

# **SALES AND USE TAX REVIEW COMMISSION**

## **RECOMMENDATION PURSUANT TO P.L. 1999, C. 416**

**BILL NUMBER: A-2724**

**DATE OF  
INTRODUCTION: 9/21/00**

**SPONSOR: Assemblyman Bateman**

**DATE OF  
RECOMMENDATION: 12/18/00**

**IDENTICAL BILL: S-1529**

**COMMITTEE: Assembly Commerce, Tourism, Gaming and Military and Veterans' Affairs**

### **DESCRIPTION:**

These bills authorize the designation of an additional Urban Enterprise Zone (UEZ), which must be in a county of the second class.

### **ANALYSIS:**

This legislation exacerbates the ongoing problem created by the increasing number of communities that have been designated urban enterprise zones under the UEZ program. As more zones are authorized, surrounding communities claim a negative economic impact that causes them to seek similar tax advantages. With 28 UEZ municipalities spread across the state, New Jersey has now become a patchwork of local tax rates. Along with enforcement and policy problems, the spread of such reduced rate tax areas are affecting the administrative simplicity the state once enjoyed with one state-wide sales tax rate and no local tax rates.

A destructive cycle of economic cannibalization is inevitable when government creates a favorable tax situation in multiple districts scattered across a densely populated state like New Jersey. Assuming a somewhat inelastic level of retail purchases, as the number of zones increase, so does the negative impact of shifting economic growth from one municipality to another by means of state tax expenditures through the device of urban enterprise zones.

Not only does this legislation fail to demonstrate an economic justification for zone expansion, but it also increases the State's exposure to litigation that may invalidate the UEZ Program on the grounds that it violates the Federal Constitution. 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 UEZ 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 are then 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-UEZ 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 UEZ vendors.

Under the Commerce Clause, New Jersey must take the position that a New Jersey purchaser would be able to claim a 3% use tax rate if delivery is taken within a 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 zones only makes this situation worse.

**RECOMMENDATION:** The Commission does not recommend enactment of these Bills.

**COMMISSION MEMBERS FOR PROPOSAL:** 0

**COMMISSION MEMBERS AGAINST PROPOSAL:** 7

**COMMISSION MEMBERS ABSTAINING:** 0

**COMMISSION MEETING DATE:** 11/28/00