Department of Legislative Services

Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 283 (Senator Kramer)
Budget and Taxation

Sales and Use Tax - Cleaning of Commercial or Industrial Buildings - Community Property Exemption

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This emergency bill exempts from the State sales and use tax cleaning services of a commercial or industrial building owned by a common ownership community or retirement community that is used for specified purposes.

Fiscal Summary

State Effect: General fund revenues decrease by a potentially significant amount beginning in FY 2020. General fund expenditures increase by $81,300 in FY 2020.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: Under the bill, the State sales and use tax does not apply to the cleaning of a commercial or industrial building if the building is owned by a common ownership community or retirement community and used for (1) classrooms; (2) dining; (3) exercise; (4) food preparation or cooking; (5) meetings or gatherings; (6) offices used by the common ownership community for management of the community; (7) recreation; (8) security; (9) sports; (10) storage; or (11) any other common use.

The exemption does not apply to the cleaning of a commercial or industrial building or the proportionate share of the building that is used for a purpose that requires the collection of the sales and use tax.

Current Law: A taxable service under the State sales and use tax includes the cleaning of a commercial or industrial building. Cleaning of a commercial or industrial building is defined as the following services performed to a commercial or industrial building: (1) floor, carpet, wall, window, ceiling, and exterior cleaning and (2) janitorial services.

Background:

Sales and Use Tax

The sales and use tax is the State's second largest source of general fund revenue, accounting for approximately $4.9 billion in fiscal 2019 and $5.0 billion in fiscal 2020, according to the December 2018 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	6.0%; 10.0% for liquor sold for off-the-premises consumption and restaurant meals, liquor for consumption on the premises, tickets to specified sporting events, 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 eligible food items; both rates include 1.0% for local jurisdictions
West Virginia	6.0% plus 0.5% (in two municipalities) or 1.0% (in 41 municipalities)

*An additional state tax of 0.7% is imposed in localities in Northern Virginia and the Hampton Roads region, and an additional 1.7% is imposed in localities in the Historic Triangle.

Common Ownership Communities

Approximately 230,000 condominium units are located in Maryland, with 2,691 condominium regimes registered with the State. The Foundation for Community Association Research estimated that there were 6,750 community associations in Maryland in 2017. For more information about condominiums and community associations, which are broadly referred to as common ownership communities, see the **Appendix – Common Ownership Communities**.

The Commercial Law Article defines a retirement community as a senior living community, retirement community, assisted living community, continuing care retirement community (CCRC), independent living community, or similar community that offers a combination of independent living, assisted living, or nursing. The Maryland Department of Aging reports that, as of January 1, 2019, there are 38 CCRCs operating in the State.

State Fiscal Effect: General fund revenues may decrease by a potentially significant amount beginning in fiscal 2020. The amount of the decrease depends on the number of common ownership communities and retirement communities that use cleaning services, the proportionate share of buildings that would be subject to the exemption, and the cost of cleaning services for each, none of which can be reliably estimated.

As a point of reference, the Comptroller's Office reports that businesses in the "cleaning services and janitor supplies" sales and use tax category remitted $14.3 million in sales and use taxes in fiscal 2018. The average remittance for these businesses for fiscal 2015 through 2018 is $14.0 million annually. For each $1.0 million of cleaning services that are exempt under the bill, general fund revenues will decrease by $60,000.

The Comptroller's Office will incur a one-time expenditure increase of $81,300 in fiscal 2020 to notify the approximately 130,000 sales and use tax account holders of the sales tax change. In addition, due to the potentially complex nature of calculating the exemption amount, the Comptroller's Office advises that it may need additional personnel to verify compliance with the new exemption.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office; Maryland Department of Aging; State Department of Assessments and Taxation; Secretary of State; Foundation for Community Association Research; Department of Legislative Services

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Appendix – Common Ownership Communities

When a person purchases a single-family home, condominium, or an interest in a cooperative housing corporation, he or she may also be required to join an association of owners, which is intended to act in the common interests of all the homeowners, condominium unit owners, or cooperative owners in the community. Collectively, these associations are often referred to as common ownership communities (COCs). In Maryland, a growing number of newly constructed or newly converted residences are located in some form of a COC.

The affairs of a condominium are governed by a council of unit owners, which comprises all unit owners. Among other powers, the council of unit owners has the power to impose assessments on the unit owners to pay common expenses. A council of unit owners may delegate its powers to a board of directors, officers, or a managing agent. Condominiums are governed under Title 11 of the Real Property Article.

