CHAPTER 162

AN ACT revising the taxation of gas and electric public utilities and certain telecommunications companies, and sales of electricity, natural gas and energy transportation service, in order to preserve certain revenues under transitions to more competitive markets in energy and telecommunications, revising and repealing various sections of statutory law.

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

1. Section 3 of P.L.1945, c.162 (C.54:10A-3) is amended to read as follows:

C.54:10A-3 Corporations exempt.

3. The following corporations shall be exempt from the tax imposed by this act:

(a) Corporations subject to a tax assessed upon the basis of gross receipts, or insurance premiums collected;

(b) Corporations which operate regular route autobus service within this State under operating authority conferred pursuant to R.S.48:4-3, provided, however, that such corporations shall not be exempt from the tax on net income imposed by section 5(c) of P.L.1945, c.162 (C.54:10A-5);

(c) Railroad, canal corporations, savings banks, production credit associations organized under the Farm Credit Act of 1933, agricultural cooperative associations incorporated or domesticated under or subject to chapter 13 of Title 4 of the Revised Statutes and exempt under Subtitle A, Chapter 1F, Part IV, Section 521 of the federal Internal Revenue Code (26 U.S.C. s.521), or building and loan or savings and loan associations;

(d) Cemetery corporations not conducted for pecuniary profit or any private shareholder or individual;

(e) Nonprofit corporations, associations or organizations established, organized or chartered, without capital stock, under the provisions of Title 15, 16 or 17 of the Revised Statutes, Title 15A of the New Jersey Statutes or under a special charter or under any similar general or special law of this or any other State, and not conducted for pecuniary profit of any private shareholders or individual;

(f) Sewerage and water corporations subject to a tax under the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) or any statute or law imposing a similar tax or taxes;

(g) Nonstock corporations organized under the laws of this State or of any other state of the United States to provide mutual ownership housing under federal law by tenants, provided, however, that the exemption hereunder shall continue only so long as the corporations remain subject to rules and regulations of the Federal Housing Authority and the Commissioner of the Federal Housing Authority holds membership certificates in the corporations and the corporate property is encumbered by a mortgage deed or deed of trust insured under the National Housing Act (48 Stat.1246) as amended by subsequent Acts of Congress. In order to be exempted under this subsection, corporations shall annually file a report on or before August 15 with the commissioner, in the form required by the commissioner, to claim such exemption, and shall pay a filing fee of $25.00;

(h) Corporations not for profit organized under any law of this State where the primary purpose thereof is to provide for its shareholders or members housing in a retirement community as the same is defined under the provisions of the "Retirement Community Full Disclosure Act," P.L.1969, c.215 (C.45:22A-1 et seq.);

(i) Corporations which are licensed as insurance companies under the laws of another state, including corporations which are surplus lines insurers declared eligible by the Commissioner of Banking and Insurance pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45) to insure risks within this State; and

(j) Municipal electric corporations or utilities that are in existence as of January 1, 1995 and were exempt from tax under the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.).

2. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to read as follows:

C.54:10A-4 Definitions.

4. For the purposes of this act, unless the context requires a different meaning:

(a) "Commissioner" shall mean the Director of the Division of Taxation of the State

Department of the Treasury.

(b) "Allocation factor" shall mean the proportionate part of a taxpayer's net worth or entire net income used to determine a measure of its tax under this act.

(c) "Corporation" shall mean any corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(d) "Net worth" shall mean the aggregate of the values disclosed by the books of the corporation for (1) issued and outstanding capital stock, (2) paid-in or capital surplus, (3) earned surplus and undivided profits, and (4) surplus reserves which can reasonably be expected to accrue to holders or owners of equitable shares, not including reasonable valuation reserves, such as reserves for depreciation or obsolescence or depletion. Notwithstanding the foregoing, net worth shall not include any deduction for the amount of the excess depreciation described in paragraph (2)(F) of subsection (k) of this section. The foregoing aggregate of values shall be reduced by 50% of the amount disclosed by the books of the corporation for investment in the capital stock of one or more subsidiaries, which investment is defined as ownership (1) of at least 80% of the total combined voting power of all classes of stock of the subsidiary entitled to vote and (2) of at least 80% of the total number of shares of all other classes of stock except nonvoting stock which is limited and preferred as to dividends. In the case of investment in an entity organized under the laws of a foreign country, the foregoing requisite degree of ownership shall effect a like reduction of such investment from the net worth of the taxpayer, if the foreign entity is considered a corporation for any purpose under the United States federal income tax laws, such as (but not by way of sole examples) for the purpose of supplying deemed paid foreign tax credits or for the purpose of status as a controlled foreign corporation. In calculating the net worth of a taxpayer entitled to reduction for investment in subsidiaries, the amount of liabilities of the taxpayer shall be reduced by such proportion of the liabilities as corresponds to the ratio which the excluded portion of the subsidiary values bears to the total assets of the taxpayer.

In the case of banking corporations which have international banking facilities as defined in subsection (n), the foregoing aggregate of values shall also be reduced by retained earnings of the international banking facility. Retained earnings means the earnings accumulated over the life of such facility and shall not include the distributive share of dividends paid and federal income taxes paid or payable during the tax year.

If in the opinion of the commissioner, the corporation's books do not disclose fair valuations the commissioner may make a reasonable determination of the net worth which, in his opinion, would reflect the fair value of the assets, exclusive of subsidiary investments as defined aforesaid, carried on the books of the corporation, in accordance with sound accounting principles, and such determination shall be used as net worth for the purpose of this act.

(e) "Indebtedness owing directly or indirectly" shall include, without limitation thereto, all indebtedness owing to any stockholder or shareholder and to members of his immediate family where a stockholder and members of his immediate family together or in the aggregate own 10% or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes.

(f) "Investment company" shall mean any corporation whose business during the period covered by its report consisted, to the extent of at least 90% thereof of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patents, patent rights and other securities for its own account, but this shall not include any corporation which: (1) is a merchant or a dealer of stocks, bonds and other securities, regularly engaged in buying the same and selling the same to customers; or (2) had less than 90% of its average gross assets in New Jersey, at cost, invested in stocks, bonds, debentures, mortgages, notes, patents, patent rights or other securities or consisting of cash on deposit during the period covered by its report; or (3) is a banking corporation or a financial business corporation as defined in the Corporation Business Tax Act.

(g) "Regulated investment company" shall mean any corporation which for a period covered by its report, is registered and regulated under the Investment Company Act of 1940 (54 Stat. 789), as amended.

(h) "Taxpayer" shall mean any corporation required to report or to pay taxes, interest or

penalties under this act.

(i) "Fiscal year" shall mean an accounting period ending on any day other than the last day of December on the basis of which the taxpayer is required to report for federal income tax purposes.

(j) Except as herein provided, "privilege period" shall mean the calendar or fiscal accounting period for which a tax is payable under this act.

(k) "Entire net income" shall mean total net income from all sources, whether within or without the United States, and shall include the gain derived from the employment of capital or labor, or from both combined, as well as profit gained through a sale or conversion of capital assets. For the purpose of this act, the amount of a taxpayer's entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its federal income tax; provided, however, that in the determination of such entire net income,

(1) Entire net income shall exclude for the periods set forth in paragraph (2)(F)(i) of this subsection, any amount, except with respect to qualified mass commuting vehicles as described in section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately prior to January 1, 1984, which is included in a taxpayer's federal taxable income solely as a result of an election made pursuant to the provisions of paragraph (8) of that section.

(2) Entire net income shall be determined without the exclusion, deduction or credit of:

(A) The amount of any specific exemption or credit allowed in any law of the United States imposing any tax on or measured by the income of corporations;

(B) Any part of any income from dividends or interest on any kind of stock, securities or indebtedness, except as provided in paragraph (5) of subsection (k) of this section;

(C) Taxes paid or accrued to the United States, a possession or territory of the United States, a state, a political subdivision thereof, or the District of Columbia on or measured by profits or income, or business presence or business activity, or the tax imposed by this act, or any tax paid or accrued with respect to subsidiary dividends excluded from entire net income as provided in paragraph (5) of subsection (k) of this section;

(D) (Deleted by amendment, P.L.1985, c.143.)

(E) (Deleted by amendment, P.L.1995, c.418.)

(F) (i) The amount by which depreciation reported to the United States Treasury Department for property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar accounting years beginning on and after the effective date of P.L.1993, c.172, for purposes of computing federal taxable income in accordance with section 168 of the Internal Revenue Code in effect after December 31, 1980, exceeds the amount of depreciation determined in accordance with the Internal Revenue Code provisions in effect prior to January 1, 1981, but only with respect to a taxpayer's accounting period ending after December 31, 1981; provided, however, that where a taxpayer's accounting period begins in 1981 and ends in 1982, no modification shall be required with respect to this paragraph (F) for the report filed for such period with respect to property placed in service during that part of the accounting period which occurs in 1981. The provisions of this subparagraph shall not apply to assets placed in service prior to January 1, 1998 of a gas, gas and electric, and electric public utility that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998.

(ii) For the periods set forth in subparagraph (F)(i) of this subsection, any amount, except with respect to qualified mass commuting vehicles as described in section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately prior to January 1, 1984, which the taxpayer claimed as a deduction in computing federal income tax pursuant to a qualified lease agreement under paragraph (8) of that section.

The director shall promulgate rules and regulations necessary to carry out the provisions of this section, which rules shall provide, among others, the manner in which the remaining life of property shall be reported.

(G) (i) The amount of any civil, civil administrative, or criminal penalty or fine, including a penalty or fine under an administrative consent order, assessed and collected for a violation of a State or federal environmental law, an administrative consent order, or an environmental

ordinance or resolution of a local governmental entity, and any interest earned on the penalty or fine, and any economic benefits having accrued to the violator as a result of a violation, which benefits are assessed and recovered in a civil, civil administrative, or criminal action, or pursuant to an administrative consent order. The provisions of this paragraph shall not apply to a penalty or fine assessed or collected for a violation of a State or federal environmental law, or local environmental ordinance or resolution, if the penalty or fine was for a violation that resulted from fire, riot, sabotage, flood, storm event, natural cause, or other act of God beyond the reasonable control of the violator, or caused by an act or omission of a person who was outside the reasonable control of the violator.

(ii) The amount of treble damages paid to the Department of Environmental Protection pursuant to subsection a. of section 7 of P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the department in removing, or arranging for the removal of, an unauthorized discharge upon failure of the discharger to comply with a directive from the department to remove, or arrange for the removal of, the discharge.

(H) The amount of any sales and use tax paid by a utility vendor pursuant to section 71 of P.L.1997, c.162.

(3) The commissioner may, whenever necessary to properly reflect the entire net income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without being limited to the method of accounting employed by the taxpayer.

(4) There shall be allowed as a deduction from entire net income of a banking corporation, to the extent not deductible in determining federal taxable income, the eligible net income of an international banking facility determined as follows:

(A) The eligible net income of an international banking facility shall be the amount remaining after subtracting from the eligible gross income the applicable expenses;

(B) Eligible gross income shall be the gross income derived by an international banking facility, which shall include, but not be limited to, gross income derived from:

(i) Making, arranging for, placing or carrying loans to foreign persons, provided, however, that in the case of a foreign person which is an individual, or which is a foreign branch of a domestic corporation (other than a bank), or which is a foreign corporation or foreign partnership which is controlled by one or more domestic corporations (other than banks), domestic partnerships or resident individuals, all the proceeds of the loan are for use outside of the United States;

(ii) Making or placing deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries) or foreign branches of the taxpayers or with other international banking facilities;

(iii) Entering into foreign exchange trading or hedging transactions related to any of the transactions described in this paragraph; or

(iv) Such other activities as an international banking facility may, from time to time, be authorized to engage in;

(C) Applicable expenses shall be any expense or other deductions attributable, directly or indirectly, to the eligible gross income described in subparagraph (B) of this paragraph.

(5) Entire net income shall exclude 100% of dividends which were included in computing such taxable income for federal income tax purposes, paid to the taxpayer by one or more subsidiaries owned by the taxpayer to the extent of the 80% or more ownership of investment described in subsection (d) of this section. With respect to other dividends, entire net income shall not include 50% of the total included in computing such taxable income for federal income tax purposes.

(6) (A) Net operating loss deduction. There shall be allowed as a deduction for the taxable year the net operating loss carryover to that year.

(B) Net operating loss carryover. A net operating loss for any taxable year ending after June 30, 1984 shall be a net operating loss carryover to each of the seven years following the year of the loss. The entire amount of the net operating loss for any taxable year (the "loss year") shall be carried to the earliest of the taxable years to which the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of the loss over the sum of the entire net income, computed without the exclusions

permitted in paragraphs (4) and (5) of this subsection or the net operating loss deduction provided by subparagraph (A) of this paragraph, for each of the prior taxable years to which the loss may be carried.

(C) Net operating loss. For purposes of this paragraph the term "net operating loss" means the excess of the deductions over the gross income used in computing entire net income without the net operating loss deduction provided for in subparagraph (A) of this paragraph and the exclusions in paragraphs (4) and (5) of this subsection.

(D) Change in ownership. Where there is a change in 50% or more of the ownership of a corporation because of redemption or sale of stock and the corporation changes the trade or business giving rise to the loss, no net operating loss sustained before the changes may be carried over to be deducted from income earned after such changes. In addition where the facts support the premise that the corporation was acquired under any circumstances for the primary purpose of the use of its net operating loss carryover, the director may disallow the carryover.

(7) The entire net income of gas, electric and gas and electric public utilities and municipal electric corporations that were subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting the New Jersey depreciation allowance for federal tax depreciation with respect to assets placed in service prior to January 1, 1998. For gas, electric, and gas and electric public utilities, and municipal electric corporations that were subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998, the New Jersey depreciation allowance shall be computed as follows: All depreciable assets placed in service prior to January 1, 1998 shall be considered a single asset account. The New Jersey tax basis of this depreciable asset account shall be an amount equal to the carryover adjusted basis for federal income tax purposes on December 31, 1997 of all depreciable assets in service on December 31, 1997, increased by the excess, of the "net carrying value," defined to be adjusted book basis of all assets and liabilities, excluding deferred income taxes, recorded on the public utility's books of account on December 31, 1997, over the carryover adjusted basis for federal income tax purposes on December 31, 1997 of all assets and liabilities owned by the gas, electric, or gas and electric public utility or municipal electric corporation as of December 31, 1997. "Books of account" for gas, gas and electric, and electric public utilities and municipal electric corporations means the uniform system of accounts as promulgated by the Federal Energy Regulatory Commission and adopted by the Board of Public Utilities. The following adjustments to entire net income shall be made pursuant to this section:

(A) Depreciation for property placed in service prior to January 1, 1998 shall be adjusted as follows:

(i) Depreciation for federal income tax purposes shall be disallowed in full.

(ii) A deduction shall be allowed for the New Jersey depreciation allowance. The New Jersey depreciation allowance shall be computed for the single asset account described above based on the New Jersey tax basis as adjusted above as if all assets in the single asset account were first placed in service on January 1, 1998. Depreciation shall be computed using the straight line method over a thirty-year life. A full year’s depreciation shall be allowed in the initial tax year. No half-year convention shall apply. The depreciable basis of the single account shall be reduced by the adjusted federal tax basis of assets sold, retired, or otherwise disposed of during any year on which gain or loss is recognized for federal income tax purposes as described in subparagraph (B) of this paragraph.

(B) Gains and losses on sales, retirements and other dispositions of assets placed in service prior to January 1, 1998 shall be recognized and reported on the same basis as for federal income tax purposes.

(C) The Director of the Division of Taxation shall promulgate regulations describing the methodology for allocating the single asset account in the event that a portion of the utility's operations are separated, spun-off, transferred to a separate company or otherwise disaggregated.

(8) In the case of taxpayers that are gas, electric, gas and electric, or telecommunication public utilities as defined pursuant to subsection (q) of this section, the director shall have authority to promulgate rules and issue guidance correcting distortions and adjusting timing differences resulting from the adoption of P.L.1997, c.162 (C.54:10A-5.25 et al.).

(l) "Real estate investment trust" shall mean any corporation, trust or association qualifying and electing to be taxed as a real estate investment trust under federal law.

