

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 617

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 14b (MCL 205.104b), as amended by 2008 PA 439,
and by adding section 4cc.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 4CC. (1) BEGINNING JANUARY 1, 2016 THROUGH DECEMBER 31,
2 2035, THE TAX UNDER THIS ACT DOES NOT APPLY TO THE STORAGE, USE, OR
3 CONSUMPTION OF DATA CENTER EQUIPMENT SOLD TO THE OWNER OR OPERATOR
4 OF A QUALIFIED DATA CENTER OR A COLOCATED BUSINESS FOR USE OR
5 CONSUMPTION IN THE OPERATIONS OF THE QUALIFIED DATA CENTER.

6 (2) AS USED IN THIS SECTION:

7 (A) "COLOCATED BUSINESS" MEANS A PERSON THAT HAS ENTERED INTO
8 A CONTRACT WITH THE OWNER OR OPERATOR OF A QUALIFIED DATA CENTER TO

1 USE OR DEPLOY DATA CENTER EQUIPMENT PHYSICALLY LOCATED WITHIN THE
2 QUALIFIED DATA CENTER FOR A PERIOD OF 1 OR MORE YEARS.

3 (B) "DATA CENTER EQUIPMENT" MEANS HIGH-TECHNOLOGY EQUIPMENT
4 CONSUMED OR USED PHYSICALLY WITHIN A QUALIFIED DATA CENTER
5 INCLUDING, BUT NOT LIMITED TO, COMPUTERS, SERVERS, ROUTERS,
6 SWITCHES, PERIPHERAL COMPUTER DEVICES, AND THEIR ASSOCIATED TOOLS,
7 RACKS, SHELVING, CABLING, AND WIRING. DATA CENTER EQUIPMENT ALSO
8 INCLUDES ANY CONSTRUCTION MATERIALS USED OR ASSEMBLED UNDER THE
9 QUALIFIED DATA CENTER'S PROPRIETARY METHOD, INCLUDING, BUT NOT
10 LIMITED TO, BUILDING MATERIALS, INFRASTRUCTURE, MACHINERY, WIRING,
11 CABLING, DEVICES, TOOLS, AND EQUIPMENT THAT WOULD OTHERWISE BE
12 CONSIDERED A FIXTURE OR RELATED EQUIPMENT. DATA CENTER EQUIPMENT
13 ALSO INCLUDES STORAGE BATTERIES, BACK-UP GENERATORS, UNINTERRUPTED
14 POWER SUPPLY UNITS, AND OTHER REDUNDANT POWER SUPPLY EQUIPMENT.
15 DATA CENTER EQUIPMENT DOES NOT INCLUDE ANY EQUIPMENT OWNED BY A
16 THIRD PARTY THAT IS USED TO SUPPLY THE QUALIFIED DATA CENTER'S
17 PRIMARY POWER.

18 (C) "HIGH TECHNOLOGY" MEANS TECHNOLOGY USED IN THE CREATION,
19 STORAGE, PROCESSING, OR MANIPULATION OF DIGITAL DATA.

20 (D) "PRIMARY BUSINESS" MEANS AT LEAST 75% OF THE ENTITY'S
21 BUSINESS ACTIVITY.

22 (E) "QUALIFIED DATA CENTER" MEANS A FACILITY COMPOSED OF 1 OR
23 MORE BUILDINGS LOCATED IN THIS STATE AND THE FACILITY IS OWNED OR
24 OPERATED BY AN ENTITY WHOSE PRIMARY BUSINESS IS OWNING, OPERATING,
25 MANAGING, OR MAINTAINING A GROUP OF NETWORKED COMPUTERS OR
26 NETWORKED FACILITIES FOR THE PURPOSE OF CENTRALIZING, OR ALLOWING 1
27 OR MORE COLOCATED BUSINESSES TO CENTRALIZE, THE STORAGE,

1 **PROCESSING, MANAGEMENT, OR DISSEMINATION OF DATA OF 1 OR MORE OTHER**
2 **PERSONS OR THE DATA OF A COLOCATED BUSINESS.**

3 Sec. 14b. (1) If an exemption from the tax under this act is
4 claimed, the seller shall obtain identifying information of the
5 purchaser and the reason for claiming the exemption at the time of
6 the purchase or at a later date. The seller shall obtain the same
7 information for a claimed exemption regardless of the medium in
8 which the transaction occurred.

9 (2) A seller shall use a standard format for claiming an
10 exemption electronically as adopted by the governing board under
11 the streamlined sales and use tax agreement.

12 (3) A purchaser is not required to provide a signature to
13 claim an exemption under this act unless a paper exemption form is
14 used.

15 (4) A seller shall maintain a proper record of all exempt
16 transactions and shall provide them when requested by the
17 department.

18 (5) A seller who complies with the requirements of this
19 section is not liable for the tax under this act if a purchaser
20 improperly claims an exemption. A purchaser who improperly claims
21 an exemption is liable for the tax due under this act. This
22 subsection does not apply if a seller does any of the following:

23 (a) Fraudulently fails to collect the tax **UNDER THIS ACT.**

24 (b) Solicits a purchaser to make an improper claim for
25 exemption.

26 (c) Accepts an exemption form when the purchaser claims an
27 entity-based exemption if both of the following occur:

1 (i) The subject of the transaction sought to be covered by the
2 exemption form is actually received by the purchaser at a location
3 operated by the seller.

4 (ii) The state in which the location operated by the seller is
5 located provides an exemption form that clearly and affirmatively
6 indicates that the claimed exemption is not available in that
7 state.

8 (6) A seller who obtains a fully completed exemption form or
9 captures the relevant data elements as outlined in this section
10 within 120 days after the date of sale is not liable for the tax
11 under this act.

12 (7) If the seller has not obtained an exemption form or all
13 relevant data elements, the seller may either prove that the
14 transaction was not subject to the tax under this act by other
15 means or obtain a fully completed exemption form from the
16 purchaser, by the later of the following:

17 (a) 120 days after a request by the department.

18 (b) The date an assessment becomes final.

19 (c) The denial of a claim for refund.

20 (d) In the instance of a credit audit, the issuance of an
21 audit determination letter or informal conference decision and
22 order of determination.

23 (e) The date of a final order of the court of claims or the
24 Michigan tax tribunal, as applicable, with respect to an
25 assessment, order, or decision of the department.

26 (8) The department may, in its discretion, allow a seller
27 additional time to comply with subsection (7).

1 (9) A seller is not liable for the tax under this act if the
2 seller obtains a blanket exemption form for a purchaser with which
3 the seller has a recurring business relationship. Renewals of
4 blanket exemption forms or updates of exemption form information or
5 data elements are not required if there is a recurring business
6 relationship between the seller and the purchaser. For purposes of
7 this section, a recurring business relationship exists when a
8 period of not more than 12 months elapses between sales
9 transactions.

10 Enacting section 1. The legislature shall annually appropriate
11 sufficient funds from the state general fund to the state school
12 aid fund created in section 11 of article IX of the state
13 constitution of 1963 to fully compensate for any loss of revenue to
14 the state school aid fund resulting from the enactment of this
15 amendatory act.