

[First Reprint]

SENATE, No. 2794

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED JUNE 21, 2018

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator TROY SINGLETON

District 7 (Burlington)

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Senator Greenstein

SYNOPSIS

Provides for collection of sales tax from certain remote sellers.

CURRENT VERSION OF TEXT

As amended by the Senate on June 25, 2018.



(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 for delivery into
 11 the State and who does not have a physical presence in the State,
 12 shall be subject to the tax imposed under the "Sales and Use Tax
 13 Act," P.L.1966, c.30 (C.54:32B-1 et seq.), and shall collect the tax
 14 in accordance with the provisions of P.L.1966, c.30 (C.54:32B-1 et
 15 seq.) if the seller meets either of the following criteria:

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

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

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

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

42 d. Nothing in P.L. , c. (C.) (pending before the Legislature
 43 as this bill) shall affect the obligation of any purchaser from this
 44 State to remit use tax as to any applicable transaction in which the

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:

¹Senate floor amendments adopted June 25, 2018.

1 seller does not collect and remit the sales tax or remit an offsetting
2 sales tax.

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

10

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

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

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

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

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

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

46 d. Following each retail sale made, the marketplace facilitator
47 shall provide to the purchaser a sales slip, invoice, receipt, or other

1 statement or memorandum of the price paid or payable, which shall
2 state, charge, and show the tax separately.

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

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

16
17 ¹**[2.] 3.**¹ Section 2 of P.L.1966, c.30 (C.54:32B-2) is amended
18 to read as follows:

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

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

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

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

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

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

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

1 (D) to a person who receives by contract a product transferred
2 electronically for further commercial broadcast, rebroadcast,
3 transmission, retransmission, licensing, relicensing, distribution,
4 redistribution or exhibition of the product, in whole or in part, to
5 another person, other than rights to redistribute based on statutory
6 or common law doctrine such as fair use.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 consumption of such property or products. Use also includes the
2 exercise of any right or power over intrastate or interstate
3 telecommunications and prepaid calling services. Use also includes
4 the exercise of any right or power over utility service. Use also
5 includes the derivation of a direct or indirect benefit from a service.

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

8 (1) The term "seller" includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (k) "Occupancy" means the use or possession or the right to the
2 use or possession, of any room in a hotel.
- 3 (l) "Occupant" means a person who, for a consideration, uses,
4 possesses, or has the right to use or possess, any room in a hotel
5 under any lease, concession, permit, right of access, license to use
6 or other agreement, or otherwise.
- 7 (m) "Permanent resident" means any occupant of any room or
8 rooms in a hotel for at least 90 consecutive days shall be considered
9 a permanent resident with regard to the period of such occupancy.
- 10 (n) "Room" means any room or rooms of any kind in any part or
11 portion of a hotel, which is available for or let out for any purpose
12 other than a place of assembly.
- 13 (o) "Admission charge" means the amount paid for admission,
14 including any service charge and any charge for entertainment or
15 amusement or for the use of facilities therefor.
- 16 (p) "Amusement charge" means any admission charge, dues or
17 charge of a roof garden, cabaret or other similar place.
- 18 (q) "Charge of a roof garden, cabaret or other similar place"
19 means any charge made for admission, refreshment, service, or
20 merchandise at a roof garden, cabaret or other similar place.
- 21 (r) "Dramatic or musical arts admission charge" means any
22 admission charge paid for admission to a theater, opera house,
23 concert hall or other hall or place of assembly for a live, dramatic,
24 choreographic or musical performance.
- 25 (s) "Lessor" means any person who is the owner, licensee, or
26 lessee of any premises, tangible personal property or a specified
27 digital product which the person leases, subleases, or grants a
28 license to use to other persons.
- 29 (t) "Place of amusement" means any place where any facilities
30 for entertainment, amusement, or sports are provided.
- 31 (u) "Casual sale" means an isolated or occasional sale of an item
32 of tangible personal property or a specified digital product by a
33 person who is not regularly engaged in the business of making retail
34 sales of such property or product where the item of tangible
35 personal property or the specified digital product was obtained by
36 the person making the sale, through purchase or otherwise, for the
37 person's own use.
- 38 (v) "Motor vehicle" includes all vehicles propelled otherwise
39 than by muscular power (excepting such vehicles as run only upon
40 rails or tracks), trailers, semitrailers, house trailers, or any other
41 type of vehicle drawn by a motor-driven vehicle, and motorcycles,
42 designed for operation on the public highways.
- 43 (w) "Persons required to collect tax" or "persons required to
44 collect any tax imposed by this act" includes: every seller of
45 tangible personal property, specified digital products or services;
46 every recipient of amusement charges; every operator of a hotel;
47 every seller of a telecommunications service; every recipient 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 every recipient of charges for
3 parking, storing or garaging a motor vehicle. Said terms shall also
4 include any officer or employee of a corporation or of a dissolved
5 corporation who as such officer or employee is under a duty to act
6 for such corporation in complying with any requirement of this act
7 and any member of a partnership.

