



**House
Legislative
Analysis
Section**

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RETAILERS: TAX-EXEMPT SALES

**House Bill 4583 (Substitute H-1)
First Analysis (3-15-94)**

**Sponsor: Rep. Alvin H. Kukuk
Committee: Taxation**

THE APPARENT PROBLEM:

The General Sales Tax Act requires anyone acting as a retailer to collect the four percent tax on taxable items ("tangible personal property") and remit it to the state. Some sales are exempt from the collection, either because of the nature of the item, such as groceries and prescription drugs, or because of the nature of the person or entity making the purchase. Some kinds of nonprofit organizations, including schools, hospitals, churches, and charities, are exempt when the goods will be used or consumed in connection with their operations. Generally, farmers and others engaged in similar agricultural and horticultural business pursuits are exempt when the personal property is to be used in connection with the production of horticultural or agricultural products as a business enterprise or in connection with fishing as an owner-operator business enterprise. There are numerous other exemptions, including sales of some items to industrial processors, radio and television stations, and nonprofit ambulance services.

Retailers are required to keep records of transactions, and the act requires that for tax-exempt sales, they maintain the name and address of the purchaser, the date of the sale, the article purchased, the use to be made of the article, the amount of the sale, and, when appropriate, the sales tax license number of the purchaser. Retailers complain that even though they must maintain these records, they still remain liable for the tax if the Department of Treasury determines ("has reason to believe") the sale should not have been tax exempt. For example, the department might determine that the article was not (or was not likely to be) put to the stated use. According to testimony before the House Taxation Committee, the treasury department periodically (every few years) audits a retailer's sales tax records and, based on a sample, assesses taxes for improperly exempted sales. This means, retailers say, that despite the documentation they collect from customers in good faith, they are liable for the tax when they are misled.

THE CONTENT OF THE BILL:

The bill would amend a section of the General Sales Tax Act dealing with sales of taxable goods to individuals or entities who claim an exemption from paying the tax. The bill would specify that a taxpayer (i.e., a retailer) that maintained the required records and accepted an exemption certificate from a buyer in good faith on a form prescribed by the Department of Treasury would not be liable for collection of the unpaid tax after a finding that the sale did not qualify for an exemption. The term "good faith" would mean that the taxpayer exercised reasonable care and effort to determine that the purchaser was entitled to the exemption being claimed.

MCL 205.67

FISCAL IMPLICATIONS:

There is no information at present.

ARGUMENTS:

For:

Retailers say it is unfair for them, when they have made a good faith effort to follow the law, to have to pay the sales tax on sales that the treasury department ultimately decides should not have been tax exempt. If retailers accept in good faith the exemption certificate of the customer and maintain all the required records, why should they remain liable for the sales tax? It puts retailers and their employees in a difficult position in regards to their customers if they must do more than accept the required documentation. Retailers should not be liable for the ultimate use of products by the customer, particularly when many products have multiple uses. A product would be exempt if used by certain people for certain purposes (by a farmer in agricultural operations, for example) but not when used in other ways (by a farmer for personal business). The bill would say that a retailer that accepted the required documentation for a tax-

exempt sale in good faith and maintained the proper records would not be liable for the tax if the state later determined the sale did not qualify for an exemption.

Response:

While this bill is said to be acceptable to the Department of Treasury because it balances retailer protections with the need for compliance with the tax laws, it should be noted that the retailers are an important element in seeing that the sales tax law is complied with. Without some vigilance by retailers the sales tax could not be administered fairly.

Against:

Some people are concerned that the bill is not providing the protection retailers are hoping for. The bill still requires retailers to exercise reasonable care and effort to determine that the purchaser is entitled to the exemption being claimed. Retailers could still be liable if the treasury department determines the sale should not have been taxable and that the retailer did not exercise reasonable care and effort. And it appears the burden of proof in disputing the state's assessment of sales taxes against a retailer would remain on the retailer.

POSITIONS:

The Department of Treasury supports the substitute. (3-9-94)

The Michigan Retailers Association supports the bill. (3-9-94)

A representative of the Small Business Association of Michigan testified in support of the bill. (3-9-94)

A spokesperson for the Retail Hardware Store Association testified in support of the bill. (3-9-94)

A representative of the Michigan Equipment Dealers Association testified in support of the bill. (3-9-94)