

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2608

STATE OF NEW JERSEY
215th LEGISLATURE

ADOPTED MARCH 12, 2012

Sponsored by:

Assemblyman ALBERT COUTINHO

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Assemblyman VINCENT PRIETO

District 32 (Bergen and Hudson)

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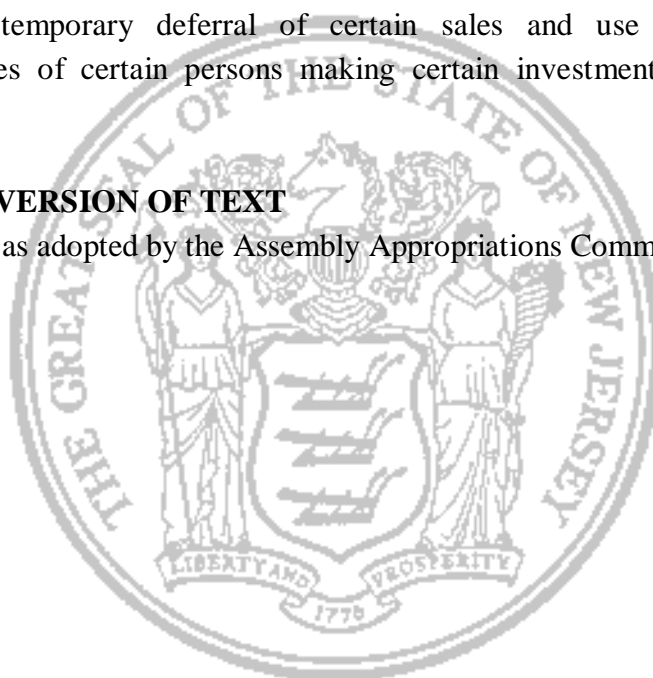
Assemblymen DeAngelo and Burzichelli

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

Substitute as adopted by the Assembly Appropriations Committee.



(Sponsorship Updated As Of: 3/16/2012)

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 19 of P.L. , c.
 10 (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 "Transportation management association" means a nonprofit
47 corporation approved by the Department of Transportation as

1 coordinating transportation services, including, but not limited to,
2 public transportation, van pools, car pools, bicycling and pedestrian
3 modes, and strategies such as flex time, staggered work hours, and
4 compressed work weeks, for corporations, employees, developers,
5 individuals, and other groups.

6
7 2. (New section) Notwithstanding any other provision of law to
8 the contrary, a person who owns or leases or rents or otherwise
9 utilizes a customer operations and processing facility of its own
10 within this State or that of a related person within this State or that
11 of a third party within this State, including a venue for making
12 purchases of tangible personal property or a venue for transferring
13 specified digital products and services for resale, that are shipped or
14 transferred directly to a purchaser, shall be deemed not to be a seller
15 by the director for purposes of the tax imposed by the “Sales and
16 Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.), if the person:
17 demonstrates to the chief executive officer that the person does not
18 engage in certain activities within this State in accordance with
19 section 3 of P.L. , c. (C.) (pending before the Legislature as
20 this bill); demonstrates to the chief executive officer that the person
21 meets or will meet each of the demonstrations required by section 4
22 of P.L. , c. (C.) (pending before the Legislature as this bill);
23 and enters into an agreement with the director in accordance with
24 section 5 of P.L. , c. (C.) (pending before the Legislature as
25 this bill).

26
27 3. (New section) a. Notwithstanding any other provision of law
28 to the contrary, a person who seeks to be deemed not to be a seller
29 by the director in accordance with section 2 of P.L. , c. (C.)
30 (pending before the Legislature as this bill) shall demonstrate to the
31 chief executive officer, on or after the effective date of P.L. , c.
32 (C.) (pending before the Legislature as this bill), that the person
33 does not engage in certain activities within this State.

34 b. The demonstration shall be made in a form and manner as
35 shall be prescribed by the chief executive officer, and shall include
36 information that the person does not engage in an activity within
37 this State other than an activity specified by the definition of a
38 “customer operations and processing facility” as that term is
39 defined by section 1 of P.L. , c. (C.) (pending before the
40 Legislature as this bill).

