



**Sales and Use Tax Review Commission
2005 Annual Report**

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

December 31, 2005

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Overview of Authorizing Legislation

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

Membership

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

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

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

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

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

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

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

Duties of the Commission

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

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

Procedures

The following requirements govern the Commission's review process.

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

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

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

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

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

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

Rules and Regulations

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

Commission Report

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

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

Standards of Analysis for Review of Sales and Use Tax Legislation

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

Following are the totals for sales and use tax collections in the past five fiscal years:

Fiscal Year	Sales and Use Tax Collections
2005	\$6,552,199,925
2004	6,261,700,380
2003	5,936,057,000
2002	5,996,839,000
2001	5,758,670,000

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

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

Simplicity

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

Equity

Two compensating concepts of fairness, may merit some consideration.

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

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

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

Economic Neutrality

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

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

Costs of Administration and Compliance

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

List of Bills Reviewed by Commission

(from January 1 – December 31, 2005)

Bill Number	Description	Recommendation Date
A-3512	Establishes the Light Rail Transportation Enterprise Zone Act.	02/15/05
A-3614	Authorizes the creation of new Urban Enterprise Zones in Lower Township and in Woodbine Borough in Cape May County	04/08/05
A-3963	Provides a 50 percent sales tax exemption for certain retail establishments serving food and drinks during “smoke free” periods of operation.	07/27/05
A-3969	Exempts New Jersey teachers’ purchases of qualified teaching materials from sales and use tax.	07/27/05
A-3975	“New Jersey Smoke-Free Air Act”; prohibits smoking in indoor public places and workplaces, provides temporary reduced sales tax rate for certain retail liquor licenses.	07/27/05
S-2208	Includes sales and use of prewritten software delivered by any means as a sale or use of tangible personal property subject to the New Jersey sales and use tax.	04/08/05
S-2210	Disallows the “casual sale” exemption for sales of aircraft, restricts aircraft and boat export exemption, and modifies aircraft and other business property import exemption under sales and use tax.	04/08/05
S-2312	Authorizes the designation of a joint urban enterprise zone by the Urban Enterprise Zone Authority.	04/08/05
S-2358	Extends eligibility for the sales and use tax exemption of energy and utility service purchases by certain manufacturing-intensive businesses in Urban Enterprise Zones.	04/08/05

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

Bill Number:	A-3512	Date of Introduction:	11/22/04
Sponsor:	Assemblyman Johnson Assemblywoman Voss Assemblywoman Weinberg Assemblyman Manzo	Date of Recommendation:	02/15/05

Identical Bill:

Committee: Assembly Transportation

Description

This bill establishes the Light Rail Transportation Enterprise Zone Act.

Analysis

According to the statement attached to the bill, the bill's purpose is to "create light rail transportation zones having benefits similar to Urban Enterprise Zones, to encourage development of light rail systems along currently underutilized freight railroad tracks and rights of way."

The creation of a Light Rail Transportation Enterprise Zone Program is not recommended for several reasons. This bill contains benefits which are similar to those offered under the Urban Enterprise Zones Act which has expanded in ways that the original drafters never intended. For instance, prior to 1994 ten towns in eleven municipalities were designated as Urban Enterprise Zones; however, in 1994 legislation authorized the creation of ten additional zones, and in 1995 legislation added seven more zones. In 2002 legislation added three more zones to that list. Finally, the thirty-first zone was added in 2004. In addition, Urban Enterprise Zone-impacted business districts, areas that have been "negatively impacted" by the presence of two or more adjacent Urban Enterprise Zones, have been created wherein reduced sales tax is collected. If there was a consensus that the Urban Enterprise Zone Program is operating as intended and is thought to be effective and efficient, then this bill may represent sound policy. However, there has never been an independent, comprehensive analysis performed that confirms that the Urban Enterprise Zone Program has actually been a benefit to the participating communities, yet the Program is being constantly amended and expanded.

In addition, the original purpose of the Urban Enterprise Zones Act was to assist in the revitalization of the State's economically distressed urban areas. Given the ease with which the benefits available under the Urban Enterprise Zone Program are being expanded, it is conceivable that all municipalities in New Jersey will be able to credibly and successfully press for Urban Enterprise Zone benefits, even if not located within an Urban Enterprise Zone. As originally conceived, the Urban Enterprise Zone Program was to be limited and its benefits restricted to the most dire cases. This bill does not establish that its provisions would further that purpose.

