

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5817

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending section 6a (MCL 205.56a), as amended by 2008 PA 556.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6a. (1) At the time of purchase or shipment from a
2 refiner, pipeline terminal operator, or marine terminal operator, a
3 purchaser or receiver of ~~gasoline~~-**FUEL** shall prepay a portion of
4 the tax imposed by this act at the rate provided in this section to
5 the refiner, pipeline terminal operator, or marine terminal
6 operator for the purchase or receipt of ~~gasoline~~-**FUEL**. If the
7 purchase or receipt of ~~gasoline~~-**FUEL** is made outside this state for
8 shipment into and subsequent sale within this state, the purchaser
9 or receiver, other than a refiner, pipeline terminal operator, or
10 marine terminal operator, shall make the prepayment required by

1 this section directly to the department. Prepayments **FOR GASOLINE**
 2 shall be made at a cents-per-gallon rate determined by the
 3 department and shall be based on 6% of the statewide average retail
 4 price of a gallon of self-serve unleaded regular gasoline as
 5 determined and certified by the department rounded up to the
 6 nearest 1/10 of 1 cent. **PREPAYMENTS FOR DIESEL FUEL SHALL BE MADE**
 7 **AT A CENTS-PER-GALLON RATE DETERMINED BY THE DEPARTMENT AND SHALL**
 8 **BE BASED ON 6% OF THE STATEWIDE AVERAGE RETAIL PRICE OF A GALLON OF**
 9 **UNDYED NO. 2 ULTRA-LOW SULFUR DIESEL FUEL AS DETERMINED AND**
 10 **CERTIFIED BY THE DEPARTMENT ROUNDED UP TO THE NEAREST 1/10 OF 1**
 11 **CENT.** A person ~~who~~**THAT** makes prepayments directly to the
 12 department shall make those prepayments according to the schedule
 13 in subsection (4).

14 (2) The rate of prepayment applied pursuant to subsection (1)
 15 shall be determined every ~~3 months~~**MONTH** by the department. ~~unless~~
 16 ~~the department certifies that the change in the statewide average~~
 17 ~~retail price of a gallon of self-serve unleaded regular gasoline~~
 18 ~~has been less than 10% since the establishment of the rate of~~
 19 ~~prepayment then in effect.~~**THE DEPARTMENT SHALL PUBLISH NOTICE OF**
 20 **THE RATE OF PREPAYMENT APPLICABLE TO GASOLINE AND DIESEL FUEL NOT**
 21 **LATER THAN THE TENTH DAY OF THE MONTH IMMEDIATELY PRECEDING THE**
 22 **MONTH IN WHICH THE RATE IS EFFECTIVE.**

23 (3) A person subject to tax under this act ~~who~~**THAT** makes
 24 prepayment to another person as required by this section **FOR**
 25 **GASOLINE** may claim an estimated prepayment credit on its regular
 26 monthly return filed pursuant to section 6. The credit shall be for
 27 prepayments made during the month for which the return is required

1 and shall be based upon the difference between prepayments made in
2 the immediately preceding month and collections of prepaid tax
3 received from sales or transfers **DURING THE MONTH FOR WHICH THE**
4 **RETURN REQUIRED UNDER SECTION 6 IS MADE.** A sale or transfer for
5 which collection of prepaid tax is due the taxpayer is subject to a
6 bad debt deduction under section 4i, whether or not the sale or
7 transfer is a sale at retail. The credit shall not be reduced
8 because of actual shrinkage. A taxpayer ~~who~~**THAT** does not, in the
9 ordinary course of business, sell gasoline in each month of the
10 year ~~may~~, with the approval of the department, base the initial
11 prepayment deduction in each tax year on prepayments made in a
12 month other than the immediately preceding month. The difference in
13 actual prepayments shall be reconciled on the annual return in
14 accordance with procedures prescribed by the department.

