

CHAPTER 126

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

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

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

C.54:32B-2 Definitions.

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

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

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

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

(d) "Receipt " means the amount of the sales price of any tangible personal property or service taxable under this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) "Use " means the exercise of any right or power over tangible personal property by the purchaser thereof and includes, but is not limited to, the receiving, storage or any keeping or retention for any length of time, withdrawal from storage, any distribution, any installation, any affixation to real or personal property, or any consumption of such property. Use also includes the exercise of any right or power over intrastate or interstate telecommunications and prepaid calling services. Use also includes the exercise of any right or power over utility service.

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

(1) The term "seller" includes:

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

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

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

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

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

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

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

(2) In addition, when in the opinion of the director it is necessary for the efficient administration of this act to treat any salesman, representative, peddler or canvasser as the agent of the seller, distributor, supervisor or employer under whom the agent operates or from whom the agent obtains tangible personal property sold by the agent or for whom the agent solicits business, the director may, in the director's discretion, treat such agent as the seller jointly responsible with the agent's principal, distributor, supervisor or employer for the collection and payment over of the tax.

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

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

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

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

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

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

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

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

(r) "Dramatic or musical arts admission charge " means any admission charge paid for

admission to a theater, opera house, concert hall or other hall or place of assembly for a live, dramatic, choreographic or musical performance.

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

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

(u) "Casual sale" means an isolated or occasional sale of an item of tangible personal property by a person who is not regularly engaged in the business of making retail sales of such property where the item was obtained by the person making the sale, through purchase or otherwise, for the person's own use.

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

(w) "Persons required to collect tax" or "persons required to collect any tax imposed by this act" includes: every seller of tangible personal property or services; every recipient of amusement charges; every operator of a hotel; and every seller of telecommunications. Said terms shall also include any officer or employee of a corporation or of a dissolved corporation who as such officer or employee is under a duty to act for such corporation in complying with any requirement of this act and any member of a partnership.

(x) "Customer" includes: every purchaser of tangible personal property or services; every patron paying or liable for the payment of any amusement charge; and every occupant of a room or rooms in a hotel.

(y) "Property and services the use of which is subject to tax" includes: (1) all property sold to a person within the State, whether or not the sale is made within the State, the use of which property is subject to tax under section 6 or will become subject to tax when such property is received by or comes into the possession or control of such person within the State; (2) all services rendered to a person within the State, whether or not such services are performed within the State, upon tangible personal property the use of which is subject to tax under section 6 or will become subject to tax when such property is distributed within the State or is received by or comes into possession or control of such person within the State; (3) intrastate or interstate telecommunications sourced to this State pursuant to section 29 of P.L.2005, c.126 (C.54:32B-3.4); (4) (Deleted by amendment, P.L.1995, c.184); (5) energy sold, exchanged or delivered in this State for use in this State; (6) utility service sold, exchanged or delivered in this State for use in this State; (7) direct mail processing services in connection with direct mail distributed in this State; and (8) (Deleted by amendment, P.L.2005, c.126).

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

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

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

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

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

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

(2) "Lease or rental" does include agreements covering motor vehicles and trailers where the

amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. s.7701(h)(1).

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

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

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

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

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

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

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

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

(6) purchases of telecommunications using a prepaid calling service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) Installation charges; and

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

(2) "Sales price" does not include:

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

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

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

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

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

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

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

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

(ss) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser in cases in which the cost of the items are not

billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

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

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

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

C.54:32B-3 Imposition of sales tax.

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

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this act.

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

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

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

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

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

(5) Direct-mail processing services, except for direct-mail processing services in connection with distribution of direct mail to out-of-State recipients.

