

Sales and Use Tax Review Commission 2004 Annual Report

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Special Report:
Analysis of New Jersey's Urban Enterprise Zone Program

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Overview of Authorizing Legislation

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

Membership

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

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

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

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

Two public members (not of the same political party) 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 in the past five fiscal years:

Fiscal Year	Sales and Use Tax Collections
2004	\$6,261,700,380
2003	5,936,057,000
2002	5,996,839,000
2001	5,758,670,000
2000	5,508,046,000

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 that 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.

Analysis of New Jersey's Urban Enterprise Zone Program

Executive Summary

In the 21 years since the New Jersey Urban Enterprise Zone program began in 1983, with the intention of economically revitalizing blighted areas, it has grown and spread to the point where it is a substantial drain on the State's General Fund, and yet, because of inherent defects in the statutory design of the program, it has served to enrich opportunistic businesses while doing relatively little to promote meaningful economic recovery in blighted areas.

Starting on a small scale with just 11 municipalities in urban enterprise zones, the State's program now encompasses 37 municipalities. Because businesses in non-UEZ municipalities find themselves at a disadvantage because of the reduced sales tax rate that neighboring competitors can offer their customers, there has been a constant and growing demand for new zones. In just the five years since the Sales and Use Tax Review Commission was created, there have been more than 90 bills proposing the creation of new UEZs, or expansion of benefits to neighboring municipalities affected by adjacent UEZs, or proposing other kinds of special zones with exemptions or preferential tax rates or fund dedication somewhat like the tax benefits provided under the UEZ program. Five of those bills have been enacted into law in this five-year period, thus continuing the spread of the program and resulting in even more demands for the expansion of the UEZ and similar programs.

This has been a costly program for the State of New Jersey. Because of the outright sales tax exemption granted to UEZ businesses, the preferential reduced sales tax rate they are entitled to collect, and the dedication of sales tax funds generated by UEZ transactions, the UEZ program has cost the General Fund more than \$2.25 billion in lost state revenue since 1983. Furthermore, despite the statutory goal of aiding poor and blighted areas with the various sales tax benefits, the tax exemptions have given a disproportionately large financial benefit to a relatively small number of all UEZ qualified businesses. In addition, although as a prerequisite for qualifying for the sales tax benefit, a business is required to generate employment in its zone or engage in other activity to strengthen the economy of the zone, a close analysis reveals that some of the qualified businesses that derive the greatest economic benefit may actually do the least to create jobs for the poor and unemployed people of a depressed area. For example, among 44 businesses saving \$65 million in tax benefits as a result of their sales tax exemption, the number of employees is so low and the benefit claimed by the individual businesses so high that the loss to the State's General Fund ranges from \$100,000 to over \$1 million *per employee* of those qualified UEZ businesses.

In addition to costing the State billions of dollars in lost revenue, the UEZ program has created vexing problems ranging from practical difficulties of administration and enforcement to a constitutional problem that could potentially lead to litigation. There are a variety of troublesome policy issues that arise under the UEZ program. A few, which will be described further in this report, include the matter of *temporarily* qualified UEZ businesses making expensive tax-free purchases with their temporary UEZ exemption, and then failing to qualify for permanent certification, real estate developers obtaining qualified UEZ business status based on the temporary presence of their construction site trailer at a commercial construction location, and abuses of the reduced 3% sales tax rate by lumber dealers, whose sales are particularly difficult to monitor.

The application of the reduced sales tax rate to sales by UEZ businesses and Salem County businesses could violate the Commerce Clause of the United States Constitution. According to the terms of the statutes governing the UEZ, the reduced rate applies only to sales within the zone, and consequently, there is no statutory basis for applying the reduced rate to the use tax due on goods purchased from non-New Jersey vendors but used in the zone. As interpreted by the United States Supreme Court in a 1994 decision, the Commerce Clause does not permit a state to subject in-state sales to a lower sales tax rate than the compensatory use tax rate applicable when merchandise purchased from an out-of-state source is used within the taxing state. For now, New Jersey is avoiding this potential constitutional violation by

administratively permitting a 3% rate on use tax due on goods purchased outside New Jersey, or by mail order from non-New Jersey vendors, and used for the first time within a UEZ (or Salem County). This temporary solution results in additional revenue loss and does nothing to advance the legislative purposes of the UEZ program or of the Salem County partial rate exemption. At the end of this report is a brief discussion of some legislative changes that have been suggested as an alternative to the partial rate reduction of the UEZ program.

The analysis of New Jersey's Urban Enterprise Zone Program includes the following sections:

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A. Statutory Basis

The Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq., provides that certain deteriorated, economically depressed areas in the State may be designated as “urban enterprise zones.” Businesses in an urban enterprise zone (UEZ) that agree to follow certain guidelines designed to reduce poverty and unemployment in the zone, may become qualified UEZ businesses, eligible for several economic benefits. These include, for example, (1) the right to make tax-free purchases (except for motor vehicles, energy, telecommunications, and utilities) for the exclusive use and consumption by the qualified business in the UEZ, N.J.S.A. 52:27H-79, and (2) the right to charge only one half the regular sales tax rate, i.e. 3% instead of 6%, on in-person retail sales made from their retail business location in the zone, except for sales of motor vehicles, manufacturing equipment, energy, alcoholic beverages and cigarettes. N.J.S.A. 52:27H-80.

Although the intent of these economic benefits, especially the one-half sales tax rate reduction on sales, is to vitalize economically depressed areas by encouraging people from outside the zone to shop at UEZ businesses, thus increasing economic activity in the zone, it is worth noting that the one-half rate reduction does *not* apply to the kinds of transactions that might potentially bring the most consumer traffic to a UEZ. The rate reduction applies only to sales of tangible personal property, i.e. the category of transactions taxable pursuant to N.J.S.A. 54:32B-3(a). N.J.S.A. 54:27H-80 does not extend this reduced rate to restaurant meals, admissions to entertainment, or hotel room occupancies, transactions taxable under N.J.S.A. 54:32B-3(c), (e), and (d), respectively, although restaurants, places of entertainment, and hotels could potentially attract a high volume of customers, who, once in the zone, might then shop in surrounding businesses, thus generating even more commercial activity.

The UEZ program has expanded to the point that there are now 32 UEZs in the State. In addition, N.J.S.A. 52:27H-66.2 allows the designation of “UEZ-impacted business districts” in municipalities that are economically distressed and adversely affected by the presence of adjacent UEZs in which customers can pay sales tax at the reduced rate. Qualified businesses in such UEZ-impacted business districts are also entitled to charge sales tax at only 50% of the full rate. N.J.S.A. 52:27H-66.4.

In 1994 a new provision supplementing the Sales and Use Tax Act established a similar partial exemption for certain retail sales in counties connected by bridge or tunnel to a state that has either no retail sales tax at all or a sales tax rate at least five percentage points lower than New Jersey’s. N.J.S.A. 54:32B-8.45. The one-half sales tax rate (i.e. 3%) applies only to in-person retail sales (other than sales of motor vehicles, alcoholic beverages and cigarettes) made from a vendor’s regular place of retail business where merchandise is exhibited and offered for sale. Currently, the provision applies only in Salem County. For many years Salem County retailers had been losing potential customers who crossed the river to shop in “tax-free” Delaware. Although purchases made in Delaware are subject to New Jersey’s compensating use tax when goods are brought into this State for use here, the obligation to pay use tax has been difficult to enforce and is frequently ignored.

B. Administrative Problems and Policy Issues

The administration of the sales and use tax provisions of the UEZ program has always been troublesome because of ongoing policy controversies and the persistent and serious difficulties of preventing abuse and misuse of the program’s sales and use tax incentives. As described earlier in this report, qualified UEZ businesses enjoy two different types of sales and use tax benefits: (1) They are exempt from sales and use tax on their purchases of tangible personal property, except motor vehicles and energy, and services, except telecommunications and utilities, for the exclusive use and consumption by the qualified business (N.J.S.A. 52:27H-79), and (2) their sales from their UEZ location, except for sales of motor vehicles, manufacturing equipment, energy, alcoholic beverages, and cigarettes, are subject to a 50% reduction in the normal 6% sales tax rate (N.J.S.A. 52:27H-80). The administration of each of these benefits presents special issues and problems of interpretation and policing.

1. Full Exemption of Qualified Business

Several problems occur in administering the full sales and use tax exemption available to qualified businesses. The statutory basis for that exemption is as follows:

52:27H-79. Sales and use tax exemptions; retail sales tangible personal property and services for use of qualified business

Retail sales of personal property (except motor vehicles and energy) and sales of services (except telecommunications and utility services) to a qualified business for the exclusive use or consumption of such businesses within an enterprise zone are exempt from the taxes imposed under the "Sales and Use Tax Act," P.L. 1966, c.30 (C.54:32B-1 et seq.).

