

Legislative Analysis



2% EXCISE TAX ON SERVICES

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House Bill 4368

Sponsor: Rep. George Cushingberry, Jr.

Committee: Tax Policy

Complete to 3-13-07

A SUMMARY OF HOUSE BILL 4368 AS INTRODUCED 3-1-07

The bill would create a new act, known as the Service Providers Excise Tax Act, imposing a two percent excise tax on services. For FY 2007, revenue from the tax would be split between the General Fund (64.3%) and the School Aid Fund (35.7%). The bill also appropriates \$3 million from the General Fund to the Department of Treasury for the purposes of administering and enforcing the requirements of the act. The bill would take effect June 1, 2007.

Tax Rate, Tax Base, and Taxpayers

The bill would impose a specific tax of two percent (2%) of gross receipts on every person performing or delivering a service received in the state. The bill defines "service" to mean an activity for a fee, retainer, commission, or other consideration (including professional services) that predominantly involves the performance or delivery of a task or process (rather than the production or transfer of tangible personal property).

"Gross receipts" would be defined to mean the total amount of consideration (including cash, credit, property, and services) for which services are sold, valued in money, without any deduction for the service provider's costs, the cost of materials used or installed, labor costs, interest, losses, transportation costs, and other taxes and expenses. Gross receipts would not include discounts that are not reimbursed by a third party, financing charges from credit extended on the sale of services (if separately stated), or any taxes legally imposed directly on the purchased that are separately stated on an invoice, bill of sale, or other documentation.

Services Subject to Taxation

The bill lists numerous services subject to taxation. This list, the bill notes, is illustrative of the types of services subject to taxation, and is not exclusive. Services are referenced by the appropriate North American Industry Classification System (NAICS) code.

- Admissions to performing arts events
- Admissions to professional and semi-professional spectator sports
- Admissions to movies and video exhibitions
- Cable and other program distribution
- Amusement park admissions
- Dues and fees for golf courses and country clubs
- Operation of skiing facilities

- Operation of marinas
- Operation of bowling centers
- Repair and maintenance services (e.g. auto)
- Personal care services (e.g. hair cuts)
- Dry cleaning and laundry services
- Other personal services (e.g. bail bonding, dating services, shoe shining, wedding planning)
- Pest control and extermination
- Janitorial services
- Landscaping services
- Carpet and upholstery cleaning
- Building services (e.g. chimney, drain/gutter, swimming pool, and ventilation duct cleaning)
- Sightseeing transportation services
- Travel agency services
- Tour operator services
- Travel and reservation services (time-share, convention and visitor bureau services, automobile club services, ticket services)
- Amusement and recreation services (billiards, mini-golf, riding stables, day camps)
- Renting self-storage/warehouse units
- Operating self-storage/warehouse facilities
- Document preparation services
- Telephone call centers
- Business service centers
- Collection agencies
- Credit bureaus
- Other business services (e.g. fundraising, court reporting, mail presorting)
- Packaging and labeling services
- Organizing conventions and trade shows
- Advertising
- Armored car/private investigation service
- Security systems
- Waste collection
- Operating waste treatment and disposal facilities
- Remediation and other waste management services
- Veterinary services
- Funeral home services, cremation, embalming, internment
- Legal services
- Accounting services
- Architectural services
- Insurance agency and brokerage services
- Claims adjusting services
- Third party administration of insurance or pension funds
- Investment advice
- Real estate agents and brokers
- Real estate-related services (e.g. appraisals, property management)
- Courier and messenger services
- Office administration services
- Facilities support services
- Employment placement agency services
- Temporary help services
- Professional Employer Organization (PEO) services
- Managing nonfinancial intangible assets
- Other professional, scientific and technical services (e.g. market research, photography, translation, consumer credit counseling)
- Construction services
- Rail transportation services
- Truck transportation services
- Management, scientific and technical consulting services
- Other support services (e.g. water softening and conditioning, driving on a contract or fee basis)

Services Exempt from Taxation

The bill also lists many services that would be exempt from taxation.

