

FIRST CONFERENCE REPORT

The Committee of Conference on the matters of difference between the two Houses concerning

House Bill No. 4539, entitled

A bill to amend 1933 PA 167, entitled "General sales tax act," by amending sections 2, 4, 6a, and 25 (MCL 205.52, 205.54, 205.56a, and 205.75), sections 2 and 4 as amended by 2004 PA 173, section 6a as amended by 2013 PA 1, and section 25 as amended by 2012 PA 226, and by adding section 2b.

Recommends:

First: That the Senate recede from the Substitute of the Senate as passed by the Senate.

Second: That the House and Senate agree to the Substitute of the House as passed by the House, amended to read as follows:

(attached)

Third: That the House and Senate agree to the title of the bill to read as follows:

A bill to amend 1933 PA 167, entitled "An act to provide for the raising of additional public revenue by prescribing certain specific taxes, fees, and charges to be paid to the state for the privilege of engaging in certain business activities; to provide, incident to the enforcement thereof, for the issuance of licenses to engage in such occupations; to provide for the ascertainment, assessment and collection thereof; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act," by amending sections 2, 4, 6a, and 25 (MCL 205.52, 205.54, 205.56a, and 205.75), sections 2 and 4 as amended

by 2004 PA 173, section 6a as amended by 2013 PA 1, and section 25
as amended by 2012 PA 226, and by adding section 4dd.

Jim Stamas

Arlan B. Meekhof

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Conferees for the House

Conferees for the Senate

SUBSTITUTE FOR
HOUSE BILL NO. 4539

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending sections 2, 4, 6a, and 25 (MCL 205.52, 205.54, 205.56a,
and 205.75), sections 2 and 4 as amended by 2004 PA 173, section 6a
as amended by 2013 PA 1, and section 25 as amended by 2012 PA 226,
and by adding section 4dd.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) Except as provided in section 2a, there is levied
2 upon and there shall be collected from all persons engaged in the
3 business of making sales at retail, by which ownership of tangible
4 personal property is transferred for consideration, an annual tax
5 for the privilege of engaging in that business equal to ~~6%~~7% of
6 the gross proceeds of the business, plus the penalty and interest

1 if applicable as provided by law, less deductions allowed by this
2 act.

3 (2) The tax under subsection (1) also applies to the
4 following:

5 (a) The transmission and distribution of electricity, whether
6 the electricity is purchased from the delivering utility or from
7 another provider, if the sale is made to the consumer or user of
8 the electricity for consumption or use rather than for resale.

9 (b) The sale of a prepaid telephone calling card or a prepaid
10 authorization number for telephone use, rather than for resale,
11 including the reauthorization of a prepaid telephone calling card
12 or a prepaid authorization number.

13 (c) A conditional sale, installment lease sale, or other
14 transfer of property, if title is retained as security for the
15 purchase but is intended to be transferred later.

16 (3) Any person engaged in the business of making sales at
17 retail who is at the same time engaged in some other kind of
18 business, occupation, or profession not taxable under this act
19 shall keep books to show separately the transactions used in
20 determining the tax levied by this act. If the person fails to keep
21 separate books, there shall be levied upon him or her the tax
22 provided for in subsection (1) equal to ~~6%~~ 7% of the entire gross
23 proceeds of both or all of his or her businesses. The taxes levied
24 by this section are a personal obligation of the taxpayer.

25 (4) A meal provided free of charge or at a reduced rate to an
26 employee during work hours by a food service establishment licensed
27 by the Michigan department of agriculture for the convenience of

1 the employer is not considered transferred for consideration.

2 Sec. 4. (1) In computing the amount of tax levied under this
3 act for any month, a taxpayer not subject to section 6(2) may
4 deduct the amount provided by subdivision (a) or (b), whichever is
5 greater:

6 (a) If the tax that accrued to this state from the sales at
7 retail during the preceding month is remitted to the department on
8 or before the twelfth day of the month in which remittance is due,
9 0.75% of the tax due at a rate of ~~4%~~**NOT MORE THAN 5%** for the
10 preceding monthly period, but not to exceed \$20,000.00 of the tax
11 due for that month. If the tax that accrued to this state from the
12 sales at retail during the preceding month is remitted to the
13 department after the twelfth day and on or before the twentieth day
14 of the month in which remittance is due, 0.50% of the tax due at a
15 rate of ~~4%~~**NOT MORE THAN 5%** for the preceding monthly period, but
16 not to exceed \$15,000.00 of the tax due for that month.

