

ASSEMBLY, No. 1045

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Assemblyman ERIC HOUGHTALING

District 11 (Monmouth)

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

Assemblywoman ELIZABETH MAHER MUOIO

District 15 (Hunterdon and Mercer)

Co-Sponsored by:

Assemblyman Dancer

SYNOPSIS

Clarifies sales tax collection responsibilities of horse-boarding businesses in New Jersey; makes change retroactive to October 1, 2006.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 5/11/2018)

1 AN ACT clarifying the sales tax collection responsibilities of horse-
2 boarding businesses in New Jersey, amending and supplementing
3 P.L.1966, c.30.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 3 of P.L.1966, c.30 (C.54:32B-3) is amended to read
9 as follows:

10 3. There is imposed and there shall be paid a tax of 7% upon:

11 (a) The receipts from every retail sale of tangible personal
12 property or a specified digital product for permanent use or less
13 than permanent use, and regardless of whether continued payment is
14 required, except as otherwise provided in this act.

15 (b) The receipts from every sale, except for resale, of the
16 following services:

17 (1) Producing, fabricating, processing, printing or imprinting
18 tangible personal property or a specified digital product, performed
19 for a person who directly or indirectly furnishes the tangible
20 personal property or specified digital product, not purchased by him
21 for resale, upon which such services are performed.

22 (2) Installing tangible personal property or a specified digital
23 product, or maintaining, servicing, repairing tangible personal
24 property or a specified digital product not held for sale in the
25 regular course of business, whether or not the services are
26 performed directly or by means of coin-operated equipment or by
27 any other means, and whether or not any tangible personal property
28 or specified digital product is transferred in conjunction therewith,
29 except (i) such services rendered by an individual who is engaged
30 directly by a private homeowner or lessee in or about his residence
31 and who is not in a regular trade or business offering his services to
32 the public, (ii) such services rendered with respect to personal
33 property exempt from taxation hereunder pursuant to section 13 of
34 P.L.1980, c.105 (C.54:32B-8.1), (iii) (Deleted by amendment,
35 P.L.1990, c.40), (iv) any receipts from laundering, dry cleaning,
36 tailoring, weaving, or pressing clothing, and shoe repairing and
37 shoeshining and (v) services rendered in installing property which,
38 when installed, will constitute an addition or capital improvement to
39 real property, property or land, other than landscaping services and
40 other than installing carpeting and other flooring.

41 (3) Storing all tangible personal property not held for sale in the
42 regular course of business; the rental of safe deposit boxes or
43 similar space; and the furnishing of space for storage of tangible
44 personal property by a person engaged in the business of furnishing
45 space for such storage.

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 "Space for storage" means secure areas, such as rooms, units,
2 compartments or containers, whether accessible from outside or
3 from within a building, that are designated for the use of a customer
4 and wherein the customer has free access within reasonable
5 business hours, or upon reasonable notice to the furnisher of space
6 for storage, to store and retrieve property. Space for storage shall
7 not include the lease or rental of an entire building, such as a
8 warehouse or airplane hangar, or the lease or rental of a stall in a
9 barn, stable, or other similar structure or facility for the boarding or
10 stabling or for the keeping or holding of a horse, pony, mule,
11 donkey, or hinny.

12 (4) Maintaining, servicing or repairing real property, other than
13 a residential heating system unit serving not more than three
14 families living independently of each other and doing their cooking
15 on the premises, whether the services are performed in or outside of
16 a building, as distinguished from adding to or improving such real
17 property by a capital improvement, but excluding services rendered
18 by an individual who is not in a regular trade or business offering
19 his services to the public, and excluding garbage removal and sewer
20 services performed on a regular contractual basis for a term not less
21 than 30 days.

22 (5) Mail processing services for printed advertising material,
23 except for mail processing services in connection with distribution
24 of printed advertising material to out-of-State recipients.

25 (6) (Deleted by amendment, P.L.1995, c.184).

26 (7) Utility service provided to persons in this State, any right or
27 power over which is exercised in this State.

28 (8) Tanning services, including the application of a temporary
29 tan provided by any means.

30 (9) Massage, bodywork or somatic services, except such
31 services provided pursuant to a doctor's prescription.

32 (10) Tattooing, including all permanent body art and permanent
33 cosmetic make-up applications, except such services provided
34 pursuant to a doctor's prescription in conjunction with
35 reconstructive breast surgery.

36 (11) Investigation and security services.

37 (12) Information services.

