

ASSEMBLY, No. 473

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywoman VANDERVALK

1 AN ACT making the use of certain goods and services by casino hotels  
2 subject to the use tax and dedicating such use tax to the Casino  
3 Revenue Fund, amending P.L.1966, c.30 and supplementing  
4 P.L.1977, c.110 (C.5:12-1 et seq.).  
5

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

8  
9 1. Section 2 of P.L.1966, c.30 (C.54:32B-2) is amended to read as  
10 follows:

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

13 (a) Person. Person includes an individual, partnership, society,  
14 association, joint stock company, corporation, public corporation or  
15 public authority, estate, receiver, trustee, assignee, referee, and any  
16 other person acting in a fiduciary or representative capacity, whether  
17 appointed by a court or otherwise, and any combination of the  
18 foregoing.

19 (b) Purchase at retail. A purchase by any person at a retail sale.

20 (c) Purchaser. A person who purchases property or who receives  
21 services.

22 (d) Receipt. The amount of the sales price of any property and the  
23 charge for any service taxable under this act, valued in money, whether  
24 received in money or otherwise, including any amount for which credit  
25 is allowed by the vendor to the purchaser, without any deduction for  
26 expenses or early payment discounts, but excluding any credit for  
27 property of the same kind that is not tangible personal property  
28 purchased for lease accepted in part payment and intended for resale,  
29 excluding the cost of transportation where such cost is separately  
30 stated in the written contract, if any, and on the bill rendered to the  
31 purchaser, and excluding the amount of the sales price for which food  
32 stamps have been properly tendered in full or part payment pursuant

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

**Matter underlined thus is new matter.**

1 to the federal Food Stamp Act of 1977, Pub.L.95-113 (7 U.S.C. §  
2 2011 et seq.).

3 (e) Retail sale. (1) A sale of tangible personal property to any  
4 person for any purpose, other than (A) for resale either as such or as  
5 converted into or as a component part of a product produced for sale  
6 by the purchaser, or (B) for use by that person in performing the  
7 services subject to tax under subsection (b) of section 3 where the  
8 property so sold becomes a physical component part of the property  
9 upon which the services are performed or where the property so sold  
10 is later actually transferred to the purchaser of the service in  
11 conjunction with the performance of the service subject to tax.

12 (2) For the purposes of this act, the term retail sales includes:

13 Sales of tangible personal property to all contractors,  
14 subcontractors or repairmen of materials and supplies for use by them  
15 in erecting structures for others, or building on, or otherwise  
16 improving, altering, or repairing real property of others.

17 (3) For the purposes of this act, the term retail sale includes the  
18 purchase of tangible personal property for lease.

19 (4) The term retail sales does not include:

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

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

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

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

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

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

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

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

44 (g) Tangible personal property. Corporeal personal property of  
45 any nature.

46 (h) Use. The exercise of any right or power over [tangible

1 personal] property or services [by the purchaser thereof and] , which  
2 includes, but is not limited to, the receiving, storage or any keeping or  
3 retention for any length of time, withdrawal from storage, any  
4 installation, or any affixation to real or personal property of such  
5 property, or any consumption of such property or services. Use also  
6 includes the exercise of any right or power over intrastate or interstate  
7 telecommunications and the benefit of advertising space in a  
8 telecommunications user or provider directory or index.

9 (i) Vendor. (1) The term "vendor" includes:

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

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

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

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

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

30 (F) A person who purchases tangible personal property for lease,  
31 whether in this State or elsewhere. For the purposes of Title 54 of the  
32 Revised Statutes, the presence of leased tangible personal property in  
33 this State is deemed to be a place of business in this State.

34 (2) In addition, when in the opinion of the director it is necessary  
35 for the efficient administration of this act to treat any salesman,  
36 representative, peddler or canvasser as the agent of the vendor,  
37 distributor, supervisor or employer under whom he operates or from  
38 whom he obtains tangible personal property sold by him or for whom  
39 he solicits business, the director may, in his discretion, treat such agent  
40 as the vendor jointly responsible with his principal, distributor,  
41 supervisor or employer for the collection and payment over of the tax.

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

46 (k) Occupancy. The use or possession or the right to the use or

1 possession, of any room in a hotel.

2 (l) Occupant. A person who, for a consideration, uses, possesses,  
3 or has the right to use or possess, any room in a hotel under any lease,  
4 concession, permit, right of access, license to use or other agreement,  
5 or otherwise.

6 (m) Permanent resident. Any occupant of any room or rooms in  
7 a hotel for at least 90 consecutive days shall be considered a  
8 permanent resident with regard to the period of such occupancy.

