

ASSEMBLY, No. 1683

STATE OF NEW JERSEY 213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Assemblywoman ALISON LITTELL MCHOSE

District 24 (Sussex, Hunterdon and Morris)

Assemblyman GARY R. CHIUSANO

District 24 (Sussex, Hunterdon and Morris)

SYNOPSIS

Removes charges for initiation fees, membership fees, or dues from sales and use tax.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



A1683 MCHOSE, CHIUSANO

2

1 AN ACT removing charges in the nature of initiation fees,
2 membership fees, and dues from the sales and use tax, and
3 amending P.L.1966, c.30.
4

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

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

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

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

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

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

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

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

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

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

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

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

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 (A) Professional, insurance, or personal service transactions
2 which involve the transfer of tangible personal property as an
3 inconsequential element, for which no separate charges are made.
- 4 (B) The transfer of tangible personal property to a corporation,
5 solely in consideration for the issuance of its stock, pursuant to a
6 merger or consolidation effected under the laws of New Jersey or
7 any other jurisdiction.
- 8 (C) The distribution of property by a corporation to its
9 stockholders as a liquidating dividend.
- 10 (D) The distribution of property by a partnership to its partners
11 in whole or partial liquidation.
- 12 (E) The transfer of property to a corporation upon its
13 organization in consideration for the issuance of its stock.
- 14 (F) The contribution of property to a partnership in
15 consideration for a partnership interest therein.
- 16 (G) The sale of tangible personal property where the purpose of
17 the vendee is to hold the thing transferred as security for the
18 performance of an obligation of the seller.
- 19 (f) "Sale, selling or purchase" means any transfer of title or
20 possession or both, exchange or barter, rental, lease or license to
21 use or consume, conditional or otherwise, in any manner or by any
22 means whatsoever for a consideration, or any agreement therefor,
23 including the rendering of any service, taxable under this act, for a
24 consideration or any agreement therefor.
- 25 (g) "Tangible personal property" means personal property that
26 can be seen, weighed, measured, felt, or touched, or that is in any
27 other manner perceptible to the senses. "Tangible personal
28 property" includes electricity, water, gas, steam, and prewritten
29 computer software including prewritten computer software
30 delivered electronically.
- 31 (h) "Use" means the exercise of any right or power over tangible
32 personal property, digital property, services to property, or services
33 by the purchaser thereof and includes, but is not limited to, the
34 receiving, storage or any keeping or retention for any length of
35 time, withdrawal from storage, any distribution, any installation,
36 any affixation to real or personal property, or any consumption of
37 such property. Use also includes the exercise of any right or power
38 over intrastate or interstate telecommunications and prepaid calling
39 services. Use also includes the exercise of any right or power over
40 utility service. Use also includes the derivation of a direct or
41 indirect benefit from a service.
- 42 (i) "Seller" means a person making sales, leases or rentals of
43 personal property or services.
- 44 (1) The term "seller" includes:
- 45 (A) A person making sales, leases or rentals of tangible personal
46 property, digital property or services, the receipts from which are
47 taxed by this act;

- 1 (B) A person maintaining a place of business in the State or
2 having an agent maintaining a place of business in the State and
3 making sales, whether at such place of business or elsewhere, to
4 persons within the State of tangible personal property, digital
5 property or services, the use of which is taxed by this act;
- 6 (C) A person who solicits business either by employees,
7 independent contractors, agents or other representatives or by
8 distribution of catalogs or other advertising matter and by reason
9 thereof makes sales to persons within the State of tangible personal
10 property, digital property or services, the use of which is taxed by
11 this act;
- 12 (D) Any other person making sales to persons within the State of
13 tangible personal property, digital property or services, the use of
14 which is taxed by this act, who may be authorized by the director to
15 collect the tax imposed by this act;
- 16 (E) The State of New Jersey, any of its agencies,
17 instrumentalities, public authorities, public corporations (including
18 a public corporation created pursuant to agreement or compact with
19 another state) or political subdivisions when such entity sells
20 services or property of a kind ordinarily sold by private persons;
- 21 (F) (Deleted by amendment, P.L.2005, c.126);
- 22 (G) A person who sells, stores, delivers or transports energy to
23 users or customers in this State whether by mains, lines or pipes
24 located within this State or by any other means of delivery;
- 25 (H) **[A person engaged in collecting charges in the nature of**
26 **initiation fees, membership fees or dues for access to or use of the**
27 **property or facilities of a health and fitness, athletic, sporting or**
28 **shopping club or organization]** (Deleted by amendment, P.L. _____,
29 c. _____)(pending before the Legislature as this bill); and
- 30 (I) A person engaged in the business of parking, storing or
31 garaging motor vehicles.
- 32 (2) In addition, when in the opinion of the director it is
33 necessary for the efficient administration of this act to treat any
34 salesman, representative, peddler or canvasser as the agent of the
35 seller, distributor, supervisor or employer under whom the agent
36 operates or from whom the agent obtains tangible personal property
37 or digital property sold by the agent or for whom the agent solicits
38 business, the director may, in the director's discretion, treat such
39 agent as the seller jointly responsible with the agent's principal,
40 distributor, supervisor or employer for the collection and payment
41 over of the tax. A person is an agent of a seller in all cases, but not
42 limited to such cases, that: (A) the person and the seller have the
43 relationship of a "related person" described pursuant to section 2 of
44 P.L.1993, c.170 (C.54:10A-5.5); and (B) the seller and the person
45 use an identical or substantially similar name, tradename,
46 trademark, or goodwill, to develop, promote, or maintain sales, or
47 the person and the seller pay for each other's services in whole or in

