1 or 2 will be based on the following: for a period not to
5 exceed 24 months following a voluntary seller's registration through
6 the Streamlined Sales and Use Tax Agreement's central registration
7 process, a percentage of tax revenue generated for a member state by
8 the voluntary seller for each member state for which the seller does not
9 have a requirement to register to collect the tax.

10 (cf: P.L.1993, c.274, s.1)

11

12 24. Section 17 of P.L.1966, c.30 (C.54:32B-17) is amended to read
13 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
16 ~~[twenty-eighth]~~ twentieth day of each month thereafter, make and file
17 a return for the preceding month with the director. The return of a
18 ~~[vendor]~~ seller of tangible personal property or services shall show his
19 receipts from sales and also the aggregate value of tangible personal
20 property and services sold by him, the use of which is subject to tax
21 under this act, and the amount of taxes required to be collected with
22 respect to such sales and use. The return of a recipient of amusement
23 charges shall show all such charges and the amount of tax thereon,
24 and the return of a person required to collect tax on leases or
25 ~~[rents]~~ rentals shall show all ~~[rents]~~ lease or rental payments received
26 or charged and the amount of tax thereon.

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

35 (c) The form of returns shall be prescribed by the director and shall
36 contain such information as he may deem necessary for the proper
37 administration of this act. The director may require amended returns
38 to be filed within 20 days after notice and to contain the information
39 specified in the notice.

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

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

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

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

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

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

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

41 (6) The "amnesty" granted pursuant to paragraph (1) of this
42 subsection shall apply only to sales or use taxes due from a seller in its
43 capacity as a seller and shall not apply to sales or use taxes due from
44 a seller in its capacity as a buyer.

45 (cf: P.L.1967, c.25, s.4)

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

3 18. Every person required to file a return under this act shall, at the
4 time of filing such return, pay to the director the taxes imposed by this
5 act as well as all other moneys collected by such person acting or
6 purporting to act under the provisions of this act. All the taxes for the
7 period for which a return is required to be filed or for such lesser
8 interval as shall have been designated by the director, shall be due and
9 payable to the director on the date limited for the filing of the return
10 for such period, or on the date limited for such lesser interval as the
11 director has designated, without regard to whether a return is filed or
12 whether the return which is filed correctly shows the amount of
13 receipts, amusement charges or rents or the value of property or
14 services sold or purchased or the taxes due thereon. Where the
15 director, in ~~[his]~~ the director's discretion, deems it necessary to
16 protect the revenues to be obtained under this act, ~~[he]~~ the director
17 may require any person required to collect the tax imposed by this act
18 to file ~~[with him]~~ a bond with the director, issued by a surety
19 company authorized to transact business in this State and approved
20 by the Commissioner of Banking and Insurance of this State as to
21 solvency and responsibility, in such amount as the director may fix, to
22 secure the payment of any tax or penalties or interest due or which
23 may become due from such person under this act. In the event that
24 the director determines that a ~~[vendor]~~ seller is to file such bond,
25 ~~[he]~~ the director shall give notice to ~~[him]~~ the seller to that effect,
26 specifying the amount of the bond required. Such person shall file
27 such bond within 5 days after the giving of such notice unless within
28 such 5 days ~~[he]~~ that person shall request in writing a hearing before
29 the director at which the necessity, propriety and amount of the bond
30 shall be determined by the director. Such determination shall be final
31 and shall be complied with within 15 days after the giving of notice
32 thereof. In lieu of such bond, securities approved by the director or
33 cash in such amount as ~~[he]~~ the director may prescribe, may be
34 deposited, which shall be kept in the custody of the director who may
35 at any time without notice to the depositor apply them to any tax or
36 interest or penalties due, and for that purpose the securities may be
37 sold by ~~[him]~~ the director at public or private sale without notice to
38 the depositor thereof.

39 (cf: P.L.1967, c.25, s.5)

40

41 26. (New section) a. The retail sale, excluding lease or rental, of
42 a product shall be sourced as follows:

43 (1) If the product is received by the purchaser at a business location
44 of the seller, then the sale shall be sourced to that business location.

45 (2) If the product is not received by the purchaser at a business
46 location of the seller, then the sale shall be sourced to the location

1 where receipt by the purchaser (or the purchaser's donee, designated
2 as such by the purchaser) occurs, including the location indicated by
3 instructions for delivery to the purchaser (or donee), known to the
4 seller.

5 (3) If paragraphs (1) and (2) of this subsection do not apply, then
6 the sale shall be sourced to the location indicated by an address for the
7 purchaser that is available from the business records of the seller that
8 are maintained in the ordinary course of the seller's business when use
9 of this address does not constitute bad faith.

10 (4) If paragraphs (1), (2), and (3) of this subsection do not apply,
11 then the sale shall be sourced to the location indicated by an address
12 for the purchaser obtained during the consummation of the sale,
13 including the address of a purchaser's payment instrument, if no other
14 address is available, if use of this address does not constitute bad faith.

15 (5) If the rules of paragraphs (1), (2), (3), or (4) of this subsection
16 do not apply, including the circumstance in which the seller is without
17 sufficient information to apply the previous rules, then the location
18 shall be determined by the address from which tangible personal
19 property was shipped, from which the digital good or the computer
20 software delivered electronically was first available for transmission by
21 the seller, or from which the service was provided (disregarding for
22 these purposes any location that merely provided the digital transfer
23 of the product sold).

24 b. The lease or rental of tangible personal property, other than
25 property identified in subsection c. or subsection d. of this section,
26 shall be sourced as follows:

27 (1) If a lease or rental that requires recurring periodic payments,
28 then the first periodic payment shall be sourced the same as a retail
29 sale in accordance with the provisions of subsection a. of this section.
30 Periodic payments made subsequent to the first payment shall be
31 sourced to the primary property location for each period covered by
32 the payment. The primary property location shall be as indicated by an
33 address for the property provided by the lessee that is available to the
34 lessor from its records maintained in the ordinary course of business,
35 when use of this address does not constitute bad faith. The property
36 location shall not be altered by intermittent use at different locations,
37 such as use of business property that accompanies employees on
38 business trips and service calls.

39 (2) If a lease or rental does not require recurring periodic payments,
40 then the payment shall be sourced the same as a retail sale in
41 accordance with the provisions of subsection a. of this section.

42 (3) This subsection shall not affect the imposition or computation
43 of sales or use tax on leases or rentals based on a lump sum or
44 accelerated basis, or on the acquisition of property for lease.

45 c. The lease or rental of motor vehicles, trailers, semi-trailers, or
46 aircraft that do not qualify as transportation equipment, as defined in

1 subsection d. of this section, shall be sourced as follows:

2 (1) If a lease or rental requires recurring periodic payments, then
3 each periodic payment shall be sourced to the primary property
4 location. The primary property location shall be as indicated by an
5 address for the property provided by the lessee that is available to the
6 lessor from its records maintained in the ordinary course of business,
7 if use of this address does not constitute bad faith. This location shall
8 not be altered by intermittent use at different locations.

9 (2) If a lease or rental does not require recurring periodic payments,
10 then the payment shall be sourced the same as a retail sale in
11 accordance with the provisions of subsection a. of this section.

12 (3) This subsection shall not affect the imposition or computation
13 of sales or use tax on leases or rentals based on a lump sum or
14 accelerated basis, or on the acquisition of property for lease.

15 d. The retail sale, including lease or rental, of transportation
16 equipment shall be sourced the same as a retail sale in accordance with
17 the provisions of subsection a. of this section, notwithstanding the
18 exclusion of lease or rental under subsection a. of this section.

19 e. For the purposes of this section,

20 "Transportation equipment" means:

21 (1) Locomotives and railcars that are utilized for the carriage of
22 persons or property in interstate commerce;

23 (2) Trucks and truck-tractors with a Gross Vehicle Weight Rating
24 (GVWR) of 10,001 pounds or greater, trailers, semi-trailers, or
25 passenger buses that are:

26 A. Registered through the International Registration Plan; and

27 B. Operated under authority of a carrier authorized and certificated
28 by the U.S. Department of Transportation or another federal authority
29 to engage in the carriage of persons or property in interstate
30 commerce;

31 (3) Aircraft that are operated by air carriers authorized and
32 certificated by the U.S. Department of Transportation or another
33 federal or a foreign authority to engage in the carriage of persons or
34 property in interstate or foreign commerce; or

35 (4) Containers designed for use on and component parts attached
36 or secured on the items set forth in subsections (d)(1) through (d)(3);
37 and

38 "Receive" and "receipt" mean:

39 (1) Taking possession of tangible personal property,

40 (2). Making first use of services, or

41 (3) Taking possession or making first use of digital goods,
42 whichever comes first.

43 The terms "receive" and "receipt" do not include possession by a
44 shipping company on behalf of the purchaser.

45

46 27. (New section) a. Notwithstanding the general sourcing

1 provisions of section 26 of P.L. , c. (C.) (now pending before
2 the Legislature as this bill), a business purchaser that is not a holder of
3 a direct pay permit that knows at the time of its purchase of a digital
4 good, computer software delivered electronically, or a service that the
5 digital good, computer software delivered electronically, or service
6 will be concurrently available for use in more than one jurisdiction
7 shall deliver to the seller in conjunction with its purchase a multiple
8 points of use exemption form ("MPU exemption form") disclosing this
9 fact.

10 b. Upon receipt of the MPU exemption form, the seller shall be
11 relieved of all obligation to collect, pay, or remit the applicable tax and
12 the purchaser shall be obligated to collect, pay, or remit the applicable
13 tax on a direct pay basis.

14 c. A purchaser delivering the MPU exemption form may use any
15 reasonable, but consistent and uniform, method of apportionment that
16 is supported by the purchaser's business records as they exist at the
17 time of the consummation of the sale.

18 d. The MPU exemption form shall remain in effect for all future
19 sales by the seller to the purchaser (except as to the subsequent sale's
20 specific apportionment that is governed by the principle of subsection
21 c. of this section and the facts existing at the time of the sale) until it
22 is revoked in writing.

23 e. A holder of a direct pay permit shall not be required to deliver
24 a MPU exemption form to the seller. A direct pay permit holder shall
25 follow the provisions of subsection c. of this section in apportioning
26 the tax due on a digital good or a service that will be concurrently
27 available for use in more than one jurisdiction.

28

29 28. (New section) a. Notwithstanding the general sourcing
30 provisions of section 26 of P.L. , c. (C.) (now pending before
31 the Legislature as this bill), a purchaser of direct mail that is not a
32 holder of a direct pay permit shall provide to the seller in conjunction
33 with the purchase either a direct mail form or information to show the
34 jurisdictions to which the direct mail is delivered to recipients.

35 (1) Upon receipt of the direct mail form, the seller shall be relieved
36 of all obligations to collect, pay, or remit the applicable tax and the
37 purchaser shall be obligated to pay or remit the applicable tax on a
38 direct pay basis. A direct mail form shall remain in effect for all future
39 sales of direct mail by the seller to the purchaser until it is revoked in
40 writing.

41 (2) Upon receipt of information from the purchaser showing the
42 jurisdictions to which the direct mail is delivered to recipients, the
43 seller shall collect the tax according to the delivery information
44 provided by the purchaser. In the absence of bad faith, the seller shall
45 be relieved of any further obligation to collect tax on any transaction
46 for which the seller has collected tax pursuant to the delivery

1 information provided by the purchaser.

2 b. If the purchaser of direct mail does not have a direct pay permit
3 and does not provide the seller with either a direct mail form or
4 delivery information, as required by subsection a. of this section, the
5 seller shall collect the tax according to paragraph (5) of subsection a.
6 of section 26 of P.L. , c. (C.) (now pending before the
7 Legislature as this bill). Nothing in this subsection shall limit a
8 purchaser's obligation for sales or use tax to any state to which the
9 direct mail is delivered.

10 c. If a purchaser of direct mail provides the seller with
11 documentation of direct pay authority, the purchaser shall not be
12 required to provide a direct mail form or delivery information to the
13 seller.

14

15 29. (New section) a. Notwithstanding the general sourcing
16 provisions of section 26 of P.L. , c. (C.) (now pending before
17 the Legislature as this bill), except for the telecommunication services
18 enumerated in subsection c. of this section, the sale of
19 telecommunication service sold on a call-by-call basis shall be sourced
20 to:

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

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

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

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

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

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

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

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

42 (3) A sale of prepaid calling service shall be sourced in accordance
43 with the general sourcing provisions of section 26 of P.L. , c.
44 (C.) (now pending before the Legislature as this bill); provided
45 however, that in the case of a sale of mobile telecommunications
46 service that is a prepaid telecommunications service, the rule provided

1 in paragraph (5) of subsection (a) of that section shall include as an
2 option the location associated with the mobile telephone number.

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

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

8 (b) Service for which all customer termination points are located
9 entirely within one jurisdiction or levels of jurisdiction shall be sourced
10 to such jurisdiction in which the customer channel termination points
11 are located.

12 (c) Service for segments of a channel between two customer
13 channel termination points located in different jurisdictions and which
14 segments of channel are separately charged shall be sourced fifty
15 percent to each level of jurisdiction in which the customer channel
16 termination points are located.

17 (d) Service for segments of a channel located in more than one
18 jurisdiction or levels of jurisdiction and which segments of channel are
19 not separately billed shall be sourced to each jurisdiction based on the
20 percentage determined by dividing the number of customer channel
21 termination points in such jurisdiction by the total number of customer
22 channel termination points.

23 d. For the purposes of this section:

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

28 "Call-by-call basis" means any method of charging for
29 telecommunications services in which the price is measured by
30 individual calls;

31 "Communications channel" means a physical or virtual path of
32 communications over which signals are transmitted between or among
33 customer channel termination points;

34 "Customer" means the person or entity that contracts with the seller
35 of telecommunications services. If the end user of telecommunications
36 services is not the contracting party, then end user of the
37 telecommunications service is the customer of the telecommunication
38 service, but this provision applies only for the purpose of sourcing
39 sales of telecommunications services under this section. "Customer"
40 does not include a reseller of telecommunications service or for mobile
41 telecommunications service of a serving carrier under an agreement to
42 serve the customer outside the home service provider's licensed service
43 area;

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

46 "End user" means the person who utilizes the telecommunication

1 service. In the case of an entity, "end user" means the individual who
2 utilizes the service on behalf of the entity;

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

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

9 "Place of primary use" means the street address representative of
10 where the customer's use of the telecommunications service primarily
11 occurs, which shall be the residential street address or the primary
12 business street address of the customer. In the case of mobile
13 telecommunications services, "place of primary use" shall be within the
14 licensed service area of the home service provider;

15 "Post-paid calling service" means the telecommunications service
16 obtained by making a payment on a call-by-call basis either through the
17 use of a credit card or payment mechanism such as a bank card, travel
18 card, credit card, or debit card, or by charge made to a telephone
19 number which is not associated with the origination or termination of
20 the telecommunications service. A post-paid calling service includes
21 a telecommunications service that would be a prepaid calling service
22 except it is not exclusively a telecommunications service;

23 "Prepaid calling service" means the right to access exclusively
24 telecommunications services, which shall be paid for in advance that
25 enables the origination of calls using an access number or
26 authorization code, whether manually or electronically dialed, and that
27 is sold in predetermined units or dollars of which the number declines
28 with use in a known amount;

29 "Private communication service" means a telecommunication service
30 that entitles the customer to exclusive or priority use of a
31 communications channel or group of channels between or among
32 termination points, regardless of the manner in which such channel or
33 channels are connected, and includes switching capacity, extension
34 lines, stations, and any other associated services that are provided in
35 connection with the use of such channel or channels; and

36 "Service address" means

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

40 (2) If the location in paragraph (1) of this definition is not known,
41 "service address" means the origination point of the signal of the
42 telecommunications services first identified by either the seller's
43 telecommunications system or in information received by the seller
44 from its service provider, in the case that the system used to transport
45 such signals is not that of the seller; or

46 (3) If the locations in paragraphs (1) and (2) of this definition are

- 1 not known, "service address" means the location of the customer's
2 place of primary use.
3
- 4 30. (New section) a. A seller shall be allowed a deduction from
5 taxable sales for bad debts.
- 6 b. The amount of the deduction from taxable sales allowed
7 pursuant to subsection a. of this section shall not include interest.
- 8 c. For the purposes of this section, "bad debt" has the same
9 meaning as that term is defined by 26 U.S.C. s.166 as the basis for
10 calculating bad debt recovery; provided however, the amount
11 calculated pursuant to 26 U.S.C. s.166 shall be adjusted to exclude:
12 financing charges or interest; sales or use taxes charged on the
13 purchase price; uncollectible amounts on property that remain in the
14 possession of the seller until the full purchase price is paid; expenses
15 incurred in attempting to collect any debt, and repossessed property.
- 16 d. The deduction from taxable sales allowed pursuant to subsection
17 a. of this section shall be deducted on the return for the period during
18 which the bad debt is written off as uncollectible in the claimant's
19 books and records and is eligible to be deducted for federal income tax
20 purposes. For purposes of this subsection, a claimant who is not
21 required to file federal income tax returns may deduct a bad debt on
22 a return filed for the period in which the bad debt is written off as
23 uncollectible in the claimant's books and records and would be eligible
24 for a bad debt deduction for federal income tax purposes if the
25 claimant was required to file a federal income tax return.
- 26 e. If the deduction from taxable sales allowed pursuant to
27 subsection a. of this section is taken for a bad debt and the debt is
28 subsequently collected in whole or in part, the tax on the amount so
29 collected shall be paid and reported on the return filed for the period
30 in which the collection is made.
- 31 f. If the amount of the deduction from taxable sales allowed
32 pursuant to subsection a. of this section exceeds the amount of taxable
33 sales for the period during which the bad debt is written off, a refund
34 claim may be filed within four years from the due date of the return on
35 which the bad debt could first be claimed.
- 36 g. If filing responsibilities have been assumed by a certified service
37 provider, the certified services provider may claim, on behalf of the
38 seller, any deduction from taxable sales allowed pursuant to subsection
39 a. of this section. The certified service provider shall credit or refund
40 the full amount of any bad debt allowance or refund received to the
41 seller.
- 42 h. For the purposes of reporting a payment received on a bad debt
43 for which the deduction from taxable sales allowed pursuant to
44 subsection a. of this section was previously claimed, any payments
45 made on a debt or account shall first be applied proportionally to the

1 taxable price of the property or service and the sales tax thereon, and
2 secondly to interest, service charges, and any other charges.

3 i. In situations in which the books and records of the party claiming
4 the deduction from taxable sales allowed pursuant to subsection a. of
5 this section support an allocation of the bad debts among the member
6 states, the allocation shall be permitted.

7

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

10 24. General powers of the director. In addition to the powers
11 granted to the director in this act, the director is hereby authorized and
12 empowered:

13 1. To make, adopt and amend rules and regulations appropriate to
14 the carrying out of this act and the purposes thereof;

15 2. To extend, for cause shown by general regulation or individual
16 authorization, the time of filing any return for a period not exceeding
17 three months on such terms and conditions as the director may require;
18 and for cause shown, to remit penalties and interest as provided for in
19 the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.;

20 3. To delegate the director's functions hereunder to any officer or
21 employee of the director's division such of the director's powers as the
22 director may deem necessary to carry out efficiently the provisions of
23 this act, and the person or persons to whom such power has been
24 delegated shall possess and may exercise all of the power and perform
25 all of the duties herein conferred and imposed upon the director;

26 4. To prescribe methods for determining the amount of receipt,
27 amusement charges, or rents and for determining which of them are
28 taxable and which are nontaxable;

29 5. To require any person required to collect tax to keep detailed
30 records of all receipts, amusement charges, or rents received, charged
31 or accrued, including those claimed to be nontaxable, and also of the
32 nature, type, value and amount of all purchases, sales, services
33 rendered, admissions, occupancies, names and addresses of customers,
34 and other facts relevant in determining the amount of tax due and to
35 furnish such information upon request to the director;

36 6. To assess, determine, revise and readjust the taxes imposed by
37 this act;

38 7. To publish and maintain, as the director deems necessary, lists
39 of specific items of tangible personal property which are found to be
40 foods and drugs exempt from tax under sections 13 and 14 of
41 P.L.1980, c.105 (C.54:32B-8.1 and 54:32B-8.2);

42 8. To enter into agreements with other states and the District of
43 Columbia, providing for the reciprocal enforcement of the sales and
44 use tax laws imposed by the states entering into such an agreement.
45 Such agreement may empower the duly authorized officer of any
46 contracting state, which extends like authority to officers or employees

1 of this State, to sue for the collection of that state's sales and use taxes
2 in the courts of this State;

3 9. To require alcoholic beverage wholesalers to make report of
4 sales to retailers, as wholesaler and retailer are defined pursuant to the
5 "New Jersey Alcoholic Beverage Control Act," R.S.33:1-1 et seq.,
6 with such content, in such form and at such times as the director may
7 prescribe. The information provided to the director under this
8 paragraph shall identify retailers by their sales tax registration number
9 issued pursuant to section 15 of P.L.1966, c.30 (C.54:32B-15) and
10 shall be available for transmission to the director by electronic means,
11 or computer tape or disc, as the director may require.

12 10. To give due regard to the provisions of the Streamlined Sales
13 and Use Tax Agreement regarding rate changes .

14 (cf: P.L.1995, c.161, s.1)

15

16 32. Section 20 of P.L.1966, c.30 (C.54:32B-20) is amended to read
17 as follows:

18 20. (a) In the manner provided in this section the director shall
19 refund or credit any tax, penalty or interest erroneously, illegally or
20 unconstitutionally collected or paid if application to the director for
21 such refund shall be made within four years from the payment thereof.
22 Such application may be made by a customer who has actually paid the
23 tax. Such application may also be made by a person required to
24 collect the tax, who has collected and paid over such tax to the
25 director, provided that the application is made within four years of the
26 payment to him by the customer, but no actual refund of moneys shall
27 be made to such person until the person shall first establish to the
28 satisfaction of the director, under such regulations as the director may
29 prescribe, that the person has repaid to the customer the amount for
30 which the application for refund is made. The director may, in lieu of
31 any refund, allow credit on payments due from the applicant.

32 (b) A person shall not be entitled to a revision, refund or credit
33 under this section of a tax, interest or penalty which had been
34 determined to be due pursuant to the provisions of section 19 of
35 P.L.1966, c.30 (C.54:32B-19) where the person has had a hearing or
36 an opportunity for a hearing as provided in said section or has failed
37 to use the remedies therein provided unless the person otherwise meets
38 the requirements of subsection b. of R.S.54:49-14. No refund or
39 credit shall be made of a tax, interest or penalty paid after a
40 determination by the director made pursuant to section 19 of
41 P.L.1966, c.30 (C.54:32B-19) unless it be found that such
42 determination was erroneous, illegal or unconstitutional or otherwise
43 improper, pursuant to law, in which event refund or credit shall be
44 made of the tax, interest or penalty found to have been overpaid.

45 (c) (1) A purchaser may seek a refund of over-collected sales or use
46 tax from the seller. This refund procedure shall provide the first course

1 of remedy available to a purchaser seeking such a refund. A cause of
2 action seeking a return of over-collected sales or use taxes from the
3 seller shall not accrue until the purchaser has provided written notice
4 to a seller and the seller has had sixty days to respond. Such notice
5 shall contain the information necessary to determine the validity of the
6 request.

7 (2) In connection with a purchaser's request from a seller of
8 over-collected sales or use tax, the seller shall be presumed to have a
9 reasonable business practice, if in the collection of such sales or use
10 taxes, the seller:

11 (i) uses either a provider or a system including a proprietary system,
12 certified by the State; and

13 (ii) has remitted to the State all taxes collected less any deductions,
14 credits, or collection allowances.

15 (cf: P.L.1998, c.106, s.7)

16
17 33. (New section) On and after October 1, 2005:

18 a. The effective date of any sales and use tax rate change shall be
19 the first day of the calendar quarter next succeeding the expiration of
20 one full calendar quarter immediately following enactment of the rate
21 change;

22 b. Any exemption, exception or exclusion from sales and use
23 taxation shall be enacted only in accordance with the applicable
24 provisions of the Streamlined Sales and Use Tax Agreement;

25 c. The State shall be subject to the uniform rules for the remittance
26 of funds as provided in the Streamlined Sales and Use Tax Agreement;

27 d. The State shall be subject to the privacy and confidentiality
28 provisions provided in the Streamlined Sales and Use Tax Agreement
29 for participants in the system and consumers who deal with Model 1
30 sellers;

31 e. The uniform rules for the recovery of bad debts contained in the
32 Streamlined Sales and Use Tax Agreement shall be in effect; and

33 f. The State shall not use registration with the central registration
34 system and the collection of sales and use taxes in the member states
35 as a factor in determining whether the seller has nexus with this State
36 for any tax at any time.

37
38 34 (New section) Notwithstanding the provisions of P.L. ,
39 c. , (now pending before the Legislature as this bill), to the contrary,
40 the definition of "lease or rental" enacted by P.L. , c. shall
41 be applied only prospectively from the date of enactment of P.L. ,
42 c. and shall have no retroactive impact on existing leases or rentals.
43 The definition shall not have any impact on the treatment of
44 sale-leaseback transactions entered into before the date of enactment
45 of P.L. , c .

1 35. (New section) a. There is hereby created in the Department of
2 Treasury a special account, to be known as the "Streamlined Sales Tax
3 Fund." There shall be deposited into this account the sales and use tax
4 revenue derived from amendments and supplements to P.L.1966, c.32
5 (C.54:32B-1 et seq.) by reason of the State's participation in the
6 Streamlined Sales and Use Tax Agreement as authorized under section
7 5 of P.L.2001, c.431 (C.54:32B-48), and as enacted under the
8 provisions of P.L. , c. (now pending before the Legislature as this
9 bill). The Director of the Division of Taxation, subject to review and
10 approval by the Director of the Division of Budget and Accounting,
11 shall certify to the Treasurer the amount to be deposited into the
12 "Streamlined Sales Tax Fund" by the last day of the month following
13 the close of each sales tax reporting quarter. The director may use for
14 this purpose an estimate of an amount equal to the anticipated
15 membership dues and other costs of participation in the Streamlined
16 Sales and Use Tax Agreement. Amounts in the account shall be
17 annually appropriated for the payment of dues payable by this State to
18 the governing board and for other costs of administration of the
19 Streamlined Sales and Use Tax Agreement allocated and assessed to
20 this State by the governing board in consequence of this State
21 participating in the agreement.

22 b. The Director of the Division of Taxation may request an
23 additional annual allocation of funds to reimburse the division for costs
24 incurred in administration and enforcement of the Sales and Use Tax
25 Streamlining Agreement on behalf of this State. Such allocation shall
26 be made within the limits of funds appropriated or otherwise made
27 available for this purpose.

28 c. The Director of the Division of Taxation may request additional
29 allocations of funds to reimburse the division for costs and expenses
30 incurred by the division and its employees in participating in
31 multi-state discussions as authorized pursuant to section 4 of
32 P.L.2001, c.431 (C.54:32B-47). Such allocation shall be made within
33 the limits of funds appropriated or otherwise made available for this
34 purpose.

35

36 36. (New section) For each quarterly sales tax reporting period,
37 the Director of the Division of Taxation shall report to the State
38 Treasurer the amount of sales and use tax revenue received from
39 sellers that do not have a requirement to register to collect sales and
40 use tax pursuant to New Jersey law and the total monetary allowance
41 paid to certified service providers. If in any quarter, the monetary
42 allowance provided to certified service providers exceeds 80 percent
43 of the sales tax revenue received from sellers using a certified service
44 provider that do not have a requirement to register to collect tax, the
45 State Treasurer is authorized to withdraw from the agreement
46 pursuant to the procedures specified in the Streamlined Sales and Use

1 Tax Agreement.

2

3 37. Section 6 of P.L.1989, c.123 (C.54:32B-8.40) is repealed.

4

5 38. This act shall take effect October 1, 2005.

6

7

8

9

10 Conforms the sales and use tax to the Streamlined Sales and Use Tax

11 Agreement to provide for entry therein.

ASSEMBLY, No. 3473

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED NOVEMBER 4, 2004

Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Assemblyman UPENDRA J. CHIVUKULA

District 17 (Middlesex and Somerset)

SYNOPSIS

Conforms the sales and use tax to the Streamlined Sales and Use Tax Agreement to provide for entry therein.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/15/2005)

1 AN ACT conforming the sales and use tax to the Streamlined Sales and
2 Use Tax Agreement to provide for entry therein, amending
3 P.L.1980, c.105, P.L.1981, c.546, P.L.1985, c.24, P.L.1993,
4 c.226, P.L.1993, c.373, and P.L.1997, c.162, amending and
5 supplementing P.L.1966, c.30, and repealing section 6 of
6 P.L.1989, c.123.

