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BILL



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House Bill 5502 (Substitute H-1 as passed by the House)
House Bill 5503 (Substitute H-1 as passed by the House)
House Bill 5504 (Substitute H-2 as passed by the House)
House Bill 5505 (Substitute H-1 as passed by the House)
Sponsor: Representative Lorence Wenke (H.B. 5502)
Representative Dianne Byrum (H.B. 5503)
Representative Paul Condino (H.B. 5504)
Representative James Koetje (H.B. 5505)

House Committee: Tax Policy
Senate Committee: Finance

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CONTENT

The bills would authorize Michigan's participation in the Streamlined Sales Tax Project (a multistate effort to simplify and modernize sales and use tax collection and administration). House Bills 5502 (H-1) and 5503 (H-1) would amend the Use Tax Act and the General Sales Tax Act, respectively, to change a number of definitions and define new terms; eliminate certain exemptions; add provisions relating to bad debt deductions; add provisions related to the sourcing of sales; and make a number of other changes to the Acts.

House Bill 5504 (H-2) 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.

House Bill 5505 (H-1) would create the "Streamlined Sales and Use Tax Revenue Equalization Act", to impose specific taxes on interstate motor carriers who used diesel fuel, and on people who stored, registered, or transferred vehicles, watercraft, manufactured housing, and aircraft;

allow people paying a specific tax to claim a tax credit; and create a tax credit for the use tax paid on rooms and lodging.

The four bills are tie-barred to each other and would take effect July 1, 2004.

House Bill 5502 (H-1)

Definitions

Under the bill, "purchase price" or "price" would be defined as the total amount of consideration paid by the consumer to the seller, including cash, credit, property, and services for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, and would apply to the measure subject to use tax. Purchase price would include:

- Seller's cost of the property sold.
- Cost of materials used, labor or service cost, interest, losses, cost of transportation to the seller, taxes imposed on the seller other than taxes imposed by the Act, and any other expense of the seller.
- Charges by the seller for any services necessary to complete the sale, other

- than an amount received or billed by the taxpayer for remittance to the employee as a gratuity or tip, if the gratuity or tip is separately identified and itemized on the guest check or billed to the customer; or the labor or service charges involved in maintenance and repair work on tangible personal property of others if they are separately itemized.
- Delivery charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property from the seller to the purchaser.
- Installation charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property from the seller to the purchaser.
- Credit for any trade-in.

"Purchase price" would exclude interest, financing, or carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

Currently, the definition of "price" is based on the aggregate value in money of anything paid or delivered, or promised to be paid or delivered, by a consumer to a seller in the consummation and complete performance of the transaction by which tangible personal property or services are purchased or rented for storage, use, or other consumption in the State, without a deduction for the cost of the property sold, cost of materials used, labor or service cost, interest or discount paid, or any other expense. The bill would remove a statement that "price", as it relates to diesel fuel used by an interstate motor carrier in a qualified commercial motor vehicle, is the statewide average retail price of a gallon of self-serve diesel fuel as determined and certified quarterly by the Department of Treasury, rounded down to the nearest 10th of a cent.

Under the bill, "tangible personal property" would mean personal property that can be seen, weighed, measured, felt, or touched or that was in any other manner perceptible to the senses, and would include electricity, water, gas, steam, and prewritten computer software. Currently, "tangible personal property" includes electricity, natural gas,

steam, electricity used by the consumer, and computer software.

"Sale" would mean a transaction by which tangible personal property or services are purchased or rented for storage, use, or other consumption in Michigan. Currently, the Act does not define "sale".

The bill also would define a number of terms that are undefined in the current Act: "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".

Tangible Personal Property

The bill would add to the list of what is taxed in the same manner as tangible personal property under the Act, the transmission and distribution of electricity; the direct production costs and indirect production costs of a product affixed to the real estate that were incident to and necessary for the production or manufacturing operations or processes when the manufacturer affixed its product to real estate and maintained an inventory of its product that was available for sale to others by publication or price list; and the sum of the materials cost of the property and the cost of labor to manufacture, fabricate, or assemble the property, but not including the cost of labor to cut, bend, assemble, or attach the property at the site for affixation to real estate when the manufacturer affixed its product to real estate and did not maintain an inventory of its product that was available for sale to others by publication or price list.

