



Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bill 887 (as enacted)
Sponsor: Senator Jack Brandenburg
Senate Committee: Finance
House Committee: Tax Policy

PUBLIC ACT 201 of 2018

Date Completed: 2-28-19

RATIONALE

The General Sales Tax Act imposes a tax of 6% on the purchase price of tangible personal property in Michigan, and the Use Tax Act imposes a tax of 6% on tangible personal property that is used, stored, or consumed in Michigan, unless sales tax was paid when the property was purchased. Both Acts list property, transactions, and entities that are exempt from taxation. A concern was raised about the taxation of personal property used in construction by a person who acquired the property from another who purchased it. If a person consumes tangible personal property by affixing it to real property the person is liable for the use tax levied on the property, regardless of whether the person purchased it. However, the liability can be satisfied if the person can demonstrate that another party paid sales or use tax on the property. This policy was believed to place an undue burden on construction contractors, particularly if a contractor was not able to obtain sufficient proof from a customer that taxes were paid on the property. To alleviate this burden, it was suggested that the State exempt from the use tax property that is used in constructing, altering, repairing, or improving real estate if the property is acquired by the contractor from the person who bought it.

CONTENT

The bill amended the Use Tax Act to specify that a person engaged in the business of constructing, altering, repairing, or improving real estate for others is not liable for the tax levied under the Act for storing, using, or consuming tangible personal property acquired from another person to the extent that the property was purchased by that other person and that person is not exempt from the tax levied under the Act or the General Sales Tax Act, and that 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 tangible personal property to real estate on behalf of that other person.

The bill states the following: "It is the intent of the legislature that this amendatory act clarifies that existing law as originally intended provides that the tax levied under this act does not apply to tangible personal property acquired by a person engaged in the business of installing tangible personal property if that tangible personal property is purchased by another for installation on behalf of that other person."

The bill took effect on June 20, 2018.

MCL 205.94ee

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

The previous practice of holding businesses and individuals liable for use taxes after using property provided by a customer for real estate construction purposes was unfair and illogical. If a person purchases light fixtures at a local home improvement store and hires a contractor to install them throughout the person's house, for example, the contractor should not have to pay the use tax on those light fixtures if he or she cannot provide sufficient proof that the customer paid taxes on the items.

According to testimony provided before the Senate Committee on Finance, some Michigan businesses were audited by the Michigan Department of Treasury and assessed use taxes that the businesses might not have had to pay if they had proved that taxes were paid on property provided to them by a customer for construction purposes. Examples of this situation include a business contracted by large retail stores, such as Target or Dick's Sporting Goods, to renovate a store or install equipment. These large retail stores typically are built to look similar, so it is not uncommon for a contractor to be given equipment, shelving, or other items for installation, instead of purchasing them for the store. In this case, the contracted business was audited by the Department and assessed \$558,000 in use taxes unless it could secure proof that taxes were paid on the materials provided to the contractor. While the business was eventually able to provide evidence to the Department, it was a burdensome task. Other companies have reportedly been less fortunate and have had to remit the tax. Obtaining the confirmation requested by the Department is difficult, and sometimes it may be impossible, since contractors do not have access to their customers' records. Furthermore, if the contractor were required to pay use taxes after not being able to secure proof that the customer already paid tax on the materials, the Department would be collecting taxes on the property twice.

It should be the Department's or the customer's responsibility to determine whether taxes have been paid on the property given to contractors. It is unfair to expect a contractor that was not a party to the purchase of the property to collect that information from the customer. Moreover, asking a customer for proof that taxes were paid on property could create friction between the customer and the contractor, and the customer could decide to take his or her business elsewhere. The previous law placed unfair expectations on contractors, and detracted from Michigan's inclusive business environment.

Michigan businesses should be focused on creating jobs and making money, not on proving who paid taxes on property provided to them. The bill alleviates businesses of this responsibility and creates fair and sensible policy.

Opposing Argument

The bill is unfair because it creates an exception for a specific type of transaction. In addition, the bill is ambiguous as to whether the responsibility to provide evidence that taxes were paid on property provided to a contractor is transferred to the contractor's customer. Without clearer language, the bill may create a new issue of determining who is liable for the payment of taxes in those situations.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill will have little to no impact on use tax revenue.

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.