

**SENATE, No. 1762**

**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

INTRODUCED MARCH 5, 2012

**Sponsored by:**

**Senator RAYMOND J. LESNIAK**

**District 20 (Union)**

**Senator PAUL A. SARLO**

**District 36 (Bergen and Passaic)**

**SYNOPSIS**

Provides temporary deferral of certain sales and use tax collection responsibilities of certain persons making certain investments and creating certain jobs.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT providing a temporary deferral of certain sales and use tax  
2 collection responsibilities of certain persons making certain  
3 investments and creating certain jobs, amending and  
4 supplementing 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. (New section) As used in sections 1 through 18 of  
10 P.L. , c. (C. ) (pending before the Legislature as this bill):

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

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

20 “Chief Executive Officer” means the Chief Executive Officer of  
21 the New Jersey Economic Development Authority.

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

25 “Customer operations and processing facility” means one or  
26 more newly constructed facilities that did not exist within this State  
27 prior to January 1, 2012 where tangible personal property, specified  
28 digital products, or services are stored, packaged, processed, and  
29 shipped for delivery to the customer of a person but where retail  
30 sales of tangible personal property, specified digital products, or  
31 services are not made. A customer operations and processing  
32 facility where tangible personal property, specified digital products,  
33 or services are stored, packaged, processed, and shipped for  
34 delivery to the customer of a person but where retail sales of  
35 tangible personal property, specified digital products, or services  
36 are not made may utilize a person’s or a related person’s  
37 technology, services, or other infrastructure relating to processing,  
38 procuring, and fulfilling the order of a customer, including, but not  
39 limited to, a shared customer or subscription program, use of a  
40 similar gift card and promotional program, fraud management,  
41 inventory management software, product reviews, and cross  
42 reporting of employees of the person and of employees of the  
43 related person, and may perform the following activities within the  
44 State on behalf of a person or a related person, regardless of  
45 whether the activities are performed at the customer operations and

**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 processing facility or whether the activities are performed at a  
2 location of a related person or a location of a third party:

3 acceptance of returns or exchanges of tangible personal property  
4 received from a customer, including the provision of customer  
5 service to the customer of a person or to the customer of a related  
6 person;

7 performance of a repair, maintenance, or refurbishment service,  
8 including, but not limited to, the replacement of a defective or a  
9 damaged part and the repair of a broken or a damaged product that  
10 may be sold as a refurbished product by a related person or a third  
11 party without this State;

12 manufacturing and processing of tangible personal property for  
13 use in a business operation;

14 negotiating an agreement within this State with a person's  
15 vendors or a related person's vendors or procuring tangible personal  
16 property, a specified digital product, or a service that is subject to  
17 the tax imposed by the "Sales and Use Tax Act," P.L.1966, c.30  
18 (C.54:32B-1 et seq.) on behalf of a person or on behalf of a related  
19 person for business operations but not for retail sale from the  
20 customer operations and processing facility within this State;

21 sending a promotional or marketing message or other form of  
22 communication by means of electronic mail to the customer of a  
23 person or to the customer of a related person from a server within  
24 this State or from a server without this State;

25 provision of a procurement service for a business operation;

26 any other activity that facilitates the transfer or the delivery of a  
27 specified digital product or service, except an activity relating to a  
28 retail sale; or

29 any other activity or integration relating to a business operation  
30 between the customer operations and processing facility and a  
31 person or a related person.

32 "Full-time job" means a job that is provided to and maintained  
33 by an individual who is a resident of this State on the date the  
34 individual is hired and that did not exist within the State prior to  
35 January 1, 2012, which job requires a minimum of 35 hours of the  
36 individual's time per week within this State for each full year of  
37 employment and which job requires comprehensive benefits be  
38 provided to the individual by the individual's employer.

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

41 "New Jersey Economic Development Authority" means the New  
42 Jersey Economic Development Authority established by section 4  
43 of P.L.1974, c.80 (C.34:1B-4).

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

46 "State tax or benefit program" means the "Business Retention  
47 and Relocation Assistance Act," P.L.1996, c.25 (C.34:1B-112 et  
48 seq.), the "Business Employment Incentive Program Act,"

1 P.L.1996, c.26 (C.34:1B-124 et seq.), the "Urban Transit Hub Tax  
2 Credit Act," P.L.2007, c.346 (C.34:1B-207 et seq.), the Economic  
3 Redevelopment and Growth Grant program established in  
4 accordance with section 4 or section 5 of P.L.2009, c.90 (C.52:27D-  
5 489d or C.52:27D-489e), or the "Grow New Jersey Assistance Act,"  
6 P.L.2011, c.149 (C.34:1B-242 et seq.).

7 "Transportation management association" means a nonprofit  
8 corporation approved by the Department of Transportation as  
9 coordinating transportation services, including, but not limited to,  
10 public transportation, van pools, car pools, bicycling and pedestrian  
11 modes, as well as strategies such as flex time, staggered work  
12 hours, and compressed work weeks, for corporations, employees,  
13 developers, individuals, and other groups.

14

15 2. (New section) Notwithstanding any other provision of law, a  
16 person who owns or leases or rents or otherwise utilizes a customer  
17 operations and processing facility of its own within this State or that  
18 of a related person within this State or that of a third party within  
19 this State, including a venue for making purchases of tangible  
20 personal property or a venue for transferring specified digital  
21 products and services for resale, that are shipped or transferred  
22 directly to a purchaser, shall be deemed not to be a seller by the  
23 director for purposes of the tax imposed by the "Sales and Use Tax  
24 Act," P.L.1966, c.30 (C.54:32B-1 et seq.), if the person:  
25 demonstrates to the chief executive officer that the person does not  
26 engage in certain activities within this State in accordance with  
27 section 3 of P.L. , c. (C. ) (pending before the Legislature as  
28 this bill); demonstrates to the chief executive officer that the person  
29 meets or will meet each of the demonstrations required by section 4  
30 of P.L. , c. (C. ) (pending before the Legislature as this bill);  
31 and enters into an agreement with the director in accordance with  
32 section 5 of P.L. , c. (C. ) (pending before the Legislature as  
33 this bill).

