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HEARINGS: Yes

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Public hearing before Senate Community and Urban Affairs Committee: testimony concerning the recommended modifications to the Urban Enterprise Zone (UEZ) program proposed in the governor's fy 2011 budget: [April 12, 2010, Trenton, New Jersey]

By New Jersey. Legislature. Senate. Community and Urban Affairs Committee.

[974.90 E19, 2010](#)

LAW/RWH

P.L.2011, CHAPTER 28, *approved March 1, 2011*
Senate Committee Substitute for
Assembly, No. 1559

1 AN ACT eliminating the use of the rebate procedure for claims of
2 sales and use tax exemption made in connection with certain
3 sales to certain Urban Enterprise Zone qualified businesses,
4 amending P.L.1983, c.303.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8

9 1. Section 20 of P.L.1983, c.303 (C.52:27H-79) is amended to
10 read as follows:

11 20. a. **[Retail]** Receipts from retail sales of tangible personal
12 property (except motor vehicles and energy) and sales of services
13 (except telecommunications services and utility services) to a
14 qualified business for the exclusive use or consumption of such
15 business within an enterprise zone are exempt from the taxes
16 imposed under the "Sales and Use Tax Act," P.L.1966, c.30
17 (C.54:32B-1 et seq.).

18 b. **[Notwithstanding the provisions of subsection a. of this**
19 **section, the seller shall charge and collect from a purchaser that is**
20 **not a small qualified business the tax at the rate then in effect, and**
21 **the tax shall be refunded to the purchaser by the filing, within one**
22 **year following the date of sale, of a claim with the New Jersey**
23 **Division of Taxation for a refund of sales and use taxes paid for the**
24 **goods and materials. Proof of claim for refund shall be made by the**
25 **submission of auditable receipts and such other documentation as**
26 **the Director of the Division of Taxation may require.]** (Deleted by
27 amendment, P.L. , c.) (pending before the Legislature as this
28 bill)

29 c. As used in this section:

30 "Qualified business" includes a **[business that becomes]** person
31 who is certified as a qualified business by the [time the refund
32 application] authority on or before the date a claim for refund is
33 made and filed with the Director of the Division of Taxation in the
34 Department of the Treasury pursuant to subsection [b.] e. of this
35 section [; and

36 "Small qualified business" means a qualified business that has
37 been determined and certified by the director to have had less than
38 \$10,000,000 in annual gross receipts in that business's prior annual
39 tax period].

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 d. ~~【The director shall submit to the Senate Legislative
2 Oversight Committee and the Assembly Regulatory Oversight
3 Committee any rules or regulations to effectuate amendments made
4 to this section by P.L.2006, c.34 that are proposed for publication in
5 the New Jersey Register. The director shall evaluate the
6 effectiveness of the amendments made to this section by P.L.2006,
7 c.34 and report any findings and recommendations regarding the
8 amendments to the Senate Legislative Oversight Committee and the
9 Assembly Regulatory Oversight Committee before the Governor
10 presents a budget proposal for Fiscal Year 2008.】 (Deleted by
11 amendment, P.L. , c.) (pending before the Legislature as this
12 bill)~~

13 e. (1) Notwithstanding the provisions of section 20 of
14 P.L.1966, c.30 (C.54:32B-20) and the provisions of R.S.54:49-14,
15 the Director of the Division of Taxation in the Department of the
16 Treasury shall refund to a person who is a qualified business the
17 amount of any sales tax or any use tax paid by the person in
18 connection with that person's purchase of tangible personal
19 property or services that is exempt, pursuant to subsection a. of this
20 section, from the taxes imposed by P.L.1966, c.30 (C.54:32B-1 et
21 seq.) if the person who is a qualified business makes and files a
22 claim for refund with the director within one year of the date the
23 payment of tax for purchase is made.

24 (2) A person who is a qualified business shall make and file a
25 claim for refund on such forms, and accompanied by auditable
26 receipts and such other documentation, as the director may
27 prescribe.

28 (cf: P.L.2008, c.118, s.1)

29

30 2. This act shall take effect immediately; provided however,
31 that section 1 shall remain inoperative until the first day of the first
32 month next following the date of enactment.

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Eliminates use of rebate procedure for claims of sales and use tax
38 exemption made in connection with certain sales to certain UEZ
39 qualified businesses.

