SB 276

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 276 (Senator Hooper, *et al*.)
Budget and Taxation

Sales and Use Tax - Film Production Activity - Smoking

This bill applies the sales and use tax to a sale of tangible personal property or a taxable service used directly in connection with a film production activity that contains scenes in which actors are smoking.

The bill takes effect July 1, 2002.

Fiscal Summary

State Effect: The increase in general fund revenues cannot be precisely estimated at this time but is assumed to be minimal. The revenue increase would depend on the number of production companies that film in Maryland but that do not receive the existing sales tax exemption because their films contain smoking scenes; however, it is assumed that additional revenue collections will be small because some productions could film outside of the State as a result of the tax, and in other cases compliance will be low. Expenditures to enforce the bill's provisions could be handled with existing resources.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Current Law: The sale of tangible personal property or a taxable service that is used directly in connection with a film production activity is currently exempt from the 5% sales and use tax.

Background: Chapter 432 of 2000 exempted from the sales and use tax the sale of tangible personal property or a taxable service that is used directly in connection with a "film production activity." The film producer or production company must apply to the Department of Business and Economic Development (DBED) for certification of eligibility for the exemption.

Chapter 432 defined film production activity as the production or postproduction of film or video projects including feature films, television projects, commercials, corporate films, infomercials, music videos, or other projects for which the producer or production company will be compensated, and which are intended for nationwide distribution.

Tangible personal property or a taxable service includes: (1) camera equipment and supplies; (2) film and tape; (3) lighting and stage equipment and supplies; (4) sound equipment and supplies; (5) recording equipment and supplies; (6) costumes and related material; (7) props and scenery and related material; (8) design supplies and equipment; (9) drafting supplies; (10) special effects supplies; (11) short-term vehicle rentals; and (12) fabrication, printing, or production of scripts, storyboards, costumes, wardrobes, props, scenery, or special effects.

State Revenues: The Maryland Film Office (MFO) of DBED issues certificates to production companies filming in Maryland that provide for a sales tax exemption for the goods described above. The office issued 177 exemption certificates in fiscal 2001 and 41 so far in fiscal 2002. The reduction in fiscal 2002 reflects both the post-September 11 economic slowdown and changes to the procedures by which MFO issues certificates. The agency has switched from issuing one certificate for each production to issuing time-limited certificates to each producer, who may use them for an unlimited number of productions within the time period. The Comptroller and MFO estimate that approximately $120,000 in sales and use tax revenue was foregone in fiscal 2001 as a result of the exemption.

It is estimated that approximately one-third of film and television productions include smoking of some type, and hence would lose their exemption. Theoretically, sales tax revenue could therefore increase by approximately $40,000 if smoking (and spending) were evenly distributed among all productions. Instead, it is possible that some producers will choose to film outside of Maryland, especially if smoking is important to the production's plot.

It cannot be reliably estimated at this time how many productions would leave Maryland and the amount of sales tax exemptions attributable to such productions. The Department of Legislative Services (DLS) estimates that the amount of revenue loss is likely to be minimal due to offsetting factors. On the one hand, it is likely that relatively few productions will leave the State because it is likely that production companies decide where to film based on a variety of factors and the sales tax exemption is unlikely to be the determining factor. On the other hand, because the production companies are prequalified for the exemption and enforcement provisions for the bill are not specified, there may be substantial noncompliance with the prohibition and hence tax revenues will not increase.

MFO estimates that direct expenditures by producers in fiscal 2001 were $15.7 million and the indirect (multiplier) effect was $18.3 million. These estimates include payroll, facility and equipment rental, food, services and supplies, hotel rooms, fuel, and other production expenses. To the extent that film productions leave Maryland and that the above expenditures are subject to various forms of taxation (income tax, property tax, unemployment insurance, hotel taxes), there would be a corresponding decline in tax revenue. The amount of such decline cannot be reliably estimated at this time, but as noted above, DLS estimates that few production companies will leave the State and hence any indirect tax revenue impact will be minimal.

State Expenditures: The administrative expenditures associated with enforcing the bill cannot be precisely estimated, because no enforcement mechanism is specified, but are assumed to be absorbable with existing resources. DBED advises that it would require eight industrial developer positions (at an annual cost of approximately $386,000) to monitor all productions in Maryland to ensure that no smoking scenes took place. DLS believes that implementation could also be done by simply requiring the production company -- at the time of receiving its prequalified exemption -- to sign an affidavit promising not to use smoking scenes and acknowledging sales tax liability if such scenes are used. Such an approach could be handled with existing budgeted resources.

Small Business Effect: For film companies that are small businesses and that lose the sales tax exemption because their films contain smoking scenes, the impact could be meaningful depending on the amount of their purchases, which currently qualify for the exemption. To the extent that companies elect not to film in Maryland because of the restriction, small businesses that support and receive revenues from these production companies could be meaningfully negatively impacted.

Additional Information

Prior Introductions: SB 572 of 2001 received an unfavorable report from the Senate Budget and Taxation Committee.

Cross File: None.

Information Source(s): Comptroller's Office, Department of Business and Economic Development, Department of Legislative Services

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