

ASSEMBLY, No. 2003

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Assemblyman TROY SINGLETON

District 7 (Burlington)

Assemblyman JOHN J. BURZICHELLI

District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Revises sales and use tax to specify certain persons deemed to be sellers and to clarify tax collection responsibilities of certain other persons and agents.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/13/2012)

A2003 SINGLETON, BURZICHELLI

2

1 AN ACT revising the sales and use tax to specify certain persons
2 deemed to be sellers and to clarify the tax collection
3 responsibilities of certain other persons and agents, amending
4 P.L.1966, c.30.

5

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

8

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

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

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

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

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

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

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

27 (1) For the purposes of this act a sale is for "resale, sublease, or
28 subrent" if it is a sale (A) for resale either as such or as converted
29 into or as a component part of a product produced for sale by the
30 purchaser, including the conversion of natural gas into another
31 intermediate or end product, other than electricity or thermal
32 energy, produced for sale by the purchaser, (B) for use by that
33 person in performing the services subject to tax under subsection
34 (b) of section 3 where the property so sold becomes a physical
35 component part of the property upon which the services are
36 performed or where the property so sold is later actually transferred
37 to the purchaser of the service in conjunction with the performance
38 of the service subject to tax, (C) of telecommunications service to a
39 telecommunications service provider for use as a component part of
40 telecommunications service provided to an ultimate customer, or
41 (D) to a person who receives by contract a product transferred
42 electronically for further commercial broadcast, rebroadcast,
43 transmission, retransmission, licensing, relicensing, distribution,
44 redistribution or exhibition of the product, in whole or in part, to

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 another person, other than rights to redistribute based on statutory
2 or common law doctrine such as fair use.

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

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

9 (4) The term “retail sale” does not include:

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

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

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

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

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

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

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

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

34 (g) “Tangible personal property” means personal property that
35 can be seen, weighed, measured, felt, or touched, or that is in any
36 other manner perceptible to the senses. “Tangible personal
37 property” includes electricity, water, gas, steam, and prewritten
38 computer software including prewritten computer software
39 delivered electronically.

40 (h) “Use” means the exercise of any right or power over tangible
41 personal property, specified digital products, services to property or
42 products, or services by the purchaser thereof and includes, but is
43 not limited to, the receiving, storage or any keeping or retention for
44 any length of time, withdrawal from storage, any distribution, any
45 installation, any affixation to real or personal property, or any
46 consumption of such property or products. Use also includes the
47 exercise of any right or power over intrastate or interstate

1 telecommunications and prepaid calling services. Use also includes
2 the exercise of any right or power over utility service. Use also
3 includes the derivation of a direct or indirect benefit from a service.

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

6 (1) The term "seller" includes:

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

10 (B) A person maintaining a place of business in the State or
11 having an agent maintaining a place of business in the State and
12 making sales, whether at such place of business or elsewhere, to
13 persons within the State of tangible personal property, specified
14 digital products or services, the use of which is taxed by this act;

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

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

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

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

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

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

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

40 (2) [In addition, when in the opinion of the director it is
41 necessary for the efficient administration of this act to treat any
42 salesman, representative, peddler or canvasser as the agent of the
43 seller, distributor, supervisor or employer under whom the agent
44 operates or from whom the agent obtains tangible personal property
45 or a specified digital product sold by the agent or for whom the
46 agent solicits business, the director may, in the director's discretion,
47 treat such agent as the seller jointly responsible with the agent's

1 principal, distributor, supervisor or employer for the collection and
2 payment over of the tax. A person is an agent of a seller in all
3 cases, but not limited to such cases, that: (A) the person and the
4 seller have the relationship of a “related person” described pursuant
5 to section 2 of P.L.1993, c.170 (C.54:10A-5.5); and (B) the seller
6 and the person use an identical or substantially similar name,
7 tradename, trademark, or goodwill, to develop, promote, or
8 maintain sales, or the person and the seller pay for each other’s
9 services in whole or in part contingent upon the volume or value of
10 sales, or the person and the seller share a common business plan or
11 substantially coordinate their business plans, or the person provides
12 services to, or that inure to the benefit of, the seller related to
13 developing, promoting, or maintaining the seller’s market]
14 (Deleted by amendment, P.L. _____, c. _____) (pending before the
15 Legislature as this bill).

