

ASSEMBLY, No. 2691

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 3, 1997

By Assemblyman BAGGER

1 AN ACT eliminating the sales and use tax on international
2 telecommunications service, amending P.L.1966, c.30.

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

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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. s.
32 2011 et seq.).

33 (e) Retail sale. (1) A sale of tangible personal property to any
34 person for any purpose, other than (A) for resale either as such or as

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 converted into or as a component part of a product produced for sale
2 by the purchaser, or (B) for use by that person in performing the
3 services subject to tax under subsection (b) of section 3 where the
4 property so sold becomes a physical component part of the property
5 upon which the services are performed or where the property so sold
6 is later actually transferred to the purchaser of the service in
7 conjunction with the performance of the service subject to tax.

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

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

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

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

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

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

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

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

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

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

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

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

40 (g) Tangible personal property. Corporeal personal property of
41 any nature.

42 (h) Use. The exercise of any right or power over tangible personal
43 property by the purchaser thereof and includes, but is not limited to,
44 the receiving, storage or any keeping or retention for any length of
45 time, withdrawal from storage, any installation, any affixation to real
46 or personal property, or any consumption of such property. Use also

1 includes the exercise of any right or power over intrastate or interstate
2 telecommunications.

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

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

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

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

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

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

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

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

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

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

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

46 (m) Permanent resident. Any occupant of any room or rooms in

1 a hotel for at least 90 consecutive days shall be considered a
2 permanent resident with regard to the period of such occupancy.

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

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

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

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

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

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

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

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

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

33 (w) "Persons required to collect tax" or "persons required to
34 collect any tax imposed by this act" shall include: every vendor of
35 tangible personal property or services; every recipient of amusement
36 charges; every operator of a hotel; every lessor; and every vendor of
37 telecommunications. Said terms shall also include any officer or
38 employee of a corporation or of a dissolved corporation who as such
39 officer or employee is under a duty to act for such corporation in
40 complying with any requirement of this act and any member of a
41 partnership. Provided, however, the vendor of tangible personal
42 property to all contractors, subcontractors or repairmen, consisting of
43 materials and supplies for use by them in erecting structures for others,
44 or building on, or otherwise improving, altering or repairing real
45 property of others, shall not be deemed a person required to collect
46 tax, and the tax imposed by any section of this act shall be paid

1 directly to the director by such contractors, subcontractors or
2 repairmen.

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

7 (y) "Property and services the use of which is subject to tax" shall
8 include: (1) all property sold to a person within the State, whether or
9 not the sale is made within the State, the use of which property is
10 subject to tax under section 6 or will become subject to tax when such
11 property is received by or comes into the possession or control of such
12 person within the State; (2) all services rendered to a person within the
13 State, whether or not such services are performed within the State,
14 upon tangible personal property the use of which is subject to tax
15 under section 6 or will become subject to tax when such property is
16 received by or comes into possession or control of such person within
17 the State; (3) intrastate or interstate telecommunications charged to a
18 service address in this State; and (4) (Deleted by amendment,
19 P.L.1995, c.184).

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

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

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

37 (cc) "Telecommunications" means the act or privilege of
38 originating or receiving messages or information through the use of
39 any kind of one-way or two-way communication; including but not
40 limited to voice, video, facsimile, teletypewriter, computer, cellular
41 mobile or portable telephone, specialized mobile or portable pager or
42 paging service, or any other type of communication; using electronic
43 or electromagnetic methods, and all services and equipment provided
44 in connection therewith or by means thereof. "Telecommunications"
45 shall not include:

46 (1) one-way radio or television broadcasting transmissions

1 available universally to the general public without a fee;

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

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

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

16 (5) charges subject to the local calling rate paid by inserting coins
17 into a coin operated telecommunications device available to the public;
18 and,

19 (6) international telecommunications service.

20 (dd) "Interstate telecommunication" means any telecommunication
21 that originates or terminates inside this State, [~~including~~excluding
22 international telecommunication.

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

25 (ff) "international telecommunication" means any
26 telecommunication that originates within this State and terminates
27 within a foreign nation or originates within a foreign nation and
28 terminates within this State.

29 (cf: P.L.1995, c.184, s.1)

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31 2. This act shall take effect July 1, 1997.

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34 STATEMENT

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36 This bill eliminates the sales and use tax on international
37 telecommunications service effective July 1, 1997.

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42 Eliminates sales and use tax on international telecommunications
43 service.