



Sales and Use Tax Review Commission

2010 Annual Report

ANNUAL REPORT TO THE NEW JERSEY LEGISLATURE

Issued pursuant to N.J.S.A. 54:32B-43

DECEMBER 31, 2010

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OVERVIEW OF AUTHORIZING LEGISLATION

The New Jersey Legislature established the Sales and Use Tax Review Commission through the enactment of Public Law 1999, Chapter 416, on January 18, 2000. This authorizing legislation, which is codified as N.J.S.A. 54:32B-37 et seq., became effective March 1, 2000.

MEMBERSHIP

The Commission may comprise ten members. That membership consists of the following, all of whom serve without compensation, but are entitled to reimbursement of expenses incurred in the performance of their Commission duties.

Four members of the Executive Branch: State Treasurer (or designee), *ex officio*, and three other members of the Executive Branch designated by the Governor to serve at the Governor's pleasure.

Two public members (not of the same political party) appointed by the President of the Senate, serving the two-year legislative term in which the appointment is made and until their successors are appointed and qualified.¹

Two public members (not of the same political party) appointed by the Speaker of the General Assembly, serving the two-year legislative term in which the appointment is made and until their successors are appointed and qualified.²

Two public members (not of the same political party) appointed by the Governor, with the advice and consent of the Senate, serving four years and until successors are appointed and qualified.³

From among the six public members the Governor designates a chairman, who serves at the pleasure of the Governor.

The Commission is entitled to receive assistance and services from employees of any New Jersey state, county or municipal department, board, bureau, commission or agency as required, and to employ clerical assistants within the limits of funds available to it. The Division of Taxation is required to assist the Commission in performing its duties. The Commission may use the Division's existing studies and materials, and may also request additional services from the Division.

DUTIES OF THE COMMISSION

¹ Of the first members appointed, one was to serve for two years and one was to serve for four years

² Of the first members appointed, one was to serve for two years and one was to serve for four years

³ Of the first members appointed, one was to serve for two years and one was to serve for four years

The Commission is charged with the duty to review all bills, and all joint or concurrent resolutions, originating in either the General Assembly or the Senate of the State Legislature, which would either expand or reduce the base of the sales and use tax. Its review must, at a minimum, include an analysis of the bill's or resolution's impact, comments or recommendations concerning the bill or resolution, and any alternatives to it which the Commission may wish to suggest.

PROCEDURES

The following requirements govern the Commission's review process.

(1) First, within 20 days of the introduction of any bill or resolution, the Legislative Budget and Finance Officer must determine whether enactment of the measure would effect an expansion or reduction of the sales and use tax base.

(2) If the officer determines that the measure expands or reduces the tax base, he must then promptly notify the Commission, the presiding officer of the house in which the bill or resolution was introduced, and the chairman of any standing committee of that house to which the bill or resolution may have been referred.

(3) When the Commission receives a bill or resolution for review, it should complete the review and issue its written comments and recommendations within 90 days after the measure's introduction in the Legislature, unless it has been granted an extension. Its comments and recommendations must be provided to the presiding officer of the introducing house and the chairman of the standing committee handling the measure within 90 days of introduction, unless an extension has been granted.

(4) The General Assembly or Senate, or the standing committee handling the bill or resolution, may not vote on it until after the Commission completes its review and provides its comments and recommendations, unless the Commission fails to do so by the deadline described in paragraph (3), in which case the Legislature is free to take action.

(5) However, if the presiding officer of the introducing house notifies the Commission and the standing committee that the bill or resolution is an urgent matter, the house or standing committee is permitted to vote on the bill or resolution without waiting for the Commission's comment.

The Commission may meet and hold hearings, may request the assistance of officials of state agencies or of political subdivisions of the State, and may solicit the testimony of the interested group and the general public.

Rules and Regulations

The Commission may adopt rules and regulations consistent with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. that it deems necessary in order to carry out its functions.

COMMISSION REPORT

The Commission must report its activities by December 31 of each year, and it may also issue periodic tax policy recommendations.

This annual report is being issued in accordance with this requirement imposed by N.J.S.A. 54:32B-43.

Standards of Analysis for Review of Sales and Use Tax Legislation

The sales and use tax makes up approximately one-third of New Jersey’s tax revenue. It is the major source of revenue for general (not “dedicated”) state purposes.

Following are the totals for sales and use tax collections (excluding sales tax on energy) in the past eight fiscal years:

Fiscal Year	Sales and Use Tax Collections
2010	\$7,879,915,000
2009	8,264,162,457
2008	8,915,515,422
2007	8,609,639,460
2006	6,853,418,000
2005	6,552,199,925
2004	6,261,700,380
2003	5,936,057,000

The magnitude of these figures suggests how important it is to ensure the continued efficacy of the sales and use tax as a means of funding state purposes, while ensuring that the tax also remains fair and results in minimal interference with the public’s economic decision making.

In order to expedite the work of evaluating the merits of pending sales and use tax legislative proposals that would alter the sales and use tax base, it can be helpful to identify some standards that might be useful. Although it may be necessary to give due attention to the sometimes competing visions and values of “fairness,” ease of administration, economic neutrality, and compliance cost, it can be useful to consider the following standards when performing an analysis of each bill presented for review.

SIMPLICITY

Sales and use tax statutes should be plain, clear, precise, and unambiguous in order to permit both accurate compliance by the public and nonarbitrary enforcement by state tax administrators.

EQUITY

Two compensating concepts of fairness may merit some consideration.

“Horizontal equity” requires that the tax apply equally to similarly situated taxpayers. That is, all taxpayers engaging in the same type of transaction are deemed to be “equals” and therefore should be equally obligated to pay tax at the same rate, resulting in tax payments proportionate to the monetary value of the transactions. Proponents of “horizontal equity” as a guiding principle of ideal statutory tax schemes generally favor sales tax with the broadest possible tax base, with few if any exclusions or exemptions, coupled with the lowest possible rate of tax.

“Vertical equity” requires that the burden of paying the tax be assigned according to the taxpayer’s ability to pay. This vision of equity is based on the recognition that paying the same dollar of tax requires a greater proportionate sacrifice for the person of very limited means than it does for the person of wealth. The vertical equity vision is generally implemented through personal income tax schemes, imposing tax at progressively higher rates in accordance with income. It is generally not a guiding principle of sales tax schemes.

However, in the context of consumption taxes, such as the sales and use tax, some degree of vertical equity is indirectly achieved by means of exemptions and exclusions for “necessities” such as food, medicines, and home heating repairs that are so crucial to subsistence living that the poor cannot safely choose to forgo the purchases. However, while the exemptions for necessities result in the nontaxability of a greater percentage of the poor’s purchases than of the wealthy’s purchases, they also promote “horizontal equity,” since the exemptions apply without regard to the taxpayer’s real or assumed ability to pay. Therefore, exemptions for “necessities” can be acceptable to proponents of both competing concepts of equity.

ECONOMIC NEUTRALITY

Sales tax policy analysts generally advocate that sales tax legislation should be economically neutral to the extent possible. That is, any exemptions and exclusions in the law should ideally have minimal effect on the free functioning of the state’s market economy. The concept of economic neutrality is closely related to the “horizontal equity” vision of tax burden fairness. The tax should be sufficiently broad-based, and its rate sufficiently low, that a transaction’s taxability need not become a significant factor affecting consumers’ economic decisions.

If sales taxes are viewed as simply a means of raising revenue for the support of government services and programs, it is then arguable that they should not be used as a social and political policy tool, by favoring “desirable” activities with exemptions or by penalizing “undesirable” activities through the imposition of higher rates of tax. In addition, they should generally avoid favoring one segment of the economy over another competing segment.

COSTS OF ADMINISTRATION AND COMPLIANCE

A state’s cost of administering the tax, and the costs incurred by vendors and consumers in complying with it, should be as low as possible, consistent with the objective of ensuring that the proper amount of tax is paid and remitted on the proper transactions.

LIST OF BILLS REVIEWED BY COMMISSION

(JANUARY 1 – DECEMBER 31, 2010)

<u>Bill Number</u>	<u>Description</u>	<u>Recommendation</u> <u>Date</u>
<u>Assembly Bills</u>		
A-159 /S-1354	Excludes certain stable stall rentals from sales and use tax imposition and provides sales and use tax exemption for sales of equine-related services	03/24/2010
A-195	Provides that sales by UEZ retailers of items delivered to location outside of the UEZ shall not qualify for partial exemption from the sales tax.	03/24/2010
A-204	Authorizes creation of 33rd urban enterprise zone in Belleville Township.	03/24/2010
A-249	Provides sales and use tax exemption for certain purchases made by certain flood victims.	03/24/2010
A-417	Provides sales tax exemption for certain off-road diesel equipment and certain retrofit devices.	03/24/2010
A-433	Authorizes designation of joint urban enterprise zone by Urban Enterprise Zone Authority.	03/24/2010

A-447	Exempts sales of services by counties and municipalities from sales and use tax.	03/24/2010
A-496	Provides sales tax exemption for sales of prepared foods.	03/24/2010
A-597/ S-917	"Monmouth Economic Revitalization Authority Act."	03/24/2010
A636/ S-1269	Establishes annual sales tax holiday for certain sales of personal computers and certain sales of school supplies and equipment during first full weekend of August.	03/24/2010
A-709	Exempts sales of returnable plastic containers and pallets from sales and use tax	03/24/2010
A-739	Repeals gross receipts and use taxes on retail sales of fur clothing.	03/24/2010
A-786	Provides sales and use tax exemption for new motor vehicles with certain fuel efficiency.	03/24/2010
A-827	Establishes sales and use tax rate reduction period from October 1, 2009 December 31, 2009 for sales of certain goods and services greater than or equal to \$10,000; sets reduction period tax rate at 3.5%.	03/24/2010
A-1160	Eliminates imposition of sales and use tax on charges for initiation fees, membership fees, or dues for access to or use of certain health and fitness clubs and organizations.	03/24/2010
A-1253/ S-1322	Exempts from sales tax all hybrid and certain highly fuel efficient vehicles.	03/24/2010

A-1294	Authorizes creation of 33rd urban enterprise zone in Borough of Seaside Heights.	03/24/2010
A-1546	Provides a sales and use tax exemption for sales of certain high-efficiency home heating equipment.	03/24/2010
A-1569	Authorizes creation of urban enterprise zones in Garfield, Harrison, Keansburg, and two joint urban enterprise zones, one in Cliffside Park and Fairview, and one in Buena Vista Township and Buena Borough.	03/24/2010
A-1559	Allows point of sales tax exemption for certain UEZ business purchases made by certain zone-located qualified businesses.	03/24/2010
A-1723	Reduces sales tax rate on certain sales and admission charges at places of amusement in urban enterprise zone areas and provides that sales tax revenue be for municipal purposes	03/24/2010
A-1779	Exempts from sales tax certain sales by or to any senior citizens club organized for pleasure, recreation, or other non-profitable purposes.	03/24/2010
A-1826	Exempts from sales tax for two years certain hybrid and highly fuel efficient vehicles and energy efficient appliances.	03/24/2010
A-1852	Provides for sales tax exemption for advanced technology partial zero emission vehicles, imposes surcharge on certain automobiles.	03/24/2010
A-1854	Establishes sales tax holiday for certain energy efficient products during third week of April and October.	03/24/2010
A-1961	Exempts certain purchases by school food service providers from the sales and use tax.	03/24/2010

A-2043	Provides exemption from tax on sales of certain energy saving products and services purchased from businesses located in UEZ.	03/24/2010
A-2090	Authorizes creation of 33rd urban enterprise zone in Town of Harrison. Hudson.	03/24/2010
A-2316	Removes charges in the nature of initiation fees, membership fees or dues from sales and use tax.	03/24/2010
A-2315/ S-1496	Exempts certain lake association membership fees and dues from imposition of sales and use tax.	03/24/2010
A-2362 /S-1637	Consumer Relief Act of 2010; establishes temporary sales and use tax rate reduction periods for sales of certain goods and services.	03/24/2010
A-2607/S-1855	Provides sales and use tax exemption for certain packaging equipment.	03/24/2010
A-2657	The "Seaside Lodging and Rental District Act", imposes tax on certain lodging properties for tourism promotion therein.	03/24/2010
A-2683	Phases out sales and use tax imposed on charges for certain initiation fees, membership fees and dues.	03/24/2010
A-2767 /S-1949	Provides energy and utility service sales tax relief benefit to certain manufacturers throughout the State.	03/24/2010
A-2970	Exempts storage facility space furnished to active duty military personnel from the sales and use tax.	03/24/2010
A-3126	Provides sales and use tax exemption for wind energy equipment.	03/24/2010
A-3417	Provides sales tax exemption for student parking	03/24/2010

	provided by certain colleges and universities.	
A-3419	Provides sales and use tax exemption for natural gas, and transportation or transmission of natural gas, to certain colleges and universities.	03/24/2010
Senate Bills		
S-76	Removes imposition of sales tax on massage, bodywork and somatic services.	03/24/2010
S-139	Exempts sale of recreational safety helmets from sales and use tax.	03/24/2010
S-302	Eliminates imposition of sales and use tax on charges for initiation fees, membership fees, or dues for access to or use of certain health and fitness clubs and organizations.	03/24/2010
S-354	Provides that sales by UEZ retailers of items delivered to location outside of the UEZ shall not qualify for partial exemption from the sales tax.	03/24/2010
S-462	Provides exemption from tax on sales of certain energy saving products and services purchased from businesses located in UEZ	03/24/2010
S-603	Establishes New Jersey Borough Enterprise Zone Program to encourage business development in small, highly developed municipalities.	03/24/2010
S-605	Allows corporation business tax and gross income tax credits, employer unemployment tax rebates, sales tax exemption, property tax freeze and employee skill training program as incentives for business revitalization in distressed shopping centers.	03/24/2010
S-615	Exempts charges for residential storage space and dues for residential health and fitness facilities from the	03/24/2010

	sales and use tax.	
S-675	Authorizes creation of urban enterprise zones in Garfield, Harrison and Keansburg as well as a joint urban enterprise zone in Cliffside Park and Fairview	03/24/2010
S-680	Removes limousine services from sales and use tax imposition.	03/24/2010
S-705	Provides for reduced sales tax imposition on certain sales in certain Highlands Region Preservation Area municipalities.	03/24/2010
S-756	Exempts from sales tax for two years certain hybrid and highly fuel efficient vehicles and energy efficient appliances.	03/24/2010
S-917/ A-597	“Monmouth Economic Revitalization Authority Act.”	03/24/2010
S-978	Exempts sales of methane gas fuel conversion machinery and equipment from sales taxes.	03/24/2010
S-990	Exempts certain materials and labor used to convert traditional motor vehicles into plug-in hybrid electric motor vehicles from sales and use tax.	03/24/2010
S-994	Exempts certain New Jersey teachers’ purchase of qualified teaching materials from sales and use tax.	03/24/2010
S-1043	Exempts storage facility space furnished to active duty military personnel from sales and use tax.	03/24/2010
S-1050	Excludes the value of certain manufacturer’s rebates from the sales price of motor vehicles taxable under the sales and use tax.	03/24/2010
S-1096	Establishes sales tax holiday in New Jersey from	03/24/2010

	December 10 through December 25.	
S-1097	Exempts from sales and use tax sales of carbon monoxide detectors and any device or equipment sold for residential use to detect, warn of, abate, or extinguish fires.	03/24/2010
S-1098	Establishes back-to-school sales tax holiday in New Jersey from August 26 through September 1, 2010.	03/24/2010
S-1143	Provides a sales and use tax exemption for sales of certain high-efficiency home heating equipment.	03/24/2010
S-1147	Removes investigation and security services from imposition of sales and use tax.	03/24/2010
S-1178	Allows certification of a qualified UEZ retailer as a business, notwithstanding that it sells items out of stock at time of purchase at a UEZ location and later mails them to purchaser from another location.	03/24/2010
S-1269	Establishes annual sales tax holiday during first weekend of August for certain retail sales of computers, school computer supplies, school supplies, school art supplies, and school instructional materials.	03/24/2010
S-1298	Phases out sales and use tax imposed on charges for certain initiation fees, membership fees and dues.	03/24/2010
S-1321	Provides sales and use tax exemption for sales of certain Energy Star labeled residential lighting and appliances.	03/24/2010
S-1322/ A-1253	Exempts from sales tax all hybrid and certain highly fuel efficient vehicles.	03/24/2010
S-1354 / A-159	Excludes certain stable stall rentals from sales and use tax imposition and provides sales and use tax exemption for sales of equine-related services	03/24/2010

S-1496/ A-2315	Exempts certain lake association membership fees and dues from imposition of sales and use tax.	03/24/2010
S-1637/ A-2362	Consumer Relief Act of 2010; establishes temporary sales and use tax rate reduction periods for sales of certain goods and services.	03/15/2010
S-1855/A--2607	Provides sales and use tax exemption for certain packaging equipment.	06/30/2010
S-1949/ A-2767	Provides energy and utility service sales tax relief benefit to certain manufacturers throughout the State.	06/30/2010
S-2005	Provides sales and use tax exemption for wind energy equipment.	06/30/2010
S-2132	Allows point of sales tax exemption for certain UEZ business purchases made by certain zone-located qualified businesses.	09/15/2010

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-159

Date of Introduction: 01/12/10

Sponsor(s): Assemblyman McHose

Date of Consideration: 03/24/10

Assemblyman Chiusano

Co-Sponsor(s):

Identical Bill: S-1354

Committee: Assembly Appropriations Committee

Description

This bill carves out stall rentals from the recent imposition of sales tax on the furnishing of space for storage and establishes a new exemption for “equine-related services rendered in connection with the boarding of the horse, pony, mule, donkey or hinny while...boarded by the keeper of a livery stable or a boarding and exchange stable.”

Note

(The Commission addressed an identical proposal (Assembly Bill No.:3602) in 2009. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

Under the provisions of this bill, the recent imposition of sales tax on space for storage is being chipped away to exclude stall rentals. The Commission has consistently taken the position that the new areas of imposition that came into effect under P.L.2006, c. 44 should not be undermined.

Further, the services which are the subject of the proposed exemption have always been subject to sales tax as services to tangible personal property. No justification was advanced that would rationalize creating a new exemption now when the State is in such a tenuous fiscal position.

Recommendation

The Commission recommends enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-195

Date of Introduction: 01/12/10

Sponsor(s): Assemblyman Chiusano

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill: S-354

Committee: Assembly Commerce and Economic Development

Description

The bill provides that sales by UEZ retailers of items delivered to location outside of the UEZ shall not qualify for partial exemption from the sales tax.

Note

(The Commission addressed an identical proposal (Assembly Bill No.:3602) in 2009. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill provides that retail sales of items by a qualified business in an urban enterprise zone ("UEZ") would not qualify for the partial exemption from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) if such items are delivered to a location outside of the UEZ.

The Commission, upon review and discussion of the proposed legislation determined that a study should be conducted to determine whether the original intentions of the Urban Enterprise Zone have been achieved and whether enacting proposed legislation of this nature would or would further that intent. It was the position of the Commission, as well, that UEZs cause depreciation in the sales and businesses of other retailers who reside alongside, but outside of the borders of the designated UEZ districts.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-204

Date of Introduction: 01/12/10

Sponsor(s): Assemblyman Caputo

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill:

Committee: Assembly Commerce and Economic Development

Description

This bill authorizes the creation of a new Urban Enterprise Zone in Belleville Township.

Note

(The Commission addressed an identical proposal (Assembly Bill No.: 3173) in 2008. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill amends the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 *et seq.*, to allow the creation of a new Urban Enterprise Zone in Belleville Township, Essex County. The Urban Enterprise Zone Program has expanded in ways that the original drafters never intended. For instance, prior to 1994 ten towns in eleven municipalities were designated as Urban Enterprise Zones; however, in 1994 legislation authorized the creation of ten additional zones, and in 1995 legislation added seven more zones. In 2002 legislation added three more zones to that list. Finally, the thirty-second zone was added in 2004. In addition, Urban Enterprise Zone-impacted business districts, areas that have been “negatively impacted” by the presence of two or more adjacent Urban Enterprise Zones, have been created wherein reduced sales tax is collected. If there was a consensus that the Urban Enterprise Zone Program is operating as intended and is thought to be effective and efficient, then the amendments set forth in this bill may represent sound policy. However, there has never been an independent, comprehensive

analysis performed that confirms that the Urban Enterprise Zone Program has actually been a benefit to the participating communities, yet the program is being constantly amended and expanded.

The greater the number of municipalities that have 3.5% sales tax, the more that New Jersey becomes a patchwork of differing sales tax rates. This is contrary to tax simplicity and uniformity. In addition, adding more zones may create a slippery slope because other municipalities which are similarly situated to Belleville Township may petition to become urban enterprise zones. This domino effect defeats the original purpose of the Urban Enterprise Zones Act of helping to revitalize the State's economically distressed urban areas. Given the ease with which the Urban Enterprise Zone Program is being expanded, it is conceivable that all municipalities in New Jersey will be able to credibly and successfully press for Urban Enterprise Zone status. As originally conceived, the program was to be limited and its benefits restricted to the direst cases. This bill does not establish that its provisions would further that purpose.

As the number of zones increase, the challenge of enforcement expands. Due to the high number of zones in existence, New Jersey no longer enjoys the administrative simplicity it once did with sales tax uniformity across the State. This bill does not provide an economic study to justify the creation of an Urban Enterprise Zone in Belleville Township. It does not provide any information that would demonstrate that such designation would reverse the economic decline of Belleville Township or attract businesses or customers to that municipality. Further, it does not demonstrate that if enacted, it would not draw businesses or customers from other depressed municipalities.

