

[Second Reprint]

ASSEMBLY, No. 4261

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED JUNE 21, 2018

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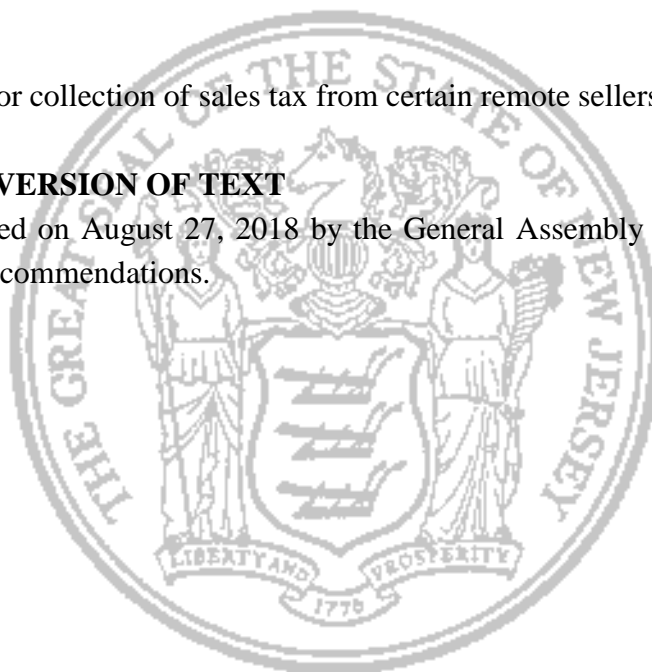
Assemblyman Schaer and Senator Greenstein

SYNOPSIS

Provides for collection of sales tax from certain remote sellers.

CURRENT VERSION OF TEXT

As amended on August 27, 2018 by the General Assembly pursuant to the Governor's recommendations.



(Sponsorship Updated As Of: 7/2/2018)

1 AN ACT concerning the collection of the State sales and use tax, and
 2 supplementing and amending P.L.1966, c.30.

3
 4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
 5 *of New Jersey:*

6
 7 1. (New section) a. Notwithstanding the provisions of the
 8 "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), or
 9 any other law, rule, or regulation to the contrary, a seller, who
 10 makes a retail sale of tangible personal property ², specified digital
 11 products, or taxable services² for delivery into the State and who
 12 does not have a physical presence in the State, shall be subject to
 13 the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30
 14 (C.54:32B-1 et seq.), and shall collect the tax in accordance with
 15 the provisions of P.L.1966, c.30 (C.54:32B-1 et seq.) if the seller
 16 meets either of the following criteria:

17 (1) The seller's gross revenue from delivery of tangible personal
 18 property, a specified digital product, or services into the State in the
 19 calendar year in which a sale ²**[of tangible personal property]**²
 20 occurred or the prior calendar year exceeds \$100,000; or

21 (2) The seller sold tangible personal property, a specified digital
 22 product, or services for delivery into the State in 200 or more
 23 separate transactions during the calendar year in which a sale ²**[of**
 24 **tangible personal property]**² occurred or the prior calendar year.

25 b. A taxpayer complying with the provisions of P.L.1966, c.30
 26 (C.54:32B-1 et seq.) and this section, voluntarily or otherwise, may
 27 seek a refund or credit of a tax, penalty, or interest by following the
 28 procedures set forth in section 20 of P.L.1966, c.30 (C.54:32B-20).
 29 However, the director shall not grant an application for a refund or
 30 credit submitted to the director pursuant to section 20 of P.L.1966,
 31 c.30 (C.54:32B-20) on the basis that a taxpayer lacked a physical
 32 presence in the State and complied with the provisions of P.L.1966,
 33 c.30 (C.54:32B-1 et seq.) and this section voluntarily. Nothing in
 34 this subsection shall limit the ability of a taxpayer to obtain a refund
 35 or credit on any other basis set forth in section 20 of P.L.1966, c.30
 36 (C.54:32B-20).

37 c. A seller who remits the tax imposed under the "Sales and
 38 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), voluntarily or
 39 otherwise, shall not be liable to a purchaser who claims that the
 40 sales tax has been over-collected because a provision of
 41 P.L. , c. (C.) (pending before the Legislature as this bill) is later
 42 deemed unlawful.

43 d. Nothing in P.L. , c. (C.) (pending before the Legislature
 44 as this bill) shall affect the obligation of any purchaser from this

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:

¹Assembly floor amendments adopted June 25, 2018.

²Assembly amendments adopted in accordance with Governor's
 recommendations August 27, 2018.

1 State to remit use tax as to any applicable transaction in which the
2 seller does not collect and remit the sales tax or remit an offsetting
3 sales tax.

4 e. The tax imposed under P.L.1966, c.30 (C.54:32B-1 et seq.)
5 upon sellers who meet the criteria set forth in this section and are
6 not otherwise subject to the tax shall apply only to sales following
7 the effective date of this section and no obligation to collect and
8 remit the tax imposed under P.L.1966, c.30 (C.54:32B-1 et seq.) by
9 sellers who meet the criteria set forth in this section may be applied
10 retroactively.

11
12 ¹2. (New section) a. As used in this section:

13 "Forum" means a physical or electronic place, including, but not
14 limited to, a store, a booth, an Internet web site, a catalog, or a
15 dedicated sales software application, where tangible personal
16 property ², specified digital products,² or taxable services are
17 offered for sale.

