

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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Senate Bill 581 (as passed by the Senate)  
Sponsor: Senator Gilbert J. DiNello  
Committee: Finance

Date Completed: 8-21-90

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**RATIONALE**

There has been widespread confusion in recent years regarding the application of the sales tax to items sold at fund-raising events held by schools, churches, and other nonprofit organizations. Under the General Sales Tax Act, sales to nonprofit schools, churches, hospitals, and other health, welfare, educational, cultural arts, or charitable institutions or organizations are exempt from sales tax. The exemption only applies, however, if an item purchased by the school, church, or nonprofit organization is used or consumed by that entity and is not for resale. This means, then, that if a school or an organization affiliated with a school, or a nonprofit organization or a church, purchases items from a business for the purpose of reselling the items, the items are subject to the sales tax, which can be collected either by the supplier upon the sale to the school, church, or organization, or by that entity upon resale.

An exception to this is made for the sale of certain foods. Under the Act, sales (by anyone) of food for human consumption are tax-exempt, unless the food is prepared food intended for immediate consumption. Sales of candy bars, unpopped popcorn, bars of cheese, salami rolls, etc., that are sold door to door by a nonprofit organization, or through the schools for fund-raising purposes, are exempt from the sales tax. Food and beverages sold at a fund-raiser such as a pancake supper, however, are prepared food for immediate consumption and their sale is taxable, as are sales of bags of popcorn, candy, hot dogs, and coffee by booster clubs at athletic or other school-related events. Nevertheless, it appears that many schools, organizations affiliated with schools, churches, and other nonprofit organizations often have not collected the sales tax on food or other items sold to the

public, because: 1) they believed that their tax-exempt status when purchasing items from suppliers extended to the resale of the items, and/or 2) they believed that the sales tax exemption on food included any food sold, not just food not intended for immediate consumption.

Further complicating the situation have been the actions of some suppliers. The Department of Treasury contends that a supplier who sells items to schools, churches, or other nonprofit organizations must collect sales tax if the items are to be sold at retail. A supplier does not have to collect the tax if the organization, school, or church uses or consumes the material itself, or if the organization, school, or church has obtained a sales tax license through the Department to collect and remit sales tax on items sold at retail. The Department claims that while some suppliers have properly collected and remitted the tax, others have ignored the law; the Department has assessed penalties and interest against several suppliers who have not complied with it. Many suppliers, however, claim that they either were unaware that they were supposed to collect the tax, or were simply honoring the claims of schools or nonprofit organizations that they were exempt from paying sales tax on items bought for resale.

It has been contended that it is unfair to expect the schools or other nonprofit organizations to collect the sales tax, or require suppliers to collect the tax under certain circumstances but not under others. Some people feel that the confusion surrounding the applicability of the sales tax to items sold at fund-raisers by nonprofit organizations could be eliminated by simply making all such sales tax-exempt.

S.B. 581 (8-21-90)

## **CONTENT**

The bill would amend the General Sales Tax Act to exempt from the sales tax sales by a school or an organization affiliated with a school, or a nonprofit charitable or service organization that has a tax-exempt status under the Internal Revenue Code, of tangible personal property sold for the purpose of temporary fund-raising events for the benefit of the school and its students or the nonprofit charitable or service organization.

The bill would apply to sales taxes collected after December 31, 1982.

Proposed MCL 205.54n

## **FISCAL IMPACT**

The bill would result in an indeterminate reduction in GF/GP revenues. The annual cost of the bill could be several million dollars, while making the exemption retroactive to 1982 could result in a reduction of tens of millions of dollars.

