

SENATE BILL NO. 416

June 27, 2023, Introduced by Senators KLINEFELT, CHANG, MCMORROW and GEISS and referred to the Committee on Finance, Insurance, and Consumer Protection.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending sections 14a and 14b (MCL 205.104a and 205.104b), as amended by 2022 PA 4.

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

1 inventory, complete daily sales records, receipts, invoices, bills
2 of lading, and all pertinent documents in a form the department
3 requires. Except as otherwise provided for a person described under
4 subsection (6), if an exemption from use tax is claimed by a person
5 because the sale is for resale at retail, a record must be kept of
6 the sales tax license number if the person has a sales tax license.
7 These records must be retained for a period of 4 years after the
8 tax imposed under this act to which the records apply is due or as
9 otherwise provided by law.

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

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

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

1 under this subsection must be conducted in accordance with 1941 PA
2 122, MCL 205.1 to 205.31, and the standards published by the
3 department under section 21 of 1941 PA 122, MCL 205.21, and must
4 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 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 obtained by any
26 of the 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 **(c) A person licensed by the Michigan liquor control**
10 **commission as a micro brewer for purposes of sales of alcoholic**
11 **liquor to another person licensed by the Michigan liquor control**
12 **commission. As used in this subdivision, "micro brewer" means that**
13 **term as defined in section 109 of the Michigan liquor control code**
14 **of 1998, 1998 PA 58, MCL 436.1109.**

15 (7) For purposes of this act, exemption certificate includes a
16 blanket exemption certificate on a form prescribed by the
17 department that covers all exempt transfers between the taxpayer
18 and the buyer for a period of 4 years or for a period of less than
19 4 years as stated on the blanket exemption certificate if that
20 period is agreed to by the buyer and taxpayer.

21 (8) As used in this section:

22 (a) "Indirect audit procedure" is an audit method that
23 involves the determination of tax liabilities through an analysis
24 of a taxpayer's business activities using information from a range
25 of sources beyond the taxpayer's declaration and formal books and
26 records.

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

29 Sec. 14b. (1) If an exemption from the tax under this act is

1 claimed, the seller shall obtain identifying information of the
2 purchaser and the reason for claiming the exemption at the time of
3 the purchase or at a later date. The seller shall obtain the same
4 information for a claimed exemption regardless of the medium in
5 which the transaction occurred. If the seller is a person described
6 in section 14a(6) (a), ~~or~~ (b), **or (c)**, obtaining the purchaser's
7 license number issued by the Michigan liquor control commission
8 satisfies the requirements of this subsection.

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

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

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

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

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

24 (b) Solicits a purchaser to make an improper claim for
25 exemption.

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

28 (i) The subject of the transaction sought to be covered by the
29 exemption form is actually received by the purchaser at a location

1 operated by the seller.

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

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

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

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

16 (b) The date an assessment becomes final.

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

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

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

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

26 (9) A seller is not liable for the tax under this act if the
27 seller obtains a blanket exemption form for a purchaser with which
28 the seller has a recurring business relationship. Renewals of
29 blanket exemption forms or updates of exemption form information or

1 data elements are not required if there is a recurring business
2 relationship between the seller and the purchaser. For purposes of
3 this section, a recurring business relationship exists when a
4 period of not more than 12 months elapses between sales
5 transactions.

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

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

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

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

26 (d) The purchaser submits to the department a proper exemption
27 claim on a form as prescribed by the department under this
28 subsection.

29 (e) The purchaser submits to the department any additional

1 information that the department requires related to the purchaser's
2 claim for refund under this subsection.

3 Enacting section 1. This amendatory act does not take effect
4 unless Senate Bill No. 415 of the 102nd Legislature is enacted into
5 law.