34

35 3. (New section) a. Notwithstanding any other provision of  
36 law, a person who seeks to be deemed not to be a seller by the  
37 director in accordance with section 2 of P.L. , c. (C. )  
38 (pending before the Legislature as this bill) shall demonstrate to the  
39 chief executive officer, on or after the effective date of  
40 P.L. , c. (C. ) (pending before the Legislature as this bill),  
41 that the person does not engage in certain activities within this  
42 State.

43 b. The demonstration shall be made in a form and manner as  
44 shall be prescribed by the chief executive officer, and shall include  
45 information that the person does not engage in an activity within  
46 this State other than an activity specified by the definition of a  
47 "customer operations and processing facility" as that term is

1 defined by section 1 of P.L. , c. (C. ) (pending before the  
2 Legislature as this bill).

3  
4 4. (New section) a. Notwithstanding any other provision of  
5 law, a person who seeks to be deemed not to be a seller by the  
6 director in accordance with section 2 of P.L. , c. (C. )  
7 (pending before the Legislature as this bill) shall demonstrate to the  
8 chief executive officer, on or after the date the person demonstrates  
9 to the chief executive officer that the person does not engage in  
10 certain activities within this State in accordance with section 3 of  
11 P.L. , c. (C. ) (pending before the Legislature as this bill), the  
12 ability of that person to make certain investments and create certain  
13 jobs within this State.

14 b. The demonstration shall be made in a form and manner as  
15 shall be prescribed by the chief executive officer, and shall include  
16 information that the person, directly or in combination with a  
17 related person or in combination with a third party: placed or will  
18 place one or more customer operations and processing facilities in  
19 service within this State on or after January 1, 2012 but before  
20 December 1, 2013; made or will make a capital investment of not  
21 less than \$130,000,000 within this State on or after January 1, 2012  
22 but before December 1, 2013; created or will create not fewer than  
23 1,500 full-time jobs on or after January 1, 2012 but before  
24 December 1, 2013; and will maintain not fewer than 1,500 full-time  
25 jobs for at least fifty-nine months following the month in which the  
26 full-time job creation demonstration required by this subsection is  
27 first met.

28  
29 5. (New section) a. Notwithstanding any other provision of  
30 law, the chief executive officer shall provide notice to the person  
31 who seeks to be deemed not to be a seller by the director in  
32 accordance with section 2 of P.L. , c. (C. ) (pending before  
33 the Legislature as this bill) and shall provide notice to the director  
34 of the chief executive officer's determination that that the person  
35 does not engage in certain activities within this State in accordance  
36 with section 3 of P.L. , c. (C. ) (pending before the  
37 Legislature as this bill) and that the person meets or will meet each  
38 of the initial demonstrations required by section 4 of  
39 P.L. , c. (C. ) (pending before the Legislature as this bill).

40 b. A person who receives a notice from the chief executive  
41 officer in accordance with subsection a. of this section shall, on or  
42 after the date the notice provided by the chief executive officer is  
43 received, enter into an agreement with the director which complies  
44 with each of the requirements specified by subsections c. through h.  
45 of this section.

46 c. (1) The person shall file a certificate of registration with the  
47 director, in accordance with section 15 of P.L.1966, c. 30  
48 (C.54:32B-15), on or before the earlier of:

1 July 1, 2013;

2 the date the person makes and files an application to receive  
3 financial assistance authorized by, or to apply for a credit against a  
4 taxpayer's liability for tax under, a State tax or benefit program;

5 the date the person ceases to maintain a customer operations and  
6 processing facility placed into service within this State to meet the  
7 demonstrations required by subsection b. of section 4 of P.L. , c.  
8 (C. ) (pending before the Legislature as this bill);

9 the date the person maintains fewer than 1,275 of the full-time  
10 jobs created within this State to meet the demonstrations required  
11 by subsection b. of section 4 of P.L. , c. (C. ) (pending  
12 before the Legislature as this bill);

13 the termination date of any law, regulation, agreement, or other  
14 binding means that provides for the temporary deferral of tax  
15 collection responsibilities in a form and a manner that is  
16 comparable to the deferral of tax collection responsibilities  
17 provided by P.L. , c. (C. ) (pending before the Legislature as  
18 this bill) and that is entered into by the person with a state other  
19 than the State of New Jersey on or after the effective date of  
20 P.L. , c. (C. ) (pending before the Legislature as this bill);

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

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

35 the date the person violates one or more of the requirements of  
36 the agreement entered into with the director in accordance with this  
37 section.

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

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

1 digital products, and services that is subject to the tax imposed by  
2 P.L.1966, c.30 (C.54:32B-1 et seq.) and that is made on or after the  
3 date the certificate of authority is received by the person.

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

12 d. The person shall provide notice to its customers and shall  
13 include in the notice any information required to be provided to  
14 customers in accordance with section 6 of P.L. , c. (C. )  
15 (pending before the Legislature as this bill).

16 e. The person shall establish a transportation plan or an  
17 alternative transportation plan with the Executive Director of the  
18 New Jersey Transit Corporation and any applicable transportation  
19 management association in accordance with section 7 of P.L. , c.  
20 (C. ) (pending before the Legislature as this bill).