This bill permits a partial exemption from the Sales and Use Tax Act, similar to that which is set forth in the Urban Enterprise Zones Act. The greater the number of municipalities that have 3% sales tax, the more that New Jersey becomes a patchwork of differing sales tax rates. This is contrary to tax simplicity and uniformity.

Since the inception of the Urban Enterprise Zones Act, competitors located outside of the zones have complained of and have perceived unfair tax advantages for vendors located within the zones. There have been many complaints of fraud submitted to the Urban Enterprise Zone Authority and to the Division

of Taxation by vendors located outside of the zones charging that Urban Enterprise Zone vendors purchase items tax-free and then transport the property to other locations for use outside of the Zone. Permitting more vendors the entitlement of a tax exemption would only exacerbate this situation.

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

Finally, the sales and use tax partial exemption set forth in the bill may not be constitutional. 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. This bill 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-zone New Jersey retailers are forced to compete with out-of-State retailers that deliver goods into a designated zone, as well as with the in-zone vendors. To comply with the Commerce Clause, the Division must take the position that a New Jersey purchaser would be able to claim a 3% use tax rate if delivery is taken within the zone. The de facto extension of the 3% rate to retailers outside of New Jersey was never contemplated, but is nonetheless a real consequence of this bill. Any expansion or creation of new 3% zones only perpetuates this situation.

Recommendation

The Commission does not recommend enactment of this bill.

Commission members For proposal:	0
Commission members Against proposal:	8
Commission members Abstaining :	0
Commission Meeting Date:	02/15/05

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

Bill Number:	A-3614	Date of Introduction:	01/10/05
Sponsor:	Assemblyman Gibson	Date of Recommendation:	04/08/05
Identical Bill:	S-2184		
Committee:	Assembly Commerce and Economic Development		

Description

This bill authorizes the creation of new Urban Enterprise Zones in Lower Township and in Woodbine Borough in Cape May County.

Analysis

This bill is proposed to amend the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 *et seq.*, to allow the creation of a new Urban Enterprise Zone in Lower Township and in Woodbine Borough.

The Urban Enterprise Zone Program has expanded in ways that the original drafters never intended. For instance, prior to 1994 ten towns in eleven municipalities were designated as Urban Enterprise Zones; however, in 1994 legislation authorized the creation of ten additional zones, and in 1995 legislation added seven more zones. In 2002 legislation added three more zones to that list. Finally, the thirty-first zone was added in 2004. In addition, Urban Enterprise Zone-impacted business districts, areas that have been “negatively impacted” by the presence of two or more adjacent Urban Enterprise Zones, have been created wherein reduced sales tax is collected. If there was a consensus that the Urban Enterprise Zone Program is operating as intended and is thought to be effective and efficient, then the amendments set forth in this bill may represent sound policy. However, there has never been an independent, comprehensive analysis performed that confirms that the Urban Enterprise Zone Program has actually been a benefit to the participating communities, yet the Program is being constantly amended and expanded.

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

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

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

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

Since the inception of the Urban Enterprise Zones Act, its Constitutional validity has been brought into question. Under the Commerce Clause, a state may not impose taxes on out-of-State sale transactions that exceed the taxes imposed on in-State transactions. The Urban Enterprise Zone program halves the 6% sales tax rate for sales that take place within a zone. However, New Jersey law imposes a 6% compensating use tax on goods purchased outside of New Jersey but brought into the State for use here. Thus, the law appears to discriminate between a "sale" and a "use" based upon where the transaction occurs. As a result, non-Urban Enterprise Zone New Jersey retailers are forced to compete with out-of-State retailers that deliver goods into a designated zone, as well as with the in-state Urban Enterprise Zone vendors. To comply with the Commerce Clause, the Division must take the position that a New Jersey purchaser would be able to claim a 3% use tax rate if delivery is taken within the zone. The de facto extension of the 3% rate to retailers outside of New Jersey was never contemplated, but is nonetheless a real consequence of this program. Any expansion or creation of new 3% zones only perpetuates this situation.

