HB 1279

Department of Legislative Services

Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1279 (Delegate Vogt)
Ways and Means

Sales and Use Tax - Exemption - Energy Consumption by Restaurants

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This bill exempts from the State sales and use tax the sale of electricity, fuel, or other utilities that are used to operate a restaurant.

The bill takes effect July 1, 2016.

Fiscal Summary

State Effect: General fund revenues decrease by a significant amount beginning in FY 2017 depending on the number of restaurants in the State that qualify for the exemption and the amount of energy used by these restaurants. Under one set of assumptions, general fund revenues decrease by approximately $2.2 million annually beginning in FY 2017. General fund expenditures for administrative costs in the Comptroller's Office increase by $81,300 in FY 2017.

Local Effect: None.

Small Business Effect: Meaningful. Restaurants with fewer than 50 employees will pay less for various energy expenses.

Analysis

Current Law: Section 11-210 of the Tax-General Article exempts from the sales and use tax the sale of machinery, equipment, and other tangible personal property used directly and predominantly in a production activity. Section 11-101(k) of the Tax-General Article specifies that tangible personal property includes coal, electricity, oil, nuclear fuel assemblies, steam, and artificial or natural gas.

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; (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; (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; or (5) a sale of electricity generated by specified solar energy equipment or residential wind energy equipment for the use in residential property owned by an eligible customer generator.

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 certain 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.

Background: The sales and use tax is the State's second largest source of general fund revenue, accounting for approximately $4.5 billion in fiscal 2016 and $4.7 billion in fiscal 2017, according to the December 2015 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	5.75%; 10% for liquor sold for off-the-premises consumption and restaurant meals, liquor for consumption on the premises, and rental vehicles
Maryland	6%; 9% for alcoholic beverages
Pennsylvania	6% plus 1% or 2% in certain local jurisdictions
Virginia*	5.3%; 2.5% for food; both rates include 1% for local jurisdictions
West Virginia	6% plus 0.5% or 1% in certain municipalities

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

State Fiscal Effect: General fund revenues decrease by a significant amount beginning in fiscal 2017 depending on the number of restaurants in the State that qualify for the exemption and the amount of energy used by these restaurants.

As a point of reference and *for illustrative purposes only*, it is estimated that general fund revenues could decrease by approximately $2.2 million in fiscal 2017 and by $2.5 million in fiscal 2021 based on the following assumptions:

- there are approximately 11,000 eating and drinking establishments in the State that may qualify for the exemption, according to the Maryland Restaurant Association;
- commercial accounts are 9.6% of total energy customers, as shown in **Exhibit 2**;
- commercial accounts provide for nearly 27% of total energy sales, as shown in **Exhibit 3**;
- approximately $149.9 million in sales taxes was remitted from light and power companies in fiscal 2015; and
- 3% annual increases in energy costs.

Exhibit 2
Number of Customers, by Class
2013

Utility	Residential	Commercial	Industrial	Other	Total
BGE	1,118,769	113,008	11,620	300	1,243,697
Delmarva	174,110	25,899	239	275	200,523
Potomac Edison	223,537	27,693	2,845	328	254,403
Pepco	486,127	47,487	12	88	533,714
Total Accounts	**2,002,543**	**214,087**	**14,716**	**991**	**2,232,337**
Percent of Total Accounts	**89.7%**	**9.6%**	**0.7%**	**0.0%**	

BGE: Baltimore Gas and Electric Company

Source: Public Service Commission

Exhibit 3
Energy Sales, by Customer Class (GWh)
2013

Utility	Residential	Commercial	Industrial	Other	Total
BGE	13,077	3,035	14,339	317	30,768
Delmarva	2,136	1,704	408	12	4,260
Potomac Edison	3,244	2,049	1,612	16	6,921
Pepco	5,827	8,232	396	73	14,528
Total Sales	**24,284**	**15,020**	**16,755**	**418**	**56,477**
Percent of Total Sales	**43.0%**	**26.6%**	**29.7%**	**0.7%**	

BGE: Baltimore Gas and Electric Company

Source: Public Service Commission

The Comptroller's Office would incur a one-time expenditure increase of $81,300 in fiscal 2017 to notify the approximately 130,000 sales and use tax account holders of the sales tax change.

Additional Information

Prior Introductions: None.

Cross File: None identified; however, SB 511 is an identical bill.

Information Source(s): Comptroller's Office, Department of Legislative Services

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