

HOUSE BILL No. 4153

January 31, 2013, Introduced by Rep. Shirkey and referred to the Committee on Transportation and Infrastructure.

A bill to amend 1933 PA 167, entitled "General sales tax act," by amending section 6a (MCL 205.56a), as amended by 2012 PA 509.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6a. (1) THROUGH MARCH 31, 2013, AT THE TIME OF PURCHASE
2 OR SHIPMENT FROM A REFINER, PIPELINE TERMINAL OPERATOR, OR MARINE
3 TERMINAL OPERATOR, A PURCHASER OR RECEIVER OF GASOLINE SHALL PREPAY
4 A PORTION OF THE TAX IMPOSED BY THIS ACT AT THE RATE PROVIDED IN
5 THIS SECTION TO THE REFINER, PIPELINE TERMINAL OPERATOR, OR MARINE
6 TERMINAL OPERATOR FOR THE PURCHASE OR RECEIPT OF GASOLINE. IF THE
7 PURCHASE OR RECEIPT OF GASOLINE 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
11 THIS SECTION DIRECTLY TO THE DEPARTMENT. PREPAYMENTS FOR GASOLINE

1 SHALL BE MADE AT A CENTS-PER-GALLON RATE DETERMINED BY THE
2 DEPARTMENT AND SHALL BE BASED ON 6% OF THE STATEWIDE AVERAGE RETAIL
3 PRICE OF A GALLON OF SELF-SERVE UNLEADED REGULAR GASOLINE AS
4 DETERMINED AND CERTIFIED BY THE DEPARTMENT ROUNDED UP TO THE
5 NEAREST 1/10 OF 1 CENT. A PERSON THAT MAKES PREPAYMENTS DIRECTLY TO
6 THE DEPARTMENT SHALL MAKE THOSE PREPAYMENTS ACCORDING TO THE
7 SCHEDULE IN SUBSECTION (6).

8 (2) ~~(1) At~~ BEGINNING APRIL 1, 2013, AT the time of purchase or
9 shipment from a refiner, pipeline terminal operator, or marine
10 terminal operator, a purchaser or receiver of fuel shall prepay a
11 portion of the tax imposed by this act at the ~~rate~~ RATES provided
12 in this section to the refiner, pipeline terminal operator, or
13 marine terminal operator for the purchase or receipt of fuel. If
14 the purchase or receipt of fuel is made outside this state for
15 shipment into and subsequent sale within this state, the purchaser
16 or receiver, other than a refiner, pipeline terminal operator, or
17 marine terminal operator, shall make the prepayment required by
18 this section directly to the department. Prepayments for gasoline
19 shall be made at a cents-per-gallon rate determined by the
20 department and shall be based on 6% of the statewide average retail
21 price of a gallon of self-serve unleaded regular gasoline as
22 determined and certified by the department rounded up to the
23 nearest 1/10 of 1 cent. Prepayments for diesel fuel shall be made
24 at a cents-per-gallon rate determined by the department and shall
25 be based on 6% of the statewide average retail price of a gallon of
26 undyed No. 2 ultra-low sulfur diesel fuel as determined and
27 certified by the department rounded up to the nearest 1/10 of 1

1 cent. A person that makes prepayments directly to the department
2 shall make those prepayments according to the schedule in
3 subsection ~~(4)~~-(6).

4 (3) THROUGH MARCH 31, 2013, THE RATE OF PREPAYMENT APPLIED
5 PURSUANT TO SUBSECTION (1) SHALL BE DETERMINED EVERY 3 MONTHS BY
6 THE DEPARTMENT UNLESS THE DEPARTMENT CERTIFIES THAT THE CHANGE IN
7 THE STATEWIDE AVERAGE RETAIL PRICE OF A GALLON OF SELF-SERVE
8 UNLEADED REGULAR GASOLINE HAS BEEN LESS THAN 10% SINCE THE
9 ESTABLISHMENT OF THE RATE OF PREPAYMENT THEN IN EFFECT.