ASSEMBLY, No. 1559

STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Assemblywoman PAMELA R. LAMPITT

District 6 (Camden)

Assemblyman ALBERT COUTINHO

District 29 (Essex and Union)

SYNOPSIS

Allows point of sale sales tax exemption for certain UEZ business purchases made by certain zone-located qualified businesses.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT allowing a point of sale sales tax exemption for certain
2 urban enterprise zone business purchases made by certain zone-
3 located qualified businesses, amending P.L.1983, c.303.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 20 of P.L.1983, c.303 (C.52:27H-79) is amended to
9 read as follows:

10 20. a. Retail sales of tangible personal property (except motor
11 vehicles and energy) and sales of services (except
12 telecommunications and utility services) to a qualified business for
13 the exclusive use or consumption of such business within an
14 enterprise zone are exempt from the taxes imposed under the "Sales
15 and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

16 b. Notwithstanding the provisions of subsection a. of this
17 section, the seller shall charge and collect from a purchaser that is
18 not a small qualified business or a zone-located qualified business
19 the tax at the rate then in effect, and the tax shall be refunded to the
20 purchaser by the filing, within one year following the date of sale,
21 of a claim with the **[New Jersey]** Director of the Division of
22 Taxation in the Department of the Treasury for a refund of sales and
23 use taxes paid for the **[goods and materials]** tangible personal
24 property and services. Proof of claim for refund shall be made by
25 the submission of auditable receipts and such other documentation
26 as the **[Director of the Division of Taxation]** director may require.

27 c. As used in this section:

28 "Qualified business" includes a business that becomes qualified
29 by the time the refund application is filed pursuant to subsection b.
30 of this section; **[and]**

31 "Small qualified business" means a qualified business that has
32 been determined and certified by the director to have had less than
33 \$10,000,000 in annual gross receipts in that business's prior annual
34 tax period; and

35 "Zone-located qualified business" means a qualified business
36 that has been determined and certified by the director to have a
37 business location or locations only within an enterprise zone;
38 provided however, that if a qualified business is in an affiliated
39 group, as defined by section 1504 of the federal Internal Revenue
40 Code of 1986, 26 U.S.C. s.1504, or a controlled group of
41 corporations, as defined by section 1563 of the federal Internal
42 Revenue Code of 1986, 26 U.S.C. s.1563, any other business in the
43 group that is in the same line of business as the zone-located
44 qualified business shall only have one business location, which
45 location is within an enterprise zone.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 d. (1) The director shall submit to the Senate Legislative
2 Oversight Committee and the Assembly Regulatory Oversight
3 Committee any rules or regulations to effectuate amendments made
4 to this section by P.L.2006, c.34 that are proposed for publication in
5 the New Jersey Register. The director shall evaluate the
6 effectiveness of the amendments made to this section by P.L.2006,
7 c.34 and report any findings and recommendations regarding the
8 amendments to the Senate Legislative Oversight Committee and the
9 Assembly Regulatory Oversight Committee before the Governor
10 presents a budget proposal for Fiscal Year 2008.

11 (2) The director shall submit to the Senate Budget and
12 Appropriations Committee and the Assembly Budget Committee
13 any rules or regulations to effectuate amendments made to this
14 section by P.L. , c. (pending before the Legislature as this bill)
15 that are proposed for publication in the New Jersey Register. The
16 director shall evaluate the effectiveness of the amendments made to
17 this section by P.L. , c. (pending before the Legislature as this
18 bill) and report any findings and recommendations regarding the
19 amendments to the Legislature, pursuant to section 2 of P.L.1991,
20 c.164 (C.52:14-19.1), before the Governor presents a budget
21 proposal for fiscal year 2012.

22 (cf: P.L.2008, c.118, s.1)

23

24 2. This act shall take effect immediately and apply to sales or
25 services made or rendered on or after the first day of the third
26 month next following the date of enactment.

27

28

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STATEMENT

30

31 This bill broadens the class of businesses that are excluded from
32 the sales tax rebate procedure established under the Urban
33 Enterprise Zone (UEZ) sales tax rebate program by allowing certain
34 zone-located qualified businesses to make certain tax exempt
35 business purchases at the point of sale.

36 Under current law, sales of tangible personal property, except
37 motor vehicles and energy, and sales of services, except
38 telecommunications and utilities, to a qualified business for the
39 exclusive use or consumption of that business within a UEZ are
40 exempt from the sales and use tax at the point of sale if the business
41 is a "small qualified business" with annual gross receipts of less
42 than \$10,000,000. Qualified UEZ businesses with annual gross
43 receipts equal to or greater than \$10,000,000 are also eligible for
44 the exemption, but are required to pay or remit the applicable sales
45 or use tax on qualified purchases and submit a claim for refund to
46 the Division of Taxation in the Department of the Treasury within
47 one year of the date of the transaction.

A1559 LAMPITT, COUTINHO

4

1 This bill extends the point of sale sales tax exemption to zone-
2 located qualified businesses. Under its provisions, businesses that
3 have been determined and certified by the Director of the Division
4 of Taxation in the Department of the Treasury to have a business
5 location or locations exclusively within a UEZ are eligible to forgo
6 the rebate process, regardless of the size or the amount of annual
7 gross receipts generated by the business during the prior annual tax
8 period.

