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

Bill Number: A-552

Date of Introduction: 01/10/13

Sponsor(s): Assemblywoman Wagner

Date of Consideration: 07/10/13

Co-Sponsor(s):

Identical Bill:

Committee: Environment and Solid Waste Committee

Description

This bill would establish a "New Jersey Energy Efficient Weekend" sales tax holiday during the third weekend of April in each month.

Analysis

This measure would establish a "New Jersey Energy Efficient Weekend" sales tax holiday during the third weekend of April. Specified Energy Efficient products for non-business use with a sales price of \$2,500 or less would be exempt from the sales and use tax.

This effort is intended to encourage consumers to purchase energy-efficient appliances and other similarly cost-saving home goods. It would be difficult to ensure that only energy-efficient goods within the specified categories or to ensure that other, non-included purchases would not be 'bundled' into overall consumer purchasing during the designated period. Additionally, it is expected that similarly-situated businesses offering other cost-saving or energy-efficient products would also seek temporary sales tax relief, further eroding a reliable revenue source.

It should be further noted that this bill, if enacted with the amendments reflective of the SSUTA standards and definitions as discussed below in Additional Information, would not be effective until January 2014.

This State is a full, participating member of the Streamlined Sales and Use Tax Agreement (SSUTA) and has adopted the provisions of that agreement into current sales tax law.

Sales tax holidays are temporary sales tax exemptions for certain items for a specified period. Section 322 of the Agreement sets forth the requirements for a member state to follow when authorizing "Sales Tax Holidays." The Agreement requires that a state provide at least 60

days' notice prior to the first day of the calendar quarter in which the exemption period will begin. States may not allow an exemption for an item unless it is specifically defined in the Library of Definitions. The language found in this bill in sections 1.a. and 1.b. refer to the term "Energy efficient product". This term is different from a similar term in the Library of Definitions where it uses the term, "Energy Star Qualified Products." (Emphasis added.) Under the SSUTA, only those products which have been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each such agency's requirements under the Energy Star® program are eligible to be exempt under a sales tax holiday in this area. A member state that wishes to exempt "Energy Star qualified products" during a tax holiday may 1) exempt all Energy Star Qualified Products, or 2) exempt specified Energy Star qualified Products, or 3) exempt specified classifications as categorized on the Energy Star product listing. The language in this section is not the same as that in the SSUTA and therefore, without an amendment to the bill's terms, it does not meet the standards for a sales tax holiday.

While the Commission understands the superficial appeal of these programs, the loss of revenue greatly outweighs the small benefits experienced by the purchasers. 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 sales tax holiday would save an individual purchaser a fairly insignificant sum. However, the cumulative loss of revenue to the State could be substantial. The Commission has not been presented with any compelling reasons to support of this proposed sales tax holiday.¹

Recommendation

The Commission opposes enactment of the bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 6

Commission Members **Abstaining**: 1

¹ N- Commission did not recommend this identical legislation in Assembly Bill 1854 on March 24, 2010)

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

Bill Number: A-3516

Date of Introduction: 12/06/13

Sponsor(s): Assemblywoman Wagner
Co-Sponsor(s):

Date of Consideration: 07/10/13

Identical Bill:

Committee: Assembly Budget Committee

Description

This bill would provide sales and use tax rebate for certain purchases made by, or on behalf of, individuals and small businesses affected by natural disasters.

Analysis

The response below is predicated upon Hurricane Sandy and the legislations assumed intent to compensate Sandy victims and future natural disaster victims as defined in the proposed legislation.

This bill proposes a sales tax refund program to reimburse taxpayers, or contractors acting on their behalf, for the sales tax charged on purchase of or services to construction materials, construction supplies, and construction equipment, the sales of carpeting and other flooring, heating and cooling systems, the purchase of durable domestic appliances, and consumer electronic devices (including repair and installation thereof) and the sales, maintenance and repair of motor vehicles which were damaged or destroyed by a natural disaster.

This is a broadly-written measure which is intended to provide a savings to those affected by the most damaging storm in this State's history.

A close examination of this initiative reveals that it may be an invitation to outright fraud. Some understanding of current sales tax law and how this measure would alter that law for disaster victims may help in understanding the problems with this measure.

