The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 1958.

This bill conforms the New Jersey sales and use tax to the requirements of the Streamlined Sales and Use Tax Agreement to provide for compliance with that agreement.

The Streamlined Sales and Use Tax Agreement is one of two components of the sales tax system under development by the Streamlined Sales Tax Project, an effort created by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. Forty-two states and the District of Columbia are involved in the project, and New Jersey has been involved as a participating state since 2001, when the State Treasurer was authorized, pursuant to P.L.2001, c.431 (N.J.S.A.54:32B-44 et seq.), to enter into multistate discussions concerning the Streamlined Sales and Use Tax Agreement to provide a streamlined sales tax system.

The two parts of the project's proposed streamlined sales tax system are: (1) a uniform sales and use tax administration system to reduce the burden of tax compliance for all sellers and all types of commerce; and (2) a sales tax law simplification and uniformity system. The proposed legislation to modernize and simplify sales tax laws and to achieve uniformity among the states is referred to as the Streamlined Sales and Use Tax Agreement.

The Streamlined Sales and Use Tax Agreement includes the following key features:

- Uniform definitions within tax laws. Individual legislatures still choose what is taxable or exempt in their state. However, participating states agree to use the common definitions for key items in the tax base and will not deviate from these definitions.
- Rate simplification. States will be allowed one state rate and a second state rate in limited circumstances (food and drugs). Each local jurisdiction will be allowed one local rate. A state or local government may not choose to tax telecommunications services, for example, at one rate and all other items of tangible personal property...
or taxable services at another rate.

- - State level tax administration of all state and local sales and use taxes.

- - Uniform sourcing rules. The states will have uniform and simple rules for how they will source transactions to state and local governments.

- - Simplified exemption administration for use-based and entity-based exemptions.

- - Uniform audit procedures. Sellers who participate in one of the certified Streamlined Sales Tax System technology models will either not be audited or will have limited scope audits, depending on the technology model used. The states may conduct joint audits of large multi-state businesses.

These simplifications would apply to all sellers. Sellers who do not have a physical presence (or “use tax collection nexus”) are not required to collect sales and use taxes unless the United States Congress should choose to require collection from all sellers for all types of commerce. However, absent Congressional action, sellers without a physical presence can volunteer to collect tax under the simplifications proposed in the Agreement. Registration by sellers to voluntarily collect sales and use taxes will not create an inference that the business must pay business activity taxes, such as the corporate franchise or income tax.

This bill makes the amendments and supplements to the New Jersey sales and use tax that are necessary to conform New Jersey law to the terms of the Streamlined Sales and Use Tax Agreement.

COMMITTEE AMENDMENTS

The amendments for the most part concern strict compliance with the terms of the Streamlined Sales and Use Tax Agreement, or take advantage of some of the options available to this State under the agreement.

In furtherance of the goal of attaining uniform definitions within tax laws, the amendments make changes to the definitions of "sales price", the categories of medical supplies, and "alcoholic beverages". Some of the definitions in the bill, already in substantial compliance with the terms of the agreement, are put in exact compliance. For example, "alcoholic beverages" were formerly defined pursuant to the "Alcoholic Beverage Tax Law," and by reference to that other tax one could determine that they are beverages with an alcoholic content of one-half of one percent or more. The amendments restate that definition within the body of the sales tax statute itself. Other amendments relate to amendments of the Streamlined Sales and Use Tax Agreement, such as the amendment of "delivery charges," which incorporates into the bill 2004 changes to the Agreement prescribing, in the case of a shipment that includes both taxable and exempt property, price-based and weight-based options for the allocation of those charges between the two types of property.
In furtherance of the goal of attaining uniform sourcing rules, the amendments update the wording of definitions relating to telecommunications and change certain specific sourcing rules to references to the general telecommunications sourcing rule in the bill.

The bill replaced the sales tax "rate chart" with a rounding rule based on the gross transaction, which is required under the Streamlined Sales and Use Tax Agreement. The agreement does not require that the rule be used in all cases, but that rounding be available to all vendors, to the amendments reinstate the rate chart, which may be used by electing sellers. The rate chart has administrative advantages, particularly for smaller sellers.

The amendments delete a prohibition against the imposition of multiple rates of tax on sales of tangible personal property or services.

The amendments further clarify the sales and use tax treatment of leased property. Pursuant to P.L.1989, c.123 New Jersey became the first state to "accelerate" sales taxes on leased property. Instead of the lessee paying sales tax on each payment, the lessor is considered the user of the property and becomes the payer of the sales or use tax at the time that the property to be leased is purchased. The bill continues this acceleration, but shifts the imposition of the tax liability from the lessor to the lessee, which should be advantageous for business and nonbusiness lessees who move property in and out of the State. The amendments clarify the use tax and refund provisions concerning leased property.

In furtherance of the goal of rate simplification, the amendments change the Salem County 3 percent option from a general 6 percent rate from which the vendors would opt to collect at 3 percent to a general 3 percent rate from which vendors could opt to collect a 6 percent. Assuming that most vendors will wish to continue to collect at 3 percent, an "opt-out" provision should require less effort and paperwork than an "opt-in" provision.

In a new section 32, the amendments provide that a purchaser's first recourse of remedy for the over-collection of sales or use tax shall be to the seller, and prescribes rules governing a purchaser's exercise of that recourse.

In furtherance of the goal of attaining uniform tax procedures, the amendments incorporate another 2004 amendment to the Streamlined Sales and Use Tax Agreement providing refund procedures, and add a new section 33 to the bill. This new section 33 provides that the timing of rate changes, the enactment of exemptions and exclusions, procedures for remittance of funds, standards of privacy and confidentiality, and procedures for the recovery of bad debts shall be pursuant to the standards of the Streamlined Sales and Use Tax Agreement.

Finally, the amendments delay the effective date of the legislation from January 1 to July 1, 2005.
FISCAL IMPACT

The changes to the New Jersey sales and use tax base made by the bill are estimated to be, when taken in their entirety, revenue neutral. For example, while it has been noted that the definition of taxable food would be expanded to include beverages with fruit juice content of less than 51 percent, carbonated waters would become exempt. Further, candy-like snacks with a relatively high flour content that are now taxable as candy would become exempt as grocery food. High fur content clothing that is now taxable would become exempt clothing. The exemption for medical equipment would be slightly expanded. It appears that these changes would cancel each other out.

Testimony regarding the bill from the Department of the Treasury has suggested that the vendor participation in use tax collection that would be encouraged by the "amnesty" provisions of section 24 of the bill would result in increased sales and use tax collections of $40 million annually.