SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: S-2021

DATE OF INTRODUCTION: Jan. 9, 2001

SPONSOR: Senator Bucco

DATE OF RECOMMENDATION: April 2, 2001

IDENTICAL BILL: A-3190

COMMITTEE:

Senate Budget and Appropriations

DESCRIPTION:

This bill provides a sales tax exemption for sales of tangible personal property for non-business use to individual back-to-school purchasers made during the exclusion period but excludes motor vehicles, alcoholic beverages, cigarettes and energy from this exemption. The "exclusion period" is defined as the period from August 26, 2001, to and including September 1, 2001. The bill also defines "individual back-to-school purchaser" as one who pays and takes delivery during the exclusion period and, also, one who orders and pays during the period, even if delivery takes place after the exclusion period.

ANALYSIS:

To the extent that this tax "holiday" will be applicable to some major purchases, it is forseeable that many purchasers will plan to make their computer purchases during the one-week sales tax holiday. All this does is to divert sales from subsequent months, leading to the false impression that tax holidays are a major retail success.

The limitation of the exemption to individual purchasers for nonbusiness 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.

The bill makes the "holiday" exemption applicable both to sales in which both payment and delivery take place during the holiday, and to sales in which payment is made during the holiday but delivery takes place later. Using the time of payment to determine the time of sale is inconsistent with the Division of Taxation's consistent, historic position that liability for the tax on sales of tangible personal property accrues when the merchandise is delivered. The bill's use of two different, alternative, methods of determining the time of sale (either date of delivery and payment, or date of payment only) would make this exemption very difficult to administer. Additional problems are likely to arise in determining the payment date on credit card and check purchases, which are actually paid at some point later than the date when the customer presents his check or signs a credit card slip.

It appears that the "holiday" will apply only to sales that take place within New Jersey, and not to compensating use tax imposed on items purchased outside New Jersey. This will create a potential federal constitutional problem, if the use tax is imposed when tangible personal property is purchased out of State or from non-New Jersey mail order vendors is used in or delivered in New Jersey. The State cannot lawfully exempt a sale of merchandise taking place within New Jersey while imposing tax on a comparable item purchased from an out-of-State source. A "holiday" applicable only to in-State sales, whereby in-State sales would be subject to no tax at all, while the full use tax would be imposed on interstate purchases used in New Jersey, 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 6% sales tax. Sales offered by the retailer -- generally at a percentage far greater than 6%-- result in much greater savings for the customer. Confident that the public will be lured to the stores by the prospect of a tax-free holiday, retailers may actually raise their "sale" prices during a tax holiday, thus resulting in somewhat of an increase in what the consumer must pay for purchases during that period. Rather than provide a savings for consumers, the bill could easily result in increased profit for vendors.

The benefit that consumers would enjoy because of the tax holiday would be proportionate to the amount that they pay for the exempt items. The holiday would therefore be regressive in its impact, since it would give a far greater tax benefit to those who could afford to purchase expensive computers for their personal use.

Legislation like this has the potential to cause a major disruption of the State's tax administration operations. Press releases need to be written to explain the scope and duration of the sales tax "holiday," staff in the tax information services need to be trained, and the State would need to be prepared to handle a huge increase in information inquiries from vendors and consumers before, during and after the one-week "holiday". To handle the expected increase in volume, it might need to hire new temporary personnel, who would need training time, work space, and of course salaries. In the alternative, the rush of calls might have to be handled by existing personnel, resulting in congested phone lines, long "hold" times, and consequently unhappy callers. The inquiries would not end abruptly as soon as the holiday is over, since many taxpayers who missed the deadline for a tax-free computer purchase would most likely call or write to express their dissatisfaction with the inadequate publicity for the holiday or the timing of the holiday or to seek exceptions or extensions of the final cut-off date. Taxpayers who purchased such property immediately before a holiday would also doubtlessly feel aggrieved. Thus, a tax holiday intended as a benefit is likely to become a public relations disaster for the State.

In addition, 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 two-week tax holiday would save an individual purchaser a fairly insignificant sum. However, the cumulative loss of revenue, some of it unintended, to the State could be substantial. The complete exemption, applicable to much more expensive purchases, could result in significant revenue loss, particularly since many people may elect to schedule their purchase a high-priced item during the tax holiday in order to enjoy the tax savings. This leaves the State to find other means of generating the moneys lost as a result of an expanded exemption that has little to recommend it as a matter of tax policy.

RECOMMENDATION: Oppose

COMMISSION MEMBERS FOR PROPOSAL: 0

COMMISSION MEMBERS AGAINST PROPOSAL: 8

COMMISSION MEMBERS ABSTAINING: 0

COMMISSION MEETING DATE: March 28, 2001

CMT:sp