



# **Sales and Use Tax Review Commission**

## **2011 Annual Report**

ANNUAL REPORT TO THE NEW JERSEY LEGISLATURE

---

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

DECEMBER 31, 2011



# Table of Contents

Commission Membership and Executive Staff ..... x

Overview of Authorizing Legislation ..... 1

**STANDARDS OF ANALYSIS FOR REVIEW OF SALES AND USE TAX LEGISLATION ..... 3**

List of Bills Reviewed by Commission ..... 5

Bill Recommendations Issued by Commission

| BILL NUMBER   | ..... | PAGE NUMBER |
|---------------|-------|-------------|
| A-3882/       | ..... | 14          |
| A-3912        | ..... | 16          |
| A-3966/S2842  | ..... | 20          |
| S-1050        | ..... | 22          |
| S-2775/A-3882 | ..... | 14          |
| S-2921/A-2840 | ..... | 24          |
| S-2953        | ..... | 26          |

**SALES AND USE TAX REVIEW COMMISSION REGULATIONS ..... 27**



# 2010 Commission Membership and Executive Staff

## Public Members

### APPOINTED BY GOVERNOR

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

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

### APPOINTED BY SENATE

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

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

### APPOINTED BY GENERAL ASSEMBLY

Rafael Cuellar  
President and CEO of ECO & Sons, Inc.

503 Paulison Avenue  
Passaic, NJ 07055  
(973) 417-9905  
e-mail: [rcuellar@ecoandsons.com](mailto:rcuellar@ecoandsons.com)

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

## **Executive Branch**

Christopher Jeter  
Assistant State Treasurer  
NJ Department of the Treasury  
125 West State Street, P.O. Box 002  
Trenton, NJ 08625-002  
(609) 984-0818  
e-mail: [christopher.jeter@treas.state.nj.us](mailto:christopher.jeter@treas.state.nj.us)

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

Raymond Brandes, Esq.  
Assistant Counsel to the Governor  
125 West State Street  
P.O. Box 001  
Trenton, NJ 08625  
(609) 777-2462  
e-mail: [raymond.brandes@gov.state.nj.us](mailto:raymond.brandes@gov.state.nj.us)

## **Executive Secretary**

El-Rhonda Williams Alston, Esq.  
Office of Legislative Analysis and Disclosure  
NJ Division of Taxation  
New Jersey Department of the Treasury  
50 Barrack Street, P.O. Box 269  
Trenton, NJ 08695

(609) 292-7127

e-mail: [nj.sutrc@treas.state.nj.us](mailto:nj.sutrc@treas.state.nj.us)

## **Staff Contributors**

Carol Bell

Beth Berniker

Eric Friedmann

Susan Greitz

John Kelly

Denise Lambert-Harding

Elizabeth Lipari

Mitchell Smith

# 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.<sup>1</sup>

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.<sup>2</sup>

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.<sup>3</sup>

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

---

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

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

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

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

---

## PROCEDURES

The following requirements govern the Commission's review process.

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

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

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

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

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

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

### **Rules and Regulations**

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

---

## COMMISSION REPORT

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

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

# Standards of Analysis for Review of Sales and Use Tax Legislation

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

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

| Fiscal Year | Sales and Use Tax Collections |
|-------------|-------------------------------|
| 2011        | _____                         |
| 2010        | \$8,456,510,000               |
| 2009        | 8,264,162,457                 |
| 2008        | 8,915,515,422                 |
| 2007        | 8,609,639,460                 |
| 2006        | 6,853,418,000                 |
| 2005        | 6,552,199,925                 |
| 2004        | 6,261,700,380                 |

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 non-arbitrary enforcement by state tax administrators.

---

## EQUITY

Two compensating concepts of fairness may merit some consideration.

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

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

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

---

## ECONOMIC NEUTRALITY

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

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

---

## COSTS OF ADMINISTRATION AND COMPLIANCE

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

## LIST OF BILLS REVIEWED BY COMMISSION

(JANUARY 1 – DECEMBER 31, 2011)