Exemptions

Under the bill, the following would be exempt from the use tax:

- Rental receipts if the tangible personal property rented or leased were previously subject to the Act or the General Sales Tax Act.
- Rental receipts if the tangible personal property rented or leased were previously taxed under a sales or use tax act of

another state or the political subdivision of another state levied at a rate of 6% or more.

- Specific charges for technical support for adapting or modifying prewritten computer software programs to a purchaser's needs or equipment if those charges were separately stated and identified.
- The sale of oxygen for human use dispensed pursuant to a prescription.
- The sale of insulin for human use.
- The sale of diesel fuel to an interstate motor carrier for use in a qualified commercial motor vehicle.
- Bottled water (in addition to water delivered through a water main or sold in bulk tanks).

The bill also would exempt the sale of a commercial advertising element if it were used to create or develop a print, radio, television, or other advertisement, discarded or returned to the provider after the advertising message was completed, and custom developed by the provider for the purchaser. ("Commercial advertising element" would mean a negative or positive photographic image, an audiotape or videotape master, a layout, a manuscript, writing of copy, a design, artwork, an illustration, retouching, and mechanical or keyline instructions.) This exemption would not include black and white or full color process separation elements, an audiotape reproduction, or a videotape reproduction.

The bill would retain present exemptions for prescription drugs for human use; deposits on returnable containers; nonalcoholic beverages and prepared food provided during work hours to employees of licensed food service establishments; food or tangible personal property purchased with Federal food stamps; fruit or vegetable seeds or plants purchased from a business that is authorized to accept food stamps or that has been denied authorization and provides proof of denial to the Department of Treasury; and food. (Currently, the Act exempts "food for human consumption"; the bill would exempt "food or food ingredients, except prepared food intended for immediate human consumption".) The bill also would exempt live animals purchased with the intent that they be slaughtered for human consumption.

The bill would extend the use tax to food or drink heated or cooled mechanically, electrically, or by other artificial means to an average temperature above 75 degrees Fahrenheit or below 65 degrees Fahrenheit before sale and sold from a vending machine, except milk, nonalcoholic beverages in a sealed container, and fresh fruit. The tax due on the sale of food or drink from a vending machine selling both taxable items and exempt items would have to be calculated based on one of the following: the actual gross proceeds from sales at retail; or 45% of proceeds from the sale of items subject to the use tax or exempt from the tax, other than from the sale of carbonated beverages.

Registration

The Act requires a person engaged in the business of selling personal property for storage, use, or other consumption in this State to register with the Department of Treasury.

The bill provides that a seller would not be required to register if it had registered under the Streamlined Sales and Use Tax Agreement and were not otherwise subject to the use tax.

Personal Liability

Currently, if a seller who is required or authorized to collect the tax fails to do so, the seller is liable personally for the amount it failed to collect, together with a penalty and interest on the tax. The Treasury Department may make an assessment against the seller based upon any information that comes into the Department's possession. The Department must give the seller written notice of the assessment. The notice may be served personally or by registered mail.

Under the bill, these provisions also would apply to a certified service provider that failed to collect the tax. (The term "certified service provider" would be defined in the proposed Streamlined Sales and Use Tax Administration Act.)

Bad Debt Deduction

In computing the amount of tax levied under the Act for any month, a seller may deduct the amount of bad debts from its gross

sales, rentals, or services used for the computation of the tax. Under the bill, the amount of gross sales, rentals, or services deducted would have to be charged off as uncollectible on the books and records of the seller at the time the debt became worthless and deducted on the return for the period during which the bad debt was written off as uncollectible in the claimant's books and records, and would have to be eligible to be deducted for Federal income tax purposes. A claimant that was not required to file a Federal income tax return could deduct a bad debt on a return filed for the period in which the bad debt became worthless and was written off as uncollectible, if the debt would be eligible for a bad debt deduction for Federal tax purposes if the claimant were required to file a Federal return.

Any payments made on a bad debt would have to be applied proportionately, first to the taxable price of the property and the tax on the property, and, second, to any interest, service, or other charge.

Currently, if the business consists of taxable and nontaxable transactions, the deduction equals the full amount of the bad debt if the bad debt is documented as a taxable transaction in the seller's records. If documentation is not available, the maximum deduction from gross sales, rentals, or services for any bad debts equals the amount of the bad debt multiplied by the quotient resulting from dividing the sales, rentals, or services taxed under the Act during the preceding calendar year by all sales, rentals, or services during the preceding calendar year, whether or not taxed under the Act. The bill would delete these provisions.