(m) "Financial business corporation" shall mean any corporate enterprise which is (1) in substantial competition with the business of national banks and which (2) employs moneyed capital with the object of making profit by its use as money, through discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; buying and selling exchange; making of or dealing in secured or unsecured loans and discounts; dealing in securities and shares of corporate stock by purchasing and selling such securities and stock without recourse, solely upon the order and for the account of customers; or investing and reinvesting in marketable obligations evidencing indebtedness of any person, copartnership, association or corporation in the form of bonds, notes or debentures commonly known as investment securities; or dealing in or underwriting obligations of the United States, any state or any political subdivision thereof, or of a corporate instrumentality of any of them. This shall include, without limitation of the foregoing, business commonly known as industrial banks, dealers in commercial paper and acceptances, sales finance, personal finance, small loan and mortgage financing businesses, as well as any other enterprise employing moneyed capital coming into competition with the business of national banks; provided that the holding of bonds, notes, or other evidences of indebtedness by individual persons not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with the business of national banks, shall not be deemed financial business. Nor shall "financial business" include national banks, production credit associations organized under the Farm Credit Act of 1933 or the Farm Credit Act of 1971, Pub.L. 92-181 (12 U.S.C. s.2091 et seq.), stock and mutual insurance companies duly authorized to transact business in this State, security brokers or dealers or investment companies or bankers not employing moneyed capital coming into competition with the business of national banks, real estate investment trusts, or any of the following entities organized under the laws of this State: credit unions, savings banks, savings and loan and building and loan associations, pawnbrokers, and State banks and trust companies.

(n) "International banking facility" shall mean a set of asset and liability accounts segregated on the books and records of a depository institution, United States branch or agency of a foreign bank, or an Edge or Agreement Corporation that includes only international banking facility time deposits and international banking facility extensions of credit as such terms are defined in section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the board of governors of the Federal Reserve System, 12 CFR Part 204, effective December 3, 1981. In the event that the United States enacts a law, or the board of governors of the Federal Reserve System adopts a regulation which amends the present definition of international banking facility or of such facilities' time deposits or extensions of credit, the Commissioner of Banking and Insurance shall forthwith adopt regulations defining such terms in the same manner as such terms are set forth in the laws of the United States or the regulations of the board of governors of the Federal Reserve System. The regulations of the Commissioner of Banking and Insurance shall thereafter provide the applicable definitions.

(o) "S corporation" means a corporation included in the definition of an "S corporation" pursuant to section 1361 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1361.

(p) "New Jersey S corporation" means a corporation that is an S corporation; which has made a valid election pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S corporation continuously since the effective date of the valid election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22).

(q) "Public Utility" means "public utility" as defined in R.S.48:2-13.

C.54:10A-5.25 Installment payments of estimated corporation business tax for certain public utilities.

3. a. Gas, electric, gas and electric and telecommunications and municipal electric corporations public utilities that were subject to a public utility tax either pursuant to P.L.1940, c.5 (C.54:30A-17 et seq.) or P.L.1940, c.4 (C.54:30A-49 et seq.) as of December 31, 1996, shall be required to file and remit installment payments of estimated corporation business tax pursuant to the provisions of subsection (f) of section 15 of P.L.1945, c.162 (C.54:10A-15) during the

calendar year in which those taxpayers first become subject to the corporation business tax, provided however, that the provisions of subsection d. of section 5 of P.L.1981, c.184 (C.54:10A-15.4) shall not apply to those taxpayers during that year.

b. A telecommunications public utility that makes an advance payment of its applicable gross receipts and franchise tax to the State in the final year of the existence of such tax and treated such advance payment as an asset on its books and records for that year shall be entitled to a credit against its corporation business tax liability equal to the amount of such advance payment. Any unused portion of the credit may be carried forward in full to future privilege periods, provided however, that in any one privilege period the total amount of such credit which the taxpayer may utilize to pay its corporation business tax liability shall not exceed $5,000,000. Any gas, electric, or gas and electric public utility taxpayer that has made any advance credit payment pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.), shall not be eligible for a credit for such amount or any part thereof to offset any liability under P.L.1945, c.162. Under no circumstances may any portion of an unused $5,000,000 per year credit be subject to refund.

c. All amounts remitted under P.L.1945, c.162 by any gas, electric, gas and electric or telecommunication public utility or municipal electric corporation shall be separately accounted for by the State Treasurer.

d. A public utility, including a municipal electric corporation with gas, electric or telecommunications operations or any of them shall file with the Board of Public Utilities amendments to its existing tariffs, contracts or schedules of service designating the appropriate apportionment of its corporation business tax liability in these tariffs, contracts or schedules so that rates will not be increased for any class of ratepayer as a result of the transition to this tax. The board may permit gas, electric, gas and electric or telecommunications public utilities or municipal electric corporations to establish new tariffs, contracts or schedules, or to amend existing tariffs, contracts or schedules, as necessary to comply with the provisions of this act.

e. A qualified taxpayer may claim a corporation business tax credit in accordance with the provisions of section 53 of P.L.1997, c.162 (C.54:30A-117) and for local energy utility franchise taxes paid and subject to the limitations of subparagraph (C) of paragraph (2) of subsection (k) of section 4 of P.L.1945, c.162 (C. 54:10A-4).

f. A municipal electric corporation or utility that is required to file a corporation business tax return that is not required to file a federal corporation tax return shall file with the director a pro-forma federal corporation tax return at the same time it files its corporation business tax return. The director may promulgate rules and regulations and issue guidance with respect to all issues related to the pro-forma federal corporation tax return.

C.54:10A-5.26 Determination of taxpayer's liability.

4. If, in the first full privilege period commencing after the assessment under the Transitional Energy Facility Assessment Act, established in sections 36 through 49 of P.L.1997, c.162 (C.54:30A-100 through C.54:30A-113), has terminated, or in any subsequent privilege period thereafter, a taxpayer that was formerly subject to the Transitional Energy Facility Assessment Act and whose liability under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), for such privilege period after the assessment under the Transitional Energy Facility Assessment Act has terminated, is less than the taxpayer's liability for the first full privilege period as a taxpayer under P.L.1945, c.162, then that taxpayer or corporate or noncorporate legal successor or assignee whether through any reorganization, sale, bankruptcy, consolidation, merger, or other transaction or occurrence of any kind without limitation, shall pay as its liability under P.L.1945, c.162 for any of those privilege periods after the assessment under the Transitional Energy Facility Assessment Act has terminated an amount equal to the higher of:

a. The amount of its corporation business tax liability for that privilege period as would otherwise be computed under P.L.1945, c.162; or

b. The amount of corporation business tax it would be liable to pay for such privilege period if its gas or electric operations were accounted for on a separate basis, pursuant to regulations as may be promulgated by the director.

5. The title of P.L.1940, c.5 is amended to read as follows:

Title amended.

An act for the taxation of the gross receipts of sewerage and water corporations, using or occupying the public streets, highways, roads or other public places, for the exemption from taxation of the franchises, stock and certain property of such corporations, and for the taxation of certain of the property of such corporations not so exempted from taxation.

6. Section 1 of P.L.1940, c.5 (C.54:30A-49) is amended to read as follows:

C.54:30A-49 Purpose of act.

1. The purpose of this act is to provide a complete scheme and method for the taxation of sewerage and water corporations using or occupying the public streets, highways, roads or other public places, to exempt from taxation other than imposed by this act the franchises, stock, and certain property of such corporations and for the taxation of the property of such corporations not so exempted from taxation; and the reimbursement to the State of certain costs and expenses incurred in the imposition of such taxes.

7. Section 2 of P.L.1940, c.5 (C.54:30A-50) is amended to read as follows:

C.54:30A-50 Definitions.

2. Definitions. As used in this act--unless the context otherwise requires:

(a) "Taxpayer" means any corporation subject to taxation under the provisions of this act.

(b) "Real estate" means lands and buildings of taxpayers, but it does not include pipes, conduits, bridges, viaducts, dams and reservoirs (except that the lands upon which dams and reservoirs are situated are real estate), machinery, apparatus and equipment, notwithstanding any attachment thereof to lands or buildings.

(c) "Gross receipts" means all receipts from the taxpayer's business over, in, through or from the whole of its lines or mains but does not include any sum or sums of money received by the taxpayer in payment for water sold and furnished to another public utility which is also subject to the payment of a tax based upon its gross receipts, or to a gas, electric or gas and electric public utility subject to the payment of taxes pursuant to P.L.1997, c.162 (C.54:10A-5.25 et al.), nor any sum or sums of money received by the taxpayer in payment for water sold or furnished that is used to generate electricity that is sold for resale or to an end user other than the one on-site end user upon whose property is located a co-generation facility or self-generation unit that generated the electricity or upon the property purchased or leased from the one on-site end user by the person owning the co-generation facility or self-generation unit if such property is contiguous to the user's property and is the property upon which is located a co-generation facility or self-generation unit that generated the electricity, nor in the case of a sewerage corporation, an amount equal to any sum or sums of money payable by such sewerage corporation to any board, commission, department, branch, agency or authority of the State or of any county or municipality, for the treatment, purification or disposal of sewage or other wastes, nor in the case of a water purveyor, the amount which represents the water tax imposed by section 11 of P.L.1983, c.443 (C.58:12A-21) and which is included in the tariff altered pursuant to section 6 of P.L.1983, c.443 (C.58:12A-17).

(d) (Deleted by amendment, P.L.1997, c.162.)

(e) (Deleted by amendment, P.L.1997, c.162.)

(f) (Deleted by amendment, P.L.1997, c.162.)

(g) "Public street, highway, road or other public place" includes any street, highway, road or other public place which is open and used by the public, even though the same has not been formally accepted as a public street, highway, road, or other public place. However, for purposes of computing the tax in connection with lines or mains installed prior to February 19, 1991, "public street, highway, road or other public place" shall not mean or include non-restricted roadways, such as extended residential, commercial or recreational facility driveways, or dead end streets, cul-de-sacs or alleys which are connected to public roadways and

are for access to or the use of supermarkets, shopping malls, planned communities and the connecting roads within or around the above facilities whether these roadways shall be located on public or private property, unless such shall have been determined a "public street, highway, road or other public place" for the purposes of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to February 19, 1991.

(h) "Service connections" means the pipes connecting the building or place where the service or commodity supplied by the taxpayer is used or delivered, or is made available for use or delivery, with a supply line or supply main in the street, highway, road, or other public place, or with such supply line or supply main on private property.

(i) "State Tax Commissioner" or "director" means the Director of the Division of Taxation in the Department of the Treasury.

(j) (Deleted by amendment, P.L.1997, c.l62.)

(k) (Deleted by amendment, P.L.1997, c.162.)

(l) (Deleted by amendment, P.L.1997, c.162.)

(m) (Deleted by amendment, P.L.1997, c.162.)

(n) (Deleted by amendment, P.L.1997, c.162.)

8. Section 3 of P.L.1940, c.5 (C.54:30A-51) is amended to read as follows:

C.54:30A-51 Taxation of sewerage, water corporations.

3. Sewerage and water corporations using or occupying public streets, highways, roads or other public places, and their property and franchises, shall be subject to taxation only as in this act provided. Any such corporation shall not be subject to any other taxes upon its property, franchises, stock or gross receipts, and the shares of stock of any such corporation shall not be taxed in the hands of shareholders.

9. Section 4 of P.L.1940, c.5 (C.54:30A-52) is amended to read as follows:

C.54:30A-52 Taxation of real estate.

4. All the real estate as herein defined, owned or held by any taxpayer shall be assessed and taxed at local rates in the manner provided by law for the taxation of similar property owned by other corporations or individuals, and all proceedings for appeal, review and collection available to municipalities and other corporations or individuals with respect to similar property shall be applicable.

10. Section 6 of P.L.1940, c.5 (C.54:30A-54) is amended to read as follows:

C.54:30A-54 Excise tax for sewerage, water corporation; rate; certain amount computed; average tax.

6. Every sewerage and water corporation using or occupying the public streets, highways, roads, or other public places in this State shall, annually, pay excise taxes for the privilege of exercising its franchises and using the public streets, highways, roads or other public places in this State, as follows:

(a) A tax computed at the rate of 5% of such proportion of the gross receipts of such taxpayer for the preceding calendar year as the length of the lines or mains in this State, located along, in or over any public street, highway, road or other public place, exclusive of service connections, bears to the whole length of its lines or mains, exclusive of service connections. In case the gross receipts of any such taxpayer for any calendar year shall not exceed $50,000.00 the tax on such taxpayer for such calendar year shall be computed at the rate of 2% instead of at the rate of 5%.

(b) A tax at the rate of 7 % upon the gross receipts of such taxpayer for the preceding calendar year from its business over, on, in, through or from its lines or mains in the State of New Jersey.

(c) In addition to the excise taxes imposed in subsections (a) and (b) hereof, every sewerage and water corporation which is subject to the taxes imposed thereunder shall also pay to the

State excise taxes for the franchise to operate and conduct business within the State and to use the public streets, highways, roads or other public places in the State as follows:

(1) A tax computed at the rate of 0.625% of such proportion of the gross receipts of such taxpayer for the preceding calendar year as the length of the lines or mains in this State, located along, in or over any public street, highway, road or other public place, exclusive of service connections, bears to the whole length of its lines or mains, exclusive of service connections. In case the gross receipts of any such taxpayer for any calendar year shall not exceed $50,000.00 the tax on such taxpayer for such calendar year shall be computed at the rate of 0.25% instead of at the rate of 0.625%.

(2) A tax at the rate of 0.9375% upon the gross receipts of such taxpayer for the preceding calendar year from its business over, on, in, through or from its lines or mains in the State of New Jersey.

11. Section 8 of P.L.1963, c.42 (C.54:30A-54.1) is amended to read as follows:

C.54:30A-54.1 Computation, certification of excise taxes.

8. The director shall annually, on or before April 1, 1964, and April 1 in each year thereafter, compute the excise taxes payable to the State as provided in subsection (c) of section 6 hereof. Within five days after making such computation, the director shall certify such taxes and the taxes provided for in section 2 of this act as a partial payment to the respective taxpayers who shall make payment thereof to the director on or before May 1 next succeeding.

12. Section 2 of P.L.1971, c.108 (C.54:30A-54.1a) is amended to read as follows:

C.54:30A-54.1a Amount, payment of tax.

2. a. For sewerage and water corporations, on or before May 1, 1971, except as hereinafter provided, and on or before May 1 of each year thereafter, every person, copartnership, association or corporation subject to the excise tax imposed by section 6 of P.L.1940, c.5 (C.54:30A-54) shall pay to the director an amount equal to 1/2 of the tax payable under section 6 of P.L.1940, c.5 (C.54:30A-54) upon its gross receipts determined thereunder for the preceding calendar year. Each such payment shall be in addition to the tax payable under section 6 of P.L.1940, c.5 (C.54:30A-54) and shall be considered as a partial payment of the tax which will become due under said section upon the following May 1. The additional taxes due on or before May 1, 1971 shall be payable in two equal installments. With respect to the additional taxes herein, the first installment shall be payable on May 1, 1971 and the second installment thereof shall be payable on or before June 15, 1971.

In the calculation of the tax due in accordance with section 6 of P.L.1940, c.5 (C.54:30A-54) in the year 1972 and each applicable year thereafter, every person, copartnership, association or corporation subject to tax hereunder shall be entitled to a credit in the amount of the tax paid hereunder as a partial payment in the preceding calendar year and shall be entitled to the return, or credit against taxes due and payable in the next year, of any amount so paid which shall be found to be in excess of the total amount payable in accordance with section 6 of P.L.1940, c.5 (C.54:30A-54).

b. (Deleted by amendment, P.L.1997, c.162.)

13. Section 14 of P.L.1991, c.184 (C.54:30A-54.4) is amended to read as follows:

C.54:30A-54.4 Advance payment; computation; due date.

14. a. For sewerage and water corporations, on or before April 1, 1979 and on or before June 1 in each year thereafter, the director shall compute an advance payment equal in amount to 55% of the increase in taxes due under subsections (a) and (b) of section 6 of P.L.1940, c.5 (C.54:30A-54) during the preceding calendar year over the taxes due under such subsections in the calendar year immediately preceding that year. The advance payment shall not be considered for the purpose of determining the amount of the increase. Each such payment shall be in addition to the taxes payable under section 6 of P.L.1940, c.5 (C.54:30A-54) and section 2 of

P.L.1971, c.108 (C.54:30A-54.1a) and shall be considered as a partial payment of the tax to become due and payable in the following year.

b. Every taxpayer subject to tax under section 6 of P.L.1940, c.5 (C.54:30A-54) shall be required to remit to the State for the use of the State as an advance payment, an amount equal to the amount as computed in subsection a. of this section payable in two installments as follows: 60% on May 1, 1979 and 40% on August 1, 1979.

c. In the year 1980 and in each year thereafter an advance payment pursuant to subsection a. of this section shall be paid by each taxpayer subject to subsection a. of this section in the manner provided for by law for payment of the taxes due under section 6 of P.L.1940, c.5 (C.54:30A-54).

d. (Deleted by amendment, P.L.1997, c.162.)