17 (b) The tax at a rate of ~~4%~~**NOT MORE THAN 5%** due on \$150.00 of
18 taxable gross proceeds for the preceding monthly period, or a
19 prorated portion of \$150.00 of the taxable gross proceeds for the
20 preceding month if the taxpayer engaged in business for less than a
21 month.

22 (2) Beginning January 1, 1999, in computing the amount of tax
23 levied under this act for any month, a taxpayer who is subject to
24 section 6(2) may deduct from the amount of the tax paid 0.50% of
25 the tax due at a rate of ~~4%~~**NOT MORE THAN 5%**.

26 (3) A deduction is not allowed under this section for payments
27 of taxes made to the department after the day the taxpayer is

1 required to pay, pursuant to section 6, the tax imposed by this
2 act.

3 (4) If, pursuant to section 6(4), the department prescribes
4 the filing of returns and the payment of the tax for periods in
5 excess of 1 month, a taxpayer is entitled to a deduction from the
6 tax collections remitted to the department for the extended payment
7 period that is equivalent to the deduction allowed under subsection
8 (1) or (2) for monthly periods.

9 (5) The department may prescribe the filing of estimated
10 returns and annual periodic reconciliations as necessary to carry
11 out the purposes of this section.

12 (6) A seller registered under the streamlined sales and use
13 tax agreement may claim a deduction under this section if provided
14 for in the streamlined sales and use tax administration act.

15 **SEC. 4DD. BEGINNING OCTOBER 1, 2015, THE TAX LEVIED UNDER THIS**
16 **ACT DOES NOT APPLY TO THE SALE OF GASOLINE OR DIESEL FUEL USED TO**
17 **OPERATE A MOTOR VEHICLE ON THE PUBLIC ROADS OR HIGHWAYS OF THIS**
18 **STATE.**

19 Sec. 6a. (1) Through March 31, 2013, at the time of purchase
20 or shipment from a refiner, pipeline terminal operator, or marine
21 terminal operator, a purchaser or receiver of gasoline shall prepay
22 a portion of the tax imposed by this act at the rate provided in
23 this section to the refiner, pipeline terminal operator, or marine
24 terminal operator for the purchase or receipt of gasoline. If the
25 purchase or receipt of gasoline is made outside this state for
26 shipment into and subsequent sale within this state, the purchaser
27 or receiver, other than a refiner, pipeline terminal operator, or

1 marine terminal operator, shall make the prepayment required by
2 this section directly to the department. Prepayments for gasoline
3 shall be made at a cents-per-gallon rate determined by the
4 department and shall be based on 6% of the statewide average retail
5 price of a gallon of self-serve unleaded regular gasoline as
6 determined and certified by the department rounded up to the
7 nearest 1/10 of 1 cent. A person that makes prepayments directly to
8 the department shall make those prepayments according to the
9 schedule in subsection (6).

10 (2) Beginning April 1, 2013 **THROUGH OCTOBER 1, 2015**, at the
11 time of purchase or shipment from a refiner, pipeline terminal
12 operator, or marine terminal operator, a purchaser or receiver of
13 fuel shall prepay a portion of the tax imposed by this act at the
14 rates provided in this section to the refiner, pipeline terminal
15 operator, or marine terminal operator for the purchase or receipt
16 of fuel. If the purchase or receipt of fuel is made outside this
17 state for shipment into and subsequent sale within this state, the
18 purchaser or receiver, other than a refiner, pipeline terminal
19 operator, or marine terminal operator, shall make the prepayment
20 required by this section directly to the department. Prepayments
21 for gasoline shall be made at a cents-per-gallon rate determined by
22 the department and shall be based on 6% of the statewide average
23 retail price of a gallon of self-serve unleaded regular gasoline as
24 determined and certified by the department rounded up to the
25 nearest 1/10 of 1 cent. Prepayments for diesel fuel shall be made
26 at a cents-per-gallon rate determined by the department and shall
27 be based on 6% of the statewide average retail price of a gallon of

1 undyed No. 2 ultra-low sulfur diesel fuel as determined and
2 certified by the department rounded up to the nearest 1/10 of 1
3 cent. A person that makes prepayments directly to the department
4 shall make those prepayments according to the schedule in
5 subsection (6).