Under the bill, if a certified service provider assumed filing responsibility under the proposed Streamlined Sales and Use Tax Administration Act, the certified service provider could claim, on behalf of the seller, any bad debt allowable to the seller, and would have to credit or refund that amount of bad debt allowed or refunded to the seller. If the books and records of a seller under the proposed Act that claimed a bad debt allowance supported an allocation of the bad debts among member states of the Streamlined Sales and Use Tax Agreement, the seller could allocate the bad debts.

Overcollected Tax

The bill provides that a cause of action against a seller for overcollected sales or use taxes would not accrue until a purchaser had given a seller written notice and the seller had had 60 days to respond. The purchaser would have to provide sufficient information to determine the validity of the request. In matters relating to the request, a seller would be presumed to have a reasonable business practice, if in the collection of the sales and use tax, the seller had a certified service provider or a system, including a proprietary system, certified by the Department and had remitted to the State all taxes collected less any deductions, credits, or collection allowances.

Electronically Delivered Software; Direct Mail

The bill would require a business purchaser that did not hold a direct pay permit under the Act, to provide a seller with an MPU (multiple points of use) exemption form, at the time the business purchased electronically delivered computer software, if it knew that the software would 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.

A purchaser that delivered an MPU exemption form could use any reasonable, consistent, and uniform method of apportionment of the tax supported by purchaser's business records. A business purchaser that held a direct pay permit would not be required to give an MPU form to the seller, but would have to apportion the tax on electronically delivered software using any reasonable, consistent, and uniform method supported by its business records.

A purchaser of direct mail other than a holder of a direct pay permit would have to give the seller at the time of purchase either a direct mail form as prescribed by the Department or information indicating the taxing jurisdictions to which the direct mail was delivered to recipients. Upon receiving the form, the seller would be relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser would be obligated to pay it on a direct pay basis.

Upon receiving information indicating taxing jurisdictions from the purchaser, the seller would have to collect the tax according to that delivery information.

A purchaser who provided the seller with documentation of a direct pay permit would not be required to supply a direct mail form or delivery information.

Record-Keeping

The Act requires a person in the business of selling tangible personal property who is liable for the use tax to keep accurate and complete records of inventories, sales, receipts, invoices, bills of lading, and other pertinent documents. Records of a claimed exemption from the use tax also must be kept, and the person's sales tax license number must be included, if the person has a sales tax license. Required records must be kept for four years. A person who knowingly makes a sale of personal property for the purpose of retail to another person not licensed under the General Sales Tax Act is liable for the use tax unless the transaction is exempt under Section 4h (which exempts property used in a qualified business activity of the purchaser). If the taxpayer fails to file a return or to maintain records as required, or the Department believes that any records or returns are inaccurate and incomplete and that additional taxes are due, the Department may assess the amount due based on information available to it.

Under the bill, these provisions would not apply if the State became a member of the Streamlined Sales and Use Tax Agreement. The bill contains similar record-keeping requirements that would apply if the State became a member of the Agreement. Under the bill, if a person knowingly made a sale of tangible personal property for the purpose of resale at retail to another person not licensed under the Act, the person making the sale would be liable for the use tax unless the transaction was exempt because the property was part of a drop shipment.

Claim of Exemption

Under the bill, if an exemption from the use tax were claimed, the seller would be required to obtain identifying information from the purchaser and the reason for claiming the exemption, regardless of the

medium in which the transaction occurred. A seller would have to use a standard format for claiming an exemption electronically as adopted by the governing board under the Streamlined Sales and Use Tax Agreement. A seller who complied with these requirements would not be liable for the tax if a purchaser improperly claimed an exemption.

Sourcing

Under the bill, for determining the source of a sale subject to the use tax, the following would apply:

- If a product were received by the purchaser at a business location of the seller, the sale would be sourced to that business location.
- If a product were not received by the purchaser at a business location of the seller, the sale would be sourced to the location where the product was received by the purchaser or the purchaser's designee.
- If neither of the above applied, the sale would be sourced to the location indicated by an address for the purchaser available from the seller's business records maintained in the ordinary course of the seller's business, provided use of the address did not constitute bad faith.
- If none of the above applied, the sale would be sourced to the location indicated by an address for the purchaser obtained at the completion of the sale, including the address of the purchaser's payment instrument if no other address were available, provided the use of the address did not constitute bad faith.
- If none of the above applied or the seller had insufficient information to apply them, the sale would be sourced to the location indicated by the address from which the tangible personal property was shipped or from which the computer software delivered electronically was first available for transmission by the seller.