14. Section 7 of P.L.1940, c.5 (C.54:30A-55) is amended to read as follows:

C.54:30A-55 Statements by taxpayers operating public utilities.

7. (A) Every taxpayer shall on or before the first day of September, 1941 and on or before the first day of September in each year thereafter return to the Director of the Division of Taxation a statement in such form, manner, and detail as the Director of the Division of Taxation shall require, showing, as of the first day of July of such year:

(1) Deleted by amendment, P.L.1997, c.162.)

(2) The length of the taxpayer's lines and mains along, in, on or over any public street, highway, road or other public place in this State, exclusive of service connections; and

(3) The whole length of the taxpayer's lines and mains, exclusive of service connections.

(4) (Deleted by amendment, P.L.1997,c.162.)

(B) Every taxpayer shall on or before February 1, 1998, and on or before February 1 in each year thereafter return to the Director of the Division of Taxation a statement showing:

(1) The gross receipts for the preceding calendar year from the business over, on, in, through or from the taxpayer's lines and mains in this State, stated separately for each class of business; and

(2) The gross receipts for the preceding calendar year from the business over, on, in, through or from the whole of the taxpayer's lines and mains.

(3) (Deleted by amendment, P.L.1997, c.162.)

(C) The statements herein provided for shall be subscribed and sworn to by the president, a vice-president or chief officer of the corporation making such return; any taxpayer or refusing or neglecting to make the statements herein provided for shall forfeit and pay to the State of New Jersey the sum of one hundred dollars ($100) per day for each day of such refusal or neglect, to be recovered in an action at law in the name of the State and which, when recovered, shall be paid into the State Treasury. It shall be the duty of the Director of the Division of Taxation to certify any such default to the Attorney General of the State who, thereupon, shall prosecute an action at law for such penalty.

(D) The Director of the Division of Taxation shall audit and verify the statements filed by taxpayers and whenever and in such respects as he shall deem necessary or advisable. The Director of the Division of Taxation may require any taxpayer to supply additional data and information in such form and detail as he shall request, whenever he may deem it necessary or helpful, for the proper performance of his duties under this act.

15. Section 14 of P.L.1940, c.5 (C.54:30A-62) is amended to read as follows:

C.54:30A-62 Certification of excise taxes; statements to taxpayer.

14. Within five days after making the computation of the excise taxes under subsections (a) and (b) of section 6 of P.L.1940, c.5 (C.54:30A-54) the Director of the Division of Taxation shall certify to the State Treasurer the amount of such taxes. At the same time, the director shall issue directly to each taxpayer statements of taxes due, and payments with respect thereto shall be remitted by each taxpayer to the director in the following manner: 35% thereof within 15 days after the date of certification of the computation by the director, 35% thereof on or before

August 15 and 30% thereof on or before November 15. The administration, collection and enforcement of the taxes payable by each taxpayer under subsections (a) and (b) of section 6 of P.L.1940, c.5 (C.54:30A-54) and any advance payment or payment of estimated tax liability required with regard to those taxes shall be subject to the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., to the extent that the provisions of that law are not inconsistent with the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.).

The director may, by regulation, require that any payment of tax made, on or before the date established pursuant to this section for the payment, shall be by electronic funds transfer to such depositories as the State Treasurer shall designate pursuant to section 1 of P.L.1956, c.174 (C.52:18-16.1). A payment by electronic funds transfer shall be deemed to be made on the date the payment is received by the designated depository. The form and content of the electronic funds transfer message, the circumstances under which an electronic funds transfer shall serve as a substitute for the filing of another form of return, the means by which taxpayers will be provided with acknowledgments of payments, and the classes of taxpayers subject to the electronic funds transfer requirement shall be as prescribed by the director.

For the purposes of this section "electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephone, or computer or magnetic tape for the purpose of ordering, instructing or authorizing a financial institution to debit or credit an account.

16. Section 15 of P.L.1940, c.5 (C.54:30A-63) is amended to read as follows:

C.54:30A-63 Statements to director.

15. When any corporation subject to taxation under this act shall acquire the rights, property and franchises of using and occupying public streets, highways, roads or other public places in this State of persons, copartnerships, associations or corporations then subject to an excise tax based upon its gross receipts, and shall retain such rights, property and franchises at the end of the calendar year in which such acquisition occurs, then and in such case on or before February 1 of the succeeding year, such acquiring corporation shall return to the Director of the Division of Taxation in the manner and form required by this act and in addition to the statements of gross receipts and length of lines to be filed under this act, a statement showing the gross receipts from the business over, on, in, through or from the lines or mains of the persons, copartnerships, associations or corporations whose rights, property and franchises were acquired as aforesaid, from January 1 of the year in which such property was acquired to the date of such acquisition, together with a statement showing the length of lines or mains as of July 1 of the year in which such acquisition took place, as hereinbefore required, unless such information has previously been supplied and filed with the Director of the Division of Taxation. The total of the gross receipts as shown in both of said statements to the Director of the Division of Taxation, or as otherwise ascertained by him, shall be used in ascertaining and fixing the excise tax imposed by section 6(a) of this act upon such acquiring corporation, and if said rights, property and franchises were acquired from a corporation subject to taxation under this act, then the total of the gross receipts as shown in both of said statements to the Director of the Division of Taxation, or as otherwise ascertained by him, shall be used in ascertaining and fixing the excise tax imposed by section 6(b) of this act upon such acquiring corporation.

The total of the gross receipts as shown in both of said statements to the Director of the Division of Taxation, or as otherwise ascertained by him, shall be used in ascertaining and fixing the excise tax imposed by section 6(c) of this act upon such acquiring corporation.

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

C.54:32B-2 Definitions.

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

(a) Person. Person includes an individual, partnership, society, association, joint stock company, corporation, public corporation or public authority, estate, receiver, trustee, assignee,

referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of the foregoing.

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

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

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

(e) Retail sale. (1) A sale of tangible personal property to any person for any purpose, other than (A) for resale either as such or as converted into or as a component part of a product produced for sale by the purchaser, including the conversion of natural gas into another intermediate or end product, other than electricity or thermal energy, produced for sale by the purchaser, or (B) for use by that person in performing the services subject to tax under subsection (b) of section 3 where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax.

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

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

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

(4) The term retail sales does not include:

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

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

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

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

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

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

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

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

(g) Tangible personal property. Corporeal personal property of any nature including energy.

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

right or power over utility service.

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

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

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

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

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

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

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

(G) A person who sells, stores, delivers or transports energy to users or customers in this State whether by mains, lines or pipes located within this State or by any other means of delivery.

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

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

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

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

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

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

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

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

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

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

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

(t) Place of amusement. Any place where any facilities for entertainment, amusement, or

sports are provided.

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

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

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

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

(y) "Property and services the use of which is subject to tax" shall include: (1) all property sold to a person within the State, whether or not the sale is made within the State, the use of which property is subject to tax under section 6 or will become subject to tax when such property is received by or comes into the possession or control of such person within the State; (2) all services rendered to a person within the State, whether or not such services are performed within the State, upon tangible personal property the use of which is subject to tax under section 6 or will become subject to tax when such property is received by or comes into possession or control of such person within the State; (3) intrastate or interstate telecommunications charged to a service address in this State; (4) (Deleted by amendment, P.L.1995, c.184); (5) energy sold, exchanged or delivered in this State for use in this State; and (6) utility service sold, exchanged or delivered in this State for use in this State.

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

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

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

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

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

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

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

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

(5) charges subject to the local calling rate paid by inserting coins into a coin operated telecommunications device available to the public.

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

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

(ff) "Natural gas" means any gaseous fuel distributed through a pipeline system.

(gg) "Energy" means natural gas or electricity.

(hh) "Utility service" means the transportation or transmission of natural gas or electricity by means of mains, wires, lines or pipes, to users or customers.

(ii) "Self-generation unit" means a facility located on the user's property, or on property purchased or leased from the user by the person owning the self-generation unit and such property is contiguous to the user's property, which generates electricity to be used only by that user on the user's property and is not transported to the user over wires that cross a property line or public thoroughfare unless the property line or public throughfare merely bifurcates the user's or self-generation unit owner's otherwise contiguous property.

(jj) "Co-generation facility" means a facility the primary purpose of which is the sequential production of electricity and steam or other forms of useful energy which are used for industrial or commercial heating or cooling purposes and which is designated by the Federal Energy Regulatory Commission, or its successor, as a "qualifying facility" pursuant to the provisions of the "Public Utility Regulatory Policies Act of 1978," Pub.L. 95-617.

(kk) "Non-utility" means a company engaged in the sale, exchange or transfer of natural gas that was not subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to December 31, 1997.

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

C.54:32B-3 Imposition of sales tax.

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

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

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

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

(2) Installing tangible personal property, or maintaining, servicing, repairing tangible personal property not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith, except (i) such services rendered by an individual who is engaged directly by a private homeowner or lessee in or about his residence and who is not in a regular trade or business offering his services to the

public, (ii) such services rendered with respect to personal property exempt from taxation hereunder pursuant to section 13 of P.L.1980, c.105 (C.54:32B-8.1), (iii) (Deleted by amendment, P.L.1990, c.40), (iv) any receipts from laundering, dry cleaning, tailoring, weaving, pressing, shoe repairing and shoeshining and (v) services rendered in installing property which, when installed, will constitute an addition or capital improvement to real property, property or land.

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

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

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

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

(7) Utility service provided to persons in this State, any right or power over which is exercised in this State.

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

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

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

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

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

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

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

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

(d) The rent for every occupancy of a room or rooms in a hotel in this State, except that the

tax shall not be imposed upon (1) a permanent resident, or (2) where the rent is not more than at the rate of $2.00 per day.

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

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

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

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

C.54:32B-6 Imposition of compensating use tax.

6. Unless property or services have already been or will be subject to the sales tax under this act, there is hereby imposed on and there shall be paid by every person a use tax for the use within this State of 6%, except as otherwise exempted under this act, (A) of any tangible personal property purchased at retail, including energy, provided however, that electricity consumed by the generating facility that produced it shall not be subject to tax, (B) of any tangible personal property manufactured, processed or assembled by the user, if items of the same kind of tangible personal property are offered for sale by him in the regular course of business, or if items of the same kind of tangible personal property are not offered for sale by him in the regular course of business and are used as such or incorporated into a structure, building or real property, (C) of any tangible personal property, however acquired, where not acquired for purposes of resale, upon which any taxable services described in paragraphs (1) and (2) of subsection (b) of section 3 of P.L.1966, c.30 (C.54:32B-3) have been performed, (D) of interstate or intrastate telecommunications described in subsection (f) of section 3 of P.L.1966, c.30, (E) (Deleted by amendment, P.L.1995, c.184), and (F) of utility service provided to persons in this State for use in this State, provided however, that utility service used by the facility that provides the service shall not be subject to tax. For purposes of clause (A) of this section, the tax shall be at the applicable rate, as set forth hereinabove, of the consideration given or contracted to be given for such property or for the use of such property, but excluding any credit for property of the same kind accepted in part payment and intended for resale, plus the cost of transportation, except where such cost is separately stated in the written contract, if any, and on the bill rendered to the purchaser, provided however, that there shall be no exclusion for the cost of the utility service. For the purposes of clause (B) of this section, the tax shall be at the applicable rate, as set forth hereinabove, of the price at which items of the same kind of tangible personal property are offered for sale by the user, or if items of the same kind of tangible personal property are not offered for sale by the user in the regular course of business and are used as such or incorporated into a structure, building or real property the tax shall be at the applicable rate, as set forth hereinabove, of the consideration given or contracted to be given for the tangible personal property manufactured, processed or assembled by the user into the tangible personal property the use of which is subject to use tax pursuant to this section, and the mere storage, keeping, retention or withdrawal from storage of tangible personal property by the person who manufactured, processed or assembled such property shall not be deemed a taxable use by him. For purposes of clause (C) of this section, the tax shall be at the applicable

rate, as set forth hereinabove, of the consideration given or contracted to be given for the service, including the consideration for any tangible personal property transferred in conjunction with the performance of the service, plus the cost of transportation, except where such cost is separately stated in the written contract, if any, and on the bill rendered to the purchaser. For the purposes of clause (D) of this section, the tax shall be at the applicable rate on the charge made by the telecommunications service provider. For purposes of clause (F) of this section, the tax shall be at the applicable rate on the charge made by the utility service provider.

20. Section 17 of P.L.1966, c.30 (C.54:32B-7) is amended to read as follows:

C.54:32B-7 Special rules for computing receipts and consideration.

17. (a) The retail sales tax imposed under subsection (a) of section 3 and the compensating use tax imposed under section 6, when computed in respect to tangible personal property wherever manufactured, processed or assembled and used by such manufacturer, processor or assembler in the regular course of business within this State, shall be based on the price at which items of the same kind of tangible personal property are offered for sale by him.

(b) Tangible personal property, which has been purchased by a resident of the State of New Jersey outside of this State for use outside of this State and subsequently becomes subject to the compensating use tax imposed under this act, shall be taxed on the basis of the purchase price of such property, provided, however:

(1) That where a taxpayer affirmatively shows that the property was used outside such State by him for more than six months prior to its use within this State, such property shall be taxed on the basis of current market value of the property at the time of its first use within this State. The value of such property, for compensating use tax purposes, may not exceed its cost.

(2) That the compensating use tax on such tangible personal property brought into this State (other than for complete consumption or for incorporation into real property located in this State) and used in the performance of a contract or subcontract within this State by a purchaser or user for a period of less than six months may be based, at the option of the taxpayer, on the fair rental value of such property for the period of use within this State.

(c) Leased tangible personal property which has been purchased outside this State for lease outside of this State and subsequently becomes subject to the compensating use tax imposed under this act shall be taxed on the basis of the purchase price of such property, provided however, that the compensating use tax on such property brought into and used within this State may be based, at the option of the lessor, on the total of the lease payments attributable to the lease of that property attributable to the period of the lease remaining after first use in this State.

(d) Unless tangible personal property purchased for lease has already been subject to the sales tax imposed under subsection (a) of section 3 or the compensating use tax imposed under section 6, the use tax computed with respect to such property, in the discretion of the director, may be assessed against the lessee or sub-lessee and shall be based on the total of the periodic payments required under the lease. The fact that the lessee has accepted in good faith the certificate of the lessor, in the form prescribed by the director, and the fact that the tax imposed on property purchased for lease in this act has been paid may be considered by the director, but shall not be deemed conclusive if good faith issuance or acceptance of such certificate is in question.

(e) The purchase of energy shall be subject to the compensating use tax imposed under section 6 on the basis of the purchase price of the energy, including any charges for utility service.

21. Section 19 of P.L.1980, c.105 (C.54:32B-8.7) is amended to read as follows:

C.54:32B-8.7 Utilities.

19. Receipts from the following are exempt from the tax imposed under the Sales and Use Tax Act: sales of gas other than natural gas, water, steam, or fuel delivered to consumers through mains, lines, pipe, or in containers or bulk.

22. Section 23 of P.L.1980, c.105 (C.54:32B-8.11) is amended to read as follows:

C.54:32B-8.11 Transportation charges, exception.

23. Receipts from charges for the transportation of persons or property, except of energy, are exempt from the tax imposed under the Sales and Use Tax Act.

23. Section 25 of P.L.1980, c.105 (C.54:32B-8.13) is amended to read as follows:

C.54:32B-8.13 Sales, use tax exempt, machinery, apparatus, etc.

25. Receipts from the following are exempt from the tax imposed under the Sales and Use Tax Act:

a. Sales of machinery, apparatus or equipment for use or consumption directly and primarily in the production of tangible personal property by manufacturing, processing, assembling or refining;

b. Sales of machinery, apparatus or equipment for use or consumption directly and primarily in the production, generation, transmission or distribution of gas, electricity, refrigeration, steam or water for sale or in the operation of sewerage systems;

c. Sales of telephones, telephone lines, cables, central office equipment or station apparatus, or other machinery, equipment or apparatus, or comparable telegraph equipment to a service provider subject to the jurisdiction of the Board of Public Utilities or the Federal Communications Commission, for use directly and primarily in receiving at destination or initiating, transmitting and switching telephone, telegraph or interactive telecommunications service for sale to the general public;

d. Sales of machinery, apparatus, equipment, building materials, or structures or portions thereof, used directly and primarily for cogeneration in a cogeneration facility. As used in this subsection, "cogeneration facility" means a facility the primary purpose of which is the sequential production of electricity and steam or other forms of useful energy which are used for industrial or commercial heating or cooling purposes and which is designated by the Federal Energy Regulatory Commission, or its successor, as a "qualifying facility" pursuant to the provisions of the "Public Utility Regulatory Policies Act of 1978," Pub.L.95-617. The Director of the Office of Energy in the Department of Environmental Protection, in consultation with the Director of the Division of Taxation, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations establishing technical specifications for eligibility for the exemption provided in this subsection;

e. Sales of machinery, apparatus or equipment, including transponders, earth stations, microwave dishes, transmitters and receivers which have a useful life exceeding one year, other than that used in the construction or operation of towers, to a commercial broadcaster operating under a broadcasting license issued by the Federal Communications Commission or to a provider of cable/satellite television program services who may or may not operate under a broadcasting license issued by the Federal Communications Commission for use or consumption directly and primarily in the production or transmission of radio or television information transmitted, delivered or archived through any medium or method.

