

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

**BILL NUMBER:**  
S-2210

**DATE OF INTRODUCTION:**  
January 11, 2005

**SPONSOR:**  
Senator Bryant

**DATE OF RECOMMENDATION:**  
April 8, 2005

**IDENTICAL BILL:**

**COMMITTEE:**  
Senate Budget and Appropriations Committee

**DESCRIPTION:**  
This bill disallows the "casual sale" exemption for sales of aircraft, restricts aircraft and boat export exemption, and modifies aircraft and other business properties import exemption under sales and use tax.

**ANALYSIS:**  
This bill is proposed to amend the Sales and Use Tax Act ("Act") N.J.S.A. 54:32B-1, et. seq., to disallow the "casual sale" exemption for sales of aircraft, restrict aircraft and boat export exemption, and modify aircraft and other business property import exemption under sales and use tax.

Generally under the Act, property sold in New Jersey is subject to sales tax. There is an exemption, however, for "casual sales," sales that are isolate or occasional sales by a person who is not regularly engaged in the business of making sales at retail in which the property sold was obtained by the person making the sale for the person's own use.

Currently, however, sales of registered motor vehicles and registered boats (or motor vehicles and boats that should be registered) are not entitled to the "casual sale" exemption. This bill disallows sales of aircraft from the casual sale exemption.

It appears that the failure to exclude aircraft sales from the scope of the casual sale exemption was a legislative oversight. As a matter of policy, casual sales of motor vehicles, vessels and aircraft should be treated the same. There is no evident reason to tax casual sales of boats and motor vehicles, while exempting similar sales of airplanes. Thus, the adoption of this bill will cure any inequities with regard to the casual sale of many big-ticket items. In addition, allowing an exemption for aircraft purchased in casual sales creates unfair competition for dealers in the business of selling used aircraft.

Generally under the Act, property "sold in New Jersey" is subject to sales tax if the purchaser takes physical possession of the property in New Jersey. However a purchaser may take physical possession of a motor vehicle, a boat, or an aircraft in New Jersey and

still not be subject to sales tax if the purchaser is a nonresident with no permanent place of abode in New Jersey, will not be using the property in business in this State, and furnishes an affidavit to the vendor. A purchaser may not bring a boat or aircraft back into the State, on other than a transient basis, for 12 months from the date of purchase to qualify for the exemption. This bill provides that the purchaser may never bring a boat or aircraft back into the State, on other than a transient basis, to qualify for the exemption.

In general, under the Act no use tax is imposed on property brought into the State by a person who purchased the property while a nonresident of this State. However, under current law, no person who is engaged in any manner in carrying on business in this State is deemed a nonresident. That means that a corporation with trivial business activities in New Jersey that wanted to make a major relocation to New Jersey could be subject to use tax on the property that it relocated. This bill eliminates the provision for purposes of use tax that no person who is engaged in any manner in carrying on business in this State is deemed a nonresident. However, in the specific case of aircraft, this bill imposes use tax on an aircraft based in New Jersey even if the aircraft was originally purchased while the owner was not a resident of this State if it is used in business here.

In addition, this bill creates a significant advantage for the State's General Fund. The gain of revenue to the State is enhanced by the fact that boats and aircraft are traditionally expensive items and a large block of sales tax revenue for the State. As a result of the changes in the law that this bill creates, the State's budgetary crisis will be alleviated since the amount of monies that the State deposits in its General Fund will be increased.

**RECOMMENDATION:**

The Commission recommends enactment of this bill.

**COMMISSION MEMBERS FOR PROPOSAL: 6**

**COMMISSION MEMBERS AGAINST PROPOSAL: 0**

**COMMISSION MEMBERS ABSTAINING: 0**