38 (13) Transportation services originating in this State and
39 provided by a limousine operator, as permitted by law, except such
40 services provided in connection with funeral services.

41 (14) Telephone answering services.

42 (15) Radio subscription services.

43 Wages, salaries and other compensation paid by an employer to
44 an employee for performing as an employee the services described
45 in this subsection are not receipts subject to the taxes imposed
46 under this subsection (b).

47 Services otherwise taxable under paragraph (1) or (2) of this
48 subsection (b) are not subject to the taxes imposed under this

1 subsection, where the tangible personal property or specified digital
2 product upon which the services were performed is delivered to the
3 purchaser outside this State for use outside this State.

4 (c) (1) Receipts from the sale of prepared food in or by
5 restaurants, taverns, or other establishments in this State, or by
6 caterers, including in the amount of such receipts any cover,
7 minimum, entertainment or other charge made to patrons or
8 customers, except for meals especially prepared for and delivered to
9 homebound elderly, age 60 or older, and to disabled persons, or
10 meals prepared and served at a group-sitting at a location outside of
11 the home to otherwise homebound elderly persons, age 60 or older,
12 and otherwise homebound disabled persons, as all or part of any
13 food service project funded in whole or in part by government or as
14 part of a private, nonprofit food service project available to all such
15 elderly or disabled persons residing within an area of service
16 designated by the private nonprofit organization; and

17 (2) Receipts from sales of food and beverages sold through
18 vending machines, at the wholesale price of such sale, which shall
19 be defined as 70% of the retail vending machine selling price,
20 except sales of milk, which shall not be taxed. Nothing herein
21 contained shall affect other sales through coin-operated vending
22 machines taxable pursuant to subsection (a) above or the exemption
23 thereto provided by section 21 of P.L.1980, c.105 (C.54:32B-8.9).

24 The tax imposed by this subsection (c) shall not apply to food or
25 drink which is sold to an airline for consumption while in flight.

26 (3) For the purposes of this subsection:

27 "Food and beverages sold through vending machines" means
28 food and beverages dispensed from a machine or other mechanical
29 device that accepts payment; and

30 "Prepared food" means:

31 (i) A. food sold in a heated state or heated by the seller; or

32 B. two or more food ingredients mixed or combined by the
33 seller for sale as a single item, but not including food that is only
34 cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,
35 poultry, and foods containing these raw animal foods requiring
36 cooking by the consumer as recommended by the Food and Drug
37 Administration in Chapter 3, part 401.11 of its Food Code so as to
38 prevent food borne illnesses; or

39 C. food sold with eating utensils provided by the seller,
40 including plates, knives, forks, spoons, glasses, cups, napkins, or
41 straws. A plate does not include a container or packaging used to
42 transport the food;

43 provided however, that

44 (ii) "prepared food" does not include the following sold without
45 eating utensils:

46 A. food sold by a seller whose proper primary NAICS
47 classification is manufacturing in section 311, except subsector
48 3118 (bakeries);

1 B. food sold in an unheated state by weight or volume as a
2 single item; or

3 C. bakery items, including bread, rolls, buns, biscuits, bagels,
4 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,
5 muffins, bars, cookies, and tortillas.

6 (d) The rent for every occupancy of a room or rooms in a hotel
7 in this State, except that the tax shall not be imposed upon a
8 permanent resident.

9 (e) (1) Any admission charge to or for the use of any place of
10 amusement in the State, including charges for admission to race
11 tracks, baseball, football, basketball or exhibitions, dramatic or
12 musical arts performances, motion picture theaters, except charges
13 for admission to boxing, wrestling, kick boxing or combative sports
14 exhibitions, events, performances or contests which charges are
15 taxed under any other law of this State or under section 20 of
16 P.L.1985, c.83 (C.5:2A-20), and, except charges to a patron for
17 admission to, or use of, facilities for sporting activities in which
18 such patron is to be a participant, such as bowling alleys and
19 swimming pools. For any person having the permanent use or
20 possession of a box or seat or lease or a license, other than a season
21 ticket, for the use of a box or seat at a place of amusement, the tax
22 shall be upon the amount for which a similar box or seat is sold for
23 each performance or exhibition at which the box or seat is used or
24 reserved by the holder, licensee or lessee, and shall be paid by the
25 holder, licensee or lessee.

26 (2) The amount paid as charge of a roof garden, cabaret or other
27 similar place in this State, to the extent that a tax upon such charges
28 has not been paid pursuant to subsection (c) hereof.