The exemptions granted under this section shall not be construed to apply to sales, otherwise taxable, of machinery, equipment or apparatus whose use is incidental to the activities described in subsections a., b., c., d. and e. of this section.

The exemptions granted in this section shall not apply to energy, motor vehicles, or to parts with a useful life of one year or less or tools or supplies used in connection with the machinery, equipment or apparatus described in this section.

24. Section 26 of P.L.1980, c.105 (C.54:32B-8.14) is amended to read as follows:

C.54:32B-8.14 Sales of tangible personal property for use in R&D exempt; exceptions.

26. Receipts from sales of tangible personal property, except energy, purchased for use or consumption directly and exclusively in research and development in the experimental or laboratory sense are exempt from the tax imposed under the Sales and Use Tax Act. Such research and development shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer

surveys, advertising, promotions or research in connection with literary, historical or similar projects.

25. Section 28 of P.L.1980, c.105 (C.54:32B-8.16) is amended to read as follows:

C.54:32B-8.16 Tangible personal property for use on farms, exceptions.

28. Receipts from sales of tangible personal property except automobiles, except property incorporated in a building or structure, and except energy, for use and consumption directly and exclusively in the production for sale of tangible personal property on farms, including stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, ranches, nurseries, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards are exempt from the tax imposed under the Sales and Use Tax Act.

C.54:32B-8.46 Receipts from sale, exchange, delivery, use of electricity; purchase or use of natural gas or utility service.

26. a. Receipts from the sale, exchange, delivery or use of electricity are exempt from the tax imposed under the Sales and Use Tax Act if the electricity:

(1) Is sold by a municipal electric utility in existence as of December 31, 1995 and exempt from the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.), within its municipal boundaries except if the customer is located within a franchise area served by an electric public utility other than the municipal electric utility;

(2) Was generated by a facility located on the user's property or property purchased or leased from the user by the person owning the co-generator and such property is contiguous to the user's property, and the electricity was consumed by the one on-site end user on the user's property, and was not transported to the user over wires that cross a property line or public thoroughfare unless the property line or public thoroughfare merely bifurcated the user's or co-generator owner's otherwise contiguous property or the electricity was consumed by an affiliated user on the same site, or by a non-affiliated user on the same site with an electric distribution system which is integrated and interconnected with the user on or before March 10, 1997; the director may promulgate rules and regulations and issue guidance with respect to all issues related to affiliated users; or

(3) Is sold for resale.

b. Receipts from the purchase or use of the following are exempt from the tax imposed under the Sales and Use Tax Act:

(1) Natural gas or utility service that is used to generate electricity that is sold for resale or to an end user other than the end user upon whose property is located a co-generation facility or self-generation unit that generated the electricity or upon the property purchased or leased from the end user by the person owning the co-generation facility or self-generation unit if such property is contiguous to the user's property and is the property upon which is located a co-generation facility or self-generation unit that generated the electricity; and

(2) Natural gas and utility service that is used for co-generation at any site at which a co-generation facility was in operation on or before March 10, 1997, or for which an application for an operating permit or a construction permit and a certificate of operation in order to comply with air quality standards under P.L.1954, c.212 (C.26:2C-1 et seq.) has been filed with the Department of Environmental Protection on or before March 10, 1997, to produce electricity for use on that site.

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

C.54:32B-9 Exempt organizations.

9. (a) Except as to motor vehicles sold by any of the following, any sale, service or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and use taxes imposed under this act:

(1) The State of New Jersey, or any of its agencies, instrumentalities, public authorities, public corporations (including a public corporation created pursuant to agreement or compact

with another State) or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services or property of a kind not ordinarily sold by private persons;

(2) The United States of America, and any of its agencies and instrumentalities, insofar as it is immune from taxation where it is the purchaser, user or consumer, or where it sells services or property of a kind not ordinarily sold by private persons;

(3) The United Nations or any international organization of which the United States of America is a member where it is the purchaser, user or consumer, or where it sells services or property of a kind not ordinarily sold by private persons.

(b) Except as otherwise provided in this section any sale or amusement charge by or to any of the following or any use or occupancy by any of the following, where such sale, charge, use or occupancy is directly related to the purposes for which the following have been organized, shall not be subject to the sales and use taxes imposed under this act:

(1) Any corporation, association, trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals, or as a volunteer fire company, rescue, ambulance, first aid or emergency company or squad, and an association of parents and teachers of an elementary or secondary public or private school exempt under the provisions of section 9, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

(c) (1) Nothing in this section shall exempt the sale of a motor vehicle by an organization described in subsection (b)(1) of this section or retail sales of tangible personal property by any shop or store operated by such organization from the taxes imposed hereunder, unless the purchaser is an organization exempt under this section.

(2) Nothing in this section shall exempt the sale or use of energy or utility service to or by an organization described in subsection (a)(1) or (b)(1) of this section.

(d) Any organization enumerated in subsection (b)(1) hereof shall not be entitled to the exemption herein granted unless it has complied with such requirements for obtaining a tax immunity authorization as may be provided in this act.

(e) Where any organization described in subsection (b)(1) hereof carries on its activities in furtherance of the purposes for which it was organized, in premises in which, as part of said activities, it operates a hotel, occupancy of rooms in the premises and rents therefrom received by such corporation or association shall not be subject to tax hereunder.

(f)(1) Except as provided in paragraph (2) of this subsection, any admissions all of the proceeds of which inure exclusively to the benefit of the following organizations shall not be subject to any of the taxes imposed under subsection (e) of section 3:

(A) an organization described in subsection (a)(1) or (b) of this section;

(B) a society or organization conducted for the sole purpose of maintaining symphony orchestras or operas and receiving substantial support from voluntary contributions;

(C) national guard organizations, posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units or societies are organized in this State, and if no part of their net earnings inures to the benefit of any private stockholder or individual; or

(D) a police or fire department of a political subdivision of the State, or a volunteer fire company, ambulance, first aid, or emergency company or squad, or exclusively to a retirement, pension or disability fund for the sole benefit of members of a police or fire department or to a fund for the heirs of such members.

(2) The exemption provided under paragraph (1) of this subsection shall not apply in the case of admissions to:

(A) Any athletic game or exhibition unless the proceeds shall inure exclusively to the benefit of elementary or secondary schools or unless in the case of an athletic game between two elementary or secondary schools, the entire gross proceeds from such game shall inure to the benefit of one or more organizations described in subsection (b)(1) of this section;

(B) Carnivals, rodeos, or circuses in which any professional performer or operator participates for compensation;

(3) Admission charges for admission to the following places or events shall not be subject to any of the taxes imposed under subsection (e) of section 3:

(A) Any admission to agricultural fairs if no part of the net earnings thereof inures to the benefit of any stockholders or members of the association conducting the same; provided the proceeds therefrom are used exclusively for the improvement, maintenance and operation of such agricultural fairs.

(B) Any admission to a home or garden which is temporarily open to the general public as a part of a program conducted by a society or organization to permit the inspection of historical homes and gardens; provided no part of the net earnings thereof inures to the benefit of any private stockholder or individual.

(C) Any admissions to historic sites, houses and shrines, and museums conducted in connection therewith, maintained and operated by a society or organization devoted to the preservation and maintenance of such historic sites, houses, shrines and museums; provided no part of the net earnings thereof inures to the benefit of any private stockholder or individual.

28. Section 11 of P.L.1966, c.30 (C.54:32B-11) is amended to read as follows:

C.54:32B-11 Exemptions from use tax.

11. Exemptions from use tax. The following uses of property shall not be subject to the compensating use tax imposed under this act:

(1) In respect to the use of property used by the purchaser in this State prior to July 1, 1966.

(2) In respect to the use of property purchased by the user while a nonresident of this State, except in the case of tangible personal property which the user, in the performance of a contract, incorporates into real property located in the State or except in the case of tangible personal property purchased for lease. A person while engaged in any manner in carrying on in this State any employment, trade, business or profession, not entirely in interstate or foreign commerce, shall not be deemed a nonresident with respect to the use in this State of property in such employment, trade, business or profession.

(3) In respect to the use of property or services upon the sale of which the purchaser would be expressly exempt from the taxes imposed under subsection (a) or (b) of section 3.

(4) In respect to the use of property which is converted into or becomes a component part of a product produced for sale or for market sampling by the purchaser.

(5) In respect to the use of paper in the application of newspapers and periodicals.

(6) In respect to the use of property or services to the extent that a retail sales or use tax was legally due and paid thereon, without any right to a refund or credit thereof, to any other State or jurisdiction within any other state but only when it is shown that such other State or jurisdiction allows a corresponding exemption with respect to the sale or use of tangible personal property or services upon which such a sales tax or compensating use tax was paid to this State. To the extent that the tax imposed by this act is at a higher rate than the rate of tax in the first taxing jurisdiction, this exemption shall be inapplicable and the tax imposed by section 6 of this act shall apply to the extent of the difference in such rates.

(7) In respect to the use of natural gas by an eligible person, other than a co-generation facility, as defined in section 34 of P.L.1997,c.162 (C.54:32B-14.1), up to the base level of volume as defined in section 34 of P.L.1997, c.162, but only as long as the eligible person remains at the same physical site that was occupied on December 31, 1995.

29. Section 12 of P.L.1966, c.30 (C.54:32B-12) is amended to read as follows:

C.54:32B-12 Collection of tax from customer.

12. (a) Every person required to collect the tax shall collect the tax from the customer when collecting the price, service charge, amusement charge or rent to which it applies. If the customer is given any sales slip, invoice, receipt or other statement or memorandum of the price, service charge, amusement charge or rent paid or payable, the tax shall be stated, charged and

shown separately on the first of such documents given to him. The tax shall be paid to the person required to collect it as trustee for and on account of the State.

(b) For the purpose of the proper administration of this act and to prevent evasion of the tax hereby imposed, it shall be presumed that all receipts for property or services of any type mentioned in subsections (a), (b) and (c) of section 3, all rents for occupancy of the type mentioned in subsection (d) of said section, and all amusement charges of any type mentioned in subsection (e) of said section, are subject to tax until the contrary is established, and the burden of proving that any such receipt, amusement charge or rent is not taxable hereunder shall be upon the person required to collect tax or the customer. Unless a vendor shall have taken from the purchaser a certificate, signed by the purchaser and bearing his name and address and the number of his registration certificate, to the effect that the property or service was purchased for resale or the purchaser prior to taking delivery, furnishes to the vendor any affidavit, statement or additional evidence, documentary or otherwise, which the director may require demonstrating that the purchaser is an exempt organization described in section 9(b)(1), the sale shall be deemed a taxable sale at retail. Provided however, the director may, in his discretion, authorize a purchaser, who acquires tangible personal property or services under circumstances which make it impossible at the time of acquisition to determine the manner in which the tangible personal property or services will be used, to pay the tax directly to the director and waive the collection of the tax by the vendor. Provided, further, the director shall authorize any contractor, subcontractor or repairman who acquires tangible personal property consisting of materials and supplies for use by him in erecting structures for others, or building on, or otherwise improving, altering, or repairing real property of others, to pay the tax directly to the director and waive the collection of the tax by the vendor. Provided further, the director shall authorize any eligible person, as defined in section 34 of P.L.1997, c.162 (C.54:32B-14.1), who purchases natural gas from a non-utility on and after January 1, 1998 through December 31, 2002, to pay the tax on the commodity directly to the director and waive the collection of the tax by the vendor. No such authority shall be granted or exercised except upon application to the director, and the issuance by the director of a direct payment permit. If a direct payment permit is granted, its use shall be subject to conditions specified by the director, and the payment of tax on all acquisitions pursuant to the permit shall be made directly to the director by the permit holder.

(c) The director may provide by regulation that the tax upon receipts from sales on the installment plan may be paid on the amount of each installment and upon the date when such installment is due. He may also provide by regulation for the exclusion from taxable receipts, amusement charges or rents of amounts representing sales where the contract of sale has been canceled, the property returned or the receipt, charge or rent has been ascertained to be uncollectible or, in the case the tax has been paid upon such receipt, charge or rent, for refund or credit of the tax so paid.

30. Section 14 of P.L.1966, c.30 (C.54:32B-14) is amended to read as follows:

C.54:32B-14 Liability for tax.

14. (a) Every person required to collect any tax imposed by this act shall be personally liable for the tax imposed, collected or required to be collected under this act. Any such person shall have the same right in respect to collecting the tax from his customer or in respect to non-payment of the tax by the customer as if the tax were a part of the purchase price of the property or service, amusement charge or rent, as the case may be, and payable at the same time; provided, however, that the director shall be joined as a party in any action or proceeding brought to collect the tax.

(b) Where any customer has failed to pay a tax imposed by this act to the person required to collect the same, then in addition to all other rights, obligations and remedies provided, such tax shall be payable by the customer directly to the director and it shall be the duty of the customer to file a return with the director and to pay the tax to him within 20 days of the date the tax was required to be paid.

(c) The director may, whenever he deems it necessary for the proper enforcement of this act,

provide by regulation that customers shall file returns and pay directly to the director any tax herein imposed, at such times as returns are required to be filed and payment over made by persons required to collect the tax.

(d) No person required to collect any tax imposed by this act shall advertise or hold out to any person or to the public in general, in any manner, directly or indirectly, that the tax is not considered as an element in the price, amusement charge or rent payable by the customer, or that he will pay the tax, that the tax will not be separately charged and stated to the customer or that the tax will be refunded to the customer. Upon written application duly made and proof duly presented to the satisfaction of the director showing that in his particular business it would be impractical for the vendor to separately charge the tax to the customer, the director may waive the application of the requirement herein as to such vendor.

(e) All vendors of energy or utility service shall include the tax imposed by the "Sales and Use Tax Act" within the purchase price of the tangible personal property or service.

31. Section 20 of P.L.1983, c.303 (C.52:27H-79) is amended to read as follows:

C.52:27B-79 Sales to enterprise zone business tax-exempt.

20. Retail sales of personal property (except motor vehicles and energy) and sales of services (except telecommunications and utility services) to a qualified business for the exclusive use or consumption of such business within an enterprise zone are exempt from the taxes imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

32. Section 21 of P.L.1983, c.303 (C.52:27H-80) is amended to read as follows:

C.52:27H-80 Sales tax exemption for retail sales.

21. Receipts of retail sales, except retail sales of motor vehicles, of alcoholic beverages as defined in the "Alcoholic Beverage Tax Law," R.S.54:41-1 et seq., of cigarettes as defined in the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.), of manufacturing machinery, equipment or apparatus, and of energy, made by a certified vendor from a place of business owned or leased and regularly operated by the vendor for the purpose of making retail sales, and located in a designated enterprise zone established pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et al.), are exempt to the extent of 50% of the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

Any vendor, which is a qualified business having a place of business located in a designated enterprise zone, may apply to the Director of the Division of Taxation in the Department of the Treasury for certification pursuant to this section. The director shall certify a vendor if he shall find that the vendor owns or leases and regularly operates a place of business located in the designated enterprise zone for the purpose of making retail sales, that items are regularly exhibited and offered for retail sale at that location, and that the place of business is not utilized primarily for the purpose of catalogue or mail order sales. The certification under this section shall remain in effect during the time the business retains its status as a qualified business meeting the eligibility criteria of section 27 of P.L.1983, c.303 (C.52:27H-86). However, the director may at any time revoke a certification granted pursuant to this section if he shall determine that the vendor no longer complies with the provisions of this section.

Notwithstanding the provisions of this act to the contrary, except as may otherwise be provided by section 7 of P.L.1983, c.303 (C.52:27H-66), the authority may, in its discretion, determine whether or not the provisions of this section shall apply to any enterprise zone designated after the effective date of P.L.1985, c.142 (C.52:27H-66 et al.); provided, however, that the authority may make such a determination only where the authority finds that the award of an exemption of 50 percent of the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) will not have any adverse economic impact upon any other urban enterprise zone.

