

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1291
Ways and Means

(Delegate McIntosh, *et al.*)

Sales and Use Tax - Exemption - Energy for Homeowners Association

This bill exempts the sale of electricity, steam, or artificial or natural gas to a homeowners association (HOA) for use in property owned by the homeowners association from the State sales and use tax.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: Potential significant decrease in general fund and Transportation Trust Fund (TTF) revenues beginning in FY 2012. State expenditures are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: The sales and use tax does not apply to (1) a sale of electricity, steam, or artificial or natural gas for use in residential condominiums; (2) a sale of electricity, steam, or artificial or natural gas that is delivered under a residential or domestic rate schedule on file with the Public Service Commission (PSC); (3) a sale of coal, firewood, heating oil, or propane gas or similar liquefied gas for use in residential property that contains no more than four units, cooperative housing, condominiums, or other similar residential living arrangements; or (4) a sale of electricity through three or more bulk meters for use in a nonprofit planned retirement community of more than 2,000 housing cooperative or condominium units if ownership of units is restricted by age, any unit is

served by an individual meter, and on or before July 1, 1979, at least three bulk meters served the community.

The sales and use tax also does not apply to the sale of geothermal equipment, residential wind energy equipment, or solar energy equipment. Solar energy equipment is equipment that uses solar energy to heat or cool a structure, generates electricity to be used in a structure or supplied to the electric grid, or provides hot water for use in a structure. Solar energy equipment does not include equipment that is part of a nonsolar energy system or that uses any type of recreational facility or equipment as a storage medium.

Background: The sales and use tax is the State's second largest source of general fund revenue, accounting for \$3.7 billion in fiscal 2011 and \$3.8 billion in fiscal 2012, according to the December 2010 revenue forecast. In addition, TTF is projected to receive \$228.7 million and \$237.6 million in sales and use tax revenues in fiscal 2011 and 2012, respectively. **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%
District of Columbia	6%
Maryland	6%
Pennsylvania	6% plus 1% or 2% in certain local jurisdictions
Virginia	5%; 2.5% for food, both rates include 1% for local jurisdictions
West Virginia	6%; 3% for food

State Fiscal Effect: Total sales and use tax revenues may decrease by a significant amount beginning in fiscal 2012. The amount of the decrease cannot be reliably estimated and depends on several factors, including the number of HOAs in the State, the amount and types of property owned by HOAs, and the amount of electricity, steam, or natural gas that is used by HOAs. Chapter 10 of 2008 altered the distribution of sales and use tax revenues by requiring that, for fiscal 2009 through 2013, 5.3% of revenues be distributed to TTF. Beginning in fiscal 2014, the percentage of revenues distributed to TTF increases to 6.5%.

According to the Community Associations Institute, there were approximately 309,600 association governed communities in the United States in 2010, of which approximately 55% are HOAs and other planned communities. For purposes of this fiscal and policy note, it is assumed that the bill applies solely to HOAs and not other community associations such as condominium associations and cooperatives. Assuming that the number of HOAs in Maryland is commensurate with the State's share of the U.S. population (1.87%), there could be approximately 3,200 HOAs in the State. However, it is not known how many of these HOAs own properties that use electricity, steam, or natural gas. It is assumed that some smaller HOAs may not own any such property, while some larger HOAs, such as the Columbia Association, may own a variety of types of property that will be impacted by the bill such as recreation centers, community centers, swimming pools, and administrative buildings. The Columbia Association's proposed fiscal 2012 budget includes \$2.7 million in expenditures for utilities (gas, electric, water and sewer, and telephone service), and actual expenditures for utilities in fiscal 2009 totaled \$2.4 million.

For purposes of showing potential energy consumption by HOAs, the following is a discussion of residential electricity use. Generally, the amount of electricity consumed by a household each month depends on a multitude of factors including: (1) the size and efficiency of the dwelling; (2) the fuel source used for heating, hot water, and other equipment; (3) the number of people in the household; (4) household behavior; and (5) weather. Based on these factors, the average monthly electric consumption varies for each Maryland service territory, as shown in **Exhibit 2**.

