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House Bill 4377 (Substitute H-1 as reported without amendment)  
House Bill 4378 (Substitute H-1 as reported without amendment)  
Sponsor: Representative Brenda Carter (H.B. 4377)  
Representative Cynthia Neely (H.B. 4378)  
House Committee: Insurance and Financial Services  
Tax Policy  
Senate Committee: Finance, Insurance, and Consumer Protection

## **CONTENT**

House Bill 4377 (H-1) would amend the Use Tax Act to do the following:

- Exempt bottled water, candy, food sold in an unheated state, and food sold with eating utensils provided by the seller from the Use Tax.
- Specify the calculation for determining prepared food sales percentage and require a seller to calculate the prepared food sales percentage annually.

House Bill 4378 (H-1) would amend the General Sales Tax Act to do the following:

- Exempt bottled water, candy, food sold in an unheated state, and food sold with eating utensils provided by the seller from the Sales Tax.
- Specify the calculation for determining prepared food sales percentage and require a seller to calculate the prepared food sales percentage annually.

MCL 205.94d (H.B. 4377)  
205.54g (H.B. 4378)

## **BRIEF RATIONALE**

In 2007, the Department of Treasury adopted a rule defining "food sold with eating utensils to the seller" in the Michigan Administrative Code in compliance with the Streamlined Sales and Use Tax Agreement (SSUTA). The SSUTA is made up of 23 member states with the goal of simplifying and making uniform sales and use tax collection for the ease of retailers operating businesses in multiple states. In November 2020, the Court of Appeals issued a decision that invalidated the rule because it conflicted with statutory language. Accordingly, it has been suggested that statute be amended to maintain compliance with SSUTA.

Legislative Analyst: Eleni Lionas

## **FISCAL IMPACT**

Based on estimates from the Michigan Department of Treasury, the bills would reduce State and local unit revenue by approximately \$0.5 million per year.

Approximately 73% of sales tax revenue is constitutionally earmarked to the School Aid Fund, 10% is constitutionally earmarked to local revenue sharing, and the remainder is deposited into the General Fund. Of the State's share of use tax revenue (after the local use tax enacted as personal property tax reform), revenue at a rate of 2% is constitutionally directed to the School Aid Fund, while the General Fund receives any remaining State use tax revenue. The

bills' effect on each fund (and local unit revenue) would depend on the relative impact of the exemption between the sales tax and the use tax. The overwhelming majority of the impact is expected to reflect the sales tax exemption. If 100% of the affected sales were under the sales tax, the bill would reduce School Aid Fund revenue by approximately \$0.4 million per year, and constitutional revenue sharing and General Fund revenue by approximately \$0.1 million per year.

Date Completed: 9-22-23

Fiscal Analyst: David Zin

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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.