ASSEMBLY, No. 4496

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED SEPTEMBER 24, 2018

Sponsored by:
Assemblyman JOHN J. BURZICHELLI
District 3 (Cumberland, Gloucester and Salem)
Assemblyman PAUL D. MORIARTY
District 4 (Camden and Gloucester)
Senator TROY SINGLETON
District 7 (Burlington)

Co-Sponsored by:
Assemblywoman Pinkin

SYNOPSIS
Provides for collection of sales tax by marketplace facilitators and certain remote sellers, and clarifies collection of taxes related to hotel and transient accommodation occupancies.

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 9/28/2018)
AN ACT concerning the collection requirements of various State
taxes, supplementing P.L.1966, c.30 and amending various parts
of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

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

   (1) The seller's gross revenue from delivery of tangible personal
property, specified digital products, or taxable services into the
State in the calendar year or the prior calendar year exceeds
$100,000; or

   (2) The seller sold tangible personal property, specified digital
products, or taxable services for delivery into the State in 200 or
more separate transactions during the calendar year or the prior
calendar year.

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

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

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

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

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

2. (New section) a. As used in this section:
"Marketplace facilitator" means a person, including any affiliate
of the person, who facilitates a retail sale of tangible personal
property, specified digital products, or taxable services by
satisfying paragraphs (1) and (2) below:
(1) The person directly or indirectly does any of the following:
(i) Lists, makes available, or advertises tangible personal
property, specified digital products, or services for sale by a
marketplace seller in a forum owned, operated, or controlled by the
person.
(ii) Facilitates the sales of a marketplace seller's product through
a marketplace by transmitting or otherwise communicating an offer
or acceptance of a retail sale of tangible personal property, specified
digital products, or taxable services between a marketplace seller
and a purchaser in a forum including a shop, store, booth, catalog,
internet site, or similar forum.
(iii) Owns, rents, licenses, makes available, or operates any
electronic or physical infrastructure or any property, process,
method, copyright, trademark, or patent that connects marketplace
sellers to purchasers for the purpose of making retail sales of
tangible personal property, specified digital products, or taxable
services.
(iv) Provides a marketplace for making retail sales of tangible
personal property, specified digital products, or taxable services or
otherwise facilitates retail sales of tangible personal property,
specified digital products, or taxable services regardless of
ownership or control of the tangible personal property, specified
digital products, or taxable services that are the subject of the retail
sale.
(v) Provides software development or research and development
activities related to any activity described in this paragraph, if such
software development or research and development activities are
directly related to the physical or electronic marketplace provided
by a marketplace facilitator.
(vi) Provides or offers fulfillment or storage services for a
marketplace seller.
(vii) Sets prices for a marketplace seller's sale of tangible personal property, specified digital products, or taxable services.

(viii) Provides or offers customer service to a marketplace seller or a marketplace seller's customers, or accepts or assists with taking orders, returns, or exchanges of tangible personal property, specified digital products, or taxable services sold by a marketplace seller.

(ix) Brands or otherwise identifies sales as those of the marketplace facilitator.

(2) The person directly or indirectly does any of the following:

(i) Collects the sales price of a retail sale of tangible personal property, specified digital products, or taxable services.

(ii) Provides payment processing services for a retail sale of tangible personal property, specified digital products, or taxable services.

(iii) Charges, collects, or otherwise receives selling fees, listing fees, referral fees, closing fees, fees for inserting or making available tangible personal property, specified digital products, or taxable services on a marketplace, or other consideration from the facilitation of a retail sale of tangible personal property, specified digital products, or taxable services, regardless of ownership or control of the tangible personal property, specified digital products, or taxable services that are the subject of the retail sale.

(iv) Through terms and conditions, agreements, or arrangements with a third party, collects payment in connection with a retail sale of tangible personal property, specified digital products, or taxable services from a purchaser and transmits that payment to the marketplace seller, regardless of whether the person collecting and transmitting such payment receives compensation or other consideration in exchange for the service.

(v) Provides a virtual currency that purchasers are allowed or required to use to purchase tangible personal property, specified digital products, or taxable services.

"Marketplace seller" means a seller that makes retail sales through any physical or electronic marketplace owned, operated, or controlled by a marketplace facilitator, even if such seller would not have been required to collect and pay the tax imposed under P.L.1966, c.30 (C.54:32B-1 et seq.) had the sale not been made through such marketplace.

b. Following the effective date of P.L. (pending before the Legislature as this bill), a marketplace facilitator shall collect and pay to the director the tax imposed under P.L.1966, c.30 (C.54:32B-1 et seq.) any retail sale made or facilitated to a purchaser in this State, regardless of whether the marketplace seller has or is required to have a certificate of registration or would have been required to collect the tax imposed under P.L.1966, c.30 (C.54:32B-1 et seq.) had the sale not been facilitated by the marketplace facilitator, and regardless of the
amount of the sales price that will ultimately accrue to or benefit
the marketplace facilitator, the marketplace seller, or any other
person.