16 (3) A person shall be deemed to be a seller if:

17 (A) Both of the following conditions are met:

18 (i) the person holds a substantial ownership interest in, or is
19 owned in whole or in substantial part by, a person maintaining a
20 place of business within this State, and

21 (ii) the person sells the same or a similar line of products as a
22 related person in this State and does so under the same or a similar
23 business name, or the person uses the in-State facilities or the in-
24 State employees of a related person in this State to advertise,
25 promote or facilitate sales to customers;

26 (B) The person holds a substantial ownership interest in, or is
27 owned in whole or substantial part by, a business that maintains an
28 office, distribution facility, sales or sample facility, warehouse or
29 storage place or other similar place of business in this State that
30 delivers tangible personal property or specified digital products sold
31 by the person to customers;

32 (C) The person derives receipts from the lease or rental of
33 tangible personal property situated in this State; or

34 (D) The person is engaged in the business of selling tangible
35 personal property, specified digital products or services, the use of
36 which is taxed by P.L.1966, c.30 (C.54:32B-1 et seq.), and either:

37 (i) an affiliated person uses in this State a trademark, service
38 mark or trade name that is the same as a trademark, service mark or
39 trade name used by the person who is engaged in the business of
40 selling tangible personal property, specified digital products or
41 services, the use of which is taxed by P.L.1966, c.30 (C.54:32B-1 et
42 seq.); or

43 (ii) an affiliated person engages in activities in this State that
44 inure to the benefit of the person who is engaged in the business of
45 selling tangible personal property, specified digital products or
46 services, the use of which is taxed by P.L.1966, c.30 (C.54:32B-1 et
47 seq.), in that person’s development or maintenance of a market for

1 its goods or services in this State, to the extent that those activities
2 of the affiliated person are sufficient to allow this State to assert its
3 jurisdiction to impose tax collection duties on that person who is
4 engaged in the business of selling tangible personal property,
5 specified digital products or services, the use of which is taxed by
6 P.L.1966, c.30 (C.54:32B-1 et seq.), under the provisions of the
7 Constitution and statutes of the United States. The provisions of
8 this sub-subparagraph shall not be construed to narrow the scope of
9 any other provision contained in this subsection. Notwithstanding
10 the provisions of this sub-subparagraph, the activities in this State
11 of an affiliated person in providing accounting services or legal
12 services or in providing advice to a person who is engaged in the
13 business of selling tangible personal property, specified digital
14 products or services, the use of which is taxed by P.L.1966, c.30
15 (C.54:32B-1 et seq.), or in directing the activities of a seller,
16 including, but not limited to, making decisions regarding strategic
17 planning, marketing, inventory, staffing, distribution or cash
18 management shall not result in the person being deemed to be a
19 seller under this subsection.

20 (4) A person who is part of a controlled group of corporations,
21 and that controlled group of corporations has a component member
22 that is a seller engaged in business in this State as described in
23 paragraph (3) of this subsection, shall be presumed to be a seller
24 engaged in business in this State. This presumption may be rebutted
25 by evidence that during the period for which a return is required to
26 be filed, or for such lesser interval as shall have been designated by
27 the director, the component member that is a seller engaged in
28 business in this State did not engage in any of the activities
29 described in this subsection on behalf of the person who is part of a
30 controlled group of corporations.

31 (5) A person who makes sales of tangible personal property,
32 directly or through a subsidiary or other related entity, to purchasers
33 in this State by mail, telephone, the Internet or any other media, and
34 who has a contractual relationship with an entity to provide and
35 perform delivery, installation, assembly, or maintenance services
36 for that person's purchasers within the State shall be deemed to be a
37 seller.

