

# **Sales and Use Tax Review Commission 2001 Annual Report**

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

December 31, 2001

John R. Baldwin  
*Commission Chairman*

Nicholas K. Catalano  
*Executive Secretary*

# Table of Contents

Commission Membership and Executive Staff .....	v
Overview of Authorizing Legislation.....	1
Standards of Analysis for Review of Sales and Use Tax Legislation .....	5
Sales Tax Holidays .....	7
Bad Debt Refunds .....	11
List of Bills Reviewed by Commission .....	13
Bill Recommendations Issued by Commission	
A-17 .....	19
A-2845 .....	21
A-2967 .....	23
A-3141 .....	25
A-3161 .....	29
A-3329 .....	31
A-3587 .....	35
A-3843 .....	37
S-1905 .....	39
S-1924 .....	41
S-1975 .....	43
S-2020 .....	45
S-2021 .....	49
S-2023 .....	53
S-2072 .....	57
S-2198 .....	59
S-2270 .....	61
S-2271 .....	63
S-2319 .....	65
S-2389 .....	67
S-2661 .....	69
Sales and Use Tax Review Commission Regulations .....	71

# Commission Membership and Executive Staff

(as of December 31, 2001)

## Public Members

### APPOINTED BY GOVERNOR

John R. Baldwin, Chairman  
209 Garfield Avenue  
Avon-by-the-Sea, NJ 07717  
(732) 775-3153  
(732) 556-1657 (fax)  
e-mail: jrbaldwin@aol.com

Deborah R. Bierbaum  
AT&T  
412 Mt. Kemble Avenue, Suite 260  
Morristown, NJ 07960  
(973) 644-1244  
(973) 644-8430 (fax)  
e-mail: bierbaum@att.com

### APPOINTED BY SENATE

James Appleton, Esq.  
President, NJ Coalition of Automotive Retailers  
P.O. Box 7510  
Trenton, NJ 08628  
(609) 883-5056 Ext. 330

Susan A. Feeney, Esq.  
McCarter & English  
100 Mulberry Street, Four Gateway Center  
P.O. Box 652  
Newark, NJ 07101  
(973) 622-4444  
(973) 624-7070 (fax)  
e-mail: sfeeney@McCarter.com

### APPOINTED BY GENERAL ASSEMBLY

Arthur Gelber, CPA  
President, The Gelber Organization  
One Gateway Center, Suite 2600  
Newark, NJ 07102  
(973) 645-0571  
e-mail: gelber@Gelberorg.com

## **Executive Branch**

Bernard B. Kornmehl, Esq. (*Ex Officio*, serving as Treasurer's designee)  
Assistant State Treasurer  
135 West Hanover Street  
P.O. Box 002  
Trenton, NJ 08625  
(609) 633-6604 (work)  
(609) 984-3990 (fax)  
e-mail: bkornmehl@gov.state.nj.us

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

Robert K. Thompson  
Director, Division of Taxation  
50 Barrack Street  
P.O. Box 240  
Trenton, NJ 08695  
(609) 292-5185  
(609) 292-3318 (fax)  
e-mail: rthompson@tax.state.nj.us

John T. Hanson  
Vice President of Strategic Initiatives  
Commerce & Economic Growth Commission  
20 West State Street  
P.O. Box 820  
Trenton, NJ 08625  
(609) 633-2068  
(609) 633-8004 (fax)

## **Executive Secretary**

Nicholas K. Catalano, Esq.  
Chief, Regulatory Services Branch  
Division of Taxation  
50 Barrack Street  
P.O. Box 269  
Trenton, NJ 08695  
(609) 292-5995  
e-mail: ncatalano@tax.state.nj.us

## **Staff Contributors**

John Farina  
Denise Lambert  
Carol Trovato  
Carol Bell  
Beth Berniker  
Eric Friedmann  
Susan Greitz  
Elizabeth Lipari  
Robert Piechota



# Overview of Authorizing Legislation

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

## Membership

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

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

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

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

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

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

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

---

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

## **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.

## **Procedures**

The following requirements govern the Commission's review process.

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

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

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

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

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

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

**Rules and Regulations**

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

**Commission Report**

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

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



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

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

Following are the total figures for sales and use tax collections in the past four fiscal years:

<b>Fiscal Year</b>	<b>Sales and Use Tax Collections</b>
2000	\$5,508,045,603
1999	5,054,437,769
1998	4,766,194,660
1997	4,415,427,600

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

In order to expedite the work of reviewing pending sales and use tax legislative proposals and arriving at recommendations, it can be helpful to identify some standards that might be useful when evaluating the merits of legislation that would alter the sales and use tax base. It may be necessary to give due attention to the sometimes competing visions and values of "fairness," ease of administration, economic neutrality, and compliance cost. While analysis of legislation is generally not limited to the consideration of a fixed, precisely defined list of standards, it can be useful to consider, among other factors, the following standards when performing an analysis of each bill presented for review.

## **Simplicity**

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

## **Equity**

In this area, the policy analyst faces the challenge of applying two competing concepts of fairness, both of which may merit some consideration.

"Horizontal equity" requires that the tax apply equally to similarly situated taxpayers. That is, all taxpayers engaging in the same type of transaction are deemed to be "equals" and therefore should be equally obligated to pay tax at the same rate, resulting in tax payments proportionate to the monetary value of the transactions. Proponents of "horizontal equity" as a guiding principle of ideal statutory tax

schemes generally favor sales tax laws with the broadest possible tax base, with few if any exclusions or exemptions, coupled with the lowest possible rate of tax.

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

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

### **Economic Neutrality**

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

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

### **Costs of Administration and Compliance**

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

# Sales Tax Holidays

Sales tax “holiday” legislation is intended to provide tax relief by establishing a sales tax exemption for a specified, limited time period. The current sales tax holiday trend began with New York’s enactment of a tax-free week for clothing purchases in 1997. While New York’s tax holiday was specifically designed, in part, to bring clothing shoppers to New York City, thereby protecting New York’s retailers from competition with businesses in surrounding states, most sales tax holiday legislation is proposed for the broader purpose of cutting taxes, reducing the living expenses burdening lower-income taxpayers, and stimulating a sluggish economy by encouraging consumer purchases. Sales tax holiday legislation is, therefore, often drafted so that the limited-time exemption favors only the kinds of transactions that legislators believe will advance those policy goals, for example, purchases of back-to-school supplies, or computers for personal home use, or preholiday shopping.

The Commission has serious questions about the benefits of sales tax holiday legislation and urges careful consideration of the following concerns. First, it is highly unlikely that consumers enjoy a true savings as a result of a tax holiday which merely eliminates the 6% sales tax. Sales offered by retailers — generally at percentages far greater than 6% — result in much greater savings for customers. Confident that the public will patronize the stores during a tax-free holiday, retailers may actually raise their “sale” prices during the tax holiday, thus resulting in somewhat of an increase in what consumers must pay for purchases during that period.

In addition, to the extent that consumers enjoy some genuine savings because of the tax holiday, that savings would, of course, be proportionate to the amount they paid for normally taxable items that were tax-free during the special exemption period. The holiday would therefore be regressive in its impact, since it would give a far greater tax benefit to those who could afford to make more numerous or more costly purchases.

Statistics showing great increases in sales during a tax holiday do not necessarily indicate that there has been a real increase in consumer spending and that the retail economy is on its way to recovering from a slump. The apparent “success” of a holiday in increasing sales is especially misleading when the holiday applies to expensive items. Many of the bills proposing sales tax holidays have been limited to sales of home computers for personal use. Because computers are a major purchase for most consumers, it is foreseeable that many purchasers would plan to make their computer purchases during the limited sales tax holiday period. Thus, the holiday period may simply divert sales from subsequent months, leading to the false impression that tax holidays are a major retail success. In fact, the holidays can cause problems for the retailers, who generally prefer a more even cash flow and a fairly consistent, stable need for employees. Holidays can cause periods of

low sales and low income before and after the holiday, with a burdensome increase in work for sales personnel during the short holiday.

Many of the tax holiday proposals considered by the Commission this past year would have limited the temporary tax exemption to purchases of specific categories of items, e.g., computers for home use, or school supplies. These specific exemptions often give rise to difficult issues of interpretation, application, and enforcement, and require a disproportionate amount of administrative attention devoted to the implementation of a one-week exemption. For example, exemptions for computers for personal, nonbusiness use are easy to abuse, as taxpayers purchasing a computer for business use might easily claim fraudulently that the purchase is not business-related. Exemptions for school supplies present additional problems, since such a vast variety of items might conceivably be used in students' learning activities, but might also have a myriad of uses by nonstudents for purposes entirely unrelated to school.

