

[First Reprint]

## **ASSEMBLY, No. 4206**

# **STATE OF NEW JERSEY**

## **218th LEGISLATURE**

INTRODUCED JUNE 18, 2018

**Sponsored by:**

**Assemblywoman ANNETTE QUIJANO**

**District 20 (Union)**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**SYNOPSIS**

Imposes certain notification and reporting requirements on certain persons not required or authorized to collect sales and use tax.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Budget Committee on June 18, 2018, with amendments.



**(Sponsorship Updated As Of: 6/22/2018)**

1       AN ACT imposing certain notification and reporting requirements  
2       on certain persons not required or authorized to collect the sales  
3       and use tax, supplementing P.L.1966, c.30 (C.54:32B-1 et seq.)  
4       <sup>1</sup>and making an appropriation<sup>1</sup>.

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

8  
9       1. a. A person who makes a sale to a person within this State of  
10      tangible personal property or a specified digital product, the sale or the  
11      use of which is subject to the tax imposed pursuant to the “Sales and  
12      Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.), but who is not  
13      required or otherwise authorized by the director to collect the tax  
14      imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.) shall be  
15      required to give notice to the person within this State to whom the sale  
16      is made informing the person of that person’s responsibility to pay any  
17      use tax liability that may be due and required to be paid in connection  
18      with the sale of the tangible personal property or specified digital  
19      product.

20      b. The notice shall inform the person within this State to whom  
21      the sale is made that the person selling the tangible personal property  
22      or specified digital product is not required or otherwise authorized by  
23      the director to collect the tax.

24      c. The notice shall inform the person within this State to whom  
25      the sale is made that the sale of tangible personal property or a  
26      specified digital product is generally subject to New Jersey use tax  
27      unless the tangible personal property or specified digital product is  
28      exempt or excluded from taxation or the person within this State to  
29      whom the sales is made has been issued an exemption certificate by  
30      the director, has been authorized to issue an exemption certificate in  
31      accordance with the Streamlined Sales and Use Tax Agreement, or is  
32      an exempt governmental entity.

33      d. The notice shall inform the person within this State to whom  
34      the sale is made that the sale of tangible personal property or a  
35      specified digital product is not exempt or excluded from taxation  
36      because the sale is made over the Internet, by mail order <sup>1</sup>**【catalogue】**  
37      catalog<sup>1</sup>, or by other remote means and delivered <sup>1</sup>**【to the person】**<sup>1</sup>  
38      within this State by mail or other common carrier.

39      e. The notice shall inform the person within this State to whom  
40      the sale is made that it is the responsibility of that person to report and  
41      pay to the State any use tax liability that may be due on a taxable sale  
42      of tangible personal property or a specified digital product, and shall  
43      inform the person within this State to whom the sale is made that a use  
44      tax liability can be reported and paid to the State through the person’s

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly ABU committee amendments adopted June 18, 2018.

1 gross income tax return or by filing an individual or business use tax  
2 return.

3 f. The notice shall inform the person within this State to whom  
4 the sale is made that not reporting or underreporting a use tax liability  
5 may result in the imposition of penalties or interest or a combination of  
6 penalties and interest.

7 g. The notice shall inform the person within this State to whom  
8 the sale is made that additional information regarding the New Jersey  
9 use tax and instructions and forms necessary to report and pay a use  
10 tax liability <sup>1</sup>【may be accessed through information and documents  
11 posted】 to the State are available<sup>1</sup> on the Division of Taxation's  
12 website, [www.state.nj.us/treasury/taxation/](http://www.state.nj.us/treasury/taxation/).

13 h. The notice shall be prominently displayed on the sales slip,  
14 invoice, receipt, bill, or other similar statement or memorandum given  
15 to the person within this State to whom the sale is made at the time the  
16 sale is made.

17

18 2. a. A person who makes a sale to a person within this State of  
19 tangible personal property or a specified digital product, the sale or the  
20 use of which is subject to the tax imposed pursuant to the "Sales and  
21 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), but who is not  
22 required or otherwise authorized by the director to collect the tax  
23 imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.) shall provide  
24 an annual report to the person within this State to whom the sale was  
25 made informing the person of all sales that were made to the person  
26 during the calendar year preceding the calendar year in which the  
27 report is required to be sent to the person in accordance with this  
28 section.

