
SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: A-302

DATE OF INTRODUCTION: 01/10/2012

SPONSOR: Assemblyman Amodeo
Assemblyman Brown

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Assembly Regulatory Oversight and Gaming Committee

DESCRIPTION

This measure would provide temporary exemption from sales and use tax for the rental of certain hotel rooms.

ANALYSIS

This measure would provide a temporary exemption from sales tax imposition on receipts for room occupancies for certain hotel rooms in Atlantic City.¹

This proposal is in-administrable and violates the concept of tax uniformity. The sales tax is collected and remitted based on aggregate receipts subject to tax and there has never been a required mechanism to break out taxable versus nontaxable services based on the day of their occurrence. There is no difference in the service rendered (the rental of a room) regardless of the time period in which it is rendered; the sales tax is designed to treat essentially identical transactions in a like manner. In other words, there is an unprecedented statutory and conceptual variance being proposed here.

The methodological change in remittance requirement represented by this measure is even more problematic than its underlying concept. The State of New Jersey has, since the inception of the sales tax in 1966, endeavored to minimize the burden of tax collection and remittance. No vendor or service provider has ever been asked to segregate taxable and nontaxable receipts based on the day in

¹ This measure is subject to the Atlantic City Luxury Sales Tax and other taxes and fees. For more information, see http://www.state.nj.us/treasury/taxation/acluxury_over.shtml.

which sales were made or services rendered. Enactment of this bill would most likely bring about a significant amount of misunderstanding resulting in confusion and a fair amount of noncompliance.

In addition, hotel operators do not have systems that are designed to only calculate tax on certain days of the week so they are likely not to do it correctly. This lack of uniformity would most likely cause confusion and error on the collector of taxes and their subsequent remittances.

Field audit and compliance teams work closely with those required to collect and remit taxes in Atlantic City. If collectors were unable or unwilling to maintain the additional records necessary or make the requisite system adjustments to track weekday and weekend rentals there will be no effective audit trails leaving no useful method to ensure the law is being properly applied.

Finally, the public will be confused if they have to pay sales tax on rooms rented on a Saturday or Sunday while renters on a Tuesday or Wednesday do not have to pay tax.

RECOMMENDATION

The Commission opposes enactment of this bill.

Commission **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining** Proposal: 0

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

BILL NUMBER: A-1322

DATE OF INTRODUCTION: 01/10/2012

SPONSOR: Assemblyman Greenwald
Assemblyman Moriarty

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Assembly Appropriations Committee

Description

This bill would decrease the sales and use tax rate from seven percent to six percent and reduce the sales and use tax base by eliminating tax on digital property and certain services and by restoring certain exclusions and exemptions.

Analysis

This bill attempts to decrease the rate of the sales and use tax from seven percent to six percent, beginning July 1, 2010. It also reduces the base of the sales and use tax, beginning July 1, 2010, by eliminating the imposition of tax on digital property and certain services, and by broadening certain existing tax exclusions and exemptions which were restricted or otherwise removed under P.L. 2006, c. 44 and P.L. 2008, c. 123.

Any tax change of this magnitude will result in errors, the potential for fraud and innumerable changes to online systems as most taxes, including the sales and use tax, are remitted electronically. There are costs that must be borne by state government if these changes were to be implemented, not the least of which is the modifications of the systems employed to receive tax collections. There are costs that will be imposed on those authorized to collect the taxes (individuals and businesses) in that they would be required to modify software to change both the rates and to accommodate the change in the taxability of certain items and services.

Reducing tax rates during a fragile recovery may appear to be an economic incentive to spur consumer spending, however such a sweeping change may have unintended consequences, not the least of which is to undermine the State budget.

This measure was pre-filed for the current session. P.L. 2011, c.49 was signed into law April 18, 2011 and the majority of that law became effective May 1, 2011. That statute modified a number of portions of sales tax law to maintain compliance with the Streamlined Sales and Use Tax Agreement. For example “digital property” is now “specified digital product.” The intent of the bill is prospective and not retroactive. Nonetheless, without any guarantees that these flaws would be detected, an amendment to ensure prospective application would be needed. Finally, Commission members expressed that the bill was not clear and its provisions were inconsistent.

Streamlined Sales and Use Tax Agreement:

If the design flaws in this measure were corrected, this measure would be fully compliant with the Streamlined Sales and Use Tax Agreement. The rate change and taxability changes as proposed herein would not jeopardize the State’s standing as a full, participating member subject to that Agreement.

Public Comment

None

Recommendation

The Commission opposes enactment of the bill.

Commission For Proposal: 0

Commission Members Against Proposal: 8

Commission Members Abstaining Proposal: 0

SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: A-2016

DATE OF INTRODUCTION: 01/10/2012

SPONSOR: Assemblyman Singleton

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Assembly Appropriations Committee

DESCRIPTION

The bill would phase out sales and use tax on landscaping services and certain services rendered in connection with the installation of carpeting and other flooring.

ANALYSIS

This bill would phase out sales and use tax on charges for the installation of carpeting and other flooring and certain landscaping services. The tax on these services would be reduced by 1/3 on the first day of the third month after the enactment of this bill, and further reduced by 1/3 of the original tax rate on July 1, 2012. The tax is eliminated on July 1, 2013. It is highly likely that this bill will not be enacted three months prior to July 1, 2012 so the final bill that would be placed on the Governor's desk would need amendment to account for the operant effective dates.

Effective October 1, 2006, the capital improvement exception for the installation of "carpeting and other flooring" was removed from the Sales and Use Tax Act, subjecting these services to tax. Likewise, effective October 1, 2006, the capital improvement exception for the installation of certain defined landscaping services was removed from the Sales and Use Tax Act, similarly subjecting those services to tax.

On and after December 1, 2008, the New Jersey Administrative Code was revised to provide that any subcontractor who performs a taxable capital improvement, such as floor covering installation services or the installation of certain landscaping services, must charge and collect the sales tax from the person that they are performing the service for, regardless of whether the person is another contractor, a property owner, etc. (See N.J.A.C. 18:24-5.6(b)(2) and N.J.A.C. 18:24-5.12).

The Commission noted that current law now contains a confusing mix of both exempt and taxable capital improvements resulting in difficulties both in tax administration and taxpayer understanding. As tax is charged by the contractor performing the work, documentation and audit issues have been created in situations where a subcontractor has been hired by another contractor to perform the taxable capital improvement. The invoice from the contractor to the property owner will not show tax since the contractor already paid tax to the subcontractor. This creates auditing verification problems for property owners and prime contractors since only the invoice of the subcontractor who actually performed the taxable capital improvement will demonstrate whether tax was charged on the job.