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

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

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

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

(c) (1) Receipts from the sale of prepared food in or by restaurants, taverns, or other establishments in this State, or by caterers, including in the amount of such receipts any cover,

minimum, entertainment or other charge made to patrons or customers, except for meals especially prepared for and delivered to homebound elderly, age 60 or older, and to disabled persons, or meals prepared and served at a group-sitting at a location outside of the home to otherwise homebound elderly persons, age 60 or older, and otherwise homebound disabled persons, as all or part of any food service project funded in whole or in part by government or as part of a private, nonprofit food service project available to all such elderly or disabled persons residing within an area of service designated by the private nonprofit organization; and

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

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

(3) For the purposes of this subsection:

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

"Prepared food" means:

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

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

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

provided however, that "prepared food" does not include the following sold without eating utensils:

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

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

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

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

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

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

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

(2) The receipts from every sale, except for resale, of intrastate or interstate mobile telecommunications services billed by or for a customer's home service provider and provided

to a customer with a place of primary use in this State. The provisions and definitions of the federal "Mobile Telecommunications Sourcing Act," 4 U.S.C. ss. 116-126 (Pub.L. 106-252), are applicable herein.

(g) The receipts from every sale, except for resale, of prepaid calling service and the recharge of prepaid calling service.

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

C.54:32B-4 Tax bracket schedule, pay phone formula.

4. a. For the purpose of adding and collecting the tax imposed by this act, or an amount equal as nearly as possible or practicable to the average equivalent thereof, to be reimbursed to the seller by the purchaser, a seller shall use one of the two following options:

(1) a tax shall be calculated based on the following formula:

Amount of Sale	Amount of Tax
\$0.01 to \$0.10	No Tax
0.11 to 0.22	\$0.01
0.23 to 0.38	0.02
0.39 to 0.56	0.03
0.57 to 0.72	0.04
0.73 to 0.88	0.05
0.89 to \$1.10	0.06

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

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

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

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

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

C.54:32B-6 Imposition of compensating use tax.

6. Unless property or services have already been or will be subject to the sales tax under this act, there is hereby imposed on and there shall be paid by every person a use tax for the use within this State of 6%, except as otherwise exempted under this act, (A) of any tangible personal property purchased at retail, including energy, provided however, that electricity consumed by the generating facility that produced it shall not be subject to tax, (B) of any tangible personal property manufactured, processed or assembled by the user, if items of the same kind of tangible personal property are offered for sale by him in the regular course of business, or if items of the same kind of tangible personal property are not offered for sale by him in the regular course of business and are used as such or incorporated into a structure, building or real property, (C) of any tangible personal property, however acquired, where not acquired for purposes of resale, upon which any taxable services described in paragraphs (1) and (2) of subsection (b) of section 3 of P.L.1966, c.30 (C.54:32B-3) have been performed, (D) of interstate or intrastate telecommunications and mobile telecommunications described in subsection (f) of section 3 of P.L.1966, c.30, (E) (Deleted by amendment, P.L.1995, c.184), (F) of utility service provided to persons in this State for use in this State, provided however, that utility service used by the facility that provides the service shall not be subject to tax, (G) of direct-mail processing services described in paragraph (5) of subsection (b) of section 3 of P.L.1966, c.30 (C.54:32B-3) and (H) of prepaid calling service and the recharge of prepaid calling service. For purposes of clause (A) of this section, the tax shall be at the applicable rate,

