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COMMITTEE REPORT

March 22, 2018

**H. 4021**

Introduced by Rep. Finlay

S. Printed 3/22/18--H.

Read the first time March 22, 2017.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Bill (H. 4021) to amend Section 12‑36‑2120, as amended, Code of Laws of South Carolina, 1976, relating to exemptions from the state sales tax, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking SECTION 2 and inserting:

/ SECTION 2. A. Section 12‑20‑20(B) of the 1976 Code is amended to read:

“(B) Unless otherwise provided, corporations shall file an annual report on a form prescribed by the department on or before the date for filing the income tax return as provided in Section 12‑6‑4970. Any other entity subject to a license fee in this chapter must file an annual report on or before the fifteenth day of the fourth month following the close of the taxable year.”

B. This SECTION takes effect upon approval by the Governor and applies to tax years beginning after 2017.

SECTION 3. Section 12-36-2120 of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

“( ) incontinence supplies and related home medical supplies:

(a) as defined under federal and state Medicaid or Medicare laws;

(b) which is paid directly by funds of this State or the United States under the Medicaid or Medicare programs, where state or federal law or regulation authorizing the payment prohibits the payment of the sale or use tax; and

(c) sold by a person engaged in the business of selling such equipment and supplies at retail who holds a South Carolina retail sales license.”

SECTION 4. A. Section 12‑43‑335(A) of the 1976 Code is amended by adding appropriately numbered items to read:

“(7) Sector 11, subsectors 111, 112, 113, 114, and 115, unless exempt;

(8) Sector 52, subsectors 522, 523, 524, and 525; Sector 53, subsectors 531 and 533; and Sector 55, subsector 551, unless exempt.

(9) Sector 51, subsector 512; Sector 54, subsector 541; Sector 61, subsector 611; Sector 62, subsectors 621, 622, 623, and 624; Sector 71, subsector 712; Sector 72, subsector 721; and Sector 81, subsectors 813 and 814, unless exempt.”

B. Section 12‑39‑70 of the 1976 Code is repealed.

C. This SECTION takes effect upon approval by the Governor and applies to property tax returns due after December 31, 2018.

SECTION 5. A Chapter 54, Title 12 of the 1976 Code is amended by adding:

“Section 12‑54‑265. Notwithstanding any other provision of law, the department may submit to a financial institution, as defined in Section 63‑17‑2310(A)(2), information that identifies a debtor named on a warrant for distraint that has been issued and filed by the department or whose debt has been submitted to the department for collection under the provisions of Section 12‑4‑580. For purposes of debts named on warrants for distraint, the debt must be at least one hundred eighty days old from the date of assessment. The department may submit the information to the financial institution on a quarterly basis or, with the agreement of the financial institution, on a more frequent basis. A financial institution that receives the information must conduct a data match. The financial institution must then provide to the department, in a manner and form prescribed by the department, information concerning the debtor for purposes of collecting outstanding debts. The information provided to the department must include, but is not limited to, the information required pursuant to Section 63‑17‑2320(A). The financial institution must be paid a reasonable fee out of the collected funds not to exceed actual cost.”

B. This SECTION takes effect upon approval by the Governor.

SECTION 6. Except where provided otherwise, this act takes effect January 1, 2019. /

Renumber sections to conform.

Amend title to conform.

BRIAN W. WHITE for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced on March 22, 2017**

**State Expenditure**

The Department of Revenue indicates that there will be no expenditure impact to the general fund, federal funds, or other funds from this bill. The department can administer the legislative changes with existing resources.

**State Reve**n**ue**

**Section 1.** The perishable prepared food manufacturing industry includes the processing, packaging, and storage of food and food components. This industry now must operate and comply with the Food Safety Modernization Act of 2011. The United States Congress passed the Food Safety Modernization Act of 2011 to create a new food safety system to combat foodborne illnesses through broad prevention measures and a new system of food import oversight. The Act gives the U.S. Food and Drug Administration comprehensive preventive controls for food and feed facilities, mandated inspections frequency, mandatory food recalls, and requires imported food to meet the same food safety standards as those of U.S. producers.

