



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 4224 (Substitute H-1 as passed by the House)
House Bill 4225 (Substitute H-1 as passed by the House)
Sponsor: Representative Jim Lilly (H.B. 4224)
Representative Sarah Anthony (H.B. 4225)
House Committee: Rules and Competitiveness
Senate Committee: Finance

Date Completed: 5-12-21

CONTENT

House Bills 4224 and 4225 would amend the General Sales Tax Act and the Use Tax Act, respectively, to exempt from taxation under those Acts the sale or use and storage, as applicable, of personal protective equipment (PPE) and supplies to a person engaged in a business enterprise that had implemented a COVID-19 safety protocol plan.

Specifically, beginning March 10, 2020, through December 31, 2021, the sale of PPE, or the use, storage, or consumption of PPE and supplies by an individual engaged in a business enterprise that had implemented a COVID-19 safety protocol plan would be exempt from taxation under the Acts. The PPE and supplies would be exempt from the taxes imposed by the Acts only insofar as they were used for the exempt purpose stated above. The exemption would be limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the Department of Treasury.

A person engaged in a business enterprise that adopted a COVID-19 safety protocol plan could request a refund from the Department for any tax paid for the purchase of PPE and supplies, including tax paid on transactions before the implementation of the plan. The person would need to submit all of the following to the Department to be eligible for a refund:

- A copy of its COVID-19 safety protocol plan.
- An accurate record of the purchase, including a paper, electronic or digital receipt, invoice, or purchase order related to the sale, that included the date of the purchase and the amount of sales tax paid to the seller.
- Any other information required by the Department to substantiate the refund claim (the Department could not request the information unless that information would be necessary to implement the refund and it is not sought under another purpose).

"COVID-19 safety protocol plan" would mean a COVID-19 exposure prevention, preparedness, and response plan that meets all the following requirements:

- Complies with any applicable law, including any applicable executive or epidemic orders regarding safeguards to protect Michigan's workers from COVID-19.
- Is consistent with best practices for infection prevention and industrial hygiene.
- Promotes remote work to the fullest extent possible, including increasing the number of telework-eligible employees.

-- Implements enhanced cleaning, screening, testing, and contact tracing procedures and any additional infection-control measures that are reasonable in light of the work performed at the worksite and the rate of infection in the surrounding community.

"Personal protective equipment and supplies" would mean protective equipment, disinfecting products, and plexiglass or similar property used as a barrier to reduce or prevent exposure to COVID-19 including plexiglass or similar property that is affixed to or made a structural part of real estate.

"Protective equipment" would mean items for human wear and designed as protection of the wearer against exposure to COVID-19, but not suitable for general use. Protective equipment would include breathing masks, face shields, respirators, protective gloves, and safety glasses and goggles.

"Disinfecting products" would mean products designed to disinfect or sanitize an individual, workplace, or protective equipment and used or consumed to prevent the spread of COVID-19. Disinfecting products would include antibacterial soap, disinfecting spray, disinfecting wipes, and hand sanitizer.

The bills would be retroactive and would apply retroactively beginning March 10, 2020.

Proposed MCL 205.54gg (H.B. 4224)
Proposed MCL 205.92gg (H.B. 4225)

Legislative Analyst: Christian Schmidt

FISCAL IMPACT

The bills would reduce sales and use tax revenue to the General Fund and School Aid Fund, and local unit revenue, by an unknown and potentially significant amount that would depend on the sales that occurred, the prices of covered goods, the number of affected taxpayers that have implemented a COVID-19 safety protocol, and the interpretation of the bills' provisions.

Estimates of spending on PPE vary widely. A recent press release by a market research firm claimed the US market for PPE would reach \$13.2 billion by 2027, after growing at a compounded annual growth rate of 29.1% between 2020 and 2027. On the other hand, a report from late 2020 from another market research firm forecasted the global market would reach \$10.1 billion by 2027 while another report released the same month by a different firm estimated the global market at \$86.7 billion by 2026. Yet another report, from before the COVID-19 pandemic, estimated the market at \$49.0 billion in 2019.

News reports compound the uncertainty illustrated by these estimates: a December 2020 Associated Press analysis reported that state governments spent at least \$7.0 billion on PPE in 2020. Similarly, a news article in September 2020 claimed Amazon was likely to spend approximately \$4.0 billion on PPE in 2020, while an August 2020 article reported Wal-Mart as having already spent \$1.2 billion (at a rate of approximately \$3.3 million per day) on PPE and cleaning. Reports of price inflation in the sector also create wide margins of error around any estimate.

Nearly all of these estimates indicate the bills could represent a potentially significant reduction in sales and use tax revenue. Adjusting the \$49.0 billion pre-COVID-19 global market for the relative sizes of the US and Michigan economies would suggest \$302.0 million of spending in Michigan, or approximately \$18.0 million of sales and use tax revenue. Price increases and increased consumption related to COVID-19 would mean the potential revenue loss from the bills likely would exceed \$18 million per year, although it is unknown how many

taxpayers have implemented a COVID-19 safety protocol. Similarly, the bills list antibacterial soap, disinfecting sprays, and hand sanitizers as meeting the definition of "disinfecting products" but it is unlikely the market estimates above would include expenditures on these types of items. Inclusion of these items under the bills likely would increase the magnitude of any revenue loss.

Because fiscal year (FY) 2019-20 ended September 30, 2020, refunds issued for expenditures made between March 10, 2020, and September 30, 2020, would affect revenue for FY 2020-21 or FY 2021-22, depending on when the refund request was processed. As a result, any revenue loss from the bills would affect revenue for FY 2020-21 and FY 2021-22.

The distribution of any revenue loss would depend on whether the refunds were issued under the sales tax or the use tax. One-third of use tax revenue is directed to the School Aid Fund, while the remainder is directed to the General Fund. Approximately 73% of sales tax revenue is directed to the School Aid Fund, while another 10% is directed to local units of government through constitutional revenue sharing provisions, and the remaining sales tax revenue is directed to the General Fund.

One difficulty with the estimates of the PPE market stems from definitions of what types of spending and equipment constitutes PPE. Similarly, the bill requires eligible items of protective equipment to be "designed as protection...against exposure to COVID-19, but not suitable for general use". It is unclear what equipment would satisfy this definition. For example, N95 masks—generally regarded as very effective against COVID-19 transmission—were in existence long before COVID-19 and would not appear to represent equipment "designed as protection...against COVID-19". The masks are designed to protect wearers against a wide array of airborne particles. Similarly, gloves frequently used to protect against potential exposure to COVID-19 are used widely in food service and other medical situations, are available in retail first aid kits, and thus would appear to have an ability to be employed for "general use". As a result, the definitional issues that have affected studies of the PPE market also could create difficulty for the administration of the bills' provisions.

Fiscal Analyst: 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.