9 The UEZ changes provided by the bill are intended to increase
10 the number and expand the types of businesses eligible to receive
11 the benefits of tax exempt purchases at the point of sale. The rebate
12 procedure established under P.L.2006, c.34 has imposed an
13 administrative burden and added to the financial hardship of cash-
14 strapped UEZ businesses during the current economic decline.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1559

STATE OF NEW JERSEY

DATED: JUNE 10, 2010

The Assembly Commerce and Economic Development Committee reports favorably Assembly Bill No. 1559.

This bill broadens the class of businesses that are excluded from the sales tax rebate procedure established under the Urban Enterprise Zone (UEZ) sales tax rebate program by allowing certain zone-located qualified businesses to make certain tax exempt business purchases at the point of sale.

Under current law, sales of tangible personal property, except motor vehicles and energy, and sales of services, except telecommunications and utilities, to a qualified business for the exclusive use or consumption of that business within a UEZ are exempt from the sales and use tax at the point of sale if the business is a "small qualified business" with annual gross receipts of less than \$10,000,000. Qualified UEZ businesses with annual gross receipts equal to or greater than \$10,000,000 are also eligible for the exemption, but are required to pay or remit the applicable sales or use tax on qualified purchases and submit a claim for refund to the Division of Taxation in the Department of the Treasury within one year of the date of the transaction.

This bill extends the point of sale sales tax exemption to zone-located qualified businesses. Under its provisions, businesses that have been determined and certified by the Director of the Division of Taxation in the Department of the Treasury to have a business location or locations exclusively within a UEZ are eligible to forgo the rebate process, regardless of the size or the amount of annual gross receipts generated by the business during the prior annual tax period.

The UEZ changes provided by the bill are intended to increase the number and expand the types of businesses eligible to receive the benefits of tax exempt purchases at the point of sale. The rebate procedure established under P.L.2006, c.34 has imposed an administrative burden and added to the financial hardship of cash-strapped UEZ businesses during the current economic decline.

This bill was pre-filed for introduction in the 2010-2011 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 1559
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: JULY 23, 2010

SUMMARY

- Synopsis:** Allows point of sale sales tax exemption for certain UEZ business purchases made by certain zone-located qualified businesses.
- Type of Impact:** Annually Recurring Revenue Loss to the State General Fund, the State Enterprise Zone Assistance Fund, and Local Urban Enterprise Zone Authorities and Annually Recurring Reduction in Administrative Expenses to the State Enterprise Zone Assistance Fund.
- Agencies Affected:** Department of the Treasury;
Local Urban Enterprise Zone Authorities.

Office of Legislative Services Estimate

| Fiscal Impact | <u>Annual Impact</u> |
|--|------------------------------------|
| State Administrative Cost Reduction | Indeterminate - See comments below |
| State Revenue Loss | Indeterminate - See comments below |
| Local Revenue Loss | Indeterminate - See comments below |

- The Office of Legislative Services (OLS) cannot quantify the bill's fiscal impact, as it lacks the data upon which to make a reliable estimate.
- The bill would produce an indeterminate revenue loss to the State General Fund, the State Enterprise Zone Assistance Fund, and local Urban Enterprise Zone Authorities. There may also be an indeterminate, limited reduction in State administrative costs to the extent that the Division of Taxation processes fewer sales tax refund requests.

BILL DESCRIPTION

Assembly Bill No. 1559 of 2010 broadens the class of businesses that are excluded from the sales tax rebate procedure established under the Urban Enterprise Zone (UEZ) sales tax rebate program by allowing certain zone-located qualified businesses to make certain tax exempt business purchases at the point of sale.

Under current law, sales of tangible personal property, except motor vehicles and energy, and sales of services, except telecommunications and utilities, to a qualified business for the

exclusive use or consumption of that business within a UEZ are exempt from the sales and use tax at the point of sale if the business is a “small qualified business” with annual gross receipts of less than \$10,000,000. Qualified UEZ businesses with annual gross receipts equal to or greater than \$10,000,000 are also eligible for the exemption, but are required to pay or remit the applicable sales or use tax on qualified purchases and submit a claim for refund to the Division of Taxation in the Department of the Treasury within one year of the date of the transaction.

