

Bill and Sponsors Statement identical to S1825

COMMITTEE STATEMENT: **ASSEMBLY:** No
SENATE: No
FLOOR AMENDMENT STATEMENTS: No
LEGISLATIVE FISCAL ESTIMATE: No

ASSEMBLY COMMITTEE SUBSTITUTE for A2925

SPONSORS STATEMENT: No

COMMITTEE STATEMENT: **ASSEMBLY:** [Yes](#) [5-6-99 \(Agriculture\)](#)
Identical to Senate Economic Growth Statement for S1825

[Yes](#) [10-18-99 \(Appropriations\)](#)
Identical to Senate Budget Statement for S1825

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: [Yes](#) [11-17-99](#)
Identical to 10-15-99 Fiscal Estimate for S1825

[Yes](#) [11-22-99](#)
Identical to 11-17-99 Fiscal Estimate for S1825

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: [Yes](#)

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

P.L. 1999, CHAPTER 314, *approved January 6, 2000*
Senate Committee Substitute (*First Reprint*) for
Senate, No. 1825

1 AN ACT revising the farm use sales tax exemption, and amending
2 P.L.1980, c.105.

3

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

6

7 1. Section 27 of P.L.1980, c.105 (C.54:32B-8.15) is amended to
8 read as follows:

9 27. Sales or use of wrapping paper, wrapping twine, bags, cartons,
10 tape, rope, labels, nonreturnable containers, reusable milk containers,
11 and all other wrapping supplies when such use is incidental to the
12 delivery of any personal property and containers for use in a "farming
13 enterprise" as defined pursuant to section 28 of P.L.1980, c.105
14 (C.54:32B-8.16) are exempt from the tax imposed under the Sales and
15 Use Tax Act.

16 (cf: P.L.1980, c.105, s.27)

17

18 2. Section 28 of P.L.1980, c.105 (C.54:32B-8.16) is amended to
19 read as follows:

20 28. a. Receipts from sales of tangible personal property **[(except**
21 **automobiles, except property incorporated in a building or structure**
22 **and except energy)] and production and conservation services to a**
23 **farmer** for use and consumption directly and primarily in the
24 production, handling and preservation for sale of **[(tangible personal**
25 **property on farms, including stock, dairy, poultry, fruit, and**
26 **fur-bearing animals, and truck farms, ranches, nurseries, greenhouses**
27 **or other similar structures used primarily for the raising of)]**
28 **agricultural or horticultural commodities **[(, and orchards)] at the****
29 **farming enterprise of that farmer** are exempt from the tax imposed
30 under the "Sales and Use Tax Act."

31 b. The exemptions provided by subsection a. of this section shall
32 not apply to sales of:

33 (1) automobiles;

34 (2) energy; or

35 (3) materials used to construct a building or structure, other than
36 a silo, greenhouse, grain bin, or manure handling equipment.

37 c. For the purposes of this section:

38 "Agricultural or horticultural commodities" means tangible
39 personal property produced through the raising of plants or animals

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted October 18, 1999.

1 useful to people, including but not limited to: forages and sod crops;
2 livestock; grains and feed crops; dairy animals and products; poultry
3 and poultry products; game animals and fur-bearing animals; honey
4 and other apiary products; the products of aquaculture; trees and
5 forest products; fruits, nuts and berries; vegetables; and nursery, floral,
6 ornamental and greenhouse products; and

7 "Farming enterprise" means a facility used primarily for the raising
8 of agricultural or horticultural commodities for sale, including but not
9 limited to truck farms, ranches, orchards, nurseries, greenhouses or
10 other similar facilities.

11 (cf: P.L.1997, c.293, s.1)

12

13 3. This act shall take effect immediately and apply to sales made
14 on or after ¹【the first day of the third month following the date of
15 enactment and apply retroactively to receipts from sales for which a
16 notice of deficiency assessment has been given by the Division of
17 Taxation within one year prior to the date of enactment, on, or after
18 the date of enactment】January 1, 2000 ¹.

19

20

21

22

23 Revises "farm use" sales tax exemption.

SENATE, No. 1825

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED MAY 6, 1999

Sponsored by:

Senator ROBERT E. LITTELL

District 24 (Sussex, Hunterdon and Morris)

Senator RAYMOND J. ZANE

District 3 (Salem, Cumberland and Gloucester)

SYNOPSIS

Exempts tangible personal property and services used directly and primarily in the farming process from sales and use taxes.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/11/1999)

S1825 LITTELL, ZANE

2

1 AN ACT exempting tangible personal property and services used
2 directly and primarily in the farming process from sales and use
3 taxes, amending P.L.1980, c.105.

4

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

7

8 1. Section 28 of P.L.1980, c.105 (C.54:32B-8.16) is amended to
9 read as follows:

10 28. Receipts from sales of tangible personal property (except
11 automobiles**],** except property incorporated in a building or structure**]**
12 and except energy) and services for use and consumption directly and
13 primarily in the production for sale and to the point of sale of tangible
14 personal property on farms, including stock , including horses, dairy,
15 poultry, fruit, fur-bearing animals, game fish and animals, and truck
16 farms, fish farms, ranches, nurseries, greenhouses or other similar
17 structures used primarily for the raising of agricultural, or horticultural
18 commodities, and orchards are exempt from the tax imposed under the
19 "Sales and Use Tax Act."

