

# Legislative Analysis

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## STREAMLINED SALES AND USE TAX

Mitchell Bean, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

### **House Bill 5502**

**Sponsor: Rep. Lorence Wenke**

### **House Bill 5503**

**Sponsor: Rep. Dianne Byrum**

### **House Bill 5504**

**Sponsor: Rep. Paul Condino**

### **House Bill 5505**

**Sponsor: Rep. James Koetje**

**Committee: Tax Policy**

**Complete to 3-23-04**

## **A SUMMARY OF HOUSE BILLS 5502-5505 AS INTRODUCED 2-10-04**

Together, the bills would authorize the state's participation in the Streamlined Sales Tax Project, a multi-state effort to simplify and modernize sales and use tax collection and administration as a means of reducing the burden of collecting those taxes on sellers, thereby increasing compliance with the taxes.

House Bill 5504 would create the Streamlined Sales and Use Tax Administration Act, and House Bill 5505 would create the Streamlined Sales and Use Tax Revenue Equalization Act. House Bill 5502 and House Bill 5503 would amend the Use Tax Act and the General Sales Tax Act, respectively, to make complementary changes in those acts. The bills are tie-barred to one another.

The following is a more detailed description of the bills.

### ***House Bill 5504 - Streamlined Sales and Use Tax Administration Act***

The bill would create the Streamlined Sales and Use Tax Administration Act under which the state treasurer could enter into the streamlined sales and use tax agreement with one or more other states, to "simplify the sale and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce." The state treasurer (or a designee) could also certify the state's compliance with the agreement and take whatever actions necessary to participate in the agreement. The Department of Treasury could take actions "reasonably required" to implement the provisions of the act, including promulgating rules, regulations, and procuring goods and services with other states in furthering the agreement.

### **State delegates to governing board**

The bill would appoint four people to the governing board of the agreement. The state delegation would include (1) a member or former member of the Senate or an employee of the Senate or the Senate Fiscal Agency, (2) a member or former member of the House or an employee of the House or the House Fiscal Agency, (3) the state treasurer or a designee, and (4) the governor or a designee. Legislative appointees would be jointly made the by the legislative leaders of both parties.

The delegation would represent the state in all meetings of the board and would vote on the state's behalf in certifying certified service providers and certified automated systems, establishing performance standards for multi-state sellers, issuing resolutions, determining compliance of petitioning states, and other actions as necessary under the agreement. The state delegation would report on a quarterly basis to the appropriate legislative standing committees on the board's activities, and would recommend amendments to state statutes necessary to be in compliance with the agreement. In addition, the delegation would appoint a business advisory council of not more than eight members to consult with the delegation on streamlined sales and use tax matters.

### **Withdrawal from the agreement**

The state could withdraw from the agreement if the state treasurer determines that doing so would be in the state's best interest. To withdraw from the agreement, the state would have to provide written notice to the board, the chief executive of each member state's tax agency, and the appropriate legislative standing committees. The withdrawal would be effective on the first day of the calendar quarter that begins at least 60 days after notice. The state would remain liable for its share of any financial or contractual obligations incurred by the board prior to the effective date.

### **Noncompliance**

If the state is determined to be substantially not compliant with the agreement, it could be subject to a variety of sanctions, including expulsion from the agreement by a three-quarters vote of the participating states (excluding Michigan). Should the state be expelled or sanctioned in any other manner, it would nonetheless remain liable for any financial or contractual obligations of the board incurred prior to the date of expulsion.

### **Registration of sellers**

A seller could only participate under the agreement by registering in the central registration system as provided under the agreement. A seller registered under the agreement is registered in each of the member states, though sellers could also individually register with member states. A seller could cancel its registration at any time, though it would remain liable for remitting taxes collected to the state. By registering, the seller agrees to be subject to the General Sales Tax Act and Use Tax Act, and to collect and remit those taxes for all taxable sales into the state. The bill also adds

that registration would not create a nexus with the state, and would not be used to determine nexus in the state for the purposes of other state taxes. If the state withdraws (or is expelled) from the agreement, a seller would continue to be liable to remit taxes collected on the state's behalf. A seller would not be liable if it charged and collected an incorrect amount of taxes, if it relied on erroneous data in the taxability matrix or by the department on tax rates.

