

# ASSEMBLY, No. 1301

## STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

**Sponsored by:**

**Assemblyman RONALD S. DANCER**

**District 12 (Burlington, Middlesex, Monmouth and Ocean)**

**Assemblyman JOHN J. BURZICHELLI**

**District 3 (Cumberland, Gloucester and Salem)**

**SYNOPSIS**

Clarifies sales tax collection responsibilities of horse boarding businesses in New Jersey.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



A1301 DANCER, BURZICHELLI

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1 AN ACT clarifying the sales tax collection responsibilities of horse  
2 boarding businesses in New Jersey, amending and supplementing  
3 P.L.1966, c.30.  
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5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
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8 1. Section 3 of P.L.1966, c.30 (C.54:32B-3) is amended to read  
9 as follows:

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

11 (a) The receipts from every retail sale of tangible personal  
12 property or a specified digital product for permanent use or less  
13 than permanent use, and regardless of whether continued payment is  
14 required, except as otherwise provided in this act.

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

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

22 (2) Installing tangible personal property or a specified digital  
23 product, or maintaining, servicing, repairing tangible personal  
24 property or a specified digital product not held for sale in the  
25 regular course of business, whether or not the services are  
26 performed directly or by means of coin-operated equipment or by  
27 any other means, and whether or not any tangible personal property  
28 or specified digital product is transferred in conjunction therewith,  
29 except (i) such services rendered by an individual who is engaged  
30 directly by a private homeowner or lessee in or about his residence  
31 and who is not in a regular trade or business offering his services to  
32 the public, (ii) such services rendered with respect to personal  
33 property exempt from taxation hereunder pursuant to section 13 of  
34 P.L.1980, c.105 (C.54:32B-8.1), (iii) (Deleted by amendment,  
35 P.L.1990, c.40), (iv) any receipts from laundering, dry cleaning,  
36 tailoring, weaving, or pressing clothing, and shoe repairing and  
37 shoeshining and (v) services rendered in installing property which,  
38 when installed, will constitute an addition or capital improvement to  
39 real property, property or land, other than landscaping services and  
40 other than installing carpeting and other flooring.

41 (3) Storing all tangible personal property not held for sale in the  
42 regular course of business; the rental of safe deposit boxes or  
43 similar space; and the furnishing of space for storage of tangible  
44 personal property by a person engaged in the business of furnishing  
45 space for such storage.

**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 "Space for storage" means secure areas, such as rooms, units,  
2 compartments or containers, whether accessible from outside or  
3 from within a building, that are designated for the use of a customer  
4 and wherein the customer has free access within reasonable  
5 business hours, or upon reasonable notice to the furnisher of space  
6 for storage, to store and retrieve property. Space for storage shall  
7 not include the lease or rental of an entire building, such as a  
8 warehouse or airplane hanger, or the lease or rental of a stall in a  
9 barn, stable, or other similar structure or facility for the boarding or  
10 stabling or for the keeping or holding of a horse, pony, mule,  
11 donkey, or hinny.

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

22 (5) Mail processing services for printed advertising material,  
23 except for mail processing services in connection with distribution  
24 of printed advertising material to out-of-State recipients.

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

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

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

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

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

34 (11) Investigation and security services.

35 (12) Information services.

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

39 (14) Telephone answering services.

40 (15) Radio subscription services.

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

45 Services otherwise taxable under paragraph (1) or (2) of this  
46 subsection (b) are not subject to the taxes imposed under this  
47 subsection, where the tangible personal property or specified digital

1 product upon which the services were performed is delivered to the  
2 purchaser outside this State for use outside this State.