Finally, expanding the Urban Enterprise Zone Program would further alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer and is generally perceived as economically neutral and "fair." When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer, is relatively small, but the cumulative revenue generated can be enormous. Expanding the Urban Enterprise Zone Program by adding more 3% zones would save an individual taxpayer and vendor a fairly insignificant sum every year. However, the cumulative loss of revenue to the State is substantial, leaving the State to find other means of generating the money lost as a result of expanding the program. This loss of revenue would be considerable because the 3% sales tax collected by qualified vendors is remitted to the municipality in which the Urban Enterprise Zone is located and not to the State's General Fund. Thus, the State would lose the entire 6% sales tax that is currently collected on sales of items in the new Urban Enterprise Zone. This would be a particularly burdensome loss to the State in regard to big-ticket items.

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

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposal:	0
Commission Members Against Proposal:	6
Commission Members Abstaining :	0
Commission Meeting Date:	04/08/05

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

Bill Number: A-3963

Date of Introduction: 05/02/05

Sponsor: Assemblyman Kean

Date of Recommendation: 07/27/05

Identical Bill:

Committee: Assembly Health and Human Services

Description

This bill provides a 50 percent sales tax exemption for certain retail establishments serving food and drinks during “smoke free” periods of operation.

Analysis

This bill provides for those restaurants, bars, taverns and night clubs, with specific liquor license, and are “smoke free,” to charge one-half of the current sales tax on retail sales of food and drinks in the establishments during those periods that they are operating “smoke free.”

This bill carries negative public policy implications. Patrons of eligible restaurants, bars, taverns, and night clubs with retail liquor licenses should not have to be enticed with a financial incentive to promote a health issue. Individuals voluntarily choose to patronize certain restaurants and bars. The State should not have to bear the burden of subsidizing restaurant and bar type businesses that choose to have “smoke free” periods.

Enacting special exemptions for socially desirable behavior tends to lead to an increased demand for similar exemptions for other useful, necessary, or politically favored behavior. Such piecemeal small exemptions alter the broad-based nature of the sales and use tax, and reduce its credibility as a fairly administered and easy to understand tax. The amount that an individual taxpayer would save from purchasing food or drink during a “smoke free” period from an eligible restaurant or bar would be minuscule compared to the cumulative loss of revenue the State would suffer. If the proposed exemption were granted, the revenue currently raised by the imposition of tax on these items would have to be raised from other revenue sources.

This exemption benefits a specialized group and does not promote horizontal equity. Horizontal equity mandates that sales tax legislation be broadly based and taxes similar transactions, persons, or things in a similar manner. This proposal creates disparity between eligible restaurants and bars with retail liquor licenses and ones without retail liquor licenses. This bill gives preferential treatment to eligible restaurants and bars with retail liquor licenses that choose to have “smoke free” periods.

Generally, the Commission does not favor the use of tax policy as a means of influencing taxpayers’ behavior, even though the behaviors promoted might be beneficial to the State.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposal:	0
Commission Members Against Proposal:	5
Commission Members Abstaining :	0
Commission Meeting Date:	07/27/05

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

Bill Number:	A-3969	Date of Introduction:	05/02/05
Sponsor:	Assemblyman Chiappone Assemblyman Van Drew	Date of Recommendation:	07/27/05
Identical Bill:	S-604		
Committee:	Assembly Education		

Description

This bill provides an exemption for New Jersey teachers' purchases of qualified teaching materials from sales and use tax.

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 slight financial benefit that would accrue to teachers making qualified purchases would be outweighed by the high risk of a very significant level of fraudulent exemption. Since computers and office-type supplies qualify for exemption, there is a high risk of purchasers fraudulently claiming the exemption, yet there would be no administratively feasible way for vendors to know that the purchaser was a teacher making a qualifying purchase.

The list of materials that would qualify for exemption is not restrictive enough. Purchasers could claim that almost anything qualifies for exemption. Moreover, 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:	5
Commission Members Abstaining :	0
Commission Meeting Date:	07/27/05

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

Bill Number: A-3975

Date of Introduction: 05/02/05

Sponsor: Assemblyman Kean

Date of Recommendation: 07/27/05

Identical Bill:

Committee: Assembly Health and Human Services

Description

Prohibits smoking in indoor public places and workplaces.

Provides for a 50% reduction in the sales tax rate for the first 36 months following the effective date on receipts for sales of food and drink by restaurants or bars with certain liquor licenses.

