

Sales and Use Tax Review Commission 2002 Annual Report

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

December 31, 2002

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Commission Chairman

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Executive Secretary

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(as of May 29, 2002)

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Overview of Authorizing Legislation

The New Jersey Legislature established the Sales and Use Tax 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) to be 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 is to serve for two years and one is 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 its 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 after the bill's or resolution's 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 that it deems necessary in order to carry out its functions. The Administrative Procedure Act applies. N.J.S.A. 52:14B-1 et seq.

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 total figures for sales and use tax collections in the past three fiscal years:

| Fiscal Year | Sales and Use Tax Collections |
|--------------------|--------------------------------------|
| 2001 | \$5,263,641,000 |
| 2000 | 5,190,002,000 |
| 1999 | 4,893,117,000 |

The magnitude of these figures may suggest 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 reviewing pending sales and use tax legislative proposals and arriving at recommendations, it can be helpful to identify some standards that might be useful when evaluating the merits of legislation that would alter the sales and use tax base. 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. While analysis of legislation is generally not limited to the consideration of a fixed, precisely defined list of standards, it can be useful to consider, among other factors, 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 fair, nonarbitrary enforcement by State tax administrators.

Equity

In this area, the policy analyst faces the challenge of applying two competing concepts of fairness, both of which 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 laws 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 of course 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 and fundamentally 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

The 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, 2002)

| Bill Number | Description | Recommendation Date |
|-------------|---|------------------------|
| A-58 | The bill amends and supplements the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq., to provide that enterprise zones may be designated as permanent zones under certain conditions relating to unemployment statistics. The bill also expands the reduced sales tax rate to include restaurant meals, provides for local decision making on investing monies received from the reduced tax collections, and lessens the restrictions on allowing zone businesses to use investment of capital instead of hiring people in order to become qualified under the Urban Enterprise Zone Program. | 02/26/02 |
| A-106 | This bill exempts sales of returnable plastic containers and pallets from sales and use tax. | 02/26/02 |
| A-153 | The bill exempts from sales tax certain sales by or to any senior citizens' club organized for pleasure, recreation, or other purposes not generally viewed as exempt purposes under Federal or State law. | 02/26/02 |
| A-330 | The bill would allow urban enterprise zone qualified vendors to charge 3% sales tax on motor vehicles. | 02/26/02 |
| A-349 | This bill authorizes municipalities to establish commercial incentive zones and sharing of retail sales tax proceeds therein. | 02/26/02 |
| A-400 | This bill would provide for a sales and use tax exemption for purchases of goods donated to governmental, religious, educational, charitable, and public safety organizations. | 02/26/02 |
| A-486 | The bill would make State credit unions exempt from sales and use tax. | 02/26/02 |
| A-521 | The bill would make sales of lumber and millwork ineligible for the urban enterprise zone (UEZ) reduced sales tax and, also, establishes certain dollar and other limitations on the ability to charge the UEZ 3% sales tax. | 02/26/02 |
| A-580 | The bill provides for a 3% sales tax rate for "retail sales," sales of food and drink, and admission charges at places of amusement in urban enterprise zones. | 02/26/02 |
| A-743 | This bill exempts maintenance of residential septic systems from sales tax. | 02/26/02 |
| A-833 | The bill provides an exemption from sales and use tax on the purchase of certain children's car seats. | 02/26/02 |
| A-835 | The bill provides an exemption from sales and use tax on the purchase of certain protective bicycle and skating helmets, and other protective headgear. | 02/26/02 |
| A-997 | This bill would exempt charges for the sale and servicing of medical alarm and emergency notification equipment as well as the telecommunications services provided in conjunction therewith. | 02/26/02 |
| A-1039 | The bill provides a sales tax exemption for the purchase of an automobile to replace a stolen vehicle to the extent of insurance proceeds received by the party suffering a loss. | 02/26/02 |

| Bill Number | Description | Recommendation Date |
|-------------|--|---------------------|
| A-1122 | The bill amends and supplements the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq., to direct the New Jersey Urban Enterprise Zone Authority to designate a municipality as an expansion area of an existing enterprise zone if the municipality meets certain population and population density requirements and is in a county of the first class having a population less than 700,000 and borders a municipality with an existing enterprise zone and the contiguous municipality meets certain population and population density requirements. | 02/26/02 |
| A-1673 | This bill concerns the calculation of sales tax on casual sales of passenger automobiles. | 04/30/02 |
| A-1674 | This bill provides for a sale and use tax exemption for the retail purchase of books. | 04/30/02 |
| A-1774 | This bill establishes the New Jersey Film Industry Assistance Program in the Economic Development Authority and appropriates \$20,000,000. It expands the exemption for certain sales and services purchased in relation to film and video production. | 04/30/02 |
| A-1859 | This bill would provide a seven-year sales and use tax exemption on Generation 4 equipment or upgrades of equipment purchased by dry cleaning businesses. | 04/30/02 |
| A-1988 | Exempts sales of aircraft having a certified takeoff weight of at least 6,000 pounds. | 04/30/02 |
| A-1996 | The bill amends and supplements the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq., to authorize the expansion of existing Urban Enterprise Zones to include contiguous economically distressed areas. | 02/26/02 |
| A-2024 | This bill establishes sales tax holidays in New Jersey on August 31, 2002, and November 29, 2002. | 04/30/02 |
| A-2059 | This bill authorizes the creation of a new urban enterprise zone in Gloucester City, Camden County. | 04/30/02 |
| A-2207 | This bill authorizes the creation of a new urban enterprise zone in New Brunswick, Middlesex County. | 07/30/02 |
| A-2421 | This bill exempts purchases of certain residential water use reduction equipment, devices, and appliances from sales and use tax. | 07/30/02 |
| S-251 | The bill provides an exemption from sales and use tax on the purchase of recreational safety helmets. | 02/26/02 |
| S-258 | 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. | 02/26/02 |
| S-329 | This bill would allow certified vendors in historic districts to charge 3% sales tax. | 02/26/02 |
| S-598 | The bill would provide a sales and use tax exemption for certain sales to nonprofit homeowners' associations of certain services which they are required to provide for the common areas of a real estate community. | 02/26/02 |
| S-636 | The bill provides for a 3% sales tax rate for "retail sales," sales of food and drink, and admission charges at places of amusement in urban enterprise zones. | 02/26/02 |
| S-704 | The bill provides for a sales tax exemption for rental transactions between closely related business entities. | 02/26/02 |

| Bill Number | Description | Recommendation Date |
|--------------------|---|----------------------------|
| S-779 | This bill requires the designation of an urban enterprise zone in a municipality where a Federal military installation was decommissioned by the Department of Defense. | 07/30/02 |
| S-791 | The bill would provide a sales and use tax exemption for the purchase of certain very low-emission motor vehicles that satisfy the standards in Phase II of California's Low Emissions Vehicle program. | 02/26/02 |
| S-911 | This bill establishes the New Jersey Film Industry Assistance Program in the Economic Development Authority and appropriates \$20,000,000. It expands the exemption for certain sales and services purchased in relation to film and video production. | 04/30/02 |
| S-936 | This bill would create "Urban Heritage Districts." These small districts would be located within municipalities qualified to receive urban aid, and would contain historic sites and meet certain other requirements. | 04/30/02 |
| S-967 | Broadens the exemption for school textbooks to include "recommended" textbooks, in addition to books designated as "required" textbooks by the educational institution. | 04/30/02 |
| S-1061 | Clarifies that diabetic supplies; medical oxygen, respiratory equipment; wheelchairs, TENS, and other durable medical equipment; and crutches and other artificial devices and appliances are exempt only when sold for human use. Expands the medical exemption to provide an exemption for sales of medical equipment and supplies and all other health care equipment and supplies not already specifically exempt under N.J.S.A. 54:32B-8.1, when they are purchased for use in providing medical and health care services to humans, but not transferred to the purchaser. | 04/30/02 |
| S-1185 | Exempts sales of aircraft having a certified takeoff weight of at least 6,000 pounds. | 04/30/02 |
| S-1598 | This bill authorizes the creation of a new urban enterprise zone in New Brunswick, Middlesex County. | 07/30/02 |
| S-1635 | This bill establishes a sales tax holiday in New Jersey for retail sales of books from September 15 through September 22, 2002, during the National Book Festival. | 07/30/02 |
| S-1751 | The bill extends certain urban enterprise zone (UEZ) designation periods and allows certain municipal UEZ borrowing from the Enterprise Zone Assistance Fund. The bill also authorizes affected municipalities to borrow against other municipal accounts without interest during the 2003 fiscal year. | 09/24/02 |

Resolution

The following motion was carried at the Sales and Use Tax Review Commission's regular meeting on December 18, 2001. The procedure will apply to any bill prefiled for introduction in the 2002-2003 legislative session that has been reviewed by the Commission in the 2000-2001 legislative session:

During the 2000-2001 legislative session, the Sales and Use Tax Review Commission provided its recommendations on 46 bills to the Legislature.

Many of these proposals have been or will be reintroduced for the 2002-2003 legislative session. In view of the volume of legislation certified to the Commission, and in recognition of its obligation to provide advisory recommendations to the Legislature in a timely manner, the Commission hereby reconfirms the recommendations offered during the 2000-2001 session and deems them applicable to the substantially identical measures reintroduced in the 2002-2003 legislative session.

The Commission is cognizant that changed circumstances, significant amendments or additional information may provide a basis for a reconsideration of a prior recommendation. The Commission will undertake an appropriate review of any previously considered bill when such circumstances or information is brought to its attention or the bill previously reviewed has been so significantly amended as to require additional consideration.

On February 26, 2002, the Commission reconfirmed prior recommendations on the following 2002-2003 legislative session prefiled bills (2000-2001 legislative session bill number in brackets). Recommendations from the 2000-2001 session are available on the Division of Taxation Web site at:

www.state.nj.us/treasury/taxation/

(Click on *Sales and Use Tax Review Commission*).

| | | | |
|--------|------------------------|-------|------------------------|
| A-106 | (A-3587 First Reprint) | S-122 | (S-2291) |
| A-444 | (A-3141) | S-204 | (S-2389) |
| A-475 | (A-2724) | S-206 | (S-2661) |
| A-876 | (A-2182) | S-267 | (S-2020) |
| A-1108 | (A-2967) | S-268 | (S-2021) |
| A-1591 | (A-3190) | S-493 | (S-1975) |
| | | S-598 | (S-1905 First Reprint) |
| | | S-692 | (S-2560) |

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

Bill Number: A-58 **Date of Introduction:** 01/08/02

Sponsor: Assemblyman Smith **Date of Recommendation:** 03/26/02
Assemblywoman Coleman

Identical Bill:

Committee: Assembly Commerce and Economic Development

Description

The bill amends and supplements the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq., to provide that enterprise zones may be designated as permanent zones under certain conditions relating to unemployment statistics. The bill also expands the reduced sales tax rate to include restaurant meals, provides for local decision making on investing monies received from the reduced tax collections, and lessens the restrictions on allowing zone businesses to use investment of capital instead of hiring people in order to become qualified under the Urban Enterprise Zone Program.

Analysis

This bill is proposed to amend the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60, et seq., to allow certain enterprise zones to be designated as permanent zones. It also expands the reduced sales tax rate to include restaurant meals, provides for local decision making on investing monies received from the reduced tax collections, and lessens the restrictions on allowing zone businesses to use investment of capital instead of hiring people in order to become qualified under the Urban Enterprise Zone Program.

The section of the bill permitting businesses to invest capital instead of hiring employees defeats the purpose of the program as originally intended. The Urban Enterprise Zone Program was originally based on the premise that benefits should be available if businesses hire unemployed persons, thereby stimulating economic activity in distressed areas of the State. The extension of the program to grant benefits to those businesses who simply invest capital instead of hiring unemployed people seems to be a deviation from the original goal of the legislation. While investing capital may be of benefit to the individual business and municipality, hiring out-of-work people in order to reduce the level of unemployment in these distressed areas is the avowed purpose of the Urban Enterprise Zone Program. In addition, the easier it is for certain businesses to qualify for charging 3% sales tax, the more that competitors located outside a zone will assert that the Urban Enterprise Zone Program gives an unfair advantage to businesses in the zone. The bill could also result in a trend toward more "automatic" qualification for urban enterprise zone benefits. The provision in the bill allowing the municipality to make its own independent investment decisions with its own designees may result in some unforeseen problems. Since the funds under the program are derived from State taxes, it appears that investment agreements should be monitored and controlled at the State level.

Further, the bill states that the Urban Enterprise Zone Authority must notify qualified businesses that the Urban Enterprise Zone benefits have been extended and will continue for as long as the zone retains its designation. Qualified businesses must ordinarily requalify every year. The bill is vague in terms of allowing qualified businesses in the permanent zones to receive Urban Enterprise Zone benefits without annual requalification. The proposal also fails to consider the situation of new businesses qualifying in the permanent zones since the definition of a qualified business is not amended to refer to permanent zones.

The portion of the bill permitting urban enterprise zone qualified businesses to charge 3% sales tax on "retail sales by restaurants of meals and nonalcoholic beverages..." creates multiple problems. First,

N.J.S.A. 54:32B-3(c) imposes tax on sales by “restaurants, taverns, vending machines or other establishments...or by caterers, including...any cover...charge.” Since the bill only refers to “restaurants,” owners of taverns, vending machines, and caterers will be upset if they must continue to charge 6% sales tax. Thus, 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. Tax treatment should be uniform from one taxpayer to another. By only providing an exemption to a specific group, the proposal creates a disparity between restaurant owners and owners of taverns, vending machines, and caterers that are presumably not included in the exemption. Thus, the vendors excluded by the bill who must continue to charge 6% sales tax may complain that the bill violates the concept of horizontal equity by giving a benefit to a similarly situated group.

Second, the rationale behind the bill is unclear. Presumably it is to encourage consumers to enter the urban enterprise zone by offering a 3% reduction on restaurant meals, thereby inducing buyers to make more purchases than they would if the sales tax rate was 6%. But it is doubtful that a consumer would be enticed into an urban enterprise zone by the prospect of reduced sales tax on a meal and then make substantially more purchases simply because the sales tax rate is 3%.

The third problem associated with allowing restaurants to charge 3% on meals results from the fact that the proposal does not include alcoholic beverages in the partial exemption. This aspect may lead to costly errors because the restaurant employees will need to itemize alcoholic beverages separately from nonalcoholic beverages and from meals. If the restaurant erroneously charges 3% sales tax on the alcoholic beverages, it will be subject to assessments for the remaining 3% sales tax, plus penalties and interest. The need to separately itemize alcoholic beverages from nonalcoholic beverages and meals might outweigh the benefit conferred due to the inconvenience and expense of separate accounting.

The current program for reduced sales tax deals only with sales of tangible personal property. Services to property are not part of the exemption. Including restaurant meals in the partial exemption may create a slippery slope because vendors located within the urban enterprise zones who provide other services may be lead to also seek a similar tax exemption.

The loss of revenue to the State would be substantial because the 3% sales tax collected would be 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 6% sales tax that is currently collected on restaurant meals.

Finally, varying tax rates from municipality to municipality threatens economic neutrality and horizontal equity within the State. The doctrine of economic neutrality promotes a system of taxation that has a limited effect or impact on the marketplace and avoids policy that benefits one segment of the market at the expense of another. The goal upon which the Urban Enterprise Zones Act is based is to bring new businesses and consumers to selected economically depressed areas. In doing this, the surrounding municipalities from which business and consumers are drawn suffer negative economic effects. Horizontal equity refers to the concept that tax treatment should be uniform from one transaction to another. The Act creates a lower sales tax rate for sales of restaurant meals within the zones. This disparate treatment of certain transactions violates this doctrine. Adding more types of sales under the purview of the 3% sales tax rate would exacerbate the already tenuous foundation upon which the Act is based.