Capital improvements were much more clearly understood by the taxpaying public prior to October 1, 2006. The Commission members expressed concern that enactment and subsequent implementation of this law would violate the Streamlined Sales and Use Tax Agreement.

ADDITIONAL INFORMATION:

New Jersey is a fully participating as well as compliant state respective of the provisions of the Streamlined Sales and Use Tax Agreement (SSUTA). This measure would clearly violate that agreement as described below:

1. This bill would reduce, by incremental amounts, the tax rate charged charges for the installation of carpeting and other flooring and certain landscaping services. The SSUTA permits member states to determine the taxability of items as defined in the Library of Definitions and it permits member states to completely exempt items for specified periods (sales tax holidays)
2. As the change in the rate (reduction by thirds until elimination) occurs during a specific, defined period, it could only be permissible if it met the strict criteria of a “sales tax holiday” as defined in Section 322 of the SSUTA.
3. Section 322 B states, in part that “A member state shall not exempt only a portion of the price of an individual item during a sales tax holiday (emphasis added). This measure, as currently written would clearly violate the terms of the SSUTA and thereby place this State’s continued membership in jeopardy.

Public Comment

None

Recommendation

The Commission opposes enactment of the bill.

Commission For Proposal: 0

Commission Members Against Proposal: 8

Commission Members Abstaining Proposal: 0

SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: A-2198

DATE OF INTRODUCTION: 02/02/2012

SPONSOR: Assemblyman Amodeo
Assemblyman Burzichelli

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Assembly Transportation and Public Works Committee

DESCRIPTION

This bill would provide sales and use tax exemption for compressed natural gas used to fuel certain bus operation.

ANALYSIS

The intent of this measure is to exempt compressed natural gas from the sales tax. This fuel become subject to the tax effective with the passage of the "Motor Fuel Tax Act," P.L. 2010, c. 22, signed into law by Governor Christie on June 29, 2010.

The sponsors of this measure recognize the value of the change in the point of taxation represented by the new motor fuels law, however that change is not the reason for the different treatment of compressed natural, rendering it subject to sales taxation.

The following paragraphs may help to clarify matters:

Compressed natural gas (CNG) was taxed as a motor fuel under previous law since that law defined motor fuel generally as something that could power a motor vehicle. N.J.S.A. 54:39-2

The new law specifically defines the types of fuels that are subject to tax (see the imposition section at N.J.S.A. 54:49-103). Compressed natural gas was not specifically included in the list of fuels on which the motor fuels tax may be imposed.

Consequently CNG is no longer a motor fuel therefore it does not meet the sales tax exemption at N.J.S.A. 54:32B-8.8 which states, in part, that: “receipts from sales of motor fuel, racing gasoline, liquefied petroleum gas, and aviation fuel as those fuels are defined by section 2 of P.L. 2010, c. 22 (C. 54:39-102); and sales of fuel to an airline for use in its airplanes or to a railroad for use in its locomotives are exempt from the tax imposed under the Sales and Use Tax Act.”

Compressed natural gas is specifically not exempted under N.J.S.A. 54:32B-8.7 “receipts from the following are exempt from the tax imposed under the Sales and Use Tax Act: sales of gas other than natural gas, water, steam, or fuel delivered to consumers through mains, lines, pipe, or in containers or bulk. “

Therefore this fuel is subject to the sales tax. It also should be noted that many companies that employ vehicles that run on CNG are owned by government entities that are exempt from sales tax (e.g. NJ Transit).

The passage of this measure would not increase this agency’s administrative burden.

Additional Information:

This measure’s adoption would not violate the terms of the Streamlined Sales and Use Tax Agreement.

Public Comment

No

RECOMMENDATION

The Commission opposes enactment of the bill.

Commission For Proposal: 0

Commission Members Against Proposal: 7

Commission Members Abstaining Proposal: 1

SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: A-1329

DATE OF INTRODUCTION: 01/10/2012

SPONSOR: Assemblywoman Beck
Assemblyman Kyrillos

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Senate State Government, Wagering, Tourism, and Historic Preservation Committee

DESCRIPTION

This bill would provide sales and use tax rebate on supplies and materials purchased for the construction or reconstruction of certain horse racetrack grandstands.

ANAYLSIS

This proposal which would provide sales and use tax rebate on supplies and materials purchased for the construction or reconstruction of certain horse racetrack grandstands appears to be special legislation targeted to a narrowly-defined group of taxpayers which may result in a perceived disparity in the treatment of other similarly situated taxpayers. The Division of Taxation would be tasked with a refund program which would represent an imposition on the administering agency.

A rebate is generally used by companies to reduce the cost of a product, not for tax reduction. Subscriptions, naming rights and other promotional methods could be pursued to increase the viability and community participation in the State's horseracing industry.

In order to accurately assess the validity of rebate claims, there should be standards provided in this bill. The terms "supplies" and "materials" should be defined. N.J.A.C. 18:24-5.2 (subchapter 5 addresses contractors and services performed on real property) defines "construction materials" and "construction supplies" and could be used as guidance for potential definitions herein. Without some clarity there could be difficulty in determining whether purchases are eligible for rebate resulting in a potential increase in opportunities for fraud and error.

The 90-day limit set forth in the proposal is not realistic. In order to perform its due diligence, six months as a workable time limit for the processing of refunds.

Finally, Commission members expressed that as this rebate is limited to a small theatre of taxpayers subject to strict rebate guidelines on a project specific purpose, it would recommend its enactment.

Streamlined Sales and Use Tax Agreement:

This measure does not affect the State's compliance with the Streamlined Sales and Use Tax Agreement.

Public Comment

None

RECOMMENDATION

The Commission recommends enactment of the bill.

Commission For Proposal: 7

Commission Members Against Proposal: 0

Commission Members Abstaining Proposal: 0

SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: S-1395

DATE OF INTRODUCTION: 0/06/2012

SPONSOR: Senator Rice

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Senate Economic Growth Committee

DESCRIPTION

This bill would exempt from payment certain taxes and energy charges for manufacturing facilities.

ANALYSIS

P.L.2007, c.94 and a small portion of P.L.2009, c.90 provided narrow exemptions to the taxation of energy receipts as used by certain facilities. It is unlikely that this incentive would encourage enough manufacturers to expand their operations or locate in New Jersey to make up for the revenue loss. In view of the current State budget crisis providing tax relief for the entire manufacturing sector is questionable.

While the sales and use tax on energy and utility service is imposed on the end-user customers, the transitional energy facility assessment (TEFA) is imposed on the public utility energy companies selling and/or transporting energy for sale to ultimate consumers in the State of New Jersey.