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

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

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

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

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

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

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

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

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

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

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

26 (cc) "Telecommunications service" means the electronic
27 transmission, conveyance, or routing of voice, data, audio, video, or
28 any other information or signals to a point, or between or among
29 points.

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

37 "Telecommunications service" shall not include:

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

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

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

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

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

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

44 (7) data processing and information services that allow data to
45 be generated, acquired, stored, processed, or retrieved and delivered
46 by an electronic transmission to a purchaser where such purchaser's
47 primary purpose for the underlying transaction is the processed data
48 or information;

- 1 (8) installation or maintenance of wiring or equipment on a
2 customer's premises;
- 3 (9) tangible personal property;
- 4 (10) advertising, including but not limited to directory
5 advertising;
- 6 (11) billing and collection services provided to third parties;
- 7 (12) internet access service;
- 8 (13) radio and television audio and video programming services,
9 regardless of the medium, including the furnishing of transmission,
10 conveyance, and routing of such services by the programming
11 service provider. Radio and television audio and video
12 programming services shall include but not be limited to cable
13 service as defined in section 47 U.S.C. s.522(6) and audio and video
14 programming services delivered by commercial mobile radio
15 service providers, as defined in section 47 C.F.R. 20.3;
- 16 (14) ancillary services; or
- 17 (15) digital products delivered electronically, including but not
18 limited to software, music, video, reading materials, or ringtones.
- 19 For the purposes of this subsection:
- 20 "ancillary service" means a service that is associated with or
21 incidental to the provision of telecommunications services,
22 including but not limited to detailed telecommunications billing,
23 directory assistance, vertical service, and voice mail service;
- 24 "conference bridging service" means an ancillary service that
25 links two or more participants of an audio or video conference call
26 and may include the provision of a telephone number. Conference
27 bridging service does not include the telecommunications services
28 used to reach the conference bridge;
- 29 "detailed telecommunications billing service" means an ancillary
30 service of separately stating information pertaining to individual
31 calls on a customer's billing statement;
- 32 "directory assistance" means an ancillary service of providing
33 telephone number information or address information or both;
- 34 "vertical service" means an ancillary service that is offered in
35 connection with one or more telecommunications services, which
36 offers advanced calling features that allow customers to identify
37 callers and to manage multiple calls and call connections, including
38 conference bridging services; and
- 39 "voice mail service" means an ancillary service that enables the
40 customer to store, send, or receive recorded messages. Voice mail
41 service does not include any vertical service that a customer may be
42 required to have to utilize the voice mail service.
- 43 (dd) (1) "Intrastate telecommunications" means a
44 telecommunications service that originates in one United States
45 state or a United States territory or possession or federal district,
46 and terminates in the same United States state or United States
47 territory or possession or federal district.

