



Senate

General Assembly

File No. 602

January Session, 2009

Senate Bill No. 931

Senate, April 9, 2009

The Committee on Finance, Revenue and Bonding reported through SEN. DAILY of the 33rd Dist., Chairperson of the Committee on the part of the Senate, 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 general statutes and section 12-412i of the general statutes, a
4 sale to a purchaser who will be making a finished product referred to
5 in said sections, which sale would otherwise qualify for sales and use
6 tax exemption pursuant to said sections except for the fact that such
7 finished product is used by such purchaser to fulfill a paving contract,
8 shall qualify for such exemption in the same manner as if such
9 purchaser made a sale of such finished product.

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

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

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
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 to the Sales & Use Tax of approximately \$150,000 per year beginning in FY 10.

The Out Years

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

OLR Bill Analysis**SB 931*****AN ACT CONCERNING THE SALES TAX LIABILITY OF ASPHALT MANUFACTURERS.*****SUMMARY:**

Under this bill, any company that manufactures a finished product and then, rather than sell it, uses it to fulfill a paving contract, qualifies for certain existing sales tax exemptions on the machinery, materials, tools, and fuel it buys to make the product. The bill covers exemptions for the cost of:

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

The bill states that the production material exemption (#2 above) does not extend to someone other than the manufacturer, who buys materials from the manufacturer for use as components or ingredients of a finished product that the buyer uses to fulfill a paving contract.

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 53 Nay 0 (03/24/2009)