Notwithstanding any other provisions of law to the contrary, except as provided in subsection b. of section 6 of P.L.1996, c.124 (C.13:1E-116.6), after first depositing 10 percent of the gross amount of all revenues received from the taxation of retail sales made by certified vendors from

business locations in designated enterprise zones to which this exemption shall apply into the account created in the name of the authority in the enterprise zone assistance fund pursuant to section 29 of P.L.1983, c.303 (C.52:27H-88), the remaining 90 percent shall be deposited immediately upon collection by the Department of the Treasury, as follows:

a. In the first five-year period during which the State shall have collected reduced rate revenues within an enterprise zone, all such revenues shall be deposited in the enterprise zone assistance fund created pursuant to section 29 of P.L.1983, c.303 (C.52:27H-88);

b. In the second five-year period during which the State shall have collected reduced rate revenues within an enterprise zone, 66 2/3% of all those revenues shall be deposited in the enterprise zone assistance fund, and 33 1/3% shall be deposited in the General Fund;

c. In the third five-year period during which the State shall have collected reduced rate revenues within an enterprise zone, 33 1/3% of all those revenues shall be deposited in the enterprise zone assistance fund, and 66 2/3% shall be deposited in the General Fund;

d. In the final five-year period during which the State shall have collected reduced rate revenues within an enterprise zone, but not to exceed the life of the enterprise zone, all those revenues shall be deposited in the General Fund.

Commencing on the effective date of P.L.1993, c.144, all revenues in any enterprise zone to which the provisions of this section have been extended prior to the enactment of P.L.1993, c.144 shall be deposited into the enterprise zone assistance fund until there shall have been deposited all revenues into that fund for a total of five full years, as set forth in subsection a. of this section. The State Treasurer then shall proceed to deposit funds into the enterprise zone assistance fund according to the schedule set forth in subsections b. through d. of this section, beginning at the point where the enterprise zone was located on that schedule on the effective date of P.L.1993, c.144. No enterprise zone shall receive the deposit benefit granted by any one subsection of this section for more than five cumulative years.

The revenues required to be deposited in the enterprise zone assistance fund under this section shall be used for the purposes of that fund and for the uses prescribed in section 29 of P.L.1983, c.303 (C.52:27H-88), subject to annual appropriations being made for those purposes and uses.

C.54:32B-8.47 Energy and utility service, certain, exempt sales.

33. a. Receipts from the sale or use of energy and utility service to or by a utility corporation or person that was subject to the provisions of P.L.1940, c.4 (C.54:30A-16 et seq.), as of April 1, 1997, or currently or formerly subject to taxation pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.), for their own use and consumption, are exempt from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

b. Receipts from the sale or use of energy and utility service made pursuant to a contract described in section 59 of P.L.1997, c.162 (C.48:2-21.31) shall be exempt from the tax imposed under the "Sales and Use Tax Act."

C.54:32B-14.1 Tax treatment of certain purchases of natural gas, "eligible person" defined.

34. a. As used in this act, "eligible person" means any person other than a co-generation facility as defined in this act whose last purchase and delivery of natural gas on or before December 31, 1995 was from a non-utility, or a cogeneration facility which ceased operation in 1996 and subsequently began to purchase non-utility natural gas,and who satisfactorily documents such purchase to the director.

b. An eligible person shall determine and certify to the director, and satisfactorily document to the director, a base level of volume as of December 31, 1995 or December 31, 1996 in the case of a co-generation facility which ceased operation in 1996 and subsequently began to purchase non-utility natural gas, which shall be equal to the average annual volume of natural gas units purchased by the eligible person from any non-utility and delivered, but such computation shall not include any purchases delivered prior to January 1, 1992, provided however, that the base level of volume of an eligible person other than a co-generation facility shall be reduced on an annual basis beginning in 1999 by multiplying the base level of volume as of December 31, 1995 by the following reduction ratios: 0.8 in 1999, 0.6 in 2000, 0.4 in 2001 and 0.2 in 2002. In 2003 and thereafter there shall be no exemption for purchases of natural gas

by an eligible person other than a co-generation facility.

c. For purchases of natural gas from a non-utility on and after January 1, 1998 through December 31, 2002, an eligible person shall issue a direct payment certificate to the non-utility and shall pay any sales or use tax due pursuant to the method prescribed by this section. Unless specifically exempt from the tax imposed under the Sales and Use Tax Act pursuant to subsection b. of section 26 of P.L.1997, c.162 (C.54:32B-8.46), utility service is subject to the tax imposed pursuant to section 3 of P.L.1966, c.30 (C.54:32B-3).

d. On an annual basis, each eligible person, other than a co-generation facility, shall be required to file with the director:

(1) An energy volume report, which shall contain a certification as to the gross annual volume of gas (in units) purchased and delivered in the previous 12-month period from any non-utility and utility, the purchase price per unit, and any additional information that the director deems necessary to effectuate the provisions herein; and

(2) An energy use tax return, wherein any tax due on natural gas purchased from a utility or non-utility shall be reported and remitted as follows:

(a) If the certified gross annual volume (in units) was purchased solely from a non-utility, and does not exceed the base level of volume, no sales and use tax shall be due on purchases of natural gas in that calendar year;

(b) If the certified gross annual volume (in units) was purchased solely from a non-utility, and exceeds the base level of volume, the sales and use tax shall be remitted on the purchases of natural gas that exceed the base level of volume, based on the purchase price of the gas; and

(c) If the certified gross annual volume in units was purchased from both a utility and non-utility vendor or solely from a utility vendor, the director shall refund to the eligible person all sales taxes paid on purchases not in excess of the base level of volume. The eligible person shall remit to the director all unpaid sales taxes on the purchases of natural gas that exceed the base level of volume, based on the purchase price.

C.54:32B-20.1 Credits for certain payments by remitters; no credit for certain tax payments.

35. a. A corporation that was subject to tax pursuant to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to January 1, 1998 shall be entitled to claim a credit against remittances of sales and use tax after July 1, 1998 and after August 1 in each year thereafter pursuant to the provisions of section 53 of P.L.1997, c.162 (C.54:30A-117).

b. Any gas, electric, or telecommunications public utility taxpayer that has made any advance credit payment pursuant to P.L.1940, c.4 (C.54:30A-16 et seq.) or P.L.1940, c.5 (C. 54:30A-49 et seq.) shall not be eligible for a credit for such amount or any part thereof to offset any liability under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

C.54:30A-100 Short title; purpose of act.

36. a. Sections 36 through 49 of this act shall be known and may be cited as the "Transitional Energy Facility Assessment Act."

b. The purpose of the Transitional Energy Facility Assessment Act is to provide a complete framework and method for the assessment of a transitional energy facility assessment on gas and electric light, heat and power corporations, municipal or otherwise,that were subject to tax pursuant to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to January 1, 1998, or the corporate or non-corporate legal successor or assignee whether through any reorganization, sale, bankruptcy, consolidation, merger or other transaction or occurrence of any kind without limitation, and on municipal electric corporations or utilities that were in existence as of January 1, 1995 but only those corporations' or utilities' sales of electricity that are not exempt from sales tax under paragraph (1) of subsection a. of section 26 of P.L.1997, c.162 (C.54:32B-8.46).

C.54:30A-101 Definitions relative to Transitional Energy Facility Assessment Act.

37. As used in this act, unless the context requires otherwise:

“Base year” means, for the purpose of determining the assessments to be made under this act, calendar year 1996 for those gas and electric light, heat and power corporations that were subject to tax pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) prior to January 1, 1998, and for

those remitters identified subsequent to 1998 the first year of subjectivity to this act shall be the base year;

"Base year liability" means each remitter's unit energy tax liability in the base year pursuant to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) adjusted to reflect the remitter's total unit energy tax rates in effect on January 1, 1997 and local energy utility franchise taxes paid;

"Base year transitional energy facility assessment" means an amount equal to the base year liability less:

a. The pro forma corporation business tax that would have been booked by the remitter in the base year if the changes in the remitter's rates implemented pursuant to section 67 of P.L.1997, c.162 (C.48:2-21.34) had been in effect in that year. This amount shall reflect adjustments to the determination of the corporation business tax, if any, filed in accordance with section 67 of P.L.1997, c.162 (C.48:2-21.34);

b. The pro forma sales and use tax that would have been collected by the remitter in the base year if the changes in the remitter's rates implemented pursuant to section 67 of P.L.1997, c.162 (C.48:2-21.34) had been in effect in that year. The amount shall reflect adjustments to the sales and use tax, if any, filed in accordance with section 67 of P.L.1997, c.162 (C.48:2-21.34); and

c. The amount of tax derived pursuant to the customer-specific tax classifications described in section 59 of P.L.1997, c.162 (C.48:2-21.31);

"Board" means the Board of Public Utilities of the State of New Jersey;

"First year" means the year immediately following the initial year;

"Initial year" means the year immediately following the base year;

“Remitter” means any corporation subject to assessment under this act; and

"Sales and use tax" means the sales and use tax liability computed on sales and use of energy and utility service as defined in section 2 of P.L.1966, c.30 (C.54:32B-2).

C.54:30A-102 Establishment of remitter's transition energy facility assessment.

38. Each remitter's transitional energy facility assessment shall be established pursuant to section 67 of P.L.1997, c.162 (C.48:2-21.34). Under no circumstances shall an assessment be made under this act for any year commencing after December 31, 2002.

C.54:30A-103 Payment of assessment by corporation.

39. Every gas and electric light, heat and power corporation subject to tax pursuant to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to January 1, 1998, or the corporate or non-corporate legal successor or assignee whether through any reorganization, sale, bankruptcy, consolidation, merger or other occurrence of any kind without limitation, and every corporation otherwise assessable set forth hereinbelow, shall annually pay the transitional energy facility assessment set forth in section 67 of P.L.1997, c.162 (C.48:2-21.34).

C.54:30A-104 Statement of sales from remitter due February 1.

40. a. On or before February 1, 1999, and on or before February 1 of each year thereafter until the year after the final year in which there is imposed a transitional energy facility assessment, every remitter shall return to the Director of the Division of Taxation in the Department of the Treasury a statement in such form, manner and detail as the director shall require showing:

a. The therms of natural gas and kilowatthours of electricity sold or transported for sale to ultimate consumers in New Jersey during the prior calendar year; and

b. The transitional energy facility assessment unit rate surcharges (exclusive of the provision for corporation business taxes included therein) as calculated pursuant to section 67 of P.L.1997, c.162 (C.48:2-21.34) applicable to the prior calendar year.

C.54:30A-105 Statement of tax collection from remitter due October 15.

41. a. Every remitter shall on or before October 15, 1998, and on or before October 15, in each year thereafter for years in which the transitional energy facility assessment is imposed, return to the Director of the Division of Taxation in the Department of the Treasury and the Board of Public Utilities a statement in such form, manner and detail as the director shall require

showing the following:

(1) Sales and use tax collected and use tax liability through September 30 of the current calendar year;

(2) Estimated sales tax collections and use tax liability for the period from October 1 through December 31 of the current calendar year;

(3) Estimated corporation business tax, including negative and positive deferred corporation business taxes shown separately, for the current privilege period based upon actual taxable income from January 1 through September 30 and estimated taxable income from October 1 through December 31; and

(4) Actual transitional energy facility assessment liability from January 1 through September 30 and estimated liability from October 1 through December 31 for the current calendar year.

b. On or before November 15, 1998, and on or before November 15 of each year thereafter for years in which the transitional energy facility assessment is imposed, the State Treasurer shall, with the cooperation of the Board of Public Utilities, calculate the percentage reduction in the initial TEFA unit rate surcharges based upon the formula set forth in section 67 of P.L.1997, c.162 (C.48:2-21.34) and the board shall report the amount of such reduction to the remitters subject to the transitional energy facility assessment.

c. Every remitter shall on or before February 1, 1998 file with the director a statement showing:

(1) The total public utility tax advance payments paid in the initial year pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.); and

(2) The remitter's base year liability and each of the amounts described in subsections (a), (b) and (c) in the definition of "base year transitional energy facility assessment" in section 37 of P.L.1997, c.162 (C.54:30A-101).

d. For any remitter owning or holding both gas and electric facilities and conducting both gas and electric business in this State each of the amounts reported on the return required to be filed pursuant to subsection c. shall be allocated by the director between those operations in the proportion that the sum of the unit-based taxes bore to the whole of the unit-based taxes in the base year or such other allocation methodology as the director shall prescribe.

e. The statements required pursuant to this section shall be subscribed and sworn to by the president, a vice-president or chief officer of the corporation preparing each statement. Any remitter refusing or neglecting to make the statements herein provided for shall forfeit and pay to the State of New Jersey the sum of $100 per day for each day of such refusal or neglect, to be recovered in an action at law in the name of the State and which, when recovered, shall be paid into the State Treasury. It shall be the duty of the director to certify any such default to the Attorney General of the State who, thereupon, shall prosecute an action at law for each penalty.

f. The Director of the Division of Taxation shall audit and verify the statements filed by remitters whenever and in such respects the director shall deem necessary or advisable. The director may require any remitter to supply additional data and information in such form, manner, and detail as the director shall request, whenever the director may deem it necessary or helpful, for the proper performance of the director's duties under this act.

g. The director may, by regulation, additionally require that all filings required for the calculation and certification of assessment to be paid by remitters established pursuant to this act shall be made in an electronic form. The form and content of the electronic filing message, the circumstances under which the electronic filing message shall serve as a substitute for the filing of another return and the means by which remitters shall be determined to be subject to this electronic filing requirement shall be prescribed by the director.

For the purpose of this act "electronic filing" or "electronic filings" means any message that is initiated through an electronic terminal, telecommunication device, or computer for the purpose of fulfilling the reporting responsibilities set forth hereinabove.

C.54:30A-106 TEFA statement to remitter.

42. a. On or before April 1, 1999, and on or before April 1 of each year thereafter until the year after the final year in which the transitional energy facility assessment is imposed, the Director of the Division of Taxation shall send to each remitter a statement showing the

transitional energy facility assessment liability for the prior calendar year, estimated payment received for the prior calendar year and any overpayment or underpayment of the tax liability for that calendar year.

b. Remitters shall make a payment of the underpayment as determined in subsection a. of this section, if any, to the director on or before May 15 of the current year.

c. Remitters shall treat any overpayment as determined in subsection a. of this section, if any, as an estimated payment as set forth in subsection d. of section 43 of P.L.1997, c.162 (C.54:30A-107).

C.54:30A-107 Liability for TEFA assessment.

43. a. (1) The liability for the transitional energy facility assessment made against any remitter in the first year of assessment shall be an amount equal to TEFA unit rate surcharges (excluding the provision for corporation business taxes included therein) determined in section 67 of P.L.1997, c.162 (C.48:2-21.34) multiplied by the associated therms of natural gas and kilowatthours of electricity sold or transported for sale to ultimate consumers in New Jersey in the first year plus any advances paid in the initial year pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) by that remitter.

(2) The liability for the transitional energy facility assessment made against any remitter for each year subsequent to the first year shall be an amount equal to the TEFA unit rate surcharges (excluding the provision for corporation business taxes included therein) calculated in section 67 of P.L.1997, c.162 (C.48:2-21.34) for that year multiplied by the associated therms of natural gas and kilowatthours of electricity sold or transported for sale to ultimate consumers in New Jersey in that year.

b. A credit against the liability determined pursuant to paragraph (1) of subsection a. of this section shall be taken in the first year by the remitter in the amount of all advances paid in the initial year pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.).

c. (1) Each remitter shall make an estimated payment on May 15 of the first assessment year in the amount of the base year transitional energy facility assessment.

(2) Subsequent to the first year, each remitter shall make an estimated payment on May 15 of each assessment year in which the transitional energy facility assessment is in effect, in an amount equal to the transitional energy facility assessment liability described in subsection a. of this section for the immediately preceding assessment year, excluding advances paid in the initial year pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.), reduced by the reduction percentage for the current assessment year determined pursuant to paragraphs (2), (3) and (4) of subsection d. of section 67 of P.L.1997, c.162 (C.48:2-21.34) less credits described in subsection d. of this section, if any.

d. Any excess of the estimated payment made pursuant to paragraph (1) or (2) of subsection c. of this section over the liability determined pursuant to subsection a. of this section shall be treated as a credit against the estimated payment for the subsequent assessment year and reduce the amount of the estimated payment required to be made for that subsequent year. Any excess of the estimated payment made pursuant to paragraph (2) of subsection c. of this section over the liability for the final year of the transitional energy facility assessment shall be utilized as a nonrefundable credit with an unlimited carryforward against that remitter's corporation business tax liability in the subsequent privilege period year. Such credit shall be applied in full to each estimated corporation business tax payment beginning in the subsequent privilege period until fully utilized.

C.54:30A-108 Payments due May 15.

