



**House
Legislative
Analysis
Section**

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**USE TAX: BLANKET EXEMPTION &
GOOD FAITH TEST**

**House Bill 5212 (Substitute H-1)
First Analysis (11-1-01)**

**Sponsor: Rep. Randy Richardville
Committee: Tax Policy**

THE APPARENT PROBLEM:

Under the General Sales Tax Act, in cases of sales considered exempt from the tax, if a taxpayer (i.e., a seller) maintains the appropriate records and accepts an exemption certificate from a buyer in good faith, then the seller is not liable for collection of the tax if it is later determined that the sale did not qualify for an exemption. This would apply, for example, in a case when a person or business purchased a product under the pretense of using it for a tax-exempt purpose but then put the product to a different use which did not qualify for an exemption. Since a recent amendment to the act, the term "good faith" simply means that the seller received a completed and signed certificate. There is no longer a requirement that the seller make further inquiries of the buyer as to the product's intended use. The act also creates a so-called blanket exemption, whereby a single exemption certificate can cover all exempt sales between a seller-taxpayer and a buyer for up to four years. As a result of testimony in hearings held last summer, the Subcommittee on Tax Simplification of the House Tax Policy Committee has recommended that similar blanket exemption and good faith provisions be placed in the Use Tax Act, which is a companion to the General Sales Tax Act.

THE CONTENT OF THE BILL:

The bill would put into the Use Tax Act the same provisions regarding sales to exempt buyers that are currently found in the General Sales Tax Act.

The bill would specify that if a taxpayer maintained the required records and accepted an exemption certificate from the buyer in good faith, then the taxpayer would not be liable for collection of the unpaid tax after any finding that the sale did not qualify for an exemption. The term "good faith" would be defined to mean that the taxpayer received a completed and signed exemption certificate from the buyer.

Further, the bill would say that an exemption certificate could include a blanket exemption certificate on a form prescribed by the Department of

Treasury covering all exempt transactions between the taxpayer and the buyer for a period of up to four years, with the period to be agreed to by the buyer and taxpayer.

The bill also specifies that the good faith exemption certificate requirement would not apply to 1) a person licensed by the Michigan Liquor Control Commission as a wholesaler for purposes of selling alcoholic liquor to another person licensed by the commission; and 2) the commission itself or a person licensed as an authorized distribution agent for purposes of selling alcoholic liquor a person licensed by the commission. The exemption would apply provided all of the required records (inventory records, purchase records, sales record, invoices, bills of lading, etc.) were maintained in routine business records.

MCL 205.104

BACKGROUND INFORMATION:

The exemptions in the bill that apply to wholesalers of beer and wine and to the state as the wholesaler of spirits were added to the General Sales Tax Act by Public Act 102 of 2001 (House Bill 4540). For a discussion of that issue, see the analysis of House Bill 4540 by the House Legislative Analysis Section dated 7-23-01. The definition of "good faith" used in this bill was put into the General Sales Tax Act by Public Act 242 of 2000. That issue is discussed in the analysis of House Bill 4891 dated 7-19-00.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that there could be a revenue loss to the state to the extent some use tax might go uncollected as a result of the good faith provision, but says that any such losses are likely to be very small. (HFA fiscal note dated 10-22-01)

House Bill 5212 (11-1-01)

ARGUMENTS:***For:***

The bill would put into statute one of the recommendations made in the recent report of the Subcommittee on Tax Simplification of the House Tax Policy Committee. It would put into the Use Tax Act the same provisions as found in the General Sales Tax Act regarding the responsibilities of taxpayer-sellers when making sales considered to be tax exempt. Business representatives had recommended this consistent treatment to the subcommittee. The bill would protect sellers from any tax liability if they collected an exemption certificate from the buyer in a putative tax-exempt transaction. It would also allow for blanket exemptions, as is allowed for transactions subject to the sales tax, so that one exemption certificate can cover a number of transactions for up to four years, rather than requiring the collection of a certificate for each transaction.

For:

The General Sales Tax Act was recently amended so that the requirement that a seller collect exemption certificates from buyers would not apply to beer and wine wholesalers. Under Michigan's three-tiered system of distribution, wholesalers are not permitted to make retail sales but make tax-exempt sales to retailers (who later collect the tax), so there is no need for them to have to collect certificates. The bill puts that same exemption into the Use Tax Act. The provision applies also to the state liquor commission, which is the wholesaler for spirits.

POSITIONS:

The Department of Treasury supports the bill. (10-31-01)

The Michigan Chamber of Commerce supports the bill. (10-31-01)

The Michigan Beer and Wine Wholesalers has indicated support for the substitute version of the bill. (10-31-01)

The Detroit Regional Chamber of Commerce and the Grand Rapids Chamber of Commerce have indicated their support for the bill. (10-31-01)

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.