as set forth hereinabove, of the consideration given or contracted to be given for such property or for the use of such property, but excluding any credit for property of the same kind accepted in part payment and intended for resale, plus the cost of transportation, except where such cost is separately stated in the written contract, if any, and on the bill rendered to the purchaser, provided however, that there shall be no exclusion for the cost of the utility service. For the purposes of clause (B) of this section, the tax shall be at the applicable rate, as set forth hereinabove, of the price at which items of the same kind of tangible personal property are offered for sale by the user, or if items of the same kind of tangible personal property are not offered for sale by the user in the regular course of business and are used as such or incorporated into a structure, building or real property the tax shall be at the applicable rate, as set forth hereinabove, of the consideration given or contracted to be given for the tangible personal property manufactured, processed or assembled by the user into the tangible personal property the use of which is subject to use tax pursuant to this section, and the mere storage, keeping, retention or withdrawal from storage of tangible personal property by the person who manufactured, processed or assembled such property shall not be deemed a taxable use by him. For purposes of clause (C) of this section, the tax shall be at the applicable rate, as set forth hereinabove, of the consideration given or contracted to be given for the service, including the consideration for any tangible personal property transferred in conjunction with the performance of the service, plus the cost of transportation, except where such cost is separately stated in the written contract, if any, and on the bill rendered to the purchaser. For the purposes of clause (D) of this section, the tax shall be at the applicable rate on the charge made by the telecommunications service provider. For purposes of clause (F) of this section, the tax shall be at the applicable rate on the charge made by the utility service provider. For purposes of clause (G) of this section, the tax shall be at the applicable rate on that proportion of the amount of all processing costs charged by a direct-mail processing service provider that is attributable to the service distributed in this State. For the purposes of clause (H) of this section, the tax shall be at the applicable rate on the consideration given or contracted to be given for the prepaid calling service or the recharge of the prepaid calling service.

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

C.54:32B-7 Special rules for computing price and consideration.

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

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

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

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

(c) Leased tangible personal property which has been purchased outside this State for lease outside of this State and subsequently becomes subject to the compensating use tax imposed under this act shall be taxed on the basis of the purchase price of such property, provided however, that the compensating use tax on such property brought into and used within this State may be based on the total of the lease payments attributable to the lease of that property

attributable to the period of the lease remaining after first use in this State.

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

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

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

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

C.54:32B-7.1 Sales tax imposed on sale of certain race horses; refunds, certain.

1. a. The sale of a race horse through a claiming race within the State shall be subject to the sales tax imposed by section 3 of P.L.1966, c.30 (C.54:32B-3) on the sales price.

b. Notwithstanding the provisions of subsection a. of this section, the purchaser of the horse in the second or a subsequent sale through a claiming race of that horse within the State during a single calendar year shall be allowed a refund on that portion of the tax paid by the purchaser on the amount of the total sales price that does not exceed the highest of any prior sales price paid for the same horse within the State during that calendar year. Such claim for refund may be made by the purchaser by filing a claim, within four years of the date of purchase, with the New Jersey Division of Taxation for a refund of that part of the sales tax paid. If no previous purchases have been made within the calendar year, no such refund shall be allowed.

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

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

C.54:32B-8.1 Exemption for certain medical supplies, equipment; definitions.

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

- (1) drugs sold pursuant to a doctor's prescription;
- (2) over-the-counter drugs;
- (3) diabetic supplies;
- (4) prosthetic devices;
- (5) tampons or like products;
- (6) medical oxygen;
- (7) human blood and its derivatives;
- (8) durable medical equipment for home use;
- (9) mobility enhancing equipment; and
- (10) repair and replacement parts for any of the foregoing exempt devices and equipment.

b. As used in this section:

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

(1) recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them; or

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

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

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

(1) a "Drug Facts" panel or

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

"Grooming and hygiene product" is soap or cleaning solution, shampoo, toothpaste, mouthwash, anti-perspirant, or sun tan lotion or screen, regardless of whether the item meets the definition of "over-the-counter drug."

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

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

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

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

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

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

(1) can withstand repeated use;

(2) is primarily and customarily used to serve a medical purpose;

3. is generally not useful to a person in the absence of illness or injury; and

4. is not worn in or on the body.

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

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

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

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

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

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

C.54:32B-8.2 Food items, certain, exemption from tax; definitions.

14. a. Receipts from the following are exempt from the tax imposed under the "Sales and Use Tax Act:" sales of food and food ingredients and dietary supplements, sold for human consumption off the premises where sold but not including (1) candy, and (2) soft drinks, all of which shall be subject to the retail sales and compensating use taxes, whether or not the item is sold in liquid form.

