

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 470
Ways and Means

(Delegate Haynes, *et al.*)

Sales and Use Tax - Exemption - Service Performed by Person Practicing
Engineering

This bill exempts the sale of a service performed by a person practicing engineering from the State sales and use tax.

The bill takes effect July 1, 2017.

Fiscal Summary

State Effect: General fund revenues may decrease beginning in FY 2018 to the extent engineering firms are collecting and remitting sales and use taxes for certain services that are performed. General fund expenditures for administrative costs in the Comptroller's Office increase by \$81,300 in FY 2018.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: Practice engineering is defined as providing any service or creative work, the performance of which requires education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design. For a building or other structure, machine, equipment, process, works, system, project, or public or private utility, practice engineering includes (1) consultation; (2) design; (3) evaluation; (4) inspection of construction to ensure compliance with specifications and drawings; (5) investigation;

(6) planning; and (7) design coordination. Practice engineering does not include the exclusive and sole performance of nontechnical management activities.

Current Law: The following services are subject to the State sales and use tax: fabrication, printing, or production of tangible personal property by special order; commercial cleaning or laundering of textiles for a buyer who is engaged in a business that requires the recurring service of commercial cleaning or laundering of the textiles; cleaning of a commercial or industrial building; cellular telephone or other mobile telecommunications services; “900,” “976,” “915,” and other “900”-type telecommunications services; custom calling services provided in connection with basic telephone service; telephone answering services; pay-per-view television services; credit reporting; security services, including detective, guard, or armored car services; security systems services; transportation services for transmission, distribution, or delivery of electricity or natural gas, if the sale or use of the electricity or natural gas is subject to the sales and use tax; and prepaid telephone calling arrangements.

Although they are not considered services under the State sales and use tax, the tax also applies generally to such items as rentals of tangible personal property, restaurant meals, hotel rooms, and utilities (although specific exemptions are allowed for residential purchases of electricity and gas).

The sales and use tax does not apply to (1) a personal, professional, or insurance service that is not a taxable service and involves a sale as an inconsequential element for which no separate charge is made; (2) a sale of custom computer software services relating to procedures and programs that otherwise are taxable; are to be used by a specific person; are created for that person; or contain standard or proprietary routines that incorporate significant creative input to customize the procedures and programs for that person; and do not constitute a program, procedure, or documentation that is mass produced and sold to the general public or persons associated in a trade, profession, or industry; (3) the sale of an optional computer software maintenance contract if the buyer does not have a right, as part of the contract, to receive at no additional cost software products that are separately priced and marketed by the vendor; and (4) the use of a taxable service obtained by using a prepaid telephone calling arrangement.

Background: The sales and use tax is the State’s second largest source of general fund revenue, accounting for approximately \$4.6 billion in fiscal 2017 and \$4.7 billion in fiscal 2018, according to the December 2016 revenue forecast. **Exhibit 1** shows the sales and use tax rates in surrounding states and the District of Columbia.

Exhibit 1
Sales and Use Tax Rates in Maryland and Surrounding States

Delaware	0.0%
District of Columbia	5.75%; 10.0% for liquor sold for off-the-premises consumption and restaurant meals, liquor for consumption on the premises, and rental vehicles
Maryland	6.0%; 9.0% for alcoholic beverages
Pennsylvania	6.0% plus 1.0% or 2.0% in certain local jurisdictions
Virginia*	5.3%; 2.5% for food; both rates include 1.0% for local jurisdictions
West Virginia	6.0% plus 0.5% (in one municipality) or 1.0% (in 27 municipalities)

*An additional state tax of 0.7% is imposed in localities in Northern Virginia and the Hampton Roads region.

The Department of Legislative Services is aware of at least one instance where a firm engaged in providing engineering services is disputing a sales and use tax assessment by the Comptroller's Office. The dispute arose when the Comptroller judged certain services performed by the firm to be more like detective and investigation services, which are taxable under the law, than engineering services.

State Fiscal Effect: The bill specifies that the sale of a service performed by a person practicing engineering is exempt from the sales and use tax. Generally, the sales and use tax does not apply to the sale of engineering services and other professional services. As such, general fund revenues should not be affected.

However, to the extent the Comptroller assesses the sales and use tax to other services that may or may not be determined to be engineering services but are performed by an engineering firm, general fund revenues will decrease under the bill to the extent these firms are collecting and remitting sales taxes. The number of firms to which this may apply, the types of services that may be performed, and the amount of the resulting revenue decrease cannot be reliably estimated.

The Comptroller's Office will incur a one-time expenditure increase of \$81,300 in fiscal 2018 to notify the approximately 130,000 sales and use tax account holders of the sales tax change.

Additional Information

Prior Introductions: None.

Cross File: SB 235 (Senator Guzzone) - Budget and Taxation.

Information Source(s): Comptroller's Office; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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