c. Nothing in this section shall be construed to interfere with
the ability of a marketplace facilitator and a marketplace seller to
enter into an agreement with each other regarding the collection and
payment of tax imposed under P.L.1966, c.30 (C.54:32B-1 et seq.).

d. If the marketplace facilitator demonstrates to the satisfaction
of the division that the marketplace facilitator has made a
reasonable effort to obtain accurate information from the
marketplace seller about a retail sale and that the failure to collect
and pay the correct amount of tax imposed under P.L.1966, c.30
(C.54:32B-1 et seq.) was due to incorrect information provided to
the marketplace facilitator by the marketplace seller, then the
marketplace facilitator shall be relieved of liability of the tax for
that retail sale. This subsection does not apply with regard to a retail
sale for which the marketplace facilitator is the seller or if the
marketplace facilitator and seller are affiliates. Where the
marketplace facilitator is relieved under this subsection, the seller is
liable for the tax imposed under P.L.1966, c.30 (C.54:32B-1 et
seq.).

e. 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.

f. A marketplace facilitator shall be subject to audit by the
division with respect to all retail sales for which it is required to
collect and pay the tax imposed under P.L.1966, c.30 (C.54:32B-1
et seq.). Where the division audits the marketplace facilitator, the
division is prohibited from auditing the marketplace seller for the
same retail sales unless the marketplace facilitator seeks relief
under subsection d. of this section.

g. Upon written application and for good cause shown, in order
to ensure the accurate and timely collection of taxes due, the
director shall have the discretion to temporarily suspend or delay
the collection or reporting requirements, or both, of a marketplace
facilitator for a period not to exceed 180 days. The director shall
annually report to the Governor, and to the Legislature pursuant to
section 2 of P.L.1991, c.164 (C.52:14-19.1), on the number of
marketplace facilitators granted a suspension or delay of tax
collection or reporting requirements pursuant to this subsection and
the duration of each suspension or delay, except in a year in which
no such suspension or delay was granted.

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

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

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

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

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

(B) The transfer of tangible personal property to a corporation,
solely in consideration for the issuance of its stock, pursuant to a
merger or consolidation effected under the laws of New Jersey or
any other jurisdiction.
(C) The distribution of property by a corporation to its stockholders as a liquidating dividend.

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

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

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

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

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

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

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

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

(1) The term "seller" includes:

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

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

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

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

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

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

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

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

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

(I) A person engaged in the business of parking, storing or
garaging motor vehicles\[\text{[.]}\]
(J) A person making sales, leases, or rentals of tangible personal property, specified digital products, or taxable services who meets the criteria set forth in paragraph (1) or (2) of section 1 of P.L. , c. (C.) (pending before the Legislature as this bill); and

(K) A marketplace facilitator.

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

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

[(1)] (A) The name of the person who provided the transient accommodation or hotel room;

[(2)] (B) The name of the customer who procured occupancy of the transient accommodation or hotel room;

[(3)] (C) The address, including any unit designation, of the transient accommodation or hotel room;

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

[(5)] (E) The municipal transient accommodation registration number, if applicable;
A statement as to whether such booking services will be provided in connection with (i) short-term rental of the entirety of such unit, (ii) short-term rental of part of such unit, but not the entirety of such unit, and/or (iii) short-term rental of the entirety of such unit, or part thereof, in which a non-short-term occupant will continue to occupy such unit for the duration of such short-term rental;

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

Such other information as the Division of Taxation may by rule require.

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

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

"Occupancy" means the use or possession or the right to the use or possession, of any room in a hotel or transient accommodation.

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

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

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

"Admission charge" means the amount paid for admission, including any service charge and any charge for entertainment or amusement or for the use of facilities therefor.

"Amusement charge" means any admission charge, dues or charge of a roof garden, cabaret or other similar place.

"Charge of a roof garden, cabaret or other similar place" means any charge made for admission, refreshment, service, or merchandise at a roof garden, cabaret or other similar place.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.

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

"Telecommunications service" shall not include:
(1) (Deleted by amendment, P.L.2008, c.123);
(2) (Deleted by amendment, P.L.2008, c.123);
(3) (Deleted by amendment, P.L.2008, c.123);
(4) (Deleted by amendment, P.L.2008, c.123);
(5) (Deleted by amendment, P.L.2008, c.123);
(6) (Deleted by amendment, P.L.2008, c.123);
(7) data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;
(8) installation or maintenance of wiring or equipment on a customer's premises;
(9) tangible personal property;
(10) advertising, including but not limited to directory advertising;
(11) billing and collection services provided to third parties;
(12) internet access service;
(13) radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in section 47 U.S.C. s.522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in section 47 C.F.R. 20.3;
(14) ancillary services; or
(15) digital products delivered electronically, including but not limited to software, music, video, reading materials, or ringtones.

