HOUSE BILL No. 4685

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June 4, 2015, Introduced by Rep. Poleski 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 2013 PA 1.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 6a. (1) Through March 31, 2013, at the time of purchase or shipment from a refiner, pipeline terminal operator, or marine terminal operator, a purchaser or receiver of gasoline shall prepay a portion of the tax imposed by this act at the rate provided in this section to the refiner, pipeline terminal operator, or marine terminal operator for the purchase or receipt of gasoline. If the purchase or receipt of gasoline is made outside this state for shipment into and subsequent sale within this state, the purchaser or receiver, other than a refiner, pipeline terminal operator, or marine terminal operator, shall make the prepayment required by this section directly to the department. Prepayments for gasoline shall be made at a cents-per-gallon rate determined by the department and shall be based on 6% of the statewide average retail price of a gallon of self-serve unleaded regular gasoline as determined and certified by the department rounded up to the nearest 1/10 of 1 cent. A person that makes prepayments directly to the department shall make those prepayments according to the schedule in subsection (6).

(2) ~~Beginning~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, BEGINNING** April 1, 2013, at the time of purchase or shipment from a refiner, pipeline terminal operator, or marine terminal operator, a purchaser or receiver of fuel shall prepay a portion of the tax imposed by this act at the rates provided in this section to the refiner, pipeline terminal operator, or marine terminal operator for the purchase or receipt of fuel. **IF THE PURCHASE OR RECEIPT OF FUEL IS MADE WITHIN A BULK TRANSFER/TERMINAL SYSTEM, THE PREPAYMENT OF SALES TAX IS NOT REQUIRED. IF THE PURCHASE OR RECEIPT OF FUEL IS MADE WITHIN THIS STATE FOR SHIPMENT AND SUBSEQUENT SALE WITHIN THIS STATE AND BOTH THE SELLER AND PURCHASER OR RECEIVER ARE REFINERS, PIPELINE TERMINAL OPERATORS, OR MARINE TERMINAL OPERATORS, THE PREPAYMENT OF SALES TAX IS NOT REQUIRED. IF THE PURCHASE OR RECEIPT OF FUEL IS MADE WITHIN THIS STATE FOR SHIPMENT AND SUBSEQUENT SALE OUTSIDE THIS STATE, THE PREPAYMENT OF SALES TAX IS NOT REQUIRED.** If the purchase or receipt of fuel is made outside this state for shipment into and subsequent sale within this state, the purchaser or receiver, other than a refiner, pipeline terminal operator, or marine terminal operator, shall make the prepayment required by this section directly to the department. Prepayments for gasoline

shall be made at a cents-per-gallon rate determined by the department and shall be based on 6% of the statewide average retail price of a gallon of self-serve unleaded regular gasoline as determined and certified by the department rounded up to the nearest 1/10 of 1 cent. Prepayments for diesel fuel shall be made at a cents-per-gallon rate determined by the department and shall be based on 6% of the statewide average retail price of a gallon of undyed No. 2 ultra-low sulfur diesel fuel as determined and certified by the department rounded up to the nearest 1/10 of 1 cent. A person that makes prepayments directly to the department shall make those prepayments according to the schedule in subsection (6).

(3) Through March 31, 2013, the rate of prepayment applied pursuant to subsection (1) shall be determined every 3 months by the department unless the department certifies that the change in the statewide average retail price of a gallon of self-serve unleaded regular gasoline has been less than 10% since the establishment of the rate of prepayment then in effect.

(4) Beginning April 1, 2013, the rates of prepayment applied pursuant to subsection (2) shall be determined every month by the department. Notwithstanding subsection (3), the department shall publish notice of the rates of prepayment applicable to gasoline and diesel fuel pursuant to subsection (2) not later than the tenth day of the month immediately preceding the month in which the rate is effective.

(5) A person subject to tax under this act that makes prepayment to another person as required by this section for

gasoline may claim an estimated prepayment credit on its regular monthly return filed pursuant to section 6. The credit shall be for prepayments made during the month for which the return is required and shall be based upon the difference between prepayments made in the immediately preceding month and collections of prepaid tax received from sales or transfers during the month for which the return required under section 6 is made. A sale or transfer for which collection of prepaid tax is due the taxpayer is subject to a bad debt deduction under section 4i, whether or not the sale or transfer is a sale at retail. The credit shall not be reduced because of actual shrinkage. A taxpayer that does not, in the ordinary course of business, sell gasoline in each month of the year may, with the approval of the department, base the initial prepayment deduction in each tax year on prepayments made in a month other than the immediately preceding month. The difference in actual prepayments shall be reconciled on the annual return in accordance with procedures prescribed by the department.

