SB 40

Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 40 (Senators Astle and Garagiola)
Budget and Taxation Ways and Means

Sales and Use Tax - Machinery and Equipment - Energy Star Windows and Doors

This bill exempts from the State sales and use tax the sale of machinery or equipment used directly and predominantly to produce Energy Star windows or Energy Star entry doors for residential real property; or electricity, fuel, and other utilities used to operate that machinery or equipment.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: General fund revenues decrease by at least $255,000 beginning in FY 2013. Expenditures are not affected.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
GF Revenue	($255,000)	($255,000)	($255,000)	($255,000)	($255,000)
Expenditure	0	0	0	0	0
Net Effect	($255,000)	($255,000)	($255,000)	($255,000)	($255,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential meaningful. To the extent that some of the window and door manufacturers in Maryland are small businesses, these businesses will pay less in sales and use taxes for machinery, equipment, and utility purchases.

Analysis

Current Law: The State sales and use tax does not apply to (1) a sale of machinery or equipment used to produce bituminous concrete or electricity, fuel, and other utilities used to operate that machinery or equipment; (2) a sale of tangible personal property used directly and predominantly in a production activity at any stage of operation on the production activity site from the handling of raw material or components to the movement of the finished product, if the tangible personal property is not installed so that it becomes real property; (3) a melting, smelting, heating, or annealing coke oven, aluminum furnace, anode bake oven, electrolytic pot, cathode, refractory, or other material used in relining and rebuilding a furnace or oven; (4) a foundation to support other machinery or equipment or an item required to conform to an air or water pollution law and normally considered part of real property; or (5) a sale of equipment that is used by a retail food vendor to manufacture or process bread or bakery goods for resale if the taxable price of each piece of equipment is at least $2,000, and the retail food vendor operates a substantial grocery or market business at the same location where the food is sold.

The State sales and use tax also 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.

Background: The State sales and use tax rate is 6%, except for the sale of alcoholic beverages, which are taxed at a rate of 9%. The sales and use tax is the State's second largest source of general fund revenue, accounting for $4.0 billion in both fiscal 2012 and 2013, according to the December 2011 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%
District of Columbia	6%
Maryland	6% 9% for alcoholic beverages
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%; 2% for food

There are several window and door manufacturers in Maryland, including the Thompson Creek Window Company which has a window and door manufacturing facility in Landover. According to its website, the company makes a variety of different types of windows and doors which meet Energy Star guidelines. The Comptroller's Office indicates that Thompson Creek has moved from being a manufacturer to a contractor who makes improvements to real property for tax purposes, and is therefore subject to the sales tax on costs incurred.

State Fiscal Effect: The bill exempts the sale of machinery, equipment, electricity, and other fuel used to make Energy Star windows and entry doors from the State sales and use tax.

The *2007 Economic Census* indicates that there are 10 establishments in Maryland that manufacture wood windows and doors and another 16 establishments that manufacture metal windows and doors. The economic census data does not capture the number of manufacturers of vinyl windows and doors. The Comptroller's Office examined a sample of tax return data from window manufacturers, in conjunction with the economic census data, and estimated that, on average, purchases of machinery and equipment used in the manufacturing process total approximately $4.2 million annually. As a result, it is estimated that sales and use tax revenues associated with the machinery and equipment exemption may decrease by approximately $255,000 annually beginning in fiscal 2013.

Sales and use tax revenues will also decrease to the extent these businesses are exempted from paying the sales tax on electricity and other fuel used in the production of Energy Star windows and doors. Energy usage data for the businesses that may be eligible for the exemption is not readily available. However, PSC data from 2009 indicates that 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.

For illustrative purposes only, if all window and door manufacturers in Maryland, based on the *2007 Economic Census*, are eligible for the sales tax exemption, total sales tax revenues could decrease by an additional $24,400 annually, if all of these businesses have annual electric bills of $15,700, which is based on an average monthly bill of $1,308. As previously noted, this does not include manufacturers of vinyl or composite windows and doors located in the State.

It should be noted that to the extent that equipment and machinery purchases and utility usage differs from the amounts estimated, the revenue loss associated with the exemptions provided by the bill will differ accordingly.

Additional Information

Prior Introductions: SB 996 of 2011 received a favorable with amendments report from the Senate Budget and Taxation Committee and passed the Senate. It received a hearing in the House Ways and Means Committee, but no further action was taken.

Cross File: None.

Information Source(s): Comptroller's Office, Maryland Energy Administration, Public Service Commission, Department of Legislative Services

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