

SUBSTITUTE FOR
SENATE BILL NO. 617

(As amended December 3, 2015)

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 2030, THE TAX << >> UNDER THIS ACT DOES NOT APPLY
3 TO THE STORAGE, USE, OR CONSUMPTION OF DATA CENTER EQUIPMENT SOLD
4 TO AN INTERNET DATA CENTER OR A COLOCATED BUSINESS FOR USE OR
5 CONSUMPTION IN THE OPERATIONS OF THE INTERNET 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 AN INTERNET DATA CENTER TO

1 DEPLOY AND USE DATA CENTER EQUIPMENT PHYSICALLY LOCATED WITHIN THE
2 INTERNET 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 AN INTERNET 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 TO CONSTRUCT THE INTERNET
9 DATA CENTER, INCLUDING, BUT NOT LIMITED TO, ANY HEATING, COOLING,
10 OR VENTILATION FIXTURES, FIRE SUPPRESSION SYSTEMS, SECURITY
11 SYSTEMS, AND MATERIALS HANDLING EQUIPMENT. DATA CENTER EQUIPMENT
12 ALSO INCLUDES STORAGE BATTERIES, BACK-UP GENERATORS, UNINTERRUPTED
13 POWER SUPPLY UNITS, AND OTHER REDUNDANT POWER SUPPLY EQUIPMENT.
14 DATA CENTER EQUIPMENT DOES NOT INCLUDE ANY EQUIPMENT OWNED BY A
15 THIRD PARTY THAT IS USED TO SUPPLY THE INTERNET DATA CENTER'S
16 PRIMARY POWER OR ANY THIRD-PARTY COMMUNICATION NODES THAT ARE USED
17 TO CONNECT AN INTERNET DATA CENTER TO THE EXOGENOUS INTERNET
18 ENVIRONMENT.

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

21 (D) "INTERNET DATA CENTER" MEANS A FACILITY THAT SATISFIES ALL
22 OF THE FOLLOWING:

23 (i) THE FACILITY PHYSICALLY HOUSES NETWORKED COMPUTER SERVERS
24 ASSEMBLED FOR THE PURPOSE OF CENTRALIZING THE STORAGE, PROCESSING,
25 MANAGEMENT, OR DISSEMINATION OF DATA OWNED OR CONTROLLED BY THE
26 CUSTOMERS OF THE INTERNET DATA CENTER.

27 (ii) THE FACILITY IS SPECIFICALLY DESIGNED AND CONSTRUCTED TO

1 PROVIDE A HIGH-SECURITY ENVIRONMENT FOR THE LOCATION OF SERVERS AND
2 SIMILAR EQUIPMENT.

3 (iii) THE FACILITY IS OWNED OR OPERATED BY AN ENTITY WHOSE
4 PRIMARY BUSINESS, OR THE PRIMARY BUSINESS OF ITS PARENT COMPANY, IS
5 THAT OF AN INTERNET DATA CENTER AND THAT ENTITY GENERATES 75% OR
6 MORE OF ITS REVENUE FROM THE OPERATIONS AND BUSINESS OF AN INTERNET
7 DATA CENTER.

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

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

17 (3) A purchaser is not required to provide a signature to
18 claim an exemption under this act unless a paper exemption form is
19 used.

20 (4) A seller shall maintain a proper record of all exempt
21 transactions and shall provide them when requested by the
22 department.

23 (5) A seller who complies with the requirements of this
24 section is not liable for the tax under this act if a purchaser
25 improperly claims an exemption. A purchaser who improperly claims
26 an exemption is liable for the tax due under this act. This
27 subsection does not apply if a seller does any of the following:

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

2 (b) Solicits a purchaser to make an improper claim for
3 exemption.

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

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

9 (ii) The state in which the location operated by the seller is
10 located provides an exemption form that clearly and affirmatively
11 indicates that the claimed exemption is not available in that
12 state.

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

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

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

23 (b) The date an assessment becomes final.

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

25 (d) In the instance of a credit audit, the issuance of an
26 audit determination letter or informal conference decision and
27 order of determination.

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

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

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