

# ASSEMBLY, No. 3427

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED NOVEMBER 13, 2008

**Sponsored by:**

**Assemblyman VINCENT J. POLISTINA**

**District 2 (Atlantic)**

**Assemblyman JOHN F. AMODEO**

**District 2 (Atlantic)**

**Co-Sponsored by:**

**Assemblyman Webber, Assemblywoman Addiego and Assemblyman Rudder**

**SYNOPSIS**

Provides sales tax exemption for sales of prepared foods.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT providing a sales tax exemption for sales of prepared food,  
2 amending P.L.2007, c.30, P.L. 1992, c.165, P.L.1966, c.30 and  
3 P.L.1980, c.105.

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

7  
8 1. Section 5 of P.L.2007, c.30 (C.34:1B-194) is amended to  
9 read as follows:

10 5. The governing body of a municipality that establishes a  
11 sports and entertainment district may, as part of the ordinance  
12 establishing the district: impose one or more of the taxes  
13 enumerated in subsection a. of this section; dedicate some or all of  
14 those taxes; and dedicate some or all of the taxes enumerated in  
15 subsection b. of this section solely for the purposes of financing the  
16 project costs of a sports and entertainment facility for the life of the  
17 project, as appropriate, except that none of the taxes enumerated in  
18 subsection a. or b. of this section shall be imposed or dedicated for  
19 a period of more than 30 years.

20 a. The municipality may, by ordinance, impose any or all of the  
21 following:

22 (1) a tax at the rate of 2% on the receipts from every sale within  
23 the district of tangible personal property subject to taxation  
24 pursuant to subsection (a) of section 3 of P.L.1966, c.30 (C.54:32B-  
25 3);

26 (2) a tax at the rate of 2% on the receipts from every sale within  
27 the district of **[food and drink subject to]** prepared food exempt  
28 from taxation pursuant to subsection **[(c)** of section 3 of P.L.1966,  
29 c.30 (C.54:32B-3) **]** (a) of section 14 of P.L.1980, c.105 (C.54:32B-  
30 8.2);

31 (3) a tax at the rate of 2% on charges of rent for every  
32 occupancy of a room or rooms in a hotel located within the district  
33 and subject to taxation pursuant to subsection (d) of section 3 of  
34 P.L.1966, c.30 (C.54:32B-3); or

35 (4) a tax at the rate of 2% on the admission charge to a place of  
36 amusement within the district and subject to taxation pursuant to  
37 subsection (e) of section 3 of P.L.1966, c.30 (C.54:32B-3).

38 b. The municipality may dedicate, by ordinance, any hotel and  
39 motel occupancy tax revenues collected within the district that the  
40 municipality is authorized to impose pursuant to section 3 of  
41 P.L.2003, c.114 (C.40:48F-1) and, at the discretion of the  
42 municipality, an additional charge of 2%.

43 c. A tax imposed under subsection a. of this section shall be in  
44 addition to any other tax or fee imposed pursuant to statute or local

**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 ordinance or resolution by any governmental entity upon the same  
2 transaction.

3 d. A copy of an ordinance adopted pursuant to section 4 of  
4 P.L.2007, c.30 (C.34:1B-193) shall be transmitted upon adoption or  
5 amendment thereof to the State Treasurer. An ordinance so adopted  
6 or any amendment thereto shall provide that the tax provisions of  
7 the ordinance or any amendment to the tax provisions shall take  
8 effect on the first day of the first full month occurring 90 days after  
9 the date of transmittal to the State Treasurer.

10 e. A municipality that creates a district pursuant to section 4 of  
11 P.L.2007, c.30 (C.34:1B-193), which overlaps, in whole or in part,  
12 with an urban enterprise zone in which the receipts of certain sales  
13 are exempt to the extent of 50% of the tax imposed under the "Sales  
14 and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), pursuant to  
15 section 21 of P.L.1983, c.303 (C.52:27H-80), shall continue to  
16 administer those sales tax revenues collected within the designated  
17 urban enterprise zone as otherwise provided pursuant to P.L.1983,  
18 c.303 (C.52:27H-60 et seq.).  
19 (cf: P.L.2007, c.30, s.5)

20

21 2. Section 3 of P.L.1992, c.165 (C.40:54D-3) is amended to  
22 read as follows:

23 3. As used in this act:

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

27 "Beach operation offset payment " means a payment made by an  
28 authority to municipalities in its district for tourism development  
29 activities related to operating and maintaining public beaches within  
30 a zone to seaward of a line of demarcation located not more than  
31 1,000 feet from the mean high water line.