10 (4) ~~(2) The rate~~ BEGINNING APRIL 1, 2013, THE RATES of
11 prepayment applied pursuant to subsection ~~(1)~~-(2) shall be
12 determined every month by the department. ~~The~~ NOTWITHSTANDING
13 SUBSECTION (3), THE department shall publish notice of the ~~rate~~
14 RATES of prepayment applicable to gasoline and diesel fuel PURSUANT
15 TO SUBSECTION (2) not later than the tenth day of the month
16 immediately preceding the month in which the rate is effective.

17 (5) ~~(3)~~ A person subject to tax under this act that makes
18 prepayment to another person as required by this section for
19 gasoline may claim an estimated prepayment credit on its regular
20 monthly return filed pursuant to section 6. The credit shall be for
21 prepayments made during the month for which the return is required
22 and shall be based upon the difference between prepayments made in
23 the immediately preceding month and collections of prepaid tax
24 received from sales or transfers during the month for which the
25 return required under section 6 is made. A sale or transfer for
26 which collection of prepaid tax is due the taxpayer is subject to a
27 bad debt deduction under section 4i, whether or not the sale or

1 transfer is a sale at retail. The credit shall not be reduced
2 because of actual shrinkage. A taxpayer that does not, in the
3 ordinary course of business, sell gasoline in each month of the
4 year may, with the approval of the department, base the initial
5 prepayment deduction in each tax year on prepayments made in a
6 month other than the immediately preceding month. The difference in
7 actual prepayments shall be reconciled on the annual return in
8 accordance with procedures prescribed by the department.

9 (6) ~~(4)~~—Notwithstanding the other provisions for the payment
10 and remitting of tax due under this act, a refiner, pipeline
11 terminal operator, or marine terminal operator shall account for
12 and remit to the department the prepayments received pursuant to
13 this section in accordance with the following schedule:

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

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

19 (7) ~~(5)~~—A refiner, pipeline terminal operator, or marine
20 terminal operator that fails to remit prepayments made by a
21 purchaser or receiver of fuel is subject to the penalties provided
22 by 1941 PA 122, MCL 205.1 to 205.31.

23 (8) ~~(6)~~—The refiner, pipeline terminal operator, or marine
24 terminal operator shall not receive a deduction under section 4 for
25 receiving and remitting prepayments from a purchaser or receiver
26 pursuant to this section.

27 (9) ~~(7)~~—The purchaser or receiver of fuel that makes

1 prepayments is not subject to further liability for the amount of
2 the prepayment if the refiner, pipeline terminal operator, or
3 marine terminal operator fails to remit the prepayment.

4 (10) ~~(8)~~—A person subject to tax under this act that makes
5 prepayment to another person as required by this section for diesel
6 fuel may claim an estimated prepayment credit on its regular
7 monthly return filed pursuant to section 6. The credit shall be for
8 prepayments made during the month for which the return is required
9 and shall be based upon the difference between the prepayments made
10 in the immediately preceding month and collections of prepaid tax
11 received from sales or transfers during the month for which the
12 return required under section 6 is made. A sale or transfer for
13 which collection of prepaid tax is due the taxpayer is subject to a
14 bad debt deduction under section 4i, whether or not the sale or
15 transfer is a sale at retail. The credit shall not be reduced
16 because of actual shrinkage. A taxpayer that does not, in the
17 ordinary course of business, sell diesel fuel in each month of the
18 year may, with the approval of the department, base the initial
19 prepayment deduction in each tax year on prepayments made in a
20 month other than the immediately preceding month. Estimated
21 prepayment credits claimed with the return due in ~~January~~ **APRIL**
22 2013 shall be based on the taxpayer's retail sales of diesel fuel
23 in ~~December 2012.~~ **MARCH 2013**. The difference in actual prepayments
24 shall be reconciled on the annual return in accordance with
25 procedures prescribed by the department. Repayment of the credit
26 claimed on the return due in ~~January~~ **APRIL** 2013 shall be made by
27 the earlier of the date that the taxpayer stops selling diesel fuel

1 or ~~July~~**OCTOBER** 15, 2013.

2 (11) ~~(9)~~—As used in this section:

3 (a) "Blendstock" includes all of the following:

4 (i) Any petroleum product component of fuel, such as naphtha,
5 reformate, or toluene.

