

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

BILL NUMBER:

S-1917

DATE OF INTRODUCTION:

October 4, 2004

SPONSOR: DATE OF RECOMMENDATION:

Senator Turner

December 6, 2004

IDENTICAL BILL:

COMMITTEE:

Senate Commerce Committee

DESCRIPTION:

This bill exempts subscription fees for cable radio service, satellite television service and satellite radio service from sales and use tax.

ANALYSIS:

The Sales and Use Tax Act defines “telecommunications” as “the act or privilege of originating or receiving messages or information by means of any one-way or two-way electronic or electromagnetic communication method and all services and equipment provided in connection therewith.” N.J.S.A. 54:32B-2(cc). Retail sales of telecommunications are taxable pursuant to N.J.S.A. 54:32B-3(f)(1). N.J.S.A. 54:32B-2(cc)(4) exempts from the definition of telecommunications “charges in the nature of subscription fees paid by subscribers for cable television service.” There is also an exclusion for one-way radio or television broadcasting transmissions available to the general public without a fee. N.J.S.A. 54:32B-2(cc)(1). The tax is imposed on the transmission charge, not on the value of the message or data being transmitted. This bill changes the definition of “telecommunications” to also exclude retail sales of cable radio service, satellite television service and satellite radio service.

Currently, the Division exempts satellite television subscription services from tax since the service is substantially the same programming as cable service. However, since they are not excluded from the definition of telecommunications, tax is imposed on satellite and cable radio subscription services charged to a service address in New Jersey. Exempting these services could open the door to other telecommunications services being exempt.

According to the statement attached to the bill, satellite and cable radio is a new technology. However, it is not clear from the statement why such services should be exempt from tax.

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Additionally, the exemption would further alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer, and is generally perceived as economically neutral and “fair.” When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer, is relatively small, but the cumulative revenue generated can be enormous. An exemption for satellite and cable radio subscription services would save an individual taxpayer 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 this exclusion. Considering the State’s current budgetary crisis, this bill is particularly troubling and the exemption is not recommended as a matter of tax policy.

Moreover, P.L. 2001, c.341 authorizes the Treasurer to enter into the Streamlined Sales and Use Tax Agreement for the purpose of interstate tax simplification and modernization and in order to substantially reduce the burden of sales tax collection for all sellers and all types of commerce. An important part of simplification under the Agreement is uniform definitions of sales and use tax terms. *See N.J.S.A. 54:32B-50.* Until the Agreement is final with respect to all aspects of interstate administration and enforcement, including critical definitions for property and services such as telecommunications, it may be prudent to defer action on this amendment. Under the Agreement, definitions and substantive provisions that affect administration cannot be inconsistent from state to state.

Finally, the Committee recommends taxing all cable and satellite television services as a means to raising revenue.

RECOMMENDATION:

The Commission does not recommend enactment of this bill.

COMMISSION MEMBERS FOR PROPOSAL: 0

COMMISSION MEMBERS AGAINST PROPOSAL: 6

COMMISSION MEMBERS ABSTAINING: 0