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

34 "Commissioner" means the Commissioner of the Department of  
35 Commerce and Economic Development.

36 "Construction" means the planning, designing, construction,  
37 reconstruction, rehabilitation, replacement, repair, extension,  
38 enlargement, improvement and betterment of a project, and includes  
39 the demolition, clearance and removal of buildings or structures on  
40 land acquired, held, leased or used for a project.

41 "Convention center facility" means any convention hall or center  
42 or like structure or building, and shall include all facilities,  
43 including commercial, office, community service, parking facilities  
44 and all property rights, easements and interests, and other facilities  
45 constructed for the accommodation and entertainment of tourists  
46 and visitors, constructed in conjunction with a convention center  
47 facility and forming reasonable appurtenances thereto but does not

1 mean the Wildwood convention center facility as defined in this  
2 section.

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

7 "Cost" means all or any part of the expenses incurred in  
8 connection with the acquisition, construction and maintenance of  
9 any real property, lands, structures, real or personal property rights,  
10 rights-of-way, franchises, easements, and interests acquired or used  
11 for a project; any financing charges and reserves for the payment of  
12 principal and interest on bonds or notes; the expenses of  
13 engineering, appraisal, architectural, accounting, financial and legal  
14 services; and other expenses as may be necessary or incident to the  
15 acquisition, construction and maintenance of a project, the  
16 financing thereof and the placing of the project into operation.

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

18 "Director" means the Director of the Division of Taxation in the  
19 Department of the Treasury.

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

22 "Outdoor special events arena" means a facility or structure for  
23 the holding outdoors of public events, entertainments, sporting  
24 events, concerts or similar activities, and shall include all facilities,  
25 property rights and interests, and all appurtenances reasonably  
26 related thereto, constructed for the accommodation and  
27 entertainment of tourists and visitors.

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

35 "Predominantly tourism related retail receipts" means:

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

39 b. Receipts from the sale of **【food and drink】** prepared food in  
40 or by restaurants, taverns, or other establishments in the district, or  
41 by caterers, including in the amount of such receipt any cover,  
42 minimum, entertainment or other charge made to patrons or  
43 customers, **【subject to】** exempt from taxation pursuant to  
44 subsection **【(c) of section 3 of the "Sales and Use Tax Act,"**  
45 **P.L.1966, c.30 (C.54:32B-3)】** (a) of section 14 of P.L.1980, c.105  
46 (C.54:32B-8.2) but excluding receipts from sales of food and  
47 beverages sold through **【coin operated】** vending machines; and

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

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

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

12 "Tourism" means activities involved in providing and marketing  
13 services and products, including accommodations, for nonresidents  
14 and residents who travel to and in New Jersey for recreation and  
15 pleasure.

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

20 "Tourism development activities" include operations of the  
21 authority to carry out its statutory duty to promote, advertise and  
22 market the district, including making beach operation offset  
23 payments.

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

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

34 "Tourist industry" means the industry consisting of private and  
35 public organizations which directly or indirectly provide services  
36 and products to nonresidents and residents who travel to and in New  
37 Jersey for recreation and pleasure.

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

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

1 "Wildwood convention center facility" means the project  
2 authorized by paragraph (12) of subsection a. of section 6 of  
3 P.L.1971, c.137 (C.5:10-6).  
4 (cf: P.L.2005, c.78, s.1)

5  
6 3. Section 15 of P.L.1992, c.165 (C.40:54D-15) is amended to  
7 read as follows:

8 15. Ordinances adopted pursuant to this act, P.L.1992, c.165  
9 (C.40:54D-1 et seq.) shall impose a tourism development fee. The  
10 ordinances imposing the fee shall set forth the method for the  
11 calculation thereof which shall be similar to that used for mercantile  
12 licenses and other such fees as established by the municipalities.

