



June 12, 2024

Chair Blessing, Vice Chair Roegner, Ranking Member Smith, and Members of the Senate Ways and Means Committee,

Thank you for the opportunity to submit Meijer's written comments on SB 244 as an interested party.

As you may know, Meijer operates more than 50 locations in Ohio, and proudly opened three brand new stores in Cleveland, North Canton and Alliance earlier this year. Meijer also operates a dairy and distribution facility in Tipp City and employs more than 15,000 Ohio Team Members. The retail and grocery industries are evolving, and advances in technology have changed the ways that many of our customers engage with our stores. Meijer home delivery and curbside pickup are growing parts of our business, and we work closely with third party partners and delivery network companies to offer these services to shoppers.

While we sincerely appreciate our delivery network partners, we do have concerns with how SB 244 may impact retailers like Meijer in terms of tax liability. As written, SB 244 allows delivery network companies to request a waiver from the Tax Commissioner to be excused from being treated as the seller of goods sold on an online or mobile marketplace. If a waiver is granted, a delivery network company must collect and remit tax on its delivery charges, but not on the price of taxable goods. This arrangement is complicated, however, if the delivery network company charges additional fees or markups on individual products, which are *not* delivery charges. In this case, the retailer is the seller of the good but does not have visibility to the full price of the good. If the goods are subject to sales tax, the Department of Taxation will look to the seller (retailer) rather than the delivery network company to collect and remit that tax – even if the seller is unaware of the markup charged to the customer.

For example, if Meijer sells a hat for \$10 through a delivery network company, Meijer will collect sales tax on the \$10 sticker price at the point of sale. If the delivery network company sells the same hat through its platform for \$12 (a \$2 markup on the original sticker price), Meijer never charges the additional \$2 and, therefore, cannot collect and remit sales tax on the difference. If the delivery network company received a waiver under SB 244, it would be exempt from collecting sales tax on the additional \$2 (for a taxable good), and the Department would not receive a tax remittance on the difference. In this

scenario, our concern is that the Department of Taxation will look to Meijer (the seller) as responsible for delivering tax revenue that it never received, leaving us vulnerable to audit.

Last month, the Michigan House of Representatives introduced bipartisan legislation (HBs 5745-46) which would address this issue differently. Rather than establishing a waiver, the Michigan bills would allow delivery network companies to deduct the amount of sales and use taxes paid to a seller in connection with the delivery network sale. We prefer this structure, as it removes the retailer from the process altogether – eliminating vulnerability to audit and making tax reconciliation a matter settled between the delivery network company and the Department. We urge the Committee to consider this approach and will gladly share the Michigan language for your reference.

We thank you for your time and consideration and hope to continue this conversation. If you have any questions, please do not hesitate to contact us directly.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Martin', with a long horizontal line extending to the right.

Andrew Martin  
Government Affairs Manager  
Meijer, Inc.

# HOUSE BILL NO. 5745

May 23, 2024, Introduced by Reps. Farhat, Wilson, Filler and Martus and referred to the Committee on Tax Policy.

A bill to amend 1933 PA 167, entitled  
"General sales tax act,"  
by amending section 2d (MCL 205.52d), as added by 2019 PA 143.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 2d. (1) Notwithstanding anything to the contrary in this  
2 act, a marketplace facilitator engaged in the business of making  
3 sales at retail of tangible personal property in this state shall  
4 remit the tax due under this act on all taxable sales made by the  
5 marketplace facilitator or facilitated for marketplace sellers to a  
6 purchaser in this state regardless of whether the marketplace  
7 seller for whom sales are facilitated has nexus with this state.

1 (2) A marketplace facilitator is a person engaged in the  
2 business of making sales at retail for purposes of this act  
3 regardless of whether the marketplace facilitator makes only  
4 facilitated sales for marketplace sellers or a combination of  
5 direct and facilitated sales and has all the rights and duties of a  
6 taxpayer under this act.

7 (3) A marketplace facilitator shall report its direct sales  
8 and the sales it facilitates to purchasers in this state in a  
9 manner as prescribed by the department.

10 (4) A class action shall not be brought against a marketplace  
11 facilitator in any court of this state on behalf of purchasers  
12 arising from or in any way related to an overpayment of sales tax  
13 remitted on sales facilitated by the marketplace facilitator,  
14 regardless of whether that claim is characterized as a tax refund  
15 claim. Nothing in this subsection affects a purchaser's right to  
16 seek a refund as provided under section 12.

17 (5) Nothing in this section affects the obligation of a  
18 purchaser to remit use tax under the use tax act, 1937 PA 94, MCL  
19 205.91 to 205.111, for a taxable transaction on which a marketplace  
20 facilitator or marketplace seller does not remit sales tax.

21 (6) Except as otherwise provided in this subsection **or**  
22 **subsection (10)**, if a marketplace facilitator is required to remit  
23 tax under subsection (1), the department shall audit only the  
24 marketplace facilitator for sales made by marketplace sellers that  
25 were facilitated by the marketplace facilitator. ~~The~~ **Except as**  
26 **otherwise provided in subsection (10)**, the department shall not  
27 audit a marketplace seller for sales facilitated by a marketplace  
28 facilitator required to remit tax under subsection (1) unless the  
29 marketplace seller fails to provide the marketplace facilitator

1 with sufficient information to the extent that the marketplace  
2 facilitator is not liable under subsection (7).