7

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

10

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

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

15 (a) "Person [~~. Person~~]" includes an individual, trust, partnership,
16 limited partnership, limited liability company, society, association, joint
17 stock company, corporation, public corporation or public authority,
18 estate, receiver, trustee, assignee, referee, fiduciary and any other
19 [person acting in a fiduciary or representative capacity, whether
20 appointed by a court or otherwise, and any combination of the
21 foregoing] legal entity.

22 (b) "Purchase at retail [~~. A~~]" means a purchase by any person at
23 a retail sale.

24 (c) "Purchaser [~~. A~~]" means a person to whom a sale of personal
25 property is made or to whom a service is furnished [~~who purchases~~
26 ~~property or who receives services~~].

27 (d) "Receipt [~~. The~~]" means the amount of the sales price of any
28 tangible personal property [and the charge for any] or service taxable
29 under this act[, valued in money, whether received in money or
30 otherwise, including any amount for which credit is allowed by the
31 vendor to the purchaser, without any deduction for expenses or early
32 payment discounts, but excluding any credit for property of the same
33 kind that is not tangible personal property purchased for lease
34 accepted in part payment and intended for resale, excluding the cost
35 of transportation where such cost is separately stated in the written
36 contract, if any, and on the bill rendered to the purchaser, and
37 excluding the amount of the sales price for which food stamps have
38 been properly tendered in full or part payment pursuant to the federal
39 Food Stamp Act of 1977, Pub.L.95-113 (7 U.S.C. s.2011 et seq.)].

40 (e) "Retail sale [~~. (1) A~~]" means any sale, lease, or rental [~~of~~
41 ~~tangible personal property to any person~~] for any purpose, other than
42 for resale, sublease, or subrent.

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 (1) For the purposes of this act a sale is for "resale, sublease, or
2 subrent" if it is a sale (A) for resale either as such or as converted into
3 or as a component part of a product produced for sale by the
4 purchaser, including the conversion of natural gas into another
5 intermediate or end product, other than electricity or thermal energy,
6 produced for sale by the purchaser, or (B) for use by that person in
7 performing the services subject to tax under subsection (b) of section
8 3 where the property so sold becomes a physical component part of
9 the property upon which the services are performed or where the
10 property so sold is later actually transferred to the purchaser of the
11 service in conjunction with the performance of the service subject to
12 tax.

13 (2) For the purposes of this act, the term "retail sale" includes:
14 sales of tangible personal property to all contractors, subcontractors
15 or repairmen of materials and supplies for use by them in erecting
16 structures for others, or building on, or otherwise improving, altering,
17 or repairing real property of others.

18 (3) [For the purposes of this act, the term retail sale includes the
19 purchase of tangible personal property for lease] (Deleted by
20 amendment, P.L. _____, c. _____)(now pending before the Legislature as
21 this bill).

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

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

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

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

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

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

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

38 (G) The sale of tangible personal property where the purpose of the
39 vendee is to hold the thing transferred as security for the performance
40 of an obligation of the [vender] seller.

41 (f) "Sale, selling or purchase [. Any] " means any transfer of title
42 or possession or both, exchange or barter, rental, lease or license to
43 use or consume, conditional or otherwise, in any manner or by any
44 means whatsoever for a consideration, or any agreement therefor,
45 including the rendering of any service, taxable under this act, for a
46 consideration or any agreement therefor.

1 (g) "Tangible personal property [. Corporeal personal property of
2 any nature including energy] " means personal property that can be
3 seen, weighed, measured, felt, or touched, or that is in any other
4 manner perceptible to the senses. "Tangible personal property"
5 includes electricity, water, gas, steam, and prewritten computer
6 software.

7 (h) "Use [. The] " means the exercise of any right or power over
8 tangible personal property by the purchaser thereof and includes, but
9 is not limited to, the receiving, storage or any keeping or retention for
10 any length of time, withdrawal from storage, any distribution, any
11 installation, any affixation to real or personal property, or any
12 consumption of such property. Use also includes the exercise of any
13 right or power over intrastate or interstate telecommunications and
14 prepaid [telephone] calling [arrangements] services. Use also
15 includes the exercise of any right or power over utility service.

16 (i) [Vendor. (1) The term "vendor"] "Seller" means a person
17 making sales, leases or rentals of personal property or services.

18 (1) The term "seller" includes:

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

21 (B) A person maintaining a place of business in the State and
22 making sales, whether at such place of business or elsewhere, to
23 persons within the State of tangible personal property or services, the
24 use of which is taxed by this act;

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

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

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

39 (F) [A person who purchases tangible personal property for lease,
40 whether in this State or elsewhere. For the purposes of Title 54 of the
41 Revised Statutes, the presence of leased tangible personal property in
42 this State is deemed to be a place of business in this State](~~Deleted by~~
43 amendment, P.L. _____, c. _____)(now pending before the Legislature as
44 this bill); and

45 (G) A person who sells, stores, delivers or transports energy to
46 users or customers in this State whether by mains, lines or pipes

1 located within this State or by any other means of delivery.

2 (2) In addition, when in the opinion of the director it is necessary
3 for the efficient administration of this act to treat any salesman,
4 representative, peddler or canvasser as the agent of the [vendor]
5 seller, distributor, supervisor or employer under whom [he] the agent
6 operates or from whom [he] the agent obtains tangible personal
7 property sold by [him] the agent or for whom [he] the agent solicits
8 business, the director may, in [his] the directors's discretion, treat
9 such agent as the [vendor] seller jointly responsible with [his] the
10 agent's principal, distributor, supervisor or employer for the collection
11 and payment over of the tax.

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

16 (k) "Occupancy [. The] means the use or possession or the right
17 to the use or possession, of any room in a hotel.

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

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

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

28 (o) "Admission charge [. The]" means the amount paid for
29 admission, including any service charge and any charge for
30 entertainment or amusement or for the use of facilities therefor.

31 (p) "Amusement charge [. Any] " means any admission charge,
32 dues or charge of roof garden, cabaret or other similar place.

33 (q) "Charge of a roof garden, cabaret or other similar place [.
34 Any] " means any charge made for admission, refreshment, service, or
35 merchandise at a roof garden, cabaret or other similar place.

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

40 (s) "Lessor [. Any] " means any person who is the owner,
41 licensee, or lessee of any premises or tangible personal property which
42 [he] the person leases, subleases, or grants a license to use to other
43 persons.

44 (t) "Place of amusement [. Any] " means any place where any
45 facilities for entertainment, amusement, or sports are provided.

1 (u) "Casual sale [~~. Casual sale~~]" means an isolated or occasional
2 sale of an item of tangible personal property by a person who is not
3 regularly engaged in the business of making retail sales [~~at retail~~] of
4 such property where [~~such property~~] the item was obtained by the
5 person making the sale, through purchase or otherwise, for [~~his~~] the
6 person's own use [~~in this State~~].

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

12 (w) "Persons required to collect tax" or "persons required to
13 collect any tax imposed by this act" [~~shall include~~] includes: every
14 [~~vendor~~] seller of tangible personal property or services; every
15 recipient of amusement charges; every operator of a hotel; [~~every~~
16 ~~lessor;~~] and every [~~vendor~~] seller of telecommunications. Said terms
17 shall also include any officer or employee of a corporation or of a
18 dissolved corporation who as such officer or employee is under a duty
19 to act for such corporation in complying with any requirement of this
20 act and any member of a partnership. [~~Provided, however, the vendor~~
21 ~~of tangible personal property to all contractors, subcontractors or~~
22 ~~repairmen, consisting of materials and supplies for use by them in~~
23 ~~erecting structures for others, or building on, or otherwise improving,~~
24 ~~altering or repairing real property of others, shall not be deemed a~~
25 ~~person required to collect tax, and the tax imposed by any section of~~
26 ~~this act shall be paid directly to the director by such contractors,~~
27 ~~subcontractors or repairmen.~~]

28 (x) "Customer" [~~shall include~~] includes: every purchaser of
29 tangible personal property or services; every patron paying or liable
30 for the payment of any amusement charge; and every occupant of a
31 room or rooms in a hotel.

32 (y) "Property and services the use of which is subject to tax" [~~shall~~
33 ~~include~~] includes: (1) all property sold to a person within the State,
34 whether or not the sale is made within the State, the use of which
35 property is subject to tax under section 6 or will become subject to tax
36 when such property is received by or comes into the possession or
37 control of such person within the State; (2) all services rendered to a
38 person within the State, whether or not such services are performed
39 within the State, upon tangible personal property the use of which is
40 subject to tax under section 6 or will become subject to tax when such
41 property is distributed within the State or is received by or comes into
42 possession or control of such person within the State; (3) intrastate or
43 interstate telecommunications [~~, other than mobile telecommunications~~
44 ~~services,~~] charged to a service address in this State and sourced to this
45 State pursuant to section 29 of P.L. , c. (C.) (now pending

1 before the Legislature as this bill); (4) (Deleted by amendment,
2 P.L.1995, c.184); (5) energy sold, exchanged or delivered in this State
3 for use in this State; (6) utility service sold, exchanged or delivered in
4 this State for use in this State; (7) direct mail [advertising] processing
5 services in connection with [advertising or promotional material]
6 direct mail distributed in this State.

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

13 (aa) "Lease or rental" means [the possession or control of tangible
14 personal property by an agreement, not transferring sole title, as may
15 be evidenced by a contract, contracts, or by implication from other
16 circumstances including course of dealing or usage of trade or course
17 of performance, for a period of more than 28 days] any transfer of
18 possession or control of tangible personal property for a fixed or
19 indeterminate term for consideration. A "lease or rental" may include
20 future options to purchase or extend.

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

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

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

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

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

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

44 (bb) ["The amount of the sales price" of tangible personal property
45 purchased for lease means, at the election of the lessor, either (1) the
46 amount of the lessor's purchase price or (2) the amount of the total of

1 the lease payments attributable to the lease of such property. Tangible
2 personal property purchased for lease is subject to the provisions of
3 subsection (a) of section 3 of P.L.1966, c.30 (C.54:32B-3)] (Deleted
4 by amendment, P.L. _____, c. _____)(now pending before the Legislature
5 as this bill).

6 (cc) "Telecommunications" means the act or privilege of
7 originating or receiving messages or information through the use of
8 any kind of one-way or two-way communication; including but not
9 limited to voice, video, facsimile, teletypewriter, computer, mobile
10 telecommunications service or any other type of communication; using
11 electronic or electromagnetic methods, and all services and equipment
12 provided in connection therewith or by means thereof.
13 "Telecommunications" shall not include:

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

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

21 (3) services provided by a person, or by that person's wholly
22 owned subsidiary, not engaged in the business of rendering or offering
23 telecommunications services to the public, for private and exclusive
24 use within its organization, provided however, that
25 "telecommunications" shall include the sale of telecommunications
26 services attributable to the excess unused telecommunications capacity
27 of that person to another;

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

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

33 (6) purchases of telecommunications using a prepaid telephone
34 arrangement.

35 (dd) "Interstate telecommunication" means any telecommunication
36 that originates or terminates inside this State, including international
37 telecommunication. In the case of mobile telecommunications service,
38 "interstate telecommunication" means any mobile telecommunications
39 service that originates in one state and terminates in another state,
40 territory, or foreign country that is provided to a customer with a
41 place of primary use in this State.

42 (ee) "Intrastate telecommunication" means any telecommunication
43 that originates and terminates within this State. In the case of mobile
44 telecommunications service, "intrastate telecommunication" means any
45 mobile telecommunications service that originates and terminates
46 within the same state that is provided to a customer with a place of

1 primary use in this State.

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

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

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

8 (ii) "Self-generation unit" means a facility located on the user's
9 property, or on property purchased or leased from the user by the
10 person owning the self-generation unit and such property is contiguous
11 to the user's property, which generates electricity to be used only by
12 that user on the user's property and is not transported to the user over
13 wires that cross a property line or public thoroughfare unless the
14 property line or public thoroughfare merely bifurcates the user's or
15 self-generation unit owner's otherwise contiguous property.

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

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

26 (ll) "Pre-paid [telephone] calling [arrangement] service" means
27 the right to purchase exclusively telecommunications services, that
28 must be paid for in advance, that enables the origination of calls using
29 an access number or authorization code, whether manually or
30 electronically dialed; provided, that the remaining amount of units of
31 service that have been pre-paid shall be known by the service provider
32 on a continuous basis.

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

36 (nn) "Place of primary use" means the street address representative
37 of where the customer's use of the mobile telecommunications service
38 primarily occurs, which shall be the residential street address or the
39 primary business street address of the customer and within the licensed
40 service area of the home service provider. For the purposes of
41 determining the primary place of use, the terms used shall have the
42 meanings provided pursuant to the federal "Mobile
43 Telecommunications Sourcing Act," 4 U.S.C. s.124 (Pub.L.106-252).

44 (oo) (1) "Sales price" is the measure subject to sales tax and means
45 the total amount or consideration, including cash, credit, property, and
46 services, for which personal property or services are sold, leased, or

- 1 rented, valued in money, whether received in money or otherwise,
2 without any deduction for the following:
- 3 (A) The seller's cost of the property sold;
4 (B) The cost of materials used, labor or service cost, interest,
5 losses, all costs of transportation to the seller, all taxes imposed on the
6 seller, and any other expense of the seller;
7 (C) Charges by the seller for any services necessary to complete
8 the sale;
9 (D) Delivery charges, unless separately stated on the invoice, bill
10 or similar document given to purchaser;
11 (E) Installation charges; and
12 (F) The value of exempt personal property given to the purchaser
13 where taxable and exempt personal property have been bundled
14 together and sold by the seller as a single product or piece of
15 merchandise.
- 16 (2) "Sales price" does not include:
- 17 (A) Discounts, including cash, term, or coupons that are not
18 reimbursed by a third party, that are allowed by a seller and taken by
19 a purchaser on a sale;
20 (B) Interest, financing, and carrying charges from credit extended
21 on the sale of personal property or services, if the amount is separately
22 stated on the invoice, bill of sale, or similar document given to the
23 purchaser;
24 (C) Any taxes legally imposed directly on the consumer that are
25 separately stated on the invoice, bill of sale, or similar document given
26 to the purchaser;
27 (D) The amount of sales price for which food stamps have been
28 properly tendered in full or part payment pursuant to the federal Food
29 Stamp Act of 1977, Pub.L. 95-113 (7 U.S.C. s.2011 et seq.); or
30 (E) Credit for any trade-in of property of the same kind accepted
31 in part payment and intended for resale.
- 32 (pp) "Purchase price" means the measure subject to use tax and has
33 the same meaning as "sales price."
- 34 (qq) "Sales tax" means the tax imposed on certain transactions
35 pursuant to the provisions of the "Sales and Use Tax Act," P.L.1966,
36 c.30 (C.54:32B-1 et seq.).
- 37 (rr) "Delivery charges" means charges by the seller for preparation
38 and delivery to a location designated by the purchaser of personal
39 property or services including, but not limited to, transportation,
40 shipping, postage, handling, crating, and packing.
- 41 (ss) "Direct mail" means printed material delivered or distributed
42 by United States mail or other delivery service to a mass audience or
43 to addresses on a mailing list provided by the purchaser or at the
44 direction of the purchaser in cases in which the cost of the items are
45 not billed directly to the recipients. "Direct mail" includes tangible
46 personal property supplied directly or indirectly by the purchaser to

1 the direct mail seller for inclusion in the package containing the printed
2 material. "Direct mail" does not include multiple items of printed
3 material delivered to a single address.

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

8 (cf: P.L.2002, c.45, s.1)

9

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

12 3. There is imposed and there shall be paid a tax of 6% upon:

13 (a) The receipts from every retail sale of tangible personal
14 property, except as otherwise provided in this act. [If the lessor of
15 tangible personal property purchased for lease elects to pay tax on the
16 amount of the sales price as provided in paragraph (2) of subsection
17 (bb) of section 2 of P.L.1966, c.30 (C.54:32B-2), any and each
18 subsequent lease or rental is a retail sale, and a subsequent sale of such
19 property is a retail sale.]

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

22 (1) Producing, fabricating, processing, printing or imprinting
23 tangible personal property, performed for a person who directly or
24 indirectly furnishes the tangible personal property, not purchased by
25 him for resale, upon which such services are performed.

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

42 (3) Storing all tangible personal property not held for sale in the
43 regular course of business and the rental of safe deposit boxes or
44 similar space.

45 (4) Maintaining, servicing or repairing real property, other than a
46 residential heating system unit serving not more than three families

1 living independently of each other and doing their cooking on the
2 premises, whether the services are performed in or outside of a
3 building, as distinguished from adding to or improving such real
4 property by a capital improvement, but excluding services rendered by
5 an individual who is not in a regular trade or business offering his
6 services to the public, and excluding garbage removal and sewer
7 services performed on a regular contractual basis for a term not less
8 than 30 days.

9 (5) Direct-mail [advertising] processing services, except for
10 direct-mail [advertising] processing services in connection with
11 distribution of [advertising or promotional material] direct mail to
12 out-of-State recipients.

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

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

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

20 Services otherwise taxable under paragraph (1) or (2) of this
21 subsection (b) are not subject to the taxes imposed under this
22 subsection, where the tangible personal property upon which the
23 services were performed is delivered to the purchaser outside this
24 State for use outside this State.

25 (c) (1) Receipts from the sale of prepared food [and drink] in or
26 by restaurants, taverns, [vending machines] or other establishments
27 in this State, or by caterers, including in the amount of such receipts
28 any cover, minimum, entertainment or other charge made to patrons
29 or customers[:

30 (1) In all instances where the sale is for consumption on the
31 premises where sold;

32 (2) In those instances where the vendor or any person whose
33 services are arranged for by the vendor, after the delivery of the food
34 or drink by or on behalf of the vendor for consumption off the
35 premises of the vendor, serves or assists in serving, cooks, heats or
36 provides other services with respect to the food or drink], except for
37 meals especially prepared for and delivered to homebound elderly, age
38 60 or older, and to disabled persons, or meals prepared and served at
39 a group-sitting at a location outside of the home to otherwise
40 homebound elderly persons, age 60 or older, and otherwise
41 homebound disabled persons, as all or part of any food service project
42 funded in whole or in part by government or as part of a private,
43 nonprofit food service project available to all such elderly or disabled
44 persons residing within an area of service designated by the private
45 nonprofit organization[;

46 (3) In those instances where the sale is for consumption off the

1 premises of the vendor, and consists of a meal, or food prepared and
2 ready to be eaten, of a kind obtainable in restaurants as the main
3 course of a meal, including a sandwich, except where food other than
4 sandwiches is sold in an unheated state and is of a type commonly sold
5 in the same form and condition in food stores other than those which
6 are principally engaged in selling prepared foods]; and

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

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

16 For the purposes of this subsection:

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

20 "Prepared food," means:

21 A. food sold in a heated state or heated by the seller; or

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

29 C. food sold with eating utensils provided by the seller, including
30 plates, knives, forks, spoons, glasses, cups, napkins, or straws;
31 provided however, that "prepared food" does not include:

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

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

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

39 (d) The rent for every occupancy of a room or rooms in a hotel in
40 this State, except that the tax shall not be imposed upon [(1)] a
41 permanent resident[, or (2) where the rent is not more than at the rate
42 of \$2.00 per day].

43 (e) (1) Any admission charge[, where such admission charge is in
44 excess of \$0.75] to or for the use of any place of amusement in the
45 State, including charges for admission to race tracks, baseball,
46 football, basketball or exhibitions, dramatic or musical arts

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

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

17 (f) (1) The receipts from every sale, except for resale, of intrastate
18 or interstate telecommunications (other than mobile
19 telecommunications services) charged to an address in this State,
20 regardless of where the services are billed or paid.

21 (2) The receipts from every sale, except for resale, of intrastate or
22 interstate mobile telecommunications services billed by or for a
23 customer's home service provider and provided to a customer with a
24 place of primary use in this State. The provisions and definitions of
25 the federal "Mobile Telecommunications Sourcing Act," 4 U.S.C. ss.
26 116-126 (Pub.L. 106-252), are applicable herein.

27 (g) The receipts from every sale, except for resale, of prepaid
28 [telephone] calling [arrangements] service and the recharge of
29 prepaid [telephone] calling [arrangements] service. [If the sale or
30 recharge of a prepaid telephone calling arrangement does not take
31 place at the vendor's place of business, the sale or recharge shall be
32 conclusively determined to take place at the customer's shipping
33 address, or if there is no item shipped, at the customer's billing address
34 or the location associated with the customer's mobile telephone
35 number.]

36 (cf: P.L.2002, c.45, s.2)

37

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

40 4. a. For the purpose of adding and collecting the tax imposed by
41 this act, or an amount equal as nearly as possible or practicable to the
42 average equivalent thereof, to be reimbursed to the [vendor] seller by
43 the purchaser, [the following formula shall be in force and effect:

1	Amount of Sale	Amount of Tax
2		
3	\$0.01 to \$0.10	No Tax
4	0.11 to 0.22	\$0.01
5	0.23 to 0.38	0.02
6	0.39 to 0.56	0.03
7	0.57 to 0.72	0.04
8	0.73 to 0.88	0.05
9	0.89 to \$1.10	0.06

10

11 In addition to a tax of \$0.06 on each full dollar, a tax shall be
 12 collected on each part of a dollar in excess of a full dollar, in
 13 accordance with the above formula.] tax shall be calculated to the
 14 third decimal place. One-half cent (\$0.005) or higher shall be rounded
 15 up to the next cent; less than \$0.005 shall be dropped in order to
 16 round the result down.

17 b. For charges paid by inserting coins into a coin operated
 18 telecommunications device available to the public the tax shall be
 19 computed to the nearest multiple of five cents of the tax otherwise due
 20 pursuant to subsection a. of this section, except that, if the amount of
 21 the tax is midway between multiples of five cents, the next higher
 22 multiple shall apply.
 23 (cf: P.L.1993, c.10, s.2)

24

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

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

1 persons in this State for use in this State, provided however, that
2 utility service used by the facility that provides the service shall not be
3 subject to tax, (G) of direct-mail [advertising] processing services
4 described in paragraph (5) of subsection (b) of section 3 of P.L.1966,
5 c.30 (C.54:32B-3) and (H) of prepaid [telephone] calling service
6 [arrangements] and the recharge of prepaid telephone calling
7 arrangements. For purposes of clause (A) of this section, the tax shall
8 be at the applicable rate, as set forth hereinabove, of the consideration
9 given or contracted to be given for such property or for the use of
10 such property, but excluding any credit for property of the same kind
11 accepted in part payment and intended for resale, plus the cost of
12 transportation, except where such cost is separately stated in the
13 written contract, if any, and on the bill rendered to the purchaser,
14 provided however, that there shall be no exclusion for the cost of the
15 utility service. For the purposes of clause (B) of this section, the tax
16 shall be at the applicable rate, as set forth hereinabove, of the price at
17 which items of the same kind of tangible personal property are offered
18 for sale by the user, or if items of the same kind of tangible personal
19 property are not offered for sale by the user in the regular course of
20 business and are used as such or incorporated into a structure, building
21 or real property the tax shall be at the applicable rate, as set forth
22 hereinabove, of the consideration given or contracted to be given for
23 the tangible personal property manufactured, processed or assembled
24 by the user into the tangible personal property the use of which is
25 subject to use tax pursuant to this section, and the mere storage,
26 keeping, retention or withdrawal from storage of tangible personal
27 property by the person who manufactured, processed or assembled
28 such property shall not be deemed a taxable use by him. For purposes
29 of clause (C) of this section, the tax shall be at the applicable rate, as
30 set forth hereinabove, of the consideration given or contracted to be
31 given for the service, including the consideration for any tangible
32 personal property transferred in conjunction with the performance of
33 the service, plus the cost of transportation, except where such cost is
34 separately stated in the written contract, if any, and on the bill
35 rendered to the purchaser. For the purposes of clause (D) of this
36 section, the tax shall be at the applicable rate on the charge made by
37 the telecommunications service provider. For purposes of clause (F)
38 of this section, the tax shall be at the applicable rate on the charge
39 made by the utility service provider. For purposes of clause (G) of
40 this section, the tax shall be at the applicable rate on that proportion
41 of the amount of all processing costs charged by a direct-mail
42 [advertising] processing service provider that is attributable to the
43 [advertising or promotional material] service distributed in this State.
44 For the purposes of clause (H) of this section, the tax shall be at the
45 applicable rate on the consideration given or contracted to be given for
46 the prepaid [telephone] calling [arrangement] service or the recharge

1 of the prepaid [telephone] calling [arrangement] service.

2 (cf: P.L.2002, c.45, s.3)

3

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

6 7. (a) The retail sales tax imposed under subsection (a) of section
7 3 and the compensating use tax imposed under section 6, when
8 computed in respect to tangible personal property wherever
9 manufactured, processed or assembled and used by such manufacturer,
10 processor or assembler in the regular course of business within this
11 State, shall be based on the price at which items of the same kind of
12 tangible personal property are offered for sale by him.

13 (b) Tangible personal property, which has been purchased by a
14 resident of the State of New Jersey outside of this State for use
15 outside of this State and subsequently becomes subject to the
16 compensating use tax imposed under this act, shall be taxed on the
17 basis of the purchase price of such property, provided, however:

18 (1) That where a taxpayer affirmatively shows that the property
19 was used outside such State by him for more than six months prior to
20 its use within this State, such property shall be taxed on the basis of
21 current market value of the property at the time of its first use within
22 this State. The value of such property, for compensating use tax
23 purposes, may not exceed its cost.

24 (2) That the compensating use tax on such tangible personal
25 property brought into this State (other than for complete consumption
26 or for incorporation into real property located in this State) and used
27 in the performance of a contract or subcontract within this State by a
28 purchaser or user for a period of less than six months may be based,
29 at the option of the taxpayer, on the fair rental value of such property
30 for the period of use within this State.

31 (c) [Leased tangible personal property which has been purchased
32 outside this State for lease outside of this State and subsequently
33 becomes subject to the compensating use tax imposed under this act
34 shall be taxed on the basis of the purchase price of such property,
35 provided however, that the compensating use tax on such property
36 brought into and used within this State may be based, at the option of
37 the lessor, on the total of the lease payments attributable to the lease
38 of that property attributable to the period of the lease remaining after
39 first use in this State] (Deleted by amendment, P.L. _____, c. _____)(now
40 pending before the Legislature as this bill).

41 (d) [Unless tangible personal property purchased for lease has
42 already been subject to the sales tax imposed under subsection (a) of
43 section 3 or the compensating use tax imposed under section 6, the use
44 tax computed with respect to such property, in the discretion of the
45 director, may be assessed against the lessee or sub-lessee and] Sales
46 tax imposed on the lease of tangible personal property in New Jersey

1 shall be based on the total of the periodic payments required under the
2 ~~[lease] agreement.~~ ~~[The fact that the lessee has accepted in good~~
3 ~~faith the certificate of the lessor, in the form prescribed by the~~
4 ~~director, and the fact that the tax imposed on property purchased for~~
5 ~~lease in this act has been paid may be considered by the director, but~~
6 ~~shall not be deemed conclusive if good faith issuance or acceptance of~~
7 ~~such certificate is in question.]~~ The full amount of sales tax due on the
8 complete term of a lease for more than six months shall be remitted
9 with the monthly or quarterly sales and use tax return due for the
10 period in which the lease was entered into in this State. If leased
11 property is subsequently removed on a permanent basis from this
12 State, the lessee shall be entitled to a refund of the tax allocable to the
13 portion of the lease that remains in effect after the property has been
14 removed from this State.

15 (e) The purchase of energy shall be subject to the compensating
16 use tax imposed under section 6 on the basis of the purchase price of
17 the energy, including any charges for utility service.

18 (cf: P.L.1997, c.162, s.20)

19

20 6. Section 1 of P.L.1993, c.226 (C.54:32B-7.1) is amended to read
21 as follows:

22 1. a. ~~[Notwithstanding the provisions of section 3 of P.L.1966,~~
23 ~~c.30 (C.54:32B-3) to the contrary, the]~~ The sale of a race
24 [horses]horse through a claiming [races] race within the State shall
25 be subject to the sales tax imposed by [that] section [only] 3 of
26 P.L.1966, c.30 (C.54:32B-3) on the sales price.

