

**SUBSTITUTE FOR
HOUSE BILL NO. 5096**

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 9a (MCL 205.99a), as amended by 2004 PA 172.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9a. (1) In computing the amount of tax levied under this
2 act for any month, a seller may deduct the amount of bad debts from
3 his or her gross sales, rentals, or services used for the
4 computation of the tax. The amount of gross sales, rentals, or
5 services deducted must be charged off as uncollectible on the books
6 and records of the seller at the time the debt becomes worthless
7 and deducted on the return for the period during which the bad debt
8 is written off as uncollectible in the claimant's books and records
9 and must be eligible to be deducted for federal income tax
10 purposes. For purposes of this section, a claimant who is not

1 required to file a federal income tax return may deduct a bad debt
2 on a return filed for the period in which the bad debt becomes
3 worthless and is written off as uncollectible in the claimant's
4 books and records and would be eligible for a bad debt deduction
5 for federal income tax purposes if the claimant was required to
6 file a federal income tax return. If a consumer or other person
7 pays all or part of a bad debt with respect to which a seller
8 claimed a deduction under this section, the seller is liable for
9 the amount of taxes deducted in connection with that portion of the
10 debt for which payment is received and shall remit these taxes in
11 his or her next payment to the department. Any payments made on a
12 bad debt shall be applied proportionally first to the taxable price
13 of the property and the tax on the property and second to any
14 interest, service, or other charge.

15 (2) Any claim for a bad debt deduction under this section
16 shall be supported by that evidence required by the department. The
17 department shall review any change in the rate of taxation
18 applicable to any taxable sales, rentals, or services by a seller
19 claiming a deduction pursuant to this section and shall ensure that
20 the deduction on any bad debt does not result in the seller
21 claiming the deduction recovering any more or less than the taxes
22 imposed on the sale, rental, or service that constitutes the bad
23 debt.

24 (3) AFTER SEPTEMBER 30, 2009, IF A TAXPAYER WHO REPORTED THE
25 TAX AND A LENDER EXECUTE AND MAINTAIN A WRITTEN ELECTION
26 DESIGNATING WHICH PARTY MAY CLAIM THE DEDUCTION, A CLAIMANT IS
27 ENTITLED TO A DEDUCTION OR REFUND OF THE TAX RELATED TO A SALE AT

1 RETAIL THAT WAS PREVIOUSLY REPORTED AND PAID IF ALL OF THE
 2 FOLLOWING CONDITIONS ARE MET:

3 (A) NO DEDUCTION OR REFUND WAS PREVIOUSLY CLAIMED OR ALLOWED
 4 ON ANY PORTION OF THE ACCOUNT RECEIVABLE.

5 (B) THE ACCOUNT RECEIVABLE HAS BEEN FOUND WORTHLESS AND
 6 WRITTEN OFF BY THE TAXPAYER THAT MADE THE SALE OR THE LENDER ON OR
 7 AFTER SEPTEMBER 30, 2009.

8 (4) ~~(3)~~—If a certified service provider assumed filing
 9 responsibility under the streamlined sales and use tax
 10 administration act, 2004 PA 174, MCL 205.801 TO 205.833, the
 11 certified service provider may claim, on behalf of the seller, any
 12 bad debt allowable to the seller and shall credit or refund that
 13 amount of bad debt allowed or refunded to the seller.

14 (5) ~~(4)~~—If the books and records of a seller under the
 15 streamlined sales and use tax act—**AGREEMENT UNDER THE STREAMLINED**
 16 **SALES AND USE TAX ADMINISTRATION ACT**, 2004 PA 174, MCL 205.801 TO
 17 205.833, that claims a bad debt allowance support an allocation of
 18 the bad debts among member states of that agreement, the seller may
 19 allocate the bad debts.

