



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 5187 (Substitute H-3 as passed by the House)
House Bill 5188 (Substitute H-3 as passed by the House)
Sponsor: Representative Rebekah Warren (H.B. 5187)
Representative Mark E. Huizenga (H.B. 5188)
House Committee: Commerce and Tourism
Ways and Means
Senate Committee: Economic and Small Business Development

Date Completed: 2-6-20

CONTENT

House Bill 5187 (H-3) and House Bill 5188 (H-3) would amend the General Sales Tax Act and the Use Tax Act, respectively, to do the following:

- **Require an amount equal to all revenue lost to the State School Aid Fund (SAF) because of an exemption for qualified data centers to be deposited into the SAF.**
- **Require a person that claimed an exemption for a qualified data center to report the purchase price of the data center equipment to the Department of Treasury, as well as other information, to determine the amount of revenue lost to the SAF.**

House Bill 5187 (H-3)

The General Sales Tax Act requires money received and collected under it to be deposited into the State Treasury to the credit of the General Fund, unless specified otherwise.

Under the bill, an amount equal to all revenue lost to the SAF as a result of the exemption under Section 4ee of the Act, as determined by the Department, would have to be deposited into the SAF.

(Section 4ee of the Act states that, beginning January 1, 2016, through December 31, 2035, and subject to further provisions, a sale of data center equipment to the owner or operator of a qualified data center or a collocated business for assembly, use, or consumption in the operations of the qualified data center or a sale of data center equipment to a person engaged in the business of constructing, altering, repairing, or improving real estate for others to the extent the data center equipment is to be affixed to or made a structural part of a qualified data center is exempt from the tax levied under the Act.)

Money deposited into the SAF could not include and would have to be considered in addition to money deposited in the SAF under Section 25(3) (which specifies that 60% of the collections of the tax imposed at a rate of 4.0% must be deposited into the SAF and distributed as provided by law, and all of the collections of the tax imposed at the additional rate of 2.0% approved by the electors on March 15, 1994, must be deposited into the SAF).

A person that claimed an exemption under Section 4ee would have to report the sales price of the data center equipment and any other information necessary to determine the amount

of revenue lost to the SAF as a result of the exemption annually on a form at the time and in a manner prescribed by the Department. The report could not include any remittance for tax, and would not constitute a return or otherwise alleviate an obligation to submit a sales tax return or to remit sales tax.

House Bill 5188 (H-3)

The Use Tax Act requires money received and collected under it to be deposited into the State Treasury to the credit of the General Fund, unless specified otherwise, to be disbursed only by legislative appropriations.

Currently, from the money received and collected under the Act for the State share, an amount equal to all revenue lost under the State Education Tax Act and all revenue lost from basic school operating mills as a result of certain personal property exemptions under the General Property Tax Act, as determined by the Department, must be deposited into the SAF. Under the bill, all revenue lost to the SAF as a result of the exemption under Section 4cc of the Use Tax Act also would have to be deposited into the SAF.

(Section 4cc of the Act specifies 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 tangible personal property was purchased by that other person and that person is not exempt from the tax levied under the General Sales Tax Act and that tangible personal 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.)

A person that claimed an exemption under Section 4cc would have to report the purchase price of the data center equipment and any other information necessary to determine the amount of revenue lost to the SAF as a result of the exemption annually on a form at the time and in a manner prescribed by the Department. The report could not include any remittance for tax and would not constitute a return or otherwise alleviate the person's obligation to submit a use tax return or to remit use tax.

MCL 205.75 (H.B. 5187)
205.111 (H.B. 5188)

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bills would reduce General Fund revenue by an unknown amount that would depend on the particular characteristics of affected taxpayers. The number of affected taxpayers also is unknown, as is the dollar value of tax-exempt purchases. Any reduction in General Fund revenue would increase School Aid Fund revenue by the same amount.

When the exemption for data center equipment purchases was adopted in 2015, the fiscal impact estimated that if the School Aid Fund were reimbursed for losses due to the exemption, it would reduce General Fund revenue by approximately \$7.9 million in fiscal year 2017-18, and could total \$111.0 million over the life of the exemption.

Fiscal Analyst: David Zin

SAS\S1920\s5187sa

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.