Recommendation

The Commission does not recommend enactment of this bill.

| | |
|---|---|
| Commission members For proposal: | 0 |
| Commission members Against proposal: | 4 |
| Commission members Abstaining : | 1 |

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

Bill Number: A-106 **Date of Introduction:** 01/08/02

Sponsor: Assemblyman Thompson **Date of Recommendation:** 03/26/02

Identical Bill:

Committee: Assembly Environment and Solid Waste

Description

This bill exempts sales of returnable plastic containers and pallets from sales and use tax.

Analysis

There is a concern that the granting of an exemption for the sale or use of returnable plastic containers and pallets is contrary to the intent of the original exemption which exempted wrapping supplies when such use is incidental to the *delivery* of personal property. This bill will drastically broaden the exemption by completely removing the limitations to containers that are nonreturnable and used in a manner that is incidental to delivery. This proposal will also vastly expand the recent amendment that exempts "containers" used in a farming enterprise.

Under the current statute, wrapping supplies or containers used in the delivery of property are exempt. Thus, returnable wrapping supplies including pallets that are either internally used by a business or returned once delivery is completed are subject to tax. The proposed exemption for returnable plastic containers and pallets does not require that they be used in the "delivery" of property. The actual language of the bill contains no limitation that would limit the exemption to commercial transactions. The proposed exemption could apply to a vast variety of containers and pallets sold for purely personal or noncommercial uses such as residential garbage cans, refrigerator containers for home use, pallets used to store items in a home basement. Therefore, if the bill is intended to provide a tax benefit to businesses that use such containers, it is worded too broadly, since it could extend the benefit to both private and commercial purchasers and users of the containers. The language of the bill should be amended to specify that the exemption will apply only to purchases for commercial use by adding "incidental to the delivery of tangible personal property."

This bill results in disparate treatment for the purchase of nonplastic containers and pallets with no apparent justification for such distinction. The Commission finds no overarching public policy reasons to provide a broader exemption for returnable plastic containers and pallets than for all other types of containers and wrapping and packing supplies used in commerce. There is no apparent compelling argument for such a broadly applicable exemption for returnable plastic containers and pallets. The language of the bill could also be improved by removing the word "plastic" and having the exemption apply to all returnable containers and pallets regardless of the material. The Commission did express a preference to such an approach and might be inclined to support a bill with the above changes.

In addition, the expanded 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 returnable plastic containers and pallets would save an individual purchaser 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 an expanded exemption.

Recommendation

The Commission does not recommend enactment of this bill.

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| 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-153 **Date of Introduction:** 01/08/02

Sponsor: Assemblywoman Heck **Date of Recommendation:** 03/26/02

Identical Bill:

Committee: Assembly Senior Issues

Description

The bill exempts from sales tax certain sales by or to any senior citizens' club organized for pleasure, recreation, or other purposes not generally viewed as exempt purposes under Federal or State law.

Analysis

Currently, the private organizations qualifying for New Jersey sales tax exemption are quite limited. They include those that are "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals, or as a volunteer fire company, rescue, ambulance, first aid or emergency company or squad," or parent-teacher associations. N.J.S.A. 54:32B-9(b).

These organizations meet the standards of U.S.C.A. 26 § 501(c)(3), which defines religious, scientific, educational, and charitable groups.

This bill proposes to add senior citizen organizations to the list of those that qualify under N.J.S.A. 54:32B-9(b). This type of group is currently categorized within the Internal Revenue Code as a 501(c)(7) organization. The bill intends to amend the Sales and Use Tax Act to include "club[s], limited in membership to persons 60 years of age or older, that is organized for pleasure, recreation of other non-profitable purposes."

This proposed category is quite broad and seemingly unjustified by the traditional policy reasons underlying tax exemptions for certain private organizations. That is, briefly stated, that these groups have purposes that lessen the burden of the State and the public at large. No compelling reason has been brought before the Commission to justify the inclusion for senior citizens' groups. The number of groups that currently do not qualify are enormous and no public policy reason has been demonstrated to justify providing special sales tax treatment to associations of New Jerseyans based solely on age.

Recommendation

The Commission does not recommend enactment of this bill.

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| 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-330 **Date of Introduction:** 01/08/02

Sponsor: Assemblyman O'Toole **Date of Recommendation:** 02/26/02

Identical Bill:

Committee: Assembly Commerce and Economic Development

Description

The bill would allow urban enterprise zone qualified vendors to charge 3% sales tax on motor vehicles.

Analysis

This bill is proposed to amend the Urban Enterprise Zone Act, N.J.S.A. 52:27H-60, et seq., to allow urban enterprise zone qualified business vendors to charge reduced sales tax on sales of motor vehicles.

This proposal would disrupt the equity of New Jersey's retail auto industry. Car and truck dealers that cannot charge 3% sales tax will be at a great disadvantage. The dealerships located outside the urban enterprise zone would not survive. The demand for vehicles from the urban enterprise zone qualified auto dealers would be substantial, robbing development from elsewhere for the benefit of the urban enterprise zone.

The bill would also lead to inequitable results in regard to the casual sale of used vehicles which are subject to 6% sales tax. In the urban enterprise zone cities, buyers of privately sold cars will complain when they have to pay 6% sales tax, compared to paying 3% sales tax for a vehicle from a nearby used car dealer.

Since the sales tax revenue paid to a qualified vendor in an urban enterprise zone is remitted to the municipality and not to the State, the loss of revenue would be substantial. The loss of revenue to the State is enhanced by the fact that motor vehicles are big-ticket items and the largest single block of sales tax revenue for the State. If this proposal were to go into effect, all revenue previously collected on sales of motor vehicles in urban enterprise zones would be lost. Moreover, since the proposal encourages motor vehicle dealers to locate in an urban enterprise zone, the revenue impact could be significantly greater if a large number of dealers relocate and charge 3% tax.

The adoption of this proposal creates a potential Federal constitutional problem. New Jersey imposes use tax on items that are purchased out-of-State for use in New Jersey but sales tax was not collected or was collected at a rate less than the New Jersey sales tax rate. Constitutionally, the use tax in an area must be imposed at the same rate as the sales tax is imposed within the same area. A constitutional issue may result from vehicles purchased out-of-State for use in the urban enterprise zone. When registering, the State would require sales tax to be paid at the rate of 6%, while the same vehicle purchased at the urban enterprise zone would only be subject to 3% sales tax. Therefore, if certain businesses in a zone may charge 3% sales tax, a payer of use tax within the zone may assert that the use tax must be imposed at 3%, instead of 6%.

Further, varying tax rates from municipality to municipality threatens economic neutrality and horizontal equity within the State. The doctrine of economic neutrality promotes a system of taxation that has a limited effect or impact on the marketplace and avoids policy that benefits one segment of the market at the expense of another. The goal upon which the Urban Enterprise Zones Act is based is to bring new busi-

nesses and consumers to selected economically depressed areas. In doing this, the surrounding municipalities from which business and consumers are drawn suffer negative economic effects. Horizontal equity refers to the concept that tax treatment should be uniform from one transaction to another. The Act creates a lower sales tax rate for transactions involving sales of motor vehicles within the zones. This disparate treatment of certain transactions violates this doctrine. Adding more types of sales under the purview of the 3% sales tax rate would exacerbate the already tenuous foundation upon which the Act is based.

Recommendation

The Commission does not recommend enactment of this bill.

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

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

Bill Number: A-349 **Date of Introduction:** 01/08/02

Sponsor: Assemblyman Caraballo **Date of Recommendation:** 03/26/02
Assemblyman O'Toole

Identical Bill:

Committee: Assembly Commerce and Economic Growth

Description

This bill authorizes municipalities to establish commercial incentive zones and sharing of retail sales tax proceeds therein.

Analysis

This bill would authorize municipalities that establish special improvement districts to designate an area made up primarily of retail businesses as "commercial incentive zones." The commercial incentive zones would receive a portion of sales tax proceeds that would be used to finance public improvement projects and to provide eligible services to municipalities in which those zones are located.

The objective behind this proposed legislation seems to be an attempt to revitalize and enhance retail activity in many of the distressed urban areas within the State. The theory is that increased economic activity within the designated commercial incentive zones will lead to lower property taxes which will induce businesses to relocate or expand into those economically depressed areas. The Legislature has already tried to do this by enacting the New Jersey Urban Enterprise Zone Act ("the Act"). It was anticipated that the Act would provide a framework for encouraging private capital investment within selected urban areas designated as Urban Enterprise Zones. The major benefits of the UEZ program were to provide: 1) a sales tax exemption which would induce businesses to relocate or expand into the zones, and 2) a reduced rate reduction on the sales of goods from the businesses in the zones to entice shoppers into the zones. Legislation which encourages the establishment of commercial incentive zones offers no new incentives for businesses above and beyond those offered through the UEZ program.

To date, there has been no comprehensive analysis done of the UEZ program to measure the impact of the program on the State. Without any concrete evidence to show that the UEZ program's effectiveness within the urban areas was as anticipated, it seems irresponsible to continue to push for more legislation projected to increase business activity and stimulate economic growth in disenfranchised areas within the State. The proposed bill basically appears to be a modified UEZ program disguised to look like a different agenda by the presentation of varied criteria. There is no justification for reintroducing such initiatives without knowing that the initial objectives of the UEZ program as originally implemented were attained, and met the expectations of the program's supporters.

This bill allows a portion of revenue generated within designated commercial impact zones to be held by the State Treasurer for use by the municipalities in which those zones are located, for qualified improvement projects and eligible services. Assuming that channeling predesignated funds back to the commercial impact zones results in decreased property taxes which would otherwise be required for improvements and services within a municipality thus attracting new business into the zones, the piecemeal creation of each specially favored zone would simply shift economic growth from one neighborhood to another. If a commercial impact zone does experience an increase in healthy economic activity, its good fortune would be at the expense of neighboring municipalities. There is no guarantee that the increase in retail sales activity within the commercial impact zones will increase to the extent that the revenues raised

would be sufficient enough to appropriately fund the qualified projects and services that the improvement zones need.

In addition, the bill would give municipalities the ability to control the allocation of funds received from the State Treasury. Municipalities would be allowed to establish commercial incentive zones within their perimeters. Funds would be transferred from the State Treasury to areas designated that municipalities have designated for improvements. The municipalities with selected commercial incentive zones would have the benefit of increased aid without going through the normal channels of the State's funding process. The bill provides a back-door method of transferring funds from the State Treasury to municipalities with commercial incentive zones to use for marketing, advertising, and security within those zones. Empowering certain municipalities to control the flow of revenue into commercial incentive zones could easily create opportunities for abuse and fraudulent practices.

The bill not only would result in enormous lost revenue; it would also impose a tremendous administrative burden on the Division of Taxation, Division of Revenue, and the Office of Management and Budget. Increased administrative responsibilities would include establishing baseline tax collections, and implementing procedures for separating the revenue earmarked for a nonlapsing Commercial Incentive Fund from the General Fund. The enactment of this bill will require the State Treasurer to undertake additional responsibilities, which may result in the reallocation of State resources.

Recommendation

The Commission does not recommend enactment of this bill.

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| 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-400 **Date of Introduction:** 01/08/02

Sponsor: Assemblyman Kean, Jr. **Date of Recommendation:** 03/26/02

Identical Bill:

Committee: Assembly State Government

Description

This bill would provide for a sales and use tax exemption for purchases of goods donated to governmental, religious, educational, charitable, and public safety organizations.

Analysis

This bill provides a sales tax exemption for purchases of goods donated to governmental and certain charitable and public safety organizations. It also applies to corporations who make donations from their inventory.

There is no good reason for this legislation since there are already less burdensome ways to encourage charitable giving within the State. Providing this type of exemption would allow donors to receive a double benefit since charitable donations can be deducted from both gross income tax and corporation business tax. Many organizations are classified as "exempt" and qualify to make purchases tax-free. It is unclear why a donor would purchase the property and then donate it to an exempt organization. The sales tax could be avoided entirely if the donor gave cash to the exempt entity. The exempt organization could then purchase the property without paying sales tax. The only possible benefit this bill could provide would be in situations where a specific or unique item is being donated. But even in that circumstance the donor could benefit from the charitable deductions referenced above.

This bill, as proposed, would be impossible to administer. There is no stated time frame for when a donation must be made relative to the purchase of the property, in order to qualify for the exemption. From an auditing and compliance standpoint, it may difficult at times for the Division of Taxation to ascertain whether the taxpayer used a purchase prior to donating it to the organization, even though such use would technically disqualify the purchase from eligibility for exemption. Similarly, at the time of purchase, it may be difficult to prove to the vendor that the taxpayer intends to donate the item and that the donee organization is qualified. The Division of Taxation would be required to draft new regulations and to adopt new rules in order to implement the administrative procedures that would be required to accommodate this bill. The proposed legislation simply provides new avenues for misuse, abuse, and fraud.

If an exemption for property purchased for donation is enacted, there may later be initiatives to extend the exemption to meals, services, and other taxable purchases when those are purchased for donation to qualifying organizations. Also, the bill's definition of a qualified organization omits Federal agencies, the United Nations, and similar international organizations, which are exempt organizations under section 9(a)(2)-(3) of the Sales and Use Tax Act. The omission of these section 9 organizations creates inequitable treatment favoring certain nonprofit organizations over others that provide important services for the common good.

Recommendation

The Commission does not recommend enactment of this bill.

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| 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-486 **Date of Introduction:** 01/08/02
Sponsor: Assemblyman Bateman **Date of Recommendation:** 03/26/02
Assemblyman Merkt
Identical Bill: S-1294
Committee: Assembly Banking and Insurance

Description

The bill would make State credit unions exempt from sales and use tax.

Analysis

The bill is an attempt to treat State chartered credit unions in the same manner as Federally chartered credit unions, which enjoy an exemption from State sales tax pursuant to Federal law. However, State credit unions generally compete with for-profit financial institutions, such as banks and leasing companies, not with Federal credit unions. The Commission finds no compelling reason to legislate sales tax parity between noncompetitive banking organizations.

As a matter of general policy, the New Jersey Sales and Use Tax Act anticipates the payment of sales or use tax by businesses on certain equipment, supplies, or taxable services. Where business property exemptions exist, they are usually for major capital expenditures such as aircraft purchased by an air carrier, ships used in interstate commerce, and capital improvements.

Recommendation

The Commission does not recommend enactment of this bill.

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| Commission Members For Proposal: | 0 |
| Commission Members Against Proposal: | 7 |
| Commission Members Abstaining : | 0 |

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

Bill Number: A-521 **Date of Introduction:** 01/08/02

Sponsor: Assemblyman Roberts, Jr. **Date of Recommendation:** 03/26/02
Assemblyman Azzolina

Identical Bill:

Committee: Assembly Commerce and Economic Development

Description

The bill would make sales of lumber and millwork ineligible for the urban enterprise zone (UEZ) reduced sales tax and, also, establish certain dollar and other limitations on the ability to charge the UEZ 3% sales tax.

