

# Legislative Analysis



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

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<http://www.house.mi.gov/hfa>

**House Bill 4039 (H-1) as reported from committee**  
**Sponsor: Rep. Pat Outman**

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

**House Bill 4137 (H-1) as reported**  
**Sponsor: Rep. Greg VanWoerkom**

**House Bill 4253 (H-1) as reported**  
**Sponsor: Rep. Kevin Coleman**

**Committee: Tax Policy**  
**Complete to 3-16-23**

### SUMMARY:

**House Bills 4039 and 4253** would amend the General Sales Tax Act and the Use Tax Act, respectively, to exempt certain delivery and installation costs from the *sales price* (in the Sales Tax Act) and the *purchase price* (in the Use Tax Act). Specifically, sales and use taxes could not be imposed on delivery or installation charges if those charges were 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. The exemption would not apply to delivery or installation charges related to the sale of electricity or gas by a utility.

*Sales price* is defined in the 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 definitions also list several categories that are *included* in the term and several categories that are *excluded*.

Under current law, the list of *included* costs and charges includes the following:

- 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.<sup>1</sup>

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<sup>1</sup> See RAB 2015-17 for further discussion of this topic: [https://www.michigan.gov/taxes/-/media/Project/Websites/treasury/Reports/2015/2015\\_RAB\\_201517\\_Delivery\\_Charges.pdf?rev=671590b649c448018c4cc2dfad316f90&hash=2BF502A37BA3963D1890CE5ED96C0E9C](https://www.michigan.gov/taxes/-/media/Project/Websites/treasury/Reports/2015/2015_RAB_201517_Delivery_Charges.pdf?rev=671590b649c448018c4cc2dfad316f90&hash=2BF502A37BA3963D1890CE5ED96C0E9C)

Under the bills, delivery and installation charges would be *excluded* as long as 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.

The bills also specify that the above exemption would not apply to delivery and installation charges involving or relating to the sale of electricity, natural gas, or artificial gas by a *utility*.

A *utility* would mean 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 would hold the School Aid Fund harmless from any reduction by requiring that an amount equal to all revenue lost to the fund as a result of the exclusion of delivery and installation charges from taxation, in addition to the other deposits required by the acts.

Finally, and notwithstanding anything to the contrary in the applicable act, the bills would require the Department of Treasury to cancel any outstanding balances on notices of intent to assess or final assessments that were issued before the applicable bill's effective date that are related to delivery or installation charges that would be exempted 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 would be required to cancel these balances within 90 days of the bill's effective date and would be prohibited from issuing any new assessments on these activities for any tax period before the bill took effect.

House Bill 4039 would also add limited liability company to the definition of *person* under the General Sales Tax Act. (It is already included in the Use Tax Act definition.)

HB 4039: MCL 205.51 and 205.75

HB 4253: MCL 205.92 and 205.111

**House Bill 4137** would amend 1979 PA 72, which requires the governor to report on the estimated revenue forgone due to certain use tax exemptions, to update references to the Use Tax Act to reflect the changes proposed by House Bill 4253 and update certain other language to reflect the Use Tax Act. The bill cannot take effect unless House Bill 4253 is enacted.

MCL 21.276

## **BACKGROUND AND BRIEF DISCUSSION:**

According to committee testimony, current state law lacks clarity on when to apply sales and use tax to delivery and installation. This has created uncertainty for businesses and has led to a situation in which they are told they owe taxes on sales for which the taxes were not collected.

Supporters of the bills argue that they are intended only to clarify current state policy and provide clarity to both businesses and the Department of Treasury. They also argue that, during the current period of high inflation, it is important for the state to 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 with the impact of a potential income tax rollback. In addition, they expressed concern about who the legislation 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:**

House Bills 4039 and 4253 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 would be protected from the revenue reduction, although general fund revenue and sales tax revenue constitutionally earmarked to local revenue sharing would decline.

House Bill 4137 would have no fiscal impact on state or local government.

### **POSITIONS:**

Representatives of the following entities testified in support of the bills (3-15-23):

- Michigan Chamber of Commerce
- Grand Rapids Chamber of Commerce

The following entities indicated support for the bills (3-15-23):

- Michigan Association of Certified Public Accountants
- National Federation of Independent Businesses
- Toyota Motor North America
- Michigan Retailers Association
- Small Business Association of Michigan
- Michigan Soft Drink Association
- Detroit Regional Chamber
- Michigan Aggregates Association

A representative of the Department of Treasury testified with a neutral position on the bills. (3-15-23)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.