

SUBSTITUTE FOR  
HOUSE BILL NO. 5074

A bill to amend 1937 PA 94, entitled  
"Use tax act,"  
by amending section 14b (MCL 205.104b), as amended by 2008 PA 439,  
and by adding section 4cc.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           SEC. 4CC. (1) BEGINNING JANUARY 1, 2016 THROUGH DECEMBER 31,  
2 2035, THE TAX UNDER THIS ACT DOES NOT APPLY TO THE STORAGE, USE, OR  
3 CONSUMPTION OF DATA CENTER EQUIPMENT SOLD TO A QUALIFIED DATA  
4 CENTER OR A COLOCATED BUSINESS FOR USE OR CONSUMPTION IN THE  
5 OPERATIONS OF THE QUALIFIED DATA CENTER.

6           (2) AS USED IN THIS SECTION:

7           (A) "COLOCATED BUSINESS" MEANS A PERSON THAT HAS ENTERED INTO  
8 A CONTRACT WITH THE OWNER OR OPERATOR OF A QUALIFIED DATA CENTER TO  
9 PHYSICALLY USE OR DEPLOY DATA CENTER EQUIPMENT WITHIN THE QUALIFIED

1 DATA CENTER FOR A PERIOD OF 1 OR MORE YEARS.

2 (B) "DATA CENTER EQUIPMENT" MEANS ANY MATERIAL USED IN OR IN  
3 SUPPORT OF AND LOCATED AT A QUALIFIED DATA CENTER, INCLUDING, BUT  
4 NOT LIMITED TO, COMPUTERS, SERVERS, BUILDING MATERIALS,  
5 INFRASTRUCTURE, MACHINERY, WIRING, CABLING, DEVICES, TOOLS, HIGH  
6 TECHNOLOGY, SOFTWARE, HARDWARE, EQUIPMENT THAT WOULD OTHERWISE BE  
7 CONSIDERED A FIXTURE, OR RELATED EQUIPMENT.

8 (C) "HIGH TECHNOLOGY" MEANS ANY TECHNOLOGY USED IN THE DESIGN  
9 AND DEVELOPMENT OF ANY OF THE FOLLOWING:

10 (i) COMPUTER HARDWARE AND SOFTWARE.

11 (ii) DATA COMMUNICATIONS.

12 (iii) INFORMATION TECHNOLOGIES.

13 (iv) TECHNOLOGY SUPPORTING A QUALIFIED DATA CENTER SUCH AS  
14 COOLING EQUIPMENT, UNINTERRUPTED POWER SUPPLY UNITS, BATTERIES, AND  
15 GENERATORS.

16 (D) "PRIMARY BUSINESS" MEANS AT LEAST 51% OF THE ENTITY'S  
17 BUSINESS ACTIVITY.

18 (E) "QUALIFIED DATA CENTER" MEANS A FACILITY COMPOSED OF 1 OR  
19 MORE BUILDINGS LOCATED IN THIS STATE AND THE FACILITY IS OWNED OR  
20 OPERATED BY AN ENTITY WHOSE PRIMARY BUSINESS IS OWNING, OPERATING,  
21 MANAGING, OR MAINTAINING A GROUP OF NETWORKED COMPUTERS OR  
22 NETWORKED FACILITIES FOR THE PURPOSE OF CENTRALIZING, OR ALLOWING 1  
23 OR MORE COLOCATED BUSINESSES TO CENTRALIZE, THE STORAGE,  
24 PROCESSING, MANAGEMENT, OR DISSEMINATION OF DATA OF 1 OR MORE OTHER  
25 PERSONS OR THE DATA OF A COLOCATED BUSINESS.

26 Sec. 14b. (1) If an exemption from the tax under this act is  
27 claimed, the seller shall obtain identifying information of the

1 purchaser and the reason for claiming the exemption at the time of  
2 the purchase or at a later date. The seller shall obtain the same  
3 information for a claimed exemption regardless of the medium in  
4 which the transaction occurred.

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

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

11 (4) A seller shall maintain a proper record of all exempt  
12 transactions and shall provide them when requested by the  
13 department.

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

19 (a) Fraudulently fails to collect the tax **UNDER THIS ACT**.

20 (b) Solicits a purchaser to make an improper claim for  
21 exemption.

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

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

27 (ii) The state in which the location operated by the seller is

1 located provides an exemption form that clearly and affirmatively  
2 indicates that the claimed exemption is not available in that  
3 state.

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

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 the tax under this act by other  
11 means or obtain a fully completed exemption form from the  
12 purchaser, by the later of the 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

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.