Exhibit 2
June 1, 2010 – May 31, 2011 Residential Electricity Bills

<u>Distribution Utility</u>	<u>Number of Customers</u>	<u>Average kWh Per Month</u>	<u>Estimated Annual Bill</u>
Allegheny	220,369	1,300	\$1,442
BGE	1,114,743	1,000	1,826
Delmarva	173,752	1,100	1,703
Pepco	487,076	950	1,765

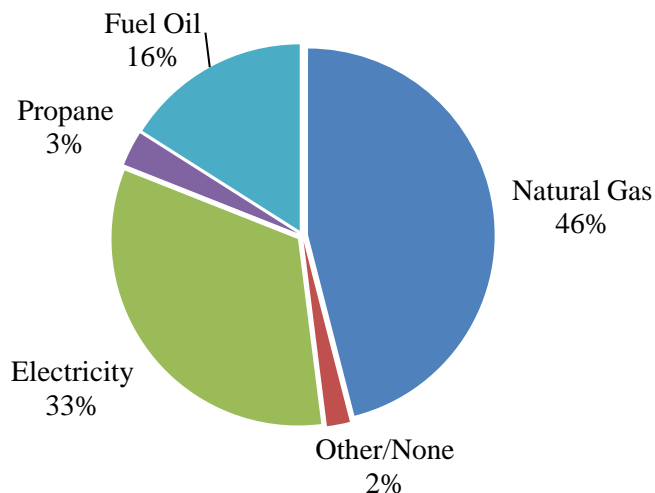
Source: Public Service Commission

In addition, typical *monthly* utility bills for commercial accounts are \$363 in the Allegany service area, \$1,757 in the BGE service area, \$1,268 in the Pepco service area, and \$1,834 in the Delmarva service area, based on winter 2009 data from PSC.

As a point of reference, and for *illustrative purposes only*, if it is assumed that 90% of the State's HOAs have an average annual electric bill similar to an average residential electric bill, and 10% of HOAs have an average annual electric bill similar to an annual commercial electric bill, then total sales and use tax revenues will decrease by approximately \$589,000 annually. This estimate is based solely on an estimation of electricity usage and does not include steam or natural gas usage.

As shown in **Exhibit 3**, natural gas is the most common heating source in the State. In areas of the State where homes do not have natural gas pipelines nearby, other sources such as electricity, heating oil, propane, and wood are the primary fuel sources for heating. Depending on the source of fuel, annual electricity usage is considerably higher for certain households, particularly for electric heating. Assuming that property owned by HOAs follows a similar pattern, the actual revenue decrease from the exemption may be greater than the estimate shown above.

Exhibit 3
Sources of Heating for Maryland Homes



Source: 2000 U.S. Census

As previously noted, for fiscal 2009 through 2013, 5.3% of total sales and use tax revenues must be distributed to TTF, and beginning in fiscal 2014, the percentage of revenues distributed to TTF increases to 6.5%. As a result, based on this estimate,

general fund revenues will decrease by \$558,000 and TTF revenues will decrease by approximately \$31,000 in fiscal 2012.

In addition, approximately \$147.3 million in sales taxes were remitted to the Comptroller from light and power companies in fiscal 2010. As an additional point of reference, *for illustrative purposes*, if HOA electricity, steam, and natural gas usage represents 1.0% of this remittance, total sales tax revenues will decrease by approximately \$1.4 million. If this usage represents 0.5% of the total sales and use tax remitted, then the total sales tax decrease associated with the exemption will be \$736,600.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation, Office of the Attorney General (Consumer Protection Division), Comptroller's Office, Secretary of State, Department of Legislative Services

Fiscal Note History: First Reader - March 21, 2011
ncs/jrb

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