The bill also would apply criteria for sourcing the lease or rental of tangible personal property. If the lease or rental required recurring periodic payments, the first payment would be sourced as provided above for a sale, and subsequent payments would be sourced to the primary property

location for each period covered by the payment as indicated by the address of the property provided by the lessee. In the case of motor vehicles, trailers, or aircraft that were not transportation equipment, each payment would be sourced to the primary property location as indicated by the address of the property provided by the lessee, if the lease or rental required recurring periodic payments. In either case, if the lease or rental did not require recurring periodic payments, the payment would be sourced as provided for a sale.

The lease or rental of transportation equipment would have to be sourced as provided for a sale.

In addition, for the purpose of determining taxation jurisdiction, the bill would provide for the sourcing of telecommunications services sold on a call-by-call basis or on a non-call-by-call basis; post-paid calling services; and private communications services.

Other Provisions

The bill states that the tax collected by the seller from the consumer or lessee under the Act would be for the benefit of the State, and a person other than the State would be prohibited from deriving a benefit from the collection or payment of the use tax.

The Act contains monthly deadlines for a seller to make a filing with the Department of Treasury. The bill would add five days to the current dates used in the Act.

The bill provides that, if a due date fell on a Saturday, Sunday, state holiday, or legal banking holiday, the taxes would be due on the next succeeding business day.

The bill would prohibit a seller from separately stating on an invoice, bill of sale, or other similar document given to the purchaser the tax imposed under the Tobacco Products Tax Act.

House Bill 5003 (H-1)

Definitions

Under the bill, "sale at retail" or "retail sale" would mean a sale, lease, or rental of tangible personal property for any purpose other than resale, sublease, or subrent. The

bill would delete the present definition of "sale at retail" and provisions describing what the term includes. The bill also would delete the present definition of "gross proceeds", and define the term as "sales price".

"Sales price" would mean the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, and would apply to the measure subject to sales tax. "Sales price" would include and exclude the same items listed in the definition of "purchase price" under House Bill 5002 (H-1).

The bill also would define a number of terms that are undefined in the current Act: "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".

Currently, food or drink heated or cooled mechanically before sale and sold from a vending machine (except milk, nonalcoholic beverages in a sealed container, and fresh fruit) is exempt from the sales tax. Under the bill, these items would be subject to the tax

Application of Tax

The Act levies the sales tax upon all persons engaged in the business of making sales at retail. The bill would refer to sales at retail "by which ownership of tangible personal property is transferred for consideration".

Under the bill, the tax also would apply to the transmission and distribution of electricity, whether the electricity was purchased from the delivering utility or from another provider, if the sale were made to the consumer or user of the electricity for consumption or use rather than resale; the sale of a prepaid telephone calling card or a prepaid authorization number for telephone use; and a conditional sale, installment lease sale, or other transfer of property, if title

were retained as security for the purchase but intended to be transferred later.

The bill specifies that a meal provided free of charge or at a reduced rate to an employee during work hours by a licensed food service establishment for the convenience of the employer would not be considered transferred for consideration.

Exemptions

The bill would exempt the following from the sales tax:

- The sale of tangible personal property to a person who was a lessor licensed under the Use Tax Act and whose rental receipts were taxed or specifically exempt under that Act.
- The sale of a vehicle purchased by a public or parochial school if that vehicle were certified for driver education and not reassigned for personal use by the school's administrative personnel.
- The sale of water through water mains, the sale of water delivered in bulk tanks in quantities of not less than 500 gallons, or the sale of bottled water.
- The sale of tangible personal property to a person for demonstration purposes.
- Specific charges for technical support or adapting or modifying prewritten computer software programs to a purchaser's needs or equipment if those charges were separately stated and identified.
- The sale of computer software originally designed for the exclusive use and special needs of the purchaser.
- The sale of a commercial advertising element (as described in House Bill 5502 (H-1)).
- A sale made outside of the ordinary course of the seller's business.
- An isolated transaction by a person not licensed or required to be licensed under the Sales Tax Act, in which tangible personal property was offered for sale, sold, or transferred and delivered by the owner.
- The sale of oxygen for human use dispensed pursuant to a prescription.
- The sale of insulin for human use

Other Provisions

The bill contains a number of provisions that are the same as or similar to those proposed

by House Bill 5502 (H-1). These pertain to taking a bad debt deduction; maintaining a cause of action against a seller for overcollected taxes; claiming an exemption; keeping records; determining the source of a sale; providing MPU exemption forms and direct mail forms; paying by certain deadlines; and stating the amount of tobacco tax.