The implementation of sales tax holiday legislation often involves difficult issues regarding which stages of a "sale" will be dispositive in determining whether the sale has taken place during the specified holiday period. For example, holiday legislation often fails to address the issue of whether the "holiday" would apply only to sales in which both payment and delivery take place during the holiday, or also to sales in which payment is made during the holiday and delivery takes place later, or sales in which payment was already made before the holiday but the purchaser takes possession of the goods during the holiday, or sales in which the order is placed during the holiday but both payment and delivery takes place during the holiday. In the absence of specific statutory direction on this issue, most likely the time of delivery would be dispositive in light of 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. However, the issue will be a puzzling one for the consumers and vendors, and will necessitate explanation by the Division.

Sales tax holiday legislation has the potential to cause a major disruption of operations of State government. Press releases need to be written to explain the scope and duration of the sales tax holiday, staff in tax information services need to be trained, and the Division of Taxation would need to be prepared to handle a huge increase in information inquiries from vendors and consumers before, during, and after the one-week holiday. The burden of handling the expected increase in volume of telephone inquiries might necessitate the hiring of new, temporary personnel, who would need training time, work space, and, of course, salaries; or 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 computer purchase would probably 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.

Generally, the language of sales tax holiday bills seems to apply only to sales that take place within New Jersey and not to compensating use tax imposed on items purchased outside New Jersey. This can create a potential federal constitution problem if use tax is imposed when tangible personal property purchased out of State or from non-New Jersey mail order vendors is used in or delivered in New Jersey. The Commission believes that the State cannot lawfully exempt sales of merchandise taking place within New Jersey while imposing tax on comparable items purchased from an out-of-State source during a holiday period.

Finally, a 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 by consumers as economically neutral and "fair." When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer is relatively small, but the cumulative revenue generated can be enormous. An exemption on purchases during a tax holiday would save an individual taxpayer a fairly insignificant sum. However, the cumulative loss of revenue to the State, some of it unintended, could be substantial. A holiday applicable to expensive purchases, such as computers, could result in a significant revenue loss, particularly since many people may elect to schedule their purchases of high-priced computers during the tax holiday in order to enjoy the tax savings.

For all these reasons the Commission is very skeptical about claims that sales tax holiday proposals will provide real tax relief to those taxpayers who need it most, or that they will genuinely increase retail sales activity or promote long-term improvement in the health of the State's retail economy.



## Bad Debt Refunds

New Jersey's current policy regarding refund claims for sales tax "bad debts" is based on the administrative interpretation and implementation of N.J.S.A. 54:32B-12(c) and N.J.S.A. 54:32B-20 of the Sales and Use Tax Act. When a vendor has already remitted the tax due on a sale, but the account receivable proves to be worthless and uncollectible, the vendor may apply for a refund. If the vendor collected no payment at all from the customer, the vendor will be allowed a full refund of the sales tax remitted. If the vendor collected only partial payment, which amounted to less than the sales tax due and remitted, the vendor is entitled to a partial refund. But if the partial payments collected amounted to at least the amount of sales tax due and remitted, the vendor will not be entitled to a refund.

Under current statutory law, such sales tax refunds can be paid only to the person who was required to collect the sales tax, and who has in fact remitted the sales tax due on a transaction. The Division of Taxation has sometimes been faced with some difficult administrative challenges when financing companies, which provide services for a variety of vendors making sales on credit, attempt to claim refunds of the sales tax remitted by vendors on sales in which purchasers have defaulted on payment. In these situations, an individual vendor has remitted the tax due on a credit transaction and has assigned the credit account to the financing company, which collects the amount due from the consumer. The financing company, in purchasing an account, pays the vendor for both the item sold and the appropriate sales tax, which the vendor has already remitted to the State. When a consumer defaults, the financing company is usually unable to collect the outstanding balance, and the unrecovered amounts become worthless debt for federal income tax purposes. The financing company, in some cases, has then sought a refund from the Division of the sales tax remitted by the vendors. It has been the Division's position, however, that the financing company is not the party who may make such claim, since, under current law, sales tax refund claims may be made only by "a person required to collect the tax, who has collected and paid over such tax to the director." N.J.S.A. 54:32B-20(a).

The Commission has reviewed recent statutory proposals that would permit lenders, such as credit card and financing companies, to claim refunds of sales tax remitted by vendors on worthless credit accounts. Specifically, a lender to a New Jersey vendor would be allowed to claim a refund of sales tax paid by the vendor on a worthless credit card account; any partial payments made by the purchaser would be allocated proportionately among the charges for purchases, finance charges, and taxes paid.

The Commission believes that these proposals are ill-conceived and are inconsistent with the basic accounting and contractual factors involved in credit transactions. Unlike vendors, the credit card companies, which simply fund undifferentiated obligations to vendors and receive payments on those obligations

from cardholders, do not hold sales tax funds “in trust” for the State. They do not remit sales tax; nor do they have any obligation to compensate the State for any sales tax deficiencies resulting from a vendor’s failure to remit tax due. In addition, there is the risk that allowing an assignee, such as a credit card or financing company, the right to a refund on bad debts would provide a motive for trading these amounts by persons who have no part in the underlying transaction.

The fiscal impact of such a legislative change on state revenue could be enormous: approximately \$41 million per year. This estimate is based on information from the Internal Revenue Service annual publication, *Statistics of Income, Corporate Income Tax Returns*. Almost no bad debt currently results in sales and use tax refunds. Almost all bad debts arising from credit transactions would result in sales tax refunds if such proposals were enacted into law. This kind of legislation would effectively subsidize the decision to write off possible collectible bad debt, making bad debt write-off more likely, thus making the cost even more expensive. Moreover, any such legislative change would effectively subsidize business judgments that may often involve a known high risk of default. The Commission believes that these proposals, when viewed as a subsidy, are not a good tax policy option for New Jersey.

## List of Bills Reviewed by Commission (from December 1 – December 31, 2000)\*

Bill Number	Description	Recommendation Date
A-2724 S-1529	These bills authorize UEZA to designate an additional zone.	12/18/00
A-2736	This bill modifies the NJ Urban Enterprise Zones Act to designate a UEZ-impacted business district.	12/24/00
S-1652	The "Urban Heritage District Act."	12/22/00
S-1678	This bill provides exemption for certain purchases by flood victims of August 2000 storm.	12/28/00

---

\* Recommendations not included in 2000 Report



## List of Bills Reviewed by Commission (from January 1 – December 31, 2001)

Bill Number	Description	Recommendation Date
A-17 S-1727	Extends the life of an Urban Enterprise Zone after the expiration of its third five-year period of designation as such if the municipality has a stated unemployment rate or is contiguous to a zone that meets that unemployment test. Also authorizes an additional joint zone that would apply to North Wildwood City, Wildwood City, Wildwood Crest Borough, and West Wildwood Borough in Cape May County.	02/26/01
A-2845	The bill provides for a sales and use tax rebate and pass-through of cost savings to residential purchasers of natural gas and the transportation service, between November 1, 2000, and March 31, 2001.	02/26/01
A-2967 S-523	These bills exempt certain sales made by rural electric cooperatives from sales and use tax and corporation business tax. Currently, Sussex Rural Electric is the only electric cooperative in the State.	02/26/01
A-3141	Provides for exemption from sales and use tax of receipts from retail sales of a personal computer for nonbusiness use to an individual purchaser when the sale is made during an exclusion period. Provides definitions for exemption from sales and use tax of receipts from retail sales of school supplies, school equipment, and school-related items sold to a consumer during the exclusion period. Provides that the Director of the Division of Taxation can promulgate regulations in consultation with the Commissioner of Education in order to implement the provisions of this bill.	03/28/01
A-3161	This bill provides a sales and use tax exemption for credit unions that are chartered under the laws of the State of New Jersey.	03/28/01
A-3329	This bill would allow certified vendors in certain downtown business districts to collect 3% sales tax.	03/22/01
A-3587	Amends the exemption provided in N.J.S.A. 54:32B-8.15 to include the sale of returnable plastic containers and pallets.	08/13/01

