

SUBSTITUTE FOR

SENATE BILL NO. 616

(As amended December 3, 2015)

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending section 12 (MCL 205.62), as amended by 2008 PA 438, and
by adding section 4ee.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 4EE. (1) BEGINNING JANUARY 1, 2016 THROUGH DECEMBER 31,
2 2030, A SALE OF DATA CENTER EQUIPMENT TO THE OWNER OR OPERATOR OF
3 AN INTERNET DATA CENTER OR A COLOCATED BUSINESS FOR USE OR
4 CONSUMPTION IN THE OPERATIONS OF THE INTERNET DATA CENTER IS EXEMPT
5 FROM THE TAX << >> UNDER THIS ACT.

6 (2) AS USED IN THIS SECTION:

7 (A) "COLOCATED BUSINESS" MEANS A PERSON THAT HAS ENTERED INTO
8 A CONTRACT WITH THE OWNER OR OPERATOR OF AN INTERNET DATA CENTER TO
9 DEPLOY AND USE DATA CENTER EQUIPMENT PHYSICALLY LOCATED WITHIN THE

1 INTERNET DATA CENTER FOR A PERIOD OF 1 OR MORE YEARS.

2 (B) "DATA CENTER EQUIPMENT" MEANS HIGH-TECHNOLOGY EQUIPMENT
3 CONSUMED OR USED PHYSICALLY WITHIN AN INTERNET DATA CENTER
4 INCLUDING, BUT NOT LIMITED TO, COMPUTERS, SERVERS, ROUTERS,
5 SWITCHES, PERIPHERAL COMPUTER DEVICES, AND THEIR ASSOCIATED TOOLS,
6 RACKS, SHELVING, CABLING, AND WIRING. DATA CENTER EQUIPMENT ALSO
7 INCLUDES ANY CONSTRUCTION MATERIALS USED TO CONSTRUCT THE INTERNET
8 DATA CENTER, INCLUDING, BUT NOT LIMITED TO, ANY HEATING, COOLING,
9 OR VENTILATION FIXTURES, FIRE SUPPRESSION SYSTEMS, SECURITY
10 SYSTEMS, AND MATERIALS HANDLING EQUIPMENT. DATA CENTER EQUIPMENT
11 ALSO INCLUDES STORAGE BATTERIES, BACK-UP GENERATORS, UNINTERRUPTED
12 POWER SUPPLY UNITS, AND OTHER REDUNDANT POWER SUPPLY EQUIPMENT.
13 DATA CENTER EQUIPMENT DOES NOT INCLUDE ANY EQUIPMENT OWNED BY A
14 THIRD PARTY THAT IS USED TO SUPPLY THE INTERNET DATA CENTER'S
15 PRIMARY POWER OR ANY THIRD-PARTY COMMUNICATION NODES THAT ARE USED
16 TO CONNECT AN INTERNET DATA CENTER TO THE EXOGENOUS INTERNET
17 ENVIRONMENT.

18 (C) "HIGH TECHNOLOGY" MEANS TECHNOLOGY USED IN THE CREATION,
19 STORAGE, PROCESSING, OR MANIPULATION OF DIGITAL DATA.

20 (D) "INTERNET DATA CENTER" MEANS A FACILITY THAT SATISFIES ALL
21 OF THE FOLLOWING:

22 (i) THE FACILITY PHYSICALLY HOUSES NETWORKED COMPUTER SERVERS
23 ASSEMBLED FOR THE PURPOSE OF CENTRALIZING THE STORAGE, PROCESSING,
24 MANAGEMENT, OR DISSEMINATION OF DATA OWNED OR CONTROLLED BY THE
25 CUSTOMERS OF THE INTERNET DATA CENTER.

26 (ii) THE FACILITY IS SPECIFICALLY DESIGNED AND CONSTRUCTED TO
27 PROVIDE A HIGH-SECURITY ENVIRONMENT FOR THE LOCATION OF SERVERS AND

1 SIMILAR EQUIPMENT.

2 (iii) THE FACILITY IS OWNED OR OPERATED BY AN ENTITY WHOSE
3 PRIMARY BUSINESS, OR THE PRIMARY BUSINESS OF ITS PARENT COMPANY, IS
4 THAT OF AN INTERNET DATA CENTER AND THAT ENTITY GENERATES 75% OR
5 MORE OF ITS REVENUE FROM THE OPERATING AND BUSINESS OF AN INTERNET
6 DATA CENTER.

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

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

16 (3) A purchaser is not required to provide a signature to
17 claim an exemption under this act unless a paper exemption form is
18 used.

19 (4) A seller shall maintain a proper record of all exempt
20 transactions and shall provide the record if requested by the
21 department.

22 (5) A seller who complies with the requirements of this
23 section is not liable for the tax if a purchaser improperly claims
24 an exemption. A purchaser who improperly claims an exemption is
25 liable for the tax due under this act. This subsection does not
26 apply if a seller fraudulently fails to collect the tax, solicits a
27 purchaser to make an improper claim for exemption, or accepts an

1 exemption form when the purchaser claims an entity-based exemption
2 if both of the following circumstances occur:

3 (a) The subject of the transaction sought to be covered by the
4 exemption form is actually received by the purchaser at a location
5 operated by the seller.

6 (b) The state in which that location operated by the seller is
7 located provides an exemption form that clearly and affirmatively
8 indicates that the claimed exemption is not available in that
9 state.

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

13 (7) If the seller has not obtained an exemption form or all
14 relevant data elements, the seller may either prove that the
15 transaction was not subject to tax by other means or obtain a fully
16 completed exemption form from the purchaser, by the later of the
17 following:

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

19 (b) The date an assessment becomes final.

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

21 (d) In the instance of a credit audit, the issuance of an
22 audit determination letter or informal conference decision and
23 order of determination.

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

27 (8) The department may, in its discretion, allow a seller

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1 additional time to comply with subsection (7).

2 (9) A seller is not liable for the tax **UNDER THIS ACT** if the
3 seller obtains a blanket exemption form for a purchaser with which
4 the seller has a recurring business relationship. Renewals of
5 blanket exemption forms or updates of exemption form information or
6 data elements are not required if there is a recurring business
7 relationship between the seller and the purchaser. For purposes of
8 this section, a recurring business relationship exists when a
9 period of not more than 12 months elapses between sales
10 transactions.

11 (10) A certified service provider shall be considered a seller
12 under this section. As used in this section, "certified service
13 provider" means that term as defined in section 25 of the
14 streamlined sales and use tax administration act, 2004 PA 174, MCL
15 205.825.

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