6 (3) Through March 31, 2013, the rate of prepayment applied
7 pursuant to subsection (1) shall be determined every 3 months by
8 the department unless the department certifies that the change in
9 the statewide average retail price of a gallon of self-serve
10 unleaded regular gasoline has been less than 10% since the
11 establishment of the rate of prepayment then in effect.

12 (4) Beginning April 1, 2013, the rates of prepayment applied
13 pursuant to subsection (2) shall be determined every month by the
14 department. Notwithstanding subsection (3), the department shall
15 publish notice of the rates of prepayment applicable to gasoline
16 and diesel fuel pursuant to subsection (2) not later than the tenth
17 day of the month immediately preceding the month in which the rate
18 is effective.

19 (5) A person subject to tax under this act that makes
20 prepayment to another person as required by this section for
21 gasoline may claim an estimated prepayment credit on its regular
22 monthly return filed pursuant to section 6. The credit shall be for
23 prepayments made during the month for which the return is required
24 and shall be based upon the difference between prepayments made in
25 the immediately preceding month and collections of prepaid tax
26 received from sales or transfers during the month for which the
27 return required under section 6 is made. A sale or transfer for

1 which collection of prepaid tax is due the taxpayer is subject to a
2 bad debt deduction under section 4i, whether or not the sale or
3 transfer is a sale at retail. The credit shall not be reduced
4 because of actual shrinkage. A taxpayer that does not, in the
5 ordinary course of business, sell gasoline in each month of the
6 year may, with the approval of the department, base the initial
7 prepayment deduction in each tax year on prepayments made in a
8 month other than the immediately preceding month. The difference in
9 actual prepayments shall be reconciled on the annual return in
10 accordance with procedures prescribed by the department.

11 (6) Notwithstanding the other provisions for the payment and
12 remitting of tax due under this act, a refiner, pipeline terminal
13 operator, or marine terminal operator shall account for and remit
14 to the department the prepayments received pursuant to this section
15 in accordance with the following schedule:

16 (a) On or before the twenty-fifth of each month, prepayments
17 received after the end of the preceding month and before the
18 sixteenth of the month in which the prepayments are made.

19 (b) On or before the tenth of each month, payments received
20 after the fifteenth and before the end of the preceding month.

21 (7) A refiner, pipeline terminal operator, or marine terminal
22 operator that fails to remit prepayments made by a purchaser or
23 receiver of fuel is subject to the penalties provided by 1941 PA
24 122, MCL 205.1 to 205.31.

25 (8) The refiner, pipeline terminal operator, or marine
26 terminal operator shall not receive a deduction under section 4 for
27 receiving and remitting prepayments from a purchaser or receiver

1 pursuant to this section.

2 (9) The purchaser or receiver of fuel that makes prepayments
3 is not subject to further liability for the amount of the
4 prepayment if the refiner, pipeline terminal operator, or marine
5 terminal operator fails to remit the prepayment.

6 (10) A person subject to tax under this act that makes
7 prepayment to another person as required by this section for diesel
8 fuel may claim an estimated prepayment credit on its regular
9 monthly return filed pursuant to section 6. The credit shall be for
10 prepayments made during the month for which the return is required
11 and shall be based upon the difference between the prepayments made
12 in the immediately preceding month and collections of prepaid tax
13 received from sales or transfers during the month for which the
14 return required under section 6 is made. A sale or transfer for
15 which collection of prepaid tax is due the taxpayer is subject to a
16 bad debt deduction under section 4i, whether or not the sale or
17 transfer is a sale at retail. The credit shall not be reduced
18 because of actual shrinkage. A taxpayer that does not, in the
19 ordinary course of business, sell diesel fuel in each month of the
20 year may, with the approval of the department, base the initial
21 prepayment deduction in each tax year on prepayments made in a
22 month other than the immediately preceding month. Estimated
23 prepayment credits claimed with the return due in April 2013 shall
24 be based on the taxpayer's retail sales of diesel fuel in March
25 2013. The difference in actual prepayments shall be reconciled on
26 the annual return in accordance with procedures prescribed by the
27 department. Repayment of the credit claimed on the return due in

1 April 2013 shall be made by the earlier of the date that the
2 taxpayer stops selling diesel fuel or October 15, 2013.

3 (11) As used in this section:

4 (a) "Blendstock" includes all of the following:

5 (i) Any petroleum product component of fuel, such as naphtha,
6 reformat, or toluene.

7 (ii) Any oxygenate that can be blended for use in a motor fuel.