### **Certified service providers**

A certified service provider would be an agent of a seller that is contracted by the seller for collecting and remitting sales and use taxes to the state. A certified service provider would be liable for the sales and use taxes it collects on a seller's behalf, unless the seller has made a material misrepresentation or committed fraud.

With certain exceptions, a certified service provider would not retain or disclose any personal identifiable information of consumers. Such information would be retained or disclosed when necessary to ensure the validity of exemptions claimed by consumers. A certified service provider would also be required to provide notice to consumers regarding its information practices. If any personally identifiable information is retained as allowed, individuals would have to be given reasonable access to their own data and afforded the right to correct inaccurately recorded data. This privacy policy would be subject to enforcement by the attorney general.

The agreement would not enlarge or limit the member states' authority to (1) conduct audits or other reviews as provided under state law or the agreement, (2) provide records in accordance with the Freedom of Information Act or other disclosure laws or regulations, (3) prevent disclosure of confidential taxpayer information, (4) prevent disclosure or misuse of federal tax return information obtained under a disclosure agreement with the Internal Revenue Service, and (5) collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.

The department would be required to publish on its web site, the state's privacy policy regarding the collection, use, and retention of personally identifiable information obtained from a certified service provider, and would be required to destroy any personally identifiable information when such information is no longer required to determine the validity of exemptions.

### **Collection models**

A seller registered under the agreement could use one of four models when collecting and remitting sales and use taxes.

Model 1: The seller uses a certified service provider to act as its agent to perform all of its sales and use tax collection functions other than its obligation to remit sales and use taxes on its own purchases.

Model 2: The seller uses a certified automated system to perform a portion of its sales and use tax collection functions, but retains the responsibility to remit the tax.

Model 3: The seller has sales in at least five member states, has total annual sales of at least \$500 million, has a proprietary system that calculates the amount of tax due in each taxing jurisdiction, and has entered into an agreement setting forth performance standards with the member states. For this model, a seller would also include an affiliated group of sellers using the same proprietary system.

Model 4: Any other system approved by the department.

### **Collection allowances**

In computing the amount of tax to be remitted to the state, a certified service provider under model 1 could take a deduction, as determined by its contract with the board, based on either a base rate applicable to taxable transactions processed by the provider or, for a seller, a percentage of tax revenue generated by the seller for the state for a period not exceeding 24 months after the seller registered under the agreement.

A seller under Model 2 could take a deduction in addition to deductions allowable under the General Sales Tax Act or Use Tax Act for a period not exceeding 24 months after the seller registers under the agreement. For all sellers, the deduction would be a base rate established by the board after the base rate is established for certified service providers. For a voluntary seller, the deduction would be a percentage of tax revenue generated for the state by that seller.

A seller under Model 3 and a seller who has not selected any collection model could take the deductions under the General Sales Tax Act or Use Tax Act. Also, a voluntary seller that has selected Model 3 or hasn't selected any model at all could take a deduction for a period not exceeding 24 months after the seller registers under the agreement that is equal to a percentage, as determined by the board, of tax revenue generated for the state by the seller.

### **Liability Limitations**

The bill provides that if a seller registered in the state within one year of the effective date of the state's participation in the agreement, the seller would not be liable for any uncollected or non-remitted sales or use tax on transactions with purchasers in the state prior to the date of registration, if the seller was not licensed or registered under the General Sales Tax Act or Use Tax Act in the one-year period prior to the effective date of the state's participation in the agreement. Such a seller would also not be responsible for any penalty or interest that could be due on those transactions.

However, the above provisions do not apply to (1) any tax liability of the seller for transactions that are subject to the sales or use tax in which the seller is the purchaser, (2) any sales or use taxes already paid or remitted to the state or to taxes collected by seller,

and (3) any transactions for which the seller received notice of the commencement of an audit and the audit is not finally resolved, including related administrative or judicial processes.

The liability limitations would apply to a seller absent the seller's fraud or intentional misrepresentation of a material fact if the seller continued to be registered and continued to collect and remit applicable sales and use taxes in the state for at least three years. The statute of limitations applicable to assessing a tax liability would be tolled during the three-year period.

### **Notification of base or rate changes**

The bill would require the department to publish on the state web site, a notification to registered sellers of a change in rate or tax base within five days of receiving notice of the public act, rule, or regulation that changes the tax rate or base. However, the failure to receive the notice would not relieve the seller of its obligation to collect the sales or use tax. The bill also adds that, whenever possible, a change in the rate or base should occur on the first day of a calendar quarter.

