

ASSEMBLY, No. 1021

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen CONNORS and MORAN

1 AN ACT concerning certain exemptions from the sales and use tax and
2 amending P.L.1966, c.30 and P.L.1980, c.105.

3

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

6

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

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

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

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

18 (c) Purchaser. A person who purchases property or who receives
19 services.

20 (d) Receipt. The amount of the sales price of any property and the
21 charge for any service taxable under this act, valued in money, whether
22 received in money or otherwise, including any amount for which credit
23 is allowed by the vendor to the purchaser, without any deduction for
24 expenses or early payment discounts, but excluding any credit for
25 property of the same kind that is not tangible personal property
26 purchased for lease accepted in part payment and intended for resale,
27 excluding the cost of transportation where such cost is separately
28 stated in the written contract, if any, and on the bill rendered to the
29 purchaser, and excluding the amount of the sales price for which food
30 stamps have been properly tendered in full or part payment pursuant
31 to the federal Food Stamp Act of 1977, Pub.L.95-113 (7 U.S.C.
32 §2011 et seq.).

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (g) Tangible personal property. Corporeal personal property of
43 any nature.

44 (h) Use. The exercise of any right or power over tangible personal
45 property by the purchaser thereof and includes, but is not limited to,
46 the receiving, storage or any keeping or retention for any length of

1 time, withdrawal from storage, any installation, any affixation to real
2 or personal property, or any consumption of such property. Use also
3 includes the exercise of any right or power over intrastate or interstate
4 telecommunications and the benefit of advertising space in a
5 telecommunications user or provider directory or index.

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

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

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

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

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

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

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

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

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

43 (k) Occupancy. The use or possession or the right to the use or
44 possession, of any room in a hotel.

45 (l) Occupant. A person who, for a consideration, uses, possesses,
46 or has the right to use or possess, any room in a hotel under any lease,

1 concession, permit, right of access, license to use or other agreement,
2 or otherwise.

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

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

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

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

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

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

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

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

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

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

36 (w) "Persons required to collect tax" or "persons required to
37 collect any tax imposed by this act" shall include: every vendor of
38 tangible personal property or services; every recipient of amusement
39 charges; every operator of a hotel; every lessor; and every vendor of
40 telecommunications. Said terms shall also include any officer or
41 employee of a corporation or of a dissolved corporation who as such
42 officer or employee is under a duty to act for such corporation in
43 complying with any requirement of this act and any member of a
44 partnership. Provided, however, the vendor of tangible personal
45 property to all contractors, subcontractors or repairmen, consisting of
46 materials and supplies for use by them in erecting structures for others,

1 or building on, or otherwise improving, altering or repairing real
2 property of others, shall not be deemed a person required to collect
3 tax, and the tax imposed by any section of this act shall be paid
4 directly to the director by such contractors, subcontractors or
5 repairmen.

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

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

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

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

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

41 (cc) "Telecommunications" means the act or privilege of originating
42 or receiving messages or information through the use of any kind of
43 one-way or two-way communication; including but not limited to
44 voice, video, facsimile, teletypewriter, computer, cellular mobile or
45 portable telephone, specialized mobile or portable pager or paging
46 service, or any other type of communication; using electronic or

1 electromagnetic methods, and all services and equipment provided in
2 connection therewith or by means thereof. "Telecommunications"
3 shall not include:

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

6 (2) purchases of telecommunications by a telecommunications
7 provider for use as a component part of telecommunications provided
8 to an ultimate retail consumer who (A) originates or terminates the
9 taxable end-to-end communications or (B) pays charges exempt from
10 taxation pursuant to paragraph (5) of this subsection;

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

18 (4) charges in the nature of subscription fees paid by subscribers
19 for cable television service; **[and]**

20 (5) charges subject to the local calling rate paid by inserting coins
21 into a coin operated telecommunications device available to the public;
22 and

23 (6) charges to customers for medical alarm and medical emergency
24 notification services.

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

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

30 (cf: P.L.1993, c.10, s.1.)

31

32 2. Section 13 of P.L.1980, c.105 (C.54:32B-8.1) is amended to
33 read as follows:

34 13. Receipts from the following are exempt from the tax imposed
35 under the Sales and Use Tax Act: sales of medicines and drugs sold
36 pursuant to a doctor's prescription for human use; over the counter
37 drugs recommended and generally sold for the relief of pain, ailments,
38 distresses or disorders of the human body; diabetic supplies; crutches,
39 artificial limbs, artificial eyes, artificial hearing devices, corrective
40 eyeglasses, prosthetic aids, artificial teeth or dentures, braces, tampons
41 or like products, orthopedic appliances and artificial devices designed
42 to correct or alleviate physical incapacity, medical oxygen, respiratory
43 equipment, human blood and its derivatives when sold for human use,
44 wheelchairs, transcutaneous electro-neuro stimulators (TENS units),
45 durable medical equipment, alarm and medical emergency notification
46 equipment, and replacement parts for any of the foregoing.

1 As used in this section, durable medical equipment means
2 equipment that: a. can withstand repeated use, b. is primarily and
3 customarily used to serve a medical purpose, c. is generally not useful
4 to a person in the absence of illness or injury, and d. is appropriate for
5 use in the home.

6 Receipts from sales of medical equipment, durable medical
7 equipment, and supplies, other than medicines and drugs, purchased
8 for use in providing medical services for compensation, but not
9 transferred to the purchaser of the service in conjunction with the
10 performance of the service, shall be considered taxable receipts from
11 retail sales notwithstanding the exemption from the sales and use tax
12 provided under this section.

13 (cf: P.L.1987, c.383, s.1)

14

15 3. This act shall take effect immediately and remain inoperative until
16 the first day of the second month following enactment.

17

18

19

STATEMENT

20

21 This bill exempts medical alarm equipment, services and
22 telecommunications costs from the tax imposed under the "Sales and
23 Use Tax Act."

24

25

26

27

28 Exempts medical alarm equipment, services and telecommunications
29 costs from the "Sales and Use Tax Act."