Since the inception of the Urban Enterprise Zones Act, competitors located outside of the zones have complained of and have perceived unfair tax advantages for vendors located within the zones. There have been many complaints of fraud submitted to the Urban Enterprise Zone Authority and to the Division of Taxation by vendors located outside of the zones charging that Urban Enterprise Zone vendors purchase items tax-free and then transport the property to other locations for use outside of the zone.

Permitting more vendors the entitlement of a tax exemption would exacerbate the already tenuous foundation upon which the Act is based.

A major reason municipalities are petitioning for an Urban Enterprise Zone may be the belief that such a designation would replace revenue that the municipality is currently losing from other sources. For instance, many municipal representatives have testified to the Sales and Use Tax Review Commission that Urban Enterprise Zone designation would benefit the municipality

since they are currently experiencing financial problems. The main theme in urging the Commission to approve a bill creating yet another zone stresses that Urban Enterprise Zone status would provide funds for municipal use. Since the inception of the Urban Enterprise Zones Act, its constitutional validity has been brought into question. Under the Commerce Clause, a state may not impose taxes on out-of-state sale transactions that exceed the taxes imposed on in-state transactions. The Urban Enterprise Zone Program halves the 7% sales tax rate for sales that take place within a zone. However, New Jersey law imposes a 7% compensating use tax on goods purchased outside of New Jersey but brought into the State for use here. Thus, the law appears to discriminate between a “sale” and a “use” based upon where the transaction occurs. As a result, non-Urban Enterprise Zone New Jersey retailers are forced to compete with out-of-state retailers that deliver goods into a designated zone, as well as with the in-state Urban Enterprise Zone vendors. To comply with the Commerce Clause, the Division must take the position that a New Jersey purchaser would be able to claim a 3.5% use tax rate if delivery is taken within the zone. The de facto extension of the 3.5% rate to retailers outside of New Jersey was never contemplated, but is nonetheless a real consequence of this program. Any expansion or creation of new 3.5% zones only perpetuates this situation.

Finally, expanding the Urban Enterprise Zone Program would further alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer and is generally perceived as economically neutral and “fair.” When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer is relatively small, but the cumulative revenue generated can be enormous. Expanding the Urban Enterprise Zone Program by adding more 3.5% zones would save an individual taxpayer and vendor a fairly insignificant sum every year. However, the cumulative loss of revenue to the State is substantial, leaving the State to find other means of generating the money lost as a result of expanding the program. This loss of revenue would be considerable because the 3.5% sales tax collected by qualified vendors is remitted to the municipality in which the Urban Enterprise Zone is located and not to the State’s General Fund. Thus, the State could lose the entire 7% sales tax that is currently collected on sales of items in the new Urban Enterprise Zone. This would be a particularly burdensome loss to the State in regard to big-ticket items.

The Committee recommends that a review of the Urban Enterprise Zone Program and its effectiveness is necessary to determine the best course of action in relation to future modifications or expansions of the Urban Enterprise Zone Program in New Jersey. To date, there has not been a comprehensive review of the Urban Enterprise Zone Program by an independent

body. As a result, substantive data concerning the actual success of the Urban Enterprise Zone Program has not been provided to the Legislature.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For:** Proposal: 0

Commission Members **Against:** Proposal: 8

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-249

Date of Introduction: 01/12/10

Date of Consideration: 03/24/10

Sponsor(s): Assemblywoman Vandervalk

Co-Sponsor(s):

Identical Bill: S-302

Committee: Assembly Appropriations Committee

Description

This bill provides sales and use tax exemption for certain purchases made by certain flood victims.

Note

(The Commission addressed an identical proposal (Assembly Bill No.: 1948) in 2008. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

The proposed exemption is intended to provide sales tax exemption to flood victims purchasing goods or services relating to flood damaged property. The scope of the exemption would include installation and repair services as well as the replacement of various household items including: appliances, heating and cooling systems, home repair materials, and household goods. The exemption is also applicable to the repair and/or replacement of motor vehicles. The exemption would operate by refund only on purchases made where sales tax has been applied. Claims for refund under this proposal would be accepted on or before March 31, 2008, and would apply to purchases made during the defined recovery period of April 4, 2007, through December 31, 2007.

“Disaster areas” refers to counties eligible for Federal disaster aid pursuant to the major disaster declaration issued by President Bush on April 26, 2007, and amended on April 29, 2007.

The bill does include appropriate language relating to proofs necessary for making claims for exemption.

The Commission supports this exemption as it is limited in its scope and application and the anticipated loss in revenue is minor.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For:** Proposal: 0

Commission Members **Against:** Proposal: 8

Commission Members **Abstaining:** 0



SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-417

Date of Introduction: 01/12/10

Sponsor(s): Assemblyman Rumana

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill:

Committee: Assembly Environment and Solid Waste Committee

Description

This bill would provide an exemption from sales and use tax for the purchase of certain off-road diesel equipment and certain retrofit devices. The scope of the types of items that would qualify would be certified by the Commissioner of the Department of Environmental Protection (DEP).

Note

(The Commission addressed an identical proposal (Assembly Bill No.: 3153) in 2008. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill proposes to amend the Sales and Use Tax Act (N.J.S.A. 54:32B-1 *et seq.*) to provide a sales tax exemption on the purchase of certain off-road diesel equipment purchases. As the DEP would be required to certify the types of equipment that would qualify for the exemption, it is difficult at this point to foresee the true scope of the exemption. Enacting a sales tax exemption for these types of purchases could open the door for similar tax exemptions on devices the use of which may also be viewed to have a favorable environmental impact.

Generally, the Commission does not support the use of tax policy as a means of influencing consumers' purchasing decisions and other behavior, even though the behaviors promoted might be beneficial to the State.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For:** Proposal: 0

Commission Members **Against:** Proposal: 8

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-433

Date of Introduction: 01/12/10

Sponsor(s): Assemblyman Green

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill:

Committee: Senate Health, Human Services and Senior Citizens Committee

Description

This bill would authorize the creation of a joint urban enterprise zone in two non-contiguous municipalities

Analysis

This bill would authorize the creation of a joint urban enterprise zone in two non-contiguous municipalities. This joint UEZ would be the State's 33rd urban enterprise zone.

The municipalities eligible for designation under this bill would be situated in North Plainfield Borough and Middlesex Borough. The additional enterprise zone to be designated by the authority would be entitled to an reduction to the extent of 50% of the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

The Commission recommends that a review of the Urban Enterprise Zone Program and its effectiveness is necessary to determine the best course of action in relation to future modifications or expansions of the Urban Enterprise Zone Program in New Jersey. To date, there has not been a comprehensive review of the Urban Enterprise Zone Program by an independent body. As a result, substantive data concerning the actual success of the Urban Enterprise Zone Program has not been provided to the Legislature.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For:** Proposal: 0

Commission Members **Against:** Proposal: 8

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-447

Date of Introduction: 01/12/10

Sponsor(s): Assemblywoman Vandervalk

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill: S-302

Committee: Assembly Appropriations Committee

Description

This bill would exempt sales of services by counties and municipalities from sales and use tax.

Analysis

As this area of imposition was enacted effective October 1, 2006, this area is a new revenue source for the State. The Commission was not presented with any reasoning compelling enough to support the repeal of the imposition on these services

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For:** Proposal: 0

Commission Members **Against:** Proposal: 8

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-496

Date of Introduction: 01/12/10

Sponsor(s): Assemblyman Polistina
Assemblyman Amodeo

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill:

Committee: Assembly Appropriations Committee

Description

This bill would provide sales tax exemption for sales of prepared foods.

Analysis

Under the provisions of the bill, prepared foods sold by restaurants and diners, cafes and cafeterias, bars and taverns, as well as supermarkets, grocery and convenience stores throughout the State would be tax exempt.

The elimination of sales tax on prepared foods would cause a significant loss of revenue to the State of New Jersey. It would also alter the broad-based structure of the sales and use tax.

The Commission does not recommend passage of this bill.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-597

Date of Introduction: 01/12/10

Sponsor(s): Assemblyman Cryan

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill: S-917

Committee: Assembly Commerce and Economic Development

Description

This bill would create the "Monmouth Economic Revitalization Authority Act."

Analysis

This measure is a comprehensive response to the opportunities presented by the closure of Ft. Monmouth, which resulted from decisions rendered by the Federal Base Realignment and Closing Commission.

In addition to creating a new authority, a State entity 'in but not of' the Department of the Treasury, which would be responsible for the implementation of the revitalization effort envisioned for the soon-to-be available lands, this proposal expands the powers of the Economic Development Authority (EDA) and designates it "master developer" for any number of future projects.

Initially, it provides for a 50% reduction to the state's sales and use taxes on the receipts of retail sales except sales of alcoholic beverages, cigarettes, manufacturing machinery, equipment or apparatus, and energy (natural gas and electricity). The legislation further proposes that the authority may adopt a resolution to levy and collect a franchise assessment within an infrastructure district not to exceed an amount equivalent to 50 percent of the tax imposed under the Sales and Use Tax Act with the intent of devoting the proceeds from those assessments to purposes of the district.

The measures in this bill contribute significant economic tools to revitalize the targeted region.

Recommendation

The Commission recommends enactment of this bill.

Commission Members For: Proposal: 7

Commission Members Against: Proposal: 0

Commission Members Abstaining: 1

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-636

Date of Introduction: 01/12/10

Sponsor(s): Assemblyman Moriarty

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill: S-1269

Committee: Assembly Environment and Solid Waste Committee

Description

This bill establishes an annual sales tax holiday during the first full weekend of August for the sales of computers and certain school supplies and instructional materials.

Note

(The Commission addressed an identical proposal (Senate Bill No.:1652) in 2008. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill establishes an annual “back-to-school” sales tax holiday during first full weekend of August for the sales of computers and certain school supplies and instructional materials. The exemption provides for a sales price cap of less than \$1,000 and would be available to non-business purchasers.

The limitation of the exemption to individual purchasers for non-business use would be difficult to administer. Retailers cannot reasonably be expected to recognize whether a particular individual is making a purchase for business or personal use, and it is foreseeable that, like the exemption for paper products for home use only, this personal use exemption will be widely misused and easily abused by consumers making purchases for their small businesses. Retailers would object to being required to determine whether every sale was “non-business” or to obtain an exemption certificate from every purchaser during the exclusion period.

Presumably the holiday will only affect sales within New Jersey and not use tax imposed on items purchased from outside of New Jersey. Thus, the proposal is contrary to the Commerce

Clause of the United State Constitution, under which states cannot discriminate against interstate commerce. If the tax holiday is limited to sales physically taking place in New Jersey, this will create a federal Constitutional problem, since use tax is imposed when tangible property purchased out-of-State from non-New Jersey mail-order vendors is used in or delivered to New Jersey. The State cannot lawfully exempt a sale of an item taking place within New Jersey while at the same time, impose tax on comparable items purchased from an out-of-State source. This scheme whereby an in-State sale would not be subject to any tax, while the full use tax of 7% would be imposed on interstate purchases used in New Jersey, discriminates against interstate commerce and would not likely survive constitutional scrutiny.

It is unlikely that consumers would enjoy a true savings as a result of a tax holiday which merely eliminates the 7% sales tax. Sales offered by the retailer, generally at a percentage far greater than 7%, result in much greater savings for the customer.

Confident that the public will be enticed to the stores by the prospect of a tax-free holiday, retailers may actually raise their "sale" prices during a tax holiday or elect not to discount regular prices. Rather than provide a savings for consumers, the bill could easily result in increased profit for vendors. Thus, consumers may not realize that they are actually paying more for the merchandise during the holiday and not enjoying a real tax savings.

The sales tax holiday would further alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer, and is generally perceived as economically neutral and "fair." When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer is relatively small, but the cumulative revenue generated can be enormous. A sales tax holiday would save an individual purchaser a fairly insignificant sum. However, the cumulative loss of revenue to the State could be substantial.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For:** Proposal: 0

Commission Members **Against:** Proposal: 8

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-709

Date of Introduction: 01/12/10

Sponsor(s): Assemblyman Dimaio

Date of Consideration: 03/24/10

Co-Sponsor(s): Assemblywoman McHose

Identical Bill:

Committee: Assembly Appropriations Committee

This bill would extend the returnable commercial container exemption beyond farming enterprises and would cover other commercial sales and use of returnable plastic containers and pallets. Returnable plastic containers and pallets are typically used by grocery manufacturers, the home improvement industry and other growing markets for shipping their items in commerce.

Public Comment

A letter (copy attached) and public comment were received from the American Chemistry Council in support of this bill. The American Chemistry Council stated that it was seeking equal treatment in the way returnable plastic pallets and containers are treated and wanted those pallets to be exempt from sales tax just as the non-returnable pallets and containers are not subject to sales tax.

Analysis

This bill extends the commercial wrapping supplies and nonreturnable containers sales and use tax exemption to returnable plastic containers and pallets. Currently, all containers for use in a farming enterprise are exempt from sales and use tax whether they are transferred to the customer along with the products or are returnable to the farming enterprise.

Additionally, all packages and packaging supplies that are used to deliver products to customers and that are transferred to the customers along with the merchandise are exempt from sales and use tax. This includes all nonreturnable containers and pallets.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For:** Proposal: 4

Commission Members **Against:** Proposal: 4

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-739

Date of Introduction: 01/12/10

Sponsor(s): Assemblyman Dimaio

Date of Consideration: 03/24/10

Co-Sponsor(s): Assemblywoman McHose

Identical Bill:

Committee: Assembly Appropriations Committee

Description

The bill makes Repeals gross receipts and use taxes on retail sales of fur clothing.

Analysis

The Commission is aware of the State's current obligations under the Streamlined Sales and Use Tax Agreement and recognizes the need for conforming legislation to pass. As this bill is a pure effort in that regard, in that it offers no ancillary amendments, the Commission supports its passage.

Recommendation

The Commission recommends enactment of this bill as currently written.

Commission Members **For** Proposal: 8

Commission Members **Against** Proposal: 0

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION
RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-786

Date of Introduction: 01/12/10

Sponsor(s): Assemblyman Bramnick

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill:

Committee: Senate Health, Human Services and Senior Citizens Committee

Description

The bill provides an exemption from sales tax on the purchase of new motor vehicles with a highway miles-per-gallon fuel efficiency rating of 35 or higher.

Note

(The Commission addressed an identical proposal (Assembly Bill No.: 3153) in 2008. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill is proposed to amend the Sales and Use Tax Act (N.J.S.A. 54:32B-1 *et seq.*) to provide an exemption for the sale of new motor vehicles with a highway miles-per-gallon fuel efficiency rating of 35 or higher. Currently, the law allows for an exemption for zero emission vehicles which are vehicles certified pursuant to the California Air Resources Board zero emission standards for the model year. See N.J.S.A. 54:32B-8.55.

A sales tax exemption for sales of fuel-efficient motor vehicles could open the door for similar tax exemptions on devices that may also be viewed as good for the environment. Generally, the Commission does not support the use of tax policy as a means of influencing consumers' purchasing decisions and other behavior, even though the behaviors promoted might be beneficial to the State. Additionally, the exemption would further alter the broad-based nature of the sales and use tax.

Loss of revenue to the State on big-ticket items, such as automobiles, is substantial. Particularly now, as the State is experiencing a budgetary crisis, the Commission cannot support of passage of this bill.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For:** Proposal: 0

Commission Members **Against:** Proposal: 8

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-827

Date of Introduction: 01/12/10

Sponsor(s): Assemblyman Albano

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill:

Committee: Senate Health, Human Services and Senior Citizens Committee

Description

This bill establishes sales and use tax rate reduction period from October 1, 2009 through December 31, 2009 for sales of certain goods and services greater than or equal to \$10,000; sets reduction period tax rate at 3.5%.

Analysis

This bill would provide a sales use tax rate reduction period from October 1, 2009 through December 31, 2009 for sales of certain and goods and services greater than or equal to \$10,000. It also sets the reduction period tax rate at 3.5%.

While the Commission understands the public appeal of these programs, the loss of revenue greatly outweighs the small benefits experienced by the purchasers. When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer is relatively small but the cumulative revenue generated can be enormous. A sales tax holiday would save an individual purchaser a fairly insignificant sum. However, the cumulative loss of revenue to the State could be substantial.

The Commission does not support the use of implementing sales tax policy for the purpose of influencing consumer purchases. Any impact would be temporary in nature and not result in a permanent change to purchasing patterns.

Further, New Jersey is a member state of the Streamlined Sales and Use Tax Agreement, which provides for limitations on sales tax holidays.

Recommendation

The Commission does not recommend enactment of this bill.

The Commission does not recommend enactment of this bill.

Commission Members **For:** Proposal: 0

Commission Members **Against:** Proposal: 8

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-1160

Date of Introduction: 01/12/10

Sponsor(s): Assemblyman Rible

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill: S-302

Committee: Senate Health, Human Services and Senior Citizens Committee

Description

The bill provides an exemption sale of recreational safety helmets from sales and use tax.

Note

(The Commission addressed an identical proposal (Senate Bill 1734) in 2008. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Description

This bill proposes to eliminate the imposition of sales and use tax on charges for initiation fees, membership fees, or dues for access to or use of certain health and fitness clubs and organizations.

Analysis

On and after October 1, 2006, the law (P.L. 2006, c.44) imposed sales and use tax on the charges for initiation fees, membership fees or dues for access to or use of the property or facilities of a health and fitness club or organization in New Jersey, unless the club or organization's members are predominantly age 18 or under.

Since the time of its enactment, sales of memberships, etc. made by government entities and certain qualifying nonprofits have been excluded from this imposition. This has left a disparity of sales tax treatment throughout the industry. This proposal intends to repeal the remaining imposition of sales tax on memberships sold by these facilities.

As this area of imposition was enacted effective October 1, 2006, this area is a new revenue source for the State. The Commission has not previously been presented with any reasoning

compelling enough to support the repeal or chipping away of this new initiative. However, the Commission believes that the carve-out for government and exempt organizations has created an inherent unfairness in the application of this imposition and supports a repeal of the imposition.

Public Comment

A letter (copy attached) and public comment were received from the International Health Racquet and Sportsclub Association (IHRSA) in support of this bill. IHRSA stated that it supported the full repeal of New Jersey's 7 percent tax on physical fitness facilities and that such a repeal would encourage New Jersey residents to live more fulfilling and healthier lives.

Recommendation

The Commission recommends enactment of this bill.

Commission Members **For:** Proposal: 8

Commission Members **Against:** Proposal: 0

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-1253

Date of Introduction: 01/12/10

Sponsor(s): Assemblywoman Stender

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill: S-1322

Committee: Assembly Transportation and Public Works Committee

Description

The bill provides an exemption from sales tax on the purchase of new hybrid motor vehicles and new motor vehicles with an average fuel economy of at least 35 miles per gallon.

Note

(The Commission addressed an identical proposal (Senate Bill 1550) in 2008. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill proposes to amend the Sales and Use Tax Act (N.J.S.A. 54:32B-1 *et seq.*) to provide an exemption for the sale of new hybrid vehicles and motor vehicles with a highway miles-per-gallon fuel efficiency rating of 35 or higher. Currently, the law allows for an exemption for zero emission vehicles which are vehicles certified pursuant to the California Air Resources Board zero emission standards for the model year. See N.J.S.A. 54:32B-8.55.

A sales tax exemption for sales of fuel-efficient motor vehicles could open the door for similar tax exemptions on devices the use of which may also be viewed as good for the environment. Generally, the Commission does not support the use of tax policy as a means of influencing consumers' purchasing decisions and other behavior, even though the behaviors promoted might be beneficial to the State.

Additionally, the exemption would further alter the broad-based nature of the sales and use tax. Loss of revenue to the State on big-ticket items, such as automobiles, is substantial. Particularly now, as the State is experiencing a budgetary crisis, the Commission cannot support passage of this bill.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For:** Proposal: 0

Commission Members **Against:** Proposal: 8

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-1294

Date of Introduction: 01/12/10

Sponsor(s): Assemblyman Holzapfel

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill: S-1322

Committee: Assembly Commerce and Economic Development

Description

This bill authorizes creation of 33rd urban enterprise zone in Borough of Seaside Heights.

Analysis

This bill amends the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 *et seq.*, to allow the creation of a new Urban Enterprise Zone in Borough of Seaside Heights.

The Urban Enterprise Zone Program has expanded since its inception. Urban Enterprise Zone-impacted business districts, areas that have been “negatively impacted” by the presence of two or more adjacent Urban Enterprise Zones, have been created wherein reduced sales tax is collected. If there was a consensus that the Urban Enterprise Zone Program is operating as intended and is thought to be effective and efficient, then the amendments set forth in this bill may represent sound policy. However, there has never been an independent, comprehensive analysis performed that confirms that the Urban Enterprise Zone Program has actually been a benefit to the participating communities, yet the program is being constantly amended and expanded.

The greater the number of municipalities that have 3.5% sales tax, the more that New Jersey becomes a patchwork of differing sales tax rates. This is contrary to tax simplicity and uniformity. In addition, adding more zones may create a slippery slope because other municipalities which are similarly situated to Borough of Seaside Heights may petition to become urban enterprise zones. This domino effect defeats the original purpose of the Urban Enterprise Zones Act of helping to revitalize the State’s economically distressed urban areas. Given the ease with which the Urban Enterprise Zone Program is being expanded, it is conceivable that all municipalities in New Jersey will be able to credibly and successfully press

for Urban Enterprise Zone status. As originally conceived, the program was to be limited and its benefits restricted to the direst cases. This bill does not establish that its provisions would further that purpose.