20 (cf: P.L.1997, c.293, s.1)

21

22 2. This act shall take effect immediately and apply to sales made on
23 and after the first day of the third month following enactment.

24

25

26

STATEMENT

27

28 This bill updates the "farm use" sales tax exemption to reflect the
29 changing nature of the agricultural sector of the New Jersey economy.

30 Over the past few decades farming in New Jersey and the rest of the
31 nation has changed its emphasis from the traditional but limited owner-
32 operated truck farm to more complex and diverse (although still
33 frequently owner-operated) agricultural enterprises that attempt to
34 integrate into the national and international agricultural products
35 markets.

36 The bill removes a restriction on the sales tax exemption for
37 farmer's purchases of property that is incorporated into buildings or
38 structures. Like the Business Retention Act of 1993 (which affected
39 the real estate taxes on industrial production equipment), this change
40 recognizes that farm structures and buildings that are used directly in
41 the production of agricultural products are primary industrial inputs.

42 The bill includes in the category of exempt purchases services for
43 use and consumption directly and primarily in the production for sale

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

Matter underlined thus is new matter.

1 of tangible personal property on farms, and also extends the exemption
2 to property and services and to the point of sale of farm products. As
3 crops cannot be grown unless the land is suitable for cultivation,
4 machinery and services used in clearing, reclaiming, and draining of
5 the land and equipment and services used after cultivation to prepare
6 and preserve products to the point of sale are also exempted from
7 taxation as part of the total agricultural process.

8 The bill also clarifies that game animals and game fish are farm
9 products, and that the facilities that produce them are farms just as the
10 facilities that produce beeswax, Halloween pumpkins, and Christmas
11 trees are farms.

12 The total impact of the changes is a refocusing of the standard of
13 the "farm" exemption to a standard that any equipment, materials or
14 services that are used directly and primarily in agricultural production,
15 from preparation of the land or other facility to delivery to the
16 agricultural producer's point of sale, whether the producer is a
17 traditional "dirt" farmer, aquaculturalist, silvaculturalist,
18 horticulturalist, or other grower, is exempt from sales taxes when
19 purchased. This refocusing of the sales tax exemption to the inputs of
20 New Jersey's most important non-industrial economic production
21 sector recognizes that our "farmers" must compete with adjoining
22 states in a world market.

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1825

STATE OF NEW JERSEY
208th LEGISLATURE

ADOPTED JUNE 17, 1999

Sponsored by:

Senator ROBERT E. LITTELL

District 24 (Sussex, Hunterdon and Morris)

Senator RAYMOND J. ZANE

District 3 (Salem, Cumberland and Gloucester)

Co-Sponsored by:

Senators Bark and Matheussen

SYNOPSIS

Revises "farm use" sales tax exemption.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Economic Growth, Agriculture and Tourism Committee.



(Sponsorship Updated As Of: 10/1/1999)

1 AN ACT revising the farm use sales tax exemption, and amending
2 P.L.1980, c.105.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 27 of P.L.1980, c.105 (C.54:32B-8.15) is amended to
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11 and all other wrapping supplies when such use is incidental to the
12 delivery of any personal property and containers for use in a "farming
13 enterprise" as defined pursuant to section 28 of P.L.1980, c.105
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15 Use Tax Act.
16 (cf: P.L.1980, c.105, s.27)

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18 2. Section 28 of P.L.1980, c.105 (C.54:32B-8.16) is amended to
19 read as follows:

20 28. a. Receipts from sales of tangible personal property **[(except**
21 **automobiles, except property incorporated in a building or structure**
22 **and except energy)] and production and conservation services to a**
23 **farmer** for use and consumption directly and primarily in the
24 production, handling and preservation for sale of **[tangible personal**
25 **property on farms, including stock, dairy, poultry, fruit, and**
26 **fur-bearing animals, and truck farms, ranches, nurseries, greenhouses**
27 **or other similar structures used primarily for the raising of]**
28 **agricultural or horticultural commodities [, and orchards] at the**
29 **farming enterprise of that farmer** are exempt from the tax imposed
30 under the "Sales and Use Tax Act."

31 b. The exemptions provided by subsection a. of this section shall
32 not apply to sales of:

33 (1) automobiles;

34 (2) energy; or

35 (3) materials used to construct a building or structure, other than
36 a silo, greenhouse, grain bin, or manure handling equipment.

37 c. For the purposes of this section:

38 "Agricultural or horticultural commodities" means tangible
39 personal property produced through the raising of plants or animals
40 useful to people, including but not limited to: forages and sod crops;
41 livestock; grains and feed crops; dairy animals and products; poultry
42 and poultry products; game animals and fur-bearing animals; honey

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 and other apiary products; the products of aquaculture; trees and
2 forest products; fruits, nuts and berries; vegetables; and nursery, floral,
3 ornamental and greenhouse products; and

4 "Farming enterprise" means a facility used primarily for the raising
5 of agricultural or horticultural commodities for sale, including but not
6 limited to truck farms, ranches, orchards, nurseries, greenhouses or
7 other similar facilities.