21 f. The person shall make a monthly progress report and shall  
22 submit that report in accordance with section 8 of P.L. , c. (C. )  
23 (pending before the Legislature as this bill).

24 g. The person shall pay any penalty required to be paid to the  
25 director in accordance with sections 9 through 14 of P.L. , c.  
26 (C. ) (pending before the Legislature as this bill).

27 h. The person shall submit a copy of the agreement entered into  
28 with the director in accordance with this section to the chief  
29 executive officer and the Legislature, in accordance with section 2  
30 of P.L.1991, c.164 (C.52:14-19.1), not later than 10 days after the  
31 date the agreement is first entered into, and shall submit a copy of  
32 any amendment or modification made to the agreement to the chief  
33 executive officer and the Legislature, in accordance with section 2  
34 of P.L.1991, c.164 (C.52:14-19.1), not later than 10 days after the  
35 date the amendment or modification to the agreement is made.

36  
37 6. (New section) a. Notwithstanding any other provision of  
38 law, a person who is deemed not to be a seller by the director in  
39 accordance with section 2 of P.L. , c. (C. ) (pending before  
40 the Legislature as this bill) shall provide prominently on any sales  
41 slip, invoice, receipt, or other statement or memorandum given to  
42 its customers in connection with its sales to persons within this  
43 State of tangible personal property, specified digital products, and  
44 services, made on or after the date the person is deemed not to be a  
45 seller by the director in accordance with section 2 of  
46 P.L. , c. (C. ) (pending before the Legislature as this bill) but  
47 before the date the person receives a certificate of authority from  
48 the director and is required to collect the tax imposed by the "Sales

1 and Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.), in  
2 accordance with section 4 of P.L. , c. (C. ) (pending before  
3 the Legislature as this bill), notice that the tax imposed by  
4 P.L.1966, c.30 (C.54:32B-1 et seq.) has not been charged or  
5 collected by the person selling the tangible personal property,  
6 specified digital products, and services to the customer, and that the  
7 amount of any sales tax or any use tax due in connection with the  
8 customer’s purchase of tangible personal property, specified digital  
9 products, and services may be required to be reported and remitted  
10 to the State by the customer making the purchase.

11 b. The notice required to be provided in accordance with  
12 subsection a. of this section shall include, if applicable, the Internet  
13 link or Internet address that will direct a customer to the Internet  
14 website maintained and operated, or caused to be maintained and  
15 operated, by the director to assist a taxpayer in determining a  
16 liability for any sales tax or any use tax due in connection with the  
17 purchase of tangible personal property, specified digital products,  
18 and services from a retailer that is not required or authorized to  
19 collect the tax on behalf of the State and to assist a taxpayer in  
20 reporting and remitting any tax determined to be due.

21  
22 7. (New section) a. Notwithstanding any other provision of  
23 law, if a person who is deemed not to be a seller by the director in  
24 accordance with section 2 of P.L. , c. (C. ) (pending before  
25 the Legislature as this bill) locates a customer operations and  
26 processing facility placed into service within this State to meet the  
27 demonstrations required by subsection b. of section 4 of  
28 P.L. , c. (C. ) (pending before the Legislature as this bill) at a  
29 location that is within a one quarter mile radius of a public  
30 transportation facility, the person shall work with the Executive  
31 Director of the New Jersey Transit Corporation and with any  
32 applicable transportation management association to establish a  
33 transportation plan that will encourage individuals employed at the  
34 customer operations and processing facility to utilize public  
35 transportation to travel between the individual’s place of residence  
36 and the customer operations and processing facility or termini  
37 within the proximity of the customer operations and processing  
38 facility.

39 b. If a person who is deemed not to be a seller by the director  
40 in accordance with section 2 of P.L. , c. (C. ) (pending  
41 before the Legislature as this bill) locates a customer operations and  
42 processing facility placed into service within this State to meet the  
43 demonstrations required by subsection b. of section 4 of  
44 P.L. , c. (C. ) (pending before the Legislature as this bill) at a  
45 location that is not within a one quarter mile radius of a public  
46 transportation facility and that facility is not otherwise accessible by  
47 public transportation, the person shall work with the Executive  
48 Director of the New Jersey Transit Corporation and with any



1 applicable transportation management association to establish an  
2 alternative transportation plan that will provide viable commuting  
3 options to an individual who is employed at the customer operations  
4 and processing facility and who is dependent on public  
5 transportation to commute between the individual's place of  
6 residence and the customer operations and processing facility or  
7 termini within the proximity of the customer operations and  
8 processing facility.

9 c. A person who is deemed not to be a seller by the director in  
10 accordance with section 2 of P.L. , c. (C. ) (pending before  
11 the Legislature as this bill) and who establishes a transportation  
12 plan or an alternative transportation plan in accordance with  
13 subsection a. or subsection b. of this section shall submit a copy of  
14 the transportation plan or the alternative transportation plan to the  
15 director, the chief executive officer, and the Legislature, in  
16 accordance with section 2 of P.L.1991, c.164 (C.52:14-19.1), not  
17 later than 10 days after the date the transportation plan or the  
18 alternative transportation plan is established, and shall submit a  
19 copy of any amendments or modifications made to the  
20 transportation plan or the alternative transportation plan to the  
21 director, the chief executive officer, and the Legislature, in  
22 accordance with section 2 of P.L.1991, c.164 (C.52:14-19.1), not  
23 later than 10 days after the date an amendment or a modification to  
24 the transportation plan or the alternative transportation plan is  
25 made.