44. All payments shall be made in full on an annual basis to the State on or before May 15, 1998, and on or before May 15 of each year thereafter as long as this assessment shall remain in effect.

C.54:30A-109 Certification of amount of assessments.

45. a. Within 30 days after making the computation of the assessments under this act, the Director of the Division of Taxation shall certify the amount of such assessments. Within five

days after making the computation of the assessments, the director shall issue directly to each remitter statements of amounts due, and payments with respect thereto shall be made by each taxpayer to the director in the following manner: all assessments due shall be remitted to the director on or before May 15, for calendar year 1998, and for each calendar year thereafter. If for any reason the making and delivering of a certificate of assessments shall be delayed until after April 15 in any year, then all of the assessments for such year affected by such certificate of assessment shall become due and payable 30 days after the date of such certification of assessment. The administration, collection and enforcement of the assessments payable by each remitter under this act shall be subject to the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., to the extent that the provisions of that law are not inconsistent with the provisions of this act.

b. The director may, by regulation, require that any payment of assessment made on or before the date established therefor pursuant to this act shall be by electronic funds transfer to such depositories as the State Treasurer shall designate pursuant to section 1 of P.L.1956, c.174 (C.52:18-16.1). A payment by electronic funds transfer shall be deemed to be made on the date the payment is received by the designated depository. The manner, form, and content of the electronic funds transfer message, the circumstances under which an electronic funds transfer shall serve as a substitute for the filing of another form of return, the means by which taxpayers will be provided with acknowledgments of payments, and the classes of taxpayers subject to the electronic funds transfer requirement shall be as prescribed by the director.

c. For the purposes of this section "electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telecommunication device, or computer for the purpose of ordering, instructing or authorizing a financial institution to debit or credit an account.

C.54:30A-110 Municipal electric sales, certain; additional assessment.

46. a. No municipal electric corporation or utility, not previously subject to assessment under P.L.1940, c.5 (C.54:30A-49 et seq.),shall be deemed a remitter for the purposes of enforcing the provisions of this act.

Notwithstanding the provisions of subsection a. of this section, sections 36 through 45, sections 47 through 49 and section 67 of P.L.1997, c.162 (C.54:30A-100 through C.54:30A-109, C.54:30A-111 through C.54:30A-113 and C.48:2-21.34) to the contrary, a municipal electric utility that collects sales tax for electricity sales that are not exempt from sales tax pursuant to the provisions of paragraph (1) of subsection a. of section 26 of P.L.1997, c.162 (C.54:32B-8.46), shall also collect on each such nonexempt sale during any year in which the transitional energy facility assessment is imposed, an additional assessment, in place of the transitional energy facility assessment otherwise determined pursuant to those sections, equal to the "TEFA unit rate surcharge" that would have been applicable to that sale if the sale had been made by the electric public utility, other than a municipal electric utility, within whose franchise area the customer is located.

C.54:30A-111 Remitter, certain, subject to assessment.

47. A corporation or utility determined to be a remitter pursuant to this act shall be subject to the transitional energy facility assessment. The amount of the transitional energy facility assessment liability and estimated payment shall be determined in accordance with this act and regulations as shall be promulgated by the Director of the Division of Taxation in the Department of the Treasury.

C.54:30A-112 Prior year's adjustment to assessment.

48. The Director of the Division of Taxation in making the assessment imposed by this act on any remitter for any year shall deduct from or add to the assessment for the year any deduction or addition to the extent and in the manner which may heretofore have been or may hereafter be ordered or decreed by any judgment of the Tax Court or any court by reason of any error or omission in connection with the assessment of the remitter in any prior year.

C.54:30A-113 Rules, regulations applicable to remitters.

49. The Director of the Division of Taxation in the Department of the Treasury shall promulgate such rules and regulations applicable to remitters subject to this act as may be necessary to effectuate the purposes and provisions of this act.

C.54:30A-114 Short title; purpose of act.

50. a. Sections 50 through 58 of this act shall be known and may be cited as the "Uniform Transitional Utility Assessment Act."

b. The purpose of the Uniform Transitional Utility Assessment Act is to provide a complete framework and method for the making of a uniform transitional utility assessment on telephone companies that were subject to the provisions of P.L.1940, c.4 (C.54:30A-16 et seq.) as of April 1, 1997, and gas and electric light, heat and power corporations that were subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.), municipal or otherwise,prior to January 1, 1998 or their corporate or non-corporate legal successor or assignee whether through any reorganization, sale, bankruptcy, consolidation, merger or other transaction or occurrence of any kind without limitation.

C.54:30A-115 Definitions relative to uniform transitional utility assessment.

51. As used in this act, unless the context requires otherwise:

"Annual assessment" means the assessment made against each remitter in any year;

"Base year" means calendar year 1996;

"Remitter" means any corporation subject to assessment under this act; and

"Sales and use tax" means the sales and use tax liability computed on sales and use of energy and utility service as defined in section 2 of P.L.1966, c.30 (C.54:32B-2).

C.54:30A-116 Annual assessment.

52. a. Every gas and electric light, heat and power corporation, municipal or otherwise,that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to January 1, 1998 and every telephone company that was subject to the provisions of P.L.1940, c.4 (C.54:30A-16 et seq.) as of April 1, 1997 shall annually pay an annual assessment annually determined by the Director of the Division of Taxation as provided in this section.

b. (1) For energy remitters, the uniform transitional utility assessment in the first year of assessment shall be equal to the remitters unit energy tax liability paid in the base year pursuant to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) adjusted to reflect the remitters unit energy tax rates in effect on January 1, 1997 less

(a) The sales and use tax remitted pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.) as of June 20 in the first year;

(b) The amount of estimated corporation business tax remitted pursuant to section 15 of P.L.1945, c.162 (C.54:10A-15) as of June 20 in the first year;

(c) the payment of base year transitional energy facility assessment as defined in section 37 of P.L.1997, c.162 (C.54:30A-101) made on May 15 of that year; and

(d) the tax remitted pursuant to customer specific tax classifications described in section 59 of this act.

Each remitter shall allocate a portion of the uniform transitional utility assessment to its liability for first year sales and use tax remittance and first year corporation business tax liability and notify the director of such allocation.

(2) For telecommunications remitters, the uniform transitional utility assessment in the first year of assessment shall be equal to the remitter's liability paid in the base year pursuant to the provisions of P.L.1940, c.4 (C.54:30A-16 et seq.) less the amount of estimated corporation business tax remitted pursuant to section 15 of P.L.1945, c.162 (C.54:10A-15) as of June 20 in the first year.

c. (1) For energy remitters, the uniform transitional utility assessment in each year after the first year of assessment shall be equal to 50% of the total of the remitter's estimate of sales and use tax remittance for that year and corporation business tax liability for that year.

(2) For telecommunications remitters, the uniform transitional utility assessment in each year

after the first year of assessment shall be equal to 50% of the remitter's estimate of its corporation business tax liability for that year.

(3) The estimates described in paragraphs (1) and (2) of this subsection, as applicable, shall be certified by the State Treasurer. The State Treasurer may, based upon each remitter's immediate prior year's sales tax remittances, immediate prior year's estimated corporation business tax liability and/or payments, current year sales tax remittances and current year estimated corporation business tax payments, as well as the economic conditions of the State, consideration of the State's revenues and expenditures and anticipated revenues and expenditures for the fiscal year and any other factor or factors which the State Treasurer deems relevant, reject the estimation and not certify the same. The remitter shall within five business days of the rejection recalculate the estimate and provide the recalculated estimate to the State Treasurer or provide the State Treasurer with sufficient justification of its original estimate. If the State Treasurer fails to certify the original, recalculated or other agreed estimate within five business days after the previous five business day period set forth herein, the dispute shall be resolved pursuant to a procedure to be established by regulations as shall be promulgated by the director. Prior to such resolution, the remitter shall pay as its uniform transitional utility assessment for that year an amount determined by the State Treasurer which (a) for energy remitters shall not exceed the greater of (i) 50% of the sum of the remitter's sales and use tax remittances for the preceding year and the tax shown on the remitter's corporation business tax return, or tentative return filed with an application for extension of time to file, for the preceding year, or (ii) 50% of the net of the remitter's base year liability less the base year transitional energy facility assessment both as defined in section 37 of P.L.1997, c.162 (C.54:30A-101), and (b) for telecommunications remitters shall not exceed the greater of (i) 50% of the tax shown on the remitter's corporation business tax return, or tentative return filed with an application for extension of time to file, for the preceding year, or (ii) 50% of the remitter's base year gross receipts and franchise tax liability pursuant to P.L.1940, c.4 (C.54:30A-16 et seq.).

d. Nothing in this section shall be construed to relieve an energy remitter of the requirement to collect and pay its current year transitional energy facility assessment.

C.54:30A-117 Amount paid available as nonfundable credit.

53. Any amount paid by a remitter pursuant to this act shall be available as a nonrefundable credit. Credits established pursuant to payments made under the "Uniform Transitional Utility Assessment Act" shall be granted only on the basis of the remitters estimation as certified by the State Treasurer pursuant to section 52 of this act, only against the tax in which the estimation is made, and shall not be claimed until after July 1 for the first year of assessment and after August 1st of each subsequent calendar year in which the uniform transitional utility assessment is paid. If, in any calendar year, the credits available against payments in any tax exceed the total amount due in that tax, the remitter may elect to have the excess credits for that year applied to the amounts due in that tax in subsequent years or, if applicable, as a credit to the transitional energy facility assessment payments to be made in the next year. Such credit shall be applied in full to each estimated tax payment beginning in the subsequent year until fully utilized. These credits may not be applied against any other liability except as set forth hereinabove.

C.54:30A-118 Statements from remitter.

54. a. Every remitter that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to January 1, 1998 shall on or before June 20, 1998, return to the Director of the Division of Taxation a statement showing, as shall apply:

(1) The sales and use tax remitted pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.) as of June 20, 1998.

(2) The amount of estimated corporation business tax remitted pursuant to section 15 of P.L.1945, c.162 (C.54:10A-15) as of June 20, 1998.

(3) The percentage of the uniform transitional utility assessment the director shall allocate to the sales and use tax and to the corporation business tax.

b. Every remitter that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to January 1, 1998 shall on April 20, 1999, and on or before April 20 of each year

thereafter, return to the director a statement showing, as shall apply:

(1) The estimated sales and use tax to be remitted for that year and the assumptions upon which that estimate is based; and

(2) The estimated corporation business tax liability for that year and the assumptions upon which that estimate is based.

c. (1) Every remitter that was subject to the provisions of P.L.1940, c.4 (C.54:30A-16 et seq.) on April 1, 1997 shall on or before June 20, 1998 return to the director a statement showing the amount of estimated corporation business tax remitted pursuant to section 15 of P.L.1945, c.162 (C.54:10A-15) as of June 20, 1998.

(2) Every remitter that was subject to the provisions of P.L.1940, c.4 (C.54:30A-16 et seq.) on April 1, 1997 shall on or before April 20, 1999 and on or before April 20 of each year thereafter return to the director a statement showing the estimated corporation business tax liability for that year and the assumptions upon which that estimate is based.

d. The statements herein provided for shall be subscribed and sworn to by the president, a vice-president or chief officer of the corporation making such return. Any remitter refusing or neglecting to make the statements herein provided for shall forfeit and pay to the State of New Jersey the sum of $100 per day for each day of such refusal or neglect, to be recovered in an action at law in the name of the State and which, when recovered, shall be paid into the State Treasury. It shall be the duty of the director to certify any such default to the Attorney General of the State who, thereupon, shall prosecute an action at law for such penalty.

e. The director shall audit and verify the statements filed by remitters whenever and in such respects as the director shall deem necessary or advisable. The director may require any remitter to supply additional data and information in such form and detail as the director shall request, whenever the director may deem it necessary or helpful, for the proper performance of the director's duties under this act.

f. The director may, by regulation, additionally require that all filings required for the calculation and certification of assessments to be paid by remitters established pursuant to this act shall be made in an electronic form. The form and content of the electronic filing message, the circumstances under which an electronic filing shall serve as a substitute for the filing of another return, and the means by which remitters shall be determined to be subject to this electronic filing requirement shall be prescribed by the director.

For the purpose of this act “electronic filing” or “electronic filings” means any message that is initiated through an electronic terminal, telecommunication device, or computer for the purpose of fulfilling the reporting responsibilities set forth hereinabove.

C.54:30A-119 Calculation, certification of assessment.

55. The Director of the Division of Taxation shall annually on or before June 23, 1998, and on or before May 10 of each year thereafter, calculate and certify to each remitter of the assessment the uniform transitional utility assessment to be paid by each remitter. All payments shall be made in full on an annual basis to the State on June 25, 1998 and on May 15 of each year thereafter as long as this tax shall remain in effect.

C.54:30A-120 Certification of amount of assessments.

56. a. Upon making the computation of the assessments under this act, the Director of the Division of Taxation shall certify the amount of such assessments. If for any reason the making and delivering of a certificate of assessments shall be delayed until after May 15, 1999 and after May 15 in any year thereafter, then all of the assessments for such year affected by such certificate of assessment shall become due and payable 10 days after the date of such certification of assessment. The administration, collection and enforcement of the assessments payable by each remitter under this act shall be subject to the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., to the extent that the provisions of that law are not inconsistent with the provisions of this act.

b. The director may, by regulation, require that any payment of assessment made on or before the date established therefor pursuant to this act shall be by electronic funds transfer to such depositories as the State Treasurer shall designate pursuant to section 1 of P.L.1956, c.174

(C.52:18-16.1). A payment by electronic funds transfer shall be deemed to be made on the date the payment is received by the designated depository. The manner, form, and content of the electronic funds transfer message, the circumstances under which an electronic funds transfer shall serve as a substitute for the filing of another form of return, the means by which taxpayers will be provided with acknowledgments of payments, and the classes of taxpayers subject to the electronic funds transfer requirement shall be as prescribed by the director.

c. For the purposes of this section "electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telecommunication device, or computer for the purpose of ordering, instructing or authorizing a financial institution to debit or credit an account.

C.54:30A-121 Prior year's adjustment to assessment.

57. The Director of the Division of Taxation in making the assessment imposed by this act on any remitter for any year shall deduct from or add to the assessment for that year any deduction or addition to the extent and in the manner which may heretofore have been or may hereafter be ordered or decreed by any judgment of the Tax court or any court by reason of any error or omission in connection with the assessment such remitter in any prior year.

C.54:30A-122 Rules, regulations applicable to remitters.

58. The Director of the Division of Taxation in the Department of the Treasury shall promulgate such rules and regulations applicable to remitters subject to this act as may be necessary to effectuate the purposes and provisions of this act.

C.48:2-21.31 Terms, conditions unaltered for retail sales, certain.

59. a. Nothing in P.L.1997, c.162 (C.54:10A-5.25 et al.) shall be construed to alter any terms or conditions of any contract for the duration of the contract, for the retail sale of electricity or natural gas to an end user that establishes a customer-specific tax classification and that was approved by separate written order of the Board of Public Utilities prior to January 1, 1998, notwithstanding any changes in the laws under which those contracts were established.

b. Amounts billed by a utility pursuant to subsection a. of this section shall be remitted to the Division of Taxation in the Department of the Treasury on or before April 1, 1998 and on or before April 1 of each year thereafter.

c. On and after January 1, 1998, no off-tariff rate agreement or alternate regulation plan pursuant to P.L.1995, c.180 (C.48:2-21.24 et seq.) or pursuant to any other order of the board shall allow for any reduction or exemption from any tax or surcharge imposed pursuant to P.L.1997, c.162 (C.54:10A-5.25 et al.) and not otherwise allowed by the provisions of P.L.1997, c.162 (C.54:10A-5.25 et al.).

60. R.S.54:4-1 is amended to read as follows:

Property subject to taxation.