6 (ii) Any oxygenate that can be blended for use in a motor fuel.

7 (b) "Boat terminal transfer" means a dock, a tank, or
8 equipment contiguous to a dock or a tank, including equipment used
9 in the unloading of fuel from a ship and in transferring the fuel
10 to a tank pending wholesale bulk reshipment.

11 (c) "Diesel fuel" means any liquid other than gasoline that is
12 capable of use as a fuel or a component of a fuel in a motor
13 vehicle that is propelled by a diesel-powered engine or in a
14 diesel-powered train. Diesel fuel includes number 1 and number 2
15 fuel oils and mineral spirits. Diesel fuel also includes any
16 blendstock or additive that is sold for blending with diesel fuel
17 and any liquid prepared, advertised, offered for sale, sold for use
18 as, or used in the generation of power for the propulsion of a
19 diesel-powered engine, airplane, or marine vessel. An additive or
20 blendstock is presumed to be sold for blending unless a
21 certification is obtained for federal purposes that the substance
22 is for a use other than blending for diesel fuel. Diesel fuel does
23 not include dyed diesel fuel, kerosene, or an excluded liquid.

24 (d) "Dyed diesel fuel" means diesel fuel that is dyed in
25 accordance with internal revenue service rules or pursuant to any
26 other internal revenue service requirements, including any
27 invisible marker requirements.

1 (e) "Excluded liquid" means that term as defined in 26 CFR
2 48.4081-1.

3 (f) "Fuel" means gasoline and diesel fuel that is subject to
4 tax under this act, collectively, except when **GASOLINE OR** diesel
5 fuel is referred to separately.

6 (g) "Gasoline" means and includes gasoline, alcohol, gasohol,
7 casing head or natural gasoline, benzol, benzine, naphtha,
8 methanol, any blendstock additive, or other product that is sold
9 for blending with gasoline or for use on the road, other than
10 products typically sold in containers of less than 5 gallons.
11 Gasoline also includes a liquid prepared, advertised, offered for
12 sale, sold for use as, or used in the generation of power for the
13 propulsion of a motor vehicle, airplane, or marine vessel,
14 including a product obtained by blending together any 1 or more
15 products of petroleum, with or without another product, and
16 regardless of the original character of the petroleum products
17 blended, if the product obtained by the blending is capable of use
18 in the generation of power for the propulsion of a motor vehicle,
19 airplane, or marine vessel. The blending of all of the above-named
20 products, regardless of their name or characteristics, shall
21 conclusively be presumed to have been done to produce fuel, unless
22 the product obtained by the blending is entirely incapable of use
23 as fuel. An additive or blendstock is presumed to be sold for
24 blending unless a certification is obtained for federal purposes
25 that the substance is for a use other than blending for gasoline.
26 Gasoline does not include diesel fuel, dyed diesel fuel, kerosene,
27 or an excluded liquid.

1 (h) "Kerosene" means all grades of kerosene, including, but
2 not limited to, the 2 grades of kerosene, No. 1-K and No. 2-K,
3 commonly known as K-1 kerosene and K-2 kerosene, respectively,
4 described in American society for testing and materials
5 specification D-3699, in effect on January 1, 1999, and kerosene-
6 type jet fuel described in American society for testing and
7 materials specification D-1655 and military specifications MIL-T-
8 5624r and MIL-T-83133d (grades jp-5 and jp-8), and any successor
9 internal revenue service rules or regulations, as the specification
10 for kerosene and kerosene-type jet fuel. Kerosene does not include
11 an excluded liquid.

12 (i) "Marine terminal operator" means a person that stores fuel
13 at a boat terminal transfer.

14 (j) "Pipeline terminal operator" means a person that stores
15 fuel in tanks and equipment used in receiving and storing fuel from
16 interstate and intrastate pipelines pending wholesale bulk
17 reshipment.

18 (k) "Purchase" or "shipment" does not include an exchange of
19 fuel or an exchange transaction between refiners, pipeline terminal
20 operators, or marine terminal operators.

21 (l) "Refiner" means a person that manufactures or produces fuel
22 by any process involving substantially more than the blending of
23 fuel.