

HOUSE BILL No. 5817

August 15, 2012, Introduced by Rep. Opsommer and referred to the Committee on Transportation.

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending section 6a (MCL 205.56a), as amended by 2008 PA 556.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6a. (1) At the time of purchase or shipment from a
2 refiner, pipeline terminal operator, or marine terminal operator, a
3 purchaser or receiver of ~~gasoline~~**FUEL** shall prepay a portion of
4 the tax imposed by this act at the rate provided in this section to
5 the refiner, pipeline terminal operator, or marine terminal
6 operator for the purchase or receipt of ~~gasoline~~**FUEL**. If the
7 purchase or receipt of ~~gasoline~~**FUEL** is made outside this state for
8 shipment into and subsequent sale within this state, the purchaser
9 or receiver, other than a refiner, pipeline terminal operator, or
10 marine terminal operator, shall make the prepayment required by
11 this section directly to the department. Prepayments **FOR GASOLINE**

1 shall be made at a cents-per-gallon rate determined by the
2 department and shall be based on 6% of the statewide average retail
3 price of a gallon of self-serve unleaded regular gasoline as
4 determined and certified by the department rounded up to the
5 nearest 1/10 of 1 cent. **PREPAYMENTS FOR DIESEL FUEL SHALL BE MADE**
6 **AT A CENTS-PER-GALLON RATE DETERMINED BY THE DEPARTMENT AND SHALL**
7 **BE BASED ON 6% OF THE STATEWIDE AVERAGE RETAIL PRICE OF A GALLON OF**
8 **UNDYED NO. 2 ULTRA-LOW SULFUR DIESEL FUEL AS DETERMINED AND**
9 **CERTIFIED BY THE DEPARTMENT ROUNDED UP TO THE NEAREST 1/10 OF 1**
10 **CENT.** A person ~~who~~**THAT** makes prepayments directly to the
11 department shall make those prepayments according to the schedule
12 in subsection (4).

13 (2) The rate of prepayment applied pursuant to subsection (1)
14 shall be determined every ~~3 months~~**MONTH** by the department. ~~unless~~
15 ~~the department certifies that the change in the statewide average~~
16 ~~retail price of a gallon of self-serve unleaded regular gasoline~~
17 ~~has been less than 10% since the establishment of the rate of~~
18 ~~prepayment then in effect.~~**THE DEPARTMENT SHALL PUBLISH NOTICE OF**
19 **THE RATE OF PREPAYMENT APPLICABLE TO GASOLINE AND DIESEL FUEL NOT**
20 **LATER THAN THE TENTH DAY OF THE MONTH IMMEDIATELY PRECEDING THE**
21 **MONTH IN WHICH THE RATE IS EFFECTIVE.**

22 (3) A person subject to tax under this act ~~who~~**THAT** makes
23 prepayment to another person as required by this section may claim
24 an estimated prepayment credit on its regular monthly return filed
25 pursuant to section 6. The credit shall be for prepayments made
26 during the month for which the return is required and shall be
27 based upon the difference between prepayments made in the

1 immediately preceding month and collections of prepaid tax received
2 from sales or transfers. A sale or transfer for which collection of
3 prepaid tax is due the taxpayer is subject to a bad debt deduction
4 under section 4i, whether or not the sale or transfer is a sale at
5 retail. The credit shall not be reduced because of actual
6 shrinkage. A taxpayer ~~who~~**THAT** does not, in the ordinary course of
7 business, sell ~~gasoline~~**FUEL** in each month of the year ~~—may~~, with
8 the approval of the department, base the initial prepayment
9 deduction in each tax year on prepayments made in a month other
10 than the immediately preceding month. The difference in actual
11 prepayments shall be reconciled on the annual return in accordance
12 with procedures prescribed by the department.

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

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

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

23 (5) A refiner, pipeline terminal operator, or marine terminal
24 operator ~~who~~**THAT** fails to remit prepayments made by a purchaser or
25 receiver of ~~gasoline~~**FUEL** is subject to the penalties provided by
26 1941 PA 122, MCL 205.1 to 205.31.

27 (6) The refiner, pipeline terminal operator, or marine

1 terminal operator shall not receive a deduction under section 4 for
2 receiving and remitting prepayments from a purchaser or receiver
3 pursuant to this section.