3 (7) A marketplace facilitator is relieved of liability under  
4 this section for failure to remit the correct amount of tax to the  
5 extent that the marketplace facilitator demonstrates, to the  
6 satisfaction of the department, that the failure was due to  
7 incorrect or insufficient information given to the marketplace  
8 facilitator by the marketplace seller. The relief under this  
9 subsection does not apply if the marketplace seller is an affiliate  
10 of the marketplace facilitator.

11 (8) A marketplace facilitator is relieved of liability under  
12 this section if the marketplace facilitator demonstrates, to the  
13 satisfaction of the department, that the tax levied under this act  
14 on a sale facilitated by the marketplace facilitator was paid to  
15 the department by the marketplace seller or provides a claim of  
16 exemption provided by the marketplace seller's purchaser.

17 (9) ~~A~~**Except as otherwise provided in subsection (10), a**  
18 marketplace seller is not liable for the tax imposed by this act on  
19 sales made through a marketplace facilitator required to remit tax  
20 under subsection (1) unless the marketplace seller fails to provide  
21 the marketplace facilitator with sufficient information to the  
22 extent that the marketplace facilitator is not liable under  
23 subsection (7).

24 **(10) Notwithstanding anything to the contrary in this section,**  
25 **all of the following apply regarding a qualified delivery network**  
26 **sale:**

27 (a) **The marketplace seller is liable for the tax imposed by**  
28 **this act on the qualified delivery network sale.**

29 (b) **The department may audit the marketplace seller for the**

1 qualified delivery network sale.

2 (c) Subject to both of the following provisions, a delivery  
3 network company may, in the form and manner prescribed by the  
4 department, deduct or exclude from its tax liability under this  
5 section the amount of tax under this act that the delivery network  
6 company paid to the marketplace seller in connection with the  
7 qualified delivery network sale:

8 (i) The delivery network company may not claim a deduction or  
9 exclusion under this subdivision if the marketplace seller did not  
10 charge the delivery network company for the tax imposed under this  
11 act on the qualified delivery network sale.

12 (ii) The amount of the deduction or exclusion under this  
13 subdivision may not exceed the amount of tax under this act that  
14 was charged by the marketplace seller to the delivery network  
15 company in connection with the qualified delivery network sale.

16 (11) ~~(10)~~—This section applies regardless of whether the  
17 marketplace facilitator has a physical presence in this state.

18 (12) ~~(11)~~—As used in this section:

19 (a) "Affiliate" means an affiliated person as that term is  
20 defined in section 2b.

21 (b) "Delivery network company" means a marketplace facilitator  
22 that maintains a website or mobile application used to facilitate  
23 delivery services that are performed or otherwise conducted by a  
24 delivery network courier.

25 (c) "Delivery network courier" means, except as otherwise  
26 provided in subdivision (d), an individual who provides delivery  
27 services through a delivery network company by doing any of the  
28 following:

29 (i) Using a personal means of transportation, such as a motor

1 vehicle, bicycle, scooter, or other similar modes of  
 2 transportation. As used in this subparagraph, "bicycle" and "motor  
 3 vehicle" mean those terms as defined in sections 4 and 33 of the  
 4 Michigan vehicle code, 1949 PA 300, MCL 257.4 and 257.33,  
 5 respectively.

6 (ii) Using public transportation.

7 (iii) Walking.

8 (d) Delivery network courier does not include a common carrier  
 9 or a motor carrier as that term is defined in section 1 of the  
 10 motor carrier fuel tax act, 1980 PA 119, MCL 207.211.

11 (e) "Delivery services" means the pickup and delivery of  
 12 tangible personal property, by a delivery network courier, from a  
 13 marketplace seller located in this state to a customer located in  
 14 this state, which may include the selection, collection, and  
 15 purchase of the tangible personal property in connection with the  
 16 delivery. Delivery services does not include a delivery requiring  
 17 more than 75 miles of travel from the marketplace seller to the  
 18 customer.

19 (f) ~~(b)~~—"Marketplace facilitator" means a person that meets  
 20 the requirements of subparagraph (i), but does not include a person  
 21 described in subparagraph (ii):

22 (i) A person is a marketplace facilitator if the person  
 23 facilitates a retail sale by a marketplace seller by listing or  
 24 advertising for sale by a marketplace seller in a marketplace,  
 25 tangible personal property and either directly or indirectly  
 26 through agreements or arrangements with third parties or its  
 27 affiliates collecting payment from the customer and transmitting  
 28 that payment to the marketplace seller for consideration.

29 (ii) Marketplace facilitator does not include a person ~~who~~ **that**

1 operates a platform or forum that provides internet, print,  
2 electronic, or any other form of advertising services, including  
3 listing tangible personal property for sale, if the person does not  
4 also engage directly or indirectly, through 1 or more affiliates,  
5 in the activities described in subparagraph (i).

6 (g) ~~(e)~~—"Marketplace seller" means a person that makes retail  
7 sales through a physical or electronic marketplace operated by a  
8 marketplace facilitator.

9 (h) "Qualified delivery network sale" means a sale that meets  
10 all of the following requirements:

11 (i) The sale is made as part of delivery services facilitated  
12 by a delivery network company.

13 (ii) The sale is sourced to this state under section 19(1)(b).

14 (iii) The tax imposed by this act on the sale is paid by the  
15 delivery network company to the marketplace seller in connection  
16 with the delivery services.