

### Sales and Use Tax Review Commission Recommendations - 2009

The analysis provided in support of the Review Commission's recommendations is based on discussions by Commission members as well as information that may be provided to the Commission by third parties, and does not necessarily reflect the opinion or judgment of any individual Commission member.

Bill Number	Description	Recommendation Date
A-4041	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%.	August 26, 2009
A-4081/S-2914	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.	August 26, 2009
A-4125/S-2918	Exempts from sales tax for two years certain hybrid and highly fuel efficient vehicles and energy efficient appliances.	August 26, 2009
S-2965	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.	August 26, 2009
<del>A-3339/</del> <del>S-2557</del>	Concerns on-site generation facilities.	March 11, 2009
<del>A-3427</del>	Provides sales tax exemption for sales of prepared foods.	March 11, 2009
<del>A-3602</del>	Excludes certain stable stall rentals from sales and use tax imposition and provides sales and use tax exemption for sales of equine-related services.	March 11, 2009
<del>A-3750</del>	Consumer Relief Act of 2009; establishes temporary sales and use tax rate reduction periods for sales of certain goods and services.	March 11, 2009
<del>S-2565</del>	Consumer Relief Act of 2009; establishes temporary sales and use tax rate reduction periods for sales of certain goods and services.	March 11, 2009
<del>S-2451</del>	Provides exemption from tax on sales of certain energy saving products and services purchased from businesses located in UEZ.	March 11, 2009
<del>S-2482</del>	Provides sales and use tax exemption for natural gas and utility service purchased or used by certain co-generation facilities in production of electricity and steam or other forms of useful energy.	March 11, 2009

Last Updated: Wednesday, 10/20/10



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

**BILL NUMBER:**  
A-3339

**DATE OF INTRODUCTION:**  
October 23, 2008

**SPONSOR:**  
Assemblyman Chivukula

**DATE OF RECOMMENDATION:**  
March 11, 2009

**IDENTICAL BILL:**  
S-2557

**COMMITTEE:**  
Assembly Telecommunications and Utilities Committee

12/8/2008- Reported as an Assembly Committee Substitute (for A3339 and A3439) and Referred to Assembly Appropriations

**DESCRIPTION:**

This bill expands the current exemption on charges for electricity and natural gas provided under N.J.S.A.54:32B-8.46 by adding language at the end of the exemption to further explain what is deemed to be "contiguous" for purposes of the exemption. The current exemption does not define contiguous so the common usage of the term has been determinative to date. The bill states that "an end use customer's property shall be deemed contiguous to the property on which the on-site generation facility serving that customer is located if the customer is purchasing thermal energy services produces by the facility, for use for heating, air conditioning, or both, regardless of any intervening property, public thoroughfare, transportation, or utility-owned right-of-way."

Currently, there is a provision in the law that exempts the purchase or use of natural gas and utility service that is used for cogeneration at any site at which a cogeneration facility was in operation on or before March 10, 1997, or for which an operating permit or a construction permit and certificate of operation has been filed with the Department of Environmental Protection on or before March 10, 1997, to produce electricity for use on that site.

Any facilities that were not in operation on or before March 10, 1997 are entitled to an exemption for purchases of natural gas and utility service that is used to generate electricity that is either 1) sold for resale, or 2) sold to an end user other than the end user upon whose property is located the cogeneration facility or self-generation unit that generated the electricity, or upon the property purchased or leased from the end user by the person owning the cogeneration facility or self-generation unit if such property is contiguous to the user's property and is the property upon which is located the cogeneration facility or self-generation unit that generated the electricity.

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The amendments proposed would expand the exemption currently available to facilities in operation after March 10, 1997.

**ANALYSIS:**

The Commission heard testimony from Joe Sullivan, Business Ombudsman, Board of Public Utilities and Fred DeSanti, MC2 Public Affairs, L.L.C. in support of the bill.

The Commission recognizes that there is a disparity in the current available exemptions to cogeneration facilities that were in operation on or before March 10, 1997 and those that were in operation after that date. Enactment of this legislation would put cogeneration facilities on a more equal "playing field".

The Commission also is aware of the Governor Corzine's Energy Master Plan for New Jersey and understands that this bill is a significant component of the effort.

**RECOMMENDATION:**

The Commission recommends enactment of this legislation.

**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-3427

**DATE OF INTRODUCTION:**

November 13, 2009

**SPONSOR:**

Assemblyman Polistina

**DATE OF RECOMMENDATION:**

March 11, 2009

**IDENTICAL BILL:**

**COMMITTEE:**

Assembly Appropriations Committee

**DESCRIPTION:**

This bill provides for the expansion of the current sales tax exemption for sales of food and food ingredients to include sales of prepared food.

