

SENATE BILL NO. 972

March 17, 2022, Introduced by Senators BARRETT and NESBITT and referred to the Committee on Transportation and Infrastructure.

A bill to amend 1933 PA 167, entitled "General sales tax act," by amending section 6a (MCL 205.56a), as amended by 2015 PA 264, and by adding section 4ii.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 4ii. (1) Beginning on the effective date of the**
2 **amendatory act that added this section, the sale of eligible fuel**
3 **is exempt from the tax imposed by this act.**

4 **(2) As used in this section, "eligible fuel" means any fuel**
5 **subject to the tax levied under the motor fuel tax act, 2000 PA**

1 403, MCL 207.1001 to 207.1170.

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

20 (2) Beginning April 1, 2013 through March 31, 2016, at the
21 time of purchase or shipment from a refiner, pipeline terminal
22 operator, or marine terminal operator, a purchaser or receiver of
23 fuel shall prepay a portion of the tax imposed by this act at the
24 rates provided in this section to the refiner, pipeline terminal
25 operator, or marine terminal operator for the purchase or receipt
26 of fuel. If the purchase or receipt of fuel is made outside this
27 state for shipment into and subsequent sale within this state, the
28 purchaser or receiver, other than a refiner, pipeline terminal
29 operator, or marine terminal operator, shall make the prepayment

1 required by this section directly to the department. Prepayments
 2 for gasoline ~~shall~~**must** be made at a cents-per-gallon rate
 3 determined by the department and ~~shall~~**must** be based on 6% of the
 4 statewide average retail price of a gallon of self-serve unleaded
 5 regular gasoline as determined and certified by the department
 6 rounded up to the nearest 1/10 of 1 cent. Prepayments for diesel
 7 fuel ~~shall~~**must** be made at a cents-per-gallon rate determined by
 8 the department and ~~shall~~**must** be based on 6% of the statewide
 9 average retail price of a gallon of undyed No. 2 ultra-low sulfur
 10 diesel fuel as determined and certified by the department rounded
 11 up to the nearest 1/10 of 1 cent. A person that makes prepayments
 12 directly to the department shall make those prepayments according
 13 to the schedule in subsection (6).

14 (3) Beginning April 1, 2016 **and until the effective date of**
 15 **the amendatory act that added section 4ii**, at the time of purchase
 16 or shipment in this state from a refiner, pipeline terminal
 17 operator, or marine terminal operator, a purchaser or receiver of
 18 fuel other than an exporter or supplier for immediate export, as
 19 evidenced by the terminal's shipping papers or bill of lading,
 20 shall prepay a portion of the tax imposed by this act at the rates
 21 provided in this section to the refiner, pipeline terminal
 22 operator, or marine terminal operator for the purchase or receipt
 23 of fuel. If the purchase or receipt of fuel is made outside this
 24 state for shipment into and subsequent sale within this state, the
 25 purchaser or receiver, other than a refiner, pipeline terminal
 26 operator, or marine terminal operator as part of a bulk transfer,
 27 shall make the prepayment required by this section directly to the
 28 department. Prepayments for gasoline ~~shall~~**must** be made at a cents-
 29 per-gallon rate determined by the department and ~~shall~~**must** be

1 based on 6% of the statewide average retail price of a gallon of
2 self-serve unleaded regular gasoline as determined and certified by
3 the department rounded up to the nearest 1/10 of 1 cent.
4 Prepayments for diesel fuel ~~shall~~**must** be made at a cents-per-
5 gallon rate determined by the department and ~~shall~~**must** be based on
6 6% of the statewide average retail price of a gallon of undyed No.
7 2 ultra-low sulfur diesel fuel as determined and certified by the
8 department rounded up to the nearest 1/10 of 1 cent. A person that
9 makes prepayments directly to the department shall make those
10 prepayments according to the schedule in subsection (6).

11 (4) The rates of prepayment applied pursuant to subsections
12 (2) and (3) shall be determined every month by the department. The
13 department shall publish notice of the rates of prepayment
14 applicable to gasoline and diesel fuel pursuant to subsections (2)
15 and (3) not later than the tenth day of the month immediately
16 preceding the month in which the rate is effective.