3 (c) (1) Receipts from the sale of prepared food in or by  
4 restaurants, taverns, or other establishments in this State, or by  
5 caterers, including in the amount of such receipts any cover,  
6 minimum, entertainment or other charge made to patrons or  
7 customers, except for meals especially prepared for and delivered to  
8 homebound elderly, age 60 or older, and to disabled persons, or  
9 meals prepared and served at a group-sitting at a location outside of  
10 the home to otherwise homebound elderly persons, age 60 or older,  
11 and otherwise homebound disabled persons, as all or part of any  
12 food service project funded in whole or in part by government or as  
13 part of a private, nonprofit food service project available to all such  
14 elderly or disabled persons residing within an area of service  
15 designated by the private nonprofit organization; and

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

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

25 (3) For the purposes of this subsection:

26 "Food and beverages sold through vending machines" means  
27 food and beverages dispensed from a machine or other mechanical  
28 device that accepts payment; and

29 "Prepared food" means:

30 (i) A. food sold in a heated state or heated by the seller; or

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

38 C. food sold with eating utensils provided by the seller,  
39 including plates, knives, forks, spoons, glasses, cups, napkins, or  
40 straws. A plate does not include a container or packaging used to  
41 transport the food;  
42 provided however, that

43 (ii) "prepared food" does not include the following sold without  
44 eating utensils:

45 A. food sold by a seller whose proper primary NAICS  
46 classification is manufacturing in section 311, except subsector  
47 3118 (bakeries);

1 B. food sold in an unheated state by weight or volume as a  
2 single item; or

3 C. bakery items, including bread, rolls, buns, biscuits, bagels,  
4 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,  
5 muffins, bars, cookies, and tortillas.

6 (d) The rent for every occupancy of a room or rooms in a hotel  
7 in this State, except that the tax shall not be imposed upon a  
8 permanent resident.

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

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

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

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

34 (g) (Deleted by amendment, P.L.2008, c.123)

35 (h) Charges in the nature of initiation fees, membership fees or  
36 dues for access to or use of the property or facilities of a health and  
37 fitness, athletic, sporting or shopping club or organization in this  
38 State, except for: (1) membership in a club or organization whose  
39 members are predominantly age 18 or under; and (2) charges in the  
40 nature of membership fees or dues for access to or use of the  
41 property or facilities of a health and fitness, athletic, sporting or  
42 shopping club or organization that is exempt from taxation pursuant  
43 to paragraph (1) of subsection (a) of section 9 of P.L.1966, c.30  
44 (C.54:32B-9), or that is exempt from taxation pursuant to paragraph  
45 (1) or (2) of subsection (b) of section 9 of P.L.1966, c.30 and that  
46 has complied with subsection (d) of section 9 of P.L.1966, c.30.

1 (i) The receipts from parking, storing or garaging a motor  
2 vehicle, excluding charges for the following: residential parking;  
3 employee parking, when provided by an employer or at a facility  
4 owned or operated by the employer; municipal parking, storing or  
5 garaging; receipts from charges or fees imposed pursuant to section  
6 3 of P.L.1993, c.159 (C.5:12-173.3) or pursuant to an agreement  
7 between the Casino Reinvestment Development Authority and a  
8 casino operator in effect on the date of enactment of P.L.2007,  
9 c.105; and receipts from parking, storing or garaging a motor  
10 vehicle subject to tax pursuant to any other law or ordinance.

11 For the purposes of this subsection, "municipal parking, storing  
12 or garaging" means any motor vehicle parking, storing or garaging  
13 provided by a municipality or county, or a parking authority  
14 thereof.