| <u>Bill No.</u>   | <u>Description</u>  | <u>Recommendation Date</u> |
|-------------------|---|----------------------------|
| A3882 /<br>S-2775 | <b>Exempts charges for residential storage space and dues for residential health and fitness facilities from the sales and use tax.</b> | April 20, 2011             |
| A3912             | <b>Provides sales and use tax exemption for services performed to certain prewritten computer software delivered electronically.</b>    | April 20, 2011             |
| A-3966/<br>S-2842 | <b>Excludes certain services rendered in connection with installation of carpeting and other flooring from sales and use tax</b>        | August 31. 2011            |
| S-1050            | <b>Excludes the value of certain manufacturer's rebates from the sales price of motor vehicles taxable under the sales and use tax.</b> | April 20, 2011             |
| S-2775/<br>A3882  | <b>Exempts charges for residential storage space and dues for residential health and fitness facilities from the sales and use tax.</b> | April 20, 2011             |
| A3912             | <b>Provides sales and use tax exemption for services performed to certain prewritten computer software delivered electronically.</b>    | April 20, 2011             |
| S-2840/<br>A-3966 | <b>Excludes certain services rendered in connection with installation of carpeting and other flooring from sales and use tax</b>        | August 31. 2011            |

|   |   |   |
|---|---|---|
| <p>S-2921/<br/>A-2940</p>   | <p><b>Exempts cosmetic makeup services in conjunction with reconstructive breast surgery from sales tax.</b></p>  | <p>August 31. 2011</p>  |
| <p>S-2953</p>   | <p><b>Exempts certain medically appropriate tattooing services from the sales and use tax.</b></p> <p><b>New Business</b></p> <p><i>Policy for addressing previously acted upon issues by the SUTRC</i></p> | <p>August 31. 2011</p> <p><i>Tabled pending NJ Attorney General's Opinion</i></p> |
| <p><i>*As the commission had acted on this bill during its March 24, 2010 meeting, no further action was needed and the bills disposition was affirmed.</i></p> |   |   |



---

**SALES AND USE TAX REVIEW COMMISSION**

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

**Bill Number:** A-3882

**Date of Introduction:** 03/07/11

**Sponsor(s):** Assemblyman Van Drew

**Date of Consideration:** 04/20/11

**Co-Sponsor(s):**

**Identical Bill:** S-2775

**Committee:** Assembly Appropriations Committee

---

**Description**

The bill provides for an exemption of charges for residential storage space and dues for residential health and fitness facilities from the sales and use tax.

**Note**

(The Commission addressed an identical proposal (Senate Bill 615) in 2010. The analysis and recommendation below were reaffirmed by the Commission Members on April 20, 2010.)

**Analysis**

This bill attempts to rescind certain portions of Chapter 44, P.L. 2006, by removing the imposition of sales tax on storage space and exempting initiation fees, membership fees and dues required to be paid for use of residential health and fitness facilities from sales and use

tax. The imposition of sales tax on storage space and certain initiation fees, membership fees and dues was included in a major piece of legislation passed in July 2006, which increased sales tax from 6% to 7% throughout the State. Sales and use tax was extended to many previously untaxed services and products in an effort in provide added revenue for the State.

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

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

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

## **Recommendation**

The Commission reaffirms its opposition to the issues presented in this bill and opposes enactment of the 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-2775

**Date of Introduction:** 03/07/11

**Sponsor(s):** Senators Bucco and Allen

**Date of Consideration:** 04/20/11

**Co-Sponsor(s):**

**Identical Bill:** A-3912

**Committee:** Assembly Appropriations Committee

---

**Description**

The bill provides for sales and use tax exemption for services performed to certain prewritten computer software delivered electronically.

**Analysis**

This bill provides a sales and use tax exemption for services performed to certain prewritten computer software delivered electronically.

Under current law, sales of prewritten, or so-called "canned," computer software are exempt from the sales and use tax if the software is delivered electronically and is used directly and exclusively in the conduct of the purchaser's business, trade, or occupation. This exemption ensures computer software applications, which run everything from operating systems to individual computer applications, are permitted to be purchased tax-free by eligible business users.

However, the exemption provided by current law does not apply to services performed to prewritten computer software. Purchasers who, for instance, pay a fee or are assessed a charge by a technician for

the installation, repair, or maintenance of the tax-exempt prewritten computer software delivered electronically must pay the applicable sales tax or use tax on the sales price paid to purchase the service.

This bill broadens the existing exemption to ensure that both the initial sale of, and any one-time or recurring services performed to, rewritten computer software delivered electronically are exempt from the sales and use tax. Similar to the provisions of the existing exemption, services performed to prewritten computer software delivered electronically are only exempt from tax if the services are performed to software used directly and exclusively in the conduct of the purchaser's business, trade, or occupation.

This measure is identical to the proposal made in the Governor's Fiscal Year 2012 Budget proposal (*A Commitment To Rebuilding New Jersey*).

**Streamline Sales Tax Agreement Compliance:**

Implementation of this proposal would not cause the State of New Jersey to be in non-compliance with the Streamlined Sales and Use Tax Agreement.

