

## QUALIFIED DELIVERY NETWORK SALES

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Senate Bill 930 (S-1) as reported from House committee

Sponsor: Sen. Jeremy Moss

House Committee: Tax Policy

Senate Committee: Regulatory Affairs

Complete to 12-6-24

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

## SUMMARY:

Senate Bill 930 would amend the General Sales Tax Act to allow marketplace sellers to collect and remit the sales tax for *qualified delivery network sales*.

*Qualified delivery network sale* would mean a sale that meets all of the following requirements:

- The sale is made as part of *delivery services* facilitated by a *delivery network company*. (Definitions for these terms are below.)
- The sale is sourced to the state under the act (i.e., section 69(1)(b)).<sup>1</sup>
- The tax imposed by the act on the sale is paid by the delivery network company to the marketplace seller in connection with the delivery services.

Currently, the act requires a *marketplace facilitator* with a nexus in Michigan<sup>2</sup> to collect and remit the tax for each taxable sale made or facilitated by the market facilitator to a purchaser in Michigan.

*Marketplace facilitator* means a person that facilitates a retail sale by a marketplace seller by listing or advertising for sale by a marketplace seller in a marketplace, tangible personal property and either directly or indirectly through agreements or arrangements with third parties or its affiliates collecting payment from the customer and transmitting that payment to the marketplace seller for consideration. Marketplace facilitator does not include a person that operates a platform or forum that provides internet, print, electronic, or any other form of advertising services, including listing tangible personal property for sale, if the person does not also engage directly or indirectly, through one or more affiliates, in the activities described in the previous sentence.

The bill would allow *delivery network companies* to deduct or exclude the tax paid to marketplace sellers for qualified delivery network sales, in a form and manner prescribed by the Department of Treasury, subject to the following provisions:

- The delivery network company could not claim a deduction or exclusion under these provisions if the *marketplace seller* did not charge the delivery network company for the tax imposed by the act on the sale.

<sup>1</sup> <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-205-69>

<sup>2</sup> More information about what constitutes a nexus can be found here: <https://www.michigan.gov/taxes/business-taxes/sales-use-tax/information/marketplace-facilitator-seller-faqs>

- The amount of the deduction or exclusion could not exceed the amount of tax that was charged by the marketplace seller to the delivery network company in connection with the sale.

***Delivery network company*** would mean a marketplace facilitator that maintains a website, mobile application, or nondigital platform used to facilitate ***delivery services*** that are performed or otherwise conducted by a ***delivery network courier***.

***Delivery services*** would mean the pickup and delivery of tangible personal property, by a delivery network courier, from a marketplace seller located in Michigan to a customer located in the state, which could include the selection, collection, and purchase of the tangible personal property in connection with the delivery. It would not include a delivery requiring more than 75 miles of travel from the marketplace seller to the customer.

***Delivery network courier*** would mean an individual who provides delivery services through a delivery network company by doing any of the following:

- Using a personal means of transportation, such as a motor vehicle, bicycle, scooter, or other similar modes of transportation.
- Using public transportation.
- Walking.

It would not include a common carrier or a motor carrier as that term is defined in section 1 of the Motor Carrier Fuel Tax Act.<sup>3</sup>

***Marketplace seller*** means a person that makes retail sales through a physical or electronic marketplace operated by a marketplace facilitator.

The bill would also authorize the Department of Treasury to audit both marketplace sellers and delivery network companies for qualified delivery network sales.

MCL 205.52d

## BACKGROUND:

Public Acts 143 to 146 of 2019<sup>4</sup> were enacted to require marketplace facilitators, such as Amazon or eBay, to collect and remit sales and use tax for sales in Michigan. The bills were enacted after the U.S. Supreme Court's 2018 decision in *South Dakota v Wayfair, Inc.* gave states the authority to collect sales and use taxes from out-of-state sellers.

According to committee testimony, existing state regulation can result in cases of sales tax inadvertently being collected twice on sales through delivery network companies (i.e., Instacart, DoorDash, etc.), particularly in sales involving small business that cannot afford expensive softwares that can address the issue. The bill is intended to clarify the current statute to allow businesses to avoid such situations.

<sup>3</sup> <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-207-211>

<sup>4</sup> <https://www.legislature.mi.gov/documents/2019-2020/billanalysis/House/pdf/2019-HLA-4540-F5C779AD.pdf>

## **FISCAL IMPACT:**

Senate Bill 930 would reduce revenue by approximately \$2.0 million in the first full year of operation (FY 2025-26), according to estimates from the Department of Treasury. In succeeding years, the revenue loss estimate would grow based on inflation and growth in third-party delivery services. The revenue loss would primarily be sales tax revenue.

Roughly 73% of sales tax revenue is earmarked to the School Aid Fund, with an additional 10% constitutionally dedicated to local revenue sharing. The majority of the remainder accrues to the general fund. While the bill would result in a revenue loss, the aim of the legislation is to prevent double taxation in certain transactions involving third-party delivery services.

The provisions of the bill likely would increase Department of Treasury administrative costs, but it is likely these would be absorbed under current appropriation levels. The department could pursue additional audits to ensure proper application of the bill's provisions, but the language is permissive in nature. Any costs that exceeded current appropriation levels would be subject to legislative appropriation.

## **POSITIONS:**

Representatives of the following entities testified in support of the bill (12-4-24):

- Department of Treasury
- DoorDash
- Instacart

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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.