CHAPTER 205. TAXATION

REVENUE DIVISION OF DEPARTMENT OF TREASURY
Act 122 of 1941

AN ACT to establish the revenue collection duties of the department of treasury; to prescribe its powers and duties as the revenue collection agency of this state; to prescribe certain powers and duties of the state treasurer; to establish the collection duties of certain other state departments for money or accounts owed to this state; to regulate the importation, stamping, and disposition of certain tobacco products; to provide for the transfer of powers and duties now vested in certain other state boards, commissions, departments, and offices; to prescribe certain duties of and require certain reports from the department of treasury; to provide procedures for the payment, administration, audit, assessment, levy of interests or penalties on, and appeals of taxes and tax liability; to prescribe its powers and duties if an agreement to act as agent for a city to administer, collect, and enforce the city income tax act on behalf of a city is entered into with any city; to provide an appropriation; to abolish the state board of tax administration; to prescribe penalties and provide remedies; and to declare the effect of this act.

History: 1941, Act 122, Eff. Jan. 10, 1942;—Am. 1970, Act 188, Imd. Eff. Aug. 6, 1970;—Am. 1980, Act 162, Eff. Sept. 17, 1980;—Am. 1986, Act 58, Eff. May 1, 1986;—1996, Act 479, Imd. Eff. Dec. 26, 1996;—Am. 1998, Act 368, Imd. Eff. Oct. 20, 1998;—Am. 1999, Act 182, Imd. Eff. Nov. 17, 1999;—Am. 2002, Act 657, Imd. Eff. Dec. 23, 2002;—Am. 2006, Act 615, Imd. Eff. Jan. 3, 2007.

Compiler's note: Enacting section 4 of Act 162 of 1980 provides:

"Section 4. This amendatory act shall take effect 90 days after signature by the Governor. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective with the effective date of this act. An appeal to the state board of tax appeals filed prior to the effective date of this act shall proceed as follows:

"(a) A matter which has not been heard on or before January 1, 1981, shall be transferred to the tax tribunal as of January 1, 1981.

"(b) A matter which has been heard on or before January 1, 1981 shall be completed by the board and a decision issued before December 31, 1981.

"(c) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

Act 138 of 1981 purported to amend enacting sections 3 and 4 of Act 162 of 1980 to read as follows:

"Section 3. Sections 7, 8, and 9 of Act No. 122 of the Public Acts of 1941, as amended, being sections 205.7, 205.8, and 205.9 of the Compiled Laws of 1970, are repealed effective September 30, 1982.

"Section 4. (1) This amendatory act shall take effect September 16, 1980. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective September 16, 1980. An appeal to the state board of tax appeals filed prior to September 16, 1980 shall proceed as follows:

"(a) A matter which has not been heard, and submitted to the board for decision, on or before January 1, 1982 shall be transferred to the tax tribunal as of January 1, 1982.

"(b) A matter which has been heard, and submitted to the board for decision, on or before January 1, 1982 shall be completed and a decision issued before September 30, 1982.

"(2) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

However, the provisions of Act 162 of 1980 had already taken effect prior to October 29, 1981, the effective date of Act 138 of 1981.

Enacting sections 2 and 3 of Act 58 of 1986 provide:

"Section 2. The changes in penalties and interest affected by this amendatory act shall take effect July 1, 1986.

"Section 3. Except for section 31 and the provisions of enacting section 2, this amendatory act shall take effect May 1, 1986."

For transfer of the functions, powers, and duties of the Revenue Division and the State Commissioner of Revenue within the Department of Treasury to the State Treasurer as head of the Department of Treasury, see E.R.O. No. 1991-16 compiled at MCL 205.35 of the Michigan Compiled Laws.

Popular name: Revenue Act

The People of the State of Michigan enact:

205.1 Department as agency responsible for tax collection; definitions.

Sec. 1. (1) The department is the agency of this state responsible for the collection of taxes and is responsible for all of the following:

(a) Coordinated collection of state taxes, assessments, licenses, fees, and other money as may be designated by law.

(b) Specialized service for tax enforcement, through establishment and maintenance of uniformity in definition, regulation, return, and payment.

(c) Avoidance of duplication in state facilities for tax collections that involve seasonal or occasional increases of staff, duplication of audits, and wasteful travel expenses.

(d) Safeguarding tax and other collections wherever received until duly deposited in the state treasury.

(e) Providing an advisory service on fiscal status, processes, and needs of state government, including periodic reports on payments, receipts, and debts.

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(f) Development of a state revenue enforcement service by means of a staff that is permanent, qualified by training and experience, protected by merit system procedure, and so organized as to serve the public with efficiency, economy, consistency, and equity.

(g) Except as otherwise provided in this act, supervise and control the collection of all past due money and accounts owed to this state or to any officer, department, commission, board, or agency of this state.

(2) Any reference to the department of revenue in this act or any other act shall mean the state treasurer. Any reference to the state commissioner of revenue in this act or any other act shall mean the state treasurer.

(3) As used in this act:

(a) "Department" means the department of treasury.

(b) "Support" means that term as defined in section 2 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.602.

History: 1941, Act 122, Eff. Jan. 10, 1942;—CL 1948, 205.1;—Am. 1970, Act 188, Imd. Eff. Aug. 6, 1970;—Am. 2002, Act 657, Imd. Eff. Dec. 23, 2002;—Am. 2006, Act 615, Imd. Eff. Jan. 3, 2007.

Compiler's note: For transfer of the functions, powers, and duties of the Revenue Division and the State Commissioner of Revenue within the Department of Treasury to the State Treasurer as head of the Department of Treasury, see E.R.O. No. 1991-16 compiled at MCL 205.35 of the Michigan Compiled Laws.

Transfer of powers: See MCL 16.183.

Popular name: Revenue Act

205.2 Repealed. 2002, Act 657, Imd. Eff. Dec. 23, 2002.

Compiler's note: The repealed section pertained to appointment and qualifications of commissioner of revenue.

Popular name: Revenue Act

205.3 Department and state treasurer; powers and duties.

Sec. 3. Except as otherwise provided in this act, the department shall have all the powers and perform the duties formerly vested in a department, board, commission, or other agency, in connection with taxes due to or claimed by this state and in connection with unpaid accounts or money due to this state or any of its departments, institutions, or agencies that may be made payable to or collectible by the department created by this act. The department has the power and authority incidental to the performance of the following acts, duties, and services:

(a) The state treasurer or a duly appointed agent of the state treasurer may examine the books, records, and papers touching the matter at issue of any person or taxpayer subject to any tax, unpaid account, or money the collection of which is charged to the department. The state treasurer or a duly appointed agent of the state treasurer may issue a subpoena requiring a person to appear and be examined with reference to a matter within the scope of the inquiry or investigation being conducted by the department and to produce any books, records, or papers. The state treasurer or a duly appointed agent, referee, or examiner of the state treasurer may administer an oath to a witness in any matter before the department. The department may invoke the aid of the circuit court of this state in requiring the attendance and testimony of witnesses and the producing of books, papers, and documents. The circuit court of this state within the jurisdiction of which an inquiry is carried on, in case of contumacy or refusal to obey a subpoena, may issue an order requiring the person to appear before the department and produce books and papers if so ordered and any evidence touching the matter in question, and failure to obey the order of the court may be punished by the court as a contempt. A person shall not be excused from testifying or from producing any books, papers, records, or memoranda in any investigation, or upon any hearing when ordered to do so by the state treasurer, upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate or subject him or her to a criminal penalty, however, a person shall not be prosecuted or subjected to any criminal penalty for or on account of any transaction made or thing concerning which he or she may testify or produce evidence, documentary or otherwise, before the department or its agent. A person testifying is not exempt from prosecution and punishment for perjury committed while testifying.

(b) After reasonable notice and public hearing, the department may promulgate rules consistent with this act in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, necessary to the enforcement of the provisions of tax and other revenue measures that are administered by the department.

(c) The department may consult with the governor and the legislature on the subject of taxation, revenue, and the administration of the laws in relation to taxation and revenue, and the progress of the work of the department, including the furnishing of reports, information, and other assistance as the governor may require.

(d) The department may investigate and study all matters of taxation and revenue as the basis of recommending to the governor and the legislature those changes and alterations in the tax laws of this state, as

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in the state treasurer's judgment may bring about a more adequate and just system of state and local taxation.

(e) The department may formulate a standard procedure that requires the departments, commissions, boards, institutions, and the agencies of this state that collect taxes, fees, or accounts for this state to report all sums of money due and uncollected and those uncollected items as prescribed by law and by the state treasurer. The procedure prescribed in this subdivision shall include a standard practice for receiving, receipting, safeguarding, and periodically reporting all state revenue receipts, whether current, delinquent, penalty, interest, or otherwise, and the amounts, kinds, and terms of items either collected, compromised, or still outstanding, to be summarized, studied, and reported upon as the state treasurer considers advisable.

(f) The department may periodically issue bulletins that index and explain current department interpretations of current state tax laws. Beginning October 22, 2003, each bulletin or letter ruling issued by the department on or after August 18, 2000 shall be published and made available to the public in printed and electronic formats. Beginning not later than 6 months after the date of enactment of the amendatory act that added this sentence, and not subject to section 6a, the department shall publish and make available to the public in printed and electronic formats the department's internal policy directives, audit standards, sampling manual, cash basis sales tax audit overview, industrial processing sales and use tax manual, contractors sales and use tax manual, and other deductions sales and use tax manual. The department may charge a reasonable fee for subscriptions to this service not to exceed the cost of printing. The money received from the sale of subscriptions shall revert to the department and be placed in the taxation manual revolving fund.

History: 1941, Act 122, Eff. Jan. 10, 1942;—CL 1948, 205.3;—Am. 1980, Act 162, Eff. Sept. 17, 1980;—Am. 1986, Act 58, Eff. May 1, 1986;—Am. 2002, Act 657, Imd. Eff. Dec. 23, 2002;—Am. 2003, Act 92, Imd. Eff. July 24, 2003;—Am. 2006, Act 615, Imd. Eff. Jan. 3, 2007;—Am. 2014, Act 565, Imd. Eff. Jan. 15, 2015.

Compiler's note: Enacting section 4 of Act 162 of 1980 provides:

"Section 4. This amendatory act shall take effect 90 days after signature by the Governor. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective with the effective date of this act. An appeal to the state board of tax appeals filed prior to the effective date of this act shall proceed as follows:

"(a) A matter which has not been heard on or before January 1, 1981, shall be transferred to the tax tribunal as of January 1, 1981.

"(b) A matter which has been heard on or before January 1, 1981 shall be completed by the board and a decision issued before December 31, 1981.

"(c) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

Act 138 of 1981 purported to amend enacting sections 3 and 4 of Act 162 of 1980 to read as follows:

"Section 3. Sections 7, 8, and 9 of Act No. 122 of the Public Acts of 1941, as amended, being sections 205.7, 205.8, and 205.9 of the Compiled Laws of 1970, are repealed effective September 30, 1982.

"Section 4. (1) This amendatory act shall take effect September 16, 1980. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective September 16, 1980. An appeal to the state board of tax appeals filed prior to September 16, 1980 shall proceed as follows:

"(a) A matter which has not been heard, and submitted to the board for decision, on or before January 1, 1982 shall be transferred to the tax tribunal as of January 1, 1982.

"(b) A matter which has been heard, and submitted to the board for decision, on or before January 1, 1982 shall be completed and a decision issued before September 30, 1982.

"(2) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

However, the provisions of Act 162 of 1980 had already taken effect prior to October 29, 1981, the effective date of Act 138 of 1981.

Enacting sections 2 and 3 of Act 58 of 1986 provide:

"Section 2. The changes in penalties and interest affected by this amendatory act shall take effect July 1, 1986.

"Section 3. Except for section 31 and the provisions of enacting section 2, this amendatory act shall take effect May 1, 1986."

Popular name: Revenue Act

Administrative rules: R 205.1 et seq.; R 205.401 et seq.; R 205.1001 et seq.; R 206.1 et seq.; and R 207.121 et seq. of the Michigan Administrative Code.

205.3a Repealed. 1980, Act 162, Eff. Sept. 17, 1980.

Compiler's note: The repealed section pertained to demand for payment of tax, issuance of warrant, and levy on property.

Popular name: Revenue Act

205.4 Submitting rules for public hearing; guidelines; electronic filing of request for rule-making; intentional use of collection goal or quota; damages; publishing handbook for taxpayers and tax preparers.

Sec. 4. (1) Not later than April 1, 1994, the department of treasury shall submit rules for a public hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that provide for all of the following:

(a) Standards to be followed by department officers and employees for the fair and courteous treatment of the public, and a system for monitoring compliance with those standards.

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(b) The procedures governing an informal conference held under section 21. These procedures shall include at least all of the following:

(*i*) A method by which the department attempts to schedule the informal conference at a mutually convenient time and place.

(*ii*) A requirement that the department include in the notice for the informal conference the scope and nature of the subject of the informal conference.

(*iii*) Authorization for the taxpayer at whose request the informal conference is being held to make a sound recording of the informal conference with prior notice to the department and for the department to do the same with prior notice to the taxpayer.

(2) Not later than April 1, 1994, the department shall develop guidelines to govern departmental employee responses to inquiries from the public and standards for tax audit activities. The guidelines shall explicitly exclude the use of a collection goal or quota for evaluating an employee. The department shall assemble the guidelines required by this subsection into an employee handbook. However, the handbook shall not disclose information or parameters excluded from disclosure under section 28(1)(f). The department shall distribute the handbook to all departmental employees involved in the collection or auditing of taxes and shall make the handbook available to the public.

(3) Not later than January 1, 2015, the department shall electronically file a request for rule-making under section 39(1) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.239, with the office of regulatory reinvention. The proposed rules shall provide for all of the following:

(a) Standards for the fair and courteous treatment of the public to be followed by the department's contractors, consultants, and agents and a system for monitoring compliance with these standards.

(b) Standards that ensure that all statutes and rules shall be fairly and consistently applied to all taxpayers.

(c) A requirement that the department shall not use collection goals or quotas during the conduct of an audit of a tax administered under this act or an examination of records under the uniform unclaimed property act, 1995 PA 29, MCL 567.221 to 567.265.

(4) If the department intentionally uses a collection goal or quota in the conduct of an audit of a tax administered under this act or the examination of records under the uniform unclaimed property act, 1995 PA 29, MCL 567.221 to 567.265, the taxpayer may be awarded actual damages, including reasonable attorney fees, sustained as a result of the department's action. An award under this subsection shall not exceed $45,000.00. Actual damages do not include taxes owed or deliverable abandoned property.

(5) The department shall publish a handbook for taxpayers and tax preparers. The handbook shall be made available at a reasonable cost, not to exceed the actual cost of publication, and shall contain all of the following:

(a) The audit and collection procedures used by the department and agents of the department.

(b) The procedures governing departmental communications with taxpayers in the audit and collection process.

History: Add. 1993, Act 14, Imd. Eff. Apr. 1, 1993;—Am. 2002, Act 657, Imd. Eff. Dec. 23, 2002;—Am. 2014, Act 277, Imd. Eff. July 2, 2014.

Compiler's note: Former MCL 205.4, which prohibited commissioner and employees from taking part in political campaigns, was repealed by Act 188 of 1970, Eff. Aug. 6, 1970.

