

HOUSE BILL No. 5133

December 9, 2015, Introduced by Rep. Byrd and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
(MCL 205.91 to 205.111) by adding section 13a; and to repeal acts
and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 13A. (1) FOR SALES OF ADVERTISING AND PROMOTIONAL DIRECT
2 MAIL ALL OF THE FOLLOWING APPLY:

3 (A) IF THE PURCHASER PROVIDES THE SELLER WITH A DIRECT PAYMENT
4 AUTHORIZATION ISSUED UNDER SECTION 8 OR AN EXEMPTION FORM AS
5 PRESCRIBED BY THE DEPARTMENT FOR CLAIMING DIRECT MAIL, THE SELLER,
6 IN THE ABSENCE OF BAD FAITH, IS RELIEVED OF ALL OBLIGATION TO
7 COLLECT, PAY, OR REMIT ANY APPLICABLE TAX UNDER THIS ACT ON ANY
8 TRANSACTION INVOLVING ADVERTISING AND PROMOTIONAL DIRECT MAIL TO

1 WHICH THE DIRECT PAYMENT AUTHORIZATION OR EXEMPTION FORM APPLIES
2 AND THE PURCHASER SHALL SOURCE THE SALE TO THE JURISDICTIONS TO
3 WHICH THE ADVERTISING AND PROMOTIONAL DIRECT MAIL IS TO BE
4 DELIVERED TO THE RECIPIENTS AND SHALL REPORT AND PAY ANY APPLICABLE
5 TAX DUE.

6 (B) IF THE PURCHASER PROVIDES THE SELLER WITH INFORMATION
7 INDICATING THE JURISDICTIONS TO WHICH THE ADVERTISING AND
8 PROMOTIONAL DIRECT MAIL IS TO BE DELIVERED TO RECIPIENTS, THE
9 SELLER SHALL SOURCE THE SALE TO THE JURISDICTIONS TO WHICH THE
10 ADVERTISING AND PROMOTIONAL DIRECT MAIL IS TO BE DELIVERED AND
11 SHALL COLLECT AND REMIT THE APPLICABLE TAX DUE. IN THE ABSENCE OF
12 BAD FAITH, THE SELLER IS RELIEVED OF ANY FURTHER OBLIGATION TO
13 COLLECT ANY ADDITIONAL TAX ON THE SALE OF ADVERTISING AND
14 PROMOTIONAL DIRECT MAIL IF THE SELLER SOURCED THE SALE AND
15 COLLECTED THE TAX IN ACCORDANCE WITH THE DELIVERY INFORMATION
16 PROVIDED BY THE PURCHASER.

17 (C) IF THE PURCHASER DOES NOT PROVIDE THE SELLER WITH A DIRECT
18 PAYMENT AUTHORIZATION, AN EXEMPTION FORM PRESCRIBED BY THE
19 DEPARTMENT, OR ANY INFORMATION INDICATING THE JURISDICTIONS TO
20 WHICH THE ADVERTISING AND PROMOTIONAL DIRECT MAIL IS TO BE
21 DELIVERED, THE SALE SHALL BE SOURCED IN ACCORDANCE WITH SECTION
22 20(1)(E).

23 (2) EXCEPT AS OTHERWISE PROVIDED UNDER THIS SUBSECTION, SALES
24 OF OTHER DIRECT MAIL SHALL BE SOURCED IN ACCORDANCE WITH SECTION
25 20(1)(C). IF THE PURCHASER PROVIDES THE SELLER WITH A DIRECT
26 PAYMENT AUTHORIZATION ISSUED UNDER SECTION 8 OR AN EXEMPTION FORM
27 AS PRESCRIBED BY THE DEPARTMENT FOR CLAIMING DIRECT MAIL, THE

1 SELLER, IN THE ABSENCE OF BAD FAITH, IS RELIEVED OF ALL OBLIGATION
2 TO COLLECT, PAY, OR REMIT ANY APPLICABLE TAX UNDER THIS ACT ON ANY
3 TRANSACTION INVOLVING OTHER DIRECT MAIL TO WHICH THE DIRECT PAYMENT
4 AUTHORIZATION OR EXEMPTION FORM APPLIES AND THE SALE SHALL BE
5 SOURCED TO THE JURISDICTIONS TO WHICH THE OTHER DIRECT MAIL IS TO
6 BE DELIVERED TO THE RECIPIENTS AND THE PURCHASER SHALL REPORT AND
7 PAY ANY APPLICABLE TAX DUE.

