
SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: A-3856

DATE OF INTRODUCTION: 10/23/2014

SPONSOR: Assemblyman Andrzejczak
Assemblyman Johnson

DATE OF CONSIDERATION: 12/10/2014

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Assembly Commerce and Economic Development

DESCRIPTION

Provides maximum sales and use tax imposition amount for sales and uses of boats and vessels; establishes grace period for imposition of use tax on certain boats and vessels used by resident purchasers.

ANALYSIS

This bill proposes to provide a maximum limit on the amount of sales and use tax that can be imposed and collected on the sale or use of a boat or other vessel, and establishes a limited grace period for the imposition of use tax on certain boats and vessels that are purchased by New Jersey residents out-of-State, for use out-of-State and are subsequently used on a temporary basis within this State.

The \$20,000 maximum limitation on the imposition of tax would only be applicable to taxpayers purchasing non-commercial boats and vessels, including motorboats, sailboats, and other yachts and cruisers. These taxpayers are not eligible for the exemption currently allowed for sales and uses of commercial ships and vessels. This bill would establish a limited grace period for the imposition of tax on the use of certain boats and vessels by resident purchasers by providing that the use within this State of a boat or other vessel for temporary periods, not totaling more than 30 calendar days in a calendar year, will not be subject to the State's compensating use tax.

The purpose of this bill is to provide support to the marine industry in this State by encouraging sales of new boats and vessels, and to allow New Jersey residents an annual 30 day window to bring the

boat into New Jersey without incurring a use tax obligation. However, this bill provides disparate treatment to similarly situated taxpayers. It will also create a decrease in sales and use tax revenues that the State cannot afford to lose. This bill increases financial assistance to urban enterprise zones (UEZs) over a seven-year period, by dedicating (from the beginning of Fiscal Year 2016 to the end of Fiscal Year 2022) one half of one penny for every dollar of sales tax revenues, as increased annually, for sales of goods and services in UEZs, to the accounts held in the Urban Enterprise Zone.

RECOMMENDATION

The Commission opposes enactment of this bill.

Commission **For** Proposal: 0

Commission Members **Against** Proposal: 8

Commission Members **Abstaining** Proposal: 0

SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: A-3643

DATE OF INTRODUCTION: 09/14/2014

SPONSOR: Assemblyman Casagrande

DATE OF CONSIDERATION: 12/10/2014

CO-SPONSORS:

IDENTICAL BILL: S-2837

COMMITTEE: Assembly Commerce and Economic Development

Description

"Innovate New Jersey Act"; establishes tax-free business incubators at institutions of higher education.

Analysis

This proposed bill, entitled the "Innovate New Jersey Act," creates a program that would allow public and private colleges, universities, and community colleges in New Jersey to apply to have vacant space or land on their campuses designated as tax-free areas for the purpose of creating incubators for certain new and expanding businesses. The specified area designated for a business incubator may be no more than 150,000 square feet at any one college or university and no more than 1.5 million square feet of business incubator space authorized for the State. Participating colleges or universities may not utilize space that is currently being used for academic purposes to open a business incubator. Business incubator programs which currently exist and meet the program's qualifications criteria may apply for approval under the program.

If this proposal became law, it would invite court challenge. Colleges and universities often are situated on lands which cross municipal tax jurisdictional lines (see *Morris Twp. v. LP Associates*, 10 N.J. Tax 240 (Tax 1988) so, at minimum there could be disputes amongst jurisdictions. The courts have ruled on other long term abatement matters and it stands to reason that this law would be challenged, either in concept or in implementation.

Public Comment

None

Recommendation

The Commission opposes enactment of the bill.

Commission For Proposal: 0

Commission Members Against Proposal: 8

Commission Members Abstaining Proposal: 0

SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: A-3609

DATE OF INTRODUCTION: 09/11/2014

SPONSOR: Assemblyman Dancer

DATE OF CONSIDERATION: 12/03/2014

CO-SPONSORS:

IDENTICAL BILL:

COMMITTEE: Assembly Agriculture and Natural Resources Committee

DESCRIPTION

Provides sales and use tax exemption for sales of certain game birds to certain persons licensed to operate semiwild shooting preserves.

ANALYSIS

This bill proposes to exempt tax for sales of certain game birds to certain persons licensed to operate semi-wild shooting preserves

For sales tax purposes, a hunting preserve is not considered a reseller of the birds that it stocks for hunters. Rather, the preserve is the retail purchaser of the birds and currently must pay tax on those used for hunting purposes because it is an overhead expense to the preserve.