Under current law, TEFA expires on December 31, 2013 and the TEFA unit rate surcharges will be reduced from their 2011 levels on January 1, 2012 by 25% and January 1, 2013 by 50%.

Presently there are very narrow exemptions from sales tax for natural gas and electricity purchases. Excluding sales of energy and utility service to manufacturing facilities from sales and use tax may create a slippery slope because other businesses which are similarly situated may petition to also be exempt from such taxes.

The 1998 imposition of sales tax on natural gas and electricity and related utility service was enacted with the intention that the tax base was to replicate the tax base that existed for the repealed Gross Receipts and Franchise Tax. Specific sales tax exemption provisions, such as the manufacturing exemption, were amended in order to clarify that the exemption did not apply to purchases of energy and utility service. Thus, manufacturers have been subject to sales tax on purchases of the energy and utility service used to operate production equipment.

PUBLIC COMMENT

None

RECOMMENDATION

The Commission opposes enactment of the bill.

Commission For Proposal: 1

Commission Members Against Proposal: 6

Commission Members Abstaining Proposal: 0

SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: A-1219

DATE OF INTRODUCTION: 01/10/2012

SPONSOR: Assemblyman Moriatry
Assemblyman Greenwald
Assemblyman Albano
Assemblyman Milam
Assemblywoman Lampitt

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Assembly Budget Committee

DESCRIPTION

The bill would establish an annual sales tax holiday for certain sales of personal computers and certain sales of school supplies and equipment during the first full weekend of August.

ANALYSIS

This measure appears designed to stimulate certain sales, including those of personal computers, to aid individuals making 'back-to-school' purchases.

The exemption proposed for sales of personal computers with a sales price of less than \$1,000 for non-business use is far broader than necessary to achieve the bill's purpose. Any individual might lawfully claim the exemption, provided that the computer is not being purchased for business use. Computers are a major purchase for most individuals, many of whom will plan to make their computer purchases during the sales tax holiday.

The consumer (purchaser) is not required to be a student and not required to be making purchases on behalf of a student. Anyone who buys writing pads, pens, pencils, basic art supplies, sports equipment, notebooks, backpacks and other items commonly used by students during the "annual exclusion period" would have a right to claim exemption under the terms of this bill as currently written.

Retail vendors of items exempted by this measure would have no effective method to determine if the items were being used for their intended purpose, other than accepting the good faith assertions of purchasers. Likewise, there would be no clear-cut method for auditors from this agency to ascertain whether the exemptions were properly taken.

The aims of this measure may be subverted by purchaser or vendor error, or by outright fraud or abuse.

Additional Information:

This State is a full, participating member of the Streamlined Sales and Use Tax Agreement (SSUTA) and has adopted the provisions of that agreement into current sales tax law.

Sales tax holidays are temporary sales tax exemptions for certain items for a specified period.

Section 322 of the Agreement sets forth the requirements for a member state to follow when authorizing "Sales Tax Holidays."

The Agreement requires that a state provide at least 60 days' notice prior to the first day of the calendar quarter in which the exemption period will begin. If this bill became law on May 1, 2012 it would meet that standard. States may not allow an exemption for an item unless it is specifically defined in the Library of Definitions. The bill defines "school supplies, school equipment and school-related items," however this combined term is not included within the SSUTA's Library of Definitions ("school art supply", "school computer supply", "school instruction material" and "school supply" are defined in the Library). Similarly, the bill defines "personal computer" and the Library defines "computer." The measure should be amended to incorporate those definitions.

PUBLIC COMMENT

None

RECOMMENDATION

The Commission opposes enactment of the bill.

Commission For Proposal: 0

Commission Members Against Proposal: 8

Commission Members Abstaining Proposal: 0

SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: A-1346

DATE OF INTRODUCTION: 01/10/2012

SPONSOR: Assemblyman Ribble
Assemblywoman Angelini

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Assembly Regulatory Oversight and Gaming Committee

DESCRIPTION

This bill would eliminate the imposition of sales and use tax on charges for initiation fees, membership fees, and dues of health and fitness, athletic, and sporting clubs and organizations.

ANALYSIS

In 2006, the State Legislature amended the Sales and Use Tax to expand its imposition on a number of services and products heretofore not subjected to the tax in order to increase revenue. Included in the expansion are the services which are the subject of this bill. This proposal, if enacted, would reduce a predictable stream of revenue to the State's General Fund.

It should be noted that deleting the words "health and fitness" from subjectivity to the sales and use tax leaving the imposition of the tax on "athletic" clubs would present enforcement difficulties. As a private gym can be considered to be either an "athletic" or a "health and fitness" club, many taxpayer will find it confusing. A number of gyms are actually referred to as "Athletic Clubs."

It is recommended that the word "athletic" also be stricken to ensure that this bill could be properly administered by agency staff.

PUBLIC COMMENT

Yes. See statement from Joe Moore, Chief Executive Officer, International health, Racquet & Sportsclub Association (IHRSA)

NEW JERSEY SALES AND USE TAX REVIEW COMMISSION

Written Testimony of Joe Moore, Chief Executive Officer
International Health, Racquet & Sportsclub Association (IHRSA)

April 25, 2012, 10:00AM

Division of Taxation Building, 4th Floor, 50 Barrack Street, Trenton, NJ

Members of the Committee, I would first like to thank all of you for taking the time to review New Jersey's current tax policies and to examine their impact on the increasingly serious trend toward obesity and physical inactivity in the state.

My name is Joe Moore. I am the President and CEO of the International Health Racquet & Sportsclub Association (IHRSA) - the leader in education, research and advocacy for the health and fitness industry, representing over 9,100 fitness businesses worldwide. On behalf of our 248 member health clubs located throughout New Jersey, I am writing to express IHRSA's support for the following legislation: **Assembly Bill 2017**, which would phase out the current sales and use tax on charges for initiation fees, membership fees, or dues for access to health and fitness clubs. We also support **Assembly Bill 1346** which will effectively repeal the current sales tax on health and fitness club fees and dues.

We support the full repeal of New Jersey's 7 percent tax on physical fitness facilities for the following reasons:

A repeal of the sales tax on fitness memberships would encourage New Jersey residents to live healthier lives. Numerous studies have consistently shown that people who exercise regularly are significantly less likely to suffer from obesity-related illnesses such as heart disease, hypertension, diabetes, arthritis, stroke, various forms of cancer, osteoporosis, depression and anxiety. In addition, policies that create incentives for employers to encourage their employees to exercise regularly have been shown to help prevent obesity-related illnesses.

