

ASSEMBLY, No. 2608

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED FEBRUARY 21, 2012

Sponsored by:

Assemblyman ALBERT COUTINHO

District 29 (Essex)

Assemblyman VINCENT PRIETO

District 32 (Bergen and Hudson)

Assemblyman TROY SINGLETON

District 7 (Burlington)

Assemblyman LOUIS D. GREENWALD

District 6 (Burlington and Camden)

Co-Sponsored by:

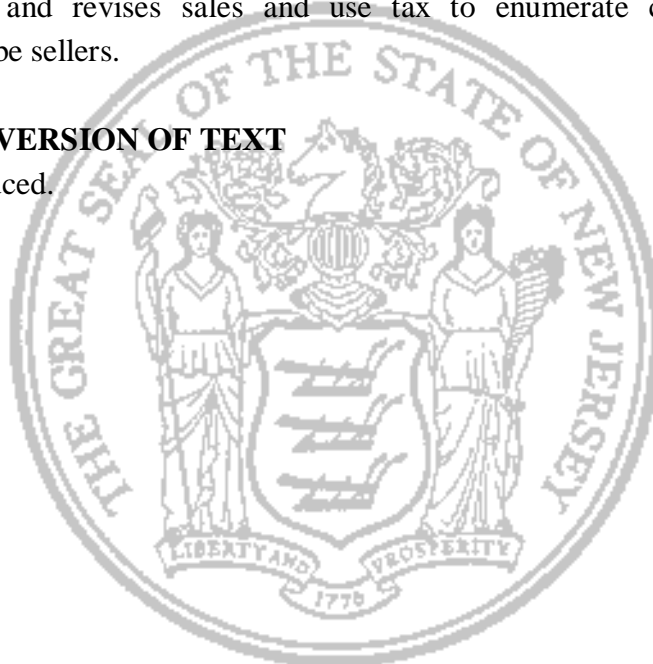
Assemblyman DeAngelo

SYNOPSIS

Provides temporary deferral of certain sales and use tax collection responsibilities of certain persons making certain investments and creating certain jobs and revises sales and use tax to enumerate certain persons presumed to be sellers.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/22/2012)

1 AN ACT providing for the deferral of certain sales and use tax
2 collection responsibilities of certain persons for certain periods
3 and revising the sales and use tax to enumerate certain persons
4 presumed to be sellers responsible for the collection of tax,
5 amending and supplementing P.L.1966, c.30.

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

9
10 1. (New section) As used in P.L. , c. (C.) (pending
11 before the Legislature as this bill):

12 “Business operation” means processing, procuring, packaging,
13 shipping, or fulfilling the order of a customer and those activities or
14 services that are ancillary to a retail sale.

15 “Capital investment” means a new or an additional expenditure
16 of funds made within this State to purchase or improve real property
17 located within this State, to purchase personal property for use in a
18 business, and to purchase business assets subject to depreciation
19 pursuant to the provisions of section 167 of the federal Internal
20 Revenue Code of 1986 (26 U.S.C. s.167).

21 “Comprehensive benefits” means an employee benefit program,
22 including, but not limited to, a health care plan, a retirement
23 account or program, and paid vacation or leave.

24 “Customer operations and processing facility” means one or
25 more locations where tangible personal property, specified digital
26 products, or services are stored, packaged, processed, and shipped
27 for delivery to the customer of a person but where a retail sale of
28 tangible personal property, specified digital products, or services
29 are not made. A customer operations and processing facility that
30 conducts the previously specified activities may utilize a person’s
31 or a related person’s technology, services, or other infrastructure
32 relating to processing, procuring, and fulfilling the order of a
33 customer, including, but not limited to, a shared customer or
34 subscription program, use of a similar gift card and promotional
35 program, fraud management, inventory management software,
36 product reviews, and cross reporting of employees of the person and
37 of employees of the related person, and may perform the following
38 activities within the State on behalf of a person or a related person,
39 regardless of whether the activities are performed at the customer
40 operations and processing facility or whether the activities are
41 performed at a location of a related person or a location of a third
42 party: acceptance of returns or exchanges of tangible personal
43 property received from a customer, including the provision of
44 customer service to the customer of a person or to the customer of a
45 related person; performance of a repair, maintenance, or
46 refurbishment service, including, but not limited to, the replacement
47 of a defective or a damaged part and the repair of a broken or a

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 damaged product that may be sold as a refurbished product by a
2 related person or a third party without this State; manufacturing and
3 processing of tangible personal property for use in a business
4 operation; negotiating an agreement within this State with a
5 person's vendors or a related person's vendors or procuring tangible
6 personal property, a specified digital product, or a service that is
7 subject to the tax imposed by the "Sales and Use Tax Act,"
8 P.L.1966, c.30 (C.54:32B-1 et seq.) on behalf of a person or on
9 behalf of a related person for business operations but not for retail
10 sale from the customer operations and processing facility within
11 this State; sending a promotional or marketing message or other
12 form of communication by means of electronic mail to the customer
13 of a person or to the customer of a related person from a server
14 within this State or from a server without this State; provision of a
15 procurement service for a business operation; any other activity that
16 facilitates the transfer or the delivery of a specified digital product
17 or service, except an activity relating to a retail sale; or any other
18 activity or integration relating to a business operation between the
19 customer operations and processing facility and a person or a
20 related person.

21 "Full-time job" means a job that is provided to an individual who
22 is a resident of this State on the date the individual is hired and that
23 did not exist within the State prior to January 1, 2012, which job
24 requires a minimum of 35 hours of the individual's time per week
25 within this State for each full year of employment and which job
26 requires comprehensive benefits be provided to the individual by
27 the individual's employer.

28 "Individual who is a resident of this State" means an individual
29 who is legally domiciled within the State of New Jersey.

30 "Related person" means "related person" as that term is defined
31 by section 2 of P.L.1993, c.170 (C.54:10A-5.5).

32 "Transportation management association" means a nonprofit
33 corporation approved by the Department of Transportation as
34 coordinating transportation services, including, but not limited to,
35 public transportation, van pools, car pools, bicycling and pedestrian
36 modes, as well as strategies such as flex time, staggered work
37 hours, and compressed work weeks, for corporations, employees,
38 developers, individuals, and other groups.

39

40 2. (New section) a. Notwithstanding any other provision of
41 law, a person who owns or leases or rents or otherwise utilizes a
42 customer operations and processing facility of its own within this
43 State or that of a related person within this State or that of a third
44 party within this State, including a venue for making purchases of
45 tangible personal property or a venue for transferring specified
46 digital products and services for resale, that are shipped or
47 transferred directly to a purchaser, shall be deemed not to be a seller
48 for purposes of the tax imposed by the "Sales and Use Tax Act,"

1 P.L.1966, c.30 (C.54:32B-1 et seq.), if the Executive Director of the
2 Economic Development Authority determines that the person:
3 meets or will meet each of the initial requirements provided by
4 subsection b. of this section; does not engage in an activity within
5 this State other than an activity specified by the definition of a
6 “customer operations and processing facility” as that term is
7 defined by section 1 of P.L. , c. (C.) (pending before the
8 Legislature as this bill); and has entered into an agreement with the
9 director in accordance with section 3 of P.L. , c. (C.)
10 (pending before the Legislature as this bill) and maintains
11 compliance with the terms and conditions of that agreement,
12 including the terms and conditions specified by subsections b.
13 through h. of section 3 of P.L. , c. (C.) (pending before the
14 Legislature as this bill).