27 b. Notwithstanding the provisions of subsection a. of this section,
28 the purchaser of the horse in the second or a subsequent sale through
29 a claiming race of that horse within the State during a single calendar
30 year shall be allowed a refund on that portion of the tax paid by the
31 purchaser on the amount of the total [purchase] sales price that
32 [exceeds] does not exceed the highest of any prior [purchase
33 prices]sales price paid for the same horse within the State during [the
34 same] that calendar year. Such claim for refund may be made by the
35 purchaser by filing a claim, within three years of the of purchase, with
36 the New Jersey Division of Taxation for a refund of that part of the
37 sales tax paid. If no previous purchases have been made within the
38 calendar year, [the full purchase price shall be subject to the sales tax]
39 no such refund shall be allowed.

40 c. Each holder of a permit to conduct horse racing in this State
41 pursuant to P.L.1940, c.17 (C.5:5-22 et seq.) shall maintain and make
42 available to the Division of Taxation, upon reasonable request, an
43 accurate and detailed list of those sales that may result in a refund
44 claim pursuant to this section.

45 (cf: P.L.1993, c.226, s.1)

1 7. 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 are exempt from the tax
4 imposed under the "Sales and Use Tax Act" : [sales of medicines
5 and]

6 (1) drugs sold pursuant to a doctor's prescription for human use;

7 (2) over-the-counter drugs recommended and generally sold for the
8 relief of pain, ailments, distresses or disorders of the human body;

9 (3) diabetic supplies; [crutches,]

10 (4) artificial limbs, artificial eyes, artificial hearing devices,
11 corrective eyeglasses, prosthetic aids, artificial teeth or dentures,
12 braces, and other prosthetic devices;

13 (5) tampons or like products[,];

14 (6) orthopedic appliances and artificial devices designed to correct
15 or alleviate physical incapacity[,];

16 (7) medical oxygen[,];

17 (8) respiratory equipment[,];

18 (9) human blood and its derivatives when sold for human use[,];

19 (10) transcutaneous electro-neuro stimulators (TENS units), and
20 other durable medical equipment for home use[,];

21 (11) wheelchairs, crutches, stair lifts, and other mobility enhancing
22 equipment; and

23 (12) replacement parts for any of the foregoing exempt devices and
24 equipment.

25 b. As used in this section[, durable] :

26 "Drug" means a compound, substance or preparation, and any
27 component of a compound, substance or preparation, other than food
28 and food ingredients, dietary supplements or alcoholic beverages:

29 (1) recognized for human use in the official United States
30 Pharmacopoeia, official Homeopathic Pharmacopoeia of the United
31 States, or official National Formulary, and supplement to any of them;

32 or

33 (2) intended for use in the diagnosis, cure, mitigation, treatment,
34 or prevention of disease in humans; or

35 (3) intended to affect the structure or any function of the human
36 body.

37 "Over-the-counter-drug" means a drug that contains a label which
38 identifies the product as a drug, required by 21 CFR 201.66. The label
39 includes:

40 (1) a "Drug Facts" panel or

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

45 "Grooming and hygiene product" is soap or cleaning lotion,

1 shampoo, toothpaste, mouthwash, anti-perspirant, or sun tan lotion or
2 screen, regardless of whether the item meets the definition of
3 "over-the-counter drug."

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

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

10 (1) artificially replace a missing portion of the body; or

11 (2) prevent or correct a physical deformity or malfunction; or

12 (3) support a weak or deformed portion of the body.

13 "Durable medical equipment" means equipment, but not including
14 mobility enhancing equipment, that:

15 [a.] (1) can withstand repeated use;

16 [b.] (2) is primarily and customarily used to serve a medical
17 purpose;

18 [c.] 3. is generally not useful to a person in the absence of illness
19 or injury; and

20 [d.] 4. [is appropriate for use in the home]is not worn in or on the
21 body.

22 "Mobility enhancing equipment" means equipment, other than
23 durable medical equipment, that:

24 1. is primarily and customarily used to provide or increase the
25 ability to move from one place to another and which is appropriate for
26 use either at home or in a motor vehicle; and

27 3. is not generally used by persons with normal mobility; and

28 4. does not include any motor vehicle or equipment on a motor
29 vehicle normally provided by a motor vehicle manufacturer.

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

38 (cf: P.L.1987, c.383, s.1)

39

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

42 14. a. Receipts from the following are exempt from the tax
43 imposed under the "Sales and Use Tax Act:" sales of food[,]and food
44 [products , beverages,] ingredients and dietary [foods and health]
45 supplements, sold for human consumption off the premises where sold

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

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

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 requiring
13 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 dietary
18 substance for use by humans to supplement the diet by increasing the
19 total dietary intake; a concentrate, metabolite, constituent, extract, or
20 combination of any ingredient described herein;

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

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

28 "Food and food ingredients" means substances, whether in liquid,
29 concentrated, solid, frozen, dried, or dehydrated form, that are sold for
30 ingestion or chewing by humans and are consumed for their taste or
31 nutritional value. "Food and food ingredients" does not include
32 substances that contain one-half of one per cent or more of alcohol by
33 volume or items that contain tobacco, such as cigarettes, cigars,
34 chewing or pipe tobacco; and

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

39 (cf: P.L.1980, c.107, s.2)

40

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

43 16. a. Receipts from sales of articles of clothing and footwear for
44 human use [except articles made of fur on the hide or pelt of an animal
45 or animals where such fur is the component material of chief value of
46 the article] are exempt from the tax imposed under the "Sales and Use

1 Tax Act." ["Clothing" as used in this section shall also mean and
2 include sales to noncommercial purchasers of common wearing apparel
3 materials intended to be incorporated into wearing apparel as a
4 constituent part thereof, such as fabrics, thread, knitting yarn, buttons
5 and zippers. The director shall prescribe regulations to carry out the
6 provisions of this section.] This exemption does not apply to clothing
7 accessories or equipment, sport or recreational equipment, or
8 protective equipment.

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

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

16 d. As used in this section:

17 "Clothing" means all human wearing apparel suitable for general
18 use. Clothing shall not include: clothing accessories or equipment,
19 sport or recreational equipment, protective equipment, sewing
20 equipment and supplies, or sewing materials that become part of
21 clothing.

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

24 "Protective equipment" means items for human wear and designed
25 as protection of the wearer against injury or disease or as protections
26 against damage or injury of other persons or property but not suitable
27 for general use.

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

31 (cf: P.L.1980, c.105, s.16)

32

33 10. Section 18 of P.L.1980, c.105 (C.54:32B-8.6) is amended to
34 read as follows:

35 18. Receipts from casual sales except as to sales of motor vehicles,
36 whether for use on the highways or otherwise, except as to sales of
37 boats or vessels registered or subject to registration under the "New
38 Jersey Boat Act of 1962," P.L.1962, c.73 (C.12:7-34.36 et seq.), and
39 all amendments and supplements thereto, [and except as to sales of
40 tangible personal property purchased for lease which property was
41 granted exemption from tax pursuant to section 6 of P.L.1989, c.123
42 (C.54:32B-8.40),] are exempt from the tax imposed under the "Sales
43 and Use Tax Act." A manufactured home, as defined in subsection d.
44 of section 3 of P.L.1983, c.400 (C.54:4-1.4) shall not be deemed a
45 motor vehicle for the purposes of this section.

46 (cf: P.L.1989, c.123, s.4)

1 11. Section 33 of P.L.1980, c.105 (C.54:32B-8.21) is amended to
2 read as follows:

3 33. Receipts from sales of school textbooks for use by students in
4 a school, college, university or other educational institution, approved
5 as such by the Department of Education or by the Department of
6 Higher Education, when the educational institution, upon forms and
7 pursuant to regulations prescribed by the director, has declared the
8 books are required for school purposes and the purchaser has supplied
9 the [vendor] seller with the form at the time of the sale are exempt
10 from the tax imposed under the Sales and Use Tax Act.

11 (cf: P.L.1980, c.105, s.33)

12

13 12. Section 1 of P.L.1981, c.546 (C.54:32B-8.36) is amended to
14 read as follows:

15 1. a. Receipts from the sales of recycling equipment are exempt
16 from the tax imposed under the "Sales and Use Tax Act." For
17 purposes of this subsection "recycling equipment" means any
18 equipment which is used exclusively to sort and prepare solid waste
19 for recycling or in the recycling of solid waste. "Recycling equipment"
20 does not include conventional motor vehicles, or any equipment used
21 in a process after the first marketable product is produced, or in the
22 case of recycling iron or steel, any equipment used to reduce the waste
23 to molten state and in any process thereafter.

24 b. (1) Receipts from the sales of treatment equipment or
25 conveyance equipment are exempt from the tax imposed under the
26 "Sales and Use Tax Act," provided that the Commissioner of the
27 Department of Environmental Protection has determined that the
28 operation of the system in which the equipment is being or is to be
29 used, and the reuse of wastewater effluent that results from that
30 operation, are or will be beneficial to the environment. For purposes
31 of this subsection, "treatment equipment" means any equipment that is
32 used exclusively to treat effluent from a primary wastewater treatment
33 facility, which effluent would otherwise have been discharged into the
34 waters of the State, for purposes of reuse in an industrial process
35 thereafter, and "conveyance equipment" means any equipment that is
36 used exclusively to transport that effluent to the facility in which the
37 treatment equipment has been or is to be installed and to transport the
38 product of that further treatment to the site of that reuse.

39 (2) Notwithstanding the provisions of paragraph (1) of this
40 subsection, the [vendor] seller shall charge and collect the tax from
41 the purchaser on such sales at the rate then in effect, and the tax shall
42 be refunded to the purchaser by the filing of a claim, within three years
43 of the date of purchase, with the New Jersey Division of Taxation for
44 a refund of sales or use tax paid. Proof of claim for refund shall be
45 demonstrated by a copy of a determination of environmental benefit
46 issued to the purchaser by the Commissioner of the Department of

1 Environmental Protection pursuant to section 1 of P.L.2001, c.321
2 (C.54:10A-5.31), and by any additional information as the director
3 may require, including but not limited to proof of tax paid.
4 (cf: P.L.2001, c.322, s.1)

5
6 13. Section 1 of P.L.1985, c.24 (C.54:32B-8.39) is amended to
7 read as follows:

8 1. Receipts from sales of [advertising or promotional materials
9 which are prepared within or outside of the State of New Jersey]
10 direct mail for distribution [by a New Jersey direct-mail advertising or
11 promotional firm] to out-of-State recipients and receipts from sales of
12 direct-mail [advertising] processing services in connection with
13 distribution of [advertising or promotional materials] direct mail to
14 out-of-State recipients are exempt from the tax imposed under the
15 "Sales and Use Tax Act." The exemption provided by this section
16 shall apply to receipts from charges for the printing or production of
17 [advertising and promotional materials] direct mail whether prepared
18 in, or shipped into New Jersey after preparation and stored for
19 subsequent shipment to out-of-State customers. The direct-mail
20 [advertising] processing services exemption provided by [the] this
21 section shall apply to receipts from charges for all direct mail
22 processing services for distribution to out-of-State recipients,
23 including but not limited to the following: preparing and maintaining
24 mailing lists, addressing, separating, folding, inserting, sorting and
25 packaging [advertising or promotional] direct mail materials and
26 transporting to the point of shipment by the mail service or other
27 carrier.

28 (cf: P.L.1987, c.268, s.2)

29
30 14. Section 1 of P.L.1993, c.373 (C.54:32B-8.45) is amended to
31 read as follows:

32 1. a. Receipts of retail sales, except retail sales of motor vehicles,
33 of alcoholic beverages as defined in the "Alcoholic Beverage Tax
34 Law," R.S.54:41-1 et seq., and cigarettes as defined in the "Cigarette
35 Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.), made by a [vendor]
36 qualified seller during a period of certification pursuant to subsection
37 b. of this section from a place of business regularly operated by the
38 [vendor] seller for the purpose of making retail sales at which items
39 are regularly exhibited and offered for retail sale and which is not
40 utilized primarily for the purpose of catalogue or mail order sales, in
41 which county is situated an entrance to an interstate bridge or tunnel
42 connecting New Jersey with a state that does not impose a retail sales
43 and use tax or imposes a retail sales and use tax at a rate at least five
44 percentage points lower than the rate in this State, are exempt to the
45 extent of 50% of the tax imposed under the "Sales and Use Tax Act,"

1 P.L.1966, c.30 (C.54:32B-1 et seq.). The State Treasurer shall
2 annually designate the county or counties in which this exemption shall
3 apply.

4 b. The exemption provided by subsection a. of this section shall
5 apply only upon the application of a qualified seller for, and the
6 issuance of, a reduced rate certification by the director. Reduced rate
7 certifications shall be issued for a calendar year in which the reduced
8 rate exemption is to apply, and a qualified seller shall reapply for
9 recertification annually. The director shall issue such forms and
10 prescribe such procedures as may be necessary for certification and
11 annual renewal by a qualified seller. The director may at any time
12 revoke a certification if the director determines that the seller is not in
13 compliance with the requirements for certification.

14 (cf: P.L.1993, c.373, s.1)

15

16 15. (New section) Receipts from sales of prewritten software
17 delivered electronically are exempt from the tax imposed under the
18 "Sales and Use Tax Act", P.L.1966, c.30 (C.54:32B-1 et seq.). The
19 exemption provided by this section shall not apply to receipts from
20 sales of prewritten software delivered by a load and leave method.

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

24 "Computer software" means a set of coded instruction designed to
25 cause a computer or automatic data processing equipment to perform
26 a task.

27 "Delivered electronically" means delivered from the seller to the
28 purchaser by means other than tangible storage media.

29 "Electronic" means relating to technology having electrical, digital
30 magnetic, wireless, optical, electromagnetic, or similar capabilities.

31 "Load and leave" means delivery to the purchaser by the use of a
32 tangible storage medium where the tangible storage medium is not
33 physically transferred to the purchaser.

34 "Prewritten computer software" means computer software,
35 including prewritten upgrades, which is not designed and developed by
36 the author or other creator to the specifications of a specific
37 purchaser. The combining of two or more prewritten computer
38 software programs or pre-written portions thereof shall not cause the
39 combination to be other than prewritten computer software.
40 "Prewritten computer software" includes software designed and
41 developed by the author or other creator to the specifications of a
42 specific purchaser when it is sold to a person other than such
43 purchaser. If a person modifies or enhances computer software of
44 which that person is not the author or creator, the person shall be
45 deemed to be the author or creator only of such person's modifications
46 or enhancements. Prewritten software or a prewritten portion thereof

1 that is modified or enhanced to any degree, where such modification
2 or enhancement is designed and developed to the specifications of a
3 specific purchaser, shall remain pre-written software; provided,
4 however, that if there is a reasonable, separately stated charge or an
5 invoice or other statement of the price given to the purchaser for such
6 modification or enhancement, such modification or enhancement shall
7 not constitute pre-written computer software. "Prewritten computer
8 software" shall not include software delivered electronically.

9
10 16. (New section) Receipts from a sale-leaseback transaction are
11 exempt from the tax imposed under the "Sales and Use Tax Act",
12 P.L.1966, c.30 (C.54:32B-1 et seq.). For purposes of this section, a
13 "sale-leaseback" means a transaction where the owner of tangible
14 property sells the property to a lessor, who leases it back to the owner
15 within 180 days from when the property was originally placed in
16 service by the owner. A sale-leaseback shall be considered a financing
17 arrangement and shall not be considered a separate sale, use, or lease
18 of the property.

19
20 17. Section 9 of P.L.1966, c.30 (C.54:32B-9) is amended to read
21 as follows:

22 9. (a) Except as to motor vehicles sold by any of the following, any
23 sale, service or amusement charge by or to any of the following or any
24 use or occupancy by any of the following shall not be subject to the
25 sales and use taxes imposed under this act:

26 (1) The State of New Jersey, or any of its agencies,
27 instrumentalities, public authorities, public corporations (including a
28 public corporation created pursuant to agreement or compact with
29 another state) or political subdivisions where it is the purchaser, user
30 or consumer, or where it is a [vendor] seller of services or property
31 of a kind not ordinarily sold by private persons;

32 (2) The United States of America, and any of its agencies and
33 instrumentalities, insofar as it is immune from taxation where it is the
34 purchaser, user or consumer, or where it sells services or property of
35 a kind not ordinarily sold by private persons;

36 (3) The United Nations or any international organization of which
37 the United States of America is a member where it is the purchaser,
38 user or consumer, or where it sells services or property of a kind not
39 ordinarily sold by private persons.

40 (b) Except as otherwise provided in this section any sale or
41 amusement charge by or to any of the following or any use or
42 occupancy by any of the following, where such sale, charge, use or
43 occupancy is directly related to the purposes for which the following
44 have been organized, shall not be subject to the sales and use taxes
45 imposed under this act: a corporation, association, trust, or
46 community chest, fund or foundation, organized and operated

1 exclusively (1) for religious, charitable, scientific, testing for public
2 safety, literary or educational purposes; or (2) for the prevention of
3 cruelty to children or animals; or (3) as a volunteer fire company,
4 rescue, ambulance, first aid or emergency company or squad; or (4) as
5 a National Guard organization, post or association, or as a post or
6 organization of war veterans, or the Marine Corps League, or as an
7 auxiliary unit or society of any such post, organization or association;
8 or (5) as an association of parents and teachers of an elementary or
9 secondary public or private school exempt under the provisions of this
10 section. Such a sale, charge, use or occupancy by, or a sale or charge
11 to, an organization enumerated in this subsection, shall not be subject
12 to the sales and use taxes only if no part of the net earnings of the
13 organization inures to the benefit of any private shareholder or
14 individual, no substantial part of the activities of the organization is
15 carrying on propaganda, or otherwise attempting to influence
16 legislation, and the organization does not participate in, or intervene
17 in (including the publishing or distributing of statements), any political
18 campaign on behalf of any candidate for public office.

19 (c) Nothing in this section shall exempt from the taxes imposed
20 under the "Sales and Use Tax Act":

21 (1) the sale of a motor vehicle by an organization described in
22 subsection (b) of this section, unless the purchaser is an organization
23 exempt under this section;

24 (2) retail sales of tangible personal property by any shop or store
25 operated by an organization described in subsection (b) of this section,
26 unless the tangible personal property was received by the organization
27 as a gift or contribution and the shop or store is one in which
28 substantially all the work in carrying on the business of the shop or
29 store is performed for the organization without compensation and
30 substantially all of the shop's or store's merchandise has been received
31 by the organization as gifts or contributions or unless the purchaser is
32 an organization exempt under this section; or

33 (3) the sale or use of energy or utility service to or by an
34 organization described in paragraph (1) of subsection (a) or subsection
35 (b) of this section.

36 (d) Any organization enumerated in subsection (b) of this section
37 shall not be entitled to an exemption granted pursuant to this section
38 unless it has complied with such requirements for obtaining a tax
39 immunity authorization as may be provided in this act.

40 (e) Where any organization described in subsection (b) of this
41 subsection carries on its activities in furtherance of the purposes for
42 which it was organized, in premises in which, as part of those
43 activities, it operates a hotel, occupancy of rooms in the premises and
44 rents from those rooms received by the organization shall not be
45 subject to tax under the "Sales and Use Tax Act."

46 (f) (1) Except as provided in paragraph (2) of this subsection, any

1 admissions all of the proceeds of which inure exclusively to the benefit
2 of the following organizations shall not be subject to any of the taxes
3 imposed under subsection (e) of section 3 of P.L.1966, c.30
4 (C.54:32B-3):

5 (A) an organization described in paragraph (1) of subsection (a) or
6 subsection (b) of this section;

7 (B) a society or organization conducted for the sole purpose of
8 maintaining symphony orchestras or operas and receiving substantial
9 support from voluntary contributions; or

10 (C) (Deleted by amendment, P.L.1999, c.416).

11 (D) a police or fire department of a political subdivision of the
12 State, or a volunteer fire company, ambulance, first aid, or emergency
13 company or squad, or exclusively to a retirement, pension or disability
14 fund for the sole benefit of members of a police or fire department or
15 to a fund for the heirs of such members.

16 (2) The exemption provided under paragraph (1) of this subsection
17 shall not apply in the case of admissions to:

18 (A) Any athletic game or exhibition unless the proceeds shall inure
19 exclusively to the benefit of elementary or secondary schools or unless
20 in the case of an athletic game between two elementary or secondary
21 schools, the entire gross proceeds from such game shall inure to the
22 benefit of one or more organizations described in subsection (b) of this
23 section;

24 (B) Carnivals, rodeos, or circuses in which any professional
25 performer or operator participates for compensation;

26 (3) Admission charges for admission to the following places or
27 events shall not be subject to any of the taxes imposed under
28 subsection (e) of section 3 of P.L.1966, c.30 (C.54:32B-3):

29 (A) Any admission to agricultural fairs if no part of the net earnings
30 thereof inures to the benefit of any stockholders or members of the
31 association conducting the same; provided the proceeds therefrom are
32 used exclusively for the improvement, maintenance and operation of
33 such agricultural fairs.

34 (B) Any admission to a home or garden which is temporarily open
35 to the general public as a part of a program conducted by a society or
36 organization to permit the inspection of historical homes and gardens;
37 provided no part of the net earnings thereof inures to the benefit of
38 any private stockholder or individual.

39 (C) Any admissions to historic sites, houses and shrines, and
40 museums conducted in connection therewith, maintained and operated
41 by a society or organization devoted to the preservation and
42 maintenance of such historic sites, houses, shrines and museums;
43 provided no part of the net earnings thereof inures to the benefit of
44 any private stockholder or individual.

45 (cf: P.L.1999, c.416, s.1)

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

3 10. (a) Receipts from any sale of a motor vehicle, an aircraft or a
4 boat or other vessel shall not be subject to the retail sales tax imposed
5 under subsection (a) of section 3, despite the taking of physical
6 possession by the purchaser within this State, provided that the
7 purchaser, at the time of taking delivery:

8 (1) is a nonresident of this State,

9 (2) has no permanent place of abode in this State,

10 (3) is not engaged in carrying on in this State any employment,
11 trade, business or profession in which the motor vehicle, aircraft or
12 boat or other vessel will be used in this State,

13 (4) prior to taking delivery, furnishes to the [vendor] seller: any
14 affidavit, statement or additional evidence, documentary or otherwise,
15 which the director may require to assure proper administration of the
16 tax imposed upon subsection (a) of section 3, and

17 (5) will not house, moor, base or otherwise place the aircraft, boat
18 or other vessel in this State for use on other than a transient basis or
19 for repairs at any time within 12 months from the date of purchase. In
20 the event that any of the conditions specified in this subsection (a)
21 have not been met, the exemption herein granted shall not be
22 applicable and the purchaser shall be liable for the payment of the
23 sales tax.

24 (b) A [vendor] seller shall not be liable for failure to collect tax on
25 receipts from any sale of a motor vehicle, an aircraft or a boat or
26 other vessel; provided that the [vendor] seller prior to making
27 delivery obtains and keeps available for inspection by the director any
28 affidavit, statement or additional evidence, documentary or otherwise,
29 as may be required to be furnished under subsection (a) above;
30 provided, that such affidavit, statement or additional evidence is not
31 known by the [vendor] seller, prior to making physical delivery of the
32 motor vehicle, aircraft or boat or other vessel, to be false.

33 (cf: P.L.1981, c.332, s.1)

34

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

37 11. The following uses of property shall not be subject to the
38 compensating use tax imposed under this act:

39 (1) In respect to the use of property used by the purchaser in this
40 State prior to July 1, 1966.

41 (2) In respect to the use of property purchased by the user while
42 a nonresident of this State, except in the case of tangible personal
43 property which the user, in the performance of a contract, incorporates
44 into real property located in the State [or except in the case of
45 tangible personal property purchased for lease]. A person while
46 engaged in any manner in carrying on in this State any employment,

1 trade, business or profession, not entirely in interstate or foreign
2 commerce, shall not be deemed a nonresident with respect to the use
3 in this State of property in such employment, trade, business or
4 profession.

5 (3) In respect to the use of property or services upon the sale of
6 which the purchaser would be expressly exempt from the taxes
7 imposed under subsection (a) or (b) of section 3.

8 (4) In respect to the use of property which is converted into or
9 becomes a component part of a product produced for sale or for
10 market sampling by the purchaser.

11 (5) In respect to the use of paper in the application of newspapers
12 and periodicals.

13 (6) In respect to the use of property or services to the extent that
14 a retail sales or use tax was legally due and paid thereon, without any
15 right to a refund or credit thereof, to any other State or jurisdiction
16 within any other state but only when it is shown that such other State
17 or jurisdiction allows a corresponding exemption with respect to the
18 sale or use of tangible personal property or services upon which such
19 a sales tax or compensating use tax was paid to this State. To the
20 extent that the tax imposed by this act is at a higher rate than the rate
21 of tax in the first taxing jurisdiction, this exemption shall be
22 inapplicable and the tax imposed by section 6 of this act shall apply to
23 the extent of the difference in such rates.

24 (7) In respect to the use of natural gas by an eligible person, other
25 than a co-generation facility, as defined in section 34 of
26 P.L.1997,c.162 (C.54:32B-14.1), up to the base level of volume as
27 defined in section 34 of P.L.1997, c.162, but only as long as the
28 eligible person remains at the same physical site that was occupied on
29 December 31, 1995.

30 (cf: P.L.1997, c.162, s.28)

31

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

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

42 (b) For the purpose of the proper administration of this act and to
43 prevent evasion of the tax hereby imposed, and subject to the rules
44 regarding the administration of exemptions authorized by the
45 Streamlined Sales and Use Tax Agreement, it shall be presumed that
46 all receipts for property or services of any type mentioned in

1 subsections (a), (b) and (c) of section 3, all rents for occupancy of the
2 type mentioned in subsection (d) of said section, and all amusement
3 charges of any type mentioned in subsection (e) of said section, are
4 subject to tax until the contrary is established, and the burden of
5 proving that any such receipt, amusement charge or rent is not taxable
6 hereunder shall be upon the person required to collect tax or the
7 customer. Unless a [vendor] seller shall have taken from the
8 purchaser a certificate, signed by the purchaser and bearing [his] the
9 purchaser's name and address and the number of [his] the purchaser's
10 registration certificate, to the effect that the property or service was
11 purchased for resale or the purchaser prior to taking delivery,
12 furnishes to the [vendor] seller any affidavit, statement or additional
13 evidence, documentary or otherwise, which the director may require
14 demonstrating that the purchaser is an exempt organization described
15 in section 9(b)(1), the sale shall be deemed a taxable retail sale [at
16 retail]. Provided however, the director may, in [his] the director's
17 discretion, authorize a purchaser, who acquires tangible personal
18 property or services under circumstances which make it impossible at
19 the time of acquisition to determine the manner in which the tangible
20 personal property or services will be used, to pay the tax directly to
21 the director and waive the collection of the tax by the [vendor] seller
22 or provide for direct pay authority under rules adopted under the
23 Streamlined Sales and Use Tax Agreement. [Provided, further, the
24 director shall authorize any contractor, subcontractor or repairman
25 who acquires tangible personal property consisting of materials and
26 supplies for use by him in erecting structures for others, or building
27 on, or otherwise improving, altering, or repairing real property of
28 others, to pay the tax directly to the director and waive the collection
29 of the tax by the vendor.] Provided further, the director shall
30 authorize any eligible person, as defined in section 34 of P.L.1997,
31 c.162 (C.54:32B-14.1), who purchases natural gas from a non-utility
32 on and after January 1, 1998 through December 31, 2002, to pay the
33 tax on the commodity directly to the director and waive the collection
34 of the tax by the [vendor] seller. No such authority shall be granted
35 or exercised except upon application to the director, and the issuance
36 by the director of a direct payment permit. If a direct payment permit
37 is granted, its use shall be subject to conditions specified by the
38 director, and the payment of tax on all acquisitions pursuant to the
39 permit shall be made directly to the director by the permit holder.

40 (c) The director may provide by regulation that the tax upon
41 receipts from sales on the installment plan may be paid on the amount
42 of each installment and upon the date when such installment is due.
43 He may also provide by regulation for the exclusion from taxable
44 receipts, amusement charges or rents of amounts subject, as
45 applicable, to the provisions of section 30 of P.L. , c. (C.)