- 1 part contingent upon the volume or value of sales, or the person and
2 the seller share a common business plan or substantially coordinate
3 their business plans, or the person provides services to, or that inure
4 to the benefit of, the seller related to developing, promoting, or
5 maintaining the seller's market.
- 6 (j) "Hotel" means a building or portion of it which is regularly
7 used and kept open as such for the lodging of guests. The term
8 "hotel" includes an apartment hotel, a motel, boarding house or
9 club, whether or not meals are served.
- 10 (k) "Occupancy" means the use or possession or the right to the
11 use or possession, of any room in a hotel.
- 12 (l) "Occupant" means a person who, for a consideration, uses,
13 possesses, or has the right to use or possess, any room in a hotel
14 under any lease, concession, permit, right of access, license to use
15 or other agreement, or otherwise.
- 16 (m) "Permanent resident" means any occupant of any room or
17 rooms in a hotel for at least 90 consecutive days shall be considered
18 a permanent resident with regard to the period of such occupancy.
- 19 (n) "Room" means any room or rooms of any kind in any part or
20 portion of a hotel, which is available for or let out for any purpose
21 other than a place of assembly.
- 22 (o) "Admission charge" means the amount paid for admission,
23 including any service charge and any charge for entertainment or
24 amusement or for the use of facilities therefor.
- 25 (p) "Amusement charge" means any admission charge, dues or
26 charge of a roof garden, cabaret or other similar place.
- 27 (q) "Charge of a roof garden, cabaret or other similar place"
28 means any charge made for admission, refreshment, service, or
29 merchandise at a roof garden, cabaret or other similar place.
- 30 (r) "Dramatic or musical arts admission charge" means any
31 admission charge paid for admission to a theater, opera house,
32 concert hall or other hall or place of assembly for a live, dramatic,
33 choreographic or musical performance.
- 34 (s) "Lessor" means any person who is the owner, licensee, or
35 lessee of any premises, tangible personal property or digital
36 property which the person leases, subleases, or grants a license to
37 use to other persons.
- 38 (t) "Place of amusement" means any place where any facilities
39 for entertainment, amusement, or sports are provided.
- 40 (u) "Casual sale" means an isolated or occasional sale of an item
41 of tangible personal property or digital property by a person who is
42 not regularly engaged in the business of making retail sales of such
43 property where the item was obtained by the person making the
44 sale, through purchase or otherwise, for the person's own use.
- 45 (v) "Motor vehicle" includes all vehicles propelled otherwise
46 than by muscular power (excepting such vehicles as run only upon
47 rails or tracks), trailers, semitrailers, house trailers, or any other

1 type of vehicle drawn by a motor-driven vehicle, and motorcycles,
2 designed for operation on the public highways.

3 (w) "Persons required to collect tax" or "persons required to
4 collect any tax imposed by this act" includes: every seller of
5 tangible personal property, digital property or services; every
6 recipient of amusement charges; every operator of a hotel; every
7 seller of telecommunications; [every recipient of initiation fees,
8 membership fees or dues for access to or use of the property or
9 facilities of a health and fitness, athletic, sporting or shopping club
10 or organization;] and every recipient of charges for parking, storing
11 or garaging a motor vehicle. Said terms shall also include any
12 officer or employee of a corporation or of a dissolved corporation
13 who as such officer or employee is under a duty to act for such
14 corporation in complying with any requirement of this act and any
15 member of a partnership.