18 "Marketplace facilitator" means a person who provides a forum
19 that lists, advertises, stores, or processes orders for tangible
20 personal property ², specified digital products, or taxable services²
21 subject to tax under the "Sales and Use Tax Act," P.L.1966, c.30
22 (C.54:32B-1 et seq.), and directly or indirectly through an
23 agreement or arrangement with a third party, collects receipts from
24 a purchaser and remits payment to a marketplace seller, regardless
25 of whether the person receives compensation or other consideration
26 for such services.

27 "Marketplace seller" means a seller that makes retail sales
28 through a forum operated by a marketplace facilitator.

29 b. Following the effective date of P.L. , c. (pending before
30 the Legislature as this bill), a marketplace facilitator shall collect
31 and pay to the director the tax imposed under P.L.1966, c.30
32 (C.54:32B-1 et seq.) on any retail sale ²~~made~~ delivered² to a
33 purchaser in this State; provided, however, a marketplace facilitator
34 shall not be required to collect and pay the tax imposed under
35 P.L.1966, c.30 (C.54:32B-1 et seq.) on a retail sale if the
36 marketplace seller for whom the retail sale is facilitated holds a
37 certificate of registration pursuant to section 15 of P.L.1966, c.30
38 (C.54:32B-15) and provides a copy of the certificate of registration
39 to the marketplace facilitator prior to the retail sale. Nothing in this
40 subsection shall be construed to interfere with the ability of a
41 marketplace facilitator and a marketplace seller to enter into an
42 agreement with each other regarding the collection of the tax
43 imposed under P.L.1966, c.30 (C.54:32B-1 et seq.).

44 c. A marketplace facilitator shall not be liable to a marketplace
45 seller for failure to collect and remit the correct amount of the tax
46 imposed under P.L.1966, c.30 (C.54:32B-1 et seq.), provided the
47 failure was the result of the marketplace seller providing the
48 marketplace facilitator with incorrect information.

d. Following each retail sale made, the marketplace facilitator shall provide to the purchaser a sales slip, invoice, receipt, or other statement or memorandum of the price paid or payable, which shall state, charge, and show the tax separately.

e. A marketplace facilitator shall file a return in accordance with the provisions of P.L.1966, c.30 (C.54:32B-1 et seq.) on a special return which the director shall prescribe.

f. Upon the request of the director, a marketplace facilitator shall demonstrate compliance with the provisions of this section and P.L.1966, c.30 (C.54:32B-1 et seq.). A marketplace facilitator otherwise shall ²[not]² be subject to audit by the ²[department] division² with respect to the retail sales for which it is required to collect and remit the tax imposed under P.L.1966, c.30 (C.54:32B-1 et seq.) pursuant to subsection b. of this section. Nothing in this subsection shall preclude the ²[department] division² from auditing a marketplace seller ²that is registered pursuant to section 15 of P.L.1966, c.30 (C.54:32B-15)² with respect to retail sales facilitated by a marketplace facilitator on the marketplace seller's behalf.¹

²[¹[2.] ³.¹ Section 2 of P.L.1966, c.30 (C.54:32B-2) is amended to read as follows:

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

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

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

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

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

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

(1) For the purposes of this act a sale is for "resale, sublease, or subrent" if it is a sale (A) for resale either as such or as converted into or as a component part of a product produced for sale by the purchaser, including the conversion of natural gas into another intermediate or end product, other than electricity or thermal energy, produced for sale by the purchaser, (B) for use by that person in performing the services subject to tax under subsection (b) of section 3 where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred

1 to the purchaser of the service in conjunction with the performance
2 of the service subject to tax, (C) of telecommunications service to a
3 telecommunications service provider for use as a component part of
4 telecommunications service provided to an ultimate customer, or
5 (D) to a person who receives by contract a product transferred
6 electronically for further commercial broadcast, rebroadcast,
7 transmission, retransmission, licensing, relicensing, distribution,
8 redistribution or exhibition of the product, in whole or in part, to
9 another person, other than rights to redistribute based on statutory
10 or common law doctrine such as fair use.

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

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

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

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

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

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

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

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

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

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

36 (f) "Sale, selling or purchase" means any transfer of title or
37 possession or both, exchange or barter, rental, lease or license to
38 use or consume, conditional or otherwise, in any manner or by any
39 means whatsoever for a consideration, or any agreement therefor,
40 including the rendering of any service, taxable under this act, for a
41 consideration or any agreement therefor.

42 (g) "Tangible personal property" means personal property that
43 can be seen, weighed, measured, felt, or touched, or that is in any
44 other manner perceptible to the senses. "Tangible personal
45 property" includes electricity, water, gas, steam, and prewritten
46 computer software including prewritten computer software
47 delivered electronically.

1 (h) "Use" means the exercise of any right or power over tangible
2 personal property, specified digital products, services to property or
3 products, or services by the purchaser thereof and includes, but is
4 not limited to, the receiving, storage or any keeping or retention for
5 any length of time, withdrawal from storage, any distribution, any
6 installation, any affixation to real or personal property, or any
7 consumption of such property or products. Use also includes the
8 exercise of any right or power over intrastate or interstate
9 telecommunications and prepaid calling services. Use also includes
10 the exercise of any right or power over utility service. Use also
11 includes the derivation of a direct or indirect benefit from a service.

