

HOUSE BILL No. 5096

August 8, 2007, Introduced by Rep. Bieda and referred to the Committee on Tax Policy.

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

1 and must be eligible to be deducted for federal income tax
2 purposes. For purposes of this section, a claimant who is not
3 required to file a federal income tax return may deduct a bad debt
4 on a return filed for the period in which the bad debt becomes
5 worthless and is written off as uncollectible in the claimant's
6 books and records and would be eligible for a bad debt deduction
7 for federal income tax purposes if the claimant was required to
8 file a federal income tax return. If a consumer or other person
9 pays all or part of a bad debt with respect to which a seller
10 claimed a deduction under this section, the seller is liable for
11 the amount of taxes deducted in connection with that portion of the
12 debt for which payment is received and shall remit these taxes in
13 his or her next payment to the department. Any payments made on a
14 bad debt shall be applied proportionally first to the taxable price
15 of the property and the tax on the property and second to any
16 interest, service, or other charge.

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

26 (3) If a certified service provider assumed filing
27 responsibility under the streamlined sales and use tax

administration act, 2004 PA 174, MCL 205.801 TO 205.833, the certified service provider may claim, on behalf of the seller, any bad debt allowable to the seller and shall credit or refund that amount of bad debt allowed or refunded to the seller.

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

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

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

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

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

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

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

1 (v) ~~(e)~~—Repossessed property.

2 (B) "SELLER" MEANS A PERSON WHO HAS REMITTED USE TAX DIRECTLY
3 TO THE DEPARTMENT ON THE SPECIFIC SALES, RENTAL, OR SERVICE
4 TRANSACTION FOR WHICH THE BAD DEBT IS RECOGNIZED FOR FEDERAL INCOME
5 TAX PURPOSES.

6 Enacting section 1. This amendatory act is curative and shall
7 be retroactively applied, expressing the original intent of the
8 legislature that a deduction for a bad debt for a seller under the
9 use tax act, 1937 PA 94, MCL 205.91 to 205.111, is available
10 exclusively to those persons with the legal liability to remit the
11 tax on the specific sales, rental, or service transaction for which
12 the bad debt is recognized for federal income tax purposes, and
13 correcting any misinterpretation of the meaning of the term
14 "seller" that may have been caused by the Michigan court of appeals
15 decision in Daimler Chrysler Services North America LLC v
16 Department of Treasury, No. 264323.