### **State Sovereignty**

The bill contains several statements limiting the effect of the new act. It would specify the following: 1) Any provision of the agreement or any application of a provision of the agreement to any person or circumstance that was inconsistent with state law would not have effect. 2) Nothing in the act could be construed to amend or modify any state law or to limit the authority of the state legislature. The agreement authorized by the act could bind and inure only to the benefit of Michigan and the other signatory states. No person, other than a signatory state, could be an intended beneficiary of the agreement. Any benefit to a person other than a signatory state would have to be established by state law (and the laws of the other participating states) and not by the agreement. 3) Nothing in the act could be construed to limit the authority of the courts of the state. A person would have all the rights and remedies provided for in the Revenue Act. A person would not have any cause of action or defense under the agreement because of the state's approval of the agreement or on the grounds that the department's action or inaction was inconsistent with the agreement. 4) A state law, or the application of a law, could not be declared invalid on the ground it was inconsistent with the agreement. 5) No provision of the agreement in whole or in part would invalidate or amend any provision of state law. Adoption of the agreement by the state would not amend or modify any state law.

### ***House Bill 5505 - Streamline Sales and Use Tax Revenue Equalization Act***

The bill would create the Streamlined Sales and Use Tax Revenue Equalization Act, which would "impose taxes and create credits and refundable credits to modify and equalize the impact of changes made to the General Sales Tax Act and Use Tax Act necessary to bring those taxes into compliance with the streamlined sales tax agreement."

## **Interstate Motor Carriers**

The bill would levy a specify tax on interstate motor carriers for the privilege of using or consuming diesel fuel in a qualified motor vehicle in the state. The tax would be imposed at cents-per-gallon rate equal to six percent of the statewide average retail price of a gallon of self-serve diesel fuel. The tax would be collected under the International Fuel Tax Agreement.

The bill would also permit an interstate motor carrier to claim a credit for six percent of the price of diesel fuel purchased in the state and used in a qualified commercial motor vehicle. The credit would be claimed on returns filed under the International Fuel Tax Agreement.

## **Motor Vehicles, etc.**

The bill would levy a specific tax for the privilege of storing, registering, or transferring ownership of any vehicle, snowmobile, ORV, watercraft, manufactured housing, and certain aircraft. The tax would not apply, however, to a vehicle stored, registered, or transferred by a new or used vehicle dealer. The tax would be at a rate of six percent of the retail value of the vehicle at the time of acquisition, and payable by the transferee. The tax imposed on a vehicle, ORV, snowmobile, or watercraft would be collected by the secretary of state prior to transfer, the tax on aircraft would be paid to the Department of Treasury, and the tax on manufactured housing would be collected by the Mobile Home Commission.

A transfer that is exempt under the Use Tax Act or subject to the sales tax under the General Sales Tax Act would be exempt from the tax levied under the bill. The bill would provide a nonrefundable credit equal to the amount of any use tax paid by the taxpayer on the same property.

## **Aircraft**

The bill would also levy a specific tax for the privilege of storing, registering, or transferring ownership in the state of a “qualified aircraft” equal to six percent of the retail value and payable to the Department of Treasury. A “qualified aircraft” would be one that is purchased outside of the state; used solely for personal, non-business purposes; and either brought into the state more than 90 days after the date of purchase, if bought by a nonresident, or brought into the state more than 360 days after the date of purchase, if bought by a resident.

An aircraft would be exempt from the tax if it is also exempt from the use tax under the Use Tax Act. The bill would also provide a refundable credit equal to the amount by which any paid use tax exceeds the amount of the tax under the bill.

## **Credit for various assessments**

The bill would provide a nonrefundable credit to any person who pays the use tax equal to six percent of an assessment imposed under the Convention and Tourism Marketing Act, the State Convention Facility Development Act, the Regional Tourism Marketing Act, or the Community Convention or Tourism Marketing Act that was added to the charges for rooms and lodging subject to use tax.

## **Disbursement of revenue and refunds**

Money received from and refunds paid to interstate motor carriers subject to the specific tax (and its credits) levied under the bill would be deposited or disbursed in accordance with Article 9, Section 8 of the state constitution. Money received from and refunds paid to other persons pursuant to the other specific taxes (and their credits) would be deposited and disbursed in the same manner as funds received or paid under the Use Tax Act.

