

ASSEMBLY, No. 4496

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED SEPTEMBER 24, 2018

Sponsored by:

Assemblyman JOHN J. BURZICHELLI

District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Provides for collection of sales tax by marketplace facilitators and certain remote sellers, and clarifies collection of taxes related to hotel and transient accommodation occupancies.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the collection requirements of various State
2 taxes, supplementing P.L.1966, c.30 and amending various parts
3 of the statutory law.

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

7
8 1. (New section) a. Notwithstanding the provisions of the
9 "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) or any
10 other law, rule, or regulation to the contrary, a seller who makes a
11 retail sale of tangible personal property, specified digital products,
12 or taxable services for delivery into the State and who does not have
13 a physical presence in the State shall be subject to the tax imposed
14 under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et
15 seq.), and shall collect the tax in accordance with the provisions of
16 P.L.1966, c.30 (C.54:32B-1 et seq.) if the seller meets either of the
17 following criteria:

18 (1) The seller's gross revenue from delivery of tangible personal
19 property, specified digital products, or taxable services into the
20 State in the calendar year or the prior calendar year exceeds
21 \$100,000; or

22 (2) The seller sold tangible personal property, specified digital
23 products, or taxable services for delivery into the State in 200 or
24 more separate transactions during the calendar year or the prior
25 calendar year.

26 b. A taxpayer complying with the provisions of P.L.1966, c.30
27 (C.54:32B-1 et seq.) and this section, voluntarily or otherwise, may
28 seek a refund or credit of a tax, penalty, or interest by following the
29 procedures set forth in section 20 of P.L.1966, c.30 (C.54:32B-20).
30 However, the director shall not grant an application for a refund or
31 credit submitted to the director pursuant to section 20 of P.L.1966,
32 c.30 (C.54:32B-20) on the basis that a taxpayer lacked a physical
33 presence in the State and complied with the provisions of P.L.1966,
34 c.30 (C.54:32B-1 et seq.) and this section voluntarily. Nothing in
35 this subsection shall limit the ability of a taxpayer to obtain a refund
36 or credit on any other basis set forth in section 20 of P.L.1966, c.30
37 (C.54:32B-20).

38 c. A seller who remits the tax imposed under the "Sales and
39 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), voluntarily or
40 otherwise, shall not be liable to a purchaser who claims that the
41 sales tax has been over-collected because a provision of P.L. ,
42 c. (C.) (pending before the Legislature as this bill) is later
43 deemed unlawful.

44 d. Nothing in P.L. , c. (C.) (pending before the
45 Legislature as this bill) shall affect the obligation of any purchaser

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 from this State to remit use tax as to any applicable transaction in
2 which the seller does not collect and remit the sales tax or remit an
3 offsetting sales tax.

4 e. The tax imposed under P.L.1966, c.30 (C.54:32B-1 et seq.)
5 upon sellers who meet the criteria set forth in this section and are
6 not otherwise subject to the tax shall apply only to sales following
7 the effective date of this section, and no obligation to collect and
8 remit the tax imposed under P.L.1966, c.30 (C.54:32B-1 et seq.) by
9 sellers who meet the criteria set forth in this section may be applied
10 retroactively.

11

12 2. (New section) a. As used in this section:

13 "Marketplace facilitator" means a person, including any affiliate
14 of the person, who facilitates a retail sale of tangible personal
15 property, specified digital products, or taxable services by
16 satisfying paragraphs (1) and (2) below:

17 (1) The person directly or indirectly does any of the following:

18 (i) Lists, makes available, or advertises tangible personal
19 property, specified digital products, or services for sale by a
20 marketplace seller in a forum owned, operated, or controlled by the
21 person.

22 (ii) Facilitates the sales of a marketplace seller's product through
23 a marketplace by transmitting or otherwise communicating an offer
24 or acceptance of a retail sale of tangible personal property, specified
25 digital products, or taxable services between a marketplace seller
26 and a purchaser in a forum including a shop, store, booth, catalog,
27 internet site, or similar forum.

28 (iii) Owns, rents, licenses, makes available, or operates any
29 electronic or physical infrastructure or any property, process,
30 method, copyright, trademark, or patent that connects marketplace
31 sellers to purchasers for the purpose of making retail sales of
32 tangible personal property, specified digital products, or taxable
33 services.

34 (iv) Provides a marketplace for making retail sales of tangible
35 personal property, specified digital products, or taxable services or
36 otherwise facilitates retail sales of tangible personal property,
37 specified digital products, or taxable services regardless of
38 ownership or control of the tangible personal property, specified
39 digital products, or taxable services that are the subject of the retail
40 sale.

41 (v) Provides software development or research and development
42 activities related to any activity described in this paragraph, if such
43 software development or research and development activities are
44 directly related to the physical or electronic marketplace provided
45 by a marketplace facilitator.

46 (vi) Provides or offers fulfillment or storage services for a
47 marketplace seller.

1 (vii) Sets prices for a marketplace seller's sale of tangible
2 personal property, specified digital products, or taxable services.

3 (viii) Provides or offers customer service to a marketplace seller
4 or a marketplace seller's customers, or accepts or assists with taking
5 orders, returns, or exchanges of tangible personal property,
6 specified digital products, or taxable services sold by a marketplace
7 seller.

8 (ix) Brands or otherwise identifies sales as those of the
9 marketplace facilitator.

10 (2) The person directly or indirectly does any of the following:

11 (i) Collects the sales price of a retail sale of tangible personal
12 property, specified digital products, or taxable services.

13 (ii) Provides payment processing services for a retail sale of
14 tangible personal property, specified digital products, or taxable
15 services.

16 (iii) Charges, collects, or otherwise receives selling fees, listing
17 fees, referral fees, closing fees, fees for inserting or making
18 available tangible personal property, specified digital products, or
19 taxable services on a marketplace, or other consideration from the
20 facilitation of a retail sale of tangible personal property, specified
21 digital products, or taxable services, regardless of ownership or
22 control of the tangible personal property, specified digital products,
23 or taxable services that are the subject of the retail sale.

24 (iv) Through terms and conditions, agreements, or arrangements
25 with a third party, collects payment in connection with a retail sale
26 of tangible personal property, specified digital products, or taxable
27 services from a purchaser and transmits that payment to the
28 marketplace seller, regardless of whether the person collecting and
29 transmitting such payment receives compensation or other
30 consideration in exchange for the service.

31 (v) Provides a virtual currency that purchasers are allowed or
32 required to use to purchase tangible personal property, specified
33 digital products, or taxable services.

34 "Marketplace seller" means a seller that makes retail sales
35 through any physical or electronic marketplace owned, operated, or
36 controlled by a marketplace facilitator, even if such seller would not
37 have been required to collect and pay the tax imposed under
38 P.L.1966, c.30 (C.54:32B-1 et seq.) had the sale not been made
39 through such marketplace.

40 b. Following the effective date of P.L. , c. (C.)
41 (pending before the Legislature as this bill), a marketplace
42 facilitator shall collect and pay to the director the tax imposed under
43 P.L.1966, c.30 (C.54:32B-1 et seq.) any retail sale made or
44 facilitated to a purchaser in this State, regardless of whether the
45 marketplace seller has or is required to have a certificate of
46 registration or would have been required to collect the tax imposed
47 under P.L.1966, c.30 (C.54:32B-1 et seq.) had the sale not been
48 facilitated by the marketplace facilitator, and regardless of the

1 amount of the sales price that will ultimately accrue to or benefit
2 the marketplace facilitator, the marketplace seller, or any other
3 person.

4 c. Nothing in this section shall be construed to interfere with
5 the ability of a marketplace facilitator and a marketplace seller to
6 enter into an agreement with each other regarding the collection and
7 payment of tax imposed under P.L.1966, c.30 (C.54:32B -1 et seq.).

8 d. If the marketplace facilitator demonstrates to the satisfaction
9 of the division that the marketplace facilitator has made a
10 reasonable effort to obtain accurate information from the
11 marketplace seller about a retail sale and that the failure to collect
12 and pay the correct amount of tax imposed under P.L.1966, c.30
13 (C.54:32B-1 et seq.) was due to incorrect information provided to
14 the marketplace facilitator by the marketplace seller, then the
15 marketplace facilitator shall be relieved of liability of the tax for
16 that retail sale. This subsection does not apply with regard to a retail
17 sale for which the marketplace facilitator is the seller or if the
18 marketplace facilitator and seller are affiliates. Where the
19 marketplace facilitator is relieved under this subsection, the seller is
20 liable for the tax imposed under P.L.1966, c.30 (C.54:32B-1 et
21 seq.).

