

HOUSE BILL No. 5418

September 17, 2009, Introduced by Rep. Smith and referred to the Committee on Tax Policy.

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending section 4i (MCL 205.54i), as amended by 2007 PA 105.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4i. (1) As used in this section:

2 (a) "Bad debt" means any portion of a debt that is related to
3 a sale at retail taxable under this act for which gross proceeds
4 are not otherwise deductible or excludable and that is eligible to
5 be claimed, or could be eligible to be claimed if the taxpayer kept
6 accounts on an accrual basis, as a deduction pursuant to section
7 166 of the internal revenue code, 26 USC 166. A bad debt shall not
8 include any finance charge, interest, or sales tax on the purchase
9 price, uncollectible amounts on property that remains in the

1 possession of the taxpayer until the full purchase price is paid,
2 expenses incurred in attempting to collect any account receivable
3 or any portion of the debt recovered, any accounts receivable that
4 have been sold to and remain in the possession of a third party for
5 collection, and repossessed property.

6 (b) Except as provided in subdivision (c), "lender" includes
7 any of the following:

8 (i) Any person who holds or has held an account receivable
9 which that person purchased directly from a taxpayer who reported
10 the tax.

11 (ii) Any person who holds or has held an account receivable
12 pursuant to that person's contract directly with the taxpayer who
13 reported the tax.

14 (iii) The issuer of the private label credit card.

15 (c) "Lender" does not include the issuer of a credit card or
16 instrument that can be used to make purchases from a person other
17 than the vendor whose name or logo appears on the card or
18 instrument or that vendor's affiliates.

19 (d) "Private label credit card" means any charge card, credit
20 card, or other instrument serving a similar purpose that carries,
21 refers to, or is branded with the name or logo of a vendor and that
22 can only be used for purchases from the vendor.

23 (e) "Taxpayer" means a person that has remitted sales tax
24 directly to the department on the specific sales at retail
25 transaction for which the bad debt is recognized for federal income
26 tax purposes or, after September 30, 2009, a lender holding the
27 account receivable for which the bad debt is recognized, or would

1 be recognized if the claimant were a corporation, for federal
2 income tax purposes.

3 (2) In computing the amount of tax levied under this act for
4 any month **PRIOR TO OCTOBER 1, 2009**, a taxpayer may deduct the
5 amount of bad debts from his or her gross proceeds used for the
6 computation of the tax. **IN COMPUTING THE AMOUNT OF TAX LEVIED UNDER**
7 **THIS ACT FOR ANY MONTH AFTER SEPTEMBER 30, 2009, A TAXPAYER MAY**
8 **DEDUCT 80% OF THE AMOUNT OF BAD DEBTS FROM HIS OR HER GROSS**
9 **PROCEEDS USED FOR THE COMPUTATION OF THE TAX.** The amount of gross
10 proceeds deducted must be charged off as uncollectible on the books
11 and records of the taxpayer at the time the debt becomes worthless
12 and deducted on the return for the period during which the bad debt
13 is written off as uncollectible in the claimant's books and records
14 and must be eligible to be deducted for federal income tax
15 purposes. For purposes of this section, a claimant who is not
16 required to file a federal income tax return may deduct a bad debt
17 on a return filed for the period in which the bad debt becomes
18 worthless and is written off as uncollectible in the claimant's
19 books and records and would be eligible for a bad debt deduction
20 for federal income tax purposes if the claimant was required to
21 file a federal income tax return. If a consumer or other person
22 pays all or part of a bad debt with respect to which a taxpayer
23 claimed a deduction under this section, the taxpayer is liable for
24 the amount of taxes deducted in connection with that portion of the
25 debt for which payment is received and shall remit these taxes in
26 his or her next payment to the department. Any payments made on a
27 bad debt shall be applied proportionally first to the taxable price

1 of the property and the tax on the property and second to any
2 interest, service, or other charge.

3 (3) After September 30, 2009, if a taxpayer who reported the
4 tax and a lender execute and maintain a written election
5 designating which party may claim the deduction, a claimant is
6 entitled to a deduction or refund of the tax related to a sale at
7 retail that was previously reported and paid if all of the
8 following conditions are met:

9 (a) No deduction or refund was previously claimed or allowed
10 on any portion of the account receivable.

11 (b) The account receivable has been found worthless and
12 written off by the taxpayer that made the sale or the lender on or
13 after September 30, 2009.

14 (4) Any claim for a bad debt deduction under this section
15 shall be supported by that evidence required by the department. The
16 department shall review any change in the rate of taxation
17 applicable to any taxable sales by a taxpayer claiming a deduction
18 pursuant to this section and shall ensure that the deduction on any
19 bad debt does not result in the taxpayer claiming the deduction
20 recovering any more or less than the taxes imposed on the sale that
21 constitutes the bad debt.

22 (5) If a certified service provider assumed filing
23 responsibility under the streamlined sales and use tax
24 administration act, 2004 PA 174, MCL 205.801 to 205.833, the
25 certified service provider may claim, on behalf of the taxpayer,
26 any bad debt allowable to the taxpayer and shall credit or refund
27 that amount of bad debt allowed or refunded to the taxpayer.

1 (6) If the books and records of a taxpayer under the
2 streamlined sales and use tax agreement under the streamlined sales
3 and use tax administration act, 2004 PA 174, MCL 205.801 to
4 205.833, that claims a bad debt allowance support an allocation of
5 the bad debts among member states of that agreement, the taxpayer
6 may allocate the bad debts.