As the number of zones increase, the challenge of enforcement expands. Due to the high number of zones in existence, New Jersey no longer enjoys the administrative simplicity it once did with sales tax uniformity across the State. This bill does not provide an economic study to justify the creation of zones in Borough of Seaside Heights.

Since the inception of the Urban Enterprise Zones Act, competitors located outside of the zones have complained of and have perceived unfair tax advantages for vendors located within the zones. There have been many complaints of fraud submitted to the Urban Enterprise Zone Authority and to the Division of Taxation by vendors located outside of the zones charging that Urban Enterprise Zone vendors purchase items tax-free and then transport the property to other locations for use outside of the zone. Permitting more vendors the entitlement of a tax exemption would exacerbate the already tenuous foundation upon which the Act is based.

A major reason municipalities are petitioning for an Urban Enterprise Zone may be the belief that such a designation would replace revenue that the municipality is currently losing from other sources. For instance, many municipal representatives have testified to the Sales and Use Tax Review Commission that Urban Enterprise Zone designation would benefit the municipality since they are currently experiencing financial problems. The main theme in urging the Commission to approve a bill creating another zone stresses that Urban Enterprise Zone status would provide funds for municipal use.

The Committee recommends that a review of the Urban Enterprise Zone Program and its effectiveness is necessary to determine the best course of action in relation to future modifications or expansions of the Urban Enterprise Zone Program in New Jersey. To date, there has not been a comprehensive review of the Urban Enterprise Zone Program by an independent body. As a result, substantive data concerning the actual success of the Urban Enterprise Zone Program has not been provided to the Legislature.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For:** Proposal: 0

Commission Members **Against:** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-1546

Date of Introduction: 01/12/10

Sponsor(s): Assemblyman Lampitt

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill: S-1765

Committee: Assembly Commerce and Economic Development

Description

Provides a sales and use tax exemption for sales of certain high-efficiency home heating equipment.

Note

(The Commission addressed an identical proposal (Senate Bill 1765) in 2008. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill provides a sales and use tax exemption for the purchase of certain high-efficiency home heating equipment.

This bill eliminates sales tax on the purchase of energy-efficient home heating equipment. Generally, this burden is borne at the time of purchase directly by a contractor hired to install a new unit or component.

In theory, the contractor passes on these costs, including sales tax paid and reasonable markup to the property owner as the cost of the materials installed. In accordance with current sales tax law, this resulting cost for materials is not directly taxed to the consumer. If the exemption were available to the contractor upon his purchase, the consumer, who receives an estimate on the installation, may or may not receive the benefit of the resulting tax savings.

Further, energy prices are currently so high that a sales tax exemption is not necessary to motivate energy-conscious purchases.

Finally, the passage of this bill would also encourage other products that also meet the energy efficiency standards of the Energy Star program to seek a similar exemption.

These products currently include home appliances, home electronics, office equipment, and lighting. Currently, the Warm Advantage program administered by the Board of Public Utilities under the New Jersey's Clean Energy Program provides cash rebates for home heating equipment that meets certain standards. The Board of Public Utilities seems the more appropriate venue to advance further energy initiatives.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For:** Proposal: 0

Commission Members **Against:** Proposal: 8

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-1559

Date of Introduction: 01/12/10

Sponsor(s): Assemblywoman Lampitt
Assemblyman Coutinho

Date of Consideration: 06/30/10

Identical Bill:

Committee: Assembly Commerce and Economic Development Committee

Description

This bill would allow a point of sale sales tax exemption for certain UEZ business purchases made by certain zone-located qualified businesses.

Public Comment

The *Independent Pharmacy Alliance (IPA)* submitted written comments in support of Assembly Bill No.: 1559. John Covello, Executive Director, Government Affairs, present the oral comments before the Commission. In brief, the IPA argues that A-1559 would correct a tax policy that penalizes, rather than rewards small businesses that have stayed invested in New Jersey's urban communities through a very difficult economic crisis. It also proffers that the reimbursement process as it is under the current law unfairly impacts pharmacies which are generally solo operated thus preventing the owner of the opportunity to even complete the paperwork and submissions in order to be considered for a refund. This unfair position causes honest business people to lose 100s of dollars each year.

Analysis

This measure attempts to extend to a "zone-located qualified business" the point-of-sale exemption originally granted to "small qualified businesses" by P.L. 2006, c.34 (subsequently amended by P.L. 2007, c. 328 and P.L. 2008, c. 118). The intent of the original measure was to reduce fraud and abuse of the tax exemption available to urban enterprise zone-certified businesses and the subsequent amendments were designed to reduce any unintended burden on small businesses in the zones by allowing them to purchase goods for their own use sales-tax-free without having to pay the tax first and then apply for a refund.

This proposal would allow entities of any size to receive the point-of-sale exemption if the Division of Taxation can certify that the business is only located in, or has multiple locations only in urban enterprise zones. There would be no satisfactory method of ensuring that a particular business only has locations in such zones, especially with the proposed language in the definition of “zone-located qualified business” concerning affiliated entities. The Director of the Division of Taxation does not currently certify zone businesses; this responsibility is properly within the Department of Community Affairs which is staffed with personnel to perform site visits.

The New Jersey corporate business tax differs from the federal corporate tax in many ways, including the treatment of affiliates. There is no way to capture the identities of affiliates for New Jersey purposes, so it would be difficult to assess whether a particular entity meets the location test in the new zone-located business definition.

The requirement in this measure for the submission of proposed rules to the Senate Budget and Appropriations Committee and the Assembly Budget Committee is unworkable. The promulgation of rules by this agency occurs only after initial implementation of a particular statute. The rules are then designed to clarify both ambiguities in the law discovered in the implementation and the concerns raised by the affected taxpayer population. Although the rules which are proposed by this agency are designed to strictly construe and carry out the law, sensible rulemaking dictates that regulatory schemes address real-world concerns which are unknowable until after initial statutory implementation.

Attempts to alleviate the claimed burdens of P.L. 2006 c. 34 have resulted in the extension of the point-of-sale exemption to otherwise-qualified small businesses whose gross revenues do not exceed \$10 million. The passage of this measure would effectively cause a return to practices prior to the passage of that statute.

This bill would allow preferential treatment of certain corporate entities based on formation and affiliation. It would also dilute the integrity of the UEZ program by allowing entities that do not follow the normal process for certification and approval as a UEZ qualified business to receive UEZ tax benefits and incentives.

If the desire is to restore the point-of-sale exemption to all certified Urban Enterprise Zone businesses, a far better strategy would be to repeal P.L. 2006, c.34 rather than to carve out additional exceptions which the Division of Taxation is unable to administer.

Additional Information:

In the *Report to the Transition Team Subcommittee on Economic Development & Job Growth* (dated 1/14/2009), Recommendation F called for “legislation to eliminate the cumbersome UEZ rebate regulations that require UEZ -based businesses to pay sales tax and then apply for a tax rebate on formerly tax exempt purchases, saving both the Division of Taxation and businesses significant resources needed to administer the program.”

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 1

Commission Members **Against** Proposal: 3

Commission Members **Abstaining**: 1

Motion

The Commission, upon motion of the Commission Member Chris Jeter, supports a broader repeal of P.L.2006, c.34 as reflected in Recommendation F of the *Report to the Transition Team Subcommittee on Economic Development & Job Growth* (dated 1/14/2009). In addition, the Commission reiterated its consistent desire that the Urban Enterprise Zone laws be studied for its effectiveness.

On the Motion:

The Commission does support the Motion.

Commission Members **For** Motion: 3

Commission Members **Against** Motion: 0

Commission Members **Abstaining**: 2

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-1569

Date of Introduction: 01/12/10

Sponsor(s): Assemblyman Scalera

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill:

Committee: Assembly Commerce and Economic Development

Description

This bill authorizes creation of urban enterprise zones in Garfield, Harrison, Keansburg, and two joint urban enterprise zones, one in Cliffside Park and Fairview, and one in Buena Vista Township and Buena Borough.

Analysis

This bill amends the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 *et seq.*, to allow the creation of Garfield, Harrison, Keansburg, and two joint urban enterprise zones, one in Cliffside Park and Fairview, and one in Buena Vista Township and Buena Borough.

The Urban Enterprise Zone Program has expanded since its inception. Urban Enterprise Zone-impacted business districts, areas that have been “negatively impacted” by the presence of two or more adjacent Urban Enterprise Zones, have been created wherein reduced sales tax is collected. If there was a consensus that the Urban Enterprise Zone Program is operating as intended and is thought to be effective and efficient, then the amendments set forth in this bill may represent sound policy. However, there has never been an independent, comprehensive analysis performed that confirms that the Urban Enterprise Zone Program has actually been a benefit to the participating communities, yet the program is being constantly amended and expanded.

The greater the number of municipalities that have 3.5% sales tax, the more that New Jersey becomes a patchwork of differing sales tax rates. This is contrary to tax simplicity and uniformity. In addition, adding more zones may create a slippery slope because other municipalities which are similarly situated to Garfield, Harrison, Keansburg, and two joint urban enterprise zones, one in Cliffside Park and Fairview, and one in Buena Vista Township and

Buena Borough may petition to become urban enterprise zones. This domino effect defeats the original purpose of the Urban Enterprise Zones Act of helping to revitalize the State's economically distressed urban areas. Given the ease with which the Urban Enterprise Zone Program is being expanded, it is conceivable that all municipalities in New Jersey will be able to credibly and successfully press for Urban Enterprise Zone status. As originally conceived, the program was to be limited and its benefits restricted to the direst cases. This bill does not establish that its provisions would further that purpose.

As the number of zones increase, the challenge of enforcement expands. Due to the high number of zones in existence, New Jersey no longer enjoys the administrative simplicity it once did with sales tax uniformity across the State. This bill does not provide an economic study to justify the creation of zones in Garfield, Harrison, Keansburg, and two joint urban enterprise zones, one in Cliffside Park and Fairview, and one in Buena Vista Township and Buena Borough.

Since the inception of the Urban Enterprise Zones Act, competitors located outside of the zones have complained of and have perceived unfair tax advantages for vendors located within the zones. There have been many complaints of fraud submitted to the Urban Enterprise Zone Authority and to the Division of Taxation by vendors located outside of the zones charging that Urban Enterprise Zone vendors purchase items tax-free and then transport the property to other locations for use outside of the zone. Permitting more vendors the entitlement of a tax exemption would exacerbate the already tenuous foundation upon which the Act is based.

A major reason municipalities are petitioning for an Urban Enterprise Zone may be the belief that such a designation would replace revenue that the municipality is currently losing from other sources. For instance, many municipal representatives have testified to the Sales and Use Tax Review Commission that Urban Enterprise Zone designation would benefit the municipality since they are currently experiencing financial problems. The main theme in urging the Commission to approve a bill creating another zone stresses that Urban Enterprise Zone status would provide funds for municipal use.

The Committee recommends that a review of the Urban Enterprise Zone Program and its effectiveness is necessary to determine the best course of action in relation to future modifications or expansions of the Urban Enterprise Zone Program in New Jersey. To date, there has not been a comprehensive review of the Urban Enterprise Zone Program by an independent body. As a result, substantive data concerning the actual success of the Urban Enterprise Zone Program has not been provided to the Legislature.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For:** Proposal: 0

Commission Members **Against:** Proposal: 8

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-1723

Date of Introduction: 01/12/10

Sponsor(s): Assemblyman Scalera

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill:

Committee: Assembly Commerce and Economic Development

Description

This bill reduces sales tax rate on certain sales and admission charges at places of amusement in urban enterprise zone areas and provides that sales tax revenue be for municipal purposes.

Analysis

(Note: As this bill was pre-filed, it contains the incorrect sales and use tax rate and references. The rate noted in the bill is 6% and the language calls for a 50 % reduction down to 3%. For the purposes of the Commission's discussion and recommendation, it is assumed the current tax rate was intended as there is nothing to the contrary suggesting a lowering of the State's current 7% rate.)

It is doubtful that this reduction for certain sales within places of amusement would induce buyers to make more purchases than they would if the tax rate was not reduced. Also, it should be noted that the State would lose the all sales tax currently collected.

Currently, the urban enterprise zone statute only allows "qualified businesses" to receive certain benefits. These businesses meet certain criteria such as creating new employment in the zone. Since the bill would give the tax reduction benefit to all places of amusement without any qualifying criteria (other than being located within a zone), the bill is inconsistent with current urban enterprise zone policies and programs. The bill could result in a trend towards more "automatic" qualification for urban enterprise zone benefits. The easier it is for certain businesses to qualify for charging half of the sales tax, the more non-qualified competitors will assert that the urban enterprise zone program (particularly the one in the bill) gives an unfair competitive advantage to businesses in the zone. Further, the inconsistencies between the

bill's provisions and the regular reduction of sales and use tax requirements will create confusion among businesses in zones and among consumers.

Another concern revolving around the reduced sales tax rate is its impact upon the compensating use tax. Use tax is imposed on items subject to the sales tax for which no sales tax has been imposed, including, but not limited to otherwise-taxable items purchased from out of state. Constitutionally, the use tax in must be imposed in the manner and at the same rate as the sales tax is imposed in a given zone or geographical area. Therefore, if certain businesses in a zone may charge half the sales tax, payers of use tax within the zone may assert that half the use tax must be imposed at instead of full rate.

The Commission recommends that a review of the Urban Enterprise Zone Program and its effectiveness necessary to determine the best course of action in relation to future modifications or expansions of the Urban Enterprise Zone Program in New Jersey, including allowing places of amusement within the UEZs. To date, there has not been a comprehensive review of the Urban Enterprise Zone Program by an independent body. As a result, substantive data concerning the actual success of the Urban Enterprise Zone Program has not been provided to the Legislature.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For:** Proposal: 0

Commission Members **Against:** Proposal: 8

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-1779

Date of Introduction: 01/12/10

Sponsor(s): Assemblyman Scalera

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill:

Committee: Assembly Health and Senior Services Committee

Description

This bill exempts from sales tax certain sales by or to any senior citizens club organized for pleasure, recreation, or other non-profitable purposes.

Note

(The Commission addressed an identical proposal (Assembly Bill No: 2393) in 2006. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill proposes to grant a sales and use tax exemption to certain senior citizens' clubs. Under the Internal Revenue Code, these groups organized for pleasure, recreation and other non-profitable purposes are classified as 501(c) (7) organizations. This measure would provide a significant benefit to clubs that qualify.

Currently, only organizations which qualify as exempt under IRC Sec. 501(c)(3) and apply and are approved as 'exempt organizations' by this agency may make certain sales tax-exempt purchases for the organization's own use.

There are numerous 'not for profit' organizations that do not qualify as exempt organizations under the Sales and Use Tax Act. These include service clubs, fraternal associations, farmers' cooperatives, labor unions, business associations and many other social, recreational, fraternal, and civic organizations. If this bill is approved, other organizations may seek similar treatment.

Similarly, senior citizens housing developments could claim eligibility for sales and use tax exemption on building and landscaping materials. This would allow such organizations unfair competitive advantage over contractors who are required to pay the tax on building materials.

It should be noted that, for those seniors who must take meals at a nursing home or who are served “meals on wheels” at home or at a group sitting, an exemption from sales tax already exists. (*See*, N.J.S.A. 54:32B-3(c) (2).)

Section 2 of the bill provides for an immediate effective date with section 1 remaining inoperative until the first day of the fourth month following enactment. This implies that the exemption begins shortly after the bill is signed by the Governor, an inadequate amount of time to prepare administratively to implement this new exemption. If the timeframe remains the same, the clubs would be exempt before submitting an application and receiving approval for the exemption from the Division of Taxation. This may require this agency to process applications for refund of sales tax on “interim” purchases (those occurring on or after the effective date but before the newly-qualified organization actually receives the applicable exemption certificate).

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For**: Proposal: 0

Commission Members **Against**: Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-1826

Date of Introduction: 01/12/10

Sponsor(s): Assemblyman Scalera

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill: S-756

Committee: Assembly Environment and Solid Waste Committee

Description

This bill exempts from sales tax for two years certain hybrid and highly fuel efficient vehicles and energy efficient appliances.

Analysis

The bill provides an exemption from sales tax for two years on certain hybrid and highly fuel efficient vehicles and qualified products bearing the Energy Star Label.

The provisions of this bill, as written, are very broad. Although there is no explicit exemption for leasing or rental transactions, such transactions involving qualifying vehicles would also be exempt as the Sales and Use Tax Act (See N.J.S.A. 54:32B-2(e)) includes lease and rentals in the definition of "retail sale".

The Sales and Tax Act already contains an exemption for zero emission vehicles which are vehicles certified pursuant to the California Air Resources Board zero emission standards for the model year (N.J.S.A. 54:32B-8.55), however, this exemption is not applicable to partial zero emission vehicles.

Currently, the Board of Public Utilities under the New Jersey's Clean Energy Program provides cash rebates or other incentives for certain energy efficient home purchases. The Board of Public Utilities seems the more appropriated venue to advance further energy initiatives.

Additionally, the exemption would further alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer, and is generally perceived as economically neutral and "fair."

This State is a full, participating member of the Streamlined Sales and Use Tax Agreement (SSUTA) and has adopted the provisions of that agreement into current sales tax law.

Sales tax holidays are temporary sales tax exemptions for certain items for a specified period. Although commonly understood to be for very short durations (i.e. ‘back-to-school’ purchases), a specified period of any duration (this measure ends after two years) is a sales tax holiday under the SSUTA.

The SSUTA contains a product definition of “energy star qualified product” which is applicable in a sales tax holiday. A state may exempt all such products, exempt some products, or exempt certain classifications of energy star products.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For:** Proposal: 0

Commission Members **Against:** Proposal: 8

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-1852

Date of Introduction: 01/25/10

Sponsor: Assemblywoman Gusciora

Date of Recommendation: 03/24/10

Identical Bill:

Committee: Assembly Commerce and Economic Development

Description

This bill provides for a sales tax exemption for advanced technology partial zero emission vehicles and it imposes a surcharge on certain automobiles.

Note

(The Commission addressed an identical proposal (Assembly Bill No: 4113) in 2007. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill is proposed to amend the Sales and Use Tax Act, N.J.S.A. 54:32B-1, *et seq.*, to provide an exemption for sales of advanced technology partial zero emission vehicles.

Although the bill does not specifically exempt leasing or rental transactions, it is assumed that leasing and rental transactions of qualifying vehicles would also be exempt since the Sales and Use Tax Act includes leases and rentals in the definition of retail sale. N.J.S.A. 54:32B-2(e).

The Sales and Use Tax Act already contains an exemption for zero emission vehicles, which are vehicles certified pursuant to the California Air Resources Board zero emission standards for the model year. N.J.S.A. 54:32B-8.55. However, this exemption is not applicable to advanced technology partial zero emission vehicles.

The sales tax exemption on advanced technology partial zero emission vehicles could open the door for similar tax exemptions on devices that may also be viewed as good for the environment. Any such services that would be beneficial for environmental purposes should require a careful evaluation to determine whether it is worthy of a tax exemption to encourage its use. Generally, the Division does not favor the use of tax policy as a means of influencing

consumers' purchasing decisions and other behavior, even though the behaviors promoted might be beneficial to the State.

Additionally, the exemption would further alter the broad-based nature of the sales and use tax. A broad based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer, and is generally perceived as economically neutral and fair. When imposed at a fairly low rate, the burden per transaction on the individual taxpayer is relatively small, but the cumulative revenue generated can be enormous. An exemption for the purchase or lease of advanced technology partial zero emission vehicles would save an individual taxpayer a fairly insignificant sum every year. However, the cumulative loss of revenue to the State on big-ticket items, such as automobiles, is substantial, leaving the State to find other means of generating the money lost as a result of this exemption. Considering the State's current budgetary crisis, this bill is particularly troubling and the exemption is not recommended as a matter of tax policy.

In addition, on January 1, 2009, the bill imposed a fee in addition to existing motor vehicle registration fees on new passenger automobiles that are classified as low emission vehicles or, under certain circumstances, ultra low emission vehicles. Annually, the fee is determined by dividing the estimated amount of lost sales tax revenue each fiscal year by the number of low emission vehicles sold in the preceding fiscal year. Should the fee exceed \$1,000 per automobile using this method, then the fee would be determined by dividing the estimated amount of lost sales tax revenue each fiscal year by the number of low emission vehicles and ultra low emission vehicles sold in the preceding fiscal year. Finally, the bill would eliminate the existing additional fee imposed on new passenger automobiles that have an average fuel efficiency rating of less than 19 miles per gallon.

The attempt to offset the loss of sales tax that would result from exempting advanced technology partial zero emission vehicles by assessing an additional surcharge on certain other vehicles may cause the purchasers of other vehicles to feel aggrieved for subsidizing the sales tax loss incurred by the State resulting from the exemption afforded to advanced technology partial zero emission vehicles. Additionally, lower-priced vehicles that compete with the vehicles subject to this bill would then be priced higher (as a result of the 7% sales tax which continues to apply) and therefore may be disadvantaged in the marketplace.