A considerable amount of revenue has been lost because of high-volume or high-priced tax-free purchases both by provisional urban enterprise business and by qualified businesses that choose to leave the program shortly after making their major purchases. The office of the UEZ in the Commerce, Economic Growth and Tourism Commission sometimes grants applicants a provisional qualification even before they have satisfied the critically important criteria for qualified business status, under N.J.S.A. 52:27H-86, that they generate new employment in the municipality or that they invest in the zone in a way that substantially increases the economic attractiveness of the zone. Once they are granted temporary qualification, these businesses, often new to the zone, may make high-priced purchases, enjoying the benefits of the full tax-exemption granted under N.J.S.A. 52:27H-79, even though at the time of these transactions, they are not yet operating their businesses in a way that will reduce poverty and unemployment in a distressed area. Then, their start-up purchases complete, some find that, despite their efforts, they cannot succeed in staffing their businesses according to the requirements of the UEZ program, or they may simply choose not to pursue full certification as a qualified UEZ business. Nevertheless, by that time they may have saved substantial sums by avoiding the payment of sales and use tax on their business purchases, and their savings were of course the General Fund's loss. In addition, if they were vendors, they enjoyed a competitive advantage over businesses in nearby neighborhoods outside the zone, or ones inside the zone that did not choose to apply for qualified business status.

Similarly, a fully qualified urban enterprise zone business, which does meet all the statutory criteria for the sales tax incentives, may make numerous expensive purchases at full tax savings, but subsequently simply choose to leave the zone, or remain physically in the zone, but discontinue its participation in the program. It will lose its qualified business status and its eligibility for the sales tax exemption, but not before making high-priced transactions that generated no sales and use tax revenue.

An issue has arisen regarding the interpretation of the language: "for the exclusive use or consumption of such business within an enterprise zone...." The Division of Taxation has consistently interpreted that to mean that, in order to qualify for the full exemption, it is not sufficient that the purchase be used or consumed solely by the qualified business, and somewhere in the zone; it must be used exclusively by the qualified business, specifically at its *own* in-zone location. Some qualified businesses have argued that they should also be entitled to make exempt purchases that are delivered to their zone location, but then used *outside* of their business location at other sites inside the UEZ or even in non-UEZ locations.

Because purchases must be for the use of a qualified business in its zone location in order to qualify for the full exemption under N.J.S.A. 52:27H-79, contractors who are qualified businesses, with warehouses and offices in a UEZ, are unable to make exempt purchases of construction materials to be installed on their customers' real property. Some developers, however, have applied for and received certification as qualified businesses at their temporary locations, that is, trailers set up at a work site located in a UEZ. Thus qualified, they have made tax-free purchases of all of their construction materials delivered to their construction site in a zone, where they maintain a trailer only for the duration of

the project. This questionable practice has been spreading as more and more developers and contractors for residential housing construction projects have discovered that obtaining qualified business status for their temporary trailer locations enables them to enjoy the benefits of the urban enterprise program without assuming the burdens of operating a business in an economically depressed area. Their large purchases of materials generate no sales tax revenue and their short-term presence does nothing to stimulate long-term healthy commercial activity in a distressed area.

2. 50% Sales Tax Rate Reductions for Sales of Qualified Business

The partial exemption for sales by a qualified business at its UEZ location is based on N.J.S.A. 52:27H-80, which provides in part:

Receipts of retail sales, except retail sales of motor vehicles, of alcoholic beverages as defined in the "Alcoholic Beverage Tax Law," R.S. 54:41-1 et seq., of cigarettes as defined in the "Cigarette Tax Act," P.L. 1948, c.65 (C.54:40A-1 et seq.), of manufacturing machinery, equipment or apparatus, and of energy, made by a certified vendor from a place of business owned or leased and regularly operated by the vendor for the purpose of making retail sales, and located in a designated enterprise zone established pursuant to the "New Jersey Urban Enterprise Zones Act," P.L. 1966, c.30 (C. 54:32B-1 et seq.).

The problems arising regarding administration of the 3% tax rate turn on the requirement that the sales must take place in person at the zone location. The purpose of the reduced-rate incentive, which allows qualified businesses to charge and collect sales tax at only half the normal rate, is to stimulate business in designated urban areas suffering from economic distress and decline. N.J.S.A. 52:27H-61.

In order to accomplish this purpose, the long-standing policy, codified since 1985 in N.J.A.C. 18:24-31.4(e), has been to allow purchasers to take advantage of the partial rate exemption only when they buy merchandise in a face-to-face transaction in the zone. N.J.A.C. 18:24-31.4(e) provides that:

(e) All sales made by a qualified and certified vendor must be made from his place of business within an enterprise zone or district, that is, either the purchaser must accept delivery at the vendor's place of business within an enterprise zone or district, or the vendor must deliver the tangible personal property from its place of business within an enterprise zone or district. Only receipts from sales which originate and are completed by the purchaser in person at the vendor's place of business within an enterprise zone or district qualify for the reduced rate of sales tax; provided, however, that after a sale has been completed within an enterprise zone or district, the vendor may deliver the tangible personal property to the purchaser at a location outside an enterprise zone or district.

1. Receipts from mail order, telephone, telex and similar sales transactions are subject to sales tax at the regular rate where delivery is made to a location within this State.

This requirement was designed to encourage the public to enter and shop in a UEZ, thereby reducing its isolation and stimulating its economic activity. Its express purpose was "to prevent tax evasion by persons who might improperly sell or buy tangible personal property without both buyer and seller being face-to-face." 16 N.J. Register 3194.

While it is well settled that the customer must physically *go to* the seller's UEZ location to enter into a partially exempt transaction, for example by placing a purchase order, in recent years, most of the problems of interpretation and compliance have turned on whether the items purchased were also *delivered from* the zone. Frequently, a retailer with multiple locations will maintain only a small inventory at its qualified business location in a UEZ, keeping the bulk of its merchandise either in warehouses outside the zone or in its other, non-UEZ, retail store locations. Therefore the question arises whether a sale is eligible for the reduced rate if the customer placed the order in person at a qualified business in the UEZ, but the specific

item purchased was not on hand at that location and had to be shipped from the warehouse or from one of the other stores outside the UEZ.

This issue is particularly troublesome in the context of boat sales, since boats are a high-priced item, and a difference of 3% in the amount of tax collected on their sales can be substantial. Like other vendors, boat sellers can become qualified UEZ businesses if they have a UEZ location where they maintain inventory and where customers go to make purchases. However, often they have a very limited inventory at a UEZ location, and maintain most of their inventory elsewhere. The reduced-rate benefit is therefore subject to abuse, as customers appear only briefly at a small UEZ outpost to place orders for boats that are delivered from the vendor's primary location outside the zone, where extensive inventory is maintained. The customer's brief visit to a small, minimally staffed location, just long enough to place an order for a boat already viewed in a catalogue or online, does little if anything to boost economic activity in a distressed area.

Lumber vendors have been difficult to monitor, and abuses of the UEZ program in that field of commerce have been common. The lumber market deals in high volume sales and is highly competitive. Therefore a lumber dealer who can charge 3% rather than 6% sales tax enjoys a huge competitive advantage over non-UEZ lumber dealers. To maintain this advantage, lumber dealers with qualified UEZ locations have engaged in various tactics to evade collection of sales tax at the full rate. Some dealers with multiple locations shift their sales to the UEZ location by directing customers to go there to place orders. Others, who maintain little inventory at their qualified UEZ location, deliver lumber from their large non-UEZ inventory locations, but have their trucks detour briefly to the zone store in order to have on record that the truck delivering the lumber drove from the qualified business location in the zone to the customer's delivery location. Still others simply ignore the in-person requirement entirely, having their sales personnel visit customers at their sites to take orders, instead of requiring customers to appear at the zone location in order to enjoy a reduced sales tax rate. Given the difficulty of policing all of the transactions of a qualified UEZ lumber dealer all the time, many transactions that clearly do not meet the in-person sale requirement nevertheless take place, with tax fraudulently collected at only half the full rate.

C. Losses to General Fund Resulting From UEZ Program

Not taxing something is equivalent to government spending, in its impact on state funds. When a law carves out an exception to taxability, or allows a preferential tax rate, it is in effect causing the state to expend part of its budget on the statutorily favored transaction. Thus, the revenue loss resulting from sales tax exemption and reduced rates is a type of "tax expenditure."

The Office of Revenue and Economic Analysis in the Division of Taxation has completed an analysis of the "tax expenditures" associated with the UEZ program. The table following this section summarizes the findings by zone. The total tax expenditure is estimated to be at least \$2.25 billion since the inception of the UEZ program. This breaks down as follows.

Component	FY86-94 \$M est.	FY95-04 \$M	Total \$M
3% Sales Tax Rate Reduction	97.5	699.1	796.7
UEZ Fund Dedication	89.5	496.9	586.4
Qualified Business (QB) 6% Sales Tax Exemption			
Active QBs as of 11/04			606.2
Inactive QBs (FY95-05)			263.6
Total	187.0	1,196.1	2,252.9

It is estimated that the fiscal year 2005 tax expenditures for the 32 zones now operating will be \$330.2 million. This is comprised of \$114 million from the 3% sales tax reduction, \$74 million from the UEZ Fund dedication, and about \$142 million in qualified business sales and use tax exempt purchases.

Data on the 3% sales and use tax collections by zone from fiscal year 1995 through 2004 were obtained from Division of Revenue reports. The 3% sales and use tax collections prior to fiscal year 1995 were estimated by assuming that the zone collections for each year grew at the same rate as the overall sales tax collections. Data on the sales tax exempt purchases of qualified businesses were obtained from the New Jersey Commerce, Economic Growth and Tourism Commission Office of Urban Programs. It is based on the annual certification provided by qualified businesses on capital expenditures (UZ-4) and personal property purchases (UZ-5). These forms were not used until about ten years ago and therefore cannot supply data regarding costs in the early program years. Given this data gap, the cumulative tax expenditure estimate of \$2.25 billion for the fiscal year 1986–2004 period is very likely lower than the actual figures during the early years.

