

[First Reprint]

## **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)**

**Assemblyman RONALD S. DANCER**

**District 12 (Burlington, Middlesex, Monmouth and Ocean)**

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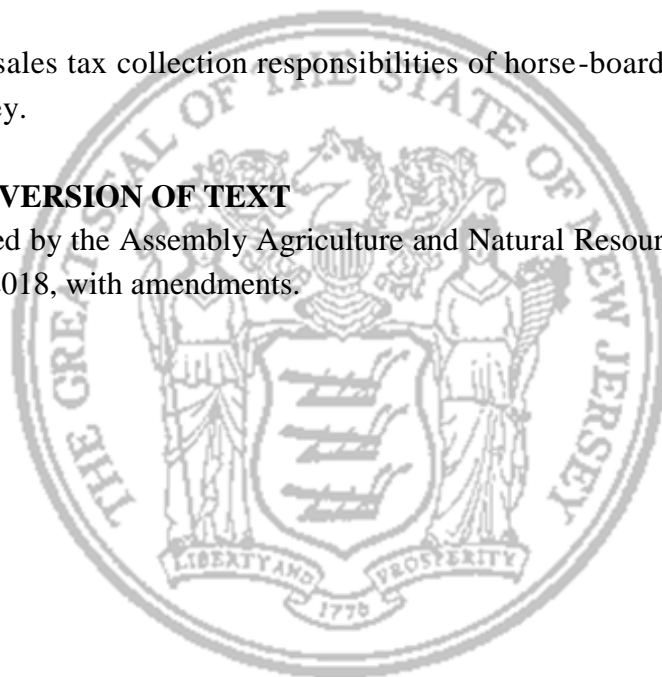
**Assemblymen Freiman, Space, Harold J. Wirths, Assemblywomen Lopez  
and Vainieri Huttle**

**SYNOPSIS**

Clarifies sales tax collection responsibilities of horse-boarding businesses in New Jersey.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Agriculture and Natural Resources Committee on May 10, 2018, with amendments.



**(Sponsorship Updated As Of: 6/8/2018)**

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% on or  
 11 before December 31, 2016, 6.875% on and after January 1, 2017 but  
 12 before January 1, 2018, and 6.625% on and after January 1, 2018  
 13 upon:

14 (a) The receipts from every retail sale of tangible personal  
 15 property or a specified digital product for permanent use or less  
 16 than permanent use, and regardless of whether continued payment is  
 17 required, except as otherwise provided in P.L.1966, c.30 (C.54:32B-  
 18 1 et seq.).

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

21 (1) Producing, fabricating, processing, printing, or imprinting  
 22 tangible personal property or a specified digital product, performed  
 23 for a person who directly or indirectly furnishes the tangible  
 24 personal property or specified digital product, not purchased by the  
 25 person for resale, upon which these services are performed.

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

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AAN committee amendments adopted May 10, 2018.

1 (3) Storing all tangible personal property not held for sale in the  
2 regular course of business; the rental of safe deposit boxes or  
3 similar space; and the furnishing of space for storage of tangible  
4 personal property by a person engaged in the business of furnishing  
5 space for such storage.

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

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

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

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

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

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

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

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

41 (11) Investigation and security services.

42 (12) Information services.

43 (13) (Deleted by amendment, P.L.2017, c.27)

44 (14) Telephone answering services.

45 (15) Radio subscription services.

46 Wages, salaries, and other compensation paid by an employer to  
47 an employee for performing as an employee the services described

1 in this subsection are not receipts subject to the taxes imposed  
2 under subsection (b) of this section.

3 Services otherwise taxable under paragraph (1) or (2) of  
4 subsection (b) of this section are not subject to the taxes imposed  
5 under this subsection, where the tangible personal property or  
6 specified digital product upon which the services were performed is  
7 delivered to the purchaser outside this State for use outside this  
8 State.

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

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

30 The tax imposed by subsection (c) of this section shall not apply  
31 to food or drink which is sold to an airline for consumption while in  
32 flight.

33 (3) For the purposes of this subsection:

34 "Food and beverages sold through vending machines" means  
35 food and beverages dispensed from a machine or other mechanical  
36 device that accepts payment; and

37 "Prepared food" means:

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

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

46 C. food sold with eating utensils provided by the seller,  
47 including plates, knives, forks, spoons, glasses, cups, napkins, or

1 straws. A plate does not include a container or packaging used to  
2 transport the food;  
3 provided however, that

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

6 A. food sold by a seller whose proper primary NAICS  
7 classification is manufacturing in section 311, except subsector  
8 3118 (bakeries);

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

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

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

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

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

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

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

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

43 (h) Charges in the nature of initiation fees, membership fees or  
44 dues for access to or use of the property or facilities of a health and  
45 fitness, athletic, sporting, or shopping club or organization in this  
46 State, except for: (1) membership in a club or organization whose  
47 members are predominantly age 18 or under; and (2) charges in the  
48 nature of membership fees or dues for access to or use of the

1 property or facilities of a health and fitness, athletic, sporting, or  
2 shopping club or organization that is exempt from taxation pursuant  
3 to paragraph (1) of subsection (a) of section 9 of P.L.1966, c.30  
4 (C.54:32B-9), or that is exempt from taxation pursuant to paragraph  
5 (1) or (2) of subsection (b) of section 9 of P.L.1966, c.30  
6 (C.54:32B-9) and that has complied with subsection (d) of section 9  
7 of P.L.1966, c.30 (C.54:32B-9).