15 (4) Notwithstanding the other provisions for the payment and
16 remitting of tax due under this act, a refiner, pipeline terminal
17 operator, or marine terminal operator shall account for and remit
18 to the department the prepayments received pursuant to this section
19 in accordance with the following schedule:

20 (a) On or before the twenty-fifth of each month, prepayments
21 received after the end of the preceding month and before the
22 sixteenth of the month in which the prepayments are made.

23 (b) On or before the tenth of each month, payments received
24 after the fifteenth and before the end of the preceding month.

25 (5) A refiner, pipeline terminal operator, or marine terminal
26 operator ~~who~~**THAT** fails to remit prepayments made by a purchaser or
27 receiver of ~~gasoline~~**FUEL** is subject to the penalties provided by

1 1941 PA 122, MCL 205.1 to 205.31.

2 (6) The refiner, pipeline terminal operator, or marine
3 terminal operator shall not receive a deduction under section 4 for
4 receiving and remitting prepayments from a purchaser or receiver
5 pursuant to this section.

6 (7) The purchaser or receiver of ~~gasoline who~~ **FUEL THAT** makes
7 prepayments is not subject to further liability for the amount of
8 the prepayment if the refiner, pipeline terminal operator, or
9 marine terminal operator fails to remit the prepayment.

10 (8) A PERSON SUBJECT TO TAX UNDER THIS ACT THAT MAKES
11 PREPAYMENT TO ANOTHER PERSON AS REQUIRED BY THIS SECTION FOR DIESEL
12 FUEL MAY CLAIM AN ESTIMATED PREPAYMENT CREDIT ON ITS REGULAR
13 MONTHLY RETURN FILED PURSUANT TO SECTION 6. THE CREDIT SHALL BE FOR
14 PREPAYMENTS MADE DURING THE MONTH FOR WHICH THE RETURN IS REQUIRED
15 AND SHALL BE BASED UPON THE DIFFERENCE BETWEEN THE PREPAYMENTS MADE
16 IN THE IMMEDIATELY PRECEDING MONTH AND COLLECTIONS OF PREPAID TAX
17 RECEIVED FROM SALES OR TRANSFERS DURING THE MONTH FOR WHICH THE
18 RETURN REQUIRED UNDER SECTION 6 IS MADE. A SALE OR TRANSFER FOR
19 WHICH COLLECTION OF PREPAID TAX IS DUE THE TAXPAYER IS SUBJECT TO A
20 BAD DEBT DEDUCTION UNDER SECTION 4I, WHETHER OR NOT THE SALE OR
21 TRANSFER IS A SALE AT RETAIL. THE CREDIT SHALL NOT BE REDUCED
22 BECAUSE OF ACTUAL SHRINKAGE. A TAXPAYER THAT DOES NOT, IN THE
23 ORDINARY COURSE OF BUSINESS, SELL DIESEL FUEL IN EACH MONTH OF THE
24 YEAR MAY, WITH THE APPROVAL OF THE DEPARTMENT, BASE THE INITIAL
25 PREPAYMENT DEDUCTION IN EACH TAX YEAR ON PREPAYMENTS MADE IN A
26 MONTH OTHER THAN THE IMMEDIATELY PRECEDING MONTH. ESTIMATED
27 PREPAYMENT CREDITS CLAIMED WITH THE RETURN DUE IN JANUARY 2013

1 SHALL BE BASED ON THE TAXPAYER'S RETAIL SALES OF DIESEL FUEL IN
2 DECEMBER 2012. THE DIFFERENCE IN ACTUAL PREPAYMENTS SHALL BE
3 RECONCILED ON THE ANNUAL RETURN IN ACCORDANCE WITH PROCEDURES
4 PRESCRIBED BY THE DEPARTMENT. REPAYMENT OF THE CREDIT CLAIMED ON
5 THE RETURN DUE IN JANUARY 2013 SHALL BE MADE BY THE EARLIER OF THE
6 DATE THAT THE TAXPAYER STOPS SELLING DIESEL FUEL OR JULY 15, 2013.

7 (9) ~~(8)~~As used in this section:

8 (A) "BLENDSTOCK" INCLUDES ALL OF THE FOLLOWING:

9 (i) ANY PETROLEUM PRODUCT COMPONENT OF FUEL, SUCH AS NAPHTHA,
10 REFORMATE, OR TOLUENE.

