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

BILL NUMBER:
S-1232

DATE OF INTRODUCTION:
January 30, 2006

SPONSOR:
Senator Bucco

DATE OF RECOMMENDATION:
May 10, 2006

IDENTICAL BILL:
S-1484

COMMITTEE:
Senate Economic Growth Committee

DESCRIPTION:
This Bill establishes a sales tax holiday in New Jersey from December 10 through December 25, 2006 on most sales of tangible personal property.

ANALYSIS:
This Bill provides for a sales tax holiday on receipts from every retail sale in this State of tangible personal property to an individual purchaser for non-business use, but not including retail sales of motor vehicles, alcoholic beverages, cigarettes and energy. The proposal establishes the date of the holiday as December 10 through December 25, 2006. An "individual purchaser" is defined as an individual who pays the purchase price and takes delivery in this State on the date of a sales tax holiday or who places an order and pays the purchase price on the date of a sales tax holiday even if the delivery in this State takes place after the date of a sales tax holiday.

Although the purchase of motor vehicles is specifically not allowed to be tax exempt during the holiday period, many other big-ticket items remain eligible. For instance airplanes, computers, boats, jewelry, electronic equipment, furniture and artwork are still eligible. To the extent that this tax holiday will be applicable to some major purchases, it is foreseeable that many purchasers will plan to make their purchase of expensive items during the sales tax holiday. All this accomplishes is to divert sales from subsequent months, leading to the false impression that tax holidays are a major retail success.

The limitation of the exemption to individual purchasers for non-business use would be difficult to administer. Retailers cannot reasonably be expected to recognize whether a particular individual is making a purchase for business or personal use, and it is foreseeable that, like the exemption for paper products for home use only, this personal-use exemption will be widely misused and easily abused by consumers making purchases for their small businesses. Retailers would object to being required to determine whether every sale was "non-business" or to obtain an exemption certificate from every purchaser during the exclusion period.

Under the Sales and Use Tax Act, ordinarily the imposition of sales and use tax is dependent on delivery of the item, not on payment for the item. Under the Bill, however, the holiday exemption is applicable both to sales in which both payment and delivery take place during the holiday, and to sales in which payment is made during the holiday but delivery takes place later. Using the time of payment to determine the time of sale is inconsistent with the Division of Taxation's consistent, historic position that liability for the tax on sales of tangible personal property accrues when the merchandise is delivered. The Bill's use of two different, alternative methods of determining the time of sale (either date of delivery and payment, or date of payment only) would make this exemption very difficult to administer. Additional problems are likely to arise in determining the payment date on credit card and check purchases, which are actually paid at some point later than the date when the customer presents his check or signs a credit card slip. Allowing exemption for items delivered after the exclusion period makes the proposal susceptible to fraud because retailers could alter their receipts to use an order and payment date that are within the exclusion period, even when they were not truly within the period in order to prevent losing a customer. This temptation would be highest with sellers of big-ticket items.

Presumably the holiday will only affect sales within New Jersey and not use tax imposed on items purchased from outside of New Jersey. Thus, the proposal is contrary to the Commerce Clause of the United States Constitution, under which states cannot discriminate against interstate commerce. If the tax holiday is limited to sales physically taking place in New Jersey, this will create a federal constitutional problem, since use tax is imposed when tangible property purchased out-of-State from non-New Jersey mail order vendors is used in or delivered to New Jersey. The State cannot lawfully exempt a sale of an item taking place within New Jersey while at the same time, impose tax on a comparable item purchased from an out-of-State source. This scheme whereby an in-State sale would not be subject to any tax, while the full use tax of 6% would be imposed on interstate purchases used in New Jersey is discrimination against interstate commerce and would not likely survive constitutional scrutiny.

It is unlikely that consumers would enjoy a true savings as a result of a tax holiday which merely eliminates the 6% sales tax. Sales offered by the retailer, generally at a percentage far greater than 6%, result in much greater savings for the customer. Confident that the public will be enticed to the stores by the prospect of a tax-free holiday, retailers may actually raise their "sale" prices during a tax holiday or elect not to discount regular prices if retailers are confident that the public will be drawn into stores by the idea of a tax holiday. Rather than provide a savings for consumers, the Bill could easily result in increased profit for vendors. Thus, consumers may not realize that they are actually paying more for the merchandise during the holiday, which merely eliminates the 6% tax, and not realize that they are not enjoying a real tax savings.

The Bill's tax benefit increases proportionate to the buying power of the taxpayer. Thus, the Bill would give a considerably greater tax benefit to wealthier people since presumably they buy considerably more than low or moderate income people. The holiday would therefore be regressive in its impact, since it would give a far greater tax benefit to those who could afford to purchase expensive items for their personal use. In addition, the dates designated for the holiday are the retail industry's busiest periods, thus it appears counter intuitive to stimulate consumer spending during this time.

Legislation like this has the potential to cause a major disruption of the State's tax administration operations. Press releases need to be written to explain the scope and duration of the sales tax holiday, staff in the tax information services need to be trained, and the State would need to be prepared to handle a huge increase in information inquiries from vendors and consumers before, during and after the holiday. To handle the expected increase in volume, it might need to hire new temporary personnel, who would need training time, work space, and of course salaries. In the alternative, the rush of calls might have to be handled by existing personnel, resulting in congested phone lines, long "hold" times, and consequently unhappy callers. The inquiries would not end abruptly as soon as the holiday is over, since many taxpayers who missed the deadline for a tax-free purchase would most likely call or write to express their dissatisfaction with the inadequate publicity for the holiday or the timing of the holiday or to seek exceptions or extensions of the final cut-off date. Taxpayers who purchased such property immediately before a holiday would also doubtlessly feel aggrieved. Thus, a tax holiday intended as a benefit is likely to become a public relations disaster for the State.

The sales tax holiday would further alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer, and is generally perceived as economically neutral and "fair." 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, some of it unintended, to the State could be substantial. The proposal could result in significant revenue loss, particularly since many people may elect to schedule their purchase of a high-priced item during the tax holiday in order to enjoy the tax savings. This leaves the State to find other means of generating the moneys lost as a result of an expanded exemption.

Finally, the enactment of this Bill may violate the provisions of the Streamlined Sales and Use Tax Agreement (P.L. 2005, c.126).

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

COMMISSION MEMBERS FOR PROPOSAL: 0

COMMISSION MEMBERS AGAINST PROPOSAL: 8

COMMISSION MEMBERS ABSTAINING: 0

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