17 (5) A person subject to tax under this act that makes
18 prepayment to another person as required by this section for
19 gasoline may claim an estimated prepayment credit on its regular
20 monthly return filed pursuant to section 6. The credit ~~shall~~**must**
21 be for prepayments made during the month for which the return is
22 required and ~~shall~~**must** be based upon the difference between
23 prepayments made in the immediately preceding month and collections
24 of prepaid tax received from sales or transfers during the month
25 for which the return required under section 6 is made. A sale or
26 transfer for which collection of prepaid tax is due the taxpayer is
27 subject to a bad debt deduction under section 4i, whether or not
28 the sale or transfer is a sale at retail. The credit ~~shall~~**must** not
29 be reduced because of actual shrinkage. A taxpayer that does not,

1 in the ordinary course of business, sell gasoline in each month of
 2 the year may, with the approval of the department, base the initial
 3 prepayment deduction in each tax year on prepayments made in a
 4 month other than the immediately preceding month. The difference in
 5 actual prepayments ~~shall~~**must** be reconciled on the annual return ~~in~~
 6 ~~accordance with~~**pursuant to** procedures prescribed by the
 7 department.

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

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

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

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

22 (8) 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 (9) The purchaser or receiver of fuel that makes prepayments
 27 is not subject to further liability for the amount of the
 28 prepayment if the refiner, pipeline terminal operator, or marine
 29 terminal operator fails to remit the prepayment.

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

26 (11) As used in this section:

27 (a) "Alcohol" means fuel grade ethanol or a mixture of fuel
 28 grade ethanol and another product.

29 (b) "Blendstock" includes all of the following:

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

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

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

8 (d) "Bulk transfer" means a transfer of fuel from, or purchase
9 for resale by, a refiner, pipeline terminal operator, or marine
10 terminal operator to or from another refiner, pipeline terminal
11 operator, or marine terminal operator through pipeline tender or
12 marine delivery, including pipeline movements of fuel or marine
13 vessel movements of fuel. Bulk transfer also includes a transaction
14 involving the transfer by any transportation means to, or purchase
15 for resale by, a refiner, pipeline terminal operator, or marine
16 terminal operator of alcohol to be used exclusively for blending
17 with gasoline. Notwithstanding anything to the contrary in this
18 definition, fuel transferred to, or purchased for resale by, a
19 refiner, pipeline terminal operator, or marine terminal operator
20 must be delivered to, or otherwise remain within, the bulk transfer
21 terminal system ~~prior to~~ **before** removal across the rack ~~in order to~~
22 constitute a bulk transfer.

23 (e) "Bulk transfer terminal system" means the fuel
24 distribution system consisting of refineries, pipelines, marine
25 vessels, and terminals and includes fuel storage tanks and fuel
26 storage facilities that are part of a refinery, boat terminal
27 transfer, or terminal owned, operated, or controlled by a refiner,
28 marine terminal operator, or pipeline terminal operator.

29 (f) "Diesel fuel" means any liquid other than gasoline that is

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

13 (g) "Dyed diesel fuel" means diesel fuel that is dyed ~~in~~
14 ~~accordance with internal revenue service~~ **pursuant to Internal**
15 **Revenue Service** rules or pursuant to any other ~~internal revenue~~
16 ~~service~~ **Internal Revenue Service** requirements, including any
17 invisible marker requirements.

18 (h) "Dyed kerosene" means kerosene that is dyed ~~in accordance~~
19 ~~with internal revenue service~~ **pursuant to Internal Revenue Service**
20 rules or pursuant to any other ~~internal revenue service~~ **Internal**
21 **Revenue Service** requirements, including invisible marker
22 requirements.

23 (i) "Excluded liquid" means that term as defined in 26 CFR
24 48.4081-1.

25 (j) "Export" means to purchase or receive fuel in this state
26 for immediate shipment and subsequent sale outside of this state.