8 (cf: P.L.1997, c.293, s.1)

9

10 3. This act shall take effect immediately and apply to sales made
11 on or after the first day of the third month following the date of
12 enactment and apply retroactively to receipts from sales for which a
13 notice of deficiency assessment has been given by the Division of
14 Taxation within one year prior to the date of enactment, on, or after
15 the date of enactment.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1825**

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 18, 1999

The Assembly Appropriations Committee reports favorably a Senate Committee Substitute for Senate Bill No. 1825, with committee amendments.

Senate Bill No. 1825 SCS, as amended, revises the "farm use" sales tax exemption.

Current law extends the "farm use" exemption to tangible personal property that is used on farms in the production for sale of agricultural or horticultural commodities, but excludes from the exemption property that is "incorporated in a building or structure." The bill narrows this exclusion by limiting it to property "used to construct a structure" (other than certain specified single-use structures, for which construction materials would now be exempt; the specified structures are silos, greenhouses, grain bins, and manure handling equipment). The basic effect of this change would be to expand the exemption to cover a broader range of affixed equipment used in the production of farm commodities (e.g., ventilation systems necessary for horticultural production in greenhouses and affixed milking machinery).

In addition, the bill extends the "farm use" exemption to cover (1) production and conservation services (it is currently limited to tangible personal property), (2) post-production handling and preservation equipment (equipment is currently exempt only if used for production), and (3) containers used in a "farming enterprise" (currently, containers that are not for transfer to a purchaser are taxable).

Finally, the bill clarifies that game animal producers who sell animals for nonfood purposes (e.g., to hunting clubs) are farmers.

As amended and reported by this committee, the bill is identical to Assembly Bill No. 2925 ACS as amended and reported by this committee.

FISCAL IMPACT

There are no data available upon which to base an estimate of the cost to the State of the broadened sales and use tax exemptions under the bill. Note, however, is taken of the following:

(1) Limiting sales tax liability to property used to construct a structure conforms the exemption to that applicable to manufacturing machinery and equipment. Exempting the enumerated single use structures recognizes that these are, in effect, large units of production, preservation and handling equipment.

(2) Currently, production services and conservation services are taxable if they are performed on property *not* held for sale (production services on property held for sale are currently exempt) or on realty such that they do *not* result in capital improvements (real property services that result in capital improvements are exempt). The data that are available on such services (e.g., soil fertilization, pest control, drainage clearing, and barrier maintenance) suggest that the exemption of production and conservation services under the bill would have a negligible impact on sales tax revenue.

(3) Post-production handling and preservation equipment appears to include mainly transportation equipment not used primarily in production (equipment used primarily in production is tax-exempt) and refrigeration equipment. No information is available on the portion of the State market for these products that is allocated to farm use.

(4) The exemption for containers for use in a farming enterprise expands a non-farm use general exemption for supplies used in the delivery of personal property. Currently, reusable containers are generally taxable and containers transferred to another user with the product are exempt from tax. The bill resolves a gray area for farm containers that has been a continuing source of dispute between container users and tax examiners. The exemption of farm use containers may save more in administrative costs than is lost in tax revenue.

COMMITTEE AMENDMENTS:

The amendments delete a provision that would otherwise have made the bill apply retroactively to exempt taxation of certain transactions on which taxes due were not paid, and make the changes apply to transactions on and after January 1, 2000.

SENATE ECONOMIC GROWTH, AGRICULTURE AND
TOURISM COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1825

STATE OF NEW JERSEY

DATED: JUNE 17, 1999

The Senate Economic Growth, Agriculture and Tourism Committee favorably reports a Senate Committee Substitute for Senate Bill No. 1825.

This committee substitute revises the "farm use" sales tax exemption.

The committee substitute exempts tangible personal property that is incorporated in real property on farms from the sales tax by replacing the limitation, contained in current law, on property "incorporated" in a structure with a limitation to property "used to construct a structure," with the purpose of exempting currently taxable equipment used in production that is affixed (such as ventilation systems necessary for horticultural production in greenhouses or affixed milking machinery) and exempting construction materials used to construct silos, greenhouses, grain bins, or manure handling equipment.

The committee substitute extends the current exemption, limited to tangible personal property, to production services and conservation services. Also, the committee substitute extends the production exemption to post-production handling and preservation equipment and exempts containers for farm use (containers that are not transferred to a purchaser are currently taxable).

The committee substitute clarifies that game animal producers who sell animals for nonfood purposes (for example, to hunting clubs) are farmers.

The committee substitute makes several technical changes to clarify the exemption, principally the addition of a definition section which includes definitions for "agricultural or horticultural commodities" and "farming enterprise."

Finally, the committee substitute provides that the bill would apply retroactively to receipts from sales for which a notice of deficiency assessment has been given by the Division of Taxation within one year prior to the date of enactment, on, or after the date of enactment.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1825**

STATE OF NEW JERSEY

DATED: SEPTEMBER 23, 1999

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1825 SCS.