## **ARGUMENTS**

### **Supporting Argument**

Schools, churches, and charitable organizations that hold a fund-raiser from time to time to raise money for a particular event or cause cannot be expected to be as well-versed as a private business in the State's application of the sales tax to items sold to the public. The general perception of the public is that such organizations are, and should be, tax-exempt. Humanitarian, charitable, and educational organizations have traditionally had tax-exempt status under Federal tax laws, and the State tax laws should mirror this posture. Such organizations hold fund-raisers for the purpose of doing something positive for communities, not to make money for themselves. Giving these organizations tax-exempt status encourages members to give their time and effort to various worthy causes, and results in greater financial gain than if the sales tax were imposed. The public supports many different kinds of fund-raisers, partially because people believe that the money they spend for a cause or a charity is a well-spent donation. People may not be as anxious to support fund-raisers if they realize that part of the money is going to the government.

The bill, by eliminating the tax on sales at temporary fund-raisers, would be particularly helpful to schools. Why should the schools, as tax-supported institutions, be required to pay the sales tax when they attempt to raise funds to improve educational programs? The bill would eliminate the time-consuming, complicated requirement to pay the sales tax and thus would assist people in raising funds for worthy causes.

### **Supporting Argument**

By eliminating the tax on temporary fund-raising sales by schools and nonprofit organizations, and making the exemption retroactive to the 1983 tax year, the bill would eliminate the confusion of some suppliers over application of the tax. Many businesses that supplied schools and charitable organizations with merchandise sold goods to those entities without collecting sales tax, because those entities had a tax exemption. Some suppliers didn't realize that the schools or charitable organizations that purchased items, which they then resold, were supposed to pay sales tax when purchasing from the supplier. The Department of Treasury has assessed penalties and interest against some suppliers for failure to pay the tax, which is unfair because the suppliers can no longer charge the schools or organizations that bought the items. These suppliers, through no fault of their own, have no choice but to dig into their pockets to pay the tax or face greater penalties later. The bill would correct this problem.

**Response:** The bill not only would eliminate the confusion of some suppliers, it would eliminate their lawfully imposed tax liability and let them off the hook. Why should these businesses, which should have known about the application of the sales tax, be rewarded for ignoring the law while other suppliers properly collected and paid their taxes in a timely manner? Allowing retroactive refunds of any lawfully levied tax is a questionable policy, because it mocks those taxpayers who faithfully complied with the law.

### **Opposing Argument**

While the bill as introduced may have been acceptable (as it would have applied only to temporary school fund-raisers held for the benefit of a school and its students), the bill in its current form could cause a great deal of confusion and several problems. Some nonprofit organizations sell many items that compete with local merchants. These organizations don't just

hold an occasional fund-raiser by selling candy bars and cheese; they have catalogs that contain calculators, clothing, calendars, wrapping paper, etc. In fact, an industry has formed around fund-raising--full-time fund-raising--complete with suppliers and their retailers (the nonprofit organizations that conduct the fund-raisers). Selling all these items as a form of fund-raising, and then claiming a tax-exempt status, gives these suppliers and nonprofit organizations an unfair advantage over nearby private competition.

Further, the bill would allow an exemption for temporary fund-raising events, but it fails to define "temporary". This failure could lead to several possible interpretations. If a school held a fall, winter, and spring fund-raiser each year, would they be considered permanent or temporary? If a local nonprofit organization dedicated to paying children's hospital bills held an annual summer golf outing and a winter bowling event, would those fund-raisers be considered temporary? If a charitable organization held a fund-raiser for a specific project, but experienced such great success that it subsequently held a series of fund-raisers, would the first event be temporary, or the second or third? If it were determined that a charitable organization's annual fund-raiser was a permanent event, could the organization form a booster group each year with a different name to qualify the event each year as temporary?

### Opposing Argument

By allowing all nonprofit charitable and service organizations with a Federal tax-exempt status to forego paying sales tax on sales at temporary fund-raising events, the bill could reduce sales tax revenues by millions of dollars each year. Making the exemption retroactive to the 1983 tax year could force the State to make refunds in the tens of millions of dollars. The bill would simply be too expensive. It must be remembered that 60% of the sales tax is dedicated to the School Aid Fund, and any reduction in the tax would have a direct effect on the amounts sent to the schools.

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