For the purposes of this subsection:
"ancillary service" means a service that is associated with or incidental to the provision of telecommunications services, including but not limited to detailed telecommunications billing, directory assistance, vertical service, and voice mail service;
"conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call and
may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge;

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

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

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

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

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

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

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

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

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

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

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

(ii) "Self-generation unit" means a facility located on the user's property, or on property purchased or leased from the user by the person owning the self-generation unit and such property is contiguous to the user's property, which generates electricity to be used only by that user on the user's property and is not transported to the user over wires that cross a property line or public thoroughfare unless the property line or public thoroughfare merely bifurcates the user's or self-generation unit owner's otherwise contiguous property.
"Co-generation facility" means a facility the primary purpose of which is the sequential production of electricity and steam or other forms of useful energy which are used for industrial or commercial heating or cooling purposes and which is designated by the Federal Energy Regulatory Commission, or its successor, as a "qualifying facility" pursuant to the provisions of the "Public Utility Regulatory Policies Act of 1978," Pub.L.95-617.

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

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

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

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

- The seller's cost of the property sold;
- The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- Charges by the seller for any services necessary to complete the sale;
- Delivery charges;
- Discounts, including cash, term, or coupons that are not reimbursed by a third party, that are allowed by a seller and taken by a purchaser on a sale;
- Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;
(D) The amount of sales price for which food stamps have been properly tendered in full or part payment pursuant to the federal Food Stamp Act of 1977, Pub.L.95-113 (7 U.S.C. s.2011 et seq.); or
(E) Credit for any trade-in of property of the same kind accepted in part payment and intended for resale if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(3) "Sales price" includes consideration received by the seller from third parties if:
   (A) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
   (B) The seller has an obligation to pass the price reduction or discount through to the purchaser;
   (C) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
   (D) One of the following criteria is met:
      (i) the purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;
      (ii) the purchaser identifies himself to the seller as a member of a group or organization entitled to a price reduction or discount; provided however, that a preferred customer card that is available to any patron does not constitute membership in such a group; or
      (iii) the price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

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

(pp) "Purchase price" means the measure subject to use tax and has the same meaning as "sales price."
(qq) "Sales tax" means the tax imposed on certain transactions pursuant to the provisions of the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).
(rr) "Delivery charges" means charges by the seller for preparation and delivery to a location designated by the purchaser
of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. If a shipment includes both exempt and taxable property, the seller should allocate the delivery charge by using: (1) a percentage based on the total sales price of the taxable property compared to the total sales price of all property in the shipment; or (2) a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment. The seller shall tax the percentage of the delivery charge allocated to the taxable property but is not required to tax the percentage allocated to the exempt property.

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

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

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

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

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

(xx) "Investigation and security services" means:

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

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

(3) armored car services; and

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

(yy) "Information services" means the furnishing of information of any kind, which has been collected, compiled, or analyzed by the seller, and provided through any means or method, other than personal or individual information which is not incorporated into reports furnished to other people.
"Specified digital product" means an electronically transferred digital audio-visual work, digital audio work, or digital book; provided however, that a digital code which provides a purchaser with a right to obtain the product shall be treated in the same manner as a specified digital product.

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

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

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

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

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

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

(ggg) "Transient accommodation" means a room, group of rooms, or other living or sleeping space for the lodging of occupants, including but not limited to residences or buildings used as residences. "Transient accommodation" does not include: a hotel or hotel room; a room, group of rooms, or other living or sleeping space used as a place of assembly; a dormitory or other similar residential facility of an elementary or secondary school or a college or university; a hospital, nursing home, or other similar residential facility of a provider of services for the care, support and treatment of individuals that is licensed by the State; a campsite, cabin, lean-to, or other similar residential facility of a campground or an adult or youth camp; a furnished or unfurnished private residential property, including but not limited to condominiums, bungalows, single-family homes and similar living units, where no maid service, room service, linen changing service or other common hotel services are made available by the lessor and where the keys to the furnished or unfurnished private residential property, whether a physical key, access to a keyless locking mechanism, or other means of physical ingress to the furnished or unfurnished private residential property, are provided to the lessee at the location of an offsite real estate broker licensed by the New Jersey Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases of real property with a term of at least 90 consecutive days.

(hhh) "Transient space marketplace" means an online marketplace through which a person may offer transient accommodations or hotel rooms to individuals. A "transient space
marketplace" allows transient accommodations or hotel rooms to be advertised or listed through an online marketplace in exchange for consideration or provides a means for a customer to arrange for the occupancy of the transient accommodation or hotel room in exchange for consideration. A 'transient space marketplace' shall not include an online marketplace operated by or on behalf of a hotel or hotel corporation that facilitates customer occupancy solely for the hotel or hotel corporation's owned or managed hotels and franchisees, and shall not include a travel agency or an online travel agency.