29 (f) (1) The receipts from every sale, except for resale, of
30 intrastate, interstate, or international telecommunications services
31 and ancillary services sourced to this State in accordance with
32 section 29 of P.L.2005, c.126 (C.54:32B-3.4).

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

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

35 (h) Charges in the nature of initiation fees, membership fees or
36 dues for access to or use of the property or facilities of a health and
37 fitness, athletic, sporting or shopping club or organization in this
38 State, except for: (1) membership in a club or organization whose
39 members are predominantly age 18 or under; and (2) charges in the
40 nature of membership fees or dues for access to or use of the
41 property or facilities of a health and fitness, athletic, sporting or
42 shopping club or organization that is exempt from taxation pursuant
43 to paragraph (1) of subsection (a) of section 9 of P.L.1966, c.30
44 (C.54:32B-9), or that is exempt from taxation pursuant to paragraph
45 (1) or (2) of subsection (b) of section 9 of P.L.1966, c.30 and that
46 has complied with subsection (d) of section 9 of P.L.1966, c.30.

47 (i) The receipts from parking, storing or garaging a motor
48 vehicle, excluding charges for the following: residential parking;

1 employee parking, when provided by an employer or at a facility
2 owned or operated by the employer; municipal parking, storing or
3 garaging; receipts from charges or fees imposed pursuant to section
4 3 of P.L.1993, c.159 (C.5:12-173.3) or pursuant to an agreement
5 between the Casino Reinvestment Development Authority and a
6 casino operator in effect on the date of enactment of P.L.2007,
7 c.105; and receipts from parking, storing or garaging a motor
8 vehicle subject to tax pursuant to any other law or ordinance.

9 For the purposes of this subsection, "municipal parking, storing
10 or garaging" means any motor vehicle parking, storing or garaging
11 provided by a municipality or county, or a parking authority
12 thereof.

13 (cf: P.L.2013, c.193, s.1)

14
15 2. (New section) Charges for storing a horse, pony, mule,
16 donkey, or hinny in a barn, stable, or other similar structure or
17 facility by a person engaged in the business of boarding or stabling
18 or otherwise keeping or holding horses, ponies, mules, donkeys, or
19 hinnies are exempt from the tax imposed pursuant to the "Sales and
20 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

21
22 3. (New section) Charges for maintaining or servicing a horse,
23 pony, mule, donkey, or hinny that is boarded or stabled or that is
24 kept or held in a barn, stable, or other similar structure or facility by
25 a person engaged in the business of boarding or stabling or
26 otherwise keeping or holding horses, ponies, mules, donkeys, or
27 hinnies are exempt from the tax imposed pursuant to the "Sales and
28 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

29
30 4. (New section) a. The director shall refund any tax, penalty,
31 or interest collected or paid on or after October 1, 2006 but before
32 the effective date of P.L. , c. (pending before the Legislature as
33 this bill) in connection with any receipts from sales or charges that
34 have been excluded or exempted from tax pursuant to section 1, 2,
35 or 3 of P.L. , c. (pending before the Legislature as this bill), if
36 application to the director for refund is filed, notwithstanding the
37 limitations on the time prescribed for filing a claim for refund by
38 section 20 of P.L.1966, c.30 (C.54:32B-20) or by R.S.54:49-14 to
39 the contrary, within 24 months of the effective date of P.L. ,
40 c. (pending before the Legislature as this bill).

41 b. An application for refund allowed pursuant to this section
42 may be filed by a customer who paid the tax or by a person required
43 to collect the tax, who has collected and paid over the tax to the
44 director, on forms furnished by the director and accompanied by
45 any information and documentation that the director determines to
46 be necessary and appropriate to verify the tax, penalty, or interest
47 collected or paid and to establish, if application is filed by a person
48 required to collect the tax, that the person has repaid to the

1 customer the amount of any tax for which the application for refund
2 is filed.

3 c. The director shall examine each application for refund filed
4 pursuant to this section and shall make a determination regarding a
5 refund, based upon such rules and regulations as may be prescribed
6 by the director, within 90 days of the date the application for refund
7 is filed.

