

**SUBSTITUTE FOR
HOUSE BILL NO. 5323**

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending sections 14a and 14b (MCL 205.104a and 205.104b),
section 14a as amended by 2014 PA 109 and section 14b as amended by
2018 PA 168.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 14a. (1) A person in the business of selling tangible
2 personal property and liable for any tax under this act shall keep
3 in a paper, electronic, or digital format an accurate and complete
4 beginning and annual inventory and purchase records of additions to
5 inventory, complete daily sales records, receipts, invoices, bills
6 of lading, and all pertinent documents in a form the department
7 requires. ~~If~~**Except as otherwise provided for a person described**

1 **under subsection (6), if** an exemption from use tax is claimed by a
2 person because the sale is for resale at retail, a record ~~shall~~
3 **must** be kept of the sales tax license number if the person has a
4 sales tax license. These records ~~shall~~**must** be retained for a
5 period of 4 years after the tax imposed under this act to which the
6 records apply is due or as otherwise provided by law.

7 (2) If the department considers it necessary, the department
8 may require a person, by notice served upon that person, to make a
9 return, render under oath certain statements, or keep certain
10 records the department considers sufficient to show whether or not
11 that person is liable for the tax under this act.

12 (3) A person knowingly making a sale of tangible personal
13 property for the purpose of resale at retail to another person not
14 licensed under this act is liable for the tax imposed under this
15 act unless the transaction is exempt under the provisions of
16 section 4i.

17 (4) If a taxpayer fails to file a return or to maintain or
18 preserve sufficient records as prescribed in this section, or the
19 department has reason to believe that any records maintained or
20 returns filed are inaccurate or incomplete and that additional
21 taxes are due, the department may assess the amount of the tax due
22 from the taxpayer based on an indirect audit procedure or any other
23 information that is available or that may become available to the
24 department. That assessment is considered prima facie correct for
25 the purpose of this act and the burden of proof of refuting the
26 assessment is upon the taxpayer. An indirect audit of a taxpayer
27 under this subsection ~~shall~~**must** be conducted in accordance with
28 1941 PA 122, MCL 205.1 to 205.31, and the standards published by
29 the department under section 21 of 1941 PA 122, MCL 205.21, and

1 ~~shall~~**must** include all of the following elements:

2 (a) A review of the taxpayer's books and records. The
3 department may use an indirect method to test the accuracy of the
4 taxpayer's books and records.

5 (b) Both the credibility of the evidence and the
6 reasonableness of the conclusion ~~shall~~**must** be evaluated before any
7 determination of tax liability is made.

8 (c) The department may use any method to reconstruct income,
9 deductions, or expenses that is reasonable under the circumstances.
10 The department may use third-party records in the reconstruction.

11 (d) The department shall investigate all reasonable evidence
12 presented by the taxpayer refuting the computation.

13 (5) If a taxpayer has filed all the required returns and has
14 maintained and preserved sufficient records as required under this
15 section, the department shall not base a tax deficiency
16 determination or assessment on any indirect audit procedure unless
17 the department has a documented reason to believe that any records
18 maintained or returns filed are inaccurate or incomplete and that
19 additional taxes are due.

20 (6) If the information required under section 14b(1) is
21 maintained, an exemption certificate or any other documentation or
22 information is not required for an exemption claim obtained by any
23 of the following:

24 (a) A person licensed by the Michigan liquor control
25 commission as a wholesaler for purposes of sales of alcoholic
26 liquor to another person licensed by the Michigan liquor control
27 commission. As used in this subsection, "alcoholic liquor",
28 "authorized distribution agent", and "wholesaler" mean those terms
29 as defined in the Michigan liquor control code of 1998, 1998 PA 58,

1 MCL 436.1101 to 436.2303.

2 (b) The Michigan liquor control commission or a person
3 certified by the commission as an authorized distribution agent for
4 purposes of the sale and distribution of alcoholic liquor to a
5 person licensed by the Michigan liquor control commission.

6 (7) ~~(6)~~—For purposes of this act, exemption certificate
7 includes a blanket exemption certificate on a form prescribed by
8 the department that covers all exempt transfers between the
9 taxpayer and the buyer for a period of 4 years or for a period of
10 less than 4 years as stated on the blanket exemption certificate if
11 that period is agreed to by the buyer and taxpayer.

12 (8) ~~(7)~~—As used in this section:

13 (a) "Indirect audit procedure" is an audit method that
14 involves the determination of tax liabilities through an analysis
15 of a taxpayer's business activities using information from a range
16 of sources beyond the taxpayer's declaration and formal books and
17 records.

18 (b) "Sufficient records" means records that meet the
19 department's need to determine the tax due under this act.

20 Sec. 14b. (1) If an exemption from the tax under this act is
21 claimed, the seller shall obtain identifying information of the
22 purchaser and the reason for claiming the exemption at the time of
23 the purchase or at a later date. The seller shall obtain the same
24 information for a claimed exemption regardless of the medium in
25 which the transaction occurred. **If the seller is a person described**
26 **in section 14a(6) (a) or (b), obtaining the purchaser's license**
27 **number issued by the Michigan liquor control commission satisfies**
28 **the requirements of this subsection.**

29 (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~~ **the record if** requested by
8 the 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
28 within 120 days after the date of sale is not liable for the tax
29 under this act.

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

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

7 (b) The date an assessment becomes final.

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

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

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

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

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

26 (10) A purchaser that fails to claim an exemption at the time
27 of purchase by notifying the seller of the exemption and providing
28 a complete and proper claim of exemption may submit a claim for a
29 refund to the department for the tax related to that purchase if

1 all of the following conditions are met:

2 (a) The claim for a refund is made within 4 years of the date
3 of purchase.

4 (b) The purchaser submits to the department an accurate record
5 of the purchase, including, but not limited to, a paper,
6 electronic, or digital receipt, invoice, or purchase order related
7 to the sale, that includes the date of the purchase and the amount
8 of sales tax paid to the seller for which the purchaser is seeking
9 a refund under this subsection.

10 (c) The purchaser submits to the department a form signed by
11 the seller as prescribed by the department that contains
12 information required by the department to substantiate the refund
13 claim. The form ~~shall~~**must** contain a statement that the seller
14 reported and paid the tax on the sale for which the purchaser is
15 seeking a refund under this subsection and that the seller has not
16 claimed, and will not claim, a refund of that tax.

17 (d) The purchaser submits to the department a proper exemption
18 claim on a form as prescribed by the department under this
19 subsection.

20 (e) The purchaser ~~shall submit~~**submits** to the department any
21 additional information that the department ~~may require~~**requires**
22 related to the purchaser's claim for refund under this subsection.