Bill Number:	H.4021 Amended by the House of Representatives on April 3, 2018
Author:	Finlay
Subject:	Sales Tax Exemptions
Requestor:	Senate Finance
RFA Analyst(s):	R. Martin, Gable, and Mitchell
Impact Date:	April 23, 2018

Estimate of Fiscal Impact

	FY 2018-19	FY 2019-20
State Expenditure		
General Fund	$0	$0
Other and Federal	$0	$0
Full-Time Equivalent Position(s)	0.00	0.00
State Revenue		
General Fund	($917,434)	($1,834,866)
Other and Federal	($458,716)	($917,434)
Local Expenditure	Undetermined	$0
Local Revenue	$0	$0

Fiscal Impact Summary
This bill contains three separate sales and use tax exemptions. They are as follows:

Section 1. This bill, as amended, would reduce sales and use tax pursuant to Section 12-36-2120(18) of an estimated $167,200 in calendar year 2019. Since the effective date of this bill is January 1, 2019, sales and use tax revenue would be reduced by one-half of a full fiscal year, or an estimated $83,600 in FY2018-19. 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 FY2018-19. In FY2019-20, 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 FY2019-20, and each fiscal year thereafter.

This bill, as amended, would also reduce sales and use tax pursuant to Section 12-36-2120(54) of an estimated $48,000 in calendar year 2019. Since the effective date of this bill is January 1, 2019, sales and use tax revenue would be reduced by one-half of a full fiscal year, or an estimated $24,000 in FY2018-19. 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 FY2018-19. In FY2019-20, 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 FY2019-20, and each fiscal year thereafter.

Section 3. This section would reduce sales and use tax revenue of an estimated $2,537,100 in calendar year 2019. Since the effective date of this bill is January 1, 2019, sales and use tax revenue would be reduced by one-half of a full fiscal year, or an estimated $1,268,050 in FY2018-19. Of this total, General Fund revenue would be reduced by $845,700, the EIA would be reduced by $211,425, and the Homestead Exemption Fund would be reduced by $211,425 in FY2018-19. In FY2019-20, sales and use tax revenue would be reduced by an estimated $2,537,100 annually. Of this total, General Fund revenue would be reduced by $1,691,400, the EIA would be reduced by $422,850, and the Homestead Exemption Fund would be reduced by $422,850 in FY2019-20, and each fiscal year thereafter.

This bill would not affect Federal Fund revenues.

Explanation of Fiscal Impact

Amended by House of Representative on April 3, 2018
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 2019. 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 2019. Since the effective date of this bill is January 1, 2019, sales and use tax revenue would be reduced by one-half of a full fiscal year, or an estimated $83,600 in FY2018-19. 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 FY2018-19. In FY2019-20, 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 FY2019-20, 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 calendar year 2019. 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 2019. Since the effective date of this bill is January 1, 2019, sales and use tax revenue would be reduced by one-half of a full fiscal year, or an estimated $24,000 in FY2018-19. 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 FY2018-19. In FY2019-20, 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 FY2019-20, 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 section adds the language contained in H.4028. Currently, pursuant to Section 12-20-20, corporations (C-Corps) that are required to pay a corporation license fee must file an annual report by April 15th following the close of the taxable year. Pursuant to Section 12-6-4970, "S" corporations (S-Corps) are required to file an annual report by March 15th following the close of the taxable year. This change took effect upon approval by the Governor in Act 160 of 2016.

This bill would amend Section 12-20-20(B) to require any corporation that is subject to an annual corporation license fee must pay the license fee on or before the original due date of filing the annual report. This change would synchronize the reporting dates of submitting an annual report with the Department of Revenue with the due date of remitting an annual corporation license tax by corporations. This act takes effect upon approval by the Governor and applies to tax years beginning after 2017. This section would not affect state General Fund revenue in FY2018-19, or any fiscal year thereafter. This section would also not affect Federal Funds or Other Fund revenue in FY2018-19.

Section 3. This section would add a sales and use tax exemption on the sale of adult incontinence products. The Mayo Clinic and the Urology Care Foundation report that as many as one in three adults have bladder control issues stemming from pregnancy and childbirth, health conditions such as diabetes and obesity, and changes as one grows older. Women represent over eighty percent of the users of incontinence products. Nearly ninety percent of the global demand for incontinence products is concentrated in the United States.

