

SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: S-2023

DATE OF
INTRODUCTION: Jan. 9, 2001

SPONSOR: Senator Adler
Senator Bennett

DATE OF
RECOMMENDATION: March 29, 2001

IDENTICAL BILL:

COMMITTEE: Senate Environment

DESCRIPTION:

Provides sales and use tax exemption for purchases of equipment used directly and exclusively to prevent, control or eliminate air, water or solid or hazardous waste pollution generated as a by-product of manufacturing, industrial, commercial or agricultural processes or services, provided that the New Jersey Department of Environmental Protection or the federal Environmental Protection Agency mandates that the purchaser use this equipment pursuant to state or federal law or regulation.

ANALYSIS:

The bill appears to be an attempt to provide some partial compensation to those businesses which must purchase costly pollution prevention and control devices in order to comply with federal or state regulatory requirements. The exemption, as written, is limited to purchases of mandatory equipment.

As a matter of policy, the majority of Commission members generally do not support the use of tax exemption legislation as a tool for encouraging socially desirable behavior, or tax increases as a means of discouraging disfavored behavior. Nevertheless, it is important to note that even if this exemption is intended to serve the socially useful purpose of encouraging manufacturers to be more vigilant about reducing pollution, it is not properly designed for that purpose. This tax exemption would apply only when the taxpayer purchases *mandatory* pollution-control equipment. Thus it does not encourage voluntary efforts to use pollution-control equipment not yet mandated by law, or to employ a higher level of pollution-control measures than the law requires. To the contrary, it would actually provide a financial *disincentive* to voluntary environmental initiatives, since there would be a tax advantage to delaying the purchase of a piece of

pollution-control equipment until it becomes mandatory. An exemption limited to purchases of non-mandatory equipment, certified by the D.E.P. or the E.P.A. to be an effective means of controlling pollution, would, on the other hand, be more narrowly and appropriately designed to encourage environmentally responsible business conduct; it would reward those businesses that take extra, voluntary initiatives in curbing pollution.

The Commission members who support this bill as currently written would prefer that it be amended to extend to purchases of non-mandatory equipment. There appears to be no public policy reason to exempt only purchases made in order to comply with statutory or regulatory mandates, but not voluntary purchases of equipment that is not yet required.

The majority of those members who oppose the bill as currently written might find it acceptable if (1) the exemption applied to both voluntary and mandatory purchases, and (2) the legislation required, as a prerequisite for exemption, that the D.E.P. or the E.P.A. has certified the equipment's appropriate and effective function as a pollution-control device. Such certification would be necessary because the Division of Taxation, which would be charged with administering the sales tax exemption, does not have the technical expertise to determine whether a particular piece of apparatus serves the exempt purposes set forth in the provision. Also, given the amount of revenue implicated and the need for certification, an exemption by refund only (rather than at point of sale) provision would be preferable in this case.

An amendment extending an exemption to voluntary, as well as mandatory, purchases would still not address concerns that it is not sound tax policy to provide tax exemptions as a means of compensating regulated businesses which must incur certain expenses in complying with federal or state requirements. The existence of a major compensation exemption might foster an inappropriate sense of entitlement to tax exemptions on various costly transactions engaged in solely for the purpose of complying with governmental mandates. Thus it might result in aggressive lobbying for similar tax exemptions for the purchase of governmentally mandated environmental, health, safety, disabled-access and other equipment mandated by law. However, the Commission recognizes that environmental concerns are a highly sensitive issue in the densely populated, highly industrialized state of New Jersey, where the solid, liquid and gaseous substances released into the environment by farms, factories and commercial operations have the potential to cause substantial harm. Therefore there may be a greater rational basis for tax incentives to encourage widespread compliance with pollution-control mandates than with some other mandates whose beneficial impact is less widespread.

In addition, enactment of this new tax exemption provision would further alter the broad-based nature of 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. The loss of revenue to the State could be substantial.

RECOMMENDATION: This bill is not recommended for enactment as currently drafted.

COMMISSION MEMBERS FOR PROPOSAL: 2

COMMISSION MEMBERS AGAINST PROPOSAL: 6

COMMISSION MEMBERS ABSTAINING: 0

COMMISSION MEETING DATE: March 28, 2001

CMT:dh