This bill extends the point of sale sales tax exemption to zone-located qualified businesses. Under its provisions, businesses that have been determined and certified by the Director of the Division of Taxation in the Department of the Treasury to have a business location or locations exclusively within a UEZ are eligible to forgo the rebate process, regardless of the size or the amount of annual gross receipts generated by the business during the prior annual tax period.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS cannot quantify the bill’s fiscal impact, as it lacks the data upon which to make a reliable estimate. The bill would produce an indeterminate revenue loss to the State General Fund, the State Enterprise Zone Assistance Fund, and local Urban Enterprise Zone Authorities. There may also be an indeterminate, limited reduction in State administrative costs to the extent that the Division of Taxation processes fewer sales tax refund requests.

The bill’s potential revenue losses would occur due to the reduced tax enforcement opportunity of the Division of Taxation when reviewing sales tax refund requests by qualified UEZ businesses. Under current law, qualified businesses with annual gross receipts greater than \$10,000,000 must pay sales tax on certain business purchases, and can subsequently apply to the Division for a sales tax refund for any exempt purchases. The refund mechanism is a means by which the Division can deter erroneous or fraudulent sales tax exemption claims. This bill would broaden the number of businesses exempt from the point-of-sale tax requirement, reduce the number of refunds claimed, and accordingly reduce the Division’s sales tax enforcement capability in these cases.

In prior Legislative Sessions, the OLS was also unable to quantify the potential revenue losses for related legislation that increased the UEZ point-of-sale tax exemption threshold from \$1,000,000 in annual business gross receipts to \$3,000,000 (P.L.2007, c.328), and further increased the threshold to \$10,000,000 (P.L.2008, c.118). Then as now, accurate data on the potential reduction in tax enforcement was not available.

Section: Revenue, Finance and Appropriations

*Analyst: Martin Poethke
Lead Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

A1559

3

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-6 et seq.).

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 1559

STATE OF NEW JERSEY

DATED: DECEMBER 8, 2010

The Senate Budget and Appropriations Committee reports favorably a Senate Committee Substitute for Assembly Bill No. 1559.

This substitute largely eliminates the refund procedure that was established for certain sales of sales and use tax-exempt property and services to certain Urban Enterprise Zone (UEZ) qualified businesses, in accordance with P.L.2006, c.34, to permit qualified businesses that are not small qualified businesses to receive the benefits of the exemption at the point of sale.

Current law permits certain businesses that are certified as qualified businesses by the Urban Enterprise Zone Authority to purchase tangible personal property, except motor vehicles and energy, and services, except telecommunications services and utility services, exempt from the sales and use tax, if the property or services purchased by the qualified business are purchased for the exclusive use or consumption of that business within an enterprise zone. Since 2006, however, qualified businesses that fail to fall within the parameters of a "small qualified business" must pay tax on purchases of eligible property and services at the point of sale and then file a claim for refund with the Division of Taxation in the Department of the Treasury for the amount of tax determined to be paid.

This refund procedure was established as a means to mitigate suspected fraud and abuse associated with the exemption, and to permit new businesses to receive the benefits of the exemption on certain purchases made before the business is certified as a qualified business. When P.L.2006, c.34 was implemented, the Executive projected the procedure would net, to the State, an additional \$46 million of revenue in State fiscal year 2007.

These figures were never substantiated, and the State never allocated resources necessary to implement and enforce the refund procedure. Moreover, the procedure imposes an administrative burden on businesses. Qualified businesses that are not a small qualified business must make and file certain paperwork along with certain auditable receipts to receive a refund for purchases of property and services that, by law, are exempt from the sales and use tax.

The elimination of this rebate procedure for qualified businesses will alleviate the administrative burden on qualified businesses that are not small qualified businesses, and allow the State to realign its resources with more critical tax administration and compliance efforts. Under the substitute, all qualified businesses will be eligible to receive the benefits of the exemption at the point of sale, regardless of annual gross receipts generated in the prior annual tax period.

The elimination of the refund procedure for qualified businesses will not, however, affect that portion of the procedure that applies to businesses not yet certified as qualified businesses. The substitute retains the current procedure whereby businesses that pay tax on purchases of property and services used, for example, in the initial building or equipping of a business are permitted to file a claim for refund for tax associated with eligible purchases after the business is certified as a qualified business by the Urban Enterprise Zone Authority. Under current law, claims for refund associated with eligible purchases must be made and filed with the Division of Taxation after a business is certified as a qualified business, but within one year of the date the purchase is made.

This substitute is identical to Senate Bill No. 2132, as also reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) is unable to quantify the fiscal impact of the substitute; it lacks data necessary to make a reliable estimate.

The OLS notes that the elimination of the rebate procedure for qualified businesses may result in an indeterminate reduction of certain State administrative costs. The State may experience a limited reduction in administrative costs due to the need to review and process fewer refund requests. Under the substitute, more businesses will be eligible to forgo the rebate procedure and receive the benefit of the exemption at the point of sale.

