

**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Senators McManus, Allen, Van Woerkom, Prusi, Barcia and Gleason

ENROLLED SENATE BILL No. 881

AN ACT to amend 1933 PA 167, entitled "An act to provide for the raising of additional public revenue by prescribing certain specific taxes, fees, and charges to be paid to the state for the privilege of engaging in certain business activities; to provide, incident to the enforcement thereof, for the issuance of licenses to engage in such occupations; to provide for the ascertainment, assessment and collection thereof; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act," by amending sections 4d, 4u, and 6a (MCL 205.54d, 205.54u, and 205.56a), section 4d as added and section 4u as amended by 2004 PA 173 and section 6a as amended by 1993 PA 325.

The People of the State of Michigan enact:

Sec. 4d. The following are exempt from the tax under this act:

(a) The sale of tangible personal property to a person who is a lessor licensed under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, and whose rental receipts are taxed or specifically exempt under the use tax act.

(b) The sale of a vehicle acquired for lending or leasing to a public or parochial school for use in a course in driver education.

(c) The sale of a vehicle purchased by a public or parochial school if that vehicle is certified for driver education and is not reassigned for personal use by the school's administrative personnel.

(d) The sale of water through water mains, the sale of water delivered in bulk tanks in quantities of not less than 500 gallons, or the sale of bottled water.

(e) The sale of tangible personal property to a person for demonstration purposes. For a dealer selling a new car or truck, the exemption for demonstration purposes shall be determined by the number of new cars and trucks sold during the current calendar year or the immediately preceding year without regard to specific make or style in accordance with the following schedule of 0 to 25, 2 units; 26 to 100, 7 units; 101 to 500, 20 units; 501 or more, 25 units; but not to exceed 25 cars and trucks in a calendar year for demonstration purposes.

(f) Specific charges for technical support or for adapting or modifying prewritten computer software programs to a purchaser's needs or equipment if those charges are separately stated and identified.

(g) The sale of computer software originally designed for the exclusive use and special needs of the purchaser.

(h) The sale of a commercial advertising element if the commercial advertising element is used to create or develop a print, radio, television, or other advertisement, the commercial advertising element is discarded or returned to the provider after the advertising message is completed, and the commercial advertising element is custom developed by the provider for the purchaser. As used in this subdivision, "commercial advertising element" means a negative or positive photographic image, an audiotape or videotape master, a layout, a manuscript, writing of copy, a design, artwork, an illustration, retouching, and mechanical or keyline instructions. This exemption does not include black and white or full color process separation elements, an audiotape reproduction, or a videotape reproduction.

(i) A sale made outside of the ordinary course of the seller's business.

(j) An isolated transaction by a person not licensed or required to be licensed under this act, in which tangible personal property is offered for sale, sold, or transferred and delivered by the owner.

(k) The sale of oxygen for human use dispensed pursuant to a prescription.

(l) The sale of insulin for human use.

(m) Before January 1, 2014, the sale of tangible personal property for use in construction or renovation of a qualified convention facility under the regional convention facility authority act.

Sec. 4u. (1) A sale of tangible personal property to an extractive operator for use or consumption in extractive operations is exempt from the tax under this act.

(2) The property under subsection (1) is exempt only to the extent that the property is used for the exempt purposes stated in this section. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

(3) Extractive operations include the actual production of oil, gas, brine, or other natural resources. Property eligible for the exemption includes the following:

(a) Casing pipe or drive pipe.

(b) Tubing.

(c) Well-pumping equipment.

(d) Chemicals.

(e) Explosives or acids used in fracturing, acidizing, or shooting wells.

(f) Christmas trees, derricks, or other wellhead equipment.

(g) Treatment tanks.

(h) Piping, valves, or pumps used before movement or transportation of the natural resource from the production area.

(i) Chemicals or acids used in the treatment of crude oil, gas, brine, or other natural resources.

(j) Tangible personal property used or consumed in depositing tailings from hard rock mining processing.

(k) Tangible personal property used or consumed in extracting the lithologic units necessary to process iron ore.

(4) The extractive operation exemption does not include the following:

(a) Tangible personal property consumed or used in the construction, alteration, improvement, or repair of buildings, storage tanks, and storage and housing facilities.

