

# **SALES AND USE TAX REVIEW COMMISSION**

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

**BILL NUMBER: A-2736**

**DATE OF  
INTRODUCTION: 9/25/00**

**SPONSOR: Assemblyman Zecker**

**DATE OF  
RECOMMENDATION: 12/24/00**

**IDENTICAL BILL:**

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

### **DESCRIPTION:**

This bill amends the New Jersey Urban Enterprise Zone Act to allow the designation of a UEZ-impacted business zone, which is described as a business district with urban enterprise zones adjacent to it on two or more sides. Businesses within the newly designated area would be permitted to collect sales tax at 50% of the 6% state rate, which is the same rate as the surrounding businesses that are in an urban enterprise zone.

### **ANALYSIS:**

This bill is a response to the destructive cycle of economic cannibalization that is occurring across the state as a direct result of the Urban Enterprise Zone Act and the 28 municipalities which enjoy a favorable tax position vis a vis non-zone municipalities. 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. The business district of Clifton, which is surrounded by businesses in the Urban Enterprise Zones of Passaic and Paterson, finds that it is no longer able to compete for customers or attract new business.

Information presented to the Commission indicates that the presence of the UEZ's, coupled with competition from local malls and "big box" retail centers have combined to bring about a loss of employment and ratables, resulting in abandoned, blighted properties. The legislative remedy proposed in the bill is to allow Clifton businesses in the area most affected to also charge 3% sales tax, which may help Clifton but furthers the domino effect on nearby communities.

The legislation 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 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 3% zones, only makes this situation worse.

**RECOMMENDATION:**

The Commission does not recommend enactment of this bill.

**COMMISSION MEMBERS FOR PROPOSAL: 0**

**COMMISSION MEMBERS AGAINST PROPOSAL: 7**

**COMMISSION MEMBERS ABSTAINING: 0**

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