Approximately \$869 million in revenue was lost to New Jersey during fiscal years 1995 through 2004 as a result of the qualified businesses' purchase exemption. Qualified business purchases cannot be broken down by year based on the data that Commerce provides. However, it is possible to identify the qualified businesses by type of business and total magnitude of tax expenditure. Detailed analysis of the data since fiscal year 1995 for the 3% rate reduction (\$699 million) and the total active and inactive qualified business loss (\$870 million) indicate that the cumulative qualified business losses over the last nine or ten years have been 124% of the cumulative 3% collections.

The distribution of the tax expenditure among the 7,644 active qualified businesses is highly concentrated. Almost 59% or 4,485 of the currently active qualified businesses reported having a tax-exempt capital expenditure or personal property purchase. Just over 25% of the total loss or \$140 million was claimed by 0.2% of the active qualified businesses (13 companies). Over 40% of the total loss (\$219 million) was claimed by 0.4% of the active qualified businesses (30 companies) and 75% of the loss (\$410 million) was claimed by 2.6% of the active qualified businesses (200 companies). Thus, 103 qualified businesses each claimed more than \$1 million in tax savings since about fiscal year 1996, another 84 qualified businesses each claimed between \$500,000 and \$1 million, and another 421 claimed \$100,000 to 500,000 in tax savings. Together, these 608 qualified businesses accounted for about 48% of the total full-time employment in active qualified businesses.

One curious finding emerges when the tax expenditure from the qualified business sales and use tax exemption per full-time employee is examined. It appears that the tax exemption has given a disproportionate economic benefit to a small number of UEZ qualified businesses. For example, there are 44 qualified businesses claiming almost \$65 million in tax benefits for exempt purchases where the tax benefit per worker ranges from \$100,000 to over \$1 million. At least 34 of these 44 qualified businesses are real estate developers, managers, or leasing agents and most have only 1 or 2 full-time employees. While this may be a legitimate application of the UEZ program to generate renewal activity within the zones, it seems to be an inefficient way of getting jobs into the UEZ and, as an indirect way of subsidizing redevelopment, it has a great potential for abuse.

The following table shows the figures organized by zones.

Urban Enterprise Zone Collections: Estimated General Fund Losses FY87-04 (\$000)

Zone	Cumulative FY95-FY04			Total Loss	Est. Loss FY87-94		Est. Total Loss Since FY87	QB Loss as % of 3% Loss
	3% Tax Reduction	UEZ Fund Dedication	QB 6% Loss 7/94 to 10/04		3 % Tax Reduction	UEZ Fund Dedication		
ORIGINAL ZONES (10)								
Bridgeton	\$ 6,198	\$ 3,824	\$ 8,864	\$ 18,886	\$ 4,111	\$ 3,496	\$ 26,493	143%
Camden	11,230	7,900	38,104	57,234	4,500	3,827	65,561	339
Elizabeth	94,035	64,512	61,068	219,616	8,476	8,476	236,568	65
Jersey City	101,827	71,257	373,604	546,687	10,802	10,802	568,291	367
Kearny	17,882	12,616	11,241	41,739	1,972	1,972	45,683	63
Millville	18,697	9,606	27,538	55,841	5,269	5,018	66,128	147
Newark	53,838	35,408	121,669	210,915	20,208	17,184	248,307	226
Orange	8,997	6,001	3,033	18,031	891	891	19,813	34
Plainfield	11,549	7,017	4,843	23,409	5,695	4,843	33,947	42
Trenton	16,479	10,228	12,704	39,411	9,158	7,787	56,355	77
Vineland	74,216	37,536	62,930	174,682	26,447	25,191	226,319	85
1995 EXPANSION (11)								
Asbury Park	2,968	2,287	1,065	6,319			6,319	36
Passaic	21,334	16,262	6,283	43,879			43,879	29
Paterson	29,682	24,622	20,477	74,782			74,782	69
Perth Amboy	17,431	13,859	13,358	44,648			44,648	77
Lakewood	62,434	50,238	31,968	144,639			144,639	51
Long Branch	6,066	5,027	3,421	14,514			14,514	56
Phillipsburg	5,228	3,985	5,205	14,418			14,418	100
Carteret	5,084	4,127	17,368	26,579			26,579	342
Mt. Holly	13,426	10,821	1,045	25,292			25,292	8
Pleasantville	44,708	35,518	4,251	84,476			84,476	10
Union City	8,990	7,451	808	17,248			17,248	9
1996 EXPANSION (7)								
East Orange	5,890	5,059	1,713	12,662			12,662	29
Guttenburg	524	456	531	1,512			1,512	101
Hillside	9,696	8,390	11,755	29,841			29,841	121
Irvington	7,945	6,814	3,684	18,443			18,443	46
North Bergen	25,492	20,664	14,387	60,543			60,543	56
Pemberton	2,298	1,932	1,514	5,744			5,744	66
West New York	9,256	7,777	1,397	18,430			18,430	15
Additional Zones (6)								
Bayonne	2,754	2,754	590	6,099			6,099	21
North Wildwood	408	408	412	1,228			1,228	101
Roselle	1,018	1,018	173	2,210			2,210	17
West Wildwood	160	160	4	325			325	3
Wildwood	1,324	1,324	945	3,592			3,592	71
Wildwood Crest	66	66	1,786	1,919			1,919	2,691
ALL ZONES:	\$699,131	\$496,925	\$869,739	\$2,065,795	\$97,528	\$89,486	\$2,252,810	124%

Note: QB = active and inactive Qualified Businesses

D. Ongoing Expansion of the Reduced-Rate Zones

The UEZ program began in 1983 with 10 zones, covering 11 municipalities. (Some zones encompass more than a single municipality.) During the next 21 years it expanded to the point where there are now 32 zones encompassing 37 municipalities. As more and more zones are created, there is a constantly growing demand for additional zones, as merchants in municipalities that are not included in the UEZ program suffer from the effects of competition with nearby businesses charging only 3% sales tax and therefore lobby their legislators to work toward establishing yet another zone. In addition, as explained previously, in 2002 the Legislature enacted L. 2001, c.347, allowing an extension of the reduced-rate benefit to business in municipalities that are adversely affected by competition with qualified businesses in adjacent UEZs. As the number of UEZs increases, all the problems — fiscal, constitutional, administrative — become more intense as well.

The Legislature continually generates bills designed to expand the UEZ program, establish additional urban enterprise zones, or create other types of zones entitled to special tax advantages such as reduced sales tax rates or receipt of dedicated tax revenue. The following bills, for example, have emerged from the Legislature during the years that the Sales and Use Tax Review Commission has been in existence, that is during the 2000–2001, 2002–2003, and 2004–2005 legislative sessions.

2000–2001

- A-17 Directs UEZA to establish extended enterprise zones; creates an additional joint urban enterprise zone.
- A-527 Establishes for qualified urban enterprise zone vendors an annual tax review and certification.
- A-600 Provides for one additional urban enterprise zone.
- A-606 Directs UEZA to designate an expansion area of an existing urban enterprise zone.
- A-738 Authorizes expansion of existing UEZs to include contiguous economically distressed areas.
- A-1005 Permits municipalities hosting UEZs to establish set-aside programs favoring local businesses for construction projects using State funds.
- A-1008 Directs UEZA to establish permanent enterprise zones.
- A-1031 Revises criteria for urban enterprise zone sales tax exemption and disallows exemption for sales of lumber and millwork.
- A-1085 Authorizes municipalities to establish commercial incentive zones and sharing retail sales tax proceeds therein.
- A-1322 Revises criteria for urban enterprise zone sales tax exemption and disallows exemption for sales of building materials and construction supplies.
- A-1544 Requires designation of UEZ in municipality in which federal military installation has been decommissioned by Department of Defense.
- A-1627 Allows qualified UEZ vendors to sell motor vehicles at reduced sales tax rates.
- A-2165 Reduces sales tax rate on certain sales and admission charges at places of amusement in urban enterprise zone areas and provides that sales tax revenue be for municipal purposes.
- A-2446 Allows UEZ municipalities to include marketing, advertising and special event activities and other managerial and professional services as projects eligible for UEZ funding assistance.
- A-2712 Authorizes creation of 28th UEZ in Roselle Borough, Union County.
- A-2724 Authorizes UEZA to designate an additional zone.
- A-2736 Modifies the NJ Urban Enterprise Zones Act to designate a UEZ-impacted business district.
- A-2792 Directs UEZA to establish permanent enterprise zones.
- A-3843 Authorizes creation of 28th UEZ in Beverly City, Burlington County.
- S-322 Directs UEZA to establish permanent enterprise zones and UEZ-impacted business districts.
- S-447 Provides for establishment of health enterprise zones.

- S-591 Permits NJ UEZ Authority to designate an additional enterprise zone.
- S-592 Requires designation of UEZ in municipality in which federal military installation has been decommissioned by Department of Defense.
- S-617 Reduces sales tax rate on certain sales and admission charges at places of amusement in urban enterprise zone areas and provides that sales tax revenue be for municipal purposes.
- S-1529 Authorizes UEZA to designate an additional zone.
- S-1727 Directs UEZA to establish extended enterprise zones; creates an additional joint urban enterprise zone.
- S-2560 Authorizes creation of 28th UEZ in Beverly City, Burlington County.