Under the bill, if all of the information required for claiming an exemption were maintained as provided in the bill, an exemption certificate would not be required for an exemption claimed by a person licensed by the Michigan Liquor Control Commission as a wholesaler or a person certified by the Commission as an authorized distribution agent. In addition, an exemption certificate would not be required if an exemption were claimed by the Commission. These provisions would apply if the State became a member of the Streamlined Sales and Use Tax Agreement.

The bill would allow a taxpayer to claim a credit or refund for returned goods or a refund less an allowance for use made for a motor vehicle under the auto lemon law, as certified by the manufacturer.

Under the bill, in a taxable sale at retail of a motor vehicle where another motor vehicle was used as partial payment of the purchase price, the value of the motor vehicle used as partial payment would be that value agreed to by the parties to the sale as evidenced by the signed statement executed under the Michigan Vehicle Code.

The Act includes sales tax brackets that retailers must use to determine the amount of sales tax charged on retail sales. Under the bill, retailers would be permitted to use the brackets through December 31, 2005. The bill also would delete a provision that the use of the brackets does not relieve the retailer from liability for payment of the full amount of the sales tax.

The bill would repeal Section 5a, which provides that labor or service charges involved in maintenance and repair work on tangible property of others must be separately itemized and the tax applied only to the amount charged for the tangible personal property.

House Bill 5504 (H-2)

Membership in Agreement

The bill would authorize the State Treasurer to enter into the Streamlined Sales and Use Tax Agreement with one or more other states. The State Treasurer (or a designee) also could certify the State's compliance with the Agreement and take any other action reasonably necessary to participate in the Agreement. The Department of Treasury could take actions reasonably required to implement the provisions of the proposed Streamlined Sales and Use Tax Administration Act, including promulgating rules and regulations, and jointly procuring goods and services with other member states in furtherance of the Agreement.

A State delegation of four people would be appointed to the governing board under the Agreement. The Michigan delegation would include a member or former member of the Senate or an employee of the Senate or the Senate Fiscal Agency; a member or former member of the House or an employee of the House or the House Fiscal Agency; the State Treasurer or a designee; and the Governor or a designee. Legislative appointments would be jointly made by the legislative leaders of both parties.

Members of the delegation could represent the State in all meetings of the board, and would vote on the State's behalf in certifying a person as a certified service provider; certifying a software program as a certified automated system; establishing sales or use tax performance standards for multistate sellers; participating in the issue resolution process; participating in determining the compliance of petitioning states; and other actions necessary under the purposes of the Agreement.

The State delegation would have to report quarterly to the appropriate legislative standing committees on the board's activities, and recommend amendments to State statutes necessary for compliance with the Agreement. In addition, the delegation would have to appoint a business advisory council of not more than eight members to consult with the delegation on streamlined sales and use tax matters.

The State could withdraw from the Agreement if the State Treasurer or the

State Legislature by resolution determined that doing so would be in the State's best interest. The state could withdraw by providing written notice to the board, the chief executive of each member state's tax agency, and the appropriate legislative standing committees, and posting the notice of intent on this State's website. The withdrawal would be effective on the first day of the calendar quarter that began at least 60 days after notice was given. The State would remain liable for its share of any financial or contractual obligations incurred by the board before the effective date.

If the State were determined to be out of substantial compliance with the Agreement, it could be subject to sanctions, including expulsion from the Agreement by a three-quarters vote of the board (excluding Michigan). Should the state be expelled or sanctioned in any manner, it would remain liable for any financial or contractual obligations the board incurred before the date of expulsion.

Registration

A person would be permitted to participate under the Agreement only by registering in the central registration system provided for by the Agreement. A seller registered under the Agreement would be considered registered in each of the member states, though sellers also could choose to register directly with other member states. A seller would be allowed to cancel its registration at any time, though it would remain liable for remitting taxes collected to this State.

By registering, a seller would agree to be subject to the General Sales Tax Act and the Use Tax Act, and to collect and remit sales and use taxes for all taxable sales into the State. The bill provides that registration in this State would not create a nexus with the State, and could not be used to determine nexus with the State for any tax purpose.