29 b. The report shall provide a list, by date, indicating each item of  
30 tangible personal property or specified digital product that was sold to  
31 the person within this State, and the price of each item of tangible  
32 personal property or specified digital product that was sold to the  
33 person within this State, during the calendar year to which the report  
34 applies.

35 c. The report shall inform the person within this State to whom a  
36 sale was made that the person selling the tangible personal property or  
37 specified digital product was not required or otherwise authorized by  
38 the director to collect the tax.

39 d. The report shall inform the person within this State to whom a  
40 sale was made that the sale of tangible personal property or a specified  
41 digital product is generally subject to New Jersey use tax unless the  
42 tangible personal property or specified digital product is exempt or  
43 excluded from taxation or the person within this State to whom the  
44 <sup>1</sup>【sales】 sale<sup>1</sup> is made has been issued an exemption certificate by the  
45 director, has been authorized to issue an exemption certificate in  
46 accordance with the Streamlined Sales and Use Tax Agreement, or is  
47 an exempt governmental entity.

1 e. The report shall inform the person within this State to whom  
2 the sale was made that the sale of tangible personal property or a  
3 specified digital product is not exempt or excluded from taxation  
4 because the sale was made over the Internet, by mail order  
5 <sup>1</sup>‘[catalogue] catalog<sup>1</sup>, or by other remote means and delivered <sup>1</sup>‘[to  
6 the person]’<sup>1</sup> within this State by mail or other common carrier.

7 f. The report shall inform the person within this State to whom  
8 the sale was made that it is the responsibility of that person to report  
9 and pay to the State any use tax liability that may be due on a taxable  
10 sale of tangible personal property or a specified digital product, and  
11 shall inform the person within this State to whom the sale was made  
12 that a use tax liability can be reported and paid to the State through the  
13 person’s gross income tax return or by filing an individual or business  
14 use tax return.

15 g. The report shall inform the person within this State to whom a  
16 sale was made that the person making the sale of tangible personal  
17 property or a specified digital product is required to provide an annual  
18 report to the director in accordance with section 3 of  
19 P.L. , c. (C. ) (pending before the Legislature as this bill)  
20 informing the director of all sales that were made to persons within  
21 this State during the calendar year to which the report applies.

22 h. The report shall inform the person within this State to whom a  
23 sale was made that not reporting or underreporting a use tax liability  
24 may result in the imposition of penalties or interest or a combination of  
25 penalties and interest.

26 i. The report shall inform the person within this State to whom  
27 the sale was made that additional information regarding the New  
28 Jersey use tax and instructions and forms necessary to report and pay a  
29 use tax liability <sup>1</sup>‘[may be accessed through information and  
30 documents posted] to the State are available<sup>1</sup> on the Division of  
31 Taxation’s website, [www.state.nj.us/treasury/taxation/](http://www.state.nj.us/treasury/taxation/).

32 j. The report shall be sent by mail to the last known billing  
33 address of the person within this State to whom the sale was made, or  
34 if the billing address is unknown, to the last known shipping address of  
35 the person within this State to whom the sale was made, in an envelope  
36 marked prominently with words indicating important tax information  
37 is enclosed, on or before January 31st of each calendar year  
38 immediately following a calendar year in which a sale was made to a  
39 person within this State of tangible personal property or a specified  
40 digital product; provided, that if the billing address and the shipping  
41 address of the person within this State to whom a sale was made are  
42 unknown, the report shall be sent electronically to the last known  
43 email address of the person within this State to whom a sale was made  
44 with a subject heading indicating important tax information is attached  
45 or included.

1        3. a. A person who makes a sale to a person within this State of  
2 tangible personal property or a specified digital product, the sale or the  
3 use of which is subject to the tax imposed pursuant to the “Sales and  
4 Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.), but who is not  
5 required or otherwise authorized by the director to collect the tax  
6 imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.) shall provide  
7 an annual report to the director informing the director of all sales that  
8 were made to persons within this State during the calendar year  
9 preceding the calendar year in which the report is required to be  
10 transmitted to the director in accordance with this section.

11        b. The report shall identify the name of each person within this  
12 State to whom a sale of tangible personal property or a specified  
13 digital product was made during the calendar year to which the report  
14 applies.

15        c. The report shall identify the billing address and, if different, the  
16 last known mailing address of each person within this State to whom a  
17 sale of tangible personal property or a specified digital product was  
18 made during the calendar year to which the report applies.