41
42 4. (New section) a. Notwithstanding any other provision of law
43 to the contrary, a person who seeks to be deemed not to be a seller
44 by the director in accordance with section 2 of P.L. , c. (C.)
45 (pending before the Legislature as this bill) shall demonstrate to the
46 chief executive officer, on or after the date the person demonstrates
47 to the chief executive officer that the person does not engage in

1 certain activities within this State in accordance with section 3 of
2 P.L. , c. (C.) (pending before the Legislature as this bill), the
3 ability of that person to make certain investments and create certain
4 jobs within this State.

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

19

20 5. (New section) a. Notwithstanding any other provision of law
21 to the contrary, the chief executive officer shall provide notice to a
22 person who seeks to be deemed not to be a seller by the director in
23 accordance with section 2 of P.L. , c. (C.) (pending before
24 the Legislature as this bill) and to the director of the chief executive
25 officer's determination that that the person to whom the notice
26 applies does not engage in certain activities within this State in
27 accordance with section 3 of P.L. , c. (C.) (pending before
28 the Legislature as this bill) and that the person to whom the notice
29 applies meets or will meet each of the initial demonstrations
30 required by section 4 of P.L. , c. (C.) (pending before the
31 Legislature as this bill).

32 b. A person who receives a notice from the chief executive
33 officer in accordance with subsection a. of this section shall, on or
34 after the date the notice provided by the chief executive officer is
35 received, enter into an agreement with the director which complies
36 with each of the requirements specified by subsections c. through i.
37 of this section.

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

41 July 1, 2013;

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

46 the date the person maintains fewer than 1,275 of the full-time
47 jobs created within this State to meet the demonstrations required

1 by subsection b. of section 4 of P.L. , c. (C.) (pending
2 before the Legislature as this bill);

3 the termination date of any law, regulation, agreement, or other
4 binding means that provides for the temporary deferral of tax
5 collection responsibilities in a form and a manner that is
6 comparable to the deferral of tax collection responsibilities
7 provided by P.L. , c. (C.) (pending before the Legislature as
8 this bill) and that is entered into by the person with a state other
9 than the State of New Jersey on or after the effective date of
10 P.L. , c. (C.) (pending before the Legislature as this bill);

11 the effective date of a law enacted by the United States Congress
12 that permits a state to require that its sales tax or its use tax be
13 collected and paid to the State even if the person required to collect
14 the tax under that law does not have a physical presence within that
15 state that would otherwise give the state jurisdiction to impose tax
16 collection responsibilities under the Constitution and statutes of the
17 United States;

18 the date the person engages in an activity within this State that is
19 sufficient to give this State jurisdiction to impose tax collection
20 responsibilities on that person under the Constitution and statutes of
21 the United States and that is not specified by the definition of
22 “customer operations and processing facility,” as that term is
23 defined by section 1 of P.L. , c. (C.) (pending before the
24 Legislature as this bill); or

25 the date the person violates one or more of the requirements of
26 the agreement entered into with the director in accordance with this
27 section.

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

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

42 (4) The person shall pay the tax imposed by P.L.1966, c.30
43 (C.54:32B-1 et seq.) on any sale to persons within this State of
44 tangible personal property, specified digital products, and services
45 that is subject to the tax imposed by P.L.1966, c.30 (C.54:32B-1 et
46 seq.) and that is made on or after the after the earliest of the dates
47 specified by paragraph (1) of this subsection if the person fails to

1 file a certificate of registration required to be made with the director
2 in accordance with paragraph (1) of this subsection.

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

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

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

15 g. The person shall comply with the terms and conditions of any
16 agreement entered into in accordance with subsection a. of section 9
17 of P.L. , c. (C.) (pending before the Legislature as this bill)
18 and shall comply with the requirements of subsection b. of section 9
19 of P.L. , c. (C.) (pending before the Legislature as this bill).

20 h. The person shall pay any assessment in lieu of tax collected
21 which is required to be paid to the director in accordance with
22 sections 10 through 14 of P.L. , c. (C.) (pending before the
23 Legislature as this bill).

