

CHAPTER 44

AN ACT concerning the sales and use tax, amending and supplementing P.L.1966, c.30, and amending P.L.1980, c.105, P.L.1993, c.373, P.L.2003, c.114, and P.L.2005, c.126.

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 digital 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 including prewritten computer software delivered electronically.

(h) "Use" means the exercise of any right or power over tangible personal property, digital property, services to property, or services 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. Use also includes the derivation of a direct or indirect benefit from a 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, digital property or services, the receipts from which are taxed by this act;

(B) A person maintaining a place of business in the State or having an agent 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, digital 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, digital 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, digital 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);

(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;

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

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

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

(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 a 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, tangible personal property or digital 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 or digital 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, digital property or services; every recipient of amusement charges; every operator of a hotel; every seller of telecommunications; every recipient of initiation fees, membership fees or dues for access to or use of the property or facilities of a health and fitness, athletic, sporting or shopping club or organization; and every recipient of charges for parking, storing or garaging a motor vehicle. 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, digital property or services; every patron paying or liable for the payment of any amusement charge; every occupant of a room or rooms in a hotel; every person paying charges in the nature of initiation fees, membership fees or dues for access to or use of the property or facilities of a health and fitness, athletic, sporting or shopping club or organization; and every purchaser of parking, storage or garaging a motor vehicle.

(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 or digital 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; (8) (Deleted by amendment, P.L.2005, c.126); and (9) services the benefit of which are received in this State.

(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 or digital 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 or digital 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;

(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 or digital 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.

(vv) "Digital property" means electronically delivered music, ringtones, movies, books, audio and video works and similar products, where the customer is granted a right or license to use, retain or make a copy of such item. Digital property does not include video programming services, including video on demand television services, and broadcasting services, including content to provide such services.

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

(xx) "Investigation and security services" means:

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

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

(3) armored car services; and

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

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

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 7% upon:

(a) The receipts from every retail sale of tangible personal property or digital 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 or digital property, performed for a person who directly or indirectly furnishes the tangible personal property or digital property, not purchased by him for resale, upon which such services are performed.

(2) Installing tangible personal property or digital property, or maintaining, servicing, repairing tangible personal property or digital 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 or digital 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, or pressing clothing, and 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, other than landscaping services and other than installing carpeting and other flooring.

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

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

(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.

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

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

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

(11) Investigation and security services.

(12) Information services.

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

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 or digital 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:

- (i) 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
 - (ii) "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.
- (h) Charges in the nature of initiation fees, membership fees or dues for access to or use of the property or facilities of a health and fitness, athletic, sporting or shopping club or organization in this State, except for membership in a club or organization whose members are predominantly age 18 or under.

(i) The receipts from parking, storing or garaging a motor vehicle, excluding charges for the following types of parking: residential parking; employee parking, when provided by an employer or at a facility owned or operated by the employer; municipal metered parking; and such receipts subject to tax pursuant to any other law or ordinance.

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 0.19	\$0.01
0.20 to 0.32	0.02
0.33 to 0.47	0.03
0.48 to 0.62	0.04
0.63 to 0.77	0.05
0.78 to 0.90	0.06
0.91 to \$1.10	0.07

and in addition to a tax of \$0.07 on each full dollar, a tax shall be collected on each part of a dollar in excess of a full dollar, in accordance with the 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 5 of P.L.1966, c.30 (C.54:32B-5) is amended to read as follows:

C.54:32B-5 Transitional provisions.

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

of days covered thereby.

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

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

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

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

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

periods to the total number of days covered thereby.

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

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

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

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

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

(3) Sales made on or after July 15, 2006 to contractors, subcontractors or repairmen of materials, supplies, or services for use in erecting structures for others, or building on, or otherwise improving, altering or repairing real property of others shall be subject to the taxes imposed by subsections (a) and (b) of section 3 and section 6 hereof at the rate of 7%; provided, however, that if such sales are made for use in performance of a contract which is either of a fixed price not subject to change or modification, or entered into pursuant to the obligation of a formal written bid which cannot be altered or withdrawn, and, in either case,

such contract was entered into or such bid was made on or after July 1, 1992, but prior to July 15, 2006, such sales shall be subject to tax at the rate of 6%, but the vendor shall charge and collect from the purchaser a tax on such sales at the rate of 7%.