38 (6) In addition, when in the opinion of the director it is
39 necessary for the efficient administration of this subsection to
40 regard a salesperson, representative, independent contractor,
41 solicitor, trucker, peddler or canvasser operating in this State as an
42 agent of the dealer, distributor, supervisor, employer or person
43 under whom the agent operates or from whom the agent obtains the
44 tangible personal property sold by the agent, regardless of whether
45 the agent is making sales on the agent's behalf or on behalf of such
46 dealer, distributor, supervisor, employer, or person, the director
47 may so regard the agent and may regard the dealer, distributor,

1 supervisor, employer, or person as a seller for purposes of this
2 subsection.

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

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

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

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

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

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

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

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

27 (r) "Dramatic or musical arts admission charge" means any
28 admission charge paid for admission to a theater, opera house,
29 concert hall or other hall or place of assembly for a live, dramatic,
30 choreographic or musical performance.

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

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

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

44 (v) "Motor vehicle" includes all vehicles propelled otherwise
45 than by muscular power (excepting such vehicles as run only upon
46 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, specified digital products or services;
6 every recipient of amusement charges; every operator of a hotel;
7 every seller of a telecommunications service; every recipient of
8 initiation fees, membership fees or dues for access to or use of the
9 property or facilities of a health and fitness, athletic, sporting or
10 shopping club or organization; and every recipient of charges for
11 parking, storing or garaging a motor vehicle. Said terms shall also
12 include any officer or employee of a corporation or of a dissolved
13 corporation who as such officer or employee is under a duty to act
14 for such corporation in complying with any requirement of this act
15 and any member of a partnership.

16 (x) "Customer" includes: every purchaser of tangible personal
17 property, specified digital products or services; every patron paying
18 or liable for the payment of any amusement charge; every occupant
19 of a 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 a specified digital
32 product the use of which is subject to tax under section 6 or will
33 become subject to tax when such property or product is distributed
34 within the State or is received by or comes into possession or
35 control of such person within the State; (3) intrastate, interstate, or
36 international telecommunications sourced to this State pursuant to
37 section 29 of P.L.2005, c.126 (C.54:32B-3.4); (4) (Deleted by
38 amendment, P.L.1995, c.184); (5) energy sold, exchanged or
39 delivered in this State for use in this State; (6) utility service sold,
40 exchanged or delivered in this State for use in this State; (7) mail
41 processing services in connection with printed advertising material
42 distributed in this State; (8) (Deleted by amendment, P.L.2005,
43 c.126); and (9) services the benefit of which are received in this
44 State.

45 (z) "Director" means the Director of the Division of Taxation in
46 the State Department of the Treasury, or any officer, employee or
47 agency of the Division of Taxation in the Department of the

1 Treasury duly authorized by the director (directly, or indirectly by
2 one or more redelegations of authority) to perform the functions
3 mentioned or described in this act.

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

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

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

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

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

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

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

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

34 (cc) "Telecommunications service" means the electronic
35 transmission, conveyance, or routing of voice, data, audio, video, or
36 any other information or signals to a point, or between or among
37 points.

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

45 "Telecommunications service" shall not include:

