Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 930 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Jeremy Moss
Committee: Regulatory Affairs

Date Completed: 8-22-24

RATIONALE

According to testimony before the Senate Committee on Regulatory Affairs, third-party delivery services are growing in popularity; however, under current statute, sales tax can be applied twice under certain circumstances. Some small retailers do not have the option to refrain from collecting and remitting sales tax. In these cases, taxes are applied by the delivery service and the retailer. Some have argued that small retailers should have the option to not collect sales tax at the point-of-sale when delivery services are making purchases so that these delivery services are the only entity collecting and remitting sales tax on the purchase.

CONTENT

The bill would amend the General Sales Tax Act to do the following:

-- **Allow a delivery network company to deduct or exclude from its tax liability the amount of sales tax that the delivery network company paid to a marketplace seller in connection with a qualified delivery network sale.**
-- **Allow the Department of Treasury to audit a marketplace seller and a delivery network company for a qualified delivery network sale.**

Definitions

Generally, a marketplace facilitator acts as an intermediary between a marketplace seller and a customer. Under the Act, a person must do the following to be considered a marketplace facilitator:

-- List or advertise for sale tangible personal property being sold by a marketplace seller.
-- Collect payment from the customer and transmit that payment to the marketplace seller for consideration, either directly or indirectly through agreements or arrangements with third parties.

A person that operates a platform or forum that provides internet, print, electronic, or any other form of advertising services, including listing tangible personal property for sale, is not a marketplace facilitator if that person does not fulfill the latter requirement.

Under the bill, "delivery network company" would mean a marketplace facilitator that maintains a website, mobile application, or nondigital platform used to facilitate delivery services that are performed or otherwise conducted by a delivery network courier. "Delivery network courier" would mean an individual who provides delivery services through a delivery network company by doing any of the following:

-- Using a personal means of transportation, such as a motor vehicle, bicycle, scooter, or other similar modes of transportation.

-- Using public transportation.
-- Walking.

"Delivery network courier" would not include a common carrier or a motor carrier as that term is defined in the Motor Carrier Fuel Tax Act: 1) a person who operates or causes to be operated a qualified commercial motor vehicle on a public road or highway in the State and at least one other state or Canadian province; or 2) a person who operates or causes to be operated a qualified commercial motor vehicle on a public road or highway in the State and who is licensed under the International Fuel Tax Agreement.[1]

Under the bill, "delivery services" would mean the pickup and delivery of tangible personal property, by a delivery network courier, from a marketplace seller located in the State to a customer located in the State, which may include the selection, collection, and purchase of the tangible personal property in connection with the delivery. The term would not include a delivery requiring more than 75 miles of travel from the marketplace seller to the customer.

The bill would define "qualified delivery network sale" as a sale that meets all the following requirements:

-- The sale is made as part of delivery services facilitated by a delivery network company.
-- The sale is sourced to the State.
-- The tax imposed by the Act on the sale is paid by the delivery network company to the marketplace seller in connection with the delivery services.

Qualified Delivery Network Sales

Among other things, the Act requires individuals or businesses that sell tangible personal property to remit a 6% sales tax on the total price of their taxable retail sales to the State.[2] A marketplace seller must fulfill either of the following to be considered engaged in the business of making sales at retail of tangible personal property in the State:

-- The seller's gross receipts from sales to customers in the State exceeded $100,000 in the previous calendar year.
-- The seller had 200 or more separate transactions into the State in the previous calendar year.

Generally, a marketplace facilitator engaged in the business of making sales at retail in the State must remit the sales tax on all taxable sales made by the marketplace facilitator or facilitated for marketplace sellers in the State. The Treasury Department cannot audit a marketplace seller for sales facilitated by a marketplace facilitator required to remit the sales tax. A marketplace seller is not liable for the sales tax imposed on sales made through a marketplace facilitator required to remit tax.

The bill would specify that, for a qualified delivery network sale, the delivery network company would have to pay the sales tax to the marketplace seller in connection with the delivery services performed. The Treasury Department could audit the marketplace seller and the delivery network company for the qualified delivery network sale.

Additionally, the bill would allow a delivery network company to deduct or exclude from its tax liability the amount of tax under the Act that the delivery network company paid to the marketplace seller in connection with the qualified delivery network sale; however, the

[1] MCL 207.211
[2] MCL 205.52

delivery network company could not claim such a deduction or exclusion if the marketplace seller did not charge the delivery network company for the tax imposed under the Act on the qualified delivery network sale. The amount of the deduction or exclusion could not exceed the amount of tax under the Act that was charged by the marketplace seller to the delivery network company in connection with the qualified delivery network sale.

MCL 205.52d

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

The bill would support small businesses. Currently, delivery network companies and consumers pay sales tax on qualified delivery network sales. For example, a customer who uses a third-party delivery service such as Instacart pays for the goods and services purchased as well as applicable taxes and fees, including sales tax. The delivery network courier picking goods up from the store also pays sales tax, resulting in double taxation. Testimony before the Senate Committee on Regulatory Affairs indicates that large retailers have been able to modify their point-of-sale software to turn off the collection of sales tax when a third-party delivery service is completing an order; however, many small retailers have been unable to invest in this expensive technology. The bill would allow delivery network companies to claim deductions for the unnecessary sales tax paid, alleviating their unfair tax burdens and allowing them to continue working with small businesses.

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

According to estimates from the Department of Treasury, the bill would reduce sales tax revenue by approximately $1.8 million in Fiscal Year 2024-25, the first full fiscal year in which the bill would be effective. The revenue reduction would increase in future years due to increases in inflation and the real (inflation-adjusted) economy.

Approximately 73% of sales tax revenue is distributed to the School Aid Fund, while 10% is distributed to local units through constitutional revenue sharing. Except for sales tax collected on sales related to motor vehicle and motor vehicle parts (which are unlikely to be affected by the bill), where a small earmark directs revenue to the Comprehensive Transportation Fund, any remaining sales tax revenue is directed to the General Fund.

The bill likely would not have a significant fiscal impact on the Department of Treasury. While the bill would allow additional audits to be performed, it would not require them. The magnitude of the impact would depend upon the number of audits performed. It is likely that existing appropriations would be sufficient to cover expenditures; however, a large increase in audits could result in additional administrative and staffing costs.

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