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Senate Bill 232 (Substitute S-1 as passed by the Senate)
Senate Bill 233 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Dave Robertson
Committee: Finance

Date Completed: 4-23-15

RATIONALE

The General Sales Tax Act and the Use Tax Act impose a tax of 6% on the sales price or purchase price of nonexempt personal property and services. Subject to amendments enacted in 2013, the Acts' definitions of "sales price" and "purchase price" include credit for any trade-in, which means that the sales or use tax is imposed on the full price of the item purchased, rather than on the difference between the value of that item and the one traded-in. This struck many people as unfair, particularly in situations involving car sales, and it was pointed out that many other states provide an allowance for a trade-in when the sales tax is calculated on motor vehicle purchases. In response, legislation was enacted in 2013 to exclude from the sales and use taxes the value of a trade-in on a motor vehicle, recreational vehicle (RV), or titled watercraft, subject to a limit on the amount of credit allowed for a traded-in vehicle or RV over a phase-in period. Under the Acts, however, these tax-on-the-difference provisions apply only to motor vehicles or RVs purchased from a dealer licensed in Michigan. That means if a Michigan resident purchases a vehicle in another state, he or she must pay tax on the full purchase price, with no exemption for the value of a traded-in vehicle. It has been pointed out that, because this tax treatment differentiates between dealers from other states and in-State dealers, it may be a violation of the Commerce Clause of the United States Constitution.¹ For this reason, it has been suggested that the statutes should provide the exemption for purchases from out-of-State dealers.

CONTENT

Senate Bill 232 (S-1) would amend the tax-on-the-difference provisions of the Use Tax Act to replace the definition of "dealer" and delete a requirement that a motor vehicle or recreational vehicle be purchased from a dealer licensed under the Michigan Vehicle Code (i.e., an in-State 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 exclude leases and rentals from those provisions.

Also, under both Acts, the scheduled annual increase in the dollar amount allowed for a trade-in will take place "unless section 105d of the Social Welfare Act...is repealed". The bills would delete the quoted language. (Section 105d provides for the expansion of the Medicaid program pursuant to the Affordable Care Act, and requires the State to seek a Federal waiver permitting the State's modifications to the program that accompany the waiver.)

¹ The Commerce Clause, found in Article 1, Section 8 of the U.S. Constitution, gives Congress the power to regulate commerce among the states. In addition to granting Congressional authority, the Commerce Clause is understood to restrict states' power to regulate. The "dormant" Commerce Clause is the implicit prohibition against states' enacting legislation that discriminates against or excessively burdens interstate commerce.

The bills would be retroactive and effective December 15, 2013.

Senate Bill 232 (S-1)

The Use Tax Act requires a taxpayer to purchase a new or used motor vehicle or recreational vehicle from a dealer licensed by the Secretary of State under Section 248 of the Michigan Vehicle Code in order to be eligible for use tax on the difference. (That section contains licensure requirements for dealers, including a requirement that a dealer have an established place of business in this State.) Also, for this purpose, the Act defines "dealer" as a person licensed as a new vehicle dealer or as a used or secondhand dealer under Section 248 of the Vehicle Code.

The bill, instead, would require a motor vehicle or RV to be purchased from a dealer, and would define "dealer" as the term is defined in Section 11 of the Code.²

Senate Bill 233 (S-1)

As discussed above, the General Sales Tax Act allows the trade-in value of a motor vehicle or recreational vehicle to be deducted from the sales price of a new or used motor vehicle or RV (subject to dollar limits and a phase-in schedule). The bill would refer to a new or used motor vehicle or recreational vehicle purchased from a dealer, and would define "dealer" as the term is defined in Section 11 of the Vehicle Code.

The Act also allows the trade-in value of a titled watercraft to be deducted from the purchase price of a new or used titled watercraft. The bill would refer to such a watercraft purchased from a watercraft dealer, and would define "watercraft" as the term is defined in Section 80102 of the Natural Resources and Environmental Protection Act.³

In the case of both vehicles and watercraft, the bill states that the provisions would not apply to leases or rentals.

