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LAW/KR

P.L.2011, CHAPTER 49, *approved April 8, 2011*

Senate, No. 2130

1 **AN ACT** revising the sales and use tax to maintain compliance with  
2 certain terms and conditions of the Streamlined Sales and Use  
3 Tax Agreement, amending and supplementing P.L.1966, c.30  
4 and amending P.L.1980, c.105, P.L.1993, c.373, and P.L.1983,  
5 c.303.

6

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

9

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

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

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

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

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

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

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

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

**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 service to a telecommunications service provider for use as a  
2 component part of telecommunications service provided to an  
3 ultimate customer, or (D) to a person who receives by contract a  
4 product transferred electronically for further commercial broadcast,  
5 rebroadcast, transmission, retransmission, licensing, relicensing,  
6 distribution, redistribution or exhibition of the product, in whole or  
7 in part, to another person, other than rights to redistribute based on  
8 statutory or common law doctrine such as fair use.

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

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

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

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

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

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

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

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

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

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

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

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

46 (h) "Use" means the exercise of any right or power over tangible  
47 personal property, **【digital property】** specified digital products,  
48 services to property or products, or services by the purchaser

1 thereof and includes, but is not limited to, the receiving, storage or  
2 any keeping or retention for any length of time, withdrawal from  
3 storage, any distribution, any installation, any affixation to real or  
4 personal property, or any consumption of such property or products.  
5 Use also includes the exercise of any right or power over intrastate  
6 or interstate telecommunications and prepaid calling services. Use  
7 also includes the exercise of any right or power over utility service.  
8 Use also includes the derivation of a direct or indirect benefit from  
9 a service.

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

12 (1) The term "seller" includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (r) "Dramatic or musical arts admission charge" means any  
47 admission charge paid for admission to a theater, opera house,

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

3 (s) "Lessor" means any person who is the owner, licensee, or  
4 lessee of any premises, tangible personal property or **[digital**  
5 **property]** a specified digital product which the person leases,  
6 subleases, or grants a license to use to other persons.

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

9 (u) "Casual sale" means an isolated or occasional sale of an item  
10 of tangible personal property or **[digital property]** a specified  
11 digital product by a person who is not regularly engaged in the  
12 business of making retail sales of such property or product where  
13 the item of tangible personal property or the specified digital  
14 product was obtained by the person making the sale, through  
15 purchase or otherwise, for the person's own use.

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

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

34 (x) "Customer" includes: every purchaser of tangible personal  
35 property, **[digital property]** specified digital products or services;  
36 every patron paying or liable for the payment of any amusement  
37 charge; every occupant of a room or rooms in a hotel; every person  
38 paying charges in the nature of initiation fees, membership fees or  
39 dues for access to or use of the property or facilities of a health and  
40 fitness, athletic, sporting or shopping club or organization; and  
41 every purchaser of parking, storage or garaging a motor vehicle.

42 (y) "Property and services the use of which is subject to tax"  
43 includes: (1) all property sold to a person within the State, whether  
44 or not the sale is made within the State, the use of which property is  
45 subject to tax under section 6 or will become subject to tax when  
46 such property is received by or comes into the possession or control  
47 of such person within the State; (2) all services rendered to a person

1 within the State, whether or not such services are performed within  
2 the State, upon tangible personal property or **【digital property】** a  
3 specified digital product the use of which is subject to tax under  
4 section 6 or will become subject to tax when such property or  
5 product is distributed within the State or is received by or comes  
6 into possession or control of such person within the State; (3)  
7 intrastate, interstate, or international telecommunications sourced to  
8 this State pursuant to section 29 of P.L.2005, c.126 (C.54:32B-3.4);  
9 (4) (Deleted by amendment, P.L.1995, c.184); (5) energy sold,  
10 exchanged or delivered in this State for use in this State; (6) utility  
11 service sold, exchanged or delivered in this State for use in this  
12 State; (7) mail processing services in connection with printed  
13 advertising material distributed in this State; (8) (Deleted by  
14 amendment, P.L.2005, c.126); and (9) services the benefit of which  
15 are received in this State.

16 (z) "Director" means the Director of the Division of Taxation in  
17 the State Department of the Treasury, or any officer, employee or  
18 agency of the Division of Taxation in the Department of the  
19 Treasury duly authorized by the director (directly, or indirectly by  
20 one or more redelegations of authority) to perform the functions  
21 mentioned or described in this act.

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

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

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

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

34 (C) Providing tangible personal property or **【digital property】** a  
35 specified digital product along with an operator for a fixed or  
36 indeterminate period of time. A condition of this exclusion is that  
37 the operator is necessary for the equipment to perform as designed.  
38 For the purpose of this subparagraph, an operator must do more  
39 than maintain, inspect, or set-up the tangible personal property or  
40 **【digital property】** specified digital product.

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

46 (3) The definition of "lease or rental" provided in this subsection  
47 shall be used for the purposes of this act regardless of whether a  
48 transaction is characterized as a lease or rental under generally



1 accepted accounting principles, the federal Internal Revenue Code  
2 or other provisions of federal, state or local law.

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

4 (cc) "Telecommunications service" means the electronic  
5 transmission, conveyance, or routing of voice, data, audio, video, or  
6 any other information or signals to a point, or between or among  
7 points.

8 "Telecommunications service" shall include such transmission,  
9 conveyance, or routing in which computer processing applications  
10 are used to act on the form, code, or protocol of the content for  
11 purposes of transmission, conveyance, or routing without regard to  
12 whether such service is referred to as voice over Internet protocol  
13 services or is classified by the Federal Communications  
14 Commission as enhanced or value added. "Telecommunications  
15 service" shall not include:

16 (1) (Deleted by amendment, P.L.2008, c.123);

17 (2) (Deleted by amendment, P.L.2008, c.123);

18 (3) (Deleted by amendment, P.L.2008, c.123);

19 (4) (Deleted by amendment, P.L.2008, c.123);

20 (5) (Deleted by amendment, P.L.2008, c.123);

21 (6) (Deleted by amendment, P.L.2008, c.123);

22 (7) data processing and information services that allow data to  
23 be generated, acquired, stored, processed, or retrieved and delivered  
24 by an electronic transmission to a purchaser where such purchaser's  
25 primary purpose for the underlying transaction is the processed data  
26 or information;

27 (8) installation or maintenance of wiring or equipment on a  
28 customer's premises;

29 (9) tangible personal property;

30 (10) advertising, including but not limited to directory  
31 advertising;

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

33 (12) internet access service;

34 (13) radio and television audio and video programming services,  
35 regardless of the medium, including the furnishing of transmission,  
36 conveyance, and routing of such services by the programming  
37 service provider. Radio and television audio and video  
38 programming services shall include but not be limited to cable  
39 service as defined in section 47 U.S.C. s.522(6) and audio and video  
40 programming services delivered by commercial mobile radio  
41 service providers, as defined in section 47 C.F.R. 20.3;

42 (14) ancillary services; or

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

45 For the purposes of this subsection:

46 "ancillary service" means a service that is associated with or  
47 incidental to the provision of telecommunications services,

1 including but not limited to detailed telecommunications billing,  
2 directory assistance, vertical service, and voice mail service;

3 "conference bridging service" means an ancillary service that  
4 links two or more participants of an audio or video conference call  
5 and may include the provision of a telephone number. Conference  
6 bridging service does not include the telecommunications services  
7 used to reach the conference bridge;

8 "detailed telecommunications billing service" means an ancillary  
9 service of separately stating information pertaining to individual  
10 calls on a customer's billing statement;

11 "directory assistance" means an ancillary service of providing  
12 telephone number information or address information or both;

13 "vertical service" means an ancillary service that is offered in  
14 connection with one or more telecommunications services, which  
15 offers advanced calling features that allow customers to identify  
16 callers and to manage multiple calls and call connections, including  
17 conference bridging services; and

18 "voice mail service" means an ancillary service that enables the  
19 customer to store, send, or receive recorded messages. Voice mail  
20 service does not include any vertical service that a customer may be  
21 required to have to utilize the voice mail service.

22 (dd) (1) "Intrastate telecommunications" means a  
23 telecommunications service that originates in one United States  
24 state or a United States territory or possession or federal district,  
25 and terminates in the same United States state or United States  
26 territory or possession or federal district.

27 (2) "Interstate telecommunications" means a  
28 telecommunications service that originates in one United States  
29 state or a United States territory or possession or federal district,  
30 and terminates in a different United States state or United States  
31 territory or possession or federal district.

32 (3) "International telecommunications" means a  
33 telecommunications service that originates or terminates in the  
34 United States and terminates or originates outside the United States,  
35 respectively. "United States" includes the District of Columbia or a  
36 United States territory or possession.

37 (ee) (Deleted by amendment, P.L.2008, c.123)

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

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

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

44 (ii) "Self-generation unit" means a facility located on the user's  
45 property, or on property purchased or leased from the user by the  
46 person owning the self-generation unit and such property is  
47 contiguous to the user's property, which generates electricity to be  
48 used only by that user on the user's property and is not transported

1 to the user over wires that cross a property line or public  
2 thoroughfare unless the property line or public thoroughfare merely  
3 bifurcates the user's or self-generation unit owner's otherwise  
4 contiguous property.

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

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

16 (ll) "Pre-paid calling service" means the right to access  
17 exclusively telecommunications services, which shall be paid for in  
18 advance and which enables the origination of calls using an access  
19 number or authorization code, whether manually or electronically  
20 dialed, and that is sold in predetermined units or dollars of which  
21 the number declines with use in a known amount.

22 (mm) "Mobile telecommunications service" means the same as  
23 that term is defined in the federal "Mobile Telecommunications  
24 Sourcing Act," 4 U.S.C. s.124 (Pub.L.106-252).

25 (nn) (Deleted by amendment, P.L.2008, c.123)

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

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

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

35 (C) Charges by the seller for any services necessary to complete  
36 the sale;

37 (D) Delivery charges;

38 (E) **【Installation charges】** (Deleted by amendment, P.L. , c. )  
39 (pending before the Legislature as this bill); and

40 (F) (Deleted by amendment, P.L.2008, c.123).

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

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

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

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

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

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

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

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

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

18 (C) The amount of the consideration attributable to the sale is  
19 fixed and determinable by the seller at the time of the sale of the  
20 item to the purchaser; and

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

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

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

32 (iii) the price reduction or discount is identified as a third party  
33 price reduction or discount on the invoice received by the purchaser  
34 or on a coupon, certificate, or other documentation presented by the  
35 purchaser.

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

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

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

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

17 (ss) "Direct mail" means printed material delivered or distributed  
18 by United States mail or other delivery service to a mass audience  
19 or to addresses on a mailing list provided by the purchaser or at the  
20 direction of the purchaser in cases in which the cost of the items are  
21 not billed directly to the recipients. "Direct mail" includes tangible  
22 personal property **【or digital property】** supplied directly or  
23 indirectly by the purchaser to the direct mail seller for inclusion in  
24 the package containing the printed material. "Direct mail" does not  
25 include multiple items of printed material delivered to a single  
26 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 (vv) **【"Digital property" means electronically delivered music,**  
35 **ringtones, movies, books, audio and video works and similar**  
36 **products, where the customer is granted a right or license to use,**  
37 **retain or make a copy of such item. Digital property does not**  
38 **include video programming services, including video on demand**  
39 **television services, and broadcasting services, including content to**  
40 **provide such services.】** (Deleted by amendment, P.L. \_\_\_\_\_, c. \_\_\_\_\_)  
41 (pending before the Legislature as this bill)

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

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

1 (1) investigation and detective services, including detective  
2 agencies and private investigators, and fingerprint, polygraph,  
3 missing person tracing and skip tracing services;

4 (2) security guard and patrol services, including bodyguard and  
5 personal protection, guard dog, guard, patrol, and security services;

6 (3) armored car services; and

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

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

14 (zz) "Specified digital product" means an electronically  
15 transferred digital audio-visual work, digital audio work, or digital  
16 book; provided however, that a digital code which provides a  
17 purchaser with a right to obtain the product shall be treated in the  
18 same manner as a specified digital product.

19 (aaa) "Digital audio-visual work" means a series of related  
20 images which, when shown in succession, impart an impression of  
21 motion, together with accompanying sounds, if any.

22 (bbb) "Digital audio work" means a work that results from the  
23 fixation of a series of musical, spoken, or other sounds, including a  
24 ringtone.

25 (ccc) "Digital book" means a work that is generally recognized  
26 in the ordinary and usual sense as a book.

27 (ddd) "Transferred electronically" means obtained by the  
28 purchaser by means other than tangible storage media.

29 (eee) "Ringtone" means a digitized sound file that is downloaded  
30 onto a device and that may be used to alert the purchaser with  
31 respect to a communication.

32 (cf: P.L.2008, c.123, s.1)

33

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

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

37 (a) The receipts from every retail sale of tangible personal  
38 property or **[digital property]** a specified digital product for  
39 permanent use or less than permanent use, and regardless of  
40 whether continued payment is required, except as otherwise  
41 provided in this act.

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

44 (1) Producing, fabricating, processing, printing or imprinting  
45 tangible personal property or **[digital property]** a specified digital  
46 product, performed for a person who directly or indirectly furnishes  
47 the tangible personal property or **[digital property]** specified digital

1 product, not purchased by him for resale, upon which such services  
2 are performed.

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

23 (3) Storing all tangible personal property not held for sale in the  
24 regular course of business; the rental of safe deposit boxes or  
25 similar space; and the furnishing of space for storage of tangible  
26 personal property by a person engaged in the business of furnishing  
27 space for such storage.

28 "Space for storage" means secure areas, such as rooms, units,  
29 compartments or containers, whether accessible from outside or  
30 from within a building, that are designated for the use of a customer  
31 and wherein the customer has free access within reasonable  
32 business hours, or upon reasonable notice to the furnisher of space  
33 for storage, to store and retrieve property. Space for storage shall  
34 not include the lease or rental of an entire building, such as a  
35 warehouse or airplane hanger.

36 (4) Maintaining, servicing or repairing real property, other than  
37 a residential heating system unit serving not more than three  
38 families living independently of each other and doing their cooking  
39 on the premises, whether the services are performed in or outside of  
40 a building, as distinguished from adding to or improving such real  
41 property by a capital improvement, but excluding services rendered  
42 by an individual who is not in a regular trade or business offering  
43 his services to the public, and excluding garbage removal and sewer  
44 services performed on a regular contractual basis for a term not less  
45 than 30 days.

46 (5) Mail processing services for printed advertising material,  
47 except for mail processing services in connection with distribution  
48 of printed advertising material to out-of-State recipients.

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

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

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

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

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

10 (11) Investigation and security services.

11 (12) Information services.

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

15 (14) Telephone answering services.

16 (15) Radio subscription services.

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

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

27 (c) (1) Receipts from the sale of prepared food in or by  
28 restaurants, taverns, or other establishments in this State, or by  
29 caterers, including in the amount of such receipts any cover,  
30 minimum, entertainment or other charge made to patrons or  
31 customers, except for meals especially prepared for and delivered to  
32 homebound elderly, age 60 or older, and to disabled persons, or  
33 meals prepared and served at a group-sitting at a location outside of  
34 the home to otherwise homebound elderly persons, age 60 or older,  
35 and otherwise homebound disabled persons, as all or part of any  
36 food service project funded in whole or in part by government or as  
37 part of a private, nonprofit food service project available to all such  
38 elderly or disabled persons residing within an area of service  
39 designated by the private nonprofit organization; and

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

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



1 (3) For the purposes of this subsection:

2 "Food and beverages sold through vending machines" means  
3 food and beverages dispensed from a machine or other mechanical  
4 device that accepts payment; and

5 "Prepared food" means:

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

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

14 C. food sold with eating utensils provided by the seller,  
15 including plates, knives, forks, spoons, glasses, cups, napkins, or  
16 straws. A plate does not include a container or packaging used to  
17 transport the food;

18 provided however, that

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

21 A. food sold by a seller whose proper primary NAICS  
22 classification is manufacturing in section 311, except subsector  
23 3118 (bakeries);

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

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

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

32 (e) (1) Any admission charge to or for the use of any place of  
33 amusement in the State, including charges for admission to race  
34 tracks, baseball, football, basketball or exhibitions, dramatic or  
35 musical arts performances, motion picture theaters, except charges  
36 for admission to boxing, wrestling, kick boxing or combative sports  
37 exhibitions, events, performances or contests which charges are  
38 taxed under any other law of this State or under section 20 of  
39 P.L.1985, c.83 (C.5:2A-20), and, except charges to a patron for  
40 admission to, or use of, facilities for sporting activities in which  
41 such patron is to be a participant, such as bowling alleys and  
42 swimming pools. For any person having the permanent use or  
43 possession of a box or seat or lease or a license, other than a season  
44 ticket, for the use of a box or seat at a place of amusement, the tax  
45 shall be upon the amount for which a similar box or seat is sold for  
46 each performance or exhibition at which the box or seat is used or  
47 reserved by the holder, licensee or lessee, and shall be paid by the  
48 holder, licensee or lessee.

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

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

8 (2) (Deleted by amendment, P.L.2008, c.123)

9 (g) (Deleted by amendment, P.L.2008, c.123)

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

22 (i) The receipts from parking, storing or garaging a motor  
23 vehicle, excluding charges for the following: residential parking;  
24 employee parking, when provided by an employer or at a facility  
25 owned or operated by the employer; municipal parking, storing or  
26 garaging; receipts from charges or fees imposed pursuant to section  
27 3 of P.L.1993, c.159 (C.5:12-173.3) or pursuant to an agreement  
28 between the Casino Reinvestment Development Authority and a  
29 casino operator in effect on the date of enactment of P.L.2007,  
30 c.105; and receipts from parking, storing or garaging a motor  
31 vehicle subject to tax pursuant to any other law or ordinance.

32 For the purposes of this subsection, "municipal parking, storing  
33 or garaging" means any motor vehicle parking, storing or garaging  
34 provided by a municipality or county, or a parking authority  
35 thereof.

36 (cf: P.L.2008, c.123, s.2)

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

40 5. **【Transitional provisions.】** a. (1) Except as otherwise  
41 provided in this act, receipts received from all sales made and  
42 services rendered on and after January 3, 1983 but prior to July 1,  
43 1990, are subject to the taxes imposed under subsections (a), (b),  
44 (c), and (f) of section 3 of this act at the rate, if any, in effect for  
45 such sales and services on June 30, 1990, except if the property so  
46 sold is delivered or the services so sold are rendered on or after July  
47 1, 1990 but prior to July 1, 1992, in which case the tax shall be  
48 computed and paid at the rate of 7%; provided, however, that if a

1 service or maintenance agreement taxable under this act covers any  
2 period commencing on or after January 3, 1983 and ending after  
3 June 30, 1990 but prior to July 1, 1992, the receipts from such  
4 agreement are subject to tax at the rate, if any, applicable to each  
5 period as set forth hereinabove and shall be apportioned on the  
6 basis of the ratio of the number of days falling within each of the  
7 said periods to the total number of days covered thereby.

8 (2) Except as otherwise provided in this act, receipts received  
9 from all sales made and services rendered on and after July 1, 1990  
10 but prior to July 1, 1992, are subject to the taxes imposed under  
11 subsections (a), (b), (c) and (f) of section 3 of this act at the rate of  
12 7%, except if the property so sold is delivered or the services so  
13 sold are rendered on or after July 1, 1992 but prior to July 15, 2006,  
14 in which case the tax shall be computed and paid at the rate of 6%,  
15 provided, however, that if a service or maintenance agreement  
16 taxable under this act covers any period commencing on or after  
17 July 1, 1990, and ending after July 1, 1992, the receipts from such  
18 agreement are subject to tax at the rate applicable to each period as  
19 set forth hereinabove and shall be apportioned on the basis of the  
20 ratio of the number of days falling within each of the said periods to  
21 the total number of days covered thereby.

22 (3) Except as otherwise provided in this act, receipts received  
23 from all sales made and services rendered on and after July 1, 1992  
24 but prior to July 15, 2006, are subject to the taxes imposed under  
25 subsections (a), (b), (c), (f) and (g) of section 3 of P.L.1966, c.30  
26 (C.54:32B-3) at the rate of 6%, except if the property so sold is  
27 delivered or the services so sold are rendered on or after July 15,  
28 2006, in which case the tax shall be computed and paid at the rate  
29 of 7%, provided, however, that if a service or maintenance  
30 agreement taxable under this act covers any period commencing on  
31 or after July 1, 1992, and ending after July 15, 2006, the receipts  
32 from such agreement are subject to tax at the rate applicable to each  
33 period as set forth hereinabove and shall be apportioned on the  
34 basis of the ratio of the number of days falling within each of the  
35 said periods to the total number of days covered thereby; provided  
36 however, if a service or maintenance agreement in effect on July 14,  
37 2006 covers billing periods ending after July 15, 2006, the seller  
38 shall charge and collect from the purchaser a tax on such sales at  
39 the rate of 6%, unless the billing period starts on or after July 15,  
40 2006 in which case the seller shall charge and collect a tax at the  
41 rate of 7%.

42 b. (1) The tax imposed under subsection (d) of section 3 shall  
43 be paid at the rate of 7% upon any occupancy on and after July 1,  
44 1990 but prior to July 1, 1992, although such occupancy is pursuant  
45 to a prior contract, lease or other arrangement. If an occupancy,  
46 taxable under this act, covers any period on or after January 3, 1983  
47 but prior to July 1, 1990, the rent for the period of occupancy prior  
48 to July 1, 1990 shall be taxed at the rate of 6%. If rent is paid on a

1 weekly, monthly or other term basis, the rent applicable to each  
2 period as set forth hereinabove shall be apportioned on the basis of  
3 the ratio of the number of days falling within each of the said  
4 periods to the total number of days covered thereby.

5 (2) The tax imposed under subsection (d) of section 3 shall be  
6 paid at the rate of 6% upon any occupancy on and after July 1, 1992  
7 but prior to July 15, 2006, although such occupancy is pursuant to a  
8 prior contract, lease or other arrangement. If an occupancy, taxable  
9 under this act, covers any period on or after July 1, 1990 but prior  
10 to July 1, 1992, the rent for the period of occupancy prior to July 1,  
11 1992 shall be taxed at the rate of 7%. If rent is paid on a weekly,  
12 monthly or other term basis, the rent applicable to each period as set  
13 forth hereinabove shall be apportioned on the basis of the ratio of  
14 the number of days falling within each of the said periods to the  
15 total number of days covered thereby.

16 (3) The tax imposed under subsection (d) of section 3 shall be  
17 paid at the rate of 7% upon any occupancy on and after July 15,  
18 2006, although such occupancy is pursuant to a prior contract, lease  
19 or other arrangement. If an occupancy, taxable under this act,  
20 covers any period on or after July 1, 1992 but prior to July 15,  
21 2006, the rent for the period of occupancy prior to July 15, 2006  
22 shall be taxed at the rate of 6%. If rent is paid on a weekly,  
23 monthly or other term basis, the rent applicable to each period as set  
24 forth hereinabove shall be apportioned on the basis of the ratio of  
25 the number of days falling within each of the said periods to the  
26 total number of days covered thereby.

27 c. (1) Except as otherwise hereinafter provided, the tax imposed  
28 under subsection (e) of section 3 shall be applicable at the rate of  
29 7% to any admission to or for the use of facilities of a place of  
30 amusement occurring on or after July 1, 1990 but prior to July 1,  
31 1992, whether or not the admission charge has been paid prior to  
32 July 1, 1990, unless the tickets were actually sold and delivered,  
33 other than for resale, prior to July 1, 1990 and the tax imposed  
34 under this act during the period January 3, 1983 through June 30,  
35 1990 shall have been paid.

36 (2) Except as otherwise hereinafter provided, the tax imposed  
37 under subsection (e) of section 3 shall be applicable at the rate of  
38 6% to any admission to or for the use of facilities of a place of  
39 amusement occurring on or after July 1, 1992 but prior to July 15,  
40 2006, whether or not the admission charge has been paid prior to  
41 July 1, 1992, unless the tickets were actually sold and delivered,  
42 other than for resale, prior to July 1, 1992 and the tax imposed  
43 under this act during the period July 1, 1990 through December 31,  
44 1990 shall have been paid.

45 (3) Except as otherwise hereinafter provided, the tax imposed  
46 under subsection (e) of section 3 shall be applicable at the rate of  
47 7% to any admission to or for the use of facilities of a place of  
48 amusement occurring on or after July 15, 2006, whether or not the

1 admission charge has been paid prior to that date, unless the tickets  
2 were actually sold and delivered, other than for resale, prior to July  
3 15, 2006 and the tax imposed under this act during the period July  
4 1, 1992 through July 14, 2006 shall have been paid.

5 d. (1) Sales made on and after July 1, 1990 but prior to July 1,  
6 1992 to contractors, subcontractors or repairmen of materials,  
7 supplies, or services for use in erecting structures for others, or  
8 building on, or otherwise improving, altering or repairing real  
9 property of others shall be subject to the taxes imposed by  
10 subsections (a) and (b) of section 3 and section 6 hereof at the rate  
11 of 7%; provided, however, that if such sales are made for use in  
12 performance of a contract which is either of a fixed price not  
13 subject to change or modification, or entered into pursuant to the  
14 obligation of a formal written bid which cannot be altered or  
15 withdrawn, and, in either case, such contract was entered into or  
16 such bid was made on or after January 3, 1983 but prior to July 1,  
17 1990, such sales shall be subject to tax at the rate of 6%, but the  
18 vendor shall charge and collect from the purchaser a tax on such  
19 sales at the rate of 7%.

20 (2) Sales made on or after July 1, 1992 but prior to July 15,  
21 2006 to contractors, subcontractors or repairmen of materials,  
22 supplies, or services for use in erecting structures for others, or  
23 building on, or otherwise improving, altering or repairing real  
24 property of others shall be subject to the taxes imposed by  
25 subsections (a) and (b) of section 3 and section 6 hereof at the rate  
26 of 6%; provided, however, that if such sales are made for use in  
27 performance of a contract which is either of a fixed price not  
28 subject to change or modification, or entered into pursuant to the  
29 obligation of a formal written bid which cannot be altered or  
30 withdrawn, and, in either case, such contract was entered into or  
31 such bid was made on or after July 1, 1990, but prior to July 1,  
32 1992, such sales shall be subject to tax at the rate of 7%.

33 (3) Sales made on or after July 15, 2006 to contractors,  
34 subcontractors or repairmen of materials, supplies, or services for  
35 use in erecting structures for others, or building on, or otherwise  
36 improving, altering or repairing real property of others shall be  
37 subject to the taxes imposed by subsections (a) and (b) of section 3  
38 and section 6 hereof at the rate of 7%; provided, however, that if  
39 such sales are made for use in performance of a contract which is  
40 either of a fixed price not subject to change or modification, or  
41 entered into pursuant to the obligation of a formal written bid which  
42 cannot be altered or withdrawn, and, in either case, such contract  
43 was entered into or such bid was made on or after July 1, 1992, but  
44 prior to July 15, 2006, such sales shall be subject to tax at the rate  
45 of 6%, but the **【vendor】** seller shall charge and collect from the  
46 purchaser a tax on such sales at the rate of 7%.