Analysis

This bill uses a sales tax benefit as an inducement or reward for certain businesses' expected compliance with a beneficial health law that might initially meet with their resistance. In doing so, it seems to use tax law as a social and political policy tool to compensate certain businesses for having to change their policies regarding smoking and to buy their support for a public health reform. The Commission does not favor the use of sales tax law as a means of promoting desirable behavior or penalizing undesirable behavior, and instead supports the use of sales tax as a neutral means of simply raising revenue.

Even if the Commission were to support the use of sales tax law as a tool of social or health reform, it notes that the temporary 50% tax reduction is unlikely to have a significant effect on the volume of patronage of bars and other liquor license holders. Former patrons repelled by the smoking ban are unlikely to be lured by the prospect of a small savings in sales tax.

In addition, the Commission notes that it may be inequitable to grant such a tax reduction to liquor license holders, in an apparent attempt to boost their business during the initial period of compliance with the smoking ban, while not granting a similar benefit to restaurants without liquor licenses, many of which are also patronized by smokers who will be affected by the ban.

Recommendation

The Commission opposes enactment of this bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 5

Commission Members **Abstaining**: 0

Commission Meeting Date: 07/27/05

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

Bill Number:	S-2208	Date of Introduction:	01/11/05
Sponsor:	Senator Sweeney	Date of Recommendation:	04/08/05
Identical Bill:			
Committee:	Senate Budget and Appropriations		

Description

This bill includes sales and use of prewritten computer software delivered by any means as a sale or use of tangible personal property subject to the New Jersey sales and use tax.

Analysis

This bill proposes to amend the Sales and Use Tax Act N.J.S.A. 54:32B-1 *et seq.*, to include sales and use of prewritten computer software delivered by tape, disk, CD-Rom, electronically, or by any other means as a sale of tangible personal property subject to New Jersey sales and use tax. Prewritten computer software, often referred to as “canned” or off-the-shelf computer software, may be delivered to the purchaser by a variety of means which may affect whether sales or use tax is due on the sale. This proposed legislation eliminates the means of delivery as a determinative factor of the taxability of the sale or use. Under this bill, the sale of computer software that is not created, written, or designed for the exclusive use of a specific customer will be considered a taxable sale regardless of the means of delivery.

This bill reflects the manner in which computer software is currently developed, marketed, and sold. This proposed legislation closes the loophole whereby taxpayers can request already tangible software to be delivered electronically to avoid paying tax.

In addition, this bill creates a significant advantage for the State’s General Fund. The gain of revenue to the State is enhanced by the fact that prewritten computer software is traditionally an expensive item and a large block of sales tax revenue for the State. As a result of the changes in the law that this bill creates, the State’s budgetary crisis will be alleviated since the amount of monies that the State deposits in its General Fund will be increased.

There was discussion concerning that this bill may add to the already heavy tax burden faced by employers and increases the cost of doing business in New Jersey. This bill may force companies to increase consumer costs, downsize, or in extreme cases move out of the State resulting in less investment and/or fewer jobs.

Recommendation

The Commission has no recommendation regarding this bill.

Commission Members For Proposal:	3
Commission Members Against Proposal:	3
Commission Members Abstaining :	0
Commission Meeting Date:	04/08/05

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

Bill Number: S-2210

Date of Introduction: 01/11/05

Sponsor: Senator Bryant

Date of Recommendation: 04/08/05

Identical Bill:

Committee: Senate Budget and Appropriations

Description

This bill disallows the “casual sale” exemption for sales of aircraft, restricts aircraft and boat export exemption, and modifies aircraft and other business property import exemption under sales and use tax.

Analysis

This bill is proposed to amend the Sales and Use Tax Act (“Act”) N.J.S.A. 54:32B-1 et seq., to disallow the “casual sale” exemption for sales of aircraft, restrict aircraft and boat export exemption, and modify aircraft and other business property import exemption under sales and use tax.

Generally under the Act, property sold in New Jersey is subject to sales tax. There is an exemption, however, for “casual sales,” sales that are isolated or occasional sales by a person who is not regularly engaged in the business of making sales at retail in which the property sold was obtained by the person making the sale for the person’s own use.

Currently, however, sales of registered motor vehicles and registered boats (or motor vehicles and boats that should be registered) are not entitled to the “casual sale” exemption. This bill disallows sales of aircraft from the casual sale exemption.