Many new housing developments are subject to a homeowners association (HOA) that is created by a governing document and has the authority to impose mandatory fees on lots in the development in connection with the provision of services or for the benefit of the lots, the lot owners, or the common areas. HOAs are governed under Title 11B of the Real Property Article.

A cooperative housing corporation or "cooperative" is a corporation that owns real property. A resident of a cooperative does not own his or her unit; rather, the person owns an interest in the corporation, which leases the unit to the person for residential use. Cooperatives are governed by the laws in Title 5, Subtitle 6B of the Corporations and Associations Article.

Condominiums and HOAs may be authorized by their governing documents to impose liens on units or lots to collect unpaid assessments or fees. In a cooperative, the governing documents usually provide for the collection of delinquent fees, and evictions for unpaid fees are generally pursued by way of a landlord-tenant action.

Since registration of the various 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 (SOS). SOS registration records show that, as of December 2018, 2,691 condominium regimes have been registered with the State.[1] The State Department of Assessments and Taxation, which maintains

[1] This number is lower than the 2,875 condominium regimes reported by SOS in 2017. The inflated number was the result of a miscalculation, and the revised number does not reflect a decrease in the number of regimes.

assessment records based on class of property, reports that there are 229,859 condominium units in the State as of December 2018. The Foundation for Community Association Research estimated that there were 6,750 community associations in the State in 2017.

Task Force on Common Ownership Communities

With a growing number of Marylanders residing in COCs, and evidence that some COCs had issues with governance, dispute resolution, and financial stability, the General Assembly created the Task Force on Common Ownership Communities in 2005 (Chapter 469 of 2005). The issues addressed by the task force included the education and training needs of COC boards and prospective buyers, availability of alternative dispute resolution services, special considerations of aging COCs, collection of assessments, and resale of homes within COCs. The task force met 10 times, held five public hearings, and submitted its final report in December 2006. The report's findings and recommendations have served, in subsequent years, as the basis for numerous pieces of legislation intended to improve the operation of COCs. This legislation, enacted from 2007 through 2017:

- authorized a group of three or more unit or lot owners in a condominium or HOA to petition a circuit court to appoint a receiver in specified situations frequently found in aging communities (Chapter 321 of 2007);

- gave the Consumer Protection Division within the Office of the Attorney General increased authority over violations of the Maryland Homeowners Association Act (Chapter 593 of 2007);

- eased restrictions on the ability of condominiums and HOAs to amend their governing documents (Chapters 144 and 145 of 2008 and Chapter 480 of 2017);

- strengthened the transition process from developer to the governing body of a condominium or HOA by allowing the governing body to terminate specified contracts and requiring the developer to provide specified documents (Chapters 95 and 96 of 2009);

- required the governing body of a COC to purchase fidelity insurance or a fidelity bond covering various acts of malfeasance by COC officers, directors, and other specified employees and agents (Chapters 77 and 78 of 2009 and Chapter 615 of 2010);

- granted priority to a specified portion of a lien of a condominium or HOA over the claim of a holder of a first mortgage or first deed of trust in the event of a foreclosure on a unit or lot (Chapter 387 of 2011);

- limited the amount of damages for which the governing body of a condominium or HOA may foreclose on a lien against a unit owner or lot owner (Chapters 448 and 449 of 2013);

- expanded the purposes for which a condominium's board of directors may hold a closed meeting, similar to the law for an HOA, by allowing a meeting to be closed to consider terms or conditions of a business transaction in the negotiation stage if disclosure could adversely affect the economic interests of the council of unit owners (Chapter 110 of 2013);

- established meeting standards and standards for late charges for delinquent payments, eviction restrictions, an auditing process for books and records, and a dispute settlement mechanism for cooperatives under specified circumstances (Chapter 567 of 2014); and

- altered the contents of a required disclosure for the resale of a condominium unit, authorized the assessment of specified fees by a condominium council of unit owners or an HOA for providing specified information, and required the Department of Housing and Community Development to adjust the maximum authorized fees every two years (Chapter 735 of 2016 and Chapter 817 of 2017).

The task force's report also featured findings and recommendations relating to the creation of an ombudsman in local governments. Since the report's release, Prince George's County created its Common Ownership Communities Program in 2007 with the stated purpose of assisting governing bodies as well as owners and residents of HOAs, residential condominiums, and cooperative housing corporations with education, training, and alternative dispute resolution. Charles County and Montgomery County have offices dedicated to COCs that predate the task force.

Finally, findings and recommendations of the report that have not been codified in statute pertain to reserves of COCs, an insurance deductible cap for unit owners, and the uniformity of COC depository requirements.