22 e. Following each retail sale made, the marketplace facilitator
23 shall provide to the purchaser a sales slip, invoice, receipt, or other
24 statement or memorandum of the price paid or payable, which shall
25 state, charge, and show the tax separately.

26 f. A marketplace facilitator shall be subject to audit by the
27 division with respect to all retail sales for which it is required to
28 collect and pay the tax imposed under P.L.1966, c.30 (C.54:32B-1
29 et seq.). Where the division audits the marketplace facilitator, the
30 division is prohibited from auditing the marketplace seller for the
31 same retail sales unless the marketplace facilitator seeks relief
32 under subsection d. of this section.

33 g. Upon written application and for good cause shown, in order
34 to ensure the accurate and timely collection of taxes due, the
35 director shall have the discretion to temporarily suspend or delay
36 the collection or reporting requirements, or both, of a marketplace
37 facilitator for a period not to exceed 180 days. The director shall
38 annually report to the Governor, and to the Legislature pursuant to
39 section 2 of P.L.1991, c.164 (C.52:14-19.1), on the number of
40 marketplace facilitators granted a suspension or delay of tax
41 collection or reporting requirements pursuant to this subsection and
42 the duration of each suspension or delay, except in a year in which
43 no such suspension or delay was granted.

44

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

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

1 (a) "Person" includes an individual, trust, partnership, limited
2 partnership, limited liability company, society, association, joint
3 stock company, corporation, public corporation or public authority,
4 estate, receiver, trustee, assignee, referee, fiduciary and any other
5 legal entity.

6 (b) "Purchase at retail" means a purchase by any person at a
7 retail sale.

8 (c) "Purchaser" means a person to whom a sale of personal
9 property is made or to whom a service is furnished.

10 (d) "Receipt" means the amount of the sales price of any
11 tangible personal property, specified digital product or service
12 taxable under this act.

13 (e) "Retail sale" means any sale, lease, or rental for any purpose,
14 other than for resale, sublease, or subrent.

15 (1) For the purposes of this act a sale is for "resale, sublease, or
16 subrent" if it is a sale (A) for resale either as such or as converted
17 into or as a component part of a product produced for sale by the
18 purchaser, including the conversion of natural gas into another
19 intermediate or end product, other than electricity or thermal
20 energy, produced for sale by the purchaser, (B) for use by that
21 person in performing the services subject to tax under subsection
22 (b) of section 3 where the property so sold becomes a physical
23 component part of the property upon which the services are
24 performed or where the property so sold is later actually transferred
25 to the purchaser of the service in conjunction with the performance
26 of the service subject to tax, (C) of telecommunications service to a
27 telecommunications service provider for use as a component part of
28 telecommunications service provided to an ultimate customer, or
29 (D) to a person who receives by contract a product transferred
30 electronically for further commercial broadcast, rebroadcast,
31 transmission, retransmission, licensing, relicensing, distribution,
32 redistribution or exhibition of the product, in whole or in part, to
33 another person, other than rights to redistribute based on statutory
34 or common law doctrine such as fair use.

35 (2) For the purposes of this act, the term "retail sale" includes:
36 sales of tangible personal property to all contractors, subcontractors
37 or repairmen of materials and supplies for use by them in erecting
38 structures for others, or building on, or otherwise improving,
39 altering, or repairing real property of others.

40 (3) (Deleted by amendment, P.L.2005, c.126).

41 (4) The term "retail sale" does not include:

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

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

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

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

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

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

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

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

18 (g) "Tangible personal property" means personal property that
19 can be seen, weighed, measured, felt, or touched, or that is in any
20 other manner perceptible to the senses. "Tangible personal
21 property" includes electricity, water, gas, steam, and prewritten
22 computer software including prewritten computer software
23 delivered electronically.

24 (h) "Use" means the exercise of any right or power over tangible
25 personal property, specified digital products, services to property or
26 products, or services by the purchaser thereof and includes, but is
27 not limited to, the receiving, storage or any keeping or retention for
28 any length of time, withdrawal from storage, any distribution, any
29 installation, any affixation to real or personal property, or any
30 consumption of such property or products. Use also includes the
31 exercise of any right or power over intrastate or interstate
32 telecommunications and prepaid calling services. Use also includes
33 the exercise of any right or power over utility service. Use also
34 includes the derivation of a direct or indirect benefit from a service.

35 (i) "Seller" means a person making sales, leases or rentals of
36 personal property or services.

37 (1) The term "seller" includes:

38 (A) A person making sales, leases or rentals of tangible personal
39 property, specified digital products or services, the receipts from
40 which are taxed by this act;

41 (B) A person maintaining a place of business in the State or
42 having an agent maintaining a place of business in the State and
43 making sales, whether at such place of business or elsewhere, to
44 persons within the State of tangible personal property, specified
45 digital products or services, the use of which is taxed by this act;

46 (C) A person who solicits business either by employees,
47 independent contractors, agents or other representatives or by
48 distribution of catalogs or other advertising matter and by reason

1 thereof makes sales to persons within the State of tangible personal
2 property, specified digital products or services, the use of which is
3 taxed by this act.

4 A person making sales of tangible personal property, specified
5 digital products, or services taxable under the "Sales and Use Tax
6 Act," P.L.1966, c.30 (C.54:32B-1 et seq.) shall be presumed to be
7 soliciting business through an independent contractor or other
8 representative if the person making sales enters into an agreement
9 with an independent contractor having physical presence in this
10 State or other representative having physical presence in this State,
11 for a commission or other consideration, under which the
12 independent contractor or representative directly or indirectly refers
13 potential customers, whether by a link on an internet website or
14 otherwise, and the cumulative gross receipts from sales to
15 customers in this State who were referred by all independent
16 contractors or representatives that have this type of an agreement
17 with the person making sales are in excess of \$10,000 during the
18 preceding four quarterly periods ending on the last day of March,
19 June, September, and December. This presumption may be rebutted
20 by proof that the independent contractor or representative with
21 whom the person making sales has an agreement did not engage in
22 any solicitation in the State on behalf of the person that would
23 satisfy the nexus requirements of the United States Constitution
24 during the four quarterly periods in question. Nothing in this
25 subparagraph shall be construed to narrow the scope of the terms
26 independent contractor or other representative for purposes of any
27 other provision of the "Sales and Use Tax Act," P.L.1966, c.30
28 (C.54:32B-1 et seq.);

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

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

38 (F) (Deleted by amendment, P.L.2005, c.126);

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

42 (H) A person engaged in collecting charges in the nature of
43 initiation fees, membership fees or dues for access to or use of the
44 property or facilities of a health and fitness, athletic, sporting or
45 shopping club or organization; **[and]**

46 (I) A person engaged in the business of parking, storing or
47 garaging motor vehicles **[.]**;

1 (J) A person making sales, leases, or rentals of tangible personal
2 property, specified digital products, or taxable services who meets
3 the criteria set forth in paragraph (1) or (2) of section 1 of P.L. _____,
4 c. (C. _____) (pending before the Legislature as this bill); and

5 (K) A marketplace facilitator.

6 (2) In addition, when in the opinion of the director it is
7 necessary for the efficient administration of this act to treat any
8 salesman, representative, peddler or canvasser as the agent of the
9 seller, distributor, supervisor or employer under whom the agent
10 operates or from whom the agent obtains tangible personal property
11 or a specified digital product sold by the agent or for whom the
12 agent solicits business, the director may, in the director's discretion,
13 treat such agent as the seller jointly responsible with the agent's
14 principal, distributor, supervisor or employer for the collection and
15 payment over of the tax. A person is an agent of a seller in all
16 cases, but not limited to such cases, that: (A) the person and the
17 seller have the relationship of a "related person" described pursuant
18 to section 2 of P.L.1993, c.170 (C.54:10A-5.5); and (B) the seller
19 and the person use an identical or substantially similar name,
20 tradename, trademark, or goodwill, to develop, promote, or
21 maintain sales, or the person and the seller pay for each other's
22 services in whole or in part contingent upon the volume or value of
23 sales, or the person and the seller share a common business plan or
24 substantially coordinate their business plans, or the person provides
25 services to, or that inure to the benefit of, the seller related to
26 developing, promoting, or maintaining the seller's market.