This exemption benefits a specialized group and does not promote horizontal equity. Horizontal equity mandates that sales tax legislation be broadly based and taxes similar transactions, persons or things in a similar manner. Tax treatment should be uniform from one taxpayer to another. This proposal gives a benefit to a certain class of taxpayers for purchases of property used in the operation of their business while taxpayers in other businesses do not receive such an exemption for property used in the operation of their business. In general, the Sales and Use Tax Act does not exempt the purchase of property used by a taxpayer in the operation of their business; these purchases are simply part of the taxpayer's overhead and are considered a cost of doing business. The creation of an exemption based on a taxpayer's employment could encourage other occupations to pursue the same exemption from purchases for their work and professional development.

ADDITIONAL INFORMATION:

Public Comment

None

Recommendation

The Commission opposes enactment of the bill.

Commission For Proposal: 8

Commission Members Against Proposal:

Commission Members Abstaining Proposal: 0

SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: A-3220

DATE OF INTRODUCTION: 05/15/2014

SPONSOR: Assemblyman Andrzejczak

DATE OF CONSIDERATION: 12/10/2015

COMMITTEE: Assembly Agriculture and Natural Resources Committee

DESCRIPTION

This bill concerns promotion and protection of agriculture.

ANALYSIS

This proposed bill contains several provisions concerning the promotion and protection of agriculture.

Sections 2 through 5 of the bill clarify the sales tax collection responsibilities of horse-boarding businesses in New Jersey. Specifically, the taxable service of "furnishing space for storage" is redefined to exclude from tax charges for the lease or rental of certain stable stalls for the boarding of horses, ponies, mules, donkeys, or hinnies. Under the bill, charges for boarding, maintaining, and caring for horses, ponies, mules, donkeys, and hinnies that are boarded in certain stable stalls by a person engaged in the business of such boarding are likewise exempt from the sales tax. These sections would take effect immediately, but apply retroactively to October 1, 2006. By providing an exemption for horse boarding and related services, this bill eliminates confusion and provides clarity to New Jersey businesses.

The service of boarding horses is deemed to be storing tangible personal property not held for sale in the regular course of business and is therefore taxable pursuant to N.J.S.A. 54:32B-3 (b) (3). If a customer simply rents a horse stall without receiving other services, the transaction is treated as a rental of storage space, which is taxable pursuant to N.J.S.A. 54:32B-3 (b) (3).

Advocates for the horse boarding industry and the general public may not understand that horses (and other animals, such as dogs) are considered tangible personal property. The storage thereof is subjected to tax in the same manner as the storage of other personal property. It would create an inequity to treat a horse, pony, mule, donkey, or hinny differently than dogs or other animals.

Additional Information:

None

Public Comment

No

RECOMMENDATION

The Commission opposes enactment of the bill.

Commission For Proposal: 0

Commission Members Against Proposal: 7

Commission Members Abstaining Proposal: 1

SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: A-3126

DATE OF INTRODUCTION: 05/08/2014

SPONSOR: Senator Bucco

DATE OF CONSIDERATION: 05/27/2015

COMMITTEE: Assembly Agriculture and Natural Resources Committee

DESCRIPTION

This bill clarifies sales tax collection responsibilities of horse-boarding businesses in New Jersey; makes change retroactive to October 1, 2006.

ANAYLSIS

This bill proposes to exempt charges for the boarding of horses as well as all related services (for example, feeding, watering, grooming, bathing, etc.). The boarding of horses and those related services have been subject to sales tax for quite some time. Considering the size of the industry, the exemption for horse-boarding and the related services could result in a significant loss of future revenue to the State.

Effective October 1, 2006, amendments made to the New Jersey Sales and Use Tax Act (P.L. 2006, c. 44) imposed tax on the furnishing of space for storage of tangible personal property by a person engaged in the business of furnishing space for such storage. "Space for storage" means secure areas, such as rooms, units, compartments or containers, whether accessible from outside or from within a building, that are designated for the use of a customer and wherein the customer has free access within reasonable business hours, or upon reasonable notice to the furnisher of space for storage, to store and retrieve property. Space for storage does not include the lease or rental of an entire building, such as a warehouse or airplane hanger.

The service of boarding horses is deemed to be storing tangible personal property not held for sale in the regular course of business and is therefore taxable pursuant to N.J.S.A. 54:32B-3 (b) (3). If a customer simply rents a horse stall without receiving other services, the transaction is treated as a rental of storage space, which is taxable pursuant to N.J.S.A. 54:32B-3 (b) (3).

The exemptions in the bill are retroactive to October 1, 2006 and allow a 2-year window for a claimant to file for a refund, notwithstanding that the statute of limitations is 4-years from the date of payment of the tax. The Division will interpret the provision in Section 4(b) regarding "forms furnished by the Director" to refer to the general refund claim form (A-3730) available on the Division's website. In addition, the general refund statute allows the Division 6 months from the date of the claim to process it without the payment of interest; the bill reduces that period to 90 days for these specific refund claims. This shortened period will likely result in the payment of interest on several refund claims, since workloads will have to be redirected to prioritize the refunds authorized herein.