2002–2003

- A-55 Permits municipalities hosting UEZs to establish set-aside programs favoring local businesses for construction projects using State funds.
- A-58 Directs the UEZA to establish permanent enterprise zones.
- A-330 Allows qualified urban enterprise zone vendors to sell motor vehicles at reduced sales tax rate.
- A-349 Authorizes municipalities to establish commercial incentive zones and sharing of retail sales tax proceeds therein.
- A-475 Authorizes UEZA to designate an additional zone.
- A-521 Revises criteria for urban enterprise zone sales tax exemption and disallows exemption for sale of lumber and millwork.
- A-580 Reduces sales tax rate on certain sales and admission charges at places of amusement in urban enterprise zone areas and provides that sales tax revenue be for municipal purposes.
- A-911 Authorizes expansion of existing UEZs to include contiguous economically distressed areas.
- A-1119 Provides for one additional urban enterprise zone.
- A-1122 Directs UEZA to designate an expansion area of an existing urban enterprise zone.
- A-1155 Establishes for qualified urban enterprise zone vendors an annual tax review and certification.
- A-1951 Allows UEZ municipalities to include certain activities and services as projects eligible for UEZ funding.
- A-1952 Defines certain marketing and advertising projects undertaken by municipalities as eligible for UEZ funding assistance.
- A-1996 Authorizes expansion of existing UEZs to include contiguous economically distressed areas.
- A-2059 Authorizes creation of UEZ in Gloucester City, Camden County.
- A-2093 Extends partial sales tax exemption to prepared foods and nonalcoholic beverages in certain urban enterprise zones.
- A-2115 Permits municipalities hosting UEZs to establish set-aside programs favoring local businesses for construction projects using State funds.
- A-2187 Clarifies parameters of joint UEZ authorized in Cape May County under P.L. 2001, c.347.
- A-2207 Authorizes an additional urban enterprise zone in New Brunswick, Middlesex County.
- A-2661 Extends certain urban enterprise zone designation periods and allows certain municipal urban enterprise zone borrowing from the Enterprise Zone Assistance Fund.
- A-3461 Changes definition of “qualified business” under “New Jersey Urban Enterprise Zones Act.”
- A- 3961 Changes definition of UEZ-impacted business district.
- S-122 Establishes “Small Downtown Business Incentive Program.”
- S-420 Prohibits automobile insurers from denying agency to insurance producer solely because he writes in automobile insurance UEZs.

- S-636 Reduces sales tax rate on certain sales and admission charges at places of amusement in urban enterprise zone areas and provides that sales tax revenue be for municipal purposes.
- S-692 Authorizes creation of 28th UEZ in Beverly City, Burlington County.
- S-779 Requires designation of UEZ in municipality in which federal military installation has been decommissioned by Department of Defense.
- S-936 The "Urban Heritage District Act."
- S-1450 Clarified parameters of joint UEZ authorized in Cape May County under P.L. 2001, c.347.
- S-1595 Authorizes creation of UEZ in Gloucester City, Camden County.
- S-1751 Extends certain UEZ designation periods and allows certain municipal urban enterprise zone borrowing from the Enterprise Zone Assistance Fund.
- S-2033 Permits municipalities hosting UEZs to establish set-aside programs favoring local business for construction projects using State funds.
- S-2589 Authorizes UEZA to designate a Raritan River Area Urban Enterprise Zone.

2004–2005

- A-168 Authorizes expansion of existing UEZs to include contiguous economically distressed areas.
- A-263 Authorizes an additional urban enterprise zone in New Brunswick, Middlesex County.
- A-273 Extends payment of sales tax revenues into UEZ assistance fund in those zones designated pursuant to P.L. 1993, c.367.
- A-484 Reduces sales tax on certain sales and admission charges at places of amusement in urban enterprise zone areas and provides that sales tax revenue be for municipal purposes.
- A-517 Changes definition of "qualified business" under "New Jersey Urban Enterprise Zones Act."
- A-590 Authorizes UEZA to designate an additional zone.
- A-755 Allows UEZ municipalities to include certain activities and services as projects eligible for UEZ funding.
- A-1640 Allows qualified urban enterprise zone vendors to sell motor vehicles at reduced sales tax rate.
- A-1778 Revised criteria for urban enterprise zone sales tax exemption and disallows exemption for sales of lumber and millwork.
- A-1796 Permits municipalities hosting UEZs to establish set-aside programs favoring local businesses for construction projects using State funds.
- A-1822 Authorizes designation of joint urban enterprise zone by Urban Enterprise Zone Authority.
- A-2582 Extends payment of sales tax revenues into UEZ assistance fund in those zones designated pursuant to P.L. 1993, c.367.
- A-2672 Establishes New Jersey Borough Enterprise Zone Program to encourage business development in small, highly developed municipalities.
- A-2780 Authorizes creation of 32nd urban enterprise zone in Salem City, Salem County.
- A-2812 Authorizes creation of urban enterprise zones in Garfield and Fairview in Bergen County.
- A-2893 Authorizes creation of 32nd UEZ in Beverly City, Burlington County.
- A-2929 Authorizes creation of urban enterprise zone in Union Township, Union County.
- A-3154 Authorizes 32nd UEZ in Buena Borough, Atlantic County.
- A-3156 Authorizes 32nd UEZ in Buena Vista Township, Atlantic County.
- A-3235 Establishes annual enterprise zone employee tax credit for employee health care benefits.
- A-3433 Requires certain qualified UEZ businesses which relocate outside of a zone to reimburse the General Fund for zone incentives.
- A-3614 Authorizes urban enterprise zones in Lower Township and in Woodbine Borough, Cape May County.

- S-71 Permits municipalities hosting UEZs to establish set-aside programs favoring local businesses for construction projects using Stated funds.
- S-97 Allows reduces sales tax rate for sales of motor vehicles in certain urban enterprise zone and UEZ-impacted business districts.
- S-160 Authorizes creation of UEZ in Gloucester City, Camden County.
- S-199 Authorizes an additional urban enterprise zone in New Brunswick, Middlesex County.
- S-208 Authorizes UEZA to designate a Raritan River Area Urban Enterprise Zone.
- S-815 Authorizes creation of 31st UEZ in Beverly City, Burlington County.
- S-1436 Authorizes creation of 32nd urban enterprise zone in Salem City, Salem County.
- S-1496 Authorizes creation of urban enterprise zones in Garfield and Fairview in Bergen County.
- S-1995 Authorizes 33rd urban enterprise zone in Englewood City, Bergen County.
- S-2582 Extends payment of sales tax revenues into UEZ assistance fund in those zones designated pursuant to P.L. 1993, c.367.
- S-2184 Authorizes urban enterprise zones in Lower Township and in Woodbine Borough, Cape May County.

Five of the above-listed bills were passed and enacted into law as follows:

- P.L. 2001, c.347 (S-322)
- P.L. 2003, c.285 (A-2059)
- P.L. 2002, c.68 (A-2187)
- P.L. 2003, c.6 (S-1751)
- P.L. 2004, c.75 (A-263)

E. Constitutional Issue

In light of a 1994 United States Supreme Court decision, the application of the statutory partial exemptions to sales by qualified UEZ businesses and Salem County businesses may violate the federal Commerce Clause (U.S. Const., Art. I, §8, par.3). The State may not subject in-State sales to a lower sales tax rate than the compensatory use tax rate applicable when merchandise purchased from an out-of-State source is used, for the first time, in New Jersey. Therefore those provisions of the Sales and Use Tax Act and the Urban Enterprise Zone act establishing 3% sales tax zones could be successfully challenged on Commerce Clause grounds. Following is a brief explanation of the current law and the constitutional issue.

New Jersey's compensating use tax (N.J.S.A. 54:32B-6) was designed to prevent the State from losing revenue when goods that are taxable in New Jersey are purchased elsewhere, or are delivered to a New Jersey address from out-of-State, and then used within this State. Coppa v. Director, Division of Taxation, 8 N.J. Tax 236 (Tax Ct. 1986); Diamondhead Corp. v. Director, Division of Taxation, 4 N.J. Tax 255 (Tax Ct. 1982). Compensatory use taxes were upheld by the United States Supreme Court long before New Jersey enacted its Sales and Use Tax Act in 1966. The Court found that a use tax did not violate the Commerce Clause when it treated in-state and out-of-state purchases equally. It recognized that a compensating use tax merely put in-state and out-of-state purchases on a level of parity, and held that a use tax imposed in order to prevent the loss of tax revenue resulting from residents purchasing from out-of-state vendors did not violate the Commerce Clause. Henneford v. Silas Mason Co., 300 U.S. 577 (1937).

The special 3% sales tax does not apply to all UEZ and Salem County sales. By the terms of the statutes (N.J.S.A. 52:27H-80 and N.J.S.A. 54:32B-8.45), only certain sales that actually take place in person at a retailer's regular business location *in the zone* or *in Salem County* are eligible for the partial exemption. The physical location of the sale is an explicit prerequisite for both the UEZ and Salem County partial exemptions, and is clearly necessary in order to carry out their remedial purposes. However, imple-

menting N.J.S.A. 52:27H-80 and N.J.S.A. 54:32B-8.45 as written, and giving full effect to the physical-location requirements for the reduced sales tax rates, will result in a violation of the Commerce Clause. The State cannot lawfully subject a sale of merchandise taking place *within* New Jersey to only 3% sales tax, while imposing a use tax rate of 6% on use of a comparable item that was purchased from an *out-of-State* source.

