

CHAPTER 105

AN ACT concerning the sales and use tax on certain membership fees and dues and certain parking services, amending P.L.1966, c.30.

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

1. 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: (1) membership in a club or organization whose members are predominantly age 18 or under; and (2) charges in the nature of 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 that is exempt from taxation pursuant to paragraph (1) of subsection (a) of section 9 of P.L.1966, c.30 (C.54:32B-9), or that is exempt from

taxation pursuant to paragraph (1) or (2) of subsection (b) of section 9 of P.L.1966, c.30 and that has complied with subsection (d) of section 9 of P.L.1966, c.30.

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

For the purposes of this subsection, “municipal parking, storing or garaging” means any motor vehicle parking, storing or garaging provided by a municipality or county, or a parking authority thereof.

2. This act shall take effect July 1, 2007.

Approved June 28, 2007.