

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 809
Ways and Means

(Delegate Palakovich Carr, *et al.*)

Budget and Taxation

Sales and Use Tax - Taxable Services - Telephone Answering Service

This emergency bill defines a telephone answering service for purposes of the State sales and use tax. A telephone answering service includes a service provided to a customer that consists exclusively of the taking of messages, either by an automated system or by a live operator, and transmitting the messages to the customer. A telephone answering service does not include the physical act of answering a telephone on behalf of a customer, if the act is incidental to and less than 5% of the service provider's total gross receipts in a calendar year.

Fiscal Summary

State Effect: General fund revenues may decrease beginning in FY 2019 depending on whether certain businesses are no longer required to collect and remit sales and use taxes. General fund expenditures increase by \$81,300 in FY 2019.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: The State sales and use tax is imposed on 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; and telephone answering services.

Background: The sales and use tax is the State’s second largest source of general fund revenue, accounting for approximately \$4.9 billion in fiscal 2019 and \$5.0 billion in fiscal 2020, according to the December 2018 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	6.0%; 10.0% for liquor sold for on-the-premises consumption and restaurant meals; 10.25% for alcoholic beverages for consumption off the premises, tickets to specified sporting events, and specified 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 eligible food items; both rates include 1.0% for local jurisdictions
West Virginia	6.0% plus 0.5% (in two municipalities) or 1.0% (in 41 municipalities)

*An additional state tax of 0.7% is imposed in localities in Northern Virginia and the Hampton Roads region and an additional 1.7% is imposed in localities in the Historic Triangle.

State Revenues: General fund revenues may decrease to the extent that businesses that are currently collecting and remitting sales taxes for telephone answering services that are determined to be nontaxable by the bill. The number of businesses 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 Department of Legislative Services is aware of at least one instance in which a business providing “virtual office” services to clients is disputing a sales and use tax assessment by the Comptroller’s Office. The dispute arose when the Comptroller determined a certain service performed by the business was a telephone answering service, which is taxable under current law. The business claims that the service, which involves a receptionist answering phones, should not be taxable as a telephone answering service since the

receptionist also performs many other tasks that account for the majority of the individual's time.

There are as many as 100 virtual offices in the State, including 11 in Anne Arundel County, 15 in Baltimore County, 10 in Howard County, 42 in Montgomery County, and 12 in Prince George's County.

State Expenditures: The Comptroller's Office will incur a one-time expenditure increase of \$81,300 in fiscal 2019 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 945 (Senator Kramer) - Budget and Taxation.

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

Fiscal Note History: First Reader - February 24, 2019
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Analysis by: Michael Sanelli

Direct Inquiries to:
(410) 946-5510
(301) 970-5510