## **Administration**

The specific taxes imposed under the bill would be administered by the Department of Treasury under the Revenue Act. If that act and the bill conflict, this bill would apply. The taxes levied under the bill would be due on or before the 20<sup>th</sup> of the each month, with the exception of the tax on interstate motor carriers, and unless the department requires otherwise. The credit and refunds provided under the bill would be applied to a taxpayer's use tax liability.

### ***House Bill 5502 - Use Tax Act amendments***

**Section 2 - Definitions:** The bill amends the definitions of "price" and "tangible personal property", and adds a definition of "sale".

**Section 2b (new) - Definitions:** The bill adds a new section that includes definitions for "alcoholic beverage", "computer", "computer software", "delivered electronically", "delivery charges", "dietary supplement", "direct mail", "drug", "durable medical equipment", "electronic", "lease or rental", "mobility enhancing equipment", "prescription", "prewritten computer software", "prosthetic device", and "tobacco".

**Section 3- Tax rate:** The bill deletes language pertaining to the "price" of diesel fuel used by interstate motor carriers, as it relates to the rate of the use tax on that fuel. The bill also deletes language that provides that, with certain exceptions, the price tax base of any vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft subject to the use tax shall not be less than its retail dollar value at the time of acquisition. The bill also adds that any decrease in the rate of the tax on services subject to the use tax would only apply to billings rendered on or after the effective date of the decrease.

**Section 3a - tax for use or consumption:** The bill adds that the following would be taxed in the same manner under the act as "tangible personal property":

- the transmission and distribution of electricity, if the sale is made to the consumer or use for consumption or use rather than resale.
- the direct and indirect production costs of a product affixed to real estate that are incident to and necessary for production or manufacturing operations or processes, for a manufacturer who affixes its product to real estate and maintains an inventory of its product available for sale.
- the sum of the cost of materials of the property and the labor costs to manufacture, fabricate, or assemble the property, but not including labor costs to cut, bend, assemble, or attach the property at the site for affixation to real estate, for a manufacturer who affixes its product to real estate but does not maintain an inventory of its product available for sale to others or make its product available for sale to other by publication or price list.

**Section 3c (new) - sale of telecommunications:** Generally speaking, the bill provides that the sale of telecommunication sold on a call-by-call basis would be sourced to each level of taxing jurisdiction in which the call originates or terminates and in which the service address is located.

**Section 4 - Exemptions:** The bill deletes a provision that provides an interstate motor carrier with a credit equal to six percent of the price of diesel fuel purchased in the state and used in a qualified commercial motor vehicle. The bill also deletes two provisions that exclude diesel fuel that is used, stored, or consumed in the state by interstate motor carriers in qualified motor vehicles from certain exemptions from taxation under the act. The bill deletes a provision that requires a statement attesting that property will be used in connection with production of horticultural or agricultural products. The bill also deletes an exemption for hearing aids, contact lenses, but adds an exemption for the sale of a prosthetic device, durable medical equipment, and mobility enhancing equipment. The bill adds an exemption for bottled water and deletes several exemptions related to aircraft stored or used by a domestic air carrier.

**Section 4a - Exemption:** The bill deletes an exemption for property affixed to real estate under certain contracts entered into or bid for prior to September 1, 1959 or, if contracted with the state, January 1, 1960. The bill adds exemptions for certain rental receipts, specific charges for technical support or for modifying prewritten computer software programs, certain computer software, certain commercial advertising, oxygen sold for human use and dispensed pursuant to a prescription, insulin sold for human use, meals provided free of charge or at a reduced rate to an employee by a food service establishment, and the sale of diesel fuel to an interstate motor carrier for use in a qualified commercial vehicle.

**Section 4b - Exemption:** The bill repeals this section, which provides an exemption for property affixed to real estate under certain contracts entered into or bid for prior to December 13, 1960.

**Section 4c - Exemption:** The bill repeals this section, which provides an exemption for certain contracts entered into or bid for prior to January 1, 1970 relating to the operation of commercial radio or television stations.

**Section 4d - Exemption:** The bill deletes and re-writes language regarding exemptions provided to prescription drugs, food (other than prepared food for immediate consumption), the deposit on beverage containers, food purchased with food stamps, certain fruit and vegetable seeds and plants, live animals purchased with the intent to be slaughtered for human consumption, and certain foods sold from a vending machine.

