

SUBSTITUTE FOR
HOUSE BILL NO. 4292

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 14a (MCL 205.104a), as amended by 2008 PA 439.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 14a. (1) A person in the business of selling tangible
2 personal property and liable for any tax under this act shall keep
3 **IN A PAPER, ELECTRONIC, OR DIGITAL FORMAT AN** accurate and complete
4 beginning and annual inventory and purchase records of additions to
5 inventory, complete daily sales records, receipts, invoices, bills
6 of lading, and all pertinent documents in a form the department
7 requires. If an exemption from use tax is claimed by a person
8 because the sale is for resale at retail, a record shall be kept of
9 the sales tax license number if the person has a sales tax license.
10 These records shall be retained for a period of 4 years after the

1 tax imposed under this act to which the records apply is due or as
2 otherwise provided by law.

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

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

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

27 (A) A REVIEW OF THE TAXPAYER'S BOOKS AND RECORDS. THE

1 DEPARTMENT MAY USE AN INDIRECT METHOD TO TEST THE ACCURACY OF THE
2 TAXPAYER'S BOOKS AND RECORDS.

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

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

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

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

18 (6) ~~(5)~~—For purposes of this act, exemption certificate
19 includes a blanket exemption certificate on a form prescribed by
20 the department that covers all exempt transfers between the
21 taxpayer and the buyer for a period of 4 years or for a period of
22 less than 4 years as stated on the blanket exemption certificate if
23 that period is agreed to by the buyer and taxpayer.

24 (7) AS USED IN THIS SECTION:

25 (A) "INDIRECT AUDIT PROCEDURE" IS AN AUDIT METHOD THAT
26 INVOLVES THE DETERMINATION OF TAX LIABILITIES THROUGH AN ANALYSIS
27 OF A TAXPAYER'S BUSINESS ACTIVITIES USING INFORMATION FROM A RANGE

1 OF SOURCES BEYOND THE TAXPAYER'S DECLARATION AND FORMAL BOOKS AND
2 RECORDS.

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