

SOUTH DAKOTA LEGISLATIVE RESEARCH COUNCIL

FISCAL NOTE, 2012 LEGISLATIVE SESSION

FISCAL NOTE 2012-SB61A

SB 61 exempt the production of certain plants and sod from sales and use taxes.

Senate Bill 61 provides that the production of any sod and any nursery, greenhouse, food-bearing, and ornamental plant is considered an agricultural purpose.

If the sod and plants are raised with the intent to be ultimately sold at retail, the following products are specifically exempted by the bill from Retail Sales and Use Tax imposed in Chapters 10-45 and 10-46, if the products are directly used in the production of the sod or plants:

1. Any pesticide as defined in § 38-20A-1 and any product or substance used in conjunction with the pesticide as enumerated in § 10-45-16.1;
2. Commercial Fertilizer as defined in subdivision 38-19-1(5); and
3. Fuel for agricultural purposes as defined in § 10-45-19.

SB 61 also states that no horticultural enterprise may receive the exemption unless the horticultural enterprise is:

1. A resident nurseryman, as defined in subdivision 38-24B-1(11) and licensed by the South Dakota Department of Agriculture;
2. A permanent standing greenhouse operating for more than three months a year, in which the main enterprise is the raising of plants from a seed, seedling, plug, or cutting to finish as a salable product;
3. A grower of sod as defined in subdivision 38-24B-1(14); or
4. A commercial grower of fruits and vegetables if the products are ultimately offered for sale at retail.

The Department of Revenue (DOR) estimates that the passage of SB 61 in the current form will cost the State General Fund \$350,000 annually. The following information represents the details of the Department of Revenue estimate.

FY11 Gross Receipts by Nurseries & Greenhouses	\$32,619,780.19
Estimated % for fertilizer, fuel, & pesticides	25.00%
Estimated taxable amounts	\$8,154,945.05
State Tax Rate - 4%	4%
State tax estimated amount	\$326,197.80
Adjusted amount due to inflation	\$350,000.00

Gross receipts were determined from compiling all tax returns for FY11 with nursery, greenhouse, or sod in the name. The search generated tax returns from 111 taxpayers with the following SIC Codes:

- 181 Ornamental Nursery Products
- 182 Food Crops Grown Under Cover
- 781 Landscape Counseling & Planning
- 782 Lawn & Garden Services
- 5193 Flowers & Florists' Supplies
- 5261 Retail Nurseries & Garden Stores
- 5431 Fruit & Vegetable Markets
- 5992 Florists
- 783 Ornamental Shrub & Tree Services
- 811 Timber tracts
- 5153 Grain & Field Beans

The Department of Revenue made the following assumptions:

1. DOR calculated a cost of 25% of each entities gross receipts for an estimate of an amount of purchases of fertilizer, pesticides, and fuel ;
2. DOR increased the estimated taxable amount of \$326,197.80 to \$350,000.00 due to inflationary costs;
3. DOR reviewed the tax returns of the top sales taxable receipts and noted limited Use Tax paid; and
4. The entities are purchasing fertilizer, pesticides, and fuel with Sales Tax charged from local vendors.

LRC staff does not have the same access to taxpayer information as the Department of Revenue. Therefore, we are unable to make our own estimate. After reviewing the estimate provided by the Department of Revenue, LRC staff believes that the estimate for SB 61 is reasonable.

APPROVED BY: _____ Signed_By_James_Fry_____ DATE: _2/06/2012_