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

4. Section 84 of P.L.2015, c.19 (C.5:10A-84) is amended to read as follows:

84. As used in sections 82 through 85 of P.L.2015, c.19 (C.5:10A-82 et seq.):

"Commission" means the New Jersey Sports and Exposition Authority, which may be referred to as the "Meadowlands Regional Commission," as established by section 6 of P.L.2015, c.19 (C.5:10A-6).

"Constituent municipality" means any of the following municipalities: Carlstadt, East Rutherford, Little Ferry, Lyndhurst, Moonachie, North Arlington, Ridgefield, Rutherford, South Hackensack, and Teterboro in Bergen county; and Jersey City, Kearny, North Bergen, and Secaucus in Hudson county.

"Meadowlands district" means the Hackensack Meadowlands District, the area delineated within section 5 of P.L.2015, c.19 (C.5:10A-5).

"Public venue" means any place located within the Meadowlands district, whether publicly or privately owned, where any facilities for entertainment, amusement, or sports are provided, but shall not include a movie theater.

"Public event" means any spectator sporting event, trade show, exposition, concert, amusement, or other event open to the public that takes place at a public venue, but shall not include a major league football game.

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

"Transient accommodation" means a room, group of rooms, or other living or sleeping space for the lodging of occupants, including but not limited to residences or buildings used as residences. "Transient accommodation" does not include: a hotel or hotel room; a room, group of rooms, or other living or sleeping space used as a place of assembly; a dormitory or other similar residential facility of an elementary or secondary school or a college or university; a hospital, nursing home, or other similar
residential facility of a provider of services for the care, support and
treatment of individuals that is licensed by the State; a campsite,
cabin, lean-to, or other similar residential facility of a campground
or an adult or youth camp; a furnished or unfurnished private
residential property, including but not limited to condominiums,
bungalows, single-family homes and similar living units, where no
maid service, room service, linen changing service or other
common hotel services are made available by the lessor and where
the keys to the furnished or unfurnished private residential property,
whether a physical key, access to a keyless locking mechanism, or
other means of physical ingress to the furnished or unfurnished
private residential property, are provided to the lessee at the
location of an offsite real estate broker licensed by the New Jersey
Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases
of real property with a term of at least 90 consecutive days.

"Transient space marketplace" means an online marketplace
through which a person may offer transient accommodations or
hotel rooms to individuals. A "transient space marketplace" allows
transient accommodations or hotel rooms to be advertised or listed
through an online marketplace in exchange for consideration or
provides a means for a customer to arrange for the occupancy of the
transient accommodation or hotel room in exchange for
consideration. A 'transient space marketplace' shall not include an
online marketplace operated by or on behalf of a hotel or hotel
corporation that facilitates customer occupancy solely for the hotel
or hotel corporation's owned or managed hotels and franchisees,
and shall not include a travel agency or an online travel agency.
(cf: P.L.2018, c.52, s.1)

5. Section 3 of P.L.2007, c.30 (C.34:1B-192) is amended to
read as follows:

3. As used in this act:

"Authority" means the New Jersey Economic Development
Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et
seq.).

"Developer" means any person or entity, whether public or
private, including a State entity, that proposes to undertake a project
pursuant to a development agreement.

"District" or "sports and entertainment district" means a
geographic area which includes a project as set forth in the
ordinance pursuant to section 4 of P.L.2007, c.30 (C.34:1B-193).

"Eligible municipality" means a municipality: (1) in which is
located part of an urban enterprise zone that has been designated
pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.) or any
supplement thereto; and (2) which has a population greater than
25,000 and less than 29,000 according to the latest federal decennial
census in a county of the third class with a population density
greater than 295 and less than 304 persons per square mile
according to the latest federal decennial census.

"Infrastructure improvements" means the construction or
rehabilitation of any street, highway, utility, transportation or
parking facilities, or other similar improvements; the acquisition of
any interest in land as necessary or convenient for the acquisition of
any right-of-way or other easement for the purpose of constructing
infrastructure improvements; the acquisition, construction or
reconstruction of land and site improvements, including demolition,
clearance, removal, construction, reconstruction, fill, environmental
enhancement or abatement, or other site preparation for
development of a sports and entertainment district.

"Project" means a sports and entertainment facility and may
include infrastructure improvements that are associated with the
sports and entertainment facility.

"Project cost" means the cost of a project, including the
financing, acquisition, development, construction, redevelopment,
rehabilitation, reconstruction and improvement costs thereof,
financing costs and the administrative costs, including any
administrative costs of the authority if bonds are issued pursuant to
section 16 of P.L.2007, c.30 (C.34:1B-205) and incurred in
connection with a sports and entertainment facility which is
financed, in whole or in part, by the revenues dedicated by a
municipality to a project as authorized pursuant to section 5 of
P.L.2007, c.30 (C.34:1B-194).