26

27 8. (New section) a. Notwithstanding any other provision of  
28 law, a person who is deemed not to be a seller by the director in  
29 accordance with section 2 of P.L. , c. (C. ) (pending before  
30 the Legislature as this bill) shall make a monthly report  
31 documenting that person's progress in making certain investments  
32 and creating certain jobs within this State.

33 b. The monthly progress report required to be made by a person  
34 in accordance with subsection a. of this section shall furnish: the  
35 location of each customer operations and processing facility placed  
36 into service or maintained in service within this State during the  
37 month; the dollar value of the capital investment made within this  
38 State during the month; the number of full-time jobs created and  
39 maintained each day during the month; and the dollar value of gross  
40 receipts derived from the person's sales to purchasers within this  
41 State of tangible personal property, specified digital products, and  
42 services made during the month.

43 c. The monthly progress report required to be made by a person  
44 in accordance with subsection a. of this section shall include a  
45 certification made by the person's chief executive officer, or the  
46 chief executive officer's designee, that the report and any  
47 information furnished in accordance with subsection b. of this  
48 section has been reviewed by the person's chief executive officer,

1 or the chief executive officer's designee, and that the  
2 representations contained in the report are accurate.

3 d. Monthly progress reports required to be made by a person in  
4 accordance with subsection a. of this section shall be submitted to  
5 the director, the chief executive officer, and the Legislature, in  
6 accordance with section 2 of P.L.1991, c.164 (C.52:14-19.1), on a  
7 quarterly basis, beginning with the first calendar quarter beginning  
8 after the date the chief executive officer provides notice to the  
9 person and the director of the chief executive's determination in  
10 accordance with subsection a. of section 5 of P.L. , c. (C. )  
11 (pending before the Legislature as this bill).

12

13 9. (New section) a. Notwithstanding any other provision of  
14 law, if a person who is deemed not to be a seller by the director in  
15 accordance with section 2 of P.L. , c. (C. ) (pending before  
16 the Legislature as this bill) fails to place one or more customer  
17 operations and processing facilities in service within this State to  
18 meet the demonstrations required by subsection b. of section 4 of  
19 P.L. , c. (C. ) (pending before the Legislature as this bill), on  
20 or after January 1, 2012 but before December 1, 2013, the person  
21 shall pay a penalty to the director.

22 b. The amount of penalty required to be paid in accordance  
23 with subsection a. of this section shall be equal to seven percent of  
24 the gross receipts derived from the person's sales to purchasers  
25 within this State of tangible personal property, specified digital  
26 products, and services made on or after January 1, 2012 but before  
27 December 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 by the director in  
31 accordance with section 2 of P.L. , c. (C. ) (pending before  
32 the Legislature as this bill) ceases to maintain a customer operations  
33 and processing facility placed into service within this State to meet  
34 the demonstrations required by subsection b. of section 4 of  
35 P.L. , c. (C. ) (pending before the Legislature as this bill), on  
36 or after the date the person first meets the demonstration to place  
37 one or more customer operations and processing facilities in service  
38 within this State but before December 1, 2013, the person shall pay  
39 a penalty to the director.

40 b. The amount of penalty required to be paid in accordance  
41 with subsection a. of this section shall be equal to seven percent of  
42 the gross receipts derived from the person's sales to purchasers  
43 within this State of tangible personal property, specified digital  
44 products, and services made on or after the date the person first  
45 meets the demonstration to place one or more customer operations  
46 and processing facilities in service within this State in accordance  
47 with subsection b. of section 4 of P.L. , c. (C. ) (pending  
48 before the Legislature as this bill) but before December 1, 2013.

1 11. (New section) a. Notwithstanding any other provision of  
2 law, if a person who is deemed not to be a seller by the director in  
3 accordance with section 2 of P.L. , c. (C. ) (pending before  
4 the Legislature as this bill) fails to make a capital investment of not  
5 less than \$130,000,000 within this State to meet the demonstrations  
6 required by subsection b. of section 4 of P.L. , c. (C. )  
7 (pending before the Legislature as this bill), on or after January 1,  
8 2012 but before December 1, 2013, the person shall pay a penalty to  
9 the director.

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

16  
17 12. (New section) a. Notwithstanding any other provision of  
18 law, if a person who is deemed not to be a seller by the director in  
19 accordance with section 2 of P.L. , c. (C. ) (pending before  
20 the Legislature as this bill) fails to create not fewer than 1,500 full-  
21 time jobs within this State to meet the demonstrations required by  
22 subsection b. of section 4 of P.L. , c. (C. ), on or after  
23 January 1, 2012 but before December 1, 2013, the person shall pay  
24 a penalty to the director.

25 b. The amount of penalty required to be paid in accordance  
26 with subsection a. of this section shall be equal to seven percent of  
27 the gross receipts derived from the person's sales to purchasers  
28 within this State of tangible personal property, specified digital  
29 products, and services made on or after January 1, 2012 but before  
30 December 1, 2013.

31  
32 13. (New section) a. Notwithstanding any other provision of  
33 law, if a person who is deemed not to be a seller by the director in  
34 accordance with section 2 of P.L. , c. (C. ) (pending before  
35 the Legislature as this bill) maintains fewer than 1,500 of the full-  
36 time jobs created within this State to meet the demonstrations  
37 required by subsection b. of section 4 of P.L. , c. (C. )  
38 (pending before the Legislature as this bill), on or after the date the  
39 person first meets the full-time job creation demonstration but  
40 before the first day of the fifty-ninth month beginning after the  
41 month in which the person first meets the full-time job creation  
42 demonstration, the person shall pay a penalty to the director.