27 (3) Notwithstanding any other provision of law or
28 administrative action to the contrary, transient space marketplaces
29 shall be required to collect and pay on behalf of persons engaged in
30 the business of providing transient accommodations or hotel rooms
31 located in this State the tax for transactions solely consummated
32 through the transient space marketplace. For not less than four years
33 following the end of the calendar year in which the transaction
34 occurred, the transient space marketplace shall maintain the
35 following data for those transactions consummated through the
36 transient space marketplace:

37 **[(1)]** (A) The name of the person who provided the transient
38 accommodation or hotel room;

39 **[(2)]** (B) The name of the customer who procured occupancy
40 of the transient accommodation or hotel room;

41 **[(3)]** (C) The address, including any unit designation, of the
42 transient accommodation or hotel room;

43 **[(4)]** (D) The dates and nightly rates for which the consumer
44 procured occupancy of the transient accommodation or hotel room;

45 **[(5)]** (E) The municipal transient accommodation registration
46 number, if applicable;

1 **[(6)] (F)** A statement as to whether such booking services will
2 be provided in connection with (i) short-term rental of the entirety
3 of such unit, (ii) short-term rental of part of such unit, but not the
4 entirety of such unit, and/or (iii) short-term rental of the entirety of
5 such unit, or part thereof, in which a non-short-term occupant will
6 continue to occupy such unit for the duration of such short-term
7 rental;

8 **[(7)] (G)** The individualized name or number of each such
9 advertisement or listing connected to such unit and the uniform
10 resource locator (URL) for each such listing or advertisement,
11 where applicable; and

12 **[(8)] (H)** Such other information as the Division of Taxation
13 may by rule require.

14 The Division of Taxation may audit transient space marketplaces
15 as necessary to ensure data accuracy and enforce tax compliance.

16 (j) "Hotel" means a building or portion of a building which is
17 regularly used and kept open as such for the lodging of guests.
18 "Hotel" includes an apartment hotel, a motel, inn, and rooming or
19 boarding house or club, whether or not meals are served, but does
20 not include a transient accommodation.

21 (k) "Occupancy" means the use or possession or the right to the
22 use or possession, of any room in a hotel or transient
23 accommodation.

24 (l) "Occupant" means a person who, for a consideration, uses,
25 possesses, or has the right to use or possess, any room in a hotel or
26 transient accommodation under any lease, concession, permit, right
27 of access, license to use or other agreement, or otherwise.

28 (m) "Permanent resident" means any occupant of any room or
29 rooms in a hotel or transient accommodation for at least 90
30 consecutive days shall be considered a permanent resident with
31 regard to the period of such occupancy.

32 (n) "Room" means any room or rooms of any kind in any part or
33 portion of a hotel or transient accommodation, which is available
34 for or let out for any purpose other than a place of assembly.

35 (o) "Admission charge" means the amount paid for admission,
36 including any service charge and any charge for entertainment or
37 amusement or for the use of facilities therefor.

38 (p) "Amusement charge" means any admission charge, dues or
39 charge of a roof garden, cabaret or other similar place.

40 (q) "Charge of a roof garden, cabaret or other similar place"
41 means any charge made for admission, refreshment, service, or
42 merchandise at a roof garden, cabaret or other similar place.

43 (r) "Dramatic or musical arts admission charge" means any
44 admission charge paid for admission to a theater, opera house,
45 concert hall or other hall or place of assembly for a live, dramatic,
46 choreographic or musical performance.

47 (s) "Lessor" means any person who is the owner, licensee, or
48 lessee of any premises, tangible personal property or a specified

1 digital product which the person leases, subleases, or grants a
2 license to use to other persons.

3 (t) "Place of amusement" means any place where any facilities
4 for entertainment, amusement, or sports are provided.

5 (u) "Casual sale" means an isolated or occasional sale of an item
6 of tangible personal property or a specified digital product by a
7 person who is not regularly engaged in the business of making retail
8 sales of such property or product where the item of tangible
9 personal property or the specified digital product was obtained by
10 the person making the sale, through purchase or otherwise, for the
11 person's own use.

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

17 (w) "Persons required to collect tax" or "persons required to
18 collect any tax imposed by this act" includes: every seller of
19 tangible personal property, specified digital products or services;
20 every recipient of amusement charges; every operator of a hotel or
21 transient accommodation; every transient space marketplace; every
22 marketplace facilitator; every seller of a telecommunications
23 service; every recipient of initiation fees, membership fees or dues
24 for access to or use of the property or facilities of a health and
25 fitness, athletic, sporting or shopping club or organization; and
26 every recipient of charges for parking, storing or garaging a motor
27 vehicle. Said terms shall also include any officer or employee of a
28 corporation or of a dissolved corporation who as such officer or
29 employee is under a duty to act for such corporation in complying
30 with any requirement of this act and any member of a partnership.

31 (x) "Customer" includes: every purchaser of tangible personal
32 property, specified digital products or services; every patron paying
33 or liable for the payment of any amusement charge; every occupant
34 of a room or rooms in a hotel or transient accommodation; every
35 person paying charges in the nature of initiation fees, membership
36 fees or dues for access to or use of the property or facilities of a
37 health and fitness, athletic, sporting or shopping club or
38 organization; and every purchaser of parking, storage or garaging a
39 motor vehicle.

40 (y) "Property and services the use of which is subject to tax"
41 includes: (1) all property sold to a person within the State, whether
42 or not the sale is made within the State, the use of which property is
43 subject to tax under section 6 or will become subject to tax when
44 such property is received by or comes into the possession or control
45 of such person within the State; (2) all services rendered to a person
46 within the State, whether or not such services are performed within
47 the State, upon tangible personal property or a specified digital
48 product the use of which is subject to tax under section 6 or will

1 become subject to tax when such property or product is distributed
2 within the State or is received by or comes into possession or
3 control of such person within the State; (3) intrastate, interstate, or
4 international telecommunications sourced to this State pursuant to
5 section 29 of P.L.2005, c.126 (C.54:32B-3.4); (4) (Deleted by
6 amendment, P.L.1995, c.184); (5) energy sold, exchanged or
7 delivered in this State for use in this State; (6) utility service sold,
8 exchanged or delivered in this State for use in this State; (7) mail
9 processing services in connection with printed advertising material
10 distributed in this State; (8) (Deleted by amendment, P.L.2005,
11 c.126); and (9) services the benefit of which are received in this
12 State.

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

19 (aa) "Lease or rental" means any transfer of possession or
20 control of tangible personal property for a fixed or indeterminate
21 term for consideration. A "lease or rental" may include future
22 options to purchase or extend.

23 (1) "Lease or rental" does not include:

24 (A) A transfer of possession or control of property under a
25 security agreement or deferred payment plan that requires the
26 transfer of title upon completion of the required payments;

27 (B) A transfer of possession or control of property under an
28 agreement that requires the transfer of title upon completion of
29 required payments and payment of an option price does not exceed
30 the greater of \$100 or one percent of the total required payments; or

31 (C) Providing tangible personal property or a specified digital
32 product along with an operator for a fixed or indeterminate period
33 of time. A condition of this exclusion is that the operator is
34 necessary for the equipment to perform as designed. For the
35 purpose of this subparagraph, an operator must do more than
36 maintain, inspect, or set-up the tangible personal property or
37 specified digital product.

38 (2) "Lease or rental" does include agreements covering motor
39 vehicles and trailers where the amount of consideration may be
40 increased or decreased by reference to the amount realized upon
41 sale or disposition of the property as defined in 26 U.S.C.
42 s.7701(h)(1).

43 (3) The definition of "lease or rental" provided in this subsection
44 shall be used for the purposes of this act regardless of whether a
45 transaction is characterized as a lease or rental under generally
46 accepted accounting principles, the federal Internal Revenue Code
47 or other provisions of federal, state or local law.

48 (bb)(Deleted by amendment, P.L.2005, c.126).

1 (cc) "Telecommunications service" means the electronic
2 transmission, conveyance, or routing of voice, data, audio, video, or
3 any other information or signals to a point, or between or among
4 points.