While many states are considering tax credits and other incentives to increase physical activity, New Jersey has gone in the opposite direction by imposing a barrier to regular exercise. In an era of rapidly rising rates of obesity and lifestyle-related disease, in which **New Jersey spends \$2.34 billion per year on obesity-attributable expenditures**, the health club industry believes that government should take all reasonable steps toward reversing sedentary lifestyles and lowering healthcare costs –not increase them by imposing a sales tax.

Obesity and physical inactivity among adults are as much of a problem in New Jersey as anywhere else in the country.

According to Trust for America's Health, the obesity rate in New Jersey has nearly doubled in the past 15 years, to 24.1% in 2011. As of 2011, 61.8% of New Jersey adults are overweight or obese and 8.8% have diabetes, nearly double the diabetes rate from 15

years ago.ⁱ Results from the Behavioral Risk Factor Surveillance System found that 26.6% of New Jersey adults are physically inactive, which ranks New Jersey the 11th most inactive state in the country.ⁱⁱ

These increasing levels of obesity and physical inactivity are directly linked to increasing government health care costs.

Nationally, 75% of healthcare expenditures go toward diagnosing and treating chronic diseases, many of which are associated with obesity and inactivity. Inpatient and outpatient health care costs due to obesity are increasing at the alarming rate of 36% every year in New Jersey. Prescription costs for obesity-related illnesses are climbing annually at a rate of 77%. The estimated costs associated with obesity are \$147 billion annually in the U.S. and again, as mentioned above, well over \$2 billion in New Jersey.ⁱⁱⁱ

New Jersey's health clubs are poised to help solve the obesity crisis and make significant contributions to New Jersey's economy.

The New Jersey health club industry is comprised of approximately 1,252 for-profit businesses, providing health and fitness services to 1.5 million residents. The industry generated \$626 million in revenue in 2008 and employs approximately 40,064 people in New Jersey.^{iv} One study showed that \$77 billion dollars a year could be saved in the United States if all physically inactive Americans began exercising.^v

People who exercise in a health club are more successful at losing weight than people who exercise outside or at home. A recent study found that of the Americans who considered their efforts to lose weight to be extremely/very successful, 23% exercised at a health club (100+ days per year), 19% exercised outside and 17.4% exercised at home.^{vi}

Members of the Commission, thank you for the opportunity to comment on this important legislation. I sincerely hope that this Commission will join me in recognizing the efforts to repeal New Jersey's tax on healthy lifestyles as an example of sound government policy. If you have any questions or information requests, please do not hesitate to contact Amy Bantham, Deputy Vice President of Government Relations (aeb@ihrsa.org), or Tim Sullivan, Legislative Analyst (ts@ihrsa.org), in our office at 1-800-228-4772.

ⁱTrust for America's Health, *F as in Fat 2011*

ⁱⁱUnited Health Foundation. *America's Health Rankings. New Jersey Physical Activity 2011*. <http://www.americashealthrankings.org/NJ/PhysicalActivity/2011>

ⁱⁱⁱNew Jersey Department of Health and Senior Services

^{iv}*American Sports Data Health Club Trend Report, IHRSA Profiles of Success*, [www.taxfoundation.org, www.ed.ca.gov/payroll_taxes](http://www.taxfoundation.org/www.ed.ca.gov/payroll_taxes) [Estimated median of \$500,000 in revenue per club; Estimated median 7 full time and 25 part time employees per club; Based on a median payroll cost of 43% of total revenue]

^vThalwitz C. *The Economic Benefits of Exercise 2009*

^{vi}IHRSA/American Sports Data Inc., *The Health Club Trend Report. 2004*.

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ⁱTrust for America's Health, *F as in Fat 2011*

ⁱⁱUnited Health Foundation. America's Health Rankings. *New Jersey Physical Activity 2011*. <http://www.americashealthrankings.org/NJ/PhysicalActivity/2011>

ⁱⁱⁱNew Jersey Department of Health and Senior Services

^{iv}*American Sports Data Health Club Trend Report, IHRSA Profiles of Success*, [www.taxfoundation.org, www.ed.ca.gov/payroll_taxes](http://www.taxfoundation.org/www.ed.ca.gov/payroll_taxes) [Estimated median of \$500,000 in revenue per club; Estimated median 7 full time and 25 part time employees per club; Based on a median payroll cost of 43% of total revenue]

^vThalwitz C. *The Economic Benefits of Exercise 2009*

^{vi}IHRSA/American Sports Data Inc., *The Health Club Trend Report. 2004.*

RECOMMENDATION

The Commission recommends enactment of the bill.

Commission For Proposal: 6

Commission Members Against Proposal: 2

Commission Members Abstaining Proposal: 0

SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: A-2017

DATE OF INTRODUCTION: 01/10/2012

SPONSOR: Assemblyman Amodeo
Assemblyman Brown

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Assembly Appropriations Committee

DESCRIPTION

This measure would phase out imposition of sales and use tax on charges for initiation fees, membership fees, or dues for access to or use of certain health and fitness clubs and organizations.

ANALYSIS

This measure would phase out the sales and use tax imposition upon charges in the nature of initiation fees, membership fees or dues for access to or use of the property or facilities of a from health and fitness, athletic or sporting club or organization. This measure has been introduced numerous times since the effective date of P.L. 1006, c.44 which subjected those charges to tax effective October 1, 2006.

This measure calls for a phase-out of the tax by reducing that rate over a period which would end before July 1, 2013. On that date the charges as described above would be exempt from the sales and use tax.

In "Additional Information" this agency provides information regarding the Streamlined Sales and Use Tax Agreement; if this measure is enacted; the State is no longer in compliance. It also bears noting that there would have to be online applications designed for each of the periods for which the tax is to be phased out and those applications could only be used to remit tax on charges for the use of the facilities for the above-described entities. This would be both inefficient, in that resources would be deployed to create, troubleshoot and maintain these online applications and likely ineffective since

many service providers would simply continue to use current online forms ST-50 and ST-51 (electronic remittance forms). All sales and use tax remittance has been made electronically and by touch-tone phone since 2006.

Additional Information:

The State of New Jersey is a full member of and subject to the provisions of the Streamlined Sales and Use Tax Agreement (SSUTA). The Agreement contains a Library of Definitions which is used to determine items that a member state may or may not subject to taxation.

Section 322 of the Agreement addresses “sales tax holidays,” which are periods in which certain goods are not subject to the sales or use taxes of a given state. Section 322 B prohibits multiple tax rates to be applied. This phased in reduction of the tax would be prohibited by the Agreement.

Noncompliance with this provision would jeopardize the State’s membership in the SSUTA.