Bill Number	Description	Recommendation Date
A-3843	The bill authorizes the creation of a new UEZ in Beverly City, Burlington County.	12/18/01
S-1905 A-3005	These bills would provide a sales and use tax exemption for certain sales to nonprofit homeowners' associations of energy and of certain services which they are required to provide for the common areas of a real estate community.	02/22/01
S-1924	Broadens the exemption for school textbooks to include "recommended" books, in addition to books designated as "required" textbooks by an educational institution.	02/22/01
S-1975	The bill would amend the Sales and Use Tax Act to exempt sales at concession stands in, or on the grounds of, State-owned veterans' homes.	02/22/01
S-2020	(1) Provides a sales tax exemption for sales of tangible personal property for nonbusiness use to individual holiday purchasers during the exclusion period. (2) Excludes motor vehicles, alcoholic beverages, cigarettes, and energy from this exemption. (3) Defines "exclusion period" and "individual holiday purchasers."	03/28/01
S-2021 A-3190	These bills provide a sales tax exemption for sales of tangible personal property for nonbusiness use to individual back-to-school purchasers made during the exclusion period but excludes motor vehicles, alcoholic beverages, cigarettes, and energy from this exemption.	03/28/01
S-2023	Provides sales and use tax exemption for purchases of equipment used directly and exclusively to prevent, control, or eliminate air, water, or solid or hazardous waste pollution generated as a by-product of manufacturing, industrial, commercial, or agricultural processes or services.	03/28/01
S-2072	(1) Broadens the applicability of the medical exemption. (2) Extends the scope of the exemption by exempting sales of all other "health care equipment and supplies." (3) Clarifies the exemption and makes some minor structural changes in the provision.	03/28/01

Bill Number	Description	Recommendation Date
S-2198 A-3272	Exempts the sale of child restraint systems for use in motor vehicles, provided that they meet the most recent Federal safety standards.	03/28/01
S-2270	This bill would make State-chartered credit unions exempt from sales and use tax as long as Federally chartered credit unions are exempt.	03/29/01
S-2271	This bill provides a sales and use tax exemption for credit unions that are chartered under the laws of the State of New Jersey. (Identical Bill A-3161)	03/29/01
S-2319	This bill would authorize a refund of sales and use tax paid with respect to certain costs incurred in the rehabilitation of historic property. In addition, other State tax benefits would be enacted that are outside the scope of this review.	05/30/01
S-2389	Establishes a week-long tax holiday during the last week of July 2001, during which sales of personal computers for nonbusiness use will be exempt from sales and use tax. Also establishes a one-day tax holiday on July 31, 2001, when sales of any item of tangible personal property for nonbusiness use will be exempt from sales and use tax.	08/13/01
S-2661	The bill authorizes the creation of a sales tax exemption for purchases of teaching materials including professional development materials for teachers or teaching staff of preschool through grade 12 schools in New Jersey.	12/18/01



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

---

**Bill Number:** A-17

**Date of Introduction:** 10/30/00

**Sponsor:** Assemblyman Asselta

**Date of Recommendation:** 2/26/01

**Identical Bill:** S-1727

**Committee:** Assembly Commerce, Tourism, Gaming and  
Military and Veterans' Affairs

---

**Description**

The bill would extend the life of an Urban Enterprise Zone after the expiration of its third five year period of designation as such if the municipality has a stated unemployment rate or is contiguous to a Zone that meets that unemployment test. The bill would also authorize an additional joint Zone that would apply to North Wildwood City, Wildwood City, Wildwood Crest Borough and West Wildwood Borough in Cape May County. Qualifying retailers in the extended Zones and new Zone would be authorized to charge and collect 3% sales tax; the 3% tax collections would be returned to the pertinent municipality according to a formula provided in the bill.

**Analysis**

The existing Urban Enterprise Zones Act has certain provisions that divert qualifying 3% sales tax collections to municipal coffers, and this bill is an attempt to retain this source of municipal funding for certain municipalities that have an Urban Enterprise Zone that will expire soon. Another purpose of the bill is to establish an entirely new joint Zone in four municipalities. By extending the duration of some of the current Zones and adding a new one, the bill is extending two of the significant problems with the Zone program: municipal dependence on the Act's municipal financing and the Zones creating resentment and possible economic recession in neighboring municipalities that lack the Zone designation.

Although the bill proposes to extend the duration of some Zones and create an additional one, the bill does not provide a strong justification for either proposal. The existing Urban Enterprise Zones Act allows Zones to exist for 20 years and prohibits Zone renewal. Thus, the Act appears to be predicated on the concept that twenty years of tax incentives should be sufficient to achieve the program's objectives. The bill does not adequately explain why 20 years was not long enough to achieve the program's goals.

Because qualifying businesses in the zones may charge 3% sales tax instead of 6%, any perpetuation or proliferation of the Urban Enterprise Zones poses a constitutional problem. It is unconstitutional to charge higher use tax, in a municipality, than the sales tax imposed within the municipality. Because of this constitutional restriction, in municipalities where Zone businesses charge 3% sales tax, use tax on purchases made from out-of-state retailers is also only 3%. Thus, not only does the 3% sales tax harm businesses in nearby municipalities, but also it gives a tax break to non-New Jersey retailers. The bill would allow these problems to continue.

The bill does not explain why the four Wildwood shore towns need Urban Enterprise Zone tax incentives. Further, three of those towns are currently benefiting from a 2% additional tax on tourism related receipts. It may be difficult to justify also giving the 3% sales tax collections to those municipalities. Additionally, under the bill, those municipalities will have 3 different sales tax rates: 3% for qualifying Zone reduced rate receipts; 8% for the pertinent tourism related receipts; and 6 % for non-UEZ and non-tourism related receipts. The bill makes the sales tax so complicated that correctly collecting the taxes and completing the tax returns could be a significant burden to the affected businesses and significantly offset the benefits offered by the Zone program.

### **Recommendation**

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0  
Commission Members **Against** Proposal: 7  
Commission Members **Abstaining**: 0  
Commission Meeting Date: 2/14/01

DA:sp

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

---

**Bill Number:** A-2845

**Date of Introduction:** 10/12/00

**Sponsor:** Assemblyman Jones **Date of Recommendation:** 2/26/01

**Identical Bill:** None

**Committee:** Assembly Telecommunications & Utilities

---

**Description**

The bill provides for a sales and use tax rebate and pass-through of cost savings to residential purchasers of natural gas and the transportation service, between November 1, 2000 and March 31, 2001.

**Analysis**

The bill is an attempt to grant a tax exemption based upon the recent retail price increase in the natural gas industry, which resulted from an increase in demand and a reduction in supply. As a policy matter, it is generally not appropriate for the government to legislate in response to fluctuating market forces and momentary economic conditions. The rebate does not take the level of need into account, but rather, refunds the tax to all residential purchasers. Also, there are already state programs in place which provide financial aid to those residents in need of relief from the cost of home heating. In addition, by restricting the rebate to residential purchasers, the bill treats similarly situated taxpayers, commercial gas purchasers, differently although they are likely to be more effected by the rise in natural gas prices, due to the use of natural gas in running machinery and equipment, as well as for heating purposes.

**Recommendation**

The Sales and Use Tax Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 7

Commission Members **Abstaining:** 0

Commission Meeting Date: 2/14/01

DML:sp



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

---

**Bill Number:** A-2967

**Date of Introduction:** 11/13/00

**Sponsor:** Assemblyman Garrett

**Date of Recommendation:** 2/26/01

**Identical Bill:** S-523

**Committee:** Assembly Telecommunications and Utilities

---

**Description**

This bill exempts certain sales made by rural electric cooperatives from the sales and use tax and corporation business tax. Currently, Sussex Rural Electric is the only electric cooperative in the state.

**Analysis**

Pursuant to the Energy Tax Reform legislation, the retail sale of electricity became subject to sales tax as of January 1, 1998. All entities that were previously subject to the Gross Receipts and Franchise Tax (GRAFT) (which was repealed) became subject to the provisions of the Sales and Use Tax Act. Municipalities across the state receive significant municipal aid which is derived from these tax collections. Sussex Rural Electric was subject to the GRAFT and thus, is required to collect sales tax on its retail electricity sales. This bill would disrupt the level playing field established under deregulation by granting Sussex a significant competitive advantage in servicing the customers within its franchise area. Any competitor within the franchise area is required to collect sales tax on its sales of electricity. If an exemption is available for sales made by Sussex, that entity would be virtually guaranteed a captive customer base, because there would be a disincentive to switch electricity providers. This is counter to the basic premise of deregulation, which is to open the electricity market to competition by treating all sellers equally.