Market behaviors that may result from this initiative, including adverse selection (aimed at nonadvanced technology partial zero emission vehicles) could result in such a great loss in sales tax receipts that the surcharge, when calculated for those future years, even further burdens luxury car purchasers. These taxpayers may begin to purchase luxury vehicles that are

also advanced technology partial zero emission vehicles, resulting in the potential for steeper future increases in the surcharge. Price elasticity for luxury vehicles affected by the surcharge is unknowable.

If the Legislature wishes to reward certain behaviors (purchases of certain types of vehicles), it would appear more fiscally prudent to proffer grants or other specific economic inducements from the State budget to consumers who purchase these eligible vehicles than to risk unknown impacts on a stable general source of revenue (the sales tax).

Finally, based on the lack of specificity in the bill, the models of advanced technology partial zero emission vehicles currently available are unknown.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For:** Proposal: 0

Commission Members **Against:** Proposal: 8

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-1854

Date of Introduction: 01/25/10

Sponsor: Assemblyman Gusciora

Date of Recommendation: 03/24/10

Assemblywoman Casagrande

Identical Bill:

Committee: Assembly Commerce and Economic Development

Description

This bill establishes an annual sales tax holiday during the third week of April and October for the sale of certain Energy Star rated appliances and products.

Note

(The Commission addressed an identical proposal (Assembly Bill No: 3279) in 2008. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill would provide a weeklong sales tax exemption for sales of energy-efficient dishwashers, clothes washers and dryers, air conditioners, ceiling fans, compact fluorescent light bulbs, dehumidifiers, programmable thermostats, refrigerators, and weatherization products that have met or exceeded the Energy Star rating. The exemption would only be applicable to products sold for no more than \$2,500.

While the Commission understands the superficial appeal of these programs, the loss of revenue greatly outweighs the small benefits experienced by the purchasers. When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer is relatively small but the cumulative revenue generated can be enormous. A sales tax holiday would save an individual purchaser a fairly insignificant sum. However, the cumulative loss of revenue to the State could be substantial.

The Commission does not support the use of implementing sales tax policy for the purpose of influencing consumer purchases. Any impact would be temporal in nature and not result in a permanent change to purchasing patterns.

Further, New Jersey is a member state of the Streamlined Sales and Use Tax Agreement, which provides for limitations on sales tax holidays as to notice time, product types, and duration. It does not appear that this proposal takes into account the provisions of the agreement.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For:** Proposal: 0

Commission Members **Against:** Proposal: 8

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-1961

Date of Introduction: 02/08/10

Sponsor(s): Assemblyman Conners

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill:

Committee: Assembly Appropriations Committee

Description

The bill exempts certain purchases by school food service providers from the sales and use tax.

Note

(The Commission addressed an identical proposal (Assembly Bill No: 3279) in 2008. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill provides for an exemption from sales and use tax of supplies, materials, and equipment purchased by school food service providers used directly and exclusively in operating a food service in a public, nonpublic, or charter school pursuant to a contract with a board of education, board of trustees, or person having responsibility for the operation of the school in this State.

Generally, New Jersey schools are exempt from sales and use tax on purchases made with school funds under N.J.S.A. 54:32B-9. This bill seeks to create an exemption based on a taxpayer's contractual relationship to an exempt entity. The bill's broad language lends itself to many administrative and enforcement problems. The bill does not define "supplies, material and equipment" or "food service management provider." This language allows for subjective interpretation and may result in fraudulent purchases. Enforcement and administrative problems arise because of the inherent difficulty in determining whether a purchaser and the purchase are qualified for the exemption.

The Commission recommends that in lieu of providing a specific exemption for school food service providers, the proposal be drafted to amend N.J.S.A. 54:32B-9 to address agency relationships between contractors and exempt entities. The existence of an agent/principal relationship determines whether the purported agent may utilize the sales tax status of the principal.

In the alternative, the food service provider may be able to resolve some of the sales tax issues itself by restructuring its transactions. Most of its purchases could be reframed as purchases for resale. Thus, the sales tax on purchases of equipment and supplies that immediately become the property of the school or school board would be eliminated.

The Commission also suggests that school food service providers could structure their relationships with Boards of Education in order to establish a true agency relationship. According to the proposed legislation, the act shall take effect immediately and shall be retroactive to July 1, 1999. This will have the result of ending any pending assessments. However, it is not clear how past assessments should be handled. Pursuant to N.J.S.A. 54:32B-20, if application is made within four years from the date of the payment of the tax, the Division is required to issue a refund of tax paid in error, illegally, or unconstitutionally. Thus, if the intent of the legislature is to have the Division issue refunds, this statute must be amended to permit refunds of tax remitted on and after July 1, 1999.

Since there was no taxpayer reliance on unsettled law and the money is not to be refunded to the municipality, the bill should include a provision prescribing a window, such as 30 days, in which application for refund should be made. This provision is necessary in order to restore certainty to public finances and to mitigate a potential windfall from being returned to the vendors who are engaged in food service contracts with municipalities.

The Commission has considered an identical bill in a previous session and found the same issues remain in its current drafting that existed at that time. The Commission would suggest that the affected parties take into consideration the suggestions stated above when contemplating any future drafts.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For:** Proposal: 0

Commission Members **Against:** Proposal: 8

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-2043

Date of Introduction: 02/08/10

Sponsor(s): Assemblyman DeAngelo

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill: S-462

Committee: Assembly Commerce and Economic Committee

Description

This bill would provide exemption from tax on sales of certain energy saving products and services purchased from businesses located in an Urban Enterprise Zone.

Analysis

This bill requires that receipts of retail sales made by a vendor certified pursuant to section 21 of P.L.1983, c.303 (C.52:27H-80), from a place of business owned or leased and regularly operated by a vendor for the purpose of making retail sales, and located in a designated enterprise zone or in a designated UEZ-impacted business district, on products certified as compliant with the requirements of the "Energy Star" program established by the federal Department of Energy and United States Environmental Protection Agency pursuant to 42 U.S.C.s.6294a are exempt from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) to the extent that the tax imposed on such receipts shall be two percent of the sales price.

In section 1.a. and 1.b. of the bill, the special reduced sales tax would be "two percent of the *sales price*." (Emphasis added.) Under the Sales and Use Tax Act, sales tax is imposed on *receipts*. Presumably, the bill proponents intended that the tax base for the special reduced sales tax be the same as the tax base for regular sales tax. Therefore, in the bill, the term "receipt" should be substituted for "sales price."

The bill would allow Urban Enterprise Zone (UEZ) qualified businesses to charge 2% sales tax on sales of "Energy Star" products. Even without the bill, UEZ qualified retailers may charge 3.5% sales tax for qualifying sales. Nothing has been presented to indicate that a further reduction

of 1.5% would entice buyers to these retailers, or to buy an Energy Star-compliant product as opposed to another, similar product at these retailers.

It should be noted that many complaints from non-Zone retailers are received about the “unfair” competition from UEZ retailers charging reduced sales tax. This measure, should it become law, would likely increase those complaints.

Section 1.b. would allow UEZ vendors to charge 2% sales tax on services that “promote or employ alternative energy sources, energy efficiency or environmental sustainability” The New Jersey Sales and Use tax is imposed on a short list of services, and those services are clearly defined. Installations that result in a capital improvement are already exempt from sales tax on charges for labor. A portion of this measure would be generous.

There is no provision in the bill to impose restrictions on the location of the performance of eligible services, opening up the possibility that eligible services would be performed outside the zone. Currently, under the UEZ program, no reduced sales tax is allowed on services.

Enactment of this proposal would be contrary to the spirit of the Streamlined Sales and Use Tax Agreement (SSUTA) as it would introduce another taxing scheme within the State of New Jersey. The SSUTA calls for a uniform state sales tax rate. Should this measure become law, there would be multiple sales tax rates, dependent upon the product or service purchased, within urban enterprise zones.

Further, there already exists an Energy Star Qualified Product exemption for sales tax holidays within the Agreement.

The Commission finds it out of the ordinary to impose a 2% Sales Tax Rate. It further determines that this bill should be referred to the Department of Community Affairs, the agency that certifies UEZs.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-2090

Date of Introduction: 02/11/10

Sponsor(s): Assemblywoman Quiqley
Assemblyman Prieto

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill:

Committee: Assembly Commerce and Economic Development

Description

This bill authorizes creation of 33rd urban enterprise zone in Town of Harrison, Hudson County.

Analysis

This bill amends the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq., to allow the creation of a new Urban Enterprise Zone in Town of Harrison, Hudson, County.

The Urban Enterprise Zone Program has expanded since its inception. Urban Enterprise Zone-impacted business districts, areas that have been “negatively impacted” by the presence of two or more adjacent Urban Enterprise Zones, have been created wherein reduced sales tax is collected. If there was a consensus that the Urban Enterprise Zone Program is operating as intended and is thought to be effective and efficient, then the amendments set forth in this bill may represent sound policy. However, there has never been an independent, comprehensive analysis performed that confirms that the Urban Enterprise Zone Program has actually been a benefit to the participating communities, yet the program is being constantly amended and expanded.

The greater the number of municipalities that have 3.5% sales tax, the more that New Jersey becomes a patchwork of differing sales tax rates. This is contrary to tax simplicity and uniformity. In addition, adding more zones may create a slippery slope because other municipalities which are similarly situated to the Town of Harrison, Hudson County may petition to become urban enterprise zones. This domino effect defeats the original purpose of the

Urban Enterprise Zones Act of helping to revitalize the State's economically distressed urban areas. Given the ease with which the Urban Enterprise Zone Program is being expanded, it is conceivable that all municipalities in New Jersey will be able to credibly and successfully press for Urban Enterprise Zone status. As originally conceived, the program was to be limited and its benefits restricted to the direst cases. This bill does not establish that its provisions would further that purpose.

As the number of zones increase, the challenge of enforcement expands. Due to the high number of zones in existence, New Jersey no longer enjoys the administrative simplicity it once did with sales tax uniformity across the State. This bill does not provide an economic study to justify the creation of zones in Harrison.

Since the inception of the Urban Enterprise Zones Act, competitors located outside of the zones have complained of and have perceived unfair tax advantages for vendors located within the zones. There have been many complaints of fraud submitted to the Urban Enterprise Zone Authority and to the Division of Taxation by vendors located outside of the zones charging that Urban Enterprise Zone vendors purchase items tax-free and then transport the property to other locations for use outside of the zone. Permitting more vendors the entitlement of a tax exemption would exacerbate the already tenuous foundation upon which the Act is based.

A major reason municipalities are petitioning for an Urban Enterprise Zone may be the belief that such a designation would replace revenue that the municipality is currently losing from other sources. For instance, many municipal representatives have testified to the Sales and Use Tax Review Commission that Urban Enterprise Zone designation would benefit the municipality since they are currently experiencing financial problems. The main theme in urging the Commission to approve a bill creating another zone stresses that Urban Enterprise Zone status would provide funds for municipal use.

The Committee recommends that a review of the Urban Enterprise Zone Program and its effectiveness is necessary to determine the best course of action in relation to future modifications or expansions of the Urban Enterprise Zone Program in New Jersey. To date, there has not been a comprehensive review of the Urban Enterprise Zone Program by an independent body. As a result, substantive data concerning the actual success of the Urban Enterprise Zone Program has not been provided to the Legislature.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For:** Proposal: 0

Commission Members **Against:** Proposal: 8

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-2315

Date of Introduction: 02/25/10

Sponsor: Assemblyman McHose

Date of Recommendation: 03/24/10

Co-Sponsor: Assemblyman Chiusano

Identical Bill: A-3935

Committee: Assembly Appropriations Committee

Description

The bill provides for an exception to the imposition of sales and use tax on membership fees and other related fees charged by lake associations.

Analysis

This bill attempts to rescind certain portions of Chapter 44, P.L. 2006, by removing the imposition of sales tax on membership fees and other related fees charged by lake associations. The imposition of sales tax on membership fees and other related fees charged by lake associations was included in a major piece of legislation passed in July 2006, which increased sales tax from 6% to 7% throughout the State. Sales and use tax was extended to many previously untaxed services and products in an effort to provide added revenue for the State.

The fiscal impact of this bill is expected to be significant and would undermine the intent of Chapter 44, P.L. 2006, which was to raise much needed revenue for the State. By changing the law now to eliminate the imposition of sales tax membership fees and other related fees charged by lake associations would reverse the effect of the legislation, which was passed in October 2006, after much thought and deliberation. Passage of the proposal purports to promote the existence of private lake associations, which are said to serve an economic and environmental purpose in lake communities.

The Commission notes that these associations may utilize a portion of these fees to maintain property but also use these funds to allow for exclusive access rights and uses of said property. As such, the underlying purpose of the sales tax imposition on membership and related fees

seems appropriate. Further, the tax is not directly imposed upon the nonprofit association, rather on its consumers and membership seeking exclusive access.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-2316

Date of Introduction: 02/25/10

Sponsor(s): Assemblyman McHose

Date of Consideration: 03/24/10

Assemblyman Chiusano

Co-Sponsor(s):

Identical Bill:

Committee: Assembly Appropriations Committee

Description

This bill would remove charges in the nature initiation fees, membership fees and dues from sales and use tax.

Analysis

This bill attempts to rescind certain portions of Chapter 44, P.L. 2006, by removing the imposition of sales tax on initiation fees, membership fees and dues from sales and use tax. The imposition of sales tax on initiation fees, membership fees and dues was included in a major piece of legislation passed in July 2006, which increased sales tax from 6% to 7% throughout the State. Sales and use tax was extended to many previously untaxed services and products in an effort in provide added revenue for the State.

The fiscal impact of this bill is expected to be significant and would undermine the intent of Chapter 44, P.L. 2006, which was to raise much needed revenue for the State. By changing the law now to eliminate the imposition of sales tax on initiation fees, membership fees and dues would reverse the effect of the legislation, which was passed in October 2006, after much thought and deliberation.

In addition to a substantial loss of revenue, the reversal would create a tremendous administrative burden as the Division of Taxation would be required to respond to a significant number of inquiries from consumers as well as from businesses and taxpayers that collect

initiation fees, membership fees and dues. Enactment of this bill would also require the revision of numerous sales and use tax publications and Web content.

The imposition of sales tax on initiation fees, membership fees and dues was enacted on October 1, 2006, to increase revenue for the State. The Commission has not been presented with any compelling reasons to support repeal of this initiative.

Public Comment

A letter and public comment were received from the International Health Racquet and Sportsclub Association (IHRSA) in support of this bill. IHRSA stated that it supported the full repeal of New Jersey's 7 percent tax on physical fitness facilities and that such a repeal would encourage New Jersey residents to live more fulfilling and healthier lives.

Recommendation

The Commission opposes enactment of the bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-2362

Date of Introduction: 01/25/10

Sponsor(s): Assemblyman Polista

Date of Consideration: 03/24/10

Assemblyman Casagrande

Co-Sponsor(s):

Identical Bill: S-1637

Committee: Assembly Commerce and Economic Development

Description

This bill establishes temporary sales and use tax rate reduction periods for sales of certain goods and services.

Analysis

This bill would provide a sales use tax rate reduction period beginning: (1) on and after March 19, 2010 but before March 29, 2010; (2) on and after July 2, 2010 but before July 12, 2010; and (3) on and after October 10, 2010 but before October 20, 2010. The rate of 3.5% would be imposed on sales made during a tax reduction period, admissions charges paid during a tax reduction period, rents for occupancies during a tax reduction period, and uses beginning during a tax reduction period

While the Commission understands the public appeal of these programs, the loss of revenue greatly outweighs the small benefits experienced by the purchasers. When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer is relatively small but the cumulative revenue generated can be enormous. A sales tax holiday would save an individual purchaser a fairly insignificant sum. However, the cumulative loss of revenue to the State could be substantial.

The Commission does not support the use of implementing sales tax policy for the purpose of influencing consumer purchases. Any impact would be temporary in nature and not result in a permanent change to purchasing patterns.

Further, New Jersey is a member state of the Streamlined Sales and Use Tax Agreement, which provides for limitations on sales tax holidays.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For:** Proposal: 0

Commission Members **Against:** Proposal: 8

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

Bill Number: A-2607

Date of Introduction: 05/06/10

Sponsor(s): Assemblyman Bucco

Date of Consideration: 06/30/10

Identical Bill: S-1855

Committee: Senate Economic Growth Committee

Description

The bill proposes to provide sales and use tax exemption for certain packaging equipment.

Analysis

The proposed bill attempts to broaden the manufacturing exemption. It is unclear, however, whether the expanded exemption would simply benefit manufacturers who have post-production processes on their facilities, or to expand the exemption to third-party packaging facilities or distributors.

There is also the wrapping supplies exemption which may be used by manufacturers and distributors who meet eligibility requirements.

The critical flaw in this measure is the lack of a definition for “packaging” which will make it very difficult to administer.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 2

Commission Members **Against** Proposal: 4

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-2657

Date of Introduction: 05/13/10

Sponsor(s): Assemblyman Gusciora

Date of Consideration: 06/30/10

Identical Bill:

Committee: Assembly Tourism and Arts Committee

Description

The bill proposes to create the “Seaside Lodging and Rental District Act” and impose tax on certain lodging properties for tourism promotion therein.

Public Comment

The *New Jersey Association of Realtors (NJAR)* submitted written comments in opposition to Assembly Bill No.: 2657. In brief, the NJAR argues that A-2657 would have an extremely negative impact on New Jersey’s Tourism industry and small businesses in resort municipalities. It also proffers that the bill unfairly targets the State’s coastal communities and would devastate the State’s economy in revenue losses amounting to \$298 million.

Analysis

This proposed legislation, if implemented, would establish a “Seaside Lodging and Rental District” wherein rentals at certain lodgings would be subject to a new taxing scheme. A five percent State sales tax, along with a two percent municipal lodging and rental tax, would be imposed on rents now not subject to the New Jersey Sales and Use tax nor to any taxes or fees now assessed upon hotels and motels under **N.J.S.A. 54:32D-1 et seq.**

In addition to the creation of a new sales and use tax rate only applicable to certain rents on lodging (which violates the SSUTA as described below), the passage of this measure would require reprogramming of the online sales tax remittance system and would likely spur other communities to look at special-purpose tax schemes to enhance their own tourism promotion efforts.

Streamlined Sales and Use Tax Agreement (SSUTA)

This measure, as written, would be in violation of the Streamline Sales and Use Tax Agreement in as much as it creates multiple taxing levels within one geographical area. If one or more geographic areas within the defined resort communities fall within an established Urban Enterprise Zone (e.g. portions of Asbury Park and Wildwood), this measure would conflict with the Urban Enterprise Zone Act.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 6

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-2683

Date of Introduction: 05/13/10

Sponsor(s): Assemblyman Albano
Assemblyman Milam

Date of Consideration: 06/30/10

Identical Bill: S-1298

Committee: Assembly Appropriations Committee

Description

The bill proposes to phase out sales and use tax imposed on charges for certain initiation fees, membership fees and dues.

Public Comment

The *International Health, Racquet & Sportsclub Association (IHRSA)* submitted written and oral comments in support of Assembly Bill No.: 2683. Mary Katherine Roberts, Esq. of Riker represented the IHRSA and gave the oral comments. In brief, the IHRSA argues that A-2683 would encourage New Jersey residents to live more fulfilling and healthier lives. It also proffers that the bill imposes an unfair playing field for “for-profit” healthcare centers as non-profit centers are exempt from imposition of the sales tax.

Analysis

The imposition of the sales and use tax on initiation fees and membership dues for access to or use of the property or facilities of health and fitness, athletic or sporting clubs or organizations was one component of a legislative initiative (P.L. 2006, c. 44) which increased the sales and use tax from 6% to 7% and which extended the tax to many previously untaxed services and products providing needed State revenue.

This bill represents the latest attempt by the Legislature to rescind portions of P.L. 2006, c. 44. Many other legislative proposals could be introduced calling for the exemption of other specific products and services from sales and use tax, further eroding anticipated revenue and threatening the balanced budget. The approval of such legislation would only hasten the call for similar tax exemptions, undermine the legislative intent of P.L. 2006, c. 44 and significantly add to the State’s structural deficit.

Streamlined Sales and Use Tax Agreement (SSUTA)

This measure, as written, calls into question whether it would be in compliance with the Streamline Sales and Use Tax Agreement in as much as it creates multiple taxing levels by reducing and phasing out the existing tax liability.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 6

Commission Members **Abstaining**: 0

Motion

The Commission, upon motion of the Commission Member Stephan Finkle, would support this proposal if it did not contain a “Phase-Out” of the sales and use tax imposed on charges for certain initiation fees, membership fees and dues.

On the Motion:

The Commission does support the Motion.

Commission Members **For** Motion: 3

Commission Members **Against** Motion: 2

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-2970

Date of Introduction: 06/21/10

Sponsor(s): Assemblyman Conners

Date of Consideration: 09/15/10

Assemblyman Greenwald

Identical Bill: A-782

Committee: Assembly Military and Veterans' Affairs Committee

Description

The bill would exempt storage facility space furnished to active duty military personnel from the sales and use tax.

Analysis

This measure would exempt from sales and use tax any storage facility space furnished to active duty military personnel for the period of three months before active duty until three months after active duty.

Although it is recognized that the important service that the military provides the citizenry, the approval of such legislation will only hasten the call for similar exemptions, further undermining and reducing State revenues while adding to the State's structural deficit.

