

ALLOW CLAIM FOR REFUND OF SALES OR USE TAX AFTER EXEMPT PURCHASE

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**House Bill 5620 reported from committee as H-1
Sponsor: Rep. Pamela Hornberger**

Analysis available at
<http://www.legislature.mi.gov>

**House Bill 5621 reported from committee as H-1
Sponsor: Rep. Sue Allor**

**Committee: Tax Policy
Complete to 3-15-18**

BRIEF SUMMARY: House Bills 5620 and 5621 would amend the General Sales Tax Act and the Use Tax Act, respectively, to allow an individual to apply for sales and use tax refunds from the Michigan Department of Treasury when the purchaser fails to claim a tax exemption at the time of purchase.

FISCAL IMPACT: As written, the bills would be expected to have an unknown, but presumed minor, impact on state sales and use tax revenue. While the number of purchasers that would avail themselves of this mechanism to receive a refund cannot be determined in advance, it is likely to be small.

The bills would have an indeterminate fiscal impact on the Department of Treasury. Any fiscal impact would relate to increased administration costs associated with processing the requirements under the provisions of the bill. It is likely that the Department of Treasury will be able to cover any costs under current appropriation levels.

THE APPARENT PROBLEM:

Michigan is unique among states in that the incidence and legal liability of the state's sales tax is on the seller; it is a tax for the privilege of engaging in certain business activities. There is no requirement that a consumer pay the sales tax, though it is almost universally passed on to the consumer by the seller.

With this arrangement, in which the sales tax is a transaction between the seller and the Michigan Department of Treasury, it can be difficult for a purchaser to seek and receive a sales tax refund. A purchaser may seek a refund if, for instance, the person neglected to claim the appropriate sales tax exemption at the time of purchase; exemptions are available for certain purchases (like property used in industrial processing) and purchasers (like churches and nonprofit organizations). Under current law, to receive a sales tax refund the purchaser must work directly with the seller. Reportedly, this can be problematic for both purchasers and sellers: purchasers are not able to directly apply for a refund, and sellers bear the burden of fixing a problem they did not create. Legislation has been introduced to allow a purchaser to seek a sales (or use) tax refund directly with the Department of Treasury.

THE CONTENT OF THE BILLS:

Both the General Sales Tax Act and the Use Tax Act contain lists of sales and transactions that are exempt from the respective taxes. Currently under both acts, if an exemption from the tax is claimed, the seller must obtain identifying information of the purchaser and the reason for claiming the exemption either at time of purchase or at a later date. If the seller obtains a fully completed exemption form or captures the relevant data within 120 days after the date of the sale, the seller is not liable for the tax.¹ The seller can also prove that the transaction was not subject to the tax by other means within an extended period of time. Additionally, the seller can obtain a blanket exemption from a purchaser with which the seller has a recurring business relationship.

Under each bill, if a purchaser failed to claim an exemption at the time of purchase by notifying the seller and providing a complete and valid certificate of exemption, the purchaser could submit a claim for a refund to the Department of Treasury for the tax related to the purchase if all of the following were met:

- The claim for a refund was made within 4 years of the date of purchase.
- The purchaser submitted to the department an accurate record of the purchase, including, but not limited to, a paper, electronic, or digital receipt, invoice, or purchase order related to the sale that includes the amount of sales or use tax paid for which the purchaser is seeking a refund.
- The purchaser submitted to the department a form prescribed by the department and signed by the seller that contains information required to substantiate the refund claim. The form would have to include a statement that the seller reported and paid the tax on the sale in question and that the seller had not claimed, and would not claim, a refund of that tax.
- The purchaser submitted to the department a proper exemption claim form as prescribed by the department.
- The purchaser submitted any additional information required by the department related to the claim for refund.

The bills would each take effect 90 days after being enacted into law.

MCL 205.62 (HB 5620: General Sales Tax Act)

MCL 205.104b (HB 5621: Use Tax Act)

ARGUMENTS:

For:

Supporters note that the bills are a clear win-win for consumers and businesses. The current process to seek a sales tax refund is cumbersome: purchasers, like a nonprofit that may have made an honest mistake in forgetting to claim an exemption at the time of purchase, must return to the seller to seek the refund; and sellers, through no fault of their own, may

¹ See “Michigan Sales and Use Tax Certificate of Exemption,” Michigan Department of Treasury Form 3372 (Rev. 03-16). https://www.michigan.gov/documents/taxes/3372_216612_7.pdf

incur additional work in providing a refund or amending a sales tax return. The bills will simplify the process, giving consumers a direct route to receive the refund and saving businesses time and hassle in managing the refund process.

Against:

No arguments were offered in opposition to the bills.

POSITIONS:

A representative of the Michigan Department of Treasury testified in support of the bills.
(2-28-18)

A representative of the Michigan Chamber of Commerce testified in support of the bills.
(2-28-18; and indicated support 3-14-18)

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