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

14 (1) The term "seller" includes:

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

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

23 (C) A person who solicits business either by employees,
24 independent contractors, agents or other representatives or by
25 distribution of catalogs or other advertising matter and by reason
26 thereof makes sales to persons within the State of tangible personal
27 property, specified digital products or services, the use of which is
28 taxed by this act.

29 A person making sales of tangible personal property, specified
30 digital products, or services taxable under the "Sales and Use Tax
31 Act," P.L.1966, c.30 (C.54:32B-1 et seq.) shall be presumed to be
32 soliciting business through an independent contractor or other
33 representative if the person making sales enters into an agreement
34 with an independent contractor having physical presence in this
35 State or other representative having physical presence in this State,
36 for a commission or other consideration, under which the
37 independent contractor or representative directly or indirectly refers
38 potential customers, whether by a link on an internet website or
39 otherwise, and the cumulative gross receipts from sales to
40 customers in this State who were referred by all independent
41 contractors or representatives that have this type of an agreement
42 with the person making sales are in excess of \$10,000 during the
43 preceding four quarterly periods ending on the last day of March,
44 June, September, and December. This presumption may be rebutted
45 by proof that the independent contractor or representative with
46 whom the person making sales has an agreement did not engage in
47 any solicitation in the State on behalf of the person that would
48 satisfy the nexus requirements of the United States Constitution

1 during the four quarterly periods in question. Nothing in this
2 subparagraph shall be construed to narrow the scope of the terms
3 independent contractor or other representative for purposes of any
4 other provision of the "Sales and Use Tax Act," P.L.1966, c.30
5 (C.54:32B-1 et seq.);

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

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

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

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

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

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

25 (J) A person making sales, leases, or rentals of tangible personal
26 property, who meets the criteria set forth in paragraph (1) or (2) of
27 section 1 of P.L. , c. (C.) (pending before the Legislature as
28 this bill).

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

1 services to, or that inure to the benefit of, the seller related to
2 developing, promoting, or maintaining the seller's market.

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

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

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

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

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

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

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

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

27 (r) "Dramatic or musical arts admission charge" means any
28 admission charge paid for admission to a theater, opera house,
29 concert hall or other hall or place of assembly for a live, dramatic,
30 choreographic or musical performance.

31 (s) "Lessor" means any person who is the owner, licensee, or
32 lessee of any premises, tangible personal property or a specified
33 digital product which the person leases, subleases, or grants a
34 license to use to other persons.

35 (t) "Place of amusement" means any place where any facilities
36 for entertainment, amusement, or sports are provided.

37 (u) "Casual sale" means an isolated or occasional sale of an item
38 of tangible personal property or a specified digital product by a
39 person who is not regularly engaged in the business of making retail
40 sales of such property or product where the item of tangible
41 personal property or the specified digital product was obtained by
42 the person making the sale, through purchase or otherwise, for the
43 person's own use.

44 (v) "Motor vehicle" includes all vehicles propelled otherwise
45 than by muscular power (excepting such vehicles as run only upon
46 rails or tracks), trailers, semitrailers, house trailers, or any other
47 type of vehicle drawn by a motor-driven vehicle, and motorcycles,
48 designed for operation on the public highways.

1 (w) "Persons required to collect tax" or "persons required to
2 collect any tax imposed by this act" includes: every seller of
3 tangible personal property, specified digital products or services;
4 every recipient of amusement charges; every operator of a hotel;
5 every seller of a telecommunications service; every recipient of
6 initiation fees, membership fees or dues for access to or use of the
7 property or facilities of a health and fitness, athletic, sporting or
8 shopping club or organization; and every recipient of charges for
9 parking, storing or garaging a motor vehicle. Said terms shall also
10 include any officer or employee of a corporation or of a dissolved
11 corporation who as such officer or employee is under a duty to act
12 for such corporation in complying with any requirement of this act
13 and any member of a partnership.

14 (x) "Customer" includes: every purchaser of tangible personal
15 property, specified digital products or services; every patron paying
16 or liable for the payment of any amusement charge; every occupant
17 of a room or rooms in a hotel; every person paying charges in the
18 nature of initiation fees, membership fees or dues for access to or
19 use of the property or facilities of a health and fitness, athletic,
20 sporting or shopping club or organization; and every purchaser of
21 parking, storage or garaging a motor vehicle.

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

43 (z) "Director" means the Director of the Division of Taxation in
44 the State Department of the Treasury, or any officer, employee or
45 agency of the Division of Taxation in the Department of the
46 Treasury duly authorized by the director (directly, or indirectly by
47 one or more redelegations of authority) to perform the functions
48 mentioned or described in this act.

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

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

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

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

13 (C) Providing tangible personal property or a specified digital
14 product along with an operator for a fixed or indeterminate period
15 of time. A condition of this exclusion is that the operator is
16 necessary for the equipment to perform as designed. For the
17 purpose of this subparagraph, an operator must do more than
18 maintain, inspect, or set-up the tangible personal property or
19 specified digital product.

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

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

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

31 (cc) "Telecommunications service" means the electronic
32 transmission, conveyance, or routing of voice, data, audio, video, or
33 any other information or signals to a point, or between or among
34 points.

35 "Telecommunications service" shall include such transmission,
36 conveyance, or routing in which computer processing applications
37 are used to act on the form, code, or protocol of the content for
38 purposes of transmission, conveyance, or routing without regard to
39 whether such service is referred to as voice over Internet protocol
40 services or is classified by the Federal Communications
41 Commission as enhanced or value added.