PUBLIC COMMENT

Yes

NEW JERSEY SALES AND USE TAX REVIEW COMMISSION

Written Testimony of Joe Moore, Chief Executive Officer
International Health, Racquet & Sportsclub Association (IHRSA)

April 25, 2012, 10:00AM

Division of Taxation Building, 4th Floor, 50 Barrack Street, Trenton, NJ

Members of the Committee, I would first like to thank all of you for taking the time to review New Jersey's current tax policies and to examine their impact on the increasingly serious trend toward obesity and physical inactivity in the state.

My name is Joe Moore. I am the President and CEO of the International Health Racquet & Sportsclub Association (IHRSA) - the leader in education, research and advocacy for the health and fitness industry, representing over 9,100 fitness businesses worldwide. On behalf of our 248 member health clubs located throughout New Jersey, I am writing to express IHRSA's support for the following legislation: **Assembly Bill 2017**, which would phase out the current sales and use tax on charges for initiation fees, membership fees, or dues for access to health and fitness clubs. We also support **Assembly Bill 1346** which will effectively repeal the current sales tax on health and fitness club fees and dues.

We support the full repeal of New Jersey's 7 percent tax on physical fitness facilities for the following reasons:

A repeal of the sales tax on fitness memberships would encourage New Jersey residents to live healthier lives. Numerous studies have consistently shown that people who exercise regularly are significantly less likely to suffer from obesity-related illnesses such as heart disease, hypertension, diabetes, arthritis, stroke, various forms of cancer, osteoporosis, depression and anxiety. In addition, policies that create incentives for employers to encourage their employees to exercise regularly have been shown to help prevent obesity-related illnesses.

While many states are considering tax credits and other incentives to increase physical activity, New Jersey has gone in the opposite direction by imposing a barrier to regular exercise. In an era of rapidly rising rates of obesity and lifestyle-related disease, in which **New Jersey spends \$2.34 billion per year on obesity-attributable expenditures**, the health club industry believes that government should take all reasonable steps toward reversing sedentary lifestyles and lowering healthcare costs –not increase them by imposing a sales tax.

Obesity and physical inactivity among adults are as much of a problem in New Jersey as anywhere else in the country.

According to Trust for America's Health, the obesity rate in New Jersey has nearly doubled in the past 15 years, to 24.1% in 2011. As of 2011, 61.8% of New Jersey adults are overweight or obese and 8.8% have diabetes, nearly double the diabetes rate from 15

years ago.ⁱ Results from the Behavioral Risk Factor Surveillance System found that 26.6% of New Jersey adults are physically inactive, which ranks New Jersey the 11th most inactive state in the country.ⁱⁱ

These increasing levels of obesity and physical inactivity are directly linked to increasing government health care costs.

Nationally, 75% of healthcare expenditures go toward diagnosing and treating chronic diseases, many of which are associated with obesity and inactivity. Inpatient and outpatient health care costs due to obesity are increasing at the alarming rate of 36% every year in New Jersey. Prescription costs for obesity-related illnesses are climbing annually at a rate of 77%. The estimated costs associated with obesity are \$147 billion annually in the U.S. and again, as mentioned above, well over \$2 billion in New Jersey.ⁱⁱⁱ

New Jersey's health clubs are poised to help solve the obesity crisis and make significant contributions to New Jersey's economy.

The New Jersey health club industry is comprised of approximately 1,252 for-profit businesses, providing health and fitness services to 1.5 million residents. The industry generated \$626 million in revenue in 2008 and employs approximately 40,064 people in New Jersey.^{iv} One study showed that \$77 billion dollars a year could be saved in the United States if all physically inactive Americans began exercising.^v

People who exercise in a health club are more successful at losing weight than people who exercise outside or at home. A recent study found that of the Americans who considered their efforts to lose weight to be extremely/very successful, 23% exercised at a health club (100+ days per year), 19% exercised outside and 17.4% exercised at home.^{vi}

Members of the Commission, thank you for the opportunity to comment on this important legislation. I sincerely hope that this Commission will join me in recognizing the efforts to repeal New Jersey's tax on healthy lifestyles as an example of sound government policy. If you have any questions or information requests, please do not hesitate to contact Amy Bantham, Deputy Vice President of Government Relations (aeb@ihrsa.org), or Tim Sullivan, Legislative Analyst (ts@ihrsa.org), in our office at 1-800-228-4772.

ⁱTrust for America's Health, *F as in Fat 2011*

ⁱⁱUnited Health Foundation. *America's Health Rankings. New Jersey Physical Activity 2011*. <http://www.americashealthrankings.org/NJ/PhysicalActivity/2011>

ⁱⁱⁱNew Jersey Department of Health and Senior Services

^{iv}*American Sports Data Health Club Trend Report, IHRSA Profiles of Success*, [www.taxfoundation.org, www.ed.ca.gov/payroll_taxes](http://www.taxfoundation.org/www.ed.ca.gov/payroll_taxes) [Estimated median of \$500,000 in revenue per club; Estimated median 7 full time and 25 part time employees per club; Based on a median payroll cost of 43% of total revenue]

^vThalwitz C. *The Economic Benefits of Exercise 2009*

^{vi}IHRSA/American Sports Data Inc., *The Health Club Trend Report. 2004*.

RECOMMENDATION

The Commission opposes enactment of the bill.

Commission For Proposal: 6

Commission Members Against Proposal: 2

Commission Members Abstaining Proposal: 0

SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: A-2284

DATE OF INTRODUCTION: 02/02/2012

SPONSOR: Assemblywoman Riley

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Assembly Telecommunications and Utilities Committee

DESCRIPTION

This bill would provide an energy and utility service sales tax relief benefit to certain manufacturers throughout the State

ANALYSIS

This bill provides a partial (50%) exemption from the imposition of the sales and use tax for sales of energy and utility service sales tax relief to certain manufacturers throughout the State. Currently, certain manufacturers located within an urban enterprise zone and Salem County under section 23 of P.L. 2004, c. 65 (C. 52:27H-87.1) are entitled to a 100% exemption on these sales (employers of 250 or more employees, of which 50 % are directly involved in manufacturing process).

If this measure is enacted, other entities struggling in this economy will be encouraged to seek similar legislative relief.

In addition, the energy vendors will have to incur the cost of revising their tax collection systems to enable the collection of the 7% rate and the 3.5% rate.

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 transactions. Exclusions from the tax greatly impact on the very nature of the tax and the requirements to raise needed revenue. An exclusion of energy and utility service from sales and use tax would save an individual manufacturer 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.

Streamlined Sales and Use Tax Agreement (SSUTA)

This bill does appear to violate the SSUTA in that it requires sellers to collect a different sales tax rate from a limited group of New Jersey taxpayers. Sellers do not have the ability to “opt out” of the reduced rate collection.