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

c. As used in this section:

"Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" does not include any preparation containing flour or requiring refrigeration;

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

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

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

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

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

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

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

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

C.54:32B-8.4 Clothing, footwear, exemption from tax; definitions.

16. a. Receipts from sales of articles of clothing and footwear for human use are exempt from the tax imposed under the "Sales and Use Tax Act." This exemption does not apply to clothing accessories or equipment, sport or recreational equipment, or protective equipment.

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

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

d. As used in this section:

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

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

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

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

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

C.54:32B-8.6 Casual sales, exemption from tax.

18. Receipts from casual sales except as to sales of motor vehicles, whether for use on the highways or otherwise, except as to sales of boats or vessels registered or subject to registration

under the "New Jersey Boat Act of 1962," P.L.1962, c.73 (C.12:7-34.36 et seq.), and all amendments and supplements thereto, are exempt from the tax imposed under the "Sales and Use Tax Act." A manufactured home, as defined in subsection d. of section 3 of P.L.1983, c.400 (C.54:4-1.4) shall not be deemed a motor vehicle for the purposes of this section.

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

C.54:32B-8.21 School textbooks, exemption from tax.

33. Receipts from sales of school textbooks for use by students in a school, college, university or other educational institution, approved as such by the Department of Education or by the New Jersey Commission on Higher Education, when the educational institution, upon forms and pursuant to regulations prescribed by the director, has declared the books are required for school purposes and the purchaser has supplied the seller with the form at the time of the sale are exempt from the tax imposed under the Sales and Use Tax Act.

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

C.54:32B-8.36 Recycling, treatment, conveyance equipment, exemption from tax.

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

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

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

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

C.54:32B-8.39 Certain direct mail receipts, exemption from tax.

1. Receipts from sales of direct mail for distribution to out-of-State recipients and receipts from sales of direct-mail processing services in connection with distribution of direct mail to out-of-State recipients are exempt from the tax imposed under the "Sales and Use Tax Act." The exemption provided by this section shall apply to receipts from charges for the printing or production of direct mail whether prepared in, or shipped into New Jersey after preparation and stored for subsequent shipment to out-of-State customers. The direct-mail processing services exemption provided by this section shall apply to receipts from charges for all direct mail

processing services for distribution to out-of-State recipients, including but not limited to the following: preparing and maintaining mailing lists, addressing, separating, folding, inserting, sorting and packaging direct mail materials and transporting to the point of shipment by the mail service or other carrier.

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

C.54:32B-8.45 One-half sales tax rate, counties, certain.

1. a. Receipts of retail sales, except retail sales of motor vehicles, of alcoholic beverages, and cigarettes as defined in the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.), made by a seller from a place of business regularly operated by the seller for the purpose of making retail sales at which items are regularly exhibited and offered for retail sale and which is not utilized primarily for the purpose of catalogue or mail order sales, in which county is situated an entrance to an interstate bridge or tunnel connecting New Jersey with a state that does not impose a retail sales and use tax or imposes a retail sales and use tax at a rate at least five percentage points lower than the rate in this State, are exempt to the extent of 50% of the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

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

C.54:32B-8.56 Certain prewritten software, exemption from tax; definitions.

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

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

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

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

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

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

"Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or pre-written portions thereof shall not cause the combination to be other than prewritten computer software. "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser. If a person modifies or enhances computer software of which that person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. Prewritten software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, shall remain pre-written software; provided, however, that if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute pre-written computer software. "Prewritten computer software" shall not include software delivered electronically.

C.54:32B-8.57 Sale-leaseback transaction, exemption from tax.

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

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

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

C.54:32B-9 Exempt organizations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C.54:32B-10 Sale of motor vehicle, aircraft, boat, vessel, exemption from tax.

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

(1) is a nonresident of this State,

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

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

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

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

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

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

C.54:32B-11 Certain uses of property exempt from tax.