5 "Telecommunications service" shall include such transmission,
6 conveyance, or routing in which computer processing applications
7 are used to act on the form, code, or protocol of the content for
8 purposes of transmission, conveyance, or routing without regard to
9 whether such service is referred to as voice over Internet protocol
10 services or is classified by the Federal Communications
11 Commission as enhanced or value added.

12 "Telecommunications service" shall not include:

13 (1) (Deleted by amendment, P.L.2008, c.123);

14 (2) (Deleted by amendment, P.L.2008, c.123);

15 (3) (Deleted by amendment, P.L.2008, c.123);

16 (4) (Deleted by amendment, P.L.2008, c.123);

17 (5) (Deleted by amendment, P.L.2008, c.123);

18 (6) (Deleted by amendment, P.L.2008, c.123);

19 (7) data processing and information services that allow data to
20 be generated, acquired, stored, processed, or retrieved and delivered
21 by an electronic transmission to a purchaser where such purchaser's
22 primary purpose for the underlying transaction is the processed data
23 or information;

24 (8) installation or maintenance of wiring or equipment on a
25 customer's premises;

26 (9) tangible personal property;

27 (10) advertising, including but not limited to directory
28 advertising;

29 (11) billing and collection services provided to third parties;

30 (12) internet access service;

31 (13) radio and television audio and video programming services,
32 regardless of the medium, including the furnishing of transmission,
33 conveyance, and routing of such services by the programming
34 service provider. Radio and television audio and video
35 programming services shall include but not be limited to cable
36 service as defined in section 47 U.S.C. s.522(6) and audio and video
37 programming services delivered by commercial mobile radio
38 service providers, as defined in section 47 C.F.R. 20.3;

39 (14) ancillary services; or

40 (15) digital products delivered electronically, including but not
41 limited to software, music, video, reading materials, or ringtones.

42 For the purposes of this subsection:

43 "ancillary service" means a service that is associated with or
44 incidental to the provision of telecommunications services,
45 including but not limited to detailed telecommunications billing,
46 directory assistance, vertical service, and voice mail service;

47 "conference bridging service" means an ancillary service that links
48 two or more participants of an audio or video conference call and

1 may include the provision of a telephone number. Conference
2 bridging service does not include the telecommunications services
3 used to reach the conference bridge;

4 "detailed telecommunications billing service" means an ancillary
5 service of separately stating information pertaining to individual
6 calls on a customer's billing statement;

7 "directory assistance" means an ancillary service of providing
8 telephone number information or address information or both;

9 "vertical service" means an ancillary service that is offered in
10 connection with one or more telecommunications services, which
11 offers advanced calling features that allow customers to identify
12 callers and to manage multiple calls and call connections, including
13 conference bridging services; and

14 "voice mail service" means an ancillary service that enables the
15 customer to store, send, or receive recorded messages. Voice mail
16 service does not include any vertical service that a customer may be
17 required to have to utilize the voice mail service.

18 (dd) (1) "Intrastate telecommunications" means a
19 telecommunications service that originates in one United States
20 state or a United States territory or possession or federal district,
21 and terminates in the same United States state or United States
22 territory or possession or federal district.

23 (2) "Interstate telecommunications" means a
24 telecommunications service that originates in one United States
25 state or a United States territory or possession or federal district,
26 and terminates in a different United States state or United States
27 territory or possession or federal district.

28 (3) "International telecommunications" means a
29 telecommunications service that originates or terminates in the
30 United States and terminates or originates outside the United States,
31 respectively. "United States" includes the District of Columbia or a
32 United States territory or possession.

33 (ee) (Deleted by amendment, P.L.2008, c.123)

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

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

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

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

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

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

12 (ll) "Pre-paid calling service" means the right to access
13 exclusively telecommunications services, which shall be paid for in
14 advance and which enables the origination of calls using an access
15 number or authorization code, whether manually or electronically
16 dialed, and that is sold in predetermined units or dollars of which
17 the number declines with use in a known amount.

18 (mm) "Mobile telecommunications service" means the same as
19 that term is defined in the federal "Mobile Telecommunications
20 Sourcing Act," 4 U.S.C. s.124 (Pub.L.106-252).

21 (nn) (Deleted by amendment, P.L.2008, c.123)

22 (oo) (1) "Sales price" is the measure subject to sales tax and
23 means the total amount of consideration, including cash, credit,
24 property, and services, for which personal property or services are
25 sold, leased, or rented, valued in money, whether received in money
26 or otherwise, without any deduction for the following:

27 (A) The seller's cost of the property sold;

28 (B) The cost of materials used, labor or service cost, interest,
29 losses, all costs of transportation to the seller, all taxes imposed on
30 the seller, and any other expense of the seller;

31 (C) Charges by the seller for any services necessary to complete
32 the sale;

33 (D) Delivery charges;

34 (E) (Deleted by amendment, P.L.2011, c.49); and

35 (F) (Deleted by amendment, P.L.2008, c.123).

36 (2) "Sales price" does not include:

37 (A) Discounts, including cash, term, or coupons that are not
38 reimbursed by a third party, that are allowed by a seller and taken
39 by a purchaser on a sale;

40 (B) Interest, financing, and carrying charges from credit
41 extended on the sale of personal property or services, if the amount
42 is separately stated on the invoice, bill of sale, or similar document
43 given to the purchaser;

44 (C) Any taxes legally imposed directly on the consumer that are
45 separately stated on the invoice, bill of sale, or similar document
46 given to the purchaser;

1 (D) The amount of sales price for which food stamps have been
2 properly tendered in full or part payment pursuant to the federal
3 Food Stamp Act of 1977, Pub.L.95-113 (7 U.S.C. s.2011 et seq.); or

4 (E) Credit for any trade-in of property of the same kind accepted
5 in part payment and intended for resale if the amount is separately
6 stated on the invoice, bill of sale, or similar document given to the
7 purchaser.

8 (3) "Sales price" includes consideration received by the seller
9 from third parties if:

10 (A) The seller actually receives consideration from a party other
11 than the purchaser and the consideration is directly related to a price
12 reduction or discount on the sale;

13 (B) The seller has an obligation to pass the price reduction or
14 discount through to the purchaser;

15 (C) The amount of the consideration attributable to the sale is
16 fixed and determinable by the seller at the time of the sale of the
17 item to the purchaser; and

18 (D) One of the following criteria is met:

19 (i) the purchaser presents a coupon, certificate, or other
20 documentation to the seller to claim a price reduction or discount
21 where the coupon, certificate, or documentation is authorized,
22 distributed, or granted by a third party with the understanding that
23 the third party will reimburse any seller to whom the coupon,
24 certificate, or documentation is presented;

25 (ii) the purchaser identifies himself to the seller as a member of
26 a group or organization entitled to a price reduction or discount;
27 provided however, that a preferred customer card that is available to
28 any patron does not constitute membership in such a group; or

29 (iii) the price reduction or discount is identified as a third party
30 price reduction or discount on the invoice received by the purchaser
31 or on a coupon, certificate, or other documentation presented by the
32 purchaser.

33 (4) In the case of a bundled transaction that includes a
34 telecommunications service, an ancillary service, internet access, or
35 an audio or video programming service, if the price is attributable to
36 products that are taxable and products that are nontaxable, the
37 portion of the price attributable to the nontaxable products is
38 subject to tax unless the provider can identify by reasonable and
39 verifiable standards such portion from its books and records that are
40 kept in the regular course of business for other purposes, including
41 non-tax purposes.

42 (pp) "Purchase price" means the measure subject to use tax and
43 has the same meaning as "sales price."

44 (qq) "Sales tax" means the tax imposed on certain transactions
45 pursuant to the provisions of the "Sales and Use Tax Act,"
46 P.L.1966, c.30 (C.54:32B-1 et seq.).

47 (rr) "Delivery charges" means charges by the seller for
48 preparation and delivery to a location designated by the purchaser

1 of personal property or services including, but not limited to,
2 transportation, shipping, postage, handling, crating, and packing. If
3 a shipment includes both exempt and taxable property, the seller
4 should allocate the delivery charge by using: (1) a percentage based
5 on the total sales price of the taxable property compared to the total
6 sales price of all property in the shipment; or (2) a percentage based
7 on the total weight of the taxable property compared to the total
8 weight of all property in the shipment. The seller shall tax the
9 percentage of the delivery charge allocated to the taxable property
10 but is not required to tax the percentage allocated to the exempt
11 property.

