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House Bill 4540 (Substitute H-1 as reported without amendment)  
House Bill 4541 (Substitute H-2 as reported without amendment)  
House Bill 4542 (Substitute H-2 as reported without amendment)  
House Bill 4543 (Substitute H-2 as reported without amendment)  
Sponsor: Representative Lynn Afendoulis (H.B. 4540)  
Representative Joe Tate (H.B. 4541)  
Representative Michael Webber (H.B. 4542)  
Representative Tenisha Yancey (H.B. 4543)

House Committee: Tax Policy  
Ways and Means

Senate Committee: Finance

### **CONTENT**

House Bill 4540 (H-1) would amend the General Sales Tax Act to do the following:

- Require a marketplace facilitator engaged in the business of making sales at retail of tangible personal property in Michigan to remit sales tax on all taxable sales made by the marketplace facilitator or facilitated for marketplace sellers to a purchaser in Michigan.
- Require a marketplace facilitator to report its direct sales and the sales it facilitated to purchasers in Michigan in a manner prescribed by the Department of Treasury.
- Prohibit a class action from being brought against a marketplace facilitator in any Michigan court on behalf of purchasers arising from or in any way related to an overpayment of sales tax remitted on sales facilitated by the marketplace facilitator.
- Create provisions regarding the Department auditing a marketplace seller.
- Specify when a marketplace facilitator would be relieved of its liability under the bill.

House Bill 4541 (H-2) would amend the Use Tax Act to make changes similar to those proposed under House Bill 4540 (H-1).

House Bill 4542 (H-2) would amend the General Sales Tax Act to do the following:

- List the criteria under which a seller of tangible personal property would be engaged in the business of making sales at retail in Michigan.
- Specify that the bill would apply to transactions occurring on or after October 1, 2018.
- Require a person that was a marketplace facilitator to include sales by marketplace sellers on its marketplace and its direct sales in determining its gross receipts or its number of transactions.
- Require a person that was a marketplace seller to include its sales through a marketplace facilitator and its direct sales in determining its gross receipts or its number of transactions.
- Specify that a seller that made no sales at retail would not be required to obtain a license under the Act or file returns.
- Specify that a seller that made both sales at retail and sales for purposes of resale would have to obtain a license under the Act, file required returns, and remit tax as required by the Act.

House Bill 4543 (H-2) would amend the Use Tax Act to do the following:

- List the criteria under which a seller of tangible personal property or services subject to tax under the Use Tax Act would have nexus in Michigan and would have to register with the Department of Treasury and collect and remit use tax.
- Specify that the bill would apply to transactions occurring on or after October 1, 2018.
- Require a person that was a marketplace facilitator to include sales by marketplace sellers on its marketplace and its direct sales in determining its gross receipts or its number of transactions.
- Require a person that was a marketplace seller would have to include its sales through a marketplace facilitator and its direct sales in determining its gross receipts or its number of transactions.
- Specify that a seller that only made sales for purposes of resale would not be required to register for the use tax.
- Specify that a seller that made both sales that it was required to collect and remit tax on under the Act and sales for purposes of resale would have to register under the Act, file required returns, and remit tax as required by the Act.

House Bill 4540 (H-1) and 4541 (H-2) would be severable as provided for in Section 5 of Revised Statute 1 of 1846 (which states that if any portion of an act or the application to any person or circumstance is found to be invalid by a court, such invalidity may not affect the remaining portions or applications of the act.)

House Bills 4540 (H-1) and 4541 (H-2) would take effect on January 1, 2020, and an obligation to collect sales and use tax under the bills would not apply retroactively.

Proposed MCL 205.52d (H.B. 4540)  
Proposed MCL 205.95c (H.B. 4541)  
Proposed MCL 205.52c (H.B. 4542)  
Proposed MCL 205.95b (H.B. 4543)

Legislative Analyst: Drew Krogulecki

### **FISCAL IMPACT**

House Bills 4542 (H-2) and 4543 (H-2) would have no fiscal impact on State or local revenue, as the bills codify existing guidance and practice from the Michigan Department of Revenue.

House Bills 4540 (H-1) and 4541 (H-2) would increase State sales and use tax revenue by approximately \$90 million per fiscal year once taxpayers were fully compliant with the changes. The bills would make changes similar to those established by Revenue Administrative Bulletin (RAB) 2018-16, issued in the wake of the United States Supreme Court's *South Dakota v. Wayfair* decision. That decision validated certain state approaches to collecting sales and use taxes from out-of-state retailers with no physical presence in a state. The bills effectively extend the provisions of RAB 2018-16 to online marketplaces that serve to connect sellers to customers. Existing requirements under the RAB affect only individual sellers and many sellers on these online marketplaces fail to meet the thresholds necessary to generate tax liabilities, even though the combined activity of all sellers would surpass the thresholds. The bills would require those marketplaces to remit sales and use tax.

Although RAB 2018-16 was issued August 1, 2018, and was expected to eventually generate more than \$200 million per year fiscal year, there was a lag between when the RAB was

issued and when taxpayer compliance improved enough that tax collections supported the revenue estimate. It is unknown how significant the compliance lag could be for the provisions of House Bills 4540 (H-1) and 4541 (H-2), but any lag likely would result in the fiscal year 2019-20 revenue impact being below the estimated partial fiscal-year impact of \$67.5 million.

The impact of House Bills 4540 (H-1) and 4541 (H-2) on General Fund and School Aid Fund revenue would depend on the split between collections under the sales tax and the use tax. For additional revenue collected under the sales tax, approximately 73.3% would be directed to the School Aid Fund, 10% would be directed to local units as a result of constitutional revenue sharing provisions, and almost all of the remaining revenue would be directed to the General Fund. For additional revenue collected under the use tax, one-third would be directed to the School Aid Fund and the remaining two-thirds would be directed to the School Aid Fund. Most of the additional revenue under the bills likely would be sales tax revenue.

Date Completed: 12-2-19

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