47 e. (1) As to sales other than those referred to in d. above, the  
48 taxes imposed under subsections (a) and (b) of section 3 and section

1 6 hereof, and the taxes imposed under subsection (f) of section 3  
2 and section 6 hereof, upon receipts received on or after July 1, 1990  
3 and on or before December 31, 1990, shall be at the rate in effect on  
4 June 30, 1990, in case of sales made or services rendered pursuant  
5 to a written contract entered on or after January 3, 1983 but prior to  
6 July 1, 1990, and accompanied by a deposit or partial payment of  
7 the contract price, except in the case of a contract which, in the  
8 usage of trade, is not customarily accompanied by a deposit or  
9 partial payment of the contract price, but the vendor shall charge  
10 and collect from the purchaser on such sales at the rate of 7%,  
11 which tax shall be reduced to the rate, if any, in effect on June 30,  
12 1990, only by a claim for refund filed by the purchaser with the  
13 director within 90 days after receipt of said receipts and otherwise  
14 pursuant to the provisions of section 20 of P.L.1966, c.30  
15 (C.54:32B-20). A claim for refund shall not be allowed if there has  
16 been no deposit or partial payment of the contract price unless the  
17 claimant shall establish by clear and convincing evidence that, in  
18 the usage of trade, such contracts are not customarily accompanied  
19 by a deposit or partial payment of the contract price.

20 (2) As to sales other than those referred to in d. above, the taxes  
21 imposed under subsections (a) and (b) of section 3 and section 6  
22 hereof, and the taxes imposed under subsections (f) and (g) of  
23 section 3 and section 6 hereof, upon receipts received on or after  
24 July 15, 2006 and on or before December 31, 2006, shall be at the  
25 rate in effect on July 14, 2006, in case of sales made or services  
26 rendered pursuant to a written contract entered on or after July 1,  
27 1992 but prior to July 15, 2006, and accompanied by a deposit or  
28 partial payment of the contract price, except in the case of a  
29 contract which, in the usage of trade, is not customarily  
30 accompanied by a deposit or partial payment of the contract price,  
31 but the [vendor] seller shall charge and collect from the purchaser  
32 on such sales at the rate of 7%, which tax shall be reduced to the  
33 rate, if any, in effect on July 14, 2006, only by a claim for refund  
34 filed by the purchaser with the director within 90 days after receipt  
35 of said receipts and otherwise pursuant to the provisions of section  
36 20 of P.L.1966, c.30 (C.54:32B-20). A claim for refund shall not  
37 be allowed if there has been no deposit or partial payment of the  
38 contract price unless the claimant shall establish by clear and  
39 convincing evidence that, in the usage of trade, such contracts are  
40 not customarily accompanied by a deposit or partial payment of the  
41 contract price.

42 f. (1) The taxes imposed under subsections (a), (b), (c) and (f)  
43 of section 3 upon receipts received on or after July 1, 1990 but prior  
44 to July 1, 1992 shall be at the rate, if any, in effect on June 30, 1990  
45 in the case of sales made or services rendered, if delivery of the  
46 property which was the subject matter of the sale has been  
47 completed or such services have been entirely rendered prior to July  
48 1, 1990.

1 (2) The taxes imposed under subsections (a), (b), (c) and (f) of  
2 section 3 upon receipts received on or after July 1, 1992 but prior to  
3 July 15, 2006 shall be at the rate of 7% in the case of sales made or  
4 services rendered, where delivery of the property which was the  
5 subject matter of the sale has been completed or such services have  
6 been entirely rendered on or after July 1, 1990 but prior to July 1,  
7 1992.

8 (3) The taxes imposed under subsections (a), (b), (c), (f) and (g)  
9 of section 3 upon receipts received on or after July 15, 2006 shall be  
10 at the rate of 6% in the case of sales made or services rendered,  
11 where delivery of the property which was the subject matter of the  
12 sale has been completed or such services have been entirely  
13 rendered on or after July 1, 1992 but prior to July 15, 2006.

14 g. The director is empowered to promulgate rules and  
15 regulations to implement the provisions of this section.

16 (cf: P.L.2006, c.44, s.4)

17

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

20 6. Unless property or services have already been or will be  
21 subject to the sales tax under this act, there is hereby imposed on  
22 and there shall be paid by every person a use tax for the use within  
23 this State of 7%, except as otherwise exempted under this act, (A)  
24 of any tangible personal property or **【digital property】** specified  
25 digital product purchased at retail, including energy, provided  
26 however, that electricity consumed by the generating facility that  
27 produced it shall not be subject to tax, (B) of any tangible personal  
28 property or **【digital property】** specified digital product  
29 manufactured, processed or assembled by the user, if items of the  
30 same kind of tangible personal property or **【digital property】**  
31 specified digital products are offered for sale by him in the regular  
32 course of business, or if items of the same kind of tangible personal  
33 property are not offered for sale by him in the regular course of  
34 business and are used as such or incorporated into a structure,  
35 building or real property, (C) of any tangible personal property or  
36 **【digital property】** specified digital product, however acquired,  
37 where not acquired for purposes of resale, upon which any taxable  
38 services described in paragraphs (1) and (2) of subsection (b) of  
39 section 3 of P.L.1966, c.30 (C.54:32B-3) have been performed, (D)  
40 of intrastate, interstate, or international telecommunications  
41 services described in subsection (f) of section 3 of P.L.1966, c.30,  
42 (E) (Deleted by amendment, P.L.1995, c.184), (F) of utility service  
43 provided to persons in this State for use in this State, provided  
44 however, that utility service used by the facility that provides the  
45 service shall not be subject to tax, (G) of mail processing services  
46 described in paragraph (5) of subsection (b) of section 3 of  
47 P.L.1966, c.30 (C.54:32B-3), (H) (Deleted by amendment,  
48 P.L.2008, c.123), (I) of any services subject to tax pursuant to

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



1 in the nature of initiation fees, membership fees or dues.  
2 (cf: P.L.2008, c.123, s.5)

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  
7 section 3 and the compensating use tax imposed under section 6,  
8 when computed in respect to tangible personal property and **[digital**  
9 **property]** specified digital products wherever manufactured,  
10 processed or assembled and used by such manufacturer, processor  
11 or assembler in the regular course of business within this State,  
12 shall be based on the price at which items of the same kind of  
13 tangible personal property or specified digital products are offered  
14 for sale by him.

15 (b) Tangible personal property or **[digital property]** a specified  
16 digital product, which has been purchased by a resident of the State  
17 of New Jersey outside of this State for use outside of this State and  
18 subsequently becomes subject to the compensating use tax imposed  
19 under this act, shall be taxed on the basis of the purchase price of  
20 such property or product, provided, however:

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

28 (2) That the compensating use tax on such tangible personal  
29 property or **[digital property]** specified digital product brought into  
30 this State (other than for complete consumption or for incorporation  
31 into real property located in this State) and used in the performance  
32 of a contract or subcontract within this State by a purchaser or user  
33 for a period of less than six months may be based, at the option of  
34 the taxpayer, on the fair rental value of such property or product for  
35 the period of use within this State.

36 (c) Leased tangible personal property or **[digital property]**  
37 specified digital product which has been purchased outside this  
38 State for lease outside of this State and subsequently becomes  
39 subject to the compensating use tax imposed under this act shall be  
40 taxed on the basis of the purchase price of such property or product,  
41 provided however, that the compensating use tax on such property  
42 or product brought into and used within this State may be based on  
43 the total of the lease payments attributable to the lease of that  
44 property or product attributable to the period of the lease remaining  
45 after first use in this State.

46 (d) Sales tax imposed on the lease or rental of tangible personal  
47 property or **[digital property]** a specified digital product in New

1 Jersey shall be based on either the total of the periodic payments  
2 required under the agreement or the original purchase price of the  
3 property or product. The full amount of sales tax due on the  
4 complete term of a lease or rental for more than six months shall be  
5 remitted with the monthly or quarterly sales and use tax return due  
6 for the period in which the leased personal property or product was  
7 delivered to the lessee in this State. However, if the tax is paid on a  
8 lease or rental based on the original purchase price of the tangible  
9 personal property or **[digital property]** specified digital product, a  
10 subsequent lease or rental of the same property or product shall not  
11 be subject to the tax imposed under P.L.1966, c.30 (C.54:32B-1 et  
12 seq.).

13 If leased property or a product is subsequently removed on a  
14 permanent basis from this State, the lessee shall be entitled to a  
15 refund of the tax allocable to the portion of the lease or rental that  
16 remains in effect after the property or the product has been removed  
17 from this State, but only if the other state does not allow a credit for  
18 the sales or use tax paid to this State on the lease or rental  
19 transaction, and further, in the case of property or a product  
20 removed to a state that imposes or computes tax on leases or rentals  
21 based on a lump sum or accelerated basis, only if the other state  
22 also allows a corresponding refund with respect to the lease of  
23 property or product upon which a sales or use tax is due and paid to  
24 this State.

25 (e) The purchase of energy shall be subject to the compensating  
26 use tax imposed under section 6 on the basis of the purchase price  
27 of the energy, including any charges for utility service.  
28 (cf: P.L.2006, c.44, s.6)  
29

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

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

42 (cf: P.L.2008, c.123, s.9)  
43

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

46 1. a. Receipts of retail sales, except retail sales of motor  
47 vehicles, of alcoholic beverages, of specified digital products, and  
48 cigarettes as defined in the "Cigarette Tax Act," P.L.1948, c.65

1 (C.54:40A-1 et seq.), made by a seller from a place of business  
2 regularly operated by the seller for the purpose of making retail  
3 sales at which items are regularly exhibited and offered for retail  
4 sale and which is not utilized primarily for the purpose of catalogue  
5 or mail order sales, in which county is situated an entrance to an  
6 interstate bridge or tunnel connecting New Jersey with a state that  
7 does not impose a retail sales and use tax or imposes a retail sales  
8 and use tax at a rate at least five percentage points lower than the  
9 rate in this State, are exempt to the extent of 50% of the tax  
10 imposed under the "Sales and Use Tax Act," P.L.1966, c.30  
11 (C.54:32B-1 et seq.).

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

16 (cf: P.L.2006, c.44, s.11)

17

18 8. (New section) Receipts from sales of video programming  
19 services, including video on demand television services, and  
20 broadcasting services, including content to provide such services,  
21 are exempt from the tax imposed under the "Sales and Use Tax  
22 Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

23

24 9. (New section) a. Receipts from sales of a specified digital  
25 product that is accessed but not delivered electronically to the  
26 purchaser are exempt from the tax imposed under the "Sales and  
27 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

28 b. For purposes of this section, "delivered electronically" means  
29 delivered to the purchaser by means other than tangible storage  
30 media.

31

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

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

38 (1) The State of New Jersey, or any of its agencies,  
39 instrumentalities, public authorities, public corporations (including  
40 a public corporation created pursuant to agreement or compact with  
41 another state) or political subdivisions where it is the purchaser,  
42 user or consumer, or where it is a seller of services or property of a  
43 kind not ordinarily sold by private persons;

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

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

5 (b) Except as otherwise provided in this section any sale or  
6 amusement charge by or to any of the following or any use or  
7 occupancy by any of the following, where such sale, charge, use or  
8 occupancy is directly related to the purposes for which the  
9 following have been organized, shall not be subject to the sales and  
10 use taxes imposed under this act: a corporation, association, trust,  
11 or community chest, fund or foundation, organized and operated  
12 exclusively (1) for religious, charitable, scientific, testing for public  
13 safety, literary or educational purposes; or (2) for the prevention of  
14 cruelty to children or animals; or (3) as a volunteer fire company,  
15 rescue, ambulance, first aid or emergency company or squad; or (4)  
16 as a National Guard organization, post or association, or as a post or  
17 organization of war veterans, or the Marine Corps League, or as an  
18 auxiliary unit or society of any such post, organization or  
19 association; or (5) as an association of parents and teachers of an  
20 elementary or secondary public or private school exempt under the  
21 provisions of this section. Such a sale, charge, use or occupancy  
22 by, or a sale or charge to, an organization enumerated in this  
23 subsection, shall not be subject to the sales and use taxes only if no  
24 part of the net earnings of the organization inures to the benefit of  
25 any private shareholder or individual, no substantial part of the  
26 activities of the organization is carrying on propaganda, or  
27 otherwise attempting to influence legislation, and the organization  
28 does not participate in, or intervene in (including the publishing or  
29 distributing of statements), any political campaign on behalf of any  
30 candidate for public office.

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

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

36 (2) retail sales of tangible personal property or **[digital**  
37 **property]** specified digital products by any shop or store operated  
38 by an organization described in subsection (b) of this section, unless  
39 the tangible personal property or **[digital property]** specified digital  
40 product was received by the organization as a gift or contribution  
41 and the shop or store is one in which substantially all the work in  
42 carrying on the business of the shop or store is performed for the  
43 organization without compensation and substantially all of the  
44 shop's or store's merchandise has been received by the organization  
45 as gifts or contributions or unless the purchaser is an organization  
46 exempt under this section; or

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

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

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

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

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

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

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

25 (D) a police or fire department of a political subdivision of the  
26 State, or a volunteer fire company, ambulance, first aid, or  
27 emergency company or squad, or exclusively to a retirement,  
28 pension or disability fund for the sole benefit of members of a  
29 police or fire department or to a fund for the heirs of such members.

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

32 (A) Any athletic game or exhibition unless the proceeds shall  
33 inure exclusively to the benefit of elementary or secondary schools  
34 or unless in the case of an athletic game between two elementary or  
35 secondary schools, the entire gross proceeds from such game shall  
36 inure to the benefit of one or more organizations described in  
37 subsection (b) of this section;

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

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

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

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

6 (C) Any admissions to historic sites, houses and shrines, and  
7 museums conducted in connection therewith, maintained and  
8 operated by a society or organization devoted to the preservation  
9 and maintenance of such historic sites, houses, shrines and  
10 museums; provided no part of the net earnings thereof inures to the  
11 benefit of any private stockholder or individual.

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

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

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

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

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

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

34 (cf: P.L.2008, c.123, s.12)

35

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

41 (j) If the director provides less than 30 days between the date a  
42 rate change is enacted and the date that change takes effect, the  
43 director shall relieve the seller of liability for failing to collect tax at  
44 the new rate if: (1) the seller collected tax at the immediately  
45 preceding effective rate; and (2) the seller's failure to collect tax at  
46 the newly effective rate does not extend more than 30 days after the  
47 date of enactment of the new rate.

1       (k) Notwithstanding the provisions of subsection (j) of this  
2 section, if the director establishes that a seller fraudulently failed to  
3 collect tax due at the new rate or solicits purchasers based on the  
4 immediately preceding effective tax rate, this relief from liability  
5 shall not apply.

6 (cf: P.L.2008, c.123, s.13)

7  
8       13. Section 15 of P.L.1966, c.30 (C.54:32B-15) is amended to  
9 read as follows:

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

33       (b) Any person who is not otherwise required to collect any tax  
34 imposed by this act and who makes sales to persons within the State  
35 of tangible personal property, **digital property** specified digital  
36 products or services, the use of which is subject to tax under this  
37 act, may if he so elects file a certificate of registration with the  
38 director who may, in his discretion and subject to such conditions as  
39 he may impose, issue to him a certificate of authority to collect the  
40 compensating use tax imposed by this act.

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

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

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

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

9 (d) A certified service provider in model 1 shall be allowed a  
10 monetary allowance in accordance with the terms of the contract  
11 that the states participating in the Streamlined Sales and Use Tax  
12 Agreement sign with the provider. The director shall prescribe the  
13 allowance in accordance with the terms of the contract, which shall  
14 be funded entirely from money collected in model 1.

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

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

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

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

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

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

40 (f) A model 3 seller and all other sellers that are not under  
41 model 1 or model 2 shall be allowed a monetary allowance which  
42 the director shall prescribe in accordance with the terms arrived at  
43 by the member states of the Streamlined Sales and Use Tax  
44 Agreement. The member states initially anticipate that they will  
45 provide a monetary allowance to sellers under model 3 and to all  
46 other sellers that are not under models 1 or 2 will be based on the  
47 following: for a period not to exceed 24 months following a  
48 voluntary seller's registration through the Streamlined Sales and

1 Use Tax Agreement's central registration process, a percentage of  
2 tax revenue generated for a member state by the voluntary seller for  
3 each member state for which the seller does not have a requirement  
4 to register to collect the tax.

5 (cf: P.L.2006, c.44, s.15)

6

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

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

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

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

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

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

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

12 (2) Under terms of the "amnesty" granted pursuant to paragraph  
13 (1) 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  
16 not registered in this State, provided that the seller registers  
17 pursuant to paragraph (1) of this subsection within twelve months  
18 of the effective date of this State's participation in the Streamlined  
19 Sales and Use Tax Agreement.

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

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

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

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

47 (cf: P.L.2008, c.123, s.15)

1       15. Section 21 of P.L.1983, c.303 (C.52:27H-80) is amended to  
2 read as follows:

3       21. Receipts of retail sales, except retail sales of motor vehicles,  
4 of alcoholic beverages as defined in the "Alcoholic Beverage Tax  
5 Law," R.S.54:41-1 et seq., of cigarettes as defined in the "Cigarette  
6 Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.), of manufacturing  
7 machinery, equipment or apparatus, and of energy, made by a  
8 certified **[vendor]** seller from a place of business owned or leased  
9 and regularly operated by the **[vendor]** seller for the purpose of  
10 making retail sales, and located in a designated enterprise zone  
11 established pursuant to the "New Jersey Urban Enterprise Zones  
12 Act," P.L.1983, c.303 (C.52:27H-60 et al.), or a UEZ-impacted  
13 business district established pursuant to section 3 of P.L.2001,  
14 c.347 (C.52:27H-66.2), are exempt to the extent of 50% of the tax  
15 imposed under the "Sales and Use Tax Act," P.L.1966, c.30  
16 (C.54:32B-1 et seq.).

17       Any **[vendor]** seller, which is a qualified business having a place  
18 of business located in a designated enterprise zone or in a  
19 designated UEZ-impacted business district, may apply to the  
20 Director of the Division of Taxation in the Department of the  
21 Treasury for certification pursuant to this section. The director  
22 shall certify a **[vendor]** seller if **[he]** the director shall find that the  
23 **[vendor]** seller owns or leases and regularly operates a place of  
24 business located in the designated enterprise zone or in the  
25 designated UEZ-impacted business district for the purpose of  
26 making retail sales, that items are regularly exhibited and offered  
27 for retail sale at that location, and that the place of business is not  
28 utilized primarily for the purpose of catalogue or mail order sales.  
29 The certification under this section shall remain in effect during the  
30 time the business retains its status as a qualified business meeting  
31 the eligibility criteria of section 27 of P.L.1983, c.303 (C.52:27H-  
32 86). However, the director may at any time revoke a certification  
33 granted pursuant to this section if **[he]** the director shall determine  
34 that the **[vendor]** seller no longer complies with the provisions of  
35 this section.

36       Notwithstanding the provisions of this act to the contrary, except  
37 as may otherwise be provided by section 7 of P.L.1983, c.303  
38 (C.52:27H-66), the authority may, in its discretion, determine  
39 **[whether or not]** if the provisions of this section shall apply to any  
40 enterprise zone designated after the effective date of P.L.1985,  
41 c.142 (C.52:27H-66 et al.); provided, however, that the authority  
42 may make such a determination only where the authority finds that  
43 the award of an exemption of 50 percent of the tax imposed under  
44 the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.)  
45 will not have any adverse economic impact upon any other urban  
46 enterprise zone.

1 Notwithstanding any other provisions of law to the contrary,  
2 except as provided in subsection b. of section 6 of P.L.1996, c.124  
3 (C.13:1E-116.6), after first depositing 10 percent of the gross  
4 amount of all revenues received from the taxation of retail sales  
5 made by certified **[vendors]** sellers from business locations in  
6 designated enterprise zones to which this exemption shall apply into  
7 the account created in the name of the authority in the enterprise  
8 zone assistance fund pursuant to section 29 of P.L.1983, c.303  
9 (C.52:27H-88), the remaining 90 percent shall be deposited  
10 immediately upon collection by the Department of the Treasury, as  
11 follows:

12 a. In the first five-year period during which the State shall have  
13 collected reduced rate revenues within an enterprise zone, all such  
14 revenues shall be deposited in the enterprise zone assistance fund  
15 created pursuant to section 29 of P.L.1983, c.303 (C.52:27H-88);

16 b. In the second five-year period during which the State shall  
17 have collected reduced rate revenues within an enterprise zone, 66  
18  $\frac{2}{3}$ % of all those revenues shall be deposited in the enterprise zone  
19 assistance fund, and 33  $\frac{1}{3}$ % shall be deposited in the General  
20 Fund;

21 c. In the third five-year period during which the State shall  
22 have collected reduced rate revenues within an enterprise zone, 33  
23  $\frac{1}{3}$ % of all those revenues shall be deposited in the enterprise zone  
24 assistance fund, and 66  $\frac{2}{3}$ % shall be deposited in the General  
25 Fund;

26 d. In the final five-year period during which the State shall  
27 have collected reduced rate revenues within an enterprise zone, but  
28 not to exceed the life of the enterprise zone, all those revenues shall  
29 be deposited in the General Fund.

30 Commencing on the effective date of P.L.1993, c.144, all  
31 revenues in any enterprise zone to which the provisions of this  
32 section have been extended prior to the enactment of P.L.1993,  
33 c.144 shall be deposited into the enterprise zone assistance fund  
34 until there shall have been deposited all revenues into that fund for  
35 a total of five full years, as set forth in subsection a. of this section.  
36 The State Treasurer then shall proceed to deposit funds into the  
37 enterprise zone assistance fund according to the schedule set forth  
38 in subsections b. through d. of this section, beginning at the point  
39 where the enterprise zone was located on that schedule on the  
40 effective date of P.L.1993, c.144. No enterprise zone shall receive  
41 the deposit benefit granted by any one subsection of this section for  
42 more than five cumulative years.

43 The revenues required to be deposited in the enterprise zone  
44 assistance fund under this section shall be used for the purposes of  
45 that fund and for the uses prescribed in section 29 of P.L.1983,  
46 c.303 (C.52:27H-88), subject to annual appropriations being made  
47 for those purposes and uses.

48 (cf: P.L.2001, c.347, s.9)





1 accompanying sounds, if any; (2) a “digital audio work” is a work  
2 that results from the fixation of a series of musical, spoken, or other  
3 sounds, including a ringtone; and (3) a “digital book” is a work that  
4 is generally recognized in the ordinary and usual sense as a book.

5 The definition of “specified digital product” is, in general,  
6 broader and lacks the same clarity and specificity that characterized  
7 “digital property.” To conform the State’s current tax treatment of  
8 digital goods within the parameters of the defined term under the  
9 agreement, the bill make certain other ancillary changes in addition  
10 to the adoption of the new SSUTA definition. Specifically, the bill:  
11 (1) revises the definition of “retail sale” to reiterate that sales of  
12 specified digital products are only taxable to end users (sales for  
13 resale are excluded from tax); (2) specifies that a digital code which  
14 provides a purchaser the right to obtain the product will be treated  
15 as a specified digital product for purposes of taxation; (3) stipulates  
16 that specified digital products are subject to tax regardless of  
17 whether the sale of the product is for permanent or less than  
18 permanent use and regardless of whether continued payment for the  
19 product is required; and (4) carves out a specific statutory  
20 exemption for all video programming services, including video on  
21 demand television services, and broadcasting services to ensure  
22 sales of those services are not taxable as specified digital products.

23 The bill also provides a separate statutory exemption for  
24 specified digital products that are accessed but not delivered  
25 electronically to the consumer. Currently, New Jersey excludes  
26 from tax digital property that is streamed or uploaded, temporarily,  
27 to a consumer to access certain digital content. However,  
28 “specified digital products” includes electronically transferred  
29 digital audio-visual works, digital audio works, and digital books,  
30 where “transferred electronically” means obtained by the purchaser  
31 by means other than tangible storage media. Presumably,  
32 transferred electronically includes instances where specified digital  
33 products are streamed or uploaded, and the exemption, therefore,  
34 ensures that access alone is not used to determine the taxability of  
35 specified digital products.

36 For purposes of compliance, the bill incorporates SSUTA  
37 provisions that relieve certain sellers from liability due to changes  
38 in the sales and use tax rate. Under the bill, the Director of the  
39 Division of Taxation in the Department of Treasury may not hold a  
40 seller liable for failure to collect tax that may be due at a new tax  
41 rate, if the director provides less than 30 days between the date a  
42 change in rate is enacted and the date that change takes effect.

43 The relief from liability is, however, limited. The director is not  
44 required to provide relief in instances where the seller collected the  
45 tax at a rate other than the immediately preceding sales and use tax  
46 rate, and in instances where the seller’s failure to collect tax at the  
47 new tax rate extends more than 30 days after the date the new rate is  
48 enacted. Moreover, the director is not required to provide relief if a

1 seller fraudulently failed to collect tax at the new tax rate, or if a  
2 seller solicits purchasers using the immediately preceding tax rate.

3 For purposes of compliance, the bill makes technical changes  
4 and clarifications to the tax by removing remaining references to  
5 the previously defined term “vendor,” and eliminating charges for  
6 installation as part of the enumerated charges included in the  
7 definition of “sales price.” “Vendor” had been New Jersey’s defined  
8 term for persons making taxable sales of goods or services at the  
9 time the tax was adopted in 1966 and until the State entered the  
10 SSUTA in 2005. As part of the statutory changes for compliance,  
11 New Jersey largely replaced “vendor” with the SSUTA approved  
12 term “seller.” This bill removes remaining statutory references to  
13 “vendor” not previously replaced or otherwise adopted after the  
14 defined term no longer applied.

15 The elimination of installation charges from the definition of  
16 “sales price” clarifies the imposition of tax on charges for  
17 installation. Similar to the transition from “vendor” to “seller,” the  
18 State’s definition of “sales price” was substantively revised in 2005  
19 to comply with the SSUTA. In attempting to conform to the  
20 agreement and maintain the existing taxing scheme, the State  
21 adopted a definition of “sales price” that included installation  
22 charges; charges for installing tangible personal property had been  
23 subject to the sales and use tax and the inclusion of charges for  
24 installation in the definition of “sales price” was intended to ensure  
25 those charges remained taxable after entering the agreement.

26 However, the inclusion of installation charges in the definition  
27 of “sales price” is unnecessary. The inclusion of installation  
28 charges in the definition of “sales price” is ancillary to what makes  
29 charges associated with the installation of a new car stereo or the  
30 installation of a prewritten computer software program on a laptop  
31 computer taxable. A separate statutory provision specifies that  
32 installation charges are an enumerated service subject to the sales  
33 and use tax, regardless of how “sales price” is defined. This bill  
34 removes the reference to installation charges from “sales price” so  
35 that charges for installation of tangible personal property and  
36 specified digital products remain subject to tax even if the purchase  
37 of the property or product is exempt from taxation.