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

"Sports and entertainment facility" means any privately or
publicly owned or operated facility located in a sports and
entertainment district that is used primarily for sports contests,
entertainment, or both, such as a theater, stadium, museum, arena,
automobile racetrack, or other place where performances, concerts,
exhibits, games or contests are held.

"State Treasurer" or "treasurer" means the treasurer of the State
of New Jersey.

"Transient accommodation" means a room, group of rooms, or
other living or sleeping space for the lodging of occupants,
including but not limited to residences or buildings used as
residences. "Transient accommodation" does not include: a hotel or
hotel room; a room, group of rooms, or other living or sleeping
space used as a place of assembly; a dormitory or other similar
residential facility of an elementary or secondary school or a
college or university; a hospital, nursing home, or other similar
residential facility of a provider of services for the care, support and
treatment of individuals that is licensed by the State; a campsite,
cabin, lean-to, or other similar residential facility of a campground
or an adult or youth camp; a furnished or unfurnished private residential property, including but not limited to condominiums, bungalows, single-family homes and similar living units, where no maid service, room service, linen changing service or other common hotel services are made available by the lessor and where the keys to the furnished or unfurnished private residential property, whether a physical key, access to a keyless locking mechanism, or other means of physical ingress to the furnished or unfurnished private residential property, are provided to the lessee at the location of an offsite real estate broker licensed by the New Jersey Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases of real property with a term of at least 90 consecutive days.

"Transient space marketplace” means an online marketplace through which a person may offer transient accommodations or hotel rooms to individuals. A "transient space marketplace” allows transient accommodations or hotel rooms to be advertised or listed through an online marketplace in exchange for consideration or provides a means for a customer to arrange for the occupancy of the transient accommodation or hotel room in exchange for consideration. A 'transient space marketplace' shall not include an online marketplace operated by or on behalf of a hotel or hotel corporation that facilitates customer occupancy solely for the hotel or hotel corporation's owned or managed hotels and franchisees, and shall not include a travel agency or an online travel agency. (cf: P.L.2018, c.49, s.3)

6. Section 2 of P.L.1947, c.71 (C.40:48-8.16) is amended to read as follows:

2. As used in this act:

"Retail sale” or "sale at retail” means and includes:

(1) Any sale in the ordinary course of business for consumption of whiskey, beer or other alcoholic beverages by the drink in restaurants, cafés, bars, hotels and other similar establishments;

(2) Any cover charge, minimum charge, entertainment, or other similar charge made to any patron of any restaurant, café, bar, hotel or other similar establishment;

(3) The hiring, with or without service, of any room in any hotel, transient accommodation, inn, rooming or boarding house;

(4) The hiring of any rolling chair, beach chair or cabana; and

(5) The granting or sale of any ticket, license or permit for admission to any theatre, moving picture exhibition or show, pier, exhibition, or place of amusement, except charges for admission to boxing, wrestling, kick boxing or combative sports events, matches, or exhibitions, which charges are taxed pursuant to section 20 of P.L.1985, c.83 (C.5:2A-20).

"Vendor” means any person selling or hiring property or services to another person upon the receipts from which a tax is imposed.
"Purchaser" means any person purchasing or hiring property or services from another person, the receipts from which are taxable.

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

"Transient accommodation" means a room, group of rooms, or other living or sleeping space for the lodging of occupants, including but not limited to residences or buildings used as residences. "Transient accommodation" does not include: a hotel or hotel room; a room, group of rooms, or other living or sleeping space used as a place of assembly; a dormitory or other similar residential facility of an elementary or secondary school or a college or university; a hospital, nursing home, or other similar residential facility of a provider of services for the care, support and treatment of individuals that is licensed by the State; a campground, cabin, lean-to, or other similar residential facility of a campground or an adult or youth camp; a furnished or unfurnished private residential property, including but not limited to condominiums, bungalows, single-family homes and similar living units, where no maid service, room service, linen changing service or other common hotel services are made available by the lessor and where the keys to the furnished or unfurnished private residential property, whether a physical key, access to a keyless locking mechanism, or other means of physical ingress to the furnished or unfurnished private residential property, are provided to the lessee at the location of an offsite real estate broker licensed by the New Jersey Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases of real property with a term of at least 90 consecutive days.

"Transient space marketplace" means an online marketplace through which a person may offer transient accommodations or hotel rooms to individuals. A "Transient space marketplace" allows transient accommodations or hotel rooms to be advertised or listed through an online marketplace in exchange for consideration or provides a means for a customer to arrange for the occupancy of the transient accommodation or hotel room in exchange for consideration. A 'Transient space marketplace' shall not include an online marketplace operated by or on behalf of a hotel or hotel corporation that facilitates customer occupancy solely for the hotel or hotel corporation's owned or managed hotels and franchisees, and shall not include a travel agency or an online travel agency.