(b) Tangible personal property consumed or used in transporting the product from the place of extraction, except for tangible personal property consumed or used in transporting extracted materials from the extraction site to the place where the extracted materials first come to rest in finished goods inventory storage.

(c) Tangible personal property that is a product the extractive operator produces and that is consumed or used by the extractive operator for a purpose other than the manufacturing or producing of a product for ultimate sale. The extractor shall account for and remit the tax to this state based upon the product's fair market value.

(d) Equipment, materials, and supplies used in exploring, prospecting, or drilling for oil, gas, brine, or other natural resources.

(e) Equipment, materials, and supplies used in the storing, withdrawing, or distribution of oil, gas, or brine from a storage facility.

(f) Vehicles, including special bodies or attachments, required to display a vehicle permit or license plate to operate on public highways.

(5) As used in this section:

(a) "Extractive operations" means the activity of taking or extracting for resale ore, oil, gas, coal, timber, stone, gravel, clay, minerals, or other natural resource material. An extractive operation begins when contact is made with the actual type of natural raw product being recovered. Extractive operation includes all necessary processing operations before shipment from the place of extraction. Extractive operations include all necessary processing operations and movement of the natural resource material until the point at which the natural raw product being recovered first comes to rest in finished goods inventory storage at the extraction site. Extractive operations for timber include transporting timber from the point of extraction to a place of temporary storage at the extraction site and loading or transporting timber from a place of temporary storage at the extraction site to a vehicle or other equipment located at the extraction site that will remove the timber from the extraction site.

(b) An extractive operator is a person who, either directly or by contract, performs extractive operations.

Sec. 6a. (1) At the time of purchase or shipment from a refiner, pipeline terminal operator, or marine terminal operator, a purchaser or receiver of gasoline shall prepay a portion of the tax imposed by this act at the rate provided in this section to the refiner, pipeline terminal operator, or marine terminal operator for the purchase or receipt of gasoline. If the purchase or receipt of gasoline is made outside this state for shipment into and subsequent sale within this state, the purchaser or receiver, other than a refiner, pipeline terminal operator, or marine terminal operator, shall make the prepayment required by this section directly to the department. Prepayments shall be made at a cents per gallon rate determined by the department and shall be based on 6% of the statewide average retail price of a gallon of self-serve unleaded regular gasoline as determined and certified by the department rounded up to the nearest 1/10 of 1 cent. A person who makes prepayments directly to the department shall make those prepayments according to the schedule in subsection (4).

(2) The rate of prepayment applied pursuant to subsection (1) shall be determined every 3 months by the department unless the department certifies that the change in the statewide average retail price of a gallon of self-serve unleaded regular gasoline has been less than 10% since the establishment of the rate of prepayment then in effect.

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

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

(a) On or before the twenty-fifth of each month, prepayments received after the end of the preceding month and before the sixteenth of the month in which the prepayments are made.

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

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

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

(7) The purchaser or receiver of gasoline who makes prepayments is not subject to further liability for the amount of the prepayment if the refiner, pipeline terminal operator, or marine terminal operator fails to remit the prepayment.

(8) As used in this section:

(a) "Marine terminal operator" means a person who stores gasoline at a boat terminal transfer defined as a dock, a tank, or equipment contiguous to a dock or a tank, including equipment used in the unloading of gasoline from a ship and in transferring the gasoline to a tank pending wholesale bulk reshipment.

(b) "Pipeline terminal operator" means a person who stores gasoline in tanks and equipment used in receiving and storing gasoline from interstate and intrastate pipelines pending wholesale bulk reshipment.

(c) "Purchase" or "shipment" does not include an exchange of gasoline, or an exchange transaction, between refiners, pipeline terminal operators, or marine terminal operators.

(d) "Refiner" means a person who manufactures or produces gasoline by any process involving substantially more than the blending of gasoline.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

- (a) Senate Bill No. 880.
- (b) Senate Bill No. 1630.
- (c) Senate Bill No. 1633.
- (d) House Bill No. 5691.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Brown

Clerk of the House of Representatives

Approved

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Governor