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

BILL NUMBER:
S-2380

DATE OF INTRODUCTION:
March 10, 2003

SPONSORS:
Senator James
Senator Gill

DATE OF RECOMMENDATION:
April 8, 2003

IDENTICAL BILL:

COMMITTEE:
Senate Economic Growth, Agriculture and Tourism Committee

DESCRIPTION:
The bill would allow urban enterprise zone and urban enterprise zone-impacted business district qualified vendors to charge 3% sales tax on motor vehicles.

ANALYSIS:
This bill is proposed to amend the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60, et. seq., to allow urban enterprise zone and urban enterprise zone-impacted business district qualified vendors located in a municipality with a population greater than 250,000 and less than 3000,000 in a county of the first class with a population greater than 775,000 and less than 825,000 to charge reduced sales tax on sales of motor vehicles.

Although the Statement to the bill clarifies that it would only apply to the City of Newark due to the limitations on population size, this bill would significantly disrupt the equity of New Jersey's retail auto industry. Car and truck dealers that cannot charge 3% sales tax will be at a great disadvantage. The dealerships located outside the urban enterprise zone would not survive. The demand for vehicles from the enterprise zone qualified auto dealers would be substantial, robbing development from elsewhere for the benefit of the urban enterprise zone.

Since the sales tax revenue paid to a qualified vendor in an urban enterprise zone and in an urban enterprise-impacted business district is remitted to the municipality and not to the State, the loss of revenue would be substantial. The loss of revenue to the State is enhanced by the fact that motor vehicles are big-ticket items and the largest single block of sales tax revenue for the State. If this proposal were to go into effect, all revenue previously collected on sales of motor vehicles in enterprise zones and districts would be lost. Moreover, since the proposal encourages motor vehicle dealers to locate in an urban enterprise zone or district, the revenue impact could be significantly greater if a large number of dealers relocate and charge 3% tax.

The adoption of this proposal creates a potential federal constitutional problem. New Jersey imposes use tax on items that are purchased out-of-state for use in New Jersey but sales tax was not collected or was collected at a rate less than the New Jersey sales tax rate. Constitutionally, the use tax in an area must be imposed at the same rate as the sales tax is imposed within the same area. A constitutional issue may result from vehicles purchased out-of-state for use in the urban enterprise zone. When registering, the State would require sales tax to be paid at the rate of 6%, while the same vehicle purchased at the urban enterprise zone or district would only be subject to 3% sales tax. Therefore, if certain businesses in a zone may charge 3% sales tax, a payer of use tax within the zone may assert that the use tax must be imposed at 3%, instead of 6%.

Additionally, the bill would also lead to inequitable results in regard to the casual sale of used vehicles which are subject to 6% sales tax. In the urban enterprise zone cities, buyers of privately-sold cars will complain when they have to pay 6% sales tax, compared to paying 3% sales tax for a vehicle from a nearby used car dealer.

Further, varying tax rates from municipality to municipality threatens economic neutrality and horizontal equity within the State. The doctrine of economic neutrality promotes a system of taxation that has a limited effect or impact on the marketplace and avoids policy that benefits one segment of the market at the expense of another. The goal, upon which the Urban Enterprise Zone Act is based, is to bring new businesses and consumers to selected economically depressed areas. In doing this, the surrounding municipalities from which business and consumers are drawn suffer negative economic effects. Horizontal equity refers to the concept that tax treatment should be uniform from one transaction to another. The Act creates a lower sales tax rate for transactions involving sales of motor vehicles within the zones and districts. This disparate treatment of certain transactions violates this doctrine. Adding more types of sales under the purview of the 3% sales tax rate would exacerbate the already tenuous foundation upon which the Act is based.

Finally, the Committee recommends that a review of the Urban Enterprise Zone program and its effectiveness is necessary to determine the best course of action in relation to future modifications or expansions of the program in New Jersey. To date, there has not been a comprehensive review of the program by an independent body. As a result, substantive data concerning the actual success of the Urban Enterprise Zone program has not been provided to the Legislature.

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

COMMISSION MEMBERS FOR PROPOSAL: 0

COMMISSION MEMBERS AGAINST PROPOSAL: 6

COMMISSION MEMBERS ABSTAINING: 1

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