Analysis

The bill amends the New Jersey Urban Enterprise Zone Act of 1983 codified as N.J.S.A. 52:27H-60 et seq., to disallow sales of lumber and millwork to qualify for the Urban Enterprise Zone (UEZ) reduced sales tax and, also, establish certain dollar and other limitations on the ability to charge the UEZ 3% sales tax. The intent of the Act was to help revitalize the State's economically distressed urban areas. The Act provides a framework encouraging private capital investment and job creation in the selected urban areas. Currently, 27 zones exist.

To date, there has been no comprehensive review of the UEZ program by an independent body. As a result, no substantive data concerning the actual success of the UEZ program has been provided to the Commission. Expansion/restriction of the UEZ program could result in great fiscal impact, both for the Division and the host UEZ municipality. The Division of Taxation's commentary on the fiscal impact of this bill addresses specifically the estimated impact of the exclusion of lumber and millwork from 3% sales tax rate eligibility. The Division estimates that the exclusion would provide a \$16 million increase in revenue for the State and an \$8 million loss to the UEZ municipalities.

This Bill further targets one industry for exclusion. This exclusion would disrupt only selected types of businesses that have established themselves in reliance on the benefits provided by the UEZ program. The Commission has repeatedly articulated compelling reasons for the repeal of the reduced sales tax rate benefit for all businesses of Zones. The item-by-item repeal of reduced rate sales taxation will not correct the problems Zones have created in the first place.

Although the Commission recommends the defeat of the bill in question, it recognizes that the exclusion of eligibility for lumber and millwork would act to address some problems that have existed within the industry. The Division has interpreted the Act to infer that purchases must be made "in-person" and has conveyed its interpretation in its promulgated regulations. (N.J.A.C. 18:24-31.4(e)). Historically, the "in-person" requirement has suffered abuse by the industry that often sells items not taken from inventory and fulfills sales via drop-shipment from beyond the Zone.

The bill proposes that additional language be added to the statute to support the Division's audit and enforcement efforts of the "in-person" provision. Although the presence of this express language would act to "tighten up" the Act, the regulations already exist to act in that capacity. The answer lies in the repeal of reduced rate sales taxation throughout the State of New Jersey.

Recommendation

The Commission does not recommend enactment of this bill.

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| 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-580 **Date of Introduction:** 01/08/02
Sponsor: Assemblywoman Coleman **Date of Recommendation:** 02/26/02
Identical Bill: S-636
Committee: Assembly Commerce and Economic Development

Description

The bill provides for a 3% sales tax rate for “retail sales,” sales of food and drink, and admission charges at places of amusement in urban enterprise zones.

Analysis

This bill is proposed to amend the Urban Enterprise Zone Act, N.J.S.A. 52:27H-60, et seq., to provide for a 3% sales tax rate for “retail sales,” sales of food and drink, and admission charges at places of amusement in urban enterprise zones. It further allows the 3% rate to continue after the end of the 20-year period of a zone designation so long as the place of amusement continues in operation at the same location. The bill prohibits a “sexually oriented business” from being a qualified place of amusement.

The rationale behind the bill is unclear. Presumably it is to encourage consumers to visit a place of amusement located within the urban enterprise zone by offering a 3% reduction in admission charges, thereby inducing buyers to make more purchases than they would if the sales tax rate was 6%. But it is doubtful that a consumer would be enticed into an urban enterprise zone by the prospect of reduced sales tax on an admission charge and then make substantially more purchases simply because the sales tax rate is 3%.

The loss of revenue to the State would be substantial because the 3% sales tax collected would be 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 6% sales tax that is currently collected on these items.

Currently, only “qualified businesses” located within the urban enterprise zone are eligible to collect sales tax at the rate of 3%. To become qualified, the business must meet certain criteria, such as creating new employment in the zone. Since this proposal would give the 3% 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 easier it is for certain businesses to qualify for charging 3% sales tax, the more that competitors located outside a zone will assert that the Urban Enterprise Zone Program gives an unfair advantage to businesses in the zone. The bill could also result in a trend toward more “automatic” qualification for urban enterprise zone benefits. Further, the inconsistencies between the bill’s 3% provisions and the regular 3% requirements will create confusion among businesses in zones and among customers.

The adoption of this proposal creates a potential Federal constitutional problem. New Jersey imposes use tax on items that are purchased out-of-State for use in New Jersey but sales tax was not collected or was collected at a rate less than the New Jersey sales tax rate. Constitutionally, the use tax in an area must be imposed at the same rate as the sales tax is imposed within the same area. Therefore, if certain businesses in a zone may charge 3% sales tax, a payer of use tax within the zone may assert that the use tax must be imposed at 3%, instead of 6%.

Further, varying tax rates from municipality to municipality threatens economic neutrality and horizontal equity within the State. The doctrine of economic neutrality promotes a system of taxation that has a limited effect or impact on the marketplace and avoids policy that benefits one segment of the market at the expense of another. The goal upon which the Urban Enterprise Zones Act is based is to bring new businesses and consumers to selected economically depressed areas. In doing this, the surrounding municipalities from which business and consumers are drawn suffer negative economic effects. Horizontal equity refers to the concept that tax treatment should be uniform from one transaction to another. The Act creates a lower sales tax rate for certain sales transactions within the zones. This disparate treatment of certain transactions violates this doctrine. Adding more types of sales under the purview of the 3% sales tax rate would exacerbate the already tenuous foundation upon which the Act is based.

Finally, the bill creates a complex problem in the administration of the program. Determining whether a sale occurs at the qualifying location in the zone will be difficult. For instance, a ticket agent located within a qualifying place of amusement may assert that the agent may charge 3% sales tax for a ticket sold at a booth within the zone, even though the event will be outside the zone. In addition, a vendor that is located and that takes an order within a qualifying place of amusement may assert that it can charge 3% sales tax on mail-order sales or sales of products delivered from an outside warehouse or another store.

Recommendation

The Commission does not recommend enactment of this bill.

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| 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-743 **Date of Introduction:** 01/08/02

Sponsor: Assemblyman Cottrell **Date of Recommendation:** 02/26/02
Assemblyman Malone, III

Identical Bill:

Committee: Assembly Environment and Solid Waste

Description

This bill exempts maintenance of residential septic systems from sales tax.

Analysis

The bill amends N.J.S.A. 54:32B-3(b)(4) (taxability of maintaining, servicing, or repairing real property) by excluding the service of maintaining a residential septic system from sales tax.

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. Tax treatment should be uniform from one taxpayer to another. Most other routine maintenance services performed at the home are taxable. Thus, providers of other home maintenance services may seek an exemption as well. This could lead to a trend toward eroding many of the current taxable services provided in the Sales and Use Tax Act. By only providing an exemption to a specific group, the proposal creates a disparity between residential owners of septic systems and residential privately owned sewer systems that are not included in the exemption. Thus, residential owners who pay a fee to the municipality for the use of a sewer system may complain that the bill violates the concept of horizontal equity by giving a benefit to a similarly situated group.

According to a statement to the bill, the sales tax exemption is intended to apply only to the service of pumping out a septic system. However, the exemption as provided in the bill is broad enough to cover any maintenance of a residential septic system and perhaps repairs to the system as well. This appears to be beyond what may be intended by the proposal.

If apartment dwellings serviced by a septic system also seek the exemption, the proposal may create a slippery slope because owners of commercial properties may be lead to also seek a similar tax exemption. In addition, the expanded 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 maintenance of residential septic systems would save an individual taxpayer a fairly insignificant sum every year. However, the cumulative loss of revenue to the State, estimated at between \$3 and \$3.5 million annually, is substantial, leaving the State to find other means of generating the money lost as a result of an expanded exemption.

Recommendation

The Commission does not recommend enactment of this bill.

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| 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-833 **Date of Introduction:** 01/08/02

Sponsor: Assemblyman Conners **Date of Recommendation:** 02/26/02
Assemblywoman Pou

Identical Bill:

Committee: Assembly Appropriations

Description

The bill provides an exemption from sales and use tax on the purchase of certain children's car seats.

Analysis

This bill is proposed to provide a tax exemption for parents who must purchase child passenger restraint systems for installation into passenger motor vehicles, in order to comply with Federal motor vehicle safety standards applicable at the time the systems are sold.

The presumed theory behind the proposed bill is that by relieving sales tax on the purchase of safety restraint systems, parents will more likely comply with new child passenger laws. Effective December 1, 2001, the new law requires children up to age 8 or 80 pounds to ride in safety or booster seats. In light of these restrictions, families may have to purchase two or more car seats to accommodate a child as he/she grows. This may prove more burdensome to families whose financial situation puts limitations on the type of car seats that they are able to purchase. It is unreasonable to think that relief from sales tax will have any impact on their ability to purchase safety seats, or on their choice of models. Equity problems arise as families who can more easily afford to purchase expensive child safety restraint systems would benefit from a tax exemption, while families who may not be able to afford to purchase even the least expensive car seat models would not. Lower-income families will not be more encouraged or relieved of a financial burden if sales tax is not imposed on the purchase of child passenger safety seats.

The bill as presented has terrible public policy implications suggesting that parents need a financial incentive to engage in measures that ensure the safety of their children. A public mandate should not require enticement to ensure compliance. Parents should automatically want to keep their children safe and should not have to be bribed to do so. Additionally, a sales tax exemption is not going to guarantee that car seats will be more accessible and affordable for low-income families. There are already community programs in place that either give away child safety seats or provide them at a minimum cost based on certain income requirements. A better policy would be to collect the taxes on the safety seats and redirect that revenue to low-income areas within the State.

There are no strong tax policy reasons to support this proposed exemption. 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. A broad-based tax that is 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 the tax is imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer is relatively small, but the cumulative revenue that is generated can be significant. The individual taxpayer would save a fairly inconsequential amount with an exemption on the purchase of motor vehicle child restraint devices. However, the cumulative loss of revenue to the State could be sub-

stantial, leaving the State to find other means of generating the funds lost as a result of such an exemption.

Recommendation

The Commission does not recommend enactment of this bill.

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| 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-835 **Date of Introduction:** 01/08/02
Sponsor: Assemblyman Conners **Date of Recommendation:** 02/26/02
Identical Bill: S-251
Committee: Assembly Appropriations

Description

The bill provides an exemption from sales and use tax on the purchase of certain protective bicycle and skating helmets, and other protective headgear.

Analysis

This bill is proposed to provide a tax exemption on the purchase of certain protective bicycle and skating helmets and other protective headgear meeting standards prescribed by or pursuant to laws requiring operators of bicycles, motorized bicycles, roller skates, and skateboards to wear such headgear. The problem with this proposed legislation is that the language is too broad. It is not clear whether the exemption applies only to helmets or headgear that is required for children under the age of 14 as required by law, or if it includes helmets required for motorcycle operators who are also required to wear protective headgear by law. Such ambiguity would lead to subjective interpretation rendering the bill difficult to administer and enforce. Without clear definitions on what helmets are exempt and whom the exemption is intended to benefit, vendors would have the responsibility of determining which types of "protective headgear" would qualify for exemption. In addition, without more specific guidelines, there would be no indication whether a helmet was indeed being purchased for a child under the age of 14, or for the specific sporting or recreational uses enumerated in the bill. Being unable to segregate and identify exempt purchases could result in abusive and fraudulent practices.

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 may 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 ones will. 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 for children.

The bill carries negative public policy implications. Consumers of safety products should not have to be given 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 their 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 minis-

culc 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.

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| 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-997 **Date of Introduction:** 01/08/02

Sponsor: Assemblyman Moran **Date of Recommendation:** 02/26/02
Assemblyman Conners

Identical Bill: S-717

Committee: Assembly Health and Human Services

Description

This Bill would exempt charges for the sale and servicing of medical alarm and emergency notification equipment as well as the telecommunications services provided in conjunction therewith.

Analysis

This bill as proposed would be extremely difficult to administer because it is impossible to distinguish what purpose phone lines are used for. The telephone companies neither monitor telephone lines of consumers nor do they have the equipment to determine if phone lines are being used for medical purposes.

The bill should be revised to limit the exemption to sales of medical alarm and emergency notification equipment and not to extend to telecommunication services. The exemption for telecommunication services would present an administrative burden on both the taxing authority and the vendor who is responsible for collecting tax. The bill provides an exemption when telecommunication services are used for medical purposes.

Telephone companies cannot reasonably be expected to recognize whether a particular phone call is being used for medical purposes when they do not even have equipment to make such a determination. Enforcement and administrative problems arise because of the inherent difficulty in determining whether the phone call is being used for medical purposes and thus qualified for the exemption.

Customarily, medical alarm and emergency notification equipment and servicing are sold in combination with other devices and services such as fire and security. It would be difficult to separate out the equipment and services that are qualified for the exemption from the equipment and services that are not. Since some of the equipment and services included in the combination are taxable, the entire purchase would be taxable making this exemption useless.

The exemption does not meet the test of simplicity, which requires that sales tax legislation be drafted in such a manner to allow vendors to ascertain their tax collection responsibilities simply by reviewing the provisions of the proposed legislation itself, without resort to interpretative regulations. The proposed bill as written is unclear on what is exempt (i.e., the service or the equipment) or who is the customer (i.e., the medical place, alarm place or the person who is making the call). The bill's lack of simplicity could result in a lot of taxpayer confusion and create needless litigation over terms that should be defined in the legislation for clarity.

There are many devices that are designed to protect or warn individuals when life or property is threatened. The use of medical alarm and emergency notification devices and services, that are the subject of this bill, affect the quality of life for the elderly and certainly should be recommended and encouraged. However, a tax exemption from a broad-based tax should not be based solely on the recognized necessity of the item sought to be exempt from taxation. The exemption will not cause potential users of medical alarm and emergency notification equipment and services to buy and utilize these devices and ser-

vices because a sales tax exemption has been enacted. A better recommendation would be to exempt medical alarm and emergency notification equipment for senior citizens possibly expanding the exemption for medical equipment and supplies.

There are no strong tax policy reasons to support this exemption. Enactment of special exemptions for purchases of socially desirable merchandise tends 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 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 medical alarm and medical emergency notification services and 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.

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| 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-1039 **Date of Introduction:** 01/08/02

Sponsor: Assemblyman Malone **Date of Recommendation:** 02/26/02
Assemblyman Cottrell

Identical Bill:

Committee: Assembly Banking and Insurance

Description

The bill provides a sales tax exemption for the purchase of an automobile to replace a stolen vehicle to the extent of insurance proceeds received by the party suffering a loss.

Analysis

This exemption benefits a specialized group and does not promote horizontal equity. Horizontal equity suggests that sales tax legislation be broadly based and taxes similar transactions, persons, or things in a similar manner. Tax treatment should be uniform from one taxpayer to another. This proposal creates disparity between stolen passenger vehicles and other valuable property; for example boats, electronic equipment, jewelry, trucks, etc.

This bill lacks vertical equity, which suggests proportionality among taxpayers according to ability to bear the tax burden is desirable. This bill gives preferential treatment to passenger automobiles covered by insurance. This creates a windfall to insurance indemnified passenger automobile losses. There is no relief under this bill for a person who cannot afford theft insurance when that party suffers a loss and makes a purchase to replace stolen property.

The exemption does not meet the test of simplicity. Simplicity requires that sales tax legislation be drafted in such a manner to allow vendors to ascertain their tax collection responsibilities simply by reviewing the provisions of the proposed legislation itself, without resort to interpretative regulations that could in themselves add to the complexity of administration. The proposed bill, as written, is not clear on what a "passenger vehicle" is nor further identifies who qualifies for exemption. Thus, for example, does a sport utility vehicle qualify even though it is classified as a truck? The bill also requires interpretation of the phrase "within 6 months of payment" because it is vague and ambiguous. In some cases, it takes substantial time to receive an insurance proceed. In the absence of specific statutory direction on this topic, there would be significant confusion on what purchases would qualify for this exemption. Thus, for example, would the purchase of a replacement vehicle by an insured before receiving his insurance proceed qualify for this exemption? Simplicity is crucial to the effective implementation of sales and use tax legislation. The bill's lack of simplicity could result in significant taxpayer confusion and create needless litigation over terms that should be defined in the legislation for clarity.

