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BILL ANALYSIS

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Senate Bills 158 through 160 (as introduced 3-9-23)

Sponsor: Senator Sam Singh

Committee: Finance, Insurance, and Consumer Protection

Date Completed: 3-14-23

CONTENT

Senate Bill 158 and Senate Bill 159 would amend the General Sales Tax Act and the Use Tax, respectively, to modify the definition of "sales price" and "purchase price", as applicable, to eliminate delivery and installation charges from those definitions.

Senate Bill 160 would amend Public Act 72 of 1979, which requires the Governor to report specified tax information with the annual budget message to the Legislature, to modify a Michigan Compiled Laws (MCL) reference that Senate Bill 159 would amend.

Senate Bill 160 is tie-barred to Senate Bill 159.

Senate Bill 158 & 159

The General Sales Tax Act levies a 6.0% tax on the gross proceeds (i.e., "sales price") of a business that makes sales at retail. The Use Tax levies a 6.0% tax on the price (i.e., "purchase price") of tangible personal property used, stored, or consumed in Michigan.

"Sales price" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, and applies to the measure subject to sales tax. "Purchase price" or "price" means the total amount of consideration paid by the consumer to the seller, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, and applies to the measure subject to use tax.

The terms include certain categories of costs and charges, including delivery and installation charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property from the seller to the purchaser. The bill instead would refer to installation and delivery charges.

The terms exclude from the respective definitions other listed charges, credits, and amounts. Under the bill, delivery or installation charges would be excluded if those charges were separately stated on the invoice, bill of sale, or similar document provided to the purchaser, and the seller (under Senate Bill 158) or taxpayer (under Senate Bill 159) maintained its books and records to show separately the transaction used to determine the tax levied under the applicable Acts.

All of the following would apply only to delivery and installation charges:

- The Department of Treasury would have to cancel all outstanding balances related to delivery and installation charges on notices of intent to assess that were issued for the

taxes levied under the General Sales Tax Act or Use Tax Act and that were issued before the bill's effective date.

- The Department would have to cancel all outstanding balances related to delivery or installation charges on final assessments for the taxes levied under the Acts and that were issued before the bill's effective date.
- After the bill's effective date, the Department would be prohibited from issuing any new assessments under the Acts on delivery and installation charges for any tax period before the bill's effective date that is open under the statute of limitations under either Act.

(Generally, a deficiency, interest, or penalty may not be assessed after four years after the date set for the filing of the required return or after the date the return was filed, whichever is later. The statute of limitations may be extended under certain circumstances.)

Under the bills, all revenue lost to the State School Aid Fund (SAF) as a result of the above exclusions would have to be deposited into the SAF. A person who excluded delivery or installation charges from the sales price or purchase price, as applicable, of tangible personal property to calculate the tax due under the General Sales Tax Act or Use Tax Act would have to report the amount of those charges and any other information needed to determine the amount of revenue lost to the SAF as a result of these exclusions on an existing or amended form at the time and in a manner prescribed by the Department.

Senate Bill 160

Public Act 72 of 1979 requires the Governor to report an estimate of the amount of use tax forgone under Section 2(f) of the Use Tax Act from the imposition of the tax on the difference between the agreed-upon value of a motor vehicle, trailer coach, or titled watercraft used as part payment of the purchase price (i.e., a trade-in) the full retail price of the vehicle, trailer coach, or watercraft being purchased rather than the full retail price of the vehicle, trailer coach, or titled watercraft. The bill would amend the MCL reference to Section 2(1)(f) and would replace, for the first two uses of the word, "trailer coach" with "recreational vehicle".

MCL 205.51 & 205.75 (S.B. 158)
205.92 & 205.111 (S.B. 159)
21.276 (S.B. 160)

Legislative Analyst: Jeff Mann

PREVIOUS LEGISLATION

(Please note: The information in this summary provides a cursory overview of previous legislation and its progress. It does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)

Senate Bills 158 and 159 are similar to House Bills 5080 and 5081 from the 2021-2022 Legislative Session, respectively. The House of Representatives passed the bills, and they were referred to the Senate Committee on Finance. The Committee reported the bills to the floor, but no further action was taken.

FISCAL IMPACT

Senate Bill 158 & 159

Although Senate Bill 158 is not tie-barred to Senate Bill 159, the bills would reduce revenue to the State General Fund and constitutional revenue sharing to local units of government by approximately \$270.0 million in the first full year, according to the Department of Treasury. Assuming a July 1, 2023, effective date, the reduction would total approximately \$71.0 million in fiscal year (FY) 2022-23. The actual impact on each fund affected would depend on the relative impact of the exemption between sales taxes and use taxes and would grow over

time. It is expected that most of the bills' impact would be on sales tax revenue, and if the sales tax experienced two-thirds of the impact, the bills would reduce General Fund revenue by approximately \$243.0 million in the first full year and constitutional revenue sharing to local units of government by approximately \$27.0 million. While the SAF receives revenue from the sales tax and the use tax, the bill specifies that any revenue loss to the SAF would be offset by a transfer of revenue from the General Fund.

The bills could reduce revenue by substantially more than the estimated amount if retailers altered product prices so that a portion of the cost of the good was shifted from the good to delivery and installation. For example, vendors on Amazon or eBay often price goods at low prices to affect search results, and then offset the loss of revenue with large delivery charges. A \$50 item may be listed and sold by one seller for \$50 with free shipping but by another with a price of \$1, with \$49 in delivery charges. Under current law, the sales tax on both transactions would be \$3. Under the bills, the latter transaction would exhibit a sales tax liability of six cents. The bills would create an incentive for more sellers to engage in these types of practices. To the extent that retailers engaged in these practices, the revenue loss under the bills could be substantially greater.¹

Senate Bill 160

The bill would have no fiscal impact on State or local government.

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¹ For example, if the majority of vehicle sales were to have their pricing altered in this manner, it could reduce sales tax revenue by approximately \$1.5 billion per year.

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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.