**ANALYSIS:**

This initiative has been advanced as a "fiscal stimulus" to the restaurant industry. The Commission recognizes the desire to adopt laws and policies that will encourage the stability and recovery of small businesses in the State that have suffered from the recent economic downturn. However, it does not agree that an expansion of the sales tax exemption on food will act toward accomplishing that goal. Without substantive evidence to support the sponsor's assertions, the Commission can not support any legislation that will result in such a significant loss of revenue to the State.

**RECOMMENDATION:**

The Commission does not recommend enactment of this legislation.

**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-3602

**DATE OF INTRODUCTION:**

January 13, 2009

**SPONSOR:**

Assemblywoman McHose  
Assemblyman Chiusano

**DATE OF RECOMMENDATION:**

March 11, 2009

**IDENTICAL BILL:**

**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."

**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 does not recommend enactment of this legislation.

**COMMISSION MEMBERS FOR PROPOSAL: 0**

**COMMISSION MEMBERS AGAINST PROPOSAL: 8**

**COMMISSION MEMBERS ABSTAINING: 0**

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

**BILL NUMBER:**

A-3750

**DATE OF INTRODUCTION:**

February 9, 2009

**SPONSOR:**

Assemblyman Polistina  
Assemblywoman Casagrande

**DATE OF RECOMMENDATION:**

March 11, 2009

**IDENTICAL BILL:**

S-2565

**COMMITTEE:**

Assembly Appropriations Committee

**DESCRIPTION:**

This bill establishes three ten-day periods of reduced sales tax imposition; in March, July and Fall. The bill provides for a State-wide sales tax rate of 3.5% during the proscribed time periods. Although the bill statement refers to a rate reduction for Urban Enterprise Zone areas as well, there is no language in the bill to establish such a reduction. The bill authorizes the Director to reduce the sales tax rate to a rate lower than 3.5% if Federal stimulus funds are available to offset the State's revenue loss during such periods.

**ANALYSIS:**

Pursuant to the Streamlined Sales and Use Tax Agreement, and sales tax holiday must conform to the limitations provided under the Agreement. The Agreement requires that sixty days notice must be given prior to the beginning of the calendar quarter in which the holiday would occur. Therefore, the State could not provide the proper notice for any rate reduction in March and will shortly have a notice problem with July. Further, sales tax holidays must be available only on items that are defined within the Agreement's Library of Definitions. Enactment of this proposal would likely take New Jersey out of compliance with the Agreement.

Also, it is not clear that a half sales tax holiday would influence consumer spending in a significant way as to justify a loss in revenue to the State in this fragile economic time.

**RECOMMENDATION:**

The Commission does not recommend enactment of this legislation.

**COMMISSION MEMBERS FOR PROPOSAL: 0**

**COMMISSION MEMBERS AGAINST PROPOSAL: 6**

**COMMISSION MEMBERS ABSTAINING: 2**

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

**BILL NUMBER:**

S-2565

**DATE OF INTRODUCTION:**

February 23, 2009

**SPONSOR:**

Senator Kean

Senator Bucco

**DATE OF RECOMMENDATION:**

March 11, 2009

**IDENTICAL BILL:**

A-3750

**COMMITTEE:**

Senate Economic Growth Committee

**DESCRIPTION:**

This bill establishes three ten-day periods of reduced sales tax imposition; in March, July and Fall. The bill provides for a State-wide sales tax rate of 3.5% during the proscribed time periods. Although the bill statement refers to a rate reduction for Urban Enterprise Zone areas as well, there is no language in the bill to establish such a reduction. The bill authorizes the Director to reduce the sales tax rate to a rate lower than 3.5% if Federal stimulus funds are available to offset the State's revenue loss during such periods.

**ANALYSIS:**

Pursuant to the Streamlined Sales and Use Tax Agreement, and sales tax holiday must conform to the limitations provided under the Agreement. The Agreement requires that sixty days notice must be given prior to the beginning of the calendar quarter in which the holiday would occur. Therefore, the State could not provide the proper notice for any rate reduction in March and will shortly have a notice problem with July. Further, sales tax holidays must be available only on items that are defined within the Agreement's Library of Definitions. Enactment of this proposal would likely take New Jersey out of compliance with the Agreement.

Also, it is not clear that a half sales tax holiday would influence consumer spending in a significant way as to justify a loss in revenue to the State in this fragile economic time.

**RECOMMENDATION:**

The Commission does not recommend enactment of this legislation.

**COMMISSION MEMBERS FOR PROPOSAL: 0**

**COMMISSION MEMBERS AGAINST PROPOSAL: 6**

**COMMISSION MEMBERS ABSTAINING: 2**