Under current law materials and supplies are subject to tax. If contractors purchase materials and supplies for use in the installation or repair of real property, they may be performing capital improvements, defined as the installation of tangible personal property

which increases the capital value or useful life of the real property (land or buildings). The item(s) installed must be permanently attached to the real property. The labor to install capital improvements is exempt from tax under current law with the exception of the following: certain landscaping services, carpet and other floor covering installations, and hard-wired alarm or security system installations. The labor to repair or maintain real property is subject to tax.

This measure allows a rebate of tax to a contractor or a disaster victim for purchases of materials and supplies for both capital improvement work and repair work. Considering the amount of damages suffered by the disaster victims, many contractors may be legitimately involved with work on multiple properties during the period of exemption. It will be impossible to determine if all materials shown on invoices submitted to this agency by contractors were used to work on disaster affected homes, so long as those invoices were dated during the covered disaster period.

Damages suffered by homes insured for storm damage and/or homes covered under flood insurance policies should be compensable under those policies. Homeowner purchases made from reimbursed funds would be subject to tax. The expectation of a 7% state subsidy in the form as a rebate may prompt storm victims to be less judicious in their spending habits.

There are a number of specific problems associated with purchases of tangible personal property during the covered period, but it is worthwhile to focus on electronics purchases as an example of an opportunity to defraud the State.

It is unclear whether FEMA assessments will account for such items as televisions, stereos and the like. Anyone who purchases these big ticket items during the covered period could potentially submit a claim to receive a sales tax refund on that product regardless of whether they had that item prior to the hurricane.

Also, this measure allows a rebate of tax paid on sales of contractor equipment which includes big ticket items such as back hoes, dump trucks and cranes. The definition of "sale" includes leases and rentals. The bill goes even further to allow a rebate on charges to maintain or repair such equipment during the recovery period. However, the rebate can only be filed by a storm victim so it is unclear how this will benefit the storm victim since contractors would generally not charge customers for equipment (certainly not purchased equipment) and even if they did, they shouldn't charge sales tax to the storm victim.

There was a similar (but more limited) program in the late 1990s signed into law in the wake of Hurricane Floyd. It was nearly impossible to ascertain the legitimacy of many claims, other than they were documented by invoices dated during the then-covered period.

Finally, this proposal prevents lawmakers from proposing and adopting laws which address the specifics of potential future natural disasters. One piece of legislation may not necessarily be a “one size fits all” solution to future natural disasters.

The Commission has not been presented with any compelling reasons to support of this proposed sales tax refund program as it is too broad and potentially fertile for fraud. In addition, many of the victims, if not most, have been or would be compensated from the insurance money already received which would cover some, if not most of the cost of certain losses attributable to the disaster. Further, if this proposal, if enacted, would also present recording keeping issues and would limit actions that future lawmakers may wish to consider.

Recommendation

The Commission opposes enactment of the bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 6

Commission Members **Abstaining**: 1

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

Bill Number: S-2387

Date of Introduction: 12/17/13

Sponsor(s): Senator Gordon

Date of Consideration: 07/10/13

Co-Sponsor(s):

Identical Bill:

Committee: Senate Budget and Appropriations Committee

Description

This bill would provide sales and use tax rebate for certain purchases made by, or on behalf of, individuals and small businesses affected by natural disasters.

Analysis

The response below is predicated upon Hurricane Sandy and the legislations assumed intent to compensate Sandy victims and future natural disaster victims as defined in the proposed legislation.

This bill proposes a sales tax refund program to reimburse taxpayers, or contractors acting on their behalf, for the sales tax charged on purchase of or services to construction materials, construction supplies, and construction equipment, the sales of carpeting and other flooring, heating and cooling systems, the purchase of durable domestic appliances, and consumer electronic devices (including repair and installation thereof) and the sales, maintenance and repair of motor vehicles which were damaged or destroyed by a natural disaster.

This is a broadly-written measure which is intended to provide a savings to those affected by the most damaging storm in this State's history.

A close examination of this initiative reveals that it may be an invitation to outright fraud. Some understanding of current sales tax law and how this measure would alter that law for disaster victims may help in understanding the problems with this measure.

Under current law materials and supplies are subject to tax. If contractors purchase materials and supplies for use in the installation or repair of real property, they may be performing capital improvements, defined as the installation of tangible personal property

which increases the capital value or useful life of the real property (land or buildings). The item(s) installed must be permanently attached to the real property. The labor to install capital improvements is exempt from tax under current law with the exception of the following: certain landscaping services, carpet and other floor covering installations, and hard-wired alarm or security system installations. The labor to repair or maintain real property is subject to tax.