13 A business paying the tourism development fee or tourism  
14 assessment shall be exempt from any future room taxes, tourism  
15 taxes, beach fees, or other similar taxes imposed by a county or the  
16 State of New Jersey on tourism related business. The fee shall be  
17 uniform throughout the district and shall apply to:

18 a. all persons making sales of tangible personal property or  
19 services, the receipts from which are subject to the "Sales and Use  
20 Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), not required to  
21 collect a tax on predominantly tourism related retail receipts;

22 b. all persons making charges for participant amusements;

23 c. all persons operating businesses that charge for parking,  
24 garaging or storing motor vehicles;

25 d. all persons maintaining or operating coin-operated vending  
26 machines within the district, for the machines within the district,  
27 regardless of the types of commodities sold through the machines;

28 e. all persons making sales of tangible personal property or  
29 services, the receipts from which are subject to the "Sales and Use  
30 Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) and who are required  
31 to collect a tax on predominately tourism related retail receipts, but  
32 only to the extent that the amount of tax on those receipts collected  
33 in a year by the person is less than the amount of the tourism  
34 development fee for that year, provided however that persons  
35 making sales of **【food and drink subject to】** prepared food exempt  
36 from taxation pursuant to subsection **【(c) of section 3 of P.L.1966,**  
37 **c.30 (C.54:32B-3)】** (a) of section 14 of P.L.1980, c.105 (C.54:32B-  
38 8.2) shall pay a tourism development fee in the amount determined  
39 in the sole discretion of the municipality by ordinance, which shall  
40 be in addition to any amount of the tax on predominantly tourism  
41 related retail receipts; and

42 f. all persons providing tourism lodging, who shall pay a  
43 tourism development fee in an amount determined in the sole  
44 discretion of the municipality by ordinance regardless of whether  
45 those sales are otherwise subject to the "Sales and Use Tax Act,"  
46 P.L.1966, c.30 (C.54:32B-1 et seq.). If the lodging is rented by an  
47 agent on behalf of the owner, the agent shall retain the amount of  
48 the fee for each unit of lodging from the amount or amounts of rent

1 first collected on behalf of the owner on that unit in a year, and  
2 forward the amount or amounts on behalf of the person providing  
3 tourism lodging pursuant to the requirements of section 17 of  
4 P.L.1992, c.165 (C.40:54D-17).

5 A person shall be exempt from payment of a tourism  
6 development fee for a year if that person is a vendor required to  
7 collect the tax upon predominantly tourism related retail receipts  
8 under an ordinance authorized under this act, P.L.1992, c.165  
9 (C.40:54D-1 et seq.), in an amount equal to the amount of tax so  
10 collected in that year, except as provided in subsection e.

11 A person claiming any exemption for an amount of fee otherwise  
12 required by this section by reason of the collection of amounts of  
13 tax on predominately tourism related retail receipts is deemed to  
14 have consented to the release of information concerning that  
15 person's tax on predominately tourism related retail receipts  
16 collections for the fee period sufficient, as determined by the  
17 director, to verify the claim for exemption. The municipality shall  
18 provide safeguards which restrict the use or disclosure of any such  
19 information provided to purposes directly connected with the  
20 administration of the fee.

21 A municipality may, at any time, notwithstanding the approval  
22 provisions of subsection b. of section 4 of P.L.1992 c.165  
23 (C.40:54D-4), adjust by municipal ordinance, otherwise in  
24 compliance with the requirements of subsection b. of section 4 of  
25 P.L.1992 c.165 (C.40:54D-4), the schedule of tourism development  
26 fees to reflect changes in the funds available for beach operation  
27 offset payments so as to maximize the beach operation offset  
28 payments that the municipalities can receive pursuant to the  
29 limitations of subsection e. of section 9 of P.L.2002, c.72  
30 (C.40:54D-14.1).

31 (cf: P.L.2002, c.72, s.10)

32

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

35 3. There is imposed and there shall be paid a tax of 7% upon:

36 (a) The receipts from every retail sale of tangible personal  
37 property or digital property, except as otherwise provided in this  
38 act.

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

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

46 (2) Installing tangible personal property or digital property, or  
47 maintaining, servicing, repairing tangible personal property or  
48 digital property not held for sale in the regular course of business,

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

17 (3) Storing all tangible personal property not held for sale in the  
18 regular course of business; the rental of safe deposit boxes or  
19 similar space; and the furnishing of space for storage of tangible  
20 personal property by a person engaged in the business of furnishing  
21 space for such storage.

22 "Space for storage" means secure areas, such as rooms, units,  
23 compartments or containers, whether accessible from outside or  
24 from within a building, that are designated for the use of a customer  
25 and wherein the customer has free access within reasonable  
26 business hours, or upon reasonable notice to the furnisher of space  
27 for storage, to store and retrieve property. Space for storage shall  
28 not include the lease or rental of an entire building, such as a  
29 warehouse or airplane hanger.