There are no strong tax policy reasons to support this exemption. Enactment of special exemptions for purchases of socially desirable merchandise tends to create an increased demand for similar exemptions for other good, 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 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 as economically neutral and "fair." When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer is rela-

tively small, but the cumulative revenue generated can be enormous. An exemption for the purchase of an automobile to replace a stolen vehicle to the extent of the insurance proceeds received by the party suffering a loss 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.

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| Commission Members For Proposal: | 0 |
| Commission Members Against Proposal: | 7 |
| Commission Members Abstaining : | 1 |

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

Bill Number: A-1122 **Date of Introduction:** 01/08/02

Sponsor: Assemblywoman Quigley **Date of Recommendation:** 03/26/02
Assemblyman Impreveduto

Identical Bill:

Committee: Assembly Commerce and Economic Development

Description

The bill amends and supplements the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq., to direct the New Jersey Urban Enterprise Zone Authority to designate a municipality as an expansion area of an existing enterprise zone if the municipality meets certain population and population density requirements and is in a county of the first class having a population less than 700,000 and borders a municipality with an existing enterprise zone and the contiguous municipality meets certain population and population density requirements.

Analysis

This bill is proposed to amend the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60, et seq., to direct the New Jersey Urban Enterprise Zone Authority to designate a municipality as an expansion area of an existing enterprise zone if the municipality meets certain population and population density requirements and is in a county of the first class having a population less than 700,000 and borders a municipality with an existing enterprise zone and the contiguous municipality meets certain population and population density requirements.

The bill does not effectuate its intended purpose of assisting distressed communities that are adjacent to an existing enterprise zone because no municipality in New Jersey meets the population and population density requirements set forth in the proposal to be designated as an expansion area of an existing enterprise zone. The only county of the first class with a population of less than 700,000 is Hudson County. However, according to the most recent decennial census, no municipalities in Hudson County fit the qualifications imposed in the bill. Although the proposal is defective, there is concern that the language in the bill, although specific and limited to one municipality, could establish a dangerous precedent leading to other special legislation being introduced to further expand the Urban Enterprise Zone Program. This is problematic due to the difficulty the Division of Taxation has experienced in administering the Urban Enterprise Zone Program. Many assertions of abuses and unfairness have been reported to the Division of Taxation, legislative representatives, and to the Commerce and Economic Development Commission.

Expanding existing enterprise zones will lead to multiple problems. The greater the number of municipalities and expansion areas that have 3% sales tax, the more that New Jersey becomes a patchwork of differing sales tax rates. This is contrary to tax simplicity and uniformity. Expanding an urban enterprise zone creates a new urban enterprise zone with new borders. These borders are contiguous to new areas which may create a slippery slope because the bordering municipalities may be lead to also seek similar tax exemptions. This domino effect defeats the original purpose of the Urban Enterprise Zone Program.

Moreover, varying tax rates from municipality to municipality threatens economic neutrality and horizontal equity within the State. The doctrine of economic neutrality promotes a system of taxation that has a limited effect or impact on the marketplace and avoids policy that benefits one segment of the market at the expense of another. The goal upon which the Urban Enterprise Zones Act is based is to bring new busi-

nesses and consumers to selected economically depressed areas. In doing this, the surrounding municipalities from which business and consumers are drawn suffer negative economic effects. Horizontal equity refers to the concept that tax treatment should be uniform from one transaction to another. The Act creates a lower sales tax rate for certain sales transactions within the expansion zones. This disparate treatment of certain transactions violates this doctrine. Permitting more municipalities to collect reduced sales would exacerbate the already tenuous foundation upon which the Act is based.

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. Recent legislation added three more zones to that list. Recently, 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 the 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. 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.

Since New Jersey has already established Urban Enterprise Zone-impacted business districts, this bill seems duplicative and unnecessary. It appears that many of the concerns addressed in this proposal were already addressed by the legislation that created the Urban Enterprise Zone-impacted business districts. Reduced sales tax collection is available in the newly created Urban Enterprise Zone-impacted districts, but other rules and programs are different from the Urban Enterprise Zone Program. Adding an expansion zone will only add more confusion to the public, businesses, and government administrators involved, as more rules and policies will have to be implemented.

The bill does not provide an economic study to justify the creation of expansion areas. It does not provide any information that would demonstrate that such expansion areas would reverse the economic decline of the affected municipalities or attract businesses or customers to those municipalities. Conversely, it does not demonstrate that if enacted, it would not draw businesses or customers from other depressed municipalities, or if it would do so, then such an effect is economically justified.

The adoption of this proposal further perpetuates a potential Federal constitutional problem. New Jersey imposes use tax on items that are purchased out-of-State for use in New Jersey but sales tax was not collected or was collected at a rate less than the New Jersey sales tax rate. Constitutionally, the use tax in an area must be imposed at the same rate as the sales tax is imposed within the same area. Therefore, if certain businesses in a zone may charge 3% sales tax, a payer of use tax within the zone may assert that the use tax must be imposed at 3%, instead of 6%.

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 already existing urban enterprise 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 be-

cause the 3% sales tax collected by qualified vendors would be 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 6% sales tax that is currently collected on sales of items in the expansion area of the urban enterprise zone. This would be a particularly burdensome loss to the State in regard to big-ticket items.

Recommendation

The Commission does not recommend enactment of this bill.

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| 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-1673 **Date of Introduction:** 01/31/02

Sponsor: Assemblyman Cohen **Date of Recommendation:** 04/30/02

Identical Bill:

Committee: Assembly Consumer Affairs

Description

This bill concerns the calculation of sales tax on casual sales of passenger automobiles.

Analysis

There are no apparent tax administration reasons to support this amendment. The Commission does not believe that it is good tax policy to pass legislation enabling sellers and buyers of motor vehicles to avoid the constraints of audit where the value of property sold is much greater, by objective measures, than the disclosed receipt. Thus, the amendment promotes collusion between a buyer and seller when it comes to indicating the actual price paid for a motor vehicle. It invites the parties to trim the receipt in order to save the buyer a substantial part of the sales tax otherwise due on the sales transaction.

If this bill is enacted into law, the Commission believes that casual automobile sale transactions will be impossible to enforce and fraud will invariably occur. The bill eliminates the means of verifying the purchase price of a casual sale of an automobile and enforcing the sales tax imposed on motor vehicle casual sales. In a casual sale the only record of the amount of consideration received by the seller is contained on the title of the automobile being sold. With no means to verify the purchase price, this bill will allow buyers to reflect any amount desired as the purchase price of a passenger motor vehicle. It is foreseeable that such a "no audit policy" will be widely misused and easily abused by consumers.

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-1674 **Date of Introduction:** 01/31/02

Sponsor: Assemblyman Cohen **Date of Recommendation:** 04/30/02

Identical Bill:

Committee: Assembly Consumer Affairs

Description

This bill provides for a sale and use tax exemption for the retail purchase of books.

Analysis

The Sales and Use Tax Act imposes a tax of 6% upon the receipts from every sale of tangible personal property, except as otherwise provided. The rationale behind this bill is unclear. Presumably it is to encourage people to read. But there are no sound policy reasons why there should be an exemption for all books. There are already exemptions for school textbooks and equipment used by commercial printing businesses in the Sales and Use Tax Act. Since many books are purchased essentially for entertainment purposes, it may be poor tax policy to exempt books, while still imposing tax on certain essential services, such as telephone service and energy purchases.

The bill's broad language leads itself to many administrative and enforcement problems. It is not clear what printed material the exemption applies to. Such ambiguity leads to subjective interpretation rendering the bill difficult to administer and enforce.

The Commission does not believe that sales tax exemptions should be used as a means of encouraging socially desirable behavior. Consumers are not going to be either encouraged or economically assisted by being relieved of the obligation to pay 6% sales tax. Thus, the bill as enacted would seem to do nothing to promote reading by encouraging people to purchase books.

The exemption does not meet the test of simplicity. Simplicity requires that sales tax legislation be drafted in such a manner to allow vendors to ascertain their tax collection responsibilities simply by reviewing the provisions of the proposed legislation itself, without resort to interpretative regulations that could in themselves add to the complexity of administration. The proposed bill as written is not clear on what a "book" is nor further identifies what qualifies for this exemption. The bill also requires interpretation of "books on tape." In the absence of specific statutory direction on this topic, there would be significant confusion on what purchases would qualify for this exemption.

There are no strong tax policy reasons to support this exemption. 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.

In addition, the expansion of the exemption for newspapers, magazines and periodicals to include books 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 books would save an individual purchaser a fairly insignificant sum every year.

However, the cumulative loss of revenue to the State could be substantial. This leaves the State to find other means of generating the revenue lost as a result of an expanded exemption.

Recommendation

The Commission does not recommend enactment of this bill.

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| 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-1774 **Date of Introduction:** 02/11/02
Sponsor: Assemblyman DiGaetano **Date of Recommendation:** 04/30/02
Identical Bill: S-911
Committee: Assembly Commerce and Economic Growth

Description

This bill establishes the New Jersey Film Industry Assistance Program in the Economic Development Authority and appropriates \$20,000,000. It expands the exemption for certain sales and services purchased in relation to film and video production.

Analysis

This bill expands the exemption provided for certain sales and services purchased in relation to film and video production to include sales of audiovisual masters and sales of services in connection with audiovisual masters made or used by film production companies. Primarily, the bill is expanded to include an exemption from tax on the sale of production equipment used to produce film masters. The additional sales and use tax exemption is intended to provide an additional incentive to attract film and television companies to the State.

The motion picture and television industry has yielded millions of dollars in revenue for the State in the past few years and is anticipated to continue to grow. The New Jersey Film and Television Industry Promotion Program would be established as a way for the Motion Picture and Television Development Commission to stimulate more film production projects within the State. Large production companies currently deliver film masters out-of-State to avoid paying tax. The exemption of the equipment used in connection with the film masters makes it easier for production companies to sell their masters within the State. Such an exemption provides an additional incentive for large production companies to develop and produce movie and television projects in New Jersey.

The rise in film and television production would positively impact the State's economy as production companies pump money into local communities. For example, production companies could spend significant amounts of money within local cities and towns by using local carpenters, security companies, caterers, dry cleaners, hardware, and lumber stores. Increased film and video production in the State will result in increased revenue from money that is spent by the major film production companies within New Jersey's neighborhoods.

The fiscal impact of the bill is expected to be relatively insignificant. The only revenue loss under the bill would be limited to expenditures that satisfy the new exemption. The only loss of revenue would be from the production of corporate and training films for which the exemption does not apply.

The amendment expanding the sales tax exemption is simply a technical refinement that does not place any extra administrative burdens on the State. As the bill makes New Jersey a more attractive arena for the filming projects, the potential boost to the State's economy outweighs the cost involved in administering the bill.

Recommendation

The Commission recommends enactment of this bill.

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| Commission Members For Proposal: | 5 |
| 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-1859 **Date of Introduction:** 02/21/02

Sponsor: Assemblyman Rooney **Date of Recommendation:** 04/30/02

Identical Bill:

Committee: Assembly Environment and Solid Waste

Description

This bill would provide a seven-year sales and use tax exemption on Generation 4 equipment or upgrades of equipment purchased by dry cleaning businesses.

Analysis

This bill exempts from sales and use tax receipts from sales of Generation 4 dry cleaning equipment or a subsequent generation of equipment, or equipment and apparatus necessary to convert or retrofit existing dry cleaning equipment, for seven years after the effective date of the proposed act. It further requires the Director of the Division to adopt rules and regulations as needed to identify equipment that shall qualify for exemption.

The main objective of the bills seems to be to encourage dry cleaning owners/ operators to convert their equipment so as to make it less hazardous to the environment. Generation 4 equipment is promoted to be more environmentally friendly by reducing the amount of toxic chemicals released into the air resulting in diminished health risks to both dry cleaning customers and employees.

As a matter of policy, this Commission does not support the use of tax exemption legislation as a tool for encouraging socially desirable behavior. The Commission prefers sales and tax legislation to be more "neutral" in its impact on the behavior of vendors and consumers. Even if this exemption is intended to serve a socially useful purpose by promoting the use of less environmentally harmful equipment, the Commission does not favor using tax legislation as a social, political, or environmental policy tool.

It is not sound tax policy to provide tax exemptions as a means of compensating regulated businesses that must incur certain expenses in order to comply with Federal or State imposed pollution-control requirements. Such legislation favors environmentally friendly industries and opens the door for other environmentally conscious groups and organizations to request exemptions for other types of pollution abatement equipment. The effect that an exemption may have on encouraging positive social behavior would be miniscule at first, since the bill proposes that only those businesses who do not receive financial assistance in acquiring and installing the required equipment, would benefit from the exemption.

The bill would mandate that the entire dry cleaning industry operating within the State upgrade to the Generation 4 equipment. This exemption is too restrictive in that it prohibits the sale of equipment other than the Generation 4 that may be just as effective in reducing the emission of toxic substances. Such specialized treatment for a specific stage of equipment upgrade may also lead to aggressive lobbying for similar tax exemptions on purchases of other levels of equipment upgrades such as Generation 1, 2, or 3 dry cleaning equipment.

The enactment of this new tax exemption provision would further alter the broad-based nature of 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. The loss of revenue to the State could be substantial.

Recommendation

The Commission does not recommend enactment of this bill.

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| Commission Members For Proposal: | 2 |
| Commission Members Against Proposal: | 3 |
| Commission Members Abstaining : | 0 |

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

Bill Number: A-1988 **Date of Introduction:** 03/04/02
Sponsor: Assemblyman Asselta **Date of Recommendation:** 04/30/02
Identical Bill: S-1185
Committee: Assembly Transportation

Description

Exempts sales of aircraft having a certified takeoff weight of at least 6,000 pounds.

Analysis

While it appears logical to exempt sales of the aircraft itself, since sales of repairs and parts are exempt pursuant to an amendment enacted in 1999, this will probably be a very costly piece of legislation, if enacted, since aircraft are high-price items. Because the exemption would apply to aircraft purchases that are *not* used by air carriers for air commerce, it appears that it would apply to planes used for either private or business purposes. There does not seem to be any policy reason to exempt them related to some tangible benefit for the citizens of the State as a whole, its economy or environment. Perhaps that, coupled with revenue concerns, is the reason that no comparable exemption for noncommercial motor vehicles or vessels, based solely on weight, has ever been proposed.

The 6,000-pound threshold could potentially be difficult for Division of Taxation personnel to interpret if they are not familiar with aircraft. However, the same criterion applies to determine those aircraft eligible for exempt repairs pursuant to the 1999 amendment (P.L.1999, c.246), and the Division is now aware that the FAA-certified takeoff weight is indicated in an aircraft's flight manual, which every aircraft must carry. The maximum gross takeoff weight is made up of the weight of the aircraft plus what it carries. It will be heavier than the maximum gross landing weight, because by the time the plane lands, it will have burned fuel, and with the fuel gone, the gross weight will be less. The FAA issues "type certificates." These are given to the manufacturer. They specify what gross takeoff weight is allowed for the particular type certificate. Thus, the gross weight allowed according to the type certificate is the original certified weight.