**Public Comment**

Mary Ellen Peppard, Manager, Government Relations, New Jersey State Chamber of Commerce, submitted written comments and testified in support of the bill. Her position was as follows:



Testimony before the Sales and Use Tax Review Commission

**A-3912/S-2775** (Greenwald/Bucco/Allen)

April 20, 2011

By

Mary Ellen Peppard

Manager, Government Relations

New Jersey State Chamber of Commerce

Thank you for the opportunity to voice the State Chamber's support for A-3912 & S-2775, which clarify that services performed to prewritten computer software delivered electronically and exclusively for business use are exempt from sales and use tax.

In 2006, the legislature amended the Sales and Use Tax Act to include electronically delivered software within the definition of "tangible personal property." As tangible personal property, electronically delivered software became taxable. However, that law specifically exempted from tax the purchase of this software for business use.

In 2009, the Division of Taxation issued proposed amendments to the regulations pertaining to the sales tax on software and related services. While this proposal potentially expands sales tax to the servicing of pre-written electronically delivered software, it does not include an exemption for business use. We believe that this proposal is counter to the intent of the original legislation. Businesses that have operated under the assumption that all services related to electronically delivered software are exempt may face increased tax liability. This proposal would be particularly onerous to the companies that set up back office redundancy operations in New Jersey in recent years. They made investment decisions at least partially based on their estimated costs of operating in New Jersey, and may potentially be subject to higher taxes.

We ask that the Commission recommend enactment of these bills and thank you for considering our views.

### **Recommendation**

The Commission reaffirms its opposition to the issues presented in this bill and opposes enactment of the bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 6

Commission Members **Abstaining**: \*1

*\*Commission Member Deborah Bierbaum recused herself from the matter before the SUTRC*

---

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

**Bill Number:** A-3996

**Date of Introduction:** 05/09/11

**Sponsor(s):** Assemblyman Greenwald

**Date of Consideration:** 08/31/11

**Co-Sponsor(s):**

**Identical Bill:** S-2840 (2011)

**Committee:** Assembly Budget Committee

---

**Description**

The bill would remove the charges for certain services rendered in connection with the installation of carpeting and other flooring from sales and use tax subjectivity.

**Analysis**

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

The fiscal impact of this bill is expected to be significant and would undermine the intent of Chapter 44, P.L. 2006, which was to raise much needed revenue for the State. By changing the law now to eliminate

the imposition of sales tax on storage space and to exempt initiation fees, membership fees and dues from sales and use tax would reverse the effect of the legislation, which was passed in October 2006, after much thought and deliberation.

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

The imposition of sales tax for certain services rendered in connection with the installation of carpeting and other flooring was enacted on October 1, 2006, to increase revenue for the State. The Commission has not been presented with any compelling reasons to support repeal of this initiative.

#### **Recommendation**

The Commission opposes enactment of the bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

**SALES AND USE TAX REVIEW COMMISSION**

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

---

Bill Number: S-1050

Date of Introduction: 06/02/11

Sponsor(s): Senator Connors

Date of Consideration: 04/20/11

Co-Sponsor(s):

Identical Bill:

Committee: Introduced and referred to Senate Transportation Committee

---

Description

This bill would exclude the value of certain manufacturer's rebates from the portion of the sales price of motor vehicles subject to the sales and use tax.

Analysis

This proposal, if enacted, would result in a change to the current definition of "sales price" so that it would exclude the value of any manufacturer rebate granted in such a manner that it is available at the time of sale to be used toward the vehicle's purchase.

The Sales and Use Tax Act sets forth that the total "sales price" of an item includes the total amount of consideration for which personal property is sold, leased or rented. Generally, a customer pays the full price to a retailer and uses some "proof of purchase" to obtain a rebate from the manufacturer at some later date, subsequent to purchase. Although that rebate payment reduces the customer's total outlay for the product, the rebate does not reduce the actual payment that the customer made to the retailer. As a result, the rebate does not reduce the amount of the actual sales price or the amount of sales tax due on a sale. Sales tax is calculated on the total receipt, or "sales price", not just on the portion of the receipt paid by the customer.

Language in the proposed amendment would define a manufacturer's rebate as "cash payment" made by a manufacturer to the dealer. The characterization of manufacturer's rebates as "cash payments" may not be a true description of the transaction. The Division of Taxation finds that these transactions more often occur as credits to the dealer's account rather than a "cash payment." If these payments are generally not proffered in "cash", the language in the bill may not properly define a "manufacturer's rebate".

Additional Information:

New Jersey participates in the Streamlined Sales and Use Tax Agreement (SSUTA). As a participant, this State has pledged to adhere to the definitions of certain terms as they apply to sales and use tax administration' among those agreed-upon terms is "sales price."