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

40 (5) Direct-mail processing services, except for direct-mail  
41 processing services in connection with distribution of direct mail to  
42 out-of-State recipients.

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

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

46 (8) Tanning services, including the application of a temporary  
47 tan provided by any means.

1 (9) Massage, bodywork or somatic services, except such  
2 services provided pursuant to a doctor's prescription.

3 (10)Tattooing, including all permanent body art and permanent  
4 cosmetic make-up applications.

5 (11)Investigation and security services.

6 (12)Information services.

7 (13)Transportation services originating in this State and provided  
8 by a limousine operator, as permitted by law, except such services  
9 provided in connection with funeral services.

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

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

19 (c) (1) **【Receipts from the sale of prepared food in or by**  
20 **restaurants, taverns, or other establishments in this State, or by**  
21 **caterers, including in the amount of such receipts any cover,**  
22 **minimum, entertainment or other charge made to patrons or**  
23 **customers, except for meals especially prepared for and delivered to**  
24 **homebound elderly, age 60 or older, and to disabled persons, or**  
25 **meals prepared and served at a group-sitting at a location outside of**  
26 **the home to otherwise homebound elderly persons, age 60 or older,**  
27 **and otherwise homebound disabled persons, as all or part of any**  
28 **food service project funded in whole or in part by government or as**  
29 **part of a private, nonprofit food service project available to all such**  
30 **elderly or disabled persons residing within an area of service**  
31 **designated by the private nonprofit organization; and】 (Deleted by**  
32 **amendment, P.L. , c. )(pending before the Legislature as this**  
33 **bill).**

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

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

43 (3) For the purposes of this subsection:

44 "Food and beverages sold through vending machines" means  
45 food and beverages dispensed from a machine or other mechanical  
46 device that accepts payment**【**; and

47 "Prepared food" means:

- 1 (i) A. food sold in a heated state or heated by the seller; or  
2 B. two or more food ingredients mixed or combined by the  
3 seller for sale as a single item, but not including food that is only  
4 cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,  
5 poultry, and foods containing these raw animal foods requiring  
6 cooking by the consumer as recommended by the Food and Drug  
7 Administration in Chapter 3, part 401.11 of its Food Code so as to  
8 prevent food borne illnesses; or  
9 C. food sold with eating utensils provided by the seller,  
10 including plates, knives, forks, spoons, glasses, cups, napkins, or  
11 straws. A plate does not include a container or packaging used to  
12 transport the food;  
13 provided however, that  
14 (ii) "prepared food" does not include the following sold without  
15 eating utensils:  
16 A. food sold by a seller whose proper primary NAICS  
17 classification is manufacturing in section 311, except subsector  
18 3118 (bakeries);  
19 B. food sold in an unheated state by weight or volume as a  
20 single item; or  
21 C. bakery items, including bread, rolls, buns, biscuits, bagels,  
22 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,  
23 muffins, bars, cookies, and tortillas].  
24 (d) The rent for every occupancy of a room or rooms in a hotel  
25 in this State, except that the tax shall not be imposed upon a  
26 permanent resident.  
27 (e) (1) Any admission charge to or for the use of any place of  
28 amusement in the State, including charges for admission to race  
29 tracks, baseball, football, basketball or exhibitions, dramatic or  
30 musical arts performances, motion picture theaters, except charges  
31 for admission to boxing, wrestling, kick boxing or combative sports  
32 exhibitions, events, performances or contests which charges are  
33 taxed under any other law of this State or under section 20 of  
34 P.L.1985, c.83 (C.5:2A-20), and, except charges to a patron for  
35 admission to, or use of, facilities for sporting activities in which  
36 such patron is to be a participant, such as bowling alleys and  
37 swimming pools. For any person having the permanent use or  
38 possession of a box or seat or lease or a license, other than a season  
39 ticket, for the use of a box or seat at a place of amusement, the tax  
40 shall be upon the amount for which a similar box or seat is sold for  
41 each performance or exhibition at which the box or seat is used or  
42 reserved by the holder, licensee or lessee, and shall be paid by the  
43 holder, licensee or lessee.  
44 (2) The amount paid as charge of a roof garden, cabaret or other  
45 similar place in this State, to the extent that a tax upon such charges  
46 has not been paid pursuant to subsection (c) hereof.