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

33
34 6. (New section) a. Notwithstanding any other provision of law
35 to the contrary, a person who is deemed not to be a seller by the
36 director in accordance with section 2 of P.L. , c. (C.)
37 (pending before the Legislature as this bill) shall provide
38 prominently on any sales slip, invoice, receipt, or other statement or
39 memorandum given to its customers in connection with its sales to
40 persons within this State of tangible personal property, specified
41 digital products, and services, made on or after the date the person
42 is deemed not to be a seller by the director in accordance with
43 section 2 of P.L. , c. (C.) (pending before the Legislature as
44 this bill) but before the date the person receives a certificate of
45 authority from the director and is required to collect the tax
46 imposed by the "Sales and Use Tax Act," P.L.1966, c.30
47 (C.54:32B-1 et seq.), in accordance with subsection c. of section 5

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

10 b. The notice required to be provided in accordance with
11 subsection a. of this section shall include, if applicable, the Internet
12 link or Internet address that will direct a customer to the Internet
13 website maintained and operated, or caused to be maintained and
14 operated, by the director to assist a taxpayer in determining a
15 liability for any tax imposed by the "Sales and Use Tax Act,"
16 P.L.1966, c.30 (C.54:32B-1 et seq.) that is due in connection with
17 the purchase of tangible personal property, specified digital
18 products, and services from a retailer that is not required or
19 authorized to collect the tax on behalf of the State and to assist a
20 taxpayer in reporting and remitting any tax determined to be due.

21

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

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

1 transportation, the person shall work with the Executive Director of
2 the New Jersey Transit Corporation and with any applicable
3 transportation management association to establish an alternative
4 transportation plan, for which approval by the executive director
5 shall not be unreasonably withheld, that will provide viable
6 commuting options to an individual who is employed at the
7 customer operations and processing facility and who is dependent
8 on public transportation to commute between the individual's place
9 of residence and the customer operations and processing facility or
10 termini within the proximity of the customer operations and
11 processing facility.

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

29

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

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

46 c. The monthly progress report required to be made by a person
47 in accordance with subsection a. of this section shall include a

1 certification made by the person's chief executive officer, or the
2 chief executive officer's designee, that the report and any
3 information included in accordance with subsection b. of this
4 section has been reviewed by the person's chief executive officer,
5 or the chief executive officer's designee, and that the
6 representations contained in the report are accurate.

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

16
17 9. (New section) a. Notwithstanding any other provision of law
18 to the contrary, any project or activity related to the construction,
19 reconstruction, demolition, or renovation of a customer operations
20 and processing facility that is placed into service within this State to
21 meet the demonstrations required by subsection b. of section 4 of
22 P.L. , c. (C.) (pending before the Legislature as this bill)
23 shall include, as part of the contract or agreement entered into for
24 the construction, reconstruction, demolition, or renovation, an
25 agreement that: establishes the terms and conditions of employment
26 for each individual employed in the project or activity related to the
27 construction, reconstruction, demolition, or renovation of a
28 customer operations and processing facility prior to the date any
29 individual is hired; meets or exceeds each of the requirements for a
30 public works project enumerated by section 5 of P.L.2002, c.44
31 (C.52:38-5); and is binding and enforceable on all parties directly
32 involved in the project or activity related to the construction,
33 reconstruction, demolition, or renovation of the customer operations
34 and processing facility.

35 b. Each individual employed in the performance of any
36 contract or agreement entered into for the construction,
37 reconstruction, demolition, or renovation of a customer operations
38 and processing facility that is placed into service within this State to
39 meet the demonstrations required by subsection b. of section 4 of
40 P.L. , c. (C.) (pending before the Legislature as this bill)
41 shall be subject to the requirements provided by section 1 of
42 P.L.1979, c.303 (C.34:1B-5.1); provided however, that the
43 exception for work performed on a facility owned by a landlord of
44 the entity receiving authority financial assistance in accordance
45 with that section shall not apply.

1 10. (New section) a. Notwithstanding any other provision of law
2 to the contrary, if a person who is deemed not to be a seller by the
3 director in accordance with section 2 of P.L. , c. (C.)
4 (pending before the Legislature as this bill) fails to place one or
5 more customer operations and processing facilities in service within
6 this State to meet the demonstrations required by subsection b. of
7 section 4 of P.L. , c. (C.) (pending before the Legislature as
8 this bill), on or after January 1, 2012 but before December 1, 2013,
9 the person shall pay an assessment in lieu of tax collected to the
10 director.

11 b. The amount of any assessment in lieu of tax collected which
12 is required to be paid to the director in accordance with subsection
13 a. of this section shall be equal to seven percent of the gross
14 receipts derived from the person's sales to purchasers within this
15 State of tangible personal property, specified digital products, and
16 services made on or after January 1, 2012 but before December 1,
17 2013.