38 The SSUTA is a multi-state sales and use tax compact that was  
39 developed over several years through the joint efforts of 42 states  
40 participating in the Streamlined Sales Tax Project. The underlying  
41 purpose of the SSUTA is to simplify and modernize the  
42 administration of the sales and use tax laws, rules, and regulations  
43 of member states, and to facilitate multi-state tax administration and  
44 compliance.

45 Since entering the agreement in 2005, New Jersey has taken a  
46 series of steps to conform the State’s sales and use tax to, and  
47 remain in compliance with, the SSUTA. The State has previously  
48 revised the tax to conform to SSUTA provisions concerning

**S2130**

41

1 uniform tax base definitions, rate simplification, sourcing rules,  
2 exemption administration, and administrative procedures. This bill  
3 represents the fifth time the State has amended the sales and use tax  
4 to comply with the SSUTA.

5

6

7

8

9 Revises sales and use tax to maintain compliance with certain  
10 terms and conditions of Streamlined Sales and Use Tax Agreement.

# SENATE, No. 2130

## STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 24, 2010

**Sponsored by:**

**Senator PAUL A. SARLO**

**District 36 (Bergen, Essex and Passaic)**

**Senator KEVIN J. O'TOOLE**

**District 40 (Bergen, Essex and Passaic)**

**Assemblyman LOUIS D. GREENWALD**

**District 6 (Camden)**

**Assemblyman UPENDRA J. CHIVUKULA**

**District 17 (Middlesex and Somerset)**

**Co-Sponsored by:**

**Senator Gordon**

**SYNOPSIS**

Revises sales and use tax to maintain compliance with certain terms and conditions of Streamlined Sales and Use Tax Agreement.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/18/2011)**

1 AN ACT revising the sales and use tax to maintain compliance with  
2 certain terms and conditions of the Streamlined Sales and Use  
3 Tax Agreement, amending and supplementing P.L.1966, c.30  
4 and amending P.L.1980, c.105, P.L.1993, c.373, and P.L.1983,  
5 c.303.

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

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

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

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

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

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

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

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

28 (1) For the purposes of this act a sale is for "resale, sublease, or  
29 subrent" if it is a sale (A) for resale either as such or as converted  
30 into or as a component part of a product produced for sale by the  
31 purchaser, including the conversion of natural gas into another  
32 intermediate or end product, other than electricity or thermal  
33 energy, produced for sale by the purchaser, (B) for use by that  
34 person in performing the services subject to tax under subsection  
35 (b) of section 3 where the property so sold becomes a physical  
36 component part of the property upon which the services are  
37 performed or where the property so sold is later actually transferred  
38 to the purchaser of the service in conjunction with the performance  
39 of the service subject to tax, **[or]** (C) of telecommunications  
40 service to a telecommunications service provider for use as a  
41 component part of telecommunications service provided to an  
42 ultimate customer, or (D) to a person who receives by contract a  
43 product transferred electronically for further commercial broadcast,  
44 rebroadcast, transmission, retransmission, licensing, relicensing,  
45 distribution, redistribution or exhibition of the product, in whole or  
46 in part, to another person, other than rights to redistribute based on

**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 statutory or common law doctrine such as fair use.

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

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

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

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

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

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

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

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

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

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

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

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

39 (h) "Use" means the exercise of any right or power over tangible  
40 personal property, **[digital property]** specified digital products,  
41 services to property or products, or services by the purchaser  
42 thereof and includes, but is not limited to, the receiving, storage or  
43 any keeping or retention for any length of time, withdrawal from  
44 storage, any distribution, any installation, any affixation to real or  
45 personal property, or any consumption of such property or products.  
46 Use also includes the exercise of any right or power over intrastate  
47 or interstate telecommunications and prepaid calling services. Use  
48 also includes the exercise of any right or power over utility service.

1 Use also includes the derivation of a direct or indirect benefit from  
2 a service.

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

5 (1) The term "seller" includes:

6 (A) A person making sales, leases or rentals of tangible personal  
7 property, **[digital property]** specified digital products or services,  
8 the receipts from which are taxed by this act;

9 (B) A person maintaining a place of business in the State or  
10 having an agent maintaining a place of business in the State and  
11 making sales, whether at such place of business or elsewhere, to  
12 persons within the State of tangible personal property, **[digital**  
13 **property]** specified digital products or services, the use of which is  
14 taxed by this act;

15 (C) A person who solicits business either by employees,  
16 independent contractors, agents or other representatives or by  
17 distribution of catalogs or other advertising matter and by reason  
18 thereof makes sales to persons within the State of tangible personal  
19 property, **[digital property]** specified digital products or services,  
20 the use of which is taxed by this act;

21 (D) Any other person making sales to persons within the State of  
22 tangible personal property, **[digital property]** specified digital  
23 products or services, the use of which is taxed by this act, who may  
24 be authorized by the director to collect the tax imposed by this act;

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

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

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

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

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

40 (2) In addition, when in the opinion of the director it is  
41 necessary for the efficient administration of this act to treat any  
42 salesman, representative, peddler or canvasser as the agent of the  
43 seller, distributor, supervisor or employer under whom the agent  
44 operates or from whom the agent obtains tangible personal property  
45 or **[digital property]** a specified digital product sold by the agent or  
46 for whom the agent solicits business, the director may, in the  
47 director's discretion, treat such agent as the seller jointly responsible

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

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

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

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

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

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

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

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

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

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

42 (s) "Lessor" means any person who is the owner, licensee, or  
43 lessee of any premises, tangible personal property or **[digital**  
44 **property]** a specified digital product which the person leases,  
45 subleases, or grants a license to use to other persons.

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



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

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

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

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

34 (y) "Property and services the use of which is subject to tax"  
35 includes: (1) all property sold to a person within the State, whether  
36 or not the sale is made within the State, the use of which property is  
37 subject to tax under section 6 or will become subject to tax when  
38 such property is received by or comes into the possession or control  
39 of such person within the State; (2) all services rendered to a person  
40 within the State, whether or not such services are performed within  
41 the State, upon tangible personal property or **[digital property]** a  
42 specified digital product the use of which is subject to tax under  
43 section 6 or will become subject to tax when such property or  
44 product is distributed within the State or is received by or comes  
45 into possession or control of such person within the State; (3)  
46 intrastate, interstate, or international telecommunications sourced to  
47 this State pursuant to section 29 of P.L.2005, c.126 (C.54:32B-3.4);  
48 (4) (Deleted by amendment, P.L.1995, c.184); (5) energy sold,

1 exchanged or delivered in this State for use in this State; (6) utility  
2 service sold, exchanged or delivered in this State for use in this  
3 State; (7) mail processing services in connection with printed  
4 advertising material distributed in this State; (8) (Deleted by  
5 amendment, P.L.2005, c.126); and (9) services the benefit of which  
6 are received in this State.

7 (z) "Director" means the Director of the Division of Taxation in  
8 the State Department of the Treasury, or any officer, employee or  
9 agency of the Division of Taxation in the Department of the  
10 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 any transfer of possession or control  
14 of tangible personal property for a fixed or indeterminate term for  
15 consideration. A "lease or rental" may include future options to  
16 purchase or extend.

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

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

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

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

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

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

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

43 (cc) "Telecommunications service" means the electronic  
44 transmission, conveyance, or routing of voice, data, audio, video, or  
45 any other information or signals to a point, or between or among  
46 points.

47 "Telecommunications service" shall include such transmission,  
48 conveyance, or routing in which computer processing applications

1 are used to act on the form, code, or protocol of the content for  
2 purposes of transmission, conveyance, or routing without regard to  
3 whether such service is referred to as voice over Internet protocol  
4 services or is classified by the Federal Communications  
5 Commission as enhanced or value added. "Telecommunications  
6 service" shall not include:

- 7 (1) (Deleted by amendment, P.L.2008, c.123);
- 8 (2) (Deleted by amendment, P.L.2008, c.123);
- 9 (3) (Deleted by amendment, P.L.2008, c.123);
- 10 (4) (Deleted by amendment, P.L.2008, c.123);
- 11 (5) (Deleted by amendment, P.L.2008, c.123);
- 12 (6) (Deleted by amendment, P.L.2008, c.123);
- 13 (7) data processing and information services that allow data to  
14 be generated, acquired, stored, processed, or retrieved and delivered  
15 by an electronic transmission to a purchaser where such purchaser's  
16 primary purpose for the underlying transaction is the processed data  
17 or information;
- 18 (8) installation or maintenance of wiring or equipment on a  
19 customer's premises;
- 20 (9) tangible personal property;
- 21 (10) advertising, including but not limited to directory  
22 advertising;
- 23 (11) billing and collection services provided to third parties;
- 24 (12) internet access service;
- 25 (13) radio and television audio and video programming services,  
26 regardless of the medium, including the furnishing of transmission,  
27 conveyance, and routing of such services by the programming  
28 service provider. Radio and television audio and video  
29 programming services shall include but not be limited to cable  
30 service as defined in section 47 U.S.C. s.522(6) and audio and video  
31 programming services delivered by commercial mobile radio  
32 service providers, as defined in section 47 C.F.R. 20.3;
- 33 (14) ancillary services; or
- 34 (15) digital products delivered electronically, including but not  
35 limited to software, music, video, reading materials, or ringtones.

36 For the purposes of this subsection:

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

41 "conference bridging service" means an ancillary service that  
42 links two or more participants of an audio or video conference call  
43 and may include the provision of a telephone number. Conference  
44 bridging service does not include the telecommunications services  
45 used to reach the conference bridge;

46 "detailed telecommunications billing service" means an ancillary  
47 service of separately stating information pertaining to individual  
48 calls on a customer's billing statement;

1 "directory assistance" means an ancillary service of providing  
2 telephone number information or address information or both;

3 "vertical service" means an ancillary service that is offered in  
4 connection with one or more telecommunications services, which  
5 offers advanced calling features that allow customers to identify  
6 callers and to manage multiple calls and call connections, including  
7 conference bridging services; and

8 "voice mail service" means an ancillary service that enables the  
9 customer to store, send, or receive recorded messages. Voice mail  
10 service does not include any vertical service that a customer may be  
11 required to have to utilize the voice mail service.

12 (dd) (1) "Intrastate telecommunications" means a  
13 telecommunications service that originates in one United States  
14 state or a United States territory or possession or federal district,  
15 and terminates in the same United States state or United States  
16 territory or possession or federal district.

17 (2) "Interstate telecommunications" means a  
18 telecommunications service that originates in one United States  
19 state or a United States territory or possession or federal district,  
20 and terminates in a different United States state or United States  
21 territory or possession or federal district.

22 (3) "International telecommunications" means a  
23 telecommunications service that originates or terminates in the  
24 United States and terminates or originates outside the United States,  
25 respectively. "United States" includes the District of Columbia or a  
26 United States territory or possession.

27 (ee) (Deleted by amendment, P.L.2008, c.123)

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

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

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

34 (ii) "Self-generation unit" means a facility located on the user's  
35 property, or on property purchased or leased from the user by the  
36 person owning the self-generation unit and such property is  
37 contiguous to the user's property, which generates electricity to be  
38 used only by that user on the user's property and is not transported  
39 to the user over wires that cross a property line or public  
40 thoroughfare unless the property line or public thoroughfare merely  
41 bifurcates the user's or self-generation unit owner's otherwise  
42 contiguous property.

43 (jj) "Co-generation facility" means a facility the primary purpose  
44 of which is the sequential production of electricity and steam or  
45 other forms of useful energy which are used for industrial or  
46 commercial heating or cooling purposes and which is designated by  
47 the Federal Energy Regulatory Commission, or its successor, as a

1 "qualifying facility" pursuant to the provisions of the "Public Utility  
2 Regulatory Policies Act of 1978," Pub.L.95-617.

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

7 (ll) "Pre-paid calling service" means the right to access  
8 exclusively telecommunications services, which shall be paid for in  
9 advance and which enables the origination of calls using an access  
10 number or authorization code, whether manually or electronically  
11 dialed, and that is sold in predetermined units or dollars of which  
12 the number declines with use in a known amount.

13 (mm) "Mobile telecommunications service" means the same as  
14 that term is defined in the federal "Mobile Telecommunications  
15 Sourcing Act," 4 U.S.C. s.124 (Pub.L.106-252).

16 (nn) (Deleted by amendment, P.L.2008, c.123)

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

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

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

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

28 (D) Delivery charges;

29 (E) 【Installation charges】 (Deleted by amendment, P.L. , c. )  
30 (pending before the Legislature as this bill); and

31 (F) (Deleted by amendment, P.L.2008, c.123).

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  
35 by a purchaser on a sale;

36 (B) Interest, financing, and carrying charges from credit  
37 extended on the sale of personal property or services, if the amount  
38 is separately stated on the invoice, bill of sale, or similar document  
39 given to the 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  
42 given 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  
45 Food 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  
47 in part payment and intended for resale if the amount is separately

1 stated on the invoice, bill of sale, or similar document given to the  
2 purchaser.

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

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

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

10 (C) The amount of the consideration attributable to the sale is  
11 fixed and determinable by the seller at the time of the sale of the  
12 item to the purchaser; and

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

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

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

24 (iii) the price reduction or discount is identified as a third party  
25 price reduction or discount on the invoice received by the purchaser  
26 or on a coupon, certificate, or other documentation presented by the  
27 purchaser.

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

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

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

42 (rr) "Delivery charges" means charges by the seller for  
43 preparation and delivery to a location designated by the purchaser  
44 of personal property or services including, but not limited to,  
45 transportation, shipping, postage, handling, crating, and packing. If  
46 a shipment includes both exempt and taxable property, the seller  
47 should allocate the delivery charge by using: (1) a percentage based  
48 on the total sales price of the taxable property compared to the total

1 sales price of all property in the shipment; or (2) a percentage based  
2 on the total weight of the taxable property compared to the total  
3 weight of all property in the shipment. The seller shall tax the  
4 percentage of the delivery charge allocated to the taxable property  
5 but is not required to tax the percentage allocated to the exempt  
6 property.

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

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

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

24 (vv) **["Digital property"** means electronically delivered music,  
25 ringtones, movies, books, audio and video works and similar  
26 products, where the customer is granted a right or license to use,  
27 retain or make a copy of such item. Digital property does not  
28 include video programming services, including video on demand  
29 television services, and broadcasting services, including content to  
30 provide such services.] (Deleted by amendment, P.L. \_\_\_\_\_, c. \_\_\_\_\_)  
31 (pending before the Legislature as this bill)

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

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

38 (1) investigation and detective services, including detective  
39 agencies and private investigators, and fingerprint, polygraph,  
40 missing person tracing and skip tracing services;

41 (2) security guard and patrol services, including bodyguard and  
42 personal protection, guard dog, guard, patrol, and security services;

43 (3) armored car services; and

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

46 (yy) "Information services" means the furnishing of information  
47 of any kind, which has been collected, compiled, or analyzed by the  
48 seller, and provided through any means or method, other than

1 personal or individual information which is not incorporated into  
2 reports furnished to other people.

3 (zz) “Specified digital product” means an electronically  
4 transferred digital audio-visual work, digital audio work, or digital  
5 book; provided however, that a digital code which provides a  
6 purchaser with a right to obtain the product shall be treated in the  
7 same manner as a specified digital product.

8 (aaa) “Digital audio-visual work” means a series of related  
9 images which, when shown in succession, impart an impression of  
10 motion, together with accompanying sounds, if any.

11 (bbb) “Digital audio work” means a work that results from the  
12 fixation of a series of musical, spoken, or other sounds, including a  
13 ringtone.

14 (ccc) “Digital book” means a work that is generally recognized  
15 in the ordinary and usual sense as a book.

16 (ddd) “Transferred electronically” means obtained by the  
17 purchaser by means other than tangible storage media.

18 (eee) “Ringtone” means a digitized sound file that is downloaded  
19 onto a device and that may be used to alert the purchaser with  
20 respect to a communication.

21 (cf: P.L.2008, c.123, s.1)

22

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

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

26 (a) The receipts from every retail sale of tangible personal  
27 property or **[digital property]** a specified digital product for  
28 permanent use or less than permanent use, and regardless of  
29 whether continued payment is required, except as otherwise  
30 provided in this act.

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

33 (1) Producing, fabricating, processing, printing or imprinting  
34 tangible personal property or **[digital property]** a specified digital  
35 product, performed for a person who directly or indirectly furnishes  
36 the tangible personal property or **[digital property]** specified digital  
37 product, not purchased by him for resale, upon which such services  
38 are performed.

39 (2) Installing tangible personal property or **[digital property]** a  
40 specified digital product, or maintaining, servicing, repairing  
41 tangible personal property or **[digital property]** a specified digital  
42 product not held for sale in the regular course of business, whether  
43 or not the services are performed directly or by means of coin-  
44 operated equipment or by any other means, and whether or not any  
45 tangible personal property or **[digital property]** specified digital  
46 product is transferred in conjunction therewith, except (i) such  
47 services rendered by an individual who is engaged directly by a



1 private homeowner or lessee in or about his residence and who is  
2 not in a regular trade or business offering his services to the public,  
3 (ii) such services rendered with respect to personal property exempt  
4 from taxation hereunder pursuant to section 13 of P.L.1980, c.105  
5 (C.54:32B-8.1), (iii) (Deleted by amendment, P.L.1990, c.40), (iv)  
6 any receipts from laundering, dry cleaning, tailoring, weaving, or  
7 pressing clothing, and shoe repairing and shoeshining and (v)  
8 services rendered in installing property which, when installed, will  
9 constitute an addition or capital improvement to real property,  
10 property or land, other than landscaping services and other than  
11 installing carpeting and other flooring.

12 (3) Storing all tangible personal property not held for sale in the  
13 regular course of business; the rental of safe deposit boxes or  
14 similar space; and the furnishing of space for storage of tangible  
15 personal property by a person engaged in the business of furnishing  
16 space for such storage.

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

25 (4) Maintaining, servicing or repairing real property, other than  
26 a residential heating system unit serving not more than three  
27 families living independently of each other and doing their cooking  
28 on the premises, whether the services are performed in or outside of  
29 a building, as distinguished from adding to or improving such real  
30 property by a capital improvement, but excluding services rendered  
31 by an individual who is not in a regular trade or business offering  
32 his 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) Mail processing services for printed advertising material,  
36 except for mail processing services in connection with distribution  
37 of printed advertising material to out-of-State recipients.

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

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

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

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

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

47 (11) Investigation and security services.

48 (12) Information services.

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

4 (14) Telephone answering services.

5 (15) Radio subscription services.

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

10 Services otherwise taxable under paragraph (1) or (2) of this  
11 subsection (b) are not subject to the taxes imposed under this  
12 subsection, where the tangible personal property or [digital  
13 property] specified digital product upon which the services were  
14 performed is delivered to the purchaser outside this State for use  
15 outside this State.

16 (c) (1) Receipts from the sale of prepared food in or by  
17 restaurants, taverns, or other establishments in this State, or by  
18 caterers, including in the amount of such receipts any cover,  
19 minimum, entertainment or other charge made to patrons or  
20 customers, except for meals especially prepared for and delivered to  
21 homebound elderly, age 60 or older, and to disabled persons, or  
22 meals prepared and served at a group-sitting at a location outside of  
23 the home to otherwise homebound elderly persons, age 60 or older,  
24 and otherwise homebound disabled persons, as all or part of any  
25 food service project funded in whole or in part by government or as  
26 part of a private, nonprofit food service project available to all such  
27 elderly or disabled persons residing within an area of service  
28 designated by the private nonprofit organization; and

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

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

38 (3) For the purposes of this subsection:

39 "Food and beverages sold through vending machines" means  
40 food and beverages dispensed from a machine or other mechanical  
41 device that accepts payment; and

42 "Prepared food" means:

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

44 B. two or more food ingredients mixed or combined by the  
45 seller for sale as a single item, but not including food that is only  
46 cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,  
47 poultry, and foods containing these raw animal foods requiring  
48 cooking by the consumer as recommended by the Food and Drug

1 Administration in Chapter 3, part 401.11 of its Food Code so as to  
2 prevent food borne illnesses; or

3 C. food sold with eating utensils provided by the seller,  
4 including plates, knives, forks, spoons, glasses, cups, napkins, or  
5 straws. A plate does not include a container or packaging used to  
6 transport the food;  
7 provided however, that

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

10 A. food sold by a seller whose proper primary NAICS  
11 classification is manufacturing in section 311, except subsector  
12 3118 (bakeries);

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

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

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

21 (e) (1) Any admission charge to or for the use of any place of  
22 amusement in the State, including charges for admission to race  
23 tracks, baseball, football, basketball or exhibitions, dramatic or  
24 musical arts performances, motion picture theaters, except charges  
25 for admission to boxing, wrestling, kick boxing or combative sports  
26 exhibitions, events, performances or contests which charges are  
27 taxed under any other law of this State or under section 20 of  
28 P.L.1985, c.83 (C.5:2A-20), and, except charges to a patron for  
29 admission to, or use of, facilities for sporting activities in which  
30 such patron is to be a participant, such as bowling alleys and  
31 swimming pools. For any person having the permanent use or  
32 possession of a box or seat or lease or a license, other than a season  
33 ticket, for the use of a box or seat at a place of amusement, the tax  
34 shall be upon the amount for which a similar box or seat is sold for  
35 each performance or exhibition at which the box or seat is used or  
36 reserved by the holder, licensee or lessee, and shall be paid by the  
37 holder, licensee or lessee.

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

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

45 (2) (Deleted by amendment, P.L.2008, c.123)

46 (g) (Deleted by amendment, P.L.2008, c.123)

47 (h) Charges in the nature of initiation fees, membership fees or  
48 dues for access to or use of the property or facilities of a health and

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

11 (i) The receipts from parking, storing or garaging a motor  
12 vehicle, excluding charges for the following: residential parking;  
13 employee parking, when provided by an employer or at a facility  
14 owned or operated by the employer; municipal parking, storing or  
15 garaging; receipts from charges or fees imposed pursuant to section  
16 3 of P.L.1993, c.159 (C.5:12-173.3) or pursuant to an agreement  
17 between the Casino Reinvestment Development Authority and a  
18 casino operator in effect on the date of enactment of P.L.2007,  
19 c.105; and receipts from parking, storing or garaging a motor  
20 vehicle subject to tax pursuant to any other law or ordinance.

21 For the purposes of this subsection, "municipal parking, storing  
22 or garaging" means any motor vehicle parking, storing or garaging  
23 provided by a municipality or county, or a parking authority  
24 thereof.

25 (cf: P.L.2008, c.123, s.2)

26

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

29 5. **【Transitional provisions.】** a. (1) Except as otherwise  
30 provided in this act, receipts received from all sales made and  
31 services rendered on and after January 3, 1983 but prior to July 1,  
32 1990, are subject to the taxes imposed under subsections (a), (b),  
33 (c), and (f) of section 3 of this act at the rate, if any, in effect for  
34 such sales and services on June 30, 1990, except if the property so  
35 sold is delivered or the services so sold are rendered on or after July  
36 1, 1990 but prior to July 1, 1992, in which case the tax shall be  
37 computed and paid at the rate of 7%; provided, however, that if a  
38 service or maintenance agreement taxable under this act covers any  
39 period commencing on or after January 3, 1983 and ending after  
40 June 30, 1990 but prior to July 1, 1992, the receipts from such  
41 agreement are subject to tax at the rate, if any, applicable to each  
42 period as set forth hereinabove and shall be apportioned on the  
43 basis of the ratio of the number of days falling within each of the  
44 said periods to the total number of days covered thereby.

45 (2) Except as otherwise provided in this act, receipts received  
46 from all sales made and services rendered on and after July 1, 1990  
47 but prior to July 1, 1992, are subject to the taxes imposed under  
48 subsections (a), (b), (c) and (f) of section 3 of this act at the rate of

1 7%, except if the property so sold is delivered or the services so  
2 sold are rendered on or after July 1, 1992 but prior to July 15, 2006,  
3 in which case the tax shall be computed and paid at the rate of 6%,  
4 provided, however, that if a service or maintenance agreement  
5 taxable under this act covers any period commencing on or after  
6 July 1, 1990, and ending after July 1, 1992, the receipts from such  
7 agreement are subject to tax at the rate applicable to each period as  
8 set forth hereinabove and shall be apportioned on the basis of the  
9 ratio of the number of days falling within each of the said periods to  
10 the total number of days covered thereby.

11 (3) Except as otherwise provided in this act, receipts received  
12 from all sales made and services rendered on and after July 1, 1992  
13 but prior to July 15, 2006, are subject to the taxes imposed under  
14 subsections (a), (b), (c), (f) and (g) of section 3 of P.L.1966, c.30  
15 (C.54:32B-3) at the rate of 6%, except if the property so sold is  
16 delivered or the services so sold are rendered on or after July 15,  
17 2006, in which case the tax shall be computed and paid at the rate  
18 of 7%, provided, however, that if a service or maintenance  
19 agreement taxable under this act covers any period commencing on  
20 or after July 1, 1992, and ending after July 15, 2006, the receipts  
21 from such agreement are subject to tax at the rate applicable to each  
22 period as set forth hereinabove and shall be apportioned on the  
23 basis of the ratio of the number of days falling within each of the  
24 said periods to the total number of days covered thereby; provided  
25 however, if a service or maintenance agreement in effect on July 14,  
26 2006 covers billing periods ending after July 15, 2006, the seller  
27 shall charge and collect from the purchaser a tax on such sales at  
28 the rate of 6%, unless the billing period starts on or after July 15,  
29 2006 in which case the seller shall charge and collect a tax at the  
30 rate of 7%.

31 b. (1) The tax imposed under subsection (d) of section 3 shall  
32 be paid at the rate of 7% upon any occupancy on and after July 1,  
33 1990 but prior to July 1, 1992, although such occupancy is pursuant  
34 to a prior contract, lease or other arrangement. If an occupancy,  
35 taxable under this act, covers any period on or after January 3, 1983  
36 but prior to July 1, 1990, the rent for the period of occupancy prior  
37 to July 1, 1990 shall be taxed at the rate of 6%. If rent is paid on a  
38 weekly, monthly or other term basis, the rent applicable to each  
39 period as set forth hereinabove shall be apportioned on the basis of  
40 the ratio of the number of days falling within each of the said  
41 periods to the total number of days covered thereby.

42 (2) The tax imposed under subsection (d) of section 3 shall be  
43 paid at the rate of 6% upon any occupancy on and after July 1, 1992  
44 but prior to July 15, 2006, although such occupancy is pursuant to a  
45 prior contract, lease or other arrangement. If an occupancy, taxable  
46 under this act, covers any period on or after July 1, 1990 but prior  
47 to July 1, 1992, the rent for the period of occupancy prior to July 1,  
48 1992 shall be taxed at the rate of 7%. If rent is paid on a weekly,

1 monthly or other term basis, the rent applicable to each period as set  
2 forth hereinabove shall be apportioned on the basis of the ratio of  
3 the number of days falling within each of the said periods to the  
4 total number of days covered thereby.