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

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

(2) In respect to the use of property purchased by the user while a nonresident of this State, except in the case of tangible personal property which the user, in the performance of a contract, incorporates into real property located in the State. A person while engaged in any manner in carrying on in this State any employment, trade, business or profession, not entirely in interstate or foreign commerce, shall not be deemed a nonresident with respect to the use in this State of property in such employment, trade, business or profession.

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

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

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

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

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

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

C.54:32B-12 Collection of tax from customer.

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

(b) For the purpose of the proper administration of this act and to prevent evasion of the tax hereby imposed, and subject to the rules regarding the administration of exemptions authorized by the Streamlined Sales and Use Tax Agreement, it shall be presumed that all receipts for

property or services of any type mentioned in subsections (a), (b) and (c) of section 3, all rents for occupancy of the type mentioned in subsection (d) of said section, and all amusement charges of any type mentioned in subsection (e) of said section, are subject to tax until the contrary is established, and the burden of proving that any such receipt, amusement charge or rent is not taxable hereunder shall be upon the person required to collect tax or the customer. Unless a seller shall have taken from the purchaser a certificate, signed by the purchaser if in paper form and bearing the purchaser's name and address and the number of the purchaser's registration certificate, to the effect that the property or service was purchased for resale or the purchaser prior to taking delivery, furnishes to the seller any affidavit, statement or additional evidence, documentary or otherwise, which the director may require demonstrating that the purchaser is an exempt organization described in section 9(b)(1), the sale shall be deemed a taxable retail sale. Provided however, the director may, in the director's discretion, authorize a purchaser, who acquires tangible personal property or services under circumstances which make it impossible at the time of acquisition to determine the manner in which the tangible personal property or services will be used, to pay the tax directly to the director and waive the collection of the tax by the seller or provide for direct pay authority under rules adopted under the Streamlined Sales and Use Tax Agreement. Provided further, the director shall authorize any eligible person, as defined in section 34 of P.L.1997, c.162 (C.54:32B-14.1), who purchases natural gas from a non-utility on and after January 1, 1998 through December 31, 2002, to pay the tax on the commodity directly to the director and waive the collection of the tax by the seller. No such authority shall be granted or exercised except upon application to the director, and the issuance by the director of a direct payment permit. If a direct payment permit is granted, its use shall be subject to conditions specified by the director, and the payment of tax on all acquisitions pursuant to the permit shall be made directly to the director by the permit holder.

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

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

C.54:32B-14 Liability for tax.

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

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

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

(d) No person required to collect any tax imposed by this act shall advertise or hold out to any person or to the public in general, in any manner, directly or indirectly, that the tax is not considered as an element in the price, amusement charge or rent payable by the customer, or

except as provided by subsection (f) of this section that the person required to collect the tax will pay the tax, that the tax will not be separately charged and stated to the customer or that the tax will be refunded to the customer. Upon written application duly made and proof duly presented to the satisfaction of the director showing that in the particular business of the person required to collect the tax it would be impractical for the seller to separately charge the tax to the customer, the director may waive the application of the requirement herein as to such seller.

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

(f) A vendor other than a vendor subject to subsection (e) of this section making retail sales of tangible personal property or sales of services may advertise that the vendor will pay the tax for the customer subject to the conditions of this subsection.

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

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

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

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

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

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

C.54:32B-14.1 Tax treatment of certain purchases of natural gas, "eligible person" defined.

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

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

c. For purchases of natural gas from a non-utility on and after January 1, 1998 through December 31, 2002, an eligible person shall issue a direct payment certificate to the non-utility and shall pay any sales or use tax due pursuant to the method prescribed by this section. Unless specifically exempt from the tax imposed under the Sales and Use Tax Act pursuant to

subsection b. of section 26 of P.L.1997, c.162 (C.54:32B-8.46), utility service is subject to the tax imposed pursuant to section 3 of P.L.1966, c.30 (C.54:32B-3).