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

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

- 1 (3) (Deleted by amendment, P.L.2008, c.123);
2 (4) (Deleted by amendment, P.L.2008, c.123);
3 (5) (Deleted by amendment, P.L.2008, c.123);
4 (6) (Deleted by amendment, P.L.2008, c.123);
5 (7) data processing and information services that allow data to
6 be generated, acquired, stored, processed, or retrieved and delivered
7 by an electronic transmission to a purchaser where such purchaser's
8 primary purpose for the underlying transaction is the processed data
9 or information;
10 (8) installation or maintenance of wiring or equipment on a
11 customer's premises;
12 (9) tangible personal property;
13 (10) advertising, including but not limited to directory
14 advertising;
15 (11) billing and collection services provided to third parties;
16 (12) internet access service;
17 (13) radio and television audio and video programming services,
18 regardless of the medium, including the furnishing of transmission,
19 conveyance, and routing of such services by the programming
20 service provider. Radio and television audio and video
21 programming services shall include but not be limited to cable
22 service as defined in section 47 U.S.C. s.522(6) and audio and video
23 programming services delivered by commercial mobile radio
24 service providers, as defined in section 47 C.F.R. 20.3;
25 (14) ancillary services; or
26 (15) digital products delivered electronically, including but not
27 limited to software, music, video, reading materials, or ringtones.
28 For the purposes of this subsection:
29 "ancillary service" means a service that is associated with or
30 incidental to the provision of telecommunications services,
31 including but not limited to detailed telecommunications billing,
32 directory assistance, vertical service, and voice mail service;
33 "conference bridging service" means an ancillary service that
34 links two or more participants of an audio or video conference call
35 and may include the provision of a telephone number. Conference
36 bridging service does not include the telecommunications services
37 used to reach the conference bridge;
38 "detailed telecommunications billing service" means an ancillary
39 service of separately stating information pertaining to individual
40 calls on a customer's billing statement;
41 "directory assistance" means an ancillary service of providing
42 telephone number information or address information or both;
43 "vertical service" means an ancillary service that is offered in
44 connection with one or more telecommunications services, which
45 offers advanced calling features that allow customers to identify
46 callers and to manage multiple calls and call connections, including
47 conference bridging services; and

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

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

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

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

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

21 (ff) “Natural gas” means any gaseous fuel distributed through a
22 pipeline system.

23 (gg) “Energy” means natural gas or electricity.

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

27 (ii) “Self-generation unit” means a facility located on the user’s
28 property, or on property purchased or leased from the user by the
29 person owning the self-generation unit and such property is
30 contiguous to the user’s property, which generates electricity to be
31 used only by that user on the user’s property and is not transported
32 to the user over wires that cross a property line or public
33 thoroughfare unless the property line or public thoroughfare merely
34 bifurcates the user’s or self-generation unit owner’s otherwise
35 contiguous property.

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

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

1 (ll) "Pre-paid calling service" means the right to access
2 exclusively telecommunications services, which shall be paid for in
3 advance and which enables the origination of calls using an access
4 number or authorization code, whether manually or electronically
5 dialed, and that is sold in predetermined units or dollars of which
6 the number declines with use in a known amount.

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

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

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

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

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

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

22 (D) Delivery charges;

23 (E) (Deleted by amendment, P.L.2011, c.49); and

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

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

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

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

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

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

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

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

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

- 1 (B) The seller has an obligation to pass the price reduction or
2 discount through to the purchaser;
- 3 (C) The amount of the consideration attributable to the sale is
4 fixed and determinable by the seller at the time of the sale of the
5 item to the purchaser; and
- 6 (D) One of the following criteria is met:
- 7 (i) the purchaser presents a coupon, certificate, or other
8 documentation to the seller to claim a price reduction or discount
9 where the coupon, certificate, or documentation is authorized,
10 distributed, or granted by a third party with the understanding that
11 the third party will reimburse any seller to whom the coupon,
12 certificate, or documentation is presented;
- 13 (ii) the purchaser identifies himself to the seller as a member of a
14 group or organization entitled to a price reduction or discount;
15 provided however, that a preferred customer card that is available to
16 any patron does not constitute membership in such a group; or
- 17 (iii) the price reduction or discount is identified as a third party
18 price reduction or discount on the invoice received by the purchaser
19 or on a coupon, certificate, or other documentation presented by the
20 purchaser.
- 21 (4) In the case of a bundled transaction that includes a
22 telecommunications service, an ancillary service, internet access, or
23 an audio or video programming service, if the price is attributable to
24 products that are taxable and products that are nontaxable, the
25 portion of the price attributable to the nontaxable products is
26 subject to tax unless the provider can identify by reasonable and
27 verifiable standards such portion from its books and records that are
28 kept in the regular course of business for other purposes, including
29 non-tax purposes.
- 30 (pp) "Purchase price" means the measure subject to use tax and
31 has the same meaning as "sales price."
- 32 (qq) "Sales tax" means the tax imposed on certain transactions
33 pursuant to the provisions of the "Sales and Use Tax Act,"
34 P.L.1966, c.30 (C.54:32B-1 et seq.).
- 35 (rr) "Delivery charges" means charges by the seller for
36 preparation and delivery to a location designated by the purchaser
37 of personal property or services including, but not limited to,
38 transportation, shipping, postage, handling, crating, and packing. If
39 a shipment includes both exempt and taxable property, the seller
40 should allocate the delivery charge by using: (1) a percentage based
41 on the total sales price of the taxable property compared to the total
42 sales price of all property in the shipment; or (2) a percentage based
43 on the total weight of the taxable property compared to the total
44 weight of all property in the shipment. The seller shall tax the
45 percentage of the delivery charge allocated to the taxable property
46 but is not required to tax the percentage allocated to the exempt
47 property.

