

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

SFA**BILL ANALYSIS**

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1175 (as reported without amendment)
Sponsor: Senator Joanne G. Emmons
Committee: Finance

Date Completed: 4-17-00

RATIONALE

The General Sales Tax Act requires a taxpayer (anyone acting as a seller/retailer) to collect the sales tax on transfers of tangible personal property, and remit the tax to the State. The Act contains provisions under which certain sales to nonprofit organizations, churches, schools, farmers, industrial processors, etc. are exempt from the tax. If an exemption from the tax is claimed, the taxpayer must keep a record of the sale, including the name and address of the buyer, the sale date, the article purchased and its use, the sale amount, and the buyer's sales tax license number if the buyer has a license. If a taxpayer maintains the required records, and accepts an exemption certificate from the buyer in "good faith" on a Department of Treasury form, the taxpayer is not liable for collection of any unpaid tax if it is later found that the sale did not qualify for an exemption. "Good faith" means that the taxpayer exercised reasonable care and effort to determine that the purchaser was entitled to the exemption being claimed. It has been pointed out that, during an audit of a retailer, if the Department concludes that the retailer did not exercise "reasonable care and effort to determine that the purchaser was entitled to the exemption being claimed", then the Department charges the seller for the tax. Some people believe that it should not be the responsibility of a business to determine the validity of a purchaser's claim of tax-exempt status, beyond requiring proof of a completed and signed exemption certificate. It has been suggested that the "good faith" requirement be changed.

CONTENT

The bill would amend the General Sales Tax Act to revise the Act's requirements regarding the acceptance by a taxpayer of an exemption certificate; and extend from three years to four years the period during which a blanket exemption certificate may apply. The bill would delete the current "good faith" requirement (which provides that a taxpayer must exercise reasonable care and effort to determine that a purchaser is entitled to an

exemption), and provides instead that "good faith" would mean that the taxpayer had received a completed and signed exemption certificate from the buyer.

In addition, under the bill, a taxpayer's record of an exempt sale would have to indicate the type of exemption claimed. The bill would delete the requirement that a record include the use to be made of the article.

Further, the Act provides for a blanket exemption certificate, on a form prescribed by the Department of Treasury, that covers all tax-exempt transfers between a taxpayer and a buyer. A blanket exemption certificate applies for a three-year period, or for less than three years as stated on the certificate if that period is agreed to by the buyer and the taxpayer. The bill would extend the period to four years, or less than four years as stated on the certificate if that period were agreed to by the buyer and the taxpayer.

MCL 205.67

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Current requirements placed on sellers regarding acceptance of a purchaser's claim for a tax exemption are burdensome to business, and put the seller in an adversarial relationship with customers. Under the Act, a seller must exercise reasonable care and effort to determine that the purchaser is entitled to an exemption being claimed. This is a subjective standard, and puts a business in the position of having to challenge a customer to determine if a tax-exempt sale is appropriate. Further, during an audit the Department of Treasury may rule that a certain sale or type of sale is not exempt, even though an exemption was claimed. The Department then estimates the number of those sales that were made during the period covered by the audit, and charges the seller for the tax. The seller must pay the tax. The only way for the seller to recover the money it pays for the tax is to prove to the Department that the original exemption was valid (in which case the Department reimburses the seller); or, request payment of the tax from the purchaser if the seller determines that the purchaser's claim of exemption was invalid. Reportedly, retailers are reluctant to confront customers regarding taxes on sales that occurred several weeks in the past, and usually simply do not recover the tax.

The current requirements regarding exemption certificates are unfair to business. Enforcement of the sales tax should be the responsibility of the Department, which should itself question a purchaser if it doubts the validity of the purchaser's claim of a tax exemption. The bill would reduce the burden of proof currently placed on sellers by establishing a straightforward, objective definition of "good faith".

Supporting Argument

Provisions allowing a blanket exemption certificate were enacted in 1995 in response to concerns about the requirement that sellers keep a specific record of each transaction in which the purchaser has an exemption certificate. Previously, the Act made no exception to this requirement, regardless of the number of times a sale occurred between the same seller and a tax-exempt buyer. Evidently, this was burdensome to sellers that dealt primarily in sales to tax-exempt entities, and resulted in an unnecessary amount of paperwork for both the seller and the Department. Allowing the issuance of blanket exemption certificates eliminated the need for sellers to record every individual transaction and reduced the required paperwork. By extending the maximum duration of exemption certificates from three to four years, the bill would further simplify sellers' record-keeping responsibilities.

Legislative Analyst: G. Towne

FISCAL IMPACT

This bill would reduce the required oversight standards retailers must follow when transacting sales that a purchaser claims are exempt from the sales tax. It is therefore estimated that this bill would have a small negative impact on sales tax collections; however, not enough information exists to provide a meaningful dollar estimate of this impact at this time.

Fiscal Analyst: J. Wortley

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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.