Popular name: Revenue Act

Administrative rules: R 205.1001 et seq. of the Michigan Administrative Code.

205.4a Taxpayer protection act; paid tax preparers; prohibitions; injunctions; definitions.

Sec. 4a. (1) Beginning January 1, 2021, any return or claim for refund filed pursuant to part 1 of the income tax act of 1967 PA 281, MCL 206.1 to 206.532, and prepared by a paid tax preparer shall be signed by the paid tax preparer and shall bear the paid tax preparer's tax identification number.

(2) In addition to any other penalty provided by law, any person who is a paid tax preparer with respect to any return or claim for refund who fails to sign that return or claim for refund filed pursuant to part 1 of the income tax act of 1967 PA 281, MCL 206.1 to 206.532, and to provide their preparer tax identification number as required by this section shall pay a civil penalty of $50.00 for each failure, unless it can be shown that the failure was due to reasonable cause as determined by the department. The civil penalty imposed on any paid tax preparer with respect to returns or claims for refund filed during any calendar year shall not exceed $25,000.00. The department may use an amount equal to the total penalties collected under this section to regulate paid tax preparers.

(3) A paid tax preparer shall not knowingly do any of the following:

(a) Prepare any return or claim for refund that includes an understatement of a taxpayer's liability due to an unreasonable position.

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(b) Prepare any return or claim for refund that includes an understatement of a taxpayer's liability due to willful or reckless conduct.

(c) Where required, do any of the following:

(*i*) Fail to furnish a copy of a return or claim for refund.

(*ii*) Fail to sign a return or claim for refund.

(*iii*) Fail to furnish an identifying number.

(*iv*) Fail to retain accurate and complete records, workpapers, and other documents necessary for the proper determination of tax liability.

(*v*) Fail to determine eligibility for tax benefits.

(d) Negotiate a warrant, draft, or check issued by the department or receive a refund or credit by electronic payment into the paid tax preparer's account without the actual knowledge of the taxpayer.

(e) Engage in any conduct subject to any criminal penalty provided in this act.

(f) Misrepresent the paid tax preparer's eligibility to practice before the department or otherwise misrepresent the paid tax preparer's experience or education.

(g) Guarantee the payment of any tax refund or the allowance of any tax credit.

(h) Engage in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the tax laws of this state.

(4) In a court of competent jurisdiction, the department may commence suit to enjoin any paid tax preparer from further engaging in any conduct described in subsection (3) or from further acting as a paid tax preparer. If the court issues an injunction under this section, the paid tax preparer shall reimburse the department for all costs and fees incurred in prosecuting the case.

(5) If the court finds that a paid tax preparer has continually or repeatedly engaged in any conduct prohibited in subsection (3) and that an injunction prohibiting the conduct would not be sufficient to prevent the person's interference with the proper administration of part 1 of the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, the court may enjoin the person from acting as a paid tax preparer in this state. The fact that a person has been enjoined from preparing tax returns or claims for refund for the United States or any other state, in the 5 years preceding the petition for an injunction, shall establish a prima facie case for an injunction to be issued pursuant to this section.

(6) In addition to the requirements under part 1 of the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, for the 2021 tax year and each tax year after 2021, the department shall post on the department's website and include in the instruction booklet that accompanies the annual return both of the following:

(a) A clear and concise statement informing the taxpayer that the taxpayer protection act requires a paid tax preparer to sign a return and provide his or her preparer tax identification number.

(b) Contact information for the department's fraud unit.

(7) This section shall be known and may be cited as the "taxpayer protection act".

(8) As used in this section:

(a) "Paid tax preparer" means any person who prepares for compensation, or who employs 1 or more persons to prepare for compensation, any return or claim for refund, or a substantial portion of any return or claim for refund under part 1 of the income tax act of 1967 PA 281, MCL 206.1 to 206.532. However, a paid tax preparer does not include any of the following:

(*i*) An individual who is licensed as a certified public accountant under article 7 of the occupational code, 1980 PA 299, MCL 339.720 to 339.736.

(*ii*) An individual whose principal place of business is not in this state and who satisfies the requirements set forth in section 727a of the occupational code, 1980 PA 299, MCL 339.727a.

(*iii*) An individual who is employed by a firm that is licensed under article 7 of the occupational code, 1980 PA 299, MCL 339.720 to 339.736, or exempt from licensure under section 728(4) or (5) of the occupational code, 1980 PA 299, MCL 339.728, and who prepares a return under the supervision of an individual described in subparagraph (*i*) or (*ii*).

(*iv*) An individual who prepares a return as a volunteer through a nonprofit organization or other organization offering tax assistance.

(b) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

History: Add. 2020, Act 77, Imd. Eff. Apr. 2, 2020.

Popular name: Revenue Act

205.5 Brochure listing and explaining taxpayer's protections and recourses; communication concerning determination or collection of tax.

Sec. 5. (1) The department shall prepare a brochure that lists and explains, in simple and nontechnical

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terms, a taxpayer's protections and recourses in regard to a departmental action administering or enforcing a tax statute, including at least all of the following:

(a) A taxpayer's protections and the department's obligations during an audit.

(b) Both the administrative and judicial procedures for appealing a departmental decision.

(c) The procedures for claiming refunds and filing complaints.

(d) The means by which the department may enforce a tax statute, including assessment, jeopardy assessment, and enforcement of a lien.

(2) The department shall include the brochure prepared as required under subsection (1) with a communication to a taxpayer concerning the determination or collection of a tax administered under this act. The department may take the actions necessary to prevent sending multiple brochures to the same taxpayer.

History: Add. 1993, Act 13, Imd. Eff. Apr. 1, 1993.

Compiler's note: Former MCL 205.5, which provided procedure for removal of commissioner from office, was repealed by Act 188 of 1970, Imd. Eff. Aug. 6, 1970.

Popular name: Revenue Act

Administrative rules: R 205.1001 et seq. of the Michigan Administrative Code.

205.6 Identification of refund opportunity by auditor; notification to taxpayer.

Sec. 6. If during the course of an audit authorized under this act an auditor identifies a refund opportunity for the taxpayer, the auditor shall notify the taxpayer of that refund opportunity in a timely manner. The taxpayer may then claim a refund under the provisions of this act. Neither the auditor nor any other department employee shall be required to provide detailed transactional support for refund claims or be required to perform a review beyond that necessary to carry out the intended audit scope.

History: Add. 2006, Act 6, Eff. Oct. 1, 2006.

Compiler's note: Former MCL 205.6, which provided for departmental organization by commissioner, was repealed by Act 188 of 1970, Eff. Aug. 6, 1970.

Popular name: Revenue Act

205.6a Bulletin or letter ruling; reliance by taxpayer; definitions.

Sec. 6a. (1) A taxpayer may rely on a bulletin or letter ruling issued by the department after September 30, 2006 and shall not be penalized for that reliance until the bulletin or letter ruling is revoked in writing. However, that reliance by the taxpayer is limited to issues addressed in the bulletin or letter ruling for tax periods up to the effective date of an amendment to the law upon which the bulletin or letter ruling is based or for tax periods up to the date of a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired that overrules or modifies the law upon which the bulletin or letter ruling is based.

(2) As used in this section:

(a) "Bulletin" means a revenue administrative bulletin.

(b) "Letter ruling" means a formal document issued by the department to a specific taxpayer on a specific tax matter related to a future transaction. A taxpayer shall request a letter ruling on a form and in a manner prescribed by the department.

History: Add. 2006, Act 12, Eff. Imd. Feb. 3, 2006.

Compiler's note: Former MCL 205.6a, which pertained to compromise of liability, was repealed by Act 162 of 1980, Eff. Sept. 17, 1980.

Popular name: Revenue Act

205.7 Awarding damages; conditions; limitation.

Sec. 7. If the department intentionally or recklessly disregards a provision of a law, rule, or written guideline or procedure of the department in connection with the determination, collection, or refund of a tax, interest, or penalty under this act or a tax administered under this act, a taxpayer may be awarded actual damages, including reasonable attorney fees, sustained as a result of the department's action. An award under this section shall not exceed $10,000.00. A claim may be brought under this section only if the cause of action arose before January 1, 1996.

History: Add. 1993, Act 14, Imd. Eff. Apr. 1, 1993.

Compiler's note: Former MCL 205.7, which pertained to the state board of tax appeals, was repealed by Act 37 of 1976, Eff. Dec. 31, 1977, Act 162 of 1980, Eff. Dec. 31, 1981, and by Act 138 of 1981, Eff. Sept. 30, 1982.

Popular name: Revenue Act

205.8 Letters and notices sent to taxpayer's official representative.

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Sec. 8. If a taxpayer files with the department a written request that copies of letters and notices regarding a dispute with that taxpayer be sent to the taxpayer's official representative, the department shall send the official representative, at the address designated by the taxpayer in the written request, a copy of each letter or notice sent to that taxpayer. A taxpayer shall not designate more than 1 official representative under this section for a single dispute.

History: Add. 1993, Act 14, Imd. Eff. Apr. 1, 1993.

Compiler's note: Former MCL 205.8, which pertained to the state board of tax appeals, was repealed by Act 37 of 1976, Eff. Dec. 31, 1977, Act 162 of 1980, Eff. Dec. 31, 1981, and by Act 138 of 1981, Eff. Sept. 30, 1982.

Popular name: Revenue Act

205.9 Repealed. 1976, Act 37, Eff. Dec. 31, 1977.

Compiler's note: The repealed section, which pertained to the state board of tax appeals, was also repealed by Act 162 of 1980, Eff. Dec. 31, 1981, and by Act 138 of 1981, Eff. Sept. 30, 1982.

Popular name: Revenue Act

205.10 Repealed. 1970, Act 188, Imd. Eff. Aug. 6, 1970.

Compiler's note: The repealed section provided for advisory boards, consultants and research assistants.

Popular name: Revenue Act

205.11 Repealed. 1980, Act 162, Eff. Sept. 17, 1980.

Compiler's note: The repealed section pertained to statistical reports and confidentiality.

Popular name: Revenue Act

205.12 Signing orders, certificates, jeopardy assessments, and subpoenas.

Sec. 12. All orders, certificates, jeopardy assessments, and subpoenas made or issued by the department shall be signed by the state treasurer or the state treasurer's designee.

History: 1941, Act 122, Eff. Jan. 10, 1942;—CL 1948, 205.12;—Am. 1975, Act 266, Imd. Eff. Nov. 3, 1975;—Am. 1986, Act 58, Eff. May 1, 1986;—Am. 2002, Act 657, Imd. Eff. Dec. 23, 2002.

Compiler's note: Section 2 of Act 58 of 1986 provides: "The changes in penalties and interest affected by this amendatory act shall take effect July 1, 1986."

Section 3 of Act 58 of 1986 provides: "Except for section 31 and the provisions of enacting section 2, this amendatory act shall take effect May 1, 1986."

Popular name: Revenue Act

205.13 Administration and enforcement of laws by department of treasury; powers, duties, functions, responsibilities, and jurisdiction conferred; enforcement, investigation, and collection of support by department of human services.

Sec. 13. (1) The department of treasury shall administer and enforce the following laws and shall succeed to and is vested with all of the powers, duties, functions, responsibilities, and jurisdiction now or hereafter conferred upon the following:

(a) State board of tax administration, by the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, and by the use tax act, 1937 PA 94, MCL 205.91 to 205.111.

(b) Auditor general, by 1905 PA 282, MCL 207.1 to 207.21, and by the Michigan estate tax act, 1899 PA 188, MCL 205.201 to 205.256.

(c) State tax commission, by 1929 PA 48, MCL 205.301 to 205.317.

(d) State tax commission, by section 61524 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.61524.

(e) The department shall succeed to and is vested with all powers, duties, functions, responsibilities, and jurisdiction of the attorney general over the collection of all past due money and accounts that are owing to the state of Michigan or any department, commission, or institution of this state, vested in the attorney general by 1927 PA 375, MCL 14.131 to 14.134.

(f) For cities that enter into an agreement with the department of treasury pursuant to section 9 of chapter 1 of the city income tax act, 1964 PA 284, MCL 141.509, the department of treasury is vested with all the powers, duties, functions, responsibilities, and jurisdiction to administer, collect under, and enforce the city income tax act, 1964 PA 284, MCL 141.501 to 141.787, as provided in the city income tax act, 1964 PA 284, MCL 141.501 to 141.787, and the agreement. The department of treasury shall not charge to or collect from a taxpayer any amount not otherwise authorized by law in conjunction with the collection of the tax pursuant to an agreement entered into under section 9 of chapter 1 of the city income tax act, 1964 PA 284, MCL 141.509.

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(2) The department of human services and its designees are vested with all of the powers, duties, functions, responsibilities, and jurisdiction of the department of treasury under this act for the enforcement, investigation, and collection of support owed to this state.

(3) Except as otherwise provided in this act, each state officer, department, board, commission, or agency from time to time shall forward to the department of treasury statements of all delinquent and past due money, specific taxes, and accounts owing or belonging to this state, or any officer, department, board, commission, or agency of this state together with any information necessary to enable the department to carry out the purposes of this act. The department shall do all of the following:

(a) Keep an accurate record and account of all of the statements.

(b) Enforce payment and collection of the money, specific taxes, or accounts.

(c) Keep an accurate account of all money, specific taxes, or accounts collected.

(d) Report monthly all collections made to the officer, department, board, commission, or agency to which the indebtedness was incurred.

(e) Pay monthly to the state treasurer all money collected unless otherwise provided by law.

(4) The department of human services or its designee authorized under subsection (2) to collect support owed to this state may settle and compromise claims and accounts and receive and issue receipts for collections and payments, subject to the authority granted to it by the social security act, 42 USC 301 to 1397jj, the office of child support act, 1971 PA 174, MCL 400.231 to 400.240, and the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650.

History: 1941, Act 122, Eff. Jan. 10, 1942;—Am. 1945, Act 103, Eff. Sept. 6, 1945;—CL 1948, 205.13;—Am. 1953, Act 7, Eff. July 1, 1953;—Am. 1996, Act 50, Imd. Eff. Feb. 26, 1996;—Am. 1996, Act 479, Imd. Eff. Dec. 26, 1996;—Am. 2006, Act 615, Imd. Eff. Jan. 3, 2007.

Compiler's note: For transfer of powers and duties relating to enforcement, investigation, and collection of past due and delinquent corporate privilege and franchise fees and license fees from the department of treasury to the director of the department of consumer and industry services, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

Popular name: Revenue Act

Administrative rules: R 205.1 et seq. and R 206.1 et seq. of the Michigan Administrative Code.

205.14 Tobacco products; violation of federal requirements; prohibited conduct; placement of stamp; violation of subsection (1) or (2); penalties; enforcement; assessment of tax; court action; damages awarded; definitions.

Sec. 14. (1) A person shall not acquire, possess, sell or distribute, or import into this state a tobacco product that violates any federal law or regulation, including, but not limited to, requirements concerning health warnings or other information on the container or individual package of tobacco products.

(2) A person shall not acquire, possess, sell or distribute, or import into this state a tobacco product or container of tobacco products if 1 or more of the following apply:

(a) The tobacco product or container of tobacco products bears any statement, label, stamp, sticker, or notice indicating that the manufacturer intended that the tobacco product be sold or distributed outside the United States, including, but not limited to, 1 or more of the following:

(*i*) A non-United States health warning.