43 b. The amount of penalty required to be paid in accordance  
44 with subsection a. of this section shall be equal to seven percent of  
45 the gross receipts derived from the person's sales to purchasers  
46 within this State of tangible personal property, specified digital  
47 products, and services made on or after the date the person first  
48 meets the full-time job creation demonstration required by

1 subsection b. of section 4 of P.L. , c. (C. ) (pending before  
2 the Legislature as this bill) but before the first day of the fifty-ninth  
3 month beginning after the month in which the person first meets the  
4 full-time job creation demonstration.

5 c. The penalty required to be paid in accordance with  
6 subsection a. of this section shall not apply if the reduction in the  
7 number of full-time jobs created within this State to meet the  
8 demonstrations required by subsection b. of section 4 of P.L. , c.  
9 (C. ) (pending before the Legislature as this bill) is limited to a  
10 period of not more than 60 days.

11  
12 14. (New section) a. Notwithstanding any other provision of  
13 law, if a person who is deemed not to be a seller by the director in  
14 accordance with section 2 of P.L. , c. (C. ) (pending before  
15 the Legislature as this bill) maintains fewer than 1,275 of the full-  
16 time jobs created within this State to meet the demonstrations  
17 required by subsection b. of section 4 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 demonstration but  
20 before the first day of the fifty-ninth month beginning after the  
21 month in which the person first meets the full-time job creation  
22 demonstration, 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 sales 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 demonstration required by  
29 subsection b. of section 4 of P.L. , c. (C. ) (pending before  
30 the 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 demonstration.

33  
34 15. (New section) Notwithstanding any other provision of law,  
35 the director shall issue a tax assessment for the collection of any  
36 penalty required to be paid to the director in accordance with  
37 sections 9 through 14 of P.L. , c. (C. ) (pending before the  
38 Legislature as this bill). The amount of penalty required to be paid  
39 to the director shall be a State tax subject to the State Uniform Tax  
40 Procedure Law, R.S.54:48-1 et seq., and the amount of any penalty  
41 collected by the director shall be deposited into the General Fund.

42  
43 16. (New section) Notwithstanding any other provision of law,  
44 the temporary deferral of tax collection responsibilities provided to  
45 a person who is deemed not to be a seller by the director in  
46 accordance with section 2 of P.L. , c. (C. ) (pending before  
47 the Legislature as this bill) shall be null and void and shall not  
48 apply on or after the earliest of the dates specified by paragraph (1)

1 of subsection c. of section 5 of P.L. , c. (C. ) (pending before  
2 the Legislature as this bill).

3  
4 17. (New section) Notwithstanding any other provision of law,  
5 the temporary deferral of tax collection responsibilities provided to  
6 a person who is deemed not to be a seller by the director in  
7 accordance with section 2 of P.L. , c. (C. ) (pending before  
8 the Legislature as this bill) shall not apply to another person who  
9 has the relationship of a related person or who has the relationship  
10 of a third party to the person who is deemed not to be a seller by the  
11 director in accordance with section 2 of P.L. , c. (C. )  
12 (pending before the Legislature as this bill), and who is required or  
13 authorized by the director, in accordance with section 15 of  
14 P.L.1966, c.30 (C.54:32B-15), to collect the tax imposed by the  
15 "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) as of  
16 February 21, 2012.

17  
18 18. (New section) Notwithstanding any provision of the  
19 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
20 seq.), the director, in consultation with the chief executive officer,  
21 may adopt immediately upon filing with the Office of  
22 Administrative Law such regulations as the director and the chief  
23 executive officer deem necessary to effectuate the purposes of  
24 P.L. , c. (C. ) (pending before the Legislature as this bill),  
25 which regulations shall be effective for a period of not more than  
26 360 days following the effective date of P.L. , c. (C. )  
27 (pending before the Legislature as this bill) and may thereafter be  
28 amended, adopted, or readopted by the director in accordance with  
29 P.L.1968, c.410 (C.52:14B-1 et seq.).

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

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

35 (a) "Person" includes an individual, trust, partnership, limited  
36 partnership, limited liability company, society, association, joint  
37 stock company, corporation, public corporation or public authority,  
38 estate, receiver, trustee, assignee, referee, fiduciary and any other  
39 legal entity.

40 (b) "Purchase at retail" means a purchase by any person at a  
41 retail sale.

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

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

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

1 (1) For the purposes of this act a sale is for "resale, sublease, or  
2 subrent" if it is a sale (A) for resale either as such or as converted  
3 into or as a component part of a product produced for sale by the  
4 purchaser, including the conversion of natural gas into another  
5 intermediate or end product, other than electricity or thermal  
6 energy, produced for sale by the purchaser, (B) for use by that  
7 person in performing the services subject to tax under subsection  
8 (b) of section 3 where the property so sold becomes a physical  
9 component part of the property upon which the services are  
10 performed or where the property so sold is later actually transferred  
11 to the purchaser of the service in conjunction with the performance  
12 of the service subject to tax, (C) of telecommunications service to a  
13 telecommunications service provider for use as a component part of  
14 telecommunications service provided to an ultimate customer, or  
15 (D) to a person who receives by contract a product transferred  
16 electronically for further commercial broadcast, rebroadcast,  
17 transmission, retransmission, licensing, relicensing, distribution,  
18 redistribution or exhibition of the product, in whole or in part, to  
19 another person, other than rights to redistribute based on statutory  
20 or common law doctrine such as fair use.

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

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

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

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

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

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

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

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

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

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

46 (f) "Sale, selling or purchase" means any transfer of title or  
47 possession or both, exchange or barter, rental, lease or license to  
48 use or consume, conditional or otherwise, in any manner or by any

1 means whatsoever for a consideration, or any agreement therefor,  
2 including the rendering of any service, taxable under this act, for a  
3 consideration or any agreement therefor.

