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TO: The Honorable Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division Staff

DATE: December 14, 2023

RE: **REPORT ON THE POTENTIAL IMPACTS OF AN AMUSEMENT TAX**

Council Member Angela Whitfield-Calloway requested that the Legislative Policy Division (LPD) prepare a report on the potential impacts of implementing an amusement tax in Michigan.

1. Prior Attempts to Enact an Amusement Tax in Michigan

There have been three attempts in recent history to enact an amusement tax in Michigan. In 2017, Representative Sylvia Santana introduced House Bill 5174 of 2017. If enacted, the bill would have levied a 10% excise tax on entertainment events with a seating capacity of 500 or more.

Under the bill, “entertainment events” included zoos, live theater, museums, opera, professional sporting events, concerts, temporary or transient entertainment productions, botanical gardens, amusement parks, and temporary or transient art, music, theatrical, dance, literary or cultural festivals. It also exempted the following events from the tax: high school, middle school, or elementary school events, events sponsored by a nonprofit or charitable organization, and collegiate athletic events.

HB 5174 provided that 75% of the funds from the amusement tax would be used to fund “other postemployment retirement benefits” for police and firefighter retirees in the municipality where the tax was collected. The remaining 25% would be used to fund retirement benefits for police and firefighters in the municipality where the tax was collected.

HB 5174 was referred to Committee on Tax Policy, however the bill did not move out of the committee and there was no legislative analysis on the bill. As a Senator, Sylvia introduced an identical bill (SB 0235) in 2019 with the same result.

In 2018, then Senator Coleman Young II introduced Senate Bill 0884, also known as the “sporting entertainment tax act.” This bill would have implemented an excise tax of \$3.00 per paid entry to “entertainment events,” which would include concerts or professional sporting events that had a seating capacity of 5,000 or more.

Under the sporting entertainment tax act, the only qualifying municipalities were cities with a population of 500,000 or more, meaning that the only qualifying city would be Detroit. The taxes would be allocated according to the following formula: 34% to fund additional police officers, 33% to fund additional firefighters, and 33% to fund emergency medical services personnel. The Bill was referred to the Committee on Finance, but it did not move out of the committee and there was no legislative analysis for the bill.

While these bills demonstrate that there has been some recent interest in exploring the implementation of an amusement tax in Michigan, there was apparently not enough support from the Michigan legislature in 2017 through 2019 to pass these bills.

The lack of success in implementing an amusement tax is likely due to several factors. Historically, the owners of Detroit’s largest venues have been vehemently opposed to any efforts to implement a tax or fee to offset the cost of public infrastructure and services. It is safe to assume that this will continue to be the case. They will likely argue that the cost of the tax, which they will pass off to attendees, will harm attendance.

However, ticketing companies like Ticketmaster have drastically increased the cost of concert tickets in recent years by continuously adding various fees, with account for roughly 30% of the ticket cost.¹ Despite this increase in cost, Live Nation (which owns Ticketmaster) has reported record profits and concert attendance in 2023.² Therefore, it is unlikely that a minimal amusement tax will deter attendance to live events.

It may also be the case that many Michigan legislators are generally uninterested in pursuing or supporting a tax increase, particularly where the main beneficiary of the tax will be Detroit. This can be mitigated somewhat by emphasizing that the tax is not mandatory for everyone, but rather it is a tax on a discretionary expense for individuals who choose to attend live events. Also, the legislation could be beneficial to any local government in Michigan that hosts large events if the bill allows any local government to take advantage of the amusement tax.

2. Amusement Taxes in Detroit

According to a report from the Federation of Tax Administrators (FTA), there were 34 states that implement a tax on admissions/amusements in 2017.³ There is a wide variation among the amusement taxes of different states regarding the number of services that are taxed, the use of a flat fee per ticket or a

¹ Government Accountability Office 2018 Event Ticket Sales report - <https://www.gao.gov/assets/gao-18-347.pdf>

² <https://variety.com/2023/music/news/live-nation-record-attendance-revenue-1235777899/>

³ FTA, State Taxation of Services by Category, 2017 - <https://taxadmin.org/state-taxation-of-services-by-category-2017/>

percentage of the ticket price, the restrictions on the uses of the collected funds, and the allowance for individual cities to set their own rates.⁴

This data demonstrates that amusement taxes are a popular tool that a majority of states use as a funding source. Once enacted, these taxes appear to be durable, and there have not been many organized efforts to eliminate these taxes.

Entertainment and amusement services are largely untaxed in Michigan. The Michigan Constitution restricts the imposition of taxes on the sale of tangible personal property to 6%.⁵ However, this restriction does not apply to entertainment services. Therefore, the Michigan legislature could pass a statute allowing cities to levy a tax on entertainment/amusement services without being subject to constitutional restrictions. However, the tax should be limited to ticket sales as opposed to gross receipts because gross receipts could include items subject to the constitutional limitation on sales tax, such as food, gifts, and clothing purchased at an entertainment venue.

