



Senate Fiscal Agency  
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## BILL ANALYSIS



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House Bills 5132 and 5133 (as passed by the House)  
Sponsor: Representative Jeff Farrington (H.B. 5132)  
Representative Wendell Byrd (H.B. 5133)  
House Committee: Tax Policy  
Senate Committee: Finance

Date Completed: 3-22-16

**CONTENT**

**House Bill 5132 and House Bill 5133 would repeal a section of the General Sales Tax Act and the Use Tax Act, respectively, regarding the obligation of a seller or purchaser of direct mail to collect, pay, or remit sales or use tax; and would enact new provisions that would do the following:**

- **Require a seller to source the sale of advertising and promotional direct mail to the jurisdictions to which the mail was to be delivered to recipients, and pay the applicable tax, if the purchaser provided that information.**
- **Require the purchaser to source the sale of advertising and promotional direct mail to the jurisdictions to which it was to be delivered, and pay the applicable tax, if the purchaser provided the seller with a direct payment authorization or exemption form from the Department of Treasury.**
- **Require a sale of advertising and promotional direct mail to be sourced as provided in the Acts, if the purchaser did not provide information about the delivery jurisdictions or provide a direct payment authorization or an exemption form.**
- **Require the purchaser to source the sale of other direct mail and pay the applicable tax, if the purchaser provided the seller with a direct payment authorization or exemption form.**
- **Require a sale of other direct mail to be sourced as provided in the Acts, if the purchaser did not provide a direct payment authorization or exemption form.**
- **Relieve the seller of any obligation to collect, pay, or remit the applicable tax in situations in which the purchaser was required to pay the tax and source the sale.**
- **Describe the circumstances under which the proposed provisions would apply.**

("Sourcing" refers to the identification of the jurisdiction where a sale is considered to take place.)

Each bill would take effect 90 days after its enactment.

**Current Law**

Section 21 of the General Sales Tax Act and Section 13 of the Use Tax Act state that a purchaser of direct mail (other than a holder of a direct pay permit under Section 8 of the Use Tax Act) must provide to the seller at the time of purchase either an exemption form as prescribed by the Department of Treasury, or information indicating the taxing jurisdictions

where the direct mail is delivered to recipients. Under the General Sales Tax Act, after receiving an exemption form, the seller is no longer obligated to collect, pay, or remit the applicable tax. Instead, the purchaser is obligated to pay the tax on a direct pay basis. An exemption form remains in effect for all subsequent sales of direct mail by the seller to the purchaser until revoked in writing.

Under the Use Tax Act, upon receipt of information from the purchaser indicating the taxing jurisdictions where the direct mail is delivered to recipients, the seller must collect the tax according to that delivery information. In the absence of bad faith, the seller is relieved of any further obligation to collect the tax if the seller collected the tax using the delivery information previously provided.

Under each Act, if a purchaser does not have a direct pay permit and does not provide the seller with an exemption form or delivery information, the seller must collect the tax in the same manner as provided in Section 19 of each Act. This does not limit a purchaser's obligation for the tax under the Acts.

A purchaser who provides the seller with documentation of a direct pay permit is not required to provide an exemption form or delivery information.

Both Acts define "direct mail" as printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is 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.

(Under Section 8 of the Use Tax Act, the Department may authorize a person to assume the obligation of self-accruing and remitting use tax due on purchases or leases directly to the Department under a direct payment authorization, if specified conditions are met.

Section 19 of the General Sales Tax Act describes the sourcing of a sale for taxation under different situations, while Section 19 of the Use Tax Act states that tax collected by the seller from the consumer or lessee is for the benefit of the State, the Local Community Stabilization Authority, and the metropolitan areas of Michigan, including local communities within the metropolitan areas. Any other person may not derive a benefit from the collection or payment of the use tax.)

House Bill 5132 would repeal Section 21 of the General Sales Tax Act. House Bill 5133 would repeal Section 13 of the Use Tax Act.

### Proposed Provisions

The bills would prescribe the responsibilities of sellers and purchasers for collecting, paying, or remitting sales tax, under House Bill 5132, or use tax, under House Bill 5133, under various circumstances. The provisions of the bill would be the same.

If the purchaser provided the seller with a direct payment authorization issued under Section 8 of the Use Tax Act or an exemption form as prescribed by the Department for claiming direct mail, the seller, in the absence of bad faith, would be relieved of all obligation to collect, pay, or remit any applicable tax under the Acts on any transaction involving advertising and promotional direct mail to which the direct payment authorization or exemption form applied. The purchaser would have to source the sale to the jurisdictions to which the advertising and promotional direct mail was to be delivered to the recipients and would have to report and pay any applicable tax due.