4 (g) "Tangible personal property" means personal property that  
5 can be seen, weighed, measured, felt, or touched, or that is in any  
6 other manner perceptible to the senses. "Tangible personal  
7 property" includes electricity, water, gas, steam, and prewritten  
8 computer software including prewritten computer software  
9 delivered electronically.

10 (h) "Use" means the exercise of any right or power over tangible  
11 personal property, specified digital products, services to property or  
12 products, or services by the purchaser thereof and includes, but is  
13 not limited to, the receiving, storage or any keeping or retention for  
14 any length of time, withdrawal from storage, any distribution, any  
15 installation, any affixation to real or personal property, or any  
16 consumption of such property or products. Use also includes the  
17 exercise of any right or power over intrastate or interstate  
18 telecommunications and prepaid calling services. Use also includes  
19 the exercise of any right or power over utility service. Use also  
20 includes the derivation of a direct or indirect benefit from a service.

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

23 (1) The term "seller" includes:

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

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

32 (C) A person who solicits business either by employees,  
33 independent contractors, agents or other representatives or by  
34 distribution of catalogs or other advertising matter and by reason  
35 thereof makes sales to persons within the State of tangible personal  
36 property, specified digital products or services, the use of which is  
37 taxed by this act;

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

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

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

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

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

8 (I) A person engaged in the business of parking, storing or  
9 garaging motor vehicles; and

10 (J) A person making sales to persons within the State of  
11 tangible personal property, specified digital products or services,  
12 the sale or the use of which is subject to the tax imposed by the  
13 “Sales and Use Tax Act,” P.L.1966, c30 (C.54:32B-1 et seq.), who  
14 may be authorized by the director in accordance with subsection c.  
15 of section 5 of P.L. , c. (C. ) (pending before the Legislature  
16 as this bill) to collect the tax imposed by P.L.1966, c.30 (C.54:32B-  
17 1 et seq.).

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

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

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

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



- 1 (m) "Permanent resident" means any occupant of any room or  
2 rooms in a hotel for at least 90 consecutive days shall be considered  
3 a permanent resident with regard to the period of such occupancy.
- 4 (n) "Room" means any room or rooms of any kind in any part or  
5 portion of a hotel, which is available for or let out for any purpose  
6 other than a place of assembly.
- 7 (o) "Admission charge" means the amount paid for admission,  
8 including any service charge and any charge for entertainment or  
9 amusement or for the use of facilities therefor.
- 10 (p) "Amusement charge" means any admission charge, dues or  
11 charge of a roof garden, cabaret or other similar place.
- 12 (q) "Charge of a roof garden, cabaret or other similar place"  
13 means any charge made for admission, refreshment, service, or  
14 merchandise at a roof garden, cabaret or other similar place.
- 15 (r) "Dramatic or musical arts admission charge" means any  
16 admission charge paid for admission to a theater, opera house,  
17 concert hall or other hall or place of assembly for a live, dramatic,  
18 choreographic or musical performance.
- 19 (s) "Lessor" means any person who is the owner, licensee, or  
20 lessee of any premises, tangible personal property or a specified  
21 digital product which the person leases, subleases, or grants a  
22 license to use to other persons.
- 23 (t) "Place of amusement" means any place where any facilities  
24 for entertainment, amusement, or sports are provided.
- 25 (u) "Casual sale" means an isolated or occasional sale of an item  
26 of tangible personal property or a specified digital product by a  
27 person who is not regularly engaged in the business of making retail  
28 sales of such property or product where the item of tangible  
29 personal property or the specified digital product was obtained by  
30 the person making the sale, through purchase or otherwise, for the  
31 person's own use.
- 32 (v) "Motor vehicle" includes all vehicles propelled otherwise  
33 than by muscular power (excepting such vehicles as run only upon  
34 rails or tracks), trailers, semitrailers, house trailers, or any other  
35 type of vehicle drawn by a motor-driven vehicle, and motorcycles,  
36 designed for operation on the public highways.
- 37 (w) "Persons required to collect tax" or "persons required to  
38 collect any tax imposed by this act" includes: every seller of  
39 tangible personal property, specified digital products or services;  
40 every recipient of amusement charges; every operator of a hotel;  
41 every seller of a telecommunications service; every recipient of  
42 initiation fees, membership fees or dues for access to or use of the  
43 property or facilities of a health and fitness, athletic, sporting or  
44 shopping club or organization; and every recipient of charges for  
45 parking, storing or garaging a motor vehicle. Said terms shall also  
46 include any officer or employee of a corporation or of a dissolved  
47 corporation who as such officer or employee is under a duty to act

1 for such corporation in complying with any requirement of this act  
2 and any member of a partnership.

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

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

32 (z) "Director" means the Director of the Division of Taxation in  
33 the State Department of the Treasury, or any officer, employee or  
34 agency of the Division of Taxation in the Department of the  
35 Treasury duly authorized by the director (directly, or indirectly by  
36 one or more redelegations of authority) to perform the functions  
37 mentioned or described in this act.

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

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

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

46 (B) A transfer of possession or control of property under an  
47 agreement that requires the transfer of title upon completion of

1 required payments and payment of an option price does not exceed  
2 the greater of \$100 or one percent of the total required payments; or

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

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

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

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

21 (cc) "Telecommunications service" means the electronic  
22 transmission, conveyance, or routing of voice, data, audio, video, or  
23 any other information or signals to a point, or between or among  
24 points.

