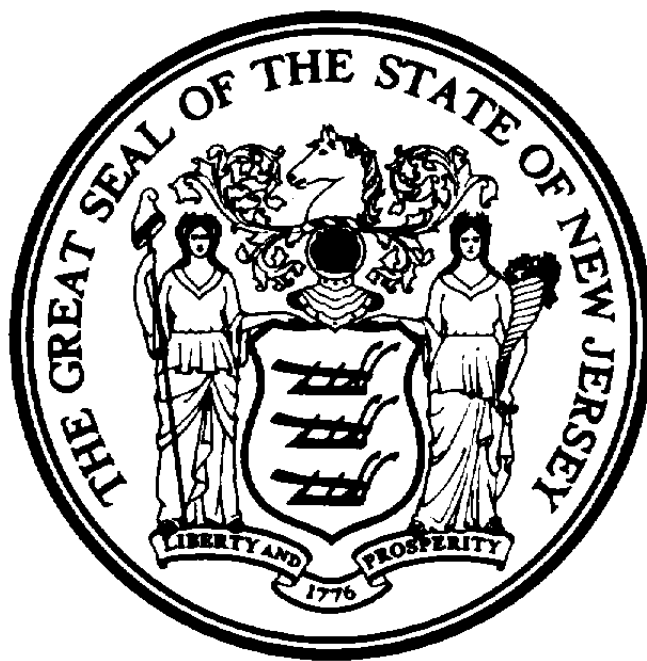


Sales and Use Tax Review Commission



**2007
ANNUAL REPORT**

Sales and Use Tax Review Commission 2007 Annual Report

Annual Report to the New Jersey Legislature
Issued pursuant to N.J.S.A. 54:32B-43

December 31, 2007

Table of Contents

Commission Membership and Executive Staff	v
Overview of Authorizing Legislation	1
Standards of Analysis for Review of Sales and Use Tax Legislation	3
List of Bills Reviewed by Commission	5
Bill Recommendations Issued by Commission	
A-3679	7
A-3885/S-2556	9
A-3938/S-2491	10
A-4036	11
A-4104	12
A-4113/S-749	13
S-2462/A-3935	15
S-2498/A-3961	16
S-2592	17
Sales and Use Tax Review Commission Regulations	18

2007 Commission Membership and Executive Staff

Public Members

APPOINTED BY GOVERNOR

Deborah R. Bierbaum
AT&T
One AT&T Way – Room 4A221
Bedminster, NJ 07921
(908) 234-8323
(908) 532-1341 (fax)
e-mail: bierbaum@att.com

Alan J. Preis
30 Columbia Turnpike
Florham Park, NJ 07932
(973) 660-0444
e-mail: ajpcpa2000@aol.com

APPOINTED BY SENATE

James Appleton
President, New Jersey Coalition of Automotive Retailers
P.O. Box 7510
Trenton, NJ 08628
(609) 883-5056 Ext. 330
e-mail: jappleton@njcar.org

Susan A. Feeney
McCarter & English
100 Mulberry Street, Four Gateway Center
P.O. Box 652
Newark, NJ 07101
(973) 639-2087
(973) 624-7070 (fax)
e-mail: sfeeney@McCarter.com

APPOINTED BY GENERAL ASSEMBLY

Rafael Cuellar
President and CEO of ECO & Sons, Inc.
503 Paulison Avenue
Passaic, NJ 07055
(973) 417-9905
e-mail: rcuellar@ecoandsons.com

Warren Goode
1025 Highway #35
Ocean, NJ 07712-4048
(732) 531-1400
(732) 531-1572 (fax)
e-mail: warren001@aol.com

Executive Branch

Maureen Adams
Director
Division of Taxation
50 Barrack Street, P.O. Box 240
Trenton, NJ 08695
(609) 292-5185
e-mail: maureen.adams@treas.state.nj.us

