

USE TAX PRESUMPTIONS

House Bill 4219 as enrolled
Public Act 27 of 2003
Second Analysis (9-17-03)

Sponsor: Rep. Gary Woronchak
House Committee: Tax Policy
Senate Committee: Finance

THE APPARENT PROBLEM:

The use tax is levied, generally speaking, on remote sales (such as those made through the Internet or mail order catalogues) and on out-of-state purchases of products that are then brought back into the state for storage, use, or consumption. The use tax is a companion to the sales tax and, like the sales tax, is levied at a rate of six percent. The taxpayer gets credit for taxes paid to other states, so that a Michigan resident who purchases a product out of state and pays an equivalent amount of sales tax to that state is not liable for use tax in Michigan. If, for example, a person pays a four percent sales tax to another state, he or she would then be liable for a two percent use tax, representing the difference between the four percent tax in the other state and the six percent tax in Michigan.

As a practical matter, compliance with the use tax is considered "voluntary"; that is, it is self-reported by the taxpayer, and the state has limited ability to enforce the tax. The state income tax form contains a line for taxpayers to use in reporting any use tax due on products purchased in the tax year. In some instances, however, the use tax can be routinely enforced. For example, automobiles, boats, or airplanes need to be registered in the state. In that case, the tax can be collected at the time of registration. This means a person cannot purchase an automobile in a state without a sales tax (such as New Hampshire or Montana) or with a sales tax lower than Michigan's (such as Alabama) and register it in Michigan without paying the required tax.

According to testimony before the House Tax Policy Committee, there appears to be no time limit on use tax liability. In a case provided to the committee, a person who moved to Michigan from Alabama was notified after registering her automobile that she needed to pay the difference between the tax rate in Alabama and the tax rate in Michigan, even though the automobile had been purchased several years

earlier, and had been registered and used in the other state. Moreover, reportedly, the tax was on the purchase price of the vehicle and not its current value. This, apparently, is state tax policy.

The Use Tax Act contains a "presumption" that tangible personal property is subject to the tax if the property is brought into the state within 90 days of the purchase date and is considered as acquired for storage, use, or other consumption in Michigan. There is no presumption in the act, however, that property brought into the state after 90 days is not subject to the tax.

In a recent court case, Guardian Industries v the Department of Treasury (November 2000), the Michigan Court of Appeals said, "There is no language in the statute that permits an exemption from taxation after the ninety-day period has expired". Essentially, the court said that the existence in statute of a presumption that property brought into the state within 90 days of purchase is intended for storage, use, or consumption in Michigan and is therefore taxable does not in and of itself lead to the presumption that property brought in after 90 days is not taxable. "The only effect of a presumption", the court said, "is to cast onto the opposite party the burden of going forward with proofs". The use tax presumption, in other words, puts the burden of proof on the taxpayer when property is brought into the state within 90 days of purchase. But when property is brought into the state more than 90 days after purchase, the use tax is still applicable since there is no language in the act providing otherwise. [Treasury officials say this court case affirmed rather than altered state tax policy.]

Some people believe this issue needs to be addressed to guard against Michigan residents being taxed on items long after they have been purchased and put to use.

THE CONTENT OF THE BILL:

The bill would amend the Use Tax Act to add the presumption that tangible personal property purchased outside the state and used solely for personal, nonbusiness purposes (and that is not an aircraft) is exempt from the use tax if either 1) the property was purchased by a nonresident at the time of purchase and was brought into the state more than 90 days after the date of purchase; or 2) the property was purchased by a person who was a resident of Michigan at the time and was brought into the state more than 360 days after that date.

The bill also would specify how to determine the price tax base (the amount on which the tax is based) of an aircraft. Under the bill, the price tax base of an aircraft that otherwise would have qualified for the exemption described above would be its retail value at the time it became taxable in the state.

[The Use Tax Act currently states that “for the purpose of the proper administration of the act and to prevent evasion of the tax”, it is presumed that tangible personal property is subject to the tax if the property is brought into the state within 90 days of the purchase date and is considered as acquired for storage, use, or other consumption in Michigan. The bill would retain that presumption.]

MCL 205.93

FISCAL IMPLICATIONS:

The Senate Fiscal Agency says the bill would reduce use tax revenue by about \$3 million annually, with one third of the impact to the School Aid Fund and two thirds to the general fund. (SFA floor analysis dated 6-3-03 of the Senate substitute that the House subsequently adopted and passed.)

ARGUMENTS:**For:**

It seems unfair for people who move to Michigan from another state to be assessed use tax on automobiles (or other products) purchased years ago simply because the sales tax in that state was lower than the tax in Michigan. This bill would put an end to that practice by adding to the Use Tax Act a presumption that tangible personal property brought into the state by a new resident more than 90 days after the property was purchased is not taxable. Similarly, it would protect state residents as well by providing a presumption that property brought into

the state by a resident more than 360 days after purchase is not taxable. In both cases, this would apply only when the property was for personal, nonbusiness use. Note that the bill does not, strictly speaking, guarantee an exemption from taxation. It provides a presumption, which puts the burden of proof that property is taxable onto the Department of Treasury. This is where the burden belongs. The new presumption is a companion to the current presumption in the act that property brought into the state within 90 days of purchase is taxable. This seems a reasonable approach. The current use tax law turns many Michigan residents into inadvertent tax cheats. This is intolerable.

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.