(*ii*) Labels or markings stating "for export only", "U.S. tax exempt", "for use outside U.S.", or similar wording.

(b) The tobacco product, container of tobacco products, or any statement, label, stamp, sticker, or notice on a tobacco product or container of tobacco products has been altered from the manufacturer's original packaging to conceal the fact that the manufacturer intended that the tobacco product be sold or distributed outside the United States.

(c) The tobacco product or any statement, label, stamp, sticker, or notice on a tobacco product or container of tobacco products has been removed from the manufacturer's original packaging to conceal the fact that the manufacturer intended that the tobacco product be sold or distributed outside the United States.

(d) The person knew or should have known that the manufacturer intended the tobacco product to be sold or distributed outside the United States.

(e) The tobacco product was imported into the United States after January 1, 2000 in violation of 26 U.S.C. 5754.

(3) A person shall not place a stamp or a counterfeit stamp on a tobacco product unless that package of tobacco products complies with subsection (2) and all federal laws and regulations.

(4) A person that acquires, possesses, sells, offers for sale, imports, or distributes packages of tobacco products who knows or should know that the tobacco product is possessed, sold, offered for sale, imported, or distributed in violation of subsection (1) or (2) is subject to criminal charges as provided in section 8 of the

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tobacco products tax act, 1993 PA 327, MCL 205.428.

(5) A tobacco product or container of tobacco products that does not comply with subsection (1), (2), or (3) and books and records associated with those tobacco products are subject to seizure and confiscation by the department, a police officer, or designated agent under the same terms and conditions as provided in section 9 of the tobacco products tax act, 1993 PA 327, MCL 205.429. The department may revoke or suspend the license of a licensee under the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436, for a violation of this section.

(6) The department is authorized to obtain and exchange information with the United States customs service, any other federal law enforcement agency, or any state law enforcement agency for the purpose of enforcing this section.

(7) The department may assess tax due, penalty, and interest on tobacco products acquired, possessed, sold, or offered for sale in violation of this section.

(8) Any person who is injured by another person who violates this section may bring an action in circuit court for damages or equitable or injunctive relief including reasonable attorney fees. In awarding damages, the court may award up to 3 times the actual damages if the violation of this section is intentional. A manufacturer of tobacco products whose tobacco products are acquired, possessed, sold, distributed, or imported into this state in violation of subsection (1) or (2) is presumed to be injured under this subsection.

(9) As used in this section:

(a) "Licensee" means a person licensed under the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436.

(b) "Stamp" or "counterfeit stamp" means those terms as defined in section 2 of the tobacco products tax act, 1993 PA 327, MCL 205.422.

(c) "Tobacco product" means that term as defined in section 2 of the tobacco products tax act, 1993 PA 327, MCL 205.422.

History: Add. 1998, Act 368, Imd. Eff. Oct. 20, 1998;—Am. 1999, Act 182, Imd. Eff. Nov. 17, 1999.

Compiler's note: Former MCL 205.14, which pertained to transfer of jurisdiction over records and funds, was repealed by Act 188 of 1970, Imd. Eff. Aug. 6, 1970.

Popular name: Revenue Act

205.15, 205.16 Repealed. 1970, Act 188, Imd. Eff. Aug. 6, 1970.

Compiler's note: The repealed sections pertained to transfer to department of employees from other agencies, and contained a savings clause.

Popular name: Revenue Act

205.17 Repealed. 1980, Act 162, Eff. Sept. 17, 1980.

Compiler's note: The repealed section pertained to office space.

Popular name: Revenue Act

205.18 Reports.

Sec. 18. (1) The department shall publish annually a report containing statistical data on revenue collections made by the department during the past fiscal year and may publish additional reports on a periodic basis.

(2) Beginning January 1, 1999, revenue forecasting reports made by the department under this act or made by the department as otherwise provided by law may include dynamic revenue forecasting. As used in this subsection, "dynamic revenue forecasting" means forecasting the direct impact of a tax law change on revenues and the other effects of tax law changes on the behavior of taxpayers and on overall economic activity.

History: Add. 1980, Act 162, Eff. Sept. 17, 1980;—Am. 1998, Act 368, Imd. Eff. Oct. 20, 1998.

Compiler's note: Enacting section 4 of Act 162 of 1980 provides:

"Section 4. This amendatory act shall take effect 90 days after signature by the Governor. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective with the effective date of this act. An appeal to the state board of tax appeals filed prior to the effective date of this act shall proceed as follows:

"(a) A matter which has not been heard on or before January 1, 1981, shall be transferred to the tax tribunal as of January 1, 1981.

"(b) A matter which has been heard on or before January 1, 1981 shall be completed by the board and a decision issued before December 31, 1981.

"(c) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

Act 138 of 1981 purported to amend enacting sections 3 and 4 of Act 162 of 1980 to read as follows:

"Section 3. Sections 7, 8, and 9 of Act No. 122 of the Public Acts of 1941, as amended, being sections 205.7, 205.8, and 205.9 of the Compiled Laws of 1970, are repealed effective September 30, 1982.

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"Section 4. (1) This amendatory act shall take effect September 16, 1980. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective September 16, 1980. An appeal to the state board of tax appeals filed prior to September 16, 1980 shall proceed as follows:

"(a) A matter which has not been heard, and submitted to the board for decision, on or before January 1, 1982 shall be transferred to the tax tribunal as of January 1, 1982.

"(b) A matter which has been heard, and submitted to the board for decision, on or before January 1, 1982 shall be completed and a decision issued before September 30, 1982.

"(2) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

However, the provisions of Act 162 of 1980 had already taken effect prior to October 29, 1981, the effective date of Act 138 of 1981.

Popular name: Revenue Act

205.19 Remittances of taxes; income tax withholding; failure to remit tax; penalties; disposition of money not paid to department; allocation of payment.

Sec. 19. (1) All remittances of taxes administered by this act shall be made to the department payable to the state of Michigan by bank draft, check, cashier's check, certified check, money order, cash, or electronic funds transfer. The money received shall be credited as provided by law. A remittance other than cash or electronic funds transfer shall not be a final discharge of liability for the tax assessed and levied until the instrument remitted has been honored. The department may accept major credit cards or debit cards, or both, for payment. For taxes paid by credit or debit card, or both, the department may add a processing fee; however, the fee shall not exceed the charges that the state incurs because of the use of the credit or debit card, or both.

(2) For reporting periods beginning after August 31, 1991, a taxpayer other than a city or a county who paid in the immediately preceding calendar year an average of $40,000.00 or more per month in income tax withholding pursuant to the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713, shall deposit Michigan income tax withholding either in the same manner and according to the same schedule as deposits of federal income tax withholding or in another manner that has been approved by the department.

(3) For failure to remit a tax administered by this act with a negotiable remittance, the following penalty may be added in addition to any other penalties imposed by this act:

(a) For notices of intent to assess issued on or before February 28, 2003, 25% of the tax due.

(b) For notices of intent to assess issued after February 28, 2003, $50.00.

(4) The department may require that all money collected by the taxpayer for taxes administered by this act that has not been paid to the department is public money and the property of this state, and shall be held in trust in a separate account and fund for the sole use and benefit of this state until paid over to the department.

(5) For tax years after the 1995 tax year for which taxes are collected under an agreement entered into pursuant to section 9 of chapter 1 of the city income tax act, 1964 PA 284, MCL 141.509, if a taxpayer pays, when filing his or her annual return, an amount less than the sum of the declared tax liability under the city income tax act, 1964 PA 284, MCL 141.501 to 141.787, and the declared tax liability under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713, and if there is no indication of the allocation of payment between the tax liabilities against which the payment should be applied, the amount paid shall first be applied against the taxpayer's tax liability under the city income tax act, 1964 PA 284, MCL 141.501 to 141.787, and any remaining amount of the payment shall be applied to the taxpayer's tax liability under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713. The taxpayer's designation of a payee on a payment is not a dispositive determination of the allocation of that payment under this subsection.

History: Add. 1980, Act 162, Eff. Sept. 17, 1980;—Am. 1986, Act 58, Eff. May 1, 1986;—Am. 1991, Act 83, Imd. Eff. July 18, 1991;—Am. 1996, Act 479, Imd. Eff. Dec. 26, 1996;—Am. 2002, Act 657, Imd. Eff. Dec. 23, 2002;—Am. 2011, Act 76, Imd. Eff. July 12, 2011.

Compiler's note: Enacting section 4 of Act 162 of 1980 provides:

"Section 4. This amendatory act shall take effect 90 days after signature by the Governor. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective with the effective date of this act. An appeal to the state board of tax appeals filed prior to the effective date of this act shall proceed as follows:

"(a) A matter which has not been heard on or before January 1, 1981, shall be transferred to the tax tribunal as of January 1, 1981.

"(b) A matter which has been heard on or before January 1, 1981 shall be completed by the board and a decision issued before December 31, 1981.

"(c) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

Act 138 of 1981 purported to amend enacting sections 3 and 4 of Act 162 of 1980 to read as follows:

"Section 3. Sections 7, 8, and 9 of Act No. 122 of the Public Acts of 1941, as amended, being sections 205.7, 205.8, and 205.9 of the Compiled Laws of 1970, are repealed effective September 30, 1982.

"Section 4. (1) This amendatory act shall take effect September 16, 1980. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective September 16, 1980. An appeal to the state board of tax appeals filed prior to September 16, 1980 shall proceed as follows:

"(a) A matter which has not been heard, and submitted to the board for decision, on or before January 1, 1982 shall be transferred to

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the tax tribunal as of January 1, 1982.

"(b) A matter which has been heard, and submitted to the board for decision, on or before January 1, 1982 shall be completed and a decision issued before September 30, 1982.

"(2) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

However, the provisions of Act 162 of 1980 had already taken effect prior to October 29, 1981, the effective date of Act 138 of 1981.

Enacting sections 2 and 3 of Act 58 of 1986 provide:

"Section 2. The changes in penalties and interest affected by this amendatory act shall take effect July 1, 1986.

"Section 3. Except for section 31 and the provisions of enacting section 2, this amendatory act shall take effect May 1, 1986."

Popular name: Revenue Act

205.20 Procedures to which taxes subject.

Sec. 20. Unless otherwise provided by specific authority in a taxing statute administered by the department, all taxes shall be subject to the procedures of administration, audit, assessment, interest, penalty, and appeal provided in sections 21 to 30.

History: Add. 1980, Act 162, Eff. Sept. 17, 1980.

Compiler's note: Enacting section 4 of Act 162 of 1980 provides:

"Section 4. This amendatory act shall take effect 90 days after signature by the Governor. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective with the effective date of this act. An appeal to the state board of tax appeals filed prior to the effective date of this act shall proceed as follows:

"(a) A matter which has not been heard on or before January 1, 1981, shall be transferred to the tax tribunal as of January 1, 1981.

"(b) A matter which has been heard on or before January 1, 1981 shall be completed by the board and a decision issued before December 31, 1981.

"(c) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

Act 138 of 1981 purported to amend enacting sections 3 and 4 of Act 162 of 1980 to read as follows:

"Section 3. Sections 7, 8, and 9 of Act No. 122 of the Public Acts of 1941, as amended, being sections 205.7, 205.8, and 205.9 of the Compiled Laws of 1970, are repealed effective September 30, 1982.

"Section 4. (1) This amendatory act shall take effect September 16, 1980. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective September 16, 1980. An appeal to the state board of tax appeals filed prior to September 16, 1980 shall proceed as follows:

"(a) A matter which has not been heard, and submitted to the board for decision, on or before January 1, 1982 shall be transferred to the tax tribunal as of January 1, 1982.

"(b) A matter which has been heard, and submitted to the board for decision, on or before January 1, 1982 shall be completed and a decision issued before September 30, 1982.

"(2) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

However, the provisions of Act 162 of 1980 had already taken effect prior to October 29, 1981, the effective date of Act 138 of 1981.

Popular name: Revenue Act

205.21 Failure or refusal to make return or payment; obtaining information on which to base assessment; audit; rules; procedure; determination of refund as result of audit; appeal; frivolous protest; penalty; claim for refund; audits commenced after September 30, 2014; report; applicability of settlement process established under subsection (2)(e).

Sec. 21. (1) If a taxpayer fails or refuses to make a return or payment as required, in whole or in part, or if the department has reason to believe that a return made or payment does not supply sufficient information for an accurate determination of the amount of tax due, the department may obtain information on which to base an assessment of the tax. By its duly authorized agents, the department may examine the books, records, and papers and audit the accounts of a person or any other records pertaining to the tax. A taxpayer who has been audited by the department or its agent or a taxpayer whose books, records, and papers have been examined by the department shall, upon request, be provided a complete copy in printed or electronic format of the complete audit work papers and the audit report of findings. Any audit performed by the department or its duly authorized agents under section 3(a) shall be performed in accordance with auditing standards which shall include, but are not limited to, confidentiality, technical training, independence, due professional care, planning, supervision, understanding of the entity audited including internal control and an assessment of risk, audit evidence and documentation, sampling and sampling projections, and elements of the audit report of findings. The department shall promulgate administrative rules on audit standards within 1 year of the date of enactment of the amendatory act that added this sentence.

(2) In carrying out this section, the department and the taxpayer shall comply with the following procedure:

(a) The department shall send to the taxpayer a letter of inquiry stating, in a courteous and nonintimidating manner, the department's opinion that the taxpayer needs to furnish further information or owes taxes to the state, and the reason for that opinion. A letter of inquiry shall also explain the procedure by which the person may initiate communication with the department to resolve any dispute. This subdivision does not apply in

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any of the following circumstances:

(*i*) The taxpayer files a return showing a tax due and fails to pay that tax.

(*ii*) The deficiency resulted from an audit of the taxpayer's books and records by this state.

(*iii*) The taxpayer otherwise affirmatively admits that a tax is due and owing.

(b) If the dispute is not resolved within 30 days after the department sends the taxpayer a letter of inquiry or if a letter of inquiry is not required pursuant to subdivision (a), the department, after determining the amount of tax due from a taxpayer, shall give notice to the taxpayer of its intent to assess the tax. The notice shall include the amount of the tax the department believes the taxpayer owes, the reason for that deficiency, and a statement advising the taxpayer of a right to an informal conference, the requirement of a written request by the taxpayer for the informal conference that includes the taxpayer's statement of the contested amounts and an explanation of the dispute, and the 60-day time limit for that request.

(c) If the taxpayer serves written notice upon the department within 60 days after the taxpayer receives a notice of intent to assess, remits the uncontested portion of the liability, and provides a statement of the contested amounts and an explanation of the dispute, the taxpayer is entitled to an informal conference on the question of liability for the assessment.

(d) Upon receipt of a taxpayer's written notice, the department shall set a mutually agreed upon or reasonable time and place for the informal conference and shall give the taxpayer reasonable written notice not less than 20 days before the informal conference. The notice shall specify the intent to assess, type of tax, and tax year that is the subject of the informal conference. The informal conference provided for by this subdivision is not subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, but is subject to the rules governing informal conferences as promulgated by the department in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The taxpayer may appear or be represented by any person before the department at an informal conference, and may present testimony and argument. At the party's own expense and with advance notice to the other party, a taxpayer or the department, or both, may make an audio recording of an informal conference. A taxpayer who has made a timely request for an informal conference may at any time withdraw that request by filing written notice with the department. Upon receipt of the request for withdrawal from the informal conference process, the department shall issue a decision and order of determination and, where appropriate, a final assessment, from which a taxpayer may seek an appeal as provided under section 22.

