

SUBSTITUTE FOR
HOUSE BILL NO. 4288

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending section 18 (MCL 205.68), as amended by 2008 PA 438.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 18. (1) A person liable for any tax imposed under this
2 act shall keep **IN A PAPER, ELECTRONIC, OR DIGITAL FORMAT AN**
3 accurate and complete beginning and annual inventory and purchase
4 records of additions to inventory, complete daily sales records,
5 receipts, invoices, bills of lading, and all pertinent documents in
6 a form the department requires. If an exemption from the tax under
7 this act is claimed by a person because the sale is for resale at
8 retail, a record shall be kept of the sales tax license number if
9 the person has a sales tax license. These records shall be retained
10 for a period of 4 years after the tax imposed under this act to

1 which the records apply is due or as otherwise provided by law.

2 (2) If the department considers it necessary, the department
3 may require a person, by notice served upon that person, to make a
4 return, render under oath certain statements, or keep certain
5 records the department considers sufficient to show whether or not
6 that person is liable for the tax under this act.

7 (3) A person knowingly making a sale of tangible personal
8 property for the purpose of resale at retail to another person not
9 licensed under this act is liable for the tax under this act unless
10 the transaction is exempt under the provisions of section 4k.

11 (4) If the taxpayer fails to file a return or to maintain or
12 preserve ~~proper~~**SUFFICIENT** records as prescribed in this section,
13 or the department has reason to believe that any records maintained
14 or returns filed are inaccurate or incomplete and that additional
15 taxes are due, the department may assess the amount of the tax due
16 from the taxpayer based on **AN INDIRECT AUDIT PROCEDURE OR ANY OTHER**
17 information that is available or that may become available to the
18 department. That assessment is considered prima facie correct for
19 the purpose of this act and the burden of proof of refuting the
20 assessment is upon the taxpayer. **AN INDIRECT AUDIT OF A TAXPAYER**
21 **UNDER THIS SUBSECTION SHALL BE CONDUCTED IN ACCORDANCE WITH 1941 PA**
22 **122, MCL 205.1 TO 205.31, AND THE STANDARDS PUBLISHED BY THE**
23 **DEPARTMENT UNDER SECTION 21 OF 1941 PA 122, MCL 205.21, AND SHALL**
24 **INCLUDE ALL OF THE FOLLOWING ELEMENTS:**

25 (A) A REVIEW OF THE TAXPAYER'S BOOKS AND RECORDS. THE
26 DEPARTMENT MAY USE AN INDIRECT METHOD TO TEST THE ACCURACY OF THE
27 TAXPAYER'S BOOKS AND RECORDS.

1 (B) BOTH THE CREDIBILITY OF THE EVIDENCE AND THE
2 REASONABLENESS OF THE CONCLUSION SHALL BE EVALUATED BEFORE ANY
3 DETERMINATION OF TAX LIABILITY IS MADE.

4 (C) THE DEPARTMENT MAY USE ANY METHOD TO RECONSTRUCT INCOME,
5 DEDUCTIONS, OR EXPENSES THAT IS REASONABLE UNDER THE CIRCUMSTANCES.
6 THE DEPARTMENT MAY USE THIRD-PARTY RECORDS IN THE RECONSTRUCTION.

7 (D) THE DEPARTMENT SHALL INVESTIGATE ALL REASONABLE EVIDENCE
8 PRESENTED BY THE TAXPAYER REFUTING THE COMPUTATION.

9 (5) IF A TAXPAYER HAS FILED ALL THE REQUIRED RETURNS AND HAS
10 MAINTAINED AND PRESERVED SUFFICIENT RECORDS AS REQUIRED UNDER THIS
11 SECTION, THE DEPARTMENT SHALL NOT BASE A TAX DEFICIENCY
12 DETERMINATION OR ASSESSMENT ON ANY INDIRECT AUDIT PROCEDURE UNLESS
13 THE DEPARTMENT HAS A DOCUMENTED REASON TO BELIEVE THAT ANY RECORDS
14 MAINTAINED OR RETURNS FILED ARE INACCURATE OR INCOMPLETE AND THAT
15 ADDITIONAL TAXES ARE DUE.

16 (6) ~~(5)~~—If all the information is maintained as provided under
17 section 12, an exemption certificate is not required for an
18 exemption claim by the following:

19 (a) A person licensed by the Michigan liquor control
20 commission as a wholesaler for purposes of sales of alcoholic
21 liquor to another person licensed by the Michigan liquor control
22 commission. As used in this subsection, "alcoholic liquor",
23 "authorized distribution agent", and "wholesaler" mean those terms
24 as defined in the Michigan liquor control code of 1998, 1998 PA 58,
25 MCL 436.1101 to 436.2303.

26 (b) The Michigan liquor control commission or a person
27 certified by the commission as an authorized distribution agent for

1 purposes of the sale and distribution of alcoholic liquor to a
2 person licensed by the Michigan liquor control commission.

3 (7) ~~(6)~~—For purposes of this act, a blanket exemption claim
4 covers all exempt transfers between the taxpayer and the buyer for
5 a period of 4 years or for a period of less than 4 years as stated
6 on the blanket exemption claim if that period is agreed to by the
7 buyer and taxpayer. Renewal of a blanket exemption claim or an
8 update of exemption claim information or data elements is not
9 required if there is a recurring business relationship between the
10 seller and the purchaser. For purposes of this subsection, a
11 recurring business relationship exists when a period of not more
12 than 12 months elapses between sales transactions.

13 (8) AS USED IN THIS SECTION:

14 (A) "INDIRECT AUDIT PROCEDURE" IS AN AUDIT METHOD THAT
15 INVOLVES THE DETERMINATION OF TAX LIABILITIES THROUGH AN ANALYSIS
16 OF A TAXPAYER'S BUSINESS ACTIVITIES USING INFORMATION FROM A RANGE
17 OF SOURCES BEYOND THE TAXPAYER'S DECLARATION AND FORMAL BOOKS AND
18 RECORDS.

19 (B) "SUFFICIENT RECORDS" MEANS RECORDS THAT MEET THE
20 DEPARTMENT'S NEED TO DETERMINE THE TAX DUE UNDER THIS ACT.