9 (n) Room. Any room or rooms of any kind in any part or portion  
10 of a hotel, which is available for or let out for any purpose other than  
11 a place of assembly.

12 (o) Admission charge. The amount paid for admission, including  
13 any service charge and any charge for entertainment or amusement or  
14 for the use of facilities therefor.

15 (p) Amusement charge. Any admission charge, dues or charge of  
16 roof garden, cabaret or other similar place.

17 (q) Charge of a roof garden, cabaret or other similar place. Any  
18 charge made for admission, refreshment, service, or merchandise at  
19 a roof garden, cabaret or other similar place.

20 (r) Dramatic or musical arts admission charge. Any admission  
21 charge paid for admission to a theatre, opera house, concert hall or  
22 other hall or place of assembly for a live, dramatic, choreographic or  
23 musical performance.

24 (s) Lessor. Any person who is the owner, licensee, or lessee of any  
25 premises or tangible personal property which he leases, subleases, or  
26 grants a license to use to other persons.

27 (t) Place of amusement. Any place where any facilities for  
28 entertainment, amusement, or sports are provided.

29 (u) Casual sale. Casual sale means an isolated or occasional sale  
30 of an item of tangible personal property by a person who is not  
31 regularly engaged in the business of making sales at retail where such  
32 property was obtained by the person making the sale, through  
33 purchase or otherwise, for his own use in this State.

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

39 (w) "Persons required to collect tax" or "persons required to  
40 collect any tax imposed by this act" shall include: every vendor of  
41 tangible personal property or services; every recipient of amusement  
42 charges; every operator of a hotel; every lessor; and every vendor of  
43 telecommunications. Said terms shall also include any officer or  
44 employee of a corporation or of a dissolved corporation who as such  
45 officer or employee is under a duty to act for such corporation in  
46 complying with any requirement of this act and any member of a

1 partnership. Provided, however, the vendor of tangible personal  
2 property to all contractors, subcontractors or repairmen, consisting of  
3 materials and supplies for use by them in erecting structures for others,  
4 or building on, or otherwise improving, altering or repairing real  
5 property of others, shall not be deemed a person required to collect  
6 tax, and the tax imposed by any section of this act shall be paid  
7 directly to the director by such contractors, subcontractors or  
8 repairmen.

9 (x) "Customer" shall include: every purchaser of tangible personal  
10 property or services; every patron paying or liable for the payment of  
11 any amusement charge; and every occupant of a room or rooms in a  
12 hotel.

13 (y) "Property and services the use of which is subject to tax" shall  
14 include: (1) all property [~~sold~~] and services transfered to a person  
15 within the State, whether or not the [~~sale~~] transfer is made within the  
16 State, the use of which property and services is subject to tax under  
17 section 6 or will become subject to tax when such property [~~is~~] and  
18 services are received by or [~~comes~~] come into the possession or  
19 control of such person within the State; (2) all services rendered to a  
20 person within the State, whether or not such services are performed  
21 within the State, upon tangible personal property the use of which is  
22 subject to tax under section 6 or will become subject to tax when such  
23 property is received by or comes into possession or control of such  
24 person within the State; (3) intrastate or interstate telecommunications  
25 charged to a service address in this State; and (4) advertising space in  
26 a telecommunications user or provider directory or index distributed  
27 in this State.

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

34 (aa) "Lease" means the possession or control of tangible personal  
35 property by an agreement, not transferring sole title, as may be  
36 evidenced by a contract, contracts, or by implication from other  
37 circumstances including course of dealing or usage of trade or course  
38 of performance, for a period of more than 28 days.

39 (bb) "The amount of the sales price" of tangible personal property  
40 purchased for lease means, at the election of the lessor, either (1) the  
41 amount of the lessor's purchase price or (2) the amount of the total of  
42 the lease payments attributable to the lease of such property. Tangible  
43 personal property purchased for lease is subject to the provisions of  
44 subsection (a) of section 3 of P.L.1966, c.30 (C.54:32B-3).

45 (cc) "Telecommunications" means the act or privilege of originating  
46 or receiving messages or information through the use of any kind of

1 one-way or two-way communication; including but not limited to  
2 voice, video, facsimile, teletypewriter, computer, cellular mobile or  
3 portable telephone, specialized mobile or portable pager or paging  
4 service, or any other type of communication; using electronic or  
5 electromagnetic methods, and all services and equipment provided in  
6 connection therewith or by means thereof. "Telecommunications"  
7 shall not include:

8 (1) one-way radio or television broadcasting transmissions available  
9 universally to the general public without a fee;

10 (2) purchases of telecommunications by a telecommunications  
11 provider for use as a component part of telecommunications provided  
12 to an ultimate retail consumer who originates or terminates the taxable  
13 end-to-end communications;

14 (3) services provided by a person, or by that person's wholly owned  
15 subsidiary, not engaged in the business of rendering or offering  
16 telecommunications services to the public, for private and exclusive  
17 use within its organization, provided however, that  
18 "telecommunications" shall include the sale of telecommunications  
19 services attributable to the excess unused telecommunications capacity  
20 of that person to another; and

21 (4) charges in the nature of subscription fees paid by subscribers for  
22 cable television service.