19        d. The report shall include the shipping address of <sup>1</sup>each person  
20 within this State to whom a sale<sup>1</sup> all sales<sup>1</sup> of tangible personal  
21 property or <sup>1</sup>each<sup>1</sup> specified digital <sup>1</sup>product<sup>1</sup> product was<sup>1</sup> products that were<sup>1</sup>  
22 made <sup>1</sup>to each person within this State<sup>1</sup> during the calendar year to  
23 which the report applies.

24        e. The report shall include the dollar amount of all sales of  
25 tangible personal property and specified digital products that were  
26 made to each person within this State during the calendar year to  
27 which the report applies.

28        f. The report shall be transmitted electronically to the director on  
29 or before January 31st of each year immediately following a year in  
30 which a sale was made to a person within this State.

31

32        4. A person who made less than \$200,000 in gross sales of  
33 tangible personal property and specified digital products during the  
34 calendar year preceding the calendar year in which a sale, that is  
35 subject to the notification requirements imposed by section 1 of  
36 P.L. , c. (C. ) (pending before the Legislature as this bill), is  
37 made shall not be required to give notices and provide reports as  
38 required to be given and provided by sections 1, 2, and 3 of  
39 P.L. , c. (C. ) (pending before the Legislature as this bill).

40

41        5. A person who made less than \$100,000 in gross sales of  
42 tangible personal property and specified digital products to persons  
43 within this State during the calendar year preceding the calendar  
44 year in which a sale, that is subject to the notification requirements  
45 imposed by section 1 of P.L. , c. (C. ) (pending before the  
46 Legislature as this bill), is made shall not be required to give notices  
47 and provide reports as required to be given and provided by sections

1 1, 2, and 3 of P.L. , c. (C. ) (pending before the Legislature  
2 as this bill).

3  
4 6. A person who is required or otherwise authorized by the  
5 director to collect the tax imposed pursuant to the “Sales and Use  
6 Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.), and who complies in  
7 good faith with all other duties and responsibilities imposed on a  
8 seller in accordance with P.L.1966, c.30 (C.54:32B-1 et seq.) shall  
9 not be required to give notices and provide reports as required to be  
10 given and provided by sections 1, 2, and 3 of P.L. , c. (C. )  
11 (pending before the Legislature as this bill).

12  
13 7. a. A person who fails to give notice to a person within this  
14 State to whom a sale is made as required to be given by section 1 of  
15 P.L. , c. (C. ) (pending before the Legislature as this bill)  
16 shall be subject to a penalty of \$25 for each failure to give notice.

17 b. The director shall assess the amount of any penalty  
18 determined to be due in accordance with this section using  
19 information that may be obtained by the director or any reasonable  
20 sampling or estimation techniques determined to be necessary or  
21 appropriate by the director to determine the number of failures to  
22 give notice, give notice of the assessment to the person subject to  
23 the penalty, and make demand upon the person for payment to be  
24 made within 30 days of the date notice is given to the person by the  
25 director.

26 c. Interest shall accrue and be due on the amount of any  
27 penalty assessed by the director in accordance with this section that  
28 is not paid within 30 days of the date notice is given to the person  
29 subject to the penalty by the director at a rate equal to the rate of  
30 interest assessed on an unpaid State tax in accordance with  
31 R.S.54:49-3, from the date the notice was given to the person by the  
32 director until the date payment is received by the director.

33 d. Penalties and interest due and required to be paid in  
34 accordance with this section shall be treated as a deficiency with  
35 respect to the payment of a State tax: the director shall be provided  
36 all rights, powers, and duties authorized by the State Uniform Tax  
37 Procedure Law, R.S.54:48-1 et seq., to ensure the payment,  
38 collection, or recovery of the deficiency and the person subject to  
39 any penalty or interest in accordance with this section shall be  
40 afforded all protections, rights, and remedies allowed by  
41 R.S.54:48-1 et seq. to challenge, protest, or appeal the deficiency or  
42 any determination or decision made in connection with the  
43 deficiency.

44  
45 8. a. A person who fails to provide an annual report to a  
46 person within this State to whom a sale is made as required to be  
47 provided by section 2 of P.L. , c. (C. ) (pending before the

1 Legislature as this bill) shall be subject to a penalty of \$100 for  
2 each failure to provide a report.

3 b. The director shall assess the amount of any penalty  
4 determined to be due in accordance with this section using  
5 information that may be obtained by the director or any reasonable  
6 sampling or estimation techniques determined to be necessary or  
7 appropriate by the director to determine the number of failures to  
8 provide an annual report, give notice of the assessment to the  
9 person subject to the penalty, and make demand upon the person for  
10 payment to be made within 30 days of the date notice is given to the  
11 person by the director.