In Associated Industries of Missouri v. Lohman, 511 U.S. 641, 114 S. Ct. 1815, 128 L. Ed 2d 639 (1994), the United States Supreme Court held that Missouri's sales and use tax scheme violated the Commerce Clause in any localities where the state use tax exceeded the local sales tax. The tax scheme at issue in the Associated Industries case contained several layers. The statutes and constitution of Missouri imposed various state sales taxes which, when combined, subjected in-state sales to a total sales tax rate of 4.225%. A parallel compensatory use tax of 4.225% applied to goods brought into Missouri after being purchased from an out-of-state source. In addition, state legislation authorized political subdivisions to enact their own local sales taxes. Many localities did so; their local sales taxes ranged from .5% to 3.5%. To complement these local sales taxes, the state imposed an additional 1.5% use tax, beyond the 4.225% use tax designed to complement statewide sales taxes. Thus, in some localities, the additional 1.5% use tax was lower than the local sales tax rate, while in others, the use tax was higher.

The Court considered it irrelevant that the tax scheme lacked any discriminatory *intent* or that the average sale taking place in Missouri might have been subject to greater aggregate sales taxes than the use taxes applicable to an interstate sale. Instead, it concluded that the test for validity of a compensatory use tax required mathematical precision: in order to be permissible under the Commerce Clause, any use tax rate imposed on an item purchased out-of-state had to be no more than the sales tax rate imposed on a similar transaction within the state. It therefore held that the effect of Missouri's tax scheme impermissibly discriminated against interstate commerce in any locality where the local sales tax rate was less than 1.5%.

In light of the Association Industries ruling, it is clear that the New Jersey statutes creating a partial exemption for certain retail sales *only* if they take place within a UEZ or within Salem County (i.e. only intra-state sales) would similarly not survive constitutional scrutiny. In order to avoid constitutional challenges, the State has taken steps to apply the reduced (3%) rate administratively both to sales actually taking place in UEZ or Salem County and satisfying the other statutory criteria for the partial exemption *and* to any out-of-state purchases, and mail-order purchases from non-New Jersey vendors, when the first use of the goods takes place in Salem County or a UEZ. Thus, the partial exemption, as implemented, does not discriminate against interstate commerce, since both sales tax and use tax would be 3%. While this situation at least probably shields the State from constitutional attacks, it results in substantial losses in tax revenue and fails to advance the purposes for which the UEZ and Salem County partial exemptions were enacted.

F. Possible Legislative Solutions

The following legislative changes have been suggested as a means of remedying the constitutional problem discussed above.

(1.) Repeal the partial exemptions created under N.J.S.A. 52:27H-80 for urban enterprise zones and under N.J.S.A. 54:32B-8.45 for Salem County. Amend the provisions of the Urban Enterprise Zones Act regarding depositing a portion of sales tax revenues in enterprise zone assistance funds; continue to provide for a portion of the 6% sales tax revenue generated by transactions in each UEZ to be applied to the zone's assistance fund.

This is by far the simplest and most direct of the four proposals and the easiest to administer. It completely eliminates the risk of discriminating against interstate commerce. There would be no "3% zones" for sales tax or for use tax; the sales and use tax rate would simply be the same throughout the state. At the same time, it would preserve the benefit to the urban enterprise zones of sharing the sales tax revenue generated by transactions in the zones. However, the partial exemption would no longer be available to attract shoppers to participating UEZ businesses, and the special treatment for Salem County would be eliminated entirely.

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

This proposal would also completely eliminate the risk of discriminating against interstate commerce. Sales of tangible personal property would be subject to the regular 6% sales tax; use tax on the first taxable use of property purchased elsewhere would also remain at 6%.

However, the amendments would create a new partial exemption designed to attract customers to a wide range of businesses in the UEZs and Salem County, e.g. restaurants, hotels, movie theaters, sports arenas. Because doing business at these facilities would involve a longer visit to the zone than merely ordering or picking up merchandise at a store, this partial exemption might be even more effective than the current partial exemptions in stimulating economic and social activity in the UEZs and making Salem County attractive to consumers. This incentive for consumers, combined with the continued sharing of sales tax revenue with the UEZs, could serve the same purposes as the original legislation, without making the State vulnerable to legal challenges.

The transactions taxable at 3% would be strictly local, intrastate transactions. Therefore use tax would not become an issue. Pursuant to N.J.S.A. 54:32B-6, the compensating use tax applies only to tangible personal property and certain services to tangible personal property which are taxable under N.J.S.A. 54:32B-3(b)(1) and (2). It does not apply to transactions taxable under N.J.S.A. 54:32B-3(b)(3) through 54:32B-3(e), some of which could be subject to a 3% sales tax rate under this proposal.

(3.) Repeal the current partial exemption provisions. Replace them with a partial sales tax and use tax exemption for goods purchased in the zone, or purchased out-of-State but used for the first time in the zone, on the condition that the goods remain in the 3% zone.

This proposal would be the most difficult to implement because the partial exemption would become void from its inception if the goods that were originally subject to only 3% sales or use tax are subsequently removed from the 3% zone for use elsewhere. If the partial exemption is lost when the goods leave the zone, the purchaser will become liable for an additional 3% use tax. The requirement of paying the additional 3% tax will be extremely difficult to enforce.

It is also doubtful that the State would have a right to collect an additional 3% tax if the purchaser took the goods out of the UEZ or Salem County to another state, thereby burdening interstate commerce. Thus, this proposal would be correcting one constitutional defect — the disparate sales tax and use tax rates in UEZs and Salem County — and substituting a new one.

In addition, a requirement that the goods purchased remain in the zone to avoid losing their partial exemption would not serve the original purpose of the 3%-zone provisions: bringing customers into the zone. A reduced tax rate that only applies to goods that remain in the zone, while denying the benefit to the outsiders that zone businesses seek to attract as customers. Certified UEZ business already have a full sales and use tax exemption for purchases that are used by the businesses at their UEZ locations.

(4.) Repeal the UEZ and Salem County partial exemption provisions. Amend the Sales and Use Tax Act in the following ways: 1. broadening the tax base by repealing most exemptions, and 2. lowering the sales and use tax rate.

By far the most dramatic of the four proposed changes, broadening the tax base would greatly simplify the state's tax structure, eliminating issues regarding the interpretation of the scope of exemptions and the policing of their misuse and abuse. In a complex tax system offering a variety of exemptions, consumers frequently alter their behavior in order to reduce the tax consequences of their activities. A

neutral, broad-based tax system, in which almost all consumption of goods and services is subject to tax, is less socially intrusive. To the extent that a broad-based tax would reach previously untaxed professional services, e.g., legal, accounting, engineering, architectural design, it would tend to neutralize the regressive impact of taxes on routine purchases of household necessities, e.g., toiletries, bedding, cleaning supplies, stationery items.

However, this proposal could also provoke the greatest negative response from the public. It would require major retraining of Division of Taxation personnel, rewriting of almost all sales tax publications, forms and instructions, and extensive public information and taxpayer education efforts. It would offer no particular competitive advantages or incentives to attract customers to existing businesses in the UEZs or Salem County. At the same time, it would place New Jersey businesses at a competitive disadvantage in relation to businesses in other states which provide for more extensive sales tax exemptions. In addition, many larger businesses may be able to avoid the sales tax on services by having the services performed by in-house employees. It may be impossible to establish clear standards to determine whether services were performed in New Jersey, since services of an intellectual and creative nature have no geographic boundaries.

Analysis prepared by Carol Trovato, Regulatory Services Branch, Division of Taxation. Section C prepared by Richard Kaluzny, Ph.D., and Mitali Dutta, Office of Revenue and Economic Analysis, Division of Taxation.

List of Bills Reviewed by Commission (from January 1 – December 31, 2004)

Bill Number	Description	Recommendation Date
A-2582	Extends payment of sales tax revenues into UEZ assistance fund in those zones designated pursuant to P.L. 1993, c.367.	06/10/04
A-3154	Authorizes 32nd UEZ in Buena Borough, Atlantic County.	12/06/04
A-3156	Authorizes 32nd UEZ in Buena Vista Township, Atlantic County.	12/06/04
A-3224	Excludes the value of certain coupons and rebates from the amount taxable under the sales and use tax.	12/06/04
A-3301	Exempts from sales and use tax sales of certain equipment to railroad police.	12/06/04
A-3443	Exempts sales of energy and utility service to manufacturing facilities from the sales and use tax and the transitional energy facility assessment (TEFA) unit rate surcharge.	12/06/04
A-3484	Extends eligibility for sales and use tax exemption of energy and utility service purchases by certain manufacturing businesses in Urban Enterprise Zones.	12/06/04
S-1376	Exempts health care supplies and equipment purchased for use in providing health care services, from sales tax.	06/10/04
S-1436	Authorizes creation of 32nd urban enterprise zone in Salem City, Salem County.	06/10/04
S-1483	Establishes a sales tax holiday in New Jersey from August 26 through September 1, 2004.	06/10/04
S-1484	Establishes a sales tax holiday in New Jersey from December 10 through December 25, 2004.	06/10/04
S-1496	Authorizes creation of urban enterprise zones in Garfield and Fairview in Bergen County.	06/10/04
S-1917	Exempts subscription fees for cable radio service, satellite television service, and satellite radio service from the sales and use tax.	12/06/04
S-1958	Conforms the sales and use tax to the Streamlined Sales and Use Tax Agreement to provide for entry therein.	11/12/04
S-1981	Exempts sales of energy and utility service to manufacturing facilities from the sales and use tax and the transitional energy facility assessment (TEFA) unit rate surcharge.	12/06/04
S-1995	Authorizes 33rd urban enterprise zone in Englewood City, Bergen County.	12/06/04

The Committee recommends that a review of the Urban Enterprise Zone program and its effectiveness is necessary to determine the best course of action in relation to future modifications or expansions of the Urban Enterprise Zone program in New Jersey. To date, there has not been a comprehensive review of the Urban Enterprise Zone program by an independent body. As a result, substantive data concerning the actual success of the Urban Enterprise Zone program has not been provided to the Legislature.