(e) After a timely request for an informal conference has been made under subdivision (c), the taxpayer and the department may seek to settle any or all issues in dispute by submitting a written settlement offer to the other party in accordance with the following:

(*i*) The taxpayer shall submit a written settlement offer no later than 21 days after the informal conference. The settlement offer must identify the issues in dispute to be settled, the amount of the settlement offer, and the factual and legal bases supporting the taxpayer's settlement offer, and include any supporting documents. The state treasurer or the state treasurer's designee or designees shall review the settlement offer and the department's recommendation regarding the offer. The state treasurer or the state treasurer's designee or designees shall determine whether to accept, reject, or counter the settlement offer. The department shall notify the taxpayer in writing of the department's acceptance, rejection, or counter-offer. If the department does not accept the taxpayer's offer, the department shall include in its written notification the factual and legal bases for the department's rejection or counter-offer. The taxpayer may accept, reject, or counter the department's counter-offer and proceed in accordance with subparagraph (*iii*).

(*ii*) The informal conference referee or the administrator of the department's hearings division or its successor unit may submit a written report to the state treasurer or the state treasurer's designee or designees that identifies the relevant facts and issues involved in the dispute, the factual and legal bases supporting settlement of any or all of the issues, and a settlement recommendation. Doubt as to collectability shall not be a reason for settlement under this subdivision. If the state treasurer or the state treasurer's designee or designees determines to pursue a settlement, the department shall notify the taxpayer in writing of the department's settlement offer, to be determined by the state treasurer or the state treasurer's designee or designees. The department's written settlement offer shall include the factual and legal bases supporting the department's settlement offer. The taxpayer, in writing, may accept, reject, or counter the department's settlement offer and proceed in accordance with subparagraph (*iii*).

(*iii*) If the department rejects the taxpayer's settlement offer or counter-offer or the taxpayer rejects the department's settlement offer or counter-offer, the informal conference process shall proceed as provided under this section unless the taxpayer files a written notice to withdraw the request for an informal conference as provided in subdivision (d). If the department accepts the taxpayer's settlement offer or counter-offer or the taxpayer accepts the department's settlement offer or counter-offer, the department and the taxpayer shall execute a written agreement outlining all of the terms of the settlement. If the agreement settles all of the

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issues in dispute, then the written agreement is also the taxpayer's written notice to withdraw its request for an informal conference. Then the department shall, where appropriate, issue a final assessment that reflects the agreement and the agreed-upon amount of liability as to the settled issues. The department's final assessment issued under this subdivision is not subject to challenge or appeal under this act or reviewable in any court by mandamus, appeal, or other method of direct or collateral attack. With respect to any issues in dispute that are not included in the settlement agreement, the informal conference process shall proceed as provided under this section unless the taxpayer files a written notice to withdraw the request for an informal conference as provided in subdivision (d).

(*iv*) The taxpayer's and the department's settlement offers, counter-offers, and responses to those offers and counter-offers, the disposition of a settlement offer or counter-offer under this subdivision, and settlement agreements, may not be offered by any party in any proceeding before the Michigan tax tribunal, the court of claims, or any court of competent jurisdiction as proof of the validity of the department's decision, order, or assessment, or of the proper amount of the taxpayer's tax liability.

(*v*) Settlement offers, counter-offers, responses thereto, settlement agreements, and reports of the informal conference referee, the administrator, or the department related to settlements under this subdivision are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and may not be obtained through discovery in any proceeding.

(f) Except for those issues that were settled pursuant to subdivision (e), after the informal conference, the department shall render a decision and order in writing, setting forth the reasons and authority, and shall assess the tax, interest, and penalty found to be due and payable. The decision and order are limited to the subject of the informal conference as included in the notice under subdivision (d).

(g) If the taxpayer does not protest the notice of intent to assess within the time provided in subdivision (c), the department may assess the tax and the interest and penalty on the tax that the department believes are due and payable. An assessment under this subdivision or subdivision (f) is final and subject to appeal as provided in section 22. The final notice of assessment shall include a statement advising the person of a right to appeal.

(3) If as a result of an audit it is determined that a taxpayer is owed a refund, the department shall send a notice to the taxpayer stating the amount of the refund the department believes is owed to the taxpayer as a result of the audit. The notice shall inform the taxpayer of his or her appeal rights. If the taxpayer disputes the findings of the audit, the taxpayer may serve written notice upon the department in the same manner as provided for in subsection (2)(c) and the taxpayer is entitled to the same informal conference and subsequent appeals as provided for in this section.

(4) If a protest to the notice of intent to assess the tax is determined by the department to be a frivolous protest or a desire by the taxpayer to delay or impede the administration of taxes administered under this act, a penalty of $25.00 or 25% of the amount of tax under protest, whichever is greater, shall be added to the tax.

(5) During the course of the informal conference under subsection (2)(d), the taxpayer by written notice may convert his or her contest of the assessment to a claim for a refund. The written notice shall be accompanied by payment of the contested amount. The informal conference shall continue and the department shall render a decision and issue an order regarding the claim for refund.

(6) For audits commenced after September 30, 2014, the department must complete fieldwork and provide a written preliminary audit determination for any tax period no later than 1 year after the period provided for in section 27a(2) without regard to the extension provided for in section 27a(3). The limitation described in this subsection does not apply to any tax period in which the department and the taxpayer agreed in writing to extend the statute of limitations described in section 27a(2).

(7) For audits commenced after September 30, 2014, unless otherwise agreed to by the department and the taxpayer, the final assessment issued under subsection (2)(g) must be issued within 9 months of the date that the department provided the taxpayer with a written preliminary audit determination unless the taxpayer, for any reason, requests reconsideration of the preliminary audit determination or the taxpayer requests an informal conference under subsection (2)(c). A request for reconsideration by a taxpayer permits, but does not require, the department to delay the issuance of a final assessment under subsection (2)(g).

(8) The department shall publish semiannually on the department's website a report containing the following information:

(a) The aggregate amount of the department's original determinations of liability attributed to settlements entered into during the reporting period.

(b) The aggregate settled amount of liability attributed to the settlements entered into during the reporting period.

(c) If the total number of settlements between taxpayers and the department entered into during the reporting period is 5 or more, include the actual number of settlements. If the number of settlements is less than 5, the department shall state "less than 5".

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(9) Except as otherwise provided under this subsection, the settlement process established under subsection (2)(e) only applies to taxes subject to administration under this act. The settlement process established under subsection (2)(e) does not apply to matters arising under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, the state real estate transfer tax act, 1993 PA 330, MCL 207.521 to 207.537, the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436, the health insurance claims assessment act, 2011 PA 142, MCL 550.1731 to 550.1741, and the city income tax act, 1964 PA 284, MCL 141.501 to 141.787.

History: Add. 1980, Act 162, Eff. Sept. 17, 1980;—Am. 1986, Act 58, Eff. May 1, 1986;—Am. 1991, Act 83, Imd. Eff. July 18, 1991;—Am. 1993, Act 13, Imd. Eff. Apr. 1, 1993;—Am. 2002, Act 657, Imd. Eff. Dec. 23, 2002;—Am. 2006, Act 8, Eff. Oct. 1, 2006;—Am. 2006, Act 9, Eff. Oct. 1, 2006;—Am. 2006, Act 10, Eff. Oct. 1, 2006;—Am. 2006, Act 11, Eff. Oct. 1, 2006;—Am. 2014, Act 3, Imd. Eff. Feb. 6, 2014;—Am. 2014, Act 35, Imd. Eff. Mar. 20, 2014;—Am. 2017, Act 215, Imd. Eff. Dec. 20, 2017.

Compiler's note: Enacting section 4 of Act 162 of 1980 provides:

"Section 4. This amendatory act shall take effect 90 days after signature by the Governor. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective with the effective date of this act. An appeal to the state board of tax appeals filed prior to the effective date of this act shall proceed as follows:

"(a) A matter which has not been heard on or before January 1, 1981, shall be transferred to the tax tribunal as of January 1, 1981.

"(b) A matter which has been heard on or before January 1, 1981 shall be completed by the board and a decision issued before December 31, 1981.

"(c) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

Act 138 of 1981 purported to amend enacting sections 3 and 4 of Act 162 of 1980 to read as follows:

"Section 3. Sections 7, 8, and 9 of Act No. 122 of the Public Acts of 1941, as amended, being sections 205.7, 205.8, and 205.9 of the Compiled Laws of 1970, are repealed effective September 30, 1982.

"Section 4. (1) This amendatory act shall take effect September 16, 1980. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective September 16, 1980. An appeal to the state board of tax appeals filed prior to September 16, 1980 shall proceed as follows:

"(a) A matter which has not been heard, and submitted to the board for decision, on or before January 1, 1982 shall be transferred to the tax tribunal as of January 1, 1982.

"(b) A matter which has been heard, and submitted to the board for decision, on or before January 1, 1982 shall be completed and a decision issued before September 30, 1982.

"(2) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

However, the provisions of Act 162 of 1980 had already taken effect prior to October 29, 1981, the effective date of Act 138 of 1981.

Enacting sections 2 and 3 of Act 58 of 1986 provide:

"Section 2. The changes in penalties and interest affected by this amendatory act shall take effect July 1, 1986.

"Section 3. Except for section 31 and the provisions of enacting section 2, this amendatory act shall take effect May 1, 1986."

Popular name: Revenue Act

205.21a Credit audit or refund denial; informal conference; notice.

Sec. 21a. If a taxpayer serves written notice upon the department within 60 days of the issuance of a credit audit or a refund denial, the taxpayer is entitled to an informal conference on the question in the same manner and under the same procedures provided for under section 21.

History: Add. 2006, Act 5, Imd. Eff. Feb. 3, 2006.

Popular name: Revenue Act

205.21b Taxpayer subject to use tax audit; offset; "use tax" defined.

Sec. 21b. (1) In the course of an audit conducted under the authority of section 21, a taxpayer has the right to claim credit amounts as an offset against debit amounts determined in the audit. A taxpayer that is the subject of a use tax audit of its purchases is entitled to offset the use tax liability determined in that audit by the amount of sales tax paid annually under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, by it to a Michigan vendor, or use tax paid annually by it to a vendor located outside this state, on an amount of up to $5,000.00 in purchases.

(2) As used in this section, "use tax" means the tax described in the use tax act, 1937 PA 94, MCL 205.91 to 205.111.

History: Add. 2006, Act 7, Eff. Oct. 1, 2006.

Popular name: Revenue Act

205.22 Appeal; procedure; assessment, decision, or order as final and not reviewable; appropriation.

Sec. 22. (1) A taxpayer aggrieved by an assessment, decision, or order of the department may appeal the contested portion of the assessment, decision, or order to the tax tribunal within 60 days, or to the court of claims within 90 days after the assessment, decision, or order. The uncontested portion of an assessment, order, or decision shall be paid as a prerequisite to appeal. However, an action shall be commenced in the court of claims within 6 months after payment of the tax or an adverse determination of the taxpayer's claim

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for refund, whichever is later, if the payment of the tax or adverse determination of the claim for refund occurred under the former single business tax act, 1975 PA 228, and before May 1, 1986.

(2) An appeal under this section shall be perfected as provided under the tax tribunal act, 1973 PA 186, MCL 205.701 to 205.779, and rules promulgated under that act for the tax tribunal, or chapter 64 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6401 to 600.6475, and rules adopted under that chapter for the court of claims.

(3) A taxpayer or the department may take an appeal by right from a decision of the tax tribunal or the court of claims to the court of appeals. The appeal shall be taken on the record made before the tax tribunal or the court of claims. The taxpayer or department may take further appeal to the supreme court in accordance with the court rules provided for appeals to the supreme court.

(4) The assessment, decision, or order of the department, if not appealed in accordance with this section, is final and is not reviewable in any court by mandamus, appeal, or other method of direct or collateral attack.

(5) An assessment is final, conclusive, and not subject to further challenge after 90 days after the issuance of the assessment, decision, or order of the department, and a person is not entitled to a refund of any tax, interest, or penalty paid pursuant to an assessment unless the aggrieved person has appealed the assessment in the manner provided by this section.

(6) For the 2015-2016 fiscal year, $200,000.00 is appropriated from the general fund to the court of claims for operations due to the anticipated increased caseload from the changes in the amendatory act that added this subsection.

History: Add. 1980, Act 162, Eff. Sept. 17, 1980;—Am. 1986, Act 58, Eff. May 1, 1986;—Am. 1993, Act 13, Imd. Eff. Apr. 1, 1993 ;—Am. 2007, Act 194, Imd. Eff. Dec. 21, 2007;—Am. 2015, Act 79, Eff. Mar. 18, 2016.

Compiler's note: Enacting section 4 of Act 162 of 1980 provides:

"Section 4. This amendatory act shall take effect 90 days after signature by the Governor. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective with the effective date of this act. An appeal to the state board of tax appeals filed prior to the effective date of this act shall proceed as follows:

"(a) A matter which has not been heard on or before January 1, 1981, shall be transferred to the tax tribunal as of January 1, 1981.

"(b) A matter which has been heard on or before January 1, 1981 shall be completed by the board and a decision issued before December 31, 1981.

"(c) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

Act 138 of 1981 purported to amend enacting sections 3 and 4 of Act 162 of 1980 to read as follows:

"Section 3. Sections 7, 8, and 9 of Act No. 122 of the Public Acts of 1941, as amended, being sections 205.7, 205.8, and 205.9 of the Compiled Laws of 1970, are repealed effective September 30, 1982.

"Section 4. (1) This amendatory act shall take effect September 16, 1980. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective September 16, 1980. An appeal to the state board of tax appeals filed prior to September 16, 1980 shall proceed as follows:

"(a) A matter which has not been heard, and submitted to the board for decision, on or before January 1, 1982 shall be transferred to the tax tribunal as of January 1, 1982.

"(b) A matter which has been heard, and submitted to the board for decision, on or before January 1, 1982 shall be completed and a decision issued before September 30, 1982.

"(2) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

However, the provisions of Act 162 of 1980 had already taken effect prior to October 29, 1981, the effective date of Act 138 of 1981.

Enacting sections 2 and 3 of Act 58 of 1986 provide:

"Section 2. The changes in penalties and interest affected by this amendatory act shall take effect July 1, 1986.

"Section 3. Except for section 31 and the provisions of enacting section 2, this amendatory act shall take effect May 1, 1986."

Popular name: Revenue Act

205.23 Determination of tax liability; notice; payment of deficiency; interest and penalties.

Sec. 23. (1) If the department believes, based upon either the examination of a tax return, a payment, or an audit authorized by this act, that a taxpayer has not satisfied a tax liability or that a claim was excessive, the department shall determine the tax liability and notify the taxpayer of that determination. A liability for a tax administered under this act is subject to the interest and penalties prescribed in subsections (2) to (5).