15 b. The initial requirements to be deemed not a seller for the
16 purposes of the tax imposed by the “Sales and Use Tax Act” are
17 that the person, directly or in combination with a related person or
18 in combination with a third party: places one or more customer
19 operations and processing facilities in service within this State on or
20 after January 1, 2012 but before September 1, 2013; makes, or
21 causes to be made, a capital investment of not less than \$65,000,000
22 within this State on or after January 1, 2012 but before December 1,
23 2013; creates not fewer than 1,500 full-time jobs within this State
24 on or after January 1, 2012 but before December 1, 2013; and, after
25 meeting the full-time job creation requirement provided by this
26 subsection, maintains not fewer than 1,500 full-time jobs within this
27 State for at least fifty-nine months following the month in which the
28 full-time job creation requirement provided by this subsection is
29 first met.

30
31 3. (New section) a. Notwithstanding any other provision of
32 law, the Executive Director of the Economic Development
33 Authority shall provide notice to the affected person and to the
34 Director of the Division of Taxation of the executive director’s
35 determination that a person meets or will meet each of the initial
36 requirements provided by subsection b. of section 2 of P.L. , c.
37 (C.) (pending before the Legislature as this bill) and the person
38 shall enter into an agreement with the Director of the Division of
39 Taxation pursuant to subsections b. through h. of this section.

40 b. (1) The person shall file a certificate of registration with the
41 director, in accordance with section 15 of P.L.1966, c. 30
42 (C.54:32B-15), on or before the earlier of: September 1, 2013; the
43 date the person makes and files an application to receive financial
44 assistance authorized by, or to apply for a credit against a
45 taxpayer’s liability for tax under, the "Business Retention and
46 Relocation Assistance Act," P.L.1996, c.25 (C.34:1B-112 et seq.),
47 the "Business Employment Incentive Program Act," P.L.1996, c.26
48 (C.34:1B-124 et seq.), the "Urban Transit Hub Tax Credit Act,"

1 P.L.2007, c.346 (C.34:1B-207 et seq.), the Economic
2 Redevelopment and Growth Grant program established in
3 accordance with section 4 or section 5 of P.L.2009, c.90 (C.52:27D-
4 489d or C.52:27D-489e), or the "Grow New Jersey Assistance Act,"
5 P.L.2011, c.149 (C.34:1B-242 et seq.); the date the person ceases to
6 maintain a customer operations and processing facility placed into
7 service within this State to meet the requirements provided by
8 subsection b. of section 2 of P.L. , c. (C.) (pending before the
9 Legislature as this bill); the date the person maintains fewer than
10 1,275 of the full-time jobs created within this State to meet the
11 requirements provided by subsection b. of section 2 of P.L. , c.
12 (C.) (pending before the Legislature as this bill); the
13 termination date of any law, regulation, agreement, or other binding
14 means that provides for the temporary deferral of tax collection
15 responsibilities in a form and a manner that is comparable to the
16 deferral of tax collection responsibilities provided by P.L. , c.
17 (C.) (pending before the Legislature as this bill) and that is
18 entered into by the person with a state other than the State of New
19 Jersey on or after the effective date of P.L. , c. (C.)
20 (pending before the Legislature as this bill); the effective date of a
21 law enacted by the United States Congress that permits a state to
22 require that its sales tax or its use tax be collected, reported, and
23 remitted to the State even if the person required to collect the tax
24 under that law does not have a physical presence within that state
25 that would otherwise give the state jurisdiction to impose tax
26 collection responsibilities under the Constitution and statutes of the
27 United States; the date the person engages in an activity within this
28 State that is sufficient to give this State jurisdiction to impose tax
29 collection responsibilities on that person under the Constitution and
30 statutes of the United States and that is not specified by the
31 definition of "customer operations and processing facility," as that
32 term is defined by section 1 of P.L. , c. (C.) (pending before
33 the Legislature as this bill); or the date the person violates one or
34 more of the terms and conditions of the agreement entered into with
35 the director in accordance with this section.

36 (2) The director shall issue, within 5 days of the date a
37 certificate of registration is received, a certificate of authority,
38 without charge in accordance with paragraph (1) of this subsection
39 empowering the person to collect the tax imposed by the "Sales and
40 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) and a duplicate
41 thereof for each additional place of business of that person.

42 (3) The person who is issued a certificate of authority in
43 accordance with paragraph (2) of this section shall collect the tax
44 imposed by P.L.1966, c.30 (C.54:32B-1 et seq.) on any sale to
45 persons within this State of tangible personal property, specified
46 digital products, and services that is subject to the tax imposed by
47 P.L.1966, c.30 (C.54:32B-1 et seq.) and that is made on or after the
48 date the certificate of authority is received by the person.

1 (4) The person shall pay the tax imposed by P.L.1966, c.30
2 (C.54:32B-1 et seq.) on any sale to persons within this State of
3 tangible personal property, specified digital products, and services
4 that is subject to the tax imposed by P.L.1966, c.30 (C.54:32B-1 et
5 seq.) and that is made on or after the after the earliest of the dates
6 specified by paragraph (1) of this subsection if the person fails to
7 file a certificate of registration required to be made by the person
8 with the director in accordance with paragraph (1) of this
9 subsection.

10 c. The person shall comply with the terms and conditions of
11 any agreement entered into in accordance with subsection a. of
12 section 4 of P.L. , c. (C.) (pending before the Legislature as
13 this bill), and shall comply with the requirements of subsection b. of
14 section 4 of P.L. , c. (C.) (pending before the Legislature as
15 this bill).

16 d. The person shall provide notice to its customers and shall
17 include in the notice information required to be provided to
18 customers in accordance with section 5 of P.L. , c. (C.)
19 (pending before the Legislature as this bill).

20 e. The person shall establish a transportation plan or an
21 alternative transportation plan with the Executive Director of the
22 New Jersey Transit Corporation and any applicable transportation
23 management association in accordance with section 6 of P.L. , c.
24 (C.) (pending before the Legislature as this bill).

25 f. The person shall make and submit a monthly progress report
26 in accordance with section 7 of P.L. , c. (C.) (pending
27 before the Legislature as this bill).

28 g. The person shall pay any penalty required to be paid to the
29 director in accordance with sections 8 through 13 of
30 P.L. , c. (C.) (pending before the Legislature as this bill).