54:4-1. All property real and personal within the jurisdiction of this State not expressly exempted from taxation or expressly excluded from the operation of this chapter shall be subject to taxation annually under this chapter. Such property shall be valued and assessed at the taxable value prescribed by law. Land in agricultural or horticultural use which is being taxed under the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), shall be valued and assessed as provided by that act. An executory contract for the sale of land, under which the vendee is entitled to or does take possession thereof, shall be deemed, for the purpose of this act, a mortgage of said land for the unpaid balance of purchase price. Personal property taxable under this chapter shall include, however, only the machinery, apparatus or equipment of a petroleum refinery that is directly used to manufacture petroleum products from crude oil in any of the series of petroleum refining processes commencing with the introduction of crude oil and ending with refined petroleum products, but shall exclude items of machinery, apparatus or equipment which are located on the grounds of a petroleum refinery but which are not directly used to refine crude oil into petroleum products and the tangible goods and chattels, exclusive

of inventories, used in business of local exchange telephone, telegraph and messenger systems, companies, corporations or associations that were subject to tax as of April 1, 1997 under P.L.1940, c.4 (C.54:30A-16 et seq.) as amended, and shall not include any intangible personal property whatsoever whether or not such personalty is evidenced by a tangible or intangible chose in action except as otherwise provided by R.S.54:4-20. As used in this section, "local exchange telephone company" means a telecommunications carrier providing dial tone and access to 51% of a local telephone exchange. Property omitted from any assessment may be assessed by the county board of taxation, or otherwise, within such time and in such manner as shall be provided by law. Real property taxable under this chapter means all land and improvements thereon and includes personal property affixed to the real property or an appurtenance thereto, unless:

a. (1) The personal property so affixed can be removed or severed without material injury to the real property;

(2) The personal property so affixed can be removed or severed without material injury to the personal property itself; and

(3) The personal property so affixed is not ordinarily intended to be affixed permanently to real property; or

b. The personal property so affixed is machinery, apparatus, or equipment used or held for use in business and is neither a structure nor machinery, apparatus or equipment the primary purpose of which is to enable a structure to support, shelter, contain, enclose or house persons or property. For purposes of this subsection, real property shall include pipe racks, and piping and electrical wiring up to the point of connections with the machinery, apparatus, or equipment of a production process as defined in this section.

Real property, as defined herein, shall not be construed to affect any transaction or security interest provided for under the provisions of chapter 9 of Title 12A of the New Jersey Statutes (N.J.S.12A:9-101 et seq.). The provisions of this section shall not be construed to repeal or in any way alter any exemption from, or any exception to, real property taxation or any definition of personal property otherwise provided by statutory law.

The Director of the Division of Taxation in the Department of the Treasury may adopt rules and regulations pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as may be deemed necessary to implement and administer the provisions of this act.

61. R.S.48:3-7.8 is amended to read as follows:

Regulations applicable to public utilities.

48:3-7.8. a. Every public utility shall at all times keep within this State all records, books, accounts, documents and other writings relating to contracts entered into, transactions had, services rendered, business done and property within this State, and shall at no time remove any of such records, books, accounts, documents or writings from this State without the consent in writing of the board first had and obtained.

b. The board may by order in writing grant consent and permission under such regulations and conditions as it may see fit to impose for the keeping of any such records, books, accounts, documents and other writings outside of the State in such cases as the board may determine that such consent or permission so granted may be of financial advantage to the customers of the public utility within this State. Such consent or permission so granted may be revoked by the board at any time without notice. A public utility granted such consent or permission shall on the notice in writing of the board produce such records, books, accounts, documents and other writings at such time and place within this State as the board may designate.

c. A natural gas or electric vendor shall maintain an office within the State and shall keep such records pertaining to the sale as the board determines by order in writing to be necessary to protect the interest of consumers in the State.

d. A public utility as defined in R.S.48:2-13 shall not enter into a contract with a natural gas or electric vendor unless it first certifies to the board that the vendor is in compliance with subsection c. of this section and with R.S.48:3-7.9.

e. For the purpose of this section and R.S.48:3-7.9, "vendor" means and includes an individual, firm, joint venture, partnership, corporation, association, state, county, municipality, public agency or authority, cooperation association, or joint stock association, or any trustee, receiver, assignee, or personal representative thereof that is not a public utility as defined in R.S.48:2-13, but sells natural gas or electric power not for resale to a customer within this State.

62. R.S.48:3-7.9 is amended to read as follows:

Designation of agent.

48:3-7.9. Every public utility and every natural gas vendor and electric vendor subject to subsection c. of R.S.48:3-7.8, shall file with the board a designation in writing of an agent, resident of this State who shall have custody of such records, books, accounts, documents and other writings, and upon whom process for the production of the same may be served. Such designation shall set out the name of such agent, his place of residence within this State and his place of business. A public utility or vendor filing such designation may at any time revoke such designation, provided, that simultaneously with the revocation of such designation, a substituted designation be filed by it with the board.

C.48:2-21.32 Rules.

63. The Board of Public Utilities may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules as it deems necessary to implement the provisions of this act.

64. On or before January 1, 2002, the State Treasurer shall review and evaluate the administration and revenue impact of the imposition of the sales and use tax on energy and utility services pursuant to this act and shall advise the Legislature accordingly.

C.48:2-21.33 Tax and related savings to consumers.

65. The Board of Public Utilities shall have authority and shall pass along the tax and related savings realized under P.L.1997, c.162 (C.54:10A-5.25 et al.) to consumers when making rate calculations.

C.54:30A-123 Deposit of tax monies, certain.

66. a. For State budgetary purposes, the State Treasurer shall direct that all tax monies collected pursuant to contracts executed pursuant to tariff rate schedules and associated gross receipts and franchise unit tax classes approved by separate written orders of the Board of Public Utilities prior to the effective date of this act shall be deposited in the State General Fund.

b. For State budgetary purposes, the collection of billings from customers of a utility for natural gas, electricity and utility service provided on and after January 1, 1998 and before the issuance by the Board of Public Utilities of a written order approving, upon either an interim or final basis, the rate filing of that utility required pursuant to section 67 of P.L.1997, c.162 (C.48:2-21.34), except for sales exempt as of December 31, 1997 from gross receipts and franchise taxes imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) and sales to which section 59 of this act (C.48:2-21.31) shall apply, shall be deemed to include the collection of the full amount of sales and use tax that otherwise would have been due and owing for the billing as if the sales and use tax was imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.) and P.L.1997, c.162 (C.54:10A-5.25 et al.) at the time that the natural gas, electricity or utility service was actually provided.

C.48:2-21.34 Definitions relative to 1997 tax changes; filings required; formulas; adjustments to rates.

67. a. As used in this section:

"Base rates" means the rates, including minimum bills, charged for utility commodities or service subject to the board's jurisdiction, other than the rates charged under a utility's levelized energy adjustment clause, hereinafter "LEAC," or levelized gas adjustment clause, hereinafter

"LGAC," or equivalent rate provision;

"Base year" means the calendar year 1996;

"Board" means the Board of Public Utilities;

"Sales and use tax" means the sales and use tax liability computed on sales and use of energy and utility service as defined in section 2 of P.L.1966, c.30 (C.54:32B-2);

"Utility" means a public utility subject to regulation by the board pursuant to Title 48 of the Revised Statutes; and

"Utility service" means the supply, transmission, distribution or transportation of electricity, natural gas or telecommunications services or any combination of such commodities, processes or services.

b. No later than 60 days after the date this act is enacted, each electric, gas and telecommunications utility subject to the provisions of this act shall file with the board, and shall simultaneously provide copies to the Director of the Division of the Ratepayer Advocate, revised tariffs and such other supporting schedules, narrative and documentation required by this act, as set forth in this section, to reflect in the utility's rates the changes in tax liability effected pursuant to this act. No later than 90 days after the date of the utility's filing, and after determining that the filing and the rate changes provided for therein are in compliance with the provisions of this act, the board shall approve the utility's filing and associated rates for billing to the utility's customers, effective for utility service rendered on and after January 1, 1998. If the board determines that the utility's filing and the associated rate changes provided for therein are not in compliance with the provisions of this act, the board shall require the utility to amend or otherwise modify its filing to render it in compliance. The board may also permit the rates provided for in the utility's filing to be implemented on an interim basis pending the board's final determination in the event the board, in its discretion, determines that due to the filing's complexity, or for other valid reasons, including but not limited to the enactment of this act after June 30, 1997, additional time is needed for the board to complete its review of the filing. If the rates approved by the board upon its final determination are less than the rates implemented on an interim basis, the difference shall be refunded to the utility's customers with interest computed in accordance with N.J.A.C.14:3-7.5(c). The rate adjustments implemented pursuant to this act shall not constitute a fixing of rates pursuant to R.S.48:2-21 and shall not be subject to the hearing requirements set forth in that section.

c. As of the effective date of the rate changes implemented pursuant to this act, and except for rates applicable to sales that were or are currently exempt from the unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) and rates applicable to sales to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies, the board shall remove from the base rates of each electric public utility and gas public utility the unit tax rates included therein for the recovery of those unit-based energy taxes, and include therein provision for the recovery of corporation business tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), and additionally shall authorize the collection of the sales and use tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), as follows:

(1) The base rates of each gas and electric utility shall be reduced by the amount of the unit-based energy taxes per kilowatthour or per therm included therein.

(2) The provision for corporation business tax initially included in the base rates of each gas and electric utility shall be based on the utility's after-tax net income earned in the base year as booked, unless the board determines, in its discretion, that such income as booked is unusually high or low or otherwise unrepresentative of the utility's prospective net income, in which case the utility's base year net income shall be adjusted as determined by the board.

To permit the board to make this determination, in addition to including in its filing schedules showing its net income earned in the base year as booked, the utility shall include adjustments to such booked income to eliminate the effect of revenues, expenses and extraordinary or other charges that are non-recurring, atypical, or both, including, but not limited to an adjustment to eliminate the effect of unusually hot or cold weather, and that would otherwise make the utility's base year net income unusually high or low or otherwise unrepresentative of the utility's prospective net income. If the adjustment is being made to eliminate the effect of unusually hot or cold weather, associated revenue and expense

adjustments shall also be made. Subject to the board's approval, such adjusted income shall be the basis for the calculation of the initial provision for corporation business tax to be included in the utility's base rates.

The utility shall also include a calculation of its rate of return on common equity achieved in the base year, both as booked and as adjusted in accordance with the foregoing. The calculation shall be made employing the methodology set forth in N.J.A.C.14:12-4.2(b)1, and shall separately show the effect of reflecting adjustments to the calculation, if any, that may have been employed historically in establishing the utility's rate of return on common equity allowed for ratemaking purposes. The utility's filing shall also include copies of its audited financial statements for the base year and associated quarterly and other reports filed with the Securities and Exchange Commission.

To reflect the provision for corporation business tax in base rates, the demand charges, or charges per kilowatt, decatherm or million cubic feet; the energy charges, or charges per kilowatthour or per therm; and the customer charges, or charges other than demand and energy charges, set forth in each base rate schedule, and the floor price employed in parity rate schedules, included in the utility's tariff filed with and approved by the board shall be increased by amounts determined by multiplying such charges by the adjustment factor, "A e, g" derived below:

$$A_{e,g} = \left((I_{e,g}) \times [Rs/(1-Re)] \right) \Big/ \left(Br_{e,g} \right)$$

where:

"A e, g" means the adjustment factor applicable to electric base rates (e), gas base rates (g), or both, other than rates applicable to sales that were exempt from unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

"I e, g" means the utility's base year after-tax net income from electric or gas sales, or both, and transportation service subject to the board's jurisdiction and other operating revenue if such revenue is reflected in the utility's cost of service for ratemaking purposes, adjusted as approved by the board;

"Br e, g" means the utility's base year revenue from base rates applicable to electric or gas sales, or both, and transportation service subject to the board's jurisdiction, but excluding sales that were exempt from unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

"Rs" means the corporation business tax rate, expressed as a decimal;

"Rf" means the applicable federal corporation income tax rate expressed as a decimal; and

"Re" equals Rs + Rf(1-Rs).

The utility shall account for the changes in tax liability provided for by this act effective January 1, 1998. Such accounting shall include the recording on the utility's income statement and balance sheet of deferred corporation business tax defined, for book accounting purposes, as differences in corporation business tax expense arising from timing differences in the recognition of revenue and expenses for book and tax purposes.

(3) When billed to the utility's customers, the adjusted base rate charges determined pursuant to paragraphs (1), (2), and (4) of this subsection, and the charges determined pursuant to the utility's levelized energy adjustment clause, levelized gas adjustment clause, or both, as determined both upon the effective date of the rate changes authorized by this act and as revised prospectively in accordance with the utility's tariff filed with and approved by the board, and the transitional energy facility assessment unit rate surcharges, hereinafter, "TEFA unit rate surcharges," determined in accordance with subsection d. of this section, shall be increased by an amount determined by multiplying such charges by the sales and use tax rate imposed under P.L.1966, c.30 (C.54:32B-1 et seq.). In addition to the utility's rates for service included in its tariff, for informational purposes the tariff shall include such rates after application of the sales

and use tax authorized by this section.

(4) The utility's filing with the board to implement the rate changes provided for by this act shall include an analysis, description, and quantification of the effect of the changes in rates and tax payments implemented pursuant to this act on the utility's requirement for cash working capital, and if such requirement is less than the cash working capital allowed for the collection and payment of unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) in determining the utility's base rates in effect prior to the rate changes implemented pursuant to this act, and to the extent the working capital reduction is not offset by a reduction in net deferred taxes as provided for below, such base rates shall be reduced by the reduction in the utility's revenue requirement associated with the remaining reduction in the working capital requirement not so offset, if any. The reduction in working capital shall be determined by using the same methodology employed in establishing the working capital allowance related to unit-based energy taxes reflected in the utility's base rates in effect prior to the rate changes implemented pursuant to this act. The reduction in the utility's revenue requirement associated with the reduced working capital requirement shall be calculated using the utility's last overall rate of return allowed by the board, including provision for federal income taxes and the corporation business tax implemented pursuant to this act payable on the equity portion of the return, and shall be implemented on the effective date of the rate changes provided for, and in the manner set forth in paragraph (2) of this subsection.

If the utility's requirement for cash working capital is increased as a result of the changes in rates and tax payments implemented pursuant to this act, the utility may accrue carrying costs, calculated at its last overall rate of return allowed by the board and applied on a simple annual interest basis without compounding, on the increased working capital requirement and request recovery of such carrying costs in a rate proceeding before the board.

The working capital-related base rate changes and carrying cost accruals shall be subject to the board's approval, and shall not be included in the determination of the TEFA unit tax surcharges provided for in subsection d. of this section.

The utility's filing with the board to implement the rate changes provided for by this act shall also include an analysis, description and quantification of net deferred taxes. For the purposes of this section, "net deferred taxes" means deferred corporation business taxes, net of federal deferred income taxes, associated with the tax and rate changes implemented pursuant to this act, including deferred corporation business tax recorded in accordance with section 4 of P.L.1945, c.162 (C.54:10A-4), projected for the calendar year in which this act takes effect and for each year of the tax life of the asset giving rise to the deferred corporation business taxes pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4).

If the change in such net deferred taxes projected for the calendar year in which the rate changes implemented pursuant to this act takes effect is negative and if the utility's requirement for working capital is reduced as a result of the changes in rates and tax payments implemented pursuant to this act, the working capital-related rate reduction that otherwise would have been implemented pursuant to this subsection shall be treated as set forth in subparagraph (a) or (b) of this paragraph. For the purposes of this act, a change in net deferred taxes is considered negative when it reduces an existing deferred tax liability or creates a deferred tax asset on the utility's balance sheet. An appropriate rate adjustment for the working capital impacts of this act, reflecting all relevant facts and circumstances at the time of the adjustment, shall be made in the year when the earlier of the following events occur:

(a) The year in which the reduction in carrying costs assumed for the rate reduction for working capital that would have been made but for this paragraph is no longer required to offset, on a present value basis, the annual carrying costs calculated on the accumulated balance of negative net deferred taxes projected to be recorded by the utility, its successors and assigns, over the tax life of the single asset account giving rise to such net deferred taxes pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4). For the purposes of this subparagraph (a):

(i) Carrying costs and present values are to be computed using the weighted average after-tax rate of return approved by the board in the utility's last base rate proceeding.

(ii) The accumulated balance of such negative net deferred taxes shall include net deferred taxes associated with all assets and liabilities originally placed in service by the utility and held

by the utility or a company affiliated with the utility regardless of whether or not such assets continue to be subject to regulation by the New Jersey Board of Public Utilities.

(b) The year in which both an appropriate working capital adjustment and the accumulated balance of negative deferred taxes, as described in (ii) of subparagraph (a) of this paragraph (4), are reflected in the utility's rate base in a rate proceeding before the board. It is the intent of this section to fully compensate utilities on a present value basis, for the carrying costs associated with negative net deferred taxes arising as a result of this act, and to remit to ratepayers any credit due them as a result of any overcompensation as may have occurred due to the treatment of working capital and deferred taxes as set forth herein or in subparagraph (a) of this paragraph (4). At the time the above base rate adjustment is made, an analysis shall be made to determine if such carrying costs have been or will be fully recovered pursuant to the intent of this provision and any additional credit or charge to ratepayers to adjust for ratepayer overpayments or underpayments, if any shall be addressed.

If the change in net deferred taxes is positive, the increase shall be added to, or increase, the reduction in the utility's requirement for working capital if the requirement is reduced as a result of the rate and tax payment changes implemented pursuant to this act, or subtracted from the working capital requirement if it is increased, and the resultant net working capital requirement shall be reflected in rates or accrue carrying costs in the same manner as prescribed for changes in the utility's requirement for working capital above.