1 (f) (1) The receipts from every sale, except for resale, of  
2 intrastate or interstate telecommunications sourced to this State in  
3 accordance with section 29 of P.L.2005, c.126 (C.54:32B-3.4).

4 (2) The receipts from every sale, except for resale, of intrastate  
5 or interstate mobile telecommunications services billed by or for a  
6 customer's home service provider and provided to a customer with a  
7 place of primary use in this State. The provisions and definitions of  
8 the federal "Mobile Telecommunications Sourcing Act," 4 U.S.C.  
9 ss.116-126 (Pub.L.106-252), are applicable herein.

10 (g) The receipts from every sale, except for resale, of prepaid  
11 calling service and the recharge of prepaid calling service.

12 (h) Charges in the nature of initiation fees, membership fees or  
13 dues for access to or use of the property or facilities of a health and  
14 fitness, athletic, sporting or shopping club or organization in this  
15 State, except for: (1) membership in a club or organization whose  
16 members are predominantly age 18 or under; and (2) charges in the  
17 nature of membership fees or dues for access to or use of the  
18 property or facilities of a health and fitness, athletic, sporting or  
19 shopping club or organization that is exempt from taxation pursuant  
20 to paragraph (1) of subsection (a) of section 9 of P.L.1966, c.30  
21 (C.54:32B-9), or that is exempt from taxation pursuant to paragraph  
22 (1) or (2) of subsection (b) of section 9 of P.L.1966, c.30 and that  
23 has complied with subsection (d) of section 9 of P.L.1966, c.30.

24 (i) The receipts from parking, storing or garaging a motor  
25 vehicle, excluding charges for the following: residential parking;  
26 employee parking, when provided by an employer or at a facility  
27 owned or operated by the employer; municipal parking, storing or  
28 garaging; receipts from charges or fees imposed pursuant to section  
29 3 of P.L.1993, c.159 (C.5:12-173.3) or pursuant to an agreement  
30 between the Casino Reinvestment Development Authority and a  
31 casino operator in effect on the date of enactment of P.L.2007,  
32 c.105; and receipts from parking, storing or garaging a motor  
33 vehicle subject to tax pursuant to any other law or ordinance.

34 For the purposes of this subsection, "municipal parking, storing  
35 or garaging" means any motor vehicle parking, storing or garaging  
36 provided by a municipality or county, or a parking authority  
37 thereof.

38 (cf: P.L.2007, c.105, s.1)

39  
40 5. Section 14 of P.L.1980, c.105 (C.54:32B-8.2) is amended to  
41 read as follows:

42 14. a. Receipts from sales of the following are exempt from the  
43 tax imposed under the "Sales and Use Tax Act~~[:]~~," P.L.1966, c.30  
44 (C.54:32B-1 et seq.): ~~【sales of】~~ food and food ingredients,  
45 prepared food, and dietary supplements, sold for human  
46 consumption ~~【off the premises where sold】~~ but not including (1)  
47 candy, and (2) soft drinks, all of which shall be subject to the retail

1 sales and compensating use taxes[, whether or not the item is sold  
2 in liquid form].

3 b. [The exemption in this section is not applicable to prepared  
4 food subject to tax under subsection (c) of section 3 of the Sales and  
5 Use Tax Act (C.54:32B-3)] (Deleted by amendment, P.L. , c. )  
6 (pending before the Legislature as this bill).

7 c. As used in this section:

8 "Candy" means a preparation of sugar, honey, or other natural or  
9 artificial sweeteners in combination with chocolate, fruits, nuts or  
10 other ingredients or flavorings in the form of bars, drops, or pieces.  
11 "Candy" does not include any preparation containing flour or  
12 requiring refrigeration;

13 "Dietary supplement" means any product, other than tobacco,  
14 intended to supplement the diet, that:

15 (1) contains one or more of the following dietary ingredients: a  
16 vitamin; a mineral; an herb or other botanical; an amino acid; a  
17 dietary substance for use by humans to supplement the diet by  
18 increasing the total dietary intake; a concentrate, metabolite,  
19 constituent, extract, or combination of any ingredient described  
20 herein;

21 (2) is intended for ingestion in tablet, capsule, powder, softgel,  
22 gelcap, or liquid form, or if not intended for ingestion in such a  
23 form, is not represented as conventional food and is not represented  
24 for use as a sole item of a meal or of the diet; and