31 h. The person shall submit a notarized copy of the agreement
32 entered into with the director in accordance with this section to the
33 Executive Director of the Economic Development Authority and the
34 Legislature, in accordance with section 2 of P.L.1991, c.164
35 (C.52:14-19.1), not later than 10 days after the date the agreement is
36 first entered into, and shall submit a notarized copy of an
37 amendment or a modification to the agreement not later than 10
38 days after the date the amendment or modification to the agreement
39 is first made.

40
41 4. (New section) a. Notwithstanding any other provision of
42 law, the construction, reconstruction, demolition, or renovation
43 related to a customer operations and processing facility that is
44 placed into service within this State to meet the requirements
45 provided by subsection b. of section 2 of P.L. , c. (C.)
46 (pending before the Legislature as this bill) shall include, as part of
47 a contract or agreement entered into for the construction,
48 reconstruction, demolition, or renovation, an agreement that:

1 establishes the terms and conditions of employment for each
2 individual employed in the construction, reconstruction, demolition,
3 or renovation related to a customer operations and processing
4 facility prior to the date any individual is hired; meets or exceeds
5 each of the requirements for a public works project enumerated by
6 section 5 of P.L.2002, c.44 (C.52:38-5); and is binding and
7 enforceable on all parties directly involved in the construction,
8 reconstruction, demolition, or renovation related to the customer
9 operations and processing facility.

10 b. Each individual employed in the construction,
11 reconstruction, demolition, or renovation related to a customer
12 operations and processing facility that is placed into service within
13 this State to meet the requirements provided by subsection b. of
14 section 2 of P.L. , c. (C.) (pending before the Legislature as
15 this bill) by a person who has entered into an agreement pursuant to
16 subsection a. of this section shall be subject to the requirements
17 provided by section 1 of P.L.1979, c.303 (C.34:1B-5.1); provided
18 however, that the exception for work performed on a facility owned
19 by a landlord of the entity receiving authority financial assistance in
20 accordance with that section shall not apply.

21
22 5. (New section) a. Notwithstanding any other provision of
23 law, a person who is deemed not to be a seller in accordance with
24 subsection a. of section 2 of P.L. , c. (C.) (pending before
25 the Legislature as this bill) shall provide prominently on any sales
26 slip, invoice, receipt, or other statement or memorandum given to
27 its customers in connection with its sales to persons within this
28 State of tangible personal property, specified digital products, and
29 services, made on or after the date the person is deemed not to be a
30 seller in accordance with subsection a. of section 2 of P.L. , c.
31 (C.) (pending before the Legislature as this bill) but before the
32 date the person receives a certificate of authority from the director
33 and is required to collect the tax imposed by the "Sales and Use Tax
34 Act," P.L.1966, c.30 (C.54:32B-1 et seq.), in accordance with
35 section 3 of P.L. , c. (C.) (pending before the Legislature as
36 this bill), notice that the tax imposed by P.L.1966, c.30 (C.54:32B-1
37 et seq.) has not been charged or collected by the person selling the
38 tangible personal property, specified digital products, and services
39 to the customer, and that the amount of any sales tax or any use tax
40 due in connection with the customer's purchase of tangible personal
41 property, specified digital products, and services may be required to
42 be reported and remitted to the State by the customer making the
43 purchase.

44 b. The notice required to be provided in accordance with
45 subsection a. of this section shall include, if applicable, the Internet
46 link or Internet address that will direct a customer to the Internet
47 website maintained and operated, or caused to be maintained and
48 operated, by the director to assist a taxpayer in determining a

1 liability for any sales tax or any use tax due in connection with the
2 purchase of tangible personal property, specified digital products,
3 and services from a retailer that is not required or authorized to
4 collect the tax on behalf of the State and to assist a taxpayer in
5 reporting and remitting the tax determined to be due.

6
7 6. (New section) a. Notwithstanding any other provision of
8 law, if a person who is deemed not to be a seller in accordance with
9 subsection a. of section 2 of P.L. , c. (C.) (pending before
10 the Legislature as this bill) locates a customer operations and
11 processing facility placed into service within this State to meet the
12 requirements provided by subsection b. of section 2 of P.L. , c.
13 (C.) (pending before the Legislature as this bill) at a location
14 that is within a one quarter mile radius of a public transportation
15 facility, the person shall work with the Executive Director of the
16 New Jersey Transit Corporation and with any applicable
17 transportation management association to establish a transportation
18 plan that will encourage individuals employed at the customer
19 operations and processing facility to utilize public transportation to
20 travel between the individual's place of residence and the customer
21 operations and processing facility or termini within the proximity of
22 the customer operations and processing facility.

23 b. If a person who is deemed not to be a seller in accordance
24 with subsection a. of section 2 of P.L. , c. (C.) (pending
25 before the Legislature as this bill) locates a customer operations and
26 processing facility placed into service within this State to meet the
27 requirements provided by subsection b. of section 2 of P.L. , c.
28 (C.) (pending before the Legislature as this bill) at a location
29 that is not within a one quarter mile radius of a public transportation
30 facility and that facility is not otherwise accessible by public
31 transportation, the person shall work with the Executive Director of
32 the New Jersey Transit Corporation and with any applicable
33 transportation management association to establish an alternative
34 transportation plan that will provide viable commuting options to an
35 individual who is employed at the customer operations and
36 processing facility and who is dependent on public transportation to
37 commute between the individual's place of residence and the
38 customer operations and processing facility or termini within the
39 proximity of the customer operations and processing facility.

40 c. A person who is deemed not to be a seller in accordance
41 with subsection a. of section 2 of P.L. , c. (C.) (pending
42 before the Legislature as this bill) and who establishes a
43 transportation plan or an alternative transportation plan in
44 accordance with subsection a. or subsection b. of this section shall
45 submit a notarized copy of the transportation plan or the alternative
46 transportation plan to the director, the Executive Director of the
47 Economic Development Authority, and the Legislature, in
48 accordance with section 2 of P.L.1991, c.164 (C.52:14-19.1), not

1 later than 10 days after the date the transportation plan or the
2 alternative transportation plan is first established, and shall submit a
3 notarized copy of any amendments or any modifications made to
4 the transportation plan or the alternative transportation plan to the
5 director, the executive director, and the Legislature, in accordance
6 with section 2 of P.L.1991, c.164 (C.52:14-19.1), not later than 10
7 days after the date an amendment or a modification to the
8 transportation plan or the alternative transportation plan is first
9 made.

10

11 7. (New section) a. Notwithstanding any other provision of
12 law, a person who is deemed not to be a seller in accordance with
13 subsection a. of section 2 of P.L. , c. (C.) (pending before
14 the Legislature as this bill) shall make a monthly progress report
15 furnishing, at a minimum, the following: the location of each
16 customer operations and processing facility placed into service or
17 maintained in service within this State during the month; the dollar
18 value of the capital investment made, or caused to be made, within
19 this State during the month; the number of full-time jobs created
20 and maintained each day during the month; and the dollar value of
21 gross receipts derived from the person's sale to purchasers within
22 this State of tangible personal property, specified digital products,
23 and services made during the month.

