



## TREASURY

# Notice Regarding Changes in the Taxability of Delivery and Installation Charges for Sales and Use Taxes

**Issued: April 26, 2023**

The General Sales Tax Act, MCL 205.51 *et seq.*, and the Use Tax Act, MCL 205.91 *et seq.*, were recently amended by the passage of Public Acts 20 and 21 of 2023 (the “Acts”). The amendments made through the Acts are effective April 26, 2023 (the “Effective Date”).

## Change in Taxability of Delivery and Installation Charges

In general, beginning on the Effective Date, delivery and installation charges are not included in the “sales price” for sales tax purposes or the “purchase price” for use tax purposes if both of the following conditions are met:

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

Delivery and installation charges that fail to satisfy the above conditions or that involve, or are related to, the sale of electricity, natural gas, or artificial gas by a utility remain subject to sales tax and use tax unless otherwise exempt.

The Acts define a “utility” as either of the following persons:

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

For purposes of this Notice, “delivery charges” means charges by the seller for preparation and delivery to a location designated by the purchaser of tangible personal

property or services and includes, but is not limited to, transportation, shipping, postage, handling, crating, and packing. MCL 205.51a(e); MCL 205.92b(e).

## **Taxpayer Relief on Unpaid Assessment Balances and Audits for Past Periods**

The Acts require Treasury to cancel all outstanding (unpaid) balances related to delivery and installation charges on Notices of Intent to Assess and Final Assessments issued by Treasury before the Effective Date. Unpaid balances for delivery and installation charges on Notices of Intent to Assess and Final Assessments are considered “outstanding” even if they are in an Informal Conference or on appeal before a court. The Acts direct Treasury to cancel these outstanding balances for delivery and installation charges no later than 90 days after the Effective Date. While Treasury will be proactive in locating and cancelling assessments, taxpayers with outstanding balances for delivery or installation charges are strongly encouraged to contact Treasury at [Treas-TCB-Technical@michigan.gov](mailto:Treas-TCB-Technical@michigan.gov).

In addition to the cancellation of balances described above, the Acts prohibit Treasury from issuing any new assessments for delivery or installation charges for tax periods occurring before the Effective Date.

As the relief provided by the Acts is limited to cancellation of outstanding balances and a prohibition on the issuance of new assessments for prior tax periods as described above, the Acts do not establish a right to a refund for sales tax or use tax on delivery or installation charges that a taxpayer has already remitted to Treasury prior to the Effective Date. Consequently, purchasers will not be able to seek refunds based on the Acts from retailers or Treasury for periods prior to the Effective Date.

After the Effective Date, if a retailer continues to charge tax on delivery or installation charges even though those charges are excluded from the “sales price” and “purchase price” under the Acts, the customer may seek a refund of the tax from the retailer. If the retailer refunds the tax to the customer, the retailer may then seek a refund from Treasury for the tax it remitted to Treasury for those charges. Consistent with *Emagine Entertainment, Inc, et al v Dep’t of Treasury*, 334 Mich App 658 (2020), Treasury will not issue a refund to a retailer unless the retailer has first refunded the tax to its customer.

There is no statutory requirement for retailers to refund their customers if they collect tax in error on delivery or installation charges that are exempt or that are excluded from the “sales price” or “purchase price” under the Acts. If they do collect the tax from their customer on those delivery or installation charges, however, they must remit the tax collected from the customer to Treasury.

# Treasury Guidance Regarding the Taxability of Delivery and Installation Charges

Treasury will issue a Revenue Administrative Bulletin (“RAB”) to replace RAB 2015-17 to further address the taxability of delivery and installation charges following the enactment of the Acts.



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