PUBLIC COMMENT

None

RECOMMENDATION

The Commission reaffirmed its decision not to recommend this bill.

Commission For Proposal: 0

Commission Members Against Proposal: 8

Commission Members Abstaining Proposal: 0

SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: A-2611

DATE OF INTRODUCTION: 03/05/2012

SPONSOR: Assemblywoman Lampitt

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Assembly Higher Education Committee

DESCRIPTION

This bill would provide sales tax exemption for natural gas, and transportation or transmission of natural gas, to certain colleges and universities.

ANALYSIS

This bill would modify the law which subjects it to tax certain energy purchases made by: 1) state and local colleges and universities and 2) nonprofit private educational institutions. Under this proposal in order to qualify for the exemption they must purchase the natural gas and those services rendered in connection with the transportation or transmission thereof for their own exclusive use or consumption.

It would be expected that for-profit institutions of higher learning would petition for similar relief in an effort to address spiraling college costs.

To avoid confusion, the proposed exemption would be better placed in N.J.S.A. 54:32B-9. (See proposed amendments)

PUBLIC COMMENT

None

RECOMMENDATION

The Commission reaffirmed its decision not to recommend this bill.

Commission For Proposal: 0

Commission Members Against Proposal: 8

Commission Members Abstaining Proposal: 0

SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: A-302

DATE OF INTRODUCTION: 03/05/2012

SPONSOR: Assemblywoman Lampitt

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Assembly Regulatory Oversight and Gaming Committee

DESCRIPTION

This bill would provide sales tax exemption for student parking provided by certain colleges and universities.

ANALYSIS

In 2007, sweeping legislation was implemented which expanded the scope of services subject to the sales and use tax. P.L.2006, c.44 included in this expansion the imposition of tax on parking which includes parking by non-residential students at New Jersey colleges and universities. Residential students do not have to pay the tax.

The residential exclusion is limited to resident students who are enrolled at the school. Students who live at home or at another "off-campus" location and commute to school for class are not residents of the college or university. Commuters must pay, and colleges and universities must collect, tax on any charges for parking, even if they park in a similar spot at the same lot as students who reside at the school. This legislation seeks to eliminate that disparate treatment between the two populations of students by exempting all students from the imposition of taxation for parking at school provided parking lots or garages.

Enactment of the proposed legislation would eliminate the discrimination borne by students who by choice or financial circumstance do not reside on campus and therefore are taxed differently than resident students.

Streamline Sales and Use Tax Agreement:

This bill does not violate the SSUTA inasmuch as it provides a definition of student parking and eliminates the distinction between resident students and commuter students.

PUBLIC COMMENT

None

RECOMMENDATION

The Commission reaffirmed its decision not to recommend this bill.

Commission For Proposal: 0

Commission Members Against Proposal: 8

Commission Members Abstaining Proposal: 0

SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: A-2721

DATE OF INTRODUCTION: 03/12/2012

SPONSOR: Assemblyman Eustace

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Assembly Environment and Solid Waste Committee

DESCRIPTION

This bill would exempt materials and labor used to convert traditional motor vehicles into plug-in hybrid motor vehicles from sales and use tax subjectivity.

ANALYSIS

This bill, if enacted, would exempt materials and labor used to convert traditional motor vehicles into plug-in hybrid vehicles from Sales and Use Tax Act. Specifically, it would exempt the sale of batteries, electronic equipment, or services purchased or rendered in connection with the conversion process of a traditional motor vehicle into a plug-in hybrid motor vehicle.

Although the bill would not specifically exempt leasing or rental transactions, it is assumed that leasing and rental transactions of qualifying vehicles would also be exempt as the Sales and Use Tax Act includes leases and rentals in the definition of "retail sale." (N.J.S.A. 54:32B-2(e)).

This proposed sales tax exemption could open the door for similar tax exemptions on devices that may also be viewed as good for the environment. Generally, the Division of Taxation does not favor the use of tax policy as a means of influencing consumer behavior.

Additional Information:

This bill does not appear to violate the Streamlined Sales and Use Tax Agreement (SSUTA)

PUBLIC COMMENT

None

RECOMMENDATION

The Commission reaffirmed its decision not to recommend this bill.

Commission For Proposal: 0

Commission Members Against Proposal: 7

Commission Members Abstaining Proposal: 1

SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: S-285

DATE OF INTRODUCTION: 01/10/2012

SPONSOR: Senator Pennacchio

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Senate Environment
and Energy Committee

DESCRIPTION

This bill would provide for reduced sales tax imposition on certain sales in certain Highlands Region Preservation Area municipalities.

ANALYSIS

The proposed 50% reduction in the existent rate of the sales and use tax on most purchases in certain Highlands Region Preservation Area municipalities rivals the current situation in Salem County, where the sales tax rate is similarly reduced. When it allowed that reduction, the Legislative did so to 'level the playing field' with the state of Delaware which has no state sales tax. There is no compelling reason for this reduction for those municipalities in the Highlands Region Preservation Area. New York, with its multitude of local sales taxes that are added to its State levy, poses no threat to this State in the matter of sales taxation. It can be substantiated that many New York state residents and most especially New York City residents shop in New Jersey to avail themselves of our State's sales tax rate (in addition to the fact that New Jersey does not tax most retail clothing purchases). Pennsylvania's rate remains at 6%, but no evidence of lost sales to Pennsylvania has been set forth here to justify the halving of the State's rate.

Another concern with the reduced sales tax is the impact of the compensating use tax. Use tax is imposed on items purchased from out of state. Constitutionally the use tax in an area must be

imposed at the same rate as the sales tax imposed within the same area. Therefore, if certain businesses make sales of items taxed at a 50% rate, payers of use tax will have legitimate reason to assert that they should be paying the same reduced rate.

If advocates for this measure wish to compare its purported benefits to those offered by Enterprise Zone-located businesses, this measure has several important distinctions, not the least of which is that it lacks the face-to-face limitation in UEZ legislation, thereby making it a subterfuge for giving blanket permission to set up retail websites in the Highlands to skirt sales tax law.

PUBLIC COMMENT

None

RECOMMENDATION

The Commission reaffirmed its decision not to recommend this bill.

Commission For Proposal: 0

Commission Members Against Proposal: 8

Commission Members Abstaining Proposal: 0

SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: S-386

DATE OF INTRODUCTION: 01/10/2012

SPONSOR: Senator Allen

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Assembly Regulatory Oversight and Gaming Committee

DESCRIPTION

This bill would eliminate charges for initiation fees, membership fees, and dues of health and fitness, athletic, and sporting clubs and organizations from sales and use tax.