24 b. The monthly progress report required to be made in
25 accordance with subsection a. of this section shall be submitted to
26 the director, the Executive Director of the Economic Development
27 Authority, and the Legislature, in accordance with section 2 of
28 P.L.1991, c.164 (C.52:14-19.1), on or before the twentieth day
29 following the end of the preceding month, beginning with the first
30 month following the effective date of P.L. , c. (C.) (pending
31 before the Legislature as this bill).

32 c. The person's chief executive officer, or equivalent officer,
33 shall provide certification, in a form and manner as shall be
34 prescribed by the director, that the chief executive officer, or
35 equivalent officer, has reviewed the information contained in the
36 monthly progress report required to be made in accordance with
37 subsection a. of this section and that the representations contained
38 in the monthly progress report are accurate.

39

40 8. (New section) a. Notwithstanding any other provision of
41 law, if a person who is deemed not to be a seller in accordance with
42 subsection a. of section 2 of P.L. , c. (C.) (pending before
43 the Legislature as this bill) fails to places one or more customer
44 operations and processing facilities in service within this State to
45 meet the requirements provided by subsection b. of section 2 of
46 P.L. , c. (C.) (pending before the Legislature as this bill), on
47 or after January 1, 2012 but before September 1, 2013, the person
48 shall pay a penalty to the director.

1 b. The amount of penalty required to be paid in accordance
2 with subsection a. of this section shall be equal to seven percent of
3 the gross receipts derived from the person's sale to purchasers
4 within this State of tangible personal property, specified digital
5 products, and services made on or after January 1, 2012 but before
6 September 1, 2013.

7
8 9. (New section) a. Notwithstanding any other provision of
9 law, if a person who is deemed not to be a seller in accordance with
10 subsection a. of section 2 of P.L. , c. (C.) (pending before
11 the Legislature as this bill) ceases to maintain a customer operations
12 and processing facility placed into service within this State to meet
13 the requirements provided by subsection b. of section 2 of P.L. ,
14 c. (C.) (pending before the Legislature as this bill), on or after
15 the date the person first meets the requirement to place one or more
16 customer operations and processing facilities in service within this
17 State but before September 1, 2013, the person shall pay a penalty
18 to the director.

19 b. The amount of penalty required to be paid in accordance
20 with subsection a. of this section shall be equal to seven percent of
21 the gross receipts derived from the person's sale to purchasers
22 within this State of tangible personal property, specified digital
23 products, and services made on or after the date the person first
24 meets the requirement to place one or more customer operations and
25 processing facilities in service within this State in accordance with
26 subsection b. of section 2 of P.L. , c. (C.) (pending before
27 the Legislature as this bill) but before September 1, 2013.

28
29 10. (New section) a. Notwithstanding any other provision of
30 law, if a person who is deemed not to be a seller in accordance with
31 subsection a. of section 2 of P.L. , c. (C.) (pending before
32 the Legislature as this bill) fails to make, or fails to cause to be
33 made, a capital investment of not less than \$65,000,000 within this
34 State to meet the requirements provided by subsection b. of section
35 2 of P.L. , c. (C.) (pending before the Legislature as this
36 bill), on or after January 1, 2012 but before December 1, 2013, the
37 person shall be required to pay a penalty to the director.

38 b. The amount of penalty required to be paid in accordance
39 with subsection a. of this section shall be equal to seven percent of
40 the gross receipts derived from the person's sale to purchasers
41 within this State of tangible personal property, specified digital
42 products, and services made on or after January 1, 2012 but before
43 December 1, 2013.

44
45 11. (New section) a. Notwithstanding any other provision of
46 law, if a person who is deemed not to be a seller in accordance with
47 subsection a. of section 2 of P.L. , c. (C.) (pending before
48 the Legislature as this bill) fails to create not fewer than 1,500 full-

1 time jobs within this State to meet the requirements provided by
2 subsection b. of section 2 of P.L. , c. (C.), on or after
3 January 1, 2012 but before December 1, 2013, the person shall pay
4 a penalty to the director.

5 b. The amount of penalty required to be paid in accordance
6 with subsection a. of this section shall be equal to seven percent of
7 the gross receipts derived from the person's sale to purchasers
8 within this State of tangible personal property, specified digital
9 products, and services made on or after January 1, 2012 but before
10 December 1, 2013.

11

12 12. (New section) a. Notwithstanding any other provision of
13 law, if a person who is deemed not to be a seller in accordance with
14 subsection a. of section 2 of P.L. , c. (C.) (pending before
15 the Legislature as this bill) maintains fewer than 1,500 of the full-
16 time jobs created within this State to meet the requirements
17 provided by subsection b. of section 2 of P.L. , c. (C.)
18 (pending before the Legislature as this bill), on or after the date the
19 person first meets the full-time job creation requirement but before
20 the first day of the fifty-ninth month beginning after the month in
21 which the person first meets the full-time job creation requirement,
22 the person shall pay a penalty to the director.

23 b. The amount of penalty required to be paid in accordance
24 with subsection a. of this section shall be equal to seven percent of
25 the gross receipts derived from the person's sale to purchasers
26 within this State of tangible personal property, specified digital
27 products, and services made on or after the date the person first
28 meets the full-time job creation requirement provided by subsection
29 b. of section 2 of P.L. , c. (C.) (pending before the
30 Legislature as this bill) but before the first day of the fifty-ninth
31 month beginning after the month in which the person first meets the
32 full-time job creation requirement.

33 c. The penalty required to be paid in accordance with
34 subsection a. of this section shall not apply if the reduction in the
35 number of full-time jobs created within this State to meet the
36 requirements provided by subsection b. of Section 2 of P.L. , c.
37 (C.) (pending before the Legislature as this bill) is limited to a
38 period of not more than 60 days.

39

40 13. (New section) a. Notwithstanding any other provision of
41 law, if a person who is deemed not to be a seller in accordance with
42 subsection a. of section 2 of P.L. , c. (C.) (pending before
43 the Legislature as this bill) maintains fewer than 1,275 of the full-
44 time jobs created within this State to meet the requirements
45 provided by subsection b. of Section 2 of P.L. , c. (C.)
46 (pending before the Legislature as this bill), on or after the date the
47 person first meets the full-time job creation requirement but before
48 the first day of the fifty-ninth month beginning after the month in

1 which the person first meets the full-time job creation requirement,
2 the person shall pay a penalty to the director.

3 b. The amount of penalty required to be paid in accordance
4 with subsection a. of this section shall be equal to seven percent of
5 the gross receipts derived from the person's sale to purchasers
6 within this State of tangible personal property, specified digital
7 products, and services made on or after the date the person first
8 meets the full-time job creation requirement provided by subsection
9 b. of section 2 of P.L. , c. (C.) (pending before the
10 Legislature as this bill) but before the first day of the fifty-ninth
11 month beginning after the month in which the person first meets the
12 full-time job creation requirement.

