

HOUSE SUBSTITUTE FOR

SENATE BILL NO. 617

(as amended December 15, 2015)

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 14b (MCL 205.104b), as amended by 2008 PA 439,
and by adding section 4cc.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 4CC. (1) [SUBJECT TO SUBSECTIONS (2) AND (3), BEGINNING]
JANUARY 1, 2016 THROUGH DECEMBER 31,

2 2035, THE TAX UNDER THIS ACT DOES NOT APPLY TO THE STORAGE, USE, OR
3 CONSUMPTION OF DATA CENTER EQUIPMENT SOLD TO THE OWNER OR OPERATOR
4 OF A QUALIFIED DATA CENTER OR A COLOCATED BUSINESS FOR ASSEMBLY,
5 USE, OR CONSUMPTION IN THE OPERATIONS OF THE QUALIFIED DATA CENTER
6 OR DATA CENTER EQUIPMENT SOLD OR PROVIDED TO A PERSON ENGAGED IN
7 THE BUSINESS OF CONSTRUCTING, ALTERING, REPAIRING, OR IMPROVING
8 REAL ESTATE FOR OTHERS TO THE EXTENT THE DATA CENTER EQUIPMENT IS
9 TO BE AFFIXED TO OR MADE A STRUCTURAL PART OF A QUALIFIED DATA
10 CENTER.

[(2) THE EXEMPTION UNDER THIS SECTION ONLY CONTINUES TO APPLY AFTER
JANUARY 1, 2022, IF THE NUMBERS GATHERED BY THE LOCAL ECONOMIC
DEVELOPMENT CORPORATIONS ARE CERTIFIED AND REPORTED TO THE DEPARTMENT OF
TALENT AND ECONOMIC DEVELOPMENT AND SUBSEQUENTLY FORWARDED TO THE
DEPARTMENT AND DEMONSTRATE THAT THE QUALIFIED DATA CENTERS, THE COLOCATED
BUSINESSES, AND THE CONTRACTORS OF THE QUALIFIED DATA CENTERS,
COLLECTIVELY, HAVE, IN AGGREGATE, ESTABLISHED IN THIS STATE AT LEAST 400
DATA CENTER INDUSTRY JOBS OR DATA CENTER INDUSTRY RELATED JOBS, OR A
COMBINATION OF BOTH, SINCE JANUARY 1, 2016. THE DEPARTMENT OF TALENT AND
ECONOMIC DEVELOPMENT SHALL SUBMIT A REPORT NO LATER THAN APRIL 1, 2022
RELATED TO THE NUMBER OF DATA CENTER INDUSTRY JOBS OR DATA CENTER
INDUSTRY RELATED JOBS THAT HAVE BEEN ESTABLISHED SINCE JANUARY 1, 2016 TO
THE SPEAKER AND MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES, THE
MAJORITY AND MINORITY LEADERS OF THE SENATE, AND THE GOVERNOR.]

(3) THE EXEMPTION UNDER THIS SECTION ONLY CONTINUES TO APPLY AFTER
JANUARY 1, 2026, IF THE NUMBERS GATHERED BY THE LOCAL ECONOMIC
DEVELOPMENT CORPORATIONS ARE CERTIFIED AND REPORTED TO THE DEPARTMENT OF
TALENT AND ECONOMIC DEVELOPMENT AND SUBSEQUENTLY FORWARDED TO THE
DEPARTMENT AND DEMONSTRATE THAT THE QUALIFIED DATA CENTERS, THE COLOCATED
BUSINESSES, AND THE CONTRACTORS OF THE QUALIFIED DATA CENTERS,
COLLECTIVELY, HAVE, IN AGGREGATE, ESTABLISHED IN THIS STATE AT LEAST
1,000 DATA CENTER INDUSTRY JOBS OR DATA CENTER INDUSTRY RELATED JOBS, OR
A COMBINATION OF BOTH, SINCE JANUARY 1, 2016. THE DEPARTMENT OF TALENT
AND ECONOMIC DEVELOPMENT SHALL SUBMIT A REPORT NO LATER THAN APRIL 1,
2026 RELATED TO THE NUMBER OF DATA CENTER INDUSTRY JOBS OR DATA CENTER
INDUSTRY RELATED JOBS THAT HAVE BEEN ESTABLISHED SINCE JANUARY 1, 2016 TO
THE SPEAKER AND MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES, THE
MAJORITY AND MINORITY LEADERS OF THE SENATE, AND THE GOVERNOR.]

(4) AS USED IN THIS SECTION:

(A) "AFFILIATE" MEANS A PERSON THAT DIRECTLY, OR INDIRECTLY THROUGH 1 OR MORE INTERMEDIARIES, CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH A SPECIFIED PERSON.

(B) "COLOCATED BUSINESS" MEANS A PERSON THAT HAS ENTERED INTO A CONTRACT WITH THE OWNER OR OPERATOR OF A QUALIFIED DATA CENTER TO USE OR DEPLOY DATA CENTER EQUIPMENT PHYSICALLY LOCATED WITHIN THE QUALIFIED DATA CENTER FOR A PERIOD OF 1 OR MORE YEARS.