This measure allows a rebate of tax to a contractor or a disaster victim for purchases of materials and supplies for both capital improvement work and repair work.

Considering the amount of damage suffered by the disaster victims, many contractors may be legitimately involved with work on multiple properties during the period of exemption. It will be impossible for this agency to determine if all materials shown on invoices submitted to this agency were used on disaster affected homes. As long as those invoices were dated during the covered disaster period the Division will have to allow the rebate.

Damages suffered by homes insured for storm damage and/or homes covered under flood insurance policies should be compensable under those policies. Homeowner purchases made from reimbursed funds would be subject to tax. The expectation of a 7% state subsidy in the form of a rebate may prompt storm victims to be less judicious in their spending habits.

There are a number of specific problems associated with purchases of tangible personal property during the covered period, but it is worthwhile to focus on electronics purchases as an example of an opportunity to defraud the State.

It is unclear whether FEMA assessments will account for such items as televisions, stereos and the like. Anyone who purchases these big ticket items during the covered period could potentially submit a claim to receive a sales tax refund on that product regardless of whether they had that item prior to the storm.

Also, this measure allows a rebate of tax paid on sales of contractor equipment which includes big ticket items such as back hoes, dump trucks and cranes. The definition of "sale" includes leases and rentals. The bill goes even further to allow a rebate on charges to maintain or repair such equipment during the recovery period, however, the rebate can only be filed by a storm victim. It is unclear how this will benefit the storm victim since contractors would generally not charge customers for equipment (certainly not purchased equipment) and even if they did, they shouldn't charge sales tax to the storm victim.

There was a similar (but more limited) program in the late 1990s signed into law in the wake of Hurricane Floyd. It was nearly impossible to ascertain the legitimacy of many claims, other than they were documented by invoices dated during the then-covered period.

Finally, this proposal prevents lawmakers from proposing and adopting laws which address the specifics of potential future natural disasters. One piece of legislation may not necessarily be a “one size fits all” solution to future natural disasters.

The Commission has not been presented with any compelling reasons to support of this proposed sales tax refund program as it is too broad and potentially fertile for fraud. In addition, many of the victims, if not most, have been or would be compensated from the insurance money already received which would cover some, if not most of the cost of certain losses attributable to the disaster. Further, if this proposal, if enacted, would also present recording keeping issues and would limit actions that future lawmakers may wish to consider.

Recommendation

The Commission opposes enactment of the bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 6

Commission Members **Abstaining**: 1

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

Bill Number: A-3545

Date of Introduction: 12/06/12

Sponsor(s): Assemblyman Greenwald
Co-Sponsor(s):

Date of Consideration: 07/10/13

Identical Bill: S-2392

Committee: Assembly Budget Committee

Description

This bill would temporarily eliminate the imposition of sales tax on the sale of certain foods and beverages.

Analysis

This bill seeks to temporarily reduce the sales tax rate to 0% from December 31, 2012 through February 16, 2013 on prepared foods sold in restaurants, taverns, and or other establishments in the state or by caterers. In essence, the bill would create a sales tax holiday for these food service industries.

Proponents of this measure have likely recognized a significant decrease in business during the specified time period above. However, this agency finds it to be fiscally imprudent to adversely affect sales tax collections, a reliable State revenue source. If this measure became law, similarly-situated businesses in other industries would most likely seek temporary sales tax relief, thereby further eroding this revenue source.

Finally, as the effective dates set forth in this bill have passed, this bill is flawed as it would now be retroactive. A significant burden would be placed upon this agency if it was required to institute a refund program for the period proposed for the tax reduction. More importantly, the refunds would be granted to the business' customers, as the sales tax is imposed on their purchases. It is unclear how this would benefit any of the sellers of prepared foods.

Additional Information:

This State is a full, participating member of the Streamlined Sales and Use Tax Agreement (SSUTA) and has adopted the provisions of that agreement into current sales tax law.

Sales tax holidays are temporary sales tax exemptions for certain items for a specified period.

Section 322 of the Agreement sets forth the requirements for a member state to follow when authorizing "Sales Tax Holidays." The Agreement requires that a state provide at least 60 days' notice prior to the first day of the calendar quarter in which the exemption period will begin. If this bill became law on July 1, 2013, it would not meet that standard as the time frame has already passed.

