

ASSEMBLY, No. 2745

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 27, 1997

By Assemblywoman BUONO and Assemblyman BARNES

1 AN ACT eliminating the sales and use tax on repair and maintenance
2 services, 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. Section 3 of P.L.1966, c.30 (C54:32B-3) is amended to read as
8 follows:

9 3. There is imposed and there shall be paid a tax of 6% upon:

10 (a) The receipts from every retail sale of tangible personal
11 property, except as otherwise provided in this act. If the lessor of
12 tangible personal property purchased for lease elects to pay tax on the
13 amount of the sales price as provided in paragraph (2) of subsection
14 (bb) of section 2 of P.L.1966, c.30 (C.54:32B-2), any and each
15 subsequent lease or rental is a retail sale, and a subsequent sale of such
16 property is a retail sale.

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

19 (1) Producing, fabricating, processing, printing or imprinting
20 tangible personal property, performed for a person who directly or
21 indirectly furnishes the tangible personal property, not purchased by
22 him for resale, upon which such services are performed.

23 (2) [Installing tangible personal property, or maintaining,
24 servicing, repairing tangible personal property not held for sale in the
25 regular course of business, whether or not the services are performed
26 directly or by means of coin-operated equipment or by any other
27 means, and whether or not any tangible personal property is
28 transferred in conjunction therewith, except (i) such services rendered
29 by an individual who is engaged directly by a private homeowner or
30 lessee in or about his residence and who is not in a regular trade or
31 business offering his services to the public, (ii) such services rendered
32 with respect to personal property exempt from taxation hereunder
33 pursuant to section 13 of P.L.1980, c.105 (C.54:32B-8.1), (iii)
34 (Deleted by amendment, P.L.1990, c.40), (iv) any receipts from

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 laundering, dry cleaning, tailoring, weaving, pressing, shoe repairing
2 and shoeshining and (v) services rendered in installing property which,
3 when installed, will constitute an addition or capital improvement to
4 real property, property or land] (Deleted by amendment, P.L. , c.
5 (now pending before the Legislature as this bill)).

6 (3) Storing all tangible personal property not held for sale in
7 the regular course of business and the rental of safe deposit boxes or
8 similar space.

9 (4) [Maintaining, servicing or repairing real property, other
10 than a residential heating system unit serving not more than three
11 families living independently of each other and doing their cooking on
12 the premises, whether the services are performed in or outside of a
13 building, as distinguished from adding to or improving such real
14 property by a capital improvement, but excluding services rendered by
15 an individual who is not in a regular trade or business offering his
16 services to the public, and excluding garbage removal and sewer
17 services performed on a regular contractual basis for a term not less
18 than 30 days] (Deleted by amendment, P.L. , c. (now pending
19 before the Legislature as this bill)).

20 (5) Advertising services, except advertising services for use
21 directly and primarily for publication in newspapers and magazines and
22 except for direct-mail advertising processing services in connection
23 with distribution to out-of-State recipients.

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

25 Wages, salaries and other compensation paid by an employer to an
26 employee for performing as an employee the services described in this
27 subsection are not receipts subject to the taxes imposed under this
28 subsection (b).

29 Services otherwise taxable under paragraph (1) or (2) of this
30 subsection (b) are not subject to the taxes imposed under this
31 subsection, where the tangible personal property upon which the
32 services were performed is delivered to the purchaser outside this
33 State for use outside this State.

34 (c) Receipts from the sale of food and drink in or by restaurants,
35 taverns, vending machines or other establishments in this State, or by
36 caterers, including in the amount of such receipts any cover, minimum,
37 entertainment or other charge made to patrons or customers:

38 (1) In all instances where the sale is for consumption on the
39 premises where sold;

40 (2) In those instances where the vendor or any person whose
41 services are arranged for by the vendor, after the delivery of the food
42 or drink by or on behalf of the vendor for consumption off the
43 premises of the vendor, serves or assists in serving, cooks, heats or
44 provides other services with respect to the food or drink, except for
45 meals especially prepared for and delivered to homebound elderly, age
46 60 or older, and to disabled persons, or meals prepared and served at