12 (ss) "Direct mail" means printed material delivered or distributed
13 by United States mail or other delivery service to a mass audience
14 or to addresses on a mailing list provided by the purchaser or at the
15 direction of the purchaser in cases in which the cost of the items are
16 not billed directly to the recipients. "Direct mail" includes tangible
17 personal property supplied directly or indirectly by the purchaser to
18 the direct mail seller for inclusion in the package containing the
19 printed material. "Direct mail" does not include multiple items of
20 printed material delivered to a single address.

21 (tt) "Streamlined Sales and Use Tax Agreement" means the
22 agreement entered into as governed and authorized by the "Uniform
23 Sales and Use Tax Administration Act," P.L.2001, c.431
24 (C.54:32B-44 et seq.).

25 (uu) "Alcoholic beverages" means beverages that are suitable
26 for human consumption and contain one-half of one percent or more
27 of alcohol by volume.

28 (vv) (Deleted by amendment, P.L.2011, c.49)

29 (ww) "Landscaping services" means services that result in a
30 capital improvement to land other than structures of any kind
31 whatsoever, such as: seeding, sodding or grass plugging of new
32 lawns; planting trees, shrubs, hedges, plants; and clearing and
33 filling land.

34 (xx) "Investigation and security services" means:

35 (1) investigation and detective services, including detective
36 agencies and private investigators, and fingerprint, polygraph,
37 missing person tracing and skip tracing services;

38 (2) security guard and patrol services, including bodyguard and
39 personal protection, guard dog, guard, patrol, and security services;

40 (3) armored car services; and

41 (4) security systems services, including security, burglar, and
42 fire alarm installation, repair or monitoring services.

43 (yy) "Information services" means the furnishing of information
44 of any kind, which has been collected, compiled, or analyzed by the
45 seller, and provided through any means or method, other than
46 personal or individual information which is not incorporated into
47 reports furnished to other people.

1 (zz) "Specified digital product" means an electronically
2 transferred digital audio-visual work, digital audio work, or digital
3 book; provided however, that a digital code which provides a
4 purchaser with a right to obtain the product shall be treated in the
5 same manner as a specified digital product.

6 (aaa) "Digital audio-visual work" means a series of related
7 images which, when shown in succession, impart an impression of
8 motion, together with accompanying sounds, if any.

9 (bbb) "Digital audio work" means a work that results from the
10 fixation of a series of musical, spoken, or other sounds, including a
11 ringtone.

12 (ccc) "Digital book" means a work that is generally recognized in
13 the ordinary and usual sense as a book.

14 (ddd) "Transferred electronically" means obtained by the
15 purchaser by means other than tangible storage media.

16 (eee) "Ringtone" means a digitized sound file that is
17 downloaded onto a device and that may be used to alert the
18 purchaser with respect to a communication.

19 (fff) "Residence" means a house, condominium, or other
20 residential dwelling unit in a building or structure or part of a
21 building or structure that is designed, constructed, leased, rented, let
22 or hired out, or otherwise made available for use as a residence.

23 (ggg) "Transient accommodation" means a room, group of
24 rooms, or other living or sleeping space for the lodging of
25 occupants, including but not limited to residences or buildings used
26 as residences. "Transient accommodation" does not include: a hotel
27 or hotel room; a room, group of rooms, or other living or sleeping
28 space used as a place of assembly; a dormitory or other similar
29 residential facility of an elementary or secondary school or a
30 college or university; a hospital, nursing home, or other similar
31 residential facility of a provider of services for the care, support and
32 treatment of individuals that is licensed by the State; a campsite,
33 cabin, lean-to, or other similar residential facility of a campground
34 or an adult or youth camp; a furnished or unfurnished private
35 residential property, including but not limited to condominiums,
36 bungalows, single-family homes and similar living units, where no
37 maid service, room service, linen changing service or other
38 common hotel services are made available by the lessor and where
39 the keys to the furnished or unfurnished private residential property,
40 whether a physical key, access to a keyless locking mechanism, or
41 other means of physical ingress to the furnished or unfurnished
42 private residential property, are provided to the lessee at the
43 location of an offsite real estate broker licensed by the New Jersey
44 Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases
45 of real property with a term of at least 90 consecutive days.

46 (hhh) "Transient space marketplace" means an online
47 marketplace through which a person may offer transient
48 accommodations or hotel rooms to individuals. A "transient space

1 marketplace" allows transient accommodations or hotel rooms to be
2 advertised or listed through an online marketplace in exchange for
3 consideration or provides a means for a customer to arrange for the
4 occupancy of the transient accommodation or hotel room in
5 exchange for consideration. A 'transient space marketplace' shall
6 not include an online marketplace operated by or on behalf of a
7 hotel or hotel corporation that facilitates customer occupancy solely
8 for the hotel or hotel corporation's owned or managed hotels and
9 franchisees, and shall not include a travel agency or an online travel
10 agency.

11 (cf: P.L.2018, c.49, s.19)

12

13 4. Section 84 of P.L.2015, c.19 (C.5:10A-84) is amended to
14 read as follows:

15 84. As used in sections 82 through 85 of P.L.2015, c.19
16 (C.5:10A-82 et seq.):

17 "Commission" means the New Jersey Sports and Exposition
18 Authority, which may be referred to as the "Meadowlands Regional
19 Commission," as established by section 6 of P.L.2015, c.19
20 (C.5:10A-6).

21 "Constituent municipality" means any of the following
22 municipalities: Carlstadt, East Rutherford, Little Ferry, Lyndhurst,
23 Moonachie, North Arlington, Ridgefield, Rutherford, South
24 Hackensack, and Teterboro in Bergen county; and Jersey City,
25 Kearny, North Bergen, and Secaucus in Hudson county.

26 "Meadowlands district" means the Hackensack Meadowlands
27 District, the area delineated within section 5 of P.L.2015, c.19
28 (C.5:10A-5).

29 "Public venue" means any place located within the Meadowlands
30 district, whether publicly or privately owned, where any facilities
31 for entertainment, amusement, or sports are provided, but shall not
32 include a movie theater.

33 "Public event" means any spectator sporting event, trade show,
34 exposition, concert, amusement, or other event open to the public
35 that takes place at a public venue, but shall not include a major
36 league football game.

37 "Residence" means a house, condominium, or other residential
38 dwelling unit in a building or structure or part of a building or
39 structure that is designed, constructed, leased, rented, let or hired
40 out, or otherwise made available for use as a residence.

41 "Transient accommodation" means a room, group of rooms, or
42 other living or sleeping space for the lodging of occupants,
43 including but not limited to residences or buildings used as
44 residences. "Transient accommodation" does not include: a hotel or
45 hotel room; a room, group of rooms, or other living or sleeping
46 space used as a place of assembly; a dormitory or other similar
47 residential facility of an elementary or secondary school or a
48 college or university; a hospital, nursing home, or other similar

1 residential facility of a provider of services for the care, support and
2 treatment of individuals that is licensed by the State; a campsite,
3 cabin, lean-to, or other similar residential facility of a campground
4 or an adult or youth camp; a furnished or unfurnished private
5 residential property, including but not limited to condominiums,
6 bungalows, single-family homes and similar living units, where no
7 maid service, room service, linen changing service or other
8 common hotel services are made available by the lessor and where
9 the keys to the furnished or unfurnished private residential property,
10 whether a physical key, access to a keyless locking mechanism, or
11 other means of physical ingress to the furnished or unfurnished
12 private residential property, are provided to the lessee at the
13 location of an offsite real estate broker licensed by the New Jersey
14 Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases
15 of real property with a term of at least 90 consecutive days.

16 "Transient space marketplace" means an online marketplace
17 through which a person may offer transient accommodations or
18 hotel rooms to individuals. A "transient space marketplace" allows
19 transient accommodations or hotel rooms to be advertised or listed
20 through an online marketplace in exchange for consideration or
21 provides a means for a customer to arrange for the occupancy of the
22 transient accommodation or hotel room in exchange for
23 consideration. A 'transient space marketplace' shall not include an
24 online marketplace operated by or on behalf of a hotel or hotel
25 corporation that facilitates customer occupancy solely for the hotel
26 or hotel corporation's owned or managed hotels and franchisees,
27 and shall not include a travel agency or an online travel agency.

