

**CHAPTER 123**  
**(CORRECTED COPY)**

**AN ACT** revising the sales and use tax to conform with the Streamlined Sales and Use Tax Agreement, amending P.L.2005, c.126, P.L.1980, c.105, and P.L.1985, c.24, amending and supplementing P.L.1966, c.30, and repealing section 27 of P.L.2005, c.126 and section 1 of P.L.2006, c.41.

**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, (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, or (C) of telecommunications service to a telecommunications service provider for use as a component part of telecommunications service provided to an ultimate customer.

(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 a telecommunications service; 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, interstate, or international 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) mail processing services in connection with printed advertising material 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 in 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 service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.

"Telecommunications service" shall include such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added.

"Telecommunications service" shall not include:

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

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

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

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

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

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

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

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

(9) tangible personal property;

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

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

(12) internet access service;

(13) radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services

by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in section 47 U.S.C. s.522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in section 47 C.F.R. 20.3;

(14) ancillary services; or

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

For the purposes of this subsection:

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

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

“detailed telecommunications billing service” means an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement;

“directory assistance” means an ancillary service of providing telephone number information or address information or both;

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

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

(dd) (1) “Intrastate telecommunications” means a telecommunications service that originates in one United States state or a United States territory or possession or federal district, and terminates in the same United States state or United States territory or possession or federal district.

(2) “Interstate telecommunications” means a telecommunications service that originates in one United States state or a United States territory or possession or federal district, and terminates in a different United States state or United States territory or possession or federal district.

(3) “International telecommunications” means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. “United States” includes the District of Columbia or a United States territory or possession.

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

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

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

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

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

(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.

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

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

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

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

(D) One of the following criteria is met:

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

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

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

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

(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. The seller shall tax the percentage of the delivery charge allocated to the taxable property but is not required to tax the percentage allocated to the exempt property.

(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) Mail processing services for printed advertising material, except for mail processing services in connection with distribution of printed advertising material 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.

(14) Telephone answering services.

(15) Radio subscription 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, interstate, or international telecommunications services and ancillary services sourced to this State in accordance with section 29 of P.L.2005, c.126 (C.54:32B-3.4).

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

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

(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.

3. Section 29 of P.L.2005, c.126 (C.54:32B-3.4) is amended to read as follows:

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

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

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

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

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

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

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

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

(a) the seller's telecommunications system; or

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

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

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

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

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

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

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

(5) A sale of an ancillary service shall be sourced to the customer's place of primary use.

d. For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

"Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services, including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

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

"Service address" means

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

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

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

4. 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.

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

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 intrastate, interstate, or international telecommunications services 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 mail processing services described in paragraph (5) of subsection (b) of section 3 of P.L.1966, c.30 (C.54:32B-3), (H) (Deleted by amendment, P.L.2008, c.123), (I) of any services subject to tax pursuant to subsection (11), (12), (13), (14) or (15) 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, including delivery charges made by the seller. 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; provided however, that for prepaid calling services and prepaid wireless calling services the tax shall be at the applicable rate on the consideration given or contracted to be given for the prepaid calling service or prepaid wireless calling service or the recharge of the prepaid calling service or prepaid wireless calling service. 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 mail processing service provider that is attributable to the service distributed in this State. 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 13 of P.L.1980, c.105 (C.54:32B-8.1) is amended to read as follows:

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

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

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

b. As used in this section:

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

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

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

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

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

(1) a "Drug Facts" panel or

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

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

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

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

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

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

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

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

(1) can withstand repeated use;

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

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

(4) is not worn in or on the body.

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

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

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

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

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

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

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

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

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

c. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

d. As used in this section:

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

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

"Fur clothing" means clothing that is required to be labeled as a fur product under 15 U.S.C. s.69, and the value of the fur components in the product is more than three times the value of the next most valuable tangible component. For the purposes of this section, "fur" means any animal skin or part thereof with hair, fleece, or fur fibers attached thereto, either in its raw or processed state, but shall not include such skins that have been converted into leather or suede, or which in processing the hair, fleece, or fur fiber has been completely removed.