**Recommendation**

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 1

Commission Members **Against** Proposal: 6

Commission Members **Abstaining:** 0

Commission Meeting Date: 2/14/01

DML:sp



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

---

**Bill Number:** A-3141

**Date of Introduction:** 1/8/01

**Sponsor:** Assemblyman Smith

**Date of Recommendation:** 4/2/01

**Identical Bill:**

**Committee:** Assembly Education

---

**Description**

(1) Provides for exemption from sales and use tax of receipts from retail sales of a personal computer for non-business use to an individual purchaser when the sale is made during an exclusion period, but not including computer leasing, rental, repair or alteration. (2) Provides definitions for “exclusion period”, “individual purchaser” and “personal computer”. (3) Provides definitions for exemption from sales and use tax of receipts from retail sales of school supplies, school equipment, and school-related items sold to a consumer during the exclusion period. (4) Provides definitions for “exclusion period” and “school supplies, school equipment and school-related items”. (5) Provides that the director of the Division of Taxation can promulgate regulations in consultation with the Commissioner of Education in order to implement the provisions of this bill.

**Analysis**

The seasonal exemptions for computers and for supplies generally viewed as “school supplies” are not narrowly designed to serve the expected goals of this bill: helping families who are attempting to materially support their children’s education. The computer exemption, which is limited to computers for non-business use, is far broader than necessary to achieve its purpose, since any individual might lawfully claim the exemption, provided that the computer is not being purchased for business use.

Because computers are a major purchase for most individuals, it is foreseeable that many purchasers will plan to make their computer purchases during the one-week sales tax holiday. All this does is to divert sales from subsequent months, leading to the false impression that tax holidays are a major retail success.

The exemption for school supplies is even broader, since it extends to “items generally accepted as being required for a student to be prepared...” though not necessarily actually for a student. Thus, virtually anyone who purchases writing pads, pens, pencils, basic art supplies, sports equipment, notebooks, book packs and

other items commonly used by students would have a right to claim exemption under the terms of the bill as currently written.

The limitation of the computer exemption to individual purchasers for nonbusiness use would be difficult to administer. Retailers cannot reasonably be expected to recognize whether a particular individual is making a purchase for business or personal use, and it is foreseeable that, like the exemption for paper products for home use only, this personal-use exemption will be widely misused and easily abused by consumers making purchases for their small businesses.

The bill does not address the issue of whether the "holiday" would apply only to sales in which both payment and delivery take place during the holiday, or also to sales in which payment is made during the holiday and delivery takes place later, or sales in which payment was already made before the holiday but the purchaser takes possession of the goods during the holiday, or sales in which the order is placed during the holiday but both payment and delivery takes place during the holiday. In the absence of specific statutory direction on this issue, most likely the time of delivery would be dispositive, in light of 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.

It appears that the "holiday" will apply only to sales that take place within New Jersey, and not to compensating use tax imposed on items purchased outside New Jersey. This will create a potential federal constitutional problem, if the use tax is imposed when tangible personal property is purchased out of State or from non-New Jersey mail order vendors is used in or delivered in New Jersey. The State cannot lawfully exempt a sale of merchandise taking place within New Jersey while imposing tax on a comparable item purchased from an out-of-State source. A "holiday" applicable only to in-State sales, whereby in-State sales would be subject to no tax at all, while the full use tax would be imposed on interstate purchases used in New Jersey, 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 lured to the stores by the prospect of a tax-free holiday, retailers may actually raise their "sale" prices during a tax holiday, thus resulting in somewhat of an increase in what the consumer must pay for purchases during that period.

The benefit that consumers would enjoy because of the tax holiday would be proportionate to the amount that they pay for the exempt items. 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 computers for their personal use.

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 one-week "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 computer 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.

In addition, 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. An exemption for "school supplies" would save an individual purchaser a fairly insignificant sum every year. However, the cumulative loss of revenue, some of it unintended, to the State could be substantial. The complete exemption, applicable to much more expensive purchases, could result in significant revenue loss, particularly since many people may elect to schedule their purchase of a high-priced computer 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**

Oppose

Commission Members <b>For</b> Proposal:	0
Commission Members <b>Against</b> Proposal:	8
Commission Members <b>Abstaining</b> :	0
Commission Meeting Date:	3/28/01

CMT:sp



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

---

**Bill Number:** A-3161

**Date of Introduction:** 1/23/01

**Sponsor:** Assemblyman Bateman    **Date of Recommendation:** 4/2/01

**Identical Bill:**

**Committee:** Assembly Banking and Insurance

---

**Description**

This bill provides a sales and use tax exemption for credit unions that are chartered under the laws of the State of New Jersey.

**Analysis**

The bill is an attempt to treat state chartered credit unions in the same manner as federally chartered credit unions, which enjoy an exemption from state sales tax pursuant to federal law. However, state credit unions generally compete with for-profit financial institutions, such as banks and leasing companies, not with federal credit unions. There is no compelling reason to legislate to achieve sales tax parity between non-competitive banking organizations. In addition, as a matter of general policy, the New Jersey Sales and Use Tax Act anticipates the payment of sales or use tax by businesses on certain equipment, supplies or taxable services. Where business property exemptions exist, they are usually for major capital expenditures; e.g. aircraft purchased by an air carrier, ships used in interstate commerce, capital improvements to realty.

A special problem arises in the area of motor vehicle leasing. Customers who obtain a lease through a federal credit union are exempt from any sales tax expense due to the federal exemption from state tax, while those who lease from any other type of organization will incur a sales tax expense. The lessor is liable for the tax, which is passed on to the lessee. This bill would add to the competitive disadvantage that currently exists due to the federal exemption. New Jersey leasing companies should not be treated differently under New Jersey law.

Finally, the proposed exemption is applicable only to credit unions organized under the laws of New Jersey. This may discriminate against out-of-state credit unions and may raise federal constitutional concerns in administration and enforcement.

**Recommendation**

This bill is not recommended for enactment.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 7

Commission Members **Abstaining**: 1

Commission Meeting Date: 3/28/01

DML:sp

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

---

**Bill Number:** A-3329

**Date of Introduction:** 3/22/01

**Sponsor:** Assemblyman Lefevre

**Date of Recommendation:** 5/30/01

**Identical Bill:** S-2291

**Committee:** Assembly Commerce, Tourism, Gaming and  
Military and Veterans' Affairs

---

**Description**

This bill would allow certified vendors in certain downtown business districts to collect 3% sales tax.

**Analysis**

The number of communities authorized to charge 3% sales tax has proliferated substantially over the past several years.

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

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

In 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, and, in addition, state legislation authorized political subdivisions to enact their own local sales taxes. Many localities did so. Thus, in some localities, the combined use tax was lower than the combined sales tax rate, while in others, the use tax was higher. The Court considered it irrelevant that the tax scheme lacked any discriminatory intent. 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 sales tax rate was less than the use tax rate.

In light of the Associated Industries ruling, it appears that New Jersey statutes creating a partial exemption for certain retail sales only if they take place within a certain district (i.e. only intrastate sales) would similarly not survive constitution scrutiny. In order to avoid constitutional challenges, New Jersey has had to apply the reduced (3%) rate administratively both to sales actually taking place in UEZ or Salem County and satisfying the other statutory criteria for the partial exemption and to any out-of-state purchases, when the first use of the goods takes place in Salem County or a UEZ. If this bill is enacted, it will need to do the same thing for use tax in the traditional downtown business districts. Only in that way could the partial exemption not discriminate against interstate commerce, since both sales tax and use tax would be 3%. But, while this solution would at least probably shield the State from constitutional attacks, it would result in substantial losses in tax revenue and would fail to advance the purpose for which the traditional downtown business district partial exemption is intended.

Therefore, the policy question that needs to be addressed is whether it is in the best interest of the State and the State's business community to continue to approve more of these special 3% sales tax districts. It appears that a saturation point may have been reached. Also, by adding more districts, the advantage enjoyed by the existing districts is likely to be diminished.

Also, the granting of the 3% sales tax benefit is not as simple as it appears. The 3% sales tax benefit does not apply to all sales of tangible personal property. It would not apply to sales of motor vehicles, alcoholic beverages, cigarettes, catalog or mail order sales, sales of services, prepared food, meals and beverages, telecommunications, and charges for occupancy, admissions and amusements. Those sales

would remain taxable at 6%. Consequently, it will be necessary to design a special sales tax return for businesses in traditional downtown business districts and it would also be necessary to somehow indoctrinate each business as to the kinds of transactions that are eligible for the 3% rate and those that are not. Unfortunately, the Division of Taxation would have to use its limited resources to accomplish this.

**Recommendation**

The Sales and Use Tax Review Commission does not recommend this bill for enactment.

