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REPORT OF THE LEGISLATIVE SUBCOMMITTEE

HOUSE BILL 4021

(Cole, Cobb-Hunter, Sottile, Finlay – Staff Contact: AJ Newton)

H. 4021 -- Rep. Finlay: 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.

Summary of Bill:

-The bill allows for state sales tax exemptions for certain fuel and electricity used in perishable food manufacturing and certain clothing worn at perishable prepared food manufacturing facilities.

-This amends Section 12-36-2120 (18) and (54) - which are exemptions from sales tax

Estimated Revenue Impact:

-In FY18-19, General Fund revenue would be reduced by \$143,466 and Other/Federal fund revenue would be reduced by \$71,734.

Subcommittee Recommendation:

Favorable



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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Bill Number: H.4021 Introduced on March 22, 2017
Author: Finlay
Subject: Sales Tax Exemptions
Requestor: House Ways and Means
RFA Analyst(s): Martin
Impact Date: March 11, 2018

Estimate of Fiscal Impact

	FY 2017-18	FY 2018-19
State Expenditure		
General Fund	\$0	\$0
Other and Federal	\$0	\$0
Full-Time Equivalent Position(s)	0.00	0.00
State Revenue		
General Fund	(\$71,734)	(\$143,466)
Other and Federal	(\$35,866)	(\$71,734)
Local Expenditure	\$0	\$0
Local Revenue	\$0	\$0

Fiscal Impact Summary

This bill contains two separate sales and use tax exemptions. They are as follows:

This bill would reduce sales and use tax pursuant to Section 12-36-2120(18) 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 reduce sales and use tax pursuant to Section 12-36-2120(54) 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.

This bill would not affect Other Fund revenues or Federal Fund revenues.

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 Revenue

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.

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

Local Expenditure

N/A

Local Revenue

N/A



South Carolina General Assembly
122nd Session, 2017-2018

H. 4021

STATUS INFORMATION

General Bill
Sponsors: Rep. Finlay
Document Path: I:\council\ills\bbm\9653sa17.docx

Introduced in the House on March 22, 2017
Currently residing in the House Committee on **Ways and Means**

Summary: Sales tax exemptions

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
3/22/2017	House	Introduced and read first time (<u>House Journal-page 8</u>)
3/22/2017	House	Referred to Committee on Ways and Means (<u>House Journal-page 8</u>)
3/15/2018		Scrivener's error corrected

View the latest legislative information at the website

VERSIONS OF THIS BILL

3/22/2017
3/15/2018

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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

1 defined by the North American Industry Classification System
2 (NAICS) 311991 to prevent health hazards, including outer
3 garments, gloves of an impermeable material, hairnets, headbands,
4 beard covers, caps, hair covers or other effective hair restraints, and
5 other attire required pursuant to 21 C.F.R. Section 110.10 for
6 persons working in direct contact with food, food contact services,
7 and food packaging materials to protect against contamination of
8 food in perishable prepared food manufacturing facilities;”

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

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