18
19 11. (New section) a. Notwithstanding any other provision of law
20 to the contrary, if a person who is deemed not to be a seller by the
21 director in accordance with section 2 of P.L. , c. (C.)
22 (pending before the Legislature as this bill) ceases to maintain a
23 customer operations and processing facility placed into service
24 within this State to meet the demonstrations required by subsection
25 b. of section 4 of P.L. , c. (C.) (pending before the
26 Legislature as this bill), on or after the date the person first meets
27 the demonstration to place one or more customer operations and
28 processing facilities in service within this State but before
29 December 1, 2013, the person shall pay an assessment in lieu of tax
30 collected to the director.

31 b. The amount of any assessment in lieu of tax collected which
32 is required to be paid to the director in accordance with subsection
33 a. of this section shall be equal to seven percent of the gross
34 receipts derived from the person's sales to purchasers within this
35 State of tangible personal property, specified digital products, and
36 services made on or after the date the person first meets the
37 demonstration to place one or more customer operations and
38 processing facilities in service within this State in accordance with
39 subsection b. of section 4 of P.L. , c. (C.) (pending before
40 the Legislature as this bill) but before December 1, 2013.

41
42 12. (New section) a. Notwithstanding any other provision of law
43 to the contrary, if a person who is deemed not to be a seller by the
44 director in accordance with section 2 of P.L. , c. (C.)
45 (pending before the Legislature as this bill) fails to make a capital
46 investment of not less than \$130,000,000 within this State to meet
47 the demonstrations required by subsection b. of section 4 of P.L. ,

1 c. (C.) (pending before the Legislature as this bill), on or after
2 January 1, 2012 but before December 1, 2013, the person shall pay
3 an assessment in lieu of tax collected to the director.

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

11
12 13. (New section) a. Notwithstanding any other provision of law
13 to the contrary, if a person who is deemed not to be a seller by the
14 director in accordance with section 2 of P.L. , c. (C.)
15 (pending before the Legislature as this bill) fails to create not fewer
16 than 1,500 full-time jobs within this State to meet the
17 demonstrations required by subsection b. of section 4 of P.L. , c.
18 (C.), on or after January 1, 2012 but before December 1, 2013,
19 the person shall pay an assessment in lieu of tax collected to the
20 director.

21 b. The amount of any assessment in lieu of tax collected which
22 is required to be paid to the director in accordance with subsection
23 a. of this section shall be equal to seven percent of the gross
24 receipts derived from the person's sales to purchasers within this
25 State of tangible personal property, specified digital products, and
26 services made on or after January 1, 2012 but before December 1,
27 2013.

28
29 14. (New section) a. Notwithstanding any other provision of law
30 to the contrary, if a person who is deemed not to be a seller by the
31 director in accordance with section 2 of P.L. , c. (C.)
32 (pending before the Legislature as this bill) maintains fewer than
33 1,500 of the full-time jobs created within this State to meet the
34 demonstrations required by subsection b. of section 4 of P.L. , c.
35 (C.) (pending before the Legislature as this bill), on or after the
36 date the person first meets the full-time job creation demonstration
37 but before the first day of the fifty-ninth month beginning after the
38 month in which the person first meets the full-time job creation
39 demonstration, the person shall pay an assessment in lieu of tax
40 collected to the director.

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

1 4 of P.L. , c. (C.) (pending before the Legislature as this
2 bill) but before the first day of the fifty-ninth month beginning after
3 the month in which the person first meets the full-time job creation
4 demonstration; provided however, that the amount of any
5 assessment in lieu of tax collected which is required to be paid to
6 the director in accordance with subsection a. of this section shall
7 not exceed \$1,000,000 per year in calendar year 2014 and shall not
8 exceed \$1,000,000 per year in any year thereafter in which the
9 person is required to maintain not fewer than 1,500 full-time jobs
10 created within this State to meet the demonstrations required by
11 subsection b. of section 4 of P.L. , c. (C.) (pending before
12 the Legislature as this bill).