13

14 14. (New section) Notwithstanding any other provision of law,
15 the director shall issue a tax assessment for the collection of any
16 penalty required to be paid to the director in accordance with
17 sections 8 through 13 of P.L. , c. (C.) (pending before the
18 Legislature as this bill). The amount of penalty required to be paid
19 to the director shall be a State tax subject to the State Uniform Tax
20 Procedure Law, R.S.54:48-1 et seq., and the amount of any penalty
21 captured by the director shall be deposited into the General Fund.

22

23 15. (New section) Notwithstanding any other provision of law,
24 the temporary deferral of tax collection responsibilities provided to
25 a person who is deemed not to be a seller in accordance with
26 subsection a. of section 2 of P.L. , c. (C.) (pending before
27 the Legislature as this bill) shall be null and void and shall not
28 apply on or after the earliest of the dates specified by paragraph (1)
29 of subsection b. of section 3 of P.L. , c. (C.) (pending before
30 the Legislature as this bill).

31

32 16. Notwithstanding any other provision of law, the temporary
33 deferral of tax collection responsibilities provided to a person who
34 is deemed not to be a seller in accordance with subsection a. of
35 section 2 of P.L. , c. (C.) (pending before the Legislature as
36 this bill) shall not apply to another person who has the relationship
37 of a related person or who has the relationship of a third party to the
38 person who is deemed not to be a seller in accordance with
39 subsection a. of section 2 of P.L. , c. (C.) (pending before
40 the Legislature as this bill), and who is required or authorized by
41 the director, in accordance with section 15 of P.L.1966, c.30
42 (C.54:32B-15), to collect the tax imposed by the "Sales and Use
43 Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) as of February 21,
44 2012.

45

46 17. (New section) Notwithstanding any provision of the
47 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
48 seq.), the director, in consultation with the Executive Director of the

1 Economic Development Authority, may adopt immediately upon
2 filing with the Office of Administrative Law such regulations as the
3 director and the executive director deem necessary to effectuate the
4 purposes of P.L. , c. (C.) (pending before the Legislature as
5 this bill), which regulations shall be effective for a period of not
6 more than 360 days following the effective date of
7 P.L. , c. (C.) (pending before the Legislature as this bill) and
8 may thereafter be amended, adopted, or readopted by the director in
9 accordance with the requirements of P.L.1968, c.410 (C.52:14B-1
10 et seq.).

11

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

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

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

21 (b) "Purchase at retail" means a purchase by any person at a
22 retail sale.

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

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

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

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

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
48 telecommunications and prepaid calling services. Use also includes

1 the exercise of any right or power over utility service. Use also
2 includes the derivation of a direct or indirect benefit from a service.

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

5 (1) The term "seller" includes:

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

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

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

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

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

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

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

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

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

39 (J) A person making sales to persons within the State of
40 tangible personal property, specified digital products or services,
41 the sale or the use of which is subject to the tax imposed by the
42 “Sales and Use Tax Act,” P.L.1966, c30 (C.54:32B-1 et seq.), who
43 may be authorized by the director pursuant to subsection b. of
44 section 3 of P.L. , c. (C.) (pending before the Legislature as
45 this bill) to collect the tax imposed by P.L.1966, c.30 (C.54:32B-1
46 et seq.);

47 (K) A person shall be presumed to be a seller if another person
48 with sufficient physical presence in this State to give this State

1 jurisdiction to impose tax collection responsibilities on that other
2 person, other a common carrier acting in its capacity as such:

3 (1) sells a similar line of products as the person and does so
4 under the same or a similar business name;

5 (2) maintains an office, distribution facility, warehouse or
6 storage place, or similar place of business in the State to facilitate
7 the delivery of property or services sold by the person to the
8 person's customers;

9 (3) uses trademarks, service marks, or trade names in the State
10 that are the same or substantially similar to those used by the
11 person;

12 (4) delivers, installs, assembles, or performs maintenance
13 services for the person's customers within the State;

14 (5) facilitates the person's delivery of property to customers in
15 the State by allowing the person's customers to pick up property
16 sold by the seller at an office distribution facilities, warehouse,
17 storage place, or similar place of business maintained in the state;

18 or

19 (6) conducts any other activities in the State that are
20 significantly associated with the person's ability to establish and
21 maintain a market in the State for the person's sales; and

22 (L) The presumption of subparagraph (K) of this subsection may
23 be rebutted by demonstrating that the activities conducted in this
24 State are not significantly associated with the person's ability to
25 establish or maintain a market in this State for the person's sales.

26 (2) In addition, when in the opinion of the director it is
27 necessary for the efficient administration of this act to treat any
28 salesman, representative, peddler or canvasser as the agent of the
29 seller, distributor, supervisor or employer under whom the agent
30 operates or from whom the agent obtains tangible personal property
31 or a specified digital product sold by the agent or for whom the
32 agent solicits business, the director may, in the director's discretion,
33 treat such agent as the seller jointly responsible with the agent's
34 principal, distributor, supervisor or employer for the collection and
35 payment over of the tax. A person is an agent of a seller in all
36 cases, but not limited to such cases, that: (A) the person and the
37 seller have the relationship of a "related person" described pursuant
38 to section 2 of P.L.1993, c.170 (C.54:10A-5.5); and (B) the seller
39 and the person use an identical or substantially similar name,
40 tradename, trademark, or goodwill, to develop, promote, or
41 maintain sales, or the person and the seller pay for each other's
42 services in whole or in part contingent upon the volume or value of
43 sales, or the person and the seller share a common business plan or
44 substantially coordinate their business plans, or the person provides
45 services to, or that inure to the benefit of, the seller related to
46 developing, promoting, or maintaining the seller's market.

47 (j) "Hotel" means a building or portion of it which is regularly
48 used and kept open as such for the lodging of guests. The term

1 "hotel" includes an apartment hotel, a motel, boarding house or
2 club, whether or not meals are served.

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

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

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

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

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

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

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

23 (r) "Dramatic or musical arts admission charge" means any
24 admission charge paid for admission to a theater, opera house,
25 concert hall or other hall or place of assembly for a live, dramatic,
26 choreographic or musical performance.

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

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

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

40 (v) "Motor vehicle" includes all vehicles propelled otherwise
41 than by muscular power (excepting such vehicles as run only upon
42 rails or tracks), trailers, semitrailers, house trailers, or any other
43 type of vehicle drawn by a motor-driven vehicle, and motorcycles,
44 designed for operation on the public highways.

45 (w) "Persons required to collect tax" or "persons required to
46 collect any tax imposed by this act" includes: every seller of
47 tangible personal property, specified digital products or services;
48 every recipient of amusement charges; every operator of a hotel;

1 every seller of a telecommunications service; every recipient of
2 initiation fees, membership fees or dues for access to or use of the
3 property or facilities of a health and fitness, athletic, sporting or
4 shopping club or organization; and every recipient of charges for
5 parking, storing or garaging a motor vehicle. Said terms shall also
6 include any officer or employee of a corporation or of a dissolved
7 corporation who as such officer or employee is under a duty to act
8 for such corporation in complying with any requirement of this act
9 and any member of a partnership.