B. Stephan Finkel
Assistant Attorney General
Justice Complex, 8th Floor West Wing
P.O. Box 080
Trenton, NJ 08625
(609) 984-9495
(609) 633-8087 (fax)
e-mail: stephan.finkel@lps.state.nj.us

Robert L. Garrenger, III
125 West State Street
P.O. Box 001
Trenton, NJ 08625
e-mail: robert.garrenger@gov.state.nj.us

Executive Secretary

Francis J. Mahon
Regulatory Services Branch
Division of Taxation
50 Barrack Street, P.O. Box 269
Trenton, NJ 08695
(609) 292-5995
e-mail: frank.mahon@treas.state.nj.us

Staff Contributors

Dorothy Aicher
Carol Bell
Beth Berniker
Susan Greitz
Elizabeth Lipari
Carol M. Trovato

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.*

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.*

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.*

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

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.

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

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 five fiscal years:

Fiscal Year	Sales and Use Tax Collections
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

(from January 1 – December 31, 2007)

Bill Number	Description	Recommendation Date
A-3679	Exempts certain charges for postage included in direct-mail processing services from sales and use tax.	6/28/07
A-3885/S-2556	Phases out sales and use tax on certain initiation fees, membership fees and dues.	06/28/07
A-3938/S-2491	Allows point-of-purchase sales tax exemption for UEZ business purchases by businesses only located in an urban enterprise zone.	06/28/07
A-4036	Eliminates sales tax on charges for storage space and exempts initiation fees, membership fees and dues for residential health and fitness facilities from sales and use tax.	06/28/07
A-4104	Removes sales tax on charges for massage, bodywork, and somatic services.	06/28/07
A-4113/S-749	Provides a sales tax exemption for advanced technology partial zero emission vehicles and imposes a surcharge on certain automobiles.	06/28/07
S-2462/A-3935	Exempts certain lake association membership fees and dues from sales and use tax.	02/07/07
S-2498/A-3961	Exempts initiation fees, membership fees and dues of certain golf clubs and organizations from sales and use tax.	06/28/07
S-2592	Removes investigation and security services from sales and use tax.	06/28/07

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

Bill Number:	A-3679	Date of Introduction:	11/20/06
Sponsor:	Assemblyman Giblin	Date of Recommendation:	06/28/07
Identical Bill:			
Committee:	Assembly Budget		

Description

This bill exempts charges for postage included in delivery charges for direct-mail processing services from sales and use tax.

Analysis

This bill is proposed to amend the Sales and Use Tax Act, N.J.S.A. 54:32B-1, *et seq.*, to reinstate the exemption for charges on postage used in connection with the distribution of direct-mail processing services. The bill excludes receipts from postage paid to deliver direct-mail processing services if the charges for postage are separately stated on an invoice, bill, or similar document presented to the purchaser.

Prior to October 1, 2006, charges for the delivery of goods and services were not subject to sales tax. On and after October 1, 2006, the exemption for delivery charges was modified, whether or not separately stated from the purchase price of an item on the invoice, bill, or similar document given to the purchaser. N.J.S.A. 54:32B-2(oo)(1). The law currently provides for the taxation of delivery charges on taxable items and retains the exemption for delivery charges on nontaxable items.

Effective October 1, 2006, the definition of "sales price" is

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

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

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

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

(D) **Delivery charges;**

(E) Installation charges; and

(F) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

See N.J.S.A. 54:32B-2(oo) (emphasis added).

Since October 1, 2005, the law defines “Delivery Charges” as charges by the seller for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, **postage**, handling, crating, and packing. N.J.S.A. 54:32B-2(rr). If a shipment includes both exempt and taxable property, the seller should allocate the delivery charge by using: (1) a percentage based on the total sales price of the taxable property compared to the total sales price of all property in the shipment; or (2) a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment. N.J.S.A. 54:32B-2(rr). Thus, only the portion of the delivery charge that relates to the taxable property or services is subject to tax.