42 "Telecommunications service" shall not include:

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

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

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

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

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

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

1 (7) data processing and information services that allow data to
2 be generated, acquired, stored, processed, or retrieved and delivered
3 by an electronic transmission to a purchaser where such purchaser's
4 primary purpose for the underlying transaction is the processed data
5 or information;

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

8 (9) tangible personal property;

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

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

12 (12) internet access service;

13 (13) radio and television audio and video programming services,
14 regardless of the medium, including the furnishing of transmission,
15 conveyance, and routing of such services by the programming
16 service provider. Radio and television audio and video
17 programming services shall include but not be limited to cable
18 service as defined in section 47 U.S.C. s.522(6) and audio and video
19 programming services delivered by commercial mobile radio
20 service providers, as defined in section 47 C.F.R. 20.3;

21 (14) ancillary services; or

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

24 For the purposes of this subsection:

25 "ancillary service" means a service that is associated with or
26 incidental to the provision of telecommunications services,
27 including but not limited to detailed telecommunications billing,
28 directory assistance, vertical service, and voice mail service;

29 "conference bridging service" means an ancillary service that
30 links two or more participants of an audio or video conference call
31 and may include the provision of a telephone number. Conference
32 bridging service does not include the telecommunications services
33 used to reach the conference bridge;

34 "detailed telecommunications billing service" means an ancillary
35 service of separately stating information pertaining to individual
36 calls on a customer's billing statement;

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

39 "vertical service" means an ancillary service that is offered in
40 connection with one or more telecommunications services, which
41 offers advanced calling features that allow customers to identify
42 callers and to manage multiple calls and call connections, including
43 conference bridging services; and

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

1 (dd) (1) "Intrastate telecommunications" means a
2 telecommunications service that originates in one United States
3 state or a United States territory or possession or federal district,
4 and terminates in the same United States state or United States
5 territory or possession or federal district.

6 (2) "Interstate telecommunications" means a
7 telecommunications service that originates in one United States
8 state or a United States territory or possession or federal district,
9 and terminates in a different United States state or United States
10 territory or possession or federal district.

11 (3) "International telecommunications" means a
12 telecommunications service that originates or terminates in the
13 United States and terminates or originates outside the United States,
14 respectively. "United States" includes the District of Columbia or a
15 United States territory or possession.

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

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

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

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

23 (ii) "Self-generation unit" means a facility located on the user's
24 property, or on property purchased or leased from the user by the
25 person owning the self-generation unit and such property is
26 contiguous to the user's property, which generates electricity to be
27 used only by that user on the user's property and is not transported
28 to the user over wires that cross a property line or public
29 thoroughfare unless the property line or public thoroughfare merely
30 bifurcates the user's or self-generation unit owner's otherwise
31 contiguous property.

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

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

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

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

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

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

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

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

14 (C) Charges by the seller for any services necessary to complete
15 the sale;

16 (D) Delivery charges;

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

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

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

20 (A) Discounts, including cash, term, or coupons that are not
21 reimbursed by a third party, that are allowed by a seller and taken
22 by a purchaser on a sale;

23 (B) Interest, financing, and carrying charges from credit
24 extended on the sale of personal property or services, if the amount
25 is separately stated on the invoice, bill of sale, or similar document
26 given to the purchaser;

27 (C) Any taxes legally imposed directly on the consumer that are
28 separately stated on the invoice, bill of sale, or similar document
29 given to the purchaser;

30 (D) The amount of sales price for which food stamps have been
31 properly tendered in full or part payment pursuant to the federal
32 Food Stamp Act of 1977, Pub.L.95-113 (7 U.S.C. s.2011 et seq.); or

33 (E) Credit for any trade-in of property of the same kind accepted
34 in part payment and intended for resale if the amount is separately
35 stated on the invoice, bill of sale, or similar document given to the
36 purchaser.

37 (3) "Sales price" includes consideration received by the seller
38 from third parties if:

39 (A) The seller actually receives consideration from a party other
40 than the purchaser and the consideration is directly related to a price
41 reduction or discount on the sale;

42 (B) The seller has an obligation to pass the price reduction or
43 discount through to the purchaser;

44 (C) The amount of the consideration attributable to the sale is
45 fixed and determinable by the seller at the time of the sale of the
46 item to the purchaser; and

47 (D) One of the following criteria is met:

1 (i) the purchaser presents a coupon, certificate, or other
2 documentation to the seller to claim a price reduction or discount
3 where the coupon, certificate, or documentation is authorized,
4 distributed, or granted by a third party with the understanding that
5 the third party will reimburse any seller to whom the coupon,
6 certificate, or documentation is presented;

7 (ii) the purchaser identifies himself to the seller as a member of
8 a group or organization entitled to a price reduction or discount;
9 provided however, that a preferred customer card that is available to
10 any patron does not constitute membership in such a group; or

11 (iii) the price reduction or discount is identified as a third party
12 price reduction or discount on the invoice received by the purchaser
13 or on a coupon, certificate, or other documentation presented by the
14 purchaser.

