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

BILL NUMBER:
S-2589

DATE OF INTRODUCTION:
May 29, 2003

SPONSOR:
Senator Smith
Senator Kavanaugh

DATE OF RECOMMENDATION:
August 5, 2003

IDENTICAL BILL:

COMMITTEE:
Senate Economic Growth, Agriculture and Tourism Committee

DESCRIPTION:

This bill authorizes the Urban Enterprise Zone Authority to designate a joint Urban Enterprise Zone in the Raritan River Area.

ANALYSIS:

This bill is proposed to amend the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60, et. seq., to allow the creation of a joint urban enterprise zone comprised of four municipalities, each of which is adjacent to one other municipality within which the joint zone is located and bordering the Raritan River.

This proposal is flawed for several reasons. The greater the number of municipalities that have 3% sales tax, the more New Jersey becomes a patchwork of differing sales tax rates. This is contrary to tax simplicity and uniformity. Adding more zones may create a slippery slope because other municipalities which are similarly situated to the Raritan River joint zone may petition to become another urban enterprise zone. This domino effect defeats the original purpose of the Urban Enterprise Zones Act of helping to revitalize the State's economically distressed urban areas. Given the ease with which the Urban Enterprise Zone program is being expanded, it is conceivable that all municipalities in New Jersey will be able to credibly and successfully press for Urban Enterprise Zone status. As originally conceived, the program was to be limited and its benefits restricted to the most dire cases and this bill does not establish that its provisions would further that purpose.

The Urban Enterprise Zone program has expanded in ways that the original drafters never intended. For instance, prior to 1994, ten towns in eleven municipalities were designated as Urban Enterprise Zones; however, in 1994, legislation authorized the creation of ten additional zones and in 1995, legislation added seven more zones. Recent legislation added three more zones to that list. Recently, Urban Enterprise Zone-impacted business districts, areas that have been "negatively impacted" by the presence of two or more adjacent enterprise zones, have been created wherein reduced sales tax is collected. If there was a consensus that the Urban Enterprise Zone Program is operating as intended and is thought to be effective and efficient then the amendments set forth in this bill may represent sound policy. However, there has never been an independent, comprehensive analysis performed that confirms that the Urban Enterprise Zone program has actually been a benefit to the participating communities, yet the program is being constantly amended and expanded.

As the number of Zones increase, the challenge of enforcement expands. Due to the high number of Zones in existence, New Jersey no longer enjoys the administrative simplicity it once did with sales tax uniformity across the State. The bill statement attached to this proposed legislation does not explain why the municipalities in question would benefit from Urban Enterprise Zone designation. In addition, the bill does not provide an economic study to justify the creation of a joint Urban Enterprise Zone in the Raritan River area. It does not provide any information that would demonstrate that such designation would reverse the economic decline of the affected municipality or attract businesses or customers to that municipality. Conversely, it does not demonstrate that if enacted, it would not draw businesses or customers from other depressed municipalities, or if it would do so, then such an effect is economically justified.

Since the inception of the Urban Enterprise Zones Act, its Constitutional validity has been brought into question. Under the Commerce Clause, a state may not impose taxes on out-of-state sale transactions that exceed the taxes imposed on in-state transactions. The Urban Enterprise Zone program halves the 6% sales tax rate for sales that take place within a zone. However, New Jersey law imposes a 6% compensating use tax on goods purchased outside of New Jersey but brought into the State for use here. Thus, the law appears to discriminate between a “sale” and a “use” based upon where the transaction occurs. As a result, non-Urban Enterprise Zone New Jersey retailers are forced to compete with out-of-state retailers that deliver goods into a designated zone, as well as with the in-State Urban Enterprise Zone vendors. To comply with the Commerce Clause, the Division must take the position that a New Jersey purchaser would be able to claim a 3% use tax rate if delivery is taken within the zone. The de facto extension of the 3% rate to retailers outside of New Jersey was never contemplated, but is nonetheless a real consequence of this program. Any expansion or creation of new 3% zones only perpetuates this situation.

In addition, varying tax rates from municipality to municipality threaten economic neutrality and horizontal equity within the State. The Doctrine of Economic Neutrality promotes a system of taxation that has a limited effect or impact on the marketplace and avoids policy that benefits one segment of the market at the expense of another. The goal, upon which the Urban Enterprise Zones Act is based, is to bring new businesses and consumers to selected economically depressed areas. In doing this, the surrounding municipalities from which business and consumers are drawn suffer negative economic effects. Horizontal equity refers to the concept that tax treatment should be uniform from one transaction to another. The Act creates a lower sales tax rate for certain sales transactions taking place within the Urban Enterprise Zones. This disparate treatment violates the Doctrine of Horizontal Equity. Permitting more municipalities to collect reduced sales would exacerbate the already tenuous foundation upon which the Act is based.

Expanding the Urban Enterprise Zone program 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. Expanding the Urban Enterprise Zone Program by adding more 3% zones would save an individual taxpayer and vendor 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 expanding the program. This loss of revenue would be considerable because the 3% sales tax collected by qualified vendors is remitted to the municipality in which the Urban Enterprise Zone is located and not to the State's General Fund. Thus, the State would lose the entire 6% sales tax that is currently collected on sales of items in the new Urban Enterprise Zone. This would be a particularly burdensome loss to the State with regard to big-ticket items.

Another consideration against the recommendation of this bill is the existence of the Streamlined Sales and Use Tax Agreement adopted by the Streamlined Sales Tax Project. The Streamlined Sales Tax Project is a joint effort between over 30 states and the National Governor's Association, the Federation of Tax Administrators and the Multistate Tax Commission to design, test and implement a new sales and use tax system for the purpose of interstate tax simplification and modernization to reduce the burden of sales tax collection. The State of New Jersey supports the goals of the Project and has been involved as an Observer State since September, 1999. In August, 2000, New Jersey became a Participating State, which indicates that the State is committed to participating in the new system and allows State representatives to vote at project meetings. An important part of simplification under the Project is Section 302 entitled "State and Local Tax Bases" which mandates a uniform sales tax rate throughout the State (See page 10 of the Streamlined Sales and Use Tax Agreement, adopted November 12, 2002). As such, further expanding the Urban Enterprise Zone Program and permitting more municipalities to collect a reduced rate of sales tax may cause potential problems under the Agreement since its substantive provisions require that sales tax rates must be uniform throughout the State.

Finally, a major reason many municipalities are now petitioning for an Urban Enterprise Zone may be the belief that such a designation would replace revenue that the municipality is currently losing from other sources. For instance, many municipal representatives have testified to the Sales and Use Tax Review Commission that Urban Enterprise Zone designation would benefit the municipality since they are currently experiencing financial problems. The main theme in urging the Commission to approve a bill creating yet another zone, stresses that Urban Enterprise Zone status would provide funds for municipal use.

RECOMMENDATION:
The Commission does not recommend enactment of this bill.

COMMISSION MEMBERS FOR PROPOSAL: 0

COMMISSION MEMBERS AGAINST PROPOSAL: 6

COMMISSION MEMBERS ABSTAINING: 0

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