1 (2) "Interstate 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 a different United States state or United States
5 territory or possession or federal district.

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

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

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

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

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

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

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

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

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

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

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

- 1 (oo) (1) "Sales price" is the measure subject to sales tax and
2 means the total amount of consideration, including cash, credit,
3 property, and services, for which personal property or services are
4 sold, leased, or rented, valued in money, whether received in money
5 or otherwise, without any deduction for the following:
- 6 (A) The seller's cost of the property sold;
 - 7 (B) The cost of materials used, labor or service cost, interest,
8 losses, all costs of transportation to the seller, all taxes imposed on
9 the seller, and any other expense of the seller;
 - 10 (C) Charges by the seller for any services necessary to complete
11 the sale;
 - 12 (D) Delivery charges;
 - 13 (E) (Deleted by amendment, P.L.2011, c.49); and
 - 14 (F) (Deleted by amendment, P.L.2008, c.123).
- 15 (2) "Sales price" does not include:
- 16 (A) Discounts, including cash, term, or coupons that are not
17 reimbursed by a third party, that are allowed by a seller and taken
18 by a purchaser on a sale;
 - 19 (B) Interest, financing, and carrying charges from credit
20 extended on the sale of personal property or services, if the amount
21 is separately stated on the invoice, bill of sale, or similar document
22 given to the purchaser;
 - 23 (C) Any taxes legally imposed directly on the consumer that are
24 separately stated on the invoice, bill of sale, or similar document
25 given to the purchaser;
 - 26 (D) The amount of sales price for which food stamps have been
27 properly tendered in full or part payment pursuant to the federal
28 Food Stamp Act of 1977, Pub.L.95-113 (7 U.S.C. s.2011 et seq.); or
 - 29 (E) Credit for any trade-in of property of the same kind accepted
30 in part payment and intended for resale if the amount is separately
31 stated on the invoice, bill of sale, or similar document given to the
32 purchaser.
- 33 (3) "Sales price" includes consideration received by the seller
34 from third parties if:
- 35 (A) The seller actually receives consideration from a party other
36 than the purchaser and the consideration is directly related to a price
37 reduction or discount on the sale;
 - 38 (B) The seller has an obligation to pass the price reduction or
39 discount through to the purchaser;
 - 40 (C) The amount of the consideration attributable to the sale is
41 fixed and determinable by the seller at the time of the sale of the
42 item to the purchaser; and
 - 43 (D) One of the following criteria is met:
 - 44 (i) the purchaser presents a coupon, certificate, or other
45 documentation to the seller to claim a price reduction or discount
46 where the coupon, certificate, or documentation is authorized,
47 distributed, or granted by a third party with the understanding that

1 the third party will reimburse any seller to whom the coupon,
2 certificate, or documentation is presented;

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

7 (iii) the price reduction or discount is identified as a third party
8 price reduction or discount on the invoice received by the purchaser
9 or on a coupon, certificate, or other documentation presented by the
10 purchaser.

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

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

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

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

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

47 (tt) "Streamlined Sales and Use Tax Agreement" means the
48 agreement entered into as governed and authorized by the "Uniform

1 Sales and Use Tax Administration Act," P.L.2001, c.431
2 (C.54:32B-44 et seq.).

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

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

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

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

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

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

18 (3) armored car services; and

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

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

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

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

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

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

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

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

44 (cf: P.L.2014, c.13, s.4)

45

46 **1[3.] 4.1** This act shall take effect **1[immediately** and shall
47 apply to receipts from sales of tangible personal property by sellers
48 who have no physical presence in the State and meet the criteria set

1 forth in section 1 made on or after the first day of the first month of
2 the first calendar quarter beginning at least 90 days after the date of
3 enactment] October 1, 2018, provided however, the Director of the
4 Division of Taxation shall take such anticipatory action in advance
5 of that date as may be necessary for the timely implementation of
6 this act¹.