

HOUSE BILL No. 4539

April 11, 2013, Introduced by Rep. Schmidt and referred to the Committee on Transportation and Infrastructure.

A bill to amend 1933 PA 167, entitled "General sales tax act," by amending section 6a (MCL 205.56a), as amended by 2013 PA 1 and by adding section 4ee.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **SEC. 4EE. BEGINNING ON THE EFFECTIVE DATE OF THE AMENDATORY**
2 **ACT THAT ADDED THIS SECTION, A PERSON SUBJECT TO THE TAX UNDER THIS**
3 **ACT MAY EXCLUDE FROM THE GROSS PROCEEDS USED FOR COMPUTATION OF THE**
4 **TAX THE SALE OF GASOLINE OR DIESEL FUEL. AS USED IN THIS SECTION,**
5 **"GASOLINE" AND "DIESEL FUEL" MEAN THOSE TERMS AS DEFINED IN SECTION**
6 **6A.**

7 Sec. 6a. (1) Through March 31, 2013, at the time of purchase
8 or shipment from a refiner, pipeline terminal operator, or marine
9 terminal operator, a purchaser or receiver of gasoline shall prepay
10 a portion of the tax imposed by this act at the rate provided in

1 this section to the refiner, pipeline terminal operator, or marine
2 terminal operator for the purchase or receipt of gasoline. If the
3 purchase or receipt of gasoline is made outside this state for
4 shipment into and subsequent sale within this state, the purchaser
5 or receiver, other than a refiner, pipeline terminal operator, or
6 marine terminal operator, shall make the prepayment required by
7 this section directly to the department. ~~Prepayments~~**BEFORE THE**
8 **EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 4EE,**
9 **PREPAYMENTS** for gasoline shall be made at a cents-per-gallon rate
10 determined by the department and shall be based on 6% of the
11 statewide average retail price of a gallon of self-serve unleaded
12 regular gasoline as determined and certified by the department
13 rounded up to the nearest 1/10 of 1 cent. A person that makes
14 prepayments directly to the department shall make those prepayments
15 according to the schedule in subsection (6).

16 (2) Beginning April 1, 2013 **AND BEFORE THE EFFECTIVE DATE OF**
17 **THE AMENDATORY ACT THAT ADDED SECTION 4EE,** at the time of purchase
18 or shipment from a refiner, pipeline terminal operator, or marine
19 terminal operator, a purchaser or receiver of fuel shall prepay a
20 portion of the tax imposed by this act at the rates provided in
21 this section to the refiner, pipeline terminal operator, or marine
22 terminal operator for the purchase or receipt of fuel. If the
23 purchase or receipt of fuel is made outside this state for shipment
24 into and subsequent sale within this state, the purchaser or
25 receiver, other than a refiner, pipeline terminal operator, or
26 marine terminal operator, shall make the prepayment required by
27 this section directly to the department. ~~Prepayments~~**BEFORE THE**

1 **EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 4EE,**
2 **PREPAYMENTS** for gasoline shall be made at a cents-per-gallon rate
3 determined by the department and shall be based on 6% of the
4 statewide average retail price of a gallon of self-serve unleaded
5 regular gasoline as determined and certified by the department
6 rounded up to the nearest 1/10 of 1 cent. ~~Prepayments—BEFORE THE~~
7 **EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 4EE,**
8 **PREPAYMENTS** for diesel fuel shall be made at a cents-per-gallon
9 rate determined by the department and shall be based on 6% of the
10 statewide average retail price of a gallon of undyed No. 2 ultra-
11 low sulfur diesel fuel as determined and certified by the
12 department rounded up to the nearest 1/10 of 1 cent. A person that
13 makes prepayments directly to the department shall make those
14 prepayments according to the schedule in subsection (6).

15 (3) Through March 31, 2013, the rate of prepayment applied
16 pursuant to subsection (1) shall be determined every 3 months by
17 the department unless the department certifies that the change in
18 the statewide average retail price of a gallon of self-serve
19 unleaded regular gasoline has been less than 10% since the
20 establishment of the rate of prepayment then in effect.