If the state were to withdraw (or be expelled) from the agreement, a seller would continue to be responsible to remit taxes collected on the State's behalf.

The bill would require the Department of Treasury to participate in an online registration system with other member states that allowed sellers to register online. There would be no registration fee or written

signature required of a seller for registration under the Agreement.

Certified Service Provider; Privacy

The bill would define "certified service provider" as an agent certified under the Agreement to perform all of a seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases. As the seller's agent, the certified service provider would be liable for the sales and use taxes due to this State on all sales transactions it processed for the seller, unless the seller had made a material misrepresentation or committed fraud. A seller that used a certified service provider would be responsible and liable to this State for reporting and remitting tax.

A certified service provider could not retain or disclose any personally identifiable information of consumers. A certified service provider would be required to provide notice to consumers regarding its information practices. A provider's retention or disclosure to member states of personally identifiable information would be limited to that required to ensure the validity of exemptions claimed because of a consumer's status or intended use of the goods or services purchased. If any personally identifiable information were retained by the State for this purpose, a person would have to be given reasonable access to the person's own data, with the right to correct inaccurately recorded data. This privacy policy would be subject to enforcement by the Attorney General.

The Department would be required to publish on its website, the State's policy regarding the collection, use, and retention of personally identifiable information obtained from a certified service provider, and would have to destroy any personally identifiable information when it was no longer required to determine the validity of exemptions.

Tax Collection & Remittance Methods

A seller registered under the Agreement could use one of the following four models to collect and remit sales and use taxes.

Model 1: The seller would use 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 or use tax on its own purchases.

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

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

Model 4: Any other system approved by the Department.

In computing the amount of tax to be remitted to this State, a certified service provider under Model 1 could take a deduction from the revenue collected in this State, as determined by its contract with the board. The deduction could be based on either a base rate applicable to taxable transactions processed by the provider for this State, or, for a voluntary seller, a percentage of tax revenue generated by the seller for the State for up to 24 months after the seller registered under the Agreement.

A seller under Model 2 could take a deduction, in addition to deductions taken under the General Sales Tax Act or the Use Tax Act, for up to 24 months after registering under the Agreement. For all sellers, the deduction would be a base rate established by the board after the base rate was established for certified service providers. For a voluntary seller, the deduction would be a percentage of tax revenue generated for this State by that seller.

A seller under Model 3 and a seller who had not selected any collection model could take the deductions under the General Sales Tax Act or the Use Tax Act. Also, a voluntary seller that had selected Model 3 or had not selected any model could take a deduction for up to 24 months after registering under the Agreement; the deduction would be equal to a percentage, as determined by the

board, of tax revenue generated for the State by the seller.

Seller Liability

If a seller were registered in this 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 nonremitted sales or use tax on transactions with purchasers in the State before the date of registration if the seller were not licensed or registered under the General Sales Tax Act or the Use Tax Act in the one-year period before the effective date of the State's participation. The seller also would not be responsible for any penalty or interest that could be due on those transactions.

These provisions would not apply to any tax liability of the seller for transactions that were subject to the sales or use tax in this State in which the seller was the purchaser; any sales or use taxes already paid or remitted to the State or taxes collected by seller; or any transactions for which the seller received notice of the commencement of an audit and the audit was 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 only 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.

Notice of Rate Change

The bill would require that the Department publish on the State website a notification to registered sellers of a change in rate or tax base within five business days of receiving notice of the public act, rule, or regulation that changed the tax rate or base. A seller's failure to receive the notice would not relieve the seller of its obligation to collect the sales or use tax. The bill also provides that, whenever possible, a change in the rate or base should occur on the first day of a calendar quarter.

Scope of Agreement

The bill provides that the Agreement would not enlarge or limit this State's authority to: conduct audits or other reviews as provided under State law or the Agreement; provide records in accordance with the Freedom of Information Act, disclosure laws, or other regulations; prevent disclosures of confidential taxpayer information, consistent with State law; prevent disclosures or misuse of Federal return information obtained under a disclosure agreement with the Internal Revenue Service; or collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.

