

ASSEMBLY, No. 2814

STATE OF NEW JERSEY

INTRODUCED MARCH 20, 1997

By Assemblyman FELICE

1 AN ACT concerning the imposition of the sales and use tax upon  
2 prepaid telephone calling cards, amending P.L.1966, c.30.

3

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.  
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, including a prepaid telephone calling card. A prepaid  
42 telephone calling card means the right to make telephone calls, paid  
43 for in advance of the exercise of that right, paid in incremental  
44 amounts, whether or not that right is represented by the transfer by the  
45 vendor to the purchaser of an item of corporeal personal property.

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

1 property by the purchaser thereof and includes, but is not limited to,  
2 the receiving, storage or any keeping or retention for any length of  
3 time, withdrawal from storage, any installation, any affixation to real  
4 or personal property, or any consumption of such property. Use also  
5 includes the exercise of any right or power over intrastate or interstate  
6 telecommunications.

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

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

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

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

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

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

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

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

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

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

46 (l) Occupant. A person who, for a consideration, uses, possesses,

1 or has the right to use or possess, any room in a hotel under any lease,  
2 concession, permit, right of access, license to use or other agreement,  
3 or otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 or electromagnetic methods, and all services and equipment provided  
2 in 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) purchases of telecommunications using a prepaid telephone  
24 calling card.

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.1995, c.184, s.1)

31

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

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

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

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

44 (1) Producing, fabricating, processing, printing or imprinting  
45 tangible personal property, performed for a person who directly or  
46 indirectly furnishes the tangible personal property, not purchased by

1 him for resale, upon which such services are performed.

2 (2) Installing tangible personal property, or maintaining, servicing,  
3 repairing tangible personal property not held for sale in the regular  
4 course of business, whether or not the services are performed directly  
5 or by means of coin-operated equipment or by any other means, and  
6 whether or not any tangible personal property is transferred in  
7 conjunction therewith, except (i) such services rendered by an  
8 individual who is engaged directly by a private homeowner or lessee  
9 in or about his residence and who is not in a regular trade or business  
10 offering his services to the public, (ii) such services rendered with  
11 respect to personal property exempt from taxation hereunder pursuant  
12 to section 13 of P.L.1980, c.105 (C.54:32B-8.1), (iii) (Deleted by  
13 amendment, P.L.1990, c.40), (iv) any receipts from laundering, dry  
14 cleaning, tailoring, weaving, pressing, shoe repairing and shoeshining  
15 and (v) services rendered in installing property which, when installed,  
16 will constitute an addition or capital improvement to real property,  
17 property or land.

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

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

31 (5) Advertising services, except advertising services for use  
32 directly and primarily for publication in newspapers and magazines and  
33 except for direct-mail advertising processing services in connection  
34 with distribution to out-of-State recipients.

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

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

40 Services otherwise taxable under paragraph (1) or (2) of this  
41 subsection (b) are not subject to the taxes imposed under this  
42 subsection, where the tangible personal property upon which the  
43 services were performed is delivered to the purchaser outside this  
44 State for use outside this State.

45 (c) Receipts from the sale of food and drink in or by restaurants,  
46 taverns, vending machines or other establishments in this State, or by

1 caterers, including in the amount of such receipts any cover, minimum,  
2 entertainment or other charge made to patrons or customers:

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

5 (2) In those instances where the vendor or any person whose  
6 services are arranged for by the vendor, after the delivery of the food  
7 or drink by or on behalf of the vendor for consumption off the  
8 premises of the vendor, serves or assists in serving, cooks, heats or  
9 provides other services with respect to the food or drink, except for  
10 meals especially prepared for and delivered to homebound elderly, age  
11 60 or older, and to disabled persons, or meals prepared and served at  
12 a group-sitting at a location outside of the home to otherwise  
13 homebound elderly persons, age 60 or older, and otherwise  
14 homebound disabled persons, as all or part of any food service project  
15 funded in whole or in part by government or as part of a private,  
16 nonprofit food service project available to all such elderly or disabled  
17 persons residing within an area of service designated by the private  
18 nonprofit organization;

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

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

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

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

39 (e) (1) Any admission charge, where such admission charge is in  
40 excess of \$0.75 to or for the use of any place of amusement in the  
41 State, including charges for admission to race tracks, baseball,  
42 football, basketball or exhibitions, dramatic or musical arts  
43 performances, motion picture theatres, except charges for admission  
44 to boxing, wrestling, kick boxing or combative sports exhibitions,  
45 events, performances or contests which charges are taxed under any  
46 other law of this State or under section 20 of P.L.1985, c.83

1 (C.5:2A-20), and, except charges to a patron for admission to, or use  
2 of, facilities for sporting activities in which such patron is to be a  
3 participant, such as bowling alleys and swimming pools. For any  
4 person having the permanent use or possession of a box or seat or  
5 lease or a license, other than a season ticket, for the use of a box or  
6 seat at a place of amusement, the tax shall be upon the amount for  
7 which a similar box or seat is sold for each performance or exhibition  
8 at which the box or seat is used or reserved by the holder, licensee or  
9 lessee, and shall be paid by the holder, licensee or lessee.

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

13 (f) The receipts from every sale, except for sales of prepaid  
14 telephone calling cards, and except for resale, of intrastate or interstate  
15 telecommunications charged to an address in this State, regardless of  
16 where the services are billed or paid.

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

18  
19 3. This act shall take effect on the first day of the third month  
20 following enactment.

## 21 22 23 STATEMENT 24

25 This bill clarifies the imposition of the New Jersey sales and use tax  
26 on the retail sales of prepaid telephone calling cards. The retail sale  
27 of a prepaid telephone calling card in this State will be subject to sales  
28 and use tax as a sale of tangible personal property. The tax will be  
29 collected by the retail vendor from the customer at the rate of 6%  
30 upon the retail charge imposed when the card is sold. Currently, the  
31 collection of the tax upon the use of a prepaid telephone calling card,  
32 to make a telephone call that is subject to the State's sales and use tax  
33 as a taxable telecommunications service, is the responsibility of the  
34 telecommunications service provider. The telecommunication provider  
35 has the duty of identifying the taxable calls that are made through the  
36 access number on the card and is supposed to collect the tax from the  
37 wholesaler, sponsor or retailer of the card after the taxable calls are  
38 made by the end user.

39 Several states tax the sales of prepaid telephone calling cards as a  
40 telecommunications service but have made a variety of different  
41 interpretations on when the sales tax is levied, who should remit the  
42 tax, and on what price the tax is to be paid. Under a variety of  
43 circumstances this approach has produced practical difficulties for  
44 states and the industry offering this telecommunications product. This  
45 is because the factors that different states generally use to determine  
46 the taxability of a telecommunications service, such as the geographic

1 point of origin, service address or billing address may not be  
2 ascertainable with the use of a prepaid card. This is also true as to the  
3 geographic point of destination with the use of a prepaid telephone  
4 calling card used for calls to mobile phones or pagers. Simplicity in  
5 tax collection and administration will be served by requiring vendors  
6 to collect the tax on the retail sale of the cards based upon the retail  
7 sale price.

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12 Clarifies sales and use tax imposition upon prepaid telephone calling  
13 cards as tax upon the sale of tangible personal property.