Sales tax is imposed on sales of direct-mail material and direct-mail processing services; however, there is an exemption for direct-mail material delivered to out-of-State recipients, as well as for the direct-mail processing services performed in connection with such material. N.J.S.A. 54:32B-8.39; N.J.S.A. 54:32B-3(b)(5). Processing services are described as addressing, separating, folding, inserting, sorting, and packaging advertising material and transporting to the point of shipment.

In other words, effective October 1, 2006, “sales price” includes delivery charges. Since postage is the means by which direct mail is delivered (delivery is part of the processing service), it is now part of the “sales price” because the definition of “delivery charges” includes postage.

Thus, postage charged to a customer as part of a receipt for direct-mail processing services where the property is delivered out-of-State is not taxable. N.J.S.A. 54:32B-8.39. However, for direct-mail processing services where the property is delivered to a location in this State, since “postage” is specifically included in the definition of “delivery,” the postage expense is part of the taxable receipt, whether or not separately stated to the customer. Since delivery charges only refer to charges made by the seller of goods and services, the purchase of postage directly from the United States Postal Service remains nontaxable.

If this bill is not enacted, the industry will simply resort to self-help strategies. Specifically, the direct-mail customer will simply purchase the postage from the United States Postal Service directly or establish an account with the United States Postal Service that the direct-mail seller can utilize.

The Committee is concerned that the passage of this bill may violate the Streamlined Sales and Use Tax Agreement. In addition, since the subject matter of this bill is currently a matter of discussion in the State and Local Advisory Council, the Committee stated that it is prudent to wait on the enactment of this bill.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposal:	3
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-3885	Date of Introduction:	01/09/07
Sponsor:	Assemblyman Albano Assemblyman Gusciara Assemblyman McKeon Assemblyman Van Drew	Date of Recommendation:	06/28/07
Identical Bill:	S-2556		
Committee:	Assembly Budget		

Description

The bill provides for a phase-out of the imposition of sales and use tax on certain membership fees and dues.

Analysis

The New Jersey Sales and Use Tax Act was recently amended to impose tax on "initiation fees, membership fees or dues for access to or use of the property of facilities of a health and fitness, athletic, sporting or shopping club or organization in this State, except from membership in a club or organization whose members are predominantly age 18 or under."

This proposal intends to phase out the imposition over the span of two years at half the tax rate from January 1, 2008, to December 31, 2008, and with a scheduled sunset date of January 1, 2009.

As this area of imposition has just been enacted and effective as of October 1, 2006, this area is a new revenue source for the State. The Commission has not been presented with any reasoning compelling enough to support repeal of this new initiative.

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-3938	Date of Introduction:	01/25/07
Sponsor:	Assemblyman Burzichelli Assemblyman Cryan Assemblyman Fisher Assemblyman Manzo Assemblyman Van Drew Assemblyman Vas	Date of Recommendation:	06/28/07
Identical Bill:	S-2491		
Committee:	Assembly Budget		

Description

The bill would amend the Urban Enterprise Zone sales tax exemption for UEZ purchases, primarily by extending the point-of-purchase exemption to businesses only located in a zone. More specifically, the bill would amend P.L. 2006, c.34, which allows only small qualified businesses to have a point-of-purchase exemption and which provides that other UEZ businesses must obtain exemption by applying for a refund of sales and use tax. Also, the bill clarifies that UEZ businesses that obtain exemption through a refund application are not also required to self-assess use tax. Further, the bill requires the State, under certain circumstances, to pay interest on a refund that was delayed due to the taxpayer needing to "perfect" the claim for refund.

Analysis

The bill would loosen UEZ restrictions enacted a year ago, which were an attempt to reduce fraud in the UEZ exemption program. The Division commented that it will have difficulties administering the bill's criteria for determining whether a business is only zone-located. The Commissioners noted that UEZ businesses find it unduly time consuming to assemble the paperwork to apply for a refund of sales tax, which burden would be decreased by the bill.

The Division also has commented that the provisions to expand the requirement to pay interest on refunds (and other bill provisions) create a special class of taxpayers, which is contrary to fair and equitable tax administration and which sets undesirable precedent.