In South Carolina, the sale of electricity for residential and industrial users is exempt from sales tax. Commercial businesses must pay sales tax on their use of electricity. This bill would amend Section 12-36-2120(18) to allow a state sales and use tax exemption on fuel and electricity used in the perishable prepared food manufacturing industry as defined in the North American Industrial Classification System (NAICS) 311991. This would include fuel and electricity used for freezing, dehydration, heat processing, acidification, and refrigeration at forty-five degrees Fahrenheit or below to ensure that mechanical breakdowns, time delays, temperature fluctuation, and other factors do not contribute to the decomposition, deterioration, or contamination of the food.

Based on the latest data from the U.S. Department of Labor, Bureau of Labor Statistics, there are currently twenty-two perishable prepared food manufacturing companies operating in South Carolina with a primary NAICS code of 311991. This represents 3.44 percent of the total perishable prepared food manufacturing industry in the United States. These twenty-two facilities currently employ 345 employees making an average annual salary of $32,919 each year. Based on the latest information from the U.S. Bureau of the Census, the cost of fuel and electricity consumed nationwide by the perishable prepared food manufacturing industry amounted to $119,054,000 in calendar year 2012. Adjusting for inflation, the annual cost of fuel and electricity consumed would total an estimated $135,000,000 in calendar year 2018. Multiplying this amount by 3.44 percent and applying a sixty percent factor for direct consumption of fuel for refrigeration and a six percent state sales and use tax rate yields a reduction in sales and use tax of an estimated $167,200 in calendar year 2018. Since the effective date of this bill is January 1, 2018, sales and use tax revenue would be reduced by one-half of a full fiscal year, or an estimated $83,600 in FY2017-18. Of this total, general fund revenue would be reduced by $55,734, the EIA would be reduced by $13,933, and the Homestead Exemption Fund would be reduced by $13,933 in FY2017-18. In FY2018-19, sales and use tax revenue would be reduced by an estimated $167,200 annually. Of this total, general fund revenue would be reduced by $111,466, the EIA would be reduced by $27,867, and the Homestead Exemption Fund would be reduced by $27,867 in FY2018-19, and each fiscal year thereafter.

This bill would also amend Section 12-36-2120(54) to allow a state sales and use tax exemption on specific clothing items required at perishable prepared food manufacturing facilities. This bill would update a referenced regulation for clothing and other attire required for working in a Class 100 or better clean room environment by replacing “Federal Standard 209E” with the “International Organization for Standardization (ISO) 14644-1”. In 2000, the Federal Standard 209E was suspended and the ISO 14644-1 and ISO 14644-2 standards became effective on November 29, 2001. These standards specify the classification of airborne particles in cleanrooms and clean zones and are considered the industry standard.

This bill would mandate that the clothing required by current Good Manufacturing Practices (cGMP) pursuant to 21 C.F.R. Section 111.10 at perishable prepared food manufacturing facilities as defined by the North American Industrial Classification System (NAICS) 311991 be designed to prevent health hazards. The federal regulation (21 C.F.R. Section 111.10) specifically requires a manufacturer, packager, labeler or holder of food to exclude from working in its operations any person who, by medical examination, the person’s acknowledgement, or supervisory observation has an illness, open lesion, or any other abnormal source of microbial contamination that could result in microbial contamination of components or supplements, or contact surfaces, until the health condition no longer exists. If a person works in a food processing operation, or comes in contact with food preparation surfaces, the person is required to use hygienic practices to protect against the contamination of food components, dietary supplements, or contact surfaces. These hygienic practices include the following:

 the person must wear protective outer garments to protect against the contamination of components, dietary supplements, or any contact surface,

 maintain adequate personal cleanliness,

 washing hands thoroughly in an adequate hand-washing facility,

 remove all unsecured jewelry and other objects that might fall into components, dietary supplements, equipment, or packaging, and removing hand jewelry that cannot be adequately sanitized during periods in which components or dietary supplements are manipulated by hand,

 maintaining gloves used in handling components or dietary supplements in an intact, clean, and sanitary condition. The gloves must be of an impermeable material,

 wearing hairnets, caps, beard covers, or other effective hair restraints,

 not storing clothing or other personal belongings in areas where components, dietary supplements, or any contact surfaces are exposed or where contact surfaces are washed,

 not eating food or chewing gum, drinking beverages, or using tobacco products in areas where components, dietary supplements, or any contact surfaces are exposed, or where contact surfaces are washed, and

 taking any other precautions necessary to protect against the contamination of components, dietary supplements, or contact surfaces with microbial contaminants, filth, or any other extraneous materials, including perspiration, hair, cosmetics, tobacco, chemicals, and medicines applied to the skin.

