

Legislative Analysis



SALES/USE TAX ON DIFFERENCE AMENDMENTS

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Senate Bills 232 & 233 as passed by the Senate

Sponsor: Sen. Dave Robertson

House Committee: Tax Policy

Senate Committee: Finance

Complete to 9-29-15

Analysis available at

<http://www.legislature.mi.gov>

(Enacted as Public Acts 7 and 8 of 2016)

SUMMARY:

These bills would allow motor vehicles and recreational vehicles purchased from out-of-state dealers to qualify for the "tax on the difference" provisions of the state's sales and use tax statutes in the same manner as sales from in-state dealers. The "tax on the difference" provisions allow the agreed-upon value of a trade-in to be deducted from a new vehicle's purchase price for the purpose of levying sales or use tax. These provisions took effect December 15, 2013, and the bills would be retroactive to that date.

Initially, up to \$2,000 of the vehicle being traded-in could be used, with that amount to increase annually by \$500, beginning January 1, 2015. In the year that the amount exceeds \$14,000, there would no longer be any limitation on the value of a trade-in.

However, the 2013 legislation said that increases in the amount of the trade-in value would take place unless the law that allowed for the expansion of the Medicaid program under the federal Affordable Care Act was repealed. (This means currently there could be no increases if that program were repealed.) The bills would eliminate that language.

As currently written, the "sales tax on the difference" legislation, as enacted in 2013, applies only to motor vehicles or RVs purchased from a dealer licensed in Michigan. A Michigan resident who purchases a vehicle in another state must pay tax on the full purchase price, with no exemption for the value of a traded-in vehicle. (Reportedly, some observers say that this may be a violation of the Commerce Clause of the United States Constitution as it discriminates between dealers from other states and in-state dealers.)

Senate Bill 232 (S-1) would amend the tax-on-the-difference provisions of the Use Tax Act to delete a requirement that a motor vehicle or recreational vehicle be purchased from a dealer licensed under the Michigan Vehicle Code (that is, an in-state dealer) and to provide a new definition of "dealer."

Senate Bill 233 (S-1) would amend the tax-on-the-difference provisions of the General Sales Tax Act to require a motor vehicle, RV, or titled watercraft to be purchased from "a dealer," and uses the same definition of "dealer" as SB 232. (It also excludes leases and rentals, as the Use Tax does already.)

The definition of "dealer" cited in the bills is found in Section 11 of the Michigan Vehicle Code, and reads, in part, as follows: a person who in a 12-month period did one or more

of the following: (1) engaged in the business of purchasing, selling, exchanging, brokering, leasing, or dealing in vehicles of a type required to be titled under this act; (2) engaged in the business of purchasing, selling, exchanging, brokering, or dealing in salvageable parts of five or more vehicles; or (3) engaged in the business of buying five or more vehicles to sell vehicle parts or process into scrap metal.

There is a rebuttable presumption that a person who in a 12-month period buys and sells, exchanges, brokers, leases, or deals in five or more vehicles, or buys and sells, exchanges, brokers, or deals in salvageable parts for five or more vehicles, or buys five or more vehicles to sell vehicle parts or to process into scrap metal is engaged in a business of being a dealer

There are also a number of exemptions from the definition, including for banks and insurance companies.

FISCAL IMPACT:

As written, the bills would decrease sales and use tax revenue by an unknown, but likely small, amount. It's estimated that the existing provisions will reduce state revenue by approximately \$40 million in FY 2015-16 and \$47.0 million in FY 2016-17, so even if out-of-state purchases reflect 5% of total purchases, the overall fiscal impact would be less than \$3.0 million.

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