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

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

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

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

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

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

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

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

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

46 (9) tangible personal property;

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

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

2 (12) internet access service;

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

11 (14) ancillary services; or

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

14 For the purposes of this subsection:

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

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

24 "detailed telecommunications billing service" means an ancillary  
25 service of separately stating information pertaining to individual  
26 calls on a customer's billing statement;

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

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

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

38 (dd) (1) "Intrastate telecommunications" means a  
39 telecommunications service that originates in one United States  
40 state or a United States territory or possession or federal district,  
41 and terminates in the same United States state or United States  
42 territory or possession or federal district.

43 (2) "Interstate telecommunications" means a telecommunications  
44 service that originates in one United States state or a United States  
45 territory or possession or federal district, and terminates in a  
46 different United States state or United States territory or possession  
47 or federal district.

1 (3) "International telecommunications" means a  
2 telecommunications service that originates or terminates in the  
3 United States and terminates or originates outside the United States,  
4 respectively. "United States" includes the District of Columbia or a  
5 United States territory or possession.

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

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

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

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

13 (ii) "Self-generation unit" means a facility located on the user's  
14 property, or on property purchased or leased from the user by the  
15 person owning the self-generation unit and such property is  
16 contiguous to the user's property, which generates electricity to be  
17 used only by that user on the user's property and is not transported  
18 to the user over wires that cross a property line or public  
19 thoroughfare unless the property line or public thoroughfare merely  
20 bifurcates the user's or self-generation unit owner's otherwise  
21 contiguous property.

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

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

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

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

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

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

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

- 1 (B) The cost of materials used, labor or service cost, interest,  
2 losses, all costs of transportation to the seller, all taxes imposed on  
3 the seller, and any other expense of the seller;
- 4 (C) Charges by the seller for any services necessary to complete  
5 the sale;
- 6 (D) Delivery charges;
- 7 (E) (Deleted by amendment, P.L.2011, c.49); and
- 8 (F) (Deleted by amendment, P.L.2008, c.123).
- 9 (2) "Sales price" does not include:
- 10 (A) Discounts, including cash, term, or coupons that are not  
11 reimbursed by a third party, that are allowed by a seller and taken  
12 by a purchaser on a sale;
- 13 (B) Interest, financing, and carrying charges from credit  
14 extended on the sale of personal property or services, if the amount  
15 is separately stated on the invoice, bill of sale, or similar document  
16 given to the purchaser;
- 17 (C) Any taxes legally imposed directly on the consumer that are  
18 separately stated on the invoice, bill of sale, or similar document  
19 given to the purchaser;
- 20 (D) The amount of sales price for which food stamps have been  
21 properly tendered in full or part payment pursuant to the federal  
22 Food Stamp Act of 1977, Pub.L.95-113 (7 U.S.C. s.2011 et seq.); or
- 23 (E) Credit for any trade-in of property of the same kind accepted  
24 in part payment and intended for resale if the amount is separately  
25 stated on the invoice, bill of sale, or similar document given to the  
26 purchaser.
- 27 (3) "Sales price" includes consideration received by the seller  
28 from third parties if:
- 29 (A) The seller actually receives consideration from a party other  
30 than the purchaser and the consideration is directly related to a price  
31 reduction or discount on the sale;
- 32 (B) The seller has an obligation to pass the price reduction or  
33 discount through to the purchaser;
- 34 (C) The amount of the consideration attributable to the sale is  
35 fixed and determinable by the seller at the time of the sale of the  
36 item to the purchaser; and
- 37 (D) One of the following criteria is met:
- 38 (i) the purchaser presents a coupon, certificate, or other  
39 documentation to the seller to claim a price reduction or discount  
40 where the coupon, certificate, or documentation is authorized,  
41 distributed, or granted by a third party with the understanding that  
42 the third party will reimburse any seller to whom the coupon,  
43 certificate, or documentation is presented;
- 44 (ii) the purchaser identifies himself to the seller as a member of  
45 a group or organization entitled to a price reduction or discount;  
46 provided however, that a preferred customer card that is available to  
47 any patron does not constitute membership in such a group; or

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

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

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

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

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

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

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

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

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

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

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

7 (1) investigation and detective services, including detective  
8 agencies and private investigators, and fingerprint, polygraph,  
9 missing person tracing and skip tracing services;

10 (2) security guard and patrol services, including bodyguard and  
11 personal protection, guard dog, guard, patrol, and security services;

12 (3) armored car services; and

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

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

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

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

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

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

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

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

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

39

40 20. This act shall take effect immediately.

41

42

43

#### STATEMENT

44

45 This bill provides for the temporary deferral of certain tax  
46 collection responsibilities imposed under the sales and use tax.  
47 During the temporary deferral, certain persons who qualify will be  
48 deemed not to be a seller by the Director of the Division of



1 Taxation in the Department of the Treasury and will be eligible,  
2 regardless of that person's physical presence within the State of  
3 New Jersey, to make sales of taxable goods and services to  
4 purchasers in this State without being required to register as a seller  
5 and to collect and remit to the State the tax determined to be due.

6 The bill provides that to qualify for the temporary deferral a  
7 person seeking to qualify must (1) demonstrate to the Chief  
8 Executive Officer of the New Jersey Economic Development  
9 Authority that the person does not engage in certain activities  
10 within this State; (2) demonstrate to the chief executive officer the  
11 person meets or will meet each of the initial demonstrations related  
12 to the ability of that person to make certain investments and create  
13 certain jobs within this State; and (3) enter into an agreement with  
14 the Director of the Division of Taxation in the Department of the  
15 Treasury.