This proposal would only apply during the three month period previous to, during the period of active duty or training and ending three months after such active duty. Despite the good intentions of this bill, storage facility providers will be burdened by the additional requirement to extend the exemption to only certain qualified military personnel. Record keeping and verification requirements implicit in this measure are also potentially burdensome.

The bill does not provide any requirement that qualified military personnel applying for this exemption would have to present certain documentation in order to qualify for the proposed exemption.

This measure would also violate the Streamline Sales and Use Tax Agreement.

Recommendation

Note: An identical proposal was considered by the Sales and Use Tax Review Commission during the 214th Legislative Session and failed to receive the recommendation of the Sales and Use Tax Review Commission. The Commission's disposition remains the same barring the submission of any new information which would persuade commission members to vote in an alternative manner. Six members voted to uphold the decision against recommendation as the identical subject matter was presented at a previous meeting.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 6

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-3126

Date of Introduction: 02/21/10

Sponsor(s): Assemblywoman Quijana
Assemblyman Ramos

Date of Consideration: 09/15/10

Identical Bill: S-2005(1R)

Committee: Assembly Environment and Solid Waste Committee

Description

The bill would provide sales and use tax exemption for wind energy equipment.

Analysis

This bill requires the Board of Public Utilities (BPU) to establish regulations which would set standards with respect to the technical sufficiency of wind energy systems for purposes of the exemption. These standards are necessary for the Division of Taxation to administer this exemption properly as this agency possesses no expertise in such matters.

The bill permits a retroactive rebate of tax for wind energy devices or systems installed after June 30, 1977 and includes those installed up to a future date 60 days subsequent to the bill's enactment. The taxpayer has 180 days after this measure's effective date to file for the rebate. The bill only allows this agency 20 days to process and issue the rebate, a 'turnaround time' that may be administratively impossible. It is very likely that records do not exist to verify claims that result from installations which may have occurred over thirty years ago, increasing the likelihood of fraud.

This sales tax exemption could open the door for similar tax exemptions on devices that may also be viewed as good for the environment. Any such devices that would be beneficial for environmental purposes should require a careful evaluation to determine whether it is prudent to enact a tax exemption to encourage its use.

Additional Information:

This bill does not appear to violate the Streamlined Sales and Use Tax Agreement.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 6

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-3417

Date of Introduction: 10/18/10

Sponsor(s): Assemblywoman Lampitt

Date of Consideration: 11/17/10

Identical Bill:

Committee: Assembly Appropriations Committee

Description

The bill would provide sales tax exemption for student parking provided by certain colleges and universities.

Note

The Sales and Use Tax Review Commission met on November 17, 2010 as a result of a notice sent pursuant to **N.J.S.A.** 54:32B-38(b) from the Honorable Sheila Y. Oliver, Speaker of the NJ General Assembly stating that A-3417 was an urgent matter that needed to be considered and voted upon as soon as practicable.

Analysis

The bill proposes to provide sales tax exemption for student parking provided by certain colleges and universities. In 2007, sweeping legislation was implemented which expanded the scope of services subject to the sales and use tax. P.L.2006, c.44 included in this expansion the imposition of tax upon parking charges for non-residential students at certain New Jersey colleges and universities. Residential students do not have to pay the tax.

The residential exclusion is, however, limited to resident students who are enrolled at the school. Students who live at home or at another “off-campus” location and commute to school for class are not deemed to be residents of the college or university. Commuters must pay, and colleges and universities must collect, tax on any charges for parking, even if they park in a similar spot at the same lot as students who reside at the school. This legislation seeks to eliminate that disparate treatment by exempting all students from the imposition of tax on charges for parking at school provided parking lots or garages.

The general social policy is sound especially during these economically challenging times. However, there are several issues to consider if the bill is enacted. The proposed bill may be

burdensome on institutions of higher learning, in that they may need to designate special lots or areas for commuter students and resident students. Commuter students may have to be issued decals or some other type of device that identifies their vehicles for purposes of access to special areas where no tax is collected so that tax may be assessed upon charges for their parking. This may be problematic if there are lots and/or garages operated by the schools in which guests or other non-students who are visiting the campus also park.

Similar taxpayers would also be treated differently in situations when there are limited student parking spots at the school-operated parking facilities forcing some commuter students to park at lots and garages that are privately owned and operated. Further, it could be administratively challenging to accurately distinguish which users of lots should be taxed and which patrons should not be taxed; thereby causing further disparate treatment.

Enactment of the proposed legislation would not eliminate the discrimination or disparate treatment borne by students who by choice or financial circumstance do not reside on campus and therefore are taxed differently.

Streamlined Sales and Use Tax Agreement:

This bill does not appear to violate the SSUTA inasmuch as it provides a definition of student parking and eliminates the distinction between resident students and commuter students.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 5

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: A-3419

Date of Introduction: 10/18/10

Sponsor(s): Assemblywoman Lampitt

Date of Consideration: 11/17/10

Identical Bill:

Committee: Assembly Appropriations Committee

Description

The bill would provide sales and use tax exemption for natural gas, and transportation or transmission of natural gas, to certain colleges and universities.

Note

The Sales and Use Tax Review Commission met on November 17, 2010 as a result of a notice sent pursuant to **N.J.S.A. 54:32B-38(b)** from the Honorable Sheila Y. Oliver, Speaker of the NJ General Assembly stating that A-3419 was an urgent matter that needed to be considered and voted upon as soon as practicable.

Analysis

This bill would modify the law which does not provide an exemption for these purchases made by 1) state and local colleges and universities or 2) nonprofit educational institutions. Under the proposed exemption, colleges and universities must be certified as tax-exempt to qualify for the exemption, and must purchase the natural gas and those services rendered in connection with the transportation or transmission of that gas for their own exclusive use or consumption.

If enacted, the NJ Division of Taxation would identify non-profit colleges and universities who are tax exempt and then provide them with an exemption certificate for the specific use. Conversely, the utility companies may have to develop a software program to segregate out institutions which would now be exempt from sales and use tax associated with the purchase of natural gas and any associated charges for the transportation or transmission of natural gas.

The location, in statute, of this proposal appears to create a new exemption that will stand on its own instead of modifying the existing language already in N.J.S.A. 54:32B-9.

Finally, enactment of this legislation could result in cries for similar treatment for similarly situated organizations

Additional Information:

Despite the information in the statement as drafted, this bill will only provide the exemption to non-profit educational colleges and institutions; it is not drafted to apply to state and county facilities.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 5

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-76

Date of Introduction: 01/12/10

Sponsor(s): Senator Doherty

Date of Consideration: 03/24/10

Identical Bill:

Committee: Senate Budget and Appropriations Committee

Description

The bill proposes to remove the imposition of sales tax on massage, bodywork, and somatic services.

Note

(The Commission addressed an identical proposal (Assembly Bill 4104) in 2007. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

The bill proposes to remove the sales tax imposed on massage, bodywork, and somatic services by N.J.S.A. 54:32B-3(b)(9), which was enacted as part of P.L. 2006, c.44. The Commission recognizes that these are health services. They are clearly distinguishable from the purely aesthetic services of tanning services and tattooing, including permanent body art and permanent cosmetic application, which are taxable under N.J.S.A. 54:32B-3(b)(8) and (10), respectively. The latter two unrelated categories of services, which also became taxable under the terms of P.L. 2006, c.44, were sometimes grouped together with massage, bodywork, and somatic services for purposes of estimating the fiscal impact of various new impositions of sales tax under P.L. 2006, c.44. However, while recognizing that massage, bodywork, and somatic services are health services and that many of its practitioners strongly advocate licensing requirements, the Commission does not consider it necessary to treat all health services as exempt. In addition, it notes that, since massage, bodywork, and somatic services are not taxable if provided pursuant to a doctor's prescription, patients have a means of obtaining exemption when their doctors recommend massage, bodywork, and somatic services for their health.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-139

Date of Introduction: 01/12/10

Sponsor(s): Senator Bucco

Date of Consideration: 03/24/10

Co-Sponsor(s): Senator Stack

Identical Bill:

Committee: Senate Law and Public Safety Committee

Description

The bill exempts sale of recreational safety helmets from sales and use tax.

Note

(The Commission addressed an identical proposal (Senate Bill 1212(1R)) in 2008. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill is proposed to provide a tax exemption on the purchase of recreational safety helmets and other protective headgear that meets the standards provided by or pursuant to the laws requiring operators of bicycles, motorcycles, motorized bicycles, roller skates, and skateboards to wear such helmets or headgear.

The exemption would also extend to helmets or protective headgear designed to be worn when downhill skiing, operating a toboggan, sled, snowboard or other method of transporting over snow covered terrain.

The language in this bill is too broad. It is not clear whether the exemption applies only to helmets or headgear required for children under the age of 14 as required by law, or if helmets required for operators of any age who engage in the activities specified, but may not be required to wear protective headgear by law, are included. Such ambiguity leads to subjective interpretation rendering the bill difficult to administer and enforce. Without clear definitions or more specific guidelines on the safety standards helmets would be required to meet for

exemption, and for whom the exemption is intended to benefit, vendors would have the responsibility of determining which types of “protective headgear” would qualify for exemption.

An exemption from sales tax will not guarantee compliance with the helmet laws or increase safety awareness by those who engage in dangerous activities that require a helmet. Consumers who can only afford to purchase the basic helmets in order to comply with the safety laws will only receive a minimal benefit if the tax was exempt on headgear purchases. Those who are able to purchase more expensive, luxurious helmets will receive a far better benefit than those who can only afford the inexpensive helmets.

Relief from sales tax will not have any impact on consumers’ ability to purchase safety helmets, or impact the type of protective headgear they choose. Lower-income families will not be more encouraged or relieved of a financial burden if sales tax is not imposed on the purchase of protective headgear.

The bill carries negative public policy implications. Consumers of safety products should not have to be enticed with a financial incentive in order to comply with a public mandate issued as a protective measure. Individuals voluntarily choose to participate in activities that require the use of protective headgear. The State should not have to bear the burden of subsidizing sports and recreational activities that require higher standard safety measures to be taken by the participants.

Enacting special exemptions for purchases of socially desirable merchandise tends to lead to an increased demand for similar exemptions for other useful, necessary, or politically favored purchases. Such piecemeal small exemptions alter the broad-based nature of the sales and use tax, and reduce its credibility as a fairly administered and easy to understand tax. The amount that an individual taxpayer would save from an exemption on purchases of safety helmets and other protective headgear would be miniscule compared to the cumulative loss of revenue the State would suffer. If the proposed exemption were granted, the revenue currently raised by the imposition of tax on these safety items would have to be raised from other revenue sources.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-302

Date of Introduction: 01/12/10

Sponsor(s): Senator Allen

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill: A-1160

Committee: Senate Health, Human Services and Senior Citizens Committee

Description

This bill proposes to eliminate the imposition of sales and use tax on charges for initiation fees, membership fees, or dues for access to or use of certain health and fitness clubs and organizations.

Note

(The Commission addressed an identical proposal (Senate Bill 1734) in 2008. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

On and after October 1, 2006, the law (P.L. 2006, c.44) imposes sales and use tax on the charges for initiation fees, membership fees or dues for access to or use of the property or facilities of a health and fitness club or organization in New Jersey, unless the club or organization's members are predominantly age 18 or under.

Since the time of its enactment, sales of memberships, etc. made by government entities and certain qualifying nonprofits have been excluded from this imposition. This has left a disparity of sales tax treatment throughout the industry. This proposal intends to repeal the remaining imposition of sales tax on memberships sold by these facilities.

As this area of imposition was enacted effective October 1, 2006, this area is a new revenue source for the State. The Commission has not previously been presented with any reasoning compelling enough to support the repeal or chipping away of this new initiative. However, the

Commission believes that the recent carve-out for government and exempt organizations has created an inherent unfairness in the application of this imposition and supports a repeal of the imposition.

Public Comment

A letter (copy attached) and public comment were received from the International Health Racquet and Sportsclub Association (IHRSA) in support of this bill. IHRSA stated that it supported the full repeal of New Jersey's 7 percent tax on physical fitness facilities and that such a repeal would encourage New Jersey residents to live more fulfilling and healthier lives.

Recommendation

The Commission recommends enactment of this bill.

Commission Members **For** Proposal: 8

Commission Members **Against** Proposal:

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-354

Date of Introduction: 01/12/10

Sponsor(s): Senator Oroho

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill: A-195

Committee: Senate Economic Growth Committee

Description

The bill provides that sales by UEZ retailers of items delivered to location outside of the UEZ shall not qualify for partial exemption from the sales tax.

Analysis

This bill provides that retail sales of items by a qualified business in an urban enterprise zone (UEZ) would not qualify for the partial exemption from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) if such items are delivered to a location outside of the UEZ.

The Commission, upon review and discussion of the proposed legislation determined that a study should be conducted to determine whether the original intentions of the Urban Enterprise Zone have been achieved and whether enacting proposed legislation of this nature would or would further that intent. It was the position of the Commission, as well, that UEZs adversely impact the sales of other retailers who reside alongside, but outside of the borders of the designated UEZ districts.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-462

Date of Introduction: 01/12/10

Sponsor(s): Senator Smith

Date of Consideration: 03/24/10

Senator Lesniak

Co-Sponsor(s):

Identical Bill: A-2043

Committee: Senate Environment and Energy Committee

Description

This bill would provide exemption from tax on sales of certain energy saving products and services purchased from businesses located in an Urban Enterprise Zone.

Analysis

This bill requires that receipts of retail sales made by a vendor certified pursuant to section 21 of P.L.1983, c.303 (C.52:27H-80), from a place of business owned or leased and regularly operated by a vendor for the purpose of making retail sales, and located in a designated enterprise zone or in a designated UEZ-impacted business district, on products certified as compliant with the requirements of the "Energy Star" program established by the federal Department of Energy and United States Environmental Protection Agency pursuant to 42 U.S.C.s.6294a are exempt from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) to the extent that the tax imposed on such receipts shall be two percent of the sales price.

In section 1.a. and 1.b. of the bill, the special reduced sales tax would be "two percent of the *sales price*." (Emphasis added.) Under the Sales and Use Tax Act, sales tax is imposed on *receipts*. Presumably, the bill proponents intended that the tax base for the special reduced sales tax be the same as the tax base for regular sales tax. Therefore, in the bill, the term "receipt" should be substituted for "sales price."

The bill would allow Urban Enterprise Zone (UEZ) qualified businesses to charge 2% sales tax on sales of "Energy Star" products. Even without the bill, UEZ qualified retailers may charge 3.5%

sales tax for qualifying sales. Nothing has been presented to indicate that a further reduction of 1.5% would entice buyers to these retailers, or to buy an Energy Star-compliant product as opposed to another, similar product at these retailers.

It should be noted that many complaints from non-Zone retailers are received about the “unfair” competition from UEZ retailers charging reduced sales tax. This measure, should it become law, would likely increase those complaints.

Section 1.b. would allow UEZ vendors to charge 2% sales tax on services that “promote or employ alternative energy sources, energy efficiency or environmental sustainability” The New Jersey Sales and Use tax is imposed on a short list of services, and those services are clearly defined. Installations that result in a capital improvement are already exempt from sales tax on charges for labor. A portion of this measure would be generous.

There is no provision in the bill to impose restrictions on the location of the performance of eligible services, opening up the possibility that eligible services would be performed outside the zone. Currently, under the UEZ program, no reduced sales tax is allowed on services.

Enactment of this proposal would be contrary to the spirit of the Streamlined Sales and Use Tax Agreement (SSUTA) as it would introduce another taxing scheme within the State of New Jersey. The SSUTA calls for a uniform state sales tax rate. Should this measure become law, there would be multiple sales tax rates, dependent upon the product or service purchased, within urban enterprise zones.

Further, there already exists an Energy Star Qualified Product exemption for sales tax holidays within the Agreement.

The Commission finds it out of the ordinary to impose a 2% Sales Tax Rate. It further determines that this bill should be referred to the Department of Community Affairs, the agency that certifies UEZs.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-603

Date of Introduction: 01/12/10

Sponsor(s): Senator Baroni

Date of Consideration: 03/24/10

Senator Kean

Co-Sponsor(s):

Identical Bill: A-433

Committee: Senate Economic Growth Committee

Description

This bill would establish a New Jersey Borough Enterprise Zone Program to encourage business development in small, highly developed municipalities.

Analysis

The bill authorizes the New Jersey Urban Enterprise Zone (UEZ) Authority to designate an unspecified number of zones in those municipalities with a population under 10,000 which are over 85 percent developed. This program is designed to provide benefits similar to the existing UEZ program in order to spur business development in highly developed municipalities with limited growth potential owing to a lack of available land.

The bill provides for a partial exemption from the "Sales and Use Tax Act" for retail sales made within designated enterprise zones, except for sales of motor vehicles and certain manufacturing equipment. The effective sales tax within the enterprise zone would be reduced by 50 percent for the first six years of designation. Two-thirds of the revenue for the subsequent six years of designation, and one-third percent for the final eight years of designation.

In the first six years of designation, 66.67 percent of the tax revenues collected in the zone is to be paid into the UEZ assistance fund and 33.33 percent, to the school district which is coterminous with the municipality in which the enterprise zone is situated.

In the second six years of designation, 33.33 percent of the sales tax revenues is to be distributed equally between the UEZ assistance fund and the school district and paid into the General Fund.

In the final eight years of designation, 66.67 percent of the sales tax proceeds is to be paid into the General Fund and the remaining 33.33 percent is to be divided equally between the UEZ assistance fund and the school district.

An enterprise zone assistance fund is established to provide municipalities, in which enterprise zones are designated, with assistance in undertaking public improvements and in upgrading public safety services in the enterprise zone area. Moneys for the fund come from the dedication of the revenues from the sales tax levied in the zone.

The Commission, upon review and discussion of the proposed legislation, determined that a study should be conducted to determine whether the original intentions of the Urban Enterprise Zone have been achieved and whether enacting proposed legislation of this nature would or would not further that intent. It was the position of the Commission that UEZs adversely impact the sales of other retailers who reside alongside, but outside of the borders of the designated UEZ districts.

Further, exemptions of this nature alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer and is generally perceived as economically neutral and “fair.”

NOTE: The Commission’s recommendation is limited to the bill’s proposal for sales tax exemption. The Commission has not been granted authority to make formal recommendations on proposals which affect other tax areas. Based on its limited review, the Commission does not recommend enactment of the sales tax exemption proposed in this bill.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-605

Date of Introduction: 01/12/10

Sponsor(s): Senator Baroni

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill: A-433

Committee: Senate Environment and Energy Committee

Description

This bill would allow corporation business tax and gross income tax credits, employer unemployment tax rebates, a sales tax exemption, property tax freeze and employee skill training program as incentives for business revitalization in distressed shopping centers.

Note

(The Commission addressed an identical proposal (A-2536) in 2006. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill proposes a full exemption for all purchases made to “qualified” businesses for use within a “distressed shopping center”. The Commission notes that this exemption is very similar to that offered under the Urban Enterprise Zones Act (N.J.S.A. 52:27H-60 et seq.). As there is an analogous program that exists for geographic regions that are deemed “distressed,” the Commission does not support the establishment of an additional program which is said to work toward the same goal.

Further, the Commission has consistently reserved any support for the Urban Enterprise Zone (UEZ) Program as there is no consensus that the Urban Enterprise Zone Program is operating as intended and is thought to be effective and efficient. There has never been an independent, comprehensive analysis performed that confirms that the Urban Enterprise Zone Program has

actually been a benefit to the participating communities, yet the Program is being constantly amended and expanded. Arguments are often advanced that the Program promotes unfair competition and that fraud is easily perpetrated under the Program's current tenants. The Commission is concerned that similar issues may arise as a result with passage of this current proposal.

Further, exemptions of this nature alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer and is generally perceived as economically neutral and "fair." When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer, is relatively small, but the cumulative revenue generated can be enormous. Extending the proposed exemption would save an individual taxpayer and vendor a fairly insignificant sum every year. However, the cumulative loss of revenue to the State could become substantial, leaving the State to find other means of generating the money lost as a result of expanding the scope of available exemptions.

NOTE: The Commission's recommendation is limited to the bill's proposal for sales tax exemption. The Commission has not been granted authority to make formal recommendations on proposals which affect other tax areas. Based on its limited review, the Commission does not recommend enactment of the sales tax exemption proposed in this bill.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-615

Date of Introduction: 01/12/10

Sponsor(s): Senator Baroni

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill: A-1635

Committee: Senate Commerce Committee

Description

This bill would eliminate the imposition of sales tax on charges for storage space and would exempt initiation fees, membership fees and dues for residential health and fitness facilities from sales and use tax.

Note

(The Commission addressed an identical proposal (Assembly Bill No.: 4036) in 2007. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill attempts to rescind certain portions of Chapter 44, P.L. 2006, by removing the imposition of sales tax on storage space and exempting initiation fees, membership fees and dues required to be paid for use of residential health and fitness facilities from sales and use tax. The imposition of sales tax on storage space and certain initiation fees, membership fees and dues was included in a major piece of legislation passed in July 2006, which increased sales tax from 6% to 7% throughout the State. Sales and use tax was extended to many previously untaxed services and products in an effort to provide added revenue for the State.

The fiscal impact of this bill is expected to be significant and would undermine the intent of Chapter 44, P.L. 2006, which was to raise much needed revenue for the State. By changing the law now to eliminate the imposition of sales tax on storage space and to exempt initiation fees, membership fees and dues from sales and use tax would reverse the effect of the legislation, which was passed in October 2006, after much thought and deliberation.