16 (x) "Customer" includes: every purchaser of tangible personal
17 property, digital property or services; every patron paying or liable
18 for the payment of any amusement charge; every occupant of a
19 room or rooms in a hotel; [every person paying charges in the
20 nature of initiation fees, membership fees or dues for access to or
21 use of the property or facilities of a health and fitness, athletic,
22 sporting or shopping club or organization;] and every purchaser of
23 parking, storage or garaging a motor vehicle.

24 (y) "Property and services the use of which is subject to tax"
25 includes: (1) all property sold to a person within the State, whether
26 or not the sale is made within the State, the use of which property is
27 subject to tax under section 6 or will become subject to tax when
28 such property is received by or comes into the possession or control
29 of such person within the State; (2) all services rendered to a person
30 within the State, whether or not such services are performed within
31 the State, upon tangible personal property or digital property the use
32 of which is subject to tax under section 6 or will become subject to
33 tax when such property is distributed within the State or is received
34 by or comes into possession or control of such person within the
35 State; (3) intrastate or interstate telecommunications sourced to this
36 State pursuant to section 29 of P.L.2005, c.126 (C.54:32B-3.4); (4)
37 (Deleted by amendment, P.L.1995, c.184); (5) energy sold,
38 exchanged or delivered in this State for use in this State; (6) utility
39 service sold, exchanged or delivered in this State for use in this
40 State; (7) direct mail processing services in connection with direct
41 mail distributed in this State; (8) (Deleted by amendment, P.L.2005,
42 c.126); and (9) services the benefit of which are received in this
43 State.

44 (z) "Director " means the Director of the Division of Taxation of
45 the State Department of the Treasury, or any officer, employee or
46 agency of the Division of Taxation in the Department of the
47 Treasury duly authorized by the director (directly, or indirectly by

1 one or more redelegations of authority) to perform the functions
2 mentioned or described in this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 31 (A) The seller's cost of the property sold;
- 32 (B) The cost of materials used, labor or service cost, interest,
33 losses, all costs of transportation to the seller, all taxes imposed on
34 the seller, and any other expense of the seller;
- 35 (C) Charges by the seller for any services necessary to complete
36 the sale;
- 37 (D) Delivery charges;
- 38 (E) Installation charges; and
- 39 (F) The value of exempt personal property given to the
40 purchaser where taxable and exempt personal property have been
41 bundled together and sold by the seller as a single product or piece
42 of merchandise.

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

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

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

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

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

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

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

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

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

30 (ss) "Direct mail" means printed material delivered or distributed
31 by United States mail or other delivery service to a mass audience
32 or to addresses on a mailing list provided by the purchaser or at the
33 direction of the purchaser in cases in which the cost of the items are
34 not billed directly to the recipients. "Direct mail" includes tangible
35 personal property or digital property supplied directly or indirectly
36 by the purchaser to the direct mail seller for inclusion in the
37 package containing the printed material. "Direct mail" does not
38 include multiple items of printed material delivered to a single
39 address.

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

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

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

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

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

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

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

19 (3) armored car services; and

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

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

27 (cf: P.L.2006, c.44, s.1)

28

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

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

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

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

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

42 (2) Installing tangible personal property or digital property, or
43 maintaining, servicing, repairing tangible personal property or
44 digital property not held for sale in the regular course of business,
45 whether or not the services are performed directly or by means of
46 coin-operated equipment or by any other means, and whether or not
47 any tangible personal property or digital property is transferred in

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

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

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

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

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

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

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

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

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

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

3 (11)Investigation and security services.

4 (12)Information services.