The Assembly Budget Committee voted to amend the bill by deleting a provision that would have reduced to one year the four-year period that generally applies, under the State Uniform Tax Procedure law, for Division audit and assessment of additional taxes.

Recommendation

The Commissioners recommended adoption of the bill because UEZ businesses find it very burdensome to comply with the current law, which requires larger businesses to obtain the UEZ purchase exemption by applying for a refund of sales and use tax.

Commission Members For Proposal:	5
Commission Members Against Proposal:	2
Commission Members Abstaining :	0

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

Bill Number:	A-4036	Date of Introduction:	02/26/07
Sponsor:	Assemblyman Manzo	Date of Recommendation:	06/28/07
Identical Bill:			
Committee:	Assembly Appropriations		

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.

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 just 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.

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-4104	Date of Introduction:	03/12/07
Sponsor:	Assemblywoman Karrow Assemblyman Kean Assemblyman Manzo	Date of Recommendation:	06/28/07
Identical Bill:			
Committee:	Assembly Appropriations		

Description

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

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:	A-4113	Date of Introduction:	03/15/07
Sponsor:	Assemblywoman Greenstein Assemblyman Gusciara	Date of Recommendation:	06/28/07
Identical Bill:	S-749		
Committee:	Assembly Environment and Solid Waste		

Description

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

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 devices 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, beginning January 1, 2009, the bill imposes 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. The fee would be determined annually 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:	6
Commission Members Abstaining :	0

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

Bill Number:	S-2462	Date of Introduction:	01/09/07
Sponsor:	Senator McNamara Senator Littell	Date of Recommendation:	02/07/07
Identical Bill:	A-3935		
Committee:	Senate Budget and Appropriations		

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

The New Jersey Sales and Use Tax Act was recently amended to impose tax on "initiation fees, membership fees or dues for access to or use of the property or facilities of a health and fitness, athletic, sporting or shopping club or organization in this State, except from membership in a club or organization whose members are predominantly age 18 or under."

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:	9
Commission Members Abstaining :	0

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

Bill Number:	S-2498	Date of Introduction:	01/25/07
Sponsor:	Senator Ciesla	Date of Recommendation:	06/28/07
Identical Bill:	A-3961		
Committee:	Senate Environment		

Description

The bill provides for an exemption from sales and use tax imposition for membership fees and dues of certain golf clubs and organizations.

Analysis

The New Jersey Sales and Use Tax Act was recently amended to impose tax on "initiation fees, membership fees or dues for access to or use of the property of facilities of a health and fitness, athletic, sporting or shopping club or organization in this State, except from membership in a club or organization whose members are predominantly age 18 or under."

This proposal intends to create an exemption from the imposition of sales tax on these fees when charged by a nonprofit golf club or organization that holds a Division-approved Exempt Organization Certificate (Form ST-5) and that restricts membership to residents of age-restricted housing communities as defined by the bill.

The Commission supports the current exemption on purchases made by these organizations. However, as these services are in direct competition with local businesses and the tax is not directly imposed upon the nonprofit association but rather its customer base, the Commission does not support this initiative.

Further, this area of imposition has just recently been enacted and effective as of October 1, 2006. This area is a new revenue source for the State. The Commission has not been presented with any compelling reason to support an effort to chip away at this new tax base.

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-2592	Date of Introduction:	03/12/07
Sponsor:	Senator Bucco Senator Lance	Date of Recommendation:	06/28/07
Identical Bill:			
Committee:	Senate Budget and Appropriations		

Description

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

Analysis

This bill is proposed to amend the Sales and Use Tax Act (P.L. 1966, c.30 (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 P.L. 2006, c. 44. 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 supports this bill with the following amendment: 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.

Recommendation

The Commission recommends enactment of this bill only with amendment as discussed in Analysis. *See above.

Commission Members For Proposal:	6*
Commission Members Against Proposal:	1
Commission Members Abstaining :	0

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.