Based on the latest information from the U.S. Bureau of the Census, the cost of material supplies other than manufactured parts and containers by the perishable prepared food manufacturing industry amounted to $414,891,000 nationwide in calendar year 2012. Adjusting for inflation, the annual cost of supplies consumed would total $465,000,000 in FY2017-18. Multiplying by 3.44 percent and applying a five percent factor for direct consumption protective hygienic workwear and a six percent state sales and use tax rate yields a reduction in sales and use tax of an estimated $48,000 in calendar year 2018. Since the effective date of this bill is January 1, 2018, sales and use tax revenue would be reduced by one-half of a full fiscal year, or an estimated $24,000 in FY2017-18. Of this total, general fund revenue would be reduced by $16,000, the EIA would be reduced by $4,000, and the Homestead Exemption Fund would be reduced by $4,000 in FY2017-18. In FY2018-19, sales and use tax revenue would be reduced by an estimated $48,000 annually. Of this total, general fund revenue would be reduced by $32,000, the EIA would be reduced by $8,000, and the Homestead Exemption Fund would be reduced by $8,000 in FY2018-19, and each fiscal year thereafter.

Although this bill is written specifically for the perishable food manufacturing industry (NAICS 311991), we believe that the enforcement of the sales and use tax exemptions on these specific items, in this specific industry, will be difficult and challenging for the Department of Revenue to enforce. The abovementioned items are used widely in the restaurant industry, the commercial painting business, and other manufacturing industries. The Department of Revenue would have to issue sales tax exemption certificates specifically for those business establishments with a primary NAICS code of 311991 in order for those targeted companies to receive the sales tax exemption. Without strict enforcement, the actual revenue impact of the proposed amendment may be higher than the calculated amount.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 12‑36‑2120, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO EXEMPTIONS FROM THE STATE SALES TAX, SO AS TO EXEMPT CERTAIN FUEL AND ELECTRICITY USED IN PERISHABLE PREPARED FOOD MANUFACTURING AND TO EXEMPT CERTAIN CLOTHING WORN AT PERISHABLE PREPARED FOOD MANUFACTURING FACILITIES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 12‑36‑2120(18) and (54) of the 1976 Code, as last amended by Act 69 of 2015, is further amended to read:

“(18) fuel used exclusively to cure agricultural products, and fuel and electricity used in perishable prepared food manufacturing, as defined in the North American Industry Classification System (NAICS) 311991, including processing, packaging, and storage, to comply with the Food Safety Modernization Act of 2011, including without limitation, fuel and electricity used for freezing, dehydration, heat processing, acidification, and refrigeration at forty‑five degrees Fahrenheit or below, used to ensure that mechanical breakdowns, time delays, temperature fluctuation, and other factors do not contribute to the decomposition, deterioration, or contamination of food;

(54) clothing and other attire required for working in a Class 100 or better as defined in ~~Federal Standard~~ ~~209E~~ International Organization for Standardization (ISO) 14644‑1 clean room environment, and clothing required by Current Good Manufacturing Practices (cGMPs) pursuant to 21 C.F.R. Section 111.10, as it may be amended, at perishable prepared food manufacturing facilities defined by the North American Industry Classification System (NAICS) 311991 to prevent health hazards, including outer garments, gloves of an impermeable material, hairnets, headbands, beard covers, caps, hair covers or other effective hair restraints, and other attire required pursuant to 21 C.F.R. Section 110.10 for persons working in direct contact with food, food contact services, and food packaging materials to protect against contamination of food in perishable prepared food manufacturing facilities;”

SECTION 2. This act takes effect January 1, 2018.

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