**Section 4e - Exemption:** The bill repeals this section, which provides an exemption for the use of tangible personal property purchased by a person engaged in the business of constructing or altering real estate for others if such property is purchased or manufactured by that person and affixed to the real estate under certain contracts bid for and entered into in 1994.

**Section 4f - Computing monthly tax payments:** The act provides sellers with a deduction of the required payment if the tax is calculated and remitted by 7<sup>th</sup> of each month or between the 7<sup>th</sup> and 15<sup>th</sup> of each month. The bill would change the days to the 12<sup>th</sup> and the 12<sup>th</sup>/20<sup>th</sup> of each month. The bill also adds that a seller registered under the streamlined sales and use tax agreement could claim a deduction if provided for in the streamlined sales and use tax administration act (HB 5504).

**Section 4o - Exemption:** The bill provides an exemption for equipment used in the production of computer software that is offered for general sale to the public. The bill would specify that the tax does not apply to prewritten computer software.

**Section 4r - Exemption:** The bill repeals this section, which provides an exemption for certain property used in industrial processing that is sold between March 30, 1995 and March 31, 1999.

**Section 4v - Exemption:** The bill repeals this section, which provides an exemption from taxes levied after December 31, 1990 and July 1, 1999 for tangible personal property related to the construction or improvement of a nonprofit hospital.

**Section 5 - Seller to collect tax:** The bill adds that a seller registered under the streamlined sales and use tax agreement that is not otherwise subject to the use tax would not be required to register with the Department of Treasury because of the registration under the agreement. The bill also add that every seller would be required to “source” sales in accordance with section 20,

**Section 6 - Use tax returns:** The bill requires use tax returns to be filed with the department of the 15<sup>th</sup> of each month. The bill would require returns to be filed by the 20<sup>th</sup>. The bill deletes a requirement that a return be signed by the person liable for the tax and, if appropriate, by the person who prepared the return. The bill would also require a seller with a tax liability of at least \$720,000 (after several adjustments) to remit at least

half of the liability to the department by the 20<sup>th</sup>, rather than the 15<sup>th</sup>, of each month. The bill also adds that if tax returns are due on a Saturday, Sunday, state holiday, or legal bank holiday, they are then due on the next business day.

**Section 6a - Qualified athletic events:** The act provides that an organizing entity of a qualified athletic event may apply the use tax only to the amount charged for the rental of taxable personal property or taxable services if certain conditions are met. The bill, instead, provides an exemption for the sale of such tangible personal property and services.

**Section 9 - Personal liability of sellers:** The act provides that a seller that is required or authorized to collect the use tax and fails to do so is liable for the amount uncollected and any penalties and interest. The bill would extend the liability to “certified service providers”, which are defined in House Bill 5504 to mean an agent certified under the streamlined sales and use tax agreement to perform all of the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.

**Section 9a - Bad debt deduction:** The act permits sellers to deduct the amount of bad debts from gross sales, rentals, or services used in computing the use tax. The act further provides that the amount of gross sales may be charged off as uncollectible on the books of the seller. The bill would add that the amount deducted would have to be charged off as uncollectible on the books and records of the seller at the time the debt becomes worthless and deducted on the return for the period during which the bad debt is written off as uncollectible in the claimants books and records and must be eligible to be deducted for federal income tax purposes. The bill also provides that any payments made on a bad debt would have to be applied proportionally first to the taxable price of the property and the tax on that property, and second to any interest, service, or other charge. The bill would delete language pertaining to the amount of the deduction if the business consists of taxable and nontaxable transactions. The bill would permit a certified service provider that assumes the responsibility to file the tax return to claim the deduction on behalf of the seller. Also, the bill provides that the bad debts could be allocated to other states that are members to the agreement.

**Section 10 - Administration of the tax:** The bill adds that a seller would be prohibited from separately stating on an invoice, bill of sale, or similar document given to the purchaser, the tax imposed under the Tobacco Products Tax Act.

**Section 11 - Refund or credit for return property:** The bill adds that a cause of action against a seller for overcollected sales or use taxes would not accrue until a purchaser has provided written notice to a seller, who then has had 60 days to respond. The bill further provides that it would be presumed that a seller has a reasonable business practice if the seller has a certified service provider and has remitted all taxes collected to the state.

