

HOUSE BILL No. 5200

September 7, 2007, Introduced by Rep. Tobocman and referred to the Committee on Tax Policy.

A bill to amend 1933 PA 167, entitled "General sales tax act," by amending sections 2 and 6a (MCL 205.52 and 205.56a), section 2 as amended by 2004 PA 173 and section 6a as amended by 1993 PA 325.

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%, of the
6 gross proceeds of the business, plus the penalty and interest if
7 applicable as provided by law, less deductions allowed by this act.

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

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

5 (b) The sale of a prepaid telephone calling card or a prepaid
6 authorization number **OR CODE** for telephone use, rather than for
7 resale, including the reauthorization of a prepaid telephone
8 calling card or a prepaid authorization number **OR CODE**.

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

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

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

25 Sec. 6a. (1) At the time of purchase or shipment from a
26 refiner, pipeline terminal operator, or marine terminal operator, a
27 purchaser or receiver of gasoline shall prepay a portion of the tax

1 imposed by this act at the rate provided in this section to the
2 refiner, pipeline terminal operator, or marine terminal operator
3 for the purchase or receipt of gasoline. If the purchase or receipt
4 of gasoline is made outside this state for shipment into and
5 subsequent sale within this state, the purchaser or receiver, other
6 than a refiner, pipeline terminal operator, or marine terminal
7 operator, shall make the prepayment required by this section
8 directly to the department. Prepayments shall be made at a cents
9 per gallon rate determined by the department and shall be based on
10 6% of the statewide average retail price of a gallon of self-serve
11 unleaded regular gasoline as determined and certified by the
12 department rounded up to the nearest 1/10 of 1 cent. A person who
13 makes prepayments direct to the department shall make those
14 prepayments according to the schedule in subsection (5).

15 (2) The rate of prepayment applied pursuant to subsection (1)
16 shall be determined every 6 months by the department unless the
17 department certifies that the change in the statewide average
18 retail price of a gallon of self-serve unleaded regular gasoline
19 has been less than 10% during the 6-month period. However, the rate
20 shall be determined not less than annually.

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

1 from sales or transfers. A sale or transfer for which collection of
2 prepaid tax is due the taxpayer is subject to a bad debt deduction
3 under section 4i, whether or not the sale or transfer is a sale at
4 retail. The credit shall not be reduced because of actual
5 shrinkage. A taxpayer who does not, in the ordinary course of
6 business sell gasoline in each month of the year, may, with the
7 approval of the department, base the initial prepayment deduction
8 in each tax year on prepayments made in a month other than the
9 immediately preceding month. ~~Estimated prepayment credits claimed~~
10 ~~with the return due in January 1984 shall be based on the~~
11 ~~taxpayer's retail sales of gasoline in December 1983.~~ The
12 difference in actual prepayments shall be reconciled on the annual
13 return in accordance with procedures prescribed by the department.

14 (4) At the option of the taxpayer the estimated prepayment
15 credit may be claimed on the return required to be filed under ~~Act~~
16 ~~No. 150 of the Public Acts of 1927, being sections 207.101 to~~
17 ~~207.202 of the Michigan Compiled Laws~~ **THE MOTOR FUEL TAX ACT, 2000**
18 **PA 403, MCL 207.1001 TO 207.1170**, instead of a claim for the credit
19 on the return required to be filed under section 6. Prepayments
20 claimed on the motor fuel tax return shall be based on the
21 difference in the prepayments made in the immediately preceding
22 month and collections of prepaid tax received from sales or
23 transfer and shall be for prepayments made in the month in which
24 the return is due. A taxpayer electing an option under this
25 subsection shall be entitled to a deduction under section 4i as
26 permitted by subsection (3). Amounts credited pursuant to this
27 section shall not be deducted from amounts required to be credited

1 to the Michigan transportation fund pursuant to section ~~18b of Act~~
2 ~~No. 150 of the Public Acts of 1927, being section 207.118b of the~~
3 ~~Michigan Compiled Laws~~ **143 OF THE MOTOR FUEL TAX ACT, 2000 PA 403,**
4 **MCL 207.1143.** The department may establish procedures for the
5 election of claims under subsection (3) and this subsection to
6 avoid duplication of claims.

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

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

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

17 (6) A refiner, pipeline terminal operator, or marine terminal
18 operator who fails to remit prepayments made by a purchaser or
19 receiver of gasoline is subject to the penalties provided by ~~Act~~
20 ~~No. 122 of the Public Acts of 1941, being sections 205.1 to 205.31~~
21 ~~of the Michigan Compiled Laws~~ **1941 PA 122, MCL 205.1 TO 205.31.**

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

26 (8) The purchaser or receiver of gasoline who makes
27 prepayments is not subject to further liability for the amount of

1 the prepayment if the refiner, pipeline terminal operator, or
2 marine terminal operator fails to remit the prepayment.

3 (9) As used in this section:

4 (a) "Marine terminal operator" means a person who stores
5 gasoline at a boat terminal transfer defined as a dock, a tank, or
6 equipment contiguous to a dock or a tank, including equipment used
7 in the unloading of gasoline from a ship and in transferring the
8 gasoline to a tank pending wholesale bulk reshipment.

9 (b) "Pipeline terminal operator" means a person who stores
10 gasoline in tanks and equipment used in receiving and storing
11 gasoline from interstate and intrastate pipelines pending wholesale
12 bulk reshipment.

13 (c) "Purchase" or "shipment" does not include an exchange of
14 gasoline, or an exchange transaction, between refiners, pipeline
15 terminal operators, or marine terminal operators.

16 (d) "Refiner" means a person who manufactures or produces
17 gasoline by any process involving substantially more than the
18 blending of gasoline.