11 (ii) ANY OXYGENATE THAT CAN BE BLENDED FOR USE IN A MOTOR FUEL.

12 (B) "BOAT TERMINAL TRANSFER" MEANS A DOCK, A TANK, OR
13 EQUIPMENT CONTIGUOUS TO A DOCK OR A TANK, INCLUDING EQUIPMENT USED
14 IN THE UNLOADING OF FUEL FROM A SHIP AND IN TRANSFERRING THE FUEL
15 TO A TANK PENDING WHOLESALE BULK RESHIPMENT.

16 (C) "DIESEL FUEL" MEANS ANY LIQUID OTHER THAN GASOLINE THAT IS
17 CAPABLE OF USE AS A FUEL OR A COMPONENT OF A FUEL IN A MOTOR
18 VEHICLE THAT IS PROPELLED BY A DIESEL-POWERED ENGINE OR IN A
19 DIESEL-POWERED TRAIN. DIESEL FUEL INCLUDES NUMBER 1 AND NUMBER 2
20 FUEL OILS AND MINERAL SPIRITS. DIESEL FUEL ALSO INCLUDES ANY
21 BLENDSTOCK OR ADDITIVE THAT IS SOLD FOR BLENDING WITH DIESEL FUEL
22 AND ANY LIQUID PREPARED, ADVERTISED, OFFERED FOR SALE, SOLD FOR USE
23 AS, OR USED IN THE GENERATION OF POWER FOR THE PROPULSION OF A
24 DIESEL-POWERED ENGINE, AIRPLANE, OR MARINE VESSEL. AN ADDITIVE OR
25 BLENDSTOCK IS PRESUMED TO BE SOLD FOR BLENDING UNLESS A
26 CERTIFICATION IS OBTAINED FOR FEDERAL PURPOSES THAT THE SUBSTANCE
27 IS FOR A USE OTHER THAN BLENDING FOR DIESEL FUEL. DIESEL FUEL DOES

1 NOT INCLUDE DYED DIESEL FUEL, KEROSENE, OR AN EXCLUDED LIQUID.

2 (D) "DYED DIESEL FUEL" MEANS DIESEL FUEL THAT IS DYED IN
3 ACCORDANCE WITH INTERNAL REVENUE SERVICE RULES OR PURSUANT TO ANY
4 OTHER INTERNAL REVENUE SERVICE REQUIREMENTS, INCLUDING ANY
5 INVISIBLE MARKER REQUIREMENTS.

6 (E) "EXCLUDED LIQUID" MEANS THAT TERM AS DEFINED IN 26 CFR
7 48.4081-1.

8 (F) "FUEL" MEANS GASOLINE AND DIESEL FUEL THAT IS SUBJECT TO
9 TAX UNDER THIS ACT, COLLECTIVELY, EXCEPT WHEN DIESEL FUEL IS
10 REFERRED TO SEPARATELY.

11 (G) "GASOLINE" MEANS AND INCLUDES GASOLINE, ALCOHOL, GASOHOL,
12 CASING HEAD OR NATURAL GASOLINE, BENZOL, BENZINE, NAPHTHA,
13 METHANOL, ANY BLENDSTOCK ADDITIVE, OR OTHER PRODUCT THAT IS SOLD
14 FOR BLENDING WITH GASOLINE OR FOR USE ON THE ROAD, OTHER THAN
15 PRODUCTS TYPICALLY SOLD IN CONTAINERS OF LESS THAN 5 GALLONS.
16 GASOLINE ALSO INCLUDES A LIQUID PREPARED, ADVERTISED, OFFERED FOR
17 SALE, SOLD FOR USE AS, OR USED IN THE GENERATION OF POWER FOR THE
18 PROPULSION OF A MOTOR VEHICLE, AIRPLANE, OR MARINE VESSEL,
19 INCLUDING A PRODUCT OBTAINED BY BLENDING TOGETHER ANY 1 OR MORE
20 PRODUCTS OF PETROLEUM, WITH OR WITHOUT ANOTHER PRODUCT, AND
21 REGARDLESS OF THE ORIGINAL CHARACTER OF THE PETROLEUM PRODUCTS
22 BLENDED, IF THE PRODUCT OBTAINED BY THE BLENDING IS CAPABLE OF USE
23 IN THE GENERATION OF POWER FOR THE PROPULSION OF A MOTOR VEHICLE,
24 AIRPLANE, OR MARINE VESSEL. THE BLENDING OF ALL OF THE ABOVE-NAMED
25 PRODUCTS, REGARDLESS OF THEIR NAME OR CHARACTERISTICS, SHALL
26 CONCLUSIVELY BE PRESUMED TO HAVE BEEN DONE TO PRODUCE FUEL, UNLESS
27 THE PRODUCT OBTAINED BY THE BLENDING IS ENTIRELY INCAPABLE OF USE