5 (3) The tax imposed under subsection (d) of section 3 shall be  
6 paid at the rate of 7% upon any occupancy on and after July 15,  
7 2006, although such occupancy is pursuant to a prior contract, lease  
8 or other arrangement. If an occupancy, taxable under this act,  
9 covers any period on or after July 1, 1992 but prior to July 15,  
10 2006, the rent for the period of occupancy prior to July 15, 2006  
11 shall be taxed at the rate of 6%. If rent is paid on a weekly,  
12 monthly or other term basis, the rent applicable to each period as set  
13 forth hereinabove shall be apportioned on the basis of the ratio of  
14 the number of days falling within each of the said periods to the  
15 total number of days covered thereby.

16 c. (1) Except as otherwise hereinafter provided, the tax imposed  
17 under subsection (e) of section 3 shall be applicable at the rate of  
18 7% to any admission to or for the use of facilities of a place of  
19 amusement occurring on or after July 1, 1990 but prior to July 1,  
20 1992, whether or not the admission charge has been paid prior to  
21 July 1, 1990, unless the tickets were actually sold and delivered,  
22 other than for resale, prior to July 1, 1990 and the tax imposed  
23 under this act during the period January 3, 1983 through June 30,  
24 1990 shall have been paid.

25 (2) Except as otherwise hereinafter provided, the tax imposed  
26 under subsection (e) of section 3 shall be applicable at the rate of  
27 6% to any admission to or for the use of facilities of a place of  
28 amusement occurring on or after July 1, 1992 but prior to July 15,  
29 2006, whether or not the admission charge has been paid prior to  
30 July 1, 1992, unless the tickets were actually sold and delivered,  
31 other than for resale, prior to July 1, 1992 and the tax imposed  
32 under this act during the period July 1, 1990 through December 31,  
33 1990 shall have been paid.

34 (3) Except as otherwise hereinafter provided, the tax imposed  
35 under subsection (e) of section 3 shall be applicable at the rate of  
36 7% to any admission to or for the use of facilities of a place of  
37 amusement occurring on or after July 15, 2006, whether or not the  
38 admission charge has been paid prior to that date, unless the tickets  
39 were actually sold and delivered, other than for resale, prior to July  
40 15, 2006 and the tax imposed under this act during the period July  
41 1, 1992 through July 14, 2006 shall have been paid.

42 d. (1) Sales made on and after July 1, 1990 but prior to July 1,  
43 1992 to contractors, subcontractors or repairmen of materials,  
44 supplies, or services for use in erecting structures for others, or  
45 building on, or otherwise improving, altering or repairing real  
46 property of others shall be subject to the taxes imposed by  
47 subsections (a) and (b) of section 3 and section 6 hereof at the rate  
48 of 7%; provided, however, that if such sales are made for use in

1 performance of a contract which is either of a fixed price not  
2 subject to change or modification, or entered into pursuant to the  
3 obligation of a formal written bid which cannot be altered or  
4 withdrawn, and, in either case, such contract was entered into or  
5 such bid was made on or after January 3, 1983 but prior to July 1,  
6 1990, such sales shall be subject to tax at the rate of 6%, but the  
7 vendor shall charge and collect from the purchaser a tax on such  
8 sales at the rate of 7%.

9 (2) Sales made on or after July 1, 1992 but prior to July 15,  
10 2006 to contractors, subcontractors or repairmen of materials,  
11 supplies, or services for use in erecting structures for others, or  
12 building on, or otherwise improving, altering or repairing real  
13 property of others shall be subject to the taxes imposed by  
14 subsections (a) and (b) of section 3 and section 6 hereof at the rate  
15 of 6%; provided, however, that if such sales are made for use in  
16 performance of a contract which is either of a fixed price not  
17 subject to change or modification, or entered into pursuant to the  
18 obligation of a formal written bid which cannot be altered or  
19 withdrawn, and, in either case, such contract was entered into or  
20 such bid was made on or after July 1, 1990, but prior to July 1,  
21 1992, such sales shall be subject to tax at the rate of 7%.

22 (3) Sales made on or after July 15, 2006 to contractors,  
23 subcontractors or repairmen of materials, supplies, or services for  
24 use in erecting structures for others, or building on, or otherwise  
25 improving, altering or repairing real property of others shall be  
26 subject to the taxes imposed by subsections (a) and (b) of section 3  
27 and section 6 hereof at the rate of 7%; provided, however, that if  
28 such sales are made for use in performance of a contract which is  
29 either of a fixed price not subject to change or modification, or  
30 entered into pursuant to the obligation of a formal written bid which  
31 cannot be altered or withdrawn, and, in either case, such contract  
32 was entered into or such bid was made on or after July 1, 1992, but  
33 prior to July 15, 2006, such sales shall be subject to tax at the rate  
34 of 6%, but the **【vendor】** seller shall charge and collect from the  
35 purchaser a tax on such sales at the rate of 7%.

36 e. (1) As to sales other than those referred to in d. above, the  
37 taxes imposed under subsections (a) and (b) of section 3 and section  
38 6 hereof, and the taxes imposed under subsection (f) of section 3  
39 and section 6 hereof, upon receipts received on or after July 1, 1990  
40 and on or before December 31, 1990, shall be at the rate in effect on  
41 June 30, 1990, in case of sales made or services rendered pursuant  
42 to a written contract entered on or after January 3, 1983 but prior to  
43 July 1, 1990, and accompanied by a deposit or partial payment of  
44 the contract price, except in the case of a contract which, in the  
45 usage of trade, is not customarily accompanied by a deposit or  
46 partial payment of the contract price, but the vendor shall charge  
47 and collect from the purchaser on such sales at the rate of 7%,  
48 which tax shall be reduced to the rate, if any, in effect on June 30,

1 1990, only by a claim for refund filed by the purchaser with the  
2 director within 90 days after receipt of said receipts and otherwise  
3 pursuant to the provisions of section 20 of P.L.1966, c.30  
4 (C.54:32B-20). A claim for refund shall not be allowed if there has  
5 been no deposit or partial payment of the contract price unless the  
6 claimant shall establish by clear and convincing evidence that, in  
7 the usage of trade, such contracts are not customarily accompanied  
8 by a deposit or partial payment of the contract price.

9 (2) As to sales other than those referred to in d. above, the taxes  
10 imposed under subsections (a) and (b) of section 3 and section 6  
11 hereof, and the taxes imposed under subsections (f) and (g) of  
12 section 3 and section 6 hereof, upon receipts received on or after  
13 July 15, 2006 and on or before December 31, 2006, shall be at the  
14 rate in effect on July 14, 2006, in case of sales made or services  
15 rendered pursuant to a written contract entered on or after July 1,  
16 1992 but prior to July 15, 2006, and accompanied by a deposit or  
17 partial payment of the contract price, except in the case of a  
18 contract which, in the usage of trade, is not customarily  
19 accompanied by a deposit or partial payment of the contract price,  
20 but the [vendor] seller shall charge and collect from the purchaser  
21 on such sales at the rate of 7%, which tax shall be reduced to the  
22 rate, if any, in effect on July 14, 2006, only by a claim for refund  
23 filed by the purchaser with the director within 90 days after receipt  
24 of said receipts and otherwise pursuant to the provisions of section  
25 20 of P.L.1966, c.30 (C.54:32B-20). A claim for refund shall not  
26 be allowed if there has been no deposit or partial payment of the  
27 contract price unless the claimant shall establish by clear and  
28 convincing evidence that, in the usage of trade, such contracts are  
29 not customarily accompanied by a deposit or partial payment of the  
30 contract price.

31 f. (1) The taxes imposed under subsections (a), (b), (c) and (f)  
32 of section 3 upon receipts received on or after July 1, 1990 but prior  
33 to July 1, 1992 shall be at the rate, if any, in effect on June 30, 1990  
34 in the case of sales made or services rendered, if delivery of the  
35 property which was the subject matter of the sale has been  
36 completed or such services have been entirely rendered prior to July  
37 1, 1990.

38 (2) The taxes imposed under subsections (a), (b), (c) and (f) of  
39 section 3 upon receipts received on or after July 1, 1992 but prior to  
40 July 15, 2006 shall be at the rate of 7% in the case of sales made or  
41 services rendered, where delivery of the property which was the  
42 subject matter of the sale has been completed or such services have  
43 been entirely rendered on or after July 1, 1990 but prior to July 1,  
44 1992.

45 (3) The taxes imposed under subsections (a), (b), (c), (f) and (g)  
46 of section 3 upon receipts received on or after July 15, 2006 shall be  
47 at the rate of 6% in the case of sales made or services rendered,  
48 where delivery of the property which was the subject matter of the



1 sale has been completed or such services have been entirely  
2 rendered on or after July 1, 1992 but prior to July 15, 2006.

3 g. The director is empowered to promulgate rules and  
4 regulations to implement the provisions of this section.

5 (cf: P.L.2006, c.44, s.4)

6

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

9 6. Unless property or services have already been or will be  
10 subject to the sales tax under this act, there is hereby imposed on  
11 and there shall be paid by every person a use tax for the use within  
12 this State of 7%, except as otherwise exempted under this act, (A)  
13 of any tangible personal property or **【digital property】** specified  
14 digital product purchased at retail, including energy, provided  
15 however, that electricity consumed by the generating facility that  
16 produced it shall not be subject to tax, (B) of any tangible personal  
17 property or **【digital property】** specified digital product  
18 manufactured, processed or assembled by the user, if items of the  
19 same kind of tangible personal property or **【digital property】**  
20 specified digital products are offered for sale by him in the regular  
21 course of business, or if items of the same kind of tangible personal  
22 property are not offered for sale by him in the regular course of  
23 business and are used as such or incorporated into a structure,  
24 building or real property, (C) of any tangible personal property or  
25 **【digital property】** specified digital product, however acquired,  
26 where not acquired for purposes of resale, upon which any taxable  
27 services described in paragraphs (1) and (2) of subsection (b) of  
28 section 3 of P.L.1966, c.30 (C.54:32B-3) have been performed, (D)  
29 of intrastate, interstate, or international telecommunications  
30 services described in subsection (f) of section 3 of P.L.1966, c.30,  
31 (E) (Deleted by amendment, P.L.1995, c.184), (F) of utility service  
32 provided to persons in this State for use in this State, provided  
33 however, that utility service used by the facility that provides the  
34 service shall not be subject to tax, (G) of mail processing services  
35 described in paragraph (5) of subsection (b) of section 3 of  
36 P.L.1966, c.30 (C.54:32B-3), (H) (Deleted by amendment,  
37 P.L.2008, c.123), (I) of any services subject to tax pursuant to  
38 subsection (11), (12), (13), (14) or (15) of subsection (b) of section  
39 3 of P.L.1966, c.30 (C.54:32B-3), and (J) of access to or use of the  
40 property or facilities of a health and fitness, athletic, sporting or  
41 shopping club or organization in this State. For purposes of clause  
42 (A) of this section, the tax shall be at the applicable rate, as set forth  
43 hereinabove, of the consideration given or contracted to be given  
44 for such property or for the use of such property including delivery  
45 charges made by the seller, but excluding any credit for property of  
46 the same kind accepted in part payment and intended for resale. For  
47 the purposes of clause (B) of this section, the tax shall be at the  
48 applicable rate, as set forth hereinabove, of the price at which items

1 of the same kind of tangible personal property or **digital property**  
2 specified digital products are offered for sale by the user, or if items  
3 of the same kind of tangible personal property are not offered for  
4 sale by the user in the regular course of business and are used as  
5 such or incorporated into a structure, building or real property the  
6 tax shall be at the applicable rate, as set forth hereinabove, of the  
7 consideration given or contracted to be given for the tangible  
8 personal property manufactured, processed or assembled by the user  
9 into the tangible personal property the use of which is subject to use  
10 tax pursuant to this section, and the mere storage, keeping, retention  
11 or withdrawal from storage of tangible personal property or **digital**  
12 **property** specified digital products by the person who  
13 manufactured, processed or assembled such property shall not be  
14 deemed a taxable use by him. For purposes of clause (C) of this  
15 section, the tax shall be at the applicable rate, as set forth  
16 hereinabove, of the consideration given or contracted to be given  
17 for the service, including the consideration for any tangible personal  
18 property or **digital property** specified digital product transferred  
19 in conjunction with the performance of the service, including  
20 delivery charges made by the seller. For the purposes of clause (D)  
21 of this section, the tax shall be at the applicable rate on the charge  
22 made by the telecommunications service provider; provided  
23 however, that for prepaid calling services and prepaid wireless  
24 calling services the tax shall be at the applicable rate on the  
25 consideration given or contracted to be given for the prepaid calling  
26 service or prepaid wireless calling service or the recharge of the  
27 prepaid calling service or prepaid wireless calling service. For  
28 purposes of clause (F) of this section, the tax shall be at the  
29 applicable rate on the charge made by the utility service provider.  
30 For purposes of clause (G) of this section, the tax shall be at the  
31 applicable rate on that proportion of the amount of all processing  
32 costs charged by a mail processing service provider that is  
33 attributable to the service distributed in this State. For purposes of  
34 clause (I) of this section, the tax shall be at the applicable rate on  
35 the charge made by the service provider. For purposes of clause (J)  
36 of this section, the tax shall be at the applicable rate on the charges  
37 in the nature of initiation fees, membership fees or dues.

38 (cf: P.L.2008, c.123, s.5)

39

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

42 7. (a) The retail sales tax imposed under subsection (a) of  
43 section 3 and the compensating use tax imposed under section 6,  
44 when computed in respect to tangible personal property and **digital**  
45 **property** specified digital products wherever manufactured,  
46 processed or assembled and used by such manufacturer, processor  
47 or assembler in the regular course of business within this State,

1 shall be based on the price at which items of the same kind of  
2 tangible personal property or specified digital products are offered  
3 for sale by him.

4 (b) Tangible personal property or **【digital property】** a specified  
5 digital product, which has been purchased by a resident of the State  
6 of New Jersey outside of this State for use outside of this State and  
7 subsequently becomes subject to the compensating use tax imposed  
8 under this act, shall be taxed on the basis of the purchase price of  
9 such property or product, provided, however:

10 (1) That where a taxpayer affirmatively shows that the property  
11 or the product was used outside such State by him for more than six  
12 months prior to its use within this State, such property or product  
13 shall be taxed on the basis of current market value of the property  
14 or the product at the time of its first use within this State. The value  
15 of such property or product, for compensating use tax purposes,  
16 may not exceed its cost.

17 (2) That the compensating use tax on such tangible personal  
18 property or **【digital property】** specified digital product brought into  
19 this State (other than for complete consumption or for incorporation  
20 into real property located in this State) and used in the performance  
21 of a contract or subcontract within this State by a purchaser or user  
22 for a period of less than six months may be based, at the option of  
23 the taxpayer, on the fair rental value of such property or product for  
24 the period of use within this State.

25 (c) Leased tangible personal property or **【digital property】**  
26 specified digital product which has been purchased outside this  
27 State for lease outside of this State and subsequently becomes  
28 subject to the compensating use tax imposed under this act shall be  
29 taxed on the basis of the purchase price of such property or product,  
30 provided however, that the compensating use tax on such property  
31 or product brought into and used within this State may be based on  
32 the total of the lease payments attributable to the lease of that  
33 property or product attributable to the period of the lease remaining  
34 after first use in this State.

35 (d) Sales tax imposed on the lease or rental of tangible personal  
36 property or **【digital property】** a specified digital product in New  
37 Jersey shall be based on either the total of the periodic payments  
38 required under the agreement or the original purchase price of the  
39 property or product. 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  
42 for the period in which the leased personal property or product was  
43 delivered to the lessee in this State. However, if the tax is paid on a  
44 lease or rental based on the original purchase price of the tangible  
45 personal property or **【digital property】** specified digital product, a  
46 subsequent lease or rental of the same property or product shall not

1 be subject to the tax imposed under P.L.1966, c.30 (C.54:32B-1 et  
2 seq.).

3 If leased property or a product is subsequently removed on a  
4 permanent basis from this State, the lessee shall be entitled to a  
5 refund of the tax allocable to the portion of the lease or rental that  
6 remains in effect after the property or the product has been removed  
7 from this State, but only if the other state does not allow a credit for  
8 the sales or use tax paid to this State on the lease or rental  
9 transaction, and further, in the case of property or a product  
10 removed to a state that imposes or computes tax on leases or rentals  
11 based on a lump sum or accelerated basis, only if the other state  
12 also allows a corresponding refund with respect to the lease of  
13 property or product upon which a sales or use tax is due and paid to  
14 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  
17 of the energy, including any charges for utility service.

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

19

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

22 26. Receipts from sales of tangible personal property, except  
23 energy, and **[digital property]** specified digital products purchased  
24 for use or consumption directly and exclusively in research and  
25 development in the experimental or laboratory sense are exempt  
26 from the tax imposed under the Sales and Use Tax Act. Such  
27 research and development shall not be deemed to include the  
28 ordinary testing or inspection of materials or products for quality  
29 control, efficiency surveys, management studies, consumer surveys,  
30 advertising, promotions or research in connection with literary,  
31 historical or similar projects.

32 (cf: P.L.2008, c.123, s.9)

33

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

36 1. a. Receipts of retail sales, except retail sales of motor  
37 vehicles, of alcoholic beverages, of specified digital products, and  
38 cigarettes as defined in the "Cigarette Tax Act," P.L.1948, c.65  
39 (C.54:40A-1 et seq.), made by a seller from a place of business  
40 regularly operated by the seller for the purpose of making retail  
41 sales at which items are regularly exhibited and offered for retail  
42 sale and which is not utilized primarily for the purpose of catalogue  
43 or mail order sales, in which county is situated an entrance to an  
44 interstate bridge or tunnel connecting New Jersey with a state that  
45 does not impose a retail sales and use tax or imposes a retail sales  
46 and use tax at a rate at least five percentage points lower than the  
47 rate in this State, are exempt to the extent of 50% of the tax

1 imposed under the "Sales and Use Tax Act," P.L.1966, c.30  
2 (C.54:32B-1 et seq.).

3 b. The exemption provided by subsection a. of this section  
4 shall apply unless a seller advises the director, in writing, that it  
5 intends to collect the tax at the full rate imposed under the "Sales  
6 and Use Tax Act".  
7 (cf: P.L.2006, c.44, s.11)

8  
9 8. (New section) Receipts from sales of video programming  
10 services, including video on demand television services, and  
11 broadcasting services, including content to provide such services,  
12 are exempt from the tax imposed under the "Sales and Use Tax  
13 Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

14  
15 9. (New section) a. Receipts from sales of a specified digital  
16 product that is accessed but not delivered electronically to the  
17 purchaser are exempt from the tax imposed under the "Sales and  
18 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

19 b. For purposes of this section, "delivered electronically" means  
20 delivered to the purchaser by means other than tangible storage  
21 media.

22  
23 10. Section 9 of P.L.1966, c.30 (C.54:32B-9) is amended to read  
24 as follows:

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

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

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

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

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

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

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

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

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

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

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

44 (e) Where any organization described in subsection (b) of this  
45 subsection carries on its activities in furtherance of the purposes for  
46 which it was organized, in premises in which, as part of those  
47 activities, it operates a hotel, occupancy of rooms in the premises

1 and rents from those rooms received by the organization shall not  
2 be subject to tax under the "Sales and Use Tax Act."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3       12. (a) Every person required to collect the tax shall collect the  
4 tax from the customer when collecting the price, service charge,  
5 amusement charge or rent to which it applies. If the customer is  
6 given any sales slip, invoice, receipt or other statement or  
7 memorandum of the price, service charge, amusement charge or  
8 rent paid or payable, the tax shall be stated, charged and shown  
9 separately on the first of such documents given to him. The tax  
10 shall be paid to the person required to collect it as trustee for and on  
11 account of the State.

12       (b) For the purpose of the proper administration of this act and  
13 to prevent evasion of the tax hereby imposed, and subject to the  
14 rules regarding the administration of exemptions authorized by the  
15 Streamlined Sales and Use Tax Agreement, it shall be presumed  
16 that all receipts for property or services of any type mentioned in  
17 subsections (a), (b), (c), and (f) of section 3, all rents for occupancy  
18 of the type mentioned in subsection (d) of said section, all  
19 amusement charges of any type mentioned in subsection (e) of said  
20 section, all charges in the nature of initiation fees, membership fees  
21 or dues mentioned in subsection (h) of said section, and all receipts  
22 from parking, storing or garaging a motor vehicle mentioned in  
23 subsection (i) of said section are subject to tax until the contrary is  
24 established, and the burden of proving that any such receipt, charge  
25 or rent is not taxable hereunder shall be upon the person required to  
26 collect tax or the customer. Unless a seller shall have taken from  
27 the purchaser a certificate, signed by the purchaser if in paper form,  
28 and bearing the purchaser's name and address and the number of the  
29 purchaser's registration certificate, to the effect that the property or  
30 service was purchased for resale or was otherwise exempt pursuant  
31 to the provisions of the "Sales and Use Tax Act," P.L.1966, c.30  
32 (C.54:32B-1 et seq.), or the purchaser, prior to taking delivery,  
33 furnishes to the seller any affidavit, statement or additional  
34 evidence, documentary or otherwise, which the director may require  
35 demonstrating that the purchaser is an exempt organization  
36 described in section 9(b)(1), the sale shall be deemed a taxable  
37 retail sale. Provided however, the director may, in the director's  
38 discretion, authorize a purchaser, who acquires tangible personal  
39 property, **[digital property]** specified digital products or services  
40 under circumstances which make it impossible at the time of  
41 acquisition to determine the manner in which the tangible personal  
42 property, **[digital property]** specified digital products or services  
43 will be used, to pay the tax directly to the director and waive the  
44 collection of the tax by the seller or provide for direct pay authority  
45 under rules adopted under the Streamlined Sales and Use Tax  
46 Agreement. Provided further, the director shall authorize any  
47 eligible person, as defined in section 34 of P.L.1997, c.162  
48 (C.54:32B-14.1), who purchases natural gas from a non-utility on



1 and after January 1, 1998 through December 31, 2002, to pay the  
2 tax on the commodity directly to the director and waive the  
3 collection of the tax by the seller. No such authority shall be  
4 granted or exercised except upon application to the director, and the  
5 issuance by the director of a direct payment permit. If a direct  
6 payment permit is granted, its use shall be subject to conditions  
7 specified by the director, and the payment of tax on all acquisitions  
8 pursuant to the permit shall be made directly to the director by the  
9 permit holder.

10 (c) The director may provide by regulation that the tax upon  
11 receipts from sales on the installment plan may be paid on the  
12 amount of each installment and upon the date when such installment  
13 is due. He may also provide by regulation for the exclusion from  
14 taxable receipts, amusement charges or rents of amounts subject, as  
15 applicable, to the provisions of section 30 of P.L.2005, c.126  
16 (C.54:32B-12.1), representing sales where the contract of sale has  
17 been canceled, the property returned or the receipt, charge or rent  
18 has been ascertained to be uncollectible or, in the case the tax has  
19 been paid upon such receipt, charge or rent, for refund or credit of  
20 the tax so paid.

21 (cf: P.L.2008, c.123, s.12)

22

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

25 14. (a) Every person required to collect any tax imposed by this  
26 act shall be personally liable for the tax imposed, collected or  
27 required to be collected under this act. Any such person shall have  
28 the same right in respect to collecting the tax from that person's  
29 customer or in respect to non-payment of the tax by the customer as  
30 if the tax were a part of the purchase price of the property or  
31 service, amusement charge or rent, as the case may be, and payable  
32 at the same time; provided, however, that the director shall be  
33 joined as a party in any action or proceeding brought to collect the  
34 tax.

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

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

47 (d) No person required to collect any tax imposed by this act  
48 shall advertise or hold out to any person or to the public in general,

1 in any manner, directly or indirectly, that the tax is not considered  
2 as an element in the price, amusement charge or rent payable by the  
3 customer, or except as provided by subsection (f) of this section that  
4 the person required to collect the tax will pay the tax, that the tax  
5 will not be separately charged and stated to the customer or that the  
6 tax will be refunded to the customer. Upon written application duly  
7 made and proof duly presented to the satisfaction of the director  
8 showing that in the particular business of the person required to  
9 collect the tax it would be impractical for the seller to separately  
10 charge the tax to the customer, the director may waive the  
11 application of the requirement herein as to such seller.

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

15 (f) A **【vendor】 seller** other than a **【vendor】 seller** subject to  
16 subsection (e) of this section making retail sales of tangible  
17 personal property or sales of services may advertise that the  
18 **【vendor】 seller** will pay the tax for the customer subject to the  
19 conditions of this subsection.

20 (1) The advertising shall indicate that the **【vendor】 seller** is, in  
21 fact, paying the tax for the customer and shall not indicate or imply  
22 that the sale or charge is exempt from taxation.

23 (2) Notwithstanding the provisions of section 12 of P.L.1966,  
24 c.30 (C.54:32B-12) to the contrary, any sales slip, invoice, receipt  
25 or other statement or memorandum of the price or service charge  
26 paid or payable given to the customer shall state that the tax will be  
27 paid by the **【vendor】 seller**; provided however that such record  
28 shall be otherwise subject to the provisions of section 12 of  
29 P.L.1966, c.30 (C.54:32B-12).

30 (3) The **【vendor】 seller** shall pay the amount of tax due on the  
31 retail sale or service receipt, as determined pursuant to section 4 of  
32 P.L.1966, c.30 (C.54:32B-4), as trustee for and on account of the  
33 State, and shall have the same liability for that amount of tax  
34 pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-  
35 1 et seq.), as for an amount collected from a customer.

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

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

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

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

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

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

13 (4) the reliance of a purchaser using databases of taxing  
14 jurisdiction assignments on erroneous data provided by the director  
15 with respect to tax rates, boundaries or taxing jurisdiction  
16 assignments, provided however that, to the extent that the director  
17 provides or certifies an address-based database for assigning tax  
18 rates and jurisdictions and upon appropriate notice, no relief from  
19 liability shall be allowed for errors resulting from reliance on a zip  
20 code database for assigning tax rates and jurisdictions.

21 Provided however, that as to the relief from liability for tax, the  
22 relief from liability for tax by reason of reliance on the taxability  
23 matrix shall be limited to the director's erroneous classification in  
24 the taxability matrix of terms "taxable" or "exempt," "included in  
25 sales price" or "excluded from sales price" or "included in the  
26 definition" or "excluded from the definition."

27 (j) If the director provides less than 30 days between the date a  
28 rate change is enacted and the date that change takes effect, the  
29 director shall relieve the seller of liability for failing to collect tax at  
30 the new rate if: (1) the seller collected tax at the immediately  
31 preceding effective rate; and (2) the seller's failure to collect tax at  
32 the newly effective rate does not extend more than 30 days after the  
33 date of enactment of the new rate.

34 (k) Notwithstanding the provisions of subsection (j) of this  
35 section, if the director establishes that a seller fraudulently failed to  
36 collect tax due at the new rate or solicits purchasers based on the  
37 immediately preceding effective tax rate, this relief from liability  
38 shall not apply.