(cf: P.L.2018, c.49, s.6)

7. Section 1 of P.L.1991, c.376 (C.40:48-8.45) is amended to read as follows:

1. As used in this act:

a. "Convention center operating authority" means, in the case of any eligible municipality, the public authority or other
governmental entity empowered to operate convention hall and the
convention center facilities in the eligible municipality.

b. "Director" means the Director of the Division of Taxation in
the Department of the Treasury.

c. "Eligible municipality" means any municipality in which any
portion of the proceeds of a retail sales tax levied by ordinance
adopted by the municipality pursuant to section 1 of P.L.1947, c.71
(C.40:48-8.15) is applied as authorized by law to the payment of
costs of convention center facilities located in the municipality.

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

e. "Occupied room" means a room or rooms of any kind in any
part of a hotel or transient accommodation, other than a place of
assembly, which is used or possessed by a guest or guests, whether
or not for consideration.

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

g. "Transient accommodation" means a room, group of rooms,
or other living or sleeping space for the lodging of occupants,
including but not limited to residences or buildings used as
residences. "Transient accommodation" does not include: a hotel or
hotel room; a room, group of rooms, or other living or sleeping
space used as a place of assembly; a dormitory or other similar
residential facility of an elementary or secondary school or a
college or university; a hospital, nursing home, or other similar
residential facility of a provider of services for the care, support and
treatment of individuals that is licensed by the State; a campsite,
cabin, lean-to, or other similar residential facility of a campground
or an adult or youth camp; a furnished or unfurnished private
residential property, including but not limited to condominiums,
bungalows, single-family homes and similar living units, where no
maid service, room service, linen changing service or other
common hotel services are made available by the lessor and where
the keys to the furnished or unfurnished private residential property,
whether a physical key, access to a keyless locking mechanism, or
other means of physical ingress to the furnished or unfurnished
private residential property, are provided to the lessee at the
location of an offsite real estate broker licensed by the New Jersey
Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases
of real property with a term of at least 90 consecutive days.

h. "Transient space marketplace" means an online marketplace
through which a person may offer transient accommodations or
hotel rooms to individuals. A " transient space marketplace" allows
transient accommodations or hotel rooms to be advertised or listed through an online marketplace in exchange for consideration or provides a means for a customer to arrange for the occupancy of the transient accommodation or hotel room in exchange for consideration. A 'transient space marketplace' shall not include an online marketplace operated by or on behalf of a hotel or hotel corporation that facilitates customer occupancy solely for the hotel or hotel corporation's owned or managed hotels and franchisees, and shall not include a travel agency or an online travel agency.

(cf: P.L.2018, c.49, s.8)

8. Section 2 of P.L.1981, c.77 (C.40:48E-2) is amended to read as follows:

2. As used in this act "hotel" means a building or portion of a building which is regularly used and kept open as such for the lodging of guests. "Hotel" includes an apartment hotel, a motel, inn, and rooming or boarding house or club, whether or not meals are served, but does not include a transient accommodation.

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

"Transient accommodation" means a room, group of rooms, or other living or sleeping space for the lodging of occupants, including but not limited to residences or buildings used as residences. "Transient accommodation" does not include: a hotel or hotel room; a room, group of rooms, or other living or sleeping space used as a place of assembly; a dormitory or other similar residential facility of an elementary or secondary school or a college or university; a hospital, nursing home, or other similar residential facility of a provider of services for the care, support and treatment of individuals that is licensed by the State; a campsite, cabin, lean-to, or other similar residential facility of a campground or an adult or youth camp; a furnished or unfurnished private residential property, including but not limited to condominiums, bungalows, single-family homes and similar living units, where no maid service, room service, linen changing service or other common hotel services are made available by the lessor and where the keys to the furnished or unfurnished private residential property, whether a physical key, access to a keyless locking mechanism, or other means of physical ingress to the furnished or unfurnished private residential property, are provided to the lessee at the location of an offsite real estate broker licensed by the New Jersey Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases of real property with a term of at least 90 consecutive days.

"Transient space marketplace" means an online marketplace through which a person may offer transient accommodations or hotel rooms to individuals. A "transient space marketplace" allows
transient accommodations or hotel rooms to be advertised or listed through an online marketplace in exchange for consideration or provides a means for a customer to arrange for the occupancy of the transient accommodation or hotel room in exchange for consideration. A 'transient space marketplace' shall not include an online marketplace operated by or on behalf of a hotel or hotel corporation that facilitates customer occupancy solely for the hotel or hotel corporation's owned or managed hotels and franchisees, and shall not include a travel agency or an online travel agency.

(cf: 2018, c.49, s.12)

9. Section 3 of P.L.1992, c.165 (C.40:54D-3) is amended to read as follows:

3. As used in this act:

"Authority" means a tourism improvement and development authority created pursuant to section 18 of this act, P.L.1992, c.165 (C.40:54D-18).