1 (now pending before the Legislature as this bill), representing sales
2 where the contract of sale has been canceled, the property returned or
3 the receipt, charge or rent has been ascertained to be uncollectible or,
4 in the case the tax has been paid upon such receipt, charge or rent, for
5 refund or credit of the tax so paid.

6 (cf: P.L.1997, c.162, s.29)

7

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

10 14. (a) Every person required to collect any tax imposed by this
11 act shall be personally liable for the tax imposed, collected or required
12 to be collected under this act. Any such person shall have the same
13 right in respect to collecting the tax from that person's customer or in
14 respect to non-payment of the tax by the customer as if the tax were
15 a part of the purchase price of the property or service, amusement
16 charge or rent, as the case may be, and payable at the same time;
17 provided, however, that the director shall be joined as a party in any
18 action or proceeding brought to collect the tax.

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

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

30 (d) No person required to collect any tax imposed by this act shall
31 advertise or hold out to any person or to the public in general, in any
32 manner, directly or indirectly, that the tax is not considered as an
33 element in the price, amusement charge or rent payable by the
34 customer, or except as provided by subsection (f) of this section that
35 the person required to collect the tax will pay the tax, that the tax will
36 not be separately charged and stated to the customer or that the tax
37 will be refunded to the customer. Upon written application duly made
38 and proof duly presented to the satisfaction of the director showing
39 that in the particular business of the person required to collect the tax
40 it would be impractical for the [vendor] seller to separately charge the
41 tax to the customer, the director may waive the application of the
42 requirement herein as to such [vendor] seller.

43 (e) All [vendor] sellers of energy or utility service shall include the
44 tax imposed by the "Sales and Use Tax Act" within the purchase price
45 of the tangible personal property or service.

46 (f) No person required to collect any tax imposed by this act shall

1 be held liable for having charged and collected the incorrect amount
2 of sales and use tax by reason of reliance on erroneous data provided
3 by the director with respect to tax rates, boundaries or taxing
4 jurisdiction assignments.

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

12 (cf: P.L.2003, c.42, s.1)

13
14 22. Section 34 of P.L.1997, c.162 (C.54:32B-14.1) is amended to
15 read as follows:

16 34. a. As used in this act, "eligible person" means any person other
17 than a co-generation facility as defined in this act whose last purchase
18 and delivery of natural gas on or before December 31, 1995 was from
19 a non-utility, or a cogeneration facility which ceased operation in 1996
20 and subsequently began to purchase non-utility natural gas, and who
21 satisfactorily documents such purchase to the director.

22 b. An eligible person shall determine and certify to the director,
23 and satisfactorily document to the director, a base level of volume as
24 of December 31, 1995 or December 31, 1996 in the case of a
25 co-generation facility which ceased operation in 1996 and
26 subsequently began to purchase non-utility natural gas, which shall be
27 equal to the average annual volume of natural gas units purchased by
28 the eligible person from any non-utility and delivered, but such
29 computation shall not include any purchases delivered prior to January
30 1, 1992, provided however, that the base level of volume of an eligible
31 person other than a co-generation facility shall be reduced on an
32 annual basis beginning in 1999 by multiplying the base level of volume
33 as of December 31, 1995 by the following reduction ratios: 0.8 in
34 1999, 0.6 in 2000, 0.4 in 2001 and 0.2 in 2002. In 2003 and thereafter
35 there shall be no exemption for purchases of natural gas by an eligible
36 person other than a co-generation facility.

37 c. For purchases of natural gas from a non-utility on and after
38 January 1, 1998 through December 31, 2002, an eligible person shall
39 issue a direct payment certificate to the non-utility and shall pay any
40 sales or use tax due pursuant to the method prescribed by this section.
41 Unless specifically exempt from the tax imposed under the Sales and
42 Use Tax Act pursuant to subsection b. of section 26 of P.L.1997,
43 c.162 (C.54:32B-8.46), utility service is subject to the tax imposed
44 pursuant to section 3 of P.L.1966, c.30 (C.54:32B-3).

45 d. On an annual basis, each eligible person, other than a
46 co-generation facility, shall be required to file with the director:

1 (1) An energy volume report, which shall contain a certification as
2 to the gross annual volume of gas (in units) purchased and delivered
3 in the previous 12-month period from any non-utility and utility, the
4 purchase price per unit, and any additional information that the
5 director deems necessary to effectuate the provisions herein; and

6 (2) An energy use tax return, wherein any tax due on natural gas
7 purchased from a utility or non-utility shall be reported and remitted
8 as follows:

9 (a) If the certified gross annual volume (in units) was purchased
10 solely from a non-utility, and does not exceed the base level of
11 volume, no sales and use tax shall be due on purchases of natural gas
12 in that calendar year;

13 (b) If the certified gross annual volume (in units) was purchased
14 solely from a non-utility, and exceeds the base level of volume, the
15 sales and use tax shall be remitted on the purchases of natural gas that
16 exceed the base level of volume, based on the purchase price of the
17 gas; and

18 (c) If the certified gross annual volume in units was purchased
19 from both a utility and non-utility [vendor] seller or solely from a
20 utility [vendor] seller, the director shall refund to the eligible person
21 all sales taxes paid on purchases not in excess of the base level of
22 volume. The eligible person shall remit to the director all unpaid sales
23 taxes on the purchases of natural gas that exceed the base level of
24 volume, based on the purchase price.

25 (cf: P.L.1997, c.162, s.34)

26

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

29 15. (a) On or before June 20, 1966, or in the case of persons
30 commencing business or opening new places of business after such
31 date, within three days after such commencement or opening, every
32 person required to collect any tax imposed by this act and every
33 person purchasing tangible personal property for resale [or lease]
34 shall file with the director a certificate of registration in a form
35 prescribed by the director. In the case of a person commencing
36 business or opening a new place of business on or after the first day of
37 the third month following the enactment of P.L.1993, c.274
38 (C.40:52-1.3 et al.), the certificate shall be filed at least 15 business
39 days before the commencement or opening. The director shall within
40 five days after such registration issue, without charge, to each
41 registrant a certificate of authority empowering the registrant to
42 collect the tax and a duplicate thereof for each additional place of
43 business of such registrant. Each certificate or duplicate shall state the
44 place of business to which it is applicable. Such certificate of
45 authority shall be prominently displayed in the place of business of the
46 registrant. A registrant who has no regular place of doing business

1 shall attach such certificate to his cart, stand, truck or other
2 merchandising device. Such certificates shall be nonassignable and
3 nontransferable and shall be surrendered to the director immediately
4 upon the registrant's ceasing to do business at the place named.

5 (b) Any person who is not otherwise required to collect any tax
6 imposed by this act and who makes sales to persons within the State
7 of tangible personal property or services, the use of which is subject
8 to tax under this act, may if he so elects file a certificate of registration
9 with the director who may, in his discretion and subject to such
10 conditions as he may impose, issue to him a certificate of authority to
11 collect the compensating use tax imposed by this act.

12 (c) A seller that registers to pay or collect and remit sales or use tax
13 in accordance with the terms of the Streamlined Sales and Use Tax
14 Agreement may select one of the following methods of remittance or
15 other method allowed by State law to remit the taxes collected, subject
16 to the liabilities and conditions established pursuant to section 10 of
17 P.L.2001, c.431 (C.54:32B-53):

18 (1) a model 1 seller, that selects a certified service provider as an
19 agent to perform all the seller's sales or use tax functions, other than
20 the seller's obligation to remit tax on its own purchases;

21 (2) a model 2 seller, that selects a certified automated system to
22 use which calculates the amount of tax due on a transaction; or

23 (c) a model 3 seller, that uses its own proprietary automated sales
24 tax system that has been certified as a certified automated system.

25 (d) A certified service provider in model 1 shall be allowed a
26 monetary allowance in accordance with the terms of the contract that
27 the states participating in the Streamlined Sales and Use Tax
28 Agreement sign with the provider. The director shall prescribe the
29 allowance in accordance with the terms of the contract, which shall be
30 funded entirely from money collected in model 1.

31 A monetary allowance to a certified service provider may be based
32 on one or more of the following incentives:

33 (1) A base rate that applies to taxable transactions processed by the
34 provider.

35 (2). For a period not to exceed 24 months following a voluntary
36 seller's registration through the Streamlined Sales and Use Tax
37 Agreement's central registration process, a percentage of tax revenue
38 generated for a member state by the voluntary seller for each member
39 state for which the seller does not have a requirement to register to
40 collect the tax.

41 (e) A model 2 seller shall be allowed a monetary allowance which
42 the director shall prescribe in accordance with the terms arrived at by
43 the member states of the Streamlined Sales and Use Tax Agreement.
44 The member states initially anticipate that they will provide a monetary
45 allowance to sellers under model 2 based on the following:

46 (1) Each seller shall receive a base rate for a period not to exceed

1 24 months following the commencement of participation by the seller.

2 (2). For a period not to exceed 24 months following a voluntary
3 seller's registration through the Streamlined Sales and Use Tax
4 Agreement's central registration process, a percentage of tax revenue
5 generated for a member state by the voluntary seller for each member
6 state for which the seller does not have a requirement to register to
7 collect the tax.

8 (f) A model 3 seller and all other sellers that are not under model
9 1 or model 2 shall be allowed a monetary allowance which the director
10 shall prescribe in accordance with the terms arrived at by the member
11 states of the Streamlined Sales and Use Tax Agreement. The member
12 states initially anticipate that they will provide a monetary allowance
13 to sellers under model 3 and to all other sellers that are not under
14 models 1 or 2 will be based on the following: for a period not to
15 exceed 24 months following a voluntary seller's registration through
16 the Streamlined Sales and Use Tax Agreement's central registration
17 process, a percentage of tax revenue generated for a member state by
18 the voluntary seller for each member state for which the seller does not
19 have a requirement to register to collect the tax.

20 (cf: P.L.1993, c.274, s.1)

21

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

24 17. (a) Every person required to collect or pay tax under this act
25 shall on or before August 28, 1966, and on or before the
26 ~~[twenty-eighth]~~ twentieth day of each month thereafter, make and file
27 a return for the preceding month with the director. The return of a
28 ~~[vendor]~~ seller of tangible personal property or services shall show his
29 receipts from sales and also the aggregate value of tangible personal
30 property and services sold by him, the use of which is subject to tax
31 under this act, and the amount of taxes required to be collected with
32 respect to such sales and use. The return of a recipient of amusement
33 charges shall show all such charges and the amount of tax thereon,
34 and the return of a person required to collect tax on leases or
35 ~~[rents]~~ rentals shall show all ~~[rents]~~ lease or rental payments received
36 or charged and the amount of tax thereon.

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

45 (c) The form of returns shall be prescribed by the director and shall
46 contain such information as he may deem necessary for the proper

1 administration of this act. The director may require amended returns
2 to be filed within 20 days after notice and to contain the information
3 specified in the notice.

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

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

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

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

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

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

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

1 misrepresentation of a material fact. The statutes of limitations
2 applicable to asserting a tax liabilities, deficiencies, penalties and
3 interest are tolled for this 36 month period.

4 (6) The "amnesty" granted pursuant to paragraph (1) of this
5 subsection shall apply only to sales or use taxes due from a seller in its
6 capacity as a seller and shall not apply to sales or use taxes due from
7 a seller in its capacity as a buyer.

8 (cf: P.L.1967, c.25, s.4)

9

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

12 18. Every person required to file a return under this act shall, at the
13 time of filing such return, pay to the director the taxes imposed by this
14 act as well as all other moneys collected by such person acting or
15 purporting to act under the provisions of this act. All the taxes for
16 the period for which a return is required to be filed or for such lesser
17 interval as shall have been designated by the director, shall be due and
18 payable to the director on the date limited for the filing of the return
19 for such period, or on the date limited for such lesser interval as the
20 director has designated, without regard to whether a return is filed or
21 whether the return which is filed correctly shows the amount of
22 receipts, amusement charges or rents or the value of property or
23 services sold or purchased or the taxes due thereon. Where the
24 director, in [his] the director's discretion, deems it necessary to
25 protect the revenues to be obtained under this act, [he] the director
26 may require any person required to collect the tax imposed by this act
27 to file [with him] a bond with the director, issued by a surety
28 company authorized to transact business in this State and approved
29 by the Commissioner of Banking and Insurance of this State as to
30 solvency and responsibility, in such amount as the director may fix, to
31 secure the payment of any tax or penalties or interest due or which
32 may become due from such person under this act. In the event that
33 the director determines that a [vendor] seller is to file such bond,
34 [he] the director shall give notice to [him] the seller to that effect,
35 specifying the amount of the bond required. Such person shall file
36 such bond within 5 days after the giving of such notice unless within
37 such 5 days [he] that person shall request in writing a hearing before
38 the director at which the necessity, propriety and amount of the bond
39 shall be determined by the director. Such determination shall be final
40 and shall be complied with within 15 days after the giving of notice
41 thereof. In lieu of such bond, securities approved by the director or
42 cash in such amount as [he] the director may prescribe, may be
43 deposited, which shall be kept in the custody of the director who may
44 at any time without notice to the depositor apply them to any tax or
45 interest or penalties due, and for that purpose the securities may be
46 sold by [him] the director at public or private sale without notice to

1 the depositor thereof.

2 (cf: P.L.1967, c.25, s.5)

3

4 26. (New section) a. The retail sale, excluding lease or rental, of
5 a product shall be sourced as follows:

6 (1) If the product is received by the purchaser at a business
7 location of the seller, then the sale shall be sourced to that business
8 location.

9 (2) If the product is not received by the purchaser at a business
10 location of the seller, then the sale shall be sourced to the location
11 where receipt by the purchaser (or the purchaser's donee, designated
12 as such by the purchaser) occurs, including the location indicated by
13 instructions for delivery to the purchaser (or donee), known to the
14 seller.

15 (3) If paragraphs (1) and (2) of this subsection do not apply, then
16 the sale shall be sourced to the location indicated by an address for the
17 purchaser that is available from the business records of the seller that
18 are maintained in the ordinary course of the seller's business when use
19 of this address does not constitute bad faith.

20 (4) If paragraphs (1), (2), and (3) of this subsection do not apply,
21 then the sale shall be sourced to the location indicated by an address
22 for the purchaser obtained during the consummation of the sale,
23 including the address of a purchaser's payment instrument, if no other
24 address is available, if use of this address does not constitute bad faith.

25 (5) If the rules of paragraphs (1), (2), (3), or (4) of this subsection
26 do not apply, including the circumstance in which the seller is without
27 sufficient information to apply the previous rules, then the location
28 shall be determined by the address from which tangible personal
29 property was shipped, from which the digital good or the computer
30 software delivered electronically was first available for transmission by
31 the seller, or from which the service was provided (disregarding for
32 these purposes any location that merely provided the digital transfer
33 of the product sold).

34 b. The lease or rental of tangible personal property, other than
35 property identified in subsection c. or subsection d. of this section,
36 shall be sourced as follows:

37 (1) If a lease or rental that requires recurring periodic payments,
38 then the first periodic payment shall be sourced the same as a retail
39 sale in accordance with the provisions of subsection a. of this section.
40 Periodic payments made subsequent to the first payment shall be
41 sourced to the primary property location for each period covered by
42 the payment. The primary property location shall be as indicated by an
43 address for the property provided by the lessee that is available to the
44 lessor from its records maintained in the ordinary course of business,
45 when use of this address does not constitute bad faith. The property
46 location shall not be altered by intermittent use at different locations,

1 such as use of business property that accompanies employees on
2 business trips and service calls.

3 (2) If a lease or rental does not require recurring periodic
4 payments, then the payment shall be sourced the same as a retail sale
5 in accordance with the provisions of subsection a. of this section.

6 (3) This subsection shall not affect the imposition or computation
7 of sales or use tax on leases or rentals based on a lump sum or
8 accelerated basis, or on the acquisition of property for lease.

9 c. The lease or rental of motor vehicles, trailers, semi-trailers, or
10 aircraft that do not qualify as transportation equipment, as defined in
11 subsection d. of this section, shall be sourced as follows:

12 (1) If a lease or rental requires recurring periodic payments, then
13 each periodic payment shall be sourced to the primary property
14 location. The primary property location shall be as indicated by an
15 address for the property provided by the lessee that is available to the
16 lessor from its records maintained in the ordinary course of business,
17 if use of this address does not constitute bad faith. This location shall
18 not be altered by intermittent use at different locations.

19 (2) If a lease or rental does not require recurring periodic
20 payments, then the payment shall be sourced the same as a retail sale
21 in accordance with the provisions of subsection a. of this section.

22 (3) This subsection shall not affect the imposition or computation
23 of sales or use tax on leases or rentals based on a lump sum or
24 accelerated basis, or on the acquisition of property for lease.

25 d. The retail sale, including lease or rental, of transportation
26 equipment shall be sourced the same as a retail sale in accordance with
27 the provisions of subsection a. of this section, notwithstanding the
28 exclusion of lease or rental under subsection a. of this section.

29 e. For the purposes of this section, "transportation equipment"
30 means:

31 (1) Locomotives and railcars that are utilized for the carriage of
32 persons or property in interstate commerce;

33 (2) Trucks and truck-tractors with a Gross Vehicle Weight Rating
34 (GVWR) of 10,001 pounds or greater, trailers, semi-trailers, or
35 passenger buses that are:

36 A. Registered through the International Registration Plan; and

37 B. Operated under authority of a carrier authorized and certificated
38 by the U.S. Department of Transportation or another federal authority
39 to engage in the carriage of persons or property in interstate
40 commerce;

41 (3) Aircraft that are operated by air carriers authorized and
42 certificated by the U.S. Department of Transportation or another
43 federal or a foreign authority to engage in the carriage of persons or
44 property in interstate or foreign commerce; or

45 (4) Containers designed for use on and component parts attached
46 or secured on the items set forth in subsections (d)(1) through (d)(3);

1 and.

2 "Receive" and "receipt" mean:

- 3 (1) Taking possession of tangible personal property,
4 (2). Making first use of services, or
5 (3) Taking possession or making first use of digital goods,
6 whichever comes first.

7 The terms "receive" and "receipt" do not include possession by a
8 shipping company on behalf of the purchaser.

9

10 27. (New section) a. Notwithstanding the general sourcing
11 provisions of section 26 of P.L. , c. (C.) (now pending before
12 the Legislature as this bill), a business purchaser that is not a holder of
13 a direct pay permit that knows at the time of its purchase of a digital
14 good, computer software delivered electronically, or a service that the
15 digital good, computer software delivered electronically, or service
16 will be concurrently available for use in more than one jurisdiction
17 shall deliver to the seller in conjunction with its purchase a multiple
18 points of use exemption form ("MPU exemption form") disclosing this
19 fact.

20 b. Upon receipt of the MPU exemption form, the seller shall be
21 relieved of all obligation to collect, pay, or remit the applicable tax and
22 the purchaser shall be obligated to collect, pay, or remit the applicable
23 tax on a direct pay basis.

24 c. A purchaser delivering the MPU exemption form may use any
25 reasonable, but consistent and uniform, method of apportionment
26 approved by the director that is supported by the purchaser's business
27 records as they exist at the time of the consummation of the sale.

28 d. The MPU exemption form shall remain in effect for all future
29 sales by the seller to the purchaser (except as to the subsequent sale's
30 specific apportionment that is governed by the principle of subsection
31 c. of this section and the facts existing at the time of the sale) until it
32 is revoked in writing.

33 e. A holder of a direct pay permit shall not be required to deliver
34 a MPU exemption form to the seller. A direct pay permit holder shall
35 follow the provisions of subsection c. of this section in apportioning
36 the tax due on a digital good or a service that will be concurrently
37 available for use in more than one jurisdiction.

38

39 28. (New section) a. Notwithstanding the general sourcing
40 provisions of section 26 of P.L. , c. (C.) (now pending before
41 the Legislature as this bill), a purchaser of direct mail that is not a
42 holder of a direct pay permit shall provide to the seller in conjunction
43 with the purchase either a direct mail form or information to show the
44 jurisdictions to which the direct mail is delivered to recipients.

45 (1) Upon receipt of the direct mail form, the seller shall be
46 relieved of all obligations to collect, pay, or remit the applicable tax

1 and the purchaser shall be obligated to pay or remit the applicable tax
2 on a direct pay basis. A direct mail form shall remain in effect for all
3 future sales of direct mail by the seller to the purchaser until it is
4 revoked in writing.

5 (2) Upon receipt of information from the purchaser showing the
6 jurisdictions to which the direct mail is delivered to recipients, the
7 seller shall collect the tax according to the delivery information
8 provided by the purchaser. In the absence of bad faith, the seller shall
9 be relieved of any further obligation to collect tax on any transaction
10 for which the seller has collected tax pursuant to the delivery
11 information provided by the purchaser.

12 b. If the purchaser of direct mail does not have a direct pay permit
13 and does not provide the seller with either a direct mail form or
14 delivery information, as required by subsection a. of this section, the
15 seller shall collect the tax according to paragraph (5) of subsection a.
16 of section 26 of P.L. , c. (C.) (now pending before the
17 Legislature as this bill). Nothing in this subsection shall limit a
18 purchaser's obligation for sales or use tax to any state to which the
19 direct mail is delivered.

20 c. If a purchaser of direct mail provides the seller with
21 documentation of direct pay authority, the purchaser shall not be
22 required to provide a direct mail form or delivery information to the
23 seller.

24

25 29. (New section) a. Notwithstanding the general sourcing
26 provisions of section 26 of P.L. , c. (C.) (now pending before
27 the Legislature as this bill), except for the telecommunication services
28 enumerated in subsection c. of this section, the sale of
29 telecommunication service sold on a call-by-call basis shall be sourced
30 to:

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

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

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

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

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

46 (2) A sale of post-paid calling service shall be sourced to the

1 origination point of the telecommunications signal as first identified by
2 either:

- 3 (a) the seller's telecommunications system; or
4 (b) information received by the seller from its service provider, if
5 the system used to transport such signals is not that of the seller.

6 (3) A sale of prepaid calling service shall be sourced in accordance
7 with the general sourcing provisions of section 26 of P.L. , c.
8 (C.) (now pending before the Legislature as this bill); provided
9 however, that in the case of a sale of mobile telecommunications
10 service that is a prepaid telecommunications service, the rule provided
11 in paragraph (5) of subsection (a) of that section shall include as an
12 option the location associated with the mobile telephone number.

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

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

18 (b) Service for which all customer termination points are located
19 entirely within one jurisdiction or levels of jurisdiction shall be sourced
20 to such jurisdiction in which the customer channel termination points
21 are located.

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

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

33 d. For the purposes of this section:

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

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

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

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

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

8 "Customer channel termination point" means the location where the
9 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 who
12 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," 4
15 U.S.C. s.124;

16 "Mobile telecommunications service" has the same meaning as that
17 term is defined by the federal "Mobile Telecommunications Sourcing
18 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 primarily
21 occurs, which shall be the residential street address or the primary
22 business street address of the customer. In the case of mobile
23 telecommunications services, "place of primary use" shall be within the
24 licensed service area of the home service provider and the terms used
25 have the same meaning as those terms are defined by the federal
26 "Mobile Telecommunications Sourcing Act," 4 U.S.C. s.124;

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

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

41 "Private communication service" means a telecommunication
42 service that entitles the customer to exclusive or priority use of a
43 communications channel or group of channels between or among
44 termination points, regardless of the manner in which such channel or
45 channels are connected, and includes switching capacity, extension
46 lines, stations, and any other associated services that are provided in

1 connection with the use of such channel or channels; and

2 "Service address" means

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

6 (2) If the location in paragraph (1) of this definition is not known,
7 "service address" means the origination point of the signal of the
8 telecommunications services first identified by either the seller's
9 telecommunications system or in information received by the seller
10 from its service provider, in the case that the system used to transport
11 such signals is not that of the seller; or

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

15

16 30. (New section) a. A seller shall be allowed a deduction from
17 taxable sales for bad debts.

18 b. The amount of the deduction from taxable sales allowed pursuant
19 to subsection a. of this section shall not include interest.

20 c. For the purposes of this section, "bad debt" has the same
21 meaning as that term is defined by 26 U.S.C. s.166 as the basis for
22 calculating bad debt recovery; provided however, the amount
23 calculated pursuant to 26 U.S.C. s.166 shall be adjusted to exclude:
24 financing charges or interest; sales or use taxes charged on the
25 purchase price; uncollectible amounts on property that remain in the
26 possession of the seller until the full purchase price is paid; expenses
27 incurred in attempting to collect any debt, and repossessed property.

28 d. The deduction from taxable sales allowed pursuant to
29 subsection a. of this section shall be deducted on the return for the
30 period during which the bad debt is written off as uncollectible in the
31 claimant's books and records and is eligible to be deducted for federal
32 income tax purposes. For purposes of this subsection, a claimant who
33 is not required to file federal income tax returns may deduct a bad debt
34 on a return filed for the period in which the bad debt is written off as
35 uncollectible in the claimant's books and records and would be eligible
36 for a bad debt deduction for federal income tax purposes if the
37 claimant was required to file a federal income tax return.

38 e. If the deduction from taxable sales allowed pursuant to
39 subsection a. of this section is taken for a bad debt and the debt is
40 subsequently collected in whole or in part, the tax on the amount so
41 collected shall be paid and reported on the return filed for the period
42 in which the collection is made.

43 f. If the amount of the deduction from taxable sales allowed
44 pursuant to subsection a. of this section exceeds the amount of
45 taxable sales for the period during which the bad debt is written off,
46 a refund claim may be filed within four years from the due date of the

1 return on which the bad debt could first be claimed.

2 g. If filing responsibilities have been assumed by a certified service
3 provider, the certified services provider may claim, on behalf of the
4 seller, any deduction from taxable sales allowed pursuant to
5 subsection a. of this section. The certified service provider shall credit
6 or refund the full amount of any bad debt allowance or refund received
7 to the seller.

8 h. For the purposes of reporting a payment received on a bad debt
9 for which the deduction from taxable sales allowed pursuant to
10 subsection a. of this section was previously claimed, any payments
11 made on a debt or account shall first be applied proportionally to the
12 taxable price of the property or service and the sales tax thereon, and
13 secondly to interest, service charges, and any other charges.

14 i. In situations in which the books and records of the party claiming
15 the deduction from taxable sales allowed pursuant to subsection a. of
16 this section support an allocation of the bad debts among the member
17 states, the allocation shall be permitted.

18

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

21 24. General powers of the director. In addition to the powers
22 granted to the director in this act, the director is hereby authorized and
23 empowered:

24 1. To make, adopt and amend rules and regulations appropriate to
25 the carrying out of this act and the purposes thereof;

26 2. To extend, for cause shown by general regulation or individual
27 authorization, the time of filing any return for a period not exceeding
28 three months on such terms and conditions as the director may require;
29 and for cause shown, to remit penalties and interest as provided for in
30 the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.;

31 3. To delegate the director's functions hereunder to any officer or
32 employee of the director's division such of the director's powers as the
33 director may deem necessary to carry out efficiently the provisions of
34 this act, and the person or persons to whom such power has been
35 delegated shall possess and may exercise all of the power and perform
36 all of the duties herein conferred and imposed upon the director;

37 4. To prescribe methods for determining the amount of receipt,
38 amusement charges, or rents and for determining which of them are
39 taxable and which are nontaxable;

40 5. To require any person required to collect tax to keep detailed
41 records of all receipts, amusement charges, or rents received, charged
42 or accrued, including those claimed to be nontaxable, and also of the
43 nature, type, value and amount of all purchases, sales, services
44 rendered, admissions, occupancies, names and addresses of customers,
45 and other facts relevant in determining the amount of tax due and to
46 furnish such information upon request to the director;

1 6. To assess, determine, revise and readjust the taxes imposed by
2 this act;

3 7. To publish and maintain, as the director deems necessary, lists
4 of specific items of tangible personal property which are found to be
5 foods and drugs exempt from tax under sections 13 and 14 of
6 P.L.1980, c.105 (C.54:32B-8.1 and 54:32B-8.2);

7 8. To enter into agreements with other states and the District of
8 Columbia, providing for the reciprocal enforcement of the sales and
9 use tax laws imposed by the states entering into such an agreement.
10 Such agreement may empower the duly authorized officer of any
11 contracting state, which extends like authority to officers or employees
12 of this State, to sue for the collection of that state's sales and use taxes
13 in the courts of this State;

14 9. To require alcoholic beverage wholesalers to make report of
15 sales to retailers, as wholesaler and retailer are defined pursuant to the
16 "New Jersey Alcoholic Beverage Control Act," R.S.33:1-1 et seq.,
17 with such content, in such form and at such times as the director may
18 prescribe. The information provided to the director under this
19 paragraph shall identify retailers by their sales tax registration number
20 issued pursuant to section 15 of P.L.1966, c.30 (C.54:32B-15) and
21 shall be available for transmission to the director by electronic means,
22 or computer tape or disc, as the director may require.