16 The bill provides that to (1) demonstrate to the chief executive  
17 officer that the person does not engage in certain activities the  
18 person seeking to qualify for the temporary deferral must  
19 demonstrate that the person does not engage in an activity within  
20 this State other than an activity specified by the definition of a  
21 "customer operations and processing facility" as that term is  
22 defined by section 1 of the bill. The bill stipulates that the  
23 demonstration must be made in a form and manner as will be  
24 prescribed by the chief executive officer, and must be made on or  
25 after the effective date of the bill.

26 The bill provides that to (2) demonstrate to the chief executive  
27 officer the person meets or will meet each of the initial  
28 demonstrations related to investments and jobs the person seeking  
29 to qualify for the temporary deferral must provide information  
30 demonstrating that the person, directly or in combination with a  
31 related person or in combination with a third party: placed or will  
32 place one or more customer operations and processing facilities in  
33 service within this State on or after January 1, 2012 but before  
34 December 1, 2013; made or will make a capital investment of not  
35 less than \$130 million within this State on or after January 1, 2012  
36 but before December 1, 2013; created or will create not fewer than  
37 1,500 full-time jobs on or after January 1, 2012 but before  
38 December 1, 2013; and will maintain not fewer than 1,500 full-time  
39 jobs for 59 months following the month in which the full-time job  
40 creation requirement is met. The bill stipulates that the  
41 demonstration must be made in a form and manner as will be  
42 prescribed by the chief executive officer, and must be made on or  
43 after the date the person demonstrates to the chief executive officer  
44 that the person does not engage in certain activities within this  
45 State.

46 The bill provides that to (3) enter into an agreement with the  
47 Director of the Division of Taxation in the Department of the  
48 Treasury the person seeking to qualify for the temporary deferral

1 must enter into an agreement with the director requiring the person  
2 to register as a seller and begin to collect the tax determined to be  
3 due on sales of taxable goods and services to purchasers in this  
4 State on or before the date the temporary deferral period expires  
5 (July 1, 2013) or the date certain other conditions specified by the  
6 agreement are met. The bill stipulates that the agreement must be  
7 entered into after the date the chief executive officer provides  
8 notice of the chief executive's determination that that the person  
9 does not engage in certain activities and meets or will meet each of  
10 the initial demonstrations required by the bill, and must adhere to  
11 certain other terms and conditions regarding notices required to be  
12 provided to customers, the establishment of transportation plans and  
13 alternative transportation plans, the making of certain monthly  
14 progress reports, the payment of certain penalties, and the  
15 submission of copies of the agreement entered into with the  
16 director.

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

32 The bill requires persons who qualify for the temporary deferral  
33 and who locate a customer operations and processing facility within  
34 a one quarter mile radius of a public transportation facility to work  
35 with the Executive Director of the New Jersey Transit Corporation  
36 and any applicable transportation management associations to  
37 establish a transportation plan that will encourage employees to use  
38 public transportation. The bill requires persons who qualify for the  
39 temporary deferral and who locate a customer operations and  
40 processing facility at a location that is not within a one quarter mile  
41 radius of a public transportation facility to work with the Executive  
42 Director of the New Jersey Transit Corporation and any applicable  
43 transportation management associations to establish an alternative  
44 transportation plan that will provide viable commuting options to  
45 employees of the facility who are dependent on public  
46 transportation.

47 The bill requires persons who qualify for the temporary deferral  
48 to make a monthly progress report documenting that person's

1 progress in making certain investments and creating certain jobs  
2 within this State. The bill stipulates that in making the report the  
3 person must furnish the following: the location of each customer  
4 operations and processing facility placed into service or maintained  
5 in service within this State during the month; the dollar value of the  
6 capital investment made within this State during the month; the  
7 number of full-time jobs created and maintained each day during  
8 the month; and the dollar value of gross receipts derived from the  
9 person's sales to purchasers within this State of tangible personal  
10 property, specified digital products, and services made during the  
11 month. The bill stipulates that the report must include a certification  
12 from the chief executive officer of the person, or the chief executive  
13 officer's designee attesting to the accuracy of information contained  
14 in the report.

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

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

38 The bill requires the director to issue a tax assessment for the  
39 collection of any penalty required to be paid to the director. The  
40 bill stipulates that any penalty required to be paid to the director is a  
41 State tax subject to the State Uniform Tax Procedure Law, and any  
42 penalty collected by the director will be deposited in the General  
43 Fund.

44 The bill provides that the temporary deferral provided to a  
45 person who qualifies is null and void and no longer applies on or  
46 after the earlier of the dates a person is required to file a certificate  
47 of registration and begin to collect the tax determined to be due on  
48 sales of taxable goods and services to purchasers in this State in

1 accordance with the terms and conditions of the agreement entered  
2 into with the director.

3 The bill provides that the temporary deferral does not apply to  
4 another person who has the relationship of a related person or who  
5 has the relationship of a third party to the person who is deemed not  
6 to be a seller by the director and who is required or authorized by  
7 the director to collect the sales and use tax as of February 21, 2012.

8 The bill authorizes the director, in consultation with the chief  
9 executive officer, to adopt regulations necessary to effectuate the  
10 purposes of the bill, and permits the director to make an immediate  
11 filing of those regulations, effective for a period of not more than  
12 360 days.

13 The bill revises the sales and use tax definition of a “seller” to  
14 clarify that a seller includes any person making sales to persons  
15 within the State of tangible personal property, specified digital  
16 products or services, the sale or the use of which is subject to the  
17 sales and use tax, who may be authorized, under the terms and  
18 conditions of an agreement entered into with the director, to collect  
19 the tax.

20 The bill takes effect immediately upon enactment.