Supplemental certificates may be issued later, showing a higher gross takeoff weight if changes are made to the aircraft after manufacture or even after sale, e.g., new larger motor substituted for the standard motor. However, the "maximum gross takeoff weight, as specified in the type certificate issued by the Federal Aviation Administration" would mean that *original* gross takeoff weight in the specifications given to the manufacturer by FAA. It would *not* mean the higher weight, after supplemental certificates are issued because the plane had additional heavy parts installed later.

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-1996 **Date of Introduction:** 01/08/02

Sponsor: Assemblyman Edwards **Date of Recommendation:** 03/26/02

Identical Bill:

Committee: Assembly Commerce and Economic Development

Description

The bill amends and supplements the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq., to authorize the expansion of existing Urban Enterprise Zones to include contiguous economically distressed areas.

Analysis

This bill is proposed to amend the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60, et seq., to authorize the expansion of existing Urban Enterprise Zones to include contiguous economically distressed areas.

This proposal is flawed for several reasons. The greater the number of municipalities and expansion areas that have 3% sales tax, the more that New Jersey becomes a patchwork of differing sales tax rates. This is contrary to tax simplicity and uniformity. Once an urban enterprise zone has been extended to a contiguous municipality, this creates a new urban enterprise zone with new borders. These borders are contiguous to new areas which may create a slippery slope because the bordering municipalities may petition to become a further expansion area of the already expanded urban enterprise zone. This domino effect defeats the original purpose of the Urban Enterprise Zone Program.

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. Recent legislation added three more zones to that list. Recently, 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 the 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. 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.

Since New Jersey has already established Urban Enterprise Zone-impacted business districts, this bill seems duplicative and unnecessary. It appears that many of the concerns addressed in this proposal were already addressed by the legislation that created the Urban Enterprise Zone-impacted business districts. Reduced sales tax collection is available in the newly created Urban Enterprise Zone-impacted districts, but other rules and programs are different from the Urban Enterprise Zone Program. Adding an expansion zone will only add more confusion to the public, businesses, and government administrators involved, as more rules and policies will have to be implemented.

The bill does not provide an economic study to justify the creation of expansion areas. It does not provide any information that would demonstrate that such expansion areas would reverse the economic decline of the affected municipalities or attract businesses or customers to those municipalities. Conversely, it does not demonstrate that if enacted, it would not draw businesses or customers from other depressed municipalities, or if it would do so, then such an effect is economically justified.

The adoption of this proposal further perpetuates a potential Federal constitutional problem. New Jersey imposes use tax on items that are purchased out-of-State for use in New Jersey but sales tax was not collected or was collected at a rate less than the New Jersey sales tax rate. Constitutionally, the use tax in an area must be imposed at the same rate as the sales tax is imposed within the same area. Therefore, if certain businesses in a zone may charge 3% sales tax, a payer of use tax within the zone may assert that the use tax must be imposed at 3%, instead of 6%.

Further, varying tax rates from municipality to municipality threatens economic neutrality and horizontal equity within the State. The doctrine of economic neutrality promotes a system of taxation that has a limited effect or impact on the marketplace and avoids policy that benefits one segment of the market at the expense of another. The goal upon which the Urban Enterprise Zones Act is based is to bring new businesses and consumers to selected economically depressed areas. In doing this, the surrounding municipalities from which business and consumers are drawn suffer negative economic effects. Horizontal equity refers to the concept that tax treatment should be uniform from one transaction to another. The Urban Enterprise Zones Act creates a lower sales tax rate for certain sales transactions within the zones. This disparate treatment of certain transactions violates this doctrine. Permitting areas that are contiguous to enterprise zones to collect reduced sales tax would exacerbate the already tenuous foundation upon which the Act is based.

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 already existing urban enterprise 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% sales tax collected by qualified vendors would be 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 6% sales tax that is currently collected on sales of items in the areas that are contiguous to an urban enterprise zone. This would be a particularly burdensome loss to the State in regard to big-ticket items.

Recommendation

The Commission does not recommend enactment of this bill.

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| 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-2024 **Date of Introduction:** 05/11/02

Sponsor: Assemblyman Cohen **Date of Recommendation:** 04/30/02

Identical Bill:

Committee: Assembly Appropriations

Description

This bill establishes sales tax holidays in New Jersey on August 31, 2002, and November 29, 2002.

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 nonbusiness use, but not including retail sales of motor vehicles, alcoholic beverages, cigarettes, and energy. The proposal establishes the dates of the holidays as August 31, 2002, and November 29, 2002. 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 nonbusiness 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 "nonbusiness" 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 while 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 6% 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 6% sales tax. Sales offered by the retailer, generally at a percentage far greater than 6%, 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 primary purpose of the bill is to boost consumer spending during the year's most critical periods for the retail economic sector. The bill's tax benefit increases in proportion 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 counterintuitive 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.

Finally, 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 that has little to recommend it as a matter of tax policy.

Recommendation

The Commission does not recommend enactment of this bill.

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| 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-2059 **Date of Introduction:** 05/11/02

Sponsor: Assemblyman Roberts, Jr. **Date of Recommendation:** 04/30/02
Assemblywoman Cruz-Perez

Identical Bill:

Committee: Assembly Commerce and Economic Development

Description

This Bill authorizes the creation of a new urban enterprise zone in Gloucester City, Camden County.

Analysis

This bill is proposed to amend the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60, et seq., to allow the creation of a 31st urban enterprise zone in Gloucester City in Camden County.

This proposal is flawed for several reasons. The greater the number of municipalities that have 3% sales tax, the more that New Jersey becomes a patchwork of differing sales tax rates. This is contrary to tax simplicity and uniformity. Adding more zones may create a slippery slope because other municipalities which are similarly situated to Gloucester City may petition to become another urban enterprise zone. 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.

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. Recent legislation added three more zones to that list. Recently, 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.

As the number of Zones increases, 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. The Bill Statement attached to this proposed legislation simply states that Gloucester City would benefit from the economic stimulus that an urban enterprise zone would provide. However, the bill does not provide an economic study to justify the creation of an urban enterprise zone in Gloucester City. It does not provide any information that would demonstrate that such designation would reverse the economic decline of the affected municipality or attract businesses or customers to that municipality. Conversely, it does not demonstrate that if enacted, it would not draw businesses or customers from other depressed municipalities, or if it would do so, then such an effect is economically justified.

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 6% sales tax rate for sales that take place within a zone. However, New Jersey law imposes a 6% 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% use tax rate if delivery is taken within the zone. The de facto extension of the 3% 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% zones only perpetuates this situation.

Moreover, varying tax rates from municipality to municipality threatens economic neutrality and horizontal equity within the State. The doctrine of economic neutrality promotes a system of taxation that has a limited effect or impact on the marketplace and avoids policy that benefits one segment of the market at the expense of another. The goal upon which the Urban Enterprise Zones Act is based is to bring new businesses and consumers to selected economically depressed areas. In doing this, the surrounding municipalities from which business and consumers are drawn suffer negative economic effects. Horizontal equity refers to the concept that tax treatment should be uniform from one transaction to another. The Act creates a lower sales tax rate for certain sales transactions taking place within the urban enterprise zone zones. This disparate treatment violates the doctrine of horizontal equity. Permitting more municipalities to collect reduced sales tax would exacerbate the already tenuous foundation upon which the Act is based.

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% 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% 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 6% 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.

Recommendation

The Commission does not recommend enactment of this bill.

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| 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-2207 **Date of Introduction:** 03/30/02

Sponsor: Assemblyman Egan **Date of Recommendation:** 07/30/02
Assemblyman Diegnan

Identical Bill: S-1598

Committee: Assembly Commerce and Economic Development

Description

This bill authorizes the creation of a new urban enterprise zone in New Brunswick, Middlesex County.

Analysis

This bill is proposed to amend the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60, et seq., to allow the creation of a 31st urban enterprise zone in New Brunswick.

The Commission is concerned that the greater the number of municipalities with a 3% sales tax, the more that New Jersey becomes a patchwork of differing sales tax rates. This is contrary to the principle of tax simplicity and uniformity. Adding more zones may create a slippery slope because other municipalities which are similarly situated to New Brunswick may petition to become another urban enterprise zone. 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.

The Urban Enterprise Zone Program has expanded in ways that the original drafters would never have intended. For instance, prior to 1994, ten towns (comprising eleven zones) were designated as Urban Enterprise Zones. In 1994, legislation authorized the creation of ten additional zones. In 1995, legislation yet again added seven more zones. Recent legislation has added three more zones to that list. Also, 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. There has never been an independent, comprehensive analysis done and report issued that confirms that the Urban Enterprise Zone Program has actually been a benefit to the participating communities and to the citizens of the State of New Jersey. The Commission believes that a study is necessary. It also believes and recommends that no further zone be created until and unless their efficiency is proven by objective analysis.

As the number of Zones increases, 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. The Bill Statement attached to this proposed legislation simply states that New Brunswick would benefit from the economic stimulus that an urban enterprise zone would provide. However, the bill does not provide an economic study to justify the creation of an urban enterprise zone in New Brunswick. It does not provide any information that would demonstrate that such designation would reverse the economic decline of the affected municipality or attract businesses or customers to that municipality. Conversely, it does not demonstrate that if enacted, it would not draw businesses or customers from other depressed municipalities, or if it would do so, then such an effect is economically justified.

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 6% sales tax rate for sales that take place within a zone. However, New Jersey law imposes a 6% 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% use tax rate if delivery is taken within the zone. The de facto extension of the 3% 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% zones only perpetuates this situation.

Moreover, varying tax rates from municipality to municipality threatens economic neutrality and the idea of horizontal tax equity within the State. The doctrine of economic neutrality promotes a system of taxation that has a limited effect or impact on the marketplace and avoids policy that benefits one segment of the market at the expense of another. The premise upon which the Urban Enterprise Zones Act is based is to attract new businesses and consumers to selected economically depressed areas. In doing this, the surrounding municipalities from which business and consumers are drawn suffer negative economic effects. Horizontal equity refers to the concept that tax treatment should be uniform from one transaction to another. The Act creates a lower sales tax rate for certain sales transactions taking place within the urban enterprise zone zones. This disparate treatment violates the doctrine of horizontal equity. Permitting more municipalities to collect reduced sales tax would exacerbate the already tenuous foundation upon which the Act is based.

In addition, 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% 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% 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 6% 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.

Finally, the major reason many municipalities are now petitioning for Urban Enterprise Zone status stems from the belief that such a designation would replace revenue that the municipality is currently losing from other sources. For instance, a representative testified to the Sales and Use Tax Review Commission on behalf of New Brunswick's Department of Planning, Community and Economic Development that aid and funds that the city is currently receiving are soon due to expire. The main theme in the representative's testimony urging the Commission to approve the bill, stressed that Urban Enterprise Zone status would replace lost funds for municipal use.

SUGGESTED SOLUTIONS TO URBAN ENTERPRISE ZONE EXPANSION

The Commission believes that there are reasonable and fiscally sound ways to increase municipal revenue from sales tax. The first legislative method involves repealing the partial exemption created under N.J.S.A. 52:27H-80 and amending the provisions of the Urban Enterprise Zones Act regarding depositing a portion of sales tax revenues in enterprise zone assistance funds. In other words, the sales tax rate would remain at 6%, but a portion of the tax collected in each Urban Enterprise Zone would be applied to that zone's assistance fund. This proposal provides several benefits. First, it is easy to administer as the sales tax rate would be the same throughout the State. This proposal also eliminates the risk of discriminating against interstate commerce, thereby removing the constitutional argument provided above. At the same time, it preserves the benefit to the zones of sharing the sales tax revenue generated by transactions in the zones. The purchase exemption for property used or consumed in the zone by a qualified business would stay in effect, but the partial exemption would no longer be available for participating Urban Enterprise Zone businesses. Again, a study could establish whether the 3% sales tax rate actually benefits the zone community rather than a few select businesses that happen to sell higher-priced goods.

Another solution would be to repeal the partial exemption for sales of tangible personal property and replace it with a similar partial exemption for local activities, namely services that are subject to sales tax under N.J.S.A. 54:32B-3(b)(3); (c); (d), and (e). These include storage, restaurant meals, hotel room rentals, and admission to places of amusement. A portion of the revenue generated by partially exempt transactions would continue to be deposited in enterprise zone assistance funds and apply to the accounts of the zones where the transaction took place.

Similar to the previous solution, this proposal would eliminate the risk of discriminating against interstate commerce. Sales of tangible personal property would be subject to the regular 6% sales tax rate while use tax on taxable items purchased elsewhere would also remain at 6%. However, the amendments would create a new partial exemption designed to attract customers to a wide range of businesses in the Urban Enterprise Zones, e.g., restaurants, hotels, movie theaters, and sports arenas. Because doing business at these facilities would involve a longer visit to the zone than merely ordering or picking up merchandise at a store, this partial exemption would be even more effective than the current partial exemptions in stimulating economic and social activity in the Urban Enterprise Zone. It would give a boost to high-traffic businesses like theaters, restaurants, and hotels, most likely attracting residents of more prosperous communities to the commercial and recreational offerings in the Urban Enterprise Zones. Thus, it would help revitalize both the image and the actual economic status of the zones. This incentive for consumers, combined with the continual sharing of sales tax revenue with the Urban Enterprise Zones, could serve the same purposes as the original legislation, but without keeping the State vulnerable to legal challenges or to declining use tax revenues as businesses and individuals have more goods delivered into the zone from out-of-State suppliers. The transactions taxable at 3% would be strictly local, intrastate transactions, therefore use tax would not become an issue. Pursuant to N.J.S.A. 54:32B-6, the compensating use tax applies only to tangible personal property and certain services to tangible personal property which are taxable under N.J.S.A. 54:32B-3(b)(1) and (2). It does not apply to transactions taxable under N.J.S.A. 54:32B-3(b)(3) through 54:32B-3(e), some of which could be subject to a 3% sales tax rate under this proposal.

These two solutions solve the problem of providing sales tax benefits which give some communities a sales tax rate advantage over others. There are constant demands to expand the program by establishing new Urban Enterprise Zones in neighboring communities that are competitively disadvantaged by their neighbors' favored position. In addition to diluting the very benefits that the program seeks to confer, this expansion then creates even further demands for expansion to other communities that perceive an economic disadvantage resulting from the new zones' favored status. The expansion of the Urban Enterprise

Zones also serves to enlarge and perpetuate the fiscal costs to the State in terms of lost tax dollars and the potential legal problems inherent in the 3% sales tax benefit.

There are in fact alternatives for providing funds to local municipalities rather than expanding a program which presents major fiscal, administrative, and legal problems for the State of New Jersey. The Commission again urges the State to undertake an independent and comprehensive review of the enterprise zone program before any additional zones are added.

Recommendation

The Commission does not recommend enactment of this bill.

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| Commission Members For Proposal: | 0 |
| Commission Members Against Proposal: | 7 |
| Commission Members Abstaining : | 0 |

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

Bill Number: A-2421 **Date of Introduction:** 06/06/02

Sponsor: Assemblyman Garrett **Date of Recommendation:** 07/30/02
Assemblyman Diegnan

Identical Bill:

Committee: Assembly Agriculture and Natural Resources

Description

This bill exempts purchases of certain residential water use reduction equipment, devices, and appliances from sales and use tax. Such equipment, devices, and appliances would include, but not be limited to, front-loading washing machines, low-flush toilets, low-flow showerheads, and water-saving aerators on sink faucets.

