

# DEPARTMENT OF TAXATION

## 2023 Fiscal Impact Statement

1. **Patron** Mark D. Obenshain

3. **Committee** Senate Finance and Appropriations

4. **Title** Sales and Use Tax; Agricultural Exemptions.

2. **Bill Number** SB 1240

**House of Origin:**

X **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

### 5. **Summary/Purpose:**

This bill would expand the Retail Sales and Use Tax agricultural exemption to include certain structural components of indoor, closed, controlled-environment commercial agricultural facilities, including greenhouses, used directly in producing agricultural products for market. The expanded exemption would include internal structural components, such as towers for growing plants and conveyances for moving such towers; lighting systems; cooling, humidification and air circulation systems; and watering and water treatment systems. It would also include transparent elements of external structural components such as windows, walls, and roofs that allow sunlight in for the commercial production of agricultural products. The exemption would not apply to property used in the production of cannabis or any derivative thereof.

This bill would also allow contractors working on behalf of owners of such projects to use this exemption when purchasing materials for their construction.

Under current law, structural construction materials to be affixed to real property owned or leased by a farmer are specifically excluded from the agricultural exemption.

If this bill is enacted during the 2023 Regular Session of the General Assembly, it would become effective July 1, 2023.

**This is Executive Legislation.**

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Unknown. (See Line 8.)

### 8. **Fiscal implications:**

#### Administrative Costs

The Department of Taxation considers implementation of this bill to be routine and does not require additional funding.

## Revenue Impact

This bill could have an unknown impact to state and local revenues. Eligible purchases by operators of indoor, closed, controlled-environment commercial agricultural facilities, including greenhouses, are not estimated to comprise a significant market share of agricultural purchasing in the Commonwealth.

### **9. Specific agency or political subdivisions affected:**

Department of Taxation

### **10. Technical amendment necessary:** No.

### **11. Other comments:**

#### Current Law

Generally, items of tangible personal property used in construction of a structure that will be affixed to real property in an immovable way are not eligible for exemption from the Retail Sales and Use Tax. Likewise, the current agricultural exemption extends to tangible personal property used in agricultural production but the exemption specifically excludes structural construction materials to be affixed to real property owned or leased by a farmer.

#### Proposal

This bill would expand the agricultural exemption to include certain structural components of indoor, closed, controlled-environment commercial agricultural facilities, including greenhouses, used directly in producing agricultural products for market. The bill would allow contractors working on behalf of owners of such projects to use the exemption when purchasing materials for its construction.

The expanded exemption would include internal structural components, such as towers for growing plants and conveyances for moving such towers; lighting systems; cooling, humidification and air circulation systems; and watering and water treatment systems. It would also include transparent elements of external structural components such as windows, walls, and roofs that allow sunlight in for the commercial production of agricultural products. The exemption would apply to greenhouses, regardless of whether they are affixed to real property.

This bill would also clarify that, for purposes of the expanded exemption, “agricultural products” include any horticultural (food), floricultural (flowers) and viticulture (wine) products. The exemption would not apply to property used in the production of cannabis or any derivative thereof.

If this bill is enacted during the 2023 Regular Session of the General Assembly, it would become effective July 1, 2023.

### Similar Legislation

**House Bill 1400, House Bill 1563, and Senate Bill 800** would provide similar exemptions for structural components of indoor, closed, controlled-environment commercial agricultural facilities, including greenhouses.

**House Bill 1601 and Senate Bill 985** would provide similar exemptions, but would require the commercial greenhouse structure to exceed 50,000 square feet and meet the specifications of a commercial greenhouse operator.

cc : Secretary of Finance

Date: 1/20/2023 ADD  
SB1240F161