This bill revises the "farm use" sales tax exemption.

Current law extends the "farm use" exemption to tangible personal property that is used on farms in the production for sale of agricultural or horticultural commodities, but excludes from the exemption property that is "incorporated in a building or structure." The bill narrows this exclusion by limiting it to property "used to construct a structure" (other than certain specified single-use structures, for which construction materials would now be exempt; the specified structures are silos, greenhouses, grain bins, and manure handling equipment). The basic effect of this change would be to expand the exemption to cover a broader range of affixed equipment used in the production of farm commodities (e.g., ventilation systems necessary for horticultural production in greenhouses and affixed milking machinery).

In addition, the bill extends the "farm use" exemption to cover (1) production and conservation services (it is currently limited to tangible personal property), (2) post-production handling and preservation equipment (equipment is currently exempt only if used for production), and (3) containers used in a "farming enterprise" (currently, containers that are not for transfer to a purchaser are taxable).

Finally, the bill clarifies that game animal producers who sell animals for nonfood purposes (e.g., to hunting clubs) are farmers.

The bill would apply retroactively to receipts from sales for which the Division of Taxation has given a notice of deficiency assessment one year prior to the date of enactment or thereafter.

FISCAL IMPACT

There are no data available upon which to base an estimate of the cost to the State of the broadened sales and use tax exemptions under the bill. Note, however, is taken of the following:

(1) Limiting sales tax liability to property used to construct a structure conforms the exemption to that applicable to manufacturing machinery and equipment. Exempting the enumerated single use

structures recognizes that these are, in effect, large units of production, preservation and handling equipment.

(2) Currently, production services and conservation services are taxable if they are performed on property *not* held for sale (production services on property held for sale are currently exempt) or on realty such that they do *not* result in capital improvements (real property services that result in capital improvements are exempt). The data that are available on such services (e.g., soil fertilization, pest control, drainage clearing, and barrier maintenance) suggest that the exemption of production and conservation services under the bill would have a negligible impact on sales tax revenue.

(3) Post-production handling and preservation equipment appears to include mainly transportation equipment not used primarily in production (equipment used primarily in production is tax-exempt) and refrigeration equipment. No information is available on the portion of the State market for these products that is allocated to farm use.

(4) The exemption for containers for use in a farming enterprise expands a non-farm use general exemption for supplies used in the delivery of personal property. Currently, reusable containers are generally taxable and containers transferred to another user with the product are exempt from tax. The bill resolves a gray area for farm containers that has been a continuing source of dispute between container users and tax examiners. The exemption of farm use containers may save more in administrative costs than is lost in tax revenue.

Finally, it may be noted that the retroactive application of the changes made by the bill to receipts from sales for which a deficiency has been assessed on or after a date one year prior to the date of the bill's enactment has the effect, under the four year statute of limitation for sales tax deficiency assessments, of applying to transactions that occurred five years prior to the enactment of the bill. There is no information available to estimate the impact of the bill's retroactivity on deficiencies that would otherwise be assessed.

LEGISLATIVE FISCAL ESTIMATE

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1825**

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: OCTOBER 15, 1999

BILL SUMMARY

Senate Committee Substitute for Senate Bill No. 1825 of 1999 expands the sales and use tax exemption for property used or consumed on farms and extends the farm use sales tax exemption to certain services.

The bill revises the sales tax treatment of tangible personal property that is installed on farms. Currently, the sales tax exemption does not apply to property "incorporated" in a structure. The bill replaces this with a restriction denying sales tax exemption to most property "used to construct a structure," to exempt more currently-taxable affixed equipment used in production, handling and preservation of farm commodities (such as ventilation systems necessary for horticultural production in greenhouses, or affixed milking machinery).

The bill further exempts materials used to construct the following single use agricultural structures: silos, greenhouses, grain bins, and manure handling equipment.

The bill extends the sales and use tax exemption (currently limited to tangible personal property) to production services and conservation services.

The bill extends the sales and use tax exemption (currently limited to the production of farm commodities) to post-production handling and preservation equipment.

The bill provides a sales and use tax exemption for containers for farm use (generally, containers for transfer to a purchaser are sales tax-exempt).

The bill applies retroactively to receipts from sales for which a deficiency has been or is assessed on or after a date one year prior to the date of the bill's enactment.

OFFICE OF LEGISLATIVE SERVICES COMMENTS

The Office of Legislative Services (OLS) notes there are no data available to estimate the costs to the State of the broadened sales and use tax exemptions.

To be currently taxable, production services and conservation services must be performed on property not held for sale (production services on property held for sales are currently exempt) or on realty so as not to result in capital improvement (real property services that result in capital improvements are exempt). The data that are available on such services (e.g. soil fertilization, pest control, drainage clearing and barrier maintenance) suggest the change would have a negligible impact on sales tax revenue.

Post-production handling and preservation equipment appears to include primarily transportation equipment not used primarily in production (equipment used primarily in production is currently exempt) and refrigeration equipment. No information is available on the part of the State market for these products that is allocated to farm use.

