

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1039

As Engrossed: 3/5/2013

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 03/05/13 -- House Amendment 4 -- Reverses the Amendment 3 changes and provides for an exemption from sales and use taxes on sales of electricity used in agricultural structures, aquaculture and horticulture equipment effective on January 1, 2014 and provides for the exemption from sales and use taxes for sales of natural gas and liquefied petroleum gas (LPG) used in agricultural structures, aquaculture and horticulture equipment effective on January 1, 2016.

Engrossment 02/14/13 -- House Amendment 2 -- The amendment adds co-sponsors and adds definitions for the terms "aquaculture" and "horticulture". Aquaculture is defined to mean the active cultivation of domesticated fish. Domesticated fish include those that are spawned, grown, managed, harvested and marketed which are confined in ponds and tanks which are not connected to any flowing stream or body of water. Horticulture is defined to mean the initial production and cultivation of fruits, vegetables, tree nuts, trees, shrubs, vines and florist stock and does not include activities at a retail or wholesale facility. As defined, horticulture does not include crop irrigation (soybeans, rice, corn, etc.) and the sales tax exemption for utilities to operate equipment in this manner would not be applicable.

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,

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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.

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)

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-\$ 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

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. Based on DFA experience with manufacturer's utilities for partial use meters and the issuance of local tax rebates, if partial use meters were allowed for purpose of the exemption, 6 additional audit personnel would be

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required to verify, calculate, and process refund claims.

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 :

Development of rules and processes to register all eligible businesses and farmers and provide exemption certificates.

Other Comments :

None

Legal Analysis :

Under this bill, beginning January 1, 2014, electricity used by a qualifying agricultural structure or equipment will be exempt from the state sales and use tax and the 1/8% and 1/2% constitutional levies.

Beginning January 1, 2016 LP gas and natural gas used by a qualifying agricultural structure or equipment will be exempt from the state sales and use tax and the 1/8% and 1/2% constitutional levies.

The bill requires separate metering of exempt utilities but vests DFA with the discretion to establish additional or alternative metering requirements. DFA also has the discretion to create a certification form and require that taxpayers claiming the exemption submit the certification to their utility providers. DFA is required to promulgate a rule to implement the new exemption.

The bill will become effective 90 days after adjournment of the session.