15 (4) In the case of a bundled transaction that includes a
16 telecommunications service, an ancillary service, internet access, or
17 an audio or video programming service, if the price is attributable to
18 products that are taxable and products that are nontaxable, the
19 portion of the price attributable to the nontaxable products is
20 subject to tax unless the provider can identify by reasonable and
21 verifiable standards such portion from its books and records that are
22 kept in the regular course of business for other purposes, including
23 non-tax purposes.

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

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

29 (rr) "Delivery charges" means charges by the seller for
30 preparation and delivery to a location designated by the purchaser
31 of personal property or services including, but not limited to,
32 transportation, shipping, postage, handling, crating, and packing. If
33 a shipment includes both exempt and taxable property, the seller
34 should allocate the delivery charge by using: (1) a percentage based
35 on the total sales price of the taxable property compared to the total
36 sales price of all property in the shipment; or (2) a percentage based
37 on the total weight of the taxable property compared to the total
38 weight of all property in the shipment. The seller shall tax the
39 percentage of the delivery charge allocated to the taxable property
40 but is not required to tax the percentage allocated to the exempt
41 property.

42 (ss) "Direct mail" means printed material delivered or distributed
43 by United States mail or other delivery service to a mass audience
44 or to addresses on a mailing list provided by the purchaser or at the
45 direction of the purchaser in cases in which the cost of the items are
46 not billed directly to the recipients. "Direct mail" includes tangible
47 personal property supplied directly or indirectly by the purchaser to
48 the direct mail seller for inclusion in the package containing the

1 printed material. "Direct mail" does not include multiple items of
2 printed material delivered to a single address.

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

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

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

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

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

17 (1) investigation and detective services, including detective
18 agencies and private investigators, and fingerprint, polygraph,
19 missing person tracing and skip tracing services;

20 (2) security guard and patrol services, including bodyguard and
21 personal protection, guard dog, guard, patrol, and security services;

22 (3) armored car services; and

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

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

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

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

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

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

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

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

48 (cf: P.L.2014, c.13, s.4)]²

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

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

5 (a) "Person" includes an individual, trust, partnership, limited
6 partnership, limited liability company, society, association, joint
7 stock company, corporation, public corporation or public authority,
8 estate, receiver, trustee, assignee, referee, fiduciary and any other
9 legal entity.

10 (b) "Purchase at retail" means a purchase by any person at a
11 retail sale.

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

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

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

19 (1) For the purposes of this act a sale is for "resale, sublease, or
20 subrent" if it is a sale (A) for resale either as such or as converted
21 into or as a component part of a product produced for sale by the
22 purchaser, including the conversion of natural gas into another
23 intermediate or end product, other than electricity or thermal
24 energy, produced for sale by the purchaser, (B) for use by that
25 person in performing the services subject to tax under subsection
26 (b) of section 3 where the property so sold becomes a physical
27 component part of the property upon which the services are
28 performed or where the property so sold is later actually transferred
29 to the purchaser of the service in conjunction with the performance
30 of the service subject to tax, (C) of telecommunications service to a
31 telecommunications service provider for use as a component part of
32 telecommunications service provided to an ultimate customer, or
33 (D) to a person who receives by contract a product transferred
34 electronically for further commercial broadcast, rebroadcast,
35 transmission, retransmission, licensing, relicensing, distribution,
36 redistribution or exhibition of the product, in whole or in part, to
37 another person, other than rights to redistribute based on statutory
38 or common law doctrine such as fair use.

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

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

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

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

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

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

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

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

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

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

16 (f) "Sale, selling or purchase" means any transfer of title or
17 possession or both, exchange or barter, rental, lease or license to
18 use or consume, conditional or otherwise, in any manner or by any
19 means whatsoever for a consideration, or any agreement therefor,
20 including the rendering of any service, taxable under this act, for a
21 consideration or any agreement therefor.

22 (g) "Tangible personal property" means personal property that
23 can be seen, weighed, measured, felt, or touched, or that is in any
24 other manner perceptible to the senses. "Tangible personal
25 property" includes electricity, water, gas, steam, and prewritten
26 computer software including prewritten computer software
27 delivered electronically.

28 (h) "Use" means the exercise of any right or power over tangible
29 personal property, specified digital products, services to property or
30 products, or services by the purchaser thereof and includes, but is
31 not limited to, the receiving, storage or any keeping or retention for
32 any length of time, withdrawal from storage, any distribution, any
33 installation, any affixation to real or personal property, or any
34 consumption of such property or products. Use also includes the
35 exercise of any right or power over intrastate or interstate
36 telecommunications and prepaid calling services. Use also includes
37 the exercise of any right or power over utility service. Use also
38 includes the derivation of a direct or indirect benefit from a service.

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

41 (1) The term "seller" includes:

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

45 (B) A person maintaining a place of business in the State or
46 having an agent maintaining a place of business in the State and
47 making sales, whether at such place of business or elsewhere, to

1 persons within the State of tangible personal property, specified
2 digital products or services, the use of which is taxed by this act;

3 (C) A person who solicits business either by employees,
4 independent contractors, agents or other representatives or by
5 distribution of catalogs or other advertising matter and by reason
6 thereof makes sales to persons within the State of tangible personal
7 property, specified digital products or services, the use of which is
8 taxed by this act.