21 (4) Beginning April 1, 2013 **AND BEFORE THE EFFECTIVE DATE OF**
22 **THE AMENDATORY ACT THAT ADDED SECTION 4EE,** the rates of prepayment
23 applied pursuant to subsection (2) shall be determined every month
24 by the department. Notwithstanding subsection (3), the department
25 shall publish notice of the rates of prepayment applicable to
26 gasoline and diesel fuel pursuant to subsection (2) not later than
27 the tenth day of the month immediately preceding the month in which

1 the rate is effective.

2 (5) A person subject to tax under this act that makes
3 prepayment to another person as required by this section for
4 gasoline may claim an estimated prepayment credit on its regular
5 monthly return filed pursuant to section 6. The credit shall be for
6 prepayments made during the month for which the return is required
7 and shall be based upon the difference between prepayments made in
8 the immediately preceding month and collections of prepaid tax
9 received from sales or transfers during the month for which the
10 return required under section 6 is made. A sale or transfer for
11 which collection of prepaid tax is due the taxpayer is subject to a
12 bad debt deduction under section 4i, whether or not the sale or
13 transfer is a sale at retail. The credit shall not be reduced
14 because of actual shrinkage. A taxpayer that does not, in the
15 ordinary course of business, sell gasoline in each month of the
16 year may, with the approval of the department, base the initial
17 prepayment deduction in each tax year on prepayments made in a
18 month other than the immediately preceding month. The difference in
19 actual prepayments shall be reconciled on the annual return in
20 accordance with procedures prescribed by the department.

21 (6) Notwithstanding the other provisions for the payment and
22 remitting of tax due under this act, a refiner, pipeline terminal
23 operator, or marine terminal operator shall account for and remit
24 to the department the prepayments received pursuant to this section
25 in accordance with the following schedule:

26 (a) On or before the twenty-fifth of each month, prepayments
27 received after the end of the preceding month and before the

1 sixteenth of the month in which the prepayments are made.

2 (b) On or before the tenth of each month, payments received
3 after the fifteenth and before the end of the preceding month.

4 (7) A refiner, pipeline terminal operator, or marine terminal
5 operator that fails to remit prepayments made by a purchaser or
6 receiver of fuel is subject to the penalties provided by 1941 PA
7 122, MCL 205.1 to 205.31.

8 (8) The refiner, pipeline terminal operator, or marine
9 terminal operator shall not receive a deduction under section 4 for
10 receiving and remitting prepayments from a purchaser or receiver
11 pursuant to this section.

12 (9) The purchaser or receiver of fuel that makes prepayments
13 is not subject to further liability for the amount of the
14 prepayment if the refiner, pipeline terminal operator, or marine
15 terminal operator fails to remit the prepayment.

16 (10) A person subject to tax under this act that makes
17 prepayment to another person as required by this section for diesel
18 fuel may claim an estimated prepayment credit on its regular
19 monthly return filed pursuant to section 6. The credit shall be for
20 prepayments made during the month for which the return is required
21 and shall be based upon the difference between the prepayments made
22 in the immediately preceding month and collections of prepaid tax
23 received from sales or transfers during the month for which the
24 return required under section 6 is made. A sale or transfer for
25 which collection of prepaid tax is due the taxpayer is subject to a
26 bad debt deduction under section 4i, whether or not the sale or
27 transfer is a sale at retail. The credit shall not be reduced

1 because of actual shrinkage. A taxpayer that does not, in the
2 ordinary course of business, sell diesel fuel in each month of the
3 year may, with the approval of the department, base the initial
4 prepayment deduction in each tax year on prepayments made in a
5 month other than the immediately preceding month. Estimated
6 prepayment credits claimed with the return due in April 2013 shall
7 be based on the taxpayer's retail sales of diesel fuel in March
8 2013. The difference in actual prepayments shall be reconciled on
9 the annual return in accordance with procedures prescribed by the
10 department. Repayment of the credit claimed on the return due in
11 April 2013 shall be made by the earlier of the date that the
12 taxpayer stops selling diesel fuel or October 15, 2013.

13 (11) As used in this section:

14 (a) "Blendstock" includes all of the following:

15 (i) Any petroleum product component of fuel, such as naphtha,
16 reformate, or toluene.