13 c. The assessment in lieu of tax collected which is required to
14 be paid to the director in accordance with subsection a. of this
15 section shall not apply if the reduction in the number of full-time
16 jobs created within this State to meet the demonstrations required
17 by subsection b. of section 4 of P.L. , c. (C.) (pending
18 before the Legislature as this bill) is limited to a period of not more
19 than 60 days.
20

21 15. (New section) Notwithstanding any other provision of law to
22 the contrary, the director shall issue a tax assessment for the
23 collection of any assessment in lieu of tax collected which is
24 required to be paid to the director in accordance with sections 10
25 through 14 of P.L. , c. (C.) (pending before the Legislature as
26 this bill). The amount of any assessment in lieu of tax collected
27 which is required to be paid to the director shall be deemed to be a
28 State tax subject to the State Uniform Tax Procedure Law,
29 R.S.54:48-1 et seq., and the amount of any assessment in lieu of tax
30 collected which is collected by the director shall be deposited into
31 the General Fund.
32

33 16. (New section) Notwithstanding any other provision of law to
34 the contrary, the temporary deferral of tax collection responsibilities
35 provided to a person who is deemed not to be a seller by the
36 director in accordance with section 2 of P.L. , c. (C.)
37 (pending before the Legislature as this bill) shall be null and void
38 and shall not apply on or after the earliest of the dates specified by
39 paragraph (1) of subsection c. of section 5 of P.L. , c. (C.)
40 (pending before the Legislature as this bill).
41

42 17. (New section) Notwithstanding any other provision of law to
43 the contrary, the temporary deferral of tax collection responsibilities
44 provided to a person who is deemed not to be a seller by the
45 director in accordance with section 2 of P.L. , c. (C.)
46 (pending before the Legislature as this bill) shall not apply to
47 another person who has the relationship of a related person or who

1 has the relationship of a third party to the person who is deemed not
2 to be a seller by the director in accordance with section 2 of P.L. ,
3 c. (C.) (pending before the Legislature as this bill), and who is
4 required or authorized by the director, in accordance with section 15
5 of P.L.1966, c.30 (C.54:32B-15), to collect the tax imposed by the
6 "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) as of
7 February 21, 2012.

8
9 18. (New section) a. Notwithstanding any other provision of law
10 to the contrary, if a 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) makes and files an
13 application to receive financial assistance authorized by, or to apply
14 for a credit against a taxpayer's liability for tax under, the
15 "Business Retention and Relocation Assistance Act," P.L.1996,
16 c.25 (C.34:1B-112 et seq.), the "Business Employment Incentive
17 Program Act," P.L.1996, c.26 (C.34:1B-124 et seq.), the "Urban
18 Transit Hub Tax Credit Act," P.L.2007, c.346 (C.34:1B-207 et
19 seq.), the Economic Redevelopment and Growth Grant program
20 established in accordance with section 4 or section 5 of P.L.2009,
21 c.90 (C.52:27D-489d or C.52:27D-489e), or the "Grow New Jersey
22 Assistance Act," P.L.2011, c.149 (C.34:1B-242 et seq.), the chief
23 executive officer or the New Jersey Economic Development
24 Authority, as the case may be, shall consider the temporary deferral
25 of tax collection responsibilities provided by P.L. , c. (C.)
26 (pending before the Legislature as this bill) in determining if the
27 creation or retention of jobs or the capital investment resulting from
28 person's operations and activities will yield a net positive benefit to
29 the State or in determining if the person otherwise is eligible to
30 receive the benefit provided under the tax or benefit program for
31 which an application is made and filed.

32 b. A person who is deemed not to be a seller by the director in
33 accordance with section 2 of P.L. , c. (C.) (pending before
34 the Legislature as this bill) shall not qualify for financial assistance
35 authorized by, or qualify for a credit against a taxpayer's liability
36 for tax under, the "Business Retention and Relocation Assistance
37 Act," P.L.1996, c.25 (C.34:1B-112 et seq.), the "Business
38 Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124
39 et seq.), the "Urban Transit Hub Tax Credit Act," P.L.2007, c.346
40 (C.34:1B-207 et seq.), the Economic Redevelopment and Growth
41 Grant program established in accordance with section 4 or section 5
42 of P.L.2009, c.90 (C.52:27D-489d or C.52:27D-489e), or the "Grow
43 New Jersey Assistance Act," P.L.2011, c.149 (C.34:1B-242 et seq.)
44 based upon any capital investment which is made or any full-time
45 job which is created or maintained to meet the demonstrations
46 required by subsection b. of section 4 of P.L. , c. (C.)
47 (pending before the Legislature as this bill).