(2) If the amount of a tax paid is less than the amount that should have been paid or an excessive claim has been made, the deficiency and interest on the deficiency at the current monthly interest rate of 1 percentage point above the adjusted prime rate per annum from the time the tax was due, and until paid, are due and payable after notice and informal conference as provided in this act. A deficiency in an estimated payment as may be required by a tax statute administered under this act shall be treated in the same manner as a tax due and shall be subject to the same current monthly interest rate of 1 percentage point above the adjusted prime rate per annum from the time the payment was due, until paid. As used in this section, "adjusted prime rate" means the average predominant prime rate quoted by not less than 3 commercial banks to large businesses, as determined by the department of treasury. The adjusted prime rate is to be based on the average prime rate

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charged by not less than 3 commercial banks during the 6-month period ending on March 31 and the 6-month period ending on September 30. One percentage point shall be added to the adjusted prime rate, and the resulting sum shall be divided by 12 to establish the current monthly interest rate. The resulting current monthly interest rate based on the 6-month period ending March 31 becomes effective on the following July 1, and the resulting current monthly interest rate based on the 6-month period ending September 30 becomes effective on January 1 of the following year.

(3) Except as provided in subsection (4), if any part of the deficiency or an excessive claim for credit is due to negligence, but without intent to defraud, a penalty of $10.00 or 10% of the total amount of the deficiency in the tax, whichever is greater, plus interest as provided in subsection (2), shall be added. The penalty becomes due and payable after notice and informal conference as provided in this act. If a taxpayer subject to a penalty under this subsection demonstrates to the satisfaction of the department that the deficiency or excess claim for credit was due to reasonable cause, the department shall waive the penalty. The penalty prescribed by this subsection shall not be imposed after June 30, 1994 unless and until the department submits for public hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, a rule defining what constitutes reasonable cause for waiver of the penalty under this subsection, which definition shall include illustrative examples.

(4) If any part of the deficiency or an excessive claim for credit is due to intentional disregard of the law or of the rules promulgated by the department, but without intent to defraud, a penalty of $25.00 or 25% of the total amount of the deficiency in the tax, whichever is greater, plus interest as provided in subsection (2), shall be added. The penalty becomes due and payable after notice and informal conference as provided in this act. If a penalty is imposed under this subsection and the taxpayer subject to the penalty successfully disputes the penalty, the department shall not impose a penalty prescribed by subsection (3) to the tax otherwise due.

(5) If any part of the deficiency or an excessive claim for credit is due to fraudulent intent to evade a tax, or to obtain a refund for a fraudulent claim, a penalty of 100% of the deficiency, plus interest as provided in subsection (2), shall be added. The penalty becomes due and payable after notice and informal conference as provided in this act.

History: Add. 1980, Act 162, Eff. Sept. 17, 1980;—Am. 1986, Act 58, Eff. May 1, 1986;—Am. 1991, Act 83, Imd. Eff. July 18, 1991;—Am. 1993, Act 14, Imd. Eff. Apr. 1, 1993.

Compiler's note: Enacting section 4 of Act 162 of 1980 provides:

"Section 4. This amendatory act shall take effect 90 days after signature by the Governor. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective with the effective date of this act. An appeal to the state board of tax appeals filed prior to the effective date of this act shall proceed as follows:

"(a) A matter which has not been heard on or before January 1, 1981, shall be transferred to the tax tribunal as of January 1, 1981.

"(b) A matter which has been heard on or before January 1, 1981 shall be completed by the board and a decision issued before December 31, 1981.

"(c) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

Act 138 of 1981 purported to amend enacting sections 3 and 4 of Act 162 of 1980 to read as follows:

"Section 3. Sections 7, 8, and 9 of Act No. 122 of the Public Acts of 1941, as amended, being sections 205.7, 205.8, and 205.9 of the Compiled Laws of 1970, are repealed effective September 30, 1982.

"Section 4. (1) This amendatory act shall take effect September 16, 1980. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective September 16, 1980. An appeal to the state board of tax appeals filed prior to September 16, 1980 shall proceed as follows:

"(a) A matter which has not been heard, and submitted to the board for decision, on or before January 1, 1982 shall be transferred to the tax tribunal as of January 1, 1982.

"(b) A matter which has been heard, and submitted to the board for decision, on or before January 1, 1982 shall be completed and a decision issued before September 30, 1982.

"(2) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

However, the provisions of Act 162 of 1980 had already taken effect prior to October 29, 1981, the effective date of Act 138 of 1981.

Enacting sections 2 and 3 of Act 58 of 1986 provide:

"Section 2. The changes in penalties and interest affected by this amendatory act shall take effect July 1, 1986.

"Section 3. Except for section 31 and the provisions of enacting section 2, this amendatory act shall take effect May 1, 1986."

Popular name: Revenue Act

Administrative rules: R 205.1001 et seq. of the Michigan Administrative Code.

205.23a Compromise; filing and publication of report; continuing review; revocation; duties of state treasurer; disclosure of return information; additional assessment; levy against property prohibited; remittance; rejection of offer to compromise as final.

Sec. 23a. (1) Beginning January 1, 2015, the state treasurer, or an authorized representative of the state treasurer, may compromise all or any part of any payment of a tax subject to administration under this act including any related penalties and interest if 1 or more of the following grounds exist:

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(a) A doubt exists as to liability if the department concludes, based on evidence provided by the taxpayer, that the taxpayer would have prevailed in a contested case if the taxpayer's appeal rights had not expired.

(b) A doubt exists as to collectability if the taxpayer establishes both of the following:

(*i*) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(*ii*) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(c) A federal compromise of tax under section 7122 of the internal revenue code has been granted for the same tax years. If an offer to compromise a tax under part 1 or part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.699, is accepted pursuant to this subdivision, the state treasurer, or an authorized representative of the state treasurer, may compromise the outstanding balance of the liability for each year by applying the same percentage as the federal liability compromised to the total liability.

(2) If the state treasurer, or an authorized representative of the state treasurer, compromises all or any part of any payment of a tax as authorized under this section, he or she shall place on file in the office of the state treasurer and publish on the department of treasury's website a written report outlining the basis for the compromise and, at a minimum, a statement of each of the following:

(a) The amount of tax assessed.

(b) The amount of interest or assessable penalty imposed by law on the person against whom the tax is assessed.

(c) The terms of the compromise and the amount actually paid in accordance with the terms of the compromise.

(d) The grounds for the compromise.

(3) A compromise under this section is subject to continuing review by the state treasurer. The department may revoke any compromise made under this section, may reestablish all compromised liabilities, without regard to any statute of limitations that otherwise may be applicable, and shall not refund any portion of the amount offered in compromise, if either of the following occurs:

(a) The state treasurer, or an authorized representative of the state treasurer, reasonably determines that the person receiving the compromise concealed from the department any property belonging to the taxpayer, the estate of a taxpayer, or any other person liable for the tax or, with the intent to mislead, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax to induce the compromise.

(b) The taxpayer fails to comply with any of the terms and conditions relative to the offer or to file subsequent required returns and pay subsequent final tax liabilities within 20 days after the department issues a notice and demand to the person stating that the continued failure to file or pay the tax may result in the revocation of the compromise made under this section.

(4) Within 180 days after the effective date of the amendatory act that added this section, the state treasurer shall do all of the following:

(a) Establish guidelines for the offer-in-compromise program authorized under this section. If appropriate, the guidelines shall be modeled after those guidelines published by the internal revenue service of the United States department of treasury in regards to the federal offer-in-compromise program established under section 7122 of the internal revenue code.

(b) Establish guidelines for officers and employees within the department to use when making decisions on whether an offer-in-compromise is appropriate.

(c) Establish procedures for an independent administrative review within the department of any rejection of a proposed offer-in-compromise made by the taxpayer. In order to initiate a review under this subdivision, the taxpayer shall make a written request on a form prescribed by the department within 30 days after the department issues the rejection. If appropriate, the independent administrative review procedures shall be modeled after the guidelines published by the internal revenue service for the federal offer-in-compromise program established under section 7122 of the internal revenue code.

(5) The department shall disclose return information to members of the general public to the extent necessary to permit inspection of any accepted offer-in-compromise under this section relating to the liability for a tax imposed by this state.

(6) Except for a revocation as provided under subsection (3), a tax that was compromised is not subject to additional assessment or collection unless the compromised tax is modified or adjusted as a result of information received from the internal revenue service or as a result of an audit performed by this state or on behalf of this state. Except as to any additional assessment imposed as provided under this subsection, a taxpayer shall not request an informal conference or institute tribunal or judicial proceeding against the

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department regarding the taxpayer's tax liability or the compromise.

(7) The department shall not levy against property to collect a liability while an offer to compromise is pending unless the state treasurer, or an authorized representative of the state treasurer, has determined that the taxpayer's offer to compromise was intended to delay collection of the tax or the department has issued a jeopardy assessment under section 26.

(8) A taxpayer who submits an offer to compromise a tax, penalty, or interest shall remit with its offer $100.00 or 20% of the offer, whichever is greater, to the department. The amount remitted with the offer shall be applied to the outstanding balance of that taxpayer's liability and shall not be refunded if the offer to compromise is rejected or reduced.

(9) Except for the independent administrative review available as provided under subsection (4)(c), a rejection of an offer to compromise, in whole or in part, is final and is not subject to further challenge or appeal under this act.

History: Add. 2014, Act 240, Imd. Eff. June 27, 2014.

205.24 Failure or refusal to file return or pay tax; assessment; notice; penalty; interest; waiver; penalty for failure or refusal to file informational report; failure to pay estimated tax payment; waiver of interest and penalty.

Sec. 24. (1) If a taxpayer fails or refuses to file a return or pay a tax administered under this act within the time specified, the department, as soon as possible, shall assess the tax against the taxpayer and notify the taxpayer of the amount of the tax. A liability for a tax administered under this act is subject to the interest and penalties prescribed in subsections (2) to (5).

(2) Except as provided in subsections (3), (6), and (7), if a taxpayer fails or refuses to file a return or pay a tax within the time specified for notices of intent to assess issued on or before February 28, 2003, a penalty of $10.00 or 5% of the tax, whichever is greater, shall be added if the failure is for not more than 1 month, with an additional 5% penalty for each additional month or fraction of a month during which the failure continues or the tax and penalty is not paid, to a maximum of 50%. Except as provided in subsections (3), (6), and (7), if a taxpayer fails or refuses to file a return or pay a tax within the time specified for notices of intent to assess issued after February 28, 2003, a penalty of 5% of the tax shall be added if the failure is for not more than 2 months, with an additional 5% penalty for each additional month or fraction of a month during which the failure continues or the tax and penalty is not paid, to a maximum of 25%. In addition to the penalty, interest at the rate provided in section 23 for deficiencies in tax payments shall be added on the tax from the time the tax was due, until paid. After June 30, 1994, the penalty prescribed by this subsection shall not be imposed until the department submits for public hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, a rule defining what constitutes reasonable cause for waiver of the penalty under subsection (4), which definition shall include illustrative examples.

(3) If a person is required to remit tax due pursuant to section 19(2) and fails or refuses to pay the tax within the time specified, a penalty of 0.167% of the tax shall be added for each day during which the failure continues or the tax and penalty are not paid as follows:

(a) For notices of intent to assess issued on or before February 28, 2003, to a maximum of 50% of the tax.

(b) For notices of intent to assess issued after February 28, 2003, to a maximum of 25% of the tax.

(4) If a return is filed or remittance is paid after the time specified and it is shown to the satisfaction of the department that the failure was due to reasonable cause and not to willful neglect, the state treasurer or an authorized representative of the state treasurer shall waive the penalty prescribed by subsection (2).

(5) For failure or refusal to file an information return or other informational report required by a tax statute, within the time specified, a penalty of $10.00 per day for each day for each separate failure or refusal may be added. The total penalty for each separate failure or refusal shall not exceed $400.00.

(6) If a taxpayer fails to pay an estimated tax payment as may be required by the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, a penalty shall not be imposed if the taxpayer was not required to make estimated tax payments in the taxpayer's immediately preceding tax year.

(7) Notwithstanding any other provision of this act, for any return or tax remittance due on August 15, 2003 that was filed or remitted not later than August 22, 2003, the department shall waive all interest and penalty for the failure to file or remit for the period of August 15, 2003 through August 22, 2003.

History: Add. 1980, Act 162, Eff. Sept. 17, 1980;—Am. 1986, Act 58, Eff. May 1, 1986;—Am. 1991, Act 83, Imd. Eff. July 18, 1991;—Am. 1993, Act 14, Imd. Eff. Apr. 1, 1993;—Am. 2001, Act 168, Imd. Eff. Nov. 27, 2001;—Am. 2002, Act 657, Imd. Eff. Dec. 23, 2002;—Am. 2003, Act 201, Imd. Eff. Nov. 14, 2003.

Compiler's note: Enacting section 4 of Act 162 of 1980 provides:

"Section 4. This amendatory act shall take effect 90 days after signature by the Governor. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective with the effective date of this act. An appeal to the state

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board of tax appeals filed prior to the effective date of this act shall proceed as follows:

"(a) A matter which has not been heard on or before January 1, 1981, shall be transferred to the tax tribunal as of January 1, 1981.

"(b) A matter which has been heard on or before January 1, 1981 shall be completed by the board and a decision issued before December 31, 1981.

"(c) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

Act 138 of 1981 purported to amend enacting sections 3 and 4 of Act 162 of 1980 to read as follows:

"Section 3. Sections 7, 8, and 9 of Act No. 122 of the Public Acts of 1941, as amended, being sections 205.7, 205.8, and 205.9 of the Compiled Laws of 1970, are repealed effective September 30, 1982.

"Section 4. (1) This amendatory act shall take effect September 16, 1980. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective September 16, 1980. An appeal to the state board of tax appeals filed prior to September 16, 1980 shall proceed as follows:

"(a) A matter which has not been heard, and submitted to the board for decision, on or before January 1, 1982 shall be transferred to the tax tribunal as of January 1, 1982.

"(b) A matter which has been heard, and submitted to the board for decision, on or before January 1, 1982 shall be completed and a decision issued before September 30, 1982.

"(2) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

However, the provisions of Act 162 of 1980 had already taken effect prior to October 29, 1981, the effective date of Act 138 of 1981.

Enacting sections 2 and 3 of Act 58 of 1986 provide:

"Section 2. The changes in penalties and interest affected by this amendatory act shall take effect July 1, 1986.

"Section 3. Except for section 31 and the provisions of enacting section 2, this amendatory act shall take effect May 1, 1986."

Popular name: Revenue Act

Administrative rules: R 205.1001 et seq. of the Michigan Administrative Code.

205.25 Demand for payment; warrant; levy on and sale of property; refusal or failure to surrender property; personal liability; penalty; reduction of obligation; exemptions; effect of levy on salary or wages; service of warrant-notice of levy.

Sec. 25. (1) The state treasurer, or an authorized representative of the state treasurer, may cause a demand to be made on a taxpayer for the payment of a tax, unpaid account, or amount due the state or any of its departments, institutions, or agencies, subject to administration under this act. If the liability remains unpaid for 10 days after the demand and proceedings are not taken to review the liability, the state treasurer or an authorized representative of the state treasurer may issue a warrant under the official seal of that office. Except as provided in subsection (5), the state treasurer or an authorized representative of the state treasurer, through any state officer authorized to serve process or through his or her authorized employees, may levy on all property and rights to property, real and personal, tangible and intangible, belonging to the taxpayer or on which a lien is provided by law for the amount of the deficiency, and sell the real and personal property of the taxpayer found within the state for the payment of the amount due, the cost of executing the warrant, recording or filing fees, and the additional penalties and interest. Except as provided in subsection (6), the officer or agent serving the warrant shall proceed upon the warrant in all respects and in the same manner as prescribed by law in respect to executions issued against property upon judgments by a court of record. This state, through the state treasurer or an authorized representative of the state treasurer, may bid for and purchase any property sold pursuant to this section.