9 A person making sales of tangible personal property, specified
10 digital products, or services taxable under the "Sales and Use Tax
11 Act," P.L.1966, c.30 (C.54:32B-1 et seq.) shall be presumed to be
12 soliciting business through an independent contractor or other
13 representative if the person making sales enters into an agreement
14 with an independent contractor having physical presence in this
15 State or other representative having physical presence in this State,
16 for a commission or other consideration, under which the
17 independent contractor or representative directly or indirectly refers
18 potential customers, whether by a link on an internet website or
19 otherwise, and the cumulative gross receipts from sales to
20 customers in this State who were referred by all independent
21 contractors or representatives that have this type of an agreement
22 with the person making sales are in excess of \$10,000 during the
23 preceding four quarterly periods ending on the last day of March,
24 June, September, and December. This presumption may be rebutted
25 by proof that the independent contractor or representative with
26 whom the person making sales has an agreement did not engage in
27 any solicitation in the State on behalf of the person that would
28 satisfy the nexus requirements of the United States Constitution
29 during the four quarterly periods in question. Nothing in this
30 subparagraph shall be construed to narrow the scope of the terms
31 independent contractor or other representative for purposes of any
32 other provision of the "Sales and Use Tax Act," P.L.1966, c.30
33 (C.54:32B-1 et seq.);

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

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

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

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

47 (H) A person engaged in collecting charges in the nature of
48 initiation fees, 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; **[and]**

3 (I) A person engaged in the business of parking, storing or
4 garaging motor vehicles**[.]**;

5 (J) A person making sales, leases, or rentals of tangible personal
6 property, specified digital products, or taxable services who meets
7 the criteria set forth in paragraph (1) or (2) of section 1 of
8 P.L. c. (C.) (pending before the Legislature as this bill); and

9 (K) A marketplace facilitator.

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

31 (3) Notwithstanding any other provision of law or
32 administrative action to the contrary, transient space marketplaces
33 shall be required to collect and pay on behalf of persons engaged in
34 the business of providing transient accommodations or hotel rooms
35 located in this State the tax for transactions solely consummated
36 through the transient space marketplace. For not less than four years
37 following the end of the calendar year in which the transaction
38 occurred, the transient space marketplace shall maintain the
39 following data for those transactions consummated through the
40 transient space marketplace:

41 (1) The name of the person who provided the transient
42 accommodation or hotel room;

43 (2) The name of the customer who procured occupancy of the
44 transient accommodation or hotel room;

45 (3) The address, including any unit designation, of the transient
46 accommodation or hotel room;

47 (4) The dates and nightly rates for which the consumer procured
48 occupancy of the transient accommodation or hotel room;

1 (5) The municipal transient accommodation registration number,
2 if applicable;

3 (6) A statement as to whether such booking services will be
4 provided in connection with (i) short-term rental of the entirety of
5 such unit, (ii) short-term rental of part of such unit, but not the
6 entirety of such unit, and/or (iii) short-term rental of the entirety of
7 such unit, or part thereof, in which a non-short-term occupant will
8 continue to occupy such unit for the duration of such short-term
9 rental;

10 (7) The individualized name or number of each such
11 advertisement or listing connected to such unit and the uniform
12 resource locator (URL) for each such listing or advertisement,
13 where applicable; and

14 (8) Such other information as the Division of Taxation may by
15 rule require.

16 The Division of Taxation may audit transient space marketplaces
17 as necessary to ensure data accuracy and enforce tax compliance.

18 (j) "Hotel" means a building or portion of a building which is
19 regularly used and kept open as such for the lodging of guests.
20 "Hotel" includes an apartment hotel, a motel, inn, and rooming or
21 boarding house or club, whether or not meals are served, but does
22 not include a transient accommodation.

23 (k) "Occupancy" means the use or possession or the right to the
24 use or possession, of any room in a hotel or transient
25 accommodation.

26 (l) "Occupant" means a person who, for a consideration, uses,
27 possesses, or has the right to use or possess, any room in a hotel or
28 transient accommodation under any lease, concession, permit, right
29 of access, license to use or other agreement, or otherwise.

30 (m) "Permanent resident" means any occupant of any room or
31 rooms in a hotel or transient accommodation for at least 90
32 consecutive days shall be considered a permanent resident with
33 regard to the period of such occupancy.

34 (n) "Room" means any room or rooms of any kind in any part or
35 portion of a hotel or transient accommodation, which is available
36 for or let out for any purpose other than a place of assembly.

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

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

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

45 (r) "Dramatic or musical arts admission charge" means any
46 admission charge paid for admission to a theater, opera house,
47 concert hall or other hall or place of assembly for a live, dramatic,
48 choreographic or musical performance.

1 (s) "Lessor" means any person who is the owner, licensee, or
2 lessee of any premises, tangible personal property or a specified
3 digital product which the person leases, subleases, or grants a
4 license to use to other persons.

5 (t) "Place of amusement" means any place where any facilities
6 for entertainment, amusement, or sports are provided.

7 (u) "Casual sale" means an isolated or occasional sale of an item
8 of tangible personal property or a specified digital product by a
9 person who is not regularly engaged in the business of making retail
10 sales of such property or product where the item of tangible
11 personal property or the specified digital product was obtained by
12 the person making the sale, through purchase or otherwise, for the
13 person's own use.

14 (v) "Motor vehicle" includes all vehicles propelled otherwise
15 than by muscular power (excepting such vehicles as run only upon
16 rails or tracks), trailers, semitrailers, house trailers, or any other
17 type of vehicle drawn by a motor-driven vehicle, and motorcycles,
18 designed for operation on the public highways.