Commission Members **For** Proposal:

Commission Members **Against** Proposal: 5

Commission Members **Abstaining**:

Commission Meeting Date: 5/30/01

NC:sp



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

---

**Bill Number:** A-3587

**Date of Introduction:** 5/24/01

**Sponsor:** Assemblymen Felice  
and Thompson

**Date of Recommendation:** 8/13/01

**Identical Bill:**

**Committee:** Assembly Solid and Hazardous Waste

---

**Description**

Amends the exemption provided in N.J.S.A. 54:32B-8.15 to include the sale of returnable plastic containers and pallets.

**Analysis**

This bill would completely remove, in certain instances, N.J.S.A. 54:32B-8.15's historic limitation to containers that are (1) non-returnable and (2) used in a manner that is merely incidental to delivery of a product. It would remove these two limitations, however, solely for two categories of packing supplies: plastic containers and pallets. A previous amendment, enacted in January 2000, removes these limitations with regard to containers used in a farming enterprise. However, the special favorable treatment afforded to farmers is supported by some strong farm business preservation policy considerations which supported the enactment of a "farming" provision in the packing supplies exemption. In the present case, on the other hand, we find no overarching public policy reasons to provide a broader exemption for plastic containers and pallets than for all other types of containers and wrapping and packing supplies used in commerce.

While the statement accompanying the bill says that it applies to *commercial* sales and use of returnable plastic containers and pallets, the actual language of the new subsection (b.) contains no such limitation to "commercial" sales and use. Thus, according to its plain language, the new exemption could apply to plastic residential garbage cans, plastic refrigerator containers for home use, pallets used to store items in a home basement, and a vast variety of other plastic containers and pallets sold for purely personal or non-commercial use. There is no apparent compelling argument for such a broadly applicable exemption for plastic containers and pallets. Therefore, if the bill is intended to provide a tax benefit to businesses that use such containers, it is worded too broadly, since it could extend the benefit to both private and commercial purchasers and users of the containers.

But even if the language of the bill were amended to specify that the exemption will apply only to purchases for commercial use, it is puzzling why the State should choose to accord special treatment to *plastic* containers and pallets, above all others. There appears to be no policy reason to single out plastic items for such favorable tax treatment. Not all plastic containers are recyclable. Nor are all recyclable containers made of plastic; many are made of aluminum, paper, or glass. Thus, the bill appears designed to give a special competitive advantage to the plastic industry in the sale of a particular product, without serving any broad public purpose.

In addition, the expanded exemption would further alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer, and is generally perceived as economically neutral and "fair". When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer, is relatively small, but the cumulative revenue generated can be enormous. An exemption for plastic containers and pallets would save an individual purchaser a fairly insignificant sum every year. However, the cumulative loss of revenue to the State could be substantial, leaving the State to find other means of generating the money lost as a result of an expanded exemption.

### **Recommendation**

Opposed.

Commission Members **For** Proposal: 0  
Commission Members **Against** Proposal: 7  
Commission Members **Abstaining**: 0  
Commission Meeting Date: 7/25/01

CMT:dh

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

---

**Bill Number:** A-3843

**Date of Introduction:** 11/8/01

**Sponsor:** Assemblyman Azzolina  
Assemblyman Malone

**Date of Recommendation:** 12/18/01

**Identical Bill:** S-2560

**Committee:** Assembly Commerce, Tourism, Gaming &  
Military and Veterans' Affairs

---

**Description**

The Bill authorizes the creation of a new UEZ in Beverly City, Burlington County.

**Analysis**

This Bill is proposed as an amendment to the New Jersey Urban Enterprise Zone Act of 1983 codified as N.J.S.A 52:27H-60 et seq. The purpose of the Act was to help revitalize the state's economically distressed urban areas. The Act provides a framework encouraging private capital investment and job creation in the selected urban areas. There were originally 10 designated zones. Currently, 27 zones exist.

Since the inception of the 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 UEZ 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-UEZ 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 UEZ 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 makes this situation worse.

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 market-

place and avoids policy that benefits one segment of the market at the expense of another. The goal, upon which the UEZ Act is based, is to bring new businesses and consumers to selected economically depressed areas. In doing this, the surrounding municipalities from which business and consumers are drawn suffer negative economic effects. Horizontal equity refers to the concept that tax treatment should be uniform from one transaction to another. The Act creates a lower sales tax rate for certain sales transactions within the Zones. This disparate treatment of certain transactions violates this doctrine. Enactment of this Bill would exacerbate the already tenuous foundation upon which the Act is based.

As the number of Zones increase, the challenge of enforcement expands. Due to the high number of Zones in existence, New Jersey no longer enjoys the administrative simplicity it once did with sales tax uniformity across the State.

The Bill Statement attached to this proposed legislation states that “Beverly City has an aging infrastructure and needs the economic stimulus which an urban enterprise zone would provide”. No evidence was provided to the Commission that UEZ designation would provide the intended effect or that Beverly City would be an appropriate designee based on financial need.

**Recommendation**

The Commission does not recommend enactment of this Bill.

Commission Members **For** Proposal: 0  
Commission Members **Against** Proposal: 7  
Commission Members **Abstaining**: 0  
Commission Meeting Date:

SG:sp

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

---

**Bill Number:** S-1905

**Date of Introduction:** 12/4/00

**Sponsor:** Senator Ciesla

**Date of Recommendation:** 2/22/01

**Identical Bill:** A-3005

**Committee:** Senate Community & Urban Affairs

---

**Description**

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

**Analysis**

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

This rationale, however, does not support an exemption for purchases of energy, since municipalities are not exempt from sales and use tax on the purchase of energy. See N.J.S.A. 54:32B-9(c)(2). Thus, as currently written, the bill presented to us for review would give homeowners' associations greater exemption rights than exempt organizations and state and local governments in the area of energy purchases; only the federal government (along with its agencies and instrumentalities) is exempt from sales tax on energy.

While the Commission supports the policy underlying the proposed exemption, its support of the bill is based on an assumption that the language of the bill will be amended to delete the exemption for receipts from the sale or use of “energy”.

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

**Recommendation**

Conditional support

Commission Members **For** Proposal: 6  
Commission Members **Against** Proposal: 0  
Commission Members **Abstaining**: 1  
Commission Meeting Date: 2/14/01

CMT:sp

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

---

**Bill Number:** S-1924

**Date of Introduction:** 12/14/00

**Sponsor:** Senator Turner

**Date of Recommendation:** 2/22/01

**Identical Bill:**

**Committee:** Senate Education

---

**Description**

This bill broadens the exemption for school textbooks to include “recommended” books, in addition to books designated as “required” textbooks by an educational institution.

**Analysis**

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

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

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

In addition, the expansion of the textbook exemption would further alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer, and is generally perceived as economically neutral and “fair”. When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer, is relatively small, but the cumulative revenue generated can be enormous. An exemption for “recommended” but not “required” books would save an individual college student a fairly insignificant sum every year. However, the loss of revenue, some of it unintended, to the State could be substantial. This leaves the State to find other means of generating the moneys lost as a result of an expanded exemption that has little to recommend it as a matter of tax policy.

**Recommendation**

Opposed

Commission Members **For** Proposal: 0  
Commission Members **Against** Proposal: 7  
Commission Members **Abstaining**: 0  
Commission Meeting Date: 2/14/01

CMT:sp

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

---

**Bill Number:** S-1975

**Date of Introduction:** 12/14/00

**Sponsor:** Senators Vitale  
and Robertson

**Date of Recommendation:** 2/22/01

**Identical Bill:**

**Committee:** Senate Senior Citizens, Veterans' Affairs and Human Services

---

**Description**

The bill would amend the Sales and Use Tax Act to exempt sales at concession stands in, or on the grounds of, State-owned veterans' homes.

**Analysis**

The bill would exempt the concession stands at three State-owned veterans' homes. The rationale for the bill is to reduce the cost of purchases by veterans at concession stands in State veterans' home, for the reason that most veterans have very limited resources for making their purchases. There are two main drawbacks, however, to this reasoning. First, this exemption singles out a group of people, however small and appealing, for a special interest exemption, which is a trend to discourage. Second, the bill provides exemption to concession stands in only one type of State-owned residential facility. It may not be long before the administrators or residents of other State-owned institutions, such as mental hospitals, request a similar exemption. The more that the exemption is extended, the greater the impact will be on state revenues and the greater the potential for abuse, e.g., exempting sales to the general public.