39 (cf: P.L.2008, c.123, s.13)

40

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

43 15. (a) On or before June 20, 1966, or in the case of persons  
44 commencing business or opening new places of business after such  
45 date, within three days after such commencement or opening, every  
46 person required to collect any tax imposed by this act and every  
47 person purchasing tangible personal property or **digital property** a  
48 specified digital product for resale shall file with the director a

1 certificate of registration in a form prescribed by the director. In  
2 the case of a person commencing business or opening a new place  
3 of business on or after the first day of the third month following the  
4 enactment of P.L.1993, c.274 (C.40:52-1.3 et al.), the certificate  
5 shall be filed at least 15 business days before the commencement or  
6 opening. The director shall within five days after such registration  
7 issue, without charge, to each registrant a certificate of authority  
8 empowering the registrant to collect the tax and a duplicate thereof  
9 for each additional place of business of such registrant. Each  
10 certificate or duplicate shall state the place of business to which it is  
11 applicable. Such certificate of authority shall be prominently  
12 displayed in the place of business of the registrant. A registrant  
13 who has no regular place of doing business shall attach such  
14 certificate to his cart, stand, truck or other merchandising device.  
15 Such certificates shall be nonassignable and nontransferable and  
16 shall be surrendered to the director immediately upon the  
17 registrant's ceasing to do business at the place named.

18 (b) Any person who is not otherwise required to collect any tax  
19 imposed by this act and who makes sales to persons within the State  
20 of tangible personal property, **[digital property]** specified digital  
21 products or services, the use of which is subject to tax under this  
22 act, may if he so elects file a certificate of registration with the  
23 director who may, in his discretion and subject to such conditions as  
24 he may impose, issue to him a certificate of authority to collect the  
25 compensating use tax imposed by this act.

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

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

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

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

40 (d) A certified service provider in model 1 shall be allowed a  
41 monetary allowance in accordance with the terms of the contract  
42 that the states participating in the Streamlined Sales and Use Tax  
43 Agreement sign with the provider. The director shall prescribe the  
44 allowance in accordance with the terms of the contract, which shall  
45 be funded entirely from money collected in model 1.

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

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

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

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

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

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

24 (f) A model 3 seller and all other sellers that are not under  
25 model 1 or model 2 shall be allowed a monetary allowance which  
26 the director shall prescribe in accordance with the terms arrived at  
27 by the member states of the Streamlined Sales and Use Tax  
28 Agreement. The member states initially anticipate that they will  
29 provide a monetary allowance to sellers under model 3 and to all  
30 other sellers that are not under models 1 or 2 will be based on the  
31 following: for a period not to exceed 24 months following a  
32 voluntary seller's registration through the Streamlined Sales and  
33 Use Tax Agreement's central registration process, a percentage of  
34 tax revenue generated for a member state by the voluntary seller for  
35 each member state for which the seller does not have a requirement  
36 to register to collect the tax.

37 (cf: P.L.2006, c.44, s.15)

38

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

41 17. (a) Every person required to collect or pay tax under this act  
42 shall on or before August 28, 1966, and on or before the twentieth  
43 day of each month thereafter, make and file a return for the  
44 preceding month with the director. The return of a seller of tangible  
45 personal property, **digital property** specified digital proucts or  
46 services shall show his receipts from sales and also the aggregate  
47 value of tangible personal property, **digital property** specified  
48 digital products and services sold by him, the use of which is

1 subject to tax under this act, and the amount of taxes required to be  
2 collected with respect to such sales and use. The return of a  
3 recipient of amusement charges shall show all such charges and the  
4 amount of tax thereon, and the return of a person required to collect  
5 tax on leases or rentals shall show all lease or rental payments  
6 received or charged and the amount of tax thereon. The return of a  
7 recipient of initiation fees, membership fees or dues for access to or  
8 use of the property or facilities of a health and fitness, athletic,  
9 sporting or shopping club or organization shall show all such  
10 charges and the amount of tax thereon. The return of the recipient  
11 of charges from parking, storing or garaging a motor vehicle shall  
12 show all such charges and the amount of tax thereon.

13 (b) The director may permit or require returns to be made  
14 covering other periods and upon such dates as he may specify. In  
15 addition, the director may require payments of tax liability at such  
16 intervals and based upon such classifications as he may designate.  
17 In prescribing such other periods to be covered by the return or  
18 intervals or classifications for payment of tax liability, the director  
19 may take into account the dollar volume of tax involved as well as  
20 the need for insuring the prompt and orderly collection of the taxes  
21 imposed.

22 (c) The form of returns shall be prescribed by the director and  
23 shall contain such information as he may deem necessary for the  
24 proper administration of this act. The director may require  
25 amended returns to be filed within 20 days after notice and to  
26 contain the information specified in the notice.

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

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

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

44 (2) Under terms of the "amnesty" granted pursuant to paragraph  
45 (1) of this subsection, a seller that registers shall not be assessed for  
46 uncollected or unpaid sales or use tax and shall not be assessed  
47 penalties or interest for sales made during the period the seller was  
48 not registered in this State, provided that the seller registers

1 pursuant to paragraph (1) of this subsection within twelve months  
2 of the effective date of this State's participation in the Streamlined  
3 Sales and Use Tax Agreement.

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

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

14 (5) The "amnesty" limitations on deficiency assessments,  
15 penalties and interest pursuant to paragraph (2) of this subsection  
16 shall be in full effect and the director shall not assess deficiencies  
17 for uncollected or unpaid sales or use tax and shall not assess  
18 penalties or interest for sales made during the period the seller was  
19 not registered in this State so long as the seller continues  
20 registration and continues collection and remittance of applicable  
21 sales or use taxes for a period of at least 36 months; provided  
22 however that the director may make such assessments by reason of  
23 the seller's fraud or intentional misrepresentation of a material fact.  
24 The statutes of limitations applicable to asserting tax liabilities,  
25 deficiencies, penalties and interest are tolled for this 36-month  
26 period.

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

31 (cf: P.L.2008, c.123, s.15)

32

33 15. Section 21 of P.L.1983, c.303 (C.52:27H-80) is amended to  
34 read as follows:

35 21. Receipts of retail sales, except retail sales of motor vehicles,  
36 of alcoholic beverages as defined in the "Alcoholic Beverage Tax  
37 Law," R.S.54:41-1 et seq., of cigarettes as defined in the "Cigarette  
38 Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.), of manufacturing  
39 machinery, equipment or apparatus, and of energy, made by a  
40 certified **[vendor]** seller from a place of business owned or leased  
41 and regularly operated by the **[vendor]** seller for the purpose of  
42 making retail sales, and located in a designated enterprise zone  
43 established pursuant to the "New Jersey Urban Enterprise Zones  
44 Act," P.L.1983, c.303 (C.52:27H-60 et al.), or a UEZ-impacted  
45 business district established pursuant to section 3 of P.L.2001,  
46 c.347 (C.52:27H-66.2), are exempt to the extent of 50% of the tax  
47 imposed under the "Sales and Use Tax Act," P.L.1966, c.30  
48 (C.54:32B-1 et seq.).

1 Any **[vendor]** seller, which is a qualified business having a place  
2 of business located in a designated enterprise zone or in a  
3 designated UEZ-impacted business district, may apply to the  
4 Director of the Division of Taxation in the Department of the  
5 Treasury for certification pursuant to this section. The director  
6 shall certify a **[vendor]** seller if **[he]** the director shall find that the  
7 **[vendor]** seller owns or leases and regularly operates a place of  
8 business located in the designated enterprise zone or in the  
9 designated UEZ-impacted business district for the purpose of  
10 making retail sales, that items are regularly exhibited and offered  
11 for retail sale at that location, and that the place of business is not  
12 utilized primarily for the purpose of catalogue or mail order sales.  
13 The certification under this section shall remain in effect during the  
14 time the business retains its status as a qualified business meeting  
15 the eligibility criteria of section 27 of P.L.1983, c.303 (C.52:27H-  
16 86). However, the director may at any time revoke a certification  
17 granted pursuant to this section if **[he]** the director shall determine  
18 that the **[vendor]** seller no longer complies with the provisions of  
19 this section.

20 Notwithstanding the provisions of this act to the contrary, except  
21 as may otherwise be provided by section 7 of P.L.1983, c.303  
22 (C.52:27H-66), the authority may, in its discretion, determine  
23 **[whether or not]** if the provisions of this section shall apply to any  
24 enterprise zone designated after the effective date of P.L.1985,  
25 c.142 (C.52:27H-66 et al.); provided, however, that the authority  
26 may make such a determination only where the authority finds that  
27 the award of an exemption of 50 percent of the tax imposed under  
28 the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.)  
29 will not have any adverse economic impact upon any other urban  
30 enterprise zone.

31 Notwithstanding any other provisions of law to the contrary,  
32 except as provided in subsection b. of section 6 of P.L.1996, c.124  
33 (C.13:1E-116.6), after first depositing 10 percent of the gross  
34 amount of all revenues received from the taxation of retail sales  
35 made by certified **[vendors]** sellers from business locations in  
36 designated enterprise zones to which this exemption shall apply into  
37 the account created in the name of the authority in the enterprise  
38 zone assistance fund pursuant to section 29 of P.L.1983, c.303  
39 (C.52:27H-88), the remaining 90 percent shall be deposited  
40 immediately upon collection by the Department of the Treasury, as  
41 follows:

42 a. In the first five-year period during which the State shall have  
43 collected reduced rate revenues within an enterprise zone, all such  
44 revenues shall be deposited in the enterprise zone assistance fund  
45 created pursuant to section 29 of P.L.1983, c.303 (C.52:27H-88);

46 b. In the second five-year period during which the State shall  
47 have collected reduced rate revenues within an enterprise zone, 66



1 2/3% of all those revenues shall be deposited in the enterprise zone  
2 assistance fund, and 33 1/3% shall be deposited in the General  
3 Fund;

4 c. In the third five-year period during which the State shall  
5 have collected reduced rate revenues within an enterprise zone, 33  
6 1/3% of all those revenues shall be deposited in the enterprise zone  
7 assistance fund, and 66 2/3% shall be deposited in the General  
8 Fund;

9 d. In the final five-year period during which the State shall  
10 have collected reduced rate revenues within an enterprise zone, but  
11 not to exceed the life of the enterprise zone, all those revenues shall  
12 be deposited in the General Fund.

13 Commencing on the effective date of P.L.1993, c.144, all  
14 revenues in any enterprise zone to which the provisions of this  
15 section have been extended prior to the enactment of P.L.1993,  
16 c.144 shall be deposited into the enterprise zone assistance fund  
17 until there shall have been deposited all revenues into that fund for  
18 a total of five full years, as set forth in subsection a. of this section.  
19 The State Treasurer then shall proceed to deposit funds into the  
20 enterprise zone assistance fund according to the schedule set forth  
21 in subsections b. through d. of this section, beginning at the point  
22 where the enterprise zone was located on that schedule on the  
23 effective date of P.L.1993, c.144. No enterprise zone shall receive  
24 the deposit benefit granted by any one subsection of this section for  
25 more than five cumulative years.

26 The revenues required to be deposited in the enterprise zone  
27 assistance fund under this section shall be used for the purposes of  
28 that fund and for the uses prescribed in section 29 of P.L.1983,  
29 c.303 (C.52:27H-88), subject to annual appropriations being made  
30 for those purposes and uses.

31 (cf: P.L.2001, c.347, s.9)

32

33 16. This act shall take effect immediately; provided however,  
34 that sections 1 through 15 shall remain inoperative until the first  
35 day of the first month next following the date of enactment.

36

37

38

#### STATEMENT

39

40 This bill revises the sales and use tax on digital property,  
41 provides certain relief from liability due to tax rate changes, and  
42 makes various other technical changes and clarifications to the tax  
43 to maintain compliance with the Streamlined Sales and Use Tax  
44 Agreement (SSUTA).

45 For purposes of compliance, the bill removes the current  
46 definition of, and eliminates references to, "digital property" under  
47 the sales and use tax and replaces it with "specified digital  
48 product," the defined term for electronically transferred digital

1 products under the SSUTA. This change technically modifies but  
2 does not substantively affect the taxability of digitally downloaded  
3 music, movies, books, and certain other goods currently subject to  
4 the sales and use tax.

5 “Digital property” is electronically delivered music, ringtones,  
6 movies, books, audio and video works and products where the  
7 customer is granted a right or license to use, retain, or make a copy  
8 of such item, and has been subject to the sales and use tax since  
9 2006. The tax on digital property is separate yet related to the  
10 existing tax on tangible personal property and services, and allows  
11 certain electronically delivered digital property, and any services to  
12 that property, to be treated, for tax purposes, in a similar form and  
13 manner as their tangible counterparts.

14 At the time the tax was imposed, New Jersey was one of a  
15 handful of states that subjected certain digital downloads to  
16 taxation. Since then, a number of other states have expanded the  
17 base of their sales and use tax to impose tax on digital products.  
18 The governing board of the SSUTA has responded to this change  
19 and attempted to maintain uniformity among member states by  
20 incorporating a standard, uniform definition of digital products into  
21 the agreement. Compliance now requires member states that elect  
22 to impose tax on digital goods to adopt the agreement’s definition  
23 of “specified digital product” and to adhere to certain other  
24 conditions related to specified digital products under the SSUTA.

25 This bill adopts the standard, uniform definition in place of  
26 “digital property” and conforms to various other conditions of the  
27 agreement to allow the State to continue to tax digital products in  
28 compliance with the SSUTA. Under the bill, a “specified digital  
29 product” is an electronically transferred digital audio-visual work,  
30 digital audio work, or digital book, where (1) a “digital audio-video  
31 work” is a series of related images which, when shown in  
32 succession, impart an impression of motion, together with  
33 accompanying sounds, if any; (2) a “digital audio work” is a work  
34 that results from the fixation of a series of musical, spoken, or other  
35 sounds, including a ringtone; and (3) a “digital book” is a work that  
36 is generally recognized in the ordinary and usual sense as a book.

37 The definition of “specified digital product” is, in general,  
38 broader and lacks the same clarity and specificity that characterized  
39 “digital property.” To conform the State’s current tax treatment of  
40 digital goods within the parameters of the defined term under the  
41 agreement, the bill make certain other ancillary changes in addition  
42 to the adoption of the new SSUTA definition. Specifically, the bill:  
43 (1) revises the definition of “retail sale” to reiterate that sales of  
44 specified digital products are only taxable to end users (sales for  
45 resale are excluded from tax); (2) specifies that a digital code which  
46 provides a purchaser the right to obtain the product will be treated  
47 as a specified digital product for purposes of taxation; (3) stipulates  
48 that specified digital products are subject to tax regardless of

1 whether the sale of the product is for permanent or less than  
2 permanent use and regardless of whether continued payment for the  
3 product is required; and (4) carves out a specific statutory  
4 exemption for all video programming services, including video on  
5 demand television services, and broadcasting services to ensure  
6 sales of those services are not taxable as specified digital products.

7 The bill also provides a separate statutory exemption for  
8 specified digital products that are accessed but not delivered  
9 electronically to the consumer. Currently, New Jersey excludes  
10 from tax digital property that is streamed or uploaded, temporarily,  
11 to a consumer to access certain digital content. However,  
12 “specified digital products” includes electronically transferred  
13 digital audio-visual works, digital audio works, and digital books,  
14 where “transferred electronically” means obtained by the purchaser  
15 by means other than tangible storage media. Presumably,  
16 transferred electronically includes instances where specified digital  
17 products are streamed or uploaded, and the exemption, therefore,  
18 ensures that access alone is not used to determine the taxability of  
19 specified digital products.

20 For purposes of compliance, the bill incorporates SSUTA  
21 provisions that relieve certain sellers from liability due to changes  
22 in the sales and use tax rate. Under the bill, the Director of the  
23 Division of Taxation in the Department of Treasury may not hold a  
24 seller liable for failure to collect tax that may be due at a new tax  
25 rate, if the director provides less than 30 days between the date a  
26 change in rate is enacted and the date that change takes effect.

27 The relief from liability is, however, limited. The director is not  
28 required to provide relief in instances where the seller collected the  
29 tax at a rate other than the immediately preceding sales and use tax  
30 rate, and in instances where the seller’s failure to collect tax at the  
31 new tax rate extends more than 30 days after the date the new rate is  
32 enacted. Moreover, the director is not required to provide relief if a  
33 seller fraudulently failed to collect tax at the new tax rate, or if a  
34 seller solicits purchasers using the immediately preceding tax rate.

35 For purposes of compliance, the bill makes technical changes  
36 and clarifications to the tax by removing remaining references to  
37 the previously defined term “vendor,” and eliminating charges for  
38 installation as part of the enumerated charges included in the  
39 definition of “sales price.” “Vendor” had been New Jersey’s defined  
40 term for persons making taxable sales of goods or services at the  
41 time the tax was adopted in 1966 and until the State entered the  
42 SSUTA in 2005. As part of the statutory changes for compliance,  
43 New Jersey largely replaced “vendor” with the SSUTA approved  
44 term “seller.” This bill removes remaining statutory references to  
45 “vendor” not previously replaced or otherwise adopted after the  
46 defined term no longer applied.

47 The elimination of installation charges from the definition of  
48 “sales price” clarifies the imposition of tax on charges for

1 installation. Similar to the transition from “vendor” to “seller,” the  
2 State’s definition of “sales price” was substantively revised in 2005  
3 to comply with the SSUTA. In attempting to conform to the  
4 agreement and maintain the existing taxing scheme, the State  
5 adopted a definition of “sales price” that included installation  
6 charges; charges for installing tangible personal property had been  
7 subject to the sales and use tax and the inclusion of charges for  
8 installation in the definition of “sales price” was intended to ensure  
9 those charges remained taxable after entering the agreement.

10 However, the inclusion of installation charges in the definition  
11 of “sales price” is unnecessary. The inclusion of installation  
12 charges in the definition of “sales price” is ancillary to what makes  
13 charges associated with the installation of a new car stereo or the  
14 installation of a prewritten computer software program on a laptop  
15 computer taxable. A separate statutory provision specifies that  
16 installation charges are an enumerated service subject to the sales  
17 and use tax, regardless of how “sales price” is defined. This bill  
18 removes the reference to installation charges from “sales price” so  
19 that charges for installation of tangible personal property and  
20 specified digital products remain subject to tax even if the purchase  
21 of the property or product is exempt from taxation.

22 The SSUTA is a multi-state sales and use tax compact that was  
23 developed over several years through the joint efforts of 42 states  
24 participating in the Streamlined Sales Tax Project. The underlying  
25 purpose of the SSUTA is to simplify and modernize the  
26 administration of the sales and use tax laws, rules, and regulations  
27 of member states, and to facilitate multi-state tax administration and  
28 compliance.

29 Since entering the agreement in 2005, New Jersey has taken a  
30 series of steps to conform the State’s sales and use tax to, and  
31 remain in compliance with, the SSUTA. The State has previously  
32 revised the tax to conform to SSUTA provisions concerning  
33 uniform tax base definitions, rate simplification, sourcing rules,  
34 exemption administration, and administrative procedures. This bill  
35 represents the fifth time the State has amended the sales and use tax  
36 to comply with the SSUTA.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE, No. 2130

# STATE OF NEW JERSEY

DATED: DECEMBER 16, 2010

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2130.

The bill revises the imposition of the sales and use tax on digital property, provides relief from liability due to certain tax rate changes, and makes various other technical changes and clarifications to the tax to maintain compliance with the Streamlined Sales and Use Tax Agreement (SSUTA).

For purposes of compliance, the bill removes the current definition of, and eliminates references to, “digital property” under the sales and use tax and replaces it with “specified digital product,” the defined term for electronically transferred digital products under the SSUTA. This change technically modifies but does not substantively affect the taxability of digitally downloaded music, movies, books, and certain other digital goods currently subject to the sales and use tax.

Under current law, “digital property” is electronically delivered music, ringtones, movies, books, audio and video works and products where the customer is granted a right or license to use, retain, or make a copy of such item, and has been subject to the sales and use tax since 2006. The tax on digital property is separate yet related to the tax on tangible personal property and services, and allows certain electronically delivered digital property, and any services to that property, to be treated, for tax purposes, in a similar form and manner as its tangible counterparts.

At the time the tax was implemented, New Jersey was one of a handful of states that subjected certain digital downloads to taxation. Since then, a number of other states have expanded the base of their sales and use tax to impose tax on digital products. The governing board of the SSUTA has attempted to maintain uniformity by incorporating a standard, uniform definition of digital products into the agreement. Compliance now requires member states that impose tax on digital goods to adopt the agreement’s definition of “specified digital product” and to adhere to certain other conditions related to the agreement.

This bill adopts that standard, uniform definition in place of “digital property” and conforms to various other conditions of the agreement to allow the State to tax digital products in compliance with the SSUTA. Under the bill, a “specified digital product” is an electronically

transferred digital audio-visual work, digital audio work, or digital book, where (1) a “digital audio-video work” is a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any; (2) a “digital audio work” is a work that results from the fixation of a series of musical, spoken, or other sounds, including a ringtone; and (3) a “digital book” is a work that is generally recognized in the ordinary and usual sense as a book.

This definition is, in general, more generic and lacks the clarity and specificity that characterized “digital property.” To conform the State’s current tax treatment of digital goods within the parameters of the term under the agreement, the bill makes certain other ancillary changes. Specifically, the bill: (1) revises the definition of “retail sale” to reiterate that sales of specified digital products are only taxable to end users; (2) specifies that a digital code which provides a purchaser the right to obtain the product is treated as a specified digital product for purposes of taxation; (3) stipulates that specified digital products are subject to tax regardless of whether the sale of the product is for permanent or less than permanent use and regardless of whether continued payment for the product is required; (4) provides a statutory exemption for video programming services and broadcasting services to ensure those services are not taxable as specified digital products; and (5) provides a statutory exemption for specified digital products that are accessed but not delivered electronically to the purchaser to ensure access does not determine taxability.

For purposes of compliance, the bill incorporates SSUTA provisions that relieve certain sellers from liability due to changes in the sales and use tax rate. The bill provides that the Director of the Division of Taxation in the Department of Treasury may not hold a seller liable for failure to collect tax due at a new tax rate, if the director provides less than 30 days between the date a change in rate is enacted and the date that change takes effect.

The relief from liability is, however, limited. The bill specifies that the director is not required to provide relief in instances where the seller collected the tax at a rate other than the immediately preceding tax rate, and in instances where the seller’s failure to collect tax at the new rate extends more than 30 days after the date the new rate is enacted. Moreover, the director is not required to provide relief if a seller fraudulently failed to collect tax at the new rate, or if a seller solicits purchasers using the immediately preceding tax rate.

For purposes of compliance, the bill makes technical changes and clarifications to the tax by removing references to the previously defined term “vendor.” The term “vendor” had been the State’s defined term under the sales and use tax for persons making taxable sales of goods or services from the time the tax was adopted until the State entered the SSUTA. As part of the changes for compliance, New Jersey largely replaced “vendor” with the SSUTA term “seller.” This

bill removes remaining statutory references to “vendor” not previously replaced, or adopted after the term no longer applied.

For purposes of compliance, the bill makes technical changes and clarifications to the tax by eliminating installation charges from the enumerated charges included in the definition of “sales price.” Similar to the transition from “vendor” to “seller,” the State’s definition of “sales price” was previously revised to comply with the SSUTA. In attempting to conform to the agreement and maintain the existing taxing scheme, the State adopted a definition of “sales price” that included installation charges. However, the inclusion of installation charges in “sales price” is unnecessary; a separate provision currently specifies that installation charges are subject to tax, regardless of how “sales price” is defined. This bill eliminates the reference to installation charges provided by “sales price” to remove any potential internal inconsistency.

The SSUTA is a multi-state sales and use tax compact that was developed over several years through the joint efforts of 42 states participating in the Streamlined Sales Tax Project. The underlying purpose of the SSUTA is to simplify and modernize the administration of the sales and use tax laws, rules, and regulations of member states, and to facilitate multi-state tax administration and compliance.

Since entering the agreement in 2005, New Jersey has taken various steps to conform the State’s sales and use tax to, and remain in compliance with, the SSUTA. The State has previously revised the tax to conform to SSUTA provisions concerning uniform tax base definitions, rate simplification, sourcing rules, exemption administration, and administrative procedures. This bill represents the fifth time the State has amended the sales and use tax to comply with the agreement.

FISCAL IMPACT:

This bill was not certified as requiring a fiscal noted.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE, No. 2130

# STATE OF NEW JERSEY

DATED: FEBRUARY 3, 2011

The Assembly Appropriations Committee reports favorably Senate Bill No. 2130.

This bill revises the sales and use tax on digital property, provides seller relief from liability due to certain tax rate changes, and makes various other technical changes and clarifications to the tax to maintain compliance with the Streamlined Sales and Use Tax Agreement (SSUTA).

*Digital Property.* For purposes of compliance, the bill revises the sales and use tax on digital property by replacing the current definition of “digital property” with the SSUTA’s defined term “specified digital product,” and making certain other ancillary changes related to the taxation of digital goods. These changes technically modify, but do not substantively affect, the tax treatment of digitally downloaded music, movies, books, and other similar digital goods currently subject to taxation.

Under current law, “digital property” is electronically delivered music, ringtones, movies, books, audio and video works and similar products from which the customer is granted a right or license to use, retain, or make a copy of such item, and has been subject to the sales and use tax since 2006. The tax imposed on digital property is separate but related to the tax on tangible personal property and services, and allows electronically delivered digital property, and certain services to that property, to be treated, for tax purposes, in a similar form and manner as its tangible counterparts.

When the tax was first imposed, New Jersey was one of a handful of states that subjected certain digital goods to taxation. Since then, a number of states have expanded the base of their sales and use tax to include digital downloads. The governing board of the SSUTA has responded to the change and attempted to maintain uniformity by incorporating a standard, uniform definition of digital products into the agreement. Compliance now requires member states that tax digital downloads to adopt “specified digital product” and to impose tax on digital products in compliance with certain other terms and conditions of the agreement.

This bill adopts that standard, uniform definition to maintain compliance. Under the bill, a “specified digital product” is an electronically transferred digital audio-visual work, digital audio work,



or digital book, where (1) a “digital audio-video work” is a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any; (2) a “digital audio work” is a work that results from the fixation of a series of musical, spoken, or other sounds, including a ringtone; and (3) a “digital book” is a work that is generally recognized in the ordinary and usual sense as a book.

This definition is, however, broader and lacks the same clarity and specificity that characterized “digital property.” To maintain the State’s current tax treatment of digital property within the parameters of the agreement, the bill makes certain other ancillary changes. Specifically, the bill: (1) revises the definition of “retail sale” to clarify that sales of specified digital products are only taxable to end users; (2) specifies that a digital code which provides a purchaser the right to obtain the product is treated as a specified digital product for tax purposes; (3) stipulates that specified digital products are subject to tax regardless of whether the sale of the product is for permanent or less than permanent use and regardless of whether continued payment is required; (4) provides an exemption for video programming services and for broadcasting services; and (5) provides an exemption for specified digital products that are accessed but not delivered electronically.

*Seller Relief from Liability.* For purposes of compliance, the bill provides seller relief from liability by incorporating SSUTA provisions that relieve sellers due to certain changes in the sales and use tax rate. The bill specifies that the Director of the Division of Taxation in the Department of Treasury may not hold a seller liable for failure to collect tax due at a new tax rate, if the director provides less than 30 days between the date a change in rate is enacted and the date that change takes effect.