23 10. To give due regard to the provisions of the Streamlined Sales
24 and Use Tax Agreement regarding rate changes for services covering
25 a period starting before and ending after January 1, 2005.

26 (cf: P.L.1995, c.161, s.1)

27

28 32. (New section) Neither the "Sales and Use Tax Act" or any
29 other law of this State shall impose multiple rates of sales and use tax
30 on sales of tangible personal property or services on or after January
31 1, 2005. The provisions of this section shall not apply to sales and use
32 tax that may apply to sales of electricity, piped natural or artificial gas,
33 or other heating fuels delivered by the seller or the retail sale or
34 transfer of motor vehicles, aircraft, watercraft, modular homes,
35 manufactured homes, mobile homes or other sales allowed under the
36 provisions of the Streamlined Sales and Use Tax Agreement.

37

38 33. (New section) The effective date of any sales and use tax rate
39 change on and after January 1, 2005 shall be the first day of the
40 calendar quarter next succeeding the expiration of one full calendar
41 quarter immediately following enactment of the rate change.

42

43 34. (New section) On and after January 1, 2005 any exemption,
44 exception or exclusion from sales and use taxation shall be enacted
45 only in accordance with the applicable provisions of the Streamlined
46 Sales and Use Tax Agreement.

1 35. (New section) Notwithstanding the provisions of P.L. , c. ,
2 (now pending before the Legislature as this bill), to the contrary, the
3 definition of "lease or rental" enacted by P.L. , c. shall be applied only
4 prospectively from the date of enactment of P.L. , c. and shall have
5 no retroactive impact on existing leases or rentals. The definition shall
6 not have any impact on the treatment of sale-leaseback transactions
7 entered into before the date of enactment of P.L. , c .
8

9 36. (New section) a. There is hereby created in the Department of
10 Treasury a special account, to be known as the "Streamlined Sales Tax
11 Fund." There shall be deposited into this account the sales and use tax
12 revenue derived from amendments and supplements to P.L.1966, c.32
13 (C.54:32B-1 et seq.) by reason of the State's participation in the
14 Streamlined Sales and Use Tax Agreement as authorized under section
15 5 of P.L.2001, c.431 (C.54:32B-48), and as enacted under the
16 provisions of P.L. , c. (now pending before the Legislature as this
17 bill). The Director of the Division of Taxation, subject to review and
18 approval by the Director of the Division of Budget and Accounting,
19 shall certify to the Treasurer the amount to be deposited into the
20 "Streamlined Sales Tax Fund" by the last day of the month following
21 the close of each sales tax reporting quarter. The director may use for
22 this purpose an estimate of an amount equal to the anticipated
23 membership dues and other costs of participation in the Streamlined
24 Sales and Use Tax Agreement. Amounts in the account shall be
25 annually appropriated for the payment of dues payable by this State to
26 the governing board and for other costs of administration of the
27 Streamlined Sales and Use Tax Agreement allocated and assessed to
28 this State by the governing board in consequence of this State
29 participating in the agreement.

30 b. The Director of the Division of Taxation may request an
31 additional annual allocation of funds to reimburse the division for costs
32 incurred in administration and enforcement of the Sales and Use Tax
33 Streamlining Agreement on behalf of this State. Such allocation shall
34 be made within the limits of funds appropriated or otherwise made
35 available for this purpose.

36 c. The Director of the Division of Taxation may request additional
37 allocations of funds to reimburse the division for costs and expenses
38 incurred by the division and its employees in participating in
39 multi-state discussions as authorized pursuant to section 4 of
40 P.L.2001, c.431 (C.54:32B-47). Such allocation shall be made within
41 the limits of funds appropriated or otherwise made available for this
42 purpose.
43

44 37. Section 6 of P.L.1989, c.123 (C.54:32B-8.40) is repealed.
45

46 38. This act shall take effect January 1, 2005.

STATEMENT

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This bill conforms the New Jersey sales and use tax to the requirements of the Streamlined Sales and Use Tax Agreement to provide for compliance with that agreement.

The Streamlined Sales and Use Tax Agreement 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 into multistate discussions concerning the Streamlined Sales and Use Tax Agreement to provide a streamlined sales tax system.

The two parts to the projects's proposed streamlined sales tax system are: 1) a uniform sales and use tax administration system to reduce the burden of tax compliance for all sellers and all types of commerce and 2) a sales tax law simplification and uniformity system. The proposed legislation to modernize and simplify sales tax laws and to achieve uniformity among the states is referred to as the Streamlined Sales and Use Tax Agreement.

The Streamlined Sales and Use Tax Agreement includes the following key features:

- - Uniform definitions within tax laws. Individual legislatures still choose what is taxable or exempt in their state. However, participating states agree to use the common definitions for key items in the tax base and will not deviate from these definitions.

- - Rate simplification. States will be allowed one state rate and a second state rate in limited circumstances (food and drugs). Each local jurisdiction will be allowed one local rate. A state or local government may not choose to tax telecommunications services, for example, at one rate and all other items of tangible personal property or taxable services at another rate.

- - State level tax administration of all state and local sales and use taxes.

- - Uniform sourcing rules. The states will have uniform and simple rules for how they will source transactions to state and local governments.

- - Simplified exemption administration for use-based and entity-based exemptions.

- - Uniform audit procedures. Sellers who participate in one of the certified Streamlined Sales Tax System technology models will either not be audited or will have limited scope audits, depending on the technology model used. The states may conduct joint audits of large

1 multi-state businesses.

2 These simplifications would apply to all sellers. Sellers who do not
3 have a physical presence (or “use tax collection nexus”) are not
4 required to collect sales and use taxes unless United States Congress
5 should chose to require collection from all sellers for all types of
6 commerce. However, absent Congressional action, sellers without a
7 physical presence can volunteer to collect under the simplifications
8 proposed in the Agreement. Registration by sellers to voluntarily
9 collect sales and use taxes will not create an inference that the business
10 must pay business activity taxes, such as the corporate franchise or
11 income tax.

12 This bill makes the amendments and supplements to the New
13 Jersey sales and use tax that are necessary to conform New Jersey law
14 to the terms of the Streamlined Sales and Use Tax Agreement.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 3473

STATE OF NEW JERSEY

DATED: JUNE 29, 2005

The Assembly Budget Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 3473.

This Assembly Committee Substitute for Assembly Bill No. 3473 conforms the New Jersey sales and use tax to the requirements of the Streamlined Sales and Use Tax Agreement to provide for compliance with that agreement.

The Streamlined Sales and Use Tax Agreement 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 into multistate discussions concerning the Streamlined Sales and Use Tax Agreement to provide a streamlined sales tax system.

The two parts to the projects's proposed streamlined sales tax system are: 1) a uniform sales and use tax administration system to reduce the burden of tax compliance for all sellers and all types of commerce and 2) a sales tax law simplification and uniformity system. The proposed legislation to modernize and simplify sales tax laws and to achieve uniformity among the states is referred to as the Streamlined Sales and Use Tax Agreement.

The Streamlined Sales and Use Tax Agreement includes the following key features:

- - Uniform definitions within tax laws. Individual legislatures still choose what is taxable or exempt in their state. However, participating states agree to use the common definitions for key items in the tax base and will not deviate from these definitions.

- - Rate simplification. States will be allowed one state rate and a second state rate in limited circumstances (food and drugs). Each local jurisdiction will be allowed one local rate. A state or local government may not choose to tax telecommunications services, for example, at

one rate and all other items of tangible personal property or taxable services at another rate.

- - State level tax administration of all state and local sales and use taxes.

- - Uniform sourcing rules. The states will have uniform and simple rules for how they will source transactions to state and local governments.

- - Simplified exemption administration for use-based and entity-based exemptions.

- - Uniform audit procedures. Sellers who participate in one of the certified Streamlined Sales Tax System technology models will either not be audited or will have limited scope audits, depending on the technology model used. The states may conduct joint audits of large multi-state businesses.

These simplifications would apply to all sellers. Sellers who do not have a physical presence (or “use tax collection nexus”) are not required to collect sales and use taxes unless United States Congress should chose to require collection from all sellers for all types of commerce. However, absent Congressional action, sellers without a physical presence can volunteer to collect under the simplifications proposed in the Agreement. Registration by sellers to voluntarily collect sales and use taxes will not create an inference that the business must pay business activity taxes, such as the corporate franchise or income tax.

This substitute makes the amendments and supplements to the New Jersey sales and use tax that are necessary to conform New Jersey law to the terms of the Streamlined Sales and Use Tax Agreement.

FISCAL IMPACT:

The changes to the New Jersey sales and use tax base made by the substitute are estimated to be, when taken in their entirety, revenue neutral. For example, while it has been noted that the definition of taxable food would be expanded to include beverages with fruit juice content of less than 51 percent, carbonated waters would become exempt. Further, candy-like snacks with a relatively high flour content that are now taxable as candy would become exempt as grocery food. High fur content clothing that is now taxable would become exempt clothing. The exemption for medical equipment would be slightly expanded. It appears that these changes would cancel each other out.

Testimony regarding the substitute from the Department of the Treasury has suggested that the vendor participation in use tax collection that would be encouraged by the "amnesty" provisions of section 23 of the substitute would result in increased sales and use tax collections of \$40 million annually.

SENATE, No. 1958

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED OCTOBER 14, 2004

Sponsored by:

Senator WAYNE R. BRYANT

District 5 (Camden and Gloucester)

Senator BARBARA BUONO

District 18 (Middlesex)

Co-Sponsored by:

Senator Sarlo

SYNOPSIS

Conforms the sales and use tax to the Streamlined Sales and Use Tax Agreement to provide for entry therein.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/8/2005)

S1958 BRYANT, BUONO

2

1 AN ACT conforming the sales and use tax to the Streamlined Sales and
2 Use Tax Agreement to provide for entry therein, amending
3 P.L.1980, c.105, P.L.1981, c.546, P.L.1985, c.24, P.L.1993,
4 c.226, P.L.1993, c.373, and P.L.1997, c.162, amending and
5 supplementing P.L.1966, c.30, and repealing section 6 of P.L.1989,
6 c.123.

7

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

10

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

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

15 (a) "Person [~~. Person~~]" includes an individual, trust, partnership,
16 limited partnership, limited liability company, society, association, joint
17 stock company, corporation, public corporation or public authority,
18 estate, receiver, trustee, assignee, referee, fiduciary and any other
19 [person acting in a fiduciary or representative capacity, whether
20 appointed by a court or otherwise, and any combination of the
21 foregoing] legal entity.

22 (b) "Purchase at retail [~~. A~~]" means a purchase by any person at
23 a retail sale.

24 (c) "Purchaser [~~. A~~]" means a person to whom a sale of personal
25 property is made or to whom a service is furnished [~~who purchases~~
26 ~~property or who receives services~~].

27 (d) "Receipt [~~. The~~]" means the amount of the sales price of any
28 tangible personal property [and the charge for any] or service taxable
29 under this act[, valued in money, whether received in money or
30 otherwise, including any amount for which credit is allowed by the
31 vendor to the purchaser, without any deduction for expenses or early
32 payment discounts, but excluding any credit for property of the same
33 kind that is not tangible personal property purchased for lease
34 accepted in part payment and intended for resale, excluding the cost
35 of transportation where such cost is separately stated in the written
36 contract, if any, and on the bill rendered to the purchaser, and
37 excluding the amount of the sales price for which food stamps have
38 been properly tendered in full or part payment pursuant to the federal
39 Food Stamp Act of 1977, Pub.L.95-113 (7 U.S.C. s.2011 et seq.)].

40 (e) "Retail sale [~~. (1) A~~]" means any sale, lease, or rental [~~of~~
41 ~~tangible personal property to any person~~] for any purpose, other than
42 for resale, sublease, or subrent.

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 (1) For the purposes of this act a sale is for "resale, sublease, or
2 subrent" if it is a sale (A) for resale either as such or as converted into
3 or as a component part of a product produced for sale by the
4 purchaser, including the conversion of natural gas into another
5 intermediate or end product, other than electricity or thermal energy,
6 produced for sale by the purchaser, or (B) for use by that person in
7 performing the services subject to tax under subsection (b) of section
8 3 where the property so sold becomes a physical component part of
9 the property upon which the services are performed or where the
10 property so sold is later actually transferred to the purchaser of the
11 service in conjunction with the performance of the service subject to
12 tax.

13 (2) For the purposes of this act, the term "retail sale" includes:
14 sales of tangible personal property to all contractors, subcontractors
15 or repairmen of materials and supplies for use by them in erecting
16 structures for others, or building on, or otherwise improving, altering,
17 or repairing real property of others.

18 (3) [For the purposes of this act, the term retail sale includes the
19 purchase of tangible personal property for lease] (Deleted by
20 amendment, P.L. _____, c. _____)(now pending before the Legislature as
21 this bill).

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

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

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

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

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

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

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

38 (G) The sale of tangible personal property where the purpose of the
39 vendee is to hold the thing transferred as security for the performance
40 of an obligation of the [vendedor] seller.

41 (f) "Sale, selling or purchase [. Any] " means any transfer of title
42 or possession or both, exchange or barter, rental, lease or license to
43 use or consume, conditional or otherwise, in any manner or by any
44 means whatsoever for a consideration, or any agreement therefor,
45 including the rendering of any service, taxable under this act, for a
46 consideration or any agreement therefor.

1 (g) "Tangible personal property [. Corporeal personal property of
2 any nature including energy] " means personal property that can be
3 seen, weighed, measured, felt, or touched, or that is in any other
4 manner perceptible to the senses. "Tangible personal property"
5 includes electricity, water, gas, steam, and prewritten computer
6 software.

7 (h) "Use [. The] " means the exercise of any right or power over
8 tangible personal property by the purchaser thereof and includes, but
9 is not limited to, the receiving, storage or any keeping or retention for
10 any length of time, withdrawal from storage, any distribution, any
11 installation, any affixation to real or personal property, or any
12 consumption of such property. Use also includes the exercise of any
13 right or power over intrastate or interstate telecommunications and
14 prepaid [telephone] calling [arrangements] services. Use also
15 includes the exercise of any right or power over utility service.

16 (i) [Vendor. (1) The term "vendor"] "Seller" means a person
17 making sales, leases or rentals of personal property or services.

18 (1) The term "seller" includes:

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

21 (B) A person maintaining a place of business in the State and
22 making sales, whether at such place of business or elsewhere, to
23 persons within the State of tangible personal property or services, the
24 use of which is taxed by this act;

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

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

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

39 (F) [A person who purchases tangible personal property for lease,
40 whether in this State or elsewhere. For the purposes of Title 54 of the
41 Revised Statutes, the presence of leased tangible personal property in
42 this State is deemed to be a place of business in this State](~~Deleted by~~
43 amendment, P.L. _____, c. _____)(now pending before the Legislature as
44 this bill); and

45 (G) A person who sells, stores, delivers or transports energy to
46 users or customers in this State whether by mains, lines or pipes

- 1 located within this State or by any other means of delivery.
- 2 (2) In addition, when in the opinion of the director it is necessary
3 for the efficient administration of this act to treat any salesman,
4 representative, peddler or canvasser as the agent of the [vendor]
5 seller, distributor, supervisor or employer under whom [he] the agent
6 operates or from whom [he] the agent obtains tangible personal
7 property sold by [him] the agent or for whom [he] the agent solicits
8 business, the director may, in [his] the directors's discretion, treat
9 such agent as the [vendor] seller jointly responsible with [his] the
10 agent's principal, distributor, supervisor or employer for the collection
11 and payment over of the tax.
- 12 (j) "Hotel [. A] " means a building or portion of it which is
13 regularly used and kept open as such for the lodging of guests. The
14 term "hotel" includes an apartment hotel, a motel, boarding house or
15 club, whether or not meals are served.
- 16 (k) "Occupancy [. The] " means the use or possession or the right
17 to the use or possession, of any room in a hotel.
- 18 (l) "Occupant [. A] " means a person who, for a consideration,
19 uses, possesses, or has the right to use or possess, any room in a hotel
20 under any lease, concession, permit, right of access, license to use or
21 other agreement, or otherwise.
- 22 (m) "Permanent resident [. Any]" means any occupant of any room
23 or rooms in a hotel for at least 90 consecutive days shall be considered
24 a permanent resident with regard to the period of such occupancy.
- 25 (n) "Room [. Any] " means any room or rooms of any kind in any
26 part or portion of a hotel, which is available for or let out for any
27 purpose other than a place of assembly.
- 28 (o) "Admission charge [. The]" means the amount paid for
29 admission, including any service charge and any charge for
30 entertainment or amusement or for the use of facilities therefor.
- 31 (p) "Amusement charge [. Any] " means any admission charge,
32 dues or charge of roof garden, cabaret or other similar place.
- 33 (q) "Charge of a roof garden, cabaret or other similar place [.
34 Any] " means any charge made for admission, refreshment, service, or
35 merchandise at a roof garden, cabaret or other similar place.
- 36 (r) "Dramatic or musical arts admission charge [. Any] " means
37 any admission charge paid for admission to a theater, opera house,
38 concert hall or other hall or place of assembly for a live, dramatic,
39 choreographic or musical performance.
- 40 (s) "Lessor [. Any] " means any person who is the owner,
41 licensee, or lessee of any premises or tangible personal property which
42 [he] the person leases, subleases, or grants a license to use to other
43 persons.
- 44 (t) "Place of amusement [. Any] " means any place where any
45 facilities for entertainment, amusement, or sports are provided.

1 (u) "Casual sale [~~. Casual sale~~]" means an isolated or occasional
2 sale of an item of tangible personal property by a person who is not
3 regularly engaged in the business of making retail sales [~~at retail~~] of
4 such property where [~~such property~~] the item was obtained by the
5 person making the sale, through purchase or otherwise, for [~~his~~] the
6 person's own use [~~in this State~~].

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

12 (w) "Persons required to collect tax" or "persons required to
13 collect any tax imposed by this act" [~~shall include~~] includes: every
14 [~~vendor~~] seller of tangible personal property or services; every
15 recipient of amusement charges; every operator of a hotel; [~~every~~
16 ~~lessor;~~] and every [~~vendor~~] seller of telecommunications. Said terms
17 shall also include any officer or employee of a corporation or of a
18 dissolved corporation who as such officer or employee is under a duty
19 to act for such corporation in complying with any requirement of this
20 act and any member of a partnership. [~~Provided, however, the vendor~~
21 ~~of tangible personal property to all contractors, subcontractors or~~
22 ~~repairmen, consisting of materials and supplies for use by them in~~
23 ~~erecting structures for others, or building on, or otherwise improving,~~
24 ~~altering or repairing real property of others, shall not be deemed a~~
25 ~~person required to collect tax, and the tax imposed by any section of~~
26 ~~this act shall be paid directly to the director by such contractors,~~
27 ~~subcontractors or repairmen.~~]

28 (x) "Customer" [~~shall include~~] includes: every purchaser of
29 tangible personal property or services; every patron paying or liable
30 for the payment of any amusement charge; and every occupant of a
31 room or rooms in a hotel.

32 (y) "Property and services the use of which is subject to tax" [~~shall~~
33 ~~include~~] includes: (1) all property sold to a person within the State,
34 whether or not the sale is made within the State, the use of which
35 property is subject to tax under section 6 or will become subject to tax
36 when such property is received by or comes into the possession or
37 control of such person within the State; (2) all services rendered to a
38 person within the State, whether or not such services are performed
39 within the State, upon tangible personal property the use of which is
40 subject to tax under section 6 or will become subject to tax when such
41 property is distributed within the State or is received by or comes into
42 possession or control of such person within the State; (3) intrastate or
43 interstate telecommunications [~~, other than mobile telecommunications~~
44 ~~services,~~] charged to a service address in this State and sourced to this
45 State pursuant to section 29 of P.L. , c. (C.) (now pending

1 before the Legislature as this bill); (4) (Deleted by amendment,
2 P.L.1995, c.184); (5) energy sold, exchanged or delivered in this State
3 for use in this State; (6) utility service sold, exchanged or delivered in
4 this State for use in this State; (7) direct mail [advertising] processing
5 services in connection with [advertising or promotional material]
6 direct mail distributed in this State.

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

13 (aa) "Lease or rental" means [the possession or control of tangible
14 personal property by an agreement, not transferring sole title, as may
15 be evidenced by a contract, contracts, or by implication from other
16 circumstances including course of dealing or usage of trade or course
17 of performance, for a period of more than 28 days] any transfer of
18 possession or control of tangible personal property for a fixed or
19 indeterminate term for consideration. A "lease or rental" may include
20 future options to purchase or extend.

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

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

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

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

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

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

44 (bb) ["The amount of the sales price" of tangible personal property
45 purchased for lease means, at the election of the lessor, either (1) the
46 amount of the lessor's purchase price or (2) the amount of the total of

1 the lease payments attributable to the lease of such property. Tangible
2 personal property purchased for lease is subject to the provisions of
3 subsection (a) of section 3 of P.L.1966, c.30 (C.54:32B-3)] (Deleted
4 by amendment, P.L. _____, c. _____)(now pending before the Legislature
5 as this bill).

6 (cc) "Telecommunications" means the act or privilege of
7 originating or receiving messages or information through the use of
8 any kind of one-way or two-way communication; including but not
9 limited to voice, video, facsimile, teletypewriter, computer, mobile
10 telecommunications service or any other type of communication; using
11 electronic or electromagnetic methods, and all services and equipment
12 provided in connection therewith or by means thereof.
13 "Telecommunications" shall not include:

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

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

21 (3) services provided by a person, or by that person's wholly
22 owned subsidiary, not engaged in the business of rendering or offering
23 telecommunications services to the public, for private and exclusive
24 use within its organization, provided however, that
25 "telecommunications" shall include the sale of telecommunications
26 services attributable to the excess unused telecommunications capacity
27 of that person to another;

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

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

33 (6) purchases of telecommunications using a prepaid telephone
34 arrangement.

35 (dd) "Interstate telecommunication" means any telecommunication
36 that originates or terminates inside this State, including international
37 telecommunication. In the case of mobile telecommunications service,
38 "interstate telecommunication" means any mobile telecommunications
39 service that originates in one state and terminates in another state,
40 territory, or foreign country that is provided to a customer with a
41 place of primary use in this State.

42 (ee) "Intrastate telecommunication" means any telecommunication
43 that originates and terminates within this State. In the case of mobile
44 telecommunications service, "intrastate telecommunication" means any
45 mobile telecommunications service that originates and terminates
46 within the same state that is provided to a customer with a place of

1 primary use in this State.

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

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

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

8 (ii) "Self-generation unit" means a facility located on the user's
9 property, or on property purchased or leased from the user by the
10 person owning the self-generation unit and such property is contiguous
11 to the user's property, which generates electricity to be used only by
12 that user on the user's property and is not transported to the user over
13 wires that cross a property line or public thoroughfare unless the
14 property line or public thoroughfare merely bifurcates the user's or
15 self-generation unit owner's otherwise contiguous property.

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

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

26 (ll) "Pre-paid [telephone] calling [arrangement] service" means
27 the right to purchase exclusively telecommunications services, that
28 must be paid for in advance, that enables the origination of calls using
29 an access number or authorization code, whether manually or
30 electronically dialed; provided, that the remaining amount of units of
31 service that have been pre-paid shall be known by the service provider
32 on a continuous basis.

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

36 (nn) "Place of primary use" means the street address representative
37 of where the customer's use of the mobile telecommunications service
38 primarily occurs, which shall be the residential street address or the
39 primary business street address of the customer and within the licensed
40 service area of the home service provider. For the purposes of
41 determining the primary place of use, the terms used shall have the
42 meanings provided pursuant to the federal "Mobile
43 Telecommunications Sourcing Act," 4 U.S.C. s.124 (Pub.L.106-252).

44 (oo) (1) "Sales price" is the measure subject to sales tax and means
45 the total amount or consideration, including cash, credit, property, and
46 services, for which personal property or services are sold, leased, or

- 1 rented, valued in money, whether received in money or otherwise,
2 without any deduction for the following:
- 3 (A) The seller's cost of the property sold;
4 (B) The cost of materials used, labor or service cost, interest,
5 losses, all costs of transportation to the seller, all taxes imposed on the
6 seller, and any other expense of the seller;
7 (C) Charges by the seller for any services necessary to complete
8 the sale;
9 (D) Delivery charges, unless separately stated on the invoice, bill
10 or similar document given to purchaser;
11 (E) Installation charges; and
12 (F) The value of exempt personal property given to the purchaser
13 where taxable and exempt personal property have been bundled
14 together and sold by the seller as a single product or piece of
15 merchandise.
- 16 (2) "Sales price" does not include:
- 17 (A) Discounts, including cash, term, or coupons that are not
18 reimbursed by a third party, that are allowed by a seller and taken by
19 a purchaser on a sale;
20 (B) Interest, financing, and carrying charges from credit extended
21 on the sale of personal property or services, if the amount is separately
22 stated on the invoice, bill of sale, or similar document given to the
23 purchaser;
24 (C) Any taxes legally imposed directly on the consumer that are
25 separately stated on the invoice, bill of sale, or similar document given
26 to the purchaser;
27 (D) The amount of sales price for which food stamps have been
28 properly tendered in full or part payment pursuant to the federal Food
29 Stamp Act of 1977, Pub.L. 95-113 (7 U.S.C. s.2011 et seq.); or
30 (E) Credit for any trade-in of property of the same kind accepted
31 in part payment and intended for resale.
- 32 (pp) "Purchase price" means the measure subject to use tax and has
33 the same meaning as "sales price."
- 34 (qq) "Sales tax" means the tax imposed on certain transactions
35 pursuant to the provisions of the "Sales and Use Tax Act," P.L.1966,
36 c.30 (C.54:32B-1 et seq.).
- 37 (rr) "Delivery charges" means charges by the seller for preparation
38 and delivery to a location designated by the purchaser of personal
39 property or services including, but not limited to, transportation,
40 shipping, postage, handling, crating, and packing.
- 41 (ss) "Direct mail" means printed material delivered or distributed
42 by United States mail or other delivery service to a mass audience or
43 to addresses on a mailing list provided by the purchaser or at the
44 direction of the purchaser in cases in which the cost of the items are
45 not billed directly to the recipients. "Direct mail" includes tangible
46 personal property supplied directly or indirectly by the purchaser to

1 the direct mail seller for inclusion in the package containing the printed
2 material. "Direct mail" does not include multiple items of printed
3 material delivered to a single address.

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

8 (cf: P.L.2002, c.45, s.1)

9

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

12 3. There is imposed and there shall be paid a tax of 6% upon:

13 (a) The receipts from every retail sale of tangible personal
14 property, except as otherwise provided in this act. [If the lessor of
15 tangible personal property purchased for lease elects to pay tax on the
16 amount of the sales price as provided in paragraph (2) of subsection
17 (bb) of section 2 of P.L.1966, c.30 (C.54:32B-2), any and each
18 subsequent lease or rental is a retail sale, and a subsequent sale of such
19 property is a retail sale.]

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

22 (1) Producing, fabricating, processing, printing or imprinting
23 tangible personal property, performed for a person who directly or
24 indirectly furnishes the tangible personal property, not purchased by
25 him for resale, upon which such services are performed.

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

42 (3) Storing all tangible personal property not held for sale in the
43 regular course of business and the rental of safe deposit boxes or
44 similar space.

45 (4) Maintaining, servicing or repairing real property, other than a
46 residential heating system unit serving not more than three families

1 living independently of each other and doing their cooking on the
2 premises, whether the services are performed in or outside of a
3 building, as distinguished from adding to or improving such real
4 property by a capital improvement, but excluding services rendered by
5 an individual who is not in a regular trade or business offering his
6 services to the public, and excluding garbage removal and sewer
7 services performed on a regular contractual basis for a term not less
8 than 30 days.

9 (5) Direct-mail [advertising] processing services, except for
10 direct-mail [advertising] processing services in connection with
11 distribution of [advertising or promotional material] direct mail to
12 out-of-State recipients.