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

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

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

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

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

(9) The purchaser or receiver of fuel that makes prepayments is not subject to further liability for the amount of the prepayment if the refiner, pipeline terminal operator, or marine terminal operator fails to remit the prepayment.

(10) A person subject to tax under this act that makes prepayment to another person as required by this section for diesel fuel may claim an estimated prepayment credit on its regular monthly return filed pursuant to section 6. The credit shall be for prepayments made during the month for which the return is required and shall be based upon the difference between the prepayments made in the immediately preceding month and collections of prepaid tax received from sales or transfers during the month for which the return required under section 6 is made. A sale or transfer for which collection of prepaid tax is due the taxpayer is subject to a bad debt deduction under section 4i, whether or not the sale or transfer is a sale at retail. The credit shall not be reduced because of actual shrinkage. A taxpayer that does not, in the ordinary course of business, sell diesel fuel in each month of the year may, with the approval of the department, base the initial

prepayment deduction in each tax year on prepayments made in a month other than the immediately preceding month. Estimated prepayment credits claimed with the return due in April 2013 shall be based on the taxpayer's retail sales of diesel fuel in March 2013. The difference in actual prepayments shall be reconciled on the annual return in accordance with procedures prescribed by the department. Repayment of the credit claimed on the return due in April 2013 shall be made by the earlier of the date that the taxpayer stops selling diesel fuel or October 15, 2013.

(11) As used in this section:

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

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

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

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

(C) "BULK PLANT" MEANS A MOTOR FUEL STORAGE AND DISTRIBUTION FACILITY THAT IS NOT A TERMINAL AND FROM WHICH MOTOR FUEL MAY BE WITHDRAWN BY A TANK WAGON, A TRANSPORT TRUCK, OR A MARINE VESSEL.

(D) "BULK TRANSFER" MEANS A TRANSFER OF MOTOR FUEL FROM 1 LOCATION TO ANOTHER BY PIPELINE TENDER OR MARINE DELIVERY WITHIN A BULK TRANSFER/TERMINAL SYSTEM, INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING TRANSFERS:

(*i*) A MARINE VESSEL MOVEMENT OF MOTOR FUEL FROM A REFINERY OR TERMINAL TO A TERMINAL.

(*ii*) PIPELINE MOVEMENTS OF MOTOR FUEL FROM A REFINERY OR TERMINAL TO A TERMINAL.

(*iii*) BOOK TRANSFERS OF MOTOR FUEL WITHIN A TERMINAL BETWEEN LICENSED SUPPLIERS BEFORE COMPLETION OF REMOVAL ACROSS THE TERMINAL RACK.

(*iv*) TWO-PARTY EXCHANGES BETWEEN LICENSED SUPPLIERS.

(E) "BULK TRANSFER/TERMINAL SYSTEM" MEANS A MOTOR FUEL DISTRIBUTION SYSTEM CONSISTING OF REFINERIES, PIPELINES, MARINE VESSELS, AND TERMINALS. MOTOR FUEL IN A REFINERY, PIPELINE, TERMINAL, OR MARINE VESSEL TRANSPORTING MOTOR FUEL TO A REFINERY OR TERMINAL IS IN A BULK TRANSFER/TERMINAL SYSTEM. MOTOR FUEL IN A FUEL STORAGE FACILITY INCLUDING, BUT NOT LIMITED TO, A BULK PLANT THAT IS NOT PART OF A REFINERY OR TERMINAL, IN THE FUEL SUPPLY TANK OF ANY ENGINE OR MOTOR VEHICLE, IN A MARINE VESSEL TRANSPORTING MOTOR FUEL TO A FUEL STORAGE FACILITY THAT IS NOT IN A BULK TRANSFER/TERMINAL SYSTEM, OR IN ANY TANK CAR, RAIL CAR, TRAILER, TRUCK, OR OTHER EQUIPMENT SUITABLE FOR GROUND TRANSPORTATION IS NOT IN A BULK TRANSFER/TERMINAL SYSTEM.

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

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

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

(I) ~~(f)~~ "Fuel" means gasoline and diesel fuel that is subject to tax under this act, collectively, except when gasoline or diesel fuel is referred to separately.

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

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

(*l*) ~~(i)~~ "Marine terminal operator" means a person that stores fuel at a boat terminal transfer.

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

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

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

(P) "TERMINAL" MEANS A MOTOR FUEL STORAGE AND DISTRIBUTION FACILITY THAT MEETS ALL OF THE FOLLOWING REQUIREMENTS:

(*i*) IS REGISTERED AS A QUALIFIED TERMINAL BY THE INTERNAL REVENUE SERVICE.

(*ii*) IS SUPPLIED BY PIPELINE OR MARINE VESSEL.

(*iii*) HAS A RACK FROM WHICH MOTOR FUEL MAY BE REMOVED.