

Sales and Use Tax Review Commission 2006 Annual Report

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

December 31, 2006

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Overview of Authorizing Legislation

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

Membership

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

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

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

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

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

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

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

Duties of the Commission

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

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

Procedures

The following requirements govern the Commission's review process.

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

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

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

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

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

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

Rules and Regulations

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

Commission Report

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

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

Standards of Analysis for Review of Sales and Use Tax Legislation

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

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

Fiscal Year	Sales and Use Tax Collections
2006	\$6,765,984,000
2005	6,552,199,925
2004	6,261,700,380
2003	5,936,057,000
2002	5,996,839,000

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

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

Simplicity

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

Equity

Two compensating concepts of fairness may merit some consideration.

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

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

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

Economic Neutrality

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

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

Costs of Administration and Compliance

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

List of Bills Reviewed by Commission

(from January 1 – December 31, 2006)

Bill Number	Description	Recommendation Date
A-1453/S-1615	Authorizes creation of 32 nd UEZ in Beverly City, Burlington County.	05/10/06
A-1460	Exempts certain purchases by school food service providers from sales and use tax.	02/07/06
A-2206/S-1062	Exempts New Jersey teachers' purchases of qualified teaching materials from sales and use tax.	05/10/06
A-2393	Exempts from sales tax certain sales by or to any senior citizens clubs organized for pleasure, recreation, or other non-profitable purposes.	05/10/06
A-2536	Allows corporation business tax and gross income tax credits, employer unemployment tax rebates, sales tax exemptions, property tax freeze and employee skill training programs as incentives for business revitalization in distressed shopping centers.	05/10/06
A-2700	Clarifies that the purchase price of a passenger automobile for calculation of sales tax due is the amount on the bill of sale.	05/10/06
S-915	Exempts sales of recreational safety helmets from sales and use tax.	05/10/06
S-926	Exempts from sales and use tax sales of Carbon monoxide detectors and any device or equipment sold for residential use to detect, warn of, abate, or extinguish fires.	05/10/06
S-936	Provides a sales and use tax exemption for sales of certain high-efficiency home heating equipment.	02/07/06
S-1231	Establishes a back-to-school sales tax holiday in New Jersey from August 26 through September 1, 2006.	05/10/06
S-1232	Establishes a sales tax holiday in New Jersey from December 10 through December 25, 2006.	05/10/06
S-1479	Exempts medical alarm equipment, services and telecommunications costs from the "Sales and Use Tax Act."	05/10/06

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

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

Since the inception of the Urban Enterprise Zones Act, its Constitutional validity has been brought into question. Under the Commerce Clause, a state may not impose taxes on out-of-State sale transactions that exceed the taxes imposed on in-State transactions. The Urban Enterprise Zone Program halves the 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.

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.

Commission Members For Proposal	0
Commission Members Against Proposal:	8
Commission Members Abstaining :	0

The above factors are not exhaustive and other facts may also be examined. No factor above is independently determining.

The bill as written 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. This proposal creates a disparity between school food service providers and taxpayers in other professions not qualifying for the exemption. If this bill is passed as written, it could open the door to allowing other agents an exemption as well. For instance, agents to federal contractors, colleges, universities, and prisons will also claim an exemption due to horizontal equity. If the State does not allow such an extension, these parties may bring a lawsuit against the State of New Jersey for discrimination which could cost the State millions of dollars.

The Commission also suggests that school food service providers structure their relationships with Boards of Education in order to establish a true agency relationship.

The bill's broad language leads itself to many administrative and enforcement problems. The bill does not define "supplies, material and equipment" or "food service management provider." This language allows for subjective interpretation and may result in fraudulent purchases. Enforcement and administrative problems arise because of the inherent difficulty in determining whether a purchaser and the purchase are qualified for the exemption. Finally, the food service provider who purchases equipment and has among other business obligations, a contract which provides for eligibility might within the language of the law be required to own duplicate equipment for service not provided under such a contract.

According to the legislation, the Act shall take effect immediately and shall be retroactive to July 1, 1999. This will have the result of ending any pending assessments. However, it is not clear how past assessments should be handled. Pursuant to N.J.S.A. 54:32B-20, if application is made within four years from the date of the payment of the tax, the Division is required to issue a refund of tax paid in error, illegally or unconstitutionally. Thus, if the intent of the legislature is to have the Division issue refunds, this statute must be amended to permit refunds of tax remitted on and after July 1, 1999.