Recommendation

The Commission does not recommend enactment of this bill.

Commission members For proposal:	0
Commission members Against proposal:	5
Commission members Abstaining :	0
Commission Meeting Date:	06/10/04

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, many 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.

The Committee recommends that a review of the Urban Enterprise Zone Program and its effectiveness is necessary to determine the best course of action in relation to future modifications or expansions of the Urban Enterprise Zone Program in New Jersey. To date, there has not been a comprehensive review of the Urban Enterprise Zone program by an independent body. As a result, substantive data concerning the actual success of the Urban Enterprise Zone Program has not been provided to the Legislature.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposal:	0
Commission Members Against Proposal:	6
Commission Members Abstaining :	0
Commission Meeting Date:	12/06/04

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, many 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.

The Committee recommends that a review of the Urban Enterprise Zone Program and its effectiveness is necessary to determine the best course of action in relation to future modifications or expansions of the Urban Enterprise Zone Program in New Jersey. To date, there has not been a comprehensive review of the Urban Enterprise Zone program by an independent body. As a result, substantive data concerning the actual success of the Urban Enterprise Zone Program has not been provided to the Legislature.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposal:	0
Commission Members Against Proposal:	6
Commission Members Abstaining :	0
Commission Meeting Date:	12/06/04

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

Bill Number: A-3224

Date of Introduction: 09/23/04

Sponsor: Assemblyman Chiappone

Date of Recommendation: 12/06/04

Identical Bill:

Committee: Assembly Appropriations

Description

This bill excludes the value of certain coupons and rebates from the amount taxable under the Sales and Use Tax Act.

Analysis

This bill is proposed to amend the definition of "receipt" in the "Sales and Use Tax Act," N.J.S.A. 54:32B-1 et seq. This amendment allows a customer making a purchase with a manufacturer's coupon to pay sales tax only on the amount paid by the customer to the vendor.

This bill excludes from the definition of receipt the amount of a coupon, rebate or certificate which is accepted by the vendor as part of the sales price and entitles the customer to pay a reduced price at the time of the sales transaction. The result is that the customer is not required to pay tax on the amount of that coupon, rebate or certificate.

This change in the law will open the door for potential fraud and collusion. This bill allows the taxable receipt to be based on the amount paid by the customer at the time of the sales transaction and not on the actual consideration received by the vendor. The taxable receipt should be based on all the consideration received from the vendor for the property sold.

The sales and use tax is a broad-based tax that is designed to raise revenue from the imposition of tax at a relatively low rate on a large amount of retail transactions. Exclusions from the tax greatly impact on the very nature of the tax and the requirements to raise needed revenue. If the revenue is required from the imposition of the existing tax it must be realized that the amount not received by virtue of the proposed exemption will have to be raised from other sources. An exclusion of manufacturers' coupons from the taxable receipt would save an individual purchaser 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 revenue lost as a result of this exclusion. Considering the State's current budgetary crisis, this bill is particularly troubling.

Recommendation

The Commission opposes enactment of this bill.

Commission Members For Proposal:	0
Commission Members Against Proposal:	5
Commission Members Abstaining :	1
Commission Meeting Date:	12/06/04

situated manufacturing facilities located outside of the zone will petition for a similar tax exemption. Moreover, there is no evidence that a sales and use tax exemption for manufacturing-intensive Urban Enterprise Zone businesses will halt the decline of the manufacturing industry in New Jersey.

Further, varying tax rates from municipality to municipality threatens economic neutrality and horizontal equity within the State. The Doctrine of Economic Neutrality promotes a system of taxation that has a limited effect or impact on the marketplace and avoids policy that benefits one segment of the market at the expense of another. The goal, upon which the Urban Enterprise Zone Act is based, is to bring new businesses and consumers to selected economically depressed areas. In doing this, the surrounding municipalities from which business and consumers are drawn suffer negative economic effects. Horizontal equity refers to the concept that tax treatment should be uniform from one transaction to another. The bill eliminates sales tax on transactions involving sales of energy and utility services within the enterprise zones. This disparate treatment of certain transactions violates this doctrine.

The sales and use tax is a broad-based tax that is designed to raise revenue from the imposition of tax at a relatively low rate on a large amount of retail transactions. Exclusions from the tax greatly impact on the very nature of the tax and the requirements to raise needed revenue. If the revenue is required from the imposition of the existing tax it must be realized that the amount not received by virtue of the proposed exemption will have to be raised from other sources. An exclusion of manufacturing facilities from sales and use tax on sales of energy and utility service would save an individual purchaser a fairly insignificant sum every year. However, the cumulative loss of revenue to the State leaves the State to find other means of generating the revenue lost as a result of this exclusion. Considering the State's current budgetary crisis, this bill is particularly troubling because manufacturers are among the largest users of electricity and natural gas.

Finally, the Urban Enterprise Zone program has expanded in ways that the original drafters never intended. For instance, prior to 1994, ten towns in eleven municipalities were designated as Urban Enterprise Zones; however, in 1994, legislation authorized the creation of ten additional zones and in 1995, legislation added seven more zones. Recent legislation added three more zones to that list. Recently, Urban Enterprise Zone-impacted business districts, areas that have been "negatively impacted" by the presence of two or more adjacent urban enterprise zones, have been created wherein reduced sales tax is collected. As originally conceived, the program was to be limited and its benefits restricted to the most dire cases. In addition, 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.

The Committee recommends that a review of the Urban Enterprise Zone Program and its effectiveness is necessary to determine the best course of action in relation to future modifications or expansions of the Urban Enterprise Zone Program in New Jersey. To date, there has not been a comprehensive review of the Urban Enterprise Zone program by an independent body. As a result, substantive data concerning the actual success of the Urban Enterprise Zone Program has not been provided to the Legislature.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposal:	2
Commission Members Against Proposal:	3
Commission Members Abstaining :	1
Commission Meeting Date:	12/06/04

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

Bill Number: S-1376

Date of Introduction: 03/29/04

Sponsor: Senator Cardinale

Date of Recommendation: 06/10/04

Identical Bill:

Committee: Senate Health, Human Services and Senior Citizens

Description

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

Analysis

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

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

The Commission has some questions regarding the interpretation of the amendment specifying that only *human* blood sold for human use is exempt. It appears to be clear that the exemption will not apply if techniques are developed that would allow humans to benefit from transfusions of non-human blood with properties similar to human blood. It is not clear whether it would apply to synthetic human blood.

There appears to be no genuine financial need or policy reason for medical services providers to have the broad exemption that this bill would provide. In the absence of any provision mandating that the cost savings be passed on to the patients, the amendments would not necessarily result in reduction of the costs of medical care.

Enactment of this new exemption provision would further alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer, and is generally perceived as economically neutral and “fair.” When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer, is relatively small, but the cumulative revenue generated can be enormous. The loss of revenue to the State could be substantial, leaving the State to find other means of generating the moneys lost as a result of an expanded exemption that has little to recommend it as a matter of tax policy.

Recommendation

The Commission opposes enactment of this bill.

Commission Members For Proposal:	0
Commission Members Against Proposal:	5
Commission Members Abstaining :	0
Commission Meeting Date:	06/10/04

tax collection are included in Salem County's reduced rate of collection. Thus, in this respect, the adoption of this bill is redundant.

Therefore, if this bill were to take effect, the only sales and use tax benefit provided to Salem City vendors will be the sales tax exemption. The Urban Enterprise Zones Act permits a qualified business the ability to purchase tax-free most items of tangible personal property and services for the exclusive use or consumption on the premises of the qualified business at its zone location. Only personal property controlled by the qualified business qualifies for the exemption. Items such as office and business equipment and supplies, furnishings, trade fixtures, and repair or construction materials are examples of items that fall within the exemption.

However, 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, many 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.

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 another 3% zone 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, even though sales of certain items of tangible personal property are currently subject to a 3% rate of tax in Salem City, the entire 3% collected is remitted to the State's General Fund. If this bill were to go into effect, the State would lose the entire amount of 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.

The Committee recommends that a review of the Urban Enterprise Zone program and its effectiveness is necessary to determine the best course of action in relation to future modifications or expansions of the Urban Enterprise Zone program in New Jersey. To date, there has not been a comprehensive review of the Urban Enterprise Zone program by an independent body. As a result, substantive data concerning the actual success of the Urban Enterprise Zone program has not been provided to the Legislature.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposal:	0
Commission Members Against Proposal:	5
Commission Members Abstaining :	0
Commission Meeting Date:	06/10/04

even when they were not truly within the period in order to prevent losing a customer. This temptation would be highest with sellers of big-ticket items.