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

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

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

20 Services otherwise taxable under paragraph (1) or (2) of this
21 subsection (b) are not subject to the taxes imposed under this
22 subsection, where the tangible personal property upon which the
23 services were performed is delivered to the purchaser outside this
24 State for use outside this State.

25 (c) (1) Receipts from the sale of prepared food [and drink] in or
26 by restaurants, taverns, [vending machines] or other establishments
27 in this State, or by caterers, including in the amount of such receipts
28 any cover, minimum, entertainment or other charge made to patrons
29 or customers[:

30 (1) In all instances where the sale is for consumption on the
31 premises where sold;

32 (2) In those instances where the vendor or any person whose
33 services are arranged for by the vendor, after the delivery of the food
34 or drink by or on behalf of the vendor for consumption off the
35 premises of the vendor, serves or assists in serving, cooks, heats or
36 provides other services with respect to the food or drink], except for
37 meals especially prepared for and delivered to homebound elderly, age
38 60 or older, and to disabled persons, or meals prepared and served at
39 a group-sitting at a location outside of the home to otherwise
40 homebound elderly persons, age 60 or older, and otherwise
41 homebound disabled persons, as all or part of any food service project
42 funded in whole or in part by government or as part of a private,
43 nonprofit food service project available to all such elderly or disabled
44 persons residing within an area of service designated by the private
45 nonprofit organization[;

46 (3) In those instances where the sale is for consumption off the

1 premises of the vendor, and consists of a meal, or food prepared and
2 ready to be eaten, of a kind obtainable in restaurants as the main
3 course of a meal, including a sandwich, except where food other than
4 sandwiches is sold in an unheated state and is of a type commonly sold
5 in the same form and condition in food stores other than those which
6 are principally engaged in selling prepared foods]; and

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

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

16 For the purposes of this subsection:

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

20 "Prepared food," means:

21 A. food sold in a heated state or heated by the seller; or

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

29 C. food sold with eating utensils provided by the seller, including
30 plates, knives, forks, spoons, glasses, cups, napkins, or straws;
31 provided however, that "prepared food" does not include:

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

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

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

39 (d) The rent for every occupancy of a room or rooms in a hotel in
40 this State, except that the tax shall not be imposed upon [(1)] a
41 permanent resident[, or (2) where the rent is not more than at the rate
42 of \$2.00 per day].

43 (e) (1) Any admission charge[, where such admission charge is in
44 excess of \$0.75] to or for the use of any place of amusement in the
45 State, including charges for admission to race tracks, baseball,
46 football, basketball or exhibitions, dramatic or musical arts

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

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

17 (f) (1) The receipts from every sale, except for resale, of intrastate
18 or interstate telecommunications (other than mobile
19 telecommunications services) charged to an address in this State,
20 regardless of where the services are billed or paid.

21 (2) The receipts from every sale, except for resale, of intrastate or
22 interstate mobile telecommunications services billed by or for a
23 customer's home service provider and provided to a customer with a
24 place of primary use in this State. The provisions and definitions of
25 the federal "Mobile Telecommunications Sourcing Act," 4 U.S.C. ss.
26 116-126 (Pub.L. 106-252), are applicable herein.

27 (g) The receipts from every sale, except for resale, of prepaid
28 [telephone] calling [arrangements] service and the recharge of
29 prepaid [telephone] calling [arrangements] service. [If the sale or
30 recharge of a prepaid telephone calling arrangement does not take
31 place at the vendor's place of business, the sale or recharge shall be
32 conclusively determined to take place at the customer's shipping
33 address, or if there is no item shipped, at the customer's billing address
34 or the location associated with the customer's mobile telephone
35 number.]

36 (cf: P.L.2002, c.45, s.2)

37

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

40 4. a. For the purpose of adding and collecting the tax imposed by
41 this act, or an amount equal as nearly as possible or practicable to the
42 average equivalent thereof, to be reimbursed to the [vendor] seller by
43 the purchaser, [the following formula shall be in force and effect:

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1	Amount of Sale	Amount of Tax
2		
3	\$0.01 to \$0.10	No Tax
4	0.11 to 0.22	\$0.01
5	0.23 to 0.38	0.02
6	0.39 to 0.56	0.03
7	0.57 to 0.72	0.04
8	0.73 to 0.88	0.05
9	0.89 to \$1.10	0.06

10

11 In addition to a tax of \$0.06 on each full dollar, a tax shall be
12 collected on each part of a dollar in excess of a full dollar, in
13 accordance with the above formula.] tax shall be calculated to the
14 third decimal place. One-half cent (\$0.005) or higher shall be rounded
15 up to the next cent; less than \$0.005 shall be dropped in order to
16 round the result down.

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

23 (cf: P.L.1993, c.10, s.2)

24

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

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

1 persons in this State for use in this State, provided however, that
2 utility service used by the facility that provides the service shall not be
3 subject to tax, (G) of direct-mail [advertising] processing services
4 described in paragraph (5) of subsection (b) of section 3 of P.L.1966,
5 c.30 (C.54:32B-3) and (H) of prepaid [telephone] calling service
6 [arrangements] and the recharge of prepaid telephone calling
7 arrangements. For purposes of clause (A) of this section, the tax shall
8 be at the applicable rate, as set forth hereinabove, of the consideration
9 given or contracted to be given for such property or for the use of
10 such property, but excluding any credit for property of the same kind
11 accepted in part payment and intended for resale, plus the cost of
12 transportation, except where such cost is separately stated in the
13 written contract, if any, and on the bill rendered to the purchaser,
14 provided however, that there shall be no exclusion for the cost of the
15 utility service. For the purposes of clause (B) of this section, the tax
16 shall be at the applicable rate, as set forth hereinabove, of the price at
17 which items of the same kind of tangible personal property are offered
18 for sale by the user, or if items of the same kind of tangible personal
19 property are not offered for sale by the user in the regular course of
20 business and are used as such or incorporated into a structure, building
21 or real property the tax shall be at the applicable rate, as set forth
22 hereinabove, of the consideration given or contracted to be given for
23 the tangible personal property manufactured, processed or assembled
24 by the user into the tangible personal property the use of which is
25 subject to use tax pursuant to this section, and the mere storage,
26 keeping, retention or withdrawal from storage of tangible personal
27 property by the person who manufactured, processed or assembled
28 such property shall not be deemed a taxable use by him. For purposes
29 of clause (C) of this section, the tax shall be at the applicable rate, as
30 set forth hereinabove, of the consideration given or contracted to be
31 given for the service, including the consideration for any tangible
32 personal property transferred in conjunction with the performance of
33 the service, plus the cost of transportation, except where such cost is
34 separately stated in the written contract, if any, and on the bill
35 rendered to the purchaser. For the purposes of clause (D) of this
36 section, the tax shall be at the applicable rate on the charge made by
37 the telecommunications service provider. For purposes of clause (F)
38 of this section, the tax shall be at the applicable rate on the charge
39 made by the utility service provider. For purposes of clause (G) of
40 this section, the tax shall be at the applicable rate on that proportion
41 of the amount of all processing costs charged by a direct-mail
42 [advertising] processing service provider that is attributable to the
43 [advertising or promotional material] service distributed in this State.
44 For the purposes of clause (H) of this section, the tax shall be at the
45 applicable rate on the consideration given or contracted to be given for
46 the prepaid [telephone] calling [arrangement] service or the recharge

1 of the prepaid [telephone] calling [arrangement] service.

2 (cf: P.L.2002, c.45, s.3)

3

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

6 7. (a) The retail sales tax imposed under subsection (a) of section
7 3 and the compensating use tax imposed under section 6, when
8 computed in respect to tangible personal property wherever
9 manufactured, processed or assembled and used by such manufacturer,
10 processor or assembler in the regular course of business within this
11 State, shall be based on the price at which items of the same kind of
12 tangible personal property are offered for sale by him.

13 (b) Tangible personal property, which has been purchased by a
14 resident of the State of New Jersey outside of this State for use
15 outside of this State and subsequently becomes subject to the
16 compensating use tax imposed under this act, shall be taxed on the
17 basis of the purchase price of such property, provided, however:

18 (1) That where a taxpayer affirmatively shows that the property
19 was used outside such State by him for more than six months prior to
20 its use within this State, such property shall be taxed on the basis of
21 current market value of the property at the time of its first use within
22 this State. The value of such property, for compensating use tax
23 purposes, may not exceed its cost.

24 (2) That the compensating use tax on such tangible personal
25 property brought into this State (other than for complete consumption
26 or for incorporation into real property located in this State) and used
27 in the performance of a contract or subcontract within this State by a
28 purchaser or user for a period of less than six months may be based,
29 at the option of the taxpayer, on the fair rental value of such property
30 for the period of use within this State.

31 (c) [Leased tangible personal property which has been purchased
32 outside this State for lease outside of this State and subsequently
33 becomes subject to the compensating use tax imposed under this act
34 shall be taxed on the basis of the purchase price of such property,
35 provided however, that the compensating use tax on such property
36 brought into and used within this State may be based, at the option of
37 the lessor, on the total of the lease payments attributable to the lease
38 of that property attributable to the period of the lease remaining after
39 first use in this State] (Deleted by amendment, P.L. _____, c. _____)(now
40 pending before the Legislature as this bill).

41 (d) [Unless tangible personal property purchased for lease has
42 already been subject to the sales tax imposed under subsection (a) of
43 section 3 or the compensating use tax imposed under section 6, the use
44 tax computed with respect to such property, in the discretion of the
45 director, may be assessed against the lessee or sub-lessee and] Sales
46 tax imposed on the lease of tangible personal property in New Jersey

1 shall be based on the total of the periodic payments required under the
2 ~~[lease] agreement.~~ ~~[The fact that the lessee has accepted in good~~
3 ~~faith the certificate of the lessor, in the form prescribed by the~~
4 ~~director, and the fact that the tax imposed on property purchased for~~
5 ~~lease in this act has been paid may be considered by the director, but~~
6 ~~shall not be deemed conclusive if good faith issuance or acceptance of~~
7 ~~such certificate is in question.]~~ The full amount of sales tax due on the
8 complete term of a lease for more than six months shall be remitted
9 with the monthly or quarterly sales and use tax return due for the
10 period in which the lease was entered into in this State. If leased
11 property is subsequently removed on a permanent basis from this
12 State, the lessee shall be entitled to a refund of the tax allocable to the
13 portion of the lease that remains in effect after the property has been
14 removed from this State.

15 (e) The purchase of energy shall be subject to the compensating
16 use tax imposed under section 6 on the basis of the purchase price of
17 the energy, including any charges for utility service.

18 (cf: P.L.1997, c.162, s.20)

19

20 6. Section 1 of P.L.1993, c.226 (C.54:32B-7.1) is amended to read
21 as follows:

22 1. a. ~~[Notwithstanding the provisions of section 3 of P.L.1966,~~
23 ~~c.30 (C.54:32B-3) to the contrary, the]~~ The sale of a race
24 [horses]horse through a claiming [races] race within the State shall
25 be subject to the sales tax imposed by [that] section [only] 3 of
26 P.L.1966, c.30 (C.54:32B-3) on the sales price.

27 b. Notwithstanding the provisions of subsection a. of this section,
28 the purchaser of the horse in the second or a subsequent sale through
29 a claiming race of that horse within the State during a single calendar
30 year shall be allowed a refund on that portion of the tax paid by the
31 purchaser on the amount of the total [purchase] sales price that
32 [exceeds] does not exceed the highest of any prior [purchase
33 prices]sales price paid for the same horse within the State during [the
34 same] that calendar year. Such claim for refund may be made by the
35 purchaser by filing a claim, within three years of the of purchase, with
36 the New Jersey Division of Taxation for a refund of that part of the
37 sales tax paid. If no previous purchases have been made within the
38 calendar year, [the full purchase price shall be subject to the sales tax]
39 no such refund shall be allowed.

40 c. Each holder of a permit to conduct horse racing in this State
41 pursuant to P.L.1940, c.17 (C.5:5-22 et seq.) shall maintain and make
42 available to the Division of Taxation, upon reasonable request, an
43 accurate and detailed list of those sales that may result in a refund
44 claim pursuant to this section.

45 (cf: P.L.1993, c.226, s.1)

1 7. 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 are exempt from the tax
4 imposed under the "Sales and Use Tax Act" : [sales of medicines
5 and]

6 (1) drugs sold pursuant to a doctor's prescription for human use;

7 (2) over-the-counter drugs recommended and generally sold for the
8 relief of pain, ailments, distresses or disorders of the human body;

9 (3) diabetic supplies; [crutches,]

10 (4) artificial limbs, artificial eyes, artificial hearing devices,
11 corrective eyeglasses, prosthetic aids, artificial teeth or dentures,
12 braces, and other prosthetic devices;

13 (5) tampons or like products[,];

14 (6) orthopedic appliances and artificial devices designed to correct
15 or alleviate physical incapacity[,];

16 (7) medical oxygen[,];

17 (8) respiratory equipment[,];

18 (9) human blood and its derivatives when sold for human use[,];

19 (10) transcutaneous electro-neuro stimulators (TENS units), and
20 other durable medical equipment for home use[,];

21 (11) wheelchairs, crutches, stair lifts, and other mobility enhancing
22 equipment; and

23 (12) replacement parts for any of the foregoing exempt devices and
24 equipment.

25 b. As used in this section[, durable] :

26 "Drug" means a compound, substance or preparation, and any
27 component of a compound, substance or preparation, other than food
28 and food ingredients, dietary supplements or alcoholic beverages:

29 (1) recognized for human use in the official United States
30 Pharmacopoeia, official Homeopathic Pharmacopoeia of the United
31 States, or official National Formulary, and supplement to any of them;

32 or

33 (2) intended for use in the diagnosis, cure, mitigation, treatment,
34 or prevention of disease in humans; or

35 (3) intended to affect the structure or any function of the human
36 body.

37 "Over-the-counter-drug" means a drug that contains a label which
38 identifies the product as a drug, required by 21 CFR 201.66. The label
39 includes:

40 (1) a "Drug Facts" panel or

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

45 "Grooming and hygiene product" is soap or cleaning lotion,

1 shampoo, toothpaste, mouthwash, anti-perspirant, or sun tan lotion or
2 screen, regardless of whether the item meets the definition of
3 "over-the-counter drug."

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

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

10 (1) artificially replace a missing portion of the body; or

11 (2) prevent or correct a physical deformity or malfunction; or

12 (3) support a weak or deformed portion of the body.

13 "Durable medical equipment" means equipment, but not including
14 mobility enhancing equipment, that:

15 [a.] (1) can withstand repeated use;

16 [b.] (2) is primarily and customarily used to serve a medical
17 purpose;

18 [c.] 3. is generally not useful to a person in the absence of illness
19 or injury; and

20 [d.] 4. [is appropriate for use in the home]is not worn in or on the
21 body.

22 "Mobility enhancing equipment" means equipment, other than
23 durable medical equipment, that:

24 1. is primarily and customarily used to provide or increase the
25 ability to move from one place to another and which is appropriate for
26 use either at home or in a motor vehicle; and

27 3. is not generally used by persons with normal mobility; and

28 4. does not include any motor vehicle or equipment on a motor
29 vehicle normally provided by a motor vehicle manufacturer.

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

38 (cf: P.L.1987, c.383, s.1)

39

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

42 14. a. Receipts from the following are exempt from the tax
43 imposed under the "Sales and Use Tax Act:" sales of food[,]and food
44 [products , beverages,] ingredients and dietary [foods and health]
45 supplements, sold for human consumption off the premises where sold

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

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

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 requiring
13 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 dietary
18 substance for use by humans to supplement the diet by increasing the
19 total dietary intake; a concentrate, metabolite, constituent, extract, or
20 combination of any ingredient described herein;

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

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

28 "Food and food ingredients" means substances, whether in liquid,
29 concentrated, solid, frozen, dried, or dehydrated form, that are sold for
30 ingestion or chewing by humans and are consumed for their taste or
31 nutritional value. "Food and food ingredients" does not include
32 substances that contain one-half of one per cent or more of alcohol by
33 volume or items that contain tobacco, such as cigarettes, cigars,
34 chewing or pipe tobacco; and

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

39 (cf: P.L.1980, c.107, s.2)

40

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

43 16. a. Receipts from sales of articles of clothing and footwear for
44 human use [except articles made of fur on the hide or pelt of an animal
45 or animals where such fur is the component material of chief value of
46 the article] are exempt from the tax imposed under the "Sales and Use

1 Tax Act." ["Clothing" as used in this section shall also mean and
2 include sales to noncommercial purchasers of common wearing apparel
3 materials intended to be incorporated into wearing apparel as a
4 constituent part thereof, such as fabrics, thread, knitting yarn, buttons
5 and zippers. The director shall prescribe regulations to carry out the
6 provisions of this section.] This exemption does not apply to clothing
7 accessories or equipment, sport or recreational equipment, or
8 protective equipment.

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

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

16 d. As used in this section:

17 "Clothing" means all human wearing apparel suitable for general
18 use. Clothing shall not include: clothing accessories or equipment,
19 sport or recreational equipment, protective equipment, sewing
20 equipment and supplies, or sewing materials that become part of
21 clothing.

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

24 "Protective equipment" means items for human wear and designed
25 as protection of the wearer against injury or disease or as protections
26 against damage or injury of other persons or property but not suitable
27 for general use.

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

31 (cf: P.L.1980, c.105, s.16)

32

33 10. Section 18 of P.L.1980, c.105 (C.54:32B-8.6) is amended to
34 read as follows:

35 18. Receipts from casual sales except as to sales of motor vehicles,
36 whether for use on the highways or otherwise, except as to sales of
37 boats or vessels registered or subject to registration under the "New
38 Jersey Boat Act of 1962," P.L.1962, c.73 (C.12:7-34.36 et seq.), and
39 all amendments and supplements thereto, [and except as to sales of
40 tangible personal property purchased for lease which property was
41 granted exemption from tax pursuant to section 6 of P.L.1989, c.123
42 (C.54:32B-8.40),] are exempt from the tax imposed under the "Sales
43 and Use Tax Act." A manufactured home, as defined in subsection d.
44 of section 3 of P.L.1983, c.400 (C.54:4-1.4) shall not be deemed a
45 motor vehicle for the purposes of this section.

46 (cf: P.L.1989, c.123, s.4)

1 11. Section 33 of P.L.1980, c.105 (C.54:32B-8.21) is amended to
2 read as follows:

3 33. Receipts from sales of school textbooks for use by students in
4 a school, college, university or other educational institution, approved
5 as such by the Department of Education or by the Department of
6 Higher Education, when the educational institution, upon forms and
7 pursuant to regulations prescribed by the director, has declared the
8 books are required for school purposes and the purchaser has supplied
9 the [vendor] seller with the form at the time of the sale are exempt
10 from the tax imposed under the Sales and Use Tax Act.

11 (cf: P.L.1980, c.105, s.33)

12

13 12. Section 1 of P.L.1981, c.546 (C.54:32B-8.36) is amended to
14 read as follows:

15 1. a. Receipts from the sales of recycling equipment are exempt
16 from the tax imposed under the "Sales and Use Tax Act." For
17 purposes of this subsection "recycling equipment" means any
18 equipment which is used exclusively to sort and prepare solid waste
19 for recycling or in the recycling of solid waste. "Recycling equipment"
20 does not include conventional motor vehicles, or any equipment used
21 in a process after the first marketable product is produced, or in the
22 case of recycling iron or steel, any equipment used to reduce the waste
23 to molten state and in any process thereafter.

24 b. (1) Receipts from the sales of treatment equipment or
25 conveyance equipment are exempt from the tax imposed under the
26 "Sales and Use Tax Act," provided that the Commissioner of the
27 Department of Environmental Protection has determined that the
28 operation of the system in which the equipment is being or is to be
29 used, and the reuse of wastewater effluent that results from that
30 operation, are or will be beneficial to the environment. For purposes
31 of this subsection, "treatment equipment" means any equipment that is
32 used exclusively to treat effluent from a primary wastewater treatment
33 facility, which effluent would otherwise have been discharged into the
34 waters of the State, for purposes of reuse in an industrial process
35 thereafter, and "conveyance equipment" means any equipment that is
36 used exclusively to transport that effluent to the facility in which the
37 treatment equipment has been or is to be installed and to transport the
38 product of that further treatment to the site of that reuse.

39 (2) Notwithstanding the provisions of paragraph (1) of this
40 subsection, the [vendor] seller shall charge and collect the tax from
41 the purchaser on such sales at the rate then in effect, and the tax shall
42 be refunded to the purchaser by the filing of a claim, within three years
43 of the date of purchase, with the New Jersey Division of Taxation for
44 a refund of sales or use tax paid. Proof of claim for refund shall be
45 demonstrated by a copy of a determination of environmental benefit
46 issued to the purchaser by the Commissioner of the Department of

1 Environmental Protection pursuant to section 1 of P.L.2001, c.321
2 (C.54:10A-5.31), and by any additional information as the director
3 may require, including but not limited to proof of tax paid.
4 (cf: P.L.2001, c.322, s.1)

5
6 13. Section 1 of P.L.1985, c.24 (C.54:32B-8.39) is amended to
7 read as follows:

8 1. Receipts from sales of [advertising or promotional materials
9 which are prepared within or outside of the State of New Jersey]
10 direct mail for distribution [by a New Jersey direct-mail advertising or
11 promotional firm] to out-of-State recipients and receipts from sales of
12 direct-mail [advertising] processing services in connection with
13 distribution of [advertising or promotional materials] direct mail to
14 out-of-State recipients are exempt from the tax imposed under the
15 "Sales and Use Tax Act." The exemption provided by this section
16 shall apply to receipts from charges for the printing or production of
17 [advertising and promotional materials] direct mail whether prepared
18 in, or shipped into New Jersey after preparation and stored for
19 subsequent shipment to out-of-State customers. The direct-mail
20 [advertising] processing services exemption provided by [the] this
21 section shall apply to receipts from charges for all direct mail
22 processing services for distribution to out-of-State recipients,
23 including but not limited to the following: preparing and maintaining
24 mailing lists, addressing, separating, folding, inserting, sorting and
25 packaging [advertising or promotional] direct mail materials and
26 transporting to the point of shipment by the mail service or other
27 carrier.

28 (cf: P.L.1987, c.268, s.2)

29
30 14. Section 1 of P.L.1993, c.373 (C.54:32B-8.45) is amended to
31 read as follows:

32 1. a. Receipts of retail sales, except retail sales of motor vehicles,
33 of alcoholic beverages as defined in the "Alcoholic Beverage Tax
34 Law," R.S.54:41-1 et seq., and cigarettes as defined in the "Cigarette
35 Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.), made by a [vendor]
36 qualified seller during a period of certification pursuant to subsection
37 b. of this section from a place of business regularly operated by the
38 [vendor] seller for the purpose of making retail sales at which items
39 are regularly exhibited and offered for retail sale and which is not
40 utilized primarily for the purpose of catalogue or mail order sales, in
41 which county is situated an entrance to an interstate bridge or tunnel
42 connecting New Jersey with a state that does not impose a retail sales
43 and use tax or imposes a retail sales and use tax at a rate at least five
44 percentage points lower than the rate in this State, are exempt to the
45 extent of 50% of the tax imposed under the "Sales and Use Tax Act,"

1 P.L.1966, c.30 (C.54:32B-1 et seq.). The State Treasurer shall
2 annually designate the county or counties in which this exemption shall
3 apply.

4 b. The exemption provided by subsection a. of this section shall
5 apply only upon the application of a qualified seller for, and the
6 issuance of, a reduced rate certification by the director. Reduced rate
7 certifications shall be issued for a calendar year in which the reduced
8 rate exemption is to apply, and a qualified seller shall reapply for
9 recertification annually. The director shall issue such forms and
10 prescribe such procedures as may be necessary for certification and
11 annual renewal by a qualified seller. The director may at any time
12 revoke a certification if the director determines that the seller is not in
13 compliance with the requirements for certification.

14 (cf: P.L.1993, c.373, s.1)

15

16 15. (New section) Receipts from sales of prewritten software
17 delivered electronically are exempt from the tax imposed under the
18 "Sales and Use Tax Act", P.L.1966, c.30 (C.54:32B-1 et seq.). The
19 exemption provided by this section shall not apply to receipts from
20 sales of prewritten software delivered by a load and leave method.

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

24 "Computer software" means a set of coded instruction designed to
25 cause a computer or automatic data processing equipment to perform
26 a task.

27 "Delivered electronically" means delivered from the seller to the
28 purchaser by means other than tangible storage media.

29 "Electronic" means relating to technology having electrical, digital
30 magnetic, wireless, optical, electromagnetic, or similar capabilities.

31 "Load and leave" means delivery to the purchaser by the use of a
32 tangible storage medium where the tangible storage medium is not
33 physically transferred to the purchaser.

34 "Prewritten computer software" means computer software,
35 including prewritten upgrades, which is not designed and developed by
36 the author or other creator to the specifications of a specific
37 purchaser. The combining of two or more prewritten computer
38 software programs or pre-written portions thereof shall not cause the
39 combination to be other than prewritten computer software.
40 "Prewritten computer software" includes software designed and
41 developed by the author or other creator to the specifications of a
42 specific purchaser when it is sold to a person other than such
43 purchaser. If a person modifies or enhances computer software of
44 which that person is not the author or creator, the person shall be
45 deemed to be the author or creator only of such person's modifications
46 or enhancements. Prewritten software or a prewritten portion thereof

1 that is modified or enhanced to any degree, where such modification
2 or enhancement is designed and developed to the specifications of a
3 specific purchaser, shall remain pre-written software; provided,
4 however, that if there is a reasonable, separately stated charge or an
5 invoice or other statement of the price given to the purchaser for such
6 modification or enhancement, such modification or enhancement shall
7 not constitute pre-written computer software. "Prewritten computer
8 software" shall not include software delivered electronically.

9
10 16. (New section) Receipts from a sale-leaseback transaction are
11 exempt from the tax imposed under the "Sales and Use Tax Act",
12 P.L.1966, c.30 (C.54:32B-1 et seq.). For purposes of this section, a
13 "sale-leaseback" means a transaction where the owner of tangible
14 property sells the property to a lessor, who leases it back to the owner
15 within 180 days from when the property was originally placed in
16 service by the owner. A sale-leaseback shall be considered a financing
17 arrangement and shall not be considered a separate sale, use, or lease
18 of the property.

19
20 17. Section 9 of P.L.1966, c.30 (C.54:32B-9) is amended to read
21 as follows:

22 9. (a) Except as to motor vehicles sold by any of the following, any
23 sale, service or amusement charge by or to any of the following or any
24 use or occupancy by any of the following shall not be subject to the
25 sales and use taxes imposed under this act:

26 (1) The State of New Jersey, or any of its agencies,
27 instrumentalities, public authorities, public corporations (including a
28 public corporation created pursuant to agreement or compact with
29 another state) or political subdivisions where it is the purchaser, user
30 or consumer, or where it is a [vendor] seller of services or property
31 of a kind not ordinarily sold by private persons;

32 (2) The United States of America, and any of its agencies and
33 instrumentalities, insofar as it is immune from taxation where it is the
34 purchaser, user or consumer, or where it sells services or property of
35 a kind not ordinarily sold by private persons;

36 (3) The United Nations or any international organization of which
37 the United States of America is a member where it is the purchaser,
38 user or consumer, or where it sells services or property of a kind not
39 ordinarily sold by private persons.

40 (b) Except as otherwise provided in this section any sale or
41 amusement charge by or to any of the following or any use or
42 occupancy by any of the following, where such sale, charge, use or
43 occupancy is directly related to the purposes for which the following
44 have been organized, shall not be subject to the sales and use taxes
45 imposed under this act: a corporation, association, trust, or
46 community chest, fund or foundation, organized and operated

1 exclusively (1) for religious, charitable, scientific, testing for public
2 safety, literary or educational purposes; or (2) for the prevention of
3 cruelty to children or animals; or (3) as a volunteer fire company,
4 rescue, ambulance, first aid or emergency company or squad; or (4) as
5 a National Guard organization, post or association, or as a post or
6 organization of war veterans, or the Marine Corps League, or as an
7 auxiliary unit or society of any such post, organization or association;
8 or (5) as an association of parents and teachers of an elementary or
9 secondary public or private school exempt under the provisions of this
10 section. Such a sale, charge, use or occupancy by, or a sale or charge
11 to, an organization enumerated in this subsection, shall not be subject
12 to the sales and use taxes only if no part of the net earnings of the
13 organization inures to the benefit of any private shareholder or
14 individual, no substantial part of the activities of the organization is
15 carrying on propaganda, or otherwise attempting to influence
16 legislation, and the organization does not participate in, or intervene
17 in (including the publishing or distributing of statements), any political
18 campaign on behalf of any candidate for public office.