In addition to a substantial loss of revenue, the reversal would create a tremendous administrative burden as the Division of Taxation would be required to respond to a significant number of inquiries from consumers as well as from businesses and taxpayers that furnish storage facilities or own or control residential health and fitness facilities. Enactment of this bill would also require the revision of numerous sales and use tax publications and Web content.

The imposition of sales tax on storage space and initiation fees, membership fees and dues was enacted on October 1, 2006, to increase revenue for the State. The Commission has not been presented with any compelling reasons to support repeal of this initiative.

Public Comment

A letter (copy attached) and public comment were received from the International Health Racquet and Sportsclub Association (IHRSA) in support of this bill. IHRSA stated that it supported the full repeal of New Jersey's 7 percent tax on physical fitness facilities and that such a repeal would encourage New Jersey residents to live more fulfilling and healthier lives.

Recommendation

The Commission opposes enactment of the bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-675

Date of Introduction: 01/12/10

Sponsor(s): Senator Sarlo
Senator Sacco

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill:

Committee: Senate Budget and Appropriations Committee

Description

This bill authorizes the creation of new Urban Enterprise Zones in Garfield, Harrison and Keansburg as well as a joint urban enterprise zone in Cliffside Park and Fairview.

Analysis

This bill amends the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq., to allow the creation of a new Urban Enterprise Zones in Garfield, Harrison and Keansburg as well as a joint urban enterprise zone in Cliffside Park and Fairview.

The Urban Enterprise Zone Program has expanded since its inception. Urban Enterprise Zone-impacted business districts, areas that have been “negatively impacted” by the presence of two or more adjacent Urban Enterprise Zones, have been created wherein reduced sales tax is collected. If there was a consensus that the Urban Enterprise Zone Program is operating as intended and is thought to be effective and efficient, then the amendments set forth in this bill may represent sound policy. However, there has never been an independent, comprehensive analysis performed that confirms that the Urban Enterprise Zone Program has actually been a benefit to the participating communities, yet the program is being constantly amended and expanded.

The greater the number of municipalities that have 3.5% sales tax, the more that New Jersey becomes a patchwork of differing sales tax rates. This is contrary to tax simplicity and uniformity. In addition, adding more zones may create a slippery slope because other municipalities which are similarly situated to Garfield, Harrison and Keansburg as well as a joint

urban enterprise zone in Cliffside Park and Fairview may petition to become urban enterprise zones. This domino effect defeats the original purpose of the Urban Enterprise Zones Act of helping to revitalize the State's economically distressed urban areas. Given the ease with which the Urban Enterprise Zone Program is being expanded, it is conceivable that all municipalities in New Jersey will be able to credibly and successfully press for Urban Enterprise Zone status. As originally conceived, the program was to be limited and its benefits restricted to the direst cases. This bill does not establish that its provisions would further that purpose.

As the number of zones increase, the challenge of enforcement expands. Due to the high number of zones in existence, New Jersey no longer enjoys the administrative simplicity it once did with sales tax uniformity across the State. This bill does not provide an economic study to justify the creation of zones in Garfield, Harrison and Keansburg as well as a joint urban enterprise zone in Cliffside Park and Fairview.

Since the inception of the Urban Enterprise Zones Act, competitors located outside of the zones have complained of and have perceived unfair tax advantages for vendors located within the zones. There have been many complaints of fraud submitted to the Urban Enterprise Zone Authority and to the Division of Taxation by vendors located outside of the zones charging that Urban Enterprise Zone vendors purchase items tax-free and then transport the property to other locations for use outside of the zone. Permitting more vendors the entitlement of a tax exemption would exacerbate the already tenuous foundation upon which the Act is based.

A major reason municipalities are petitioning for an Urban Enterprise Zone may be the belief that such a designation would replace revenue that the municipality is currently losing from other sources. For instance, many municipal representatives have testified to the Sales and Use Tax Review Commission that Urban Enterprise Zone designation would benefit the municipality since they are currently experiencing financial problems. The main theme in urging the Commission to approve a bill creating another zone stresses that Urban Enterprise Zone status would provide funds for municipal use.

The Committee recommends that a review of the Urban Enterprise Zone Program and its effectiveness is necessary to determine the best course of action in relation to future modifications or expansions of the Urban Enterprise Zone Program in New Jersey. To date, there has not been a comprehensive review of the Urban Enterprise Zone Program by an independent body. As a result, substantive data concerning the actual success of the Urban Enterprise Zone Program has not been provided to the Legislature.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-680

Date of Introduction: 01/12/10

Sponsor(s): Senator Sarlo

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill: A-1635

Committee: Senate Transportation Committee

Description

This bill creates an exemption from sales tax on limousine services.

Analysis

Effective October 1, 2006, amendments to the New Jersey Sales and Use Tax Act (P.L. 2006, c.44) impose tax on limousine services.

The Commission does not support the exemption of sales and use of tax to limousine services due to its general policy against altering the broad-base nature of the tax.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-705

Date of Introduction: 01/12/10

Sponsor(s): Senator Pennacchio

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill: A-S-441

Committee: Senate Environment and Energy Committee

Description

This bill provides for reduced sales tax imposition on certain sales in certain Highlands Region Preservation Area municipalities.

Analysis

This bill would allow for a 50% reduction of the sales and use tax imposed on receipts of retail sales, except retail sales of motor vehicles, of alcoholic beverages, of digital products, and of cigarettes as defined in the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.), made by a seller from a place of business located within a municipality, 99% or more of the area of which is located within the preservation area of the Highlands Region. The tax imposed would be 3.5%. This would further alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer and is generally perceived as economically neutral and "fair."

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-756

Date of Introduction: 01/12/10

Sponsor(s): Assemblyman Scalera

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill: A-1826

Committee: Senate Budget and Appropriations Committee

Description

This bill exempts from sales tax for two years certain hybrid and highly fuel efficient vehicles and energy efficient appliances.

Analysis

The bill provides an exemption from sales tax for two years on certain hybrid and highly fuel efficient vehicles and qualified products bearing the Energy Star Label.

The provisions of this bill, as written, are very broad. Although there is no explicit exemption for leasing or rental transactions, such transactions involving qualifying vehicles would also be exempt as the Sales and Use Tax Act (See N.J.S.A. 54:32B-2(e)) includes lease and rentals in the definition of "retail sale".

The Sales and Tax Act already contains an exemption for zero emission vehicles which are vehicles certified pursuant to the California Air Resources Board zero emission standards for the model year (N.J.S.A. 54:32B-8.55), however, this exemption is not applicable to partial zero emission vehicles.

Currently, the Board of Public Utilities under the New Jersey's Clean Energy Program provides cash rebates or other incentives for certain energy efficient home purchases. The Board of Public Utilities seems the more appropriated venue to advance further energy initiatives.

Additionally, the exemption would further alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer, and is generally perceived as economically neutral and "fair."

This State is a full, participating member of the Streamlined Sales and Use Tax Agreement (SSUTA) and has adopted the provisions of that agreement into current sales tax law.

Sales tax holidays are temporary sales tax exemptions for certain items for a specified period. Although commonly understood to be for very short durations (i.e. ‘back-to-school’ purchases), a specified period of any duration (this measure ends after two years) is a sales tax holiday under the SSUTA.

The SSUTA contains a product definition of “energy star qualified product” which is applicable in a sales tax holiday. A state may exempt all such products, exempt some products, or exempt certain classifications of energy star products.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-917

Date of Introduction: 02/01/10

Sponsor(s): Senator Lesniak

Date of Consideration: 03/24/10

Senator Beck

Co-Sponsor(s): Senator Kryillos

Identical Bill: A-597

Committee: Senate Economic Growth Committee

Description

This bill would create the "Monmouth Economic Revitalization Authority Act."

Analysis

This measure is a comprehensive response to the opportunities presented by the closure of Ft. Monmouth, which resulted from decisions rendered by the Federal Base Realignment and Closing Commission.

In addition to creating a new authority, a State entity 'in but not of' the Department of the Treasury, which would be responsible for the implementation of the revitalization effort envisioned for the soon-to-be available lands, this proposal expands the powers of the Economic Development Authority (EDA) and designates it "master developer" for any number of future projects.

Initially, it provides for a 50% reduction to the state's sales and use taxes on the receipts of retail sales except sales of alcoholic beverages, cigarettes, manufacturing machinery, equipment or apparatus, and energy (natural gas and electricity). The legislation further proposes that the authority may adopt a resolution to levy and collect a franchise assessment within an infrastructure district not to exceed an amount equivalent to 50 percent of the tax imposed under the Sales and Use Tax Act with the intent of devoting the proceeds from those assessments to purposes of the district.

The measures in this bill contribute significant economic tools to revitalize the targeted region.

Recommendation

The Commission recommends enactment of this bill.

Commission Members For Proposal: 7

Commission Members Against Proposal: 0

Commission Members Abstaining: 1

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-978

Date of Introduction: 02/04/10

Sponsor(s): Senator Allen

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill:

Committee: Senate Economic Growth Committee

Description

This bill would exempt sales of methane gas fuel conversion machinery and equipment from sales and use taxes.

Note

(The Commission addressed an identical proposal (Senate Bill No.:1611) in 2008. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This proposal would provide for a broad exemption of all tangible personal property and services purchased in relation to the conversion of machinery and equipment to accept methane fuel. The bill requires that the exemption be administered by refund.

Additionally, the claim for exemption must be supported by documentation to be acquired from the Department of Environmental Protection.

Generally, the Commission does not support use of sales tax laws and policy to create incentives to influence consumer choice or to benefit specific industries.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-990

Date of Introduction: 02/24/10

Sponsor(s): Senator Allen

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill:

Committee: Senate Environment and Energy Committee

Description

This bill would exempt materials and labor used to convert traditional motor vehicles into plug-in hybrid motor vehicles from sales and use tax subjectivity.

Note

(The Commission addressed an identical proposal (Senate Bill No. 1617) in 2008. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill amends the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) to provide for an exemption for purchases relating to the conversion of traditional motor vehicles into plug-in hybrid electric motor vehicles. The exemption would apply to the purchase of batteries, electronic equipment, and conversion services.

A sales tax exemption for these conversion purchases could open the door for similar tax exemptions on devices the use of which may also be viewed to have a favorable environmental impact. Generally, the Commission does not support the use of tax policy as a means of influencing consumers' purchasing decisions and other behavior, even though the behaviors promoted might be beneficial to the State.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-994

Date of Introduction: 02/04/10

Sponsor(s): Senator Allen

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill:

Committee: Senate Education Committee

Description

The bill provides New Jersey public and private school teachers and teaching staff members a sales tax exemption for purchases of qualified materials used in teaching or professional development.

Note

(The Commission addressed an identical proposal (Senate Bill No. 1062) in 2008. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill is proposed to mitigate the financial burden of teachers who use their personal funds to make purchases for professional development and classroom use without school reimbursement.

This exemption benefits a specialized group and violates the principle of horizontal equity which mandates that sales tax legislation be broadly based and tax similar transactions, persons, or things in a similar manner. Tax treatment should be uniform from one taxpayer to another. This proposal creates a disparity between school teachers/staff and taxpayers in other professions not qualifying for the exemption. The creation of an exemption based on a taxpayer's employment could encourage other professionals to pursue the same exemption from purchases for their work and professional development.

Generally, schools themselves are exempt from New Jersey sales tax on purchases made with school funds under N.J.S.A. 54:32B-9. The New Jersey Sales and Use Tax Act also provides a sales and use tax exemption for school textbooks. N.J.S.A. 54:32B-8.21. The financial burden on teachers would be more appropriately handled by legislation mandating the increase in school supply allowances.

The bill's broad language leads itself to significant administrative and enforcement problems. The bill de-fines "qualified teaching materials" as "books, supplies, computer equipment and other supplementary materials for use in the course of teaching or professional development." This definition allows for subjective interpretation and may result in fraudulent purchases.

As computer and office supplies qualify for exemption, there is a high risk of purchasers fraudulently claiming exemption, yet there would be no administratively feasible way for vendors to know whether the purchaser was a teacher making a qualifying purchase or whether the purchaser was using the purchase for personal use.

The bill states that a "public or private school teacher or teaching staff member of preschool through grade 12 in New Jersey" qualifies for the exemption. This language is too broad and it does not further define "teaching staff member[s]" or further identify who qualifies for this exemption. Enforcement and administrative problems arise because of the inherent difficulty in determining whether a purchaser and the purchase are qualified for the exemption.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-1043

Date of Introduction: 02/04/10

Sponsor(s): Senator Allen

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill:

Committee: Senate Military and Veterans' Affairs Committee

Description

This bill authorizes the creation of a new Urban Enterprise Zone in Beverly City, Burlington County.

Note

(The Commission addressed an identical proposal (Senate Bill No. 1714) in 2008. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill amends the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 *et seq.*, to allow the creation of a new Urban Enterprise Zone in Beverly City, Burlington County.

The Urban Enterprise Zone Program has expanded in ways that the original drafters never intended. For instance, prior to 1994 ten towns in eleven municipalities were designated as Urban Enterprise Zones; however, in 1994 legislation authorized the creation of ten additional zones, and in 1995 legislation added seven more zones. In 2002 legislation added three more zones to that list. Finally, the thirty-second zone was added in 2004. In addition, Urban Enterprise Zone-impacted business districts, areas that have been "negatively impacted" by the presence of two or more adjacent Urban Enterprise Zones, have been created wherein reduced sales tax is collected. If there was a consensus that the Urban Enterprise Zone Program is operating as intended and is thought to be effective and efficient, then the amendments set

forth in this bill may represent sound policy. However, there has never been an independent, comprehensive analysis performed that confirms that the Urban Enterprise Zone Program has

actually been a benefit to the participating communities, yet the program is being constantly amended and expanded.

The greater the number of municipalities that have 3.5% sales tax, the more that New Jersey becomes a patchwork of differing sales tax rates. This is contrary to tax simplicity and uniformity. In addition, adding more zones may create a slippery slope because other municipalities which are similarly situated to Beverly City may petition to become urban enterprise zones. This domino effect defeats the original purpose of the Urban Enterprise Zones Act of helping to revitalize the State's economically distressed urban areas. Given the ease with which the Urban Enterprise Zone Program is being expanded, it is conceivable that all municipalities in New Jersey will be able to credibly and successfully press for Urban Enterprise Zone status. As originally conceived, the program was to be limited and its benefits restricted to the most dire cases. This bill does not establish that its provisions would further that purpose.

As the number of zones increase, the challenge of enforcement expands. Due to the high number of zones in existence, New Jersey no longer enjoys the administrative simplicity it once did with sales tax uniformity across the State. This bill does not provide an economic study to justify the creation of an Urban Enterprise Zone in Beverly City. It does not provide any information that would demonstrate that such designation would reverse the economic decline of Beverly City or attract businesses or customers to that municipality. Further, it does not demonstrate that if enacted, it would not draw businesses or customers from other depressed municipalities.

Since the inception of the Urban Enterprise Zones Act, competitors located outside of the zones have complained of and have perceived unfair tax advantages for vendors located within the zones. There have been many complaints of fraud submitted to the Urban Enterprise Zone Authority and to the Division of Taxation by vendors located outside of the zones charging that Urban Enterprise Zone vendors purchase items tax-free and then transport the property to other locations for use outside of the zone.

Permitting more vendors the entitlement of a tax exemption would exacerbate the already tenuous foundation upon which the Act is based. A major reason municipalities are petitioning for an Urban Enterprise Zone may be the belief that such a designation would replace revenue that the municipality is currently losing from other sources. For instance, many municipal representatives have testified to the Sales and Use Tax Review Commission that Urban Enterprise Zone designation would benefit the municipality since they are currently experiencing financial problems.

The main theme in urging the Commission to approve a bill creating yet another zone stresses that Urban Enterprise Zone status would provide funds for municipal use. Since the inception of the Urban Enterprise Zones Act, its constitutional validity has been brought into question. Under the Commerce Clause, a state may not impose taxes on out-of-state sale transactions that exceed the taxes imposed on in-state transactions.

The Urban Enterprise Zone Program halves the 7% sales tax rate for sales that take place within a zone. However, New Jersey law imposes a 7% compensating use tax on goods purchased outside of New Jersey but brought into the State for use here. Thus, the law appears to discriminate between a “sale” and a “use” based upon where the transaction occurs. As a result, non-Urban Enterprise Zone New Jersey retailers are forced to compete with out-of-state retailers that deliver goods into a designated zone, as well as with the in-state Urban Enterprise Zone vendors. To comply with the Commerce Clause, the Division must take the position that a New Jersey purchaser would be able to claim a 3.5% use tax rate if delivery is taken within the zone. The de facto extension of the 3.5% rate to retailers outside of New Jersey was never contemplated, but is nonetheless a real consequence of this program. Any expansion or creation of new 3.5% zones only perpetuates this situation.

Finally, expanding the Urban Enterprise Zone Program would further alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer, and is generally perceived as economically neutral and “fair.” When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer is relatively small, but the cumulative revenue generated can be enormous. Expanding the Urban Enterprise Zone Program by adding more 3.5% zones would save an individual taxpayer and vendor a fairly insignificant sum every year. However, the cumulative loss of revenue to the State is substantial, leaving the State to find other means of generating the money lost as a result of expanding the program. This loss of revenue would be considerable because the 3.5% sales tax collected by qualified vendors is remitted to the municipality in which the Urban Enterprise Zone is located and not to the State’s general fund. Thus, the State would lose the entire 7% sales tax that is currently collected on sales of items in the new Urban Enterprise Zone. This would be a particularly burdensome loss to the State in regard to big-ticket items.

The Commission recommends that a review of the Urban Enterprise Zone Program and its effectiveness is necessary to determine the best course of action in relation to future modifications or expansions of the Urban Enterprise Zone Program in New Jersey. To date, there has not been a comprehensive review of the Urban Enterprise Zone Program by an independent

body. As a result, substantive data concerning the actual success of the Urban Enterprise Zone Program has not been provided to the Legislature.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-1050

Date of Introduction: 02/04/10

Sponsor(s): Senator Connors

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill:

Committee: Senate Transportation Committee

Description

The bill excludes the value of certain manufacturers' rebates from the taxable sales price of motor vehicles.

Note

(The Commission addressed an identical proposal (Senate Bill No. 1660 and S-2657) in 2008 and 2006, respectively. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

Current law imposes sales and use tax on the total "sales price" of an item, which includes the total amount of consideration for which personal property is sold, leased, or rented. If a customer pays the retailer a reduced price by relying on a rebate that the manufacturer will send to the retailer as part of the customer's payment, the customer will owe tax on the full price. The receipt payable to the retailer will be the total of the reduced price payable by the customer plus the amount that the retailer will receive from the manufacturer. Sales tax is calculated on the total receipt, or "sales price," not just on the portion of the receipt paid by the customer.

This bill amends the definition of "sales price" to exclude the value of any manufacturer rebate where used toward a vehicle purchase. The proposed language defines a manufacturer's rebate as a "cash payment" made by a manufacturer to the dealer. It is unclear whether this description accurately depicts these payments as they typically occur. If these payments are generally not in "cash," the language in the bill may not properly define a "manufacturer's rebate."

Generally, the Commission opposes the passage of measures that are focused on the benefit of one industry. Further, while there have recently been some changes to the definition of “sales price” under the Sales and Use Tax Act (N.J.S.A. 54:32B-1 *et seq.*), the sales tax treatment of manufacturers’ rebates has not been adversely affected.

Recommendation

The commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-1096

Date of Introduction: 02/04/10

Sponsor(s): Senator Bucco

Senator Van Drew

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill:

Committee: Senate Economic Growth Committee

Description

This bill establishes a sales tax holiday in New Jersey from December 10 through December 25, 2006, on most sales of tangible personal property.

Note

(The Commission addressed an identical proposal (Senate Bill No. 1232) in 2006. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill provides for a sales tax holiday on receipts from every retail sale in this State of tangible personal property to an individual purchaser for non-business use, but not including retail sales of motor vehicles, alcoholic beverages, cigarettes, and energy. The proposal establishes the date of the holiday as December 10 through December 25. An "individual purchaser" is defined as an individual who pays the purchase price and takes delivery in this State on the date of a sales tax holiday or who places an order and pays the purchase price on the date of a sales tax holiday even if the delivery in this State takes place after the date of a sales tax holiday.

Although the purchase of motor vehicles is specifically not allowed to be tax-exempt during the holiday period, many other big-ticket items remain eligible. For instance airplanes, computers, boats, jewelry, electronic equipment, furniture, and artwork are still eligible. To the extent that this tax holiday will be applicable to some major purchases, it is foreseeable that many purchasers will plan to make their purchase of expensive items during the sales tax holiday. All

this accomplishes is to divert sales from subsequent months, leading to the false impression that tax holidays are a major retail success.

The limitation of the exemption to individual purchasers for non-business use would be difficult to administer. Retailers cannot reasonably be expected to recognize whether a particular individual is making a purchase for business or personal use, and it is foreseeable that, like the exemption for paper products for home use only, this personal-use exemption will be widely misused and easily abused by consumers making purchases for their small businesses. Retailers would object to being required to determine whether every sale was “non-business” or to obtain an exemption certificate from every purchaser during the exclusion period.