**Section 12 (new) - MPU exemption form:** The bill would require certain business purchasers to provide a seller with an MPU (multiple points of use) exemption form, at the time the business purchases electronically delivered computer software, if it knows

that the software will be concurrently available for use in more than one taxing jurisdiction. Upon receiving the form, the seller would be relieved of all obligations to collect, pay, or remit the tax, and the purchaser would be obligated to pay the tax on a direct pay basis.

**Section 13 (new) - Direct mail form:** The bill would require certain direct mail purchasers to provide the seller at the time of purchase with a direct mail form or information regarding the taxing jurisdictions to which the direct mail is delivered. Upon receiving the form, the seller would be relieved of all obligations to collect, pay, or remit the tax, and the purchaser would be obligated to pay the tax on a direct pay basis.

**Section 14 - Records to be kept:** The act requires a person in the business of selling tangible personal property and liable for the use tax to keep accurate and complete records of inventories, sales, receipts, invoices, bills of lading, and other required records. The act further provides that any person knowingly making a sale of tangible personal property for the purpose of resale at retail to another person not licensed under the General Sales Tax Act is liable for the use tax unless the transaction is exempt pursuant to section 4h (property used in a “qualified business activity” under the Enterprise Zone Act). The bill provides that the section would not apply if the state becomes a member of the streamlined sales and use tax agreement.

**Section 14a (new) - Records to be kept:** The bill essentially copies section 12, except that it provides that a person knowingly making a sale of tangible personal property for the purpose of resale at retail to another person not licensed under the act would be liable for the use tax unless the transaction is exempt pursuant to section 4i (tangible personal property that is part of a drop shipment). The bill provides that this section would apply when the state is a member of the streamlined sales and use tax agreement.

**Section 14b (new) - Identifying information on exemptions:** The bill adds that if an exemption is claimed from the tax, the seller would be required to obtain identifying information on the purchaser and the reason for claiming the exemption. A seller would not be liable for the tax if a purchaser improperly claims an exemption.

**Section 17 (new) - Calculation of the tax:** The bill would require sellers, before January 1, 2006, to calculate the amount of the tax to the third decimal place and round up or down as appropriate to the whole cent.

**Section 19 (new) - State benefit:** The bill states that the tax collected by the seller would be for the benefit of the state, and a person other than the state would be prohibited from deriving a benefit from collecting or paying the tax.

**Section 20 (new) - Sourcing:** This section pertains to sourcing sales subject to the use tax; sourcing the lease or rental of tangible personal property; sourcing the lease or rental of motor vehicles, trailers, semitrailers, or aircraft that are not transportation equipment, and the sourcing of transportation equipment.

## *House Bill 5503 - General Sales Tax Amendments*

**Section 1 - Definitions:** The bill amends the definitions of “sale at retail”, “gross proceeds”, and “sale price”.

**Section 1a (new) - More definitions:** The bill adds a new section that includes definitions for “alcoholic beverage”, “computer”, “computer software”, “delivered electronically”, “delivery charges”, “dietary supplement”, “direct mail”, “drug”, “durable medical equipment”, “electronic”, “lease or rental”, “mobility enhancing equipment”, “prescription”, “prewritten computer software”, “prosthetic device”, “tangible personal property”, and “tobacco”.

**Section 2 - sales tax:** The bill would add that the sales tax would also apply to (1) the transmission and distribution of electricity, (2) the sale of prepaid telephone calling cards, and (3) a conditional sale, installment lease sale, or other transfer of property, if title is retained as security for the purchase but is intended to be transferred later. The bill would also specify that a meal provided free of charge or at a reduced price to an employee of a food service establishment would not be subject to the sales tax.

**Section 3 - License required:** The bill would add that a seller registered under the streamlined sales and use tax agreement who is not otherwise obligated to obtain a sales tax license in the state would not be required to obtain a license because of that registration.

