

SENATE BILL NO. 415

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 1933 PA 167, entitled
"General sales tax act,"
by amending sections 12 and 18 (MCL 205.62 and 205.68), as amended
by 2022 PA 3.

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

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

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

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

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

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

20 (a) Fraudulently fails to collect the tax.

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

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

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

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

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

13 (b) The date an assessment becomes final.

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

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

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

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

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

1 period of not more than 12 months elapses between sales
2 transactions.

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

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

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

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

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

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

1 (e) The purchaser submits to the department any additional
2 information that the department requires related to the purchaser's
3 claim for refund under this subsection.

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

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

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

26 (4) If a taxpayer fails to file a return or to maintain or
27 preserve sufficient records as prescribed in this section, or the
28 department has reason to believe that any records maintained or
29 returns filed are inaccurate or incomplete and that additional

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

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

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

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

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

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

29 (6) If the information required under section 12(1) is

1 maintained, an exemption certificate or any other documentation or
2 information is not required for an exemption claim obtained by any
3 of the following:

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

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

15 **(c) A person licensed by the Michigan liquor control**
16 **commission as a micro brewer for purposes of sales of alcoholic**
17 **liquor to another person licensed by the Michigan liquor control**
18 **commission. As used in this subdivision, "micro brewer" means that**
19 **term as defined in section 109 of the Michigan liquor control code**
20 **of 1998, 1998 PA 58, MCL 436.1109.**

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

1 than 12 months elapses between sales transactions.

2 (8) As used in this section:

3 (a) "Indirect audit procedure" is an audit method that
4 involves the determination of tax liabilities through an analysis
5 of a taxpayer's business activities using information from a range
6 of sources beyond the taxpayer's declaration and formal books and
7 records.

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

10 Enacting section 1. This amendatory act does not take effect
11 unless Senate Bill No. 416 of the 102nd Legislature is enacted into
12 law.