Under the Sales and Use Tax Act, ordinarily the imposition of sales and use tax is dependent on delivery of the item, not on payment for the item. Under the bill, however, the holiday exemption is applicable both to sales in which both payment and delivery take place during the holiday, and to sales in which payment is made during the holiday but delivery takes place later. Using the time of payment to determine the time of sale is inconsistent with the Division of Taxation’s consistent, historic position that liability for the tax on sales of tangible personal property accrues when the merchandise is delivered. The bill’s use of two different alternative methods of determining the time of sale (either date of delivery and payment, or date of payment only) would make this exemption very difficult to administer. Additional problems are likely to arise in determining the payment date on credit card and check purchases, which are actually paid at some point later than the date when the customer presents his check or signs a credit card slip. Allowing exemption for items delivered after the exclusion period makes the proposal susceptible to fraud because retailers could alter their receipts to use an order and payment date that are within the exclusion period, even when they were not truly within the period, in order to prevent losing a customer. This temptation would be highest with sellers of big-ticket items.

Presumably the holiday will only affect sales within New Jersey and not use tax imposed on items purchased from outside of New Jersey. Thus, the proposal is contrary to the Commerce Clause of the United States Constitution, under which states cannot discriminate against interstate commerce. If the tax holiday is limited to sales physically taking place in New Jersey, this will create a federal constitutional problem, since use tax is imposed when tangible property purchased out-of-State from non-New Jersey mail-order vendors is used in or delivered to New Jersey. The State cannot lawfully exempt a sale of an item taking place within New Jersey and at the same time, impose tax on a comparable item purchased from an out-of-State source. This scheme, whereby an in-State sale would not be subject to any tax, while the

full use tax of 7%, would be imposed on interstate purchases used in New Jersey, is discrimination against interstate commerce and would not likely survive constitutional scrutiny.

It is unlikely that consumers would enjoy a true savings as a result of a tax holiday which merely eliminates the 7% sales tax. Sales offered by the retailer, generally at a percentage far greater than 7%, result in much greater savings for the customer. Confident that the public will be enticed to the stores by the prospect of a tax-free holiday, retailers may actually raise their "sale" prices during a tax holiday or elect not to discount regular prices if retailers are confident that the public will be drawn into stores by the idea of a tax holiday. Rather than provide a savings for consumers, the bill could easily result in increased profit for vendors. Thus, consumers may not realize that they are actually paying more for the merchandise during the holiday, which merely eliminates the 6% tax, and not realize that they are not enjoying a real tax savings.

The bill's tax benefit increases proportionate to the buying power of the taxpayer. Thus, the bill would give a considerably greater tax benefit to wealthier people since presumably they buy considerably more than low or moderate income people. The holiday would therefore be regressive in its impact, since it would give a far greater tax benefit to those who could afford to purchase expensive items for their personal use. In addition, the dates designated for the holiday are the retail industry's busiest periods, thus it appears counter intuitive to stimulate consumer spending during this time.

Legislation like this has the potential to cause a major disruption of the State's tax administration operations. Press releases need to be written to explain the scope and duration of the sales tax holiday, staff in the tax information services need to be trained, and the State would need to be prepared to handle a huge increase in information inquiries from vendors and consumers before, during, and after the holiday. To handle the expected increase in volume, it might need to hire new temporary personnel who would need training time, work space, and of course salaries. In the alternative, the rush of calls might have to be handled by existing personnel, resulting in congested phone lines, long "hold" times, and consequently unhappy callers. The inquiries would not end abruptly as soon as the holiday is over, since many taxpayers who missed the deadline for a tax-free purchase would most likely call or write to express their dissatisfaction with the inadequate publicity for the holiday or the timing of the holiday or to seek exceptions or extensions of the final cut-off date. Taxpayers who purchased such property immediately before a holiday would also doubtlessly feel aggrieved. Thus, a tax holiday intended as a benefit is likely to become a public relations disaster for the State.

The sales tax holiday would further alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer and is generally perceived as economically neutral and “fair.” When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer, is relatively small, but the cumulative revenue generated can be enormous. A sales tax holiday would save an individual purchaser a fairly insignificant sum. However, the cumulative loss of revenue, some of it unintended, to the State could be substantial. The proposal could result in significant revenue loss, particularly since many people may elect to schedule their purchase of a high-priced item during the tax holiday in order to enjoy the tax savings. This leaves the State to find other means of generating the moneys lost as a result of an expanded exemption.

Finally, the enactment of this bill may violate the provisions of the Streamlined Sales and Use Tax Agreement (P.L. 2005, c.126).

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposal: 0

Commission Members Against Proposal: 8

Commission Members Abstaining: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-1097

Date of Introduction: 02/04/10

Sponsor(s): Senator Bucco

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill:

Committee: Senate Law and Public Safety Committee

Description

The bill provides a sales and use tax exemption for carbon monoxide detectors and any device or equipment sold for residential use to detect, warn of, abate or extinguish fires.

Note

(The Commission addressed an identical proposal (Senate Bill No. 926) in 2006. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This exemption benefits a specialized group and does not promote horizontal equity. Horizontal equity mandates that sales tax legislation be broadly based and taxes similar transactions, persons, or things in a similar manner. This proposal creates disparity between fire warning and protection equipment and other types of protection equipment. Fire warning and protection equipment is only one group of many devices that are available to protect or warn individuals when life or property is threatened. This bill gives preferential treatment to fire warning and protection equipment for residential use.

There are no overarching public policy reasons to provide a broader exemption for fire warning and protection equipment than for all other types of protection equipment used. Consumers who cannot afford to purchase fire warning and protection equipment are not going to be encouraged or economically assisted by being relieved of the obligation to pay 6% tax. Thus, the bill does nothing to promote safety by encouraging people to purchase fire warning and protection equipment. The current imposition of tax on the purchase of fire warning and protection equipment does not work as a disincentive to purchase. Homeowners who can afford to do so will safeguard their homes and families whether or not a tax exemption is enacted.

The bill provides an exemption when there is a purchase of fire warning and protection equipment for residential use only. The limitation of this exemption to purchases for residential use presents an administrative burden on both the taxing authority and the vendor who is responsible for collecting tax. Enforcement and administrative problems arise because of the inherent difficulty in determining whether the purchase is being used for residential use and thus qualified for the exemption. Vendors cannot reasonably be expected to recognize whether a particular individual is making a purchase for business or personal use, and it is foreseeable that this exemption will be misused and abused by consumers making purchases for their businesses.

There are no strong tax policy reasons to support this exemption. Enactment of special exemptions for purchases of socially desirable merchandise tend to create an increased demand for similar exemptions for other good, useful, necessary, or politically favored purchases. Such piecemeal exemptions alter the broad-based nature of the sales and use tax and reduce its credibility as a fairly administered and simple to understand tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer and is generally perceived by consumers as economically neutral and “fair.” When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer, is relatively small, but the cumulative revenue generated can be enormous. An exemption for fire warning and protection equipment would save an individual taxpayer a fairly insignificant sum. However, the cumulative loss of revenue to the State could be substantial, leaving the State to find other means of generating the funds lost as a result of another exemption.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-1098

Date of Introduction: 02/04/10

Sponsor(s): Senator Bucco

Senator Van Drew

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill:

Committee: Senate Economic Growth Committee

Description

This bill establishes a back-to-school sales tax holiday in New Jersey from August 26 through September 1, 2010, on most sales of tangible personal property.

Note

(The Commission addressed an identical proposal (Senate Bill No. 1231) in 2006. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill provides for a sales tax holiday on receipts from every retail sale in this State of tangible personal property to an individual purchaser for non-business use, but not including retail sales of motor vehicles, alcoholic beverages, cigarettes, and energy. The proposal establishes the dates of the holidays as August 26 through September 1, 2010. An "individual purchaser" is defined as an individual who pays the purchase price and takes delivery in this State on the date of a sales tax holiday or who places an order and pays the purchase price on the date of a sales tax holiday even if the delivery in this State takes place after the date of a sales tax holiday.

Although the purchase of motor vehicles is specifically not allowed to be tax-exempt during the holiday period, many other big-ticket items remain eligible. For instance airplanes, computers, boats, jewelry, electronic equipment, furniture, and artwork are still eligible. To the extent that this tax holiday will be applicable to some major purchases, it is foreseeable that many purchasers will plan to make their purchase of expensive items during the sales tax holiday. All

this accomplishes is to divert sales from subsequent months, leading to the false impression that tax holidays are a major retail success.

The limitation of the exemption to individual purchasers for non-business use would be difficult to administer. Retailers cannot reasonably be expected to recognize whether a particular individual is making a purchase for business or personal use, and it is foreseeable that, like the exemption for paper products for home use only, this personal-use exemption will be widely misused and easily abused by consumers making purchases for their small businesses. Retailers would object to being required to determine whether every sale was “non-business” or to obtain an exemption certificate from every purchaser during the exclusion period.

Under the Sales and Use Tax Act, ordinarily the imposition of sales and use tax is dependent on delivery of the item, not on payment for the item. Under the bill, however, the holiday exemption is applicable both to sales in which both payment and delivery take place during the holiday, and to sales in which payment is made during the holiday but delivery takes place later. Using the time of payment to determine the time of sale is inconsistent with the Division of Taxation’s consistent, historic position that liability for the tax on sales of tangible personal property accrues when the merchandise is delivered. The bill’s use of two different alternative methods of determining the time of sale (either date of delivery and payment, or date of payment only) would make this exemption very difficult to administer. Additional problems are likely to arise in determining the payment date on credit card and check purchases, which are actually paid at some point later than the date when the customer presents his check or signs a credit card slip. Allowing exemption for items delivered after the exclusion period makes the proposal susceptible to fraud because retailers could alter their receipts to use an order and payment date that are within the exclusion period even when they were not truly within the period, in order to prevent losing a customer. This temptation would be highest with sellers of big-ticket items.

Presumably the holiday will only affect sales within New Jersey and not use tax imposed on items purchased from outside of New Jersey. Thus, the proposal is contrary to the Commerce Clause of the United States Constitution, under which states cannot discriminate against interstate commerce. If the tax holiday is limited to sales physically taking place in New Jersey, this will create a federal constitutional problem, since use tax is imposed when tangible property purchased out-of-State from non-New Jersey mail-order vendors is used in or delivered to New Jersey. The State cannot lawfully exempt a sale of an item taking place within New Jersey and at the same time impose tax on a comparable item purchased from an out-of-State source. This scheme whereby an in-State sale would not be subject to any tax while the

full use tax of 7% would be imposed on interstate purchases used in New Jersey is discrimination against interstate commerce and would not likely survive constitutional scrutiny.

It is unlikely that consumers would enjoy a true savings as a result of a tax holiday which merely eliminates the 7% sales tax. Sales offered by the retailer, generally at a percentage far greater than 7%, result in much greater savings for the customer. Confident that the public will be enticed to the stores by the prospect of a tax-free holiday, retailers may actually raise their "sale" prices during a tax holiday or elect not to discount regular prices if retailers are confident that the public will be drawn into stores by the idea of a tax holiday. Rather than provide a savings for consumers, the bill could easily result in increased profit for vendors. Thus, consumers may not realize that they are actually paying more for the merchandise during the holiday, which merely eliminates the 6% tax, and not realize that they are not enjoying a real tax savings.

The bill's statement indicates that the tax holiday will provide this tax break for the greatest number of families who traditionally spend on "back-to-school" items during this period. However, the bill's tax benefit increases proportionate to the buying power of the taxpayer. Thus, the bill would give a considerably greater tax benefit to wealthier people, since presumably they buy considerably more than low or moderate income people.

Legislation like this has the potential to cause a major disruption of the State's tax administration operations. Press releases need to be written to explain the scope and duration of the sales tax holiday, staff in the tax information services need to be trained, and the State would need to be prepared to handle a huge increase in information inquiries from vendors and consumers before, during, and after the holiday. To handle the expected increase in volume, it might need to hire new temporary personnel, who would need training time, work space, and of course salaries. In the alternative, the rush of calls might have to be handled by existing personnel, resulting in congested phone lines, long "hold" times, and consequently unhappy callers. The inquiries would not end abruptly as soon as the holiday is over, since many taxpayers who missed the deadline for a tax-free purchase would most likely call or write to express their dissatisfaction with the inadequate publicity for the holiday or the timing of the holiday or to seek exceptions or extensions of the final cut-off date. Taxpayers who purchased such property immediately before a holiday would also doubtlessly feel aggrieved. Thus, a tax holiday intended as a benefit is likely to become a public relations disaster for the State.

The sales tax holiday would further alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer and is generally perceived as economically neutral and “fair.” When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer, is relatively small, but the cumulative revenue generated can be enormous. A sales tax holiday would save an individual purchaser a fairly insignificant sum. However, the cumulative loss of revenue, some of it unintended, to the State could be substantial. The proposal could result in significant revenue loss, particularly since many people may elect to schedule their purchase of a high-priced item during the tax holiday in order to enjoy the tax savings. This leaves the State to find other means of generating the moneys lost as a result of an expanded exemption.

Finally, the enactment of this bill may violate the provisions of the Streamlined Sales and Use Tax Agreement (P.L. 2005, c.126).

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposals: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-1143

Date of Introduction: 02/04/10

Sponsor(s): Senator Bucco

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill:

Committee: Senate Environment and Energy Committee

Description

This bill provides a sales and use tax exemption for the purchase of certain high-efficiency home heating equipment.

(The Commission addressed an identical proposal (Senate Bill No. 1765) in 2008. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill eliminates sales tax on the purchase of energy-efficient home heating equipment. Generally, this burden is borne at the time of purchase directly by a contractor hired to install a new unit or component. In theory, the contractor passes on these costs, including sales tax paid and reasonable markup to the property owner as the cost of the materials installed. In accordance with current sales tax law, this resulting cost for materials is not directly taxed to the consumer. If the exemption were available to the contractor upon his purchase, the consumer, who receives an estimate on the installation, may or may not receive the benefit of the resulting tax savings.

Further, energy prices are currently so high that a sales tax exemption is not necessary to motivate energy-conscious purchases. Finally, the passage of this bill would also encourage other products that also meet the energy efficiency standards of the Energy Star program to seek a similar exemption.

These products currently include home appliances, home electronics, office equipment, and lighting. Currently, the Warm Advantage program administered by the Board of Public Utilities

under the New Jersey's Clean Energy Program provides cash rebates for home heating equipment that meets certain standards. The Board of Public Utilities seems the more appropriate venue to advance further energy initiatives.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-1147

Date of Introduction: 02/04/10

Sponsor(s): Senator Bucco

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill:

Committee: Senate Budget and Appropriations Committee

Description

This bill removes investigation and security services from the imposition of sales and use tax.

Note

(The Commission addressed an identical proposal (Senate Bill No. 1200) in 2008. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill amends the Sales and Use Tax Act. (N.J.S.A. 54:32B-1 *et seq.*) to eliminate the imposition of sales and use tax on investigation and security services, which became effective October 1, 2006.

The imposition of sales and use tax on certain services and goods which were previously untaxed was a major component of the budgetary legislation that provided revenue to balance the State budget. See P.L. 2006, c.44. This bill represents an attempt by the Legislature to rescind portions of that legislation.

The approval of this bill will only hasten the call for similar legislation and further undermine the intention of P.L. 2006, c.44, reduce State revenues, and add to the State's deficit.

The Commission acknowledges the importance of homeland security and protecting critical infrastructure and assets at this time. However, this bill is too broad as written.

The Sales and Use Tax Act's definition of investigation and security services encompasses more than just security guard and patrol services. P.L. 2006, c.44 defines "investigation and security services" as:

(1) investigation and detective services, including detective agencies and private investigators, and fingerprint, polygraph, missing person tracing and skip tracing services; (2) security guard and patrol services, including bodyguard and personal protection, guard dog, guard, patrol, and security services; (3) armored car services; and (4) security systems services, including security, burglar, and fire alarm installation, repair or monitoring services. N.J.S.A. 54:32B-2(xx).

The Commission would support an amended version of this bill with the following changes: Remove paragraph 2 “security guard and patrol services, including bodyguard and personal protection, guard dog, guard, patrol, and security services” from the definition of “investigation and security services” under N.J.S.A. 54:32B-2(xx). Thus, the tax would still be imposed on paragraphs 1, 3, and 4. As written, the Commission cannot support its passage.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 8

Commission Members **Against** Proposal: 0

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-1178

Date of Introduction: 02/04/10

Sponsor(s): Senator Van Drew

Date of Consideration: 03/24/10

Identical Bill:

Committee: Senate Economic Growth Committee

Description

This bill would allow certification of a qualified UEZ retailer as a business, even if it sells items out of stock at time of purchase at a UEZ location and later mails them to purchaser from another location.

Analysis

This bill represents a 'sea change' in the underlying philosophical tenets of the original Urban Enterprise Program legislation whereby preferential treatment of businesses located in depressed economic urban areas was provided to certain businesses which sold items on-site. The continuing certification of a qualified UEZ retailer as a business which sells items *claimed* to be out of stock at the time of purchase, later mailing them to the purchaser from another of its location contravenes the intent and spirit of the UEZ enabling legislation.

The bill would be difficult to administer and enforce as there are no guidelines to clearly distinguish a "catalogue" or "mail order" business from one that simply does not keep certain items in stock at the designated qualified UEZ or UEZ-impacted business location requiring the delivery of those items from a location outside of the designated UEZ or UEZ-impacted districts. There is great potential for abusive practices arising from relaxation of the delivery requirements that qualified businesses must currently adhere to for the benefit of collecting sales tax at 50% of the current rate.

Regulations would need to be promulgated to provide specific definitions to distinguish a UEZ or UEZ impacted district business operation engaged in outside delivery of out-of-stock items from a "catalogue" or "mail order" type of business. Procedures may also have to be established that require businesses to clearly demonstrate that they are not catalogue or mail order houses, and to properly document transactions that take place under the relaxed delivery arrangements that the bill would allow. There may have to be some further step of approval which clears an

entity located in a UEZ or UEZ-impacted district from being classified as a catalogue or mail order business; a special certification process to avoid subterfuge. This agency would be greatly burdened by the additional administrative responsibilities implicit in this measure.

There appears to be no public purpose inherent in the passage of this bill, other than opening the door to fraud and undermining the original intent of the UEZ program.

Additional Information:

The legislative proposal violates the terms and conditions of the multi-state Streamlined Sales and Use Tax Agreement; New Jersey is a full participating member of the agreement and has modified its laws to that effect. The SSUTA requires that the tax treatment of any item be consistent. Imposition of a reduced sales and use tax rate based on out of stock items purchased and subsequently mailed to the purchaser from another location may rise to the level of inconsistent tax treatment contrary to the spirit of the SSUTA.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-1269

Date of Introduction: 02/08/10

Sponsor(s): Senator Madden

Senator Van Drew

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill: A-636

Committee: Senate Budget and Appropriations Committee

Description

This bill establishes an annual sales tax holiday during the first full weekend of August for the sales of computers and certain school supplies and instructional materials.

Note

(The Commission addressed an identical proposal (Senate Bill No.:1652) in 2008. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill establishes an annual “back-to-school” sales tax holiday during first full weekend of August for the sales of computers and certain school supplies and instructional materials. The exemption provides for a sales price cap of less than \$1,000 and would be available to non-business purchasers.

The limitation of the exemption to individual purchasers for non-business use would be difficult to administer. Retailers cannot reasonably be expected to recognize whether a particular individual is making a purchase for business or personal use, and it is foreseeable that, like the exemption for paper products for home use only, this personal use exemption will be widely misused and easily abused by consumers making purchases for their small businesses. Retailers would object to being required to determine whether every sale was “non-business” or to obtain an exemption certificate from every purchaser during the exclusion period.

Presumably the holiday will only affect sales within New Jersey and not use tax imposed on items purchased from outside of New Jersey. Thus, the proposal is contrary to the Commerce Clause of the United State Constitution, under which states cannot discriminate against interstate commerce. If the tax holiday is limited to sales physically taking place in New Jersey, this will create a federal Constitutional problem, since use tax is imposed when tangible property purchased out-of-State from non-New Jersey mail-order vendors is used in or delivered to New Jersey. The State cannot lawfully exempt a sale of an item taking place within New Jersey while at the same time impose tax on comparable items purchased from an out-of-State source. This scheme whereby an in-State sale would not be subject to any tax, while the full use tax of 7% would be imposed on interstate purchases used in New Jersey, discriminates against interstate commerce and would not likely survive constitutional scrutiny.

It is unlikely that consumers would enjoy a true savings as a result of a tax holiday which merely eliminates the 7% sales tax. Sales offered by the retailer, generally at a percentage far greater than 7%, result in much greater savings for the customer.

Confident that the public will be enticed to the stores by the prospect of a tax-free holiday, retailers may actually raise their "sale" prices during a tax holiday or elect not to discount regular prices. Rather than provide a savings for consumers, the bill could easily result in increased profit for vendors. Thus, consumers may not realize that they are actually paying more for the merchandise during the holiday and not enjoying a real tax savings.

The sales tax holiday would further alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer, and is generally perceived as economically neutral and "fair." When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer is relatively small, but the cumulative revenue generated can be enormous. A sales tax holiday would save an individual purchaser a fairly insignificant sum. However, the cumulative loss of revenue to the State could be substantial.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For:** Proposal: 0

Commission Members **Against:** Proposal: 8

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-1298

Date of Introduction: 02/08/10

Sponsor(s): Senator Van Drew

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill: A-2683

Committee: Senate Budget and Appropriations Committee

Description

The bill proposes to phase out sales and use tax imposed on charges for certain initiation fees, membership fees and dues.