"Beach operation offset payment " means a payment made by an authority to municipalities in its district for tourism development activities related to operating and maintaining public beaches within a zone to seaward of a line of demarcation located not more than 1,000 feet from the mean high water line.

"Bond" means any bond or note issued by an authority pursuant to the provisions of this act.

"Commissioner" means the Commissioner of the Department of Commerce and Economic Development.

"Construction" means the planning, designing, construction, reconstruction, rehabilitation, replacement, repair, extension, enlargement, improvement and betterment of a project, and includes the demolition, clearance and removal of buildings or structures on land acquired, held, leased or used for a project.

"Convention center facility" means any convention hall or center or like structure or building, and shall include all facilities, including commercial, office, community service, parking facilities and all property rights, easements and interests, and other facilities constructed for the accommodation and entertainment of tourists and visitors, constructed in conjunction with a convention center facility and forming reasonable appurtenances thereto but does not mean the Wildwood convention center facility as defined in this section.

"Tourism project" means the convention center facility or outdoor special events arena, or both, located in the territorial limits of the district, and any costs associated therewith but does not mean the Wildwood convention center facility as defined in this section.

"Cost" means all or any part of the expenses incurred in connection with the acquisition, construction and maintenance of any real property, lands, structures, real or personal property rights, rights-of-way, franchises, easements, and interests acquired or used
for a project; any financing charges and reserves for the payment of
principal and interest on bonds or notes; the expenses of
engineering, appraisal, architectural, accounting, financial and legal
services; and other expenses as may be necessary or incident to the
acquisition, construction and maintenance of a project, the
financing thereof and the placing of the project into operation.
"County" means a county of the sixth class.
"Director" means the Director of the Division of Taxation in the
Department of the Treasury.
"Fund" means a Reserve Fund created pursuant to section 13 of
"Outdoor special events arena" means a facility or structure for
the holding outdoors of public events, entertainments, sporting
events, concerts or similar activities, and shall include all facilities,
property rights and interests, and all appurtenances reasonably
related thereto, constructed for the accommodation and
entertainment of tourists and visitors.
"Participant amusement" means a sporting activity or amusement
the charge for which is exempt from taxation under the "Sales and
Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) by virtue of the
participation of the patron in the activity or amusement, such as
bowling alleys, swimming pools, water slides, miniature golf,
boardwalk or carnival games and amusements, baseball batting
cages, tennis courts, and fishing and sightseeing boats.
"Predominantly tourism related retail receipts" means:
a. The rent for every occupancy of a room or rooms in a hotel
or transient accommodation subject to taxation pursuant to
subsection (d) of section 3 of the "Sales and Use Tax Act,"
P.L.1966, c.30 (C.54:32B-3);
b. Receipts from the sale of food and drink in or by restaurants,
taverns, or other establishments in the district, or by caterers,
including in the amount of such receipt any cover, minimum,
entertainment or other charge made to patrons or customers, subject
to taxation pursuant to subsection (c) of section 3 of the "Sales and
Use Tax Act," P.L.1966, c.30 (C.54:32B-3) but excluding receipts
from sales of food and beverages sold through coin operated
vending machines; and
c. Admissions charges to or the use of any place of amusement
or of any roof garden, cabaret or similar place, subject to taxation
pursuant to subsection (e) of section 3 of the "Sales and Use Tax
"Purchaser" means any person purchasing or hiring property or
services from another person, the receipts or charges from which
are taxable by an ordinance authorized under P.L.1992, c.165
(C.40:54D-1 et seq.).
"Residence" means a house, condominium, or other residential
dwelling unit in a building or structure or part of a building or
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structure that is designed, constructed, leased, rented, let or hired
out, or otherwise made available for use as a residence.

"Sports authority" means the New Jersey Sports and Exposition
Authority established pursuant to P.L.1971, c.137 (C.5:10-1 et
seq.).

"Tourism" means activities involved in providing and marketing
services and products, including accommodations, for nonresidents
and residents who travel to and in New Jersey for recreation and
pleasure.

"Tourism assessment" means an assessment on the rent for every
occupancy of a room or rooms in a hotel or transient
accommodation subject to taxation pursuant to subsection (d) of
section 3 of the "Sales and Use Tax Act." P.L.1966, c.30
(C.54:32B-3).

"Tourism development activities" include operations of the
authority to carry out its statutory duty to promote, advertise and
market the district, including making beach operation offset
payments.

"Tourism development fee" means a fee imposed by ordinance

"Tourism improvement and development district" or "district"
means an area within two or more contiguous municipalities within
a county of the sixth class established pursuant to ordinance enacted
by those municipalities, for the purposes of promoting the
acquisition, construction, maintenance, operation and support of a
tourism project, and to devote the revenue and the proceeds from
taxes upon predominantly tourism related retail receipts and from
tourism development fees to the purposes as herein defined.