However, the OLS notes that the substitute may produce an indeterminate loss of State and local revenues. The modification to the current refund procedure will reduce the tax enforcement opportunities of the State to review and analyze requests for refund. If more qualified businesses are eligible to forgo the refund procedure, the State will have fewer opportunities to identify and deter erroneous and fraudulent claims of sales and use tax exemption.

LEGISLATIVE FISCAL ESTIMATE
SENATE COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1559
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: JANUARY 13, 2011

SUMMARY

- Synopsis:** Allows point of sale sales tax exemption for certain UEZ business purchases made by certain zone-located qualified businesses.
- Type of Impact:** Annually Recurring Revenue Loss to the State General Fund, the State Enterprise Zone Assistance Fund, and Local Urban Enterprise Zone Authorities and Annually Recurring Reduction in Administrative Expenses to the State Enterprise Zone Assistance Fund.
- Agencies Affected:** Department of the Treasury;
Local Urban Enterprise Zone Authorities.

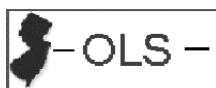
Office of Legislative Services Estimate

| Fiscal Impact | <u>Annual Impact</u> |
|--|------------------------------------|
| State Administrative Cost Reduction | Indeterminate – See comments below |
| State Revenue Loss | Indeterminate – See comments below |
| Local Revenue Loss | Indeterminate – See comments below |

- The Office of Legislative Services (OLS) cannot quantify the bill’s fiscal impact, as it lacks the data upon which to make a reliable estimate.
- The bill would produce an indeterminate revenue loss to the State General Fund, the State Enterprise Zone Assistance Fund, and local Urban Enterprise Zone Authorities. There may also be an indeterminate, limited reduction in State administrative costs to the extent that the Division of Taxation processes fewer sales tax refund requests.

BILL DESCRIPTION

The Senate Committee Substitute for Assembly Bill No. 1559 of 2010 broadens the class of businesses that are excluded from the sales tax rebate procedure established under the Urban



Enterprise Zone (UEZ) sales tax rebate program by allowing certain zone-located qualified businesses to make certain tax exempt business purchases at the point of sale.

Under current law, sales of tangible personal property, except motor vehicles and energy, and sales of services, except telecommunications and utilities, to a qualified business for the exclusive use or consumption of that business within a UEZ are exempt from the sales and use tax at the point of sale if the business is a “small qualified business” with annual gross receipts of less than \$10,000,000. Qualified UEZ businesses with annual gross receipts equal to or greater than \$10,000,000 are also eligible for the exemption, but are required to pay or remit the applicable sales or use tax on qualified purchases and submit a claim for refund to the Division of Taxation in the Department of the Treasury within one year of the date of the transaction.

This bill extends the point of sale sales tax exemption to zone-located qualified businesses. Under its provisions, businesses that have been determined and certified by the Director of the Division of Taxation in the Department of the Treasury to have a business location or locations exclusively within a UEZ are eligible to forgo the rebate process, regardless of the size or the amount of annual gross receipts generated by the business during the prior annual tax period.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS cannot quantify the bill’s fiscal impact, as it lacks the data upon which to make a reliable estimate. The bill would produce an indeterminate revenue loss to the State General Fund, the State Enterprise Zone Assistance Fund, and local Urban Enterprise Zone Authorities. There may also be an indeterminate, limited reduction in State administrative costs to the extent that the Division of Taxation processes fewer sales tax refund requests.

The bill’s potential revenue losses would occur due to the reduced tax enforcement opportunity of the Division of Taxation when reviewing sales tax refund requests by qualified UEZ businesses. Under current law, qualified businesses with annual gross receipts greater than \$10,000,000 must pay sales tax on certain business purchases, and can subsequently apply to the Division for a sales tax refund for any exempt purchases. The refund mechanism is a means by which the Division can deter erroneous or fraudulent sales tax exemption claims. This bill would broaden the number of businesses exempt from the point-of-sale tax requirement, reduce the number of refunds claimed, and accordingly reduce the Division’s sales tax enforcement capability in these cases.

In Fiscal Estimates from prior Legislative Sessions, the OLS was also unable to quantify the potential revenue losses for related legislation that increased the UEZ point-of-sale tax exemption threshold from \$1,000,000 in annual business gross receipts to \$3,000,000 (P.L.2007, c.328), and further increased the threshold to \$10,000,000 (P.L.2008, c.118). Then as now, accurate data on the potential reduction in tax enforcement was not available.