19 (w) "Persons required to collect tax" or "persons required to
20 collect any tax imposed by this act" includes: every seller of
21 tangible personal property, specified digital products or services;
22 every recipient of amusement charges; every operator of a hotel or
23 transient accommodation; every seller of a telecommunications
24 service; every recipient of initiation fees, membership fees or dues
25 for access to or use of the property or facilities of a health and
26 fitness, athletic, sporting or shopping club or organization; **[and]**
27 every recipient of charges for parking, storing or garaging a motor
28 vehicle; every marketplace facilitator; and every transient space
29 marketplace. Said terms shall also include any officer or employee
30 of a corporation or of a dissolved corporation who as such officer or
31 employee is under a duty to act for such corporation in complying
32 with any requirement of this act and any member of a partnership.

33 (x) "Customer" includes: every purchaser of tangible personal
34 property, specified digital products or services; every patron paying
35 or liable for the payment of any amusement charge; every occupant
36 of a room or rooms in a hotel or transient accommodation; every
37 person paying charges in the nature of initiation fees, membership
38 fees or dues for access to or use of the property or facilities of a
39 health and fitness, athletic, sporting or shopping club or
40 organization; and every purchaser of parking, storage or garaging a
41 motor vehicle.

42 (y) "Property and services the use of which is subject to tax"
43 includes: (1) all property sold to a person within the State, whether
44 or not the sale is made within the State, the use of which property is
45 subject to tax under section 6 or will become subject to tax when
46 such property is received by or comes into the possession or control
47 of such person within the State; (2) all services rendered to a person
48 within the State, whether or not such services are performed within

1 the State, upon tangible personal property or a specified digital
2 product the use of which is subject to tax under section 6 or will
3 become subject to tax when such property or product is distributed
4 within the State or is received by or comes into possession or
5 control of such person within the State; (3) intrastate, interstate, or
6 international telecommunications sourced to this State pursuant to
7 section 29 of P.L.2005, c.126 (C.54:32B-3.4); (4) (Deleted by
8 amendment, P.L.1995, c.184); (5) energy sold, exchanged or
9 delivered in this State for use in this State; (6) utility service sold,
10 exchanged or delivered in this State for use in this State; (7) mail
11 processing services in connection with printed advertising material
12 distributed in this State; (8) (Deleted by amendment, P.L.2005,
13 c.126); and (9) services the benefit of which are received in this
14 State.

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

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

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

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

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

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

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

45 (3) The definition of "lease or rental" provided in this subsection
46 shall be used for the purposes of this act regardless of whether a
47 transaction is characterized as a lease or rental under generally

1 accepted accounting principles, the federal Internal Revenue Code
2 or other provisions of federal, state or local law.

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

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

8 "Telecommunications service" shall include such transmission,
9 conveyance, or routing in which computer processing applications
10 are used to act on the form, code, or protocol of the content for
11 purposes of transmission, conveyance, or routing without regard to
12 whether such service is referred to as voice over Internet protocol
13 services or is classified by the Federal Communications
14 Commission as enhanced or value added.

15 "Telecommunications service" shall not include:

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

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

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

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

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

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

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

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

29 (9) tangible personal property;

30 (10) advertising, including but not limited to directory
31 advertising;

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

33 (12) internet access service;

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

42 (14) ancillary services; or

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

45 For the purposes of this subsection:

46 "ancillary service" means a service that is associated with or
47 incidental to the provision of telecommunications services,
48 including but not limited to detailed telecommunications billing,

1 directory assistance, vertical service, and voice mail service;
2 "conference bridging service" means an ancillary service that links
3 two or more participants of an audio or video conference call and
4 may include the provision of a telephone number. Conference
5 bridging service does not include the telecommunications services
6 used to reach the conference bridge;

7 "detailed telecommunications billing service" means an ancillary
8 service of separately stating information pertaining to individual
9 calls on a customer's billing statement;

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

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

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

21 (dd) (1) "Intrastate telecommunications" means a
22 telecommunications service that originates in one United States
23 state or a United States territory or possession or federal district,
24 and terminates in the same United States state or United States
25 territory or possession or federal district.

26 (2) "Interstate telecommunications" means a
27 telecommunications service that originates in one United States
28 state or a United States territory or possession or federal district,
29 and terminates in a different United States state or United States
30 territory or possession or federal district.

31 (3) "International telecommunications" means a
32 telecommunications service that originates or terminates in the
33 United States and terminates or originates outside the United States,
34 respectively. "United States" includes the District of Columbia or a
35 United States territory or possession.

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

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

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

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

43 (ii) "Self-generation unit" means a facility located on the user's
44 property, or on property purchased or leased from the user by the
45 person owning the self-generation unit and such property is
46 contiguous to the user's property, which generates electricity to be
47 used only by that user on the user's property and is not transported
48 to the user over wires that cross a property line or public

1 thoroughfare unless the property line or public thoroughfare merely
2 bifurcates the user's or self-generation unit owner's otherwise
3 contiguous property.

