

HOUSE BILL No. 5989

November 8, 2012, Introduced by Rep. Nesbitt and referred to the Committee on Tax Policy.

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending section 18 (MCL 205.68), as amended by 2008 PA 438.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 18. (1) A person liable for any tax imposed under this
2 act shall keep accurate and complete beginning and annual inventory
3 and purchase records of additions to inventory, complete daily
4 sales records, receipts, invoices, bills of lading, and all
5 pertinent documents in a form the department requires. If an
6 exemption from the tax under this act is claimed by a person
7 because the sale is for resale at retail, a record shall be kept of
8 the sales tax license number if the person has a sales tax license.
9 These records shall be retained for a period of 4 years after the
10 tax imposed under this act to which the records apply is due or as

1 otherwise provided by law.

2 (2) If the department considers it necessary, the department
3 may require a person, by notice served upon that person, to make a
4 return, render under oath certain statements, or keep certain
5 records the department considers sufficient to show whether or not
6 that person is liable for the tax under this act.

7 (3) A person knowingly making a sale of tangible personal
8 property for the purpose of resale at retail to another person not
9 licensed under this act is liable for the tax under this act unless
10 the transaction is exempt under the provisions of section 4k.

11 (4) If the taxpayer fails to file a return or to maintain or
12 preserve proper records as prescribed in this section, or the
13 department has reason to believe that any records maintained or
14 returns filed are inaccurate or incomplete and that additional
15 taxes are due, the department may assess the amount of the tax due
16 from the taxpayer based on **AN INDIRECT AUDIT PROCEDURE OR ANY OTHER**
17 information that is available or that may become available to the
18 department. That assessment is considered prima facie correct for
19 the purpose of this act and the burden of proof of refuting the
20 assessment is upon the taxpayer.

21 **(5) IF A TAXPAYER HAS FILED ALL THE REQUIRED RETURNS AND HAS**
22 **MAINTAINED AND PRESERVED ADEQUATE RECORDS AS REQUIRED UNDER THIS**
23 **SECTION, THE DEPARTMENT SHALL NOT BASE A TAX DEFICIENCY**
24 **DETERMINATION OR ASSESSMENT ON ANY INDIRECT AUDIT PROCEDURE UNLESS**
25 **THE DEPARTMENT HAS A DOCUMENTED REASON TO BELIEVE THAT ANY RECORDS**
26 **MAINTAINED OR RETURNS FILED ARE INACCURATE OR INCOMPLETE AND THAT**
27 **ADDITIONAL TAXES ARE DUE. AN INDIRECT AUDIT OF A TAXPAYER UNDER**

1 THIS SUBSECTION SHALL NOT BE CONDUCTED IN AN ARBITRARY FASHION AND
2 SHALL INCLUDE ALL OF THE FOLLOWING ELEMENTS:

3 (A) A REVIEW OF THE TAXPAYER'S BOOKS AND RECORDS. THE
4 DEPARTMENT MAY USE AN INDIRECT METHOD TO TEST THE ACCURACY OF THE
5 TAXPAYER'S BOOKS AND RECORDS.

6 (B) A TAX DEFICIENCY DETERMINATION OR AN ASSESSMENT OF TAX
7 DEFICIENCY SHALL NOT BE BASED ON A PROJECTION FROM A SAMPLE WITHOUT
8 THE WRITTEN APPROVAL OF THE TAXPAYER.

9 (C) BOTH THE CREDIBILITY OF THE EVIDENCE AND THE
10 REASONABLENESS OF THE CONCLUSION SHALL BE EVALUATED BEFORE ANY
11 DETERMINATION OF TAX LIABILITY IS MADE.

12 (D) THE DEPARTMENT MAY USE ANY METHOD TO RECONSTRUCT INCOME,
13 DEDUCTIONS, OR EXPENSES THAT IS REASONABLE UNDER THE CIRCUMSTANCES.
14 THE DEPARTMENT MAY USE THIRD-PARTY RECORDS IN THE RECONSTRUCTION.

15 (E) THE DEPARTMENT SHALL INVESTIGATE ALL REASONABLE EVIDENCE
16 PRESENTED BY THE TAXPAYER REFUTING THE COMPUTATION.

17 (6) ~~(5)~~—If all the information is maintained as provided under
18 section 12, an exemption certificate is not required for an
19 exemption claim by the following:

20 (a) A person licensed by the Michigan liquor control
21 commission as a wholesaler for purposes of sales of alcoholic
22 liquor to another person licensed by the Michigan liquor control
23 commission. As used in this subsection, "alcoholic liquor",
24 "authorized distribution agent", and "wholesaler" mean those terms
25 as defined in the Michigan liquor control code of 1998, 1998 PA 58,
26 MCL 436.1101 to 436.2303.

27 (b) The Michigan liquor control commission or a person

1 certified by the commission as an authorized distribution agent for
2 purposes of the sale and distribution of alcoholic liquor to a
3 person licensed by the Michigan liquor control commission.

4 (7) ~~(6)~~—For purposes of this act, a blanket exemption claim
5 covers all exempt transfers between the taxpayer and the buyer for
6 a period of 4 years or for a period of less than 4 years as stated
7 on the blanket exemption claim if that period is agreed to by the
8 buyer and taxpayer. Renewal of a blanket exemption claim or an
9 update of exemption claim information or data elements is not
10 required if there is a recurring business relationship between the
11 seller and the purchaser. For purposes of this subsection, a
12 recurring business relationship exists when a period of not more
13 than 12 months elapses between sales transactions.

14 (8) AS USED IN THIS SECTION:

15 (A) "CIRCUMSTANTIAL EVIDENCE" IS EVIDENCE FROM WHICH MORE THAN
16 1 LOGICAL CONCLUSION CAN BE REACHED.

17 (B) "INDIRECT AUDIT PROCEDURE" IS AN AUDIT METHOD THAT
18 INVOLVES THE USE OF CIRCUMSTANTIAL EVIDENCE TO DETERMINE A
19 LIABILITY FOR THE TAX UNDER THIS ACT BASED ON OMITTED INCOME,
20 OVERSTATED DEDUCTIONS OR EXPENSES, OR BOTH.