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

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

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

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

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

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

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

C.54:32B-15 Certificate of registration; streamlined methods.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C.54:32B-17 Returns; streamlined systems; amnesty.

17. (a) Every person required to collect or pay tax under this act shall on or before August 28, 1966, and on or before the twentieth day of each month thereafter, make and file a return for the preceding month with the director. The return of a seller of tangible personal property or services shall show his receipts from sales and also the aggregate value of tangible personal property and services sold by him, the use of which is subject to tax under this act, and the amount of taxes required to be collected with respect to such sales and use. The return of a recipient of amusement charges shall show all such charges and the amount of tax thereon, and the return of a person required to collect tax on leases or rentals shall show all lease or rental payments received or charged and the amount of tax thereon.

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

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

in the notice.

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

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

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

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

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

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

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

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

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

C.54:32B-18 Payment of tax.

18. Every person required to file a return under this act shall, at the time of filing such return, pay to the director the taxes imposed by this act as well as all other moneys collected by such person acting or purporting to act under the provisions of this act. All the taxes for the period for which a return is required to be filed or for such lesser interval as shall have been designated by the director, shall be due and payable to the director on the date limited for the filing of the return for such period, or on the date limited for such lesser interval as the director has designated, without regard to whether a return is filed or whether the return which is filed correctly shows the amount of receipts, amusement charges or rents or the value of property or services sold or purchased or the taxes due thereon. Where the director, in the director's discretion, deems it necessary to protect the revenues to be obtained under this act, the director may require any person required to collect the tax imposed by this act to file a bond with the director, issued by a surety company authorized to transact business in this State and approved

by the Commissioner of Banking and Insurance of this State as to solvency and responsibility, in such amount as the director may fix, to secure the payment of any tax or penalties or interest due or which may become due from such person under this act. In the event that the director determines that a seller is to file such bond, the director shall give notice to the seller to that effect, specifying the amount of the bond required. Such person shall file such bond within 5 days after the giving of such notice unless within such 5 days that person shall request in writing a hearing before the director at which the necessity, propriety and amount of the bond shall be determined by the director. Such determination shall be final and shall be complied with within 15 days after the giving of notice thereof. In lieu of such bond, securities approved by the director or cash in such amount as the director may prescribe, may be deposited, which shall be kept in the custody of the director who may at any time without notice to the depositor apply them to any tax or interest or penalties due, and for that purpose the securities may be sold by the director at public or private sale without notice to the depositor thereof.

C.54:32B-3.1 Sourcing of retail sale of product; definitions.

26. a. The retail sale, excluding lease or rental, of a product shall be sourced as follows:

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

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

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

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

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

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

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

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

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

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

follows:

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

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

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

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

e. For the purposes of this section,

"Transportation equipment" means:

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

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

A. Registered through the International Registration Plan; and

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

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

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

"Receive" and "receipt" mean:

(1) Taking possession of tangible personal property,

(2) Making first use of services, or

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

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

C.54:32B-3.2 Multiple points of use exemption form, circumstances when applicable.

27. a. Notwithstanding the general sourcing provisions of section 26 of P.L.2005, c.126 (C.54:32B-3.1), a business purchaser that is not a holder of a direct pay permit that knows at the time of its purchase of a digital good, computer software delivered electronically, or a service that the digital good, computer software delivered electronically, or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with its purchase a multiple points of use exemption form ("MPU exemption form") disclosing this fact.

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

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

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

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

C.54:32B-3.3 Direct mail form, information to seller.

28. a. Notwithstanding the general sourcing provisions of section 26 of P.L.2005, c.126 (C.54:32B-3.1), a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a direct mail form or information to show the jurisdictions to which the direct mail is delivered to recipients.

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

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

b. If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information, as required by subsection a. of this section, the seller shall collect the tax according to paragraph (5) of subsection a. of section 26 of P.L.2005, c.126 (C.54:32B-3.1). Nothing in this subsection shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

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

C.54:32B-3.4 Sourcing of certain telecommunication services; definitions.