10 (x) "Customer" includes: every purchaser of tangible personal
11 property, specified digital products or services; every patron paying
12 or liable for the payment of any amusement charge; every occupant
13 of a room or rooms in a hotel; every person paying charges in the
14 nature of initiation fees, membership fees or dues for access to or
15 use of the property or facilities of a health and fitness, athletic,
16 sporting or shopping club or organization; and every purchaser of
17 parking, storage or garaging a motor vehicle.

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

39 (z) "Director" means the Director of the Division of Taxation in
40 the State Department of the Treasury, or any officer, employee or
41 agency of the Division of Taxation in the Department of the
42 Treasury duly authorized by the director (directly, or indirectly by
43 one or more redelegations of authority) to perform the functions
44 mentioned or described in this act.

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

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

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

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

9 (C) Providing tangible personal property or a specified digital
10 product along with an operator for a fixed or indeterminate period
11 of time. A condition of this exclusion is that the operator is
12 necessary for the equipment to perform as designed. For the
13 purpose of this subparagraph, an operator must do more than
14 maintain, inspect, or set-up the tangible personal property or
15 specified digital product.

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

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

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

27 (cc) "Telecommunications service" means the electronic
28 transmission, conveyance, or routing of voice, data, audio, video, or
29 any other information or signals to a point, or between or among
30 points.

31 "Telecommunications service" shall include such transmission,
32 conveyance, or routing in which computer processing applications
33 are used to act on the form, code, or protocol of the content for
34 purposes of transmission, conveyance, or routing without regard to
35 whether such service is referred to as voice over Internet protocol
36 services or is classified by the Federal Communications
37 Commission as enhanced or value added. "Telecommunications
38 service" shall not include:

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

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

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

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

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

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

45 (7) data processing and information services that allow data to
46 be generated, acquired, stored, processed, or retrieved and delivered
47 by an electronic transmission to a purchaser where such purchaser's

1 primary purpose for the underlying transaction is the processed data
2 or information;

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

5 (9) tangible personal property;

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

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

9 (12) internet access service;

10 (13) radio and television audio and video programming services,
11 regardless of the medium, including the furnishing of transmission,
12 conveyance, and routing of such services by the programming
13 service provider. Radio and television audio and video
14 programming services shall include but not be limited to cable
15 service as defined in section 47 U.S.C. s.522(6) and audio and video
16 programming services delivered by commercial mobile radio
17 service providers, as defined in section 47 C.F.R. 20.3;

18 (14) ancillary services; or

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

21 For the purposes of this subsection:

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

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

31 "detailed telecommunications billing service" means an ancillary
32 service of separately stating information pertaining to individual
33 calls on a customer's billing statement;

34 "directory assistance" means an ancillary service of providing
35 telephone number information or address information or both;

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

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

45 (dd) (1) "Intrastate telecommunications" means a
46 telecommunications service that originates in one United States
47 state or a United States territory or possession or federal district,

1 and terminates in the same United States state or United States
2 territory or possession or federal district.

3 (2) "Interstate telecommunications" means a telecommunications
4 service that originates in one United States state or a United States
5 territory or possession or federal district, and terminates in a
6 different United States state or United States territory or possession
7 or federal district.

8 (3) "International telecommunications" means a
9 telecommunications service that originates or terminates in the
10 United States and terminates or originates outside the United States,
11 respectively. "United States" includes the District of Columbia or a
12 United States territory or possession.

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

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

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

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

20 (ii) "Self-generation unit" means a facility located on the user's
21 property, or on property purchased or leased from the user by the
22 person owning the self-generation unit and such property is
23 contiguous to the user's property, which generates electricity to be
24 used only by that user on the user's property and is not transported
25 to the user over wires that cross a property line or public
26 thoroughfare unless the property line or public thoroughfare merely
27 bifurcates the user's or self-generation unit owner's otherwise
28 contiguous property.

29 (jj) "Co-generation facility" means a facility the primary purpose
30 of which is the sequential production of electricity and steam or
31 other forms of useful energy which are used for industrial or
32 commercial heating or cooling purposes and which is designated by
33 the Federal Energy Regulatory Commission, or its successor, as a
34 "qualifying facility" pursuant to the provisions of the "Public Utility
35 Regulatory Policies Act of 1978," Pub.L.95-617.

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

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

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

- 1 (nn) (Deleted by amendment, P.L.2008, c.123)
- 2 (oo) (1) "Sales price" is the measure subject to sales tax and
3 means the total amount of consideration, including cash, credit,
4 property, and services, for which personal property or services are
5 sold, leased, or rented, valued in money, whether received in money
6 or otherwise, without any deduction for the following:
- 7 (A) The seller's cost of the property sold;
- 8 (B) The cost of materials used, labor or service cost, interest,
9 losses, all costs of transportation to the seller, all taxes imposed on
10 the seller, and any other expense of the seller;
- 11 (C) Charges by the seller for any services necessary to complete
12 the sale;
- 13 (D) Delivery charges;
- 14 (E) (Deleted by amendment, P.L.2011, c.49); and
- 15 (F) (Deleted by amendment, P.L.2008, c.123).
- 16 (2) "Sales price" does not include:
- 17 (A) Discounts, including cash, term, or coupons that are not
18 reimbursed by a third party, that are allowed by a seller and taken
19 by a purchaser on a sale;
- 20 (B) Interest, financing, and carrying charges from credit
21 extended on the sale of personal property or services, if the amount
22 is separately stated on the invoice, bill of sale, or similar document
23 given to the purchaser;
- 24 (C) Any taxes legally imposed directly on the consumer that are
25 separately stated on the invoice, bill of sale, or similar document
26 given to the purchaser;
- 27 (D) The amount of sales price for which food stamps have been
28 properly tendered in full or part payment pursuant to the federal
29 Food Stamp Act of 1977, Pub.L.95-113 (7 U.S.C. s.2011 et seq.); or
- 30 (E) Credit for any trade-in of property of the same kind accepted
31 in part payment and intended for resale if the amount is separately
32 stated on the invoice, bill of sale, or similar document given to the
33 purchaser.
- 34 (3) "Sales price" includes consideration received by the seller
35 from third parties if:
- 36 (A) The seller actually receives consideration from a party other
37 than the purchaser and the consideration is directly related to a price
38 reduction or discount on the sale;
- 39 (B) The seller has an obligation to pass the price reduction or
40 discount through to the purchaser;
- 41 (C) The amount of the consideration attributable to the sale is
42 fixed and determinable by the seller at the time of the sale of the
43 item to the purchaser; and
- 44 (D) One of the following criteria is met:
- 45 (i) the purchaser presents a coupon, certificate, or other
46 documentation to the seller to claim a price reduction or discount
47 where the coupon, certificate, or documentation is authorized,
48 distributed, or granted by a third party with the understanding that

1 the third party will reimburse any seller to whom the coupon,
2 certificate, or documentation is presented;

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

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

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

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

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

25 (rr) "Delivery charges" means charges by the seller for
26 preparation and delivery to a location designated by the purchaser
27 of personal property or services including, but not limited to,
28 transportation, shipping, postage, handling, crating, and packing. If
29 a shipment includes both exempt and taxable property, the seller
30 should allocate the delivery charge by using: (1) a percentage based
31 on the total sales price of the taxable property compared to the total
32 sales price of all property in the shipment; or (2) a percentage based
33 on the total weight of the taxable property compared to the total
34 weight of all property in the shipment. The seller shall tax the
35 percentage of the delivery charge allocated to the taxable property
36 but is not required to tax the percentage allocated to the exempt
37 property.