MCL 205.92 (S.B. 232)
205.51 (S.B. 233)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Under the General Sales Tax Act, the sales tax is collected by Michigan retailers, including car dealers, when a sale takes place in this State. Under the Use Tax Act, when a Michigan resident buys a vehicle from an out-of-State dealer, he or she is liable for the use tax. Under current law, however, the tax-on-the-difference provisions apply only if a motor vehicle or RV is purchased from a dealer licensed in Michigan, which leads to disparate tax treatment depending on the state where the sale occurs. For example, if a Michigan resident buys a new car from an Ohio dealer and trades in his or her used vehicle, the dealer is required by Ohio law to calculate 1) the tax that would be owed in Ohio at a 6% rate (the same rate that Michigan imposes), with credit for the trade-in (which Ohio would allow), and 2) the amount of tax that would be charged in Michigan,

² Section 11 of the Vehicle Code defines "dealer", except as otherwise provided, as a person who in a 12-month period engaged in the business of one or more of the following: a) purchasing, selling, exchanging, brokering, leasing, or dealing in vehicles of a type required to be titled under the Code; b) purchasing, selling, exchanging, brokering, or dealing in salvageable parts of five or more vehicles; or c) buying five or more vehicles to sell vehicle parts or process into scrap metal. The definition also includes a person engaged in the actual remanufacturing of engine or transmissions.

³ Section 80102 defines "dealer" as a person and an authorized representative of that person who annually purchases from a manufacturer, or who is engaged in selling or manufacturing, six or more vessels that require certificates of number under Part 801 (Marine Safety) of the Natural Resources and Environmental Protection Act.

but without a trade-in credit (because Michigan law does not allow the credit for an out-of-State purchase). The customer is charged tax at the lower of the two amounts, and Ohio submits the tax collected to Michigan. Because that amount reflects credit for the trade-in, the customer is required to pay the difference as use tax when he or she licenses the car in Michigan. The example in the table below illustrates what a customer would pay if a purchase took place in Michigan or in Ohio.

	Michigan Dealer	Ohio Dealer
Purchase Price	\$25,000	\$25,000
Trade-in Value	\$2,500	\$2,500
Taxable Value	\$22,500	\$25,000
Tax @ 6%	\$1,350 sales tax	\$1,350 sales tax plus \$150 use tax

In the scenario above, the dealer in Ohio would charge the Michigan buyer \$1,350 in sales tax and the buyer would have to pay an additional \$150 in use tax upon registering the car in Michigan. If the tax-on-the-difference credit applied to purchases from out-of-State dealers, however, the customer would pay only \$1,350 in tax regardless of whether the purchase was in Ohio or Michigan.

This tax treatment not only is unfair to purchasers, but creates a disincentive for Michigan residents to purchase vehicles from out-of-State dealers, which may violate the Commerce Clause of the U.S. Constitution. By extending the tax-on-the difference provisions to purchases from out-of-State dealers, the legislation would avoid this conflict.

Legislative Analyst: Ryan M. Bergan

FISCAL IMPACT

The bills would reduce State revenue by an unknown and likely negligible amount. Any revenue loss would affect General Fund revenue, School Aid Fund revenue, and revenue sharing to local units of government, with the relative impact across the funds depending on the relative magnitude of reduction in sales tax revenue compared to the reduction in use tax revenue.

Vehicles purchased in one state for use in another are generally assessed a sales or use tax when transferred to and registered in the state in which they will be used, if the tax assessed by the state where the vehicle is purchased is less than the tax that would have been assessed on the transaction in the state in which the vehicle will be used. However, if the vehicle purchase involved the trade-in of a used vehicle, current law assesses a tax based on the full purchase price of the vehicle, including the value of the trade-in, if the vehicle was purchased from a dealer not licensed under Michigan statute. The bills would reduce the tax levy in this situation by the allowed portion applicable to the trade-in. As a result, the bills would lower the revenue collected from individuals who use a trade-in to help purchase a vehicle out-of-state and then transfer the purchased vehicle to Michigan.

Fiscal Analyst: David Zin

SAS/A1516/s232b

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.