The deferred tax-related rate changes or carrying cost accruals shall be subject to the board's approval and shall not be included in the determination of the TEFA unit rate surcharges provided for in subsection d. of this section.

d. (1) Electric and gas utilities shall file, for the board's review and approval, initial TEFA unit rate surcharges determined by deducting from each unit-based energy tax unit tax rate effective January 1, 1997 the following: (a) An amount per kilowatthour or per therm determined by multiplying the total revenue received in the base year from sales to which that unit tax rate would have been applicable by the factor Ru/(1 + Ru), where Ru is the sales and use tax rate imposed under P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a decimal, and dividing the result by the kilowatthours or therms billed in that unit tax rate class in the base year; and (b) An amount per kilowatthour or per therm determined by dividing the revenue that would have been received in the base year from the inclusion, in the manner prescribed in paragraph (2) of subsection c. of this section, of the corporation business tax in the rates applicable to sales billed in that unit tax rate class by the kilowatthours or therms billed in that rate class. In each case, the determination shall reflect the effect of adjustments that affect the level of sales and revenue, if any, as provided in subsection c. of this section. Of the resultant rate per kilowatthour or per therm, the portion for recovery of the utility's transitional energy facilities assessment liability shall be determined by multiplying such rate by the factor (1 - Rs), where Rs is the corporation business tax rate expressed as a decimal. The TEFA unit rate surcharges shall constitute non-bypassable wires and/or mains charges of the utility, and shall be applied to all sales within the customer classes to which they apply, regardless of whether such customers are purchasing bundled or unbundled services from the utility, but shall not be applied to sales that were or are currently exempt from unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies.

If, following the effective date of this act, a customer taking bundled service from the utility shall elect to obtain its requirements from another supplier and take transportation or wheeling service from the utility, the TEFA unit rate surcharge applicable to the bundled service shall continue to apply to the transportation or wheeling service. The TEFA components of the unit rate surcharges determined pursuant to this subsection (the components of the surcharges remaining after deducting the provision for corporation business tax included therein) shall be used to determine the transitional energy facility assessment liability pursuant to sections 36 through 49 of P.L.1997, c.162 (C.54:30A-100 through C.54:30A-113).

(2) Unless reduced pursuant to paragraphs (3) and (4)of this subsection, the initial TEFA unit rate surcharges are to be reduced annually on January 1, 1999 through January 1, 2003 by the following percentages:

January 1, 1999	20%
January 1, 2000	40%
January 1, 2001	60%
January 1, 2002	80%
January 1, 2003	100%

(3) For each year beginning with calendar year 1998 and ending with calendar year 2002, the TEFA surcharge adjustment shall be determined as the difference between:

(a) The sum of the estimated, or actual when known, (i) TEFA liabilities, as defined in section 43 of P.L.1997, c.162 (C.54:30A-107), and sales and use taxes collected and corporation business taxes booked for the year 1998 by the gas and electric utilities and other entities subject to the TEFA provisions of this act (the year 1998 liability), and (ii) the TEFA liabilities of those utilities and entities in all years following the year 1998 through the year in which a determination is being made pursuant to this subsection (the determination year); and

(b) The sum of (i) the total of each remitter's base year liability, as defined in section 37 of P.L.1997, c.162 (C.54:30A-101), and (ii) the cumulative TEFA obligation, defined as the sum through the determination year of the amounts calculated by multiplying, for the applicable year,the percentage in the second column of the following table:

Determination Year	% of Year 1998 TEFA
1999	80%
2000	60%
2001	40%
2002	20%

by the Year 1998 TEFA,
where the Year 1998 TEFA is calculated as the total of each remitter's base year liability less the sales and use taxes collected and the corporation business taxes booked for the privilege period ending in calendar year 1998 by the gas and electric utilities and other entities subject to the TEFA provisions of this act. For purposes of this subsection, the amounts assumed for the determination year, including the year 1998 liability when first determined for the purposes of this subsection, shall be estimates based on nine months of actual data through and including the month of September, and three months of data forecast for the months of October through December.

(4) If the TEFA surcharge adjustment determined for the determination year is positive (that is, if the amount determined pursuant to subparagraph (a) of paragraph (3) of this subsection is greater than the amount determined pursuant to subparagraph (b) of paragraph (3) of this subsection), no reduction shall be made in the reduction in the TEFA unit rate surcharges provided for in paragraph (2) of this subsection for the year following the determination year. If the TEFA surcharge adjustment is negative, the reduction in the TEFA unit rate surcharges that otherwise would have been implemented on January 1 of the year following the determination year pursuant to paragraph (2) of this subsection shall be reduced by an amount (by percentage points) equal to the percentage the TEFA surcharge adjustment is of the total of the base year transitional energy facility assessment of all remitters, as defined in section 37 of P.L.1997, c.162 (C.54:30A-101), provided however, that such reduction in the reduction in the TEFA unit rate surcharges shall not exceed the percentage shown in paragraph (2) of this subsection for that year; and provided further that in the first two years, that such reduction shall not exceed 10 percentage points for each year.

e. The utility's filing with the board to implement the rate changes provided for by this act shall include proof of revenue schedules that show for each rate schedule included in the utility's tariff, aggregated by unit-based energy tax unit tax classes, the number of customers billed under the rate schedule, the billing determinants of such customers (i.e. the kilowatts of billing demand and kilowatthours of electric energy consumed, and the million cubic feet/decatherm subject to gas capacity-related charges and decatherm of gas consumed) and the associated revenue, both as booked in the base year and on a pro forma basis reflecting the rate changes implemented pursuant to this act. The proof of revenue shall additionally show the amount of unit-based energy taxes included in the base year revenue as booked, the unit-based energy taxes that would have been collected at the unit-based energy tax unit tax rates effective January 1, 1997, if different, as well as the corporation business tax, sales and use tax and transitional energy facility assessment revenue that would have been collected or received on a pro forma basis if the rates implemented pursuant to this act had been in effect in the base year.

f. The board may, in its discretion, permit the rate changes provided for this act to be implemented as part of a pending base rate case or other proceeding in which the utility's rates are to be changed, provided that the effective date of the changes is not delayed beyond the date on which the changes would have been implemented under subsection c. of this section. The board may also, pursuant to its powers provided by law, permit or require further modifications in the implementation of this section to address unforeseen consequences arising out of the implementation of this act.

g. Customers of the utility who are exempt from the sales and use tax imposed on sales of gas and/or electricity or as a result of rate changes occurring prior to the effective date of this act or for other valid reasons are due a refund of sales or use tax inadvertently imposed on such customers as a result of implementing the rate changes provided for by this act shall file with the State Treasurer to obtain such refunds. The State Treasurer shall promptly notify the utility of customers granted refunds under this provision in order to prevent additional collections of the sales and use tax from such customers.

h. Public utilities providing telecommunications service regulated by the board shall file for the board's review and approval revised tariffs that eliminate from the rates applicable to such service the excise tax liability included therein pursuant to P.L.1940, c.4 (C.54:30A-16 et seq.), and shall include therein the corporation business tax calculated using the methodology used in calculating the adjustment factor set forth in paragraph (2) of subsection c. of this section. Subsection d. of this section shall not apply to telecommunication utilities, and telecommunication utilities subject to a plan of regulation other than rate base/rate of return shall additionally not be required to file the rate of return information required by paragraph (2) of subsection c. Such utilities shall, however, include a narrative and/or other documentation as required by the board to support the reasonableness of the after-tax income, which may be adjusted to eliminate the effect of non-recurring or other atypical events, on which the corporate business tax inclusion in rates is based. Telecommunications utilities shall comply with all other applicable provisions of this section.

i. (1) The board shall not adjust the rates of a public utility, as provided in subsections c. and d. of this section, for a purchase by a cogenerator of natural gas and the transportation of that gas, that is exempt from sales and use tax pursuant to paragraph (2) of subsection b. of section 26 of P.L.1997, c.162 (C.54:32B-8.46). The board shall not allocate, in any future rate case, any sales and use tax, corporation business tax, or transitional energy facility assessment to rates for this purpose.

(2) The board shall adjust the rates, as provided in subsection c. of this section, for a purchase by a cogenerator of any quantity of natural gas and the transportation of that gas that is not exempt from sales and use tax pursuant to paragraph (2) of subsection b. of section 26 of P.L.1997, c.162 (C54:32B-8.46).

(3) For the purposes of this section, "cogenerator" means a person or business entity that owns or operates a cogeneration facility in the State of New Jersey, which facility is a plant, installation or other structure whose primary purpose is the sequential production of electricity and steam or other forms of useful energy which are used for industrial, commercial, heating or cooling purposes, and which is designated by the Federal Energy Regulatory Commission, or its

successor, as a "qualifying facility" pursuant to the provisions of the "Public Utility Regulatory Policies Act of 1978," Pub.L. 95-617.

C.54:10A-4.1 TEFA as State tax.

68. Notwithstanding the use of the term assessment, the transitional energy facility assessment tax is a State tax within the meaning of section 164 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.164, pursuant to which a deduction is allowed in arriving at federal taxable income for the taxable year within which it is paid or accrued and such amount shall be added back to entire net income pursuant to subparagraph (c) of paragraph (2) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4).

C.54:30A-124 Imposition of fees, taxes, levies, assessments by certain local units prohibited.

69. a. No municipal, regional, or county governmental agency may impose any fees, taxes, levies or assessments in the nature of a local franchise, right of way, or gross receipts fee, tax, levy or assessment against energy companies subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to January 1, 1998 or telecommunication companies . Nothing in this section shall be construed as a bar to reasonable fees for actual services made by any municipal, regional or county governmental agency. Nothing in this section shall be construed to affect the franchising process or the assessment of franchise fees with respect to the provision of cable television service in accordance with the provisions of P.L.1972, c.186 (C.48:5A-1 et seq.).

b. Nothing in this section shall be construed to limit municipal taxation of real or personal property pursuant to R.S.54:4-1 of local exchange telephone, telegraph and messenger systems, companies, corporations or associations that were subject to tax under P.L.1940, c.4 (C.54:30A-16 et seq.) as of April 1, 1997.

C.54:4-1.17 Construction of 1997 utility tax act.

70. a.Nothing in this act shall be construed to limit municipal taxation of real estate pursuant to R.S.54:4-1 of current or former remitters of the transitional energy facility assessment, or of a corporate or non-corporate legal successor or assignee of a current or former remitter of the transitional energy facility assessment whether through any reorganization, sale, bankruptcy, consolidation, merger or other transaction or occurrence of any kind without limitation. As used in this section, "real estate" means lands and buildings, but shall not include items of the type as set forth in the list of scheduled property for gas systems and electric light, heat and power systems in section 10 of P.L.1940, c.5 (C.54:30A-58) prior to January 1, 1998. As provided in that list, railways, tracks, ties, lines, wires, cables, poles, pipes, conduits, bridges, viaducts, dams and reservoirs (except that the lands upon which dams and reservoirs are situated shall be included as real estate), machinery, apparatus or equipment, notwithstanding any attachment thereof to lands or buildings owned by current or former remitters of the transitional energy facility assessment, or of a corporate or non-corporate legal successor or assignee of a current or former remitter of the transitional energy facility assessment whether through any reorganization, sale, bankruptcy, consolidation, merger or other transaction or occurrence of any kind without limitation, are not real estate.

b. No municipality, regional or county governmental agency shall directly or indirectly tax as real property, or include within the assessment of real property, the public utility owned electrical interconnect, water lines or gas lines, or any value thereof, which were set forth in the list of scheduled property for gas systems and electric light, heat and power systems in section 10 of P.L.1940, c.5 (C.54:30A-58), prior to enactment of this act whether or not on the real estate of current or former remitters of the transitional energy facility assessment.

71. Notwithstanding any other provision of law to the contrary, for the period from January 1, 1998 through the date the utility rate changes provided for in this act are implemented as set forth in section 67 of P.L.1997, c.162 (C.48:2-21.34), the sales and use tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.) as amended and supplemented by P.L.1997, c.162 (C.54:10A-5.25 et al.), upon sales and use of energy and utility service that were subject to

regulated rates that included unit-based energy taxes imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) during that period, shall be imposed upon the utility vendors of energy and utility service in this State and shall not be imposed upon the purchasers thereof. The amount of tax due under this section shall be payable by a utility vendor to satisfy the utility vendor's tax liability on those sales and use of energy and utility service under this section.

C.54:30A-125 Telecommunication assessment.

72. Every telephone company that was subject to the provisions of P.L.1940, c.4 (C.54:30A-16 et seq.) as of April 1,1997, that makes an advance payment of its applicable gross receipts and franchise tax to the State in the final year of the existence of such tax and treated such advance payment as an expense on its books and records for that year, or its corporate or non-corporate legal successor or assignee whether through any reorganization, sale, bankruptcy, consolidation, merger or other occurrence of any kind without limitation, shall on May 15, 1998, pay a telecommunication assessment. The telecommunication assessment shall be equal to the amount of the advances paid in 1997 pursuant to P.L.1940, c.4 (C.54:30A-16 et seq.) by that remitter. A credit against the liability for the telecommunication assessment set forth in this section shall be taken by the remitter in the amount of the advances it paid in 1997 pursuant to P.L.1940, c.4 (C.54:30A-16 et seq.).

C.54:30A-126 Submission of final tax form by energy utilities.

73. The repeal of and amendments to various provisions of law pursuant to P.L.1997, c.162 (C.54:10A-5.25 et al.), prospectively eliminating the imposition of unit-based energy taxes on gas, electric and gas and electric public utilities pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) and amendatory and supplementary acts thereto shall not affect the obligation of each such public utility taxpayer, on or before April 1, 1998, to file a final tax form with the director pursuant to subsection c. of section 10 of P.L.1991, c.184 (C.54:30A-54.6). Any remaining tax liability due by the taxpayer on the final tax form shall be submitted with the final tax form. However, any overpayment shown on the final tax form shall be taken as a credit against the uniform transitional utility assessment to be paid June 25, 1998 pursuant to sections 50 through 58 of P.L.1997, c.162 (C.54:30A-114 through C.54:30A-122).

C.48:2-21.35 Cooperation on development of statement to energy user bills.

74. The State Treasurer and the Board of Public Utilities shall cooperate to develop a statement to be included on energy users' billings from their vendors that a portion of the charges in the billing are dedicated to property tax relief.

C.40:50-16 Host community benefit agreements.

75. Host community benefit agreements between a municipality and an electric generating facility within the municipality shall be of full force and effect under law and shall be binding upon the parties to the agreement.

76. The Board of Public Utilities shall conduct a review of all telecommunications taxes, including an analysis of alternative taxes, and evaluate their potential for providing property tax relief and their impact under the on-going transition to a more competitive and technologically diverse market and submit its findings and recommendations in a written report to the Governor and the Legislature on or before December 31, 1997.

Repealer.

77. The following are repealed:

Section 2 of P.L.1983, c.95 (C.48:2-29.37);

P.L.1940, c.4 (C.54:30A-16 through 54:30A-29);

Sections 6 and 8 of P.L.1963, c.41 (C.54:30A-18.1 and 54:30A-18.2);

Section 2 of P.L.1971, c.109 (C.54:30A-18.1a);

Sections 1 and 2 of P.L.1979, c.35 (C.54:30A-18.4 and 54:30A-18.5);

Sections 2, 10, 11, 12 and 24 of P.L.1991, c.184 (C.54:30A-18.6, 54:30A-54.6, 54:30A-

54.7, 54:30A-54.8 and 54:30A-18.7);
Section 2 of P.L.1980, c.10 (C.54:30A-24.1);
Section 5 of P.L.1989, c.2 (C.54:30A-24.2);
Sections 25 and 27 of P.L.1991, c.184 (C.54:30A-24.3 and 54:30A-24.4);
P.L.1961, c.91 (C.54:30A-51.1 through 54:30A-51.5);
Section 5 of P.L.1940, c.5 (C.54:30A-53);
Sections 8 through 13 of P.L.1940, c.5 (C.54:30A-56 through 54:30A-61);
Section 4 of P.L.1980, c.11 (C.54:30A-61.1);
Sections 19, 26 and 28 of P.L.1991, c.184 (C.54:30A-61.2 through 54:30A-61.4);
Sections 16, 17, 19 and 20 of P.L.1940, c.5 (C.54:30A-64 through 54:30A-67); and
Section 30 of P.L.1991, c.184 (C.54:30A-68).

78.. This act shall take effect January 1, 1998, except that this section and sections 49, 58, 63 and 67 shall take effect immediately.

Approved July 14, 1997.