If the purchaser provided the seller with information indicating the jurisdictions to which the advertising and promotional direct mail was to be delivered to recipients, the seller would have to source the sale to those jurisdictions, and collect and remit the applicable tax due. In the absence of bad faith, the seller would be relieved of any further obligation to collect any additional tax on the sale of advertising and promotional direct mail if the seller sourced the sale and collected the tax in accordance with the delivery information provided by the purchaser.

If the purchaser did not provide the seller with a direct payment authorization, an exemption form prescribed by the Department, or any information indicating the jurisdictions where the advertising and promotional direct mail was to be delivered, the sale would have to be sourced in accordance with Section 19(1)(e) of the General Sales Tax Act or 20(1)(e) of the Use Tax Act, as applicable.

(Section 19(1) of the General Sales Tax Act and Section 20(1) of the Use Tax Act contain requirements for sourcing a sale subject to the sales tax or the use tax, respectively. Under Sections 19(1)(e) and 20(1)(e), if specific sourcing rules do not apply or the seller has insufficient information to apply those rules, a sale will be sourced to the location indicated by the address from which tangible personal property was shipped or from which computer software delivered electronically was first available for transmission by the seller.)

Except as otherwise provided, sales of other direct mail would have to be sourced in accordance with 19(1)(c) of the General Sales Tax Act or 20(1)(c) of the Use Tax Act, as applicable. If the purchaser provided the seller with a direct payment authorization issued under Section 8 of the Use Tax Act, or an exemption form as prescribed by the Department for claiming direct mail, the seller, in the absence of bad faith, would be relieved of all obligation to collect, pay, or remit any applicable tax under the Acts on any transaction involving other direct mail to which the direct payment authorization or exemption form applied. The sale would have to be sourced to the jurisdictions to which the other direct mail was to be delivered to the recipients. The purchaser would have to report and pay any applicable tax due.

(Under Section 19(1) of the General Sales Tax Act and Section 20(1) of the Use Tax Act, if a product is received by the purchaser at a business location of the seller, the sale is sourced to that business location. If a product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where the product is received by the purchaser or the purchaser's designee, including the location indicated by delivery instructions, known to the seller. Under Sections 19(1)(c) and 20(1)(c), if neither of those rules applies, the sale is sourced to the location indicated by an address for the purchaser available from the seller's business records maintained in the ordinary course of business, provided use of the address does not constitute bad faith.)

The bills would define "advertising and promotional direct mail" as direct mail whose primary purpose 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" would mean any direct mail that is not advertising and promotional direct mail regardless of whether advertising and promotional direct mail is included in the same mailing. Other direct mail would include, but not be limited to, any of the following:

- Transactional direct mail that contains personal information specific to the addressee such as invoices, bills, statements of account, and payroll advices.
- Any legally required mailings such as privacy notices, tax reports, and stockholder reports.
- Any other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents such as newsletters and informational pieces.

Each of the sections proposed by the bills would apply to a transaction characterized as a sale of services only if the service were an integral part of the production and distribution of direct mail.

If a transaction were a single transaction that included a component in addition to the advertising and promotional direct mail, the sections would apply if the primary purpose of the transaction were to attract public attention or to sell, popularize, or secure financial support for the sale of the product or service.

The sections would not apply to any transaction that included the development of billing information or the provision of any data processing service that was more than incidental, regardless of whether advertising and promotional direct mail was included in the same mailing.

Nothing in the sections would limit a purchaser's obligation for sales or use tax due to any state to which the direct mail was delivered, or limit a purchaser's right under any other law for a credit or refund of sales or use taxes paid to any other jurisdiction.

Proposed MCL 205.71a (H.B. 5132)  
Proposed MCL 205.103a (H.B. 5133)

Legislative Analyst: Drew Krogulecki

### **FISCAL IMPACT**

The bill would reduce State and local revenue by an unknown, and negligible, amount. By dividing direct mail into two categories that receive slightly different sourcing treatment, the bill could result in some sales that are currently sourced to Michigan, and thus are taxed under Michigan law, being sourced to a non-Michigan location. The impact of any reduction would depend on the relative magnitude of sales affected under the sales tax and the use tax. For sales tax revenue, the School Aid Fund receives approximately 73%, while constitutional revenue sharing receives 10%, and the remainder is deposited into the General Fund. For use tax revenue, the School Aid Fund receives one-third, and the remainder is deposited into the General Fund. The bill also could affect tax revenue from the Michigan Business Tax and the Corporate Income Tax by changing whether a firm is taxable in Michigan or by altering the amount of activity apportioned to Michigan.

To the extent that the bill would result in greater conformity with the Streamlined Sales and Use Tax Agreement, and to the extent that other states have adopted or continue to adopt similar legislation, the loss of revenue to Michigan would be mitigated.

Fiscal Analyst: David Zin

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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.