

# 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:**

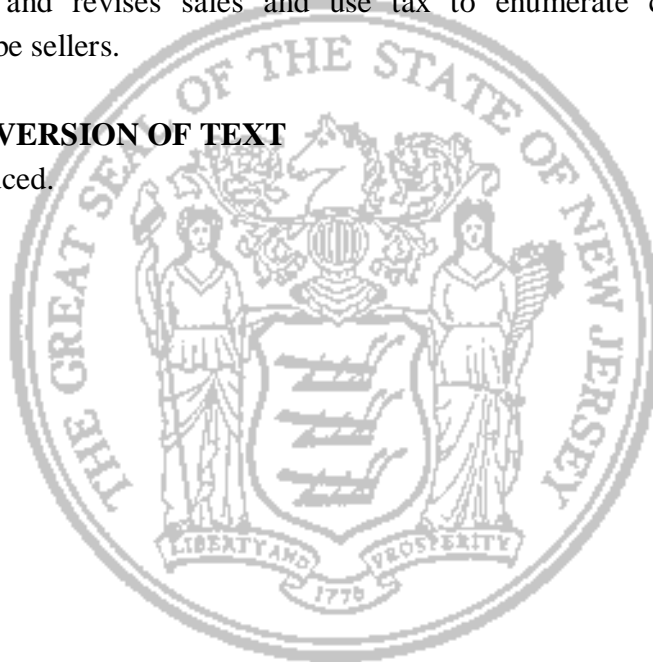
**Assemblyman DeAngelo**

**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.