Presumably the holiday will only affect sales within New Jersey and not use tax imposed on items purchased from outside of New Jersey. Thus, the proposal is contrary to the Commerce Clause of the United States Constitution, under which states cannot discriminate against interstate commerce. If the tax holiday is limited to sales physically taking place in New Jersey, this will create a federal constitutional problem, since use tax is imposed when tangible property purchased out of state from non-New Jersey mail-order vendors is used in or delivered to New Jersey. The State cannot lawfully exempt a sale of an item taking place within New Jersey while at the same time impose tax on a comparable item purchased from an out-of-state source. This scheme whereby an in-state sale would not be subject to any tax, while the full use tax of 6% would be imposed on interstate purchases used in New Jersey is discrimination against interstate commerce and would not likely survive constitutional scrutiny.

It is unlikely that consumers would enjoy a true savings as a result of a tax holiday which merely eliminates the 6% sales tax. Sales offered by the retailer, generally at a percentage far greater than 6%, result in much greater savings for the customer. Confident that the public will be enticed to the stores by the prospect of a tax-free holiday, retailers may actually raise their "sale" prices during a tax holiday or elect not to discount regular prices if retailers are confident that the public will be drawn into stores by the idea of a tax holiday. Rather than provide a savings for consumers, the Bill could easily result in increased profit for vendors. Thus, consumers may not realize that they are actually paying more for the merchandise during the holiday, which merely eliminates the 6% tax, and not realize that they are not enjoying a real tax savings.

The Bill's statement indicates that the primary purpose of the Bill is to return some of the budget surplus to taxpayers. 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 counterintuitive to stimulate consumer spending during this time.

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

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

substantial. The proposal could result in significant revenue loss, particularly since many people may elect to schedule their purchase of a high-priced item during the tax holiday in order to enjoy the tax savings. This leaves the State to find other means of generating the moneys lost as a result of an expanded exemption that has little to recommend it as a matter of tax policy.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposal:	0
Commission Members Against Proposal:	5
Commission Members Abstaining :	0
Commission Meeting Date:	06/10/04

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

Bill Number:	S-1484	Date of Introduction:	04/20/04
Sponsor:	Senator Bucco Senator Littell	Date of Recommendation:	06/10/04
Identical Bill:	S-267		
Committee:	Senate Economic Growth		

Description

This Bill establishes a sales tax holiday in New Jersey from December 10, 2004, through December 25, 2004, 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 non-business 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, 2004. 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 non-business 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 "non-business" or to obtain an exemption certificate from every purchaser during the exclusion period.

Under the Sales and Use Tax Act, ordinarily the imposition of sales and use tax is dependent on delivery of the item, not on payment for the item. Under the Bill, however, the holiday exemption is applicable both to sales in which both payment and delivery take place during the holiday, and to sales in which payment is made during the holiday but delivery takes place later. Using the time of payment to determine the time of sale is inconsistent with the Division of Taxation's consistent, historic position that liability for the tax on sales of tangible personal property accrues when the merchandise is delivered. The Bill's use of two different, alternative methods of determining the time of sale (either date of delivery and payment, or date of payment only) would make this exemption very difficult to administer. Additional problems are likely to arise in determining the payment date on credit card and check purchases, which are actually paid at some point later than the date when the customer presents his check or signs a credit card slip. Allowing exemption for items delivered after the exclusion period makes the proposal susceptible to fraud because retailers could alter their receipts to use an order and payment date that are within the exclusion period,

even when they were not truly within the period in order to prevent losing a customer. This temptation would be highest with sellers of big-ticket items.

Presumably the holiday will only affect sales within New Jersey and not use tax imposed on items purchased from outside of New Jersey. Thus, the proposal is contrary to the Commerce Clause of the United States Constitution, under which states cannot discriminate against interstate commerce. If the tax holiday is limited to sales physically taking place in New Jersey, this will create a federal constitutional problem, since use tax is imposed when tangible property purchased out of state from non-New Jersey mail-order vendors is used in or delivered to New Jersey. The State cannot lawfully exempt a sale of an item taking place within New Jersey while at the same time impose tax on a comparable item purchased from an out-of-state source. This scheme whereby an in-state sale would not be subject to any tax, while the full use tax of 6% would be imposed on interstate purchases used in New Jersey is discrimination against interstate commerce and would not likely survive constitutional scrutiny.

It is unlikely that consumers would enjoy a true savings as a result of a tax holiday which merely eliminates the 6% sales tax. Sales offered by the retailer, generally at a percentage far greater than 6%, result in much greater savings for the customer. Confident that the public will be enticed to the stores by the prospect of a tax-free holiday, retailers may actually raise their "sale" prices during a tax holiday or elect not to discount regular prices if retailers are confident that the public will be drawn into stores by the idea of a tax holiday. Rather than provide a savings for consumers, the Bill could easily result in increased profit for vendors. Thus, consumers may not realize that they are actually paying more for the merchandise during the holiday, which merely eliminates the 6% tax, and not realize that they are not enjoying a real tax savings.

The Bill's statement indicates that the primary purpose of the Bill is to return some of the budget surplus to taxpayers. 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 counterintuitive to stimulate consumer spending during this time.

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

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

substantial. The proposal could result in significant revenue loss, particularly since many people may elect to schedule their purchase of a high-priced item during the tax holiday in order to enjoy the tax savings. This leaves the State to find other means of generating the moneys lost as a result of an expanded exemption that has little to recommend it as a matter of tax policy.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposal:	0
Commission Members Against Proposal:	5
Commission Members Abstaining :	0
Commission Meeting Date:	06/10/04

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

Bill Number:	S-1496	Date of Introduction:	04/29/04
Sponsor:	Senator Sarlo Senator Sacco	Date of Recommendation:	06/10/04
Identical Bill:	A-2812		
Committee:	Senate Economic Growth		

Description

This bill authorizes the creation of new Urban Enterprise Zones in Garfield and Fairview in Bergen County.

Analysis

This bill is proposed to amend the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq., to allow the creation of new Urban Enterprise Zones in Garfield and Fairview.

The Urban Enterprise Zone Program has expanded in ways that the original drafters never intended. For instance, prior to 1994, ten towns in eleven municipalities were designated as Urban Enterprise Zones; however, in 1994, legislation authorized the creation of ten additional zones and in 1995, legislation added seven more zones. Recent legislation added three more zones to that list. Recently, Urban Enterprise Zone-impacted business districts, areas that have been "negatively impacted" by the presence of two or more adjacent Urban Enterprise Zones, have been created wherein reduced sales tax is collected. If there was a consensus that the Urban Enterprise Zone Program is operating as intended and is thought to be effective and efficient, then the amendments set forth in this bill may represent sound policy. However, there has never been an independent, comprehensive analysis performed that confirms that the Urban Enterprise Zone Program has actually been a benefit to the participating communities, yet the Program is being constantly amended and expanded.

This proposal is flawed for several reasons. The greater the number of municipalities that have 3% sales tax, the more that New Jersey becomes a patchwork of differing sales tax rates. This is contrary to tax simplicity and uniformity. Adding more zones may create a slippery slope because other municipalities which are similarly situated to Garfield and Fairview may petition to become another urban enterprise zone. This domino effect defeats the original purpose of the Urban Enterprise Zones Act of helping to revitalize the State's economically distressed urban areas. Given the ease with which the Urban Enterprise Zone Program is being expanded, it is conceivable that all municipalities in New Jersey will be able to credibly and successfully press for Urban Enterprise Zone status. As originally conceived, the Program was to be limited and its benefits restricted to the most dire cases. This bill does not establish that its provisions would further that purpose.

As the number of zones increases, the challenge of enforcement expands. Due to the high number of zones in existence, New Jersey no longer enjoys the administrative simplicity it once did with sales tax uniformity across the State. The Statement attached to this proposed legislation does not explain why the municipality in question would benefit from Urban Enterprise Zone designation. In addition, the bill does not provide an economic study to justify the creation of Urban Enterprise Zones in Garfield and Fairview. It does not provide any information that would demonstrate that such designation would reverse the economic decline of the affected municipality or attract businesses or customers to that municipality. Conversely, it does not demonstrate that if enacted, it would not draw businesses or customers from other depressed municipalities, or if it would do so, then such an effect is economically justified.

Since the inception of the Urban Enterprise Zones Act, 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, many 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.

The Committee recommends that a review of the Urban Enterprise Zone program and its effectiveness is necessary to determine the best course of action in relation to future modifications or expansions of the Urban Enterprise Zone program in New Jersey. To date, there has not been a comprehensive review of the Urban Enterprise Zone program by an independent body. As a result, substantive data concerning the actual success of the Urban Enterprise Zone program has not been provided to the Legislature.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposal:	0
Commission Members Against Proposal:	5
Commission Members Abstaining :	0
Commission Meeting Date:	06/10/04

prudent to defer action on this amendment. Under the Agreement, definitions and substantive provisions that affect administration cannot be inconsistent from state to state.