Advocates for the horse boarding industry and the general public may not understand that horses (and

other animals, such as dogs) are considered tangible personal property. The storage thereof is subjected to tax in the same manner as the storage of other personal property. It would create an inequity to treat services to the boarding of a horse, pony, mule, donkey, or hinny differently than dogs or other animals.

RECOMMENDATION

The Commission recommends enactment of the bill.

Commission For Proposal: 0

Commission Members Against Proposal: 7

Commission Members Abstaining Proposal: 1

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

BILL NUMBER: S-1749

DATE OF INTRODUCTION: 03/17/2017

Identical Bill: S-1043

SPONSOR: Senator Allen

DATE OF CONSIDERATION: 12/10/2014

COMMITTEE: Senate Military and Veterans' Affairs Committee

DESCRIPTION

This bill exempts storage facility space furnished to active duty military personnel from sales and use tax.

ANALYSIS

Although the Division of Taxation recognizes the important service that the military provides the citizenry, the approval of such legislation will only hasten the call for similar exemptions, further undermining and reducing State revenues while adding to the State's structural deficit.

This proposal would only apply during the three month period previous to the period of active duty or training and ending three months after such active duty. Despite the good intentions of this bill, storage facility providers will be burdened by the additional requirement to extend the exemption to only certain qualified military personnel and only for a limited time period. Record keeping and verification requirements implicit in this measure are also potentially burdensome.

The bill does not provide any requirement that qualified military personnel applying for this exemption would have to present certain documentation in order to receive this proposed exemption.

The 1998 imposition of sales tax on natural gas and electricity and related utility service was enacted with the intention that the tax base was to replicate the tax base that existed for the repealed Gross Receipts and Franchise Tax. Specific sales tax exemption provisions, such as the manufacturing exemption, were amended in order to clarify that the exemption did not apply to purchases of energy and utility service. Thus, manufacturers have been subject to sales tax on purchases of the energy and utility service used to operate production equipment.

PUBLIC COMMENT

None

RECOMMENDATION

The Commission opposes enactment of the bill.

Commission For Proposal: 0

Commission Members Against Proposal: 8

Commission Members Abstaining Proposal: 0

SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: S-1799

DATE OF INTRODUCTION: 03/17/2017

Identical Bill: A-1520

SPONSOR: Senator Allen

DATE OF CONSIDERATION: 12/10/2014

COMMITTEE: Senate health, Human Services and Senior Citizens Committee

DESCRIPTION

This bill Eliminates imposition of sales and use tax on charges for initiation fees, membership fees, or dues for access to or use of certain health and fitness clubs and organizations. .

ANALYSIS

In 2006, the State Legislature amended the Sales and Use Tax to expand its imposition on a number of services and products not previously subjected to the tax, in order to increase revenue. Included in the expansion were the fees and dues which are the subject of this bill. If enacted, this proposal would reduce a predictable stream of revenue to the State's General Fund.

It should be noted that deleting the words "health and fitness" from subjectivity to the sales and use tax but retaining the imposition of the tax on "athletic" clubs would present enforcement difficulties. As a private gym can be considered to be either an "athletic" or a "health and fitness" club, many taxpayers will find it confusing. A number of gyms are actually referred to as "athletic clubs." The Division of Taxation would not be able to meaningfully distinguish between a "health and fitness club" and an "athletic club." All similar situated facilities would be entitled to the exemption.

It is recommended that the word "athletic" also be stricken to ensure that this bill could be properly administered by agency staff.

PUBLIC COMMENT

None

RECOMMENDATION

The Commission opposes enactment of the bill.

Commission For Proposal: 0

Commission Members Against Proposal: 8

Commission Members Abstaining Proposal: 0

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

BILL NUMBER: S-2509

DATE OF INTRODUCTION: 10/16/2014

Identical Bill: A-1520

SPONSOR: Senator Singer , Senator Sarlo

DATE OF CONSIDERATION: 12/10/2014

COMMITTEE: Senate Economic Growth Committee

DESCRIPTION

This bill changes State assistance to urban enterprise zones over seven years by increasing reduced sales tax in enterprise zones and dedicating increase to zone municipalities.

ANALYSIS

This bill increases financial assistance to urban enterprise zones (UEZs) over a seven-year period, by dedicating from the beginning of Fiscal Year 2016 to the end of Fiscal Year 2022, one half of one penny for every dollar of sales tax revenues, collected on goods and services in UEZs would be dedicated to the accounts held in the Urban Enterprise Zone Assistance Fund (UEZ Assistance Fund) in the name of the respective municipalities having UEZs. At the end of the seven year period all sales tax revenues in UEZ will go into the General Fund. This proposal deletes the schedule of financial assistance to UEZs and municipalities having UEZs as provided in current law, but continues the 20-year original designation period as well as the one-time 16-year extension period for qualified UEZs. The bill increases the sales tax in UEZs from 3.5 percent to seven percent over the seven-year period to provide funding to UEZs from the UEZ Assistance Fund.