The relief from liability is, however, limited. The bill specifies that the director is not required to provide relief in instances in which the seller collected the tax at a rate other than the immediately preceding tax rate, and in instances in which the seller’s failure to collect tax at the new rate extends more than 30 days after the date the new rate is enacted. Moreover, the director is not required to provide relief if a seller fraudulently failed to collect tax at the new rate or solicits purchasers using the immediately preceding tax rate.

*Technical Changes and Clarifications.* For purposes of compliance, the bill makes technical changes and clarifications by replacing references to the previously defined term “vendor” with the current SSUTA approved term “seller.” “Vendor” had been New Jersey’s defined sales and use tax term for persons making taxable sales of goods and services from the time the tax was implemented until the State entered the agreement. While conforming changes under P.L.2005, c.126 largely replaced “vendor” with “seller,” certain statutory provisions were not amended to reflect the change and

certain other provisions were modified to include “vendor” after the term no longer applied. This bill removes the remaining references not previously replaced or adopted after the enactment of P.L.2005, c.126.

For purposes of compliance, the bill makes technical changes and clarifications by redefining “sales price” to exclude installation charges. Under current law, “sales price” is the measure subject to tax and means the total consideration for which goods and services are sold, leased, or rented, without deduction for the seller’s cost of goods sold, the cost of materials used, charges for services necessary to complete the sale, delivery charges, and installation charges. Charges for installation are, in general, an enumerated service subject to tax, and the inclusion of installation charges in the definition of “sales price” was intended to ensure those services were taxed consistent with the existing taxing scheme when the State adopted “sales price” in accordance with the agreement.

However, when a particular good or service is statutorily exempt, the receipt from that sale is not taxable. If the receipt from the sale is not taxable, it may be determined that, by extension, the “sales price” paid by the purchaser for the particular good or service, without deduction for installation charges, is similarly not subject to tax. This determination would be counter to the current tax treatment of installation charges, and the bill’s modification to the definition of “sales price” clarifies charges for installation are separately treated and taxed.

The SSUTA is a multi-state tax agreement developed through the joint efforts of 42 states participating in the Streamlined Sales Tax Project. The underlying purpose of the SSUTA is to “simplify and modernize” the administration of the sales and use tax laws and regulations of member states, and to facilitate multi-state tax administration and compliance.

Since entering the agreement, New Jersey has taken various steps to conform to, and remain in compliance with, the SSUTA. The State has revised the sales and use tax to conform to SSUTA provisions concerning uniform tax base definitions, rate simplification, sourcing rules, exemption administration, and administrative procedures. The changes provided by this bill represent the fifth time the State has amended the tax to comply with the agreement.

As reported, this bill is identical to Assembly Bill No. 3058, as also reported by the committee.

**FISCAL IMPACT:**

This bill is not certified as requiring a fiscal noted.

# ASSEMBLY, No. 3058

## STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 24, 2010

**Sponsored by:**

**Assemblyman LOUIS D. GREENWALD**

**District 6 (Camden)**

**Assemblyman UPENDRA J. CHIVUKULA**

**District 17 (Middlesex and Somerset)**

**SYNOPSIS**

Revises sales and use tax to maintain compliance with certain terms and conditions of Streamlined Sales and Use Tax Agreement.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 2/4/2011)

A3058 GREENWALD, CHIVUKULA

2

1 AN ACT revising the sales and use tax to maintain compliance with  
2 certain terms and conditions of the Streamlined Sales and Use  
3 Tax Agreement, amending and supplementing P.L.1966, c.30  
4 and amending P.L.1980, c.105, P.L.1993, c.373, and P.L.1983,  
5 c.303.

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

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

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

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

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

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

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

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

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

**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 in part, to another person, other than rights to redistribute based on  
2 statutory or common law doctrine such as fair use.

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

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

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

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

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

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

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

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

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

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

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

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

40 (h) "Use" means the exercise of any right or power over tangible  
41 personal property, **[digital property]** specified digital products,  
42 services to property or products, or services by the purchaser  
43 thereof and includes, but is not limited to, the receiving, storage or  
44 any keeping or retention for any length of time, withdrawal from  
45 storage, any distribution, any installation, any affixation to real or  
46 personal property, or any consumption of such property or products.  
47 Use also includes the exercise of any right or power over intrastate  
48 or interstate telecommunications and prepaid calling services. Use

- 1 also includes the exercise of any right or power over utility service.  
2 Use also includes the derivation of a direct or indirect benefit from  
3 a service.
- 4 (i) "Seller" means a person making sales, leases or rentals of  
5 personal property or services.
- 6 (1) The term "seller" includes:
- 7 (A) A person making sales, leases or rentals of tangible personal  
8 property, **[digital property]** specified digital products or services,  
9 the receipts from which are taxed by this act;
- 10 (B) A person maintaining a place of business in the State or  
11 having an agent maintaining a place of business in the State and  
12 making sales, whether at such place of business or elsewhere, to  
13 persons within the State of tangible personal property, **[digital**  
14 **property]** specified digital products or services, the use of which is  
15 taxed by this act;
- 16 (C) A person who solicits business either by employees,  
17 independent contractors, agents or other representatives or by  
18 distribution of catalogs or other advertising matter and by reason  
19 thereof makes sales to persons within the State of tangible personal  
20 property, **[digital property]** specified digital products or services,  
21 the use of which is taxed by this act;
- 22 (D) Any other person making sales to persons within the State of  
23 tangible personal property, **[digital property]** specified digital  
24 products or services, the use of which is taxed by this act, who may  
25 be authorized by the director to collect the tax imposed by this act;
- 26 (E) The State of New Jersey, any of its agencies,  
27 instrumentalities, public authorities, public corporations (including  
28 a public corporation created pursuant to agreement or compact with  
29 another state) or political subdivisions when such entity sells  
30 services or property of a kind ordinarily sold by private persons;
- 31 (F) (Deleted by amendment, P.L.2005, c.126);
- 32 (G) A person who sells, stores, delivers or transports energy to  
33 users or customers in this State whether by mains, lines or pipes  
34 located within this State or by any other means of delivery;
- 35 (H) A person engaged in collecting charges in the nature of  
36 initiation fees, membership fees or dues for access to or use of the  
37 property or facilities of a health and fitness, athletic, sporting or  
38 shopping club or organization; and
- 39 (I) A person engaged in the business of parking, storing or  
40 garaging motor vehicles.
- 41 (2) In addition, when in the opinion of the director it is  
42 necessary for the efficient administration of this act to treat any  
43 salesman, representative, peddler or canvasser as the agent of the  
44 seller, distributor, supervisor or employer under whom the agent  
45 operates or from whom the agent obtains tangible personal property  
46 or **[digital property]** a specified digital product sold by the agent or  
47 for whom the agent solicits business, the director may, in the

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

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

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

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

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

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

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

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

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

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

43 (s) "Lessor" means any person who is the owner, licensee, or  
44 lessee of any premises, tangible personal property or **[digital**  
45 **property]** a specified digital product which the person leases,  
46 subleases, or grants a license to use to other persons.

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

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

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

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

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

34 (y) "Property and services the use of which is subject to tax"  
35 includes: (1) all property sold to a person within the State, whether  
36 or not the sale is made within the State, the use of which property is  
37 subject to tax under section 6 or will become subject to tax when  
38 such property is received by or comes into the possession or control  
39 of such person within the State; (2) all services rendered to a person  
40 within the State, whether or not such services are performed within  
41 the State, upon tangible personal property or **[digital property]** a  
42 specified digital product the use of which is subject to tax under  
43 section 6 or will become subject to tax when such property or  
44 product is distributed within the State or is received by or comes  
45 into possession or control of such person within the State; (3)  
46 intrastate, interstate, or international telecommunications sourced to  
47 this State pursuant to section 29 of P.L.2005, c.126 (C.54:32B-3.4);  
48 (4) (Deleted by amendment, P.L.1995, c.184); (5) energy sold,



1 exchanged or delivered in this State for use in this State; (6) utility  
2 service sold, exchanged or delivered in this State for use in this  
3 State; (7) mail processing services in connection with printed  
4 advertising material distributed in this State; (8) (Deleted by  
5 amendment, P.L.2005, c.126); and (9) services the benefit of which  
6 are received in this State.

7 (z) "Director" means the Director of the Division of Taxation in  
8 the State Department of the Treasury, or any officer, employee or  
9 agency of the Division of Taxation in the Department of the  
10 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 any transfer of possession or control  
14 of tangible personal property for a fixed or indeterminate term for  
15 consideration. A "lease or rental" may include future options to  
16 purchase or extend.

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

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

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

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

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

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

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

43 (cc) "Telecommunications service" means the electronic  
44 transmission, conveyance, or routing of voice, data, audio, video, or  
45 any other information or signals to a point, or between or among  
46 points.

47 "Telecommunications service" shall include such transmission,  
48 conveyance, or routing in which computer processing applications

1 are used to act on the form, code, or protocol of the content for  
2 purposes of transmission, conveyance, or routing without regard to  
3 whether such service is referred to as voice over Internet protocol  
4 services or is classified by the Federal Communications  
5 Commission as enhanced or value added. "Telecommunications  
6 service" shall not include:

- 7 (1) (Deleted by amendment, P.L.2008, c.123);
- 8 (2) (Deleted by amendment, P.L.2008, c.123);
- 9 (3) (Deleted by amendment, P.L.2008, c.123);
- 10 (4) (Deleted by amendment, P.L.2008, c.123);
- 11 (5) (Deleted by amendment, P.L.2008, c.123);
- 12 (6) (Deleted by amendment, P.L.2008, c.123);
- 13 (7) data processing and information services that allow data to  
14 be generated, acquired, stored, processed, or retrieved and delivered  
15 by an electronic transmission to a purchaser where such purchaser's  
16 primary purpose for the underlying transaction is the processed data  
17 or information;
- 18 (8) installation or maintenance of wiring or equipment on a  
19 customer's premises;
- 20 (9) tangible personal property;
- 21 (10) advertising, including but not limited to directory  
22 advertising;
- 23 (11) billing and collection services provided to third parties;
- 24 (12) internet access service;
- 25 (13) radio and television audio and video programming services,  
26 regardless of the medium, including the furnishing of transmission,  
27 conveyance, and routing of such services by the programming  
28 service provider. Radio and television audio and video  
29 programming services shall include but not be limited to cable  
30 service as defined in section 47 U.S.C. s.522(6) and audio and video  
31 programming services delivered by commercial mobile radio  
32 service providers, as defined in section 47 C.F.R. 20.3;
- 33 (14) ancillary services; or
- 34 (15) digital products delivered electronically, including but not  
35 limited to software, music, video, reading materials, or ringtones.

36 For the purposes of this subsection:

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

41 "conference bridging service" means an ancillary service that  
42 links two or more participants of an audio or video conference call  
43 and may include the provision of a telephone number. Conference  
44 bridging service does not include the telecommunications services  
45 used to reach the conference bridge;

46 "detailed telecommunications billing service" means an ancillary  
47 service of separately stating information pertaining to individual  
48 calls on a customer's billing statement;

1 "directory assistance" means an ancillary service of providing  
2 telephone number information or address information or both;

3 "vertical service" means an ancillary service that is offered in  
4 connection with one or more telecommunications services, which  
5 offers advanced calling features that allow customers to identify  
6 callers and to manage multiple calls and call connections, including  
7 conference bridging services; and

8 "voice mail service" means an ancillary service that enables the  
9 customer to store, send, or receive recorded messages. Voice mail  
10 service does not include any vertical service that a customer may be  
11 required to have to utilize the voice mail service.

12 (dd) (1) "Intrastate telecommunications" means a  
13 telecommunications service that originates in one United States  
14 state or a United States territory or possession or federal district,  
15 and terminates in the same United States state or United States  
16 territory or possession or federal district.

17 (2) "Interstate telecommunications" means a  
18 telecommunications service that originates in one United States  
19 state or a United States territory or possession or federal district,  
20 and terminates in a different United States state or United States  
21 territory or possession or federal district.

22 (3) "International telecommunications" means a  
23 telecommunications service that originates or terminates in the  
24 United States and terminates or originates outside the United States,  
25 respectively. "United States" includes the District of Columbia or a  
26 United States territory or possession.

27 (ee) (Deleted by amendment, P.L.2008, c.123)

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

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

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

34 (ii) "Self-generation unit" means a facility located on the user's  
35 property, or on property purchased or leased from the user by the  
36 person owning the self-generation unit and such property is  
37 contiguous to the user's property, which generates electricity to be  
38 used only by that user on the user's property and is not transported  
39 to the user over wires that cross a property line or public  
40 thoroughfare unless the property line or public thoroughfare merely  
41 bifurcates the user's or self-generation unit owner's otherwise  
42 contiguous property.

43 (jj) "Co-generation facility" means a facility the primary purpose  
44 of which is the sequential production of electricity and steam or  
45 other forms of useful energy which are used for industrial or  
46 commercial heating or cooling purposes and which is designated by  
47 the Federal Energy Regulatory Commission, or its successor, as a

- 1 "qualifying facility" pursuant to the provisions of the "Public Utility  
2 Regulatory Policies Act of 1978," Pub.L.95-617.
- 3 (kk) "Non-utility" means a company engaged in the sale,  
4 exchange or transfer of natural gas that was not subject to the  
5 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to  
6 December 31, 1997.
- 7 (ll) "Pre-paid calling service" means the right to access  
8 exclusively telecommunications services, which shall be paid for in  
9 advance and which enables the origination of calls using an access  
10 number or authorization code, whether manually or electronically  
11 dialed, and that is sold in predetermined units or dollars of which  
12 the number declines with use in a known amount.
- 13 (mm) "Mobile telecommunications service" means the same as  
14 that term is defined in the federal "Mobile Telecommunications  
15 Sourcing Act," 4 U.S.C. s.124 (Pub.L.106-252).
- 16 (nn) (Deleted by amendment, P.L.2008, c.123)
- 17 (oo) (1) "Sales price" is the measure subject to sales tax and  
18 means the total amount of consideration, including cash, credit,  
19 property, and services, for which personal property or services are  
20 sold, leased, or rented, valued in money, whether received in money  
21 or otherwise, without any deduction for the following:
- 22 (A) The seller's cost of the property sold;
- 23 (B) The cost of materials used, labor or service cost, interest,  
24 losses, all costs of transportation to the seller, all taxes imposed on  
25 the seller, and any other expense of the seller;
- 26 (C) Charges by the seller for any services necessary to complete  
27 the sale;
- 28 (D) Delivery charges;
- 29 (E) ~~Installation charges~~ (Deleted by amendment, P.L. , c. )  
30 (pending before the Legislature as this bill); and
- 31 (F) (Deleted by amendment, P.L.2008, c.123).
- 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  
35 by a purchaser on a sale;
- 36 (B) Interest, financing, and carrying charges from credit  
37 extended on the sale of personal property or services, if the amount  
38 is separately stated on the invoice, bill of sale, or similar document  
39 given to the 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  
42 given 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  
45 Food 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  
47 in part payment and intended for resale if the amount is separately

1 stated on the invoice, bill of sale, or similar document given to the  
2 purchaser.

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

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

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

10 (C) The amount of the consideration attributable to the sale is  
11 fixed and determinable by the seller at the time of the sale of the  
12 item to the purchaser; and

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

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

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

24 (iii) the price reduction or discount is identified as a third party  
25 price reduction or discount on the invoice received by the purchaser  
26 or on a coupon, certificate, or other documentation presented by the  
27 purchaser.

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

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

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

42 (rr) "Delivery charges" means charges by the seller for  
43 preparation and delivery to a location designated by the purchaser  
44 of personal property or services including, but not limited to,  
45 transportation, shipping, postage, handling, crating, and packing. If  
46 a shipment includes both exempt and taxable property, the seller  
47 should allocate the delivery charge by using: (1) a percentage based  
48 on the total sales price of the taxable property compared to the total

1 sales price of all property in the shipment; or (2) a percentage based  
2 on the total weight of the taxable property compared to the total  
3 weight of all property in the shipment. The seller shall tax the  
4 percentage of the delivery charge allocated to the taxable property  
5 but is not required to tax the percentage allocated to the exempt  
6 property.

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

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

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

24 (vv) **["Digital property"** means electronically delivered music,  
25 ringtones, movies, books, audio and video works and similar  
26 products, where the customer is granted a right or license to use,  
27 retain or make a copy of such item. Digital property does not  
28 include video programming services, including video on demand  
29 television services, and broadcasting services, including content to  
30 provide such services.] (Deleted by amendment, P.L. \_\_\_\_\_, c. \_\_\_\_\_)  
31 (pending before the Legislature as this bill)

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

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

38 (1) investigation and detective services, including detective  
39 agencies and private investigators, and fingerprint, polygraph,  
40 missing person tracing and skip tracing services;

41 (2) security guard and patrol services, including bodyguard and  
42 personal protection, guard dog, guard, patrol, and security services;

43 (3) armored car services; and

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

46 (yy) "Information services" means the furnishing of information  
47 of any kind, which has been collected, compiled, or analyzed by the  
48 seller, and provided through any means or method, other than

1 personal or individual information which is not incorporated into  
2 reports furnished to other people.

3 (zz) “Specified digital product” means an electronically  
4 transferred digital audio-visual work, digital audio work, or digital  
5 book; provided however, that a digital code which provides a  
6 purchaser with a right to obtain the product shall be treated in the  
7 same manner as a specified digital product.

8 (aaa) “Digital audio-visual work” means a series of related  
9 images which, when shown in succession, impart an impression of  
10 motion, together with accompanying sounds, if any.

11 (bbb) “Digital audio work” means a work that results from the  
12 fixation of a series of musical, spoken, or other sounds, including a  
13 ringtone.

14 (ccc) “Digital book” means a work that is generally recognized  
15 in the ordinary and usual sense as a book.

16 (ddd) “Transferred electronically” means obtained by the  
17 purchaser by means other than tangible storage media.

18 (eee) “Ringtone” means a digitized sound file that is downloaded  
19 onto a device and that may be used to alert the purchaser with  
20 respect to a communication.

21 (cf: P.L.2008, c.123, s.1)

22

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

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

26 (a) The receipts from every retail sale of tangible personal  
27 property or **[digital property]** a specified digital product for  
28 permanent use or less than permanent use, and regardless of  
29 whether continued payment is required, except as otherwise  
30 provided in this act.

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

33 (1) Producing, fabricating, processing, printing or imprinting  
34 tangible personal property or **[digital property]** a specified digital  
35 product, performed for a person who directly or indirectly furnishes  
36 the tangible personal property or **[digital property]** specified digital  
37 product, not purchased by him for resale, upon which such services  
38 are performed.

39 (2) Installing tangible personal property or **[digital property]** a  
40 specified digital product, or maintaining, servicing, repairing  
41 tangible personal property or **[digital property]** a specified digital  
42 product not held for sale in the regular course of business, whether  
43 or not the services are performed directly or by means of coin-  
44 operated equipment or by any other means, and whether or not any  
45 tangible personal property or **[digital property]** specified digital  
46 product is transferred in conjunction therewith, except (i) such  
47 services rendered by an individual who is engaged directly by a

1 private homeowner or lessee in or about his residence and who is  
2 not in a regular trade or business offering his services to the public,  
3 (ii) such services rendered with respect to personal property exempt  
4 from taxation hereunder pursuant to section 13 of P.L.1980, c.105  
5 (C.54:32B-8.1), (iii) (Deleted by amendment, P.L.1990, c.40), (iv)  
6 any receipts from laundering, dry cleaning, tailoring, weaving, or  
7 pressing clothing, and shoe repairing and shoeshining and (v)  
8 services rendered in installing property which, when installed, will  
9 constitute an addition or capital improvement to real property,  
10 property or land, other than landscaping services and other than  
11 installing carpeting and other flooring.

12 (3) Storing all tangible personal property not held for sale in the  
13 regular course of business; the rental of safe deposit boxes or  
14 similar space; and the furnishing of space for storage of tangible  
15 personal property by a person engaged in the business of furnishing  
16 space for such storage.

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

25 (4) Maintaining, servicing or repairing real property, other than  
26 a residential heating system unit serving not more than three  
27 families living independently of each other and doing their cooking  
28 on the premises, whether the services are performed in or outside of  
29 a building, as distinguished from adding to or improving such real  
30 property by a capital improvement, but excluding services rendered  
31 by an individual who is not in a regular trade or business offering  
32 his 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) Mail processing services for printed advertising material,  
36 except for mail processing services in connection with distribution  
37 of printed advertising material to out-of-State recipients.

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

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

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

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

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

47 (11) Investigation and security services.

48 (12) Information services.



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

4 (14) Telephone answering services.

5 (15) Radio subscription services.

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

10 Services otherwise taxable under paragraph (1) or (2) of this  
11 subsection (b) are not subject to the taxes imposed under this  
12 subsection, where the tangible personal property or [digital  
13 property] specified digital product upon which the services were  
14 performed is delivered to the purchaser outside this State for use  
15 outside this State.

16 (c) (1) Receipts from the sale of prepared food in or by  
17 restaurants, taverns, or other establishments in this State, or by  
18 caterers, including in the amount of such receipts any cover,  
19 minimum, entertainment or other charge made to patrons or  
20 customers, except for meals especially prepared for and delivered to  
21 homebound elderly, age 60 or older, and to disabled persons, or  
22 meals prepared and served at a group-sitting at a location outside of  
23 the home to otherwise homebound elderly persons, age 60 or older,  
24 and otherwise homebound disabled persons, as all or part of any  
25 food service project funded in whole or in part by government or as  
26 part of a private, nonprofit food service project available to all such  
27 elderly or disabled persons residing within an area of service  
28 designated by the private nonprofit organization; and

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

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

38 (3) For the purposes of this subsection:

39 "Food and beverages sold through vending machines" means  
40 food and beverages dispensed from a machine or other mechanical  
41 device that accepts payment; and

42 "Prepared food" means:

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

44 B. two or more food ingredients mixed or combined by the  
45 seller for sale as a single item, but not including food that is only  
46 cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,  
47 poultry, and foods containing these raw animal foods requiring  
48 cooking by the consumer as recommended by the Food and Drug

1 Administration in Chapter 3, part 401.11 of its Food Code so as to  
2 prevent food borne illnesses; or

3 C. food sold with eating utensils provided by the seller,  
4 including plates, knives, forks, spoons, glasses, cups, napkins, or  
5 straws. A plate does not include a container or packaging used to  
6 transport the food;  
7 provided however, that

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

10 A. food sold by a seller whose proper primary NAICS  
11 classification is manufacturing in section 311, except subsector  
12 3118 (bakeries);

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

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

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

21 (e) (1) Any admission charge to or for the use of any place of  
22 amusement in the State, including charges for admission to race  
23 tracks, baseball, football, basketball or exhibitions, dramatic or  
24 musical arts performances, motion picture theaters, except charges  
25 for admission to boxing, wrestling, kick boxing or combative sports  
26 exhibitions, events, performances or contests which charges are  
27 taxed under any other law of this State or under section 20 of  
28 P.L.1985, c.83 (C.5:2A-20), and, except charges to a patron for  
29 admission to, or use of, facilities for sporting activities in which  
30 such patron is to be a participant, such as bowling alleys and  
31 swimming pools. For any person having the permanent use or  
32 possession of a box or seat or lease or a license, other than a season  
33 ticket, for the use of a box or seat at a place of amusement, the tax  
34 shall be upon the amount for which a similar box or seat is sold for  
35 each performance or exhibition at which the box or seat is used or  
36 reserved by the holder, licensee or lessee, and shall be paid by the  
37 holder, licensee or lessee.

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

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

45 (2) (Deleted by amendment, P.L.2008, c.123)

46 (g) (Deleted by amendment, P.L.2008, c.123)

47 (h) Charges in the nature of initiation fees, membership fees or  
48 dues for access to or use of the property or facilities of a health and

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

11 (i) The receipts from parking, storing or garaging a motor  
12 vehicle, excluding charges for the following: residential parking;  
13 employee parking, when provided by an employer or at a facility  
14 owned or operated by the employer; municipal parking, storing or  
15 garaging; receipts from charges or fees imposed pursuant to section  
16 3 of P.L.1993, c.159 (C.5:12-173.3) or pursuant to an agreement  
17 between the Casino Reinvestment Development Authority and a  
18 casino operator in effect on the date of enactment of P.L.2007,  
19 c.105; and receipts from parking, storing or garaging a motor  
20 vehicle subject to tax pursuant to any other law or ordinance.

21 For the purposes of this subsection, "municipal parking, storing  
22 or garaging" means any motor vehicle parking, storing or garaging  
23 provided by a municipality or county, or a parking authority  
24 thereof.

25 (cf: P.L.2008, c.123, s.2)

26

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

29 5. **【Transitional provisions.】** a. (1) Except as otherwise  
30 provided in this act, receipts received from all sales made and  
31 services rendered on and after January 3, 1983 but prior to July 1,  
32 1990, are subject to the taxes imposed under subsections (a), (b),  
33 (c), and (f) of section 3 of this act at the rate, if any, in effect for  
34 such sales and services on June 30, 1990, except if the property so  
35 sold is delivered or the services so sold are rendered on or after July  
36 1, 1990 but prior to July 1, 1992, in which case the tax shall be  
37 computed and paid at the rate of 7%; provided, however, that if a  
38 service or maintenance agreement taxable under this act covers any  
39 period commencing on or after January 3, 1983 and ending after  
40 June 30, 1990 but prior to July 1, 1992, the receipts from such  
41 agreement are subject to tax at the rate, if any, applicable to each  
42 period as set forth hereinabove and shall be apportioned on the  
43 basis of the ratio of the number of days falling within each of the  
44 said periods to the total number of days covered thereby.

45 (2) Except as otherwise provided in this act, receipts received  
46 from all sales made and services rendered on and after July 1, 1990  
47 but prior to July 1, 1992, are subject to the taxes imposed under  
48 subsections (a), (b), (c) and (f) of section 3 of this act at the rate of

1 7%, except if the property so sold is delivered or the services so  
2 sold are rendered on or after July 1, 1992 but prior to July 15, 2006,  
3 in which case the tax shall be computed and paid at the rate of 6%,  
4 provided, however, that if a service or maintenance agreement  
5 taxable under this act covers any period commencing on or after  
6 July 1, 1990, and ending after July 1, 1992, the receipts from such  
7 agreement are subject to tax at the rate applicable to each period as  
8 set forth hereinabove and shall be apportioned on the basis of the  
9 ratio of the number of days falling within each of the said periods to  
10 the total number of days covered thereby.