SCS for A1559

3

Section: Revenue, Finance and Appropriations

*Analyst: Martin Poethke
Lead Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 2132

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 24, 2010

Sponsored by:

Senator JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

Senator JIM WHELAN

District 2 (Atlantic)

Co-Sponsored by:

Senator Stack

SYNOPSIS

Allows point of sale sales tax exemption for certain UEZ business purchases made by certain zone-located qualified businesses.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/10/2010)

1 AN ACT allowing a point of sale sales tax exemption for certain
2 urban enterprise zone business purchases made by certain zone-
3 located qualified businesses, amending P.L.1983, c.303.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Section 20 of P.L.1983, c.303 (C.52:27H-79) is amended to
9 read as follows:

10 20. a. Retail sales of tangible personal property (except motor
11 vehicles and energy) and sales of services (except
12 telecommunications and utility services) to a qualified business for
13 the exclusive use or consumption of such business within an
14 enterprise zone are exempt from the taxes imposed under the "Sales
15 and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

16 b. Notwithstanding the provisions of subsection a. of this
17 section, the seller shall charge and collect from a purchaser that is
18 not a small qualified business or a zone-located qualified business
19 the tax at the rate then in effect, and the tax shall be refunded to the
20 purchaser by the filing, within one year following the date of sale,
21 of a claim with the **[New Jersey]** Director of the Division of
22 Taxation in the Department of the Treasury for a refund of sales and
23 use taxes paid for the **[goods and materials]** tangible personal
24 property and services. Proof of claim for refund shall be made by
25 the submission of auditable receipts and such other documentation
26 as the **[Director of the Division of Taxation]** director may require.

27 c. As used in this section:

28 "Qualified business" includes a business that becomes qualified
29 by the time the refund application is filed pursuant to subsection b.
30 of this section; **[and]**

31 "Small qualified business" means a qualified business that has
32 been determined and certified by the director to have had less than
33 \$10,000,000 in annual gross receipts in that business's prior annual
34 tax period; and

35 "Zone-located qualified business" means a qualified business
36 that has been determined and certified by the director to have a
37 business location or locations only within an enterprise zone;
38 provided however, that if a qualified business is in an affiliated
39 group, as defined by section 1504 of the federal Internal Revenue
40 Code of 1986, 26U.S.C. s.1504, or a controlled group of
41 corporations, as defined by section 1563 of the federal Internal
42 Revenue Code of 1986, 26U.S.C. s.1563, any other business in the
43 group that is in the same line of business as the zone-located
44 qualified business shall only have one business location, which
45 location is within an enterprise zone.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 d. (1) The director shall submit to the Senate Legislative
2 Oversight Committee and the Assembly Regulatory Oversight
3 Committee any rules or regulations to effectuate amendments made
4 to this section by P.L.2006, c.34 that are proposed for publication in
5 the New Jersey Register. The director shall evaluate the
6 effectiveness of the amendments made to this section by P.L.2006,
7 c.34 and report any findings and recommendations regarding the
8 amendments to the Senate Legislative Oversight Committee and the
9 Assembly Regulatory Oversight Committee before the Governor
10 presents a budget proposal for Fiscal Year 2008.

11 (2) The director shall submit to the Senate Budget and
12 Appropriations Committee and the Assembly Budget Committee
13 any rules or regulations to effectuate amendments made to this
14 section by P.L. , c. (pending before the Legislature as this bill)
15 that are proposed for publication in the New Jersey Register. The
16 director shall evaluate the effectiveness of the amendments made to
17 this section by P.L. , c. (pending before the Legislature as this
18 bill) and report any findings and recommendations regarding the
19 amendments to the Legislature, pursuant to section 2 of P.L.1991,
20 c.164 (C.52:14-19.1), before the Governor presents a budget
21 proposal for fiscal year 2012.

22 (cf: P.L.2008, c.118, s.1)

23

24 2. This act shall take effect immediately and apply to sales or
25 services made or rendered on or after the first day of the third
26 month next following the date of enactment.

27

28

29

STATEMENT

30

31 This bill broadens the class of businesses that are excluded from
32 the sales tax rebate procedure established in connection with the
33 sales and use tax exemption for sales of certain goods and services
34 to certain Urban Enterprise Zone (UEZ) qualified businesses by
35 allowing zone-located qualified businesses to make certain tax
36 exempt business purchases at the point of sale.

37 Under current law, sales of tangible personal property, except
38 motor vehicles and energy, and sale of services, except
39 telecommunications and utilities, to a qualified business for the
40 exclusive use or consumption of that business within a UEZ are
41 exempt from the sales and use tax at the point of sale if the business
42 is a "small qualified business" with annual gross receipts of less
43 than \$10,000,000. UEZ qualified businesses with annual gross
44 receipts equal to or greater than \$10,000,000 that are not a "small
45 qualified business" are eligible for the exemption, but are required
46 to pay tax on the tax-exempt goods or services at the point of sale
47 and apply to the Division of Taxation in the Department of Treasury
48 for a refund of the amount of tax paid on their purchase.