The exemption for containers for use in a farming enterprise expands a non-farm use general exemption for supplies used in the delivery of personal property. Currently, reusable containers are generally taxable and containers transferred to another user with the product are exempt from tax. The bill resolves a large gray area for farm containers (for example, produce transportation bins that are both used to move goods on a farm and are generally used to transfer bulk amounts of product to market) which has been a continuing area of dispute between container users and tax examiners. The flat exemption of farm use containers may save more in administrative costs than the tax raised in revenues.

The OLS notes that the retroactive application of the changes made by the bill to receipts from sales for which a deficiency has been assessed on or after a date one year prior to the date of the bill's enactment has the effect, under the four year statute of limitation for sales tax deficiency assessments, of applying to transactions that occurred five years prior to the enactment of the bill. There is no information available to estimate the impact of the bill's retroactivity on deficiencies that would otherwise be assessed.

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.

FISCAL NOTE

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1825**

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: NOVEMBER 17, 1999

BILL SUMMARY

Senate Committee Substitute (1R) for Senate Bill No. 1825 of 1999 expands the sales and use tax exemption for property used or consumed on farms and extends the farm use sales tax exemption to certain services.

The bill revises the sales tax treatment of tangible personal property that is installed on farms. Currently, the sales tax exemption does not apply to property "incorporated" in a structure. The bill replaces this with a restriction denying sales tax exemption to most property "used to construct a structure," to exempt more currently-taxable affixed equipment used in production, handling and preservation of farm commodities (such as ventilation systems necessary for horticultural production in greenhouses, or affixed milking machinery).

The bill further exempts materials used to construct the following single use agricultural structures: silos, greenhouses, grain bins, and manure handling equipment.

The bill extends the sales and use tax exemption (currently limited to tangible personal property) to production services and conservation services.

The bill extends the sales and use tax exemption (currently limited to the production of farm commodities) to post-production handling and preservation equipment.

The bill provides a sales and use tax exemption for containers for farm use (generally, containers for transfer to a purchaser are sales tax-exempt).

AGENCY COMMENTS

The Division of Taxation in the Department of Treasury is unable to assess the revenue impact. The division notes that revenue impact may be relatively minor because misunderstanding of the current farm exemption may create significant noncompliance that is merely codified by the bill.

OFFICE OF LEGISLATIVE SERVICES COMMENTS

The Office of Legislative Services (OLS) concurs with the Division of Taxation that there are no data available to estimate the costs to the State of the broadened sales and use tax exemptions.

To be currently taxable, production services and conservation services must be performed on property not held for sale (production services on property held for sales are currently exempt) or on realty so as not to result in capital improvement (real property services that result in capital improvements are exempt). The data that are available on such services (e.g. soil fertilization, pest control, drainage clearing and barrier maintenance) suggest the change would have a negligible impact on sales tax revenue.

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This fiscal note has been prepared pursuant to P.L.1980, c.67.

ASSEMBLY, No. 2925

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED MARCH 4, 1999

Sponsored by:

Assemblywoman CONNIE MYERS
District 23 (Warren, Hunterdon and Mercer)
Assemblyman E. SCOTT GARRETT
District 24 (Sussex, Hunterdon and Morris)

Co-Sponsored by:

Assemblymen LeFevre and Blee

SYNOPSIS

Exempts tangible personal property and services used directly and primarily in the farming process from sales and use taxes.

CURRENT VERSION OF TEXT

As introduced.



A2925 MYERS, GARRETT

2

1 AN ACT exempting tangible personal property and services used
2 directly and primarily in the farming process from sales and use
3 taxes, amending P.L.1980, c.105.

4

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

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8 1. Section 28 of P.L.1980, c.105 (C.54:32B-8.16) is amended to
9 read as follows:

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11 automobiles[, except property incorporated in a building or structure]
12 and except energy) and services for use and consumption directly and
13 primarily in the production for sale and to the point of sale of tangible
14 personal property on farms, including stock , including horses, dairy,
15 poultry, fruit, fur-bearing animals, game fish and animals, and truck
16 farms, fish farms, ranches, nurseries, greenhouses or other similar
17 structures used primarily for the raising of agricultural, or horticultural
18 commodities, and orchards are exempt from the tax imposed under the
19 "Sales and Use Tax Act."

20 (cf: P.L.1997, c.293, s.1)

21

22 2. This act shall take effect immediately and apply to sales made on
23 and after the first day of the third month following enactment.

24

25

26

STATEMENT

27

28 This bill updates the "farm use" sales tax exemption to reflect the
29 changing nature of the agricultural sector of the New Jersey economy.

30 Over the past few decades farming in New Jersey and the rest of the
31 nation has changed its emphasis from the traditional but limited owner-
32 operated truck farm to more complex and diverse (although still
33 frequently owner-operated) agricultural enterprises that attempt to
34 integrate into the national and international agricultural products
35 markets.

