

SENATE, No. 2856

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED AUGUST 27, 2018

Sponsored by:

Senator VIN GOPAL

District 11 (Monmouth)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/28/2018)

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

4

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

7

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

10 3. There is imposed and there shall be paid a tax of 7% on or
11 before December 31, 2016, 6.875% on and after January 1, 2017 but
12 before January 1, 2018, and 6.625% on and after January 1, 2018
13 upon:

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

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

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

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

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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

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

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

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

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

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

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

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

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

41 (11) Investigation and security services.

42 (12) Information services.

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

44 (14) Telephone answering services.

45 (15) Radio subscription services.

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

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

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

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

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

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

33 (3) For the purposes of this subsection:

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

37 "Prepared food" means:

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

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

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

1 straws. A plate does not include a container or packaging used to
2 transport the food;

3 provided however, that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (cf: P.L.2018, c.49, s.20)

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

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

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

1 readopted by the director in accordance with the requirements of
2 P.L.1968, c.410 (C.52:14B-1 et seq.).

3
4 5. This act shall take effect immediately; provided however,
5 that sections 1, 2, and 3 shall apply to taxable years beginning on or
6 after January 1 next following the date of enactment of this act.

7
8
9 STATEMENT

10
11 This bill clarifies the sales tax collection responsibilities of
12 horse-boarding business in New Jersey by providing an exemption
13 from tax for the lease or rental of certain stable stalls and charges
14 for horse boarding and certain other related services.

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

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

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

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

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

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

8 The failure to provide clear and consistent guidance also has
9 placed New Jersey horse-boarding businesses at a competitive
10 disadvantage with similar businesses in surrounding states. In states
11 like Pennsylvania, the law is clear that businesses are not required
12 to charge and collect sales tax on charges for boarding horses.
13 By providing an exemption for horse boarding and related 6
14 services, this bill eliminates the confusion and provides clarity to
15 the tax obligations of New Jersey businesses. Additionally, by
16 providing an exemption the bill levels the playing field for horse
17 boarding businesses within this State and their out-of-State
18 counterparts.