

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

BILL NUMBER:

A-2421

DATE OF INTRODUCTION:

June 6, 2002

SPONSOR:

Assemblyman Garrett

DATE OF RECOMMENDATION:

July 30, 2002

IDENTICAL BILL:

COMMITTEE:

Assembly Agriculture and Natural Resources Committee

DESCRIPTION:

This bill exempts purchases of certain residential water use reduction equipment, devices and appliances from sales and use tax. Such equipment, devices and appliances would include but not be limited to, front-loading washing machines, low-flush toilets, low-flow showerheads and water-saving aerators on sink faucets.

ANALYSIS:

This bill attempts to use a sales tax exemption as a tool for encouraging what is deemed to be desirable behavior (manufacturing, selling, purchasing and using equipment, devices and appliances that conserve water). As a matter of policy, this Commission does not support the use of tax exemption legislation as a tool for encouraging socially desirable behavior. The Commission generally prefers sales and use tax legislation to be more "neutral" in its impact on the behavior of vendors and consumers. Even if this exemption is intended to serve a socially useful purpose by promoting water conservation, the Commission simply does not favor using tax legislation as a social, political or environmental policy tool.

This exemption does not promote the goal of horizontal equity as it only benefits a specialized group. Tax treatment should be uniform from one taxpayer to another and sales tax legislation should be broadly based and tax similar transactions, persons or things in a similar manner. It is unclear whether the exemption would apply only to single family homeowners, or be extended to include owners of apartment dwellings, boarding homes or those offering other similar long-term rental or leasing arrangements. Owners of apartment dwellings (or other residential rental properties) as well as commercial owners may seek to qualify for the exemption as well as.

Such ambiguity leads to subjective interpretation making the bill difficult to administer and enforce. Without clearly defining the types of residential water use reduction equipment, devices, or appliances that qualify for exemption, and for whom the exemption is intended to benefit, vendors would be overly burdened by having to determine what types of residential water use reduction merchandise would qualify for exemption. In addition, without specific guidelines, there would be no way to discern whether such equipment, devices, or appliances were purchased solely for residential use which would lead to abusive and fraudulent practices.

Consumers of water reduction use equipment, devices or appliances who are all ready concerned about the depletion of valuable resources such as water, will most likely participate in water reduction measures voluntarily, without enticement. Perhaps the proponents' objective to reduce water use as a conservation measure would be easier met by including commercial water use as well. The focus should be redirected to provide incentives for the manufacturers to raise the industry standard for all water use equipment, devices and appliances where such equipment is required to reduce water to reasonable usage limits whether the water is used residential or commercially.

This bill would significantly increase the administrative burden of the Division. The Division would have to draft and distribute new rules and regulations as well as provide notices and other publications to vendors of residential water use reduction equipment, devices and appliances. The Division would also have to revise sales tax publications, draft and distribute technical bulletins and notifications to announce the new exemption to the public and industry-related organizations, answer letters, telephone and e-mail inquiries.

In addition, the loss of revenue to the State would be substantial.

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

COMMISSION MEMBERS FOR PROPOSAL: 0

COMMISSION MEMBERS AGAINST PROPOSAL: 7

COMMISSION MEMBERS ABSTAINING: 0

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