1 AS FUEL. AN ADDITIVE OR BLENDSTOCK IS PRESUMED TO BE SOLD FOR
2 BLENDING UNLESS A CERTIFICATION IS OBTAINED FOR FEDERAL PURPOSES
3 THAT THE SUBSTANCE IS FOR A USE OTHER THAN BLENDING FOR GASOLINE.
4 GASOLINE DOES NOT INCLUDE DIESEL FUEL, DYED DIESEL FUEL, KEROSENE,
5 OR AN EXCLUDED LIQUID.

6 (H) "KEROSENE" MEANS ALL GRADES OF KEROSENE, INCLUDING, BUT
7 NOT LIMITED TO, THE 2 GRADES OF KEROSENE, NO. 1-K AND NO. 2-K,
8 COMMONLY KNOWN AS K-1 KEROSENE AND K-2 KEROSENE, RESPECTIVELY,
9 DESCRIBED IN AMERICAN SOCIETY FOR TESTING AND MATERIALS
10 SPECIFICATION D-3699, IN EFFECT ON JANUARY 1, 1999, AND KEROSENE-
11 TYPE JET FUEL DESCRIBED IN AMERICAN SOCIETY FOR TESTING AND
12 MATERIALS SPECIFICATION D-1655 AND MILITARY SPECIFICATIONS MIL-T-
13 5624R AND MIL-T-83133D (GRADES JP-5 AND JP-8), AND ANY SUCCESSOR
14 INTERNAL REVENUE SERVICE RULES OR REGULATIONS, AS THE SPECIFICATION
15 FOR KEROSENE AND KEROSENE-TYPE JET FUEL. KEROSENE DOES NOT INCLUDE
16 AN EXCLUDED LIQUID.

17 (I) ~~(a)~~ "Marine terminal operator" means a person ~~who~~ THAT
18 stores gasoline ~~FUEL~~ at a boat terminal transfer. ~~defined as a~~
19 ~~dock, a tank, or equipment contiguous to a dock or a tank,~~
20 ~~including equipment used in the unloading of gasoline from a ship~~
21 ~~and in transferring the gasoline to a tank pending wholesale bulk~~
22 ~~reshipment.~~

23 (J) ~~(b)~~ "Pipeline terminal operator" means a person ~~who~~ THAT
24 stores gasoline ~~FUEL~~ in tanks and equipment used in receiving and
25 storing gasoline ~~FUEL~~ from interstate and intrastate pipelines
26 pending wholesale bulk reshipment.

27 (K) ~~(c)~~ "Purchase" or "shipment" does not include an exchange

1 of ~~gasoline~~, **FUEL** or an exchange transaction ~~between~~ refiners,
2 pipeline terminal operators, or marine terminal operators.

3 (I) ~~(d)~~ "Refiner" means a person ~~who~~ **THAT** manufactures or
4 produces ~~gasoline~~ **FUEL** by any process involving substantially more
5 than the blending of ~~gasoline~~ **FUEL**.

6 Enacting section 1. This amendatory act takes effect January
7 1, 2013.