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

8 (8) **A PERSON SUBJECT TO TAX UNDER THIS ACT THAT MAKES**
9 **PREPAYMENT TO ANOTHER PERSON AS REQUIRED BY THIS SECTION FOR DIESEL**
10 **FUEL MAY CLAIM AN ESTIMATED PREPAYMENT CREDIT ON ITS REGULAR**
11 **MONTHLY RETURN FILED PURSUANT TO SECTION 6. THE CREDIT SHALL BE FOR**
12 **PREPAYMENTS MADE DURING THE MONTH IN WHICH THE RETURN IS REQUIRED**
13 **AND SHALL BE BASED UPON THE DIFFERENCE BETWEEN THE PREPAYMENTS MADE**
14 **IN THE IMMEDIATELY PRECEDING MONTH AND COLLECTIONS OF PREPAID TAX**
15 **RECEIVED FROM SALES OR TRANSFERS DURING THE MONTH FOR WHICH THE**
16 **RETURN REQUIRED UNDER SECTION 6 IS MADE. A TAXPAYER THAT DOES NOT,**
17 **IN THE ORDINARY COURSE OF BUSINESS, SELL DIESEL FUEL IN EACH MONTH**
18 **OF THE YEAR MAY, WITH THE APPROVAL OF THE DEPARTMENT, BASE THE**
19 **INITIAL PREPAYMENT DEDUCTION IN EACH TAX YEAR ON PREPAYMENTS MADE**
20 **IN A MONTH OTHER THAN THE IMMEDIATELY PRECEDING MONTH. ESTIMATED**
21 **PREPAYMENT CREDITS CLAIMED WITH THE RETURN DUE IN JANUARY 2013**
22 **SHALL BE BASED ON THE TAXPAYER'S RETAIL SALES OF DIESEL FUEL IN**
23 **DECEMBER 2012. THE DIFFERENCE IN ACTUAL PREPAYMENTS SHALL BE**
24 **RECONCILED ON THE ANNUAL RETURN IN ACCORDANCE WITH PROCEDURES**
25 **PRESCRIBED BY THE DEPARTMENT. REPAYMENT OF THE CREDIT SHALL BE MADE**
26 **BY THE EARLIER OF THE DATE THAT THE TAXPAYER STOPS SELLING DIESEL**
27 **FUEL OR JULY 15, 2013.**

(9) ~~(8)~~—As used in this section:

(A) "BLENDSTOCK" INCLUDES ALL OF THE FOLLOWING:

(i) ANY PETROLEUM PRODUCT COMPONENT OF FUEL, SUCH AS NAPHTHA, REFORMATE, OR TOLUENE.

(ii) ANY OXYGENATE THAT CAN BE BLENDED FOR USE IN A MOTOR FUEL.

(B) "BOAT TERMINAL TRANSFER" MEANS A DOCK, A TANK, OR EQUIPMENT CONTIGUOUS TO A DOCK OR A TANK, INCLUDING EQUIPMENT USED IN THE UNLOADING OF FUEL FROM A SHIP AND IN TRANSFERRING THE FUEL TO A TANK PENDING WHOLESALE BULK RESHIPMENT.

(C) "DIESEL FUEL" MEANS ANY LIQUID OTHER THAN GASOLINE THAT IS CAPABLE OF USE AS A FUEL OR A COMPONENT OF A FUEL IN A MOTOR VEHICLE THAT IS PROPELLED BY A DIESEL-POWERED ENGINE OR IN A DIESEL-POWERED TRAIN. DIESEL FUEL INCLUDES NUMBER 1 AND NUMBER 2 FUEL OILS AND MINERAL SPIRITS. DIESEL FUEL ALSO INCLUDES ANY BLENDSTOCK OR ADDITIVE THAT IS SOLD FOR BLENDING WITH DIESEL FUEL AND ANY LIQUID PREPARED, ADVERTISED, OFFERED FOR SALE, SOLD FOR USE AS, OR USED IN THE GENERATION OF POWER FOR THE PROPULSION OF A DIESEL-POWERED ENGINE, AIRPLANE, OR MARINE VESSEL. AN ADDITIVE OR BLENDSTOCK IS PRESUMED TO BE SOLD FOR BLENDING UNLESS A CERTIFICATION IS OBTAINED FOR FEDERAL PURPOSES THAT THE SUBSTANCE IS FOR A USE OTHER THAN BLENDING FOR DIESEL FUEL. DIESEL FUEL DOES NOT INCLUDE DYED DIESEL FUEL, KEROSENE, OR AN EXCLUDED LIQUID.

(D) "DYED DIESEL FUEL" MEANS DIESEL FUEL THAT IS DYED IN ACCORDANCE WITH INTERNAL REVENUE SERVICE RULES OR PURSUANT TO ANY OTHER INTERNAL REVENUE SERVICE REQUIREMENTS, INCLUDING ANY INVISIBLE MARKER REQUIREMENTS.

(E) "EXCLUDED LIQUID" MEANS THAT TERM AS DEFINED IN 26 CFR

1 48.4081-1.

2 (F) "FUEL" MEANS GASOLINE AND DIESEL FUEL THAT IS SUBJECT TO
3 TAX UNDER THIS ACT, COLLECTIVELY, EXCEPT WHEN DIESEL FUEL IS
4 REFERRED TO SEPARATELY.