8 (b) "Boat terminal transfer" means a dock, a tank, or
9 equipment contiguous to a dock or a tank, including equipment used
10 in the unloading of fuel from a ship and in transferring the fuel
11 to a tank pending wholesale bulk reshipment.

12 (c) "Diesel fuel" means any liquid other than gasoline that is
13 capable of use as a fuel or a component of a fuel in a motor
14 vehicle that is propelled by a diesel-powered engine or in a
15 diesel-powered train. Diesel fuel includes number 1 and number 2
16 fuel oils and mineral spirits. Diesel fuel also includes any
17 blendstock or additive that is sold for blending with diesel fuel
18 and any liquid prepared, advertised, offered for sale, sold for use
19 as, or used in the generation of power for the propulsion of a
20 diesel-powered engine, airplane, or marine vessel. An additive or
21 blendstock is presumed to be sold for blending unless a
22 certification is obtained for federal purposes that the substance
23 is for a use other than blending for diesel fuel. Diesel fuel does
24 not include dyed diesel fuel, kerosene, or an excluded liquid.

25 (d) "Dyed diesel fuel" means diesel fuel that is dyed in
26 accordance with internal revenue service rules or pursuant to any
27 other internal revenue service requirements, including any

1 invisible marker requirements.

2 (e) "Excluded liquid" means that term as defined in 26 CFR
3 48.4081-1.

4 (f) "Fuel" means gasoline and diesel fuel that is subject to
5 tax under this act, collectively, except when gasoline or diesel
6 fuel is referred to separately.

7 (g) "Gasoline" means and includes gasoline, alcohol, gasohol,
8 casing head or natural gasoline, benzol, benzine, naphtha,
9 methanol, any blendstock additive, or other product that is sold
10 for blending with gasoline or for use on the road, other than
11 products typically sold in containers of less than 5 gallons.
12 Gasoline also includes a liquid prepared, advertised, offered for
13 sale, sold for use as, or used in the generation of power for the
14 propulsion of a motor vehicle, airplane, or marine vessel,
15 including a product obtained by blending together any 1 or more
16 products of petroleum, with or without another product, and
17 regardless of the original character of the petroleum products
18 blended, if the product obtained by the blending is capable of use
19 in the generation of power for the propulsion of a motor vehicle,
20 airplane, or marine vessel. The blending of all of the above-named
21 products, regardless of their name or characteristics, shall
22 conclusively be presumed to have been done to produce fuel, unless
23 the product obtained by the blending is entirely incapable of use
24 as fuel. An additive or blendstock is presumed to be sold for
25 blending unless a certification is obtained for federal purposes
26 that the substance is for a use other than blending for gasoline.
27 Gasoline does not include diesel fuel, dyed diesel fuel, kerosene,

1 or an excluded liquid.

2 (h) "Kerosene" means all grades of kerosene, including, but
3 not limited to, the 2 grades of kerosene, No. 1-K and No. 2-K,
4 commonly known as K-1 kerosene and K-2 kerosene, respectively,
5 described in American society for testing and materials
6 specification D-3699, in effect on January 1, 1999, and kerosene-
7 type jet fuel described in American society for testing and
8 materials specification D-1655 and military specifications MIL-T-
9 5624r and MIL-T-83133d (grades jp-5 and jp-8), and any successor
10 internal revenue service rules or regulations, as the specification
11 for kerosene and kerosene-type jet fuel. Kerosene does not include
12 an excluded liquid.

13 (i) "Marine terminal operator" means a person that stores fuel
14 at a boat terminal transfer.

15 (j) "Pipeline terminal operator" means a person that stores
16 fuel in tanks and equipment used in receiving and storing fuel from
17 interstate and intrastate pipelines pending wholesale bulk
18 reshipment.

19 (k) "Purchase" or "shipment" does not include an exchange of
20 fuel or an exchange transaction between refiners, pipeline terminal
21 operators, or marine terminal operators.

22 (l) "Refiner" means a person that manufactures or produces fuel
23 by any process involving substantially more than the blending of
24 fuel.

25 Sec. 25. (1) All money received and collected under this act
26 shall be deposited by the department in the state treasury to the
27 credit of the general fund, except as otherwise provided in this

1 section.

2 (2) Fifteen percent of the collections of the tax imposed at a
3 rate of ~~4%~~**NOT MORE THAN 5%** shall be distributed to cities,
4 villages, and townships pursuant to the Glenn Steil state revenue
5 sharing act of 1971, 1971 PA 140, MCL 141.901 to 141.921.