19 (c) Nothing in this section shall exempt from the taxes imposed
20 under the "Sales and Use Tax Act":

21 (1) the sale of a motor vehicle by an organization described in
22 subsection (b) of this section, unless the purchaser is an organization
23 exempt under this section;

24 (2) retail sales of tangible personal property by any shop or store
25 operated by an organization described in subsection (b) of this section,
26 unless the tangible personal property was received by the organization
27 as a gift or contribution and the shop or store is one in which
28 substantially all the work in carrying on the business of the shop or
29 store is performed for the organization without compensation and
30 substantially all of the shop's or store's merchandise has been received
31 by the organization as gifts or contributions or unless the purchaser is
32 an organization exempt under this section; or

33 (3) the sale or use of energy or utility service to or by an
34 organization described in paragraph (1) of subsection (a) or subsection
35 (b) of this section.

36 (d) Any organization enumerated in subsection (b) of this section
37 shall not be entitled to an exemption granted pursuant to this section
38 unless it has complied with such requirements for obtaining a tax
39 immunity authorization as may be provided in this act.

40 (e) Where any organization described in subsection (b) of this
41 subsection carries on its activities in furtherance of the purposes for
42 which it was organized, in premises in which, as part of those
43 activities, it operates a hotel, occupancy of rooms in the premises and
44 rents from those rooms received by the organization shall not be
45 subject to tax under the "Sales and Use Tax Act."

46 (f) (1) Except as provided in paragraph (2) of this subsection, any

1 admissions all of the proceeds of which inure exclusively to the benefit
2 of the following organizations shall not be subject to any of the taxes
3 imposed under subsection (e) of section 3 of P.L.1966, c.30
4 (C.54:32B-3):

5 (A) an organization described in paragraph (1) of subsection (a) or
6 subsection (b) of this section;

7 (B) a society or organization conducted for the sole purpose of
8 maintaining symphony orchestras or operas and receiving substantial
9 support from voluntary contributions; or

10 (C) (Deleted by amendment, P.L.1999, c.416).

11 (D) a police or fire department of a political subdivision of the
12 State, or a volunteer fire company, ambulance, first aid, or emergency
13 company or squad, or exclusively to a retirement, pension or disability
14 fund for the sole benefit of members of a police or fire department or
15 to a fund for the heirs of such members.

16 (2) The exemption provided under paragraph (1) of this subsection
17 shall not apply in the case of admissions to:

18 (A) Any athletic game or exhibition unless the proceeds shall inure
19 exclusively to the benefit of elementary or secondary schools or unless
20 in the case of an athletic game between two elementary or secondary
21 schools, the entire gross proceeds from such game shall inure to the
22 benefit of one or more organizations described in subsection (b) of this
23 section;

24 (B) Carnivals, rodeos, or circuses in which any professional
25 performer or operator participates for compensation;

26 (3) Admission charges for admission to the following places or
27 events shall not be subject to any of the taxes imposed under
28 subsection (e) of section 3 of P.L.1966, c.30 (C.54:32B-3):

29 (A) Any admission to agricultural fairs if no part of the net earnings
30 thereof inures to the benefit of any stockholders or members of the
31 association conducting the same; provided the proceeds therefrom are
32 used exclusively for the improvement, maintenance and operation of
33 such agricultural fairs.

34 (B) Any admission to a home or garden which is temporarily open
35 to the general public as a part of a program conducted by a society or
36 organization to permit the inspection of historical homes and gardens;
37 provided no part of the net earnings thereof inures to the benefit of
38 any private stockholder or individual.

39 (C) Any admissions to historic sites, houses and shrines, and
40 museums conducted in connection therewith, maintained and operated
41 by a society or organization devoted to the preservation and
42 maintenance of such historic sites, houses, shrines and museums;
43 provided no part of the net earnings thereof inures to the benefit of
44 any private stockholder or individual.

45 (cf: P.L.1999, c.416, s.1)

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

3 10. (a) Receipts from any sale of a motor vehicle, an aircraft or a
4 boat or other vessel shall not be subject to the retail sales tax imposed
5 under subsection (a) of section 3, despite the taking of physical
6 possession by the purchaser within this State, provided that the
7 purchaser, at the time of taking delivery:

8 (1) is a nonresident of this State,

9 (2) has no permanent place of abode in this State,

10 (3) is not engaged in carrying on in this State any employment,
11 trade, business or profession in which the motor vehicle, aircraft or
12 boat or other vessel will be used in this State,

13 (4) prior to taking delivery, furnishes to the [vendor] seller: any
14 affidavit, statement or additional evidence, documentary or otherwise,
15 which the director may require to assure proper administration of the
16 tax imposed upon subsection (a) of section 3, and

17 (5) will not house, moor, base or otherwise place the aircraft, boat
18 or other vessel in this State for use on other than a transient basis or
19 for repairs at any time within 12 months from the date of purchase. In
20 the event that any of the conditions specified in this subsection (a)
21 have not been met, the exemption herein granted shall not be
22 applicable and the purchaser shall be liable for the payment of the
23 sales tax.

24 (b) A [vendor] seller shall not be liable for failure to collect tax on
25 receipts from any sale of a motor vehicle, an aircraft or a boat or
26 other vessel; provided that the [vendor] seller prior to making
27 delivery obtains and keeps available for inspection by the director any
28 affidavit, statement or additional evidence, documentary or otherwise,
29 as may be required to be furnished under subsection (a) above;
30 provided, that such affidavit, statement or additional evidence is not
31 known by the [vendor] seller, prior to making physical delivery of the
32 motor vehicle, aircraft or boat or other vessel, to be false.

33 (cf: P.L.1981, c.332, s.1)

34

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

37 11. The following uses of property shall not be subject to the
38 compensating use tax imposed under this act:

39 (1) In respect to the use of property used by the purchaser in this
40 State prior to July 1, 1966.

41 (2) In respect to the use of property purchased by the user while
42 a nonresident of this State, except in the case of tangible personal
43 property which the user, in the performance of a contract, incorporates
44 into real property located in the State [or except in the case of
45 tangible personal property purchased for lease]. A person while
46 engaged in any manner in carrying on in this State any employment,

1 trade, business or profession, not entirely in interstate or foreign
2 commerce, shall not be deemed a nonresident with respect to the use
3 in this State of property in such employment, trade, business or
4 profession.

5 (3) In respect to the use of property or services upon the sale of
6 which the purchaser would be expressly exempt from the taxes
7 imposed under subsection (a) or (b) of section 3.

8 (4) In respect to the use of property which is converted into or
9 becomes a component part of a product produced for sale or for
10 market sampling by the purchaser.

11 (5) In respect to the use of paper in the application of newspapers
12 and periodicals.

13 (6) In respect to the use of property or services to the extent that
14 a retail sales or use tax was legally due and paid thereon, without any
15 right to a refund or credit thereof, to any other State or jurisdiction
16 within any other state but only when it is shown that such other State
17 or jurisdiction allows a corresponding exemption with respect to the
18 sale or use of tangible personal property or services upon which such
19 a sales tax or compensating use tax was paid to this State. To the
20 extent that the tax imposed by this act is at a higher rate than the rate
21 of tax in the first taxing jurisdiction, this exemption shall be
22 inapplicable and the tax imposed by section 6 of this act shall apply to
23 the extent of the difference in such rates.

24 (7) In respect to the use of natural gas by an eligible person, other
25 than a co-generation facility, as defined in section 34 of
26 P.L.1997,c.162 (C.54:32B-14.1), up to the base level of volume as
27 defined in section 34 of P.L.1997, c.162, but only as long as the
28 eligible person remains at the same physical site that was occupied on
29 December 31, 1995.

30 (cf: P.L.1997, c.162, s.28)

31

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

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

42 (b) For the purpose of the proper administration of this act and to
43 prevent evasion of the tax hereby imposed, and subject to the rules
44 regarding the administration of exemptions authorized by the
45 Streamlined Sales and Use Tax Agreement, it shall be presumed that
46 all receipts for property or services of any type mentioned in

1 subsections (a), (b) and (c) of section 3, all rents for occupancy of the
2 type mentioned in subsection (d) of said section, and all amusement
3 charges of any type mentioned in subsection (e) of said section, are
4 subject to tax until the contrary is established, and the burden of
5 proving that any such receipt, amusement charge or rent is not taxable
6 hereunder shall be upon the person required to collect tax or the
7 customer. Unless a [vendor] seller shall have taken from the
8 purchaser a certificate, signed by the purchaser and bearing [his] the
9 purchaser's name and address and the number of [his] the purchaser's
10 registration certificate, to the effect that the property or service was
11 purchased for resale or the purchaser prior to taking delivery,
12 furnishes to the [vendor] seller any affidavit, statement or additional
13 evidence, documentary or otherwise, which the director may require
14 demonstrating that the purchaser is an exempt organization described
15 in section 9(b)(1), the sale shall be deemed a taxable retail sale [at
16 retail]. Provided however, the director may, in [his] the director's
17 discretion, authorize a purchaser, who acquires tangible personal
18 property or services under circumstances which make it impossible at
19 the time of acquisition to determine the manner in which the tangible
20 personal property or services will be used, to pay the tax directly to
21 the director and waive the collection of the tax by the [vendor] seller
22 or provide for direct pay authority under rules adopted under the
23 Streamlined Sales and Use Tax Agreement. [Provided, further, the
24 director shall authorize any contractor, subcontractor or repairman
25 who acquires tangible personal property consisting of materials and
26 supplies for use by him in erecting structures for others, or building
27 on, or otherwise improving, altering, or repairing real property of
28 others, to pay the tax directly to the director and waive the collection
29 of the tax by the vendor.] Provided further, the director shall
30 authorize any eligible person, as defined in section 34 of P.L.1997,
31 c.162 (C.54:32B-14.1), who purchases natural gas from a non-utility
32 on and after January 1, 1998 through December 31, 2002, to pay the
33 tax on the commodity directly to the director and waive the collection
34 of the tax by the [vendor] seller. No such authority shall be granted
35 or exercised except upon application to the director, and the issuance
36 by the director of a direct payment permit. If a direct payment permit
37 is granted, its use shall be subject to conditions specified by the
38 director, and the payment of tax on all acquisitions pursuant to the
39 permit shall be made directly to the director by the permit holder.

40 (c) The director may provide by regulation that the tax upon
41 receipts from sales on the installment plan may be paid on the amount
42 of each installment and upon the date when such installment is due.
43 He may also provide by regulation for the exclusion from taxable
44 receipts, amusement charges or rents of amounts subject, as
45 applicable, to the provisions of section 30 of P.L. , c. (C.)

1 (now pending before the Legislature as this bill), representing sales
2 where the contract of sale has been canceled, the property returned or
3 the receipt, charge or rent has been ascertained to be uncollectible or,
4 in the case the tax has been paid upon such receipt, charge or rent, for
5 refund or credit of the tax so paid.

6 (cf: P.L.1997, c.162, s.29)

7

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

10 14. (a) Every person required to collect any tax imposed by this
11 act shall be personally liable for the tax imposed, collected or required
12 to be collected under this act. Any such person shall have the same
13 right in respect to collecting the tax from that person's customer or in
14 respect to non-payment of the tax by the customer as if the tax were
15 a part of the purchase price of the property or service, amusement
16 charge or rent, as the case may be, and payable at the same time;
17 provided, however, that the director shall be joined as a party in any
18 action or proceeding brought to collect the tax.

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

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

30 (d) No person required to collect any tax imposed by this act shall
31 advertise or hold out to any person or to the public in general, in any
32 manner, directly or indirectly, that the tax is not considered as an
33 element in the price, amusement charge or rent payable by the
34 customer, or except as provided by subsection (f) of this section that
35 the person required to collect the tax will pay the tax, that the tax will
36 not be separately charged and stated to the customer or that the tax
37 will be refunded to the customer. Upon written application duly made
38 and proof duly presented to the satisfaction of the director showing
39 that in the particular business of the person required to collect the tax
40 it would be impractical for the [vendor] seller to separately charge the
41 tax to the customer, the director may waive the application of the
42 requirement herein as to such [vendor] seller.

43 (e) All [vendor] sellers of energy or utility service shall include the
44 tax imposed by the "Sales and Use Tax Act" within the purchase price
45 of the tangible personal property or service.

46 (f) No person required to collect any tax imposed by this act shall

1 be held liable for having charged and collected the incorrect amount
2 of sales and use tax by reason of reliance on erroneous data provided
3 by the director with respect to tax rates, boundaries or taxing
4 jurisdiction assignments.

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

12 (cf: P.L.2003, c.42, s.1)

13
14 22. Section 34 of P.L.1997, c.162 (C.54:32B-14.1) is amended to
15 read as follows:

16 34. a. As used in this act, "eligible person" means any person other
17 than a co-generation facility as defined in this act whose last purchase
18 and delivery of natural gas on or before December 31, 1995 was from
19 a non-utility, or a cogeneration facility which ceased operation in 1996
20 and subsequently began to purchase non-utility natural gas, and who
21 satisfactorily documents such purchase to the director.

22 b. An eligible person shall determine and certify to the director,
23 and satisfactorily document to the director, a base level of volume as
24 of December 31, 1995 or December 31, 1996 in the case of a
25 co-generation facility which ceased operation in 1996 and
26 subsequently began to purchase non-utility natural gas, which shall be
27 equal to the average annual volume of natural gas units purchased by
28 the eligible person from any non-utility and delivered, but such
29 computation shall not include any purchases delivered prior to January
30 1, 1992, provided however, that the base level of volume of an eligible
31 person other than a co-generation facility shall be reduced on an
32 annual basis beginning in 1999 by multiplying the base level of volume
33 as of December 31, 1995 by the following reduction ratios: 0.8 in
34 1999, 0.6 in 2000, 0.4 in 2001 and 0.2 in 2002. In 2003 and thereafter
35 there shall be no exemption for purchases of natural gas by an eligible
36 person other than a co-generation facility.

37 c. For purchases of natural gas from a non-utility on and after
38 January 1, 1998 through December 31, 2002, an eligible person shall
39 issue a direct payment certificate to the non-utility and shall pay any
40 sales or use tax due pursuant to the method prescribed by this section.
41 Unless specifically exempt from the tax imposed under the Sales and
42 Use Tax Act pursuant to subsection b. of section 26 of P.L.1997,
43 c.162 (C.54:32B-8.46), utility service is subject to the tax imposed
44 pursuant to section 3 of P.L.1966, c.30 (C.54:32B-3).

45 d. On an annual basis, each eligible person, other than a
46 co-generation facility, shall be required to file with the director:

1 (1) An energy volume report, which shall contain a certification as
2 to the gross annual volume of gas (in units) purchased and delivered
3 in the previous 12-month period from any non-utility and utility, the
4 purchase price per unit, and any additional information that the
5 director deems necessary to effectuate the provisions herein; and

6 (2) An energy use tax return, wherein any tax due on natural gas
7 purchased from a utility or non-utility shall be reported and remitted
8 as follows:

9 (a) If the certified gross annual volume (in units) was purchased
10 solely from a non-utility, and does not exceed the base level of
11 volume, no sales and use tax shall be due on purchases of natural gas
12 in that calendar year;

13 (b) If the certified gross annual volume (in units) was purchased
14 solely from a non-utility, and exceeds the base level of volume, the
15 sales and use tax shall be remitted on the purchases of natural gas that
16 exceed the base level of volume, based on the purchase price of the
17 gas; and

18 (c) If the certified gross annual volume in units was purchased
19 from both a utility and non-utility [vendor] seller or solely from a
20 utility [vendor] seller, the director shall refund to the eligible person
21 all sales taxes paid on purchases not in excess of the base level of
22 volume. The eligible person shall remit to the director all unpaid sales
23 taxes on the purchases of natural gas that exceed the base level of
24 volume, based on the purchase price.

25 (cf: P.L.1997, c.162, s.34)

26

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

29 15. (a) On or before June 20, 1966, or in the case of persons
30 commencing business or opening new places of business after such
31 date, within three days after such commencement or opening, every
32 person required to collect any tax imposed by this act and every
33 person purchasing tangible personal property for resale [or lease]
34 shall file with the director a certificate of registration in a form
35 prescribed by the director. In the case of a person commencing
36 business or opening a new place of business on or after the first day of
37 the third month following the enactment of P.L.1993, c.274
38 (C.40:52-1.3 et al.), the certificate shall be filed at least 15 business
39 days before the commencement or opening. The director shall within
40 five days after such registration issue, without charge, to each
41 registrant a certificate of authority empowering the registrant to
42 collect the tax and a duplicate thereof for each additional place of
43 business of such registrant. Each certificate or duplicate shall state the
44 place of business to which it is applicable. Such certificate of
45 authority shall be prominently displayed in the place of business of the
46 registrant. A registrant who has no regular place of doing business

1 shall attach such certificate to his cart, stand, truck or other
2 merchandising device. Such certificates shall be nonassignable and
3 nontransferable and shall be surrendered to the director immediately
4 upon the registrant's ceasing to do business at the place named.

5 (b) Any person who is not otherwise required to collect any tax
6 imposed by this act and who makes sales to persons within the State
7 of tangible personal property or services, the use of which is subject
8 to tax under this act, may if he so elects file a certificate of registration
9 with the director who may, in his discretion and subject to such
10 conditions as he may impose, issue to him a certificate of authority to
11 collect the compensating use tax imposed by this act.

12 (c) A seller that registers to pay or collect and remit sales or use tax
13 in accordance with the terms of the Streamlined Sales and Use Tax
14 Agreement may select one of the following methods of remittance or
15 other method allowed by State law to remit the taxes collected, subject
16 to the liabilities and conditions established pursuant to section 10 of
17 P.L.2001, c.431 (C.54:32B-53):

18 (1) a model 1 seller, that selects a certified service provider as an
19 agent to perform all the seller's sales or use tax functions, other than
20 the seller's obligation to remit tax on its own purchases;

21 (2) a model 2 seller, that selects a certified automated system to
22 use which calculates the amount of tax due on a transaction; or

23 (c) a model 3 seller, that uses its own proprietary automated sales
24 tax system that has been certified as a certified automated system.

25 (d) A certified service provider in model 1 shall be allowed a
26 monetary allowance in accordance with the terms of the contract that
27 the states participating in the Streamlined Sales and Use Tax
28 Agreement sign with the provider. The director shall prescribe the
29 allowance in accordance with the terms of the contract, which shall be
30 funded entirely from money collected in model 1.

31 A monetary allowance to a certified service provider may be based
32 on one or more of the following incentives:

33 (1) A base rate that applies to taxable transactions processed by the
34 provider.

35 (2). For a period not to exceed 24 months following a voluntary
36 seller's registration through the Streamlined Sales and Use Tax
37 Agreement's central registration process, a percentage of tax revenue
38 generated for a member state by the voluntary seller for each member
39 state for which the seller does not have a requirement to register to
40 collect the tax.

41 (e) A model 2 seller shall be allowed a monetary allowance which
42 the director shall prescribe in accordance with the terms arrived at by
43 the member states of the Streamlined Sales and Use Tax Agreement.
44 The member states initially anticipate that they will provide a monetary
45 allowance to sellers under model 2 based on the following:

46 (1) Each seller shall receive a base rate for a period not to exceed

1 24 months following the commencement of participation by the seller.

2 (2). For a period not to exceed 24 months following a voluntary
3 seller's registration through the Streamlined Sales and Use Tax
4 Agreement's central registration process, a percentage of tax revenue
5 generated for a member state by the voluntary seller for each member
6 state for which the seller does not have a requirement to register to
7 collect the tax.

8 (f) A model 3 seller and all other sellers that are not under model
9 1 or model 2 shall be allowed a monetary allowance which the director
10 shall prescribe in accordance with the terms arrived at by the member
11 states of the Streamlined Sales and Use Tax Agreement. The member
12 states initially anticipate that they will provide a monetary allowance
13 to sellers under model 3 and to all other sellers that are not under
14 models 1 or 2 will be based on the following: for a period not to
15 exceed 24 months following a voluntary seller's registration through
16 the Streamlined Sales and Use Tax Agreement's central registration
17 process, a percentage of tax revenue generated for a member state by
18 the voluntary seller for each member state for which the seller does not
19 have a requirement to register to collect the tax.

20 (cf: P.L.1993, c.274, s.1)

21

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

24 17. (a) Every person required to collect or pay tax under this act
25 shall on or before August 28, 1966, and on or before the
26 ~~[twenty-eighth]~~ twentieth day of each month thereafter, make and file
27 a return for the preceding month with the director. The return of a
28 ~~[vendor]~~ seller of tangible personal property or services shall show his
29 receipts from sales and also the aggregate value of tangible personal
30 property and services sold by him, the use of which is subject to tax
31 under this act, and the amount of taxes required to be collected with
32 respect to such sales and use. The return of a recipient of amusement
33 charges shall show all such charges and the amount of tax thereon,
34 and the return of a person required to collect tax on leases or
35 ~~[rents]~~ rentals shall show all ~~[rents]~~ lease or rental payments received
36 or charged and the amount of tax thereon.

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

45 (c) The form of returns shall be prescribed by the director and shall
46 contain such information as he may deem necessary for the proper

1 administration of this act. The director may require amended returns
2 to be filed within 20 days after notice and to contain the information
3 specified in the notice.

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

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

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

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

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

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

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

1 misrepresentation of a material fact. The statutes of limitations
2 applicable to asserting a tax liabilities, deficiencies, penalties and
3 interest are tolled for this 36 month period.

4 (6) The "amnesty" granted pursuant to paragraph (1) of this
5 subsection shall apply only to sales or use taxes due from a seller in its
6 capacity as a seller and shall not apply to sales or use taxes due from
7 a seller in its capacity as a buyer.

8 (cf: P.L.1967, c.25, s.4)

9

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

12 18. Every person required to file a return under this act shall, at the
13 time of filing such return, pay to the director the taxes imposed by this
14 act as well as all other moneys collected by such person acting or
15 purporting to act under the provisions of this act. All the taxes for
16 the period for which a return is required to be filed or for such lesser
17 interval as shall have been designated by the director, shall be due and
18 payable to the director on the date limited for the filing of the return
19 for such period, or on the date limited for such lesser interval as the
20 director has designated, without regard to whether a return is filed or
21 whether the return which is filed correctly shows the amount of
22 receipts, amusement charges or rents or the value of property or
23 services sold or purchased or the taxes due thereon. Where the
24 director, in [his] the director's discretion, deems it necessary to
25 protect the revenues to be obtained under this act, [he] the director
26 may require any person required to collect the tax imposed by this act
27 to file [with him] a bond with the director, issued by a surety
28 company authorized to transact business in this State and approved
29 by the Commissioner of Banking and Insurance of this State as to
30 solvency and responsibility, in such amount as the director may fix, to
31 secure the payment of any tax or penalties or interest due or which
32 may become due from such person under this act. In the event that
33 the director determines that a [vendor] seller is to file such bond,
34 [he] the director shall give notice to [him] the seller to that effect,
35 specifying the amount of the bond required. Such person shall file
36 such bond within 5 days after the giving of such notice unless within
37 such 5 days [he] that person shall request in writing a hearing before
38 the director at which the necessity, propriety and amount of the bond
39 shall be determined by the director. Such determination shall be final
40 and shall be complied with within 15 days after the giving of notice
41 thereof. In lieu of such bond, securities approved by the director or
42 cash in such amount as [he] the director may prescribe, may be
43 deposited, which shall be kept in the custody of the director who may
44 at any time without notice to the depositor apply them to any tax or
45 interest or penalties due, and for that purpose the securities may be
46 sold by [him] the director at public or private sale without notice to

1 the depositor thereof.

2 (cf: P.L.1967, c.25, s.5)

3

4 26. (New section) a. The retail sale, excluding lease or rental, of
5 a product shall be sourced as follows:

6 (1) If the product is received by the purchaser at a business
7 location of the seller, then the sale shall be sourced to that business
8 location.

9 (2) If the product is not received by the purchaser at a business
10 location of the seller, then the sale shall be sourced to the location
11 where receipt by the purchaser (or the purchaser's donee, designated
12 as such by the purchaser) occurs, including the location indicated by
13 instructions for delivery to the purchaser (or donee), known to the
14 seller.

15 (3) If paragraphs (1) and (2) of this subsection do not apply, then
16 the sale shall be sourced to the location indicated by an address for the
17 purchaser that is available from the business records of the seller that
18 are maintained in the ordinary course of the seller's business when use
19 of this address does not constitute bad faith.

20 (4) If paragraphs (1), (2), and (3) of this subsection do not apply,
21 then the sale shall be sourced to the location indicated by an address
22 for the purchaser obtained during the consummation of the sale,
23 including the address of a purchaser's payment instrument, if no other
24 address is available, if use of this address does not constitute bad faith.

25 (5) If the rules of paragraphs (1), (2), (3), or (4) of this subsection
26 do not apply, including the circumstance in which the seller is without
27 sufficient information to apply the previous rules, then the location
28 shall be determined by the address from which tangible personal
29 property was shipped, from which the digital good or the computer
30 software delivered electronically was first available for transmission by
31 the seller, or from which the service was provided (disregarding for
32 these purposes any location that merely provided the digital transfer
33 of the product sold).

34 b. The lease or rental of tangible personal property, other than
35 property identified in subsection c. or subsection d. of this section,
36 shall be sourced as follows:

37 (1) If a lease or rental that requires recurring periodic payments,
38 then the first periodic payment shall be sourced the same as a retail
39 sale in accordance with the provisions of subsection a. of this section.
40 Periodic payments made subsequent to the first payment shall be
41 sourced to the primary property location for each period covered by
42 the payment. The primary property location shall be as indicated by an
43 address for the property provided by the lessee that is available to the
44 lessor from its records maintained in the ordinary course of business,
45 when use of this address does not constitute bad faith. The property
46 location shall not be altered by intermittent use at different locations,

1 such as use of business property that accompanies employees on
2 business trips and service calls.

3 (2) If a lease or rental does not require recurring periodic
4 payments, then the payment shall be sourced the same as a retail sale
5 in accordance with the provisions of subsection a. of this section.

6 (3) This subsection shall not affect the imposition or computation
7 of sales or use tax on leases or rentals based on a lump sum or
8 accelerated basis, or on the acquisition of property for lease.

9 c. The lease or rental of motor vehicles, trailers, semi-trailers, or
10 aircraft that do not qualify as transportation equipment, as defined in
11 subsection d. of this section, shall be sourced as follows:

12 (1) If a lease or rental requires recurring periodic payments, then
13 each periodic payment shall be sourced to the primary property
14 location. The primary property location shall be as indicated by an
15 address for the property provided by the lessee that is available to the
16 lessor from its records maintained in the ordinary course of business,
17 if use of this address does not constitute bad faith. This location shall
18 not be altered by intermittent use at different locations.

19 (2) If a lease or rental does not require recurring periodic
20 payments, then the payment shall be sourced the same as a retail sale
21 in accordance with the provisions of subsection a. of this section.

22 (3) This subsection shall not affect the imposition or computation
23 of sales or use tax on leases or rentals based on a lump sum or
24 accelerated basis, or on the acquisition of property for lease.

25 d. The retail sale, including lease or rental, of transportation
26 equipment shall be sourced the same as a retail sale in accordance with
27 the provisions of subsection a. of this section, notwithstanding the
28 exclusion of lease or rental under subsection a. of this section.

29 e. For the purposes of this section, "transportation equipment"
30 means:

31 (1) Locomotives and railcars that are utilized for the carriage of
32 persons or property in interstate commerce;

33 (2) Trucks and truck-tractors with a Gross Vehicle Weight Rating
34 (GVWR) of 10,001 pounds or greater, trailers, semi-trailers, or
35 passenger buses that are:

36 A. Registered through the International Registration Plan; and

37 B. Operated under authority of a carrier authorized and certificated
38 by the U.S. Department of Transportation or another federal authority
39 to engage in the carriage of persons or property in interstate
40 commerce;

41 (3) Aircraft that are operated by air carriers authorized and
42 certificated by the U.S. Department of Transportation or another
43 federal or a foreign authority to engage in the carriage of persons or
44 property in interstate or foreign commerce; or

45 (4) Containers designed for use on and component parts attached
46 or secured on the items set forth in subsections (d)(1) through (d)(3);

1 and.