It appears that the failure to exclude aircraft sales from the scope of the casual sale exemption was a legislative oversight. As a matter of policy, casual sales of motor vehicles, vessels, and aircraft should be treated the same. There is no evident reason to tax casual sales of boats and motor vehicles, while exempting similar sales of airplanes. Thus, the adoption of this bill will cure any inequities with regard to the casual sale of many big-ticket items. In addition, allowing an exemption for aircraft purchased in casual sales creates unfair competition for dealers in the business of selling used aircraft.

Generally under the Act, property “sold in New Jersey” is subject to sales tax if the purchaser takes physical possession of the property in New Jersey. However, a purchaser may take physical possession of a motor vehicle, a boat, or an aircraft in New Jersey and still not be subject to sales tax if the purchaser is a nonresident with no permanent place of abode in New Jersey, will not be using the property in business in this State, and furnishes an affidavit to the vendor. A purchaser may not bring a boat or aircraft back into the State, on other than a transient basis, for 12 months from the date of purchase to qualify for the exemption. This bill provides that the purchaser may never bring a boat or aircraft back into the State, on other than a transient basis, to qualify for the exemption.

In general, under the Act no use tax is imposed on property brought into the State by a person who purchased the property while a nonresident of this State. However, under current law, no person who is engaged in any manner in carrying on business in this State is deemed a nonresident. That means that a corporation with trivial business activities in New Jersey that wanted to make a major relocation to New Jersey could be subject to use tax on the property that it relocated. This bill eliminates the provision for purposes of use tax that no person who is engaged in any manner in carrying on business in this State is deemed a nonresident. However, in the specific case of aircraft, this bill imposes use tax on an aircraft

based in New Jersey, even if the aircraft was originally purchased while the owner was not a resident of this State, if it is used in business here.

In addition, this bill creates a significant advantage for the State’s General Fund. The gain of revenue to the State is enhanced by the fact that boats and aircraft are traditionally expensive items and a large block of sales tax revenue for the State. As a result of the changes in the law that this bill creates, the State’s budgetary crisis will be alleviated since the amount of monies that the State deposits in its General Fund will be increased.

Recommendation

The Commission recommends enactment of this bill.

Commission Members For Proposal:	6
Commission Members Against Proposal:	0
Commission Members Abstaining :	0
Commission Meeting Date:	04/08/05

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

Bill Number: S-2312

Date of Introduction: 02/03/05

Sponsor: Senator Scutari

Date of Recommendation: 04/08/05

Identical Bill:

Committee: Senate Economic Growth

Description

This bill authorizes the designation of a joint Urban Enterprise Zone by the Urban Enterprise Zone Authority.

Analysis

This bill is proposed to amend the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 *et seq.*, to allow the designation of a joint Urban Enterprise Zone by the Urban Enterprise Zone Authority.

The Urban Enterprise Zone Program has expanded in ways that the original drafters never intended. For instance, prior to 1994 ten towns in eleven municipalities were designated as Urban Enterprise Zones; however, in 1994 legislation authorized the creation of ten additional zones, and in 1995 legislation added seven more zones. In 2002 legislation added three more zones to that list. Finally, the thirty-first zone was added in 2004. In addition, Urban Enterprise Zone-impacted business districts, areas that have been “negatively impacted” by the presence of two or more adjacent Urban Enterprise Zones, have been created wherein reduced sales tax is collected. If there was a consensus that the Urban Enterprise Zone Program is operating as intended and is thought to be effective and efficient, then the amendments set forth in this bill may represent sound policy. However, there has never been an independent, comprehensive analysis performed that confirms that the Urban Enterprise Zone Program has actually been a benefit to the participating communities, yet the Program is being constantly amended and expanded.

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

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

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

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

Since the inception of the Urban Enterprise Zones Act, its Constitutional validity has been brought into question. Under the Commerce Clause, a state may not impose taxes on out-of-State sale transactions that exceed the taxes imposed on in-State transactions. The Urban Enterprise Zone program halves the 6% sales tax rate for sales that take place within a zone. However, New Jersey law imposes a 6% compensating use tax on goods purchased outside of New Jersey but brought into the State for use here. Thus, the law appears to discriminate between a "sale" and a "use" based upon where the transaction occurs. As a result, non-Urban Enterprise Zone New Jersey retailers are forced to compete with out-of-State retailers that deliver goods into a designated zone, as well as with the in-state Urban Enterprise Zone vendors. To comply with the Commerce Clause, the Division must take the position that a New Jersey purchaser would be able to claim a 3% use tax rate if delivery is taken within the zone. The de facto extension of the 3% rate to retailers outside of New Jersey was never contemplated, but is nonetheless a real consequence of this program. Any expansion or creation of new 3% zones only perpetuates this situation.

