



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 160 (as enacted)

PUBLIC ACT 29 of 2023

House Bill 4039 (as enacted)

PUBLIC ACT 20 of 2023

House Bill 4253 (as enacted)

PUBLIC ACT 21 of 2023

Sponsor: Senator Sam Singh (S.B. 160)

Representative Pat Outman (H.B. 4039)

Representative Kevin Coleman (H.B. 4253)

Senate Committee: Finance, Insurance, and Consumer Protection (discharged)
Committee of the whole

House Committee: Judiciary
Tax Policy

Date Completed: 5-11-23

RATIONALE

Previously, under the General Sales Tax Act and the Use Tax Act, a delivery or installation charge was subject to a 6.0% tax when it was invoiced with a purchase. If the charge was invoiced separately, it was not subject to the 6.0% tax. Reportedly, many businesses were unfamiliar with the difference and did not pay sales tax or use tax on these transactions. This resulted in increased audits, as well as unexpected assessments and penalties. It also, in some cases, led to companies raising the cost of their products to account for these taxes and penalties. Accordingly, it was suggested that delivery and installation charges be treated consistently regardless of the timing of the charge or how they are invoiced.

CONTENT

Senate Bill 160 amended Public Act 72 of 1979, which requires the Governor to report specified tax information with the annual budget message to the Legislature, to modify a Michigan Compiled Laws (MCL) reference that House Bill 4253 amended.

House Bill 4039 and House Bill 4253 amended 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.

Senate Bill 160 took effect on May 8, 2023. House Bills 4039 and 4253 took effect on April 26, 2023.

Senate Bill 160

Public Act 72 of 1979 requires the Governor to report an estimate of the amount of use tax forgone under Section 2(f) of the Use Tax Act from the imposition of the tax on the difference between the agreed-upon value of a motor vehicle, trailer coach, or titled watercraft used as part payment of the purchase price (i.e., a trade-in) of the full retail price of the vehicle, trailer coach, or watercraft being purchased rather than the full retail price of the vehicle, trailer coach, or titled watercraft. The bill amended the MCL reference to Section 2(1)(f) and replaced, for the first two uses of the word, "trailer coach" with "recreational vehicle".

House Bill 4039 and House Bill 4253

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, previously 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. Instead, "sales price" and "purchase price" no longer refer to delivery charges and installation charges. In the case of delivery charges, a seller is not liable under the Acts for delivery charges allocated to the delivery of exempt property.

The terms exclude from the respective definitions other listed charges, credits, and amounts. Delivery or installation charges are excluded if those charges are separately stated on the invoice, bill of sale, or similar document provided to the purchaser, and the seller (under House Bill 4039) or taxpayer (under House Bill 4253) maintains his or her books and records to show separately the transaction used to determine the tax levied under the applicable Acts. Under the bill, these provisions do not apply to the delivery or installation charges involving or relating to the sale of electricity, natural gas, or artificial gas by a utility.

The bill defines "utility" as either of the following: a) a person regulated by the Michigan Public Service Commission as a utility; or b) 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.

Under the bill, all the following apply only to delivery and installation charges described above, except those involving or relating 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 must 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 must 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 bill's effective date, the Department cannot issue any new assessments under the Acts on delivery and installation charges for any tax period before the bill's effective date that was 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.)

The bill requires all revenue lost to the State School Aid Fund (SAF) as a result of the above exclusions to be deposited into the SAF.

MCL 21.276 (S.B. 160)
205.51 & 205.75 (H.B. 4039)
205.92 & 205.111 (H.B. 4253)

PREVIOUS LEGISLATION

(Please note: This section does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)

House Bill 4039 and House Bill 4253 are companion bills to Senate Bills 158 and 159, respectively, from the 2023-24 Legislative Session. Senate Bills 158 and 159 were passed by the Senate on March 16, 2023. The bills also are similar to House Bills 5080 and 5081 from the 2021-2022 Legislative Session. The House of Representatives passed those bills, and they were reported by the Senate Committee on Finance, but no further action was taken.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Specifying under what circumstances delivery and installation charges can be exempted from sales and use taxes was necessary to clarify prior law. According to testimony before the Senate Committee on Finance, Insurance, and Consumer Protection, small businesses were confused by the law, as the Department of Treasury taxed the delivery and installation of products as if they were goods, not services. This confusion resulted in audits and unexpected costs for small businesses. The bills provided consistency for small businesses and consumers, exempting delivery and installation charges from sales and use tax if businesses itemize the charges separately and keep records showcasing how the taxes levied were calculated for these transactions.

Supporting Argument

Exempting delivery and installation charges from the 6.0% sales and use taxes alleviates a financial burden for Michigan consumers and businesses. According to testimony before the Senate Committee on Finance, Insurance, and Consumer Protection, some small businesses were forced to raise the price of their goods and services to account for delivery and installation taxes. Removing sales and use taxes on delivery and installation may lower certain prices, benefiting consumers.¹ Removing these taxes will also aid small businesses, especially those who offer delivery and installation services. Prior law may have provided small businesses with a competitive disadvantage. Testimony also indicates that an out-of-state business or a delivery company could bid for delivery and installation-related services tax-free, ultimately offering consumers lower, more attractive prices. Removing sales and use tax for delivery and installation fees makes Michigan businesses competitive and benefits consumers by offering them lower prices.

Legislative Analyst: Eleni Lionas

¹ Executive Office of the Governor, *Gov. Whitmer Signs Legislation Cutting Taxes for Michigan Families & Businesses, Protects Children and Seniors, Keeps Communities Safe*, 4-26-23.

FISCAL IMPACT

Senate Bill 160

The bill will have no fiscal impact on State or local government.

House Bill 4039 and House Bill 4253

Although the bills are not tie-barred, they will 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 will 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 bills specify that any revenue loss to the SAF must be offset by a transfer of revenue from the General Fund.

The bills may reduce revenue by substantially more than the estimated amount if retailers alter product prices so that a portion of the cost of the good is 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 prior law, the sales tax on both transactions would be \$3. Now, under the bill, the latter transaction would exhibit a sales tax liability of six cents. More sellers may engage in these types of practices. To the extent that retailers engage in these practices, the revenue loss under the bills could be substantially greater.

Fiscal Analyst: Joe Carrasco, Jr.
David Zin

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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.