This bill would require UEZs to contribute an increasing percentage from at least 10 percent in Fiscal Year 2016, to at least 40 percent in Fiscal Year 2020 and thereafter, of UEZ funds to be spent on eligible capital projects and public improvements in UEZs and grant and loan programs for qualified UEZ businesses.

The purpose of the UEZ program is to revitalize designated urban communities and stimulate their growth by encouraging businesses to develop and create private sector jobs through public and private investment. The UEZ program currently provides economic assistance to 37 economically distressed cities throughout the State. These zones offer a decreased sales tax rate of 3.5, which is intended to encourage patronage in these zones. The municipalities in which these zones are currently located reap the benefit of the increase in sales. It is the responsibility of the municipality to provide these UEZ businesses with opportunity of capital projects and additional assistance. This proposal goes beyond the objective of the UEZ program and completely changes the function of the program. Any

additional assistance needed should be sought through other resources.

PUBLIC COMMENT

None

RECOMMENDATION

The Commission opposes enactment of the bill.

Commission For Proposal: 0

Commission Members Against Proposal: 8

Commission Members Abstaining Proposal: 0

SALES AND USE TAX REVIEW COMMISSION

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

BILL NUMBER: S-1731

DATE OF INTRODUCTION: 03/17/2014

Identical Bill:

SPONSOR: Senator Holzapfel

DATE OF CONSIDERATION: 12/10/2014

COMMITTEE: Senate Economic Growth Committee

DESCRIPTION

This bill Authorizes creation of 33rd urban enterprise zone in Borough of Seaside Heights.

ANALYSIS

The Sales and Use Tax Review Commission, authorized under C. 54:32B-37 produced a Special Report "Analysis of New Jersey's Urban Enterprise Program" and included that report in its 2004 Annual Report. The report indicated that the program was rife with abuses including contractors parking trailers in Urban Enterprise Zones and using these locations to purchase goods used throughout New Jersey.

Governor Christie has received an even more comprehensive report which may result in future changes to the program.

In this uncertain economic climate, the loss of tax revenue to the State treasury by further expanding a program which has never proven that it meets the worthwhile goal of economic stimulation of depressed areas appears unwise.

PUBLIC COMMENT

None

RECOMMENDATION

The Commission opposes enactment of the bill.

Commission For Proposal: 0

Commission Members Against Proposal: 8

Commission Members Abstaining Proposal: 0

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

BILL NUMBER: S-1738

DATE OF INTRODUCTION: 03/17/2014

Identical Bill: A-855

SPONSOR: Senator Sarlo

DATE OF CONSIDERATION: 12/10/2014

COMMITTEE: Senate Economic Growth Committee

DESCRIPTION

This bill authorizes creation of urban enterprise zones in Garfield, Harrison and Keansburg as well as a joint urban enterprise zone in Cliffside Park and Fairview.

ANALYSIS

This bill would amend the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60, et. seq., to allow the creation of new Urban Enterprise Zones in Garfield, Harrison, Keansburg, and a joint Urban Enterprise Zone in Cliffside Park and Fairview.

The Urban Enterprise Zone Program has expanded in ways that the original drafters never intended. There are now thirty-three zones, thirty-six if this measure becomes law. Urban Enterprise Zone-impacted business districts (areas that have been “negatively impacted” by the presence of two or more adjacent Urban Enterprise Zones) have been created where reduced sales tax is collected.

The Sales and Use Tax Review Commission studies the effectiveness of the UEZ program in the 1009s and Governor Christie received a comprehensive study whose intent was similar in 2010. There has been no evidence proffered that these zones bring prosperity to depressed areas.

Since the inception of the Urban Enterprise Zones Act, competitors located outside of the zones have complained of and have perceived unfair tax advantages for sellers located within the zones. There have been many complaints of fraud submitted to the Urban Enterprise Zone Authority and to the Division of Taxation by sellers located outside of the zones, charging that Urban Enterprise Zone sellers purchase items tax-free and then transport the property to other locations for use outside of the zone. Permitting more sellers the entitlement of a tax exemption would exacerbate the already tenuous foundation upon which the Act is based.

PUBLIC COMMENT

None

RECOMMENDATION

The Commission opposes enactment of the bill.

Commission For Proposal: 0

Commission Members Against Proposal: 8

Commission Members Abstaining Proposal: 0