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

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

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

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

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

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

39 (3) For the purposes of this subsection:

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

43 "Prepared food" means:

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

45 B. two or more food ingredients mixed or combined by the
46 seller for sale as a single item, but not including food that is only
47 cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,

- 1 poultry, and foods containing these raw animal foods requiring
2 cooking by the consumer as recommended by the Food and Drug
3 Administration in Chapter 3, part 401.11 of its Food Code so as to
4 prevent food borne illnesses; or
- 5 C. food sold with eating utensils provided by the seller,
6 including plates, knives, forks, spoons, glasses, cups, napkins, or
7 straws. A plate does not include a container or packaging used to
8 transport the food;
9 provided however, that
- 10 (ii) "prepared food" does not include the following sold without
11 eating utensils:
- 12 A. food sold by a seller whose proper primary NAICS
13 classification is manufacturing in section 311, except subsector
14 3118 (bakeries);
- 15 B. food sold in an unheated state by weight or volume as a
16 single item; or
- 17 C. bakery items, including bread, rolls, buns, biscuits, bagels,
18 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,
19 muffins, bars, cookies, and tortillas.
- 20 (d) The rent for every occupancy of a room or rooms in a hotel
21 in this State, except that the tax shall not be imposed upon a
22 permanent resident.
- 23 (e) (1) Any admission charge to or for the use of any place of
24 amusement in the State, including charges for admission to race
25 tracks, baseball, football, basketball or exhibitions, dramatic or
26 musical arts performances, motion picture theaters, except charges
27 for admission to boxing, wrestling, kick boxing or combative sports
28 exhibitions, events, performances or contests which charges are
29 taxed under any other law of this State or under section 20 of
30 P.L.1985, c.83 (C.5:2A-20), and, except charges to a patron for
31 admission to, or use of, facilities for sporting activities in which
32 such patron is to be a participant, such as bowling alleys and
33 swimming pools. For any person having the permanent use or
34 possession of a box or seat or lease or a license, other than a season
35 ticket, for the use of a box or seat at a place of amusement, the tax
36 shall be upon the amount for which a similar box or seat is sold for
37 each performance or exhibition at which the box or seat is used or
38 reserved by the holder, licensee or lessee, and shall be paid by the
39 holder, licensee or lessee.
- 40 (2) The amount paid as charge of a roof garden, cabaret or other
41 similar place in this State, to the extent that a tax upon such charges
42 has not been paid pursuant to subsection (c) hereof.
- 43 (f) (1) The receipts from every sale, except for resale, of
44 intrastate or interstate telecommunications sourced to this State in
45 accordance with section 29 of P.L.2005, c.126 (C.54:32B-3.4).
- 46 (2) The receipts from every sale, except for resale, of intrastate
47 or interstate mobile telecommunications services billed by or for a

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

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

7 (h) **【Charges in the nature of initiation fees, membership fees or**
8 **dues for access to or use of the property or facilities of a health and**
9 **fitness, athletic, sporting or shopping club or organization in this**
10 **State, except for membership in a club or organization whose**
11 **members are predominantly age 18 or under.】** (Deleted by
12 amendment, P.L. , c.)(pending before the Legislature as this
13 bill)

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

20 (cf: P.L.2006, c.44, s.2)

21

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

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

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

1 purposes of clause (I) of this section, the tax shall be at the
2 applicable rate on the charge made by the service provider. [For
3 purposes of clause (J) of this section, the tax shall be at the
4 applicable rate on the charges in the nature of initiation fees,
5 membership fees or dues.]

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

7

8 4. This act shall take effect immediately and apply to
9 membership periods beginning on or after the first day of the
10 second month following enactment.

11

12

13

STATEMENT

14

15 This bill removes the imposition of the sales and use tax on the
16 charges for initiation fees, membership fees, and dues that were
17 made taxable under the new law, P.L.2006, c.44. It allows health
18 and fitness, athletic, sporting, and shopping clubs to maintain their
19 facilities and operate their organizations without the burden of a
20 seven percent sales tax.

21 As of October 1, 2006, the State of New Jersey imposes a sales
22 and use tax on the charges for initiation fees, membership fees, or
23 dues for access to or use of the property or facilities of a health and
24 fitness, athletic, sporting, or shopping club or organization within
25 the State. While the provisions of P.L.2006, c.44 specifically
26 exclude charges for membership in a club or organization whose
27 members are predominantly age 18 or under, businesses and
28 nonprofit organizations that charge fees or dues for access to or use
29 of the property or facilities of their health and fitness, athletic,
30 sporting, or shopping clubs or organizations are subject to the seven
31 percent tax.

32 This bill allows clubs and organizations in this State to remain
33 competitive with tax free facilities in the neighboring states of New
34 York, Pennsylvania, and Delaware. Currently, 25 states throughout
35 the nation impose a sales or amusement tax on health and fitness
36 club membership fees or dues. However, New Jersey is the only
37 state in the region that imposes a sales tax on the fees and dues
38 charged for access to private as well as nonprofit health and fitness,
39 athletic, and sporting clubs or organizations.