8 (i) The receipts from parking, storing, or garaging a motor  
9 vehicle, excluding charges for the following: residential parking;  
10 employee parking, when provided by an employer or at a facility  
11 owned or operated by the employer; municipal parking, storing, or  
12 garaging; receipts from charges or fees imposed pursuant to section  
13 3 of P.L.1993, c.159 (C.5:12-173.3) or pursuant to an agreement  
14 between the Casino Reinvestment Development Authority and a  
15 casino operator in effect on the date of enactment of P.L.2007,  
16 c.105; and receipts from parking, storing, or garaging a motor  
17 vehicle subject to tax pursuant to any other law or ordinance.

18 For the purposes of this subsection, "municipal parking, storing,  
19 or garaging" means any motor vehicle parking, storing, or garaging  
20 provided by a municipality or county, or a parking authority  
21 thereof.

22 (cf: P.L.2017, c.27, s.1)

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

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

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

1 date of P.L. , c. (pending before the Legislature as this  
2 bill).

3 b. An application for refund allowed pursuant to this section  
4 may be filed by a customer who paid the tax or by a person required  
5 to collect the tax, who has collected and paid over the tax to the  
6 director, on forms furnished by the director and accompanied by  
7 any information and documentation that the director determines to  
8 be necessary and appropriate to verify the tax, penalty, or interest  
9 collected or paid and to establish, if application is filed by a person  
10 required to collect the tax, that the person has repaid to the  
11 customer the amount of any tax for which the application for refund  
12 is filed.

13 c. The director shall examine each application for refund filed  
14 pursuant to this section and shall make a determination regarding a  
15 refund, based upon such rules and regulations as may be prescribed  
16 by the director, within 90 days of the date the application for refund  
17 is filed.

18 d. If upon examination of an application for refund filed  
19 pursuant to this section, the director determines that there has been  
20 an overpayment of tax, penalty, or interest, the amount of the  
21 overpayment shall be credited against any State tax liability of the  
22 person and, if there is no State tax liability, the person shall be  
23 allowed a refund of the overpaid tax, penalty, or interest. Interest  
24 shall be allowed and paid on the amount of any overpayment not  
25 credited or refunded within 90 days of the date the director's  
26 determination for refund is made at the rate required to be paid on  
27 overpayments pursuant to section 7 of P.L.1992, c.175 (C.54:49-  
28 15.1), determined for each month or fraction thereof, compounded  
29 annually at the end of each year, from the date the director's  
30 determination for refund is made until the date the credit or refund  
31 of overpayment is made.

32 e. If upon examination of an application for refund filed  
33 pursuant to this section, the director rejects the application, in  
34 whole or in part, the director shall make an order accordingly and  
35 serve notice to the person who filed the application for refund  
36 within 10 days of the date the director's determination for refund is  
37 made. A person aggrieved by the director's determination may,  
38 within 90 days of the date notice is served, file a protest and request  
39 a hearing in accordance with the procedures established for  
40 aggrieved taxpayers pursuant to R.S.54:49-18.】<sup>1</sup>

41

42 <sup>1</sup>【5.】4.<sup>1</sup> (New section) Notwithstanding the provisions of the  
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
44 seq.), to the contrary, the Director of the Division of Taxation in the  
45 Department of the Treasury may adopt immediately upon filing  
46 with the Office of Administrative Law such rules and regulations as  
47 the director determines to be necessary and appropriate to effectuate  
48 the purposes of P.L. , c. (pending before the Legislature as this

1 bill), which shall be effective for a period not exceeding 360 days  
2 following the effective date of P.L. , c. (pending before the  
3 Legislature as this bill) and may thereafter be amended, adopted, or  
4 readopted by the director in accordance with the requirements of  
5 P.L.1968, c.410 (C.52:14B-1 et seq.).

6  
7 <sup>1</sup>~~6~~ 5<sup>1</sup>. This act shall take effect immediately; provided  
8 however, that <sup>1</sup>~~section~~ sections<sup>1</sup> 1, 2, and 3 shall <sup>1</sup>~~be~~ retroactive  
9 to October 1, 2006 and apply to all services rendered on or after that  
10 date<sup>1</sup> apply to taxable years beginning on or after January 1 next  
11 following the date of enactment of this act<sup>1</sup>.