**Recommendation**

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 3

Commission Members **Against** Proposal: 4

Commission Members **Abstaining:** 0

Commission Meeting Date: 2/14/01

DA:sp



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

---

**Bill Number:** S-2020

**Date of Introduction:** 1/9/01

**Sponsor:** Senator Bucco

**Date of Recommendation:** 4/2/01

**Identical Bill:**

**Committee:** Senate Budget and Appropriations

---

**Description**

(1) Provides a sales tax exemption for sales of tangible personal property for non-business use to individual holiday purchasers during the exclusion period. (2) Excludes motor vehicles, alcoholic beverages, cigarettes and energy from this exemption. (3) Defines “exclusion period” as the period from December 10, 2001, to and including December 25, 2001. (4) Defines “individual holiday purchaser” as one who pays and takes delivery during the exclusion period and, also, one who orders and pays during the period, even if delivery takes place after the exclusion period.

**Analysis**

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 computer purchases during the one-week sales tax holiday. All this does is to divert sales from subsequent months, leading to the false impression that tax holidays are a major retail success.

The limitation of the exemption to individual purchasers for nonbusiness use would be difficult to administer. Retailers cannot reasonably be expected to recognize whether a particular individual is making a purchase for business or personal use, and it is foreseeable that, like the exemption for paper products for home use only, this personal-use exemption will be widely misused and easily abused by consumers making purchases for their small businesses.

The bill makes the “holiday” exemption 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.

It appears that the “holiday” will apply only to sales that take place within New Jersey, and not to compensating use tax imposed on items purchased outside New Jersey. This will create a potential federal constitutional problem, if the use tax is imposed when tangible personal property is purchased out of State or from non-New Jersey mail order vendors is used in or delivered in New Jersey. The State cannot lawfully exempt a sale of merchandise taking place within New Jersey while imposing tax on a comparable item purchased from an out-of-State source. A “holiday” applicable only to in-State sales, whereby in-State sales would be subject to no tax at all, while the full use tax would be imposed on interstate purchases used in New Jersey, 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 lured to the stores by the prospect of a tax-free holiday, retailers may actually raise their “sale” prices during a tax holiday, thus resulting in somewhat of an increase in what the consumer must pay for purchases during that period. Rather than provide a savings for consumers, the bill could easily result in increased profit for vendors.

The benefit that consumers would enjoy because of the tax holiday would be proportionate to the amount that they pay for the exempt items. 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 computers for their personal use.

In addition, some concerns have been raised that this exemption bill, which refers to the eligible consumers as “holiday purchasers” and which sets the tax exclusion period to coincide with the weeks of pre-Christmas shopping, may appear to be giving a benefit aimed at those taxpayers who observe Christmas. While the problem may not rise to the level of an Establishment Clause violation, it may at least be unwise to time a tax holiday that appears to be driven in part by the celebration of certain religions but not of others.

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 one-week “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 computer 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.

In addition, 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 two-week 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 complete exemption, applicable to much more expensive purchases, could result in significant revenue loss, particularly since many people may elect to schedule their purchase 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**

Oppose

Commission Members **For** Proposal: 0  
Commission Members **Against** Proposal: 8  
Commission Members **Abstaining**: 0  
Commission Meeting Date: 3/28/01

CMT:sp



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

---

**Bill Number:** S-2021

**Date of Introduction:** 1/9/01

**Sponsor:** Senator Bucco

**Date of Recommendation:** 4/2/01

**Identical Bill:** A-3190

**Committee:** Senate Budget and Appropriations

---

**Description**

This bill provides a sales tax exemption for sales of tangible personal property for non-business use to individual back-to-school purchasers made during the exclusion period but excludes motor vehicles, alcoholic beverages, cigarettes and energy from this exemption. The "exclusion period" is defined as the period from August 26, 2001, to and including September 1, 2001. The bill also defines "individual back-to-school purchaser" as one who pays and takes delivery during the exclusion period and, also, one who orders and pays during the period, even if delivery takes place after the exclusion period.

**Analysis**

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 computer purchases during the one-week sales tax holiday. All this does is to divert sales from subsequent months, leading to the false impression that tax holidays are a major retail success.

The limitation of the exemption to individual purchasers for nonbusiness use would be difficult to administer. Retailers cannot reasonably be expected to recognize whether a particular individual is making a purchase for business or personal use, and it is foreseeable that, like the exemption for paper products for home use only, this personal-use exemption will be widely misused and easily abused by consumers making purchases for their small businesses.

The bill makes the "holiday" exemption 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.

It appears that the "holiday" will apply only to sales that take place within New Jersey, and not to compensating use tax imposed on items purchased outside New Jersey. This will create a potential federal constitutional problem, if the use tax is imposed when tangible personal property is purchased out of State or from non-New Jersey mail order vendors is used in or delivered in New Jersey. The State cannot lawfully exempt a sale of merchandise taking place within New Jersey while imposing tax on a comparable item purchased from an out-of-State source. A "holiday" applicable only to in-State sales, whereby in-State sales would be subject to no tax at all, while the full use tax would be imposed on interstate purchases used in New Jersey, 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 lured to the stores by the prospect of a tax-free holiday, retailers may actually raise their "sale" prices during a tax holiday, thus resulting in somewhat of an increase in what the consumer must pay for purchases during that period. Rather than provide a savings for consumers, the bill could easily result in increased profit for vendors.

The benefit that consumers would enjoy because of the tax holiday would be proportionate to the amount that they pay for the exempt items. 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 computers for their personal use.

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 one-week "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 computer 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.

In addition, 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 two-week 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 complete exemption, applicable to much more expensive purchases, could result in significant revenue loss, particularly since many people may elect to schedule their purchase 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**

Oppose

Commission Members **For** Proposal: 0  
Commission Members **Against** Proposal: 8  
Commission Members **Abstaining**: 0  
Commission Meeting Date: 3/28/01

CMT:sp



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

---

**Bill Number:** S-2023

**Date of Introduction:** 1/9/01

**Sponsor:** Senator Adler  
Senator Bennett

**Date of Recommendation:** 3/29/01

**Identical Bill:**

**Committee:** Senate Environment

---

**Description**

Provides sales and use tax exemption for purchases of equipment used directly and exclusively to prevent, control or eliminate air, water or solid or hazardous waste pollution generated as a by-product of manufacturing, industrial, commercial or agricultural processes or services, provided that the New Jersey Department of Environmental Protection or the federal Environmental Protection Agency mandates that the purchaser use this equipment pursuant to state or federal law or regulation.

**Analysis**

The bill appears to be an attempt to provide some partial compensation to those businesses which must purchase costly pollution prevention and control devices in order to comply with federal or state regulatory requirements. The exemption, as written, is limited to purchases of mandatory equipment.

As a matter of policy, the majority of Commission members generally do not support the use of tax exemption legislation as a tool for encouraging socially desirable behavior, or tax increases as a means of discouraging disfavored behavior. Nevertheless, it is important to note that even if this exemption is intended to serve the socially useful purpose of encouraging manufacturers to be more vigilant about reducing pollution, it is not properly designed for that purpose. This tax exemption would apply only when the taxpayer purchases *mandatory* pollution-control equipment. Thus it does not encourage voluntary efforts to use pollution-control equipment not yet mandated by law, or to employ a higher level of pollution-control measures than the law requires. To the contrary, it would actually provide a financial *disincentive* to voluntary environmental initiatives, since there would be a tax advantage to delaying the purchase of a piece of pollution-control equipment until it becomes mandatory. An exemption limited to purchases of non-mandatory equipment, certified by the D.E.P. or the E.P.A. to be an effective means of controlling pollution, would, on the other hand, be more narrowly and appropriately designed to encourage environmentally responsible business conduct; it would reward those businesses that take extra, voluntary initiatives in curbing pollution.

The Commission members who support this bill as currently written would prefer that it be amended to extend to purchases of non-mandatory equipment. There appears to be no public policy reason to exempt only purchases made in order to comply with statutory or regulatory mandates, but not voluntary purchases of equipment that is not yet required.

The majority of those members who oppose the bill as currently written might find it acceptable if (1) the exemption applied to both voluntary and mandatory purchases, and (2) the legislation required, as a prerequisite for exemption, that the D.E.P or the E.P.A. has certified the equipment's appropriate and effective function as a pollution-control device. Such certification would be necessary because the Division of Taxation, which would be charged with administering the sales tax exemption, does not have the technical expertise to determine whether a particular piece of apparatus serves the exempt purposes set forth in the provision. Also, given the amount of revenue implicated and the need for certification, an exemption by refund only (rather than at point of sale) provision would be preferable in this case.

