

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1039

As Engrossed: 1/31/2013

Bill Subtitle: TO CREATE AN EXEMPTION FROM THE SALES AND USE TAX FOR UTILITIES USED BY QUALIFYING AGRICULTURAL STRUCTURES AND QUALIFYING AQUACULTURE AND HORTICULTURE EQUIPMENT.

Basic Change :

Representative Wardlaw

Engrossment 01/31/13 -- House Amendment 1 -- The amendment adds co-sponsors to the bill and changes the effective dates for the proposed sales tax exemptions. The amendment also adds greenhouses used for commercial production to the listing of specific types of agriculture structures eligible for the exemption. The exemptions would be implemented as follows:

- January 1, 2014 -- Exemption effective for sales of electricity used in agricultural structures, aquaculture and horticulture equipment.
- January 1, 2016 -- Exemption effective for sales of natural gas and liquefied petroleum gas (LPG) used in agricultural structures, aquaculture and horticulture equipment.

Original Bill - Enacts a sales and use tax exemption for utilities used in "qualifying agricultural structures" and "qualifying horticulture and aquaculture equipment". Exempt "utilities" include liquefied-petroleum gas (LPG), natural gas and electricity. The utilities must be used in structures and equipment operated for a commercial purpose and be separately metered from other utilities.

A "Qualifying agricultural structure" eligible for the exemption on utilities include:

- poultry or livestock facilities used for commercial production,
- broiler or turkey grow-out houses,
- laying houses,
- hatching units,
- nursery units,
- breeding houses,
- farrowing units,
- feed-out houses,
- cattle and dairy facilities used for commercial production,
- milking parlors,
- milk collection units,
- refrigeration units.

The sales and use tax exemption would apply to utilities used in "Qualifying horticulture or aquaculture equipment" with the specific eligible equipment to be:

For commercial horticulture operations

- cooling units;
- collection units; and
- irrigation equipment.

For commercial aquaculture operations

- equipment used to pump and aerate a pond; and
- holding and sorting tanks.

The bill would be effective the first day of the calendar quarter after the effective date of the act.

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Revenue Impact :

FY14 Tax Decrease

Total Impact to State Revenues - \$ 1.57 million

[5 Months of Reduced Tax Collections -- 1/1/2014 Effective Date]

- \$ 1.05 million ---State General Revenue (4.5%)
- \$ 0.20 million ---Educational Adequacy (.875% tax)
- \$ 0.12 million ---Property Tax Relief Trust Fund (.5%)
- \$ 0.03 million ---Conservation Tax (.125%)
- \$ 0.12 million ---Highway Fund (.5%)
- \$ 0.00 million ---Educational Excellence Trust Fund
- \$ 0.00 million ---Educational Adequacy (GR transfer)
- \$ 0.04 million ---State Central Services
- \$ 0.02 million ---Constitutional Officers

Maximum Impact to City and County Sales Tax -\$.51 million

FY15 Tax Decrease

Total Impact to State Revenues - \$ 3.87 million

- \$ 2.43 million ---State General Revenue (4.5%)
- \$ 0.50 million ---Educational Adequacy (.875% tax)
- \$ 0.29 million ---Property Tax Relief Trust Fund (.5%)
- \$ 0.07 million ---Conservation Tax (.125%)
- \$ 0.29 million ---Highway Fund (.5%)
- \$ 0.15 million ---Educational Excellence Trust Fund
- \$ 0.01 million ---Educational Adequacy (GR transfer)
- \$ 0.09 million ---State Central Services
- \$ 0.04 million ---Constitutional Officers

Maximum Impact to City and County Sales Tax -\$1.25 million

FY16 Tax Decrease

Total Impact to State Revenues - \$ 6.72 million

- \$ 4.10 million ---State General Revenue (4.5%)
- \$ 0.87 million ---Educational Adequacy (.875% tax)
- \$ 0.50 million ---Property Tax Relief Trust Fund (.5%)
- \$ 0.12 million ---Conservation Tax (.125%)
- \$ 0.50 million ---Highway Fund (.5%)
- \$ 0.37 million ---Educational Excellence Trust Fund
- \$ 0.03 million ---Educational Adequacy (GR transfer)
- \$ 0.15 million ---State Central Services
- \$ 0.07 million ---Constitutional Officers

Maximum Impact to City and County Sales Tax -\$2.17 million

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FY17 Tax Decrease

Total Impact to State Revenues - \$11.14 million

-\$ 6.77 million ---State General Revenue (4.5%)
-\$ 1.45 million ---Educational Adequacy (.875% tax)
-\$ 0.83 million ---Property Tax Relief Trust Fund (.5%)
-\$ 0.21 million ---Conservation Tax (.125%)
-\$ 0.83 million ---Highway Fund (.5%)
-\$ 0.64 million ---Educational Excellence Trust Fund
-\$ 0.06 million ---Educational Adequacy (GR transfer)
-\$ 0.26 million ---State Central Services
-\$ 0.11 million ---Constitutional Officers

Maximum Impact to City and County Sales Tax - \$3.60 million

Taxpayer Impact :

Sellers of natural gas, electricity and LP gas would maintain tax exemption records to substantiate their exempted sales. Horticulture and aquaculture businesses and farmers having structures or items of equipment eligible for the tax exemption would provide their utility providers with information substantiating their eligibility for the exemption for each item of equipment and for each structure.

Resources Required :

The proposal provides that a utility subject to the exemption must be separately metered from utilities used for other purposes. The proposal also provides DFA with the authority to establish additional or alternative methods for the metering the utilities. No additional resource will be needed by DFA to register eligible meters and provide certificates to taxpayers reflecting that the tax exemption applies to 100% of the metered utility service.

DFA will need additional personnel resources to process tax refund claims if an alternative method is created that allows meters with partial exempt use and partial taxable use being eligible for exemption on that portion used for eligible agriculture, aquaculture and horticulture purposes. For partial use meters, sellers would collect the sales tax on the total monthly bill and the taxpayer would subsequently file a claim for refund to DFA for the portion of taxes paid on the exempt use portion of the bill. Each refund claim would require an analysis for eligibility and a calculation of the amount of refund due. These additional work activities will require additional personnel.

Time Required :

Adequate time is provided for development of rules and to begin the registration of eligible commercial agricultural, horticulture and aquaculture businesses.

Procedural Changes :

DFA would register all eligible commercial agricultural, horticulture and aquaculture businesses consuming the utilities and eligible for the exemption. They would provide information identifying their utility meters. DFA would issue certificates to each eligible business for submission to their utility

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providers in order to claim the exemption. DFA would develop rules for implementation and instructions for sellers.

Other Comments :

The bill does not define the terms "horticulture" and "aquaculture" for purposes of determining which specific types of businesses would be eligible for the exemption. This will lead to doubt and confusion for taxpayers.

Legal Analysis :

This bill creates a new sales tax exemption for gas and electric utilities used in qualifying commercial agricultural structures, or by aquaculture or horticulture equipment. The exemption for electricity will begin on January 1, 2014. The exemption for natural and LP gas will begin on January 1, 2016. The bill requires separate metering for the exempt utilities, but vests DFA with the discretion to establish other forms of metering for the utilities. DFA is required to promulgate a rule to implement this new exemption.

The bill will become effective 90 days after adjournment, although the exemption itself will be phased in beginning on 1/1/14..