36 The bill removes a restriction on the sales tax exemption for
37 farmer's purchases of property that is incorporated into buildings or
38 structures. Like the Business Retention Act of 1993 (which affected
39 the real estate taxes on industrial production equipment), this change
40 recognizes that farm structures and buildings that are used directly in
41 the production of agricultural products are primary industrial inputs.

42 The bill includes in the category of exempt purchases services for
43 use and consumption directly and primarily in the production for sale

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 of tangible personal property on farms, and also extends the exemption
2 to property and services and to the point of sale of farm products. As
3 crops cannot be grown unless the land is suitable for cultivation,
4 machinery and services used in clearing, reclaiming, and draining of
5 the land and equipment and services used after cultivation to prepare
6 and preserve products to the point of sale are also exempted from
7 taxation as part of the total agricultural process.

8 The bill also clarifies that game animals and game fish are farm
9 products, and that the facilities that produce them are farms just as the
10 facilities that produce beeswax, Halloween pumpkins, and Christmas
11 trees are farms.

12 The total impact of the changes is a refocusing of the standard of
13 the "farm" exemption to a standard that any equipment, materials or
14 services that are used directly and primarily in agricultural production,
15 from preparation of the land or other facility to delivery to the
16 agricultural producer's point of sale, whether the producer is a
17 traditional "dirt" farmer, aquaculturalist, silvaculturalist,
18 horticulturalist, or other grower, is exempt from sales taxes when
19 purchased. This refocusing of the sales tax exemption to the inputs of
20 New Jersey's most important non-industrial economic production
21 sector recognizes that our "farmers" must compete with adjoining
22 states in a world market.

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2925

STATE OF NEW JERSEY
208th LEGISLATURE

ADOPTED MAY 6, 1999

Sponsored by:

Assemblywoman CONNIE MYERS
District 23 (Warren, Hunterdon and Mercer)
Assemblyman E. SCOTT GARRETT
District 24 (Sussex, Hunterdon and Morris)

Co-Sponsored by:

Assemblymen LeFevre, Blee and Conaway

SYNOPSIS

Revises "farm use" sales tax exemption.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Agriculture and Natural Resources Committee.



1 AN ACT revising the farm use sales tax exemption, and amending
2 P.L.1980, c.105.

3

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

6

7 1. Section 27 of P.L.1980, c.105 (C.54:32B-8.15) is amended to
8 read as follows:

9 27. Sales or use of wrapping paper, wrapping twine, bags, cartons,
10 tape, rope, labels, nonreturnable containers, reusable milk containers,
11 and all other wrapping supplies when such use is incidental to the
12 delivery of any personal property and containers for use in a "farming
13 enterprise" as defined pursuant to section 28 of P.L.1980, c.105
14 (C.54:32B-8.16) are exempt from the tax imposed under the Sales and
15 Use Tax Act.

16 (cf: P.L.1980, c.105, s.27)

17

18 2. Section 28 of P.L.1980, c.105 (C.54:32B-8.16) is amended to
19 read as follows:

20 28. a. Receipts from sales of tangible personal property **[(except**
21 **automobiles, except property incorporated in a building or structure**
22 **and except energy)] and production and conservation services to a**
23 **farmer** for use and consumption directly and primarily in the
24 production, handling and preservation for sale of **[(tangible personal**
25 **property on farms, including stock, dairy, poultry, fruit, and**
26 **fur-bearing animals, and truck farms, ranches, nurseries, greenhouses**
27 **or other similar structures used primarily for the raising of)]**
28 **agricultural or horticultural commodities **[(, and orchards)] at the****
29 **farming enterprise of that farmer** are exempt from the tax imposed
30 under the "Sales and Use Tax Act."

31 b. The exemptions provided by subsection a. of this section shall
32 not apply to sales of:

33 (1) automobiles;

34 (2) energy; or

35 (3) materials used to construct a building or structure, other than
36 a silo, greenhouse, grain bin, or manure handling equipment.

37 c. For the purposes of this section:

38 "Agricultural or horticultural commodities" means tangible
39 personal property produced through the raising of plants or animals
40 useful to people, including but not limited to: forages and sod crops;
41 livestock; grains and feed crops; dairy animals and products; poultry
42 and poultry products; game animals and fur-bearing animals; honey

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 and other apiary products; the products of aquaculture; trees and
2 forest products; fruits, nuts and berries; vegetables; and nursery, floral,
3 ornamental and greenhouse products; and

4 "Farming enterprise" means a facility used primarily for the raising
5 of agricultural or horticultural commodities, including but not limited
6 to truck farms, ranches, orchards, nurseries, greenhouses or other
7 similar facilities.

8 (cf: P.L.1997, c.293, s.1)

9

10 3. This act shall take effect immediately and apply to sales made
11 on or after the first day of the third month following the date of
12 enactment.

ASSEMBLY AGRICULTURE AND NATURAL RESOURCES
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2925

STATE OF NEW JERSEY

DATED: MAY 6, 1999

The Assembly Agriculture and Natural Resources Committee favorably reports the Assembly Committee Substitute for Assembly Bill No. 2925.

This committee substitute revises the "farm use" sales tax exemption.