25 (3) is required to be labeled as a dietary supplement, identifiable  
26 by the "Supplemental Facts" box found on the label and as required  
27 pursuant to 21 C.F.R. s.101.36;

28 "Food and food ingredients" means substances, whether in  
29 liquid, concentrated, solid, frozen, dried, or dehydrated form, that  
30 are sold for ingestion or chewing by humans and are consumed for  
31 their taste or nutritional value, "Food and food ingredients" does not  
32 include alcoholic beverages or tobacco;

33 "Prepared food" means:

34 (1) (a) food sold in a heated state or heated by the seller; or

35 (b) two or more food ingredients mixed or combined by the  
36 seller for sale as a single item, but not including food that is only  
37 cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,  
38 poultry, and foods containing these raw animal foods requiring  
39 cooking by the consumer as recommended by the Food and Drug  
40 Administration in Chapter 3, part 401.11 of its Food Code so as to  
41 prevent food borne illnesses; or

42 (c) food sold with eating utensils provided by the seller,  
43 including plates, knives, forks, spoons, glasses, cups, napkins, or  
44 straws. A plate does not include a container or packaging used to  
45 transport the food;

46 provided however, that

47 (2) "prepared food" does not include the following sold without  
48 eating utensils:

1     (a) food sold by a seller whose proper primary NAICS  
2 classification is manufacturing in section 311, except subsector  
3 3118 (bakeries);

4     (b) food sold in an unheated state by weight or volume as a  
5 single item; or

6     (c) bakery items, including bread, rolls, buns, biscuits, bagels,  
7 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,  
8 muffins, bars, cookies, and tortillas;

9     "Soft drinks" means non-alcoholic beverages that contain natural  
10 or artificial sweeteners. "Soft drinks" does not include beverages  
11 that contain: milk or milk products; soy, rice or similar milk  
12 substitutes; or greater than fifty percent of vegetable or fruit juice  
13 by volume; and

14     "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or  
15 any other item that contains tobacco.

16 (cf: P.L.2005, c.126, s.8)

17

18     6. This act shall take effect immediately and apply to sales of  
19 prepared food on or after the first day of the second month next  
20 following the date of enactment.

21

22

23

#### STATEMENT

24

25     This bill eliminates sales tax imposed on retail sales of prepared  
26 food. Under the provisions of the bill, prepared foods sold by  
27 restaurants and diners, cafes and cafeterias, bars and taverns, as  
28 well as supermarkets, grocery and convenience stores throughout  
29 the State are excluded from New Jersey's seven percent rate of  
30 taxation.

31     As defined by the bill, "prepared food" includes: (1) food sold  
32 in a heated state by the seller; (2) food items that are a result of the  
33 combination of two or more food ingredients by the seller to make a  
34 single item; or (3) food sold with eating utensils provided by the  
35 seller, including plates, knives, forks, spoons, glasses, cups,  
36 napkins, or straws. "Prepared food" does not, however, include  
37 sales of the following sold without eating utensils: (1) food sold by  
38 a seller whose proper primary NAICS classification is  
39 manufacturing in section 311, except subsector 3118 (bakeries); (2)  
40 food sold in an unheated state by weight or volume as a single item;  
41 or (3) bakery items, including bread, rolls, buns, biscuits, bagels,  
42 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,  
43 muffins, bars, cookies, and tortillas.

44     The elimination of sales tax on prepared foods is intended to  
45 provide State residents with immediate tax relief and to reduce a  
46 portion of their overall tax burden during the current economic  
47 decline. The tax exemption for prepared meals, catered lunches,  
48 and sit-down dinners purchased at New Jersey's eating and drinking

1 establishments will put more money back in the pockets of State  
2 residents and provide taxpayers with greater leverage in  
3 determining how to allocate and spend hard-earned dollars and  
4 cents.

5 Moreover, the sales tax changes provided by the bill are intended  
6 to serve as a fiscal stimulus for New Jersey's estimated 23,000  
7 eating and drinking establishments that generate, by some accounts,  
8 more than \$12 billion in annual sales and provide employment to  
9 more than 300,000 individuals. The elimination of the seven  
10 percent sales tax on prepared foods is anticipated to facilitate  
11 additional consumer spending within the State and place New  
12 Jersey's tax treatment of prepared foods in a competitive advantage  
13 over prepared foods sold in surrounding states.