Analysis

This bill attempts to use a sales tax exemption as a tool for encouraging what is deemed to be desirable behavior (manufacturing, selling, purchasing, and using equipment, devices, and appliances that conserve water). As a matter of policy, this Commission does not support the use of tax exemption legislation as a tool for encouraging socially desirable behavior. The Commission generally prefers sales and use tax legislation to be more "neutral" in its impact on the behavior of vendors and consumers. Even if this exemption is intended to serve a socially useful purpose by promoting water conservation, the Commission simply does not favor using tax legislation as a social, political, or environmental policy tool.

This exemption does not promote the goal of horizontal equity as it only benefits a specialized group. Tax treatment should be uniform from one taxpayer to another and sales tax legislation should be broadly based and tax similar transactions, persons, or things in a similar manner. It is unclear whether the exemption would apply only to single-family homeowners, or be extended to include owners of apartment dwellings, boarding homes or those offering other similar long-term rental or leasing arrangements. Owners of apartment dwellings (or other residential rental properties) as well as commercial owners may seek to qualify for the exemption as well.

Such ambiguity leads to subjective interpretation making the bill difficult to administer and enforce. Without clearly defining the types of residential water use reduction equipment, devices, or appliances that qualify for exemption, and whom the exemption is intended to benefit, vendors would be overly burdened by having to determine what types of residential water use reduction merchandise would qualify for exemption. In addition, without specific guidelines, there would be no way to discern whether such equipment, devices, or appliances were purchased solely for residential use, which would lead to abusive and fraudulent practices.

Consumers of water use reduction equipment, devices, or appliances who are already concerned about the depletion of valuable resources such as water will most likely participate in water reduction measures voluntarily, without enticement. Perhaps the proponents' objective to reduce water use as a conservation measure would be easier met by including commercial water use as well. The focus should be redirected to provide incentives for the manufacturers to raise the industry standard for all water use equipment, devices, and appliances where such equipment is required to reduce water to reasonable usage limits whether the water is used residually or commercially.

This bill would significantly increase the administrative burden of the Division. The Division would have to draft and distribute new rules and regulations as well as provide notices and other publications to vendors of residential water use reduction equipment, devices, and appliances. The Division would also have to revise sales tax publications, draft and distribute technical bulletins and notifications to announce the new exemption to the public and industry-related organizations, answer letters, telephone and e-mail inquiries.

In addition, the loss of revenue to the State would be substantial.

Recommendation

The Commission does not recommend enactment of this bill.

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| Commission Members For Proposal: | 0 |
| Commission Members Against Proposal: | 7 |
| Commission Members Abstaining : | 0 |

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

Bill Number: S-251 **Date of Introduction:** 01/08/02

Sponsor: Senator Bucco **Date of Recommendation:** 02/26/02
Senator Allen

Identical Bill: A-835

Committee: Senate Law and Public Safety and Veterans' affairs

Description

The bill provides an exemption from sales and use tax on the purchase of recreational safety helmets.

Analysis

This bill is proposed to provide a tax exemption on the purchase of recreational safety helmets and other protective headgear that meet 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 problem with this proposed legislation is that the language 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 whom the exemption is intended to benefit, vendors would have the responsibility of determining which types of "protective headgear" would qualify for exemption. In addition, it will be difficult to determine whether a helmet was actually being purchased for a child under the age of 14, or for the specific sporting or recreational uses enumerated in the bill. Being unable to segregate and identify exempt purchases of protective headgear could result in abusive and fraudulent practices.

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 will. 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.

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| 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-258 **Date of Introduction:** 01/08/02

Sponsor: Senator Bucco **Date of Recommendation:** 02/26/02
Senator Girgenti

Identical Bill:

Committee: Senate Law and Public Safety and Veterans' affairs

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.

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 Commission believes that the imposition of tax on the purchase of fire warning and protection equipment would never 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. The limitation of this exemption to purchases for residential use present 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 tends 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.

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| 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-329 **Date of Introduction:** 01/08/02

Sponsor: Senator Bark **Date of Recommendation:** 03/26/02
Senator Allen

Identical Bill:

Committee: Senate Economic Growth, Agriculture and Tourism

Description

This bill would allow certified vendors in historic districts to charge 3% sales tax. Vendors having a place of business within designated "urban heritage districts" would be eligible to charge sales tax at one-half the normal rate on retail sales made from their urban heritage district location (except sales of motor vehicles, cigarettes, alcoholic beverages, and manufacturing machinery, and except when the business is located in an area that overlaps with an urban enterprise zone.) The Division of Taxation would be required to certify those vendors eligible to charge the reduced sales tax rate as urban heritage district vendors.

Analysis

This bill would result in many of the same undesirable conditions already caused by the urban enterprise zone reduced sales tax rate benefit program. Even assuming that the reduced sales tax rate benefit might attract new business to the urban heritage districts favored under the terms of the bill, the piecemeal creation of such specially favored districts will simply shift economic growth from one neighborhood to another; if an "urban heritage district" does experience an increase in healthy economic activity, its good fortune would be at the expense of neighboring districts which, arguably, would be placed at a competitive disadvantage in attracting new vendors or customers willing to engage in transactions at the full 6% rate.

A special reduced sales tax rate for sales within certain portions of New Jersey will also create a potential legal problem, if the full compensating use tax rate is applied when taxable tangible personal property purchased out-of-State or from non-New Jersey mail order vendors is "used" in an urban heritage district. By the terms of the bill, the one-half reduced sales tax rate would apply only to sales made from a certified vendor at its place of business in an urban heritage district. But giving full effect to this physical location requirement could result in a violation of the Commerce Clause of the United States Constitution. The State cannot lawfully subject a sale of merchandise taking place within New Jersey to only 3% sales tax, while imposing a use tax rate of 6% on a comparable item that was purchased from an out-of-New Jersey source.

In light of the case *Associated Industries of Missouri v. Lohman*, 511 U.S. 641, 114 S. Ct. 1815, 128 L. Ed. 2d 639 (1994), it appears that New Jersey statutes creating a partial exemption for certain retail sales only if they take place within a certain district (i.e. only intrastate sales) would similarly not survive constitutional scrutiny. In order to avoid constitutional challenges, New Jersey has had to apply the reduced (3%) rate administratively both to sales actually taking place in a UEZ and satisfying the other statutory criteria for the partial exemption and to any out-of-State purchases, when the first use of the goods takes place in a UEZ. If this bill is enacted, it will need to do the same thing for use tax in the urban heritage districts. Only in that way could the partial exemption not discriminate against interstate commerce, since both sales tax and use tax would be 3%. But, while this solution would at least probably shield the State from constitutional attacks, it would result in substantial losses in tax revenue and would fail to advance the purpose for which the urban heritage district partial exemption is intended.

To date, there has been no comprehensive analysis done of the UEZ program to measure the impact of the program on the State. Without any concrete evidence to show that the UEZ program's effectiveness within the urban areas was as anticipated, it seems irresponsible to continue to push for more legislation projected to increase business activity and stimulate economic growth in certain areas within the State. The proposed bill basically appears to be a modified UEZ program disguised to look like a different agenda by the presentation of varied criteria. There is no justification for reintroducing such initiatives without knowing that the initial objectives of the UEZ program as originally implemented were attained, and met the expectations of the program's supporters.

There is no demonstrated need for this legislation. In fact, this bill could act as a deterrent to the designation or continuation of historic districts. Businesses located outside of an existing or proposed district could be threatened enough by the district's reduced sales tax that opponents would lobby against having a historic district at all. In addition, it is not realistic to think that discounts provided through reduced sales tax rates on souvenirs would stimulate economic activity or enable an historic district to prosper significantly.

Recommendation

The Commission does not recommend enactment of this bill.

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| 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-598 **Date of Introduction:** 01/08/02

Sponsor: Senator Ciesla **Date of Recommendation:** 03/26/02
Senator Singer

Identical Bill:

Committee: Senate Community and Urban Affairs

Description

The bill would provide a sales and use tax exemption for certain sales to nonprofit homeowners' associations of certain services which they are required to provide for the common areas of a real estate community.

Analysis

Nonprofit homeowners' associations are required to provide certain services for the common areas of a housing community, and are entitled to reimbursement from the municipality when they purchase these services. The bill would allow these associations an exemption when purchasing certain services that would qualify for such reimbursement by the municipality under N.J.S.A. 40:67-23.3. These reimbursable services (e.g., snow removal, road lighting, garbage and recyclables collection) are reimbursable only if performed upon an area which is dedicated to public use or which at least satisfies the municipality's criteria for such dedication, and only to the extent that the expense does not exceed what the municipality would have had to spend if the service had been provided directly to the municipality. The apparent rationale for this proposed exemption is one which the Commission essentially supports. That is, if these services were not provided by the association, they would need to be provided by the municipality, at the public's expense, and the municipality would be exempt from sales and use tax on its purchases. As a matter of general policy, the Commission supports the position that the association should be exempt when purchasing taxable services that will ultimately be paid for by an exempt public entity and that would have been exempt if purchased directly by the municipality.

There are some concerns that an exemption at the point of sale would be subject to misapplication and abuse. The exemption clearly is intended to apply only to those expenses that are reimbursable under N.J.S.A. 40:67-23.3. Reimbursable expenses are limited to those incurred in the purchase of certain essential services and *only* when those expenses are incurred in servicing areas which the municipality deems to be dedicated to public use, and the expenses do not exceed the amounts that the municipality would have had to spend if providing the service directly. But, until the municipality reviews the Association's purchases to determine the amounts eligible for reimbursement, it may not be entirely clear whether the Association's purchase should be exempt in whole or in part. It would therefore be preferable to grant the exemption in the form of a right to a refund rather than an exemption at the point of sale.

Recommendation

The Commission does not recommend enactment of this bill.

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| Commission Members For Proposal: | 0 |
| Commission Members Against Proposal: | 5 |
| Commission Members Abstaining : | 1 |

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

Bill Number: S-636 **Date of Introduction:** 01/08/02
Sponsor: Senator Inverso **Date of Recommendation:** 02/26/02
Identical Bill: A-580
Committee: Senate Economic Growth, Agriculture and Tourism

Description

The bill provides for a 3% sales tax rate for "retail sales," sales of food and drink, and admission charges at places of amusement in urban enterprise zones.

Analysis

This bill is proposed to amend the Urban Enterprise Zone Act, N.J.S.A. 52:27H-60, et seq., to provide for a 3% sales tax rate for "retail sales," sales of food and drink, and admission charges at places of amusement in urban enterprise zones. It further allows the 3% rate to continue after the end of the 20-year period of a zone designation so long as the place of amusement continues in operation at the same location. The bill prohibits a "sexually oriented business" from being a qualified place of amusement.

The rationale behind the bill is unclear. Presumably it is to encourage consumers to visit a place of amusement located within the urban enterprise zone by offering a 3% reduction in admission charges, thereby inducing buyers to make more purchases than they would if the sales tax rate was 6%. But it is doubtful that a consumer would be enticed into an urban enterprise zone by the prospect of reduced sales tax on an admission charge and then make substantially more purchases simply because the sales tax rate is 3%.

The loss of revenue to the State would be substantial because the 3% sales tax collected would be 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 6% sales tax that is currently collected on these items.

Currently, only "qualified businesses" located within the urban enterprise zone are eligible to collect sales tax at the rate of 3%. To become qualified, the business must meet certain criteria, such as creating new employment in the zone. Since this proposal would give the 3% 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 easier it is for certain businesses to qualify for charging 3% sales tax, the more that competitors located outside a zone will assert that the Urban Enterprise Zone Program gives an unfair advantage to businesses in the zone. The bill could also result in a trend toward more "automatic" qualification for urban enterprise zone benefits. Further, the inconsistencies between the bill's 3% provisions and the regular 3% requirements will create confusion among businesses in zones and among customers.

The adoption of this proposal creates a potential Federal constitutional problem. New Jersey imposes use tax on items that are purchased out-of-State for use in New Jersey but sales tax was not collected or was collected at a rate less than the New Jersey sales tax rate. Constitutionally, the use tax in an area must be imposed at the same rate as the sales tax is imposed within the same area. Therefore, if certain businesses in a zone may charge 3% sales tax, a payer of use tax within the zone may assert that the use tax must be imposed at 3%, instead of 6%.

Further, varying tax rates from municipality to municipality threatens economic neutrality and horizontal equity within the State. The doctrine of economic neutrality promotes a system of taxation that has a limited effect or impact on the marketplace and avoids policy that benefits one segment of the market at the expense of another. The goal upon which the Urban Enterprise Zone Act is based is to bring new businesses and consumers to selected economically depressed areas. In doing this, the surrounding municipalities from which business and consumers are drawn suffer negative economic effects. Horizontal equity refers to the concept that tax treatment should be uniform from one transaction to another. The Act creates a lower sales tax rate for certain sales transactions within the zones. This disparate treatment of certain transactions violates this doctrine. Adding more types of sales under the purview of the 3% sales tax rate would exacerbate the already tenuous foundation upon which the Act is based.

Finally, the bill creates a complex problem in the administration of the program. Determining whether a sale occurs at the qualifying location in the zone will be difficult. For instance, a ticket agent located within a qualifying place of amusement may assert that the agent may charge 3% sales tax for a ticket sold at a booth within the zone, even though the event will be outside the zone. In addition, a vendor that is located and that takes an order within a qualifying place of amusement may assert that it can charge 3% sales tax on mail-order sales or sales of products delivered from an outside warehouse or another store.

Recommendation

The Commission does not recommend enactment of this bill.

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| 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-704 **Date of Introduction:** 01/15/02

Sponsor: Senator Lance **Date of Recommendation:** 03/26/02

Identical Bill:

Committee: Senate Budget and Appropriations

Description

The bill provides for a sales tax exemption for rental transactions between closely related business entities.

Analysis

The bill provides that receipts from the rental of tangible personal property between related persons not engaged in the business of renting such property are exempt from sales and use tax. This exemption will cure the inequity that occurs in the situation where Company A buys equipment for its own use, pays tax, then charges a related entity, Company B, for the rental of the equipment. This inter-company transaction is characterized as a "rental" on the company's books only for accounting purposes and tax is due even though the transfer is amongst itself.

This exemption will promote horizontal equity because similar legislation already exists for the interchange of trucks between closely related business entities. Horizontal equity mandates that sales tax legislation be broadly based and taxes similar transactions, persons or things in a similar manner.

The impact of this bill is believed to be low (less than \$100,000 annually) because the specific criteria that must be satisfied in order to qualify for the sales tax exemption is very limited so it does not impact a lot of taxpayers. The bill defines "related persons" as those that are 80% or more owned by each other or are 80% or more owned by the same third parties.

Recommendation

The Commission recommends enactment of this bill.

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| Commission Members For Proposal: | 5 |
| Commission Members Against Proposal: | 1 |
| Commission Members Abstaining : | 0 |

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

Bill Number: S-779 **Date of Introduction:** 01/24/02

Sponsor: Senator Charles, Jr. **Date of Recommendation:** 07/30/02

Identical Bill:

Committee: Senate Economic Growth, Agriculture and Tourism

Description

This bill requires the designation of an urban enterprise zone in a municipality where a Federal military installation was decommissioned by the Department of Defense.

Analysis

This bill provides that in addition to the urban enterprise zones designated pursuant to section 7 of P.L. 1983, c.303 (C.52:27H-66) and Section 3 of P.L. 1995, c.382 (C.52:27H-66.1), the New Jersey Urban Enterprise Zone Authority shall designate any municipality in which a Federal military installation has been decommissioned by the United States Department of Defense as an urban enterprise zone entitled to a 50% reduction in sales tax as imposed under the Sales and Use Tax Act.