Assuming that the bill becomes prospective, it could only be sanctioned under the Streamlined Sales and Use Tax Agreement with a 60 day notice and the holiday period must begin on the 1st day of a quarter. States may not allow an exemption for an item unless it is specifically defined in the Library of Definitions. In this bill, these items, defined as prepared food, are defined in the Library of Definitions. Therefore, prepared food could be considered for sales tax holiday.

However, the Commission has not been presented with any compelling reasons to support this proposal.

Recommendation

The Commission opposes enactment of the bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

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

Bill Number: S-2392

Date of Introduction: 12/17/12

Sponsor(s): Senator Weinberg
Co-Sponsor(s):

Date of Consideration: 07/10/13

Identical Bill: A-3545

Committee: Senate Budget and Appropriations Committee

Description

This bill would temporarily eliminate the imposition of sales tax on the sale of certain foods and beverages.

Analysis

This bill seeks to temporarily reduce the sales tax rate to 0% from December 31, 2012 through February 16, 2013 on prepared foods sold in restaurants, taverns, and or other establishments in the state or by caterers. In essence, the bill would create a sales tax holiday for these food service industries.

Proponents of this measure have likely recognized a significant decrease in business during the specified time period above. However, this agency finds it to be fiscally imprudent to adversely affect sales tax collections, a reliable State revenue source. If this measure became law, similarly-situated businesses in other industries would most likely seek temporary sales tax relief, thereby further eroding this revenue source.

Finally, as the effective dates set forth in this bill have passed, this bill is flawed as it would now be retroactive. A significant burden would be placed upon this agency if it was required to institute a refund program for the period proposed for the tax reduction. More importantly, the refunds would be granted to the business' customers, as the sales tax is imposed on their purchases. It is unclear how this would benefit any of the sellers of prepared foods.

Additional Information:

This State is a full, participating member of the Streamlined Sales and Use Tax Agreement (SSUTA) and has adopted the provisions of that agreement into current sales tax law.

Sales tax holidays are temporary sales tax exemptions for certain items for a specified period.

Section 322 of the Agreement sets forth the requirements for a member state to follow when authorizing "Sales Tax Holidays." The Agreement requires that a state provide at least 60 days' notice prior to the first day of the calendar quarter in which the exemption period will begin. If this bill became law on July 1, 2013, it would not meet that standard as the time frame has already passed.

Assuming that the bill becomes prospective, it could only be sanctioned under the Streamlined Sales and Use Tax Agreement with a 60 day notice and the holiday period must begin on the 1st day of a quarter. States may not allow an exemption for an item unless it is specifically defined in the Library of Definitions. In this bill, these items, defined as prepared food, are defined in the Library of Definitions. Therefore, prepared food could be considered for sales tax holiday.

However, the Commission has not been presented with any compelling reasons to support this proposal.

Recommendation

The Commission opposes enactment of the bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

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

Bill Number: A-3913

Date of Introduction: 03/07/13

Sponsor(s): Assemblyman Greenwald
Co-Sponsor(s):

Date of Consideration: 07/10/13

Identical Bill: S-2628

Committee: Assembly Telecommunications and Utilities Committee

Description

This bill would provide a New Jersey Rural Electric Cooperative Act.

Analysis

This measure specifically applies to New Jersey's only electric cooperative, Sussex Rural Electric Cooperative, Inc., currently serving 11,628 customers in that county. The exemption for the sale or provision of electricity set forth in N.J.S.A. 54:32B-8.46 would be extended to this entity. Additionally, this rural electric cooperative would be explicitly exempted from corporation business tax.

It would appear that passage of this measure does not extend benefits to this entity that are superior to what other exempted electricity producers enjoy. However, since this bill does only apply to one entity, the state constitutional prohibition against 'special legislation' may apply.

Public Comment

Comments of James Siglin

Chief Executive Officer

Sussex Rural Electric Cooperative

Submitted to

The Sales and Use Tax Review Commission

In Support of

The New Jersey Rural Electric Cooperative Act

(A.3913/S.2628)

July 10, 2013

My name is Jim Siglin. I have been the Chief Executive Officer of Sussex Rural Electric Cooperative since June 2007 and have been employed at the Co-op for 27 years.