ANALYSIS

Deleting the words “health and fitness” but leaving the imposition on “athletic” clubs is confusing since a private gym can be considered to fit within either of those terms. Indeed many gyms are actually called Athletic Clubs.

It is recommended that the word “athletic” also be deleted to effectuate the stated legislative purpose of this bill.

PUBLIC COMMENT

Yes

RECOMMENDATION

The Commission reaffirmed its decision not to recommend this bill.

Commission For Proposal: 0

Commission Members Against Proposal: 8

Commission Members Abstaining Proposal: 0

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

BILL NUMBER: A-1186

DATE OF INTRODUCTION: 01/23/2012

SPONSOR: Senator Allen

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Assembly Appropriations Committee

DESCRIPTION

This bill exempts certain materials and labor used to convert traditional motor vehicles into plug-in hybrid electric motor vehicles from sales and use tax.

ANALYSIS

This bill, if enacted, would exempt materials and labor used to convert traditional motor vehicles into plug-in hybrid vehicles from Sales and Use Tax Act. Specifically, it would exempt the sale of batteries, electronic equipment, or services purchased or rendered in connection with the conversion process of a traditional motor vehicle into a plug-in hybrid motor vehicle.

Although the bill would not specifically exempt leasing or rental transactions, it is assumed that leasing and rental transactions of qualifying vehicles would also be exempt as the Sales and Use Tax Act includes leases and rentals in the definition of "retail sale." (N.J.S.A. 54:32B-2(e)).

This proposed sales tax exemption could open the door for similar tax exemptions on devices that may also be viewed as good for the environment. Generally, the Division of Taxation does not favor the use of tax policy as a means of influencing consumer behavior.

ADDITIONAL INFORMATION:

This bill does not appear to violate the Streamlined Sales and Use Tax Agreement (SSUTA).The

Commission reaffirmed its decision not to recommend this bill.

PUBLIC COMMENT

None

RECOMMENDATION

The Commission reaffirmed its decision not to recommend this bill.

Commission For Proposal: 0

Commission Members Against Proposal: 7

Commission Members Abstaining Proposal: 1

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

BILL NUMBER: S-1529

DATE OF INTRODUCTION: 02/09/2012

SPONSOR: Senator Doherty

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Senate Budget and Appropriations Committee

DESCRIPTION

The bill would remove from sales tax subjectivity charges for massage, bodywork, and somatic services.

ANALYSIS

These services may be essentially cosmetic, they may be medically prescribed or the specific procedure may be both medically prescribed and cosmetic.

In light of the foregoing, this agency has faced difficulty in enforcement of the taxability of charges for massage, bodywork, and somatic services. Providers of these services have also found it difficult to determine when the services are medically prescribed and when and to what extent these services are cosmetic in nature.

New Jersey needs to preserve revenue during our fragile economic recovery and for that reason decision-makers may not be supportive of this measure.

This bill rescinds a portion of Chapter 44, P.L. 2006.

PUBLIC COMMENT

None

RECOMMENDATION

The Commission reaffirmed its decision not to recommend this bill.

Commission For Proposal: 0

Commission Members Against Proposal: 8

Commission Members Abstaining Proposal: 0

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

BILL NUMBER: S-1561

DATE OF INTRODUCTION: 02/09/2012

SPONSOR: Senator Whelan

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Senate Environment and Energy Committee

DESCRIPTION

This bill would exempt from sales and use tax the sale of materials and equipment used in the manufacture of wind energy components.

ANALYSIS

On August 19, 2010 P.L. 2010, c.57 "The "Offshore Wind Economic Development Act" was signed into law by Governor Christie. This measure provided a corporation business tax credits, as set forth in C.34:1B-209.4, not to exceed, in the aggregate, \$100 million to support the development of offshore wind energy.

It is important to reference P.L. 2010, c. 57 in that it provided detailed definitions of various words and phrases used in that statute and clearly vests in the Board of Public Utilities (BPU) the authority to certify projects that would be eligible for corporate credits and this measure also tasks that agency with developing standards for equipment and materials that would be exempted from sales and use tax subjectivity.

From an administrative standpoint, the purchase of tangible personal property eligible for the proposed exemption would be a 'use' exemption in that some materials that would be otherwise taxable could be exempted if they were used in the manufacture of wind energy components as certified by the BPU. As in other use-based exemptions, the issuance of a Form ST-4 (Exempt Use Certificate) would relieve the seller of eligible materials from the collection of sales tax on receipts from those sales.

On October 22, 2008, New Jersey's Energy Master Plan was issued. The Energy Master Plan (EMP) contained, at that time, a goal of installing at least 1000 megawatts (MW) of offshore wind (OSW) energy by 2012 and at least 3000 MW by 2020. Public policy has continued to favor offshore wind energy production, as evidenced by P.L. 2010, c. 57. Regardless of whether the Master Plan's goals will be met, it is likely that investment will continue in this form of energy production and therefore it is not surprising that its proponents would seek tax relief beyond what is currently provided to spur further investment.

PUBLIC COMMENT

None

RECOMMENDATION

The Commission reaffirmed its decision not to recommend this bill.

Commission For Proposal: 0

Commission Members Against Proposal: 8

Commission Members Abstaining Proposal: 0

SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: S-1584

DATE OF INTRODUCTION: 02/13/2012

SPONSOR: Senator Bucco

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Senate Law and Public Safety Committee

DESCRIPTION

This bill would exempt the sale of recreational safety helmets from sales and use tax.

ANALYSIS

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. Exemptions from the tax greatly impact the very nature of the tax and must be carefully considered in light of the need to provide State funding.

The desire to foster the use of safety equipment by those engaged in activities in which there may be dangerous conditions may represent good public policy; however, there are other, legally-required safety items which remain subject to the sales tax. Sales and use tax is imposed on certain pollution abatement equipment even though state and local law mandates its use. Making selective decisions on the kinds of safety equipment and services statutorily subject to preferential tax treatment invites other proposals to provide similar treatment to other, safety-related taxable goods and services.

PUBLIC COMMENT

None

RECOMMENDATION

The Commission reaffirmed its decision not to recommend this bill.

Commission For Proposal: 0

Commission Members Against Proposal: 8

Commission Members Abstaining Proposal: 0

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

BILL NUMBER: S-1640

DATE OF INTRODUCTION: 02/01/2012

SPONSOR: Senator Bucco

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Senate Law and Public Safety Committee

DESCRIPTION

This bill would exempt from the sales and use tax sales of carbon monoxide detectors or any device or equipment sold for residential use to detect, warn of, abate, or extinguish fires.

