

# HOUSE BILL No. 5074

November 10, 2015, Introduced by Rep. VerHeulen and referred to the Committee on Tax Policy.

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 SUBSECTION (2), THE TAX UNDER THIS  
2 ACT DOES NOT APPLY TO THE STORAGE, USE, OR CONSUMPTION OF DATA  
3 CENTER EQUIPMENT SOLD TO A DATA CENTER OR A COLOCATED BUSINESS FOR  
4 USE OR CONSUMPTION IN THE OPERATIONS OF THE DATA CENTER.

5           (2) THE PROPERTY UNDER SUBSECTION (1) IS EXEMPT ONLY TO THE  
6 EXTENT THAT THE PROPERTY IS USED FOR THE EXEMPT PURPOSES STATED IN  
7 THIS SECTION. THE EXEMPTION IS LIMITED TO THE PERCENTAGE OF EXEMPT  
8 USE TO TOTAL USE DETERMINED BY A REASONABLE FORMULA OR METHOD  
9 APPROVED BY THE DEPARTMENT.

10           (3) AS USED IN THIS SECTION:

1 (A) "COLOCATED BUSINESS" MEANS A PERSON THAT HAS ENTERED INTO  
2 A CONTRACT WITH THE OWNER OR OPERATOR OF A DATA CENTER TO USE OR  
3 DEPLOY DATA CENTER EQUIPMENT IN THIS STATE FOR A PERIOD OF 2 OR  
4 MORE YEARS.

5 (B) "DATA CENTER" MEANS 1 OR MORE BUILDINGS LOCATED IN THIS  
6 STATE OWNED OR OPERATED BY AN ENTITY WHOSE PRIMARY BUSINESS IS  
7 OWNING, OPERATING, MANAGING, OR MAINTAINING A GROUP OF NETWORKED  
8 COMPUTERS FOR THE PURPOSE OF CENTRALIZING THE STORAGE, PROCESSING,  
9 MANAGEMENT, OR DISSEMINATION OF DATA AND INCLUDES ANY MODULAR OR  
10 PREASSEMBLED COMPONENTS, ASSOCIATED TELECOMMUNICATIONS AND STORAGE  
11 SYSTEMS AND, IF THE DATA CENTER INCLUDES MORE THAN 1 BUILDING OR  
12 PHYSICAL LOCATION, ANY NETWORK OR CONNECTION BETWEEN THOSE  
13 BUILDINGS OR LOCATIONS, AND THE PERSONAL PROPERTY USED TO OPERATE,  
14 MAINTAIN, OR MANAGE THE FACILITY AND ITS BUSINESS.

15 (C) "DATA CENTER EQUIPMENT" MEANS ANY MATERIAL USED IN OR IN  
16 SUPPORT OF A DATA CENTER, INCLUDING, BUT NOT LIMITED TO, COMPUTERS,  
17 SERVERS, CONSTRUCTION MATERIALS, INFRASTRUCTURE, MACHINERY, WIRING,  
18 CABLING, DEVICES, TOOLS, VEHICLES, TECHNOLOGY, SOFTWARE, HARDWARE,  
19 EQUIPMENT THAT WOULD OTHERWISE BE CONSIDERED A FIXTURE, OR RELATED  
20 EQUIPMENT.

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

27 (2) A seller shall use a standard format for claiming an

1 exemption electronically as adopted by the governing board under  
2 the streamlined sales and use tax agreement.

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

6 (4) A seller shall maintain a proper record of all exempt  
7 transactions and shall provide them when requested by the  
8 department.

9 (5) A seller who complies with the requirements of this  
10 section is not liable for the tax under this act if a purchaser  
11 improperly claims an exemption. A purchaser who improperly claims  
12 an exemption is liable for the tax due under this act. This  
13 subsection does not apply if a seller does any of the following:

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

15 (b) Solicits a purchaser to make an improper claim for  
16 exemption.

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

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

22 (ii) The state in which the location operated by the seller is  
23 located provides an exemption form that clearly and affirmatively  
24 indicates that the claimed exemption is not available in that  
25 state.

26 (6) A seller who obtains a fully completed exemption form or  
27 captures the relevant data elements as outlined in this section

1 within 120 days after the date of sale is not liable for the tax  
2 under this act.

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

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

9 (b) The date an assessment becomes final.

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

11 (d) In the instance of a credit audit, the issuance of an  
12 audit determination letter or informal conference decision and  
13 order of determination.

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

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

19 (9) A seller is not liable for the tax under this act if the  
20 seller obtains a blanket exemption form for a purchaser with which  
21 the seller has a recurring business relationship. Renewals of  
22 blanket exemption forms or updates of exemption form information or  
23 data elements are not required if there is a recurring business  
24 relationship between the seller and the purchaser. For purposes of  
25 this section, a recurring business relationship exists when a  
26 period of not more than 12 months elapses between sales  
27 transactions.