



Senate Fiscal Agency
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House Bill 4039 (Substitute H-1 as passed by the Senate) *(enrolled version)*
House Bill 4253 (Substitute H-1 as passed by the Senate) *(enrolled version)*
Sponsor: Representative Pat Outman (H.B. 4039)
Representative Kevin Coleman (H.B. 4253)
House Committee: Tax Policy
Senate Committee: Committee of the Whole

Date Completed: 3-23-23

CONTENT

House Bill 4039 (H-1) and House Bill 4253 (H-1) would amend the General Sales Tax Act and the Use Tax, respectively, to modify the definition of "sales price" and "purchase price", as applicable, to eliminate delivery and installation charges from those definitions.

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 delivery charges and installation charges. In the case of delivery charges, a seller would not be 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. Under the bill, delivery or installation charges 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 House Bill 4039 (H-1)) or taxpayer (under House Bill 4253 (H-1)) maintained its books and records to show separately the transaction used to determine the tax levied under the applicable Acts. These provisions would not apply to the delivery or installation charges involving or relating to the sale of electricity, natural gas, or artificial gas by a utility.

"Utility" would mean either of the following: i) 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.

All of the following would 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 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 bill's effective date, the Department would be prohibited from issuing 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.

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

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 uses 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.)

House Bill 4039 (H-1) and House Bill 4253 (H-1) are similar to Senate Bills 158 (S-1) and 159 (S-1), 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.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

Although the bills are not tie-barred, they 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.