ANALYSIS

There are many devices that are designed to protect or warn individuals when life or property is threatened. The use of the devices that are the subject of this bill are certainly to be recommended and encouraged, however, a tax exemption from a broad based tax should not be based solely on the recognized necessity of the item sought to be exempted from taxation.

Many exemption provisions are warranted in order to put or keep vendors in this State in a competitive position with merchants in other states. It does not appear that the exemption provision in this bill will have any effect in this area. Also, it is submitted that the exemption will not cause potential residential users of fire equipment devices to buy and utilize these devices because a sales tax exemption has been enacted. A large number of municipalities, in their code enforcement capacity, require working smoke detectors to be installed prior to approving the sale of residential property. It would appear that the assurance of enhanced home safety is borne in those municipalities without the inducement that this bill purports to offer.

There are administrative problems in seeking vendor compliance with the exemption requirements in this bill. The bill provides an exemption when there is a residential use of the listed devices. Short of having a certification form executed by each purchaser, a vendor will not know if the device is being purchased for business or residential use.

This problem is similar to the problem encountered when there are purchases of household paper products. The exemption provision clearly states that the purchase must be for household use, however, one cannot tell, at the point of purchase, how the purchaser intends to use the product. Thus, exemption provisions that stipulate or condition the use of the merchandise present an administrative burden on both the taxing authority and the vendor who is responsible for collection tax.

PUBLIC COMMENT

None

RECOMMENDATION

The Commission reaffirmed its decision not to recommend this bill.

Commission For Proposal: 0

Commission Members Against Proposal: 8

Commission Members Abstaining Proposal: 0

SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: S-1669

DATE OF INTRODUCTION: 01/23/2012

SPONSOR: Senator Bucco

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Senate Environment and

Energy Committee

DESCRIPTION

ANALYSIS

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

If this bill were to be enacted, in order to claim the proposed exemption, the purchaser of qualified home heating equipment would need to provide a properly completed Exempt Use Certificate (Form ST-4) to the supplier of the equipment. As the requirements under this exemption are both use-based and product-based, contractors and home owners alike may have difficulty in understanding which party is qualified to claim the exemption.

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

Additional Information:

Currently, N.J.S.A. 54:32B-3(b)(4) excludes from sales tax labor charges for the maintaining, servicing or repairing of residential heating system units serving no more than three families, provided that the families live independently of each other and do their own cooking on the premises. Included under the exemption are cleaning and servicing of residential gas, oil, coal or wood burning stoves, furnaces or fireplaces and their chimneys. A contractor is not required to obtain a New Jersey exemption certificate for services performed on an exempt residential heating system.

PUBLIC COMMENT

None

RECOMMENDATION

The Commission reaffirmed its decision not to recommend this bill.

Commission For Proposal: 0

Commission Members Against Proposal: 8

Commission Members Abstaining Proposal: 0

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

BILL NUMBER: S-1727

DATE OF INTRODUCTION: 03/05/2012

SPONSOR: Senator Bucco
Senator Allen

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Assembly Appropriations Committee

DESCRIPTION

This bill would provide sales and use tax exemption upon receipts for services performed to certain prewritten computer software delivered electronically.

ANALYSIS

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

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

However, the exemption provided by current law does not apply to services performed to prewritten computer software. Purchasers who, for instance, pay a fee or are assessed a charge by a technician for the installation, repair, or maintenance of the tax-exempt prewritten computer software delivered electronically must pay the applicable sales tax or use tax on the sales price paid to purchase the service.

This bill broadens the existing exemption to ensure that both the initial sale of, and any one-time or recurring services performed to, rewritten computer software delivered electronically are exempt from the sales and use tax.

Although the need for this exemption is great, the Governor's FY 2013 Budget proposal does not support this exemption due to the need for revenue to fund the State's current priorities.

Streamlined Sales Tax Agreement Compliance:

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

PUBLIC COMMENT

Yes. See memorandum from David Brogan, First Vice President, NJ Business & Industry Association and Mary Ellen Peppard – Assistant Vice President, NJ Chamber of Commerce

To: Members of the Sales and Use Tax Review Commission
From: David Brogan – First Vice President, NJ Business & Industry Association
Mary Ellen Peppard – Assistant Vice President, NJ Chamber of Commerce
Date: April 25, 2012
Re: S-1727 (Bucco; Allen)

Thank you for the opportunity to again express our support for S-1727, which provides a sales and use tax exemption for services performed to prewritten computer software delivered electronically for business use.

Under current law, the purchase of prewritten electronically delivered software is exempt from sales and use tax if the software is used directly and exclusively in the purchaser's business. However, this business use exemption does not extend to services performed to prewritten software, such as installation, repair or maintenance of this software.

The absence of a clear business use exemption is detrimental to companies in New Jersey. Some of our members have expressed concern that they may be at risk for increased tax liability. This uncertainty hampers investment and job creation.

Enacting this legislation would provide our member companies with predictability, enhance New Jersey's business climate and strengthen our competitiveness.

When this Commission previously considered this legislation, some members had concerns about the effective date of January 1, 2012, and subsequent retroactive application of the legislation. The effective date has now been corrected and is consistent with the Commission's recommendation that the legislation be prospective.

We appreciate the opportunity that we have had to work with several members of this Commission on this issue, and look forward to continuing to work toward a solution.

We ask that the Commission again recommend enactment of this bill, and thank you for considering our views.

RECOMMENDATION

The Commission reaffirmed its decision not to recommend this bill.

Commission For Proposal: 0

Commission Members Against Proposal: 5

Commission Members Abstaining Proposal: 3

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

BILL NUMBER: S-1728

DATE OF INTRODUCTION: 03/05/2012

SPONSOR: Senator Bucco

DATE OF CONSIDERATION: 04/25/2012

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Senate Economic Growth

Committee

DESCRIPTION

This bill provides sales and use tax exemption for sales of certain packaging equipment.

ANALYSIS

The proposed bill attempts to broaden the manufacturing exemption. It is unclear, however, whether the expanded exemption would simply benefit manufacturers who have post-production processes on their facilities, or to expand the exemption to third-party packaging facilities or distributors.

There is also the wrapping supplies exemption which may be used by manufacturers and distributors who meet eligibility requirements.

The critical flaw in this measure is the lack of a definition for "packaging" which will make it very difficult to administer.

Streamlined Sales and Use Tax Agreement (SSUTA)

This bill does not appear to violate the SSUTA.

PUBLIC COMMENT

RECOMMENDATION

The Commission reaffirmed its decision not to recommend this bill.

Commission For Proposal: 0

Commission Members Against Proposal: 8

Commission Members Abstaining Proposal: 0