Finally, expanding the Urban Enterprise Zone Program would further alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer and is generally perceived as economically neutral and "fair." When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer, is relatively small, but the cumulative revenue generated can be enormous. Expanding the Urban Enterprise Zone Program by adding more 3% zones would save an individual taxpayer and vendor a fairly insignificant sum every year. However, the cumulative loss of revenue to the State is substantial, leaving the State to find other means of generating the money lost as a result of expanding the program. This loss of revenue would be considerable because the 3% sales tax collected by qualified vendors is remitted to the municipality in which the Urban Enterprise Zone is located and not to the State's General Fund. Thus, the State would lose the entire 6% sales tax that is currently collected on sales of items in the new Urban Enterprise Zone. This would be a particularly burdensome loss to the State in regard to big-ticket items.

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

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposal:	0
Commission Members Against Proposal:	6
Commission Members Abstaining :	0
Commission Meeting Date:	04/08/05

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

Bill Number: S-2358

Date of Introduction: 02/28/05

Sponsor: Senator Asselta

Date of Recommendation: 04/08/05

Identical Bill:

Committee: Senate Economic Growth

Description

This bill extends eligibility for the sales and use tax exemption of energy and utility service purchases by certain manufacturing-intensive businesses in Urban Enterprise Zones.

Analysis:

This bill amends the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 *et seq.*, to delete the requirement that a qualified business within an Urban Enterprise Zone must employ at least 500 employees to qualify for a sales and use tax exemption on energy and utility service purchases.

Under a recently enacted incentive, the State extended to qualified businesses or vertically integrated combinations of qualified businesses manufacturing a single product within an Urban Enterprise Zone a sales and use tax exemption for its energy and utility service purchases if:

1. at least 500 persons are employed by the business within an Urban Enterprise Zone,
2. at least 50 percent of its Urban Enterprise Zone staff work in manufacturing,
3. the business consumes the energy and utility service exclusively on its Urban Enterprise Zone premises, and
4. the business satisfies the definition of a “qualified business” under the “New Jersey Urban Enterprise Zones Act.”

[Section 23(a) of P.L. 2004, c.65 (N.J.S.A. 52:27H-87.1)].

This bill allows all manufacturing-intensive qualified businesses located in Urban Enterprise Zones to claim a sales and use tax exemption for their energy and utility service purchases. Currently, the State reserves the exemption only for larger manufacturing-intensive qualified businesses situated within such zones.

The original intent of the Legislature in enacting the sales tax exemption for enterprise zone vendors was to create an incentive for businesses to locate to depressed areas within the State. To this end, the Legislature enacted an exemption for the purchase of most items of tangible personal property by qualified businesses for the exclusive use or consumption on the premises of the qualified business at its zone location. Only personal property controlled by the qualified business qualified for the exemption. Items such as office and business equipment and supplies, furnishings, trade fixtures, and repair or construction materials are examples of items that were initially viewed to fall within the exemption. Currently, there are very narrow exemptions from sales tax for natural gas and electricity purchases pursuant to P.L. 1997, c.162.

Manufacturing facilities located outside of an Urban Enterprise Zone that are not entitled to the exemption will be at a great disadvantage. Enacting the bill may create a slippery slope because the similarly situated manufacturing facilities located outside of the zone will petition for a similar tax exemption.

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

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

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members For Proposal:	0
Commission Members Against Proposal:	6
Commission Members Abstaining :	0
Commission Meeting Date:	04/08/05

CHAPTER 24A

SALES AND USE TAX REVIEW COMMISSION

SUBCHAPTER 1. GENERAL PROVISIONS

18:24A-1.1 Purpose and objectives

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

SUBCHAPTER 2. ORGANIZATION AND OPERATION OF THE COMMISSION

18:24A-2.1 Organization

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

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

18:24A-2.2 Meetings of the Commission

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

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

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

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

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

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

18:24A-2.3 Quorum; votes

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

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

SUBCHAPTER 3. INFORMATION AND FILINGS

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

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

18:24A-3.2 Oral comments

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

18:24A-3.3 Notice of policies

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

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

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

18:24A-3.5 Reports of the Commission

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