12 c. Interest shall accrue and be due on the amount of any  
13 penalty assessed by the director in accordance with this section that  
14 is not paid within 30 days of the date notice is given to the person  
15 subject to the penalty by the director at a rate equal to the rate of  
16 interest assessed on an unpaid State tax in accordance with  
17 R.S.54:49-3, from the date the notice was given to the person by the  
18 director until the date payment is received by the director.

19 d. Penalties and interest due and required to be paid in  
20 accordance with this section shall be treated as a deficiency with  
21 respect to the payment of a State tax: the director shall be provided  
22 all rights, powers, and duties authorized by the State Uniform Tax  
23 Procedure Law, R.S.54:48-1 et seq., to ensure the payment,  
24 collection, or recovery of the deficiency and the person subject to  
25 any penalty or interest in accordance with this section shall be  
26 afforded all protections, rights, and remedies allowed by  
27 R.S.54:48-1 et seq. to challenge, protest, or appeal the deficiency or  
28 any determination or decision made in connection with the  
29 deficiency.

30

31 9. a. A person who fails to provide an annual report to the  
32 director as required to be provided by section 3 of  
33 P.L. , c. (C. ) (pending before the Legislature as this bill)  
34 shall be subject to a penalty of \$1,000 for each failure to provide a  
35 report.

36 b. The director shall assess the amount of any penalty  
37 determined to be due in accordance with this section using  
38 information that may be obtained by the director or any reasonable  
39 sampling or estimation techniques determined to be necessary or  
40 appropriate by the director to determine the number of failures to  
41 provide an annual report, give notice of the assessment to the  
42 person subject to the penalty, and make demand upon the person for  
43 payment to be made within 30 days of the date notice is given to the  
44 person by the director.

45 c. Interest shall accrue and be due on the amount of any  
46 penalty assessed by the director in accordance with this section that  
47 is not paid within 30 days of the date notice is given to the person  
48 subject to the penalty by the director at a rate equal to the rate of

1 interest assessed on an unpaid State tax in accordance with  
2 R.S.54:49-3, from the date the notice was given to the person by the  
3 director until the date payment is received by the director.

4 d. Penalties and interest due and required to be paid in  
5 accordance with this section shall be treated as a deficiency with  
6 respect to the payment of a State tax: the director shall be provided  
7 all rights, powers, and duties authorized by the State Uniform Tax  
8 Procedure Law, R.S.54:48-1 et seq., to ensure the payment,  
9 collection, or recovery of the deficiency and the person subject to  
10 any penalty or interest in accordance with this section shall be  
11 afforded all protections, rights, and remedies allowed by  
12 R.S.54:48-1 et seq. to challenge, protest, or appeal the deficiency or  
13 any determination or decision made in connection with the  
14 deficiency.

15  
16 10. An annual report and any information derived from an  
17 annual report or otherwise received by the director from a person  
18 who is required to provide an annual report to the director in  
19 accordance with section 3 of P.L. , c. (C. ) (pending before  
20 the Legislature as this bill) shall not be considered a public or  
21 government record for purposes of P.L.1963, c.73 (C.47:1A-1 et  
22 seq.) or P.L.2001, c.404 (C.47:1A-5 et al.).

23  
24 11. An annual report and any information derived from an  
25 annual report or otherwise received by the director from a person  
26 who is required to provide an annual report to the director in  
27 accordance with section 3 of P.L. , c. (C. ) (pending before  
28 the Legislature as this bill) shall be treated as a confidential record  
29 or file of the director in accordance with R.S.54:50-8, and all  
30 exceptions, penalties, punishments, and remedies applicable to the  
31 unauthorized disclosure, use, or examination of confidential  
32 taxpayer information shall apply to the unauthorized disclosure,  
33 use, or examination of an annual report or any information derived  
34 from an annual report or otherwise received by the director from a  
35 person who is required to provide an annual report to the director in  
36 accordance with section 3 of P.L. , c. (C. ) (pending before  
37 the Legislature as this bill).

