



House of Representatives

General Assembly

File No. 611

February Session, 2008

House Bill No. 5939

House of Representatives, April 14, 2008

The Committee on Finance, Revenue and Bonding reported through REP. STAPLES of the 96th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING THE SALES TAX LIABILITY OF ASPHALT MANUFACTURERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) (a) (1) For purposes of
2 subparagraph (A) of subdivision (3) and subdivision (18) of section 12-
3 412 of the 2008 supplement to the general statutes, and section 12-412i
4 of the general statutes, a sale to a purchaser who will be making a
5 finished product referred to in said sections, which sale would
6 otherwise qualify for sales and use tax exemption pursuant to said
7 sections except for the fact that such finished product is used by such
8 purchaser to fulfill a paving contract, shall qualify for such exemption
9 in the same manner as if such purchaser made a sale of such finished
10 product.

11 (2) Nothing in subdivision (1) of this subsection shall apply the
12 exemption under said subdivision (18) of section 12-412 to a sale to a
13 purchaser of materials that become an ingredient or component part of
14 a finished product that is used by such purchaser to fulfill a paving

15 contract to real property.

16 (b) For purposes of subdivision (34) of section 12-412 of the 2008
17 supplement to the general statutes, a sale of machinery to a purchaser
18 that would otherwise qualify for sales and use tax exemption pursuant
19 to said section, except for the fact that the manufactured products
20 being manufactured with the purchased machinery are used by such
21 purchaser to fulfill a paving contract, shall qualify for such exemption
22 in the same manner as if such manufactured products were being sold
23 by the purchaser.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section

FIN *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Department of Revenue Services	GF - Revenue Loss	150,000	150,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill is anticipated to result in a General Fund revenue loss, beginning in FY 09, to the Sales & Use Tax of approximately \$150,000 per year.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**HB 5939*****AN ACT CONCERNING THE SALES TAX LIABILITY OF ASPHALT MANUFACTURERS.*****SUMMARY:**

This bill allows any company that manufactures a finished product and then, rather than sell it, uses it to fulfill a paving contract, to qualify for sales tax exemptions on the machinery, materials, tools, and fuel it buys to make the product. It applies to the sales tax exemptions for:

1. 100% of the cost of gas and electricity used to make a finished product to be sold (CGS § 12-412 (A)(3));
2. 100% of the cost of materials, tools, and fuel used in an industrial plant in making a finished product to be sold (CGS § 12-412 (18));
3. 100% of the cost of machinery used directly in the production process (CGS § 12-412(34)); and
4. 50% of the cost of materials that become ingredients or components of tangible personal property to be sold (CGS § 12-412i).

The bill states that it does not apply the production material exemption (#2 above) to any purchases of materials that become components or ingredients of a finished product that the buyer uses to fulfill a paving contract. Thus, it appears that, under the bill, the components or ingredients of paving material would qualify only for a 50% sales tax exemption rather than 100%.

EFFECTIVE DATE: Upon passage

BACKGROUND***Related Regulations and Rulings***

Department of Revenue Services (DRS) regulations have generally held that a taxpayer that produces an item of tangible personal property and installs it into a customer's real property is acting as a contractor rather than a retail seller and must pay sales tax on the materials it buys to make the item (*Regs. of Ct. State Agencies*, § 12-426-18 (d)).

In 2005, DRS ruled that asphalt that is consumed by the company that makes it "may not be counted as a manufactured product to be sold and therefore may not be included in determining" the company's predominant purpose. Consequently, a company that consumes more than 50% of the asphalt it manufactures in providing paving services is not a "manufacturing plant" eligible for the sales tax exemption for machinery used directly in a manufacturing production process under CGS § 12-412 (34). (DRS Ruling 2005-1)

A 1989 DRS ruling also states that the sales tax exemption for production materials under CGS § 12-412 (18) does not apply when a company that manufactures asphalt uses it as part of a construction contract where the asphalt is not separately sold. (DRS Ruling 89-7)

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 50 Nay 0 (03/27/2008)