

**Department of Legislative Services**

Maryland General Assembly

2013 Session

**FISCAL AND POLICY NOTE**

House Bill 511

(Delegate Rosenberg)

Ways and Means

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**Sales and Use Tax - Energy for Residential Use - Exemption**

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This bill exempts from the sales and use tax the sale of electricity, steam, or artificial or natural gas for residential use, including in condominiums, apartment buildings, nursing homes, assisted living facilities, cooperative housing, or any other multifamily dwellings. The bill also repeals the specified current exemptions for the sale of electricity, steam, or artificial or natural gas for residential use and use by certain nonprofit planned retirement communities.

The bill takes effect July 1, 2013.

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**Fiscal Summary**

**State Effect:** General fund revenues decrease by a potentially significant amount beginning in FY 2014. The amount of the revenue decrease depends on a number of factors, including the number of affected properties and the amount and costs of various types of energy used. Expenditures are not affected.

**Local Effect:** None.

**Small Business Effect:** Minimal. Most affected properties will not be small businesses.

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**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 (PSC); (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; or (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.

Further, Code of Maryland Regulations specifies that the sale of gas, electricity, steam, oil, or coal consumed directly and predominantly in a production activity, used to operate machinery and equipment used to produce snow for commercial purposes, or for use in residential condominiums is not subject to the tax. Production activities do not include the processing of food or a beverage by a retail food vendor or operating administrative or commercial facilities, such as offices, sales and display rooms, and retail outlets and storage facilities. In addition, if electricity, gas, or steam is sold through a single meter for both exempt and taxable uses, the purpose which consumes the majority of the electricity, gas, or steam is the basis for determining the taxability of the sale. The buyer must determine the majority usage, considering the relative connected load for each purpose and the relative time of operation of each over a period of one year, unless the circumstances of a particular case require a different period.

**Background:** The sales and use tax is the State's second largest source of general fund revenue, accounting for approximately \$4.1 billion in fiscal 2013 and \$4.3 billion in fiscal 2014, according to the December 2012 revenue forecast. **Exhibit 1** shows the sales and use tax rates in surrounding states and the District of Columbia.

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**Exhibit 1**  
**Sales and Use Tax Rates in Maryland and Surrounding States**

Delaware	0%
District of Columbia	6%
Maryland	6% 9% for alcoholic beverages
Pennsylvania	6% plus 1% or 2% in certain local jurisdictions
Virginia	5%; 2.5% for food, both rates include 1% for local jurisdictions
West Virginia	6%; 1% for food

The District of Columbia provides a sales and use tax exemption for the sale of utilities to residential properties, including apartments, condominiums, and cooperatives. This exemption applies even if the energy use is measured by master meters and the use has been classified as commercial.

**State Fiscal Effect:** General fund revenues may decrease by a potentially significant amount beginning in fiscal 2014 as a result of extending the sales tax exemption for residential electricity, steam, or artificial or natural gas to certain apartment buildings, nursing homes, assisted living facilities, cooperative housing, or other multifamily dwellings. The amount of the revenue decrease depends on the number of buildings that would shift from a commercial classification for sales and use tax purposes to a residential classification, and the amount and cost of utilities used by these buildings, none of which can be reliably estimated at this time.

The application of the Maryland sales and use tax to certain types of energy depends on the use classification of the location (building), the number of meters at a location, and who pays the utility bills. Generally, the sales tax does not apply to the sale and use of energy for residential use. However, there are some instances where the sales tax exemption does not apply, such as for apartment buildings. In a circumstance where an apartment unit has been individually metered and the apartment resident is the customer of a utility that provides electricity, steam or artificial or natural gas and the customer is paying the utility (not the landlord/owner) for one or all of these types of energy usage, then the sale is exempt from the sales and use tax. However, in a circumstance where there is a master meter and the landlord pays for the energy, the apartment building or complex is treated for sales and use tax purposes as commercial instead of residential, and therefore the sales and use tax is imposed on the sale of the energy to the landlord.

Data from the PSC indicates that average residential electricity usage is approximately 1,000 kilowatt hours (kWh) per month. The U.S. Energy Information Administration indicates that the average per kWh cost of electricity in Maryland was \$.1241 in November 2012; the average commercial per kWh charge for electricity was \$.0987. Based on this data, it is estimated that the average Maryland residential customer pays approximately \$1,500 for electricity each year.

PSC indicates that average monthly kWh electricity usage for several types of commercial and industrial users is (1) supermarkets – 72,800 kWh; (2) big box retailers – 273,000 kWh; and (3) large hospitals – 4.1 million kWh. As a point of reference, and using the data referenced above, a 50-unit apartment building using a master meter will therefore pay approximately \$59,200 for electricity usage and approximately \$3,600 in sales and use taxes on the electricity purchased. The estimate assumes only the electricity charges for each apartment unit and does not take into account any electricity

used for common areas of the building. The bill exempts this purchase from the sales and use tax, thereby reducing general fund revenues by \$3,600 in this example.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene, Comptroller's Office, Public Service Commission, Department of Legislative Services

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