SUMMARY

Synopsis: Revises sales and use tax to conform with Streamlined Sales and Use Tax Agreement.

Type of Impact: Annual Revenue Change to State General Fund and Property Tax Relief Fund.

Agencies Affected: Department of Treasury.

Executive Estimate

<table>
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<tr>
<th>Fiscal Impact</th>
<th>Fiscal Year 2009</th>
<th>Fiscal Year 2010</th>
<th>Fiscal Year 2011</th>
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</thead>
<tbody>
<tr>
<td>State Revenue Gain</td>
<td>$350,000 Per Year</td>
<td></td>
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</table>

Office of Legislative Services Estimate

<table>
<thead>
<tr>
<th>Fiscal Impact</th>
<th>Fiscal Year 2009</th>
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</thead>
<tbody>
<tr>
<td>State Revenue Gain</td>
<td>At Least $175,000</td>
<td>At Least $350,000</td>
<td>At Least $350,000</td>
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</table>

- The Office of Legislative Services (OLS) generally concur with Executive projections which suggest the bill will have a limited fiscal impact. In eliminating the six percent gross receipts tax and imposing a seven percent sales and use tax on sales of fur clothing, this bill may generate an additional $175,000 of revenue during the remainder of fiscal year 2009 and an additional $350,000 each year thereafter.

- However, the OLS does not concur with the Executive’s assertion that all other, technical modifications required for Streamlined Sales and Use Tax Agreement (SSUTA) compliance have no impact on revenue collections. While the fur tax increase may be the only quantifiable impact, the OLS cautions that the legislation has two additional fiscal implications overlooked by the Executive: (1) the sales and use tax exemption for coin-operated telephone services, which may decrease sales tax collections; and (2) the prescription requirement for the sales and use tax exemption for mobility enhancing equipment, which may increase sales tax collections.
BILL DESCRIPTION

Assembly Bill No. 3111 of 2008 revises the sales and use tax to incorporate a series of changes to the SSUTA which have been adopted since the State entered the multi-state agreement in 2005.

The bill reorganizes and elaborates the taxation of telecommunications, revises the statutory definition of “sales price,” modifies the definition of direct mail processing services, eliminates the “non-distinction” between solid and liquid food, and repeals the multiple points of use exemption. For purposes of compliance, the bill narrows a broad limitation affecting all medical equipment to affect only certain medical supplies, while limiting the exemption for mobility enhancing equipment to that sold by prescription; provides a sales and use tax exemption for coin-paid sales of payphone phone calls; and replaces the six percent gross receipts fur tax with a seven percent sales and use tax on sales of fur clothing.

Beyond changes for compliance, the bill makes certain technical modifications to the sales and use tax to revise inconsistencies and omissions which stem from previous revisions. These modifications include: the research and development exemption to explicitly include as exempt receipts from sales of digital property; the business prewritten software exemption to eliminate contradictory language concerning prewritten computer software delivered electronically; a provision extending the length of time during which tax records must be maintained; an extension of the current hold harmless provision for vendors to certain purchasers who rely on tax rates, boundaries, or the taxability matrix provided by the State; and an additional reference stipulating the process of providing returns for sales and use tax imposed on charges for initiation and membership fees and dues and charges from parking, storing, or garaging motor vehicles.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Division of Taxation in the Department of Treasury anticipates Assembly Bill No. 3111 of 2008 will have a limited fiscal impact.

According to their analysis, the transition from a six percent gross receipts tax to a seven percent sales and use tax on sales of fur clothing will generate an additional $350,000 of General Fund revenue in fiscal year 2009 and each fiscal year thereafter.

Beyond the fur tax transition, Taxation asserts technical modifications required for SSUTA compliance, “appear to have no additional impact on State revenues.”

OFFICE OF LEGISLATIVE SERVICES

The OLS generally concurs with Taxation’s analysis. Assuming sales of fur clothing increase beyond figures achieved over the previous fiscal year, the transition from a six percent gross receipts tax to a seven percent sales and use tax may generate an additional $175,000 of revenue during the remainder of fiscal year 2009 and an additional $350,000 of revenue each fiscal year thereafter. However, the OLS cautions that the bill has two additional fiscal implications beyond the one percent fur tax increase identified by Taxation. The OLS notes that the exemption for coin-operated telephone services may decrease sales tax collections, and suggests that a prescription requirement imposed on the sales and use tax exemption for mobility enhancing equipment may increase sales tax collections in future fiscal years.
Coin-Operated Telephone Services:

Since 1990, the State of New Jersey has imposed sales tax on coin-paid sales of long-distance phone calls while providing a statutory exclusion for coin-paid sales of phone calls charged at the local calling rate. In reorganizing telecommunications for SSUTA compliance, however, the seven percent tax on long distance phone calls is rescinded, the exclusion for local phone calls is eliminated, and a separate, distinct sales and use tax exemption is provided for coin-operated telephone services. Regardless of whether the call is charged at the local or long-distance rate, coin-paid phone calls are exempt from taxation under the provisions of this bill.

At the height of AT&T’s control of the market, an exemption for coin-operated telephone services may have represented a multi-million dollar proposition. Since then, the prevalence of pre-paid phone cards coupled with the growth of the cell phone industry has led to a dramatic decline in the availability and the use of public payphones. Although residents continue to rely on payphones to connect with friends and family, to conduct business, or to reach help in the event of an emergency, their use has significantly diminished, limiting the extent to which tax revenues are expected to decline over time.

While precise figures are unavailable, information obtained from the Federal Communications Commission (FCC) illustrates the decline in availability and, presumably, the use of payphones. Data released by the commission in February 2007, suggested that the number of public payphones owned and operated in the State of New Jersey dropped roughly 49 percent over a seven year period, from 99,355 active payphones in March of 1999 to 50,730 in March of 2006. While the FCC has not released revised figures, a representative with the American Public Communications Council (APCC) estimates that the number of payphones in New Jersey has continued to decline, falling below figures achieved in 2006.

Mobility Enhancing Equipment:

Under current law, the State of New Jersey provides a sales and use tax exemption for sales of mobility enhancing equipment. The receipts from sales of walkers and wheelchairs, motorized carts and crutches, and chairlifts and canes are exempt from taxation, irrespective of whether they are sold with or without a prescription. Under the bill, however, sales of mobility enhancing equipment are exempt only if the equipment is sold pursuant to the prescription of a “duly licensed practitioner” who is “authorized by the laws of this State.”

The fiscal implications of the prescription requirement are largely unknown. Taxation appears unaware that the requirement will impact State revenues, and the OLS does not have sales data from medical supply distributors to quantify the impact on State revenues at this time. However, the office notes that the prescription requirement has the potential to increase tax collections in future fiscal years. Any effort restricting or limiting the size of the population eligible to receive an exemption will increase the likelihood that a sale of mobility enhancing equipment will result in a taxable transaction and, in turn, will increase sales and use tax collections. Sales of walkers to for-profit nursing homes, sales of wheelchairs to families of individuals with disabilities, and sales of chair lifts to businesses that had been exempt may be subject to taxation under the parameters of this bill.
This fiscal note has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-1 et seq.).