This bill is unnecessary since the municipality referenced has already been designated as an urban enterprise zone. The only municipality in the State where a Federal military installation was decommissioned by the Department of Defense was Bayonne City. This municipality already qualifies as one of three new urban enterprise zones pursuant to P.L. 2001, c.247, s. 12 (52:27H-66.7) which the Urban Enterprise Zone Authority was authorized to designate under P.L. 2001, c.347 (C.52:27H-66.2 et seq.).

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 7

Commission Members **Abstaining**: 0

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

Bill Number: S-791 **Date of Introduction:** 01/24/02
Sponsor: Senator Ciesla **Date of Recommendation:** 03/26/02
Identical Bill: A-2186
Committee: Senate Transportation

Description

The bill would provide a sales and use tax exemption for the purchase of certain very low emission motor vehicles that satisfy the standards in Phase II of California's Low Emissions Vehicle program.

Analysis

This bill attempts to use a sales tax exemption as a tool for encouraging what's deemed to be desirable behavior (manufacturing, selling, purchasing, and using vehicles that are less harmful to the natural environment). This commission generally prefers sales tax legislation to be far more "neutral" in its impact on the behavior of vendors and consumers. Therefore, even if an exemption seeks to do some good by encouraging buying and selling behavior that benefits the public, the Commission is simply not in favor of using tax legislation as a social/political/environmental policy tool.

Basing a New Jersey tax exemption on the standards in another law which is neither a New Jersey law nor even a tax law is rather troublesome. This bill, by its explicit terms, requires the Treasury to work in conjunction with the Department of Environmental Protection in promulgating any regulations needed in order to implement this sales tax exemption. This joint effort is of course a practical necessity, but it also reflects the complex nature of tax exemption standards that are based on standards in environmental law. In addition, because the California environmental standards may change, New Jersey's sales tax standards might even be subject to change because of amendments or administrative modifications on that state's low emissions vehicle program.

It is estimated that this sales tax exemption, if enacted, would result in annual revenue losses of approximately \$300,000.

Recommendation

The Commission does not recommend enactment of this bill.

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| Commission Members For Proposal: | 1 |
| Commission Members Against Proposal: | 4 |
| Commission Members Abstaining : | 1 |

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

Bill Number: S-911 **Date of Introduction:** 02/11/02
Sponsor: Senator Inverso **Date of Recommendation:** 04/30/02
Senator Turner
Identical Bill: A-1774
Committee: Senate Economic Growth, Agriculture and Tourism

Description

This bill establishes the New Jersey Film Industry Assistance Program in the Economic Development Authority and appropriates \$20,000,000. It expands the exemption for certain sales and services purchased in relation to film and video production.

Analysis

This bill expands the exemption provided for certain sales and services purchased in relation to film and video production to include sales of audiovisual masters and sales of services in connection with audiovisual masters made or used by film production companies. Primarily, the bill is expanded to include an exemption from tax on the sale of production equipment used to produce film masters. The additional sales and use tax exemption is intended to provide an additional incentive to attract film and television companies to the State.

The motion picture and television industry has yielded millions of dollars in revenue for the State in the past few years and is anticipated to continue to grow. The New Jersey Film and Television Industry Promotion Program would be established as a way for the Motion Picture and Television Development Commission to stimulate more film production projects within the State. Large production companies currently deliver film masters out-of-State to avoid paying tax. The exemption of the equipment used in connection with the film masters makes it easier for production companies to sell their masters within the State. Such an exemption provides an additional incentive for large production companies to develop and produce movie and television projects in New Jersey.

The rise in film and television production would positively impact the State's economy as production companies pump money into local communities. For example, production companies could spend significant amounts of money within local cities and towns by using local carpenters, security companies, caterers, dry cleaners, hardware, and lumber stores. Increased film and video production in the State will result in increased revenue from money that is spent by the major film production companies within New Jersey's neighborhoods.

The fiscal impact of the bill is expected to be relatively insignificant. The only revenue loss under the bill would be limited to expenditures that satisfy the new exemption. The only loss of revenue would be from the production of corporate and training films for which the exemption does not apply.

The amendment expanding the sales tax exemption is simply a technical refinement that does not place any extra administrative burdens on the State. As the bill makes New Jersey a more attractive arena for the filming projects, the potential boost to the State's economy outweighs the cost involved in administering the bill.

Recommendation

The Commission recommends enactment of this bill.

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| Commission Members For Proposal: | 5 |
| 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-936 **Date of Introduction:** 02/11/02

Sponsor: Senator Turner **Date of Recommendation:** 04/30/02

Identical Bill:

Committee: Senate Community and Urban Affairs

Description

This bill would create "Urban Heritage Districts." These small districts would be located within municipalities qualified to receive urban aid, and would contain historic sites and meet certain other requirements.

Vendors having a place of business within designated "urban heritage districts" would be eligible to charge sales tax at one-half the normal rate on retail sales made from their urban heritage district location (except sales of motor vehicles, cigarettes, alcoholic beverages, and manufacturing machinery, and except when the business is located in an area that overlaps with an urban enterprise zone.) The Division of Taxation would be required to certify those vendors eligible to charge the reduced sales tax rate as urban heritage district vendors.

Sales tax revenues from the reduced-rate retail sales made by certified urban heritage district vendors would be deposited into an Urban Heritage District Maintenance Trust Fund.

Analysis

This bill would result in many of the same undesirable conditions already caused by the urban enterprise zone reduced sales tax rate benefit program. Even assuming that the reduced sales tax rate benefit might attract new business to the urban heritage districts favored under the terms of the bill, the piecemeal creation of such specially favored districts will simply shift economic growth from one neighborhood to another; if an "urban heritage district" does experience an increase in healthy economic activity, its good fortune would be at the expense of neighboring districts, which arguably, would be placed at a competitive disadvantage in attracting new vendors or customers willing to engage in transactions at the full 6% rate.

A special reduced sales tax rate for sales within certain portions of New Jersey will also create a potential legal problem if the full compensating use tax rate is applied when taxable tangible personal property purchased out-of-State or from non-New Jersey mail order vendors is "used" in an urban heritage district. By the terms of the bill, the one-half reduced sales tax rate would apply only to sales made from a certified vendor at its place of business in an urban heritage district. But giving full effect to this physical location requirement could result in a violation of the Commerce Clause of the United States Constitution. The State cannot lawfully subject a sale of merchandise taking place within New Jersey to only 3% sales tax, while imposing a use tax rate of 6% on a comparable item that was purchased from an out-of-New Jersey source.

The proposed legislation is an attempt to revitalize and enhance retail activity in many distressed urban areas within the State. The theory is that increased economic activity within designated urban heritage districts will instill a sense of civic pride and induce businesses to relocate or expand into those economically challenged areas. However, the Legislature has already tried to achieve this by enacting the New Jersey Urban Enterprise Zone Act ("the Act"). It was anticipated that the Act would provide a framework for encouraging private capital investment within selected urban areas designated as Urban Enterprise

Zones. The major benefits of the UEZ program were to provide: 1) a sales tax exemption which would induce businesses to relocate or expand into the zones, and 2) a reduced rate reduction on the sales of goods from the businesses in the zones to entice shoppers into the zones. Legislation which encourages the establishment of the urban heritage districts offers no new incentives for businesses above and beyond those offered through the UEZ program.

To date, there has been no comprehensive analysis done of the UEZ program to measure the impact of the program on the State. Without any concrete evidence to show that the UEZ program's effectiveness within the urban areas was as anticipated, it seems irresponsible to continue to push for more legislation projected to increase business activity and stimulate economic growth in disenfranchised areas within the State. The proposed bill basically appears to be a modified UEZ program disguised to look like a different agenda by the presentation of varied criteria. There is no justification for reintroducing such initiatives without knowing that the initial objectives of the UEZ program as originally implemented were attained, and met the expectations of the program's supporters.

This bill allows a portion of revenue generated within designated urban heritage districts to be held by the State Treasurer for use by the municipalities in which those districts are located, for such things as installing security measures, repair and maintenance services as well as other qualified improvement projects. Assuming that channeling predesignated funds back to the urban heritage districts results in revitalization of the urban heritage districts within a municipality thus attracting new business into the districts, the piecemeal creation of each specially favored district would simply shift economic growth from one neighborhood to another. If an urban heritage district does experience an increase in healthy economic activity, its good fortune would be at the expense of neighboring municipalities. There is no guarantee that the increase in retail sales activity within the urban heritage districts will increase to the extent that the revenues raised would be sufficient enough to appropriately fund the qualified improvement projects and services that the municipalities desire for the urban heritage districts.

The bill would give municipalities the ability to control the allocation of funds received from the State Treasury. Municipalities would be allowed to designate urban heritage districts within their perimeters. Funds would be transferred from the State Treasury to areas that municipalities establish as heritage districts. The municipalities with selected heritage districts would have the benefit of increased aide without going through the normal channels of the State's funding process. The bill provides a back-door method of transferring funds from the State Treasury to municipalities with urban heritage districts to use for repair and maintenance, security, and making aesthetic improvements within the heritage districts. Empowering certain municipalities to control the flow of revenue into urban heritage districts could easily create opportunities for abuse and fraudulent practices.

This bill could actually be a deterrent to the designation or continuation of historic districts. Businesses located outside an existing or proposed district may be threatened enough by the district's reduced sales tax that they will lobby against having a district.

The bill not only would result in an enormous loss of revenue; it would also impose a tremendous administrative burden on the Division of Taxation. Increased administrative responsibilities would include creating and implementing rules and procedures for separating revenue earmarked for the Urban Heritage District Maintenance Fund from the General Fund. The enactment of this bill will require the State Treasurer to undertake additional responsibilities, which may result in the reallocation of State resources.

Recommendation

The Commission does not recommend enactment of this bill.

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| 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-967 **Date of Introduction:** 02/11/02

Sponsor: Senator Turner **Date of Recommendation:** 04/30/02

Identical Bill:

Committee: Senate Education

Description

Broadens the exemption for school textbooks to include "recommended" textbooks, in addition to books designated as "required" textbooks by the educational institution.

Analysis

The bill does not explicitly limit the right to claim the exemption to students for *their own* school purposes. The existing statutory language also does not so limit the exemption. However, the omission has never been an administrative problem, because generally, elementary and secondary school texts are purchased by the school systems, which are exempt pursuant to N.J.S.A. 54:32B-9, while higher education textbooks are usually sold by a limited number of vendors, generally "college bookstores" which usually sell required texts in a special section of their store. But if the scope of the exemption were expanded to include merely "recommended" books, *any* purchaser might potentially claim exemption when purchasing any general trade book that happens to be recommended by some school in New Jersey. Thus, the practical effect of this amendment, if enacted, could be to create an almost blanket exemption for book purchases in New Jersey, provided that some school has taken the requisite steps to list the book as "recommended" reading material.

In addition, there is likely to be wide variance in the extent to which various schools choose to complete the necessary paperwork in order to declare that a book is "recommended" and to obtain the Department of Education's or the Commission of Higher Education's approval of their recommendations. "Recommended" books will not be limited to those purchased by a school system or marketed to college students in the "textbook" section of a university bookstore. They will be found among the normal stock of a wide variety of bookstores that do not specialize in "school" books. The amendment could thus operate contrary to the State's policy to subject *most* retail sales of tangible personal property to a broad-based sales tax, subject to only *limited* exemptions.

It would be difficult and burdensome for vendors to implement the exemption proposed in this bill, since "recommended" books encompass a wide range of reading material sold by vendors who are not accustomed to receiving a Form ST-16 (Exemption Certificate for Student Textbooks) or other exemption certificates for book purchases. There would also be resulting problems for the Division of Taxation's investigators and auditors.

In addition, the expansion of the textbook 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 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 "recommended" but not "required" books would save an individual college student a fairly insignificant sum every year. However, the loss of revenue, some of it unintended, to the State could be substantial. This leaves the State to find other

means of generating the moneys lost as a result of an expanded exemption that has little to recommend it as a matter of tax policy.

Recommendation

The Commission does not recommend enactment of this bill.

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| 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-1061 **Date of Introduction:** 02/21/02

Sponsor: Senator Cardinale **Date of Recommendation:** 04/30/02

Identical Bill: `

Committee: Senate Health, Human Services and Senior Citizens

Description

Clarifies that diabetic supplies; medical oxygen, respiratory equipment; wheelchairs, TENS and other durable medical equipment; and crutches and other artificial devices and appliances, are exempt only when sold for *human* use. Expands the medical exemption to provide an exemption for sales of medical equipment and supplies and all other health care equipment and supplies not already specifically exempt under N.J.S.A. 54:32B-8.1, when they are purchased for use in providing medical and health care services to humans, but not transferred to the purchaser.

Analysis

The proposed exemption would give professional medical services an enormous tax advantage that other providers of nontaxable professional services do not have. Providers of nontaxable professional services have always been treated as the retail purchasers of the goods and services that they use in order to render their services and, unless these particular items are subject to some blanket exemption (e.g., food, drugs, transportation services), the professionals are liable for sales and use tax.

This amendment would give physicians, dentists, profit-making hospitals, and other medical services providers an exemption even broader than the one available to the patients themselves, since it would allow them an exemption for “all other health care equipment and supplies *not otherwise exempt under this section*” (emphasis added). Thus, for example, while a *patient* would have to pay tax on purchases of bandages, toothpaste, plastic cups, cotton balls, bedpans, blood pressure monitors, and fever thermometers, a doctor’s office, nursing home, dentist’s office, or hospital would not.

Yet, there appears to be no genuine financial need or policy reason for medical services providers to have the broad exemption that this bill would provide. Certainly there is no evidence that the cost savings would automatically be passed on to the patients. Enactment of this new exemption provision 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. The loss of revenue to the State could be substantial, leaving the State to find other means of generating the moneys lost as a result of an expanded exemption that has little to recommend it as a matter of tax policy.

The Commission does not recommend enactment of this bill.

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| 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-1185 **Date of Introduction:** 03/04/02
Sponsor: Senator Allen **Date of Recommendation:** 04/30/02
Identical Bill: A-1988
Committee: Senate Transportation

Description

Exempts sales of aircraft having a certified takeoff weight of at least 6,000 pounds.

Analysis

While it appears logical to exempt sales of the aircraft itself, since sales of repairs and parts are exempt pursuant to an amendment enacted in 1999, this will probably be a very costly piece of legislation, if enacted, since aircraft are high-price items. Because the exemption would apply to aircraft purchases that are *not* used by air carriers for air commerce, it appears that it would apply to planes used for either private or business purposes. There does not seem to be any policy reason to exempt them related to some tangible benefit for the citizens of the State as a whole, its economy or environment. Perhaps that, coupled with revenue concerns, is the reason that no comparable exemption for noncommercial motor vehicles or vessels, based solely on weight, has ever been proposed.

The 6,000-pound threshold could potentially be difficult for Division of Taxation personnel to interpret if they are not familiar with aircraft. However, the same criterion applies to determine those aircraft eligible for exempt repairs pursuant to the 1999 amendment (P.L.1999, c.246), and the Division is now aware that the FAA-certified takeoff weight is indicated in an aircraft's flight manual, which every aircraft must carry. The maximum gross takeoff weight is made up of the weight of the aircraft plus what it carries. It will be heavier than the maximum gross landing weight, because by the time the plane lands, it will have burned fuel, and with the fuel gone, the gross weight will be less. The FAA issues "type certificates." These are given to the manufacturer. They specify what gross takeoff weight is allowed for the particular type certificate. Thus, the gross weight allowed according to the type certificate is the original certified weight.

