

# Legislative Analysis



## SALES AND USE TAX EXEMPTION OF DELIVERY AND INSTALLATION CHARGES

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**House Bill 4039 as enacted**  
**Public Act 20 of 2023**  
**Sponsor: Rep. Pat Outman**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 4253 as enacted**  
**Public Act 21 of 2023**  
**Sponsor: Rep. Kevin Coleman**

**Committee: Tax Policy**  
**Complete to 7-26-23**

### SUMMARY:

**House Bills 4039 and 4253** respectively amend the General Sales Tax Act and the Use Tax Act to exempt certain delivery and installation costs from inclusion in the *sales price* (in the Sales Tax Act) and *purchase price* (in the Use Tax Act) on which the taxes are based. Specifically, under the bills, sales and use taxes are not imposed on delivery or installation charges if those charges are separately stated on the invoice, bill of sale, or similar document provided to the purchaser and the seller maintained its books and records to show separately the transactions used to determine the tax levied by the applicable act. (However, this does not apply to charges for delivery of gas or electricity by a utility.)

*Sales price* is defined in the General Sales Tax Act as the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, and applies to the measure subject to sales tax.

*Purchase price* is defined in the Use Tax Act as the total amount of consideration paid by the consumer to the seller, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, and applies to the measure subject to use tax.

Both of the above definitions also list several categories that are *included* in the term and several categories that are *excluded*.

Prior to the bills' enactment, the list of *included* costs and charges included the following:<sup>1</sup>

- Delivery charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property subject to the tax levied under this act from the seller to the purchaser.
- Installation charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property from the seller to the purchaser.

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<sup>1</sup> See RAB 2015-17 for further discussion: [https://www.michigan.gov/taxes/-/media/Project/Websites/treasury/Reports/2015/2015\\_RAB\\_201517\\_Delivery\\_Charges.pdf](https://www.michigan.gov/taxes/-/media/Project/Websites/treasury/Reports/2015/2015_RAB_201517_Delivery_Charges.pdf)

Under the bills, delivery and installation charges can be *excluded* if both of the following apply:

- Those charges are separately stated on the invoice, bill of sale, or similar document provided to the purchaser.
- The seller maintains its books and records to show separately the transactions used to determine the applicable tax.

However, the above exclusion does *not* apply to delivery and installation charges involving or relating to the sale of electricity or natural or artificial gas by a *utility*.

A *utility* means a person regulated by the Michigan Public Service Commission (MPSC) as a utility or a person that operates equipment or facilities for producing generating, transmitting, delivering, or furnishing electricity within the state for the public for compensation, regardless of the person's owner, ownership structure, or regulation by the MPSC.

The bills also hold the State School Aid Fund harmless from any reduction by requiring an amount to be deposited into that fund that is equal to all revenue lost to the fund as a result of the exclusion of delivery and installation charges from taxation. This deposit is in addition to others already required by the acts.

Finally, and notwithstanding anything to the contrary in either act, the Department of Treasury must cancel any outstanding balances on notices of intent to assess or final assessments that were issued before the bills took effect that are related to delivery or installation charges that are exempt under the bills (except the delivery or installation involving or relating to the sale of electricity, natural gas, or artificial gas by a utility). The department must cancel these balances within 90 days of the applicable bill's effective date and cannot issue any new assessments on these activities from the period before the bill took effect.

House Bill 4039 also adds limited liability companies to the definition of *person* under the General Sales Tax Act (they were already included in the Use Tax Act definition).

HB 4039: MCL 205.51 and 205.75

HB 4253: MCL 205.92 and 205.111

The bills took effect April 26, 2023.

## **BACKGROUND AND BRIEF DISCUSSION:**

According to House committee testimony, state law on when to apply sales or use tax to delivery and installation charges was unclear, which created uncertainty for businesses and led to situations in which they were told they owed taxes on sales for which the taxes were not collected.

As described in the Department of Treasury Revenue Administrative Bulletin (RAB) 2015-17, "whether ownership of the property is transferred *before* or *after* the delivery or installation charges are *incurred*" previously determined whether those charges were subject to tax (emphases in original). Most commonly, if delivery or installation charges were invoiced separately from the purchase itself (i.e., not itemized on the purchase invoice as something like

“Shipping and Handling”), then those charges were considered to have been made after the transfer of ownership of the property and were therefore not taxable. Many sellers were unaware of, or unclear about, this differing tax treatment of delivery and installation charges based on when the transfer of ownership was considered effected and when the delivery or installation charges were incurred in relation to that transfer.

Supporters of the bills argued that they would clarify state policy and provide clearer and less complicated guidelines for both businesses and the Department of Treasury. They also argued that during a period of high inflation, the state should find ways to provide tax relief wherever it can.

Opponents of the legislation pointed to the impact that the loss of revenue would have on state finances, particularly in conjunction with other tax-related legislation being considered at the time. In addition, some expressed concern about who the bills would benefit, noting that many of the items that may require delivery (e.g., new furniture, kitchen appliances, etc.) are less likely to be purchased by those most in need of tax relief.

#### **FISCAL IMPACT:**

The bills would reduce sales and use tax revenues by an indeterminate amount. Purely as an order of magnitude, combined sales and use tax revenue in FY 2023-24 is expected to total about \$12.8 billion. If delivery and installation costs comprise 0.5% of total collections, the revenue reduction would approach \$65.0 million. Given the hold harmless language, the School Aid Fund will be protected from the revenue reduction, although general fund revenue and sales tax revenue constitutionally earmarked to local revenue sharing will decline.

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