28 (cf: P.L.2018, c.52, s.1)

29

30 5. Section 3 of P.L.2007, c.30 (C.34:1B-192) is amended to
31 read as follows:

32 3. As used in this act:

33 "Authority" means the New Jersey Economic Development
34 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et
35 seq.).

36 "Developer" means any person or entity, whether public or
37 private, including a State entity, that proposes to undertake a project
38 pursuant to a development agreement.

39 "District" or "sports and entertainment district" means a
40 geographic area which includes a project as set forth in the
41 ordinance pursuant to section 4 of P.L.2007, c.30 (C.34:1B-193).

42 "Eligible municipality" means a municipality: (1) in which is
43 located part of an urban enterprise zone that has been designated
44 pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.) or any
45 supplement thereto; and (2) which has a population greater than
46 25,000 and less than 29,000 according to the latest federal decennial
47 census in a county of the third class with a population density

1 greater than 295 and less than 304 persons per square mile
2 according to the latest federal decennial census.

3 "Infrastructure improvements" means the construction or
4 rehabilitation of any street, highway, utility, transportation or
5 parking facilities, or other similar improvements; the acquisition of
6 any interest in land as necessary or convenient for the acquisition of
7 any right-of-way or other easement for the purpose of constructing
8 infrastructure improvements; the acquisition, construction or
9 reconstruction of land and site improvements, including demolition,
10 clearance, removal, construction, reconstruction, fill, environmental
11 enhancement or abatement, or other site preparation for
12 development of a sports and entertainment district.

13 "Project" means a sports and entertainment facility and may
14 include infrastructure improvements that are associated with the
15 sports and entertainment facility.

16 "Project cost" means the cost of a project, including the
17 financing, acquisition, development, construction, redevelopment,
18 rehabilitation, reconstruction and improvement costs thereof,
19 financing costs and the administrative costs, including any
20 administrative costs of the authority if bonds are issued pursuant to
21 section 16 of P.L.2007, c.30 (C.34:1B-205) and incurred in
22 connection with a sports and entertainment facility which is
23 financed, in whole or in part, by the revenues dedicated by a
24 municipality to a project as authorized pursuant to section 5 of
25 P.L.2007, c.30 (C.34:1B-194).

26 "Residence" means a house, condominium, or other residential
27 dwelling unit in a building or structure or part of a building or
28 structure that is designed, constructed, leased, rented, let or hired
29 out, or otherwise made available for use as a residence.

30 "Sports and entertainment facility" means any privately or
31 publicly owned or operated facility located in a sports and
32 entertainment district that is used primarily for sports contests,
33 entertainment, or both, such as a theater, stadium, museum, arena,
34 automobile racetrack, or other place where performances, concerts,
35 exhibits, games or contests are held.

36 "State Treasurer" or "treasurer" means the treasurer of the State
37 of New Jersey.

38 "Transient accommodation" means a room, group of rooms, or
39 other living or sleeping space for the lodging of occupants,
40 including but not limited to residences or buildings used as
41 residences. "Transient accommodation" does not include: a hotel or
42 hotel room; a room, group of rooms, or other living or sleeping
43 space used as a place of assembly; a dormitory or other similar
44 residential facility of an elementary or secondary school or a
45 college or university; a hospital, nursing home, or other similar
46 residential facility of a provider of services for the care, support and
47 treatment of individuals that is licensed by the State; a campsite,
48 cabin, lean-to, or other similar residential facility of a campground

1 or an adult or youth camp; a furnished or unfurnished private
2 residential property, including but not limited to condominiums,
3 bungalows, single-family homes and similar living units, where no
4 maid service, room service, linen changing service or other
5 common hotel services are made available by the lessor and where
6 the keys to the furnished or unfurnished private residential property,
7 whether a physical key, access to a keyless locking mechanism, or
8 other means of physical ingress to the furnished or unfurnished
9 private residential property, are provided to the lessee at the
10 location of an offsite real estate broker licensed by the New Jersey
11 Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases
12 of real property with a term of at least 90 consecutive days.

13 "Transient space marketplace" means an online marketplace
14 through which a person may offer transient accommodations or
15 hotel rooms to individuals. A "transient space marketplace" allows
16 transient accommodations or hotel rooms to be advertised or listed
17 through an online marketplace in exchange for consideration or
18 provides a means for a customer to arrange for the occupancy of the
19 transient accommodation or hotel room in exchange for
20 consideration. A 'transient space marketplace' shall not include an
21 online marketplace operated by or on behalf of a hotel or hotel
22 corporation that facilitates customer occupancy solely for the hotel
23 or hotel corporation's owned or managed hotels and franchisees,
24 and shall not include a travel agency or an online travel agency.

25 (cf: P.L.2018, c.49, s.3)

26

27 6. Section 2 of P.L.1947, c.71 (C.40:48-8.16) is amended to
28 read as follows:

29 2. As used in this act:

30 "Retail sale" or "sale at retail" means and includes:

31 (1) Any sale in the ordinary course of business for consumption
32 of whiskey, beer or other alcoholic beverages by the drink in
33 restaurants, cafes, bars, hotels and other similar establishments;

34 (2) Any cover charge, minimum charge, entertainment, or other
35 similar charge made to any patron of any restaurant, cafe, bar, hotel
36 or other similar establishment;

37 (3) The hiring, with or without service, of any room in any
38 hotel, transient accommodation, inn, rooming or boarding house;

39 (4) The hiring of any rolling chair, beach chair or cabana; and

40 (5) The granting or sale of any ticket, license or permit for
41 admission to any theatre, moving picture exhibition or show, pier,
42 exhibition, or place of amusement, except charges for admission to
43 boxing, wrestling, kick boxing or combative sports events, matches,
44 or exhibitions, which charges are taxed pursuant to section 20 of
45 P.L.1985, c.83 (C.5:2A-20).

46 "Vendor" means any person selling or hiring property or services
47 to another person upon the receipts from which a tax is imposed.

1 "Purchaser" means any person purchasing or hiring property or
2 services from another person, the receipts from which are taxable.

3 "Residence" means a house, condominium, or other residential
4 dwelling unit in a building or structure or part of a building or
5 structure that is designed, constructed, leased, rented, let or hired
6 out, or otherwise made available for use as a residence.

7 "Transient accommodation" means a room, group of rooms, or
8 other living or sleeping space for the lodging of occupants,
9 including but not limited to residences or buildings used as
10 residences. "Transient accommodation" does not include: a hotel or
11 hotel room; a room, group of rooms, or other living or sleeping
12 space used as a place of assembly; a dormitory or other similar
13 residential facility of an elementary or secondary school or a
14 college or university; a hospital, nursing home, or other similar
15 residential facility of a provider of services for the care, support and
16 treatment of individuals that is licensed by the State; a campsite,
17 cabin, lean-to, or other similar residential facility of a campground
18 or an adult or youth camp; a furnished or unfurnished private
19 residential property, including but not limited to condominiums,
20 bungalows, single-family homes and similar living units, where no
21 maid service, room service, linen changing service or other
22 common hotel services are made available by the lessor and where
23 the keys to the furnished or unfurnished private residential property,
24 whether a physical key, access to a keyless locking mechanism, or
25 other means of physical ingress to the furnished or unfurnished
26 private residential property, are provided to the lessee at the
27 location of an offsite real estate broker licensed by the New Jersey
28 Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases
29 of real property with a term of at least 90 consecutive days.

30 "Transient space marketplace" means an online marketplace
31 through which a person may offer transient accommodations or
32 hotel rooms to individuals. A "transient space marketplace" allows
33 transient accommodations or hotel rooms to be advertised or listed
34 through an online marketplace in exchange for consideration or
35 provides a means for a customer to arrange for the occupancy of the
36 transient accommodation or hotel room in exchange for
37 consideration. A 'transient space marketplace' shall not include an
38 online marketplace operated by or on behalf of a hotel or hotel
39 corporation that facilitates customer occupancy solely for the hotel
40 or hotel corporation's owned or managed hotels and franchisees,
41 and shall not include a travel agency or an online travel agency.