Established in 1937, Sussex REC serves nearly 13,000 customers in parts of six communities in Sussex County with 168 customers in Orange County, New York, and Picatinny Arsenal. We have a total of 42 employees. Sussex REC is and will likely remain the only rural electric cooperative in New Jersey. It was established under the United States Department of Agriculture's Rural Utilities Service – formerly the Rural Electrification Administration (REA). It is not-for-profit. Every customer is an equal owner. It is controlled by a board of directors. Each board member must be a customer of the co-op representing various districts throughout the service area.

The New Jersey Rural Electric Cooperative Act (A.3913/S.2628) would, among other things, exempt the Co-op from taxes established under the public utility tax reform law of 1997. We believe this exemption is warranted as a matter of public policy. A look at tax treatment of co-ops in other states and other 'public power' utilities here in New Jersey supports our belief.

- There are nearly 1,000 rural electric co-ops in 46 states. Others are exempt from taxes on electricity under a model statute provided by the REA and enacted in the 1930s and 40s. Unfortunately, no such statute was enacted in New Jersey. Sussex was incorporated under statutes governing for-profit corporations and, therefore, is the only rural electric co-op subject to public utility taxes.*
- All 20 rural electric cooperatives in neighboring New York, Pennsylvania, Delaware and Maryland are exempt from sales taxes on electricity. These states enacted the REA model statute. The New Jersey Rural Electric Cooperative Act is modeled after the current Pennsylvania statute.*
- The bill would provide equal tax treatment of the Co-op in comparison with the other "public power" utilities in New Jersey. The others are operated as departments of local government by nine municipalities around the State.*
- The Cooperative is nearly identical to municipalities in terms of governance and operation. Like local government, the Co-op is not-for-profit. Like a local governing body, the Co-op is self-regulated by a board of directors elected from among its customers. All customers are equal owners.*
 - Sussex is not a public utility as defined under Title 48 of the Revised Statutes. It is not regulated by the BPU.*

Federal tax treatment of Sussex and our not-for-profit status offer strong support for the tax exemption provided under the legislation before you today.

- Sussex is exempt from federal income tax as a 501 c 12 corporation. The Co-op is required by IRS regulations to refund every penny of revenue that it receives in excess of the cost to provide service. The refunds go to every customer based upon the amount of electricity they purchased in any year they were a member of the Co-op.*
- Refunds are issued as finances allow. In 2012, we issued refunds in the amount of \$513,763 to 9,645 members for the year 1988. This year, we will issue refunds totaling \$500,000 to 9,764 customers for the years 1989 and 1990.*

- *Sussex REC pays no sales tax on any items purchased for use in the distribution of electricity.*
- *The Board of Public Utilities has recognized that the Co-op is different from regulated utilities in New Jersey. In a November 20, 1991 order (Docket AX 91111712) the BPU noted that Sussex is "somewhat unique" and may require separate tax status from the other utilities.*

Finally, while the tax exemption included in the legislation before you today would result in a small reduction in State utility tax revenue, it will provide a considerable rate decrease for our customers.

- *Based upon the average public utility tax payments made by the Co-op over the last three years, we estimate that the exemption would cost the State of New Jersey about \$1.7 million. The Tax and Revenue Outlook issued by the Office of Legislative Services in March of 2011 reported total utility tax revenues of about \$1.6 billion in 2010 and similar estimates for 2011 and 2012. While the annual amount paid by the Co-op represents just one-tenth of one percent (00.107%) of total utility tax revenues, it would mean an 8.8 percent rate reduction for Sussex' customers.*
- *The Cooperative has to borrow the money to pay its public utility taxes on the required schedule. In addition to the tax, the Co-op's customers must pay the carrying costs to borrow that money. Despite the phase out of the transition tax known as TEFA, the Co-op anticipates that without a tax exemption it must continue to borrow money to make the tax payments.*
- *The rate reduction that will result from the tax exemption will help all of our customers -- especially commercial/industrial customers served by Sussex (e.g. Ames Rubber, Mountain Creek, Hidden Valley, Township schools, Eastern Concrete, and mom-and-pop operations like the Highland Lakes General Store).*

We firmly believe that the tax exemption provided under this legislation is, as a matter of public policy, just and proper. We further believe that the benefits of such a policy far outweigh the relatively small amounts of revenue lost to the Treasury. We would be willing to accept an amendment that would provide for a phase out of the utility taxes paid by the Co-op.

