

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 881

[A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending sections 4d, 4u, and 6a (MCL 205.54d, 205.54u, and 205.56a),
section 4d as added and section 4u 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. 4d. The following are exempt from the tax under this act:

2 (a) The sale of tangible personal property to a person who is
3 a lessor licensed under the use tax act, 1937 PA 94, MCL 205.91 to
4 205.111, and whose rental receipts are taxed or specifically exempt
5 under the use tax act.

6 (b) The sale of a vehicle acquired for lending or leasing to a
7 public or parochial school for use in a course in driver education.

8 (c) The sale of a vehicle purchased by a public or parochial
9 school if that vehicle is certified for driver education and is not

1 reassigned for personal use by the school's administrative
2 personnel.

3 (d) The sale of water through water mains, the sale of water
4 delivered in bulk tanks in quantities of not less than 500 gallons,
5 or the sale of bottled water.

6 (e) The sale of tangible personal property to a person for
7 demonstration purposes. For a dealer selling a new car or truck,
8 the exemption for demonstration purposes shall be determined by the
9 number of new cars and trucks sold during the current calendar year
10 or the immediately preceding year without regard to specific make
11 or style in accordance with the following schedule of 0 to 25, 2
12 units; 26 to 100, 7 units; 101 to 500, 20 units; 501 or more, 25
13 units; but not to exceed 25 cars and trucks in a calendar year for
14 demonstration purposes.

15 (f) Specific charges for technical support or for adapting or
16 modifying prewritten computer software programs to a purchaser's
17 needs or equipment if those charges are separately stated and
18 identified.

19 (g) The sale of computer software originally designed for the
20 exclusive use and special needs of the purchaser.

21 (h) The sale of a commercial advertising element if the
22 commercial advertising element is used to create or develop a
23 print, radio, television, or other advertisement, the commercial
24 advertising element is discarded or returned to the provider after
25 the advertising message is completed, and the commercial
26 advertising element is custom developed by the provider for the
27 purchaser. As used in this subdivision, "commercial advertising

1 element" means a negative or positive photographic image, an
2 audiotape or videotape master, a layout, a manuscript, writing of
3 copy, a design, artwork, an illustration, retouching, and
4 mechanical or keyline instructions. This exemption does not include
5 black and white or full color process separation elements, an
6 audiotape reproduction, or a videotape reproduction.

7 (i) A sale made outside of the ordinary course of the seller's
8 business.

9 (j) An isolated transaction by a person not licensed or
10 required to be licensed under this act, in which tangible personal
11 property is offered for sale, sold, or transferred and delivered by
12 the owner.

13 (k) The sale of oxygen for human use dispensed pursuant to a
14 prescription.

15 (l) The sale of insulin for human use.

16 **(M) BEFORE JANUARY 1, 2014, THE SALE OF TANGIBLE PERSONAL**
17 **PROPERTY FOR USE IN CONSTRUCTION OR RENOVATION OF A QUALIFIED**
18 **CONVENTION FACILITY UNDER THE REGIONAL CONVENTION FACILITY**
19 **AUTHORITY ACT.**

20 Sec. 4u. (1) A sale of tangible personal property to an
21 extractive operator for use or consumption in extractive operations
22 is exempt from the tax under this act.

23 (2) The property under subsection (1) is exempt only to the
24 extent that the property is used for the exempt purposes stated in
25 this section. The exemption is limited to the percentage of exempt
26 use to total use determined by a reasonable formula or method
27 approved by the department.

1 (3) Extractive operations include the actual production of
2 oil, gas, brine, or other natural resources. Property eligible for
3 the exemption includes the following:

4 (a) Casing pipe or drive pipe.

5 (b) Tubing.

6 (c) Well-pumping equipment.

7 (d) Chemicals.

8 (e) Explosives or acids used in fracturing, acidizing, or
9 shooting wells.

10 (f) Christmas trees, derricks, or other wellhead equipment.

11 (g) Treatment tanks.

12 (h) Piping, valves, or pumps used before movement or
13 transportation of the natural resource from the production area.

14 (i) Chemicals or acids used in the treatment of crude oil,
15 gas, brine, or other natural resources.

16 (j) Tangible personal property used or consumed in depositing
17 tailings from hard rock mining processing.

18 (k) Tangible personal property used or consumed in extracting
19 the lithologic units necessary to process iron ore.

20 (4) The extractive operation exemption does not include the
21 following:

22 (a) Tangible personal property consumed or used in the
23 construction, alteration, improvement, or repair of buildings,
24 storage tanks, and storage and housing facilities.

25 (b) Tangible personal property consumed or used in
26 transporting the product from the place of extraction, except for
27 tangible personal property consumed or used in transporting

1 extracted materials from the extraction site to the place where the
2 extracted materials first come to rest in finished goods inventory
3 storage.

4 (c) Tangible personal property that is a product the
5 extractive operator produces and that is consumed or used by the
6 extractive operator for a purpose other than the manufacturing or
7 producing of a product for ultimate sale. The extractor shall
8 account for and remit the tax to this state based upon the
9 product's fair market value.

10 (d) Equipment, materials, and supplies used in exploring,
11 prospecting, or drilling for oil, gas, brine, or other natural
12 resources.

13 (e) Equipment, materials, and supplies used in the storing,
14 withdrawing, or distribution of oil, gas, or brine from a storage
15 facility.

