



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



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

House Bill 5080 (Substitute H-1 as passed by the House)
House Bill 5081 (Substitute H-1 as passed by the House)
Sponsor: Representative Pat Outman (H.B. 5080)
Representative Kevin Coleman (H.B. 5081)
House Committee: Tax Policy
Senate Committee: Finance

Date Completed: 1-19-22

CONTENT

House Bill 5080 (H-1) and House Bill 5081 (H-1) would amend the General Sales Tax Act and the Use Tax Act, respectively, to amend the definition of "sales price" and "purchase price", as applicable, to eliminate certain 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. Under the bills, these would apply except as provided below.

The terms exclude from the respective definitions other listed charges, credits, and amounts. Under the bill, delivery, installation, or similar 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 5080 (H-1)) or taxpayer (under House Bill 5081 (H-1)) maintained its books and records to show separately the transaction used to determine the tax levied under the applicable Acts.

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. A person who excluded delivery, installation, or similar charges from the sales price or purchase price, as applicable, of tangible personal property to calculate the tax due under the General Sales Tax Act or Use Tax Act would have to report the amount of those charges and any other information needed to

determine the amount of revenue lost to the SAF as a result of these exclusions on an existing or amended form at the time and in a manner prescribed by the Department of Treasury.

Each bill states that the proposed exclusion "is intended only to clarify the current status of the law in this state, is remedial in nature, and, therefore, applies to a civil action pending on the effective date" of the bill.

MCL 205.51 & 205.75 (H.B. 5080)
205.92 & 205.111 (H.B. 5081)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bills would reduce revenue to the State General Fund and constitutional revenue sharing to local units of government by approximately \$60.0 million per year in the first year, according to the Michigan Department of Treasury. 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 \$56.1 million per year and constitutional revenue sharing to local units of government by approximately \$4.0 million per year. While the School Aid Fund 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.

House Bill 5080 (H-1) is not tie-barred to House Bill 5081. The enacting sections of the bills indicate that the bills are intended to clarify existing law. However, the transactions exempted from tax under the bills currently are subject to tax.

The bills could reduce revenue by more than the estimated amount if retailers engaged in evasive practices. For example, vendors on Amazon or eBay will 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 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, but 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 the same or similar practices.

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.