11 (3) Except as otherwise provided in this act, receipts received  
12 from all sales made and services rendered on and after July 1, 1992  
13 but prior to July 15, 2006, are subject to the taxes imposed under  
14 subsections (a), (b), (c), (f) and (g) of section 3 of P.L.1966, c.30  
15 (C.54:32B-3) at the rate of 6%, except if the property so sold is  
16 delivered or the services so sold are rendered on or after July 15,  
17 2006, in which case the tax shall be computed and paid at the rate  
18 of 7%, provided, however, that if a service or maintenance  
19 agreement taxable under this act covers any period commencing on  
20 or after July 1, 1992, and ending after July 15, 2006, the receipts  
21 from such agreement are subject to tax at the rate applicable to each  
22 period as set forth hereinabove and shall be apportioned on the  
23 basis of the ratio of the number of days falling within each of the  
24 said periods to the total number of days covered thereby; provided  
25 however, if a service or maintenance agreement in effect on July 14,  
26 2006 covers billing periods ending after July 15, 2006, the seller  
27 shall charge and collect from the purchaser a tax on such sales at  
28 the rate of 6%, unless the billing period starts on or after July 15,  
29 2006 in which case the seller shall charge and collect a tax at the  
30 rate of 7%.

31 b. (1) The tax imposed under subsection (d) of section 3 shall  
32 be paid at the rate of 7% upon any occupancy on and after July 1,  
33 1990 but prior to July 1, 1992, although such occupancy is pursuant  
34 to a prior contract, lease or other arrangement. If an occupancy,  
35 taxable under this act, covers any period on or after January 3, 1983  
36 but prior to July 1, 1990, the rent for the period of occupancy prior  
37 to July 1, 1990 shall be taxed at the rate of 6%. If rent is paid on a  
38 weekly, monthly or other term basis, the rent applicable to each  
39 period as set forth hereinabove shall be apportioned on the basis of  
40 the ratio of the number of days falling within each of the said  
41 periods to the total number of days covered thereby.

42 (2) The tax imposed under subsection (d) of section 3 shall be  
43 paid at the rate of 6% upon any occupancy on and after July 1, 1992  
44 but prior to July 15, 2006, although such occupancy is pursuant to a  
45 prior contract, lease or other arrangement. If an occupancy, taxable  
46 under this act, covers any period on or after July 1, 1990 but prior  
47 to July 1, 1992, the rent for the period of occupancy prior to July 1,  
48 1992 shall be taxed at the rate of 7%. If rent is paid on a weekly,

1 monthly or other term basis, the rent applicable to each period as set  
2 forth hereinabove shall be apportioned on the basis of the ratio of  
3 the number of days falling within each of the said periods to the  
4 total number of days covered thereby.

5 (3) The tax imposed under subsection (d) of section 3 shall be  
6 paid at the rate of 7% upon any occupancy on and after July 15,  
7 2006, although such occupancy is pursuant to a prior contract, lease  
8 or other arrangement. If an occupancy, taxable under this act,  
9 covers any period on or after July 1, 1992 but prior to July 15,  
10 2006, the rent for the period of occupancy prior to July 15, 2006  
11 shall be taxed at the rate of 6%. If rent is paid on a weekly,  
12 monthly or other term basis, the rent applicable to each period as set  
13 forth hereinabove shall be apportioned on the basis of the ratio of  
14 the number of days falling within each of the said periods to the  
15 total number of days covered thereby.

16 c. (1) Except as otherwise hereinafter provided, the tax  
17 imposed under subsection (e) of section 3 shall be applicable at the  
18 rate of 7% to any admission to or for the use of facilities of a place  
19 of amusement occurring on or after July 1, 1990 but prior to July 1,  
20 1992, whether or not the admission charge has been paid prior to  
21 July 1, 1990, unless the tickets were actually sold and delivered,  
22 other than for resale, prior to July 1, 1990 and the tax imposed  
23 under this act during the period January 3, 1983 through June 30,  
24 1990 shall have been paid.

25 (2) Except as otherwise hereinafter provided, the tax imposed  
26 under subsection (e) of section 3 shall be applicable at the rate of  
27 6% to any admission to or for the use of facilities of a place of  
28 amusement occurring on or after July 1, 1992 but prior to July 15,  
29 2006, whether or not the admission charge has been paid prior to  
30 July 1, 1992, unless the tickets were actually sold and delivered,  
31 other than for resale, prior to July 1, 1992 and the tax imposed  
32 under this act during the period July 1, 1990 through December 31,  
33 1990 shall have been paid.

34 (3) Except as otherwise hereinafter provided, the tax imposed  
35 under subsection (e) of section 3 shall be applicable at the rate of  
36 7% to any admission to or for the use of facilities of a place of  
37 amusement occurring on or after July 15, 2006, whether or not the  
38 admission charge has been paid prior to that date, unless the tickets  
39 were actually sold and delivered, other than for resale, prior to July  
40 15, 2006 and the tax imposed under this act during the period July  
41 1, 1992 through July 14, 2006 shall have been paid.

42 d. (1) Sales made on and after July 1, 1990 but prior to July 1,  
43 1992 to contractors, subcontractors or repairmen of materials,  
44 supplies, or services for use in erecting structures for others, or  
45 building on, or otherwise improving, altering or repairing real  
46 property of others shall be subject to the taxes imposed by  
47 subsections (a) and (b) of section 3 and section 6 hereof at the rate  
48 of 7%; provided, however, that if such sales are made for use in

1 performance of a contract which is either of a fixed price not  
2 subject to change or modification, or entered into pursuant to the  
3 obligation of a formal written bid which cannot be altered or  
4 withdrawn, and, in either case, such contract was entered into or  
5 such bid was made on or after January 3, 1983 but prior to July 1,  
6 1990, such sales shall be subject to tax at the rate of 6%, but the  
7 vendor shall charge and collect from the purchaser a tax on such  
8 sales at the rate of 7%.

9 (2) Sales made on or after July 1, 1992 but prior to July 15,  
10 2006 to contractors, subcontractors or repairmen of materials,  
11 supplies, or services for use in erecting structures for others, or  
12 building on, or otherwise improving, altering or repairing real  
13 property of others shall be subject to the taxes imposed by  
14 subsections (a) and (b) of section 3 and section 6 hereof at the rate  
15 of 6%; provided, however, that if such sales are made for use in  
16 performance of a contract which is either of a fixed price not  
17 subject to change or modification, or entered into pursuant to the  
18 obligation of a formal written bid which cannot be altered or  
19 withdrawn, and, in either case, such contract was entered into or  
20 such bid was made on or after July 1, 1990, but prior to July 1,  
21 1992, such sales shall be subject to tax at the rate of 7%.

22 (3) Sales made on or after July 15, 2006 to contractors,  
23 subcontractors or repairmen of materials, supplies, or services for  
24 use in erecting structures for others, or building on, or otherwise  
25 improving, altering or repairing real property of others shall be  
26 subject to the taxes imposed by subsections (a) and (b) of section 3  
27 and section 6 hereof at the rate of 7%; provided, however, that if  
28 such sales are made for use in performance of a contract which is  
29 either of a fixed price not subject to change or modification, or  
30 entered into pursuant to the obligation of a formal written bid which  
31 cannot be altered or withdrawn, and, in either case, such contract  
32 was entered into or such bid was made on or after July 1, 1992, but  
33 prior to July 15, 2006, such sales shall be subject to tax at the rate  
34 of 6%, but the **【vendor】** seller shall charge and collect from the  
35 purchaser a tax on such sales at the rate of 7%.

36 e. (1) As to sales other than those referred to in d. above, the  
37 taxes imposed under subsections (a) and (b) of section 3 and section  
38 6 hereof, and the taxes imposed under subsection (f) of section 3  
39 and section 6 hereof, upon receipts received on or after July 1, 1990  
40 and on or before December 31, 1990, shall be at the rate in effect on  
41 June 30, 1990, in case of sales made or services rendered pursuant  
42 to a written contract entered on or after January 3, 1983 but prior to  
43 July 1, 1990, and accompanied by a deposit or partial payment of  
44 the contract price, except in the case of a contract which, in the  
45 usage of trade, is not customarily accompanied by a deposit or  
46 partial payment of the contract price, but the vendor shall charge  
47 and collect from the purchaser on such sales at the rate of 7%,  
48 which tax shall be reduced to the rate, if any, in effect on June 30,

1 1990, only by a claim for refund filed by the purchaser with the  
2 director within 90 days after receipt of said receipts and otherwise  
3 pursuant to the provisions of section 20 of P.L.1966, c.30  
4 (C.54:32B-20). A claim for refund shall not be allowed if there has  
5 been no deposit or partial payment of the contract price unless the  
6 claimant shall establish by clear and convincing evidence that, in  
7 the usage of trade, such contracts are not customarily accompanied  
8 by a deposit or partial payment of the contract price.

9 (2) As to sales other than those referred to in d. above, the taxes  
10 imposed under subsections (a) and (b) of section 3 and section 6  
11 hereof, and the taxes imposed under subsections (f) and (g) of  
12 section 3 and section 6 hereof, upon receipts received on or after  
13 July 15, 2006 and on or before December 31, 2006, shall be at the  
14 rate in effect on July 14, 2006, in case of sales made or services  
15 rendered pursuant to a written contract entered on or after July 1,  
16 1992 but prior to July 15, 2006, and accompanied by a deposit or  
17 partial payment of the contract price, except in the case of a  
18 contract which, in the usage of trade, is not customarily  
19 accompanied by a deposit or partial payment of the contract price,  
20 but the [vendor] seller shall charge and collect from the purchaser  
21 on such sales at the rate of 7%, which tax shall be reduced to the  
22 rate, if any, in effect on July 14, 2006, only by a claim for refund  
23 filed by the purchaser with the director within 90 days after receipt  
24 of said receipts and otherwise pursuant to the provisions of section  
25 20 of P.L.1966, c.30 (C.54:32B-20). A claim for refund shall not  
26 be allowed if there has been no deposit or partial payment of the  
27 contract price unless the claimant shall establish by clear and  
28 convincing evidence that, in the usage of trade, such contracts are  
29 not customarily accompanied by a deposit or partial payment of the  
30 contract price.

31 f. (1) The taxes imposed under subsections (a), (b), (c) and (f)  
32 of section 3 upon receipts received on or after July 1, 1990 but prior  
33 to July 1, 1992 shall be at the rate, if any, in effect on June 30, 1990  
34 in the case of sales made or services rendered, if delivery of the  
35 property which was the subject matter of the sale has been  
36 completed or such services have been entirely rendered prior to July  
37 1, 1990.

38 (2) The taxes imposed under subsections (a), (b), (c) and (f) of  
39 section 3 upon receipts received on or after July 1, 1992 but prior to  
40 July 15, 2006 shall be at the rate of 7% in the case of sales made or  
41 services rendered, where delivery of the property which was the  
42 subject matter of the sale has been completed or such services have  
43 been entirely rendered on or after July 1, 1990 but prior to July 1,  
44 1992.

45 (3) The taxes imposed under subsections (a), (b), (c), (f) and (g)  
46 of section 3 upon receipts received on or after July 15, 2006 shall be  
47 at the rate of 6% in the case of sales made or services rendered,  
48 where delivery of the property which was the subject matter of the

1 sale has been completed or such services have been entirely  
2 rendered on or after July 1, 1992 but prior to July 15, 2006.

3 g. The director is empowered to promulgate rules and  
4 regulations to implement the provisions of this section.

5 (cf: P.L.2006, c.44, s.4)

6

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

9 6. Unless property or services have already been or will be  
10 subject to the sales tax under this act, there is hereby imposed on  
11 and there shall be paid by every person a use tax for the use within  
12 this State of 7%, except as otherwise exempted under this act, (A)  
13 of any tangible personal property or **【digital property】** specified  
14 digital product purchased at retail, including energy, provided  
15 however, that electricity consumed by the generating facility that  
16 produced it shall not be subject to tax, (B) of any tangible personal  
17 property or **【digital property】** specified digital product  
18 manufactured, processed or assembled by the user, if items of the  
19 same kind of tangible personal property or **【digital property】**  
20 specified digital products are offered for sale by him in the regular  
21 course of business, or if items of the same kind of tangible personal  
22 property are not offered for sale by him in the regular course of  
23 business and are used as such or incorporated into a structure,  
24 building or real property, (C) of any tangible personal property or  
25 **【digital property】** specified digital product, however acquired,  
26 where not acquired for purposes of resale, upon which any taxable  
27 services described in paragraphs (1) and (2) of subsection (b) of  
28 section 3 of P.L.1966, c.30 (C.54:32B-3) have been performed, (D)  
29 of intrastate, interstate, or international telecommunications  
30 services described in subsection (f) of section 3 of P.L.1966, c.30,  
31 (E) (Deleted by amendment, P.L.1995, c.184), (F) of utility service  
32 provided to persons in this State for use in this State, provided  
33 however, that utility service used by the facility that provides the  
34 service shall not be subject to tax, (G) of mail processing services  
35 described in paragraph (5) of subsection (b) of section 3 of  
36 P.L.1966, c.30 (C.54:32B-3), (H) (Deleted by amendment,  
37 P.L.2008, c.123), (I) of any services subject to tax pursuant to  
38 subsection (11), (12), (13), (14) or (15) of subsection (b) of section  
39 3 of P.L.1966, c.30 (C.54:32B-3), and (J) of access to or use of the  
40 property or facilities of a health and fitness, athletic, sporting or  
41 shopping club or organization in this State. For purposes of clause  
42 (A) of this section, the tax shall be at the applicable rate, as set forth  
43 hereinabove, of the consideration given or contracted to be given  
44 for such property or for the use of such property including delivery  
45 charges made by the seller, but excluding any credit for property of  
46 the same kind accepted in part payment and intended for resale. For  
47 the purposes of clause (B) of this section, the tax shall be at the  
48 applicable rate, as set forth hereinabove, of the price at which items



1 of the same kind of tangible personal property or **【digital property】**  
2 specified digital products are offered for sale by the user, or if items  
3 of the same kind of tangible personal property are not offered for  
4 sale by the user in the regular course of business and are used as  
5 such or incorporated into a structure, building or real property the  
6 tax shall be at the applicable rate, as set forth hereinabove, of the  
7 consideration given or contracted to be given for the tangible  
8 personal property manufactured, processed or assembled by the user  
9 into the tangible personal property the use of which is subject to use  
10 tax pursuant to this section, and the mere storage, keeping, retention  
11 or withdrawal from storage of tangible personal property or **【digital**  
12 **property】** specified digital products by the person who  
13 manufactured, processed or assembled such property shall not be  
14 deemed a taxable use by him. For purposes of clause (C) of this  
15 section, the tax shall be at the applicable rate, as set forth  
16 hereinabove, of the consideration given or contracted to be given  
17 for the service, including the consideration for any tangible personal  
18 property or **【digital property】** specified digital product transferred  
19 in conjunction with the performance of the service, including  
20 delivery charges made by the seller. For the purposes of clause (D)  
21 of this section, the tax shall be at the applicable rate on the charge  
22 made by the telecommunications service provider; provided  
23 however, that for prepaid calling services and prepaid wireless  
24 calling services the tax shall be at the applicable rate on the  
25 consideration given or contracted to be given for the prepaid calling  
26 service or prepaid wireless calling service or the recharge of the  
27 prepaid calling service or prepaid wireless calling service. For  
28 purposes of clause (F) of this section, the tax shall be at the  
29 applicable rate on the charge made by the utility service provider.  
30 For purposes of clause (G) of this section, the tax shall be at the  
31 applicable rate on that proportion of the amount of all processing  
32 costs charged by a mail processing service provider that is  
33 attributable to the service distributed in this State. For purposes of  
34 clause (I) of this section, the tax shall be at the applicable rate on  
35 the charge made by the service provider. For purposes of clause (J)  
36 of this section, the tax shall be at the applicable rate on the charges  
37 in the nature of initiation fees, membership fees or dues.

38 (cf: P.L.2008, c.123, s.5)

39

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

42 7. (a) The retail sales tax imposed under subsection (a) of  
43 section 3 and the compensating use tax imposed under section 6,  
44 when computed in respect to tangible personal property and **【digital**  
45 **property】** specified digital products wherever manufactured,  
46 processed or assembled and used by such manufacturer, processor  
47 or assembler in the regular course of business within this State,

1 shall be based on the price at which items of the same kind of  
2 tangible personal property or specified digital products are offered  
3 for sale by him.

4 (b) Tangible personal property or **【digital property】** a specified  
5 digital product, which has been purchased by a resident of the State  
6 of New Jersey outside of this State for use outside of this State and  
7 subsequently becomes subject to the compensating use tax imposed  
8 under this act, shall be taxed on the basis of the purchase price of  
9 such property or product, provided, however:

10 (1) That where a taxpayer affirmatively shows that the property  
11 or the product was used outside such State by him for more than six  
12 months prior to its use within this State, such property or product  
13 shall be taxed on the basis of current market value of the property  
14 or the product at the time of its first use within this State. The value  
15 of such property or product, for compensating use tax purposes,  
16 may not exceed its cost.

17 (2) That the compensating use tax on such tangible personal  
18 property or **【digital property】** specified digital product brought into  
19 this State (other than for complete consumption or for incorporation  
20 into real property located in this State) and used in the performance  
21 of a contract or subcontract within this State by a purchaser or user  
22 for a period of less than six months may be based, at the option of  
23 the taxpayer, on the fair rental value of such property or product for  
24 the period of use within this State.

25 (c) Leased tangible personal property or **【digital property】**  
26 specified digital product which has been purchased outside this  
27 State for lease outside of this State and subsequently becomes  
28 subject to the compensating use tax imposed under this act shall be  
29 taxed on the basis of the purchase price of such property or product,  
30 provided however, that the compensating use tax on such property  
31 or product brought into and used within this State may be based on  
32 the total of the lease payments attributable to the lease of that  
33 property or product attributable to the period of the lease remaining  
34 after first use in this State.

35 (d) Sales tax imposed on the lease or rental of tangible personal  
36 property or **【digital property】** a specified digital product in New  
37 Jersey shall be based on either the total of the periodic payments  
38 required under the agreement or the original purchase price of the  
39 property or product. 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  
42 for the period in which the leased personal property or product was  
43 delivered to the lessee in this State. However, if the tax is paid on a  
44 lease or rental based on the original purchase price of the tangible  
45 personal property or **【digital property】** specified digital product, a  
46 subsequent lease or rental of the same property or product shall not

1 be subject to the tax imposed under P.L.1966, c.30 (C.54:32B-1 et  
2 seq.).

3 If leased property or a product is subsequently removed on a  
4 permanent basis from this State, the lessee shall be entitled to a  
5 refund of the tax allocable to the portion of the lease or rental that  
6 remains in effect after the property or the product has been removed  
7 from this State, but only if the other state does not allow a credit for  
8 the sales or use tax paid to this State on the lease or rental  
9 transaction, and further, in the case of property or a product  
10 removed to a state that imposes or computes tax on leases or rentals  
11 based on a lump sum or accelerated basis, only if the other state  
12 also allows a corresponding refund with respect to the lease of  
13 property or product upon which a sales or use tax is due and paid to  
14 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  
17 of the energy, including any charges for utility service.

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

19

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

22 26. Receipts from sales of tangible personal property, except  
23 energy, and **[digital property]** specified digital products purchased  
24 for use or consumption directly and exclusively in research and  
25 development in the experimental or laboratory sense are exempt  
26 from the tax imposed under the Sales and Use Tax Act. Such  
27 research and development shall not be deemed to include the  
28 ordinary testing or inspection of materials or products for quality  
29 control, efficiency surveys, management studies, consumer surveys,  
30 advertising, promotions or research in connection with literary,  
31 historical or similar projects.

32 (cf: P.L.2008, c.123, s.9)

33

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

36 1. a. Receipts of retail sales, except retail sales of motor  
37 vehicles, of alcoholic beverages, of specified digital products, and  
38 cigarettes as defined in the "Cigarette Tax Act," P.L.1948, c.65  
39 (C.54:40A-1 et seq.), made by a seller from a place of business  
40 regularly operated by the seller for the purpose of making retail  
41 sales at which items are regularly exhibited and offered for retail  
42 sale and which is not utilized primarily for the purpose of catalogue  
43 or mail order sales, in which county is situated an entrance to an  
44 interstate bridge or tunnel connecting New Jersey with a state that  
45 does not impose a retail sales and use tax or imposes a retail sales  
46 and use tax at a rate at least five percentage points lower than the  
47 rate in this State, are exempt to the extent of 50% of the tax

1 imposed under the "Sales and Use Tax Act," P.L.1966, c.30  
2 (C.54:32B-1 et seq.).

3 b. The exemption provided by subsection a. of this section  
4 shall apply unless a seller advises the director, in writing, that it  
5 intends to collect the tax at the full rate imposed under the "Sales  
6 and Use Tax Act".  
7 (cf: P.L.2006, c.44, s.11)

8  
9 8. (New section) Receipts from sales of video programming  
10 services, including video on demand television services, and  
11 broadcasting services, including content to provide such services,  
12 are exempt from the tax imposed under the "Sales and Use Tax  
13 Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

14  
15 9. (New section) a. Receipts from sales of a specified digital  
16 product that is accessed but not delivered electronically to the  
17 purchaser are exempt from the tax imposed under the "Sales and  
18 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

19 b. For purposes of this section, "delivered electronically" means  
20 delivered to the purchaser by means other than tangible storage  
21 media.

22  
23 10. Section 9 of P.L.1966, c.30 (C.54:32B-9) is amended to read  
24 as follows:

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

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

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

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

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

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

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

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

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

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

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

44 (e) Where any organization described in subsection (b) of this  
45 subsection carries on its activities in furtherance of the purposes for  
46 which it was organized, in premises in which, as part of those  
47 activities, it operates a hotel, occupancy of rooms in the premises

1 and rents from those rooms received by the organization shall not  
2 be subject to tax under the "Sales and Use Tax Act."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3       12. (a) Every person required to collect the tax shall collect the  
4 tax from the customer when collecting the price, service charge,  
5 amusement charge or rent to which it applies. If the customer is  
6 given any sales slip, invoice, receipt or other statement or  
7 memorandum of the price, service charge, amusement charge or  
8 rent paid or payable, the tax shall be stated, charged and shown  
9 separately on the first of such documents given to him. The tax  
10 shall be paid to the person required to collect it as trustee for and on  
11 account of the State.

12       (b) For the purpose of the proper administration of this act and  
13 to prevent evasion of the tax hereby imposed, and subject to the  
14 rules regarding the administration of exemptions authorized by the  
15 Streamlined Sales and Use Tax Agreement, it shall be presumed  
16 that all receipts for property or services of any type mentioned in  
17 subsections (a), (b), (c), and (f) of section 3, all rents for occupancy  
18 of the type mentioned in subsection (d) of said section, all  
19 amusement charges of any type mentioned in subsection (e) of said  
20 section, all charges in the nature of initiation fees, membership fees  
21 or dues mentioned in subsection (h) of said section, and all receipts  
22 from parking, storing or garaging a motor vehicle mentioned in  
23 subsection (i) of said section are subject to tax until the contrary is  
24 established, and the burden of proving that any such receipt, charge  
25 or rent is not taxable hereunder shall be upon the person required to  
26 collect tax or the customer. Unless a seller shall have taken from  
27 the purchaser a certificate, signed by the purchaser if in paper form,  
28 and bearing the purchaser's name and address and the number of the  
29 purchaser's registration certificate, to the effect that the property or  
30 service was purchased for resale or was otherwise exempt pursuant  
31 to the provisions of the "Sales and Use Tax Act," P.L.1966, c.30  
32 (C.54:32B-1 et seq.), or the purchaser, prior to taking delivery,  
33 furnishes to the seller any affidavit, statement or additional  
34 evidence, documentary or otherwise, which the director may require  
35 demonstrating that the purchaser is an exempt organization  
36 described in section 9(b)(1), the sale shall be deemed a taxable  
37 retail sale. Provided however, the director may, in the director's  
38 discretion, authorize a purchaser, who acquires tangible personal  
39 property, **[digital property]** specified digital products or services  
40 under circumstances which make it impossible at the time of  
41 acquisition to determine the manner in which the tangible personal  
42 property, **[digital property]** specified digital products or services  
43 will be used, to pay the tax directly to the director and waive the  
44 collection of the tax by the seller or provide for direct pay authority  
45 under rules adopted under the Streamlined Sales and Use Tax  
46 Agreement. Provided further, the director shall authorize any  
47 eligible person, as defined in section 34 of P.L.1997, c.162  
48 (C.54:32B-14.1), who purchases natural gas from a non-utility on

1 and after January 1, 1998 through December 31, 2002, to pay the  
2 tax on the commodity directly to the director and waive the  
3 collection of the tax by the seller. No such authority shall be  
4 granted or exercised except upon application to the director, and the  
5 issuance by the director of a direct payment permit. If a direct  
6 payment permit is granted, its use shall be subject to conditions  
7 specified by the director, and the payment of tax on all acquisitions  
8 pursuant to the permit shall be made directly to the director by the  
9 permit holder.

10 (c) The director may provide by regulation that the tax upon  
11 receipts from sales on the installment plan may be paid on the  
12 amount of each installment and upon the date when such installment  
13 is due. He may also provide by regulation for the exclusion from  
14 taxable receipts, amusement charges or rents of amounts subject, as  
15 applicable, to the provisions of section 30 of P.L.2005, c.126  
16 (C.54:32B-12.1), representing sales where the contract of sale has  
17 been canceled, the property returned or the receipt, charge or rent  
18 has been ascertained to be uncollectible or, in the case the tax has  
19 been paid upon such receipt, charge or rent, for refund or credit of  
20 the tax so paid.

21 (cf: P.L.2008, c.123, s.12)

22

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

25 14. (a) Every person required to collect any tax imposed by this  
26 act shall be personally liable for the tax imposed, collected or  
27 required to be collected under this act. Any such person shall have  
28 the same right in respect to collecting the tax from that person's  
29 customer or in respect to non-payment of the tax by the customer as  
30 if the tax were a part of the purchase price of the property or  
31 service, amusement charge or rent, as the case may be, and payable  
32 at the same time; provided, however, that the director shall be  
33 joined as a party in any action or proceeding brought to collect the  
34 tax.

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

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

47 (d) No person required to collect any tax imposed by this act  
48 shall advertise or hold out to any person or to the public in general,



1 in any manner, directly or indirectly, that the tax is not considered  
2 as an element in the price, amusement charge or rent payable by the  
3 customer, or except as provided by subsection (f) of this section that  
4 the person required to collect the tax will pay the tax, that the tax  
5 will not be separately charged and stated to the customer or that the  
6 tax will be refunded to the customer. Upon written application duly  
7 made and proof duly presented to the satisfaction of the director  
8 showing that in the particular business of the person required to  
9 collect the tax it would be impractical for the seller to separately  
10 charge the tax to the customer, the director may waive the  
11 application of the requirement herein as to such seller.

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

15 (f) A **【vendor】 seller** other than a **【vendor】 seller** subject to  
16 subsection (e) of this section making retail sales of tangible  
17 personal property or sales of services may advertise that the  
18 **【vendor】 seller** will pay the tax for the customer subject to the  
19 conditions of this subsection.

20 (1) The advertising shall indicate that the **【vendor】 seller** is, in  
21 fact, paying the tax for the customer and shall not indicate or imply  
22 that the sale or charge is exempt from taxation.