- Services performed by an employee for an employer
- Services performed by a nonprofit school or educational institution serving student through the 12th grade
- Services performed by a church, hospital, parent cooperative preschool or 501(c)(3) or 501(c)(4) tax-exempt organization up to an aggregate amount of gross receipts of \$5,000 in any calendar year
- Wired telecommunication services
- Wireless telecommunication services
- Accommodations (except those rented for more than one month and those furnished by a hospital or nursing home)
- Water and sewer systems
- Air transportation
- Water transportation
- Pipeline transportation
- Publishing
- Motion pictures (except those subject to taxation)
- Sound recording
- Broadcasting
- Information and data processing
- Promoters of performing arts, sports, and similar events
- Agents and managers for artists, athletes, entertainers and other public figures
- Independent artists, writers, performers
- Museums, historical sites, zoos, parks
- Educational services
- Gambling authorized by law
- Health care and social assistance services
- Leasing residential buildings and dwellings
- Leasing nonresidential buildings
- Leasing other real estate
- Religious, grant-making, and civic services
- Internet access
- Computer system design
- Scientific research and development
- Finance and insurance services, except those listed above as taxable
- Services performed by the organizing entity of a qualified athletic event if the organizing entity is exempt as it relates to corporate sponsorships
- Interurban and rural bus transportation
- Urban transit systems
- Personal instruction
- Admission to intercollegiate sporting events
- Admission to concerts, theatrical performances, recitals occurring on the campus of a college or university that is performed predominantly by students and faculty
- Admission to state or county fairs
- Parking fees at Detroit Metro Airport
- Services provided by the state or any political subdivision funded by any tax or special assessment
- Services that the state is prohibited from taxing
- The portion of gross receipts for temporary help services or PEO's attributable to FICA, Medicare, etc

Organizations Exempt from Taxation

The bill also provides that services sold to any of the following organizations are also exempt from taxation. Many of these organizations are already exempt from taxation under the General Sales Tax Act.

- A nonprofit school, nonprofit hospital, or nonprofit home for the care of children or the aged operated by a governmental entity, church or religious organization, fraternal organization, veterans' organization, or corporation if income does not inure for the benefit of an individual or private shareholder and activities of the organization are carried out exclusively for the benefit of the public at-large.
- A parent cooperative preschool. The bill defines this to mean a nonprofit, nondiscriminatory educational institution administered by parent of the children enrolled in the school that, among other provisions, is licensed by the Department of Labor and Economic Growth.
- A regularly organized church or house of religious worship, except when services are mainly commercial in nature.
- A business enterprise (farm) using services such as tilling, planting, caring for, or harvesting things of the soil; breeding, raising, or caring for livestock, poultry, or horticultural products.
- The U.S. and related agencies and instrumentalities; the American Red Cross; the state and its departments, institutions, and political subdivisions.
- A 501(c)(3) or 501(c)(4) tax-exempt organization, only to the extent that the service is used to carry out the organization's purposes as stated in its bylaws or articles of incorporation.
- A manufacturer, for the direct use in manufacturing.
- Firms taking or extracting from the land ore, gas, coal timber, stone, gravel, clay, minerals, or other natural resource material, for direct use in extracting materials.
- Organizing entity of a qualified athletic event if the entity is or would be exempt from sales taxes, but only for services included as part of corporate sponsorships. (This would include, for example, the NCAA in selling corporate sponsorships for the Final Four or Frozen Four and the PGA in selling corporate sponsorships for Buick Open and other events in the state.)
- An intermediary. This would be a person to whom a service is sold and who specifically charges a third person (the ultimate recipient) for that service.

Registration

The bill would require that persons engaged in the business of performing or delivering services to register with the Department of Treasury and provide the department with the name and address of each agent operating in the state, the location of places of business, and other information deemed relevant. For foreign businesses, the Department of Labor and Economic Growth could not issue a certificate of authority authorizing it to transact business in Michigan unless, when the business applies for the certificate from DLEG, the business also applies for registration with the Department of Treasury.

A person that submits a certificate of dissolution or requests a certificate of withdrawal would be required to request from the Department of Treasury a certificate stating that taxes are not due. Failure to request the certificate would subject the person to penalties levied under the Revenue Act. (A similar provision exists in the General Sales Tax Act, MCL 205.65.)

Returns

Like the sales tax, excise tax returns would be due on the 20th of each month for sales of services from the previous month. The bill also incorporates other provisions concerning returns in the General Sales Tax Act, including permitting the Department of Treasury to establish a different schedule for filing returns and remitting payments, and setting the first business day as the day returns are to be filed if the 20th is a Saturday, Sunday, or holiday.

The bill also provides a discount to taxpayers who remit and pay their taxes early or on time. If taxes are paid by the 12th of the month, the discount is equal to $\frac{3}{4}$ of 1% of the tax due (up to \$20,000). If taxes are paid between the 12th and the 20th, the discount is $\frac{1}{2}$ of 1% of the tax due (up to \$15,000). The minimum discount would be \$12 (2% of \$600). There would be no discount for returns filed after the 20th of the month. (A similar provision exists in the General Sales Tax Act, MCL 205.54.)