(C) "DATA CENTER EQUIPMENT" MEANS ONLY COMPUTERS, SERVERS, ROUTERS, SWITCHES, PERIPHERAL COMPUTER DEVICES, RACKS, SHELVING, CABLING, WIRING, STORAGE BATTERIES, BACK-UP GENERATORS, UNINTERRUPTED POWER SUPPLY UNITS, ENVIRONMENTAL CONTROL EQUIPMENT, OTHER REDUNDANT POWER SUPPLY EQUIPMENT, AND PREWRITTEN COMPUTER SOFTWARE USED IN OPERATING, MANAGING, OR MAINTAINING THE QUALIFIED DATA CENTER OR THE BUSINESS OF THE QUALIFIED DATA CENTER OR A COLOCATED BUSINESS. DATA CENTER EQUIPMENT ALSO INCLUDES ANY CONSTRUCTION MATERIALS USED OR ASSEMBLED UNDER THE QUALIFIED DATA CENTER'S PROPRIETARY METHOD FOR THE CONSTRUCTION OR MODIFICATION OF A QUALIFIED DATA CENTER, INCLUDING, BUT NOT LIMITED TO, BUILDING MATERIALS, INFRASTRUCTURE, MACHINERY, WIRING, CABLING, DEVICES, TOOLS, AND EQUIPMENT THAT WOULD OTHERWISE BE CONSIDERED A FIXTURE OR RELATED EQUIPMENT. DATA CENTER EQUIPMENT DOES NOT INCLUDE ANY EQUIPMENT OWNED BY A THIRD PARTY THAT IS USED TO SUPPLY THE QUALIFIED DATA CENTER'S PRIMARY POWER.

(D) "QUALIFIED DATA CENTER" MEANS A FACILITY COMPOSED OF 1 OR MORE BUILDINGS LOCATED IN THIS STATE AND THE FACILITY IS OWNED OR OPERATED BY AN ENTITY ENGAGED AT THAT FACILITY IN OPERATING,

1 MANAGING, OR MAINTAINING A GROUP OF NETWORKED COMPUTERS OR
2 NETWORKED FACILITIES FOR THE PURPOSE OF CENTRALIZING, OR ALLOWING 1
3 OR MORE COLOCATED BUSINESSES TO CENTRALIZE, THE STORAGE,
4 PROCESSING, MANAGEMENT, OR DISSEMINATION OF DATA OF 1 OR MORE OTHER
5 PERSONS WHO IS NOT AN AFFILIATE OF THE OWNER OR OPERATOR OF A
6 QUALIFIED DATA CENTER OR OF A COLOCATED BUSINESS AND THE ENTITY
7 RECEIVES 75% OR MORE OF ITS REVENUE FROM COLOCATED BUSINESSES THAT
8 ARE NOT AN AFFILIATE OF THE OWNER OR OPERATOR OF THE QUALIFIED DATA
9 CENTER.

10 Sec. 14b. (1) If an exemption from the tax under this act is
11 claimed, the seller shall obtain identifying information of the
12 purchaser and the reason for claiming the exemption at the time of
13 the purchase or at a later date. The seller shall obtain the same
14 information for a claimed exemption regardless of the medium in
15 which the transaction occurred.

16 (2) A seller shall use a standard format for claiming an
17 exemption electronically as adopted by the governing board under
18 the streamlined sales and use tax agreement.

19 (3) A purchaser is not required to provide a signature to
20 claim an exemption under this act unless a paper exemption form is
21 used.

22 (4) A seller shall maintain a proper record of all exempt
23 transactions and shall provide them when requested by the
24 department.

25 (5) A seller who complies with the requirements of this
26 section is not liable for the tax under this act if a purchaser
27 improperly claims an exemption. A purchaser who improperly claims

1 an exemption is liable for the tax due under this act. This
2 subsection does not apply if a seller does any of the following:

3 (a) Fraudulently fails to collect the tax **UNDER THIS ACT**.

4 (b) Solicits a purchaser to make an improper claim for
5 exemption.

6 (c) Accepts an exemption form when the purchaser claims an
7 entity-based exemption if both of the following occur:

8 (i) The subject of the transaction sought to be covered by the
9 exemption form is actually received by the purchaser at a location
10 operated by the seller.

11 (ii) The state in which the location operated by the seller is
12 located provides an exemption form that clearly and affirmatively
13 indicates that the claimed exemption is not available in that
14 state.

15 (6) A seller who obtains a fully completed exemption form or
16 captures the relevant data elements as outlined in this section
17 within 120 days after the date of sale is not liable for the tax
18 under this act.

19 (7) If the seller has not obtained an exemption form or all
20 relevant data elements, the seller may either prove that the
21 transaction was not subject to the tax under this act by other
22 means or obtain a fully completed exemption form from the
23 purchaser, by the later of the following:

24 (a) 120 days after a request by the department.

25 (b) The date an assessment becomes final.

26 (c) The denial of a claim for refund.

27 (d) In the instance of a credit audit, the issuance of an

1 audit determination letter or informal conference decision and
2 order of determination.

3 (e) The date of a final order of the court of claims or the
4 Michigan tax tribunal, as applicable, with respect to an
5 assessment, order, or decision of the department.

6 (8) The department may, in its discretion, allow a seller
7 additional time to comply with subsection (7).

8 (9) A seller is not liable for the tax under this act if the
9 seller obtains a blanket exemption form for a purchaser with which
10 the seller has a recurring business relationship. Renewals of
11 blanket exemption forms or updates of exemption form information or
12 data elements are not required if there is a recurring business
13 relationship between the seller and the purchaser. For purposes of
14 this section, a recurring business relationship exists when a
15 period of not more than 12 months elapses between sales
16 transactions.

17 Enacting section 1. The legislature shall annually appropriate
18 sufficient funds from the state general fund to the state school
19 aid fund created in section 11 of article IX of the state
20 constitution of 1963 to fully compensate for any loss of revenue to
21 the state school aid fund resulting from the enactment of this
22 amendatory act.