1 a group-sitting at a location outside of the home to otherwise
2 homebound elderly persons, age 60 or older, and otherwise
3 homebound disabled persons, as all or part of any food service project
4 funded in whole or in part by government or as part of a private,
5 nonprofit food service project available to all such elderly or disabled
6 persons residing within an area of service designated by the private
7 nonprofit organization;

8 (3) In those instances where the sale is for consumption off the
9 premises of the vendor, and consists of a meal, or food prepared and
10 ready to be eaten, of a kind obtainable in restaurants as the main
11 course of a meal, including a sandwich, except where food other than
12 sandwiches is sold in an unheated state and is of a type commonly sold
13 in the same form and condition in food stores other than those which
14 are principally engaged in selling prepared foods; and

15 (4) Sales of food and beverages sold through coin-operated
16 vending machines, at the wholesale price of such sale, which shall be
17 defined as 70% of the retail vending machine selling price, except sales
18 of milk, which shall not be taxed. Nothing herein contained shall
19 affect other sales through coin-operated vending machines taxable
20 pursuant to subsection (a) above or the exemption thereto provided by
21 section 21 of P.L.1980, c.105 (C.54:32B-8.9).

22 The tax imposed by this subsection (c) shall not apply to food or
23 drink which is sold to an airline for consumption while in flight.

24 (d) The rent for every occupancy of a room or rooms in a hotel in
25 this State, except that the tax shall not be imposed upon (1) a
26 permanent resident, or (2) where the rent is not more than at the rate
27 of \$2.00 per day.

28 (e) (1) Any admission charge, where such admission charge is in
29 excess of \$0.75 to or for the use of any place of amusement in the
30 State, including charges for admission to race tracks, baseball,
31 football, basketball or exhibitions, dramatic or musical arts
32 performances, motion picture theatres, except charges for admission
33 to boxing, wrestling, kick boxing or combative sports exhibitions,
34 events, performances or contests which charges are taxed under any
35 other law of this State or under section 20 of P.L.1985, c.83
36 (C.5:2A-20), and, except charges to a patron for admission to, or use
37 of, facilities for sporting activities in which such patron is to be a
38 participant, such as bowling alleys and swimming pools. For any
39 person having the permanent use or possession of a box or seat or
40 lease or a license, other than a season ticket, for the use of a box or
41 seat at a place of amusement, the tax shall be upon the amount for
42 which a similar box or seat is sold for each performance or exhibition
43 at which the box or seat is used or reserved by the holder, licensee or
44 lessee, and shall be paid by the holder, licensee or lessee.

45 (2) The amount paid as charge of a roof garden, cabaret or
46 other similar place in this State, to the extent that a tax upon such

1 charges has not been paid pursuant to subsection (c) hereof.

2 (f) The receipts from every sale, except for resale, of intrastate or
3 interstate telecommunications charged to an address in this State,
4 regardless of where the services are billed or paid.

5 (cf: P.L.1995, c.184, s.2)

6

7 2. Section 5 of P.L.1966, c.30 (C.54:32B-5) is amended to read as
8 follows:

9 5. Transitional provisions. a. (1) Except as otherwise provided
10 in this act, receipts received from all sales made and services rendered
11 on and after January 3, 1983 but prior to July 1, 1990, are subject to
12 the taxes imposed under subsections (a), (b), (c), and (f) of section 3
13 of this act at the rate, if any, in effect for such sales and services on
14 June 30, 1990, except if the property so sold is delivered or the
15 services so sold are rendered on or after July 1, 1990 but prior to July
16 1, 1992, in which case the tax shall be computed and paid at the rate
17 of 7%; provided, however, that if a service or maintenance agreement
18 taxable under this act covers any period commencing on or after
19 January 3, 1983 and ending after June 30, 1990 but prior to July 1,
20 1992, the receipts from such agreement are subject to tax at the rate,
21 if any, applicable to each period as set forth hereinabove and shall be
22 apportioned on the basis of the ratio of the number of days falling
23 within each of the said periods to the total number of days covered
24 thereby.

