

USE TAX LIABILITY FOR CERTAIN TANGIBLE PERSONAL PROPERTY

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

Senate Bill 887 as reported from committee w/o amendment

Sponsor: Sen. Jack Brandenburg

House Committee: Tax Policy

Senate Committee: Finance

Complete to 5-10-18

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

(Enacted as Public Act 201 of 2018)

BRIEF SUMMARY: Senate Bill 887 would add a new section to the Use Tax Act to remove the use tax liability for a contractor who installs material that is provided by another person, to the extent that the other person is not exempt from the sales or use tax.

FISCAL IMPACT: The bill would have a negligible impact, if any, on use tax revenues.

THE APPARENT PROBLEM:

Many in the business community have honed in on a practice they believe is unfair and burdensome to Michigan contractors. Under the Use Tax Act, a contractor (a business engaged in the construction, alteration, repair, or improvement of real estate of others) is considered a consumer of property, and is required to pay the use tax on property if the contractor acquires the property from another person and then affixes that property to the real property of that other person, unless the sales (or use) tax has already been paid on the property.

When contractors are hired to install material and are provided with that material by the hiring person or company, it is simply assumed that the hiring person or company has followed the law and paid the applicable sales or use tax on the material. It has been reported that when the Department of Treasury has audited contractors, the Department has required the contractor to provide documentation showing that the sales or use tax has been paid. Essentially, the contractor is being asked to provide documentation regarding a transaction they were never a party to. In the meantime, they can be assessed the use tax on the material.

This process can be quite difficult. A contractor might be hired by a national department store to install store-specific property that is provided by that department store. Finding and asking someone within that national company to procure specific tax receipts is burdensome and difficult, not to mention potentially damaging to an ongoing business relationship.

Reportedly, this situation is becoming more common in the telecommunications industry: contractors are provided with equipment by telecom companies and then install the equipment on towers and poles. As this technology continues to advance, there is potential for more businesses to be unfairly assessed the use tax. Many see this current arrangement as an unnecessary burden on contractors, and one with the potential for unfair double

taxation. Legislation has been introduced to ensure that the contractor is not liable for the use tax when the original purchaser does not qualify as being tax-exempt.

THE CONTENT OF THE BILL:

Senate Bill 887 would add a new section to the Use Tax Act to provide that a person engaged in the business of constructing, altering, repairing, or improving real estate for others is not liable for the use tax for storing, using, or consuming tangible personal property acquired from another person to the extent that the property was purchased by that other person, that other person is not exempt from the use tax or sales tax, and the property was acquired by the person engaged in the business of constructing, altering, repairing, or improving real estate for others for the sole purpose of affixing that property to real estate on behalf of that other person.

The bill also includes an enacting section that states that the bill is intended by the legislature to clarify that “existing law as originally intended provides that [the use tax] does not apply to tangible personal property acquired by a person engaged in the business of installing tangible personal property if that property is purchased by another for installation on behalf of that other person.”

Proposed MCL 205.94ee

HOUSE COMMITTEE ACTION:

The House Committee on Tax Policy reported the Senate-passed version of the bill without amendment.

ARGUMENTS:

For:

Michigan contractors should focus on creating jobs, selling products and services, and expanding their businesses. They should not have to worry about being assessed the use tax on property provided to them, then have to track down tax documentation to prove to the Department of Treasury that a tax has been paid on that property. Numerous stories were provided during testimony in which a company was audited and assessed the use tax on property provided, sometimes in the hundreds of thousands of dollars. The companies then had to spend significant time and energy providing the required documentation to the department. While the contractors eventually supplied the documentation and did not have to pay the use tax assessment, it should not be their responsibility to do so in the first place. If the department wants to ensure that the sales or use tax has been paid, it should go back to the original purchaser, not the contractor.

The bill will simply eliminate a burdensome business regulation and specifically make Michigan more competitive with regard to emerging telecommunications technology and installation.

Against:

The enacting section of the bill could lead to retroactive claims for use tax refunds. It states that the intent of the bill is to “clarify” existing law, but the bill does not clarify; it changes the law with regard to the use tax liability. Under current law, the contractor is liable for the use tax, as a consumer of tangible personal property, if the sales (or use) tax has not been paid. Making a contractor exempt from the use tax for this situation is a change in law and should be prospective.

POSITIONS:

Representatives of the following entities testified in support of the bill (5-2-18):

Michigan Chamber of Commerce
B&M Tower Technologies, Inc.
Augusta Tower Technologies, Inc.
Woods Construction

The following entities indicated support for the bill:

Associated General Contractors of Michigan (5-2-18)
National Electrical Contractors Association, Michigan Chapter (5-2-18)
National Federation of Independent Business (5-2-18)
Grand Rapids Chamber of Commerce (5-2-18)
AT&T (5-2-18)
Michigan Cable Telecommunications Association (5-9-18)

The Michigan Department of Treasury indicated support for the bill, except for the enacting section. (5-2-18)

Legislative Analyst: Patrick Morris
Fiscal Analyst: Ben Gielczyk

■ 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.