The bill contains the following statements:

- Any provision of the Agreement or any application of a provision of the Agreement to any person or circumstance that was inconsistent with the law of this State would not have effect.
- The Agreement would bind and inure only to the benefit of Michigan and the other member states. No person, other than a member state, would be an intended beneficiary of the Agreement. Any benefit to a person other than this State would have to be established by the law of this State and other member states and not by the Agreement.
- Nothing in the Agreement could be construed to limit the authority of the courts in this State. A person would have all the rights, remedies, and obligations 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 ground that the Department's action or inaction was inconsistent with the Agreement.
- A law of this State, or the application of a law, could not be declared invalid on the ground it was inconsistent with the Agreement.
- No provision of the Agreement 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 (H-1)

Diesel Fuel

The bill would levy a specific tax on interstate motor carriers in this State for the privilege of using or consuming diesel fuel in a qualified commercial motor vehicle in the State. The tax would be imposed at a cents-per-gallon rate equal to 6% of the statewide average retail price of a gallon of self-serve diesel fuel. The tax would have to be collected under the International Fuel Tax Agreement.

An interstate motor carrier would be entitled to a credit for 6% of the price of diesel fuel purchased in this State and used in a qualified commercial motor vehicle. The credit would have to be claimed on returns filed under the International Fuel Tax Agreement.

Vehicles, Manufactured Housing, & Watercraft

The bill would levy a specific tax on the privilege of storing, registering, or transferring ownership of any vehicle, snowmobile, ORV, watercraft, manufactured housing, and aircraft other than a qualified aircraft. The tax would not apply to a vehicle stored, registered, or transferred by a new or used vehicle dealer licensed by the Department of State. The tax would be at a rate of 6% of the retail value at the time of acquisition, and payable by the transferee. The tax imposed on a vehicle, ORV, snowmobile, or watercraft would have to be collected by the Secretary of State before the 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 for purposes of resale or a transfer that was exempt from the use tax or subject to the sales tax would be exempt from the tax levied under the bill. The bill would allow a nonrefundable credit equal to the amount of any use tax paid by the taxpayer on the same property.

Qualified Aircraft

The bill would levy a specific tax for the privilege of storing, registering, or transferring ownership in the State of a "qualified aircraft" equal to 6% of the retail

value of the aircraft at the time it entered the State. The transferee would have to pay the tax to the Department of Treasury. A "qualified aircraft" would be one that is purchased outside of the State; used solely for personal, nonbusiness 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 specific tax if it were exempt from the use tax or stored, registered, or transferred for resale. The bill would allow a refundable credit equal to the amount by which any use tax paid on the aircraft exceeded the amount of the tax under the bill.

Convention & Tourism Tax Credit

Under the bill, a person who paid the use tax could claim a credit and seek a refund in an amount equal to 6% 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 or lodging subject to use tax.

Disbursement & Administration

Money received from and refunds paid to interstate motor carriers under the bill would have to be deposited or disbursed in accordance with Article 9, Section 9 of the State Constitution. Money received from and refunds paid to other persons under the bill would have to be deposited or disbursed in the same manner as funds received or paid under the Use Tax Act.

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 conflicted, the bill would apply.

A person required to pay a tax under the bill would have to file a return by the 20th of the each month, except as otherwise provided for interstate motor carriers, and unless the Department required otherwise. The credits and refunds provided for under the bill could be applied to a taxpayer's use tax liability, at the tax payer's option.

Legislative Analyst: J.P. Finet

FISCAL IMPACT

These bills would affect sales and use tax collections in two ways:

1) Revenue Loss Due to Adoption of Uniform Definitions: These bills include changes needed to bring Michigan's sales and use tax statutes into conformity with the Streamlined Sales Tax Agreement. The proposed changes primarily include adopting common definitions of certain items, particularly for some food items. These changes would reduce tax collections an estimated \$18 million in FY 2004-05.

2) Increased Tax Compliance. These bills are designed to encourage e-commerce businesses voluntarily to collect Michigan's sales and use taxes. To the extent that this happened, it would help offset, or potentially completely offset, the loss in revenue from the tax base definition changes. It is difficult to estimate how much revenue would be generated from this voluntary compliance, but it is estimated that Michigan is currently losing at least \$250 million annually in sales and use tax collections from e-commerce transactions. In order to offset the entire estimated \$18 million that would be lost due to the definition changes, the changes aimed at encouraging e-commerce businesses voluntarily to collect Michigan's sales and use taxes would have to lead to the collection of only 7% of the amount that is currently not being collected.

Fiscal Analyst: Jay Wortley

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.