20 (6) ~~(5)~~—As used in this section: ~~—"bad~~

21 (A) **"BAD** debt" means any portion of a debt resulting from a
 22 seller's collection of the use tax under this act on the purchase
 23 of tangible personal property or services that is not otherwise
 24 deductible or excludable and that is eligible to be claimed, or
 25 could be eligible to be claimed if the seller kept accounts on an
 26 accrual basis, as a deduction pursuant to section 166 of the
 27 internal revenue code, 26 USC 166. A bad debt does not include any

1 of the following:

2 (i) ~~(a)~~ Interest, finance charge, or use tax on the purchase
3 price.

4 (ii) ~~(b)~~ Uncollectible amounts on property that remains in the
5 possession of the seller until the full purchase price is paid.

6 (iii) ~~(c)~~ Expenses incurred in attempting to collect any account
7 receivable or any portion of the debt recovered.

8 (iv) ~~(d)~~ Any accounts receivable that have been sold to and
9 remain in the possession of a third party for collection.

10 (v) ~~(e)~~ Repossessed property.

11 (B) EXCEPT AS PROVIDED IN SUBDIVISION (C), "LENDER" INCLUDES
12 ANY OF THE FOLLOWING:

13 (i) ANY PERSON WHO HOLDS OR HAS HELD AN ACCOUNT RECEIVABLE
14 WHICH THAT PERSON PURCHASED DIRECTLY FROM A TAXPAYER WHO REPORTED
15 THE TAX.

16 (ii) ANY PERSON WHO HOLDS OR HAS HELD AN ACCOUNT RECEIVABLE
17 PURSUANT TO THAT PERSON'S CONTRACT DIRECTLY WITH THE TAXPAYER WHO
18 REPORTED THE TAX.

19 (iii) THE ISSUER OF THE PRIVATE LABEL CREDIT CARD.

20 (C) "LENDER" DOES NOT INCLUDE THE ISSUER OF A CREDIT CARD OR
21 INSTRUMENT THAT CAN BE USED TO MAKE PURCHASES FROM A PERSON OTHER
22 THAN THE VENDOR WHOSE NAME OR LOGO APPEARS ON THE CARD OR
23 INSTRUMENT OR THAT VENDOR'S AFFILIATES.

24 (D) "PRIVATE LABEL CREDIT CARD" MEANS ANY CHARGE CARD, CREDIT
25 CARD, OR OTHER INSTRUMENT SERVING A SIMILAR PURPOSE THAT CARRIES,
26 REFERS TO, OR IS BRANDED WITH THE NAME OR LOGO OF A VENDOR AND THAT
27 CAN ONLY BE USED FOR PURCHASES FROM THE VENDOR.

1 (E) "SELLER" MEANS A PERSON WHO HAS REMITTED USE TAX DIRECTLY
2 TO THE DEPARTMENT ON THE SPECIFIC SALES, RENTAL, OR SERVICE
3 TRANSACTION FOR WHICH THE BAD DEBT IS RECOGNIZED FOR FEDERAL INCOME
4 TAX PURPOSES OR, AFTER SEPTEMBER 30, 2009, A LENDER HOLDING THE
5 ACCOUNT RECEIVABLE FOR WHICH THE BAD DEBT IS RECOGNIZED, OR WOULD
6 BE RECOGNIZED IF THE CLAIMANT WERE A CORPORATION, FOR FEDERAL
7 INCOME TAX PURPOSES.

8 Enacting section 1. This amendatory act is curative and shall
9 be retroactively applied, expressing the original intent of the
10 legislature that a deduction for a bad debt for a seller under the
11 use tax act, 1937 PA 94, MCL 205.91 to 205.111, is available
12 exclusively to those persons with the legal liability to remit the
13 tax on the specific sales, rental, or service transaction for which
14 the bad debt is recognized for federal income tax purposes, and
15 correcting any misinterpretation of the meaning of the term
16 "seller" that may have been caused by the Michigan court of appeals
17 decision in Daimler Chrysler Services North America LLC v
18 Department of Treasury, No. 264323. However, this amendatory act is
19 not intended to affect a refund required by a final order of a
20 court of competent jurisdiction for which all rights of appeal have
21 been exhausted or have expired if the refund is payable without
22 interest and after September 30, 2009 and before November 1, 2009.