

Legislative Analysis



TAXATION OF DIRECT MAIL

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

House Bill 5132 as introduced
Sponsor: Rep. Jeff Farrington

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5133 as introduced
Sponsor: Rep. Wendell L. Byrd

(Enacted as Public Acts 159 & 160 of 2016)

Committee: Tax Policy
Complete to 1-26-16

SUMMARY:

House Bill 5132 would repeal Section 21 of the General Sales Tax Act (MCL 205.741) and create a new section 21A. House Bill 5133 would repeal Section 13 of the Use Tax Act and create a new Section 13A.

Both bills address how a seller or purchaser of *advertising and promotional direct mail* collects, pays, or remits sales tax or use tax, and the sourcing of *other direct mail*. The same provisions are contained in each bill.

The bill is understood to make Michigan law conform to the Streamlined Sales and Use Tax Agreement, which aims at providing more uniform state administration of the sales and use taxes, including uniformity in state and local tax bases and sourcing rules for taxable transactions.

Direct Mail is defined in statute as printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients, *including tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material*, but not including multiple items of printed material delivered to a single address.

The bills each divide subclasses of direct mail into (1) *advertising and promotional direct mail* and (2) *other direct mail*.

- *Advertising and promotional direct mail* is defined as direct mail, the primary purpose of which is to attract public attention to a product, service, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, service, person, business, or organization.
- *Other direct mail* is defined as direct mail that is not advertising and promotional, which can include (but is not limited to):
 - Transactional direct mail that contains personal information specific to the addressee;

- Any legally required mailings such as privacy notices or tax reports; and
- Any other nonpromotional direct mail such as newsletters and informational pieces.

Current Law

Under current law, *all direct mail* is treated in the same manner. Tax is paid by the purchaser on a direct pay basis if the purchaser provides the seller with an income tax exemption form or is a holder of a direct payment authorization under the Use Tax Act. The seller is then relieved of all obligation to collect, pay, or remit the applicable tax.

If the purchaser does not have an exemption form or direct payment authorization and instead provides the seller with information indicating the taxing jurisdictions to which the direct mail is delivered, it is incumbent on the seller to collect the tax according to that delivery information. If the purchaser does not provide the seller with an exemption form or provide the seller with delivery information, then the sale is sourced based on other statutory criteria.

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For sales of *advertising and promotional direct mail*, the purchaser shall report and pay any applicable tax due to the appropriate jurisdiction to which the advertising and promotional direct mail is to be delivered if the purchaser provides the seller with a direct payment authorization under the Use Tax Act or is the holder of an income tax exemption form as prescribed by the Department of Treasury for claiming direct mail. The seller is relieved of all obligation to collect, pay, or remit the applicable tax to which the direct payment authorization or exemption form applies. The preceding also applies to *other direct mail* if the purchaser provides the seller with a direct payment authorization or an exemption form.

If the purchaser does not supply the seller with a direct payment authorization or an exemption form, then the seller shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered and collect and remit the applicable tax due. If the purchaser, however, does not provide the seller with any information indicating the jurisdictions to which the advertising and promotional direct mail is to be delivered, then the sale shall be sourced to the location indicated by the address from which the tangible personal property to be included in the advertising and promotional direct mail was shipped.

For sales of *other direct mail*, the sale is sourced to the jurisdiction of the purchaser based on the address in the seller's records unless the purchaser supplies the seller with a direct payment authorization or an exemption form. In that case, the purchaser shall report and pay an applicable tax due sourced to the jurisdictions to which the other direct mail is to be delivered to the recipients.

In addition, the bills stipulate that the section only applies to a transaction characterized as a sale of services if the service is an integral part of the production and distribution of direct

mail. They further stipulate that the section does not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental, regardless of whether advertising and promotional direct mail is included in the same mailing.

Finally, the bills exempt single transactions that include a component in addition to advertising and promotional direct mail, if the primary purpose of the transaction is *not* to attract public attention or to sell, popularize, or secure financial support for the sale of the product or service.

FISCAL IMPACT:

As written, the bill could potentially reduce sales and/or use tax revenue, primarily affecting the School Aid Fund (SAF), General Fund (GF), and constitutional revenue sharing. However, any revenue impacts are likely to be negligible.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.