Public Comment

The *International Health, Racquet & Sportsclub Association (IHRSA)* submitted written and oral comments in support of Assembly Bill No.: 2683. Mary Katherine Roberts, Esq. of Riker represented the IHRSA and gave the oral comments. In brief, the IHRSA argues that A-2683 would encourage New Jersey residents to live more fulfilling and healthier lives. It also proffers that the bill imposes an unfair playing field for “for-profit” healthcare centers as non-profit centers are exempt from imposition of the sales tax.

Analysis

The imposition of the sales and use tax on initiation fees and membership dues for access to or use of the property or facilities of health and fitness, athletic or sporting clubs or organizations was one component of a legislative initiative (P.L. 2006, c. 44) which increased the sales and use tax from 6% to 7% and which extended the tax to many previously untaxed services and products providing needed State revenue.

This bill represents the latest attempt by the Legislature to rescind portions of P.L. 2006, c. 44. Many other legislative proposals could be introduced calling for the exemption of other specific products and services from sales and use tax, further eroding anticipated revenue and threatening the balanced budget. The approval of such legislation would only hasten the call for

similar tax exemptions, undermine the legislative intent of P.L. 2006, c. 44 and significantly add to the State's structural deficit.

Streamlined Sales and Use Tax Agreement (SSUTA)

This measure, as written, calls into question whether it would be in compliance with the Streamline Sales and Use Tax Agreement in as much as it creates multiple taxing levels by reducing and phasing out the existing tax liability.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 6

Commission Members **Abstaining**: 0

Motion

The Commission, upon motion of the Commission Member Stephan Finkle, would support this proposal if it did not contain a "Phase-Out" of the sales and use tax imposed on charges for certain initiation fees, membership fees and dues.

On the Motion:

The Commission does support the Motion.

Commission Members **For** Motion: 3

Commission Members **Against** Motion: 2

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-1321

Date of Introduction: 02/08/10

Sponsor(s): Senator Baroni
Senator Beach

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill: A-2683

Committee: Senate Environment and Energy Committee

Description

This bill provides a sales and use tax exemption for the sales of certain Energy Star labeled residential lighting and appliances.

Note

(The Commission addressed an identical proposal (Senate Bill No.:1778) in 2008. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This proposal would require that receipts from sales of the following products sold for residential use are exempt from the tax imposed under the "Sales and Use Tax Act," P.L. 1966, c.30 (N.J.S.A. 54:32B-1 *et seq.*) if the products bear the Energy Star label: compact fluorescent light bulbs, ceiling fans, clothes washers, dehumidifiers, dishwashers, refrigerators and freezers, residential light fixtures, room air conditioners, and room air cleaners.

This bill proposes to eliminate sales tax on the purchase of a wide range of the energy-efficient residential use items. Generally, the Commission does not support the use of tax policy as a means of influencing consumers' purchasing decisions and other behavior, even though the behaviors promoted might be beneficial to the State. Further, energy prices are currently so high that a sales tax exemption is not necessary to motivate energy-conscious purchases. The passage of this bill would also encourage other products that also meet the energy efficiency standards of the Energy Star program to seek a similar exemption.

These products currently include home electronics, office equipment, and household heating or cooling units. Currently, the Board of Public Utilities under the New Jersey's Clean Energy Program provides cash rebates or other incentives for certain energy-efficient home purchases. The Board of Public Utilities seems the more appropriate venue to advance further energy initiatives.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal:

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-1322

Date of Introduction: 02/08/10

Sponsor(s): Senator Baroni

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill: A-1253

Committee: Senate Environment and Energy Committee

Description

The bill provides an exemption from sales tax on the purchase of new hybrid motor vehicles and new motor vehicles with an average fuel economy of at least 35 miles per gallon.

Note

(The Commission addressed an identical proposal (Senate Bill 1550) in 2008. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

This bill proposes to amend the Sales and Use Tax Act (N.J.S.A. 54:32B-1 *et seq.*) to provide an exemption for the sale of new hybrid vehicles and motor vehicles with a highway miles-per-gallon fuel efficiency rating of 35 or higher. Currently, the law allows for an exemption for zero emission vehicles which are vehicles certified pursuant to the California Air Resources Board zero emission standards for the model year. See N.J.S.A. 54:32B-8.55.

A sales tax exemption for sales of fuel-efficient motor vehicles could open the door for similar tax exemptions on devices the use of which may also be viewed as good for the environment. Generally, the Commission does not support the use of tax policy as a means of influencing consumers' purchasing decisions and other behavior, even though the behaviors promoted might be beneficial to the State.

Additionally, the exemption would further alter the broad-based nature of the sales and use tax. Loss of revenue to the State on big-ticket items, such as automobiles, is substantial. Particularly now, as the State is experiencing a budgetary crisis, the Commission cannot support passage of this bill.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For:** Proposal: 0

Commission Members **Against:** Proposal: 8

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-1354

Date of Introduction: 02/08/10

Sponsor(s): Senator Oroho

Date of Consideration: 03/24/10

Co-Sponsor(s):

Identical Bill: A-159

Committee: Senate Economic Growth Committee

Description

This bill carves out stall rentals from the recent imposition of sales tax on the furnishing of space for storage and establishes a new exemption for “equine-related services rendered in connection with the boarding of the horse, pony, mule, donkey or hinny while...boarded by the keeper of a livery stable or a boarding and exchange stable.”

Note

(The Commission addressed an identical proposal (Assembly Bill No.:3602) in 2009. The analysis and recommendation below were reaffirmed by the Commission Members on March 24, 2010.)

Analysis

Under the provisions of this bill, the recent imposition of sales tax on space for storage is being chipped away to exclude stall rentals. The Commission has consistently taken the position that the new areas of imposition that came into effect under P.L.2006, c. 44 should not be undermined.

Further, the services which are the subject of the proposed exemption have always been subject to sales tax as services to tangible personal property. No justification was advanced that would rationalize creating a new exemption now when the State is in such a tenuous fiscal position.

Recommendation

The Commission recommends enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-1496

Date of Introduction: 02/22/10

Sponsor(s): Senator Oroho

Date of Consideration: 03/24/10

Senator O'Toole

Co-Sponsor(s):

Identical Bill: A-2315

Committee: Senate Community and Urban Affairs Committee

Description

The bill provides for an exception to the imposition of sales and use tax on membership fees and other related fees charged by lake associations.

Analysis

This bill attempts to rescind certain portions of Chapter 44, P.L. 2006, by removing the imposition of sales tax on membership fees and other related fees charged by lake associations. The imposition of sales tax on membership fees and other related fees charged by lake associations was included in a major piece of legislation passed in July 2006, which increased sales tax from 6% to 7% throughout the State. Sales and use tax was extended to many previously untaxed services and products in an effort to provide added revenue for the State.

The fiscal impact of this bill is expected to be significant and would undermine the intent of Chapter 44, P.L. 2006, which was to raise much needed revenue for the State. By changing the law now to eliminate the imposition of sales tax membership fees and other related fees charged by lake associations would reverse the effect of the legislation, which was passed in October 2006, after much thought and deliberation. Passage of the proposal purports to promote the existence of private lake associations, which are said to serve an economic and environmental purpose in lake communities.

The Commission notes that these associations may utilize a portion of these fees to maintain property but also use these funds to allow for exclusive access rights and uses of said property.

As such, the underlying purpose of the sales tax imposition on membership and related fees seems appropriate. Further, the tax is not directly imposed upon the nonprofit association, rather on its consumers and membership seeking exclusive access.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-1637

Date of Introduction: 03/04/10

Sponsor(s): Senator Kean

Date of Consideration: 03/24/10

Senator Van Drew

Co-Sponsor(s):

Identical Bill: A-2362

Committee: Senate Economic Growth Committee

Description

This bill establishes temporary sales and use tax rate reduction periods for sales of certain goods and services.

Analysis

This bill would provide a sales use tax rate reduction period beginning: (1) on and after March 19, 2010 but before March 29, 2010; (2) on and after July 2, 2010 but before July 12, 2010; and (3) on and after October 10, 2010 but before October 20, 2010. The rate of 3.5% would be imposed on sales made during a tax reduction period, admissions charges paid during a tax reduction period, rents for occupancies during a tax reduction period, and uses beginning during a tax reduction period

While the Commission understands the public appeal of these programs, the loss of revenue greatly outweighs the small benefits experienced by the purchasers. When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer is relatively small but the cumulative revenue generated can be enormous. A sales tax holiday would save an individual purchaser a fairly insignificant sum. However, the cumulative loss of revenue to the State could be substantial.

The Commission does not support the use of implementing sales tax policy for the purpose of influencing consumer purchases. Any impact would be temporary in nature and not result in a permanent change to purchasing patterns.

Further, New Jersey is a member state of the Streamlined Sales and Use Tax Agreement, which provides for limitations on sales tax holidays.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-1855

Date of Introduction: 05/10/10

Sponsor(s): Senator Bucco

Date of Consideration: 06/30/10

Co-Sponsor(s):

Identical Bill: A-2607

Committee: Senate Economic Growth Committee

Description

The bill proposes to provide sales and use tax exemption for certain packaging equipment.

Analysis

The proposed bill attempts to broaden the manufacturing exemption. It is unclear, however, whether the expanded exemption would simply benefit manufacturers who have post-production processes on their facilities, or to expand the exemption to third-party packaging facilities or distributors.

There is also the wrapping supplies exemption which may be used by manufacturers and distributors who meet eligibility requirements.

The critical flaw in this measure is the lack of a definition for “packaging” which will make it very difficult to administer.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 2

Commission Members **Against** Proposal: 4

Commission Members **Abstaining:** 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-1949

Date of Introduction: 05/20/10

Sponsor(s): Senator Sweeney
Senator Kean

Date of Consideration: 06/30/10

Co-Sponsor(s):

Identical Bill: A-2767

Committee: Senate Environment and Energy Committee

Description

The bill proposes to provide energy and utility service sales tax relief benefit to certain manufacturers throughout the State.

Analysis

This bill provides a partial (50%) exemption from the imposition of the sales and use tax for sales of energy and utility service to certain manufacturers throughout the State. Currently, certain manufacturers located within an urban enterprise zone and Salem County under section 23 of P.L. 2004, c. 65 (C. 52:27H-87.1) are entitled to a 100% exemption on these sales.

If this measure is enacted, other entities struggling in this economy will be encouraged to seek similar legislative relief.

The sales and use tax is a broad-based tax that is designed to raise revenue from the imposition of tax at a relatively low rate on a large amount of transactions. Exclusions from the tax greatly impact on the very nature of the tax and the requirements to raise needed revenue. An exclusion of energy and utility service from sales and use tax would save an individual manufacturer a fairly insignificant sum every year. However, the cumulative loss of revenue to the State leaves the State to find other means of generating the revenue lost as a result of this exclusion.

This proposal, if enacted into law, would create an extremely administrative burden upon the Division of Taxation. As there is no mechanism in place to permit a partial exemption (50% tax

liability reduction) to customers of energy and utility service sales tax before those services are extended to the customer, a refund process would have to be established.

Accurate monitoring of the proposal would also create additional complexities. Daily and quarterly monitoring would not likely occur and the Economic Development Agency would, at best, provide an annual review with an aggregate of the certification compliance for the year.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 6

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-2005(1R)

Date of Introduction: 05/27/10

Sponsor(s): Senator Smith

Date of Consideration: 06/30/10

Senator Batement

Identical Bill:

Committee: Senate Environment and Energy Committee

Description

The bill would provide sales and use tax exemption for wind energy equipment.

Analysis

This bill requires the Board of Public Utilities (BPU) to establish regulations which would set standards with respect to the technical sufficiency of wind energy systems for purposes of the exemption. These standards are necessary for the Division of Taxation to administer this exemption properly as this agency possesses no expertise in such matters.

The bill permits a retroactive rebate of tax for wind energy devices or systems installed after June 30, 1977 and include those installed up to a future date 60 days subsequent to the bill's enactment. The taxpayer has 180 days after this measure's effective date to file for the rebate. The bill only allows this agency 20 days to process and issue the rebate, a 'turnaround time' that may be administratively impossible. It is very likely that records do not exist to verify claims that result from installations which may have occurred over thirty years ago, increasing the likelihood of fraud.

This sales tax exemption could open the door for similar tax exemptions on devices that may also be viewed as good for the environment. Any such devices that would be beneficial for environmental purposes should require a careful evaluation to determine whether it is prudent to enact a tax exemption to encourage its use.

Additional Information:

This bill does not appear to violate the Streamlined Sales and Use Tax Agreement.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 6

Commission Members **Abstaining**: 0

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-2132

Date of Introduction: 06/24/10

Sponsor(s): Senator Van Drew
Senator Whelan

Date of Consideration: 09/15/10

Identical Bill: A-1559

Committee: Senate Economic Growth

Description

This bill would allow a point of sale sales tax exemption for certain UEZ business purchases made by certain zone-located qualified businesses.

Public Comment

The *Independent Pharmacy Alliance (IPA)* submitted written comments in support of Senate Bill No.: 2132. John Covello, Executive Director, Government Affairs, presented the oral comments before the Commission. In brief, the IPA argues that S-2132 would correct a tax policy that penalizes, rather than rewards small businesses that have stayed invested in New Jersey's urban communities through a very difficult economic crisis. It also proffers that the reimbursement process as it is under the current law unfairly impacts pharmacies which are generally solo operated thus preventing the owner of the opportunity to even complete the paperwork and submissions in order to be considered for a refund. This unfair position causes honest business people to lose 100s of dollars each year.

Analysis

This measure attempts to extend to a "zone-located qualified business" the point-of-sale exemption originally granted to "small qualified businesses" by P.L. 2006, c.34 (subsequently amended by P.L. 2007, c. 328 and P.L. 2008, c. 118). The intent of the original measure was to reduce fraud and abuse of the tax exemption available to urban enterprise zone-certified businesses and the subsequent amendments were designed to reduce any unintended burden on small businesses in the zones by allowing them to purchase goods for their own use sales-tax-free without having to pay the tax first and then apply for a refund.

This proposal would allow entities of any size to receive the point-of-sale exemption if the Division of Taxation can certify that the business is only located in, or has multiple locations only in urban enterprise zones. There would be no satisfactory method of ensuring that a particular business only has locations in such zones, especially with the proposed language in the definition of “zone-located qualified business” concerning affiliated entities. The Director of the Division of Taxation does not currently certify zone businesses; this responsibility is properly within the Department of Community Affairs which is staffed with personnel to perform site visits.

The New Jersey corporate business tax differs from the federal corporate tax in many ways, including the treatment of affiliates. There is no way to capture the identities of affiliates for New Jersey purposes, so it would be difficult to assess whether a particular entity meets the location test in the new zone-located business definition.

The requirement in this measure for the submission of proposed rules to the Senate Budget and Appropriations Committee and the Assembly Budget Committee is unworkable. The promulgation of rules by this agency occurs only after initial implementation of a particular statute. The rules are then designed to clarify both ambiguities in the law discovered in the implementation and the concerns raised by the affected taxpayer population. Although the rules which are proposed by this agency are designed to strictly construe and carry out the law, sensible rulemaking dictates that regulatory schemes address real-world concerns which are unknowable until after initial statutory implementation.

Attempts to alleviate the claimed burdens of P.L. 2006 c. 34 have resulted in the extension of the point-of-sale exemption to otherwise-qualified small businesses whose gross revenues do not exceed \$10 million. The passage of this measure would effectively cause a return to practices prior to the passage of that statute.

This bill would allow preferential treatment of certain corporate entities based on formation and affiliation. It would also dilute the integrity of the UEZ program by allowing entities that do not follow the normal process for certification and approval as a UEZ qualified business to receive UEZ tax benefits and incentives.

If the desire is to restore the point-of-sale exemption to all certified Urban Enterprise Zone businesses, a far better strategy would be to repeal P.L. 2006, c.34 rather than to carve out additional exceptions which the Division of Taxation is unable to administer.

Additional Information:

In the *Report to the Transition Team Subcommittee on Economic Development & Job Growth* (dated 1/14/2009), Recommendation F called for “legislation to eliminate the cumbersome UEZ rebate regulations that require UEZ -based businesses to pay sales tax and then apply for a tax rebate on formerly tax exempt purchases, saving both the Division of Taxation and businesses significant resources needed to administer the program.”

Previous Action

At the Commission’s June 30, 2010 meeting, the body considered an identical bill, Assembly Bill No. 1559. The following motion was entertained at that time:

Motion

The Commission, upon motion of the Commission Member Chris Jeter, supports a broader repeal of P.L.2006, c.34 as reflected in Recommendation F of the *Report to the Transition Team Subcommittee on Economic Development & Job Growth* (dated 1/14/2009). In addition, the Commission reiterated its consistent desire that the Urban Enterprise Zone laws be studied for its effectiveness.

On the Motion (June 30, 3010):

The Commission does support the Motion.

Commission Members **For** Motion: 3

Commission Members **Against** Motion: 0

Commission Members **Abstaining**: 2

Recommendation

Upon motion, the Commission does not recommend enactment of this bill based upon its previous analysis and no additional information submitted causing a contrary recommendation.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 6

Commission Members **Abstaining**: 1

CHAPTER 24A

SALES AND USE TAX REVIEW COMMISSION

SUBCHAPTER 1. GENERAL PROVISIONS

18:24A-1.1 Purpose and objectives

The Sales and Use Tax Review Commission (the "Commission"), was established by P.L. 1999, c.416, codified at N.J.S.A. 54:32B-37 to 54:32B-43 (the "Act"), for the purpose of reviewing bills introduced in the Legislature which would expand or reduce the base of the Sales and Use Tax, N.J.S.A. 54:32B-1 et seq. The Commission may analyze a bill's fiscal impact, make comments upon or recommendations concerning a bill, and suggest alternatives to the Legislature. By law, the Commission is in but not part of the Department of the Treasury.

SUBCHAPTER 2. ORGANIZATION AND OPERATION OF THE COMMISSION

18:24A-2.1 Organization

(a) The Commission consists of no more than 10 members: the State Treasurer, ex officio, or the State Treasurer's designee, and three other members of the Executive Branch appointed by the Governor; two public members to be appointed by the President of the Senate, no more than one of whom shall be of the same political party; two public members to be appointed by the Speaker of the General Assembly, no more than one of whom shall be of the same political party; and two public members, no more than one of whom shall be of the same political party, to be appointed by the Governor with the advice and consent of the Senate.

(b) The officers of the Commission shall include a Chairman appointed by the Governor from among its public members.

18:24A-2.2 Meetings of the Commission

(a) The Chair of the Commission may establish a schedule of regular meetings for the calendar year, setting forth the date, time and location of each meeting, no later than January 10 of such year, and shall make any such schedule available for inspection by the public. The schedule of regular meetings may be revised provided that the notice of such revision is given.

(b) Meetings may be called at any time by the Chair or by any three members of the Commission as the business of the Commission may require.

(c) Emergency meetings may be called by the Chair at any time.

(d) Notice of any meeting shall be given sufficiently in advance of such meeting to permit the submission of written comments and requests for permission to give oral comments at the meeting, as provided in N.J.A.C. 18:24A-3.1.

(e) Notice of any such meeting can be obtained from the following locations:

- i. New Jersey Legislative Calendar (www.njleg.state.nj.us);

- ii. New Jersey Division of Taxation website (www.state.nj.us/treasury/taxation); and
- iii. Sales and Use Tax Review Commission Meeting Announcement Bulletin. Legislative Information and Bill Room (BO1) State House Annex Basement (609) 292-4840.

18:24A-2.3 Quorum; votes

(a) A majority of the current membership of the Commission shall constitute a quorum at any meeting. Actions may be taken and motions and resolutions may be adopted by the Commission by the affirmative majority vote of those members present and constituting a quorum. Any member may abstain from a vote.

(b) Members need not be physically present to attend and constitute a quorum at a meeting, but may attend by way of telephone conference or other technology whereby each member may be heard by others in attendance and whereby each member may hear the proceedings at the meeting.

SUBCHAPTER 3. INFORMATION AND FILINGS

18:24A-3.1 Comment on the work of the Commission

The Commission shall accept written comments with respect to any bill it is reviewing and shall keep such comments in the record of any action taken by the Commission with respect to such bill provided that any written comment is received 10 days in advance of any meeting called pursuant to N.J.A.C. 18:24A-2.2(a) or (b). Written comments shall be received during or immediately following any emergency meeting.

18:24A-3.2 Oral comments

The Commission may hear oral comments on any bill being reviewed by the Commission only upon a written request made in advance of any meeting and in the sole discretion of the Chair of the Commission. At the beginning of a meeting, the Chair may place time restrictions and such restrictions as deemed necessary for the conduct of business on any oral comment.

18:24A-3.3 Notice of policies

Notice of the Commission's policies regarding submission of written comments and requests to address the Commission orally shall be included in every notice of a meeting.

18:24A-3.4 Inquiries and communications to the Commission

Inquiries or written comments with respect to any bill being reviewed by the Division, and written requests for oral comments may be submitted to Executive Secretary, Sales and Use Tax Review Commission, c/o The Division of Taxation, 50 Barrack Street, PO Box 269, Trenton, New Jersey 08695-0269 or e-mail at nj.sutrc@treas.state.nj.us.

18:24A-3.5 Reports of the Commission

The Commission shall report on its activities by December 31 of each year to the Legislature and may issue periodic reports concerning legislation reviewed by the Commission. Copies of any such report may be obtained from the Executive Secretary of the Commission.