1 19. (New section) Notwithstanding any provision of the
2 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
3 seq.) to the contrary, the director, in consultation with the chief
4 executive officer, may adopt immediately upon filing with the
5 Office of Administrative Law such regulations as the director and
6 the chief executive officer deem necessary to effectuate the
7 purposes of P.L. , c. (C.) (pending before the Legislature as
8 this bill), which regulations shall be effective for a period of not
9 more than 360 days following the effective date of P.L. , c.
10 (C.) (pending before the Legislature as this bill) and may
11 thereafter be amended, adopted, or readopted by the director in
12 accordance with P.L.1968, c.410 (C.52:14B-1 et seq.).
13

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

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

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

23 (b) "Purchase at retail" means a purchase by any person at a
24 retail sale.

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

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

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

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

1 transmission, retransmission, licensing, relicensing, distribution,
2 redistribution or exhibition of the product, in whole or in part, to
3 another person, other than rights to redistribute based on statutory
4 or common law doctrine such as fair use.

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 consumption of such property or products. Use also includes the
2 exercise of any right or power over intrastate or interstate
3 telecommunications and prepaid calling services. Use also includes
4 the exercise of any right or power over utility service. Use also
5 includes the derivation of a direct or indirect benefit from a service.
- 6 (i) "Seller" means a person making sales, leases or rentals of
7 personal property or services.
- 8 (1) The term "seller" includes:
- 9 (A) A person making sales, leases or rentals of tangible personal
10 property, specified digital products or services, the receipts from
11 which are taxed by this act;
- 12 (B) A person maintaining a place of business in the State or
13 having an agent maintaining a place of business in the State and
14 making sales, whether at such place of business or elsewhere, to
15 persons within the State of tangible personal property, specified
16 digital products or services, the use of which is taxed by this act;
- 17 (C) A person who solicits business either by employees,
18 independent contractors, agents or other representatives or by
19 distribution of catalogs or other advertising matter and by reason
20 thereof makes sales to persons within the State of tangible personal
21 property, specified digital products or services, the use of which is
22 taxed by this act;
- 23 (D) Any other person making sales to persons within the State of
24 tangible personal property, specified digital products or services,
25 the use of which is taxed by this act, who may be authorized by the
26 director to collect the tax imposed by this act;
- 27 (E) The State of New Jersey, any of its agencies,
28 instrumentalities, public authorities, public corporations (including
29 a public corporation created pursuant to agreement or compact with
30 another state) or political subdivisions when such entity sells
31 services or property of a kind ordinarily sold by private persons;
- 32 (F) (Deleted by amendment, P.L.2005, c.126);
- 33 (G) A person who sells, stores, delivers or transports energy to
34 users or customers in this State whether by mains, lines or pipes
35 located within this State or by any other means of delivery;
- 36 (H) A person engaged in collecting charges in the nature of
37 initiation fees, membership fees or dues for access to or use of the
38 property or facilities of a health and fitness, athletic, sporting or
39 shopping club or organization; **[and]**
- 40 (I) A person engaged in the business of parking, storing or
41 garaging motor vehicles; and
- 42 (J) A person making sales to persons within the State of
43 tangible personal property, specified digital products or services,
44 the sale or the use of which is subject to the tax imposed by the
45 "Sales and Use Tax Act," P.L.1966, c30 (C.54:32B-1 et seq.), who
46 may be authorized by the director in accordance with subsection c.
47 of section 5 of P.L. , c. (C.) (pending before the Legislature

1 as this bill) to collect the tax imposed by P.L.1966, c.30 (C.54:32B-
2 1 et seq.).