1 (ss) "Direct mail" means printed material delivered or distributed
2 by United States mail or other delivery service to a mass audience
3 or to addresses on a mailing list provided by the purchaser or at the
4 direction of the purchaser in cases in which the cost of the items are
5 not billed directly to the recipients. "Direct mail" includes tangible
6 personal property supplied directly or indirectly by the purchaser to
7 the direct mail seller for inclusion in the package containing the
8 printed material. "Direct mail" does not include multiple items of
9 printed material delivered to a single address.

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

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

17 (vv) (Deleted by amendment, P.L.2011, c.49)

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

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

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

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

29 (3) armored car services; and

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

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

37 (zz) "Specified digital product" means an electronically
38 transferred digital audio-visual work, digital audio work, or digital
39 book; provided however, that a digital code which provides a
40 purchaser with a right to obtain the product shall be treated in the
41 same manner as a specified digital product.

42 (aaa) "Digital audio-visual work" means a series of related
43 images which, when shown in succession, impart an impression of
44 motion, together with accompanying sounds, if any.

45 (bbb) "Digital audio work" means a work that results from the
46 fixation of a series of musical, spoken, or other sounds, including a
47 ringtone.

1 (ccc) “Digital book” means a work that is generally recognized
2 in the ordinary and usual sense as a book.

3 (ddd) “Transferred electronically” means obtained by the
4 purchaser by means other than tangible storage media.

5 (eee) “Ringtone” means a digitized sound file that is downloaded
6 onto a device and that may be used to alert the purchaser with
7 respect to a communication.

8 (fff) “Maintaining a place of business within this State” includes
9 having, maintaining, occupying, or using, permanently or
10 temporarily, in this State, directly or by a subsidiary or other related
11 entity, an office, distribution facility, sales or sample facility,
12 warehouse or storage place or other similar place of business. A
13 person is “maintaining a place of business within this State” if the
14 person has agents operating in this State under that person’s
15 authority or under the authority of a subsidiary of that person,
16 regardless of whether the place of business or the agent is in this
17 State permanently or temporarily, or regardless of whether the
18 person or the subsidiary is authorized to do business in this State.

19 (ggg) “Substantial ownership interest” means an interest in an
20 entity that is not less than 10 percent of the equity ownership
21 interest of that entity.

22 (hhh) “Ownership” means both direct ownership and indirect
23 ownership through a parent, subsidiary, or affiliate.

24 (iii) “Controlled group of corporations” means “controlled group
25 of corporations” as defined by subsection (a) of section 1563 of the
26 federal Internal Revenue Code of 1986, 26 U.S.C. s.1563.

27 (jjj) “Component member” means “component member” as
28 defined by subsection (b) of section 1563 of the federal Internal
29 Revenue Code of 1986, 26 U.S.C. s.1563.

