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BILL ANALYSIS

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Senate Bill 158 & 159 (Substitute S-1 as passed by the Senate)

Sponsor: Senator Sam Singh

Committee: Finance, Insurance, and Consumer Protection (discharged)

Date Completed: 4-24-23

(COMPANION BILL LINK: [H.B. 4039](#) et al.)

CONTENT

Senate Bill 158 (S-1) and Senate Bill 159 (S-1) would amend the General Sales Tax Act and the Use Tax Act, respectively, to modify the definition of "sales price" and "purchase price", as applicable, to eliminate delivery and installation charges from those definitions. The bills' changes would not apply to delivery or installation charges involving or relating to the sale of electricity, natural gas, or artificial gas by a utility.

The General Sales Tax Act levies a 6.0% tax on the gross proceeds (i.e., "sales price") of a business that makes sales at retail. The Use Tax levies a 6.0% tax on the price (i.e., "purchase price") of tangible personal property used, stored, or consumed in Michigan.

"Sales price" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, and applies to the measure subject to sales tax. "Purchase price" or "price" means the total amount of consideration paid by the consumer to the seller, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, and applies to the measure subject to use tax.

The terms include certain categories of costs and charges, including delivery and installation charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property from the seller to the purchaser. The bill instead would refer to installation and delivery charges.

The terms exclude from the respective definitions other listed charges, credits, and amounts. Under the bill, delivery or installation charges, except those that involve or relate to the sale of electricity, natural gas, or artificial gas by a utility, would be excluded if those charges were separately stated on the invoice, bill of sale, or similar document provided to the purchaser, and the seller (under Senate Bill 158) or taxpayer (under Senate Bill 159) maintained its books and records to show separately the transaction used to determine the tax levied under the applicable Acts.

(The bills would define a "utility" as either a person regulated by the Michigan Public Service Commission as a utility or a person that operates equipment or facilities for producing, generating, transmitting, delivering, or furnishing electricity within the State for the public for compensation, regardless of the person's owner, ownership structure, or regulation by the Michigan Public Service Commission.)

All the following would apply only to delivery and installation charges, excluding those involved with or related to the sale of electricity, natural gas, or artificial gas by a utility:

- Within 90 days after the bills' effective dates, the Department of Treasury would have to cancel all outstanding balances related to delivery and installation charges on notices of intent to assess that were issued for the taxes levied under the General Sales Tax Act or Use Tax Act and that were issued before the bill's effective date.
- Within 90 days after the bills' effective dates, the Department would have to cancel all outstanding balances related to delivery or installation charges on final assessments for the taxes levied under the Acts and that were issued before the bill's effective date.
- After the bills' effective date, the Department could not issue any new assessments under the Acts on delivery and installation charges for any tax period before the bill's effective date that is open under the statute of limitations under either Act.

(Generally, a deficiency, interest, or penalty may not be assessed after four years after the date set for the filing of the required return or after the date the return was filed, whichever is later. The statute of limitations may be extended under certain circumstances.)

Under the bills, all revenue lost to the State School Aid Fund (SAF) as a result of the above exclusions would have to be deposited into the SAF.

(Senate Bill 158 would also amend the definition of "person" under the General Sales Tax Act to include a limited liability company, in accordance with the current definition under the Use Tax Act.)

MCL 205.51 & 205.75 (S.B. 158)
205.92 & 205.111 (S.B. 159)

BRIEF RATIONALE

Generally, under the General Sales Tax Act and the Use Tax Act, when a delivery or installation charge is invoiced with a purchase, it is subject to a 6.0% tax; when the charge is invoiced separately, it is not. Many businesses apparently are unfamiliar with this difference, and do not pay sales tax or use tax on these transactions, which has resulted in increased audits and unexpected assessments and penalties. Some have suggested that delivery and installation charges should be treated consistently regardless of the timing of the charge or how they are invoiced.

PREVIOUS LEGISLATION

(Please note: The information in this summary provides a cursory overview of previous legislation and its progress. It does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)

Senate Bills 158 and 159 are companion bills to House Bills 4039 and 4253, respectively, which have been enacted. Additionally, the bills are similar to House Bills 5080 and 5081 from the 2021-2022 Legislative Session, respectively. The House passed the bills and they were referred to the Senate Committee on Finance. The Committee reported the bills to the floor, but received no further action.

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

Although Senate Bill 158 (S-1) is not tie-barred to Senate Bill 159 (S-1), the bills would reduce revenue to the State General Fund and constitutional revenue sharing to local units of government by approximately \$70.0 million in the first full year, according to the Department of Treasury. Assuming a July 1, 2023, effective date, the reduction would total approximately \$22.0 million in fiscal year (FY) 2022-23. The actual impact on each fund affected would depend on the relative impact of the exemption between sales taxes and use taxes and would

grow over time. It is expected that most of the bills' impact would be on sales tax revenue, and if the sales tax experienced two-thirds of the impact, the bills would reduce General Fund revenue by approximately \$63.0 million in the first full year and constitutional revenue sharing to local units of government by approximately \$7.0 million. While the SAF receives revenue from the sales tax and the use tax, the bill specifies that any revenue loss to the SAF would be offset by a transfer of revenue from the General Fund.

The bills could reduce revenue by substantially more than the estimated amount if retailers altered product prices so that a portion of the cost of the good was shifted from the good to delivery and installation. For example, vendors on Amazon or eBay often price goods at low prices to affect search results, and then offset the loss of revenue with large delivery charges. A \$50 item may be listed and sold by one seller for \$50 with free shipping but by another with a price of \$1, with \$49 in delivery charges. Under current law, the sales tax on both transactions would be \$3. Under the bills, the latter transaction would exhibit a sales tax liability of six cents. The bills would create an incentive for more sellers to engage in these types of practices. To the extent that retailers engaged in these practices, the revenue loss under the bills could be substantially greater.¹

Fiscal Analyst: David Zin

¹ For example, if the majority of vehicle sales were to have their pricing altered in this manner, it could reduce sales tax revenue by approximately \$1.5 billion per year.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.