42 (cf: P.L.2018, c.49, s.6)

43

44 7. Section 1 of P.L.1991, c.376 (C.40:48-8.45) is amended to
45 read as follows:

46 1. As used in this act:

47 a. "Convention center operating authority" means, in the case
48 of any eligible municipality, the public authority or other

- 1 governmental entity empowered to operate convention hall and the
2 convention center facilities in the eligible municipality.
- 3 b. "Director" means the Director of the Division of Taxation in
4 the Department of the Treasury.
- 5 c. "Eligible municipality" means any municipality in which any
6 portion of the proceeds of a retail sales tax levied by ordinance
7 adopted by the municipality pursuant to section 1 of P.L.1947, c.71
8 (C.40:48-8.15) is applied as authorized by law to the payment of
9 costs of convention center facilities located in the municipality.
- 10 d. "Hotel" means a building or a portion of a building which is
11 regularly used and kept open as such for the lodging of guests.
12 "Hotel" includes an apartment hotel, a motel, inn, and rooming or
13 boarding house or club, whether or not meals are served, but does
14 not include a transient accommodation.
- 15 e. "Occupied room" means a room or rooms of any kind in any
16 part of a hotel or transient accommodation, other than a place of
17 assembly, which is used or possessed by a guest or guests, whether
18 or not for consideration.
- 19 f. "Residence" means a house, condominium, or other
20 residential dwelling unit in a building or structure or part of a
21 building or structure that is designed, constructed, leased, rented, let
22 or hired out, or otherwise made available for use as a residence.
- 23 g. "Transient accommodation" means a room, group of rooms,
24 or other living or sleeping space for the lodging of occupants,
25 including but not limited to residences or buildings used as
26 residences. "Transient accommodation" does not include: a hotel or
27 hotel room; a room, group of rooms, or other living or sleeping
28 space used as a place of assembly; a dormitory or other similar
29 residential facility of an elementary or secondary school or a
30 college or university; a hospital, nursing home, or other similar
31 residential facility of a provider of services for the care, support and
32 treatment of individuals that is licensed by the State; a campsite,
33 cabin, lean-to, or other similar residential facility of a campground
34 or an adult or youth camp; a furnished or unfurnished private
35 residential property, including but not limited to condominiums,
36 bungalows, single-family homes and similar living units, where no
37 maid service, room service, linen changing service or other
38 common hotel services are made available by the lessor and where
39 the keys to the furnished or unfurnished private residential property,
40 whether a physical key, access to a keyless locking mechanism, or
41 other means of physical ingress to the furnished or unfurnished
42 private residential property, are provided to the lessee at the
43 location of an offsite real estate broker licensed by the New Jersey
44 Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases
45 of real property with a term of at least 90 consecutive days.
- 46 h. "Transient space marketplace" means an online marketplace
47 through which a person may offer transient accommodations or
48 hotel rooms to individuals. A "transient space marketplace" allows

1 transient accommodations or hotel rooms to be advertised or listed
2 through an online marketplace in exchange for consideration or
3 provides a means for a customer to arrange for the occupancy of the
4 transient accommodation or hotel room in exchange for
5 consideration. A 'transient space marketplace' shall not include an
6 online marketplace operated by or on behalf of a hotel or hotel
7 corporation that facilitates customer occupancy solely for the hotel
8 or hotel corporation's owned or managed hotels and franchisees,
9 and shall not include a travel agency or an online travel agency.
10 (cf: P.L.2018, c.49, s.8)
11

12 8. Section 2 of P.L.1981, c.77 (C.40:48E-2) is amended to read
13 as follows:

14 2. As used in this act "hotel" means a building or portion of a
15 building which is regularly used and kept open as such for the
16 lodging of guests. "Hotel" includes an apartment hotel, a motel, inn,
17 and rooming or boarding house or club, whether or not meals are
18 served, but does not include a transient accommodation.

19 "Residence" means a house, condominium, or other residential
20 dwelling unit in a building or structure or part of a building or
21 structure that is designed, constructed, leased, rented, let or hired
22 out, or otherwise made available for use as a residence.

23 "Transient accommodation" means a room, group of rooms, or
24 other living or sleeping space for the lodging of occupants,
25 including but not limited to residences or buildings used as
26 residences. "Transient accommodation" does not include: a hotel or
27 hotel room; a room, group of rooms, or other living or sleeping
28 space used as a place of assembly; a dormitory or other similar
29 residential facility of an elementary or secondary school or a
30 college or university; a hospital, nursing home, or other similar
31 residential facility of a provider of services for the care, support and
32 treatment of individuals that is licensed by the State; a campsite,
33 cabin, lean-to, or other similar residential facility of a campground
34 or an adult or youth camp; a furnished or unfurnished private
35 residential property, including but not limited to condominiums,
36 bungalows, single-family homes and similar living units, where no
37 maid service, room service, linen changing service or other
38 common hotel services are made available by the lessor and where
39 the keys to the furnished or unfurnished private residential property,
40 whether a physical key, access to a keyless locking mechanism, or
41 other means of physical ingress to the furnished or unfurnished
42 private residential property, are provided to the lessee at the
43 location of an offsite real estate broker licensed by the New Jersey
44 Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases
45 of real property with a term of at least 90 consecutive days.

46 "Transient space marketplace" means an online marketplace
47 through which a person may offer transient accommodations or
48 hotel rooms to individuals. A "transient space marketplace" allows

1 transient accommodations or hotel rooms to be advertised or listed
2 through an online marketplace in exchange for consideration or
3 provides a means for a customer to arrange for the occupancy of the
4 transient accommodation or hotel room in exchange for
5 consideration. A 'transient space marketplace' shall not include an
6 online marketplace operated by or on behalf of a hotel or hotel
7 corporation that facilitates customer occupancy solely for the hotel
8 or hotel corporation's owned or managed hotels and franchisees,
9 and shall not include a travel agency or an online travel agency.
10 (cf: 2018, c.49, s.12)

11
12 9. Section 3 of P.L.1992, c.165 (C.40:54D-3) is amended to
13 read as follows:

14 3. As used in this act:

15 "Authority" means a tourism improvement and development
16 authority created pursuant to section 18 of this act, P.L.1992, c.165
17 (C.40:54D-18).

18 "Beach operation offset payment " means a payment made by an
19 authority to municipalities in its district for tourism development
20 activities related to operating and maintaining public beaches within
21 a zone to seaward of a line of demarcation located not more than
22 1,000 feet from the mean high water line.

23 "Bond" means any bond or note issued by an authority pursuant
24 to the provisions of this act.

25 "Commissioner" means the Commissioner of the Department of
26 Commerce and Economic Development.

27 "Construction" means the planning, designing, construction,
28 reconstruction, rehabilitation, replacement, repair, extension,
29 enlargement, improvement and betterment of a project, and includes
30 the demolition, clearance and removal of buildings or structures on
31 land acquired, held, leased or used for a project.

32 "Convention center facility" means any convention hall or center
33 or like structure or building, and shall include all facilities,
34 including commercial, office, community service, parking facilities
35 and all property rights, easements and interests, and other facilities
36 constructed for the accommodation and entertainment of tourists
37 and visitors, constructed in conjunction with a convention center
38 facility and forming reasonable appurtenances thereto but does not
39 mean the Wildwood convention center facility as defined in this
40 section.

41 "Tourism project" means the convention center facility or
42 outdoor special events arena, or both, located in the territorial limits
43 of the district, and any costs associated therewith but does not mean
44 the Wildwood convention center facility as defined in this section.

45 "Cost" means all or any part of the expenses incurred in
46 connection with the acquisition, construction and maintenance of
47 any real property, lands, structures, real or personal property rights,
48 rights-of-way, franchises, easements, and interests acquired or used

1 for a project; any financing charges and reserves for the payment of
2 principal and interest on bonds or notes; the expenses of
3 engineering, appraisal, architectural, accounting, financial and legal
4 services; and other expenses as may be necessary or incident to the
5 acquisition, construction and maintenance of a project, the
6 financing thereof and the placing of the project into operation.

7 "County" means a county of the sixth class.

8 "Director" means the Director of the Division of Taxation in the
9 Department of the Treasury.

10 "Fund" means a Reserve Fund created pursuant to section 13 of
11 P.L.1992, c.165 (C.40:54D-13).

12 "Outdoor special events arena" means a facility or structure for
13 the holding outdoors of public events, entertainments, sporting
14 events, concerts or similar activities, and shall include all facilities,
15 property rights and interests, and all appurtenances reasonably
16 related thereto, constructed for the accommodation and
17 entertainment of tourists and visitors.