25 (2) Except as otherwise provided in this act, receipts received
26 from all sales made and services rendered on and after July 1, 1990 but
27 prior to July 1, 1992, are subject to the taxes imposed under
28 subsections (a), (b), (c) and (f) of section 3 of this act at the rate of
29 7%, except if the property so sold is delivered or the services so sold
30 are rendered on or after July 1, 1992, in which case the tax shall be
31 computed and paid at the rate of 6%, provided, however, that if a
32 service or maintenance agreement taxable under this act covers any
33 period commencing on or after July 1, 1990, and ending after July 1,
34 1992, the receipts from such agreement are subject to tax at the rate
35 applicable to each period as set forth hereinabove and shall be
36 apportioned on the basis of the ratio of the number of days falling
37 within each of the said periods to the total number of days covered
38 thereby.

39 (3) Except as otherwise provided in this act, receipts received
40 from services rendered on or after the operative date of section 1 of
41 P.L. , c. (now pending before the Legislature as this bill), are
42 subject to the taxes imposed under paragraphs (2) and (4) of
43 subsection (b) of section 3 of this act at the rate of 6%, except if the
44 property so sold is delivered or the services so sold are rendered on or
45 after the operative date of section 1 of P.L. , c. , in which case
46 no tax shall be due, provided, however, that if a service or

1 maintenance agreement taxable under this act covers any period
2 commencing on or after July 1, 1992, and ending after the operative
3 date of section 1 of P.L. , c. , the receipts from such agreement
4 are subject to tax at the rate applicable to each period as set forth
5 hereinabove and shall be apportioned on the basis of the ratio of the
6 number of days falling within each of the said periods to the total
7 number of days covered thereby.

8 b. (1) The tax imposed under subsection (d) of section 3 shall be
9 paid at the rate of 7% upon any occupancy on and after July 1, 1990
10 but prior to July 1, 1992, although such occupancy is pursuant to a
11 prior contract, lease or other arrangement. If an occupancy, taxable
12 under this act, covers any period on or after January 3, 1983 but prior
13 to July 1, 1990, the rent for the period of occupancy prior to July 1,
14 1990 shall be taxed at the rate of 6%. If rent is paid on a weekly,
15 monthly or other term basis, the rent applicable to each period as set
16 forth hereinabove shall be apportioned on the basis of the ratio of the
17 number of days falling within each of the said periods to the total
18 number of days covered thereby.

19 (2) The tax imposed under subsection (d) of section 3 shall be
20 paid at the rate of 6% upon any occupancy on and after July 1, 1992,
21 although such occupancy is pursuant to a prior contract, lease or other
22 arrangement. If an occupancy, taxable under this act, covers any
23 period on or after July 1, 1990 but prior to July 1, 1992, the rent for
24 the period of occupancy prior to July 1, 1992 shall be taxed at the rate
25 of 7%. If rent is paid on a weekly, monthly or other term basis, the
26 rent applicable to each period as set forth hereinabove shall be
27 apportioned on the basis of the ratio of the number of days falling
28 within each of the said periods to the total number of days covered
29 thereby.

30 c. (1) Except as otherwise hereinafter provided, the tax imposed
31 under subsection (e) of section 3 shall be applicable at the rate of 7%
32 to any admission to or for the use of facilities of a place of amusement
33 occurring on or after July 1, 1990 but prior to July 1, 1992, whether
34 or not the admission charge has been paid prior to July 1, 1990, unless
35 the tickets were actually sold and delivered, other than for resale, prior
36 to July 1, 1990 and the tax imposed under this act during the period
37 January 3, 1983 through June 30, 1990 shall have been paid.