16 (f) Vehicles, including special bodies or attachments,
17 required to display a vehicle permit or license plate to operate on
18 public highways.

19 (5) As used in this section:

20 (a) "Extractive operations" means the activity of taking or
21 extracting for resale ore, oil, gas, coal, timber, stone, gravel,
22 clay, minerals, or other natural resource material. An extractive
23 operation begins when contact is made with the actual type of
24 natural raw product being recovered. Extractive operation includes
25 all necessary processing operations before shipment from the place
26 of extraction. Extractive operations ~~includes~~ **INCLUDE** all necessary
27 processing operations and movement of the natural resource material

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 1 until the point at which the natural raw product being recovered
 2 first comes to rest in finished goods inventory storage at the
 3 extraction site. **EXTRACTIVE OPERATIONS FOR TIMBER INCLUDE**
 4 **TRANSPORTING TIMBER FROM THE POINT OF EXTRACTION TO A PLACE OF**
 5 **TEMPORARY STORAGE AT THE EXTRACTION SITE AND LOADING OR**
 6 **TRANSPORTING TIMBER FROM A PLACE OF TEMPORARY STORAGE AT THE**
 7 **EXTRACTION SITE TO A VEHICLE OR OTHER EQUIPMENT LOCATED AT THE**
 8 **EXTRACTION SITE THAT WILL REMOVE THE TIMBER FROM THE EXTRACTION**
 9 **SITE.**

10 (b) An extractive operator is a person who, either directly or
 11 by contract, performs extractive operations.

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

(2) The rate of prepayment applied pursuant to subsection (1) shall be determined every ~~6-3~~ months by the department unless the department certifies that the change in the statewide average retail price of a gallon of self-serve unleaded regular gasoline has been less than 10% ~~during the 6-month period. However, the rate shall be determined not less than annually~~ **SINCE THE ESTABLISHMENT OF THE RATE OF PREPAYMENT THEN IN EFFECT.**

(3) A person subject to tax under this act who makes prepayment to another person as required by this section may claim an estimated prepayment credit on its regular monthly return filed pursuant to section 6. The credit shall be for prepayments made during the month for which the return is required and shall be based upon the difference between prepayments made in the immediately preceding month and collections of prepaid tax received from sales or transfers. A sale or transfer for which collection of prepaid tax is due the taxpayer is subject to a bad debt deduction under section 4i, whether or not the sale or transfer is a sale at retail. The credit shall not be reduced because of actual shrinkage. A taxpayer who does not, in the ordinary course of business sell gasoline in each month of the year, may, with the approval of the department, base the initial prepayment deduction in each tax year on prepayments made in a month other than the immediately preceding month. ~~Estimated prepayment credits claimed with the return due in January 1984~~

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~~shall be based on the taxpayer's retail sales of gasoline in December 1983. The difference in actual prepayments shall be reconciled on the annual return in accordance with procedures prescribed by the department.~~

~~(4) At the option of the taxpayer the estimated prepayment credit may be claimed on the return required to be filed under Act No. 150 of the Public Acts of 1927, being sections 207.101 to 207.202 of the Michigan Compiled Laws, instead of a claim for the credit on the return required to be filed under section 6. Prepayments claimed on the motor fuel tax return shall be based on the difference in the prepayments made in the immediately preceding month and collections of prepaid tax received from sales or transfer and shall be for prepayments made in the month in which the return is due. A taxpayer electing an option under this subsection shall be entitled to a deduction under section 4i as permitted by subsection (3). Amounts credited pursuant to this section shall not be deducted from amounts required to be credited to the Michigan transportation fund pursuant to section 18b of Act No. 150 of the Public Acts of 1927, being section 207.118b of the Michigan Compiled Laws. The department may establish procedures for the election of claims under subsection (3) and this subsection to avoid duplication of claims.~~

~~(4) (5)~~ Notwithstanding the other provisions for the payment and remitting of tax due under this act, a refiner, pipeline terminal operator, or marine terminal operator shall account for and remit to the department the prepayments received pursuant to this section in accordance with the following schedule:

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

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

~~(5) (6)~~ A refiner, pipeline terminal operator, or marine terminal operator who fails to remit prepayments made by a purchaser or receiver of gasoline is subject to the penalties provided by ~~Act No. 122 of the Public Acts of 1941, being sections 205.1 to 205.31 of the Michigan Compiled Laws 1941 PA 122, MCL 205.1 TO 205.31.~~

~~(6) (7)~~ The refiner, pipeline terminal operator, or marine terminal operator shall not receive a deduction under section 4 for receiving and remitting prepayments from a purchaser or receiver pursuant to this section.

~~(7) (8)~~ The purchaser or receiver of gasoline who makes prepayments is not subject to further liability for the amount of the prepayment if the refiner, pipeline terminal operator, or marine terminal operator fails to remit the prepayment.

~~(8) (9)~~ As used in this section:

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

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

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

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

12 Enacting section 1. This amendatory act does not take effect

13 unless all of the following bills of the 94th Legislature are

14 Senate Bill No. 881 (H-2) as amended December 19, 2008 (3 of 3)
enacted into law:

15 (a) Senate Bill No. 880.

16 (b) Senate Bill No. 1630.

17 (c) Senate Bill No. 1633.

18 (d) House Bill No. 5691.