38  
39 12. Nothing contained in P.L. , c. (C. ) (pending before  
40 the Legislature as this bill) shall relieve a person who is subject to  
41 the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.),  
42 from any responsibilities imposed thereunder, or prevent the  
43 director from administering and enforcing the "Sales and Use Tax  
44 Act," P.L.1966, c.30 (C.54:32B-1 et seq.), with respect to any  
45 person who is subject to the tax.

46  
47 13. Notwithstanding the provisions of the "Administrative  
48 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the

1 contrary, the director may adopt immediately upon filing with the  
2 Office of Administrative Law such rules and regulations as the  
3 director determines to be necessary and appropriate to effectuate the  
4 purposes of P.L. , c. (C. ) (pending before the Legislature as  
5 this bill), which rules and regulations shall be effective for a period  
6 not to exceed 360 days following the effective date of  
7 P.L. , c. (C. ) (pending before the Legislature as this bill) and  
8 may thereafter be amended, adopted, or readopted by the director in  
9 accordance with the requirements of P.L.1968, c.410 (C.52:14B-1  
10 et seq.).

11

12 <sup>1</sup>14. Section 2 of P.L.1966, c.30 (C.54:32B-2) is amended to read  
13 as follows:

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

16 (a) "Person" includes an individual, trust, partnership, limited  
17 partnership, limited liability company, society, association, joint stock  
18 company, corporation, public corporation or public authority, estate,  
19 receiver, trustee, assignee, referee, fiduciary and any other legal entity.  
20 "Person" also includes a marketplace provider.

21 (b) "Purchase at retail" means a purchase by any person at a retail  
22 sale.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32       (g) "Tangible personal property" means personal property that can  
33 be seen, weighed, measured, felt, or touched, or that is in any other  
34 manner perceptible to the senses. "Tangible personal property"  
35 includes electricity, water, gas, steam, and prewritten computer  
36 software including prewritten computer software delivered  
37 electronically.

38       (h) "Use" means the exercise of any right or power over tangible  
39 personal property, specified digital products, services to property or  
40 products, or services by the purchaser thereof and includes, but is not  
41 limited to, the receiving, storage or any keeping or retention for any  
42 length of time, withdrawal from storage, any distribution, any  
43 installation, any affixation to real or personal property, or any  
44 consumption of such property or products. Use also includes the  
45 exercise of any right or power over intrastate or interstate  
46 telecommunications and prepaid calling services. Use also includes  
47 the exercise of any right or power over utility service. Use also  
48 includes the derivation of a direct or indirect benefit from a service.

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

3 (1) The term "seller" includes:

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

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

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

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

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

46 (E) The State of New Jersey, any of its agencies, instrumentalities,  
47 public authorities, public corporations (including a public corporation  
48 created pursuant to agreement or compact with another state) or

1 political subdivisions when such entity sells services or property of a  
2 kind ordinarily sold by private persons;

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

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

7 (H) A person engaged in collecting charges in the nature of  
8 initiation fees, membership fees or dues for access to or use of the  
9 property or facilities of a health and fitness, athletic, sporting or  
10 shopping club or organization; and

11 (I) A person engaged in the business of parking, storing or  
12 garaging motor vehicles.

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

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

37 (k) "Occupancy" means the use or possession or the right to the  
38 use or possession, of any room in a hotel.

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

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

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

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

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

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

9 (r) "Dramatic or musical arts admission charge" means any  
10 admission charge paid for admission to a theater, opera house, concert  
11 hall or other hall or place of assembly for a live, dramatic,  
12 choreographic or musical performance.

13 (s) "Lessor" means any person who is the owner, licensee, or  
14 lessee of any premises, tangible personal property or a specified digital  
15 product which the person leases, subleases, or grants a license to use to  
16 other persons.

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

19 (u) "Casual sale" means an isolated or occasional sale of an item of  
20 tangible personal property or a specified digital product by a person  
21 who is not regularly engaged in the business of making retail sales of  
22 such property or product where the item of tangible personal property  
23 or the specified digital product was obtained by the person making the  
24 sale, through purchase or otherwise, for the person's own use.

