

SENATE BILL No. 1100

October 1, 2014, Introduced by Senators PAPPAGEORGE, NOFS, JANSEN, CASPERSON and COLBECK and referred to the Committee on Economic Development.

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending section 18 (MCL 205.68), as amended by 2014 PA 108.

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 in a paper, electronic, or digital format an
3 accurate and complete beginning and annual inventory and purchase
4 records of additions to inventory, complete daily sales records,
5 receipts, invoices, bills of lading, and all pertinent documents in
6 a form the department requires. If an exemption from the tax under
7 this act is claimed by a person because the sale is for resale at
8 retail, a record shall be kept of the sales tax license number if
9 the person has a sales tax license. These records shall be retained
10 for a period of 4 years after the tax imposed under this act to

1 which the records apply is due or as otherwise provided by law.

2 (2) THE DEPARTMENT MAY REQUIRE A PERSON SUBJECT TO THE TAX
3 UNDER THIS ACT TO MAINTAIN AN ANTI-SALES SUPPRESSION DEVICE ON ITS
4 CASH REGISTER, ELECTRONIC CASH REGISTER, OR ANY OTHER POINT-OF-SALE
5 SYSTEM IN A MANNER PRESCRIBED BY THE DEPARTMENT.

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

11 (4) ~~(3)~~—A person knowingly making a sale of tangible personal
12 property for the purpose of resale at retail to another person not
13 licensed under this act is liable for the tax under this act unless
14 the transaction is exempt under ~~the provisions of~~ section 4k.

15 (5) ~~(4)~~—If the taxpayer fails to file a return or to maintain
16 or preserve sufficient records as prescribed in this section, or
17 the department has reason to believe that any records maintained or
18 returns filed are inaccurate or incomplete and that additional
19 taxes are due, the department may assess the amount of the tax due
20 from the taxpayer based on an indirect audit procedure or any other
21 information that is available or that may become available to the
22 department. That assessment is considered prima facie correct for
23 the purpose of this act and the burden of proof of refuting the
24 assessment is upon the taxpayer. An indirect audit of a taxpayer
25 under this subsection shall be conducted in accordance with 1941 PA
26 122, MCL 205.1 to 205.31, and the standards published by the
27 department under section 21 of 1941 PA 122, MCL 205.21, and shall

1 include all of the following elements:

2 (a) A review of the taxpayer's books and records. The
3 department may use an indirect method to test the accuracy of the
4 taxpayer's books and records.

5 (b) Both the credibility of the evidence and the
6 reasonableness of the conclusion shall be evaluated before any
7 determination of tax liability is made.

8 (c) The department may use any method to reconstruct income,
9 deductions, or expenses that is reasonable under the circumstances.
10 The department may use third-party records in the reconstruction.

11 (d) The department shall investigate all reasonable evidence
12 presented by the taxpayer refuting the computation.

13 (6) ~~(5)~~—If a taxpayer has filed all the required returns and
14 has maintained and preserved sufficient records as required under
15 this section, the department shall not base a tax deficiency
16 determination or assessment on any indirect audit procedure unless
17 the department has a documented reason to believe that any records
18 maintained or returns filed are inaccurate or incomplete and that
19 additional taxes are due.

20 (7) ~~(6)~~—If all the information is maintained as provided under
21 section 12, an exemption certificate is not required for an
22 exemption claim by the following:

23 (a) A person licensed by the Michigan liquor control
24 commission as a wholesaler for purposes of sales of alcoholic
25 liquor to another person licensed by the Michigan liquor control
26 commission. As used in this subsection, "alcoholic liquor",
27 "authorized distribution agent", and "wholesaler" mean those terms

1 as defined in the Michigan liquor control code of 1998, 1998 PA 58,
2 MCL 436.1101 to 436.2303.

3 (b) The Michigan liquor control commission or a person
4 certified by the commission as an authorized distribution agent for
5 purposes of the sale and distribution of alcoholic liquor to a
6 person licensed by the Michigan liquor control commission.

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

17 (9) ~~(8)~~—As used in this section:

18 (A) **"ANTI-SALES SUPPRESSION DEVICE" MEANS A TANGIBLE DEVICE,**
19 **SOFTWARE PROGRAM, OR ANY OTHER MEANS USED TO PREVENT OR DETECT THE**
20 **USE OF AN AUTOMATED SALES SUPPRESSION DEVICE OR ZAPPER, PHANTOM-**
21 **WARE, OR A SKIMMING DEVICE AS THOSE TERMS ARE DEFINED IN SECTION**
22 **411W OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.411W.**

23 (B) ~~(a)~~—"Indirect audit procedure" is an audit method that
24 involves the determination of tax liabilities through an analysis
25 of a taxpayer's business activities using information from a range
26 of sources beyond the taxpayer's declaration and formal books and
27 records.

1 (C) ~~(b)~~—"Sufficient records" means records that meet the
2 department's need to determine the tax due under this act.