Finally, the Committee recommends taxing all cable and satellite television services as a means to raising revenue.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposal:	0
Commission Members Against Proposal:	6
Commission Members Abstaining :	0
Commission Meeting Date:	12/06/04

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

Bill Number:	S-1958	Date of Introduction:	10/14/04
Sponsor:	Senator Bryant Senator Buono	Date of Recommendation:	11/12/04

Identical Bill:

Committee: Senate Budget and Appropriations

Background

From a national perspective, sales and use tax laws and administrative rules are so complex and burdensome that the U.S. Supreme Court has determined that it is unconstitutional under the Commerce Clause to require sellers with minimal presence in the state, such as catalog sellers, to collect Sales Tax. There have been several efforts on a national scale over the past thirty-five years to resolve these issues and reduce the burden on business. In each case, for various reasons, these efforts failed.

In March of 2000, the most recent attempt to resolve these issues, the Streamlined Sales Tax Project, was created. It is a cooperative effort fostered by the National Conference of State Legislators, the National Governors Association and the Federation of Tax Administrators. It currently has 42 of the 45 states with sales taxes as participants. New Jersey has been a participant since the beginning.

In late November 2002, the Project approved the model legislation that forms the basis for the statutory amendments proposed in S-1958. It is the result of three years of detailed discussions between state representatives and the business community. States represented by both executive and legislative participants and businesses of all types including retailers, manufacturers, technology companies, trade associations, leasing companies, financial institutions, accounting and legal firms worked together to forge the changes proposed in the model conforming legislation.

This bill offers the historic opportunity to join 21 other states in adopting legislation that has the potential, by incorporating conforming language within the New Jersey Sales Tax Act, to resolve difficult issues of multi-jurisdictional sales tax complexities endured by business for decades. Not only would the passage of this bill offer immediate benefit to New Jersey vendors, but it positions New Jersey well should Congress act on federal legislation that would result in New Jersey receiving tax on sales into New Jersey by non-nexus remote sellers. (The most recent study estimates the current loss at \$430 million and it increases to \$800 million by 2008). It does this while preserving the state's ability to set its own tax policy based on its needs.

Analysis

The Commission engaged in a lengthy discussion regarding the advantages and potential (small) concerns of this bill, which would make changes (amendments, deletions, and new provisions) in New Jersey's sales and use tax laws in order to conform to the provisions in the Streamlined Sales and Use Tax Agreement (SSTA). In order to gain an understanding of the overall impact of this legislation in New Jersey, it heard testimony from a Division of Taxation representative who has been actively involved with the SSTA since its inception, who answered numerous questions regarding the precise content of the SSTA and explained why the Division so strongly and enthusiastically supports adoption of S-1958.

Based on the testimony and the content of the bill, the Commission members believe that some businesses will immediately benefit greatly if S-1958 is enacted. Enactment of S-1958 will probably not

benefit smaller, mostly in-state vendors, to the same extent it does large multistate vendors. However, there are benefits for all New Jersey businesses regardless of their size.

Commission members expect that large interstate vendors will find it much easier to do business in multiple jurisdictions if a number of states conform their sales and use tax laws to the SSTA. For them, compliance will become simpler because of the statutory definitions that leave less room for interpretation. They will be especially beneficial if all the states where they have sales adopt definitions, exemptions and procedures consistent with the SSTA.

Some Commission members expressed the opinion that a major advantage of S-1958, if adopted, is it will set the stage for collection of tax by "remote vendors," i.e., those out-of-state vendors lacking sales tax nexus with New Jersey who make sales to New Jersey customers. They believe that uniform sales tax laws among the states will encourage them to register and collect tax on their remote sales, i.e., sales contracted via mail, phone, and internet, for delivery outside their own states. Division representative offered that more than 15 national retailers with dot.com and/or catalog companies have already come forward and voluntarily agreed to collect sales tax on remote sales in hopes of encouraging New Jersey's participation in the SSTP. These agreements self-destruct at the end of 2005 if New Jersey has failed to adopt conforming legislation. These few vendors have remitted approximately \$10 million over the past 18 months. The Division's witness also stated a number of additional companies through their legal representatives have approached the project and indicated they will voluntarily register with the states that have conforming legislation in place when the Governing States come into existence. It is anticipated that this will occur by July 1, 2005. It was acknowledged that this would level the playing field and serve as a means of protecting them from those "predatory remote vendors" who do not currently collect tax on New Jersey sales and therefore enjoy a competitive advantage over local storefront vendors.

There was discussion about the potential impact on revenues caused by the changes that would be effected by S-1958. Overall, the Commission members think that the fiscal impact of the changes in S-1958 will be revenue-neutral. This minimal impact was attributed in large measure to the Division of Taxation's steadfast participation in every Streamlined Sales Tax Project meeting. The Commission noted that in certain specific portions of the SSTA, individual states are given the option to enact specific use-based exemptions or to carve out an allowable exclusion from certain exemptions.

The Commission members noted that sellers who use a "certified service provider" for processing their sales tax data and handling their filing compliance obligations will have the benefit of this service at no cost.

The Commission is aware that the bill does not directly address the reduced sales tax rates in UEZs and in Salem County. The Division of Taxation witness assured the Commission that the 3% rate in UEZs would not violate the SSTA because participation in the UEZ program is voluntary on the part of vendors located in a UEZ and indicated that, as this type of zone is common in many states, it had been discussed at SSTP meetings and the non-violation of the agreement was confirmed. (That is, vendors in a UEZ can choose not to become "qualified" UEZ vendors, who must satisfy various program requirements in order to enjoy its benefits, or, even after they have qualified, they can choose to opt out of the program and collect sales tax at full 6% rate.)

There were questions about how New Jersey's efforts to conform to the SSTA would affect our own state Legislature's ability to enact additional sales and use tax provisions, in response to changing needs within the State of New Jersey. The Commission understands that if the state is deemed to be not in conformity with the SSTA, it will lose its voting rights in the quasi-governmental body. Therefore, if a new sales and use tax law does not conform, New Jersey would no longer be classified as a conforming state, even if all of its other sales and use tax provisions are strictly in conformity. It would also be deemed not in conformity, and thus no longer a voting member, if some statutory provision or administrative practice that is

mandatory as a condition of conformity is declared unconstitutional by the New Jersey Supreme Court. Therefore, Commission members expressed concern about the lack of a severability clause that might allow the state to remain a voting member of the SSTA body, even if one statutory provision was declared invalid.

Therefore Commission members strongly support the Division's recommendation for inclusion of a severability clause, which would allow the state to remain a governing member if the state happens to enact a new provision that is deemed non-conforming by the SSTA group, or if a mandatory provision is invalidated by the New Jersey Supreme Court. This clause would allow the remainder of the SSTP amendments to remain in effect while a solution to the non-conforming position was rectified.

The Commission's discussion of S-1958 was the most lengthy one it has conducted in the years of its existence. As summarized in this Analysis, the Commission after review of the bill and consideration of the testimony provided, is convinced that this legislation is the most positive proposed Sales Tax amendment it has seen since being impaneled, offers benefits to the business community and should pave the way and eventually offer an opportunity to help solve a persistent budget deficit.

Recommendation

The Commission supports enactment of this bill.

Commission Members For Proposal:	9
Commission Members Against Proposal:	0
Commission Members Abstaining :	0
Commission Meeting Date:	11/12/04

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, many 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.

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Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposal:	0
Commission Members Against Proposal:	6
Commission Members Abstaining :	0
Commission Meeting Date:	12/06/04

Resolution

The following motion was carried at the March 29, 2004, meeting of the Sales and Use Tax Review Commission. The procedure applies to any bill prefiled for introduction in the 2004–2005 Legislative Session that has been reviewed by the Commission in the 2002–2003 Legislative Session.

During the 2002–2003 legislative session, the *Sales and Use Tax Review Commission* provided its recommendations on 50 bills to the Legislature.

Many of these proposals have been or will be reintroduced for the 2004–2005 legislative session. In view of the volume of legislation certified to the Commission, and in recognition of its obligation to provide advisory recommendations to the Legislature in a timely manner, the Commission hereby reconfirms the recommendations offered during the 2002–2003 session and deems them applicable to the substantially identical measures reintroduced in the 2004–2005 legislative session.

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

Reconfirm prior recommendations on the following 2004–2005 legislative session prefiled bills (2002–2003 legislative session bill number in brackets).

A-168 (A-1996)	A-1866 (A-1673)
A-254 (A-3499)	A-2064 (A-2024)
A-263 (A-2207)	A-2085 (A-153)
A-484 (A-580)	S-97 (S-2380)
A-597 (A-486)	S-160 (S-1595)
A-924 (A-997)	S-199 (S-1598)
A-991 (A-3765)	S-208 (S-2589)
A-994 (A-3812)	S-399 (S-258)
A-1102 (A-876)	S-604 (S-206)
A-1216 (A-1039)	S-666 (S-717)
A-1427 (A-349)	S-804 (S-204)
A-1640 (A-330)	S-815 (S-692)
A-1671 (A-400)	S-923 (S-9670)
A-1738 (A-106)	S-1080 (S-251)
A-1778 (A-521)	S-1255 (S-636)

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

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

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

18:24A-2.3 Quorum; votes

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

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

SUBCHAPTER 3. INFORMATION AND FILINGS

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

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

18:24A-3.2 Oral comments

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

18:24A-3.3 Notice of policies

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

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

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

18:24A-3.5 Reports of the Commission

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