29. a. Notwithstanding the general sourcing provisions of section 26 of P.L.2005, c.126 (C.54:32B-3.1), except for the telecommunication services enumerated in subsection c. of this section, the sale of telecommunication service sold on a call-by-call basis shall be sourced to:

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

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

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

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

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

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

(a) the seller's telecommunications system; or

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

(3) A sale of prepaid calling service shall be sourced in accordance with the general sourcing provisions of section 26 of P.L.2005, c.126 (C.54:32B-3.1); provided however, that in the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the rule provided in paragraph (5) of subsection (a) of that section shall include as an option the location associated with the mobile telephone number.

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

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

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

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

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

d. For the purposes of this section:

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

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

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

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

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

"End user" means the person who utilizes the telecommunication service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity;

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

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

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

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

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

"Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected,

and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels; and

"Service address" means

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

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

(3) If the locations in paragraphs (1) and (2) of this definition are not known, "service address" means the location of the customer's place of primary use.

C.54:32B-12.1 Deduction from taxable sales for bad debts.

30. a. A seller shall be allowed a deduction from taxable sales for bad debts.

b. The amount of the deduction from taxable sales allowed pursuant to subsection a. of this section shall not include interest.

c. For the purposes of this section, "bad debt" has the same meaning as that term is defined by 26 U.S.C. s.166 as the basis for calculating bad debt recovery; provided however, the amount calculated pursuant to 26 U.S.C. s.166 shall be adjusted to exclude: financing charges or interest; sales or use taxes charged on the purchase price; uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid; expenses incurred in attempting to collect any debt, and repossessed property.

d. The deduction from taxable sales allowed pursuant to subsection a. of this section shall be deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subsection, a claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

e. If the deduction from taxable sales allowed pursuant to subsection a. of this section is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected shall be paid and reported on the return filed for the period in which the collection is made.

f. If the amount of the deduction from taxable sales allowed pursuant to subsection a. of this section exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within four years from the due date of the return on which the bad debt could first be claimed.

g. If filing responsibilities have been assumed by a certified service provider, the certified services provider may claim, on behalf of the seller, any deduction from taxable sales allowed pursuant to subsection a. of this section. The certified service provider shall credit or refund the full amount of any bad debt allowance or refund received to the seller.

h. For the purposes of reporting a payment received on a bad debt for which the deduction from taxable sales allowed pursuant to subsection a. of this section was previously claimed, any payments made on a debt or account shall first be applied proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.

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

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

C.54:32B-24 General powers of the director.

24. General powers of the director. In addition to the powers granted to the director in this

act, the director is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this act and the purposes thereof;
2. To extend, for cause shown by general regulation or individual authorization, the time of filing any return for a period not exceeding three months on such terms and conditions as the director may require; and for cause shown, to remit penalties and interest as provided for in the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.;
3. To delegate the director's functions hereunder to any officer or employee of the director's division such of the director's powers as the director may deem necessary to carry out efficiently the provisions of this act, and the person or persons to whom such power has been delegated shall possess and may exercise all of the power and perform all of the duties herein conferred and imposed upon the director;
4. To prescribe methods for determining the amount of receipt, amusement charges, or rents and for determining which of them are taxable and which are nontaxable;
5. To require any person required to collect tax to keep detailed records of all receipts, amusement charges, or rents received, charged or accrued, including those claimed to be nontaxable, and also of the nature, type, value and amount of all purchases, sales, services rendered, admissions, occupancies, names and addresses of customers, and other facts relevant in determining the amount of tax due and to furnish such information upon request to the director;
6. To assess, determine, revise and readjust the taxes imposed by this act;
7. To publish and maintain, as the director deems necessary, lists of specific items of tangible personal property which are found to be foods and drugs exempt from tax under sections 13 and 14 of P.L.1980, c.105 (C.54:32B-8.1 and 54:32B-8.2);
8. To enter into agreements with other states and the District of Columbia, providing for the reciprocal enforcement of the sales and use tax laws imposed by the states entering into such an agreement. Such agreement may empower the duly authorized officer of any contracting state, which extends like authority to officers or employees of this State, to sue for the collection of that state's sales and use taxes in the courts of this State;
9. To require alcoholic beverage wholesalers to make report of sales to retailers, as wholesaler and retailer are defined pursuant to the "New Jersey Alcoholic Beverage Control Act," R.S.33:1-1 et seq., with such content, in such form and at such times as the director may prescribe. The information provided to the director under this paragraph shall identify retailers by their sales tax registration number issued pursuant to section 15 of P.L.1966, c.30 (C.54:32B-15) and shall be available for transmission to the director by electronic means, or computer tape or disc, as the director may require;
10. To give due regard to the provisions of the Streamlined Sales and Use Tax Agreement regarding rate changes.