An amendment extending an exemption to voluntary, as well as mandatory, purchases would still not address concerns that it is not sound tax policy to provide tax exemptions as a means of compensating regulated businesses which must incur certain expenses in complying with federal or state requirements. The existence of a major compensation exemption might foster an inappropriate sense of entitlement to tax exemptions on various costly transactions engaged in solely for the purpose of complying with governmental mandates. Thus it might result in aggressive lobbying for similar tax exemptions for the purchase of governmentally mandated environmental, health, safety, disabled-access and other equipment mandated by law. However, the Commission recognizes that environmental concerns are a highly sensitive issue in the densely populated, highly industrialized state of New Jersey, where the solid, liquid and gaseous substances released into the environment by farms, factories and commercial operations have the potential to cause substantial harm. Therefore there may be a greater rational basis for tax incentives to encourage widespread compliance with pollution-control mandates than with some other mandates whose beneficial impact is less widespread

In addition, enactment of this new tax exemption provision would further alter the broad-based nature of sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer, and is generally perceived as economically neutral and "fair". When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer, is relatively small, but the cumulative revenue generated can be enormous. The loss of revenue to the State could be substantial.

**Recommendation**

This bill is not recommended for enactment as currently drafted.

Commission Members **For** Proposal: 2

Commission Members **Against** Proposal: 6

Commission Members **Abstaining**: 0

Commission Meeting Date: 3/28/01

CMT:dh



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

---

**Bill Number:** S-2072

**Date of Introduction:** 1/22/01

**Sponsor:** Senator Cardinale  
Senator Sinagra

**Date of Recommendation:** 4/2/01

**Identical Bill:**

**Committee:** Senate Commerce

---

**Description**

(1) Broadens the applicability of the medical exemption by extending it to sales of medical equipment, durable medical equipment and medical supplies to medical and health services providers, even when they will use it in providing medical and health care services and will not transfer it to the purchaser of the service. (2) Further extends the scope of the exemption by exempting sales of all other “health care equipment and supplies” to medical and health care service providers, even when the equipment and supplies would not otherwise be exempt under this provision when sold to the patient. (3) Clarifies the exemption by specifying that it applies only to items for human use, and that it applies to replacement parts for exempt items. (4) Also makes some minor structural changes in the provision, for example by numbering the various elements of the exemption.

**Analysis**

The proposed exemption would give providers of professional medical services a substantial 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 need to 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. Under the current exemption, certain categories of exempt items which are exempt when sold to the patient or when sold to a health services provider for eventual transfer to the patient for home use, are instead deemed to be taxable tools of the trade when purchased by a doctor, physical therapist, or nonexempt private hospital or nursing home for use at their facility, and *not* transferred to the patient for use outside the facility. Thus, under current law, the health services providers purchasing such items are treated the same as attorneys purchasing research materials, architects purchasing drafting tools, concert musicians purchasing instruments, and accountants purchasing computers. It is reasonably foreseeable that passage of an amendment allowing medical and health services providers an exemption for purchases of their “tools of the trade”

would influence other professional service providers to lobby for an exemption for purchases of costly taxable items used in their own professions.

Furthermore, the proposed exemption would give doctors, 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). Under the current exemption, purchases of such items as cotton balls, bandages, testing strips, bed pans, blood pressure monitors, fever thermometers, toothpaste, and mouthwash are taxable, regardless of whether purchased by an individual patient, a physician, a dentist, a nonexempt hospital or a nursing home. Under the proposed amendment, however, while the *patient* would be required to pay sales tax on these items, the health services provider would not.

It appears that the expansion of the applicability of the exemption to the providers’ purchases is designed simply to lower the health service providers’ costs of doing business. The Commission finds no sound public policy reason to give the service provider greater exemption rights than the patient, particularly since other professional service providers are obligated to pay tax on the tools and supplies that they use and consume in rendering their nontaxable professional services. There is nothing that can be done in the proposed law that would require the service providers to pass on their overhead savings to the patient, and it appears that the exemption would serve only to increase the profits of medical and health services providers. Therefore the bill cannot even be supportable as a means of lowering health care costs for consumers, because there is no reason to believe that it would do so.

Enactment of this expanded 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 funds lost as a result of an expanded exemption that has little to recommend it as a matter of tax policy.

### **Recommendation**

Oppose

Commission Members **For** Proposal: 0  
Commission Members **Against** Proposal: 7  
Commission Members **Abstaining**: 0  
Commission Meeting Date: 3/28/01

CMT:sp

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

---

**Bill Number:** S-2198

**Date of Introduction:** 3/8/01

**Sponsor:** Senator Kosco  
Senator Matheussen

**Date of Recommendation:** 4/2/01

**Identical Bill:** A-3272

**Committee:** Senate Law & Public Safety

---

**Description**

Exempts the sale of child restraint systems for use in motor vehicles, provided that they meet the most recent federal safety standards

**Analysis**

There is wide variance in the price of child restraint systems, from inexpensive basic models to multi-use luxury versions at a premium price. Consumers who cannot afford to purchase the least expensive units are not going to be either encouraged or economically assisted by being relieved of the obligation to pay 6% tax. Thus the bill, as enacted, would seem to do nothing to promote safety by encouraging people to purchase child restraints. Instead, the exemption would simply be regressive in its effect, providing a far greater tax benefit to consumers who purchase expensive luxury child restraints and minimal benefit to those who can afford only the inexpensive models. The Commission believes that the imposition of tax on the purchase of child restraints would never work as a disincentive to purchase. Parents who can afford to do so will safeguard their children whether or not a tax exemption is enacted.

The Commission believes that the assumed objective of the bill, promotion of car seat use in New Jersey, could be achieved by legislation such as S-2196 or A-3273, which appropriate \$1,000,000 to reimburse counties for the purchase of child passenger seats to be distributed at no charge to households whose income is not more than twice the federal poverty level.

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

and is generally perceived by consumers as economically neutral and “fair”. When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer, is relatively small, but the cumulative revenue generated can be enormous. An exemption for motor vehicle child restraint devices would save an individual taxpayer a fairly insignificant sum. However, the cumulative loss of revenue to the State could be substantial, leaving the State to find other means of generating the funds lost as a result of another exemption.

**Recommendation**

Oppose

Commission Members **For** Proposal: 0  
Commission Members **Against** Proposal: 7  
Commission Members **Abstaining**: 0  
Commission Meeting Date: 3/28/01

CMT:sp

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

---

**Bill Number:** S-2270

**Date of Introduction:** 3/29/01

**Sponsor:** Senator Cardinal  
Senator Singer

**Date of Recommendation:** 5/30/01

**Identical Bill:**

**Committee:** Senate Commerce

---

**Description**

This bill would make State-chartered credit unions exempt from sales and use tax as long as federally chartered credit unions are exempt.

**Analysis**

The bill provides an exemption to credit unions "organized under the laws of this State" but not to credit unions organized in other states. This may be deemed to discriminate against credit unions organized in other states, contrary to provisions of the Constitution of the United States. In this way the exemption could expand to include all credit unions in the United States.

The sales and use tax exemption currently available to federal credit unions under federal law has resulted in a problem that would be compounded by this bill. The problem is that federal credit unions are tax-exempt on vehicles they purchase for lease to private individuals. Thus vehicle leases entered into with federal credit unions are exempt from sales and use tax, while similar leases done through other entities are subject to the tax imposed on the lessor pursuant to N.J.S.A. 54:32B-3(a) of the Sales and Use Tax Act. This exemption provides a significant competitive advantage to the leasing of motor vehicles by federal credit unions. This bill would extend this competitive advantage to New Jersey State credit unions, to the detriment of other business entities that lease vehicles.

**Recommendation**

This bill is not recommended for enactment.

Commission Members **For** Proposal:

Commission Members **Against** Proposal: 4

Commission Members **Abstaining:** 1

Commission Meeting Date: 5/30/01

NC:sp



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

---

**Bill Number:** S-2271

**Date of Introduction:** 3/29/01

**Sponsor:** Senator Cardinale

**Date of Recommendation:** See  
A-3161

**Identical Bill:** A-3161

**Committee:** Senate Commerce

---

**Description**

This bill provides a sales and use tax exemption for credit unions that are chartered under the laws of the State of New Jersey.

**Analysis**

The bill is an attempt to treat state chartered credit unions in the same manner as federally chartered credit unions, which enjoy an exemption from state sales tax pursuant to federal law. However, state credit unions generally compete with for-profit financial institutions, such as banks and leasing companies, not with federal credit unions. There is no compelling reason to legislate to achieve sales tax parity between non-competitive banking organizations. In addition, as a matter of general policy, the New Jersey Sales and Use Tax Act anticipates the payment of sales or use tax by businesses on certain equipment, supplies or taxable services. Where business property exemptions exist, they are usually for major capital expenditures; e.g. aircraft purchased by an air carrier, ships used in interstate commerce, capital improvements to realty.