1 This bill extends the point of sale exemption to zone-located
2 qualified businesses so that small qualified businesses and qualified
3 businesses located exclusively within a UEZ are eligible to forgo
4 the rebate process and make tax-exempt business purchases at the
5 point of sale. For purposes of the bill, a “zone-located qualified
6 businesses” is a qualified business that is determined and certified
7 by the Director of the Division of Taxation to have a business
8 location or locations exclusively within a UEZ, provided that if a
9 qualified business is in an affiliated group or a controlled group of
10 corporations, as defined by the federal Internal Revenue Code, any
11 other business in the group that is in the same line of business as the
12 zone-located qualified business must only have one business
13 location, which location is within a UEZ.

14 The bill requires the Director of the Division of Taxation to
15 submit to the Senate Budget and Appropriations Committee and the
16 Assembly Budget Committee any rules or regulations that are
17 necessary to permit zone-located qualified businesses to make tax
18 exempt business purchases at the point of sale and are proposed for
19 publication in the New Jersey Register, and requires the director to
20 make a report, along with any findings and recommendations,
21 regarding the effectiveness of allowing an additional class of
22 businesses to forgo the rebate procedure. Under the bill, the report
23 must be submitted to the Legislature before the Governor’s annual
24 budget message is presented to the Legislature for State Fiscal Year
25 2012.

26 Collectively, the changes provided by the bill are intended to
27 increase the number and expand the types of businesses eligible to
28 make tax exempt business purchases at the point of sale. The rebate
29 process established under P.L.2006, c.34 has imposed an
30 administrative burden on businesses and added to the financial
31 hardship of cash-strapped UEZ businesses during the current
32 economic decline.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2132**

STATE OF NEW JERSEY

DATED: DECEMBER 8, 2010

The Senate Budget and Appropriations Committee reports favorably a Senate Committee Substitute for Senate Bill No. 2132.

This substitute largely eliminates the refund procedure that was established for certain sales of sales and use tax-exempt property and services to certain Urban Enterprise Zone (UEZ) qualified businesses, in accordance with P.L.2006, c.34, to permit qualified businesses that are not small qualified businesses to receive the benefits of the exemption at the point of sale.

Current law permits certain businesses that are certified as qualified businesses by the Urban Enterprise Zone Authority to purchase tangible personal property, except motor vehicles and energy, and services, except telecommunications services and utility services, exempt from the sales and use tax, if the property or services purchased by the qualified business are purchased for the exclusive use or consumption of that business within an enterprise zone. Since 2006, however, qualified businesses that fail to fall within the parameters of a “small qualified business” must pay tax on purchases of eligible property and services at the point of sale and then file a claim for refund with the Division of Taxation in the Department of the Treasury for the amount of tax determined to be paid.

This refund procedure was established as a means to mitigate suspected fraud and abuse associated with the exemption, and to permit new businesses to receive the benefits of the exemption on certain purchases made before the business is certified as a qualified business. When P.L.2006, c.34 was implemented, the Executive projected the procedure would net, to the State, an additional \$46 million of revenue in State fiscal year 2007.

These figures were never substantiated, and the State never allocated resources necessary to implement and enforce the refund procedure. Moreover, the procedure imposes an administrative burden on businesses. Qualified businesses that are not a small qualified business must make and file certain paperwork along with certain auditable receipts to receive a refund for purchases of property and services that, by law, are exempt from the sales and use tax.

The elimination of this rebate procedure for qualified businesses will alleviate the administrative burden on qualified businesses that are not small qualified businesses, and allow the State to realign its resources with more critical tax administration and compliance efforts. Under the substitute, all qualified businesses will be eligible to receive the benefits of the exemption at the point of sale, regardless of annual gross receipts generated in the prior annual tax period.

The elimination of the refund procedure for qualified businesses will not, however, affect that portion of the procedure that applies to businesses not yet certified as qualified businesses. The substitute retains the current procedure whereby businesses that pay tax on purchases of property and services used, for example, in the initial building or equipping of a business are permitted to file a claim for refund for tax associated with eligible purchases after the business is certified as a qualified business by the Urban Enterprise Zone Authority. Under current law, claims for refund associated with eligible purchases must be made and filed with the Division of Taxation after a business is certified as a qualified business, but within one year of the date the purchase is made.

This substitute is identical to Assembly Bill No. 1559, as also reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) is unable to quantify the fiscal impact of the substitute; it lacks data necessary to make a reliable estimate.