27 (k) "Exporter" means a person that exports fuel and is
28 licensed under section 86 of the motor fuel tax act, 2000 PA 403,
29 MCL 207.1086.

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

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

26 (n) "Kerosene" means all grades of kerosene, including, but
27 not limited to, the 2 grades of kerosene, No. 1-K and No. 2-K,
28 commonly known as K-1 kerosene and K-2 kerosene, respectively,
29 described in American ~~society for testing and materials~~ **Society for**

1 **Testing and Materials** specification D-3699, in effect on January 1,
2 1999, and kerosene-type jet fuel described in American ~~society for~~
3 ~~testing and materials~~ **Society for Testing and Materials**
4 specification D-1655 and military specifications MIL-T-5624r and
5 MIL-T-83133d (grades jp-5 and jp-8), and any successor ~~internal~~
6 ~~revenue service~~ **Internal Revenue Service** rules or regulations, as
7 the specification for kerosene and kerosene-type jet fuel. Kerosene
8 does not include dyed kerosene or an excluded liquid.

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

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

15 (q) "Purchase", "receipt", or "shipment" does not include a
16 two-party exchange, a bulk transfer, or a receipt of fuel as part
17 of a bulk transfer.

18 (r) "Rack" means a mechanism for delivering fuel from a
19 refiner, a pipeline terminal operator, or a marine terminal
20 operator into a railroad tank car, a transport truck, a tank wagon,
21 or the fuel supply tank of a marine vessel.

22 (s) "Refiner" means a person that meets all of the following
23 requirements:

24 (i) Manufactures or produces fuel at a refinery by any process
25 involving substantially more than the blending of fuel.

26 (ii) Is a taxable fuel registrant that is a refiner for
27 purposes of 26 CFR 48.4081-1.

28 (t) "Refinery" means a facility used by a refiner to produce
29 fuel from crude oil, unfinished oils, natural gas liquids, or other

1 hydrocarbons and from which fuel may be removed by pipeline or
2 marine vessel or at a rack.

3 (u) "Removal" or "removed" means a physical transfer other
4 than by evaporation, loss, or destruction of fuel from a refiner,
5 pipeline terminal operator, or marine terminal operator.

6 (v) "Supplier" means a supplier or permissive supplier
7 licensed under section 70 or 73 of the motor fuel tax act, 2000 PA
8 403, MCL 207.1070 and 207.1073.

9 (w) "Tank wagon" means a straight truck having 1 or more
10 compartments other than the fuel supply tank designed or used to
11 carry fuel.

12 (x) "Terminal" means a fuel storage and distribution facility
13 that meets all of the following requirements:

14 (i) Is registered as a qualified terminal by the ~~internal~~
15 ~~revenue service.~~ **Internal Revenue Service.**

16 (ii) Is supplied by pipeline or marine vessel.

17 (iii) Has a rack from which fuel may be removed.

18 (y) "Transport truck" means a semitrailer combination rig
19 designed or used for the purpose of transporting fuel over the
20 public roads or highways.

21 (z) "Transmix" means the mixed product that results from the
22 buffer or interface of 2 different products in a pipeline shipment,
23 or a mixture of 2 different products within a terminal operated by
24 a pipeline terminal operator, within a boat terminal transfer
25 operated by a marine terminal operator, or at a refinery that
26 results in an off-grade mixture.

27 (aa) "Two-party exchange" means a transaction, including a
28 book transfer, in which fuel is transferred from 1 supplier to
29 another supplier where all of the following occur:

1 (i) The transaction includes a transfer of fuel from the person
2 who holds the original inventory position for the fuel in fuel
3 storage tanks as reflected in the records of the refiner, pipeline
4 terminal operator, or marine terminal operator.

5 (ii) The exchange transaction is completed before removal
6 across the rack by the receiving supplier.

7 (iii) The refiner, pipeline terminal operator, or marine
8 terminal operator in its books and records treats the receiving
9 exchange party as the supplier that removes the fuel across a rack
10 for purposes of reporting the transaction to the department under
11 the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170.