The committee substitute exempts tangible personal property that is incorporated in real property on farms from the sales tax by replacing the limitation, contained in current law, on property "incorporated" in a structure with a limitation to property "used to construct a structure," with the purpose of exempting currently taxable equipment used in production that is affixed (such as ventilation systems necessary for horticultural production in greenhouses or affixed milking machinery) and exempting construction materials used to construct silos, greenhouses, grain bins, or manure handling equipment.

The committee substitute extends the current exemption, limited to tangible personal property, to production services and conservation services. Also, the committee substitute extends the production exemption to post-production handling and preservation equipment and exempts containers for farm use (containers that are not transferred to a purchaser are currently taxable).

The committee substitute clarifies that game animal producers who sell animals for nonfood purposes (for example, to hunting clubs) are farmers.

Lastly, the committee substitute makes several technical changes to clarify the exemption, principally the addition of a definition section which includes definitions for "agricultural or horticultural commodities" and "farming enterprise."

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 2925**

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 18, 1999

The Assembly Appropriations Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2925, with committee amendments.

Assembly Bill No. 2925 ACS, as amended, revises the "farm use" sales tax exemption.

Current law extends the "farm use" exemption to tangible personal property that is used on farms in the production for sale of agricultural or horticultural commodities, but excludes from the exemption property that is "incorporated in a building or structure." The bill narrows this exclusion by limiting it to property "used to construct a structure" (other than certain specified single-use structures, for which construction materials would now be exempt; the specified structures are silos, greenhouses, grain bins, and manure handling equipment). The basic effect of this change would be to expand the exemption to cover a broader range of affixed equipment used in the production of farm commodities (e.g., ventilation systems necessary for horticultural production in greenhouses and affixed milking machinery).

In addition, the bill extends the "farm use" exemption to cover (1) production and conservation services (it is currently limited to tangible personal property), (2) post-production handling and preservation equipment (equipment is currently exempt only if used for production), and (3) containers used in a "farming enterprise" (currently, containers that are not for transfer to a purchaser are taxable).

Finally, the bill clarifies that game animal producers who sell animals for nonfood purposes (e.g., to hunting clubs) are farmers.

As amended and reported by this committee, the bill is identical to Senate Bill No. 1825 ACS as amended and reported by this committee.

FISCAL IMPACT:

There are no data available upon which to base an estimate of the cost to the State of the broadened sales and use tax exemptions under the bill. Note, however, is taken of the following:

(1) Limiting sales tax liability to property used to construct a structure conforms the exemption to that applicable to manufacturing machinery and equipment. Exempting the enumerated single use structures recognizes that these are, in effect, large units of production, preservation and handling equipment.

(2) Currently, production services and conservation services are taxable if they are performed on property *not* held for sale (production services on property held for sale are currently exempt) or on realty such that they do *not* result in capital improvements (real property services that result in capital improvements are exempt). The data that are available on such services (e.g., soil fertilization, pest control, drainage clearing, and barrier maintenance) suggest that the exemption of production and conservation services under the bill would have a negligible impact on sales tax revenue.

(3) Post-production handling and preservation equipment appears to include mainly transportation equipment not used primarily in production (equipment used primarily in production is tax-exempt) and refrigeration equipment. No information is available on the portion of the State market for these products that is allocated to farm use.

(4) The exemption for containers for use in a farming enterprise expands a non-farm use general exemption for supplies used in the delivery of personal property. Currently, reusable containers are generally taxable and containers transferred to another user with the product are exempt from tax. The bill resolves a gray area for farm containers that has been a continuing source of dispute between container users and tax examiners. The exemption of farm use containers may save more in administrative costs than is lost in tax revenue.

COMMITTEE AMENDMENTS:

The amendments include a restriction in the definition of farming enterprise to clarify that the activities are to produce commodities for sale, and make the changes apply to transactions on and after January 1, 2000; the amendments make the bill identical to Senate Bill No. 1825 ACS Aca.

LEGISLATIVE FISCAL ESTIMATE

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 2925**

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: NOVEMBER 17, 1999

BILL SUMMARY

Assembly Committee Substitute for Assembly Bill No. 2925 of 1999 expands the sales and use tax exemption for property used or consumed on farms and extends the farm use sales tax exemption to certain services.

The bill revises the sales tax treatment of tangible personal property that is installed on farms. Currently, the sales tax exemption does not apply to property "incorporated" in a structure. The bill replaces this with a restriction denying sales tax exemption to most property "used to construct a structure," to exempt more currently-taxable affixed equipment used in production, handling and preservation of farm commodities (such as ventilation systems necessary for horticultural production in greenhouses, or affixed milking machinery).

The bill further exempts materials used to construct the following single use agricultural structures: silos, greenhouses, grain bins, and manure handling equipment.

The bill extends the sales and use tax exemption (currently limited to tangible personal property) to production services and conservation services.

The bill extends the sales and use tax exemption (currently limited to the production of farm commodities) to post-production handling and preservation equipment.

The bill provides a sales and use tax exemption for containers for farm use (generally, containers for transfer to a purchaser are sales tax-exempt).