38 (2) Except as otherwise hereinafter provided, the tax imposed
39 under subsection (e) of section 3 shall be applicable at the rate of 6%
40 to any admission to or for the use of facilities of a place of amusement
41 occurring on or after July 1, 1992, whether or not the admission
42 charge has been paid prior to that date, unless the tickets were actually
43 sold and delivered, other than for resale, prior to July 1, 1992 and the
44 tax imposed under this act during the period July 1, 1990 through
45 December 31, 1990 shall have been paid.

46 d. (1) Sales made on and after July 1, 1990 but prior to July 1,

1 1992 to contractors, subcontractors or repairmen of materials,
2 supplies, or services for use in erecting structures for others, or
3 building on, or otherwise improving, altering or repairing real property
4 of others shall be subject to the taxes imposed by subsections (a) and
5 (b) of section 3 and section 6 hereof at the rate of 7%; provided,
6 however, that if such sales are made for use in performance of a
7 contract which is either of a fixed price not subject to change or
8 modification, or entered into pursuant to the obligation of a formal
9 written bid which cannot be altered or withdrawn, and, in either case,
10 such contract was entered into or such bid was made on or after
11 January 3, 1983 but prior to July 1, 1990, such sales shall be subject
12 to tax at the rate of 6%, but the vendor shall charge and collect from
13 the purchaser a tax on such sales at the rate of 7%.

14 (2) Sales made on or after July 1, 1992 to contractors,
15 subcontractors or repairmen of materials, supplies, or services for use
16 in erecting structures for others, or building on, or otherwise
17 improving, altering or repairing real property of others shall be subject
18 to the taxes imposed by subsections (a) and (b) of section 3 and
19 section 6 hereof at the rate of 6%; provided, however, that if such
20 sales are made for use in performance of a contract which is either of
21 a fixed price not subject to change or modification, or entered into
22 pursuant to the obligation of a formal written bid which cannot be
23 altered or withdrawn, and, in either case, such contract was entered
24 into or such bid was made on or after July 1, 1990, but prior to July
25 1, 1992, such sales shall be subject to tax at the rate of 7%.

26 (3) Sales made on or after the operative date of section 1 of
27 P.L. _____, c. _____ (now pending before the Legislature as this bill) to
28 contractors, subcontractors or repairmen of services for use in erecting
29 structures for others, or building on, or otherwise improving, altering
30 or repairing real property of others shall not be subject to the taxes
31 imposed by subsection (b) of section 3 or section 6 hereof; provided
32 however, that if such sales are made for use in performance of a
33 contract which is either of a fixed price not subject to change or
34 modification, or entered into pursuant to the obligation of a formal
35 written bid which cannot be altered or withdrawn, and, in either case,
36 such contract was entered into or such bid was made on or after July
37 July 1, 1992 but prior to the operative date of section 1 of P.L. _____, c.
38 (now pending before the Legislature as this bill), such sales shall be
39 subject to tax at the rate of 6%.

40 e. As to sales other than those referred to in d. above, the taxes
41 imposed under subsections (a) and (b) of section 3 and section 6
42 hereof, and the taxes imposed under subsection (f) of section 3 and
43 section 6 hereof, upon receipts received on or after July 1, 1990 and
44 on or before December 31, 1990, shall be at the rate in effect on June
45 30, 1990, in case of sales made or services rendered pursuant to a
46 written contract entered on or after January 3, 1983 but prior to July

1 1, 1990, and accompanied by a deposit or partial payment of the
2 contract price, except in the case of a contract which, in the usage of
3 trade, is not customarily accompanied by a deposit or partial payment
4 of the contract price, but the vendor shall charge and collect from the
5 purchaser on such sales at the rate of 7%, which tax shall be reduced
6 to the rate, if any, in effect on June 30, 1990, only by a claim for
7 refund filed by the purchaser with the director within 90 days after
8 receipt of said receipts and otherwise pursuant to the provisions of
9 section 20 of P.L.1966, c.30 (C.54:32B-20). A claim for refund shall
10 not be allowed if there has been no deposit or partial payment of the
11 contract price unless the claimant shall establish by clear and
12 convincing evidence that, in the usage of trade, such contracts are not
13 customarily accompanied by a deposit or partial payment of the
14 contract price.