8 d. If upon examination of an application for refund filed
9 pursuant to this section, the director determines that there has been
10 an overpayment of tax, penalty, or interest, the amount of the
11 overpayment shall be credited against any State tax liability of the
12 person and, if there is no State tax liability, the person shall be
13 allowed a refund of the overpaid tax, penalty, or interest. Interest
14 shall be allowed and paid on the amount of any overpayment not
15 credited or refunded within 90 days of the date the director's
16 determination for refund is made at the rate required to be paid on
17 overpayments pursuant to section 7 of P.L.1992, c.175 (C.54:49-
18 15.1), determined for each month or fraction thereof, compounded
19 annually at the end of each year, from the date the director's
20 determination for refund is made until the date the credit or refund
21 of overpayment is made.

22 e. If upon examination of an application for refund filed
23 pursuant to this section, the director rejects the application, in
24 whole or in part, the director shall make an order accordingly and
25 serve notice to the person who filed the application for refund
26 within 10 days of the date the director's determination for refund is
27 made. A person aggrieved by the director's determination may,
28 within 90 days of the date notice is served, file a protest and request
29 a hearing in accordance with the procedures established for
30 aggrieved taxpayers pursuant to R.S.54:49-18.

31

32 5. Notwithstanding the provisions of the "Administrative
33 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
34 contrary, the Director of the Division of Taxation in the Department
35 of the Treasury may adopt immediately upon filing with the Office
36 of Administrative Law such rules and regulations as the director
37 determines to be necessary and appropriate to effectuate the
38 purposes of P.L. , c. (pending before the Legislature as this bill),
39 which shall be effective for a period not exceeding 360 days
40 following the effective date of P.L. , c. (pending before the
41 Legislature as this bill) and may thereafter be amended, adopted, or
42 readopted by the director in accordance with the requirements of
43 P.L.1968, c.410 (C.52:14B-1 et seq.).

44

45 6. This act shall take effect immediately; provided however,
46 that section 1, 2, and 3 shall be retroactive to October 1, 2006 and
47 apply to all services rendered on or after that date.

STATEMENT

This bill clarifies the sales tax collection responsibilities of horse-boarding business in New Jersey by providing an exemption from tax for the lease or rental of certain stable stalls and charges for horse boarding and certain other related services.

Under the bill, the taxable service of “furnishing space for storage” is redefined to exclude from tax charges for the lease or rental of certain stable stalls. The bill provides that the service of “furnishing space for storage” does not include, and the taxable service therefore does not apply to, charges for the lease or rental of a stall in a barn, stable, or other similar structure or facility for the boarding or stabling or for the keeping or holding of a horse, pony, mule, donkey, or hinny.

The bill exempts from tax certain charges for boarding a horse. The bill provides that charges for storing a horse, pony, mule, donkey, or hinny in a barn, stable, or other similar structure or facility by a person engaged in the business of boarding or stabling or otherwise keeping or holding horses, ponies, mules, donkeys, or hinnies are exempt from the sales tax.

The bill also exempts from tax certain services provided for the care of horses boarded by persons engaged in the business of boarding horses. The bill provides that charges for maintaining or servicing a horse, pony, mule, donkey, or hinny that is boarded or stabled or that is kept or held in a barn, stable, or other similar structure or facility by a person engaged in the business of boarding or stabling or otherwise keeping or holding horses, ponies, mules, donkeys, or hinnies are exempt from the sales tax.

The bill takes effect immediately and applies retroactively to October 1, 2006. The bill establishes a refund procedure that provides taxpayers a 24-month window to apply for a refund for any taxes, penalties, and interest collected or paid in connection with eligible sales and charges between October 1, 2006 and the effective date of the bill.

The purpose of this bill is to clarify the tax collection responsibilities of horse-boarding businesses in this State. The Division of Taxation in the Department of the Treasury has failed to provide clear and consistent guidance on the taxability of horse boarding and other related services typically provided to horses under board.

This failure has created confusion within the horse-boarding community and resulted in uncertainty regarding the tax obligations of certain taxpayers. Recent audits undertaken by the Division of Taxation have exacerbated the issue and resulted in the closure of some horse-boarding businesses that have been assessed taxes, penalties, and interest for sales and charges that, in some instances, date back to the fall of 2006.

1 The failure to provide clear and consistent guidance also has
2 placed New Jersey horse-boarding businesses at a competitive
3 disadvantage with similar businesses in surrounding states. In states
4 like Pennsylvania, the law is clear that businesses are not required
5 to charge and collect sales tax on charges for boarding horses.

6 By providing an exemption for horse boarding and related
7 services, this bill eliminates the confusion and provides clarity to
8 the tax obligations of New Jersey businesses. Additionally, by
9 providing an exemption the bill levels the playing field for horse-
10 boarding businesses within this State and their out-of-State
11 counterparts.