The definition of ‘sales price’ adopted by the Streamlined Sales and Use Tax governing authority and incorporated into the New Jersey Sales and Use Tax Act by amendment mandates that third party payments are includable when determining the “sales price” in a transaction. The SSUTA does not make a distinction between types of third party payments; however, the Agreement does specifically permit states to exclude from “sales price”, either “employee discounts that are reimbursed by a third party on sales of motor vehicles, or manufacturer rebates on motor vehicles, or both.” Permissive language in the SSUTA would clearly allow for the exclusion of certain manufacturer’s rebates from the taxable portion of the sales price of motor vehicles.

#### Fiscal Impact:

Although precise figures are unavailable, it is estimated that enactment of this proposed legislation would result in a loss to the State’s General Fund ranging anywhere from \$35.7 million to \$142.8 million.

The foundation for this fiscal analysis assumes that a typical vehicle is a “light vehicle” and costs \$30,000. Sales of light vehicles in New Jersey are about 8% of the total national motor vehicle sales. Between January and October 2007, approximately 1,020,000 light vehicles were sold in New Jersey. Given the vast range of rebates, from \$500 to \$2,000, the resultant amount of lost sales and use tax would potentially range between \$35 and \$140 per unit (when a manufacturer’s rebate is included in the transaction).

Accordingly, U.S. and Asian vehicles sold in the United States which include a manufacturer’s rebate between \$500 and \$2,000 could cause a loss of revenue between \$35.7 Million and \$142.8 Million annually.

(It should be noted that cars made in Europe were not included in this analysis as the European Union typically does not offer manufacturer’s rebates.)

#### **Recommendation**

The Commission does not support enactment of the bill.

Commission Members **For** Proposal: **7**

Commission Members **Against** Proposal: **0**

Commission Members **Abstaining**: **1**

SALES AND USE TAX REVIEW COMMISSION

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

---

Bill Number: S-2921

Date of Introduction: 06/02/11

Sponsor(s): Senator James Beach

Date of Consideration: 08/31/11

Co-Sponsor(s):

Identical Bill:

Committee: Senate Budget and Appropriations Committee

---

#### Description

The bill would exempt cosmetic makeup services performed in conjunction with reconstructive breast surgery from sales and use tax subjectivity.

#### Analysis

The exemption of the sales and use tax on tattooing for certain permanent cosmetic makeup applications provided pursuant to a doctor's prescription in conjunction with reconstructive surgery is in keeping with already established tax policies. They are clearly distinguishable from the purely aesthetic services of tanning services and tattooing, including permanent body art and permanent cosmetic application, which are taxable under N.J.S.A. 54:32B-3(b)(8) and (10), respectively. New Jersey exempts massage, bodywork, and somatic services from subjectivity to sales tax if such services are provided pursuant to a doctor's prescription. It would be consistent to include a medically based exemption for this area of tattooing.

#### Recommendation

The Commission supports enactment of the bill.

Commission Members **For** Proposal: 8

Commission Members **Against** Proposal: 0

Commission Members **Abstaining**: 0

---

SALES AND USE TAX REVIEW COMMISSION

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

**Bill Number:** S-2953

**Date of Introduction:** 06/23/11

**Sponsor(s):** Senator Allen

**Date of Consideration:** 08/31/11

**Co-Sponsor(s):**

**Identical Bill:**

**Committee:** Senate Budget and Appropriations Committee

---

Description

The bill would exempt certain medically appropriate tattooing services from sales and use tax subjectivity.

**Analysis**

The exemption of the sales and use tax on tattooing correcting, completing or concealing a congenital, developmental, traumatic or consequential malformation or mis-formation, including post-surgical and post-reconstructive tattooing, provided pursuant to a doctor's prescription is in keeping with already established tax policies. The procedures described in this proposal are distinguishable from the purely aesthetic services of tanning and tattooing, including permanent body art and permanent cosmetic application, which are taxable under N.J.S.A. 54:32B-3(b)(8) and (10), respectively. New Jersey exempts massage, bodywork, and somatic services from subjectivity to sales tax if such services are provided pursuant to a doctor's prescription. It would be consistent to include a medically based exemption for this area of tattooing.

**Recommendation**

The Commission supports enactment of the bill.

Commission Members **For** Proposal: 8

Commission Members **Against** Proposal: 0

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](http://www.njleg.state.nj.us));
- ii. New Jersey Division of Taxation website ([www.state.nj.us/treasury/taxation](http://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](mailto: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.