15 f. (1) The taxes imposed under subsections (a), (b), (c) and (f) of
16 section 3 upon receipts received on or after July 1, 1990 but prior to
17 July 1, 1992 shall be at the rate, if any, in effect on June 30, 1990 in
18 the case of sales made or services rendered, if delivery of the property
19 which was the subject matter of the sale has been completed or such
20 services have been entirely rendered prior to July 1, 1990.

21 (2) The taxes imposed under subsections (a), (b), (c) and (f)
22 of section 3 upon receipts received on or after July 1, 1992 shall be at
23 the rate of 7% in the case of sales made or services rendered, where
24 delivery of the property which was the subject matter of the sale has
25 been completed or such services have been entirely rendered on or
26 after July 1, 1990 but prior to July 1, 1992.

27 (3) The taxes imposed under subsection (b) of section 3 upon
28 receipts received on or after the operative date of section 1 of P.L. ,
29 c. (now pending before the Legislature as this bill) shall be at the
30 rate of 6% in the case of sales made or services rendered, where
31 delivery of the property which was the subject matter of the sale has
32 been completed or such services have been entirely rendered on or
33 after July 1, 1992 but prior to the operative date of section 1 of
34 P.L. , c. (now pending before the Legislature as this bill).

35 g. The director is empowered to promulgate rules and regulations
36 to implement the provisions of this section.

37 (cf: P.L.1992, c.11, s.3)

38

39 3. This act shall take effect immediately, provided however that
40 section 1 shall remain inoperative until the first day of the second
41 month following enactment.

42

43

44

STATEMENT

45

46 This bill ends the imposition of the New Jersey sales and use tax on

1 installation, repair and maintenance services.

2 Currently, the sales and use tax is imposed on the cost of most
3 labor of installing, maintaining, servicing, and repairing tangible
4 personal property that is not held for business resale and on the cost
5 of most labor of maintaining, servicing or repairing real estate. While
6 there is an exception for the labor of building improvements to real
7 estate, most of the labor that businesses and individuals have
8 performed on their property is taxable.

9 This bill repeals the imposition of the sales tax on the cost of labor
10 to install, maintain, service, or repair personal property and the cost
11 of labor to maintain, service or repair real estate. The economic
12 rationale for this change is already present in the sales tax. While most
13 transfers of property are taxed under the sales tax, the law currently
14 exempts sales of machinery and equipment used in manufacturing and
15 refining, in the production and transmission of energy and utility
16 services, and in telecommunications. These are the basic business
17 inputs that are eventually taxed when transformed into goods for final
18 consumption, and taxation of these business inputs would discourage
19 business expansion and result in double taxation. The same problem
20 of double taxation exists for service inputs as for machinery inputs.
21 While in theory it is possible to separate services that are production
22 inputs from services that are consumer consumption, in practice it may
23 be impossible.

24 There is a further problem with the taxation of services that
25 discriminates against new and more efficient businesses. The taxation
26 of services that are business inputs is likely to lead a firm to hire
27 service suppliers (e.g., business equipment repairers, pipefitters,
28 machinists) as employees rather than acquire the taxable services of
29 outside firms. Larger firms and more established firms are more likely
30 to be able to do work "in-house" than smaller, newer businesses or
31 businesses that are trying to improve efficiency through out-sourcing
32 their requirements for specialized services. Because work performed
33 by an employee is not taxed under the current sales tax laws while
34 services purchased from outside contractors are taxed, the current
35 sales tax may act to discriminate against smaller or more efficient
36 business organizations.

37 This bill repeals the sales and use taxes imposed on repair and
38 maintenance services to eliminate an impediment to New Jersey
39 business location and expansion and to remove a provisions that can
40 discriminate against new small businesses. Although this repeal of an
41 existing tax will initially reduce State revenues, the improved business
42 climate will in time generate sufficient taxable income of other types
43 to offset any revenue lost.

1

2

3 Eliminates the sales and use tax on repair and maintenance services.