We respectfully ask that the Commission endorse the New Jersey Rural Electric Cooperative Act.

The Commission

The Commission has not been presented with any compelling reasons to treat a rural cooperative differently. It was unclear why consumers needed this relief and allowing this policy would open the door for other cooperatives to seek similar treatment. For these reasons and the above analysis the Commission does not support this proposal.

Recommendation

The Commission opposes enactment of the bill.

Commission Members **For** Proposal: 1

Commission Members **Against** Proposal: 7

Commission Members **Abstaining**: 0

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

Bill Number: S-2628

Date of Introduction: 03/04/13

Sponsor(s): Assemblyman Greenwald
Co-Sponsor(s):

Date of Consideration: 07/10/13

Identical Bill: A-3913

Committee: Senate Economic Growth Committee

Description

This bill would provide a New Jersey Rural Electric Cooperative Act.

Analysis

This measure specifically applies to New Jersey's only electric cooperative, Sussex Rural Electric Cooperative, Inc., currently serving 11,628 customers in that county. The exemption for the sale or provision of electricity set forth in N.J.S.A. 54:32B-8.46 would be extended to this entity. Additionally, this rural electric cooperative would be explicitly exempted from corporation business tax.

It would appear that passage of this measure does not extend benefits to this entity that are superior to what other exempted electricity producers enjoy. However, since this bill does only apply to one entity, the state constitutional prohibition against 'special legislation' may apply.

The Commission has not been presented with any compelling reasons to support this proposal.

Recommendation

The Commission opposes enactment of the bill.

Commission Members **For** Proposal: 1

Commission Members **Against** Proposal: 7

Commission Members **Abstaining**: 0

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

Bill Number: A-3934

Date of Introduction: 03/07/13

Sponsor(s): Assemblyman Cryan
Co-Sponsor(s):

Date of Consideration: 07/10/13

Identical Bill: S-2622

Committee: Assembly Telecommunications and Utilities Committee

Description

This bill would require certain common areas and facilities of assisted living facilities to be generator ready, and it would provide related tax relief.

Analysis

This proposal would require all assisted living facilities in the State to be able to operate certain common areas and facilities with the use of alternative power generation devices. As an incentive, it would provide for a sales tax exemption for the purchase qualified generator ready wiring equipment to help offset the costs to be borne in effectuating its various provisions.

This very specific sales and use tax exemption for qualified generator ready wiring equipment will have very little budgetary impact; however it may result in claims by other parties affected by power interruptions caused by natural disasters to seek similar relief.

The Commission has not been presented with any compelling reasons to support this proposal.

Recommendation

The Commission opposes enactment of the bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

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

Bill Number: A-3934

Date of Introduction: 03/07/13

Sponsor(s): Senator Greenstein
Senator Connors

Date of Consideration: 07/10/13

Co-Sponsor(s):

Identical Bill: S-2622

Committee: Senate Health, Human Services and Senior Citizens Committee

Description

This bill would require certain common areas and facilities of assisted living facilities to be generator ready, and it would provide related tax relief.

Analysis

This proposal would require all assisted living facilities in the State to be able to operate certain common areas and facilities with the use of alternative power generation devices. As an incentive, it would provide for a sales tax exemption for the purchase qualified generator ready wiring equipment to help offset the costs to be borne in effectuating its various provisions.

This very specific sales and use tax exemption for qualified generator ready wiring equipment will have very little budgetary impact; however it may result in claims by other parties affected by power interruptions caused by natural disasters to seek similar relief.

The Commission has not been presented with any compelling reasons to support this proposal.

Recommendation

The Commission opposes enactment of the bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining:** 0

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

Bill Number: S: 2452

Date of Introduction: 01/08/13

Sponsor(s): Senator Pennacchio
Co-Sponsor(s):

Date of Consideration: 07/10/13

Identical Bill:

Committee: Senate Budget and Appropriations Committee

Description

This bill would provide sales and use tax rebate for certain purchases made by business affected by Hurricane Sandy.

Analysis

This bill proposes a sales tax refund program to reimburse businesses for the sales tax charged on purchases of or services to construction materials, construction supplies, and construction equipment; the sales of carpeting and other flooring, heating and cooling systems; the purchase of durable business appliances, and consumer electronic devices (including repair and installation thereof) and the sales, maintenance and repair of motor vehicles which were damaged or destroyed by Hurricane Sandy.