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

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

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

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

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

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

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

5. 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 7%, except as otherwise exempted under this act, (A) of any tangible personal property or digital 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 or digital property manufactured, processed or assembled by the user, if items of the same kind of tangible personal property or digital 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 or digital 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), (H) of prepaid calling service and the recharge of prepaid calling service, (I) of any services subject to tax pursuant to subsection (11), (12) or (13) of subsection (b) of section 3 of P.L.1966, c.30 (C.54:32B-3), and (J) of access to or use of the property or facilities of a health and fitness, athletic, sporting or shopping club or organization in this State. 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 including delivery charges made by the seller, but excluding any credit for property of the same kind accepted in part payment and intended for resale. 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 or digital 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 or digital 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 or digital 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. For purposes of clause (I) of this section, the tax shall be at the applicable rate on the charge made by the service provider. For purposes of clause (J) of this section, the tax shall be at the applicable rate on the charges in the nature of initiation fees, membership fees or dues.

6. 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 and digital 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 or digital 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 or digital 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 or digital 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 or digital 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 or digital 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.

7. Section 17 of P.L.1980, c.105 (C.54:32B-8.5) is amended to read as follows:

C.54:32B-8.5 Newspapers, magazines, periodicals, certain, exemptions from tax.

17. a. Receipts from sales of:

- (1) newspapers,
- (2) magazines and periodicals sold by subscription, and
- (3) membership periodicals

are exempt from the tax imposed under the "Sales and Use Tax Act," whether or not accessed by electronic means.

b. For the purposes of this section, a "membership periodical" is any periodical distributed by a nonprofit organization to its members as a benefit of membership in the organization.

8. Section 23 of P.L.1980, c.105 (C.54:32B-8.11) is amended to read as follows:

C.54:32B-8.11 Transportation charges, exceptions.

23. Receipts from charges for the transportation of persons or property are exempt from the tax imposed under the "Sales and Use Tax Act," except for delivery charges; transportation services provided by a limousine operator; and the transportation of energy.

9. Section 27 of P.L.1980, c.105 (C.54:32B-8.15) is amended to read as follows:

C.54:32B-8.15 Exemption from taxation for certain wrapping supplies.

27. Sales or use of wrapping paper, wrapping twine, bags, cartons, tape, rope, labels, nonreturnable containers, reusable milk containers, and all other wrapping supplies when such use is incidental to the delivery of any tangible personal property and containers for use in a "farming enterprise" as defined pursuant to section 28 of P.L.1980, c.105 (C.54:32B-8.16) are exempt from the tax imposed under the Sales and Use Tax Act.

10. Section 31 of P.L.1980, c.105 (C.54:32B-8.19) is amended to read as follows:

C.54:32B-8.19 Property taxable under municipal ordinance.

31. Receipts from sales of tangible personal property and services taxable under any municipal ordinance which was adopted pursuant to P.L.1947, c.71 (C.40:48-8.15 et seq.) and was in effect on April 27, 1966 are exempt from the tax imposed under the Sales and Use Tax Act, subject to the following conditions:

a. To the extent that the tax that is or would be imposed under section 3 of P.L.1966, c.30 (C.54:32B-3) is greater than the tax imposed by such ordinance, such sales shall not be exempt under this section; and

b. Irrespective of the rate of tax imposed by such ordinance, such sales shall be exempt only to the extent that the rate of taxation imposed by the ordinance exceeds 6%, except that the combined rate of taxation imposed under the ordinance and under this section shall not exceed 13%.

11. 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, of digital products, 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".

12. Section 15 of P.L.2005, c.126 (C.54:32B-8.56) is amended to read as follows:

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

15. Receipts from sales of prewritten software delivered electronically and used directly and exclusively in the conduct of the purchaser's business, trade or occupation 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 prewritten 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 prewritten 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 prewritten computer software. "Prewritten computer software" shall not include software delivered electronically.

13. 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 or digital property by any shop or store operated by an organization described in subsection (b) of this section, unless the tangible personal property or digital 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.