38 (ss) "Direct mail" means printed material delivered or distributed
39 by United States mail or other delivery service to a mass audience
40 or to addresses on a mailing list provided by the purchaser or at the
41 direction of the purchaser in cases in which the cost of the items are
42 not billed directly to the recipients. "Direct mail" includes tangible
43 personal property supplied directly or indirectly by the purchaser to
44 the direct mail seller for inclusion in the package containing the
45 printed material. "Direct mail" does not include multiple items of
46 printed material delivered to a single address.

47 (tt) "Streamlined Sales and Use Tax Agreement" means the
48 agreement entered into as governed and authorized by the "Uniform

1 Sales and Use Tax Administration Act," P.L.2001, c.431
2 (C.54:32B-44 et seq.).

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

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

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

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

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

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

18 (3) armored car services; and

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

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

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

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

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

37 (ccc) "Digital book" means a work that is generally recognized in
38 the ordinary and usual sense as a book.

39 (ddd) "Transferred electronically" means obtained by the
40 purchaser by means other than tangible storage media.

41 (eee) "Ringtone" means a digitized sound file that is downloaded
42 onto a device and that may be used to alert the purchaser with
43 respect to a communication.

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

45

46 19. This act shall take effect immediately; provided however,
47 that section 12 remain inoperative until the first day of the first

1 calendar quarter beginning at least 30 days after its date of
2 enactment.

3

4

5

STATEMENT

6

7 This bill provides for the temporary deferral of certain tax
8 collection responsibilities imposed under the sales and use tax, and
9 revises the sales and use tax to enumerate certain persons presumed
10 to be sellers responsible for the collection of tax.

11 Under the bill, certain persons who qualify will be deemed not to
12 be a seller for a limited period. During this period, the bill provides
13 that qualified persons will be eligible to make taxable sales of
14 goods and services to purchases within this state without being
15 required to register as a seller and collect and remit to the state the
16 tax determined to be due.

17 The bill provides that to qualify for the deferral a person must
18 make certain investments and create certain jobs within this State.
19 The bill specifies that to qualify a person must, individually or in
20 combination with a third party or a related person, meet or
21 demonstrate the ability to meet each of the following requirements:

22 --place one or more customer operations and processing facilities
23 in service within this State on or after January 1, 2012 but before
24 September 1, 2013;

25 --make, or cause to be made, a capital investment of not less than
26 \$65 million within this State on or after January 1, 2012 but before
27 December 1, 2013;

28 --create not fewer than 1,500 full-time jobs within this State on
29 or after January 1, 2012 but before December 1, 2013; and

30 --maintain not fewer than 1,500 full-time jobs within this State
31 for at least 59 months following the month in which the full-time
32 job creation requirements are first met.

33 The bill provides that to qualify for the deferral a person must
34 limit its activities within this State. The bill specifies that to qualify
35 a person must limit its activities within this State to the following:

36 --acceptance of returns or exchanges of tangible personal
37 property received from a customer;

38 --performance of a repair, maintenance, or refurbishment service;

39 --manufacturing and processing of tangible personal property for
40 use in a business operation;

41 --negotiating certain agreements within this State or procuring
42 certain goods and services that are subject to the sales and use tax
43 on behalf of a person or on behalf of a related person for business
44 operations, but not for retail sale from the business operations and
45 processing facility within this State;

46 --sending a promotional or marketing message or other
47 communication by means of electronic mail to the customer of a

1 person or to the customer of a related person from a server within
2 this State or from a server without this State;

3 --provision of a procurement service for a business operation;

4 --any other activity that facilitates the transfer or the delivery of
5 a specified digital product or service, except an activity relating to a
6 retail sale; or

7 --any other activity or integration relating to a business operation
8 between the customer operations and processing facility and a
9 person or a related person.

10 The bill provides that to qualify for the deferral a person must
11 enter into an agreement with the Director of the Division of
12 Taxation in the Department of the Treasury requiring the person to
13 begin to collect tax at the end of the deferral period or if certain
14 conditions are not met. The bill specifies that to qualify the person
15 must enter into and maintain compliance with an agreement with
16 the director requiring the person to register as a seller and to collect
17 the sales and use tax on taxable sales of goods and services made to
18 purchasers within this State on or after the earlier of:

19 --September 1, 2013;

20 --the date the person makes and files an application to receive
21 financial assistance authorized by, or an application to apply for a
22 credit against a taxpayer's liability for tax under, certain other
23 incentive and State tax credit programs;

24 --the date the person ceases to maintain a customer operations
25 and processing facility placed into service within this State to meet
26 the requirements for the deferral;

27 --the date the person maintains fewer than 1,275 of the full-time
28 jobs created within this State to meet the requirements for the
29 deferral;

30 --the termination date of any law, regulation, agreement, or other
31 binding means that provides for the temporary deferral of tax
32 collection responsibilities in a form and a manner that is
33 comparable to the deferral of tax collection responsibilities
34 provided by the bill and that is entered into by the person who
35 qualifies for the deferral with a state other than the State of New
36 Jersey on or after the effective date of the bill;

37 --the effective date of a law enacted by the United States
38 Congress that permits a state to require that its sales tax or its use
39 tax be collected, reported, and remitted to the State even if the
40 person required to collect the tax under that law does not have a
41 physical presence within that state that would otherwise give the
42 state jurisdiction to impose tax collection responsibilities under the
43 Constitution and statutes of the United States;

44 --the date the person engages in an activity within this State that
45 is sufficient to give this State jurisdiction to impose tax collection
46 responsibilities on that person under the Constitution and statutes of
47 the United States and that is not specified by the definition of

1 “customer operations and processing facility,” as that term is
2 defined by the bill; or

3 --the date the person violates one or more of the terms and
4 conditions of the agreement entered into with the director.