**Section 4 - Deductions:** The act provides taxpayers with a deduction from the required payment if the tax is calculated and remitted by 7<sup>th</sup> of each month or between the 7<sup>th</sup> and 15<sup>th</sup> of each month. The bill would change the days to the 12<sup>th</sup> and the 12<sup>th</sup>/20<sup>th</sup> of each month. The bill also adds that a seller registered under the streamlined sales and use tax agreement could claim a deduction if provided for in the streamlined sales and use tax administration act (House Bill 5504). The bill deletes and moves a provision that prohibits a person from including in his or her “gross proceeds” sales to the U.S. or the state, and their various agencies, departments, and political subdivisions, or to the Red Cross. [The provision would be rewritten into a new section 4h]

**Section 4a - Sales excluded from gross proceeds:** The act excludes from calculation of gross proceeds the sale of tangible personal property to certain organizations, including churches, veterans’ organizations, and nonprofit schools. The bill would delete a requirement that the transferee, at the time of the transfer of property, sign a statement attesting that the property is to be used in connection with the operation of an exempted organization. The bill also deletes a similar provision regarding the sale of tangible personal property that is used in the production of horticultural or agricultural products.

**Section 4d (new) - Exemptions:** The bill adds a lengthy list of sales that would be exempt from the sales tax, including (1) sales to a lessor licensed under the use tax act and whose rental receipts are tax or exempted under the use tax act, (2) motor vehicles used by a public or parochial school for driver’s education, (3) sales of water through

water mains, bulk tanks in quantities of at least 500 gallons, or bottled, (4) sale of property used for demonstration purposes, (5) specific charges for technical support or modifying prewritten computer software, (6) sales of computer software for the special needs of the purchaser, (7) sales of commercial advertising, and (8) the sale of oxygen for human use dispensed pursuant to a prescription.

**Section 4g - Exclusions:** The act defines “prepared food intended for immediate consumption” to mean (1) food prepared and served for immediate consumption at or near the premise or ordinarily sold on a take-out basis for immediate consumption, (2) food furnished, prepared, or served for immediate consumption at a table, chair, or counter or from a tray, glass, dish, container, or other tableware, (3) food or drink arranged on a plate or platter, or (4) food that is cooked to order or cooked and maintained at a temperature higher than air temperature before sale, or food that is sold by the piece, rather than by weight or measure. The bill would define “prepared food intended for immediate consumption” to mean (1) food sold in a heated state or that is heated by the seller, (2) at least two ingredients mixed or combined by the seller for sale as a single item, (3) food sold with eating utensils provided by the seller. However, “prepared food intended for immediate consumption” would not include (1) food that is only cut, repackaged, or pasteurized by the seller, (2) raw eggs, fish, meat, poultry, and foods and foods containing those ingredients that require to be cooked to prevent food borne illnesses, (3) food sold in an unheated state by weight or volume as a single item, without utensils, and (4) bakery items.

**Section 4h (new) - Exclusion of sales to the US, the states, and the Red Cross:** The bill provides an exclusion from “gross proceeds” for any sales to the U.S. and its various agencies, the state and its various agencies and political subdivision, and the Red Cross. The exclusion is currently provided for in section 4.

**Section 4i - Bad debt deduction:** The act permits sellers to deduct the amount of bad debts from gross proceeds used in computing the use tax. The act further provides that the amount of gross sales may be charged off as uncollectible on the books of the seller. The bill would add that the amount deducted would have to be charged off as uncollectible on the books and records of the seller at the time the debt becomes worthless and deducted on the return for the period during which the bad debt is written off as uncollectible in the claimants books and records and must be eligible to be deducted for federal income tax purposes. The bill also provides that any payments made on a bad debt would have to be applied proportionally first to the taxable price of the property and the tax on that property, and second to any interest, service, or other charge. The bill would delete language pertaining to the amount of the deduction if the business consists of taxable and nontaxable transactions. The bill would permit a certified service provider that assumes the responsibility to file the tax return to claim the deduction on behalf of the seller. Also, the bill provides that the bad debts could be allocated to other states that are members to the agreement.

**Section 4k - drop shipments:** The act exempts the sale of tangible personal property that is part of a drop shipment if the taxpayer provides certain information to the

department. The bill would add that the taxpayer would also have to provide any information required by the governing board of the streamlined sales and use tax agreement under the agreement.

**Section 6 - Sales tax returns:** The act requires returns to be filed by the 15<sup>th</sup> of each month. The bill would change the date to the 20<sup>th</sup> of each month. The act also requires taxpayers with a tax liability (after certain adjustments) in the previous calendar year of more than \$720,000 to remit half of the liability for the previous month by the 15<sup>th</sup> of each month. The bill would change the date to the 20<sup>th</sup> of each month. Also, the bill would add that if the tax return is due on a Saturday, Sunday, state holiday, or bank holiday, the return would be due on the next business day.