5 (G) "GASOLINE" MEANS AND INCLUDES GASOLINE, ALCOHOL, GASOHOL,
6 CASING HEAD OR NATURAL GASOLINE, BENZOL, BENZINE, NAPHTHA,
7 METHANOL, ANY BLENDSTOCK ADDITIVE, OR OTHER PRODUCT THAT IS SOLD
8 FOR BLENDING WITH GASOLINE OR FOR USE ON THE ROAD, OTHER THAN
9 PRODUCTS TYPICALLY SOLD IN CONTAINERS OF LESS THAN 5 GALLONS.
10 GASOLINE ALSO INCLUDES A LIQUID PREPARED, ADVERTISED, OFFERED FOR
11 SALE, SOLD FOR USE AS, OR USED IN THE GENERATION OF POWER FOR THE
12 PROPULSION OF A MOTOR VEHICLE, AIRPLANE, OR MARINE VESSEL,
13 INCLUDING A PRODUCT OBTAINED BY BLENDING TOGETHER ANY 1 OR MORE
14 PRODUCTS OF PETROLEUM, WITH OR WITHOUT ANOTHER PRODUCT, AND
15 REGARDLESS OF THE ORIGINAL CHARACTER OF THE PETROLEUM PRODUCTS
16 BLENDED, IF THE PRODUCT OBTAINED BY THE BLENDING IS CAPABLE OF USE
17 IN THE GENERATION OF POWER FOR THE PROPULSION OF A MOTOR VEHICLE,
18 AIRPLANE, OR MARINE VESSEL. THE BLENDING OF ALL OF THE ABOVE-NAMED
19 PRODUCTS, REGARDLESS OF THEIR NAME OR CHARACTERISTICS, SHALL
20 CONCLUSIVELY BE PRESUMED TO HAVE BEEN DONE TO PRODUCE FUEL, UNLESS
21 THE PRODUCT OBTAINED BY THE BLENDING IS ENTIRELY INCAPABLE OF USE
22 AS FUEL. AN ADDITIVE OR BLENDSTOCK IS PRESUMED TO BE SOLD FOR
23 BLENDING UNLESS A CERTIFICATION IS OBTAINED FOR FEDERAL PURPOSES
24 THAT THE SUBSTANCE IS FOR A USE OTHER THAN BLENDING FOR GASOLINE.
25 GASOLINE DOES NOT INCLUDE DIESEL FUEL, DYED DIESEL FUEL, OR AN
26 EXCLUDED LIQUID.

27 (H) "KEROSENE" MEANS ALL GRADES OF KEROSENE, INCLUDING, BUT

1 NOT LIMITED TO, THE 2 GRADES OF KEROSENE, NO. 1-K AND NO. 2-K,
2 COMMONLY KNOWN AS K-1 KEROSENE AND K-2 KEROSENE, RESPECTIVELY,
3 DESCRIBED IN AMERICAN SOCIETY FOR TESTING AND MATERIALS
4 SPECIFICATION D-3699, IN EFFECT ON JANUARY 1, 1999, AND KEROSENE-
5 TYPE JET FUEL DESCRIBED IN AMERICAN SOCIETY FOR TESTING AND
6 MATERIALS SPECIFICATION D-1655 AND MILITARY SPECIFICATIONS MIL-T-
7 5624R AND MIL-T-83133D (GRADES JP-5 AND JP-8), AND ANY SUCCESSOR
8 INTERNAL REVENUE SERVICE RULES OR REGULATIONS, AS THE SPECIFICATION
9 FOR KEROSENE AND KEROSENE-TYPE JET FUEL. KEROSENE DOES NOT INCLUDE
10 AN EXCLUDED LIQUID.

11 (I) ~~(a)~~-"Marine terminal operator" means a person ~~who~~ **THAT**
12 stores ~~gasoline~~ **FUEL** at a boat terminal transfer. ~~defined as a~~
13 ~~dock, a tank, or equipment contiguous to a dock or a tank,~~
14 ~~including equipment used in the unloading of gasoline from a ship~~
15 ~~and in transferring the gasoline to a tank pending wholesale bulk~~
16 ~~reshipment.~~

17 (J) ~~(b)~~-"Pipeline terminal operator" means a person ~~who~~ **THAT**
18 stores ~~gasoline~~ **FUEL** in tanks and equipment used in receiving and
19 storing ~~gasoline~~ **FUEL** from interstate and intrastate pipelines
20 pending wholesale bulk reshipment.

21 (K) ~~(c)~~-"Purchase" or "shipment" does not include an exchange
22 of ~~gasoline~~ **FUEL** or an exchange transaction ~~,~~ between refiners,
23 pipeline terminal operators, or marine terminal operators.

24 (L) ~~(d)~~-"Refiner" means a person ~~who~~ **THAT** manufactures or
25 produces ~~gasoline~~ **FUEL** by any process involving substantially more
26 than the blending of ~~gasoline~~ **FUEL**.