The OLS notes that the elimination of the rebate procedure for qualified businesses may result in an indeterminate reduction of certain State administrative costs. The State may experience a limited reduction in administrative costs due to the need to review and process fewer refund requests. Under the substitute, more businesses will be eligible to forgo the rebate procedure and receive the benefit of the exemption at the point of sale.

However, the OLS notes that the substitute may produce an indeterminate loss of State and local revenues. The modification to the current refund procedure will reduce the tax enforcement opportunities of the State to review and analyze requests for refund. If more qualified businesses are eligible to forgo the refund procedure, the State will have fewer opportunities to identify and deter erroneous and fraudulent claims of sales and use tax exemption.

LEGISLATIVE FISCAL ESTIMATE
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2132
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: JANUARY 7, 2011

SUMMARY

- Synopsis:** Eliminates use of rebate procedure for claims of sales and use tax exemption made in connection with certain sales to certain UEZ qualified businesses.
- Type of Impact:** Annually Recurring Revenue Loss to the State General Fund, the State Enterprise Zone Assistance Fund, and Local Urban Enterprise Zone Authorities and Annually Recurring Reduction in Administrative Expenses to the State Enterprise Zone Assistance Fund.
- Agencies Affected:** Department of the Treasury;
Local Urban Enterprise Zone Authorities.

Office of Legislative Services Estimate

| Fiscal Impact | <u>Annual Impact</u> |
|--|------------------------------------|
| State Administrative Cost Reduction | Indeterminate – See comments below |
| State Revenue Loss | Indeterminate – See comments below |
| Local Revenue Loss | Indeterminate – See comments below |

- The Office of Legislative Services (OLS) cannot quantify the bill’s fiscal impact, as it lacks the data upon which to make a reliable estimate.
- The bill would produce an indeterminate revenue loss to the State General Fund, the State Enterprise Zone Assistance Fund, and local Urban Enterprise Zone Authorities. There may also be an indeterminate, limited reduction in State administrative costs to the extent that the Division of Taxation processes fewer sales tax refund requests.

BILL DESCRIPTION

The Senate Committee Substitute for Senate Bill No. 2132 of 2010 broadens the class of businesses that are excluded from the sales tax rebate procedure established under the Urban Enterprise Zone (UEZ) sales tax rebate program by allowing certain zone-located qualified businesses to make certain tax exempt business purchases at the point of sale.

Under current law, sales of tangible personal property, except motor vehicles and energy, and sales of services, except telecommunications and utilities, to a qualified business for the exclusive use or consumption of that business within a UEZ are exempt from the sales and use tax at the point of sale if the business is a “small qualified business” with annual gross receipts of less than \$10,000,000. Qualified UEZ businesses with annual gross receipts equal to or greater than \$10,000,000 are also eligible for the exemption, but are required to pay or remit the applicable sales or use tax on qualified purchases and submit a claim for refund to the Division of Taxation in the Department of the Treasury within one year of the date of the transaction.

This bill extends the point of sale sales tax exemption to zone-located qualified businesses. Under its provisions, businesses that have been determined and certified by the Director of the Division of Taxation in the Department of the Treasury to have a business location or locations exclusively within a UEZ are eligible to forgo the rebate process, regardless of the size or the amount of annual gross receipts generated by the business during the prior annual tax period.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS cannot quantify the bill’s fiscal impact, as it lacks the data upon which to make a reliable estimate. The bill would produce an indeterminate revenue loss to the State General Fund, the State Enterprise Zone Assistance Fund, and local Urban Enterprise Zone Authorities. There may also be an indeterminate, limited reduction in State administrative costs to the extent that the Division of Taxation processes fewer sales tax refund requests.

The bill’s potential revenue losses would occur due to the reduced tax enforcement opportunity of the Division of Taxation when reviewing sales tax refund requests by qualified UEZ businesses. Under current law, qualified businesses with annual gross receipts greater than \$10,000,000 must pay sales tax on certain business purchases, and can subsequently apply to the Division for a sales tax refund for any exempt purchases. The refund mechanism is a means by which the Division can deter erroneous or fraudulent sales tax exemption claims. This bill would broaden the number of businesses exempt from the point-of-sale tax requirement, reduce the number of refunds claimed, and accordingly reduce the Division’s sales tax enforcement capability in these cases.

In Fiscal Estimates from prior Legislative Sessions, the OLS was also unable to quantify the potential revenue losses for related legislation that increased the UEZ point-of-sale tax exemption threshold from \$1,000,000 in annual business gross receipts to \$3,000,000 (P.L.2007, c.328), and further increased the threshold to \$10,000,000 (P.L.2008, c.118). Then as now, accurate data on the potential reduction in tax enforcement was not available.

SCS for S2132

3

Section: Revenue, Finance and Appropriations

*Analyst: Martin Poethke
Lead Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).