5 The bill provides that projects related to the construction,
6 reconstruction, demolition, or renovation of a customer operations
7 and processing facility placed into service within this State to meet
8 the requirements for the deferral must include in the contract or
9 agreement for its construction, reconstruction, demolition, or
10 renovation an agreement that: establishes the terms and conditions
11 of employment for each individual employed in the construction,
12 reconstruction, demolition, or renovation of a customer operations
13 and processing facility prior to the date any individual is hired;
14 meets or exceeds the requirements for a public works project
15 enumerated by section 5 of P.L.2002, c.44 (N.J.S.A.52:38-5); and is
16 binding and enforceable on all parties directly involved in the
17 construction, reconstruction, demolition, or renovation of the
18 customer operations and processing facility. The bill provides that
19 individuals employed in the construction, reconstruction,
20 demolition, or renovation of a customer operations and processing
21 facility by a person who has entered into an agreement are generally
22 subject to the requirements provided by section 1 of P.L.1979,
23 c.303 (N.J.S.A.34:1B-5.1)

24 The bill requires persons who qualify for the deferral to provide
25 prominently on any sales slip, invoice, receipt, or other statement or
26 memorandum given to its customers in connection with its sales to
27 persons within this State of tangible personal property, specified
28 digital products, or services notice that tax has not been collected
29 on the customer’s purchase, and that the purchaser may be required
30 to pay any tax due in connection with the purchase directly to the
31 State. The bill specifies that the notice must include, if applicable,
32 the Internet link or Internet address directing a customer to any
33 Internet website maintained and operated, or caused to be
34 maintained and operated, by Director of the Division of Taxation to
35 assist taxpayers in determining a liability for any tax due as a result
36 of a customer’s purchase of taxable good or services from a non-
37 present retailer and instructions for reporting and remitting any tax
38 due and payable to the State.

39 The bill requires persons who qualify for the deferral and who
40 locate a customer operations and processing facility within a one
41 quarter mile radius of a public transportation facility to work with
42 the Executive Director of the New Jersey Transit Corporation and
43 any applicable transportation management associations to establish
44 a transportation plan that will encourage employees to use public
45 transportation. The bill requires persons who qualify for the
46 deferral and who locate a customer operations and processing
47 facility at a location that is not within a one quarter mile radius of a
48 public transportation facility to work with the Executive Director of

1 the New Jersey Transit Corporation and any applicable
2 transportation management associations to establish an alternative
3 transportation plan that will provide viable commuting options to
4 employees of the facility who are dependent on public
5 transportation.

6 The bill requires persons who qualify for the deferral to make a
7 monthly progress report furnishing, at a minimum, the following:
8 the location of each customer operations and processing facility
9 placed into service or maintained in service within this State during
10 the month; the dollar value of the capital investment made, or
11 caused to be made, within this State during the month; the number
12 of full-time jobs created and maintained each day during the month;
13 and the dollar value of gross receipts derived from the person's sale
14 to purchasers within this State of tangible personal property,
15 specified digital products, and services made during the month.

16 The bill imposes certain penalties on persons who qualify for the
17 deferral if the person fails to place one or more customer operations
18 and processing facilities in services within this State to qualify for
19 the deferral, fails to make the capital investment within this State to
20 qualify for the deferral, and fails to create the full-time jobs within
21 this State to qualify for the deferral. The bill specifies that the
22 amount of penalty required to be paid is a function of the gross
23 receipts derived from the person's sale of goods and services made
24 to purchasers within this State between January 1, 2012 and either
25 September 1, 2013 or December 1, 2013.

26 The bill imposes certain penalties on persons who qualify for the
27 deferral if the person ceases to maintain a customer operations and
28 processing facility placed into service within this State to qualify
29 for the deferral, maintains fewer than 1,500 of the full-time jobs
30 created within this State to qualify for the deferral, and maintains
31 fewer than 1,275 of the full-time jobs created within this State to
32 qualify for the deferral. The bill specifies that the amount of
33 penalty required to be paid is a function of the gross receipts
34 derived from the person's sale of goods and services made to
35 purchasers within this State between the time the person first meets
36 the capital investment or full-time job creation requirements and the
37 frame of time within which the person agrees to maintain the
38 facility or maintain the level of full-time jobs as specified by the
39 bill.

40 The bill requires the Director of the Division of Taxation to issue
41 a tax assessment for the capture of any penalty required to be paid,
42 and specifies the penalty is a State tax subject to the State Uniform
43 Tax Procedure Law.

44 The bill provides that the deferral provided to a person who
45 qualifies is null and void and no longer applies on or after the
46 earlier of:

47 --September 1, 2013;

1 --the date the person who qualifies for the deferral makes and
2 files an application to receive financial assistance authorized by, or
3 an application to apply for a credit against a taxpayer's liability for
4 tax under, certain other incentive and State tax credit programs;

5 --the date the person who qualifies for the deferral ceases to
6 maintain a customer operations and processing facility placed into
7 service within this State to meet the requirements for the deferral;

8 --the date the person who qualifies for the deferral maintains
9 fewer than 1,275 of the full-time jobs created within this State to
10 meet the requirements for the deferral;

11 --the termination date of any law, regulation, agreement, or other
12 binding means that provides for the temporary deferral of tax
13 collection responsibilities in a form and a manner that is
14 comparable to the deferral of tax collection responsibilities
15 provided by the bill and that is entered into by the person who
16 qualifies for the deferral with a state other than the State of New
17 Jersey on or after the effective date of the bill;

18 --the effective date of a law enacted by the United States
19 Congress that permits a state to require that its sales tax or its use
20 tax be collected, reported, and remitted directly to the State even if
21 the person required to collect the tax under that law does not have a
22 physical presence within that state that would otherwise give the
23 state jurisdiction to impose tax collection responsibilities under the
24 Constitution and statutes of the United States;

25 --the date the person who qualifies for the deferral engages in an
26 activity within this State that is sufficient to give this State
27 jurisdiction to impose tax collection responsibilities on that person
28 under the Constitution and statutes of the United States and that is
29 not specified by the definition of "customer operations and
30 processing facility," as that term is defined by section 1 of
31 P.L. , c. (C.) (pending before the Legislature as this bill); or

32 --the date the person who qualifies for the deferral violates one
33 or more of the terms and conditions of the agreement entered into
34 with the director.

35 The bill revises the sales and use tax to amend the definition of
36 "seller" to create a rebuttable presumption that a person is a seller
37 required to collect and remit sales and use tax on taxable sales to
38 purchasers in the State if another person conducts activities in this
39 State that are significantly associated with the person's ability to
40 establish and maintain a market in this State for the person's sales.

41 The bill provides that the presumption will be presumed to be a
42 seller may be rebutted by demonstrating to the director that the
43 activities conducted in this state are not significantly associated
44 with the persons ability to establish or maintain a market in this
45 state for the person's sales.

46 The bill authorizes the Director of the Division of Taxation, in
47 consultation with the Executive Director of the Economic
48 Development Authority, to adopt regulations necessary to effectuate

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1 the purposes of the bill, and permits the director to make an
2 immediate filing of those regulations, effective for a period of not
3 more than 360 days.

4 The bill takes effect immediately upon enactment.