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

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposal:	1
Commission Members Against Motion:	8
Commission Members Abstaining :	0

The Commission recommends that comments be added to this recommendation. A Motion to Clarify Legislative Intent was passed which stated: The Commission would support legislation that would clarify the rules for agency under Section 9 of the Sales and Use Tax Act and eliminate the retroactivity clause as proposed. The Commission agrees with the overall intent that there should be no adverse tax consequences to a food service business purchasing supplies solely for use in fulfilling a contract with a primary or secondary school.

Commission Members For Motion:	9
Commission Members Against Proposal:	0
Commission Member Abstaining :	0

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposal:	0
Commission Members Against Proposal:	8
Commission Members Abstaining :	0

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

Bill Number: A-2536 **Date of Introduction:** 02/23/06
Sponsor: Assemblyman Baroni **Date of Recommendation:** 05/10/06
Identical Bill:
Committee: Assembly Appropriations

Description

The bill allows corporation and gross income tax credits, employer unemployment tax rebates, sales tax exemptions, property tax freeze, and employee skill training programs as incentives for business revitalization in distressed shopping centers.

Analysis

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

Further, the Commission has consistently reserved any support for the Urban Enterprise Zone (UEZ) Program as there is no consensus that the Urban Enterprise Zone Program is operating as intended and is thought to be effective and efficient. There has never been an independent, comprehensive analysis performed that confirms that the Urban Enterprise Zone Program has actually been a benefit to the participating communities, yet the Program is being constantly amended and expanded. Arguments are often advanced that the Program promotes unfair competition and that fraud is easily perpetrated under the Program's current tenants. The Commission is concerned that similar issues may arise as a result with passage of this current proposal.

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

Recommendation

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

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-915	Date of Introduction:	01/01/06
Sponsor:	Senator Bucco	Date of Recommendation:	05/10/06
Identical Bill:	S-1080		
Committee:	Senate Budget and Appropriations		

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 meets the standards provided by or pursuant to the laws requiring operators of bicycles, motorcycles, motorized bicycles, roller skates, and skateboards to wear such helmets or headgear. The exemption would also extend to helmets or protective headgear designed to be worn when downhill skiing, operating a toboggan, sled, snowboard, or other method of transporting over snow covered terrain.

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

An exemption from sales tax will not guarantee compliance with the helmet laws or increase safety awareness by those who engage in dangerous activities that require a helmet. Consumers who can only afford to purchase the basic helmets in order to comply with the safety laws will only receive a minimal benefit if the tax was exempt on headgear purchases. Those who are able to purchase more expensive, luxurious helmets will receive a far better benefit than those who can only afford the inexpensive helmets. Relief from sales tax will not have any impact on consumers' ability to purchase safety helmets, or impact the type of protective headgear they choose. Lower-income families will not be more encouraged or relieved of a financial burden if sales tax is not imposed on the purchase of protective headgear.

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

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

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposal:	0
Commission Members Against Proposal:	8
Commission Members Abstaining :	0

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposal:	0
Commission Members Against Proposal:	8
Commission Members Abstaining :	0

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

Bill Number: S-936 **Date of Introduction:** 01/17/06
Sponsor: Senator Bucco **Date of Recommendation:** 02/07/06
Identical Bill:
Committee: Senate Economic Growth

Description

This legislative proposal provides a sales and use tax exemption for certain high-efficiency home heating equipment.

Analysis

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

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

Finally, the passage of this bill would also encourage other products that also meet the energy efficiency standards of the Energy Star program to seek a similar exemption. These products currently include home appliances, home electronics, office equipment, and lighting.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposal:	0
Commission Members Against Proposal:	9
Commission Members Abstaining :	0

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

Bill Number:	S-1231	Date of Introduction:	01/30/06
Sponsor:	Senator Bucco	Date of Recommendation:	05/10/06
Identical Bill:	S-1483		
Committee:	Senate Economic Growth		

Description

This bill establishes a back-to-school sales tax holiday in New Jersey from August 26 through September 1, 2006, on most sales of tangible personal property.

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 26 through September 1, 2006. 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 and at the same time impose tax on a comparable item purchased from an out-of-State source. This scheme whereby an in-State sale would not be subject to any tax, while the full use tax of 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 tax holiday will provide this tax break for the greatest number of families who traditionally spend on "back-to-school" items during this period. However, the bill's tax benefit increases proportionate to the buying power of the taxpayer. Thus, the bill would give a considerably greater tax benefit to wealthier people, since presumably they buy considerably more than low or moderate income people.