Based on information from Zion Market Research, a provider of global consumer and industrial market research, tissue maker Kimberly-Clark controls nearly fifty-four percent of the incontinence products market with such labels as Depends© undergarments. The nearest competitor, Procter and Gamble, the maker of the Always© brand, accounted for seven percent of total sales, while the Swedish maker of Tena© brand products totaled six percent of the market. According to industry reports, the adult diaper market recorded national sales of $2,528,000,000 in calendar year 2016. As sales of adult diapers are growing faster than retail sales in general, adult diaper sales could reach an estimated $2,819,000,000 in calendar year 2019. After adjusting this figure to estimate sales in South Carolina and applying a six percent sales and use tax rate yields a reduction in sales and use tax revenue of an estimated $2,537,100 annually. Since the effective date of this bill is January 1, 2019, sales and use tax revenue would be reduced by one-half of a full fiscal year, or an estimated $1,268,050 in FY2018-19. Of this total, General Fund revenue would be reduced by $845,700, the EIA would be reduced by $211,425, and the Homestead Exemption Fund would be reduced by $211,425 in FY2018-19. In FY2019-20, sales and use tax revenue would be reduced by an estimated $2,537,100 annually. Of this total, General Fund revenue would be reduced by $1,691,400, the EIA would be reduced by $422,850, and the Homestead Exemption Fund would be reduced by $422,850 in FY2019-20, and each fiscal year thereafter.

Section 4. This section adds the language contained in H.4029. This section would amend Section 12-43-335(A) by moving language contained in Section 12-39-70 and by adding the appropriately numbered items to Section 12-43-335(A). This would move the classification of businesses and other entities currently under the jurisdiction of the county auditor to Section 12-43-335 where the property is assessed under the jurisdiction of the Department of Revenue. Also, Section 12-39-70 of the 1976 Code is repealed. This section would have no impact on the General Fund, Other Funds, or Federal Funds as the Department of Revenue has a system in place capable of handling an increase in the business personal property assessment filings. This section takes effect upon approval by the Governor and applies to property tax returns due after December 31, 2020. This section would not affect state General Fund revenue in FY2018-19.

Section 5. This section adds the language contained in H.4030. Distraint warrants are a legally enforceable means of ensuring future payment on back property taxes and liens from delinquent taxpayers. To ensure payment of taxes, the state can issue a warrant to protect the property owner's assets for future liquidation. A distraint warrant states how much is owed in property tax payments and the deadline for their payment. It also contains an injunction, or a refusal to allow the recipient to sell, remove, or destroy property that can be seized for sale and payment of back taxes. People served with a distraint warrant may be responsible for both the legal and delivery costs of the document as well as the back taxes that triggered the warrant in the first place. Distraint warrants are issued by the Department of Revenue and can be delivered either by the sheriff or an agent of the department. Funds raised by the sale of property listed in a distraint warrant are applied and deducted from the total amount owed in taxes.

This section adds Section 12-54-265 to allow the Department of Revenue to submit to a financial institution information that identifies a debtor named on a warrant for distraint that has been filed by the department or whose debt has been submitted to the department for collection whose debt is at least 180 days old from the date of assessment. The department may identify debtors on a quarterly basis or, with agreement of the financial institution, a more frequent basis. The financial institution that receives the information must conduct a data match. The financial institution must then provide the department information concerning the debtor for the purposes of collecting the outstanding debts. The bill further states that the financial institution must be paid a reasonable fee out of the collected funds not to exceed actual cost. The Department of Revenue indicates that the amount of additional outstanding debt that will be collected is unknown and is not expected to be significant. Therefore, the revenue impact of this bill is undetermined.

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

Local Expenditure

Section 4. This section would have an undetermined savings impact on local expenditures as transferring the responsibility of business personal property assessment filings from the county auditors to the Department of Revenue has a varying affect from county to county. As the counties would no longer be responsible for assessing this property, there would be an expenditure savings. Ten counties responded to our inquiry. Greenville County and Oconee County would not be impacted by this bill as they currently have the department assessing their business personal property. Anderson and Charleston anticipate savings of $15,000 and $10,000, respectively, associated with postage, printing, and labor. Chester County, Dillon County, Lexington County, Richland County, Spartanburg County, and Williamsburg County, expected savings of less than $1,000, if any, stemming from savings on postage and mailings. Berkeley County would also experience minimal savings if the two Business Personal Property Appraisers remain on staff to assist local businesses with the filings. Overall, the local expenditure savings statewide is undetermined as the impact varies from county to county.

Local Revenue

N/A

Introduced on March 22, 2017
State Expenditure
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State Revenue
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- 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.

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

Local Expenditure
N/A

Local Revenue
N/A