18 "Participant amusement" means a sporting activity or amusement
19 the charge for which is exempt from taxation under the "Sales and
20 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) by virtue of the
21 participation of the patron in the activity or amusement, such as
22 bowling alleys, swimming pools, water slides, miniature golf,
23 boardwalk or carnival games and amusements, baseball batting
24 cages, tennis courts, and fishing and sightseeing boats.

25 "Predominantly tourism related retail receipts" means:

26 a. The rent for every occupancy of a room or rooms in a hotel
27 or transient accommodation subject to taxation pursuant to
28 subsection (d) of section 3 of the "Sales and Use Tax Act,"
29 P.L.1966, c.30 (C.54:32B-3);

30 b. Receipts from the sale of food and drink in or by restaurants,
31 taverns, or other establishments in the district, or by caterers,
32 including in the amount of such receipt any cover, minimum,
33 entertainment or other charge made to patrons or customers, subject
34 to taxation pursuant to subsection (c) of section 3 of the "Sales and
35 Use Tax Act," P.L.1966, c.30 (C.54:32B-3) but excluding receipts
36 from sales of food and beverages sold through coin operated
37 vending machines; and

38 c. Admissions charges to or the use of any place of amusement
39 or of any roof garden, cabaret or similar place, subject to taxation
40 pursuant to subsection (e) of section 3 of the "Sales and Use Tax
41 Act," P.L.1966, c.30 (C.54:32B-3).

42 "Purchaser" means any person purchasing or hiring property or
43 services from another person, the receipts or charges from which
44 are taxable by an ordinance authorized under P.L.1992, c.165
45 (C.40:54D-1 et seq.).

46 "Residence" means a house, condominium, or other residential
47 dwelling unit in a building or structure or part of a building or

1 structure that is designed, constructed, leased, rented, let or hired
2 out, or otherwise made available for use as a residence.

3 "Sports authority" means the New Jersey Sports and Exposition
4 Authority established pursuant to P.L.1971, c.137 (C.5:10-1 et
5 seq.).

6 "Tourism" means activities involved in providing and marketing
7 services and products, including accommodations, for nonresidents
8 and residents who travel to and in New Jersey for recreation and
9 pleasure.

10 "Tourism assessment" means an assessment on the rent for every
11 occupancy of a room or rooms in a hotel or transient
12 accommodation subject to taxation pursuant to subsection (d) of
13 section 3 of the "Sales and Use Tax Act," P.L.1966, c.30
14 (C.54:32B-3).

15 "Tourism development activities" include operations of the
16 authority to carry out its statutory duty to promote, advertise and
17 market the district, including making beach operation offset
18 payments.

19 "Tourism development fee" means a fee imposed by ordinance
20 pursuant to section 15 of P.L.1992, c.165 (C.40:54D-15).

21 "Tourism improvement and development district" or "district"
22 means an area within two or more contiguous municipalities within
23 a county of the sixth class established pursuant to ordinance enacted
24 by those municipalities, for the purposes of promoting the
25 acquisition, construction, maintenance, operation and support of a
26 tourism project, and to devote the revenue and the proceeds from
27 taxes upon predominantly tourism related retail receipts and from
28 tourism development fees to the purposes as herein defined.

29 "Tourist industry" means the industry consisting of private and
30 public organizations which directly or indirectly provide services
31 and products to nonresidents and residents who travel to and in New
32 Jersey for recreation and pleasure.

33 "Tourism lodging" means any dwelling unit, other than a
34 dwelling unit in a hotel the rent for which is subject to taxation
35 under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et
36 seq.), regardless of the form of ownership of the unit, rented with or
37 without a lease, whether rented by the owner or by an agent for the
38 owner.

39 "Transient accommodation" means a room, group of rooms, or
40 other living or sleeping space for the lodging of occupants,
41 including but not limited to residences or buildings used as
42 residences. "Transient accommodation" does not include: a hotel or
43 hotel room; a room, group of rooms, or other living or sleeping
44 space used as a place of assembly; a dormitory or other similar
45 residential facility of an elementary or secondary school or a
46 college or university; a hospital, nursing home, or other similar
47 residential facility of a provider of services for the care, support and
48 treatment of individuals that is licensed by the State; a campsite,

1 cabin, lean-to, or other similar residential facility of a campground
2 or an adult or youth camp; a furnished or unfurnished private
3 residential property, including but not limited to condominiums,
4 bungalows, single-family homes and similar living units, where no
5 maid service, room service, linen changing service or other
6 common hotel services are made available by the lessor and where
7 the keys to the furnished or unfurnished private residential property,
8 whether a physical key, access to a keyless locking mechanism, or
9 other means of physical ingress to the furnished or unfurnished
10 private residential property, are provided to the lessee at the
11 location of an offsite real estate broker licensed by the New Jersey
12 Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases
13 of real property with a term of at least 90 consecutive days.

14 "Transient space marketplace" means an online marketplace
15 through which a person may offer transient accommodations or
16 hotel rooms to individuals. A "transient space marketplace" allows
17 transient accommodations or hotel rooms to be advertised or listed
18 through an online marketplace in exchange for consideration or
19 provides a means for a customer to arrange for the occupancy of the
20 transient accommodation or hotel room in exchange for
21 consideration. A 'transient space marketplace' shall not include an
22 online marketplace operated by or on behalf of a hotel or hotel
23 corporation that facilitates customer occupancy solely for the hotel
24 or hotel corporation's owned or managed hotels and franchisees,
25 and shall not include a travel agency or an online travel agency.

26 "Vendor" means a person selling or hiring property or services to
27 another person, the receipts or charges from which are taxable by an
28 ordinance authorized under P.L.1992, c.165 (C.40:54D-1 et seq.).

29 "Wildwood convention center facility" means the project
30 authorized by paragraph (12) of subsection a. of section 6 of
31 P.L.1971, c.137 (C.5:10-6).

32 (cf: P.L.2018, c.49, s.17)

33

34 10. Notwithstanding the provisions of the "Administrative
35 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
36 contrary, the Director of the Division of Taxation may adopt
37 immediately upon filing with the Office of Administrative Law
38 such rules and regulations as the director determines to be necessary
39 to effectuate the purposes of P.L. , c. (C.) (pending before
40 the Legislature as this bill), which rules and regulations shall be
41 effective for a period not to exceed 360 days following the effective
42 date of P.L. , c. (C.) (pending before the Legislature as this
43 bill) and may thereafter be amended, adopted, or readopted by the
44 director in accordance with the requirements of the "Administrative
45 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

46

47 11. This act shall take effect November 1, 2018, provided
48 however, the Director of the Division of Taxation shall take such

1 anticipatory action in advance of that date as may be necessary for
2 the timely implementation of this act.

3

4

5

STATEMENT

6

7 This bill imposes collection of sales tax requirements on
8 marketplace facilitators and certain sellers who do not have a
9 physical presence in the State, and clarifies that travel agencies are
10 not required to collect sales tax or various hotel taxes.

11 Pursuant to section 1 of the bill, if a seller does not have a
12 physical presence in the State but has revenue from sales into the
13 State in the calendar year, or prior year, in excess of \$100,000, the
14 seller must collect sales tax. The same applies to a seller with 200
15 or more separate transactions into the State in a calendar year or in
16 the prior year.

17 These provisions of the bill reflect the 2018 decision of the U.S.
18 Supreme Court in South Dakota v. Wayfair, in which the Court
19 determined that physical presence within a state was not a
20 prerequisite for the collection of sales tax. In that case, the Court
21 held that imposing sales tax on a seller that delivers more than
22 \$100,000 worth of sales into a state or delivers 200 or more
23 separate transactions into a state has a sufficient nexus with the
24 state for the state to impose sales tax on the seller.

25 Pursuant to section 2 of the bill, marketplace facilitators must
26 collect tax on sales they facilitate for marketplace sellers. However,
27 in order to ensure the accurate and timely collection of taxes due,
28 the Director of Taxation has the discretion to temporarily suspend
29 or delay the collection of a marketplace facilitator for a period not
30 to exceed 180 days. The director must report on any grant of a
31 suspension or delay to the Governor and the Legislature.

32 Section 3 incorporates sections 1 and 2 of the bill into the
33 definitions section of the Sales and Use Tax Act.

34 The remaining sections of the bill clarify that travel agencies and
35 online travel agencies are not transient space marketplaces. This
36 clarification is intended to ensure that these businesses will not be
37 required to collect and pay sales tax or various hotel taxes for sales
38 on their platforms.