

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1073 (Senator Waugh)
Budget and Taxation

Sales and Use Tax - Exemption - Utilities for Operation of Restaurants

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, 2017.

Fiscal Summary

State Effect: General fund revenues decrease by a significant amount beginning in FY 2018 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 \$2.0 million in FY 2018 and by \$2.3 million in FY 2022. General fund expenditures for administrative costs in the Comptroller's Office increase by \$7,000 in FY 2018.

Local Effect: None.

Small Business Effect: Meaningful.

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.

Background: The sales and use tax is the State’s second largest source of general fund revenue, accounting for approximately \$4.6 billion in fiscal 2017 and \$4.7 billion in fiscal 2018, according to the December 2016 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 | 5.75%; 10.0% for liquor sold for off-the-premises consumption and restaurant meals, liquor for consumption on the premises, and 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 food; both rates include 1.0% for local jurisdictions |
| West Virginia | 6.0% plus 0.5% (in one municipality) or 1.0% (in 27 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 2018 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 \$2.0 million in fiscal 2018 and by \$2.3 million in fiscal 2022 based on the following assumptions:

- there are approximately 11,100 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 28% of total energy sales, as shown in **Exhibit 3**;
- approximately \$145.5 million in sales taxes was remitted from light and power companies in fiscal 2016; and
- 3% annual increases in energy costs.

In addition, the Comptroller's Office would incur a one-time expenditure increase of \$7,000 in fiscal 2018 to notify the approximately 11,100 restaurants of the sales tax change.

Exhibit 2
Number of Customers, by Class
2015

| <u>Utility</u> | <u>Residential</u> | <u>Commercial</u> | <u>Industrial</u> | <u>Other</u> | <u>Total</u> |
|----------------------------------|--------------------|-------------------|-------------------|--------------|------------------|
| Berlin | 2,036 | 306 | 113 | 21 | 2,476 |
| BGE | 1,132,934 | 112,721 | 11,825 | 286 | 1,257,766 |
| Choptank | 47,770 | 4,835 | 25 | 235 | 52,865 |
| Delmarva | 175,691 | 26,314 | 223 | 265 | 202,493 |
| Easton | 8,225 | 2,338 | 0 | 0 | 10,563 |
| Hagerstown | 14,686 | 2,509 | 48 | 0 | 17,243 |
| Potomac Edison | 228,054 | 28,360 | 2,745 | 305 | 259,464 |
| Pepco | 507,863 | 49,034 | 0 | 99 | 556,996 |
| SMECO | 146,123 | 15,007 | 4 | 365 | 161,499 |
| Thurmont | 2,457 | 328 | 9 | 38 | 2,832 |
| Williamsport | 847 | 124 | 15 | 9 | 995 |
| Total Accounts | 2,266,686 | 241,876 | 15,007 | 1,623 | 2,525,192 |
| Percent of Total Accounts | 89.8% | 9.6% | 0.6% | 0.1% | |

BGE: Baltimore Gas and Electric Company
 SMECO: Southern Maryland Electric Cooperative
 Source: Public Service Commission

Exhibit 3
Energy Sales, by Customer Class (GWh)
2015

| <u>Utility</u> | <u>Residential</u> | <u>Commercial</u> | <u>Industrial</u> | <u>Other</u> | <u>Total</u> |
|----------------------------------|--------------------|-------------------|-------------------|--------------|---------------|
| Berlin | 26 | 3 | 14 | 0 | 43 |
| BGE | 13,066 | 3,035 | 14,296 | 293 | 30,690 |
| Choptank | 720 | 221 | 89 | 0 | 1,030 |
| Delmarva | 2,266 | 1,741 | 408 | 12 | 4,427 |
| Easton | 0 | 0 | 0 | 0 | 0 |
| Hagerstown | 159 | 97 | 49 | 0 | 305 |
| Potomac Edison | 3,321 | 2,086 | 1,635 | 16 | 7,058 |
| Pepco | 6,030 | 8,788 | 0 | 66 | 14,884 |
| SMECO | 2,211 | 1,303 | 39 | 7 | 3,560 |
| Thurmont | 39 | 16 | 24 | 1 | 80 |
| Williamsport | 10 | 3 | 8 | 0 | 21 |
| Total Accounts | 27,848 | 17,293 | 16,562 | 395 | 62,098 |
| Percent of Total Accounts | 44.8% | 27.8% | 26.7% | 0.6% | |

GWh: gigawatt hour

BGE: Baltimore Gas and Electric Company

SMECO: Southern Maryland Electric Cooperative

Source: Public Service Commission

Additional Information

Prior Introductions: SB 511 of 2016 received a hearing in the Senate Budget and Taxation Committee, but no further action was taken. An identical bill, HB 1279, 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; Public Service Commission; Department of Legislative Services

Fiscal Note History: First Reader - March 13, 2017
mm/jrb

Analysis by: Michael Sanelli

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