

# Legislative Analysis



## SALES AND USE TAX EXEMPTIONS FOR PROSTHETIC DEVICES

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<http://www.house.mi.gov/hfa>

**House Bill 4203 (H-2) as reported from committee**  
**Sponsor: Rep. Lynn Afendoulis**

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

**House Bill 4204 (H-2) as reported from committee**  
**Sponsor: Rep. Bronna Kahle**

*(Enacted as Public Acts 46 and 47 of 2020)*

**1st Committee: Tax Policy**  
**2nd Committee: Ways and Means**  
**Complete to 12-6-19**

### SUMMARY:

House Bills 4203 and 4204 would amend the General Sales Tax Act and the Use Tax Act, respectively, to modify the exemption of prosthetic devices from sales and use taxes. The current exemption requires that a prosthetic device be dispensed pursuant to a prescription. The bills would retain this exemption and would further exempt from taxation the sale to a hospital or freestanding surgical outpatient facility (such as an ambulatory surgical center) of a prosthetic device for implantation into a human, regardless of whether the device had been dispensed pursuant to a prescription.

Each act currently exempts from taxation the sale of “a *prosthetic device*, durable medical equipment, or mobility enhancing equipment.”

As used in both acts, *prosthetic device* means a replacement, corrective, or supportive device, other than contact lenses and dental prosthesis, dispensed pursuant to a prescription, including repair or replacement parts for that device, worn on or in the body to do one or more of the following:

- Artificially replace a missing portion of the body.
- Prevent or correct a physical deformity or malfunction of the body.
- Support a weak or deformed portion of the body.

Each bill would add a new section to its respective act that exempts from taxation the sale to a hospital or freestanding surgical outpatient facility of a *prosthetic device* for implantation into a human. The definition of *prosthetic device* for this exemption only would be the same as above, except that the underlined phrase requiring that the device be dispensed pursuant to a prescription would be removed.

MCL 205.51a (HB 4203)  
MCL 205.92b (HB 4204)

## **BACKGROUND:**

According to committee testimony, in July 2018 the Department of Treasury modified its policy regarding the tax-exempt status of implantable medical devices, for example those used in joint replacement such as shoulders, hips, and knees. The Department's interpretation of the sections of law exempting prosthetic devices was confirmed in an August 2019 letter ruling<sup>1</sup> in which the Department held that, since the definition of *prosthetic device* used in the acts includes a requirement that they be "dispensed pursuant to a prescription," the exemption did not apply to implantable medical devices sold to a for-profit medical facility "because the device is not being 'dispensed' in that transaction."

## **FISCAL IMPACT:**

As written, the bills would be expected to reduce sales and use tax revenue by less than \$3.0 million on a full-fiscal-year basis. Approximately 73% of sales tax revenue is constitutionally earmarked to the School Aid Fund, with an additional 10% dedicated to constitutional revenue sharing. The majority of the remainder accrues to the general fund. About one-third of use tax revenue is constitutionally earmarked to the School Aid Fund, with the remainder accruing to the general fund.

## **POSITIONS:**

Representatives of the following organizations testified in support of the bills (3-6-19):  
Metro Health Orthopedic Associates of Michigan Surgery Center  
Michigan Chamber of Commerce

The following organizations indicated support for the bills:  
Department of Treasury (9-4-19)  
Michigan Occupational Therapy Association (12-4-19)  
Michigan Ambulatory Surgery Association (12-4-19)  
AARP (3-6-19)

Detroit Medical Center indicated a neutral position on the bills. (9-4-19)

The following organizations indicated opposition to the bills (12-4-19):  
Michigan Association of Superintendents and Administrators  
Michigan Association of School Boards  
Michigan Association of Secondary School Principals

Legislative Analyst: Nick Kelly  
Fiscal Analyst: Jim Stansell

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■ 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.

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<sup>1</sup> [https://www.michigan.gov/documents/treasury/Letter\\_Ruling\\_2019-2\\_-\\_Prosthetic\\_Devices\\_663587\\_7.pdf](https://www.michigan.gov/documents/treasury/Letter_Ruling_2019-2_-_Prosthetic_Devices_663587_7.pdf)