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

30 (w) "Persons required to collect tax" or "persons required to collect  
31 any tax imposed by this act" includes: every seller of tangible personal  
32 property, specified digital products or services; <sup>1</sup>every marketplace  
33 provider;<sup>1</sup> every recipient of amusement charges; every operator of a  
34 hotel; every seller of a telecommunications service; every recipient of  
35 initiation fees, membership fees or dues for access to or use of the  
36 property or facilities of a health and fitness, athletic, sporting or  
37 shopping club or organization; and every recipient of charges for  
38 parking, storing or garaging a motor vehicle. Said terms shall also  
39 include any officer or employee of a corporation or of a dissolved  
40 corporation who as such officer or employee is under a duty to act for  
41 such corporation in complying with any requirement of this act and  
42 any member of a partnership.

43 (x) "Customer" includes: every purchaser of tangible personal  
44 property, specified digital products or services; every patron paying or  
45 liable for the payment of any amusement charge; every occupant of a  
46 room or rooms in a hotel; every person paying charges in the nature of  
47 initiation fees, membership fees or dues for access to or use of the  
48 property or facilities of a health and fitness, athletic, sporting or

1 shopping club or organization; and every purchaser of parking, storage  
2 or garaging a motor vehicle.

3 (y) "Property and services the use of which is subject to tax"  
4 includes: (1) all property sold to a person within the State, whether or  
5 not the sale is made within the State, the use of which property is  
6 subject to tax under section 6 or will become subject to tax when such  
7 property is received by or comes into the possession or control of such  
8 person within the State; (2) all services rendered to a person within the  
9 State, whether or not such services are performed within the State,  
10 upon tangible personal property or a specified digital product the use  
11 of which is subject to tax under section 6 or will become subject to tax  
12 when such property or product is distributed within the State or is  
13 received by or comes into possession or control of such person within  
14 the State; (3) intrastate, interstate, or international telecommunications  
15 sourced to this State pursuant to section 29 of P.L.2005, c.126  
16 (C.54:32B-3.4); (4) (Deleted by amendment, P.L.1995, c.184); (5)  
17 energy sold, exchanged or delivered in this State for use in this State;  
18 (6) utility service sold, exchanged or delivered in this State for use in  
19 this State; (7) mail processing services in connection with printed  
20 advertising material distributed in this State; (8) (Deleted by  
21 amendment, P.L.2005, c.126); and (9) services the benefit of which are  
22 received in this State.

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

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

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

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

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

41 (C) Providing tangible personal property or a specified digital  
42 product along with an operator for a fixed or indeterminate period of  
43 time. A condition of this exclusion is that the operator is necessary for  
44 the equipment to perform as designed. For the purpose of this  
45 subparagraph, an operator must do more than maintain, inspect, or set-  
46 up the tangible personal property or specified digital product.

47 (2) "Lease or rental" does include agreements covering motor  
48 vehicles and trailers where the amount of consideration may be

1 increased or decreased by reference to the amount realized upon sale  
2 or disposition of the property as defined in 26 U.S.C. s.7701(h)(1).

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

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

9 (cc) "Telecommunications service" means the electronic  
10 transmission, conveyance, or routing of voice, data, audio, video, or  
11 any other information or signals to a point, or between or among  
12 points.

13 "Telecommunications service" shall include such transmission,  
14 conveyance, or routing in which computer processing applications are  
15 used to act on the form, code, or protocol of the content for purposes  
16 of transmission, conveyance, or routing without regard to whether  
17 such service is referred to as voice over Internet protocol services or is  
18 classified by the Federal Communications Commission as enhanced or  
19 value added.

20 "Telecommunications service" shall not include:

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

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

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

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

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

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

27 (7) data processing and information services that allow data to be  
28 generated, acquired, stored, processed, or retrieved and delivered by an  
29 electronic transmission to a purchaser where such purchaser's primary  
30 purpose for the underlying transaction is the processed data or  
31 information;

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

34 (9) tangible personal property;

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

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

37 (12) internet access service;

38 (13) radio and television audio and video programming services,  
39 regardless of the medium, including the furnishing of transmission,  
40 conveyance, and routing of such services by the programming service  
41 provider. Radio and television audio and video programming services  
42 shall include but not be limited to cable service as defined in section  
43 47 U.S.C. s.522(6) and audio and video programming services  
44 delivered by commercial mobile radio service providers, as defined in  
45 section 47 C.F.R. 20.3;

46 (14) ancillary services; or

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

1 For the purposes of this subsection:

2 "ancillary service" means a service that is associated with or  
3 incidental to the provision of telecommunications services, including  
4 but not limited to detailed telecommunications billing, directory  
5 assistance, vertical service, and voice mail service;