6 (3) Sixty percent of the collections of the tax imposed at a
7 rate of ~~4%~~**NOT MORE THAN 5%** shall be deposited in the state school
8 aid fund established in section 11 of article IX of the state
9 constitution of 1963 and distributed as provided by law. In
10 addition, all of the collections of the tax imposed at the
11 additional rate of 2% approved by the electors March 15, 1994 shall
12 be deposited in the state school aid fund.

13 (4) Not less than 27.9% of 25% of the collections of the
14 general sales tax imposed at a rate of ~~4%~~**NOT MORE THAN 5%** directly
15 or indirectly on fuels sold to propel motor vehicles upon highways,
16 on the sale of motor vehicles, and on the sale of the parts and
17 accessories of motor vehicles by new and used car businesses, used
18 car businesses, accessory dealer businesses, and gasoline station
19 businesses as classified by the department of treasury shall be
20 deposited each year into the comprehensive transportation fund
21 created in section 10b of 1951 PA 51, MCL 247.660b.

22 (5) For the fiscal year ending September 30, 2013 only, an
23 amount equal to 18% of the collections of the tax imposed at a rate
24 of ~~4%~~**NOT MORE THAN 5%** under this act from the sale of motor fuel,
25 as that term is defined in section 4 of the motor fuel tax act,
26 2000 PA 403, MCL 207.1004, shall be distributed as follows:

27 (a) An amount sufficient to match available federal highway

1 funds shall be deposited into the state trunk line fund created in
2 section 11 of 1951 PA 51, MCL 247.661, for the purpose of matching
3 federal aid highway funds as those federal funds are made available
4 to this state, but not less than 39.1% subject to subdivision (c).

5 (b) After the distribution under subdivision (a), any
6 remaining balance, subject to subdivision (c), shall be distributed
7 as follows:

8 (i) 66% to the county road commissions of this state, which
9 distribution shall be administered under section 12 of 1951 PA 51,
10 MCL 247.662.

11 (ii) 34% to the cities and villages of this state, which
12 distribution shall be administered under section 13 of 1951 PA 51,
13 MCL 247.663.

14 (c) Funds distributed under this subsection shall not exceed
15 \$100,000,000.00.

16 ~~—— (6) For the fiscal year ending September 30, 2013 only and~~
17 ~~except as otherwise limited in this subsection after the~~
18 ~~allocations and distributions are made pursuant to subsections (2)~~
19 ~~and (3), an amount equal to the collections of the tax imposed at a~~
20 ~~rate of 4% under this act from the sale at retail of aviation fuel~~
21 ~~and aviation products shall be deposited in the state aeronautics~~
22 ~~fund and shall be expended, on appropriation, only for those~~
23 ~~purposes authorized in the aeronautics code of the state of~~
24 ~~Michigan, 1945 PA 327, MCL 259.1 to 259.208. Not more than~~
25 ~~\$10,000,000.00 shall be deposited in the state aeronautics fund~~
26 ~~under this subsection. As used in this subsection, "state~~
27 ~~aeronautics fund" means the state aeronautics fund created in~~

~~section 34 of the aeronautics code of the state of Michigan, 1945
PA 327, MCL 259.34.~~

(6) ~~(7)~~—An amount equal to the collections of the tax imposed at a rate of ~~4%~~ **NOT MORE THAN 5%** under this act from the sale at retail of computer software as defined in section 1a shall be deposited in the Michigan health initiative fund created in section 5911 of the public health code, 1978 PA 368, MCL 333.5911, and shall be considered in addition to, and is not intended as a replacement for any other money appropriated to the department of community health. The funds deposited in the Michigan health initiative fund on an annual basis shall not be less than \$9,000,000.00 or more than \$12,000,000.00.

(7) ~~(8)~~—The balance in the state general fund shall be disbursed only on an appropriation or appropriations by the legislature.

Enacting section 1. This amendatory act does not take effect unless _____ House Joint Resolution _____ UU of the 97th Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 97th Legislature are enacted into law:

- (a) Senate Bill No. 80.
- (b) Senate Bill No. 423.
- (c) Senate Bill No. 847.
- (d) House Bill No. 5477.

1 (e) House Bill No. 5492.

2 Enacting section 3. This amendatory act takes effect October
3 1, 2015.