

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

BILL NUMBER:

S-1652

DATE OF INTRODUCTION:

May 5, 2008

SPONSOR:

Senator Madden

DATE OF RECOMMENDATION:

June 12, 2008

IDENTICAL BILL:

COMMITTEE:

Senate Budget and Appropriations Committee

DESCRIPTION:

This Bill establishes an annual sales tax holiday during the first full weekend of August for the sales of computers and certain school supplies and instructional materials.

ANALYSIS:

This Bill establishes an annual "back-to-school" sales tax holiday during first full weekend of August for the sales of computers and certain school supplies and instructional materials. The exemption provides for a sales price cap of less than \$1,000 and would be available to non-business purchasers.

The limitation of the exemption to individual purchasers for non-business use would be difficult to administer. Retailers cannot reasonably be expected to recognize whether a particular individual is making a purchase for business or personal use, and it is foreseeable that, like the exemption for paper products for home use only, this personal use exemption will be widely misused and easily abused by consumers making purchases for their small businesses. Retailers would object to being required to determine whether every sale was "non-business" or to obtain an exemption certificate from every purchaser during the exclusion period.

Presumably the holiday will only affect sales within New Jersey and not use tax imposed on items purchased from outside of New Jersey. Thus, the proposal is contrary to the Commerce Clause of the United State Constitution, under which states cannot discriminate against interstate commerce. If the tax holiday is limited to sales physically taking place in New Jersey, this will create a federal Constitutional problem, since use tax is imposed when tangible property purchased out-of-State from non-New Jersey mail order vendors is used in or delivered to New Jersey. The State cannot lawfully exempt a sale of an item taking place within New Jersey while at the same time, impose tax on a comparable items purchased from an out-of-State source. This scheme whereby an in-State sale would not be subject to any tax, while the full use tax of 7% would be imposed on interstate purchases used in New Jersey, discriminates against interstate commerce and would not likely survive constitutional scrutiny.

It is unlikely that consumers would enjoy a true savings as a result of a tax holiday which merely eliminates the 7% sales tax. Sales offered by the retailer, generally at a percentage far greater than 7%, result in much greater savings for the customer. Confident that the public will be enticed to the stores by the prospect of a tax-free holiday, retailers may actually raise their “sale” prices during a tax holiday or elect not to discount regular prices. Rather than provide a savings for consumers, the Bill could easily result in increased profit for vendors. Thus, consumers may not realize that they are actually paying more for the merchandise during the holiday and not enjoying a real tax savings.

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

RECOMMENDATION:

The Commission does not recommends enactment of this Bill.

COMMISSION MEMBERS FOR PROPOSAL: 0

COMMISSION MEMBERS AGAINST PROPOSAL: 5

COMMISSION MEMBERS ABSTAINING: 0