17 (ii) Any oxygenate that can be blended for use in a motor fuel.

18 (b) "Boat terminal transfer" means a dock, a tank, or
19 equipment contiguous to a dock or a tank, including equipment used
20 in the unloading of fuel from a ship and in transferring the fuel
21 to a tank pending wholesale bulk reshipment.

22 (c) "Diesel fuel" means any liquid other than gasoline that is
23 capable of use as a fuel or a component of a fuel in a motor
24 vehicle that is propelled by a diesel-powered engine or in a
25 diesel-powered train. Diesel fuel includes number 1 and number 2
26 fuel oils and mineral spirits. Diesel fuel also includes any
27 blendstock or additive that is sold for blending with diesel fuel

1 and any liquid prepared, advertised, offered for sale, sold for use
2 as, or used in the generation of power for the propulsion of a
3 diesel-powered engine, airplane, or marine vessel. An additive or
4 blendstock is presumed to be sold for blending unless a
5 certification is obtained for federal purposes that the substance
6 is for a use other than blending for diesel fuel. Diesel fuel does
7 not include dyed diesel fuel, kerosene, or an excluded liquid.

8 (d) "Dyed diesel fuel" means diesel fuel that is dyed in
9 accordance with internal revenue service rules or pursuant to any
10 other internal revenue service requirements, including any
11 invisible marker requirements.

12 (e) "Excluded liquid" means that term as defined in 26 CFR
13 48.4081-1.

14 (f) "Fuel" means gasoline and diesel fuel that is subject to
15 tax under this act, collectively, except when gasoline or diesel
16 fuel is referred to separately.

17 (g) "Gasoline" means and includes gasoline, alcohol, gasohol,
18 casing head or natural gasoline, benzol, benzine, naphtha,
19 methanol, any blendstock additive, or other product that is sold
20 for blending with gasoline or for use on the road, other than
21 products typically sold in containers of less than 5 gallons.
22 Gasoline also includes a liquid prepared, advertised, offered for
23 sale, sold for use as, or used in the generation of power for the
24 propulsion of a motor vehicle, airplane, or marine vessel,
25 including a product obtained by blending together any 1 or more
26 products of petroleum, with or without another product, and
27 regardless of the original character of the petroleum products

1 blended, if the product obtained by the blending is capable of use
2 in the generation of power for the propulsion of a motor vehicle,
3 airplane, or marine vessel. The blending of all of the above-named
4 products, regardless of their name or characteristics, shall
5 conclusively be presumed to have been done to produce fuel, unless
6 the product obtained by the blending is entirely incapable of use
7 as fuel. An additive or blendstock is presumed to be sold for
8 blending unless a certification is obtained for federal purposes
9 that the substance is for a use other than blending for gasoline.
10 Gasoline does not include diesel fuel, dyed diesel fuel, kerosene,
11 or an excluded liquid.

12 (h) "Kerosene" means all grades of kerosene, including, but
13 not limited to, the 2 grades of kerosene, No. 1-K and No. 2-K,
14 commonly known as K-1 kerosene and K-2 kerosene, respectively,
15 described in American society for testing and materials
16 specification D-3699, in effect on January 1, 1999, and kerosene-
17 type jet fuel described in American society for testing and
18 materials specification D-1655 and military specifications MIL-T-
19 5624r and MIL-T-83133d (grades jp-5 and jp-8), and any successor
20 internal revenue service rules or regulations, as the specification
21 for kerosene and kerosene-type jet fuel. Kerosene does not include
22 an excluded liquid.

23 (i) "Marine terminal operator" means a person that stores fuel
24 at a boat terminal transfer.

25 (j) "Pipeline terminal operator" means a person that stores
26 fuel in tanks and equipment used in receiving and storing fuel from
27 interstate and intrastate pipelines pending wholesale bulk

1 reshipment.

2 (k) "Purchase" or "shipment" does not include an exchange of
3 fuel or an exchange transaction between refiners, pipeline terminal
4 operators, or marine terminal operators.

5 (l) "Refiner" means a person that manufactures or produces fuel
6 by any process involving substantially more than the blending of
7 fuel.