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

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

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

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

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

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

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

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

34 (C) Charges by the seller for any services necessary to complete
35 the sale;

36 (D) Delivery charges;

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

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

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

40 (A) Discounts, including cash, term, or coupons that are not
41 reimbursed by a third party, that are allowed by a seller and taken
42 by a purchaser on a sale;

43 (B) Interest, financing, and carrying charges from credit
44 extended on the sale of personal property or services, if the amount
45 is separately stated on the invoice, bill of sale, or similar document
46 given to the purchaser;

1 (C) Any taxes legally imposed directly on the consumer that are
2 separately stated on the invoice, bill of sale, or similar document
3 given to the purchaser;

4 (D) The amount of sales price for which food stamps have been
5 properly tendered in full or part payment pursuant to the federal
6 Food Stamp Act of 1977, Pub.L.95-113 (7 U.S.C. s.2011 et seq.); or

7 (E) Credit for any trade-in of property of the same kind accepted
8 in part payment and intended for resale if the amount is separately
9 stated on the invoice, bill of sale, or similar document given to the
10 purchaser.

11 (3) "Sales price" includes consideration received by the seller
12 from third parties if:

13 (A) The seller actually receives consideration from a party other
14 than the purchaser and the consideration is directly related to a price
15 reduction or discount on the sale;

16 (B) The seller has an obligation to pass the price reduction or
17 discount through to the purchaser;

18 (C) The amount of the consideration attributable to the sale is
19 fixed and determinable by the seller at the time of the sale of the
20 item to the purchaser; and

21 (D) One of the following criteria is met:

22 (i) the purchaser presents a coupon, certificate, or other
23 documentation to the seller to claim a price reduction or discount
24 where the coupon, certificate, or documentation is authorized,
25 distributed, or granted by a third party with the understanding that
26 the third party will reimburse any seller to whom the coupon,
27 certificate, or documentation is presented;

28 (ii) the purchaser identifies himself to the seller as a member of
29 a group or organization entitled to a price reduction or discount;
30 provided however, that a preferred customer card that is available to
31 any patron does not constitute membership in such a group; or

32 (iii) the price reduction or discount is identified as a third party
33 price reduction or discount on the invoice received by the purchaser
34 or on a coupon, certificate, or other documentation presented by the
35 purchaser.

36 (4) In the case of a bundled transaction that includes a
37 telecommunications service, an ancillary service, internet access, or
38 an audio or video programming service, if the price is attributable to
39 products that are taxable and products that are nontaxable, the
40 portion of the price attributable to the nontaxable products is
41 subject to tax unless the provider can identify by reasonable and
42 verifiable standards such portion from its books and records that are
43 kept in the regular course of business for other purposes, including
44 non-tax purposes.

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

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

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

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

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

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

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

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

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

41 (1) investigation and detective services, including detective
42 agencies and private investigators, and fingerprint, polygraph,
43 missing person tracing and skip tracing services;

44 (2) security guard and patrol services, including bodyguard and
45 personal protection, guard dog, guard, patrol, and security services;

46 (3) armored car services; and

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

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

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

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

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

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

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

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

24 (fff) "Residence" means a house, condominium, or other
25 residential dwelling unit in a building or structure or part of a
26 building or structure that is designed, constructed, leased, rented, let
27 or hired out, or otherwise made available for use as a residence.

28 (ggg) "Transient accommodation" means a room, group of
29 rooms, or other living or sleeping space for the lodging of
30 occupants, including but not limited to residences or buildings used
31 as residences. "Transient accommodation" does not include: a hotel
32 or hotel room; a room, group of rooms, or other living or sleeping
33 space used as a place of assembly; a dormitory or other similar
34 residential facility of an elementary or secondary school or a
35 college or university; a hospital, nursing home, or other similar
36 residential facility of a provider of services for the care, support and
37 treatment of individuals that is licensed by the State; a campsite,
38 cabin, lean-to, or other similar residential facility of a campground
39 or an adult or youth camp; a furnished or unfurnished private
40 residential property, including but not limited to condominiums,
41 bungalows, single-family homes and similar living units, where no
42 maid service, room service, linen changing service or other
43 common hotel services are made available by the lessor and where
44 the keys to the furnished or unfurnished private residential property,
45 whether a physical key, access to a keyless locking mechanism, or
46 other means of physical ingress to the furnished or unfurnished
47 private residential property, are provided to the lessee at the
48 location of an offsite real estate broker licensed by the New Jersey

1 Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases
2 of real property with a term of at least 90 consecutive days.

3 (hhh) "Transient space marketplace" means an online
4 marketplace through which a person may offer transient
5 accommodations or hotel rooms to individuals. A "transient space
6 marketplace" allows transient accommodations or hotel rooms to be
7 advertised or listed through an online marketplace in exchange for
8 consideration or provides a means for a customer to arrange for the
9 occupancy of the transient accommodation or hotel room in
10 exchange for consideration. A 'transient space marketplace' shall
11 not include an online marketplace operated by or on behalf of a
12 hotel or hotel corporation that facilitates customer occupancy solely
13 for the hotel or hotel corporation's owned or managed hotels and
14 franchisees.²

15 (cf: P.L.2018, c.49, s.19)

16

17 ¹**[3.]** 4.¹ This act shall take effect ¹**[immediately and shall**
18 **apply to receipts from sales of tangible personal property by sellers**
19 **who have no physical presence in the State and meet the criteria set**
20 **forth in section 1 made on or after the first day of the first month of**
21 **the first calendar quarter beginning at least 90 days after the date of**
22 **enactment]** October 1, 2018, provided however, the Director of the
23 Division of Taxation shall take such anticipatory action in advance
24 of that date as may be necessary for the timely implementation of
25 this act¹.