14. 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, digital property or services under circumstances which make it impossible at the time of acquisition to determine the manner in which the tangible personal property, digital 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.

15. 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 or digital 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, digital 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.

16. 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, digital property or services shall show his receipts from sales and also the aggregate value of tangible personal property, digital 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 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.

17. Section 33 of P.L.2005, c.126 (C.54:32B-28.1) is amended to read as follows:

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

33. a. The effective date of any sales and use tax rate change shall be the first day of a calendar quarter and a sales and use tax rate change for services covering a period starting before and ending after that effective date shall first apply as follows: for a rate increase, the new rate shall apply to the first billing period starting on or after the effective date, and for a rate decrease, the new rate shall apply to bills rendered on or after the effective date;

b. The State shall make a reasonable effort to: provide sellers with as much advance notice as practicable of a rate change, limit the effective date of a rate change to the first day of a calendar quarter, and notify sellers of legislative changes in the tax base and amendments to sales and use tax rules and regulations; however, failure of a seller to receive notice or failure of the State to provide notice or limit the effective date of a rate change shall not relieve the seller of its obligation to collect sales or use taxes;

c. 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;

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

e. 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;

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

g. 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.

18. Section 1 of P.L.2003, c.114 (C.54:32D-1) is amended to read as follows:

C.54:32D-1 State hotel and motel occupancy fee.

1. a. In addition to any other tax, assessment or use fee authorized by law, there is imposed and shall be paid a hotel and motel occupancy fee of 7% for occupancies on and after August 1, 2003 but before July 1, 2004, and of 5% for occupancies on and after July 1, 2004, upon the rent for every occupancy of a room or rooms in a hotel subject to taxation pursuant to subsection (d) of section 3 of P.L. 1966, c.30 (C.54:32B-3), which every person required to collect tax shall collect from the customer when collecting the rent to which it applies; provided however, that on and after the tenth day following a certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection d. of section 2 of P.L.2003, c.114 (C.54:32D-2), no such fee shall be paid or collected; and provided further that:

(1) the combined rates of the fee imposed under this section, plus the tax imposed under the "Sales and Use Tax Act", P.L.1966, c.30 (C.54:32B-1 et seq.), plus any tax imposed under P.L.1947, c.71 (C.40:48-8.15 et seq.), shall not exceed a total rate of 14%, and to the extent that the total combined rate of taxation for the listed fees and taxes would exceed 14%, the fee imposed under this section shall be reduced so that the total combined rate equals 14%;

(2) the combined rates of the fee imposed under this section, plus the tax imposed under the "Sales and Use Tax Act", P.L.1966, c.30 (C.54:32B-1 et seq.), plus any tax and assessment imposed under section 4 of P.L.1992, c.165 (C.40:54D-4), shall not exceed a total rate of 14%, and to the extent that the total combined rate of taxation for the listed fees and taxes would exceed 14%, the fee imposed under this section shall be reduced so that the total combined rate equals 14%; and

(3) the fee imposed under this section shall be at the rate of 1% in a city in which the tax authorized under P.L.1981, c. 77 (C.40:48E-1 et seq.) is imposed.

b. The hotel and motel occupancy fee imposed by subsection a. of this section shall not be imposed on the rent for an occupancy if the purchaser, user or consumer is an entity exempt from the tax imposed on an occupancy under the "Sales and Use Tax Act" pursuant to subsection (a) of section 9 of P.L.1966, c.30 (C.54:32B-9).

c. Terms used in this section shall have the meaning given those terms pursuant to section 2 of P.L.1966, c.30 (C.54:32B-2).

C.54:32B-4.1 Rate of tax imposed from July 15, 2006 through September 30, 2006.

19. Notwithstanding the provisions of sections 3 and 6 of P.L.1966, c.30 (C.54:32B-3 and 54:32B-6) to the contrary, from July 15, 2006 through September 30, 2006 the rate of tax imposed pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) shall be 7%.

20. This act shall take effect immediately, provided however that sections 3, 4, 10 and 18 shall remain inoperative until July 15, 2006 and provided further that sections 1, 2, 5 through 9, and 11 through 16 shall remain inoperative until October 1, 2006.

Approved July 8, 2006.