OFFICE OF LEGISLATIVE SERVICES COMMENTS

The Office of Legislative Services (OLS) notes there are no data available to estimate the costs to the State of the broadened sales and use tax exemptions.

To be currently taxable, production services and conservation services must be performed on property not held for sale (production services on property held for sales are currently exempt) or on realty so as not to result in capital improvement (real property services that result in capital improvements are exempt). The data that are available on such services (e.g. soil fertilization, pest control, drainage clearing and barrier maintenance) suggest the change would have a negligible impact on sales tax revenue.

Post-production handling and preservation equipment appears to include primarily transportation equipment not used primarily in production (equipment used primarily in production is currently exempt) and refrigeration equipment. No information is available on the part of the State market for these products that is allocated to farm use.

The OLS notes the exemption for containers for use in a farming enterprise expands a non-farm use general exemption for supplies used in the delivery of personal property. Currently, reusable containers are generally taxable and containers transferred to another user with the product are exempt from tax. The bill resolves a large gray area for farm containers (for example, produce transportation bins that are both used to move goods on a farm and are generally used to transfer bulk amounts of product to market) which has been a continuing area of dispute between container users and tax examiners. The flat exemption of farm use containers may save more in administrative costs than the tax raised in revenues.

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.

FISCAL NOTE

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2925

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: NOVEMBER 22, 1999

BILL SUMMARY

Assembly Committee Substitute (1R) for Assembly Bill No. 2925 of 1999 expands the sales and use tax exemption for property used or consumed on farms and extends the farm use sales tax exemption to certain services.

The bill revises the sales tax treatment of tangible personal property that is installed on farms. Currently, the sales tax exemption does not apply to property "incorporated" in a structure. The bill replaces this with a restriction denying sales tax exemption to most property "used to construct a structure," to exempt more currently-taxable affixed equipment used in production, handling and preservation of farm commodities (such as ventilation systems necessary for horticultural production in greenhouses, or affixed milking machinery).

The bill further exempts materials used to construct the following single use agricultural structures: silos, greenhouses, grain bins, and manure handling equipment.

The bill extends the sales and use tax exemption (currently limited to tangible personal property) to production services and conservation services.

The bill extends the sales and use tax exemption (currently limited to the production of farm commodities) to post-production handling and preservation equipment.

The bill provides a sales and use tax exemption for containers for farm use (generally, containers for transfer to a purchaser are sales tax-exempt).

AGENCY COMMENTS

In regard to an identical Senate bill, the Division of Taxation in the Department of Treasury noted that it was unable to assess the revenue impact of the changes. The division noted that revenue impact may be

relatively minor because misunderstanding of the current farm exemption may create significant noncompliance that is merely codified by the bill.

OFFICE OF LEGISLATIVE SERVICES COMMENTS

The Office of Legislative Services (OLS) concurs with the Division of Taxation that there are no data available to estimate the costs to the State of the broadened sales and use tax exemptions.

To be currently taxable, production services and conservation services must be performed on property not held for sale (production services on property held for sales are currently exempt) or on realty so as not to result in capital improvement (real property services that result in capital improvements are exempt). The data that are available on such services (e.g. soil fertilization, pest control, drainage clearing and barrier maintenance) suggest the change would have a negligible impact on sales tax revenue.

Post-production handling and preservation equipment appears to include mainly transportation equipment not used primarily in production (equipment used primarily in production is currently exempt) and refrigeration equipment. No information is available on the part of the State market for these products that is allocated to farm use.

The exemption for containers for use in a farming enterprise expands a non-farm use general exemption for supplies used in the delivery of personal property. Currently, reusable containers are generally taxable and containers transferred to another user with the product are exempt from tax. The bill resolves a large gray area for farm containers (for example, produce transportation bins that are both used to move goods on a farm and are generally used to transfer bulk amounts of product to market) which has been a continuing area of dispute between container users and tax examiners. The flat exemption of farm use containers may save more in administrative costs than the tax raised in revenues.

This fiscal note has been prepared pursuant to P.L.1980, c.67.

Office of the Governor
NEWS RELEASE

PO BOX 004
TRENTON, NJ 08625

CONTACT: Gene Herman
609-777-2600

RELEASE: January 6, 2000

Gov. Christie Whitman today signed the following pieces of legislation:

A-1078, sponsored by Assembly Members Michael J. Arnone (R-Monmouth) and John C. Gibson (R-Cape May/Atlantic/Cumberland), appropriates \$130,000 for the honeybee research, public educational efforts, and inspections. A line item veto by the Governor reduced the amount of the appropriation from \$300,000 to \$130,000. A copy of the Governor's line item veto message is attached.

SCS for S-1835, sponsored by Senators Robert E. Littell (R-Sussex/Hunterdon/Morris) and Raymond J. Zane (D-Salem/Cumberland/Gloucester) and Assembly Members Connie Myers (R-Warren/Hunterdon/Mercer) and E. Scott Garrett (R-Sussex/Hunterdon/Morris), expands the farm use sales tax exemption on certain equipment, services and supplies.