8 (3) THIS SECTION ONLY APPLIES TO A TRANSACTION CHARACTERIZED
9 AS A SALE OF SERVICES IF THE SERVICE IS AN INTEGRAL PART OF THE
10 PRODUCTION AND DISTRIBUTION OF DIRECT MAIL.

11 (4) THIS SECTION DOES NOT APPLY TO ANY TRANSACTION THAT
12 INCLUDES THE DEVELOPMENT OF BILLING INFORMATION OR THE PROVISION OF
13 ANY DATA PROCESSING SERVICE THAT IS MORE THAN INCIDENTAL,
14 REGARDLESS OF WHETHER ADVERTISING AND PROMOTIONAL DIRECT MAIL IS
15 INCLUDED IN THE SAME MAILING.

16 (5) IF A TRANSACTION IS A SINGLE TRANSACTION THAT INCLUDES A
17 COMPONENT IN ADDITION TO ADVERTISING AND PROMOTIONAL DIRECT MAIL,
18 THIS SECTION ONLY APPLIES IF THE PRIMARY PURPOSE OF THE TRANSACTION
19 IS TO ATTRACT PUBLIC ATTENTION OR TO SELL, POPULARIZE, OR SECURE
20 FINANCIAL SUPPORT FOR THE SALE OF THE PRODUCT OR SERVICE.

21 (6) NOTHING IN THIS SECTION LIMITS A PURCHASER'S OBLIGATION
22 FOR SALES OR USE TAX DUE TO ANY STATE TO WHICH THE DIRECT MAIL IS
23 DELIVERED OR LIMITS A PURCHASER'S RIGHT UNDER ANY OTHER LAW FOR A
24 CREDIT OR REFUND OF SALES OR USE TAXES PAID TO ANY OTHER
25 JURISDICTION.

26 (7) AS USED IN THIS SECTION:

27 (A) "ADVERTISING AND PROMOTIONAL DIRECT MAIL" MEANS DIRECT

1 MAIL THE PRIMARY PURPOSE OF WHICH IS TO ATTRACT PUBLIC ATTENTION TO
2 A PRODUCT, SERVICE, PERSON, BUSINESS, OR ORGANIZATION, OR TO
3 ATTEMPT TO SELL, POPULARIZE, OR SECURE FINANCIAL SUPPORT FOR A
4 PRODUCT, SERVICE, PERSON, BUSINESS, OR ORGANIZATION.

5 (B) "OTHER DIRECT MAIL" MEANS ANY DIRECT MAIL THAT IS NOT
6 ADVERTISING AND PROMOTIONAL DIRECT MAIL REGARDLESS OF WHETHER
7 ADVERTISING AND PROMOTIONAL DIRECT MAIL IS INCLUDED IN THE SAME
8 MAILING. OTHER DIRECT MAIL INCLUDES, BUT IS NOT LIMITED TO, ANY OF
9 THE FOLLOWING:

10 (i) TRANSACTIONAL DIRECT MAIL THAT CONTAINS PERSONAL
11 INFORMATION SPECIFIC TO THE ADDRESSEE SUCH AS INVOICES, BILLS,
12 STATEMENTS OF ACCOUNT, AND PAYROLL ADVICES.

13 (ii) ANY LEGALLY REQUIRED MAILINGS SUCH AS PRIVACY NOTICES,
14 TAX REPORTS, AND STOCKHOLDER REPORTS.

15 (iii) ANY OTHER NONPROMOTIONAL DIRECT MAIL DELIVERED TO
16 EXISTING OR FORMER SHAREHOLDERS, CUSTOMERS, EMPLOYEES, OR AGENTS
17 SUCH AS NEWSLETTERS AND INFORMATIONAL PIECES.

18 Enacting section 1. Section 13 of the use tax act, 1937 PA 94,
19 MCL 205.103, is repealed.

20 Enacting section 2. This amendatory act takes effect 90 days
21 after the date it is enacted into law.