

HOUSE BILL NO. 5322

September 22, 2021, Introduced by Reps. Hall, Yancey, Bezotte, Roth, Filler, O'Malley, Hauck, Scott, Breen, Witwer, Coleman, Hertel, Young, Steckloff, Sabo, Brixie, Steenland, Tyrone Carter and Wozniak and referred to the Committee on Tax Policy.

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending sections 12 and 18 (MCL 205.62 and 205.68), section 12
as amended by 2018 PA 167 and section 18 as amended by 2014 PA 108.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 12. (1) If an exemption from the tax under this act is
2 claimed, the seller shall obtain identifying information of the
3 purchaser and the reason for claiming the exemption at the time of
4 the purchase or at a later date. The seller shall obtain the same

information for a claimed exemption regardless of the medium in which the transaction occurred. **If the seller is a person described in section 18(6) (a) or (b), obtaining the purchaser's license number issued by the Michigan liquor control commission satisfies the requirements of this subsection.**

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

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

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

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

(a) **Fraudulently** fails to collect the tax. ~~or solicits~~

(b) **Solicits** a purchaser to make an improper claim for exemption. ~~or accepts~~

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

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

1 (ii) ~~(b)~~—The state in which that location operated by the
2 seller is located provides an exemption form that clearly and
3 affirmatively indicates that the claimed exemption is not available
4 in that state.

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

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

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

14 (b) The date an assessment becomes final.

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

16 (d) In the instance of a credit audit, the issuance of an
17 audit determination letter or informal conference decision and
18 order of determination.

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

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

24 (9) A seller is not liable for the tax under this act if the
25 seller obtains a blanket exemption form for a purchaser with which
26 the seller has a recurring business relationship. Renewals of
27 blanket exemption forms or updates of exemption form information or
28 data elements are not required if there is a recurring business
29 relationship between the seller and the purchaser. For purposes of

1 this section, a recurring business relationship exists when a
2 period of not more than 12 months elapses between sales
3 transactions.

4 (10) A certified service provider ~~shall be~~**is** considered a
5 seller under this section. As used in this section, "certified
6 service provider" means that term as defined in section 25 of the
7 streamlined sales and use tax administration act, 2004 PA 174, MCL
8 205.825.

9 (11) A purchaser that fails to claim an exemption at the time
10 of purchase by notifying the seller of the exemption and providing
11 a complete and proper claim of exemption may submit a claim for a
12 refund to the department for the tax related to that purchase if
13 all of the following conditions are met:

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

16 (b) The purchaser submits to the department an accurate record
17 of the purchase, including, but not limited to, a paper,
18 electronic, or digital receipt, invoice, or purchase order related
19 to the sale, that includes the date of the purchase and the amount
20 of sales tax paid to the seller for which the purchaser is seeking
21 a refund under this subsection.

22 (c) The purchaser submits to the department a form signed by
23 the seller as prescribed by the department that contains
24 information required by the department to substantiate the refund
25 claim. The form ~~shall~~**must** contain a statement that the seller
26 reported and paid the tax on the sale for which the purchaser is
27 seeking a refund under this subsection and that the seller has not
28 claimed, and will not claim, a refund of that tax.

29 (d) The purchaser submits to the department a proper exemption

1 claim on a form as prescribed by the department under this
2 subsection.

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

6 Sec. 18. (1) A person liable for any tax imposed under this
7 act shall keep in a paper, electronic, or digital format an
8 accurate and complete beginning and annual inventory and purchase
9 records of additions to inventory, complete daily sales records,
10 receipts, invoices, bills of lading, and all pertinent documents in
11 a form the department requires. If an exemption from the tax under
12 this act is claimed by a person because the sale is for resale at
13 retail, a record ~~shall~~ **must** be kept of the sales tax license number
14 if the person has a sales tax license. These records ~~shall~~ **must** be
15 retained for a period of 4 years after the tax imposed under this
16 act to which the records apply is due or as otherwise provided by
17 law.

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

23 (3) A person knowingly making a sale of tangible personal
24 property for the purpose of resale at retail to another person not
25 licensed under this act is liable for the tax under this act unless
26 the transaction is exempt under the provisions of section 4k.

27 (4) If ~~the~~ **a** taxpayer fails to file a return or to maintain or
28 preserve sufficient records as prescribed in this section, or the
29 department has reason to believe that any records maintained or

1 returns filed are inaccurate or incomplete and that additional
2 taxes are due, the department may assess the amount of the tax due
3 from the taxpayer based on an indirect audit procedure or any other
4 information that is available or that may become available to the
5 department. That assessment is considered prima facie correct for
6 the purpose of this act and the burden of proof of refuting the
7 assessment is upon the taxpayer. An indirect audit of a taxpayer
8 under this subsection ~~shall~~**must** be conducted in accordance with
9 1941 PA 122, MCL 205.1 to 205.31, and the standards published by
10 the department under section 21 of 1941 PA 122, MCL 205.21, and
11 ~~shall~~**must** include all of the following elements:

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

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

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

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

23 (5) If a taxpayer has filed all the required returns and has
24 maintained and preserved sufficient records as required under this
25 section, the department shall not base a tax deficiency
26 determination or assessment on any indirect audit procedure unless
27 the department has a documented reason to believe that any records
28 maintained or returns filed are inaccurate or incomplete and that
29 additional taxes are due.

(6) If ~~all the information is maintained as provided~~ **required** under section ~~12,~~ **12(1) is maintained**, an exemption certificate **or any other documentation or information** is not required for an exemption claim by **any of** the following:

(a) A person licensed by the Michigan liquor control commission as a wholesaler for purposes of sales of alcoholic liquor to another person licensed by the Michigan liquor control commission. As used in this subsection, "alcoholic liquor", "authorized distribution agent", and "wholesaler" mean those terms as defined in the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303.

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

(7) For purposes of this act, a blanket exemption claim covers all exempt transfers between the taxpayer and the buyer for a period of 4 years or for a period of less than 4 years as stated on the blanket exemption claim if that period is agreed to by the buyer and taxpayer. Renewal of a blanket exemption claim or an update of exemption claim information or data elements is not required if there is a recurring business relationship between the seller and the purchaser. For purposes of this subsection, a recurring business relationship exists when a period of not more than 12 months elapses between sales transactions.

(8) As used in this section:

(a) "Indirect audit procedure" is an audit method that involves the determination of tax liabilities through an analysis of a taxpayer's business activities using information from a range

1 of sources beyond the taxpayer's declaration and formal books and
2 records.

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