

Act No. 467
Public Acts of 2014
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**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

Introduced by Rep. Schmidt

ENROLLED HOUSE BILL No. 4539

AN ACT 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.

The People of the State of Michigan enact:

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

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

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

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

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

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

(4) A meal provided free of charge or at a reduced rate to an employee during work hours by a food service establishment licensed by the Michigan department of agriculture for the convenience of the employer is not considered transferred for consideration.

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

(a) If the tax that accrued to this state from the sales at retail during the preceding month is remitted to the department on or before the twelfth day of the month in which remittance is due, 0.75% of the tax due at a rate of not more than 5% for the preceding monthly period, but not to exceed \$20,000.00 of the tax due for that month. If the tax that accrued to this state from the sales at retail during the preceding month is remitted to the department after the twelfth day and on or before the twentieth day of the month in which remittance is due, 0.50% of the tax due at a rate of not more than 5% for the preceding monthly period, but not to exceed \$15,000.00 of the tax due for that month.

(b) The tax at a rate of not more than 5% due on \$150.00 of taxable gross proceeds for the preceding monthly period, or a prorated portion of \$150.00 of the taxable gross proceeds for the preceding month if the taxpayer engaged in business for less than a month.

(2) Beginning January 1, 1999, in computing the amount of tax levied under this act for any month, a taxpayer who is subject to section 6(2) may deduct from the amount of the tax paid 0.50% of the tax due at a rate of not more than 5%.

(3) A deduction is not allowed under this section for payments of taxes made to the department after the day the taxpayer is required to pay, pursuant to section 6, the tax imposed by this act.

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

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

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

Sec. 4dd. Beginning October 1, 2015, the tax levied under this act does not apply to the sale of gasoline or diesel fuel used to operate a motor vehicle on the public roads or highways of this state.

Sec. 6a. (1) Through March 31, 2013, at the time of purchase or shipment from a refiner, pipeline terminal operator, or marine terminal operator, a purchaser or receiver of gasoline shall prepay a portion of the tax imposed by this act at the rate provided in this section to the refiner, pipeline terminal operator, or marine terminal operator for the purchase or receipt of gasoline. If the purchase or receipt of gasoline is made outside this state for shipment into and subsequent sale within this state, the purchaser or receiver, other than a refiner, pipeline terminal operator, or marine terminal operator, shall make the prepayment required by this section directly to the department. Prepayments for gasoline shall be made at a cents-per-gallon rate determined by the department and shall be based on 6% of the statewide average retail price of a gallon of self-serve unleaded regular gasoline as determined and certified by the department rounded up to the nearest 1/10 of 1 cent. A person that makes prepayments directly to the department shall make those prepayments according to the schedule in subsection (6).

(2) Beginning April 1, 2013 through October 1, 2015, at the time of purchase or shipment from a refiner, pipeline terminal operator, or marine terminal operator, a purchaser or receiver of fuel shall prepay a portion of the tax imposed by this act at the rates provided in this section to the refiner, pipeline terminal operator, or marine terminal operator for the purchase or receipt of fuel. If the purchase or receipt of fuel is made outside this state for shipment into and subsequent sale within this state, the purchaser or receiver, other than a refiner, pipeline terminal operator, or marine terminal operator, shall make the prepayment required by this section directly to the department. Prepayments for gasoline shall be made at a cents-per-gallon rate determined by the department and shall be based on 6% of the statewide average retail price of a gallon of self-serve unleaded regular gasoline as determined and certified by the department rounded up to the nearest 1/10 of 1 cent. Prepayments for diesel fuel shall be made at a cents-per-gallon rate determined by the department and shall be based on 6% of the statewide average retail price of a gallon of undyed No. 2 ultra-low sulfur diesel fuel as determined and certified by the department rounded up to the nearest 1/10 of 1 cent. A person that makes prepayments directly to the department shall make those prepayments according to the schedule in subsection (6).

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

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

(5) A person subject to tax under this act that makes prepayment to another person as required by this section for gasoline may claim an estimated prepayment credit on its regular monthly return filed pursuant to section 6. The credit shall be for prepayments made during the month for which the return is required and shall be based upon the difference between prepayments made in the immediately preceding month and collections of prepaid tax received from sales or transfers during the month for which the return required under section 6 is made. A sale or transfer for which collection of prepaid tax is due the taxpayer is subject to a bad debt deduction under section 4i, whether or not the sale or transfer is a sale at retail. The credit shall not be reduced because of actual shrinkage. A taxpayer that does not, in the ordinary course of business, sell gasoline in each month of the year may, with the approval of the department, base the initial prepayment deduction in each tax year on prepayments made in a month other than the immediately preceding month. The difference in actual prepayments shall be reconciled on the annual return in accordance with procedures prescribed by the department.

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

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

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

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

(8) The refiner, pipeline terminal operator, or marine terminal operator shall not receive a deduction under section 4 for receiving and remitting prepayments from a purchaser or receiver pursuant to this section.

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

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

(11) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Fifteen percent of the collections of the tax imposed at a rate of not more than 5% shall be distributed to cities, villages, and townships pursuant to the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.901 to 141.921.

(3) Sixty percent of the collections of the tax imposed at a rate of not more than 5% shall be deposited in the state school aid fund established in section 11 of article IX of the state constitution of 1963 and distributed as provided by law. In addition, all of the collections of the tax imposed at the additional rate of 2% approved by the electors March 15, 1994 shall be deposited in the state school aid fund.

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

(5) For the fiscal year ending September 30, 2013 only, an amount equal to 18% of the collections of the tax imposed at a rate of not more than 5% under this act from the sale of motor fuel, as that term is defined in section 4 of the motor fuel tax act, 2000 PA 403, MCL 207.1004, shall be distributed as follows:

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

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

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

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

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

(6) An amount equal to the collections of the tax imposed at a rate of 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.

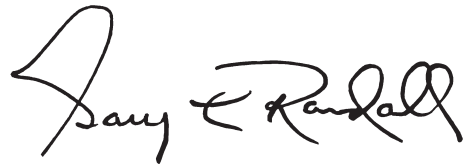
(7) The balance in the state general fund shall be disbursed only on an appropriation or appropriations by the legislature.

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.
- (e) House Bill No. 5492.

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



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor