## SUBSTITUTE FOR HOUSE BILL NO. 4292

A bill to amend 1937 PA 94, entitled "Use tax act,"

by amending section 14a (MCL 205.104a), as amended by 2008 PA 439.

## 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 an exemption from use tax is claimed by a person
- 8 because the sale is for resale at retail, a record shall be kept of
- 9 the sales tax license number if the person has a sales tax license.
- 10 These records shall be retained for a period of 4 years after the

- 1 tax imposed under this act to which the records apply is due or as
- 2 otherwise provided by law.
- 3 (2) If the department considers it necessary, the department
- 4 may require a person, by notice served upon that person, to make a
- 5 return, render under oath certain statements, or keep certain
- 6 records the department considers sufficient to show whether or not
- 7 that person is liable for the tax under this act.
- 8 (3) A person knowingly making a sale of tangible personal
- 9 property for the purpose of resale at retail to another person not
- 10 licensed under this act is liable for the tax imposed under this
- 11 act unless the transaction is exempt under the provisions of
- 12 section 4i.
- 13 (4) If a taxpayer fails to file a return or to maintain or
- 14 preserve proper SUFFICIENT records as prescribed in this section,
- 15 or the department has reason to believe that any records maintained
- 16 or returns filed are inaccurate or incomplete and that additional
- 17 taxes are due, the department may assess the amount of the tax due
- 18 from the taxpayer based on AN INDIRECT AUDIT PROCEDURE OR ANY OTHER
- 19 information that is available or that may become available to the
- 20 department. That assessment is considered prima facie correct for
- 21 the purpose of this act and the burden of proof of refuting the
- 22 assessment is upon the taxpayer. AN INDIRECT AUDIT OF A TAXPAYER
- 23 UNDER THIS SUBSECTION SHALL BE CONDUCTED IN ACCORDANCE WITH 1941 PA
- 24 122, MCL 205.1 TO 205.31, AND THE STANDARDS PUBLISHED BY THE
- 25 DEPARTMENT UNDER SECTION 21 OF 1941 PA 122, MCL 205.21, AND SHALL
- 26 INCLUDE ALL OF THE FOLLOWING ELEMENTS:
- 27 (A) A REVIEW OF THE TAXPAYER'S BOOKS AND RECORDS. THE

- 1 DEPARTMENT MAY USE AN INDIRECT METHOD TO TEST THE ACCURACY OF THE
- 2 TAXPAYER'S BOOKS AND RECORDS.
- 3 (B) BOTH THE CREDIBILITY OF THE EVIDENCE AND THE
- 4 REASONABLENESS OF THE CONCLUSION SHALL BE EVALUATED BEFORE ANY
- 5 DETERMINATION OF TAX LIABILITY IS MADE.
- 6 (C) THE DEPARTMENT MAY USE ANY METHOD TO RECONSTRUCT INCOME,
- 7 DEDUCTIONS, OR EXPENSES THAT IS REASONABLE UNDER THE CIRCUMSTANCES.
- 8 THE DEPARTMENT MAY USE THIRD-PARTY RECORDS IN THE RECONSTRUCTION.
- 9 (D) THE DEPARTMENT SHALL INVESTIGATE ALL REASONABLE EVIDENCE
- 10 PRESENTED BY THE TAXPAYER REFUTING THE COMPUTATION.
- 11 (5) IF A TAXPAYER HAS FILED ALL THE REQUIRED RETURNS AND HAS
- 12 MAINTAINED AND PRESERVED SUFFICIENT RECORDS AS REQUIRED UNDER THIS
- 13 SECTION, THE DEPARTMENT SHALL NOT BASE A TAX DEFICIENCY
- 14 DETERMINATION OR ASSESSMENT ON ANY INDIRECT AUDIT PROCEDURE UNLESS
- 15 THE DEPARTMENT HAS A DOCUMENTED REASON TO BELIEVE THAT ANY RECORDS
- 16 MAINTAINED OR RETURNS FILED ARE INACCURATE OR INCOMPLETE AND THAT
- 17 ADDITIONAL TAXES ARE DUE.
- 18 (6) (5) For purposes of this act, exemption certificate
- 19 includes a blanket exemption certificate on a form prescribed by
- 20 the department that covers all exempt transfers between the
- 21 taxpayer and the buyer for a period of 4 years or for a period of
- 22 less than 4 years as stated on the blanket exemption certificate if
- 23 that period is agreed to by the buyer and taxpayer.
- 24 (7) AS USED IN THIS SECTION:
- 25 (A) "INDIRECT AUDIT PROCEDURE" IS AN AUDIT METHOD THAT
- 26 INVOLVES THE DETERMINATION OF TAX LIABILITIES THROUGH AN ANALYSIS
- 27 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.