

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

**BILL NUMBER:**

A-3963

**DATE OF INTRODUCTION:**

May 2, 2005

**SPONSOR:**

Assemblyman Kean

**DATE OF RECOMMENDATION:**

July 27, 2005

**IDENTICAL BILL:**

**COMMITTEE:**

Assembly Health and Human Services Committee

**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 restaurant and bars with retail liquor licenses that chose 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:**

**COMMISSION MEMBERS AGAINST PROPOSAL:**

**COMMISSION MEMBERS ABSTAINING:**

(BB)