A special problem arises in the area of motor vehicle leasing. Customers who obtain a lease through a federal credit union are exempt from any sales tax expense due to the federal exemption from state tax, while those who lease from any other type of organization will incur a sales tax expense. The lessor is liable for the tax, which is passed on to the lessee. This bill would add to the competitive disadvantage that currently exists due to the federal exemption. New Jersey leasing companies should not be treated differently under New Jersey law.

Finally, the proposed exemption is applicable only to credit unions organized under the laws of New Jersey. This may discriminate against out-of-state credit unions and may raise federal constitutional concerns in administration and enforcement.

**Recommendation**

The identical bill, A-3161, was not recommended for enactment on 4/2/01.

NC:sp

Blank page

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

---

**Bill Number:** S-2319

**Date of Introduction:** 4/20/01

**Sponsor:** Senator Adler

**Date of Recommendation:** 5/30/01

**Identical Bill:**

**Committee:** Senate Environment

---

**Description**

This bill would authorize a refund of sales and use tax paid with respect to certain costs incurred in the rehabilitation of historic property. In addition, other state tax benefits would be enacted that are outside the scope of this review.

**Analysis**

There already is a similar federal tax credit that may sufficiently act as the desired incentive for rehabilitations. Adding on a state incentive may merely give a windfall to the concerned taxpayers. This may particularly be true for homeowners, due to the federal tax treatment of gains from the sale of a personal residence. Under the federal treatment, homeowners who “rehabilitated” a home and then sold it would essentially be exempt from federal income tax on the increase in value produced by the rehabilitation (within the federal tax limitations.)

Also, there is a concern regarding the proposed Sales & Use Tax exemption. Because eligibility for the exemption depends upon matters outside the expertise of Division of Taxation employees, the provision specifying that the exemption will operate via a refund procedure, rather than at the point of sale, is a good one. The Division is aware that properties designated for special historic preservation restrictions are subject to strict standards for many aspects of construction, painting, and maintenance, and that repairs and improvements to such properties are therefore more costly than they are for typical properties.

It is assumed that the proposed tax benefits are designed to both encourage and compensate owners of historic properties who comply with the preservation restrictions. However, in many if not most cases, the materials will be purchased by contractors, not by the property owner. The contractor will then be able to obtain a refund on sales tax paid or will be exempt from paying compensating use tax. Since contractors frequently charge a lump sum, the property owner will not even know the extent of the tax benefit the contractor has enjoyed. There is no way to require the contractor to pass on the sales and use tax savings to the owner of the historic

property. Thus the contractors may get a windfall, and the property owner may never have the benefit of this exemption.

**Recommendation**

The Sales and Use Tax Review Commission does not recommend this bill for enactment.

Commission Members **For** Proposal:

Commission Members **Against** Proposal: 5

Commission Members **Abstaining**:

Commission Meeting Date: 5/30/01

NC:sp

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

---

**Bill Number:** S-2389

**Date of Introduction:** 5/24/01

**Sponsor:** Senator Allen

**Date of Recommendation:** 8/13/01

**Identical Bill:**

**Committee:** Senate Commerce

---

**Description**

Establishes a week-long tax holiday during the last week of July 2001, during which sales of personal computers for non-business use will be exempt from sales and use tax. Also establishes a one-day tax holiday on July 31, 2001, when sales of any item of tangible personal property for non-business use will be exempt from sales and use tax. Specifies that the applicability of the tax holidays is based on the times that the purchaser either (1) pays the purchase price and takes delivery, or (2) places an order and pays the purchase price, even if delivery does not take place until after the exemption period.

**Analysis**

It is not clear whether the "holiday" will apply only to sales that take place within New Jersey, and not to compensating use tax imposed on items outside New Jersey. If it is limited to sales physically taking place within the state, this will create a potential federal constitutional problem, since use tax is imposed when tangible property purchased out of state or from non-New Jersey mail order vendors is used in or delivered in New Jersey. The State cannot lawfully exempt a sale of merchandise taking place within New Jersey while imposing tax on a comparable item purchased from an out-of-State source. A "holiday" applicable only to in-State sales, whereby in-State sales would be subject to no tax at all, while the full use tax would be imposed on interstate purchases used in New Jersey, 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 a retailer--generally at a percentage far greater than 6%--result in much greater savings for the customer. Confident that the public will be lured 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, thus resulting in somewhat of an increase in what the consumer must pay for purchases during that period.

The benefit that consumers would enjoy because of the tax holiday would be proportionate to the amount that they pay for the exempt items. The holiday would

therefore be regressive in its impact, since it would give a far greater tax benefit to those who can afford to purchase expensive computers for their personal use.

Legislation like this has the potential to cause a major disruption of operations of state government. Press releases need to be written to explain the scope and duration of the sales tax "holiday", staff in the information services need to be trained, and the Division would need to be prepared to handle a huge increase in information inquiries from vendors and consumers before, during and after the one-week "holiday". The burden of handling the expected increase in volume of telephone inquiries might necessitate the hiring of new temporary personnel, who would need training time, work space, and of course salaries, or 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 computer purchase would most likely call or write to express their dissatisfaction with the inadequate publicity for the holiday or the timing of the holiday 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.

In addition, 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 by consumers as economically neutral and "fair".

When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer, is relatively small, but the cumulative revenue generated can be enormous. An exemption on purchases during a tax holiday would save an individual taxpayer a fairly insignificant sum. However, the cumulative loss of revenue, some of it unintended, to the State could be substantial. The computer exemption, since it is applicable to expensive purchases, could result in significant revenue loss, particularly since many people may elect to schedule their purchase of a high-priced computer during the tax holiday in order to enjoy the tax savings. This leaves the State to find other means of generating the money lost as a result of an expanded exemption that has little to recommend it as tax policy.

### **Recommendation**

Opposed

Commission Members **For** Proposal: 0  
Commission Members **Against** Proposal: 7  
Commission Members **Abstaining**: 0  
Commission Meeting Date: 7/25/01

CMT:dh

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

---

**Bill Number:** S-2661

**Date of Introduction:** 11/8/01

**Sponsor:** Senator Allen  
Senator Bark

**Date of Recommendation:** 12/18/01

**Identical Bill:**

**Committee:** Senate Education

---

**Description**

The Bill authorizes the creation of a sales tax exemption for purchases of teaching materials including professional development materials for teachers or teaching staff of preschool through grade 12 schools in New Jersey.

**Analysis**

This Bill is proposed to mitigate the financial burden of teachers who use their personal funds to make purchases for classroom use without school reimbursement.

This exemption benefits a specialized group and does not promote horizontal equity. Horizontal equity mandates that sales tax legislation be broadly based and taxes similar transactions, persons or things in a similar manner. Tax treatment should be uniform from one taxpayer to another. This proposal creates a disparity between school teachers/staff and taxpayers in other professions not qualifying for the exemption.

The creation of an exemption based on a taxpayer's employment could encourage other occupations to pursue the same exemption from purchases for their work and professional development.

Generally, schools themselves are exempt from New Jersey sales tax on purchases made with school funds under N.J.S.A. 54:32B-9. The New Jersey Sales and Use Tax Act also provides a sales and use tax exemption for school textbooks. The financial burden on teachers would be more appropriately handled by legislation mandating school supply allowances.

The Bill's broad language leads itself to many administrative and enforcement problems. The Bill defines "qualified teaching materials" as "books, supplies, computer equipment and other supplementary materials for use in the course of teaching or professional development." This definition allows for subjective interpretation and may result in fraudulent purchases.

The Bill states that “public or private school teacher or teaching staff member of preschool through grade 12 in New Jersey” qualifies for the exemption. This language does not further define “teaching staff member[s]” or further identify who qualifies for this exemption. Enforcement and administrative problems arise because of the inherent difficulty in determining whether a purchaser and the purchase are qualified for the exemption.

**Recommendation**

The Commission does not recommend enactment of this Bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 7

Commission Members **Abstaining**: 0

Commission Meeting Date:

(EL)

# **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-2.2 Meetings of the Commission**

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

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

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

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

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

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

### **18:24A-2.3 Quorum; votes**

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

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

## **SUBCHAPTER 3. INFORMATION AND FILINGS**

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

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

### **18:24A-3.2 Oral comments**

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

### **18:24A-3.3 Notice of policies**

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

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

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