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

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

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

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

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

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

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

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

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

- 1 (r) "Dramatic or musical arts admission charge" means any
2 admission charge paid for admission to a theater, opera house,
3 concert hall or other hall or place of assembly for a live, dramatic,
4 choreographic or musical performance.
- 5 (s) "Lessor" means any person who is the owner, licensee, or
6 lessee of any premises, tangible personal property or a specified
7 digital product which the person leases, subleases, or grants a
8 license to use to other persons.
- 9 (t) "Place of amusement" means any place where any facilities
10 for entertainment, amusement, or sports are provided.
- 11 (u) "Casual sale" means an isolated or occasional sale of an item
12 of tangible personal property or a specified digital product by a
13 person who is not regularly engaged in the business of making retail
14 sales of such property or product where the item of tangible
15 personal property or the specified digital product was obtained by
16 the person making the sale, through purchase or otherwise, for the
17 person's own use.
- 18 (v) "Motor vehicle" includes all vehicles propelled otherwise
19 than by muscular power (excepting such vehicles as run only upon
20 rails or tracks), trailers, semitrailers, house trailers, or any other
21 type of vehicle drawn by a motor-driven vehicle, and motorcycles,
22 designed for operation on the public highways.
- 23 (w) "Persons required to collect tax" or "persons required to
24 collect any tax imposed by this act" includes: every seller of
25 tangible personal property, specified digital products or services;
26 every recipient of amusement charges; every operator of a hotel;
27 every seller of a telecommunications service; every recipient of
28 initiation fees, membership fees or dues for access to or use of the
29 property or facilities of a health and fitness, athletic, sporting or
30 shopping club or organization; and every recipient of charges for
31 parking, storing or garaging a motor vehicle. Said terms shall also
32 include any officer or employee of a corporation or of a dissolved
33 corporation who as such officer or employee is under a duty to act
34 for such corporation in complying with any requirement of this act
35 and any member of a partnership.
- 36 (x) "Customer" includes: every purchaser of tangible personal
37 property, specified digital products or services; every patron paying
38 or liable for the payment of any amusement charge; every occupant
39 of a room or rooms in a hotel; every person paying charges in the
40 nature of initiation fees, membership fees or dues for access to or
41 use of the property or facilities of a health and fitness, athletic,
42 sporting or shopping club or organization; and every purchaser of
43 parking, storage or garaging a motor vehicle.
- 44 (y) "Property and services the use of which is subject to tax"
45 includes: (1) all property sold to a person within the State, whether
46 or not the sale is made within the State, the use of which property is
47 subject to tax under section 6 or will become subject to tax when

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

18 (z) "Director" means the Director of the Division of Taxation in
19 the State Department of the Treasury, or any officer, employee or
20 agency of the Division of Taxation in the Department of the
21 Treasury duly authorized by the director (directly, or indirectly by
22 one or more redelegations of authority) to perform the functions
23 mentioned or described in this act.

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

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

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

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

36 (C) Providing tangible personal property or a specified digital
37 product along with an operator for a fixed or indeterminate period
38 of time. A condition of this exclusion is that the operator is
39 necessary for the equipment to perform as designed. For the
40 purpose of this subparagraph, an operator must do more than
41 maintain, inspect, or set-up the tangible personal property or
42 specified digital product.

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

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

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

7 (cc) "Telecommunications service" means the electronic
8 transmission, conveyance, or routing of voice, data, audio, video, or
9 any other information or signals to a point, or between or among
10 points.

11 "Telecommunications service" shall include such transmission,
12 conveyance, or routing in which computer processing applications
13 are used to act on the form, code, or protocol of the content for
14 purposes of transmission, conveyance, or routing without regard to
15 whether such service is referred to as voice over Internet protocol
16 services or is classified by the Federal Communications
17 Commission as enhanced or value added. "Telecommunications
18 service" shall not include:

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

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

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

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

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

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

25 (7) data processing and information services that allow data to
26 be generated, acquired, stored, processed, or retrieved and delivered
27 by an electronic transmission to a purchaser where such purchaser's
28 primary purpose for the underlying transaction is the processed data
29 or information;

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

32 (9) tangible personal property;

33 (10) advertising, including but not limited to directory
34 advertising;

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

36 (12) internet access service;

37 (13) radio and television audio and video programming services,
38 regardless of the medium, including the furnishing of transmission,
39 conveyance, and routing of such services by the programming
40 service provider. Radio and television audio and video
41 programming services shall include but not be limited to cable
42 service as defined in section 47 U.S.C. s.522(6) and audio and video
43 programming services delivered by commercial mobile radio
44 service providers, as defined in section 47 C.F.R. 20.3;

45 (14) ancillary services; or

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

1 For the purposes of this subsection:

2 "ancillary service" means a service that is associated with or
3 incidental to the provision of telecommunications services,
4 including but not limited to detailed telecommunications billing,
5 directory assistance, vertical service, and voice mail service;

6 "conference bridging service" means an ancillary service that
7 links two or more participants of an audio or video conference call
8 and may include the provision of a telephone number. Conference
9 bridging service does not include the telecommunications services
10 used to reach the conference bridge;

11 "detailed telecommunications billing service" means an ancillary
12 service of separately stating information pertaining to individual
13 calls on a customer's billing statement;

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

16 "vertical service" means an ancillary service that is offered in
17 connection with one or more telecommunications services, which
18 offers advanced calling features that allow customers to identify
19 callers and to manage multiple calls and call connections, including
20 conference bridging services; and

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

25 (dd) (1) "Intrastate telecommunications" means a
26 telecommunications service that originates in one United States
27 state or a United States territory or possession or federal district,
28 and terminates in the same United States state or United States
29 territory or possession or federal district.