"Tourist industry" means the industry consisting of private and
public organizations which directly or indirectly provide services
and products to nonresidents and residents who travel to and in New
Jersey for recreation and pleasure.

"Tourism lodging" means any dwelling unit, other than a
dwelling unit in a hotel the rent for which is subject to taxation
under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et
seq.), regardless of the form of ownership of the unit, rented with or
without a lease, whether rented by the owner or by an agent for the
owner.

"Transient accommodation" means a room, group of rooms, or
other living or sleeping space for the lodging of occupants,
including but not limited to residences or buildings used as
residences. "Transient accommodation" does not include: a hotel or
hotel room; a room, group of rooms, or other living or sleeping
space used as a place of assembly; a dormitory or other similar
residential facility of an elementary or secondary school or a
college or university; a hospital, nursing home, or other similar
residential facility of a provider of services for the care, support and
treatment of individuals that is licensed by the State; a campsite,
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cabin, lean-to, or other similar residential facility of a campground
or an adult or youth camp; a furnished or unfurnished private
residential property, including but not limited to condominiums,
bungalows, single-family homes and similar living units, where no
maid service, room service, linen changing service or other
common hotel services are made available by the lessor and where
the keys to the furnished or unfurnished private residential property,
whether a physical key, access to a keyless locking mechanism, or
other means of physical ingress to the furnished or unfurnished
private residential property, are provided to the lessee at the
location of an offsite real estate broker licensed by the New Jersey
Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases
of real property with a term of at least 90 consecutive days.

"Transient space marketplace" means an online marketplace
through which a person may offer transient accommodations or
hotel rooms to individuals. A "transient space marketplace" allows
transient accommodations or hotel rooms to be advertised or listed
through an online marketplace in exchange for consideration or
provides a means for a customer to arrange for the occupancy of the
transient accommodation or hotel room in exchange for
consideration. A 'transient space marketplace' shall not include an
online marketplace operated by or on behalf of a hotel or hotel
corporation that facilitates customer occupancy solely for the hotel
or hotel corporation's owned or managed hotels and franchisees,
and shall not include a travel agency or an online travel agency.

"Vendor" means a person selling or hiring property or services to
another person, the receipts or charges from which are taxable by an
ordinance authorized under P.L.1992, c.165 (C.40:54D-1 et seq.).

"Wildwood convention center facility" means the project
authorized by paragraph (12) of subsection a. of section 6 of
P.L.1971, c.137 (C.5:10-6).

(cf: P.L.2018, c.49, s.17)

10. Notwithstanding the provisions of the “Administrative
Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to the
contrary, the Director of the Division of Taxation may adopt
immediately upon filing with the Office of Administrative Law
such rules and regulations as the director determines to be necessary
to effectuate the purposes of P.L. , c. (C. ) (pending before
the Legislature as this bill), which rules and regulations shall be
effective for a period not to exceed 360 days following the effective
date of P.L. , c. (C. ) (pending before the Legislature as this
bill) and may thereafter be amended, adopted, or readopted by the
director in accordance with the requirements of the “Administrative
Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.).

11. This act shall take effect November 1, 2018, provided
however, the Director of the Division of Taxation shall take such
anticipatory action in advance of that date as may be necessary for
the timely implementation of this act.

STATEMENT

This bill imposes collection of sales tax requirements on
marketplace facilitators and certain sellers who do not have a
physical presence in the State, and clarifies that travel agencies are
not required to collect sales tax or various hotel taxes.

Pursuant to section 1 of the bill, if a seller does not have a
physical presence in the State but has revenue from sales into the
State in the calendar year, or prior year, in excess of $100,000, the
seller must collect sales tax. The same applies to a seller with 200
or more separate transactions into the State in a calendar year or in
the prior year.

These provisions of the bill reflect the 2018 decision of the U.S.
Supreme Court in South Dakota v. Wayfair, in which the Court
determined that physical presence within a state was not a
prerequisite for the collection of sales tax. In that case, the Court
held that imposing sales tax on a seller that delivers more than
$100,000 worth of sales into a state or delivers 200 or more
separate transactions into a state has a sufficient nexus with the
state for the state to impose sales tax on the seller.

Pursuant to section 2 of the bill, marketplace facilitators must
collect tax on sales they facilitate for marketplace sellers. However,
in order to ensure the accurate and timely collection of taxes due,
the Director of Taxation has the discretion to temporarily suspend
or delay the collection of a marketplace facilitator for a period not
to exceed 180 days. The director must report on any grant of a
suspension or delay to the Governor and the Legislature.

Section 3 incorporates sections 1 and 2 of the bill into the
definitions section of the Sales and Use Tax Act.

The remaining sections of the bill clarify that travel agencies and
online travel agencies are not transient space marketplaces. This
clarification is intended to ensure that these businesses will not be
required to collect and pay sales tax or various hotel taxes for sales
on their platforms.