A final return would be due 20 days after the date the taxpayer sells or quits the business.

Sourcing

The bill provides that transactions would be sourced as follows:

- If the service is received at the service provider's business location the service would be sourced to the business location.
- If the service is received at a location other than the provider's business location, the service would be sourced to the location where the service is received.
- If the service is not sourced to either of the locations above, the service would be sourced to the location listed as the purchaser's address in the records of the service provider (as long as the address does not constitute bad faith)

- If the service is not sourced to any of the locations above, the service would be sourced to the location listed as the purchaser's address on records obtained upon completion, such as the payment instrument, as long as the address does not constitute bad faith.
- If the service is not sourced to any of the locations above (or if there is insufficient information) the service would be sourced to location where the service is performed.

Record Retention

The bill would require taxpayers to keep accurate and complete daily records of services provided, receipts, invoices, and other information the Department of Treasury requires for four years after the tax is due. These records would have to be separate from records concerning other business activities not subject to the tax. Failure to maintain separate records would subject the taxpayer to tax on all of the taxpayer's gross receipts (including those that would not otherwise be subject to the tax).

Advertisement and Reimbursement

The bill provides that a service provider could not advertise or hold out to the public that the tax is not considered an element of the price to be paid by the purchaser. The bill also provides that a taxpayer may reimburse him or herself by adding the tax to the price of the service, and stating separately on an invoice or bill of sale the amount of the tax. (A similar provision exists in the General Sales Tax Act, MCL 205.73.)

Refunds and Credits

The bill provides that if a taxpayer provides a refund or credit for the amount paid for a service within the time prescribed by the taxpayer's refund policy or 180 days after the initial billing, whichever is sooner, the amount of tax paid would also have to be refunded or credited to the purchaser.

Penalties

Failure to comply with the bill's requirements would be a misdemeanor punishable by a fine between \$1,000 and \$5,000. A second or subsequent violation would be punishable by a fine between \$5,000 and \$50,000 and/or imprisonment of up to one year.

Revenue Disposition

Revenue from the tax would be distributed as follows:

- FY 2007: 64.3% to the General Fund; 35.7% to the School Aid Fund
- FY 2008: 50.9% to the General Fund; 39.4% to the School Aid Fund; and 9.7% to the Michigan Medicaid Benefits Trust Fund.
- FY 2009 and Beyond: 64.3% to the General Fund; 35.7% to the School Aid Fund

Administration

The tax would be administered by the Department of Treasury in accordance with the bill and the Revenue Act (1941 P.A. 122). The department could also promulgate rules to implement the act.

FISCAL IMPACT:

Based on the following information provided by the Department of Treasury, the excise tax is estimated to generate approximately \$1.47 billion in revenue during the 2007-08 fiscal year.

Sector	Business	Consumer	Total
Construction	\$213.6	\$128.4	\$342.0
Transportation and Warehousing Includes scenic transportation, couriers/messengers, ground passenger transportation, warehousing and storage	\$15.4	\$0.2	\$15.6
Administrative/Support/Waste Management Includes landscaping/lawn care, janitorial, waste management, extermination, investigation/security, and business support services	\$214.2	\$33.6	\$247.8
Arts, Entertainment, and Recreation Includes admissions to professional sporting events, movies, cultural events, racetracks, golf courses, marinas, ski facilities, amusement parks, bowling centers, and cable and satellite TV	\$11.3	\$89.7	\$101.0
Real Estate and Intangible Leasing Includes commissions on sale of real or personal property, mini-warehouses and self-storage, and management of copyrights and patents	\$49.9	\$24.8	\$74.7
Finance and Insurance Includes commissions or fees for agency or brokerages, 3rd-party administration, or claims adjusting and fees for investment advice	\$69.5	\$31.0	\$100.5
Professional, Scientific, and Technical Services Includes legal, accounting, architectural, engineering (except research engineering), consulting, and veterinary services	\$428.1	\$59.5	\$487.6
Other Services Includes repair and maintenance, personal care services, pet grooming, dry cleaning and laundry, pool cleaning and other personal services	\$26.5	\$78.1	\$104.6
Total Revenue Impact	\$1,028.5	\$445.3	\$1,473.8

Note: Dollar amounts are in millions.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.