23 (2) Notwithstanding the provisions of section 12 of P.L.1966,  
24 c.30 (C.54:32B-12) to the contrary, any sales slip, invoice, receipt  
25 or other statement or memorandum of the price or service charge  
26 paid or payable given to the customer shall state that the tax will be  
27 paid by the **【vendor】 seller**; provided however that such record  
28 shall be otherwise subject to the provisions of section 12 of  
29 P.L.1966, c.30 (C.54:32B-12).

30 (3) The **【vendor】 seller** shall pay the amount of tax due on the  
31 retail sale or service receipt, as determined pursuant to section 4 of  
32 P.L.1966, c.30 (C.54:32B-4), as trustee for and on account of the  
33 State, and shall have the same liability for that amount of tax  
34 pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-  
35 1 et seq.), as for an amount collected from a customer.

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

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

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

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

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

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

13 (4) the reliance of a purchaser using databases of taxing  
14 jurisdiction assignments on erroneous data provided by the director  
15 with respect to tax rates, boundaries or taxing jurisdiction  
16 assignments, provided however that, to the extent that the director  
17 provides or certifies an address-based database for assigning tax  
18 rates and jurisdictions and upon appropriate notice, no relief from  
19 liability shall be allowed for errors resulting from reliance on a zip  
20 code database for assigning tax rates and jurisdictions.

21 Provided however, that as to the relief from liability for tax, the  
22 relief from liability for tax by reason of reliance on the taxability  
23 matrix shall be limited to the director's erroneous classification in  
24 the taxability matrix of terms "taxable" or "exempt," "included in  
25 sales price" or "excluded from sales price" or "included in the  
26 definition" or "excluded from the definition."

27 (j) If the director provides less than 30 days between the date a  
28 rate change is enacted and the date that change takes effect, the  
29 director shall relieve the seller of liability for failing to collect tax at  
30 the new rate if: (1) the seller collected tax at the immediately  
31 preceding effective rate; and (2) the seller's failure to collect tax at  
32 the newly effective rate does not extend more than 30 days after the  
33 date of enactment of the new rate.

34 (k) Notwithstanding the provisions of subsection (j) of this  
35 section, if the director establishes that a seller fraudulently failed to  
36 collect tax due at the new rate or solicits purchasers based on the  
37 immediately preceding effective tax rate, this relief from liability  
38 shall not apply.

39 (cf: P.L.2008, c.123, s.13)

40

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

43 15. (a) On or before June 20, 1966, or in the case of persons  
44 commencing business or opening new places of business after such  
45 date, within three days after such commencement or opening, every  
46 person required to collect any tax imposed by this act and every  
47 person purchasing tangible personal property or **digital property** a  
48 specified digital product for resale shall file with the director a

1 certificate of registration in a form prescribed by the director. In  
2 the case of a person commencing business or opening a new place  
3 of business on or after the first day of the third month following the  
4 enactment of P.L.1993, c.274 (C.40:52-1.3 et al.), the certificate  
5 shall be filed at least 15 business days before the commencement or  
6 opening. The director shall within five days after such registration  
7 issue, without charge, to each registrant a certificate of authority  
8 empowering the registrant to collect the tax and a duplicate thereof  
9 for each additional place of business of such registrant. Each  
10 certificate or duplicate shall state the place of business to which it is  
11 applicable. Such certificate of authority shall be prominently  
12 displayed in the place of business of the registrant. A registrant  
13 who has no regular place of doing business shall attach such  
14 certificate to his cart, stand, truck or other merchandising device.  
15 Such certificates shall be nonassignable and nontransferable and  
16 shall be surrendered to the director immediately upon the  
17 registrant's ceasing to do business at the place named.

18 (b) Any person who is not otherwise required to collect any tax  
19 imposed by this act and who makes sales to persons within the State  
20 of tangible personal property, **[digital property]** specified digital  
21 products or services, the use of which is subject to tax under this  
22 act, may if he so elects file a certificate of registration with the  
23 director who may, in his discretion and subject to such conditions as  
24 he may impose, issue to him a certificate of authority to collect the  
25 compensating use tax imposed by this act.

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

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

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

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

40 (d) A certified service provider in model 1 shall be allowed a  
41 monetary allowance in accordance with the terms of the contract  
42 that the states participating in the Streamlined Sales and Use Tax  
43 Agreement sign with the provider. The director shall prescribe the  
44 allowance in accordance with the terms of the contract, which shall  
45 be funded entirely from money collected in model 1.

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

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

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

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

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

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

24 (f) A model 3 seller and all other sellers that are not under  
25 model 1 or model 2 shall be allowed a monetary allowance which  
26 the director shall prescribe in accordance with the terms arrived at  
27 by the member states of the Streamlined Sales and Use Tax  
28 Agreement. The member states initially anticipate that they will  
29 provide a monetary allowance to sellers under model 3 and to all  
30 other sellers that are not under models 1 or 2 will be based on the  
31 following: for a period not to exceed 24 months following a  
32 voluntary seller's registration through the Streamlined Sales and  
33 Use Tax Agreement's central registration process, a percentage of  
34 tax revenue generated for a member state by the voluntary seller for  
35 each member state for which the seller does not have a requirement  
36 to register to collect the tax.

37 (cf: P.L.2006, c.44, s.15)

38

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

41 17. (a) Every person required to collect or pay tax under this act  
42 shall on or before August 28, 1966, and on or before the twentieth  
43 day of each month thereafter, make and file a return for the  
44 preceding month with the director. The return of a seller of tangible  
45 personal property, **digital property** specified digital proucts or  
46 services shall show his receipts from sales and also the aggregate  
47 value of tangible personal property, **digital property** specified  
48 digital products and services sold by him, the use of which is

1 subject to tax under this act, and the amount of taxes required to be  
2 collected with respect to such sales and use. The return of a  
3 recipient of amusement charges shall show all such charges and the  
4 amount of tax thereon, and the return of a person required to collect  
5 tax on leases or rentals shall show all lease or rental payments  
6 received or charged and the amount of tax thereon. The return of a  
7 recipient of initiation fees, membership fees or dues for access to or  
8 use of the property or facilities of a health and fitness, athletic,  
9 sporting or shopping club or organization shall show all such  
10 charges and the amount of tax thereon. The return of the recipient  
11 of charges from parking, storing or garaging a motor vehicle shall  
12 show all such charges and the amount of tax thereon.

13 (b) The director may permit or require returns to be made  
14 covering other periods and upon such dates as he may specify. In  
15 addition, the director may require payments of tax liability at such  
16 intervals and based upon such classifications as he may designate.  
17 In prescribing such other periods to be covered by the return or  
18 intervals or classifications for payment of tax liability, the director  
19 may take into account the dollar volume of tax involved as well as  
20 the need for insuring the prompt and orderly collection of the taxes  
21 imposed.

22 (c) The form of returns shall be prescribed by the director and  
23 shall contain such information as he may deem necessary for the  
24 proper administration of this act. The director may require  
25 amended returns to be filed within 20 days after notice and to  
26 contain the information specified in the notice.

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

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

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

44 (2) Under terms of the "amnesty" granted pursuant to paragraph  
45 (1) of this subsection, a seller that registers shall not be assessed for  
46 uncollected or unpaid sales or use tax and shall not be assessed  
47 penalties or interest for sales made during the period the seller was  
48 not registered in this State, provided that the seller registers

1 pursuant to paragraph (1) of this subsection within twelve months  
2 of the effective date of this State's participation in the Streamlined  
3 Sales and Use Tax Agreement.

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

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

14 (5) The "amnesty" limitations on deficiency assessments,  
15 penalties and interest pursuant to paragraph (2) of this subsection  
16 shall be in full effect and the director shall not assess deficiencies  
17 for uncollected or unpaid sales or use tax and shall not assess  
18 penalties or interest for sales made during the period the seller was  
19 not registered in this State so long as the seller continues  
20 registration and continues collection and remittance of applicable  
21 sales or use taxes for a period of at least 36 months; provided  
22 however that the director may make such assessments by reason of  
23 the seller's fraud or intentional misrepresentation of a material fact.  
24 The statutes of limitations applicable to asserting tax liabilities,  
25 deficiencies, penalties and interest are tolled for this 36-month  
26 period.

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

31 (cf: P.L.2008, c.123, s.15)

32

33 15. Section 21 of P.L.1983, c.303 (C.52:27H-80) is amended to  
34 read as follows:

35 21. Receipts of retail sales, except retail sales of motor vehicles,  
36 of alcoholic beverages as defined in the "Alcoholic Beverage Tax  
37 Law," R.S.54:41-1 et seq., of cigarettes as defined in the "Cigarette  
38 Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.), of manufacturing  
39 machinery, equipment or apparatus, and of energy, made by a  
40 certified **[vendor]** seller from a place of business owned or leased  
41 and regularly operated by the **[vendor]** seller for the purpose of  
42 making retail sales, and located in a designated enterprise zone  
43 established pursuant to the "New Jersey Urban Enterprise Zones  
44 Act," P.L.1983, c.303 (C.52:27H-60 et al.), or a UEZ-impacted  
45 business district established pursuant to section 3 of P.L.2001,  
46 c.347 (C.52:27H-66.2), are exempt to the extent of 50% of the tax  
47 imposed under the "Sales and Use Tax Act," P.L.1966, c.30  
48 (C.54:32B-1 et seq.).

1 Any **[vendor]** seller, which is a qualified business having a place  
2 of business located in a designated enterprise zone or in a  
3 designated UEZ-impacted business district, may apply to the  
4 Director of the Division of Taxation in the Department of the  
5 Treasury for certification pursuant to this section. The director  
6 shall certify a **[vendor]** seller if **[he]** the director shall find that the  
7 **[vendor]** seller owns or leases and regularly operates a place of  
8 business located in the designated enterprise zone or in the  
9 designated UEZ-impacted business district for the purpose of  
10 making retail sales, that items are regularly exhibited and offered  
11 for retail sale at that location, and that the place of business is not  
12 utilized primarily for the purpose of catalogue or mail order sales.  
13 The certification under this section shall remain in effect during the  
14 time the business retains its status as a qualified business meeting  
15 the eligibility criteria of section 27 of P.L.1983, c.303 (C.52:27H-  
16 86). However, the director may at any time revoke a certification  
17 granted pursuant to this section if **[he]** the director shall determine  
18 that the **[vendor]** seller no longer complies with the provisions of  
19 this section.

20 Notwithstanding the provisions of this act to the contrary, except  
21 as may otherwise be provided by section 7 of P.L.1983, c.303  
22 (C.52:27H-66), the authority may, in its discretion, determine  
23 **[whether or not]** if the provisions of this section shall apply to any  
24 enterprise zone designated after the effective date of P.L.1985,  
25 c.142 (C.52:27H-66 et al.); provided, however, that the authority  
26 may make such a determination only where the authority finds that  
27 the award of an exemption of 50 percent of the tax imposed under  
28 the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.)  
29 will not have any adverse economic impact upon any other urban  
30 enterprise zone.

31 Notwithstanding any other provisions of law to the contrary,  
32 except as provided in subsection b. of section 6 of P.L.1996, c.124  
33 (C.13:1E-116.6), after first depositing 10 percent of the gross  
34 amount of all revenues received from the taxation of retail sales  
35 made by certified **[vendors]** sellers from business locations in  
36 designated enterprise zones to which this exemption shall apply into  
37 the account created in the name of the authority in the enterprise  
38 zone assistance fund pursuant to section 29 of P.L.1983, c.303  
39 (C.52:27H-88), the remaining 90 percent shall be deposited  
40 immediately upon collection by the Department of the Treasury, as  
41 follows:

42 a. In the first five-year period during which the State shall have  
43 collected reduced rate revenues within an enterprise zone, all such  
44 revenues shall be deposited in the enterprise zone assistance fund  
45 created pursuant to section 29 of P.L.1983, c.303 (C.52:27H-88);

46 b. In the second five-year period during which the State shall  
47 have collected reduced rate revenues within an enterprise zone, 66

1 2/3% of all those revenues shall be deposited in the enterprise zone  
2 assistance fund, and 33 1/3% shall be deposited in the General  
3 Fund;

4 c. In the third five-year period during which the State shall  
5 have collected reduced rate revenues within an enterprise zone, 33  
6 1/3% of all those revenues shall be deposited in the enterprise zone  
7 assistance fund, and 66 2/3% shall be deposited in the General  
8 Fund;

9 d. In the final five-year period during which the State shall  
10 have collected reduced rate revenues within an enterprise zone, but  
11 not to exceed the life of the enterprise zone, all those revenues shall  
12 be deposited in the General Fund.

13 Commencing on the effective date of P.L.1993, c.144, all  
14 revenues in any enterprise zone to which the provisions of this  
15 section have been extended prior to the enactment of P.L.1993,  
16 c.144 shall be deposited into the enterprise zone assistance fund  
17 until there shall have been deposited all revenues into that fund for  
18 a total of five full years, as set forth in subsection a. of this section.  
19 The State Treasurer then shall proceed to deposit funds into the  
20 enterprise zone assistance fund according to the schedule set forth  
21 in subsections b. through d. of this section, beginning at the point  
22 where the enterprise zone was located on that schedule on the  
23 effective date of P.L.1993, c.144. No enterprise zone shall receive  
24 the deposit benefit granted by any one subsection of this section for  
25 more than five cumulative years.

26 The revenues required to be deposited in the enterprise zone  
27 assistance fund under this section shall be used for the purposes of  
28 that fund and for the uses prescribed in section 29 of P.L.1983,  
29 c.303 (C.52:27H-88), subject to annual appropriations being made  
30 for those purposes and uses.

31 (cf: P.L.2001, c.347, s.9)

32

33 16. This act shall take effect immediately; provided however,  
34 that sections 1 through 15 shall remain inoperative until the first  
35 day of the first month next following the date of enactment.

36

37

38

#### STATEMENT

39

40 This bill revises the sales and use tax on digital property,  
41 provides certain relief from liability due to tax rate changes, and  
42 makes various other technical changes and clarifications to the tax  
43 to maintain compliance with the Streamlined Sales and Use Tax  
44 Agreement (SSUTA).

45 For purposes of compliance, the bill removes the current  
46 definition of, and eliminates references to, "digital property" under  
47 the sales and use tax and replaces it with "specified digital  
48 product," the defined term for electronically transferred digital



1 products under the SSUTA. This change technically modifies but  
2 does not substantively affect the taxability of digitally downloaded  
3 music, movies, books, and certain other goods currently subject to  
4 the sales and use tax.

5 “Digital property” is electronically delivered music, ringtones,  
6 movies, books, audio and video works and products where the  
7 customer is granted a right or license to use, retain, or make a copy  
8 of such item, and has been subject to the sales and use tax since  
9 2006. The tax on digital property is separate yet related to the  
10 existing tax on tangible personal property and services, and allows  
11 certain electronically delivered digital property, and any services to  
12 that property, to be treated, for tax purposes, in a similar form and  
13 manner as their tangible counterparts.

14 At the time the tax was imposed, New Jersey was one of a  
15 handful of states that subjected certain digital downloads to  
16 taxation. Since then, a number of other states have expanded the  
17 base of their sales and use tax to impose tax on digital products.  
18 The governing board of the SSUTA has responded to this change  
19 and attempted to maintain uniformity among member states by  
20 incorporating a standard, uniform definition of digital products into  
21 the agreement. Compliance now requires member states that elect  
22 to impose tax on digital goods to adopt the agreement’s definition  
23 of “specified digital product” and to adhere to certain other  
24 conditions related to specified digital products under the SSUTA.

25 This bill adopts the standard, uniform definition in place of  
26 “digital property” and conforms to various other conditions of the  
27 agreement to allow the State to continue to tax digital products in  
28 compliance with the SSUTA. Under the bill, a “specified digital  
29 product” is an electronically transferred digital audio-visual work,  
30 digital audio work, or digital book, where (1) a “digital audio-video  
31 work” is a series of related images which, when shown in  
32 succession, impart an impression of motion, together with  
33 accompanying sounds, if any; (2) a “digital audio work” is a work  
34 that results from the fixation of a series of musical, spoken, or other  
35 sounds, including a ringtone; and (3) a “digital book” is a work that  
36 is generally recognized in the ordinary and usual sense as a book.

37 The definition of “specified digital product” is, in general,  
38 broader and lacks the same clarity and specificity that characterized  
39 “digital property.” To conform the State’s current tax treatment of  
40 digital goods within the parameters of the defined term under the  
41 agreement, the bill make certain other ancillary changes in addition  
42 to the adoption of the new SSUTA definition. Specifically, the bill:  
43 (1) revises the definition of “retail sale” to reiterate that sales of  
44 specified digital products are only taxable to end users (sales for  
45 resale are excluded from tax); (2) specifies that a digital code which  
46 provides a purchaser the right to obtain the product will be treated  
47 as a specified digital product for purposes of taxation; (3) stipulates  
48 that specified digital products are subject to tax regardless of

1 whether the sale of the product is for permanent or less than  
2 permanent use and regardless of whether continued payment for the  
3 product is required; and (4) carves out a specific statutory  
4 exemption for all video programming services, including video on  
5 demand television services, and broadcasting services to ensure  
6 sales of those services are not taxable as specified digital products.

7 The bill also provides a separate statutory exemption for  
8 specified digital products that are accessed but not delivered  
9 electronically to the consumer. Currently, New Jersey excludes  
10 from tax digital property that is streamed or uploaded, temporarily,  
11 to a consumer to access certain digital content. However,  
12 “specified digital products” includes electronically transferred  
13 digital audio-visual works, digital audio works, and digital books,  
14 where “transferred electronically” means obtained by the purchaser  
15 by means other than tangible storage media. Presumably,  
16 transferred electronically includes instances where specified digital  
17 products are streamed or uploaded, and the exemption, therefore,  
18 ensures that access alone is not used to determine the taxability of  
19 specified digital products.

20 For purposes of compliance, the bill incorporates SSUTA  
21 provisions that relieve certain sellers from liability due to changes  
22 in the sales and use tax rate. Under the bill, the Director of the  
23 Division of Taxation in the Department of Treasury may not hold a  
24 seller liable for failure to collect tax that may be due at a new tax  
25 rate, if the director provides less than 30 days between the date a  
26 change in rate is enacted and the date that change takes effect.

27 The relief from liability is, however, limited. The director is not  
28 required to provide relief in instances where the seller collected the  
29 tax at a rate other than the immediately preceding sales and use tax  
30 rate, and in instances where the seller’s failure to collect tax at the  
31 new tax rate extends more than 30 days after the date the new rate is  
32 enacted. Moreover, the director is not required to provide relief if a  
33 seller fraudulently failed to collect tax at the new tax rate, or if a  
34 seller solicits purchasers using the immediately preceding tax rate.

35 For purposes of compliance, the bill makes technical changes  
36 and clarifications to the tax by removing remaining references to  
37 the previously defined term “vendor,” and eliminating charges for  
38 installation as part of the enumerated charges included in the  
39 definition of “sales price.” “Vendor” had been New Jersey’s defined  
40 term for persons making taxable sales of goods or services at the  
41 time the tax was adopted in 1966 and until the State entered the  
42 SSUTA in 2005. As part of the statutory changes for compliance,  
43 New Jersey largely replaced “vendor” with the SSUTA approved  
44 term “seller.” This bill removes remaining statutory references to  
45 “vendor” not previously replaced or otherwise adopted after the  
46 defined term no longer applied.

47 The elimination of installation charges from the definition of  
48 “sales price” clarifies the imposition of tax on charges for

1 installation. Similar to the transition from “vendor” to “seller,” the  
2 State’s definition of “sales price” was substantively revised in 2005  
3 to comply with the SSUTA. In attempting to conform to the  
4 agreement and maintain the existing taxing scheme, the State  
5 adopted a definition of “sales price” that included installation  
6 charges; charges for installing tangible personal property had been  
7 subject to the sales and use tax and the inclusion of charges for  
8 installation in the definition of “sales price” was intended to ensure  
9 those charges remained taxable after entering the agreement.

10 However, the inclusion of installation charges in the definition  
11 of “sales price” is unnecessary. The inclusion of installation  
12 charges in the definition of “sales price” is ancillary to what makes  
13 charges associated with the installation of a new car stereo or the  
14 installation of a prewritten computer software program on a laptop  
15 computer taxable. A separate statutory provision specifies that  
16 installation charges are an enumerated service subject to the sales  
17 and use tax, regardless of how “sales price” is defined. This bill  
18 removes the reference to installation charges from “sales price” so  
19 that charges for installation of tangible personal property and  
20 specified digital products remain subject to tax even if the purchase  
21 of the property or product is exempt from taxation.

22 The SSUTA is a multi-state sales and use tax compact that was  
23 developed over several years through the joint efforts of 42 states  
24 participating in the Streamlined Sales Tax Project. The underlying  
25 purpose of the SSUTA is to simplify and modernize the  
26 administration of the sales and use tax laws, rules, and regulations  
27 of member states, and to facilitate multi-state tax administration and  
28 compliance.

29 Since entering the agreement in 2005, New Jersey has taken a  
30 series of steps to conform the State’s sales and use tax to, and  
31 remain in compliance with, the SSUTA. The State has previously  
32 revised the tax to conform to SSUTA provisions concerning  
33 uniform tax base definitions, rate simplification, sourcing rules,  
34 exemption administration, and administrative procedures. This bill  
35 represents the fifth time the State has amended the sales and use tax  
36 to comply with the SSUTA.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 3058

# STATE OF NEW JERSEY

DATED: FEBRUARY 3, 2011

The Assembly Appropriations Committee reports favorably on Assembly Bill No. 3058.

This bill revises the sales and use tax on digital property, provides seller relief from liability due to certain tax rate changes, and makes various other technical changes and clarifications to the tax to maintain compliance with the Streamlined Sales and Use Tax Agreement (SSUTA).

*Digital Property.* For purposes of compliance, the bill revises the sales and use tax on digital property by replacing the current definition of “digital property” with the SSUTA’s defined term “specified digital product,” and making certain other ancillary changes related to the taxation of digital goods. These changes technically modify, but do not substantively affect, the tax treatment of digitally downloaded music, movies, books, and other similar digital goods currently subject to taxation.

Under current law, “digital property” is electronically delivered music, ringtones, movies, books, audio and video works and similar products from which the customer is granted a right or license to use, retain, or make a copy of such item, and has been subject to the sales and use tax since 2006. The tax imposed on digital property is separate but related to the tax on tangible personal property and services, and allows electronically delivered digital property, and certain services to that property, to be treated, for tax purposes, in a similar form and manner as its tangible counterparts.

When the tax was first imposed, New Jersey was one of a handful of states that subjected certain digital goods to taxation. Since then, a number of states have expanded the base of their sales and use tax to include digital downloads. The governing board of the SSUTA has responded to the change and attempted to maintain uniformity by incorporating a standard, uniform definition of digital products into the agreement. Compliance now requires member states that tax digital downloads to adopt “specified digital product” and to impose tax on digital products in compliance with certain other terms and conditions of the agreement.

This bill adopts that standard, uniform definition to maintain compliance. Under the bill, a “specified digital product” is an electronically transferred digital audio-visual work, digital audio work,

or digital book, where (1) a “digital audio-video work” is a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any; (2) a “digital audio work” is a work that results from the fixation of a series of musical, spoken, or other sounds, including a ringtone; and (3) a “digital book” is a work that is generally recognized in the ordinary and usual sense as a book.

This definition is, however, broader and lacks the same clarity and specificity that characterized “digital property.” To maintain the State’s current tax treatment of digital property within the parameters of the agreement, the bill makes certain other ancillary changes. Specifically, the bill: (1) revises the definition of “retail sale” to clarify that sales of specified digital products are only taxable to end users; (2) specifies that a digital code which provides a purchaser the right to obtain the product is treated as a specified digital product for tax purposes; (3) stipulates that specified digital products are subject to tax regardless of whether the sale of the product is for permanent or less than permanent use and regardless of whether continued payment is required; (4) provides an exemption for video programming services and for broadcasting services; and (5) provides an exemption for specified digital products that are accessed but not delivered electronically.

*Seller Relief from Liability.* For purposes of compliance, the bill provides seller relief from liability by incorporating SSUTA provisions that relieve sellers due to certain changes in the sales and use tax rate. The bill specifies that the Director of the Division of Taxation in the Department of Treasury may not hold a seller liable for failure to collect tax due at a new tax rate, if the director provides less than 30 days between the date a change in rate is enacted and the date that change takes effect.

The relief from liability is, however, limited. The bill specifies that the director is not required to provide relief in instances in which the seller collected the tax at a rate other than the immediately preceding tax rate, and in instances in which the seller’s failure to collect tax at the new rate extends more than 30 days after the date the new rate is enacted. Moreover, the director is not required to provide relief if a seller fraudulently failed to collect tax at the new rate or solicits purchasers using the immediately preceding tax rate.

*Technical Changes and Clarifications.* For purposes of compliance, the bill makes technical changes and clarifications by replacing references to the previously defined term “vendor” with the current SSUTA approved term “seller.” “Vendor” had been New Jersey’s defined sales and use tax term for persons making taxable sales of goods and services from the time the tax was implemented until the State entered the agreement. While conforming changes under P.L.2005, c.126 largely replaced “vendor” with “seller,” certain statutory provisions were not amended to reflect the change and

certain other provisions were modified to include “vendor” after the term no longer applied. This bill removes the remaining references not previously replaced or adopted after the enactment of P.L.2005, c.126.

For purposes of compliance, the bill makes technical changes and clarifications by redefining “sales price” to exclude installation charges. Under current law, “sales price” is the measure subject to tax and means the total consideration for which goods and services are sold, leased, or rented, without deduction for the seller’s cost of goods sold, the cost of materials used, charges for services necessary to complete the sale, delivery charges, and installation charges. Charges for installation are, in general, an enumerated service subject to tax, and the inclusion of installation charges in the definition of “sales price” was intended to ensure those services were taxed consistent with the existing taxing scheme when the State adopted “sales price” in accordance with the agreement.

However, when a particular good or service is statutorily exempt, the receipt from that sale is not taxable. If the receipt from the sale is not taxable, it may be determined that, by extension, the “sales price” paid by the purchaser for the particular good or service, without deduction for installation charges, is similarly not subject to tax. This determination would be counter to the current tax treatment of installation charges, and the bill’s modification to the definition of “sales price” clarifies charges for installation are separately treated and taxed.

The SSUTA is a multi-state tax agreement developed through the joint efforts of 42 states participating in the Streamlined Sales Tax Project. The underlying purpose of the SSUTA is to “simplify and modernize” the administration of the sales and use tax laws and regulations of member states, and to facilitate multi-state tax administration and compliance.

Since entering the agreement, New Jersey has taken various steps to conform to, and remain in compliance with, the SSUTA. The State has revised the sales and use tax to conform to SSUTA provisions concerning uniform tax base definitions, rate simplification, sourcing rules, exemption administration, and administrative procedures. The changes provided by this bill represent the fifth time the State has amended the tax to comply with the agreement.

As reported, this bill is identical to Senate Bill No. 2130, as also reported by the committee.

**FISCAL IMPACT:**

This bill is not certified as requiring a fiscal note.