6 "conference bridging service" means an ancillary service that links  
7 two or more participants of an audio or video conference call and may  
8 include the provision of a telephone number. Conference bridging  
9 service does not include the telecommunications services used to reach  
10 the conference bridge;

11 "detailed telecommunications billing service" means an ancillary  
12 service of separately stating information pertaining to individual calls  
13 on a customer's billing statement;

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

16 "vertical service" means an ancillary service that is offered in  
17 connection with one or more telecommunications services, which  
18 offers advanced calling features that allow customers to identify  
19 callers and to manage multiple calls and call connections, including  
20 conference bridging services; and

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

25 (dd) (1) "Intrastate telecommunications" means a  
26 telecommunications service that originates in one United States state  
27 or a United States territory or possession or federal district, and  
28 terminates in the same United States state or United States territory or  
29 possession or federal district.

30 (2) "Interstate telecommunications" means a telecommunications  
31 service that originates in one United States state or a United States  
32 territory or possession or federal district, and terminates in a different  
33 United States state or United States territory or possession or federal  
34 district.

35 (3) "International telecommunications" means a  
36 telecommunications service that originates or terminates in the United  
37 States and terminates or originates outside the United States,  
38 respectively. "United States" includes the District of Columbia or a  
39 United States territory or possession.

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

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

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

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

47 (ii) "Self-generation unit" means a facility located on the user's  
48 property, or on property purchased or leased from the user by the

1 person owning the self-generation unit and such property is contiguous  
2 to the user's property, which generates electricity to be used only by  
3 that user on the user's property and is not transported to the user over  
4 wires that cross a property line or public thoroughfare unless the  
5 property line or public thoroughfare merely bifurcates the user's or  
6 self-generation unit owner's otherwise contiguous property.

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

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

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

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

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

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

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

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

36 (C) Charges by the seller for any services necessary to complete  
37 the sale;

38 (D) Delivery charges;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (aaa) "Digital audio-visual work" means a series of related images  
7 which, when shown in succession, impart an impression of motion,  
8 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 purchaser  
15 by means other than tangible storage media.

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

19 (fff) "Marketplace provider" means a person who, pursuant to an  
20 agreement with a Marketplace seller, facilitates sales of tangible  
21 personal property or specified digital products by such marketplace  
22 seller or sellers. A person facilitates sales of tangible personal  
23 property or specified digital products when the person meets both of  
24 the following conditions:

25 (1) Such person provides the forum in which, or by means of  
26 which, the sale takes place or the offer of sale is accepted, including a  
27 shop, store, booth, catalog, an internet website, or similar forum; and

28 (2) Such person or an affiliate of such person collects the receipts  
29 paid by a customer to a marketplace seller for a sale of tangible  
30 personal property or specified digital products, or contracts with a  
31 third party to collect such receipts. For purposes of this paragraph,  
32 two persons are affiliated if one person has an ownership interest of  
33 more than five percent, whether direct or indirect, in the other, or  
34 where an ownership interest of more than five percent, whether direct  
35 or indirect, is held in each of such persons by another person or by a  
36 group of other persons that are affiliated persons with respect to each  
37 other.

38 (ggg) "Marketplace seller" means a person, whether or not such  
39 person is registered to collect and remit New Jersey sales and use tax,  
40 who has an agreement with a marketplace provider under which the  
41 marketplace provider will facilitate sales of tangible personal property  
42 or specified digital products by such person.<sup>1</sup>

43 (cf: P.L.2014, c.13, s.4)

44  
45 <sup>1</sup>15. In addition to the amounts appropriated to the Division of  
46 Taxation for Taxation Services and Administration, such additional  
47 amounts as may be necessary shall be annually appropriated to fund  
48 administrative costs of the collecting and processing of reports and

1 determining taxes owed to the State, including but not limited to the  
2 services of auditors and investigators required to effectuate the  
3 purposes of P.L. , c. (C. ) (pending before the Legislature as this  
4 bill), subject to the approval of the Director of the Division of Budget  
5 and Accounting.<sup>1</sup>  
6  
7 <sup>1</sup>**【14.】** 16.<sup>1</sup> This act shall take effect immediately and apply to  
8 sales of tangible personal property and specified digital products made  
9 to persons within this State on or after <sup>1</sup>**【January】** October<sup>1</sup> 1 next  
10 following the date of enactment.