This is a broadly-written measure which is intended to provide a savings to those affected by one of the most damaging storm in this State's history; however, it could also encourage fraud and abuse.

Damages suffered by businesses insured for storm damage and/or business facilities covered under flood insurance policies should be compensable under those policies. Providing tax refunds to storm victims could be seen as a state-supported incentive program which may encourage people to make unnecessary purchases with an expectation of a 7% state subsidy.

Under current law, construction materials and supplies are subject to tax. If contractors or repairmen acting on behalf of storm victims purchase materials and supplies for use in the installation or repair of real property, they may be performing capital improvements, defined as the installation of tangible personal property which increases the capital value or useful life of the real property (land or buildings). The item(s) installed must be permanently attached to the real property. The labor to install capital improvements is exempt from tax under current law

with the exception of the following: certain landscaping services, carpet and other floor covering installations, and hard-wired alarm or security system installations.² The labor to repair or maintain real property is subject to tax.

This measure allows a rebate of tax to a contractor or storm victim for purchases of materials and supplies for both capital improvement work and repair work. Considering the amount of damages suffered by the storm victims, many contractors may be legitimately involved with work on multiple properties during the period of exemption. It will be impossible to determine if all materials shown on invoices submitted to this agency by contractors were used on jobs for Sandy-affected businesses. As long as the invoices are dated during the covered period, the Division will have to allow the tax rebate.

Routine service and repair expenses may apply to business machinery as described in sections 5 and 6 of the bill. It would be very difficult to determine whether the machinery was destroyed or damaged as a result of Hurricane Sandy if such purchases were made during the covered period.

Finally, this measure allows a rebate of tax paid on sales of contractor equipment which includes 'big ticket' items such as back hoes, dump trucks and cranes. The definition of "sale" includes leases and rentals. The bill goes further to allow a rebate on charges to maintain or repair such equipment during the recovery period. However, the rebate can only be filed by a storm victim so it is unclear how this will benefit the storm victim since contractors would generally not charge customers for equipment (certainly not purchased equipment) and even if they did, they shouldn't charge sales tax to the storm victim.

There was a similar but more limited program in the late 1990s signed into law in the wake of Hurricane Floyd. It was nearly impossible to ascertain the legitimacy of many claims. Claimants merely produced documents dated during the then-covered eligible period. It was very difficult for the State to dispute the legitimacy of such claims.

The Commission does not support this proposal.

Recommendation

The Commission opposes enactment of the bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

² <http://www.state.nj.us/treasury/taxation/pdf/pubs/sales/su2.pdf>

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

Bill Number: S: 2947

Date of Introduction: 06/06/13

Sponsor(s): Senator Pennacchio
Co-Sponsor(s):

Date of Consideration: 07/10/13

Identical Bill:

Committee: Senate Environmental and Energy Committee

Description

This bill would provide sales and use tax exemption for certain energy products and services for consumption at certain manufacturing facilities.

Analysis

This proposal would provide sales and use tax exemption for certain energy products and services used at certain manufacturing facilities.

Currently, raw materials used in the manufacture of goods for eventual sale to end consumers are not subject to the sales and use tax. This exemption is claimed by completing the New Jersey Resale Certificate and providing it to the seller of such materials.

The sales and use tax is a broad-based tax that is designed to raise revenue from the imposition of tax at a relatively low rate on a large amount of retail transactions. Exemptions from the tax greatly impact on the very nature of the tax and the requirements to raise revenue. The amount of revenue forgone by virtue of the proposed exemption will have to be derived from other sources. An exemption from sales and use tax for manufacturing facilities for certain energy products and services used at certain manufacturing facilities would save an individual entity a fairly significant sum every year. The cumulative loss of revenue requires the State to find other means of generating the revenue lost as a result of this exemption. Considering the State's current budgetary crisis, this bill is particularly troubling because manufacturers are among the largest users of electricity and natural gas.

Regardless of the merits of this program, enactment of this measure would compromise a reliable revenue source for the State. Any changes to the tax base would materially change the burden of all taxpayers and, therefore, should be carefully considered.

This measure is written very broadly and would make exemption requirements that others are not required to do. The exemption requested does not go to the production of the product and therefore should not be exempt. Although it is a concept that the members would not mind entertaining in the future, at the present time, the Commission does not support this proposal.

Recommendation

The Commission opposes enactment of the bill.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining**: 0