(2) A person who refuses or fails to surrender any property or rights to property subject to levy, upon demand by the state treasurer or an authorized representative of the state treasurer, is personally liable to this state in a sum equal to the value of the property or rights not surrendered, but not exceeding the amount due for which the levy was made, together with costs and interest on the sum at the rate provided in section 23(2) from the date of the levy. Any amount, other than costs, recovered under this subsection shall be credited against the liability for the collection of which the levy was made.

(3) In addition to the personal liability imposed by subsection (2), if a person required to surrender property or rights to property fails or refuses to surrender the property or rights to property without reasonable cause, the person shall be liable for a penalty equal to 50% of the amount recoverable under subsection (2), none of which penalty shall be credited against the liability for the collection of which the levy was made.

(4) A person in possession of, or obligated with respect to, property or property rights subject to levy and upon which a levy has been made who, upon demand of the state treasurer or an authorized representative of the state treasurer, surrenders the property or rights to property or discharges the obligation to the state treasurer or an authorized representative of the state treasurer or who pays a liability under subsection (1) shall have his or her obligation to a person delinquent in payment of a tax or other account reduced in an amount equal to the property or rights to property surrendered or amounts paid to the state.

(5) There shall be exempt from levy under this section:

(a) For an unpaid tax, the type of property and the amount of that property as provided in section 6334 of the internal revenue code of 1986.

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(b) For an unpaid account, or amount due the state or any of its departments other than an unpaid tax, disposable earnings to the extent provided in section 303 of title III of the consumer credit protection act, 82 Stat 163, 15 USC 1673.

(c) The effect of a levy on salary or wages shall be continuous from the date the levy is first made until the liability out of which the levy arose is satisfied.

(6) A warrant-notice of levy may be served by certified mail, return receipt requested, on any person in possession of, or obligated with respect to, property and rights to property, real and personal, tangible and intangible, belonging to the taxpayer or on which a lien is provided by law. The date of delivery on the receipt shall be the date the levy is made. A person may, upon written notice to the state treasurer, have all notices of levy by mail sent to 1 designated office.

History: Add. 1980, Act 162, Eff. Sept. 17, 1980;—Am. 1982, Act 537, Imd. Eff. Dec. 31, 1982;—Am. 1986, Act 58, Eff. May 1, 1986;—Am. 2002, Act 657, Imd. Eff. Dec. 23, 2002;—Am. 2016, Act 230, Eff. Oct. 1, 2016.

Compiler's note: Enacting section 4 of Act 162 of 1980 provides:

"Section 4. This amendatory act shall take effect 90 days after signature by the Governor. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective with the effective date of this act. An appeal to the state board of tax appeals filed prior to the effective date of this act shall proceed as follows:

"(a) A matter which has not been heard on or before January 1, 1981, shall be transferred to the tax tribunal as of January 1, 1981.

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"Section 3. Except for section 31 and the provisions of enacting section 2, this amendatory act shall take effect May 1, 1986."

Popular name: Revenue Act

205.26 Demand for immediate return and payment of tax; jeopardy assessment; warrant or warrant-notice of levy; time for payment.

Sec. 26. If the state treasurer or the state treasurer's designated representative finds that a person liable for a tax administered under this act intends quickly to depart from the state or to remove property from this state, to conceal the person or the person's property in this state, or to do any other act tending to render wholly or partly ineffectual proceedings to collect the tax unless proceedings are brought without delay, the state treasurer or the state treasurer's designated representative shall give notice of the findings to the person, together with a demand for an immediate return and immediate payment of the tax. A warrant or warrant-notice of levy may issue immediately upon issuance of a jeopardy assessment. In that instance, the tax shall become immediately due and payable. If the person is not in default in making a return or paying a tax prescribed by this act, and furnishes evidence satisfactory to the state treasurer or the state treasurer's designated representative under rules promulgated by the department that the return will be filed and the tax to which the state treasurer's or the state treasurer's designated representative's finding relates will be paid, then the tax shall not be payable before the time otherwise fixed for payment.

History: Add. 1980, Act 162, Eff. Sept. 17, 1980;—Am. 1986, Act 58, Eff. May 1, 1986;—Am. 2002, Act 657, Imd. Eff. Dec. 23, 2002.

Compiler's note: Enacting section 4 of Act 162 of 1980 provides:

"Section 4. This amendatory act shall take effect 90 days after signature by the Governor. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective with the effective date of this act. An appeal to the state board of tax appeals filed prior to the effective date of this act shall proceed as follows:

"(a) A matter which has not been heard on or before January 1, 1981, shall be transferred to the tax tribunal as of January 1, 1981.

"(b) A matter which has been heard on or before January 1, 1981 shall be completed by the board and a decision issued before December 31, 1981.

"(c) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

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Act 138 of 1981 purported to amend enacting sections 3 and 4 of Act 162 of 1980 to read as follows:

"Section 3. Sections 7, 8, and 9 of Act No. 122 of the Public Acts of 1941, as amended, being sections 205.7, 205.8, and 205.9 of the Compiled Laws of 1970, are repealed effective September 30, 1982.

"Section 4. (1) This amendatory act shall take effect September 16, 1980. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective September 16, 1980. An appeal to the state board of tax appeals filed prior to September 16, 1980 shall proceed as follows:

"(a) A matter which has not been heard, and submitted to the board for decision, on or before January 1, 1982 shall be transferred to the tax tribunal as of January 1, 1982.

"(b) A matter which has been heard, and submitted to the board for decision, on or before January 1, 1982 shall be completed and a decision issued before September 30, 1982.

"(2) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

However, the provisions of Act 162 of 1980 had already taken effect prior to October 29, 1981, the effective date of Act 138 of 1981.

Enacting sections 2 and 3 of Act 58 of 1986 provide:

"Section 2. The changes in penalties and interest affected by this amendatory act shall take effect July 1, 1986.

"Section 3. Except for section 31 and the provisions of enacting section 2, this amendatory act shall take effect May 1, 1986."

Popular name: Revenue Act

205.27 Prohibited conduct; violation; penalties; enforcement.

Sec. 27. (1) In the performance of the duties and responsibilities required by a statute, the administration of which is subject to this act, a person shall not do any of the following:

(a) Fail or refuse to make a return or payment within the time specified, make a false or fraudulent return or payment, or make a false statement in a return or payment.

(b) Aid, abet, or assist another in an attempt to evade the payment of a tax, or a part of a tax, or file a false claim for credit as provided in statutes administered under this act.

(c) Make or permit to be made for himself or herself or for any other person a false return or payment, a false statement in a return or payment, or a false claim for credit or refund, either in whole or in part.

(2) A person who violates a provision of this section with intent to defraud or to evade or assist in defrauding or evading the payment of a tax, or a part of a tax, is guilty of a felony, punishable by a fine of not more than $5,000.00, or imprisonment for not more than 5 years, or both.

(3) In addition to the penalties provided in subsection (2), a person who knowingly swears to or verifies a false or fraudulent return or a false or fraudulent payment, or a return or payment containing a false or fraudulent statement, with the intent to aid, abet, or assist in defrauding the state, is guilty of perjury, punishable in the manner provided by law.

(4) A person who is not in violation pursuant to subsection (2), but who knowingly violates any other provision of this act, or of any statute administered under this act, is guilty of a misdemeanor, punishable by a fine of not more than $1,000.00, or imprisonment for not more than 1 year, or both.

(5) The attorney general and the prosecuting attorney of each county of this state have concurrent power to enforce this act.

History: Add. 1980, Act 162, Eff. Sept. 17, 1980;—Am. 1991, Act 83, Imd. Eff. July 18, 1991.

Compiler's note: Enacting section 4 of Act 162 of 1980 provides:

"Section 4. This amendatory act shall take effect 90 days after signature by the Governor. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective with the effective date of this act. An appeal to the state board of tax appeals filed prior to the effective date of this act shall proceed as follows:

"(a) A matter which has not been heard on or before January 1, 1981, shall be transferred to the tax tribunal as of January 1, 1981.

"(b) A matter which has been heard on or before January 1, 1981 shall be completed by the board and a decision issued before December 31, 1981.

"(c) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

Act 138 of 1981 purported to amend enacting sections 3 and 4 of Act 162 of 1980 to read as follows:

"Section 3. Sections 7, 8, and 9 of Act No. 122 of the Public Acts of 1941, as amended, being sections 205.7, 205.8, and 205.9 of the Compiled Laws of 1970, are repealed effective September 30, 1982.

"Section 4. (1) This amendatory act shall take effect September 16, 1980. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective September 16, 1980. An appeal to the state board of tax appeals filed prior to September 16, 1980 shall proceed as follows:

"(a) A matter which has not been heard, and submitted to the board for decision, on or before January 1, 1982 shall be transferred to the tax tribunal as of January 1, 1982.

"(b) A matter which has been heard, and submitted to the board for decision, on or before January 1, 1982 shall be completed and a decision issued before September 30, 1982.

"(2) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

However, the provisions of Act 162 of 1980 had already taken effect prior to October 29, 1981, the effective date of Act 138 of 1981.

Popular name: Revenue Act

205.27a Selling or quitting business; final return; escrow account for payment of taxes;

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liability for taxes, interest, and penalties; assessment of deficiency, interest, or penalty; claim for refund; fraud or failure to notify of alteration or modification of federal tax liability; assessment and payment of tax, penalties, and interest; extension of statute of limitations; assessing responsible person; conditions to paying claim for refund; schedule; filing claim under former act; assessing tax or reducing overpayment; approval of tax refund; conditions; filing as combined, consolidated, or composite return; taxes to which subsection (5) applicable; definitions.

Sec. 27a. (1) If a person liable for a tax administered under this act sells out his or her business or its stock of goods or quits the business, the person shall make a final return within 15 days after the date of selling or quitting the business. The purchaser or succeeding purchasers, if any, who purchase a going or closed business or its stock of goods shall escrow sufficient money to cover the amount of taxes, interest, and penalties as may be due and unpaid until the former owner produces a receipt from the state treasurer or the state treasurer's designated representative showing that the taxes due are paid, or a certificate stating that taxes are not due. Upon the owner's written waiver of confidentiality, the department shall, within 60 days of receipt of the request, release to a purchaser a business's known or estimated tax liability for the purposes of establishing an escrow account for the payment of taxes. The department may estimate tax liability based on prior returns and payments. If the department believes that a return made or payment does not supply sufficient information for an accurate determination, the department may make an estimate based on other available information. If the purchaser or succeeding purchasers of a business or its stock of goods fail to comply with the escrow requirements of this subsection, the purchaser is personally liable for the payment of the taxes, interest, and penalties accrued and unpaid by the business of the former owner. If the purchaser or succeeding purchasers of a business or its stock of goods comply with the escrow requirements of this subsection, the purchaser shall not be held liable for more than the known or estimated tax liability disclosed by the department and held in escrow. However, the purchaser shall not be held liable if the department has failed to provide the information requested within 60 days. For a purchaser or succeeding purchaser that has not complied with the escrow requirements of this section, the purchaser's or succeeding purchaser's personal liability is limited to the fair market value of the business less the amount of any proceeds that are applied to balances due on secured interests that are superior to the lien provided for in section 29(1).

(2) A deficiency, interest, or penalty shall not be assessed after the expiration of 4 years after the date set for the filing of the required return or after the date the return was filed, whichever is later. The taxpayer shall not claim a refund of any amount paid to the department after the expiration of 4 years after the date set for the filing of the original return. A person who has failed to file a return is liable for all taxes due for the entire period for which the person would be subject to the taxes. If a person subject to tax fraudulently conceals any liability for the tax or a part of the tax, or fails to notify the department of any alteration in or modification of federal tax liability, the department, within 2 years after discovery of the fraud or the failure to notify, shall assess the tax with penalties and interest as provided by this act, computed from the date on which the tax liability originally accrued. The tax, penalties, and interest are due and payable after notice and hearing as provided by this act.

(3) The statute of limitations shall be extended for the following if the period exceeds that described in subsection (2):

(a) The period pending a final determination of tax through audit, conference, hearing, and litigation of liability for federal income tax and for 1 year after that period.

(b) The period for which the taxpayer and the state treasurer have consented to in writing that the period be extended.

(c) The period described in section 21(6) and (7) or pending the completion of an appeal of a final assessment.

(d) A period of 90 days after a decision and order from an informal conference, or a court order that finally resolves an appeal of a decision of the department in a case in which a final assessment was not issued prior to appeal.

(4) The statute of limitations is extended only as to those items that were the subject of the audit, conference, hearing, or litigation for federal income tax or a tax administered by the department. As used in this subsection, "items that were the subject of the audit" means items that share a common characteristic that were examined by an auditor even if there was no adjustment to the tax as a result of the examination. Items that share a common characteristic include items that are reported on the same line on a tax return or items that are grouped by ledger, account, or record or by class or type of asset, liability, income, or expense.

(5) If a business liable for taxes administered under this act fails, for any reason after assessment, to file the required returns or to pay the tax due, any of its officers, members, managers of a manager-managed limited

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liability company, or partners who the department determines, based on either an audit or an investigation, is a responsible person is personally liable for the failure for the taxes described in subsection (14). The dissolution of a business does not discharge a responsible person's liability for a prior failure of the business to file a return or pay the tax due. The sum due for a liability may be assessed and collected under the related sections of this act. The department shall provide a responsible person assessed under this section with notice of any amount collected by the department from any other responsible person determined to be liable under this subsection or purchaser determined to be liable under subsection (1) that is attributable to the assessment. The department shall not assess a responsible person under this section more than 4 years after the date of the assessment issued to the business. A responsible person may challenge the validity of an assessment to the same extent that the business could have challenged that assessment under sections 21 and 22 when originally issued. The department has the burden to first produce prima facie evidence as described in subsection (15) or establish a prima facie case that the person is the responsible person under this subsection through establishment of all elements of a responsible person as defined in subsection (15). In a separate proceeding before the circuit court, a responsible person found to be liable for the assessment under this section may recover from other responsible persons an amount equal to the assessment or portion of the assessment based on that person's proportionate liability for the assessment as determined in that proceeding. Before assessing a responsible person as liable under this subsection for the tax assessed to the business, the department shall first assess a purchaser or succeeding purchaser of the business personally liable under subsection (1) if the department has information that clearly identifies a purchaser or succeeding purchaser under subsection (1) and establishes that the assessment of the purchaser or succeeding purchaser would permit the department to collect the entire amount of the tax assessment of the business. The department may assess a responsible person under this subsection notwithstanding the liability of a purchaser or succeeding purchaser under subsection (1) if the purchaser or succeeding purchaser fails to pay the assessment.

(6) Notwithstanding any other provision of this act, upon request of a responsible person who was issued an intent to assess by the department under section 21 for liability under subsection (5), the department shall disclose any documents considered in the department's audit or investigation in determining that the person is a responsible person and is personally liable for the assessment and any other documents that the tribunal or court determines are necessary for a fair adjudication of a person's liability under subsection (5).