2 "Receive" and "receipt" mean:

3 (1) Taking possession of tangible personal property,

4 (2). Making first use of services, or

5 (3) Taking possession or making first use of digital goods,
6 whichever comes first.

7 The terms "receive" and "receipt" do not include possession by a
8 shipping company on behalf of the purchaser.

9

10 27. (New section) a. Notwithstanding the general sourcing
11 provisions of section 26 of P.L. , c. (C.) (now pending before
12 the Legislature as this bill), a business purchaser that is not a holder of
13 a direct pay permit that knows at the time of its purchase of a digital
14 good, computer software delivered electronically, or a service that the
15 digital good, computer software delivered electronically, or service
16 will be concurrently available for use in more than one jurisdiction
17 shall deliver to the seller in conjunction with its purchase a multiple
18 points of use exemption form ("MPU exemption form") disclosing this
19 fact.

20 b. Upon receipt of the MPU exemption form, the seller shall be
21 relieved of all obligation to collect, pay, or remit the applicable tax and
22 the purchaser shall be obligated to collect, pay, or remit the applicable
23 tax on a direct pay basis.

24 c. A purchaser delivering the MPU exemption form may use any
25 reasonable, but consistent and uniform, method of apportionment
26 approved by the director that is supported by the purchaser's business
27 records as they exist at the time of the consummation of the sale.

28 d. The MPU exemption form shall remain in effect for all future
29 sales by the seller to the purchaser (except as to the subsequent sale's
30 specific apportionment that is governed by the principle of subsection
31 c. of this section and the facts existing at the time of the sale) until it
32 is revoked in writing.

33 e. A holder of a direct pay permit shall not be required to deliver
34 a MPU exemption form to the seller. A direct pay permit holder shall
35 follow the provisions of subsection c. of this section in apportioning
36 the tax due on a digital good or a service that will be concurrently
37 available for use in more than one jurisdiction.

38

39 28. (New section) a. Notwithstanding the general sourcing
40 provisions of section 26 of P.L. , c. (C.) (now pending before
41 the Legislature as this bill), a purchaser of direct mail that is not a
42 holder of a direct pay permit shall provide to the seller in conjunction
43 with the purchase either a direct mail form or information to show the
44 jurisdictions to which the direct mail is delivered to recipients.

45 (1) Upon receipt of the direct mail form, the seller shall be
46 relieved of all obligations to collect, pay, or remit the applicable tax

1 and the purchaser shall be obligated to pay or remit the applicable tax
2 on a direct pay basis. A direct mail form shall remain in effect for all
3 future sales of direct mail by the seller to the purchaser until it is
4 revoked in writing.

5 (2) Upon receipt of information from the purchaser showing the
6 jurisdictions to which the direct mail is delivered to recipients, the
7 seller shall collect the tax according to the delivery information
8 provided by the purchaser. In the absence of bad faith, the seller shall
9 be relieved of any further obligation to collect tax on any transaction
10 for which the seller has collected tax pursuant to the delivery
11 information provided by the purchaser.

12 b. If the purchaser of direct mail does not have a direct pay permit
13 and does not provide the seller with either a direct mail form or
14 delivery information, as required by subsection a. of this section, the
15 seller shall collect the tax according to paragraph (5) of subsection a.
16 of section 26 of P.L. , c. (C.) (now pending before the
17 Legislature as this bill). Nothing in this subsection shall limit a
18 purchaser's obligation for sales or use tax to any state to which the
19 direct mail is delivered.

20 c. If a purchaser of direct mail provides the seller with
21 documentation of direct pay authority, the purchaser shall not be
22 required to provide a direct mail form or delivery information to the
23 seller.

24

25 29. (New section) a. Notwithstanding the general sourcing
26 provisions of section 26 of P.L. , c. (C.) (now pending before
27 the Legislature as this bill), except for the telecommunication services
28 enumerated in subsection c. of this section, the sale of
29 telecommunication service sold on a call-by-call basis shall be sourced
30 to:

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

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

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

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

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

46 (2) A sale of post-paid calling service shall be sourced to the

1 origination point of the telecommunications signal as first identified by
2 either:

- 3 (a) the seller's telecommunications system; or
4 (b) information received by the seller from its service provider, if
5 the system used to transport such signals is not that of the seller.

6 (3) A sale of prepaid calling service shall be sourced in accordance
7 with the general sourcing provisions of section 26 of P.L. , c.
8 (C.) (now pending before the Legislature as this bill); provided
9 however, that in the case of a sale of mobile telecommunications
10 service that is a prepaid telecommunications service, the rule provided
11 in paragraph (5) of subsection (a) of that section shall include as an
12 option the location associated with the mobile telephone number.

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

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

18 (b) Service for which all customer termination points are located
19 entirely within one jurisdiction or levels of jurisdiction shall be sourced
20 to such jurisdiction in which the customer channel termination points
21 are located.

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

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

33 d. For the purposes of this section:

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

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

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

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

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

8 "Customer channel termination point" means the location where the
9 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 who
12 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," 4
15 U.S.C. s.124;

16 "Mobile telecommunications service" has the same meaning as that
17 term is defined by the federal "Mobile Telecommunications Sourcing
18 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 primarily
21 occurs, which shall be the residential street address or the primary
22 business street address of the customer. In the case of mobile
23 telecommunications services, "place of primary use" shall be within the
24 licensed service area of the home service provider and the terms used
25 have the same meaning as those terms are defined by the federal
26 "Mobile Telecommunications Sourcing Act," 4 U.S.C. s.124;

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

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

41 "Private communication service" means a telecommunication
42 service that entitles the customer to exclusive or priority use of a
43 communications channel or group of channels between or among
44 termination points, regardless of the manner in which such channel or
45 channels are connected, and includes switching capacity, extension
46 lines, stations, and any other associated services that are provided in

1 connection with the use of such channel or channels; and

2 "Service address" means

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

6 (2) If the location in paragraph (1) of this definition is not known,
7 "service address" means the origination point of the signal of the
8 telecommunications services first identified by either the seller's
9 telecommunications system or in information received by the seller
10 from its service provider, in the case that the system used to transport
11 such signals is not that of the seller; or

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

15

16 30. (New section) a. A seller shall be allowed a deduction from
17 taxable sales for bad debts.

18 b. The amount of the deduction from taxable sales allowed
19 pursuant to subsection a. of this section shall not include interest.

20 c. For the purposes of this section, "bad debt" has the same
21 meaning as that term is defined by 26 U.S.C. s.166 as the basis for
22 calculating bad debt recovery; provided however, the amount
23 calculated pursuant to 26 U.S.C. s.166 shall be adjusted to exclude:
24 financing charges or interest; sales or use taxes charged on the
25 purchase price; uncollectible amounts on property that remain in the
26 possession of the seller until the full purchase price is paid; expenses
27 incurred in attempting to collect any debt, and repossessed property.

28 d. The deduction from taxable sales allowed pursuant to
29 subsection a. of this section shall be deducted on the return for the
30 period during which the bad debt is written off as uncollectible in the
31 claimant's books and records and is eligible to be deducted for federal
32 income tax purposes. For purposes of this subsection, a claimant who
33 is not required to file federal income tax returns may deduct a bad debt
34 on a return filed for the period in which the bad debt is written off as
35 uncollectible in the claimant's books and records and would be eligible
36 for a bad debt deduction for federal income tax purposes if the
37 claimant was required to file a federal income tax return.

38 e. If the deduction from taxable sales allowed pursuant to
39 subsection a. of this section is taken for a bad debt and the debt is
40 subsequently collected in whole or in part, the tax on the amount so
41 collected shall be paid and reported on the return filed for the period
42 in which the collection is made.

43 f. If the amount of the deduction from taxable sales allowed
44 pursuant to subsection a. of this section exceeds the amount of
45 taxable sales for the period during which the bad debt is written off,
46 a refund claim may be filed within four years from the due date of the

1 return on which the bad debt could first be claimed.

2 g. If filing responsibilities have been assumed by a certified service
3 provider, the certified services provider may claim, on behalf of the
4 seller, any deduction from taxable sales allowed pursuant to
5 subsection a. of this section. The certified service provider shall credit
6 or refund the full amount of any bad debt allowance or refund received
7 to the seller.

8 h. For the purposes of reporting a payment received on a bad debt
9 for which the deduction from taxable sales allowed pursuant to
10 subsection a. of this section was previously claimed, any payments
11 made on a debt or account shall first be applied proportionally to the
12 taxable price of the property or service and the sales tax thereon, and
13 secondly to interest, service charges, and any other charges.

14 i. In situations in which the books and records of the party claiming
15 the deduction from taxable sales allowed pursuant to subsection a. of
16 this section support an allocation of the bad debts among the member
17 states, the allocation shall be permitted.

18

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

21 24. General powers of the director. In addition to the powers
22 granted to the director in this act, the director is hereby authorized and
23 empowered:

24 1. To make, adopt and amend rules and regulations appropriate to
25 the carrying out of this act and the purposes thereof;

26 2. To extend, for cause shown by general regulation or individual
27 authorization, the time of filing any return for a period not exceeding
28 three months on such terms and conditions as the director may require;
29 and for cause shown, to remit penalties and interest as provided for in
30 the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.;

31 3. To delegate the director's functions hereunder to any officer or
32 employee of the director's division such of the director's powers as the
33 director may deem necessary to carry out efficiently the provisions of
34 this act, and the person or persons to whom such power has been
35 delegated shall possess and may exercise all of the power and perform
36 all of the duties herein conferred and imposed upon the director;

37 4. To prescribe methods for determining the amount of receipt,
38 amusement charges, or rents and for determining which of them are
39 taxable and which are nontaxable;

40 5. To require any person required to collect tax to keep detailed
41 records of all receipts, amusement charges, or rents received, charged
42 or accrued, including those claimed to be nontaxable, and also of the
43 nature, type, value and amount of all purchases, sales, services
44 rendered, admissions, occupancies, names and addresses of customers,
45 and other facts relevant in determining the amount of tax due and to
46 furnish such information upon request to the director;

1 6. To assess, determine, revise and readjust the taxes imposed by
2 this act;

3 7. To publish and maintain, as the director deems necessary, lists
4 of specific items of tangible personal property which are found to be
5 foods and drugs exempt from tax under sections 13 and 14 of
6 P.L.1980, c.105 (C.54:32B-8.1 and 54:32B-8.2);

7 8. To enter into agreements with other states and the District of
8 Columbia, providing for the reciprocal enforcement of the sales and
9 use tax laws imposed by the states entering into such an agreement.
10 Such agreement may empower the duly authorized officer of any
11 contracting state, which extends like authority to officers or employees
12 of this State, to sue for the collection of that state's sales and use taxes
13 in the courts of this State;

14 9. To require alcoholic beverage wholesalers to make report of
15 sales to retailers, as wholesaler and retailer are defined pursuant to the
16 "New Jersey Alcoholic Beverage Control Act," R.S.33:1-1 et seq.,
17 with such content, in such form and at such times as the director may
18 prescribe. The information provided to the director under this
19 paragraph shall identify retailers by their sales tax registration number
20 issued pursuant to section 15 of P.L.1966, c.30 (C.54:32B-15) and
21 shall be available for transmission to the director by electronic means,
22 or computer tape or disc, as the director may require.

23 10. To give due regard to the provisions of the Streamlined Sales
24 and Use Tax Agreement regarding rate changes for services covering
25 a period starting before and ending after January 1, 2005.

26 (cf: P.L.1995, c.161, s.1)

27

28 32. (New section) Neither the "Sales and Use Tax Act" or any
29 other law of this State shall impose multiple rates of sales and use tax
30 on sales of tangible personal property or services on or after January
31 1, 2005. The provisions of this section shall not apply to sales and use
32 tax that may apply to sales of electricity, piped natural or artificial gas,
33 or other heating fuels delivered by the seller or the retail sale or
34 transfer of motor vehicles, aircraft, watercraft, modular homes,
35 manufactured homes, mobile homes or other sales allowed under the
36 provisions of the Streamlined Sales and Use Tax Agreement.

37

38 33. (New section) The effective date of any sales and use tax rate
39 change on and after January 1, 2005 shall be the first day of the
40 calendar quarter next succeeding the expiration of one full calendar
41 quarter immediately following enactment of the rate change.

42

43 34. (New section) On and after January 1, 2005 any exemption,
44 exception or exclusion from sales and use taxation shall be enacted
45 only in accordance with the applicable provisions of the Streamlined
46 Sales and Use Tax Agreement.

1 35. (New section) Notwithstanding the provisions of P.L. , c. ,
2 (now pending before the Legislature as this bill), to the contrary, the
3 definition of "lease or rental" enacted by P.L. , c. shall be applied only
4 prospectively from the date of enactment of P.L. , c. and shall have
5 no retroactive impact on existing leases or rentals. The definition shall
6 not have any impact on the treatment of sale-leaseback transactions
7 entered into before the date of enactment of P.L. , c .
8

9 36. (New section) a. There is hereby created in the Department of
10 Treasury a special account, to be known as the "Streamlined Sales Tax
11 Fund." There shall be deposited into this account the sales and use tax
12 revenue derived from amendments and supplements to P.L.1966, c.32
13 (C.54:32B-1 et seq.) by reason of the State's participation in the
14 Streamlined Sales and Use Tax Agreement as authorized under section
15 5 of P.L.2001, c.431 (C.54:32B-48), and as enacted under the
16 provisions of P.L. , c. (now pending before the Legislature as this
17 bill). The Director of the Division of Taxation, subject to review and
18 approval by the Director of the Division of Budget and Accounting,
19 shall certify to the Treasurer the amount to be deposited into the
20 "Streamlined Sales Tax Fund" by the last day of the month following
21 the close of each sales tax reporting quarter. The director may use for
22 this purpose an estimate of an amount equal to the anticipated
23 membership dues and other costs of participation in the Streamlined
24 Sales and Use Tax Agreement. Amounts in the account shall be
25 annually appropriated for the payment of dues payable by this State to
26 the governing board and for other costs of administration of the
27 Streamlined Sales and Use Tax Agreement allocated and assessed to
28 this State by the governing board in consequence of this State
29 participating in the agreement.

30 b. The Director of the Division of Taxation may request an
31 additional annual allocation of funds to reimburse the division for costs
32 incurred in administration and enforcement of the Sales and Use Tax
33 Streamlining Agreement on behalf of this State. Such allocation shall
34 be made within the limits of funds appropriated or otherwise made
35 available for this purpose.

36 c. The Director of the Division of Taxation may request additional
37 allocations of funds to reimburse the division for costs and expenses
38 incurred by the division and its employees in participating in
39 multi-state discussions as authorized pursuant to section 4 of
40 P.L.2001, c.431 (C.54:32B-47). Such allocation shall be made within
41 the limits of funds appropriated or otherwise made available for this
42 purpose.
43

44 37. Section 6 of P.L.1989, c.123 (C.54:32B-8.40) is repealed.
45

46 38. This act shall take effect January 1, 2005.

STATEMENT

1
2
3 This bill conforms the New Jersey sales and use tax to the
4 requirements of the Streamlined Sales and Use Tax Agreement to
5 provide for compliance with that agreement.

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

17 The two parts to the projects's proposed streamlined sales tax
18 system are: 1) a uniform sales and use tax administration system to
19 reduce the burden of tax compliance for all sellers and all types of
20 commerce and 2) a sales tax law simplification and uniformity system.
21 The proposed legislation to modernize and simplify sales tax laws and
22 to achieve uniformity among the states is referred to as the
23 Streamlined Sales and Use Tax Agreement.

24 The Streamlined Sales and Use Tax Agreement includes the
25 following key features:

26 - - Uniform definitions within tax laws. Individual legislatures still
27 choose what is taxable or exempt in their state. However, participating
28 states agree to use the common definitions for key items in the tax
29 base and will not deviate from these definitions.

30 - - Rate simplification. States will be allowed one state rate and a
31 second state rate in limited circumstances (food and drugs). Each local
32 jurisdiction will be allowed one local rate. A state or local government
33 may not choose to tax telecommunications services, for example, at
34 one rate and all other items of tangible personal property or taxable
35 services at another rate.

36 - - State level tax administration of all state and local sales and use
37 taxes.

38 - - Uniform sourcing rules. The states will have uniform and simple
39 rules for how they will source transactions to state and local
40 governments.

41 - - Simplified exemption administration for use-based and
42 entity-based exemptions.

43 - - Uniform audit procedures. Sellers who participate in one of the
44 certified Streamlined Sales Tax System technology models will either
45 not be audited or will have limited scope audits, depending on the
46 technology model used. The states may conduct joint audits of large

1 multi-state businesses.

2 These simplifications would apply to all sellers. Sellers who do not
3 have a physical presence (or “use tax collection nexus”) are not
4 required to collect sales and use taxes unless United States Congress
5 should chose to require collection from all sellers for all types of
6 commerce. However, absent Congressional action, sellers without a
7 physical presence can volunteer to collect under the simplifications
8 proposed in the Agreement. Registration by sellers to voluntarily
9 collect sales and use taxes will not create an inference that the business
10 must pay business activity taxes, such as the corporate franchise or
11 income tax.

12 This bill makes the amendments and supplements to the New
13 Jersey sales and use tax that are necessary to conform New Jersey law
14 to the terms of the Streamlined Sales and Use Tax Agreement.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1958

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 7, 2005

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 1958.

This bill conforms the New Jersey sales and use tax to the requirements of the Streamlined Sales and Use Tax Agreement to provide for compliance with that agreement.

The Streamlined Sales and Use Tax Agreement 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.431 (N.J.S.A.54:32B-44 et seq.), to enter into multistate discussions concerning the Streamlined Sales and Use Tax Agreement to provide a streamlined sales tax system.

The two parts of the projects's proposed streamlined sales tax system are: (1) a uniform sales and use tax administration system to reduce the burden of tax compliance for all sellers and all types of commerce; and (2) a sales tax law simplification and uniformity system. The proposed legislation to modernize and simplify sales tax laws and to achieve uniformity among the states is referred to as the Streamlined Sales and Use Tax Agreement.

The Streamlined Sales and Use Tax Agreement includes the following key features:

- - Uniform definitions within tax laws. Individual legislatures still choose what is taxable or exempt in their state. However, participating states agree to use the common definitions for key items in the tax base and will not deviate from these definitions.

- - Rate simplification. States will be allowed one state rate and a second state rate in limited circumstances (food and drugs). Each local jurisdiction will be allowed one local rate. A state or local government may not choose to tax telecommunications services, for example, at one rate and all other items of tangible personal property

or taxable services at another rate.

- - State level tax administration of all state and local sales and use taxes.

- - Uniform sourcing rules. The states will have uniform and simple rules for how they will source transactions to state and local governments.

- - Simplified exemption administration for use-based and entity-based exemptions.

- - Uniform audit procedures. Sellers who participate in one of the certified Streamlined Sales Tax System technology models will either not be audited or will have limited scope audits, depending on the technology model used. The states may conduct joint audits of large multi-state businesses.

These simplifications would apply to all sellers. Sellers who do not have a physical presence (or “use tax collection nexus”) are not required to collect sales and use taxes unless the United States Congress should chose to require collection from all sellers for all types of commerce. However, absent Congressional action, sellers without a physical presence can volunteer to collect tax under the simplifications proposed in the Agreement. Registration by sellers to voluntarily collect sales and use taxes will not create an inference that the business must pay business activity taxes, such as the corporate franchise or income tax.

This bill makes the amendments and supplements to the New Jersey sales and use tax that are necessary to conform New Jersey law to the terms of the Streamlined Sales and Use Tax Agreement.

COMMITTEE AMENDMENTS

The amendments for the most part concern strict compliance with the terms of the Streamlined Sales and Use Tax Agreement, or take advantage of some of the options available to this State under the agreement.

In furtherance of the goal of attaining uniform definitions within tax laws, the amendments make changes to the definitions of "sales price", the categories of medical supplies, and "alcoholic beverages". Some of the definitions in the bill, already in substantial compliance with the terms of the agreement, are put in exact compliance. For example, "alcoholic beverages" were formerly defined pursuant to the "Alcoholic Beverage Tax Law," and by reference to that other tax one could determine that they are beverages with an alcoholic content of one-half of one percent or more. The amendments restate that definition within the body of the sales tax statute itself. Other amendments relate to amendments of the Streamlined Sales and Use Tax Agreement, such as the amendment of "delivery charges," which incorporates into the bill 2004 changes to the Agreement prescribing, in the case of a shipment that includes both taxable and exempt property, price-based and weight-based options for the allocation of those charges between the two types of property.

In furtherance of the goal of attaining uniform sourcing rules, the amendments update the wording of definitions relating to telecommunications and change certain specific sourcing rules to references to the general telecommunications sourcing rule in the bill.

The bill replaced the sales tax "rate chart" with a rounding rule based on the gross transaction, which is required under the Streamlined Sales and Use Tax Agreement. The agreement does not require that the rule be used in all cases, but that rounding be available to all vendors, to the amendments reinstate the rate chart, which may be used by electing sellers. The rate chart has administrative advantages, particularly for smaller sellers.

The amendments delete a prohibition against the imposition of multiple rates of tax on sales of tangible personal property or services.

The amendments further clarify the sales and use tax treatment of leased property. Pursuant to P.L.1989, c.123 New Jersey became the first state to "accelerate" sales taxes on leased property. Instead of the lessee paying sales tax on each payment, the lessor is considered the user of the property and becomes the payer of the sales or use tax at the time that the property to be leased is purchased. The bill continues this acceleration, but shifts the imposition of the tax liability from the lessor to the lessee, which should be advantageous for business and nonbusiness lessees who move property in and out of the State. The amendments clarify the use tax and refund provisions concerning leased property.

In furtherance of the goal of rate simplification, the amendments change the Salem County 3 percent option from a general 6 percent rate from which the vendors would opt to collect at 3 percent to a general 3 percent rate from which vendors could opt to collect a 6 percent. Assuming that most vendors will wish to continue to collect at 3 percent, an "opt-out" provision should require less effort and paperwork than an "opt-in" provision.

In a new section 32, the amendments provide that a purchaser's first recourse of remedy for the over-collection of sales or use tax shall be to the seller, and prescribes rules governing a purchaser's exercise of that recourse.

In furtherance of the goal of attaining uniform tax procedures, the amendments incorporate another 2004 amendment to the Streamlined Sales and Use Tax Agreement providing refund procedures, and add a new section 33 to the bill. This new section 33 provides that the timing of rate changes, the enactment of exemptions and exclusions, procedures for remittance of funds, standards of privacy and confidentiality, and procedures for the recovery of bad debts shall be pursuant to the standards of the Streamlined Sales and Use Tax Agreement.

Finally, the amendments delay the effective date of the legislation from January 1 to July 1, 2005.

FISCAL IMPACT

The changes to the New Jersey sales and use tax base made by the bill are estimated to be, when taken in their entirety, revenue neutral. For example, while it has been noted that the definition of taxable food would be expanded to include beverages with fruit juice content of less than 51 percent, carbonated waters would become exempt. Further, candy-like snacks with a relatively high flour content that are now taxable as candy would become exempt as grocery food. High fur content clothing that is now taxable would become exempt clothing. The exemption for medical equipment would be slightly expanded. It appears that these changes would cancel each other out.

Testimony regarding the bill from the Department of the Treasury has suggested that the vendor participation in use tax collection that would be encouraged by the "amnesty" provisions of section 24 of the bill would result in increased sales and use tax collections of \$40 million annually.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1958

with committee amendments

STATE OF NEW JERSEY

DATED: JULY 1, 2005

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1958 (1R), with committee amendments.

Senate Bill No. 1958 (1R), as amended, conforms the New Jersey sales and use tax to the requirements of the Streamlined Sales and Use Tax Agreement to provide for compliance with that agreement.

The Streamlined Sales and Use Tax Agreement 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 into multistate discussions concerning the Streamlined Sales and Use Tax Agreement to provide a streamlined sales tax system.

The two parts to the projects's proposed streamlined sales tax system are: 1) a uniform sales and use tax administration system to reduce the burden of tax compliance for all sellers and all types of commerce and 2) a sales tax law simplification and uniformity system. The proposed legislation to modernize and simplify sales tax laws and to achieve uniformity among the states is referred to as the Streamlined Sales and Use Tax Agreement.

The Streamlined Sales and Use Tax Agreement includes the following key features:

- - Uniform definitions within tax laws. Individual legislatures still choose what is taxable or exempt in their state. However, participating states agree to use the common definitions for key items in the tax base and will not deviate from these definitions.

- - Rate simplification. States will be allowed one state rate and a second state rate in limited circumstances (food and drugs). Each local jurisdiction will be allowed one local rate. A state or local government may not choose to tax telecommunications services, for example, at

one rate and all other items of tangible personal property or taxable services at another rate.

- - State level tax administration of all state and local sales and use taxes.

- - Uniform sourcing rules. The states will have uniform and simple rules for how they will source transactions to state and local governments.

- - Simplified exemption administration for use-based and entity-based exemptions.

- - Uniform audit procedures. Sellers who participate in one of the certified Streamlined Sales Tax System technology models will either not be audited or will have limited scope audits, depending on the technology model used. The states may conduct joint audits of large multi-state businesses.

These simplifications would apply to all sellers. Sellers who do not have a physical presence (or “use tax collection nexus”) are not required to collect sales and use taxes unless United States Congress should chose to require collection from all sellers for all types of commerce. However, absent Congressional action, sellers without a physical presence can volunteer to collect under the simplifications proposed in the Agreement. Registration by sellers to voluntarily collect sales and use taxes will not create an inference that the business must pay business activity taxes, such as the corporate franchise or income tax.

The committee anticipates that the system of sales and use tax collection and administration that will be implemented under the agreement will adequately protect small businesses, whether engaged in remote or local transactions, from added administrative burdens and costs, or any requirements imposed on their marketplace intermediaries with respect to the calculation, collection or remittance of the sales and use tax of any state.

This bill, as amended by the committee, makes the amendments and supplements to the New Jersey sales and use tax that are necessary to conform New Jersey law to the terms of the Streamlined Sales and Use Tax Agreement.

This bill as amended and reported by the committee is identical to the Assembly Committee Substitute for Assembly Bill, No. 3473.

COMMITTEE AMENDMENTS:

These amendments make a number of technical changes to definitions to achieve compliance with the Streamlined Sales and Use Tax Agreement. In particular, the amendments:

- in section 29 delete a confusing multiple cross reference to federal law from the telecommunications sourcing definitions;

- in section 2 add required phrases to the definition of "prepared foods";

- in section 8 replace a description in the definition of "food and food ingredients" with defined terms;

- in section 7 delete the word "human" from the definition of "drug"; and

- in section 7 correct a typographic error in the definition of "grooming and hygiene product".

The amendments delete a provision in section 27 that implied that a method of apportionment used by a purchaser under a multiple points of use exemption required prior approval by the director.

The amendments add a clarification in section 21 of the bill 14 that certified service providers and sellers are relieved of liability for reliance on the taxability matrix.

The amendments delete a date in section 31 that appeared to limit compliance with the agreement's rate change provisions.

The amendments delete provisions in section 5 that limited contract options in a lease or rental agreement.

The amendments also add a proviso to section 33 that the State shall not use registration with the central registration system and the collection of sales and use taxes in the member states as a factor in determining whether the seller has nexus with this State for any tax at any time.

The amendments add a provision that authorizes, but does not require, the State Treasurer to withdraw from the Streamlined Sales and Use Tax Agreement if compensation payments made by the State to certified service providers exceed 80 percent of the sales tax revenue received from sellers using a certified service provider that do not have a requirement to register to collect tax.

The amendments change the effective date of the bill from July 1, 2005 to October 1, 2005.

FISCAL IMPACT:

The changes to the New Jersey sales and use tax base made by the bill are estimated to be, when taken in their entirety, revenue neutral. For example, while it has been noted that the definition of taxable food would be expanded to include beverages with fruit juice content of less than 51 percent, carbonated waters would become exempt. Further, candy-like snacks with a relatively high flour content that are now taxable as candy would become exempt as grocery food. High fur content clothing that is now taxable would become exempt clothing. The exemption for medical equipment would be slightly expanded. It appears that these changes would cancel each other out.

Testimony regarding the identical Assembly bill from the Department of the Treasury has suggested that the vendor participation in use tax collection that would be encouraged by the "amnesty" provisions of section 23 of the substitute would result in increased sales and use tax collections of \$40 million annually.x