

Legislative Analysis



ELIMINATE SALES/USE TAX EXEMPTIONS; ADD USE TAX NEXUS STANDARDS

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House Bills 5106 and 5107 (Substitutes H-2)

Sponsor: Rep. Paul Condino

Committee: Tax Policy

Complete to 8-31-05

A SUMMARY OF HOUSE BILLS 5106 (H-2) AND 5107 (H-2) AS REPORTED FROM COMMITTEE

House Bill 5106 would eliminate a sales tax exemption related to driver's education vehicles. House Bill 5107 would eliminate use tax exemptions related to driver's education vehicles and certain telecommunications, and would establish, in statute, a use tax nexus standard for out-of-state sellers. The bills are tie-barred to each other and House Bills 4980, 5095-5098, and 5108.

Driver Education

House Bill 5106 would amend the General Sales Tax Act (MCL 205.54d) to eliminate, beginning October 1, 2005, the exemption for the sale of a vehicle acquired for lending or leasing to a public or parochial school and the sale of a vehicle purchased by a public or parochial school for driver's education courses. House Bill 5107 would eliminate the exemption from the Use Tax Act. (MCL 205.94)

Telecommunications Services

House Bill 5107 would amend the Use Tax Act (MCL 205.93a) to eliminate, effective beginning October 1, 2005, the exemption for the use of wide area telecommunication service or similar service, an interstate private network and related usage charges, and international calls (inbound or outbound). These telecommunication services would be taxed in the same manner as interstate telephone communications. (An 800 prefix service or similar service would still be exempt.)

Use Tax Nexus Standards

In addition, House Bill 5107 would establish, in statute, a use tax nexus standard (at MCL 205.95a) that appears to be similar to current standard developed by the Department of Treasury and specified in Revenue Administrative Bulletin 1999-1. (A copy of RAB 1999-1 is available on the department's website at http://www.michigan.gov/documents/98-1SBT_114674_7.pdf) Generally, when nexus is established, out-of-state sellers then fall within the state's taxing jurisdiction and are responsible for collecting the use tax.

Specifically, the bill provides that It states that an out-of-state seller is subject the state's use tax collection requirements when it engages in any of the following activities:

1. It has one or more employees residing or temporarily present in Michigan engaging in any activity other than those described in paragraph 7 (see below). An employee temporarily present in Michigan for two days will create nexus and use tax liability.
2. It owns, rents, leases, maintains, or has the right to use and uses tangible personal or real property that is permanently or temporarily physically located in Michigan.
3. Its employees own, rent, lease, or maintain an office or other place of business in Michigan.
4. It has goods delivered to Michigan in vehicles the out-of-state seller owns, rents, leases, uses, or maintains, or has goods delivered by a related party acting as a representative of the out-of-state seller.
5. Its agents, representatives, independent contractors, brokers, or others acting on its behalf, own, rent, lease, use, or maintain an office or other place of business in Michigan, and this property is used in the representation of the out-of-state seller in Michigan.
6. Its agents, representatives, independent contractors, brokers, or others acting on behalf of the out-of-state seller, are regularly and systematically present in Michigan conducting activities to establish or maintain the market for the out-of-state seller whether or not these individuals or organizations reside in Michigan.
7. Nexus is not presumed if the out-of-state seller's only contacts with the state are limited to any of the following:
 - (a) Meeting with in-state suppliers of goods or services;
 - (b) In-state meetings with government representatives in their official capacity;
 - (c) Attending occasional meetings (e.g. board meetings, retreats, seminars, and conferences sponsored by others, schools, or other training sponsored by others, etc.);
 - (d) Attending schools, training events, or other activities sponsored by others.
 - (e) Holding recruiting or hiring events;
 - (f) Advertising in the state through various media;
 - (g) Renting customer lists to or from an in-state entity;

- (h) Attending a trade show at which no orders for goods are taken and no sales are made; or
- (i) Participating in a trade show at which no orders for goods are taken and no sales are made for less than 10 days cumulatively on an annual basis

If nexus is established by an out-of-state seller, that nexus would continue to exist through the end of the month and the next 11 months. The department or the seller could submit proof indicating that a longer or shorter period more accurately reflects the sales that were proximately caused by the seller's contacts in the state. Once nexus is established, the out-of-state seller would have to register with the Department of Treasury, as required under the act.

MCL 205.93a et al.

FISCAL IMPACT:

These bills would increase sales and use tax revenue by an estimated \$14.8 million, of which \$9.9 million would be General Fund/General Purpose revenue and \$4.9 million would be School Aid Fund revenue.

* Eliminating the driver's education vehicle exemptions would increase sales and use tax revenue by an estimated \$0.7 million: GF/GP - \$0.5 million , SAF - \$0.2 million

* Eliminating the telecommunications use tax exemption would increase revenue by an estimated \$14.1 million: GF/GP - \$9.4 million, SAF - \$4.7 million

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.