30 (2) "Interstate telecommunications" means a telecommunications
31 service that originates in one United States state or a United States
32 territory or possession or federal district, and terminates in a
33 different United States state or United States territory or possession
34 or federal district.

35 (3) "International telecommunications" means a
36 telecommunications service that originates or terminates in the
37 United States and terminates or originates outside the United States,
38 respectively. "United States" includes the District of Columbia or a
39 United States territory or possession.

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

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

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

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

1 (ii) "Self-generation unit" means a facility located on the user's
2 property, or on property purchased or leased from the user by the
3 person owning the self-generation unit and such property is
4 contiguous to the user's property, which generates electricity to be
5 used only by that user on the user's property and is not transported
6 to the user over wires that cross a property line or public
7 thoroughfare unless the property line or public thoroughfare merely
8 bifurcates the user's or self-generation unit owner's otherwise
9 contiguous property.

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

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

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

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

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

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

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

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

40 (C) Charges by the seller for any services necessary to complete
41 the sale;

42 (D) Delivery charges;

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

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

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

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

1 subject to tax unless the provider can identify by reasonable and
2 verifiable standards such portion from its books and records that are
3 kept in the regular course of business for other purposes, including
4 non-tax purposes.

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

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

10 (rr) "Delivery charges" means charges by the seller for
11 preparation and delivery to a location designated by the purchaser
12 of personal property or services including, but not limited to,
13 transportation, shipping, postage, handling, crating, and packing. If
14 a shipment includes both exempt and taxable property, the seller
15 should allocate the delivery charge by using: (1) a percentage based
16 on the total sales price of the taxable property compared to the total
17 sales price of all property in the shipment; or (2) a percentage based
18 on the total weight of the taxable property compared to the total
19 weight of all property in the shipment. The seller shall tax the
20 percentage of the delivery charge allocated to the taxable property
21 but is not required to tax the percentage allocated to the exempt
22 property.

23 (ss) "Direct mail" means printed material delivered or distributed
24 by United States mail or other delivery service to a mass audience
25 or to addresses on a mailing list provided by the purchaser or at the
26 direction of the purchaser in cases in which the cost of the items are
27 not billed directly to the recipients. "Direct mail" includes tangible
28 personal property supplied directly or indirectly by the purchaser to
29 the direct mail seller for inclusion in the package containing the
30 printed material. "Direct mail" does not include multiple items of
31 printed material delivered to a single address.

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

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

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

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

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

- 1 (1) investigation and detective services, including detective
- 2 agencies and private investigators, and fingerprint, polygraph,
- 3 missing person tracing and skip tracing services;
- 4 (2) security guard and patrol services, including bodyguard and
- 5 personal protection, guard dog, guard, patrol, and security services;
- 6 (3) armored car services; and
- 7 (4) security systems services, including security, burglar, and
- 8 fire alarm installation, repair or monitoring services.
- 9 (yy) "Information services" means the furnishing of information
- 10 of any kind, which has been collected, compiled, or analyzed by the
- 11 seller, and provided through any means or method, other than
- 12 personal or individual information which is not incorporated into
- 13 reports furnished to other people.
- 14 (zz) "Specified digital product" means an electronically
- 15 transferred digital audio-visual work, digital audio work, or digital
- 16 book; provided however, that a digital code which provides a
- 17 purchaser with a right to obtain the product shall be treated in the
- 18 same manner as a specified digital product.
- 19 (aaa) "Digital audio-visual work" means a series of related
- 20 images which, when shown in succession, impart an impression of
- 21 motion, together with accompanying sounds, if any.
- 22 (bbb) "Digital audio work" means a work that results from the
- 23 fixation of a series of musical, spoken, or other sounds, including a
- 24 ringtone.
- 25 (ccc) "Digital book" means a work that is generally recognized in
- 26 the ordinary and usual sense as a book.
- 27 (ddd) "Transferred electronically" means obtained by the
- 28 purchaser by means other than tangible storage media.
- 29 (eee) "Ringtone" means a digitized sound file that is downloaded
- 30 onto a device and that may be used to alert the purchaser with
- 31 respect to a communication.
- 32 (cf: P.L.2011, c.49, s.1)
- 33
- 34 21. This act shall take effect immediately.