Supplemental certificates may be issued later, showing a higher gross takeoff weight if changes are made to the aircraft after manufacture or even after sale, e.g., new larger motor substituted for the standard motor. However, the "maximum gross takeoff weight, as specified in the type certificate issued by the Federal Aviation Administration" would mean that *original* gross takeoff weight in the specifications given to the manufacturer by FAA. It would *not* mean the higher weight, after supplemental certificates are issued, because the plane had additional heavy parts installed later.

The Commission does not recommend enactment of this bill.

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| 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-1598 **Date of Introduction:** 03/30/02
Sponsor: Senator Smith **Date of Recommendation:** 07/30/02
Identical Bill: A-2207
Committee: Senate Economic Growth, Agriculture and Tourism

Description

This bill authorizes the creation of a new urban enterprise zone in New Brunswick, Middlesex County.

Analysis

This bill is proposed to amend the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60, et seq., to allow the creation of a 31st urban enterprise zone in New Brunswick.

The Commission is concerned that the greater the number of municipalities with a 3% sales tax, the more that New Jersey becomes a patchwork of differing sales tax rates. This is contrary to the principle of tax simplicity and uniformity. Adding more zones may create a slippery slope because other municipalities which are similarly situated to New Brunswick may petition to become another urban enterprise zone. 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.

The Urban Enterprise Zone Program has expanded in ways that the original drafters would never have intended. For instance, prior to 1994, ten towns (comprising eleven zones) were designated as Urban Enterprise Zones. In 1994, legislation authorized the creation of ten additional zones. In 1995, legislation yet again added seven more zones. Recent legislation has added three more zones to that list. Also, 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. There has never been an independent, comprehensive analysis done and report issued that confirms that the Urban Enterprise Zone Program has actually been a benefit to the participating communities and to the citizens of the State of New Jersey. The Commission believes that a study is necessary. It also believes and recommends that no further zone be created until and unless their efficiency is proven by objective analysis.

As the number of Zones increases, 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. The Bill Statement attached to this proposed legislation simply states that New Brunswick would benefit from the economic stimulus that an urban enterprise zone would provide. However, the bill does not provide an economic study to justify the creation of an urban enterprise zone in New Brunswick. It does not provide any information that would demonstrate that such designation would reverse the economic decline of the affected municipality or attract businesses or customers to that municipality. Conversely, it does not demonstrate that if enacted, it would not draw businesses or customers from other depressed municipalities, or if it would do so, then such an effect is economically justified.

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 6% sales tax rate for sales that take place within a zone. However, New Jersey law imposes a 6% 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% use tax rate if delivery is taken within the zone. The de facto extension of the 3% 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% zones only perpetuates this situation.

Moreover, varying tax rates from municipality to municipality threatens economic neutrality and the idea of horizontal tax equity within the State. The doctrine of economic neutrality promotes a system of taxation that has a limited effect or impact on the marketplace and avoids policy that benefits one segment of the market at the expense of another. The premise upon which the Urban Enterprise Zones Act is based is to attract new businesses and consumers to selected economically depressed areas. In doing this, the surrounding municipalities from which business and consumers are drawn suffer negative economic effects. Horizontal equity refers to the concept that tax treatment should be uniform from one transaction to another. The Act creates a lower sales tax rate for certain sales transactions taking place within the urban enterprise zone. This disparate treatment violates the doctrine of horizontal equity. Permitting more municipalities to collect reduced sales tax would exacerbate the already tenuous foundation upon which the Act is based.

In addition, 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% 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% 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 6% 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.

Finally, the major reason many municipalities are now petitioning for Urban Enterprise Zone status stems from the belief that such a designation would replace revenue that the municipality is currently losing from other sources. For instance, a representative testified to the Sales and Use Tax Review Commission on behalf of New Brunswick's Department of Planning, Community and Economic Development that aid and funds that the city is currently receiving are soon due to expire. The main theme in the representative's testimony urging the Commission to approve the bill stressed that Urban Enterprise Zone status would replace lost funds for municipal use.

SUGGESTED SOLUTIONS TO URBAN ENTERPRISE ZONE EXPANSION

The Commission believes that there are reasonable and fiscally sound ways to increase municipal revenue from sales tax. The first legislative method involves repealing the partial exemption created under N.J.S.A. 52:27H-80 and amending the provisions of the Urban Enterprise Zones Act regarding depositing a portion of sales tax revenues in enterprise zone assistance funds. In other words, the sales tax rate would remain at 6%, but a portion of the tax collected in each Urban Enterprise Zone would be applied to that zone's assistance fund. This proposal provides several benefits. First, it is easy to administer as the sales tax rate would be the same throughout the State. This proposal also eliminates the risk of discriminating against interstate commerce, thereby removing the constitutional argument provided above. At the same time, it preserves the benefit to the zones of sharing the sales tax revenue generated by transactions in the zones. The purchase exemption for property used or consumed in the zone by a qualified business would stay in effect, but the partial exemption would no longer be available for participating Urban Enterprise Zone businesses. Again, a study could establish whether the 3% sales tax rate actually benefits the zone community rather than a few select businesses that happen to sell higher-priced goods.

Another solution would be to repeal the partial exemption for sales of tangible personal property and replace it with a similar partial exemption for local activities, namely services that are subject to sales tax under N.J.S.A. 54:32B-3(b)(3), (c), (d), and (e). These include storage, restaurant meals, hotel room rentals, and admission to places of amusement. A portion of the revenue generated by partially exempt transactions would continue to be deposited in enterprise zone assistance funds and apply to the accounts of the zones where the transaction took place.

Similar to the previous solution, this proposal would eliminate the risk of discriminating against interstate commerce. Sales of tangible personal property would be subject to the regular 6% sales tax rate while use tax on taxable items purchased elsewhere would also remain at 6%. However, the amendments would create a new partial exemption designed to attract customers to a wide range of businesses in the Urban Enterprise Zones, e.g., restaurants, hotels, movie theaters, and sports arenas. Because doing business at these facilities would involve a longer visit to the zone than merely ordering or picking up merchandise at a store, this partial exemption would be even more effective than the current partial exemptions in stimulating economic and social activity in the Urban Enterprise Zone. It would give a boost to high-traffic businesses like theaters, restaurants, and hotels, most likely attracting residents of more prosperous communities to the commercial and recreational offerings in the Urban Enterprise Zones. Thus, it would help revitalize both the image and the actual economic status of the zones. This incentive for consumers, combined with the continual sharing of sales tax revenue with the Urban Enterprise Zones, could serve the same purposes as the original legislation, but without keeping the State vulnerable to legal challenges or to declining use tax revenues as businesses and individuals have more goods delivered into the zone from out-of-State suppliers. The transactions taxable at 3% would be strictly local, intrastate transactions, therefore use tax would not become an issue. Pursuant to N.J.S.A. 54:32B-6, the compensating use tax applies only to tangible personal property and certain services to tangible personal property which are taxable under N.J.S.A. 54:32B-3(b)(1) and (2). It does not apply to transactions taxable under N.J.S.A. 54:32B-3(b)(3) through 54:32B-3(e), some of which could be subject to a 3% sales tax rate under this proposal.

These two solutions solve the problem of providing sales tax benefits which give some communities a sales tax rate advantage over others. There are constant demands to expand the program by establishing new Urban Enterprise Zones in neighboring communities that are competitively disadvantaged by their neighbors' favored position. In addition to diluting the very benefits that the program seeks to confer, this expansion then creates even further demands for expansion to other communities that perceive an economic disadvantage resulting from the new zones' favored status. The expansion of the Urban Enterprise

Zones also serves to enlarge and perpetuate the fiscal costs to the State in terms of lost tax dollars and the potential legal problems inherent in the 3% sales tax benefit.

There are in fact alternatives for providing funds to local municipalities rather than expanding a program which presents major fiscal, administrative, and legal problems for the State of New Jersey. The Commission again urges the State to undertake an independent and comprehensive review of the enterprise zone program before any additional zones are added.

Recommendation

The Commission does not recommend enactment of this bill.

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| Commission Members For Proposal: | 0 |
| Commission Members Against Proposal: | 7 |
| Commission Members Abstaining : | 0 |

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

Bill Number: S-1635 **Date of Introduction:** 06/06/02

Sponsor: Senator Kyrillos, Jr. **Date of Recommendation:** 07/30/02

Identical Bill:

Committee: Senate Budget and Appropriations

Description

This bill establishes a sales tax holiday in New Jersey for retail sales of books from September 15 through September 22, 2002, during the National Book Festival.

Analysis

This bill provides for a sales tax holiday on receipts from every retail sale in this State of books to an individual purchaser for nonbusiness use. The proposal establishes the date of the holiday as September 15 through September 22, 2002, to coincide with the National Book Festival. An "individual purchaser" is defined as an individual who pays the purchase price and takes delivery in this State during the exclusion period or who places an order and pays the purchase price even if delivery in this State takes place after the exclusion period.

It is unlikely that consumers would enjoy a true savings as a result of a tax holiday which merely eliminates the 6% sales tax. Sales offered by the retailer, generally at a percentage far greater than 6%, 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 books during the holiday, which merely eliminates the 6% tax, and not realize that they are not enjoying a real tax savings.

According to the bill's statement, the primary purpose of the bill is to help celebrate the National Book Festival in Washington D.C., a national celebration of literacy. However, a tax holiday is not an effective means to the end of encouraging literacy. A more valuable tool than simply eliminating a 6% tax would be a discount provided by manufacturers and vendors on prices of books.

Although the bill states that it is only applicable to books that are purchased by individual consumers for nonbusiness use, it is not clear from the bill what actually constitutes a "book." For instance, does the exemption apply to periodicals, trade or scholarly journals, or to school textbooks that are not already exempt by N.J.S.A. 54:32B-8.21? Additionally, the term "nonbusiness use" is vague and ambiguous. It is too simplistic to make a demarcation between "business" and "nonbusiness" use. For example, what if an individual purchased a book that was for both their own enjoyment and would also help them in their business or profession (e.g., a book on self-confidence)? In addition, the limitation of the exemption to individual purchasers for nonbusiness 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 "nonbusiness" 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 rare or expensive books.

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 while 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 6% would be imposed on interstate purchases used in New Jersey is discrimination against interstate commerce and would not likely survive constitutional scrutiny.

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 books 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 bill's tax benefit increases in proportion 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 multiple and/or more expensive books.

Finally, 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.

This leaves the State to find other means of generating the moneys lost as a result of an expanded exemption that has little to recommend it as a matter of tax policy.

Recommendation

The Commission does not recommend enactment of this bill.

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| Commission Members For Proposal: | 0 |
| Commission Members Against Proposal: | 7 |
| Commission Members Abstaining : | 0 |

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

Bill Number: S-1751 **Date of Introduction:** 07/02/02

Sponsor: Senator Charles, Jr.
Senator Lesniak **Date of Recommendation:** 09/24/02

Identical Bill: A-2661

Committee: **Committee:** Senate Budget and Appropriations

Description

The bill extends certain Urban Enterprise Zone (UEZ) designation periods and allows certain municipal UEZ borrowing from the Enterprise Zone Assistance Fund. The bill also authorizes affected municipalities to borrow against other municipal accounts without interest during the 2003 fiscal year.

Analysis

This bill would create administrative and accounting complexity for the Division of Revenue. The provision extending the five-year time periods that define the Zone's and General Fund's portion of reduced rate revenue makes such periods indefinite. Also, the treatment for each zone account may become different as well as have different ending dates. The extension granted by the bill is defined as "such period of time as is necessary for the higher percentage rate of separate [E]nterprise [Z]one [A]ssistance [F]und deposits to fully compensate for the amount transferred."

The Commission believes that the underlying proposal is substantially fiscal in nature. Although the measures initiated by this bill affect the UEZ program and its administration, the Commission takes no position on the budgetary purpose of this bill. Further, the Commission abstains from comment on whether the utilization of Enterprise Zone Assistance Fund monies as a budgetary funding mechanism is appropriate.

The thrust of this bill enables the State to borrow funds from the Urban Enterprise Zone Assistance Fund created by the New Jersey Urban Enterprise Zone Act of 1983 codified as N.J.S.A. 52:27H-60 et seq.,. The purpose of the Act was to help revitalize the State's economically distressed urban areas. To this end, the Act provides a framework encouraging private capital investment and job creation in the selected urban areas. Currently, 27 zones exist in New Jersey.

There is no information demonstrating that specific zone designations over the past 20 years of the program have reversed the economic decline of the affected municipalities or actually attracted new businesses or customers to municipalities that would not be there otherwise; and, just as importantly, that "new" businesses in zones are not "cannibalized" from adjacent areas of the State. An independent study could establish whether the 3% sales tax rate actually benefits a zone business community rather than a few select businesses that happen to sell higher-priced goods.

Currently, the UEZ program provides for a percentage of collected reduced rate revenues within an enterprise zone to be deposited in the Enterprise Zone Assistance Fund created pursuant to section 29 of P.L. 1983, c.202 (C.52:27H-88). The schedule provides for four five-year periods of decreasing allocation of revenues to be deposited in the Urban Enterprise Zone Assistance Fund. After first depositing ten percent (10%) of gross revenue from the Zones, the schedule provides for the remaining ninety percent (90%) to be allocated and deposited into the Enterprise Zone Assistance Fund and the General Fund as follows: all revenues collected to be deposited in Enterprise Zone Assistance Fund during the first five-year period; sixty-six and two-thirds percent ($66\frac{2}{3}\%$) and thirty-three and one-third percent ($33\frac{1}{3}\%$) re-

spectively during the second five-year period; thirty-three and one-third percent ($33\frac{1}{3}\%$) and sixty-six and two-thirds percent ($66\frac{2}{3}\%$) respectively during the third five-year period; and all of the revenues collected to be deposited in the General Fund for the final five-year period.

The proposed bill applies to municipalities that have municipal accounts in the Enterprise Zone Assistance Fund that will be reduced by section 69 of P.L. 2002 (now pending before the Legislature as Senate Bill No. 2003 or Assembly Bill No. 2500 of 2002). The percentage of revenue that is allocated to the Enterprise Zone Assistance Fund under which these Zones are operating on July 1, 2002, shall be extended until such time as the account is compensated for the loss resulting from the transfer pursuant to P.L. 2002 c.69.

The Commission has a long-standing recommendation that a review of the UEZ program and its effectiveness is necessary to determine the best course of action in relation to future modifications or expansions of the UEZ program in New Jersey. To date, there has been no comprehensive review of the UEZ program by an independent body. As a result, no substantive data concerning the actual success of the UEZ program has been provided to the Legislature. Further, the State's share of money to the General Fund derived from the reduced rate revenues will remain uncertain in the near future as a result of this legislation.

Recommendation

The Commission unanimously abstains from a recommendation on this proposal. The provisions of this bill do not expand or contract the sales tax base. Rather, the bill relates to previous legislation appropriating Enterprise Zone Assistance Fund revenue for State purposes.

Again the Commission recommends an evaluation of the entire UEZ Program as the best course of action before any additional zones are legislated or other amendments made respecting the existing zones. The Commission urges the State to undertake an independent and comprehensive review of the efficacy of the entire Enterprise Zone Program in the State of New Jersey.

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| Commission Members For Proposal: | 0 |
| Commission Members Against Proposal: | 0 |
| Commission Members Abstaining : | 7 |

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 anytime.

(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 taxation@tax.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.