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

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

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

C.54:32B-8.14 Sales of tangible personal, digital property for use in R&D exempt, exceptions.

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

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

C.54:32B-8.39 Certain printed advertising material receipts, exemption from tax.

1. Receipts from sales of printed advertising material for distribution to out-of-State recipients and receipts from sales of processing services in connection with distribution of printed advertising material to out-of-State recipients are exempt from the tax imposed under the "Sales and Use Tax Act." The exemption provided by this section shall apply to receipts from charges for the printing or production of printed advertising material whether prepared in, or shipped into New Jersey after preparation and stored for subsequent shipment to out-of-State customers. The mail processing services exemption provided by this section shall apply to receipts from charges for all mail processing services for distribution to out-of-State recipients, including but not limited to the following: preparing and maintaining mailing lists, addressing, separating, folding, inserting, sorting and packaging printed advertising materials and transporting to the point of shipment by the mail service or other carrier.

11. 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 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 pre-written computer software.

12. 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), (c), and (f) of section 3, all rents for occupancy of the type mentioned in subsection (d) of said section, all amusement charges of any type mentioned in subsection (e) of said section, all charges in the nature of initiation fees, membership fees or dues mentioned in subsection (h) of said section, and all receipts from parking, storing or garaging a motor vehicle mentioned in

subsection (i) of said section are subject to tax until the contrary is established, and the burden of proving that any such receipt, 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 was otherwise exempt pursuant to the provisions of the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C.54:32B-16 Records to be kept.

16. Every person required to collect any tax imposed by this act shall keep records of every purchase, purchase for lease, sale or amusement charge or occupancy and of all amounts paid, charged or due thereon and of the tax payable thereon, in such form as the director may by regulation require. Such records shall include a true copy of each sales slip, invoice, receipt, statement or memorandum upon which subsection (a) of section 12 requires that the tax be stated separately. Such records shall be available for inspection and examination at any time upon demand by the director or his duly authorized agent or employee and shall be preserved for a period of four years, except that the director may consent to their destruction within that period or may require that they be kept longer.

15. 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. The return of a 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 shall show all such charges and the amount of tax thereon. The return of the recipient of charges from parking, storing or garaging a motor vehicle shall show all such charges 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.

C.54:32B-8.58 Coin-operated telephone service receipts exempt.

16. a. Receipts from sales of coin-operated telephone service are exempt from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

b. For purposes of this section:

“Coin-operated telephone service” means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate.

C.54:32B-8.59 Receipts from certain telecommunications services exempt.

17. Receipts from telecommunications 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, are exempt from the tax imposed under the Sales and Use Tax Act; provided however, that the exemption provided by this section shall not apply to sales of telecommunications services attributable to the excess unused telecommunications capacity of that person to another.

Repealer.

18. a. Section 27 of P.L.2005, c.126 (C.54:32B-3.2) and section 1 of P.L.2006, c.41 (C.54:32G-1) are repealed.

b. Notwithstanding the repeal of section 1 of P.L.2006, c.41, the repeal shall not affect any obligation, lien, or duty to pay taxes, interest or penalties which have accrued or may accrue by virtue of any taxes imposed pursuant to the provisions of P.L.2006, c.41 or which may be imposed with respect to any redetermination, correction, recomputation, or deficiency assessment; and provided that all taxes and returns which would be due and payable prior to the effective date of P.L.2008, c.123 (C.54:32B-8.58 et al.) shall be due and payable as if P.L.2006, c.41 were in effect; and provided that this repeal shall not affect the legal authority of the State to audit records and assess and collect taxes due or which may be due, together with such interest and penalties as have accrued or would have accrued thereon under the provisions of the law repealed; and provided that the repeal by subsection a. of this section, shall not affect any determination of, or affect any proceeding for, the enforcement thereof.

19. This act shall take effect immediately; provided however, that sections 1 through 18 shall remain inoperative until January 1, 2009.

Approved December 19, 2008.