Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 18 (Senator Mathias)
Budget and Taxation

Sales and Use Tax - Exemption - Energy for Homeowners Association

This bill exempts the sale of electricity, steam, or artificial or natural gas to a homeowners association (HOA) for use in property owned or maintained by the homeowners association from the State sales and use tax.

The bill takes effect July 1, 2016.

Fiscal Summary

State Effect: Potentially significant general fund revenue decrease beginning in FY 2017. The amount of the decrease depends on the number of HOAs in the State, the amount and types of property owned by HOAs, and the amount of electricity, steam, or artificial or natural gas that is used by HOAs. State expenditures are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: 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 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. Solar energy equipment does not include equipment that is part of a nonsolar energy system or that uses any type of recreational facility or equipment as a storage medium.

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.

Common Ownership Communities

Across the country, a growing number of newly constructed residential properties are being built as part of planned communities or associations. In addition, over the past several decades many high-rise rental apartment buildings have converted to condominium or cooperative housing corporation ("co-ops") communities. Typically, these communities are designed to give homeowners, whether in a large development of single-family homes or townhouses or a building of multi family dwelling units, control over services and amenities that might otherwise be provided, if at all, by local governments.

Community associations are usually nonprofit organizations whose primary purpose is to serve the needs of their homeowners and maintain the common areas of the community. Similar to the services traditionally provided by local governments, these associations provide basic neighborhood amenities such as street lighting, trash disposal, and grounds maintenance and often maintain facilities such as pools, playgrounds, and community centers.

In order to provide these services, the associations are usually authorized under their governing documents to collect fees from the homeowners in the community and to enter into contracts with third parties for the delivery of the services. The governing bodies of these associations strive to strike a balance between providing community services while enforcing the association's covenants and rules so as to protect the property values of the community as a whole. The membership of these governing bodies, after the builder has relinquished control, is usually composed of homeowners elected by the community at large. In addition to their own governing documents, these associations are also subject to any appropriate federal, state, or local laws.

According to the Community Associations Institute (CAI), there are over 323,600 community associations nationwide, which contain approximately 25.9 million housing units and 63.4 million residents. CAI notes that there are 2,000-3,000 new community associations established annually, and that more than 80% of new housing starts are in some form of a community association. In addition, CAI reports that more than 2 million people serve on the governing bodies of these associations and collect more than $51 billion in assessments from their homeowners.

The development of newly constructed or newly converted housing communities in Maryland over the past several decades tracks nationwide trends. According to CAI, it is estimated that in Maryland 6,400 communities are governed by a community association, over 1.2 million residents live in a community association, and over $1 billion in annual assessments is collected by community associations.

While a housing community can be organized as one of several different community or civic associations, most communities in Maryland are established under State law as condominiums, homeowners associations, or cooperative housing corporations. Collectively, these associations are often known as common ownership communities (COCs).

Since registration of COCs is not required statewide, the exact number of COCs in Maryland is unknown. However, public offering statements for condominium regimes are required by law to be registered with the Secretary of State. Statewide for 2015, Secretary of State registration records show that there are 2,619 condominium regimes, and the State Department of Assessments and Taxation, which maintains assessment records based on class of property, reports that there are 206,180 condominium units.

State Fiscal Effect: Sales and use tax revenues may decrease by a significant amount beginning in fiscal 2017. The amount of the decrease cannot be reliably estimated and depends on several factors, including the number of HOAs in the State, the amount and types of property owned by HOAs, and the amount of electricity, steam, or artificial or natural gas that is used by HOAs.

Because it is not known how many HOAs are in the State, it is also not known how many of these HOAs own properties that use electricity, steam, or artificial or natural gas. It is assumed that some smaller HOAs may not own any such property, while some larger HOAs, such as the Columbia Association, may own a variety of types of property that would be impacted by the bill such as recreation centers, community centers, swimming pools, and administrative buildings. As a point of reference, the Columbia Association's proposed fiscal 2017 budget includes $2.52 million in expenditures for utilities (gas, electric, water and sewer, and telephone service), and actual expenditures for utilities in fiscal 2015 totaled $2.24 million.

Generally, the amount of electricity consumed by a household or a business each month depends on a multitude of factors including (1) the size and efficiency of the dwelling or building; (2) the fuel source used for heating, hot water, and other equipment; (3) the number of people in the household or business; (4) household or business behavior; and (5) weather. Based on these factors, the average monthly electric consumption varies for each Maryland service territory. **Exhibits 2** and **3** show the customer class distribution among several Maryland utilities and energy sales by customer class, as of December 2013.

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

Source: Public Service Commission

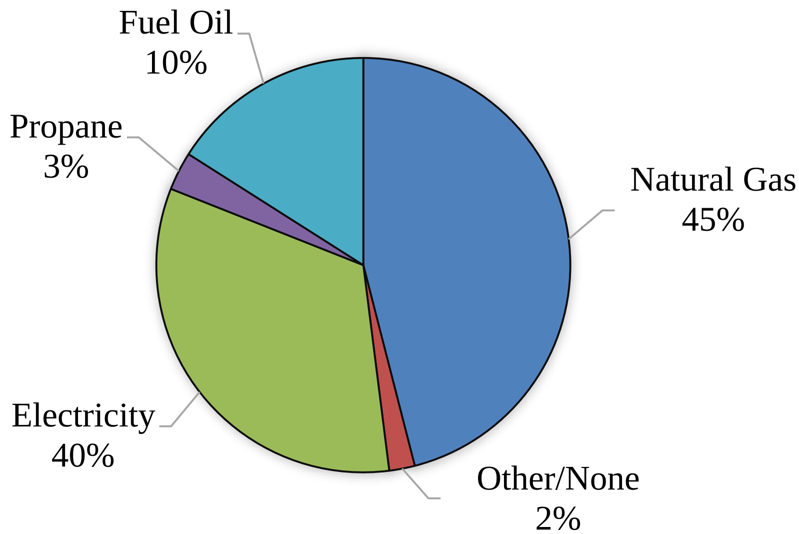
Exhibit 3
Energy Sales by Customer Class (GWh)
2013

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

Source: Public Service Commission

As shown in **Exhibit 4**, natural gas is the most common heating source in the State. In areas of the State where homes do not have natural gas pipelines nearby, other sources such as electricity, heating oil, propane, and wood are the primary fuel sources for heating. Depending on the source of fuel, annual electricity usage is considerably higher for certain households, particularly for electric heating.

Exhibit 4
Sources of Heating for Maryland Homes



Source: U.S. Census Bureau

As a point of reference, and *for illustrative purposes only*, approximately $149.9 million in sales taxes were remitted to the Comptroller from light and power companies in fiscal 2015. As an additional point of reference, *for illustrative purposes*, if HOA electricity, steam, and artificial and natural gas usage represents 1.0% of this remittance, total sales tax revenues will decrease by approximately $1.5 million.

Additional Information

Prior Introductions: HB 1291 of 2011 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, Secretary of State, Public Service Commission, Department of Legislative Services

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