

SUBSTITUTE FOR
HOUSE BILL NO. 5097

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending section 4i (MCL 205.54i), as amended by 2004 PA 173.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4i. (1) As used in this section: ~~—"bad~~
2 (A) "BAD debt" means any portion of a debt that is related to
3 a sale at retail taxable under this act for which gross proceeds
4 are not otherwise deductible or excludable and that is eligible to
5 be claimed, or could be eligible to be claimed if the taxpayer kept
6 accounts on an accrual basis, as a deduction pursuant to section
7 166 of the internal revenue code, 26 USC 166. A bad debt shall not
8 include any finance charge, interest, or sales tax on the purchase
9 price, uncollectible amounts on property that remains in the

1 possession of the taxpayer until the full purchase price is paid,
2 expenses incurred in attempting to collect any account receivable
3 or any portion of the debt recovered, any accounts receivable that
4 have been sold to and remain in the possession of a third party for
5 collection, and repossessed property.

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

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

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

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

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

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

23 (E) "TAXPAYER" MEANS A PERSON THAT HAS REMITTED SALES TAX
24 DIRECTLY TO THE DEPARTMENT ON THE SPECIFIC SALES AT RETAIL
25 TRANSACTION FOR WHICH THE BAD DEBT IS RECOGNIZED FOR FEDERAL INCOME
26 TAX PURPOSES OR, AFTER SEPTEMBER 30, 2009, A LENDER HOLDING THE
27 ACCOUNT RECEIVABLE FOR WHICH THE BAD DEBT IS RECOGNIZED, OR WOULD

**1 BE RECOGNIZED IF THE CLAIMANT WERE A CORPORATION, FOR FEDERAL
2 INCOME TAX PURPOSES.**

3 (2) In computing the amount of tax levied under this act for
4 any month, a taxpayer may deduct the amount of bad debts from his
5 or her gross proceeds used for the computation of the tax. The
6 amount of gross proceeds deducted must be charged off as
7 uncollectible on the books and records of the taxpayer at the time
8 the debt becomes worthless and deducted on the return for the
9 period during which the bad debt is written off as uncollectible in
10 the claimant's books and records and must be eligible to be
11 deducted for federal income tax purposes. For purposes of this
12 section, a claimant who is not required to file a federal income
13 tax return may deduct a bad debt on a return filed for the period
14 in which the bad debt becomes worthless and is written off as
15 uncollectible in the claimant's books and records and would be
16 eligible for a bad debt deduction for federal income tax purposes
17 if the claimant was required to file a federal income tax return.
18 If a consumer or other person pays all or part of a bad debt with
19 respect to which a taxpayer claimed a deduction under this section,
20 the taxpayer is liable for the amount of taxes deducted in
21 connection with that portion of the debt for which payment is
22 received and shall remit these taxes in his or her next payment to
23 the department. Any payments made on a bad debt shall be applied
24 proportionally first to the taxable price of the property and the
25 tax on the property and second to any interest, service, or other
26 charge.

27 (3) **AFTER SEPTEMBER 30, 2009, IF A TAXPAYER WHO REPORTED THE**

1 TAX AND A LENDER EXECUTE AND MAINTAIN A WRITTEN ELECTION
2 DESIGNATING WHICH PARTY MAY CLAIM THE DEDUCTION, A CLAIMANT IS
3 ENTITLED TO A DEDUCTION OR REFUND OF THE TAX RELATED TO A SALE AT
4 RETAIL THAT WAS PREVIOUSLY REPORTED AND PAID IF ALL OF THE
5 FOLLOWING CONDITIONS ARE MET:

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

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

11 (4) ~~(3)~~—Any claim for a bad debt deduction under this section
12 shall be supported by that evidence required by the department. The
13 department shall review any change in the rate of taxation
14 applicable to any taxable sales by a taxpayer claiming a deduction
15 pursuant to this section and shall ensure that the deduction on any
16 bad debt does not result in the taxpayer claiming the deduction
17 recovering any more or less than the taxes imposed on the sale that
18 constitutes the bad debt.

19 (5) ~~(4)~~—If a certified service provider assumed filing
20 responsibility under the streamlined sales and use tax
21 administration act, 2004 PA 174, MCL 205.801 TO 205.833, the
22 certified service provider may claim, on behalf of the taxpayer,
23 any bad debt allowable to the taxpayer and shall credit or refund
24 that amount of bad debt allowed or refunded to the taxpayer.

25 (6) ~~(5)~~—If the books and records of a taxpayer under the
26 streamlined sales and use tax agreement **UNDER THE STREAMLINED SALES**
27 **AND USE TAX ADMINISTRATION ACT, 2004 PA 174, MCL 205.801 TO**

1 205.833, that claims a bad debt allowance support an allocation of
2 the bad debts among member states of that agreement, the taxpayer
3 may allocate the bad debts.

4 Enacting section 1. This amendatory act is curative and shall
5 be retroactively applied, expressing the original intent of the
6 legislature that a deduction for a bad debt for a taxpayer under
7 the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, is
8 available exclusively to those persons with the legal liability to
9 remit the tax on the specific sale at retail for which the bad debt
10 deduction is recognized for federal income tax purposes, and
11 correcting any misinterpretation of the meaning of the term
12 "taxpayer" that may have been caused by the Michigan court of
13 appeals decision in Daimler Chrysler Services North America LLC v
14 Department of Treasury, No. 264323. However, this amendatory act is
15 not intended to affect a refund required by a final order of a
16 court of competent jurisdiction for which all rights of appeal have
17 been exhausted or have expired if the refund is payable without
18 interest and after September 30, 2009 and before November 1, 2009.