

HOUSE BILL NO. 5323

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

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

beginning and annual inventory and purchase records of additions to inventory, complete daily sales records, receipts, invoices, bills of lading, and all pertinent documents in a form the department requires. If an exemption from use tax is claimed by a person because the sale is for resale at retail, a record ~~shall~~**must** be kept of the sales tax license number if the person has a sales tax license. These records ~~shall~~**must** be retained for a period of 4 years after the tax imposed under this act to which the records apply is due or as otherwise provided by law.

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

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

(4) If a taxpayer fails to file a return or to maintain or preserve sufficient records as prescribed in this section, or the department has reason to believe that any records maintained or returns filed are inaccurate or incomplete and that additional taxes are due, the department may assess the amount of the tax due from the taxpayer based on an indirect audit procedure or any other information that is available or that may become available to the department. That assessment is considered prima facie correct for the purpose of this act and the burden of proof of refuting the assessment is upon the taxpayer. An indirect audit of a taxpayer

1 under this subsection ~~shall~~**must** be conducted in accordance with
2 1941 PA 122, MCL 205.1 to 205.31, and the standards published by
3 the department under section 21 of 1941 PA 122, MCL 205.21, and
4 ~~shall~~**must** include all of the following elements:

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

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

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

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

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

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

27 (a) A person licensed by the Michigan liquor control
28 commission as a wholesaler for purposes of sales of alcoholic
29 liquor to another person licensed by the Michigan liquor control

1 commission. As used in this subsection, "alcoholic liquor",
2 "authorized distribution agent", and "wholesaler" mean those terms
3 as defined in the Michigan liquor control code of 1998, 1998 PA 58,
4 MCL 436.1101 to 436.2303.

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

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

15 (8) ~~(7)~~—As used in this section:

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

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

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

1 **number issued by the Michigan liquor control commission satisfies**
2 **the requirements of this subsection.**

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

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

9 (4) A seller shall maintain a proper record of all exempt
10 transactions and shall provide ~~them when~~ **the record if** requested by
11 the department.

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

17 (a) Fraudulently fails to collect the tax under this act.

18 (b) Solicits a purchaser to make an improper claim for
19 exemption.

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

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

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

29 (6) A seller who obtains a fully completed exemption form or

captures the relevant data elements as outlined in this section within 120 days after the date of sale is not liable for the tax under this act.

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

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

(b) The date an assessment becomes final.

(c) The denial of a claim for refund.

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

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

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

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

(10) A purchaser that fails to claim an exemption at the time

1 of purchase by notifying the seller of the exemption and providing
2 a complete and proper claim of exemption may submit a claim for a
3 refund to the department for the tax related to that purchase if
4 all of the following conditions are met:

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

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

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

20 (d) The purchaser submits to the department a proper exemption
21 claim on a form as prescribed by the department under this
22 subsection.

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