

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 995 (Delegate Qi)
Ways and Means

Sales and Use Tax – Restaurant Utilities – Exemption

This bill exempts from the State sales and use tax the sale of electricity, oil, liquefied petroleum gas, or artificial or natural gas used to operate a restaurant. A restaurant is defined as an establishment that is primarily engaged in selling or serving prepared food and beverages for consumption on or off the premises. A restaurant includes a catering food service facility. A restaurant does not include (1) a supermarket, convenience store, mini-mart, or similar establishment; (2) a business, school, or institutional cafeteria; or (3) a cafeteria operated by or on behalf of the State or a local government. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: General fund revenues decrease by a significant amount beginning in FY 2022 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 \$1.7 million in FY 2022 and by \$2.0 million in FY 2026. General fund expenditures for administrative costs in the Comptroller’s Office increase by \$7,000 in FY 2022.

Local Effect: None.

Small Business Effect: Meaningful. Small restaurants will benefit from reduced energy costs.

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 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.

The State Sales and Use Tax

The sales and use tax is the State's second largest source of general fund revenue, accounting for approximately \$4.7 billion in fiscal 2021 and \$4.9 billion in fiscal 2022, according to the December 2020 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, soft drinks 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; and 8.0% for specified soft drinks
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; 2.5% for specified essential personal hygiene items; both rates include 1.0% for local jurisdictions
West Virginia	6.0% plus 1.0% in all municipalities

*An additional state tax of 0.7% is imposed in localities in Central Virginia, Northern Virginia, and the Hampton Roads region; 1.0% is imposed in Halifax County; and an additional 1.7% is imposed in localities in the Historic Triangle.

State Revenues: General fund revenues decrease by a significant amount beginning in fiscal 2022 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 \$1.7 million in fiscal 2022 and by \$2.0 million in fiscal 2026 based on the following assumptions:

- there are approximately 11,300 eating and drinking establishments in the State that may qualify for the exemption, according to the Maryland Restaurant Association;
- commercial accounts are 9.5% of total energy customers;
- commercial accounts provide for nearly 27% of total energy sales;
- approximately \$134.9 million in sales taxes was remitted from light and power companies in fiscal 2020; and
- 3% annual increases in energy costs.

In addition, the actual effect on revenues in the near term may be affected by the number of restaurants that have either closed or are operating at a reduced capacity as a result of the COVID-19 pandemic. If for example 40% of restaurants are closed in fiscal 2022, general fund revenues decrease by approximately \$1.0 million, based on the assumptions above.

State Expenditures: The Comptroller's Office will incur a one-time expenditure increase of \$7,000 in fiscal 2022 to notify the approximately 11,300 restaurants of the sales tax change.

Additional Information

Prior Introductions: Similar bills were introduced in the 2016 and 2017 sessions. SB 1073 of 2017 received a hearing in the Senate Budget and Taxation Committee, but no further action was taken. SB 511 of 2016 received a hearing in the Senate Budget and Taxation Committee, but no further action was taken. HB 1279 of 2016 received a hearing in the House Ways and Means Committee, but no further action was taken.

Designated Cross File: None.

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

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