23 (dd) "Interstate telecommunication" means any telecommunication  
24 that originates or terminates inside this State, including international  
25 telecommunication.

26 (ee) "Intrastate telecommunication" means any telecommunication  
27 that originates and terminates within this State.

28 (cf: P.L.1990, c.40, s.1)

29

30 2. Section 6 of P.L.1966, c.30 (C.54:32B-6) is amended to read as  
31 follows:

32 6. Imposition of compensating use tax. Unless property or services  
33 have already been or will be subject to the sales tax under this act,  
34 there is hereby imposed on and there shall be paid by every person a  
35 use tax for the use within this State of 6%, except as otherwise  
36 exempted under this act, (A) of any tangible personal property  
37 purchased at retail, (B) of any tangible personal property  
38 manufactured, processed or assembled by the user, of any taxable  
39 property or service described in subsections (c), (d) or (e) of section  
40 3 by the user which is an "approved hotel" pursuant sections 27 and 83  
41 of P.L.1977, c .10 (C.5:12-27 and 5:12-83) or section 24 of P.L.1991,  
42 c.182, if [items] property or services of the same kind [of tangible  
43 personal property] are offered for sale by [him] the user in the regular  
44 course of business, or if [items] property or services of the same kind  
45 [of tangible personal property] are not offered for sale by [him] the  
46 user in the regular course of business and are used as such or

1 incorporated into a structure, building or real property, (C) of any  
2 tangible personal property, however acquired, where not acquired for  
3 purposes of resale, upon which any taxable services described in  
4 paragraphs (1) [and] ~~or~~ (2) of subsection (b) of section 3 of P.L.1966,  
5 c.30 (C.54:32B-3) have been performed, (D) of interstate or intrastate  
6 telecommunications described in subsection (f) of section 3 of  
7 P.L.1966, c.30, and (E) of advertising space in a telecommunications  
8 user or provider directory or index. For purposes of clause (A) of this  
9 section, the tax shall be at the applicable rate, as set forth hereinabove,  
10 [of the consideration given or contracted to be given] upon the value  
11 in money, whether received in money or otherwise, for such property  
12 or for the use of such property, but excluding any credit for property  
13 of the same kind accepted in part payment and intended for resale, plus  
14 the cost of transportation, except where such cost is separately stated  
15 in the written contract, if any, and on the bill rendered to the  
16 purchaser. For the purposes of clause (B) of this section, the tax shall  
17 be at the applicable rate, as set forth hereinabove, [of] upon the price  
18 at which [items] property or services of the same kind [of tangible  
19 personal property] are offered for sale by the user, or if [items]  
20 property or services of the same kind [of tangible personal property]  
21 are not offered for sale by the user in the regular course of business  
22 and are used as such or incorporated into a structure, building or real  
23 property the tax shall be at the applicable rate, as set forth  
24 hereinabove, of the consideration given or contracted to be given for  
25 the [tangible personal] property manufactured, processed or assembled  
26 by the user into the [tangible personal] property the use of which is  
27 subject to use tax pursuant to this section, and the mere storage,  
28 keeping, retention or withdrawal from storage of [tangible personal]  
29 such property by the person who manufactured, processed or  
30 assembled such property shall not be deemed a taxable use by him.  
31 For purposes of clause (C) of this section, the tax shall be at the  
32 applicable rate, as set forth hereinabove, [of the consideration given  
33 or contracted to be given] upon the value in money, whether received  
34 in money or otherwise, for the service, including the [consideration]  
35 value in money, whether received in money or otherwise, for any  
36 tangible personal property transferred in conjunction with the  
37 performance of the service, plus the cost of transportation, except  
38 where such cost is separately stated in the written contract, if any, and  
39 on the bill rendered to the purchaser. For the purposes of clause (D)  
40 of this section, the tax shall be at the applicable rate on the charge  
41 made by the telecommunication service provider. For the purposes of  
42 clause (E) of this section, the tax shall be at the applicable rate on the  
43 charge made by the advertising space provider.  
44 (cf: P.L.1991, c.11, s.5)

