

Act No. 159
Public Acts of 2016
Approved by the Governor
June 8, 2016
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**STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2016**

Introduced by Rep. Farrington

ENROLLED HOUSE BILL No. 5132

AN ACT to amend 1933 PA 167, entitled “An act to provide for the raising of additional public revenue by prescribing certain specific taxes, fees, and charges to be paid to the state for the privilege of engaging in certain business activities; to provide, incident to the enforcement thereof, for the issuance of licenses to engage in such occupations; to provide for the ascertainment, assessment and collection thereof; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act,” (MCL 205.51 to 205.78) by adding section 21a; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 21a. (1) For sales of advertising and promotional direct mail all of the following apply:

(a) If the purchaser provides the seller with a direct payment authorization issued under section 8 of the use tax act, 1937 PA 94, MCL 205.98, or an exemption form as prescribed by the department for claiming direct mail, the seller, in the absence of bad faith, is relieved of all obligation to collect, pay, or remit any applicable tax under this act on any transaction involving advertising and promotional direct mail to which the direct payment authorization or exemption form applies, and the purchaser shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered to the recipients and shall report and pay any applicable tax due.

(b) If the purchaser provides the seller with information indicating the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients, the seller shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered and shall collect and remit the applicable tax due. In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of advertising and promotional direct mail if the seller sourced the sale and collected the tax in accordance with the delivery information provided by the purchaser.

(c) If the purchaser does not provide the seller with a direct payment authorization, an exemption form prescribed by the department, or any information indicating the jurisdictions to which the advertising and promotional direct mail is to be delivered, the sale shall be sourced in accordance with section 19(1)(e).

(2) Except as otherwise provided under this subsection, sales of other direct mail shall be sourced in accordance with section 19(1)(c). If the purchaser provides the seller with a direct payment authorization issued under section 8 of the use tax act, 1937 PA 94, MCL 205.98, or an exemption form as prescribed by the department for claiming direct mail, the seller, in the absence of bad faith, is relieved of all obligation to collect, pay, or remit any applicable tax under this act on any transaction involving other direct mail to which the direct payment authorization or exemption form applies and the sale shall be sourced to the jurisdictions to which the other direct mail is to be delivered to the recipients and the purchaser shall report and pay any applicable tax due.

(3) This section only applies to a transaction characterized as a sale of services if the service is an integral part of the production and distribution of direct mail.

(4) This section does not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental, regardless of whether advertising and promotional direct mail is included in the same mailing.

(5) If a transaction is a single transaction that includes a component in addition to advertising and promotional direct mail, this section only applies if the primary purpose of the transaction is to attract public attention or to sell, popularize, or secure financial support for the sale of the product or service.

(6) Nothing in this section limits a purchaser's obligation for sales or use tax due to any state to which the direct mail is delivered or limits a purchaser's right under any other law for a credit or refund of sales or use taxes paid to any other jurisdiction.

(7) As used in this section:

(a) "Advertising and promotional direct mail" means direct mail the primary purpose of which is to attract public attention to a product, service, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, service, person, business, or organization.

(b) "Other direct mail" means any direct mail that is not advertising and promotional direct mail regardless of whether advertising and promotional direct mail is included in the same mailing. Other direct mail includes, but is not limited to, any of the following:

(i) Transactional direct mail that contains personal information specific to the addressee such as invoices, bills, statements of account, and payroll advices.

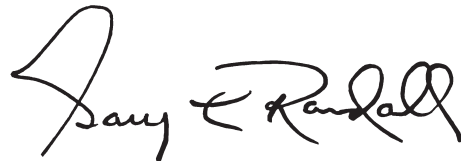
(ii) Any legally required mailings such as privacy notices, tax reports, and stockholder reports.

(iii) Any other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents such as newsletters and informational pieces.

Enacting section 1. Section 21 of the general sales tax act, 1933 PA 167, MCL 205.71, is repealed.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

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Governor