15 (cf: P.L.2011, c.49, s.2)

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17 2. (New section) Charges for storing a horse, pony, mule,  
18 donkey, or hinny in a barn, stable, or other similar structure or  
19 facility by a person engaged in the business of boarding or stabling  
20 or otherwise keeping or holding horses, ponies, mules, donkeys, or  
21 hinnies are exempt from the tax imposed pursuant to the "Sales and  
22 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

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24 3. (New section) Charges for maintaining or servicing a horse,  
25 pony, mule, donkey, or hinny that is boarded or stabled or that is  
26 kept or held in a barn, stable, or other similar structure or facility by  
27 a person engaged in the business of boarding or stabling or  
28 otherwise keeping or holding horses, ponies, mules, donkeys, or  
29 hinnies are exempt from the tax imposed pursuant to the "Sales and  
30 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

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32 4. This act shall take effect immediately and apply to lease and  
33 rental agreements entered into, and to charges for services rendered,  
34 on or after the first day of the first month of the first calendar  
35 quarter beginning at least 90 calendar days after the date of  
36 enactment; provided however, that if a lease or rental or service  
37 agreement taxable pursuant to the "Sales and Use Tax Act,"  
38 P.L.1966, c.30 (C.54:32B-1 et seq.), covers any period beginning  
39 prior to the first day of the first month of the first calendar quarter  
40 beginning at least 90 calendar days after the date of enactment and  
41 ending on or after the first day of the first month of the first  
42 calendar quarter beginning at least 90 calendar days after the date of  
43 enactment, receipts from the lease or rental or service agreement are  
44 subject to tax pursuant to P.L.1966, c.30 at the rate applicable to  
45 each period and shall be apportioned on the basis of the ratio of the  
46 number of days falling within each period to the total number of  
47 days covered thereby.

STATEMENT

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This bill clarifies the sales tax collection responsibilities of horse boarding business in New Jersey by providing an exemption from tax for the lease or rental of certain stable stalls and charges for horse boarding and certain other related services.

Under the bill, the taxable service of “furnishing space for storage” is redefined to exclude from tax charges for the lease or rental of certain stable stalls. The bill provides that the service of “furnishing space for storage” does not include, and the taxable service therefore does not apply to, charges for the lease or rental of a stall in a barn, stable, or other similar structure or facility for the boarding or stabling or for the keeping or holding of a horse, pony, mule, donkey, or hinny.

The bill similarly exempts from tax certain charges for boarding a horse. The bill provides that charges for storing a horse, pony, mule, donkey, or hinny in a barn, stable, or other similar structure or facility by a person engaged in the business of boarding or stabling or otherwise keeping or holding horses, ponies, mules, donkeys, or hinnies are exempt from the sales tax.

In addition, the bill exempts from tax certain services that are provided for the care of horses, ponies, mules, donkeys, or hinnies boarded by persons engaged in the business of boarding horses. The bill provides that charges for maintaining or servicing a horse, pony, mule, donkey, or hinny that is boarded or stabled or that is kept or held in a barn, stable, or other similar structure or facility by a person engaged in the business of boarding or stabling or otherwise keeping or holding horses, ponies, mules, donkeys, or hinnies are exempt from the sales tax.

The bill takes effect immediately and applies to lease and rental agreements entered into, and to charges for services rendered, on or after the first day of the first month of the first calendar quarter beginning at least 90 calendar days after the date of enactment. The bill provides transitional rules that apply to agreements covering periods beginning and ending before and on or after the date the exemptions provided by the bill first apply.

The purpose of this bill is to clarify the tax collection responsibilities of horse boarding businesses in this State. The Division of Taxation in the Department of the Treasury has failed to provide clear and consistent guidance on the taxability of horse boarding and other services provided to horses that are boarded for a variety of different purposes by a variety of different businesses.

This failure has created confusion and increased the cost of doing businesses for horse boarding businesses attempting to maintain compliance with current law. The failure has also placed New Jersey horse boarding businesses at a competitive disadvantage with similar businesses in surrounding states,

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1 including New York, Pennsylvania, and Delaware, that do not  
2 require businesses to charge and collect tax on charges for boarding  
3 horses.

4 By providing an exemption for all horse boarding and related  
5 services, this bill eliminates the confusion and reduces the overall  
6 cost of doing business within this State. Moreover, by providing an  
7 exemption, the bill levels the playing field for New Jersey horse  
8 boarding businesses and their out-of-State counterparts.