30 (kkk) “Affiliated person” means a person who has the
31 relationship of a “related person” as defined by section 2 of
32 P.L.1993, c.170 (C.54:10A-5.5) to a person who is engaged in the
33 business of selling tangible personal property, specified digital
34 products or services, the use of which is taxed by P.L.1966, c.30
35 (C.54:32B-1 et seq.).

36 (cf: P.L.2011, c.49, s.1)

37

38 2. This act shall take effect immediately; provided however,
39 that section 1 shall remain inoperative until the first day of the first
40 calendar quarter beginning at least 30 days after the date P.L. ,
41 c. (C.) (pending before the Legislature as this bill) is enacted.

42

43

44

STATEMENT

45

46 This bill revises the sales and use tax to specify certain persons
47 who are deemed to be sellers and to clarify the tax collection

1 responsibilities of certain other persons and agents who make
2 taxable sales of goods and services to purchasers in this State.

3 The bill provides that the following persons will be deemed to be
4 sellers for purposes of the sales and use tax:

5 -- Persons who hold a substantial ownership interest in, or are
6 owned in whole or in substantial part by, a person maintaining a
7 place of business within this State and who sell the same or a
8 similar line of products as the related person in this State under the
9 same or a similar business name;

10 -- Persons who hold a substantial ownership interest in, or are
11 owned in whole or in substantial part by, a person maintaining a
12 place of business within this State, and who use the in-State
13 facilities or the in-State employees of a related person in this State
14 to advertise, promote, or facilitate sales to customers;

15 --Persons who hold a substantial ownership interest in, or are
16 owned in whole or substantial part by, a business that maintains an
17 office, distribution facility, sales or sample facility, warehouse or
18 storage place or other similar place of business in this State that
19 delivers tangible personal property or specified digital products sold
20 by the person to customers;

21 -- Persons who derive receipts from the lease or rental of
22 tangible personal property situated within this State;

23 -- Persons who are engaged in the business of selling tangible
24 personal property, specified digital products, or services, the use of
25 which is subject to tax in this State, and who use a trademark,
26 service mark, or trade name that is the same as the trademark,
27 service mark, or trade name used by an affiliated person in this
28 State; and

29 -- Persons who are engaged in the business of selling tangible
30 personal property, specified digital products, or services, the use of
31 which is subject to tax in this State, and who derive a benefit from
32 the activities of an affiliated person in this State, in the person's
33 development or maintenance of a market for its goods or services in
34 this State, to the extent that the activities of the affiliated person are
35 sufficient to satisfy the tax jurisdiction requirements of the United
36 States Constitution.

37 The bill provides that a person who is part of a controlled group
38 of corporations, and that controlled group of corporations has a
39 component member that is a seller engaged in business in this State,
40 will be presumed to be a seller engaged in business in this State.
41 The bill specifies that this presumption may be rebutted by certain
42 evidence.

43 The bill provides that a person who is engaged in the business of
44 selling tangible personal property, directly or through a subsidiary
45 or other related entity, to purchasers in this State by mail,
46 telephone, the Internet or any other media, and who has a
47 contractual relationship with an entity to provide and perform

A2003 SINGLETON, BURZICHELLI

17

1 delivery, installation, assembly, or maintenance services for that
2 person's purchasers within the State will be deemed to be a seller.
3 The bill provides that the Director of the Division of Taxation in
4 the Department of the Treasury may, when necessary, regard a
5 salesperson, representative, independent contractor, solicitor,
6 trucker, peddler or canvasser operating in this State as an agent of
7 the dealer, distributor, supervisor, employer or person under whom
8 the agent operates or from whom the agent obtains the tangible
9 personal property sold by the agent, regardless of whether the agent
10 is making sales on the agent's behalf or on behalf of such dealer,
11 distributor, supervisor, employer, or person, and that the director
12 may so regard the agent and may regard the dealer, distributor,
13 supervisor, employer, or person as a seller for purposes of the sales
14 and use tax.