(7) Notwithstanding the provisions of subsection (2), a claim for refund based upon the validity of a tax law based on the laws or constitution of the United States or the state constitution of 1963 shall not be paid unless the claim is filed within 90 days after the date set for filing a return.

(8) Subsection (7) does not apply to a claim for the refund of a tax paid for the 1984 tax year or a tax year after the 1984 tax year on income received as retirement or pension benefits from a public retirement system of the United States government if the claimant waives any claim for the refund of such a tax paid for a tax year before 1984. Claims for refunds to which this subsection applies shall be paid in accordance with the following schedule:

Refunds for tax year:	Payable on or after:
1988 and 1987	July 1, 1990
1986	July 1, 1991
1985	July 1, 1992
1984	July 1, 1993

(9) Notwithstanding any other provision in this act, for a taxpayer that filed a tax return under former 1975 PA 228 that included in the tax return an entity disregarded for federal income tax purposes under the internal revenue code, both of the following shall apply:

(a) The department shall not assess the taxpayer an additional tax or reduce an overpayment because the taxpayer included an entity disregarded for federal income tax purposes on its tax return filed under former 1975 PA 228.

(b) The department shall not require the entity disregarded for federal income tax purposes on the taxpayer's tax return filed under former 1975 PA 228 to file a separate tax return.

(10) Notwithstanding any other provision in this act, if a taxpayer filed a tax return under former 1975 PA 228 that included in the tax return an entity disregarded for federal income tax purposes under the internal revenue code, then the taxpayer shall not claim a refund based on the entity disregarded for federal income tax purposes under the internal revenue code filing a separate return as a distinct taxpayer.

(11) Notwithstanding any other provision in this act, the department shall not assess a tax or reduce an overpayment, and shall approve a claim for a refund of any tax paid, under former 1975 PA 228 and subject to the statute of limitations for an individual, estate, or person organized for estate or gift planning purposes for amounts received, income, or gain other than those from transactions, activities, and sources in the regular

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course of the person's trade or business. For purposes of this subsection, all of the following apply:

(a) Receipts, income, and gain that are from transactions, activities, and sources in the regular course of the person's business include, but are not limited to, amounts derived from the following:

(*i*) Tangible and intangible property if the acquisition, rental, lease, management, or disposition of the property constitutes integral parts of the person's regular trade or business operations.

(*ii*) Transactions in the course of the person's trade or business from stock and securities of any foreign or domestic corporation and dividend and interest income.

(*iii*) Isolated sales, leases, assignments, licenses, divisions, or other infrequently occurring dispositions, transfers, or transactions involving tangible, intangible, or real property if the property is or was used in the person's trade or business operation.

(*iv*) The sale of an interest in a business that constitutes an integral part of the person's regular trade or business.

(*v*) The lease or rental of real property.

(b) Receipts, income, and gain that are not from transactions, activities, and sources in the regular course of the person's trade or business include, but are not limited to, amounts derived from the following:

(*i*) Investment activity, including interest, dividends, royalties, and gains from an investment portfolio or retirement account, if the investment activity is not part of the person's trade or business.

(*ii*) The disposition of tangible, intangible, or real property held for personal use and enjoyment, such as a personal residence or personal assets.

(12) Notwithstanding any other provision in this act, the department shall not assess a tax or reduce an overpayment, and shall approve a claim for a refund for any tax paid, under former 1975 PA 228 and subject to the statute of limitations for receipts, income, or gain derived from investment activity other than receipts, income, or gain from transactions, activities, and sources in the regular course of the person's trade or business by a person that is organized exclusively to conduct investment activity and that does not conduct investment activity for any person other than an individual or a person related to that individual or by a common trust fund established under the collective investment funds act, 1941 PA 174, MCL 555.101 to 555.113. For purposes of this subsection, a person is related to an individual if that person is a spouse, brother or sister, whether of the whole or half blood or by adoption, ancestor, lineal descendant of that individual or related person, or a trust benefiting that individual or 1 more persons related to that individual.

(13) The filing of a return includes the filing of a combined, consolidated, or composite return whether or not any tax was paid and whether or not the taxpayer reported any amount in the tax line including zero.

(14) Subsection (5) applies to all of the following taxes administered under this act:

(a) For assessments issued to responsible persons before January 1, 2014, taxes administered under this act.

(b) For assessments issued to responsible persons after December 31, 2013, all of the following:

(*i*) Taxes levied under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78.

(*ii*) Taxes levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, that are required to be collected or were collected from or on behalf of a third person for remittance to the state.

(*iii*) Taxes levied under the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436.

(*iv*) Taxes levied under the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170.

(*v*) Taxes levied under the motor carrier fuel tax act, 1980 PA 119, MCL 207.211 to 207.234.

(*vi*) Withholding and remittance of income taxes levied under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713.

(*vii*) Any other tax administered under this act that a person is required to collect from or on behalf of a third person, to truthfully account for and to pay over to this state.

(15) As used in subsections (5) and (6):

(a) "Business" means a corporation, limited liability company, limited liability partnership, partnership, or limited partnership.

(b) "Responsible person" means an officer, member, manager of a manager-managed limited liability company, or partner for the business who controlled, supervised, or was responsible for the filing of returns or payment of any of the taxes described in subsection (14) during the time period of default and who, during the time period of default, willfully failed to file a return or pay the tax due for any of the taxes described in subsection (14). The signature, including electronic signature, of any officer, member, manager of a manager-managed limited liability company, or partner on returns or negotiable instruments submitted in payment of taxes of the business during the time period of default, is prima facie evidence that the person is a responsible person. A signature, including electronic signature, on a return or negotiable instrument submitted in payment of taxes after the time period of default alone is not prima facie evidence that the person is a responsible person for the time period of default but may be considered along with other evidence to make a prima facie case that the person is a responsible person. With respect to a return or negotiable instrument

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submitted in payment of taxes before the time period of default, the signature, including electronic signature, on that document along with evidence, other than that document, sufficient to demonstrate that the signatory was an officer, member, manager of a manager-managed limited liability company, or partner during the time period of default is prima facie evidence that the person is a responsible person.

(c) "Time period of default" means the tax period for which the business failed to file the return or pay the tax due under subsection (5) and through the later of the date set for the filing of the tax return or making the required payment.

(d) "Willful" or "willfully" means the person knew or had reason to know of the obligation to file a return or pay the tax, but intentionally or recklessly failed to file the return or pay the tax.

History: Add. 1986, Act 58, Eff. May 1, 1986;—Am. 1990, Act 285, Imd. Eff. Dec. 21, 1990;—Am. 1990, Act 344, Imd. Eff. Dec. 21, 1990;—Am. 1993, Act 14, Imd. Eff. Apr. 1, 1993;—Am. 2002, Act 657, Imd. Eff. Dec. 23, 2002;—Am. 2003, Act 23, Imd. Eff. June 24, 2003;—Am. 2010, Act 38, Imd. Eff. Mar. 31, 2010;—Am. 2011, Act 304, Imd. Eff. Dec. 27, 2011;—Am. 2012, Act 211, Imd. Eff. June 27, 2012;—Am. 2014, Act 3, Imd. Eff. Feb. 6, 2014.

Compiler's note: Section 2 of Act 58 of 1986 provides: "The changes in penalties and interest affected by this amendatory act shall take effect July 1, 1986."

Section 3 of Act 58 of 1986 provides: "Except for section 31 and the provisions of enacting section 2, this amendatory act shall take effect May 1, 1986."

Enacting section 1 of Act 23 of 2003 provides:

"Enacting section 1. This amendatory act takes effect for returns and remittances for those returns that are due or filed on or after the effective date of this amendatory act."

Enacting section 1 of Act 38 of 2010 provides:

"Enacting section 1. This amendatory act is curative, shall be retroactively applied, and is intended to correct any misinterpretation concerning the treatment of an entity disregarded for federal income tax purposes under the internal revenue code under former 1975 PA 228 that may have been caused by the decision of the Michigan court of appeals in *Kmart Michigan Property Services* v *Michigan Department of Treasury*, No. 282058, May 12, 2009. However, this amendatory act is not intended to affect a refund resulting from a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted prior to February 12, 2010 to a taxpayer who is a party to that proceeding."

Enacting section 1 of Act 304 of 2011 provides:

"Enacting section 1. This amendatory act shall be retroactively applied."

In subsection (12), the phrase “or 1 more persons” evidently should read “or 1 or more persons.”

Enacting section 1 of Act 211 of 2012 provides:

"Enacting section 1. Section 27a(12) of 1941 PA 122, MCL 205.27a, as added by this amendatory act, is retroactive and is effective for all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a, for all matters regarding the filing of a return under this section. However, this amendatory act is not intended to affect a refund required by a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired before May 1, 2012."

Popular name: Revenue Act

205.28 Conditions applicable to administration of taxes; violation; penalties; records required; disclosure of information; report containing statistics concerning Michigan business tax act; disclosure of certain information; “adjusted gross receipts” and “wagering tax” defined.

Sec. 28. (1) The following conditions apply to all taxes administered under this act unless otherwise provided for in the specific tax statute:

(a) Notice, if required, must be given either by personal service or by certified mail addressed to the last known address of the taxpayer. Service upon the department may be made in the same manner.

(b) An injunction shall not issue to stay proceedings for the assessment and collection of a tax.

(c) In addition to the mode of collection provided in this act, the department may institute an action at law in any county in which the taxpayer resides or transacts business.

(d) The state treasurer may request in writing information or records in the possession of any other department, institution, or agency of state government for the performance of duties under this act. Departments, institutions, or agencies of state government shall furnish the information and records upon receipt of the state treasurer's request. Upon request of the state treasurer, any department, institution, or agency of state government shall hold a hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to consider withholding a license or permit of a person for nonpayment of taxes or accounts collected under this act.

(e) Except as otherwise provided in sections 21(2)(e), 23a, and 30c, the state treasurer or an employee of the department shall not compromise or reduce in any manner the taxes due to or claimed by this state or unpaid accounts or amounts due to any department, institution, or agency of state government. This subdivision does not prevent a compromise of interest or penalties, or both.

(f) Except as otherwise provided in this subdivision, in subsection (6) or (7), or in section 23a, an employee, authorized representative, former employee or authorized representative of the department, or anyone connected with the department shall not divulge any facts or information obtained in connection with

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the administration of a tax or information or parameters that would enable a person to ascertain the audit selection or processing criteria of the department for a tax administered by the department. An employee or authorized representative shall not willfully inspect any return or information contained in a return unless it is appropriate for the proper administration of a tax law administered under this act. A person may disclose information described in this subdivision if the disclosure is required for the proper administration of a tax law administered under this act or the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, pursuant to a judicial order sought by an agency charged with the duty of enforcing or investigating support obligations pursuant to an order of a court in a domestic relations matter as that term is defined in section 2 of the friend of the court act, 1982 PA 294, MCL 552.502, pursuant to a judicial order sought by an agency of the federal, state, or local government charged with the responsibility for the administration or enforcement of criminal law for purposes of investigating or prosecuting criminal matters or for federal or state grand jury proceedings, or pursuant to a judicial order if the taxpayer's liability for a tax administered under this act is to be adjudicated by the court that issued the judicial order. A person required to disclose information under section 10(1)(j) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.810, may disclose the information only to the individuals described in that section. A person may disclose the information required for the report described in section 9 of the Michigan strategic fund act, 1984 PA 270, MCL 125.2009, for programs with new written agreements entered into after the effective date of the amendatory act that added this sentence for programs operated under the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2094. A person may disclose the adjusted gross receipts and the wagering tax paid by a casino licensee licensed under the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226, pursuant to section 18, sections 341, 342, and 386 of the management and budget act, 1984 PA 431, MCL 18.1341, 18.1342, and 18.1386, or as authorized by the executive director of the gaming control board. However, the state treasurer or a person designated by the state treasurer may divulge information set forth or disclosed in a return or report or by an investigation or audit to any department, institution, or agency of state government upon receipt of a written request from a head of the department, institution, or agency of state government if it is required for the effective administration or enforcement of the laws of this state, to a proper officer of the United States Department of Treasury, and to a proper officer of another state reciprocating in this privilege. The state treasurer may enter into reciprocal agreements with other departments of state government, the United States Department of Treasury, local governmental units within this state, or taxing officials of other states for the enforcement, collection, and exchange of data after ascertaining that any information provided will be subject to confidentiality restrictions substantially the same as the provisions of this act. The state treasurer or a person designated by the state treasurer may disclose the address of each housing unit that is part of a housing project exempt from ad valorem taxes under section 15a of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1415a, or under section 11a of 1933 (Ex Sess) PA 18, MCL 125.661a, and whether the unit is subject to a service charge in lieu of ad valorem taxes. The state treasurer or a person designated by the state treasurer may also disclose the millage rates of property taxes as defined in section 512a of the income tax act of 1967, 1967 PA 281, MCL 206.512a.

(2) A person who violates subsection (1)(e), (1)(f), or (4) is guilty of a felony punishable by a fine of not more than $5,000.00 or imprisonment for not more than 5 years, or both, together with the costs of prosecution. In addition, if the offense is committed by an employee of this state, the person shall be dismissed from office or discharged from employment upon conviction.

(3) A person liable for any tax administered under this act shall keep accurate and complete records necessary for the proper determination of tax liability as required by law or rule of the department.

(4) A person who receives information under subsection (1)(f) for the proper administration of the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, shall not willfully disclose that information for any purpose other than the administration of the general property tax act, 1893 PA 206, MCL 211.1 to 211.155. A person who violates this subsection is subject to the penalties provided in subsection (2).

(5) A person identified in section 10(1) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.810, who receives information under section 10(1)(j) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.810, as permitted in subsection (1)(f), shall not willfully disclose that information for any purpose other than the proper administration of his or her legislative duties nor disclose that information to anyone other than an employee of the legislature, who is also bound by the same restrictions. A person who violates this subsection is responsible for and subject to a civil fine of not more than $5,000.00 per violation.

(6) The department shall annually prepare a report containing statistics described in this subsection concerning the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, for the most recent tax year for which reliable return data have been processed and cleared in the ordinary course of return processing by the department. A copy of the report must be provided to the chairpersons of the senate and house of representatives standing committees that have jurisdiction over matters relating to taxation and finance, the

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director of the senate fiscal agency, and the director of the house fiscal agency. The department shall report the following information broken down by business sector and, provided that no grouping consists of fewer than 10 taxpayers, by firm size in compliance with subsection (1)(f) and in a manner that does not result in the disclosure of information regarding any specific taxpayer:

(a) Apportioned business income tax base.

(b) Apportioned modified gross receipts tax base.

(c) Business income tax liability.

(d) Use of credits.

(e) Modified gross receipts tax liability.

(f) Total final liability.

(g) Total liability before credits.

(7) A person may disclose the following information described in this subsection:

(a) Information required to be reported under section 455 of the Michigan business tax act, 2007 PA 36, MCL 208.1455.

(b) An application to enter into an agreement, a communication denying an application to enter into an agreement, an agreement, a postproduction certificate, a communication denying a postproduction certificate, or the total amount of credits claimed in a tax year under section 455 of the Michigan business tax act, 2007 PA 36, MCL 208.1455, notwithstanding section 455(6) of the Michigan business tax act, 2007 PA 36, MCL 208.1455.

