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### ISSUES RELATIVE TO THE CONSTITUTIONALITY OF LOCAL SALES TAXATION IN MICHIGAN

#### THE ISSUE IN BRIEF

Recently, there has been considerable discussion regarding the use by units of local government of general selective sales taxes to finance regional public transportation services. Legislation has already been adopted authorizing Wayne County and several other units of local government\* to levy excise taxes upon the gross receipts of restaurants, hotels, and automobile rental companies to finance professional sports stadia and convention facilities. (Restaurant meals are already subject to the general state sales tax, which is levied on gross taxable sales at retail of tangible personal property, while accommodations and automobile rentals are subject to the state use tax.) Although the state Legislature may employ the term "excise taxes" or "gross receipts taxes" to denominate what are essentially sales taxes, Michigan courts have held that "a court must determine the true nature of a tax and not be misled by legislative legerdemain." This **Council Comments** summarizes the issues addressed in Report No. 305 (14 Pages) which is available upon request.

#### Unresolved Legal Questions

Whether units of local government in Michigan may impose, or be authorized to impose, general or selective sales taxes is by no means clear. (In 1970, however, the state Attorney General concluded that local units were without such authority.) There are several basic legal issues involved in the use of local sales taxes that have yet to be resolved:

First, Section 8 of Article 9 of the Michigan Constitution limits the rate of sales tax that the Legislature may impose on retailers to four percent of their gross taxable sales of tangible personal property. It is arguable whether this limitation was intended to apply only to state sales taxes imposed by the Legislature or also to sales taxes imposed by units of local government.

Second, Sections 10 and 11 of Article 9 of the state Constitution require respectively that "of all taxes imposed on retailers on taxable sales at retail of tangible personal property," 15 percent be allocated to townships, cities, and villages and 60 percent to the state school aid fund. The use of the term "all" taxes can be

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\* Oakland County and the City of Pontiac (because Pontiac levies a city income tax) and Ingham, Kent, Muskegon, and Washtenaw counties and to the most-populous city in each of these latter four counties (Lansing, Grand Rapids, Muskegon, and Ann Arbor, respectively).

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construed to require that 75 percent of both a state sales tax and of any local sales taxes be earmarked to townships, cities, villages, and school districts. Such an allocation would effectively preclude using local sales taxes to finance a sports stadiums convention facility, or regional transportation system.

Third, while Article 7 of the state Constitution accords charter counties (at presents Wayne County) and cities and villages broad authority to impose nonproperty taxes without legislative authorization, but “subject to limitations and prohibitions” set forth in the state Constitution and laws, the four percent limitation upon the rate of the sales tax and the allocation requirements may well be such limitations and prohibitions upon the authority of charter counties cities, and villages to levy nonproperty taxes. In any event, noncharter counties and regional authorities have no constitutional authority to impose nonproperty taxes, but the Legislature might authorize such taxes by law.

The use of local sales taxes in Michigan, if otherwise constitutional, would require legislative authorizations which has already been granted to certain units of local government to finance professional sports stadia and convention facilities, and voter approval as required by Section 31 of Article 9 of the state Constitution. (Section 31 was added to Article 9 by the tax limitation “Headlee” amendment in 1978.) Still, any attempt to collect a local sales tax would likely face legal challenges on one or more of the unresolved legal issues discussed above