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

C.54:32B-20 Refunds, credit.

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

(b) A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section 19 of P.L.1966, c.30 (C.54:32B-19) where the person has had a hearing or an opportunity for

a hearing as provided in said section or has failed to use the remedies therein provided unless the person otherwise meets the requirements of subsection b. of R.S.54:49-14. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the director made pursuant to section 19 of P.L.1966, c.30 (C.54:32B-19) unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper, pursuant to law, in which event refund or credit shall be made of the tax, interest or penalty found to have been overpaid.

(c) (1) A purchaser may seek a refund of over-collected sales or use tax from the seller. This refund procedure shall provide the first course of remedy available to a purchaser seeking such a refund. A cause of action seeking a return of over-collected sales or use taxes from the seller shall not accrue until the purchaser has provided written notice to a seller and the seller has had sixty days to respond. Such notice shall contain the information necessary to determine the validity of the request.

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

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

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

C.54:32B-28.1 Effective date of rate change; conformance with Streamlined Agreement.

33. On and after October 1, 2005:

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

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

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

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

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

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

C.54:32B-28.2 Application of definition of "lease or rental."

34. Notwithstanding the provisions of P.L.2005, c.126 to the contrary, the definition of "lease or rental" enacted by P.L.2005, c.126 shall be applied only prospectively from the date of enactment of P.L.2005, c.126 and shall have no retroactive impact on existing leases or rentals. The definition shall not have any impact on the treatment of sale-leaseback transactions entered into before the date of enactment of P.L.2005, c.126.

C.54:32B-54 "Streamlined Sales Tax Fund;" use, administration.

35. a. There is hereby created in the Department of Treasury a special account, to be known as the "Streamlined Sales Tax Fund." There shall be deposited into this account the sales and use tax revenue derived from amendments and supplements to P.L.1966, c.32 (C.54:32B-1 et seq.) by reason of the State's participation in the Streamlined Sales and Use Tax Agreement as authorized under section 5 of P.L.2001, c.431 (C.54:32B-48), and as enacted under the provisions of P.L.2005, c.126. The Director of the Division of Taxation, subject to review and approval by the Director of the Division of Budget and Accounting, shall certify to the Treasurer

the amount to be deposited into the "Streamlined Sales Tax Fund" by the last day of the month following the close of each sales tax reporting quarter. The director may use for this purpose an estimate of an amount equal to the anticipated membership dues and other costs of participation in the Streamlined Sales and Use Tax Agreement. Amounts in the account shall be annually appropriated for the payment of dues payable by this State to the governing board and for other costs of administration of the Streamlined Sales and Use Tax Agreement allocated and assessed to this State by the governing board in consequence of this State participating in the agreement.

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

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

C.54:32B-55 Quarterly reports of certain revenues under the Streamlined Agreement.

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

Repealer.

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

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

Approved July 2, 2005.