**Section 6b (new) - Returned goods:** The bill adds a new section that permits a taxpayer to claim a credit or refund for returned goods or a refund less an allowance for use made for a motor vehicle that is returned under the Lemon Law (Public Act 87 of 1986).

**Section 8 - Consolidated returns:** The deletes a provision that permits a taxpayer that files a consolidated return to claim a deduction of \$50.

**Section 10 - Refund by taxpayer for return property:** The bill adds that a cause of action against a seller for overcollected sales or use taxes would not accrue until a purchaser has provided written notice to a seller, who then has 60 days to respond. The bill further provides that it would be presumed that a seller has a reasonable business practice if the seller has a certified service provider and has remitted all taxes collected to the state.

**Section 11 (new) - Trade-in value:** The bill adds that the value of a trade-in is that value agreed to by the parties to the sale under the Michigan Vehicle Code.

**Section 12 (new) - Identifying information on exemptions:** The bill adds that if an exemption is claimed from the tax, the seller would be required to obtain identifying information of the purchaser and the reason for claiming the exemption. A seller would not be liable for the tax if a purchaser improperly claims an exemption.

**Section 17 - Records to be kept:** The act requires a person liable for the sales tax to keep accurate and complete records of inventories, sales, receipts, invoices, bills of lading, and other records. The act further provides that if the taxpayer maintains records under this section and accepts an exemption certificate from a buyer in “good faith” the taxpayer is not liable for the collection of the unpaid tax if it is later found that the sale did not qualify for an exemption under the act. However, the act provides that the so-called “good faith exemption certificate requirement” does not apply to the liquor control commission or a person authorized by the LCC as a wholesaler or distribution agent, if all of the required information is maintained in routine business records. The bill provides that the section would not apply if the state becomes a member of the streamlined sales and use tax agreement.

**Section 18 (new) - Records to be kept:** The bill essentially copies section 17, except that it provides that if all of the information required under Section 12 is maintained, an exemption certificate is not required for an exemption claimed by the LCC or a person authorized by the LCC as a wholesaler or distribution agent. The bill also provides that this section would apply if the state becomes a member of the streamlines sales and use tax agreement.

**Section 19 (new) - Sourcing:** This section pertains to sourcing retail sales; sourcing the lease or rental of tangible personal property; sourcing the lease or rental of motor vehicles, trailers, semitrailers, or aircraft that are not transportation equipment, and the sourcing of transportation equipment.

**Section 20 (new) - MPU exemption form:** The bill would require a certain business purchasers to provide a seller with an MPU (multiple points of use) exemption form, at the time the business purchases electronically delivered computer software, if it knows that the software will be concurrently available for use in more than one taxing jurisdiction. Upon receiving the form, the seller would be relieved of all obligations to collect, pay, or remit the tax, and the purchaser would be obligated to pay the tax on a direct pay basis.

**Section 21 (new) - Direct mail form:** The bill would require certain direct mail purchasers to provide the seller at the time of purchase with a direct mail form or information regarding the taxing jurisdictions to which the direct mail is delivered. Upon receiving the form, the seller would be relieved of all obligations to collect, pay, or remit the tax, and the purchaser would be obligated to pay the tax on a direct pay basis.

**Section 23 - Reimbursement of taxpayer:** The act includes a sales tax bracket that shall be used by taxpayers (retailers) to determine the amount of sales tax charged on retail sales that is then “reimbursed” to the retailer. [The statutory incidence of the sales tax is on retailers, not consumers.] The bill states that retailers could (though apparently would not be required to) use the sales tax bracket through December 31, 2005. The bill would delete a provision saying that the use of the sales tax bracket does not relieve the retailer from liability for payment of the full amount of the sales tax. The bill would add that a person subject to the sales tax would not separately state on an invoice, bill of sale, or similar document given to a purchaser, the amount of tax imposed under the Tobacco Products Tax Act. Finally the bill would add that when determining the amount to be added to the sales price for reimbursement purposes, the seller would compute the tax to the third decimal place and round up or down to the nearest whole cent as appropriate.

## **FISCAL IMPACT:**

A fiscal analysis is in process.

Legislative Analyst: Mark Wolf  
Fiscal Analyst: Rebecca Ross

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■ 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.