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

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

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

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposals:	0
Commission Members Against Proposal:	8
Commission Members Abstaining :	0

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

Bill Number:	S-1232	Date of Introduction:	01/30/06
Sponsor:	Senator Bucco	Date of Recommendation:	05/10/06
Identical Bill:	S-1484		
Committee:	Senate Economic Growth		

Description

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

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 date of the holiday as December 10 through December 25, 2006. 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 and at the same time, impose tax on a comparable item purchased from an out-of-State source. This scheme whereby an in-State sale would not be subject to any tax, while the full use tax of 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 tax benefit increases proportionate to the buying power of the taxpayer. Thus, the bill would give a considerably greater tax benefit to wealthier people since presumably they buy considerably more than low or moderate income people. The holiday would therefore be regressive in its impact, since it would give a far greater tax benefit to those who could afford to purchase expensive items for their personal use. In addition, the dates designated for the holiday are the retail industry's busiest periods, thus it appears counter intuitive to stimulate consumer spending during this time.

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

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

their purchase of a high-priced item during the tax holiday in order to enjoy the tax savings. This leaves the State to find other means of generating the moneys lost as a result of an expanded exemption.

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

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposal:	0
Commission Members Against Proposal:	8
Commission Members Abstaining :	0

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

Bill Number:	S-1479	Date of Introduction:	03/02/06
Sponsor:	Senator Connors	Date of Recommendation:	05/10/06
Identical Bill:	A-655		
Committee:	Senate Commerce		

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

Current law imposes sales and use tax on the purchase of medical alarm and medical emergency monitoring systems as the sale of tangible personal property. This bill proposes to amend the medical exemption under N.J.S.A. 54:32B-8.1 to include the purchase of medical alarms and medical emergency monitoring systems acquired for medical reasons.

Customarily, medical alarm and emergency notification equipment and servicing is sold in combination with other devices and services such as fire and security. The exemption would only be administrable where the medical alarm elements were separately identified and priced. Since some of the equipment and services included in the combination are taxable the entire purchase would be taxable making this exemption useless.

Additionally, many alarm companies advertise that the equipment is free with a term contract for monitoring. These sorts of agreements would not qualify for exemption under the proposal as written.

The telecommunications aspect of the exemption proposal would likewise prove extremely difficult to administer because it is impossible to distinguish what purpose phone lines are used for. Associated monitoring fees are within the scope of taxable "telecommunications", as defined by N.J.S.A. 54:32B-2(cc) and, as such, these charges are currently subject to sales tax. This measure proposes to exclude, from the definition of taxable telecommunications, charges associated with the monitoring of these alarms and systems.

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. 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.

There are no strong tax policy reasons to support this exemption. Enactment of special exemptions for purchases of socially desirable merchandise tend to create an increased demand for similar exemptions for other good, useful, necessary, or politically favored purchases. Such piecemeal exemptions alter the broad-based nature of the sales and use tax and reduce its credibility as a fairly administered and simple to understand tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer and is generally perceived 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.

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 resorting 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, administrative, and enforcement problems.

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 services 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.

Further, and perhaps most important to note at this point in time, the language in N.J.S.A. 54:32B-8.1 has recently been amended to include new definitions pursuant to New Jersey's participation in the Streamlined Sales and Use Tax Agreement (SSUTA, adopted November 19, 2002, as amended January 13, 2006). One such new definition is for "durable medical equipment." The Division is currently awaiting a determination from the Streamlined Governing Board defining what equipment falls within the scope of this definition. If medical alarms and/or monitoring systems are determined to be exempt by way of current language, this proposal would be moot.

The Commission would prefer to consider support of this exemption after the category of durable medical equipment has been reviewed and defined by the Governing Board of the Streamlined Sales and Use Tax Project.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposal:	0
Commission Members Against Proposal:	8
Commission Members Abstaining :	0

CHAPTER 24A

SALES AND USE TAX REVIEW COMMISSION

SUBCHAPTER 1. GENERAL PROVISIONS

18:24A-1.1 Purpose and objectives

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

SUBCHAPTER 2. ORGANIZATION AND OPERATION OF THE COMMISSION

18:24A-2.1 Organization

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

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

18:24A-2.2 Meetings of the Commission

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

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

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

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

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

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

18:24A-2.3 Quorum; votes

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

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

SUBCHAPTER 3. INFORMATION AND FILINGS

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

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

18:24A-3.2 Oral comments

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

18:24A-3.3 Notice of policies

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

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

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

18:24A-3.5 Reports of the Commission

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