Of course, the potential revenue generated under an amusement/entertainment tax would depend on the tax rate and whether the tax will be a flat fee per ticket or a percentage of the ticket price. For example, if Detroit imposed the 10% excise tax from HB 5174 in 2022, it would have generated roughly \$5.2 million in funds annually for Lions games alone, without including concerts and other events.⁶ For Tigers games at Comerica Park in 2022, not including concerts, 10% tax also would generate roughly \$5 million annually.⁷

Based on 2022 attendance, the \$3 per ticket tax proposed under the sporting entertainment tax act would generate roughly \$1.7 million from Lions games and roughly \$4.8 million from Tigers games, with an estimated additional \$3 million from both Ford Field and LCA from concerts. The Red Wings and Pistons would have generated about \$2.3 million each with a \$3 per ticket tax in 2022.

Because there is a greater variability in concert ticket prices, it is difficult to estimate the potential revenue generated from a tax on a percentage of ticket sales with any accuracy. However, Little Ceasar's Arena (LCA) and Ford Field both average around 1 million concertgoers per year, which would generate considerable revenue considering that tickets for many popular concerts cost hundreds, and in some cases, thousands of dollars. Additionally, the tax could also generate revenue from venues such as the Fox Theatre, The Majestic, and The Masonic Temple, as well as festivals like Movement which attracts over 100,000 people annually.

3. Considerations for Implementation of an Amusement Tax

One benefit of amusement taxes is that the entertainment services are discretionary, and the cost of the tax is disproportionately borne by wealthier individuals who choose to attend. According to the Consumer Expenditure Survey done by the US Bureau of Labor Statistics, roughly 57% of all

⁴ A 2018 report from the Citizen's Research Council entitled "Diversifying Local-Source Revenue Options in Michigan" provides a summary of the amusement excise taxes in several states - <https://crcmich.org/publications/diversifying-local-source-revenue-options-in-michigan>

⁵ MI Const. Art. 8, Section 8

⁶ Calculation based on total attendance in 2022 (570,809) multiplied by the average ticket cost (\$91.89)

⁷ Calculation based on \$49 million in gate receipts at Comerica Park in 2022.

expenditures on entertainment were from individuals who make more than \$100,000 per year.⁸ An additional benefit is that a significant portion of the tax will likely be paid by non-residents who visit the Detroit to attend events, which will raise funds for the city without having to place an additional burden on the residents.

Because amusement taxes are largely paid on discretionary activities that wealthier people engage in, an entertainment tax is less regressive than, for example, a sales tax which is disproportionately paid by people with less income. However, the added cost of an amusement on ticket prices could potentially make entertainment activities less accessible for individuals with lower incomes. This could potentially be mitigated by setting aside a portion of the collected amusement tax to subsidize discounted tickets for low-income individuals or providing a reduced tax rate to venues that offer a set number or percentage of discounted tickets.

Amusement taxes have the potential to be an inconsistent source of funding because the tax is generated from discretionary activities that may be impacted by larger economic factors that impact discretionary income. While the potential amount of amusement taxes will fluctuate somewhat depending on a number of factors, the attendance of large sporting events and concerts is fairly consistent from year to year.

There should be careful consideration as to which types of amusements should be taxed and what the attendance capacity should be before the tax is applied. The proposed sporting entertainment tax act was narrowly tailored to only include concerts and sporting events with 5,000 people or more whereas HB 5174 applied to zoos, live theater, museums, opera, professional sporting events, concerts, temporary or transient entertainment productions, botanical gardens, amusement parks, and temporary or transient art, music, theatrical, dance, literary or cultural festivals with a capacity of 500 people or more.

Certainly, the largest venues with the highest attendance will be better able to bear the cost of an amusement tax than smaller venues and events. It is important to contemplate how an amusement tax could potentially impact smaller venues and events when crafting the tax. Additionally, amusement taxes typically include exemptions for school events as well as nonprofit and charitable events.

As stated above, while the increased cost of tickets due to an amusement tax is unlikely to have a significant impact on overall attendance, the amusement tax rate should be relatively minimal to undermine the opposition and to ensure that the tax revenue collected is proportional to the purpose for which it will be used.

The dedicated use/uses of funds generated from an amusement tax must also be considered. It makes sense that both HB 5174 and the sporting entertainment tax act proposed using the funds for police, firefighters, and EMS personnel considering that large concerts and sporting events often place an increased burden on those services at an increased cost to the taxpayers. In a report from 1992, the Citizen's Research Council also cited 5-6% amusement tax as a potential strategy to provide funding for cultural and artistic institutions.⁹

⁸ Bureau of Labor Statistics, Consumer Expenditure Surveys 2022, Table 1203 - <https://www.bls.gov/cex/tables/calendar-year/aggregate-group-share/cu-income-before-taxes-2022.pdf>

⁹ Citizen's Research Council of Michigan, Alternative Funding Strategies for the Support of Regional Cultural Facilities in Southeast Michigan, 1993 - <https://crcmich.org/PUBLICAT/1990s/1993/rpt309-1.pdf>

Finally, some cities have historically chosen to levy amusement taxes on movie theaters, movie rentals, and cable subscriptions. As people have increasingly made the transition to streaming services as a source of entertainment, some cities have imposed amusement taxes on subscriptions to streaming services. Most famously, Chicago implemented an amusement tax on streaming services. While Apple and other streaming services brought lawsuits against Chicago challenging the tax, those lawsuits were unsuccessful.¹⁰ The legislature should consider the benefits of including streaming services and other entertainment services when crafting the legislation.

¹⁰ <https://news.bloombergtax.com/daily-tax-report/analysis-netflix-hulu-streaming-battle-localities-over-revenue>