(c) An application to enter into an agreement, a communication denying an application to enter into an agreement, an agreement, an investment expenditure certificate, a communication denying an investment expenditure certificate, or the total amount of credits claimed in a tax year under section 457 of the Michigan business tax act, 2007 PA 36, MCL 208.1457, notwithstanding section 457(6) of the Michigan business tax act, 2007 PA 36, MCL 208.1457.

(d) An application to enter into an agreement, a communication denying an application to enter into an agreement, an agreement, a qualified job training expenditures certificate, a communication denying a qualified job training expenditures certificate, or the total amount of credits claimed in a tax year under section 459 of the Michigan business tax act, 2007 PA 36, MCL 208.1459, notwithstanding section 459(6) of the Michigan business tax act, 2007 PA 36, MCL 208.1459.

(8) As used in subsection (1), "adjusted gross receipts" and "wagering tax" mean those terms as described in the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226.

History: Add. 1980, Act 162, Eff. Sept. 17, 1980;—Am. 1982, Act 514, Eff. Mar. 30, 1983;—Am. 1986, Act 58, Eff. May 1, 1986;—Am. 1993, Act 13, Imd. Eff. Apr. 1, 1993;—Am. 1998, Act 221, Imd. Eff. July 1, 1998;—Am. 2000, Act 308, Imd. Eff. Oct. 16, 2000;—Am. 2002, Act 657, Imd. Eff. Dec. 23, 2002;—Am. 2003, Act 114, Imd. Eff. July 24, 2003;—Am. 2009, Act 124, Imd. Eff. Oct. 27, 2009;—Am. 2010, Act 313, Imd. Eff. Dec. 21, 2010;—Am. 2014, Act 240, Imd. Eff. June 27, 2014;—Am. 2015, Act 10, Imd. Eff. Apr. 9, 2015;—Am. 2017, Act 111, Eff. Aug. 25, 2017;—Am. 2017, Act 215, Imd. Eff. Dec. 20, 2017.

Compiler's note: Enacting section 4 of Act 162 of 1980 provides:

"Section 4. This amendatory act shall take effect 90 days after signature by the Governor. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective with the effective date of this act. An appeal to the state board of tax appeals filed prior to the effective date of this act shall proceed as follows:

"(a) A matter which has not been heard on or before January 1, 1981, shall be transferred to the tax tribunal as of January 1, 1981.

"(b) A matter which has been heard on or before January 1, 1981 shall be completed by the board and a decision issued before December 31, 1981.

"(c) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

Act 138 of 1981 purported to amend enacting sections 3 and 4 of Act 162 of 1980 to read as follows:

"Section 3. Sections 7, 8, and 9 of Act No. 122 of the Public Acts of 1941, as amended, being sections 205.7, 205.8, and 205.9 of the Compiled Laws of 1970, are repealed effective September 30, 1982.

"Section 4. (1) This amendatory act shall take effect September 16, 1980. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective September 16, 1980. An appeal to the state board of tax appeals filed prior to September 16, 1980 shall proceed as follows:

"(a) A matter which has not been heard, and submitted to the board for decision, on or before January 1, 1982 shall be transferred to the tax tribunal as of January 1, 1982.

"(b) A matter which has been heard, and submitted to the board for decision, on or before January 1, 1982 shall be completed and a decision issued before September 30, 1982.

"(2) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

However, the provisions of Act 162 of 1980 had already taken effect prior to October 29, 1981, the effective date of Act 138 of 1981.

Enacting sections 2 and 3 of Act 58 of 1986 provide:

"Section 2. The changes in penalties and interest affected by this amendatory act shall take effect July 1, 1986.

"Section 3. Except for section 31 and the provisions of enacting section 2, this amendatory act shall take effect May 1, 1986."

The title to 2006 PA 615, which purported to amend MCL 205.28, was not amended and should not have appeared in the title as an amended section.

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Popular name: Revenue Act

205.29 Taxes, interest, and penalties as lien.

Sec. 29. (1) Taxes administered under this act, together with the interest and penalties on those taxes, shall be a lien in favor of the state against all property and rights of property, both real and personal, tangible and intangible, owned at the time the lien attaches, or afterwards acquired by any person liable for the tax, to secure the payment of the tax. The lien shall attach to the property from and after the date that any report or return on which the tax is levied is required to be filed with the department and shall continue for 7 years after the date of attachment. The lien may be extended for another 7 years by refiling pursuant to subsection (2) if the refiling is made within 6 months prior to the expiration date of the original 7-year period.

(2) The lien imposed by this act shall take precedence over all other liens and encumbrances, except bona fide liens recorded before the date the lien under this act is recorded. However, bona fide liens recorded before the lien under this act is recorded shall take precedence only to the extent of disbursements made under a financing arrangement before the forty-sixth day after the date of the tax lien recording, or before the person making the disbursements had actual knowledge of a tax lien recording under this act, whichever is earlier. A lien shall be recorded and discharged in accordance with Act No. 203 of the Public Acts of 1968, as amended, being sections 211.681 to 211.687 of the Michigan Compiled Laws.

(3) A purchaser or succeeding purchaser of property, from a taxpayer in other than the ordinary course of business, against which a lien has been properly recorded pursuant to subsection (2) shall be personally liable for the unpaid taxes which are due on the lien. The purchaser's liability shall be limited to the value of the property less any proceeds which were applied to balances due on secured interests which are superior to the lien recorded under subsection (2).

History: Add. 1980, Act 162, Eff. Sept. 17, 1980;—Am. 1982, Act 476, Eff. Mar. 30, 1983;—Am. 1983, Act 22, Imd. Eff. Apr. 5, 1983;—Am. 1986, Act 58, Eff. May 1, 1986.

Compiler's note: Enacting section 4 of Act 162 of 1980 provides:

"Section 4. This amendatory act shall take effect 90 days after signature by the Governor. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective with the effective date of this act. An appeal to the state board of tax appeals filed prior to the effective date of this act shall proceed as follows:

"(a) A matter which has not been heard on or before January 1, 1981, shall be transferred to the tax tribunal as of January 1, 1981.

"(b) A matter which has been heard on or before January 1, 1981 shall be completed by the board and a decision issued before December 31, 1981.

"(c) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

Act 138 of 1981 purported to amend enacting sections 3 and 4 of Act 162 of 1980 to read as follows:

"Section 3. Sections 7, 8, and 9 of Act No. 122 of the Public Acts of 1941, as amended, being sections 205.7, 205.8, and 205.9 of the Compiled Laws of 1970, are repealed effective September 30, 1982.

"Section 4. (1) This amendatory act shall take effect September 16, 1980. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective September 16, 1980. An appeal to the state board of tax appeals filed prior to September 16, 1980 shall proceed as follows:

"(a) A matter which has not been heard, and submitted to the board for decision, on or before January 1, 1982 shall be transferred to the tax tribunal as of January 1, 1982.

"(b) A matter which has been heard, and submitted to the board for decision, on or before January 1, 1982 shall be completed and a decision issued before September 30, 1982.

"(2) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

However, the provisions of Act 162 of 1980 had already taken effect prior to October 29, 1981, the effective date of Act 138 of 1981.

Enacting sections 2 and 3 of Act 58 of 1986 provide:

"Section 2. The changes in penalties and interest affected by this amendatory act shall take effect July 1, 1986.

"Section 3. Except for section 31 and the provisions of enacting section 2, this amendatory act shall take effect May 1, 1986."

Popular name: Revenue Act

205.29a Recording release; conditions for filing; release of levy; conditions for service; reimbursement of fee; certificate of withdrawal for recorded lien filed in error; release of levy issued in error.

Sec. 29a. (1) If the department files for recording a lien imposed pursuant to this act against property or rights of property under the state tax lien registration act, Act No. 203 of the Public Acts of 1968, being sections 211.681 to 211.687 of the Michigan Compiled Laws, to satisfy a tax liability and the department determines that the tax liability out of which the lien arose is satisfied, the department shall file for recording a release regarding the property or rights of property, as applicable, under Act No. 203 of the Public Acts of 1968 not more than 20 business days after funds to satisfy the tax liability out of which the lien arose have been applied to the taxpayer's account.

(2) If the department files for recording a lien imposed pursuant to this act against property or rights of property under Act No. 203 of the Public Acts of 1968 to satisfy a tax liability and upon request the

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department determines that the taxpayer named on the recorded lien does not have any interest in certain properties owned by another person, the department shall file for recording a certificate of nonattachment regarding the property or rights of property, as applicable, under Act No. 203 of the Public Acts of 1968 with all due haste but not more than 5 business days after the department determines that the lien is recorded or filed against property or rights of property to which the state does not have a lien interest under section 29. The department shall clearly indicate on the certificate of nonattachment that the taxpayer named on the recorded lien does not have any interest in the property or rights of property of the other person.

(3) If a warrant or warrant-notice of levy is issued and served upon a person to levy on property or rights of property to satisfy a tax liability and the department determines that the tax liability out of which the warrant or warrant-notice of levy arose is satisfied, the department shall serve a release of levy regarding the property or rights of property on the person who was served the warrant or warrant-notice of levy not more than 10 business days after funds to satisfy the tax liability out of which the warrant or warrant-notice of levy arose have been applied to the taxpayer's account.

(4) If a warrant or warrant-notice of levy is issued and served upon a person to levy on property or rights of property to satisfy a tax liability and the department determines that the property or rights of property are not subject to levy under section 25(1) or (5), the department shall serve a release of levy regarding the property or rights of property on the person who was served the warrant or warrant-notice of levy with all due haste but not more than 5 business days after the department determines that the property or rights of property are not subject to levy under section 25(1) or (5). The department shall clearly indicate on the release of levy that the property or rights of property were not subject to levy under section 25(1) or (5).

(5) If a person is required to pay a fee to the department, a bank, or other financial institution as the result of an erroneous recording or filing of a lien as described in subsection (2), or an erroneous issuance and service of a warrant or warrant-notice of levy as described in subsection (4), the department shall reimburse the fee to that person.

(6) If the department receives money to satisfy a tax liability or liabilities or receives information that would cancel that tax liability or those liabilities and subsequently files a lien for recording specifying that or those liabilities under Act No. 203 of the Public Acts of 1968, the department, upon request and upon a determination by the department that the lien was filed and recorded in error, with all due haste, but not more than 5 business days after the department determines that it has erroneously filed a lien for recording, shall file for recording a certificate of withdrawal for that tax liability or those liabilities which were satisfied which states that the recorded lien for that tax liability or those liabilities was filed in error.

(7) If the department receives money to satisfy a tax liability or liabilities or receives information that would cancel that tax liability or those liabilities and subsequently issues a warrant or warrant-notice of levy specifying that liability or those liabilities pursuant to this act, upon request and upon a determination by the department that the warrant or warrant-notice of levy was issued in error, with all due haste, but not more than 5 business days after the department determines that it has erroneously issued a warrant or warrant-notice of levy, the department shall issue a release of levy for that tax liability or those liabilities which were satisfied which states that the levy for that tax liability or those liabilities was issued in error.

History: Add. 1993, Act 13, Imd. Eff. Apr. 1, 1993;—Am. 1995, Act 51, Imd. Eff. May 22, 1995.

Popular name: Revenue Act

205.30 Credit or refund; interest.

Sec. 30. (1) The department shall credit or refund an overpayment of taxes; taxes, penalties, and interest erroneously assessed and collected; and taxes, penalties, and interest that are found unjustly assessed, excessive in amount, or wrongfully collected with interest at the rate calculated under section 23 for deficiencies in tax payments.

(2) A taxpayer who paid a tax that the taxpayer claims is not due may petition the department for refund of the amount paid within the time period specified as the statute of limitations in section 27a. If a tax return reflects an overpayment or credits in excess of the tax, the declaration of that fact on the return constitutes a claim for refund. If the department agrees the claim is valid, the amount of overpayment, penalties, and interest shall be first applied to any known liability as provided in section 30a, and the excess, if any, shall be refunded to the taxpayer or credited, at the taxpayer's request, against any current or subsequent tax liability. Except claims for refunds, other than those made under part 1 of the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, that have not been approved, denied, or adjusted within 1 year of the date received may be treated as denied at the election of the taxpayer, and may be appealed by the taxpayer in accordance with section 22.

(3) The department shall certify a refund to the state disbursing authority who shall pay the amount out of the proceeds of the tax in accordance with the accounting laws of the state. Interest at the rate calculated

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under section 23 for deficiencies in tax payments regarding those refunds shall be added to the refund commencing 45 days after the claim is filed or 45 days after the date established by law for the filing of the return, whichever is later. Interest on refunds intercepted and applied as provided in section 30a shall cease as of the date of interception. Refunds for amounts of less than $1.00 shall not be paid.

(4) Beginning January 1, 2014, in addition to and separate from the interest added to a refund under subsection (3), for refunds for taxes imposed under part 1 of the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, the state disbursing authority shall add interest to refunds that are not paid within 1 of the following dates for the applicable tax year:

(a) May 1, for returns received by the department on or before March 1 of the applicable tax year.

(b) Sixty days from the date the return was received by the department for returns received by the department after March 1 of the applicable tax year.

(5) Interest described in subsection (4) shall be paid at a rate of 3% per annum, calculated from the date the original return was due under section 315(1) of the income tax act of 1967, 1967 PA 281, MCL 206.315, and until a date preceding the date of the refund by not more than 7 days, if all of the following conditions are met:

(a) The refund is due on an original return which was timely filed under section 315(1) of the income tax act of 1967, 1967 PA 281, MCL 206.315.

(b) The refund is not adjusted by the department.

(c) The return is not subject to section 27a(3) or (4) except for audit by the department.

(d) The return is complete for processing purposes with no calculation errors and contains all required information as prescribed by the department under section 315(1)(d) of the income tax act of 1967, 1967 PA 281, MCL 206.315, including any state and federal returns, forms, or schedules necessary to process the return.

(e) The taxpayer who has filed a complete return under subdivision (d) has complied with the department's request, if any, for additional documentation or information within 30 days of that request.

(f) No portion of the refund is subject to interception under section 30a.

(g) The amount to be refunded is more than $1.00.

(6) Beginning January 1, 2015, in addition to and separate from the interest added to a refund under subsection (3), for refunds for taxes imposed under the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, the state disbursing authority shall add interest to refunds that are not paid within 90 days after the claim is approved or 90 days after the date established by law for filing the return, whichever is later. Interest described in this subsection shall be paid at a rate of 3% per annum for each day the refund is not issued within the time frame required in this subsection if all of the following conditions are met:

(a) The refund is claimed on an original return which was timely filed under section 505(1) of the Michigan business tax act, 2007 PA 36, MCL 208.1505.

(b) The refund is not adjusted by the department.

(c) The refund is not claimed by a taxpayer filing as a unitary business group.

(d) The return is not subject to section 27a(3) or (4) except for audit by the department.

(e) The return is complete for processing purposes with no calculation errors and contains all required information as prescribed by the department under section 507 or 509 of the Michigan business tax act, 2007 PA 36, MCL 208.1507 and 208.1509, including any state and federal returns, forms, or schedules necessary to process the return.

(f) The taxpayer who has filed a complete return under subdivision (e) has complied with the department's request, if any, for additional documentation or information within 30 days of that request.

(g) No portion of the refund is subject to interception under section 30a.

(h) The amount to be refunded is more than $10.00.

(7) Beginning January 1, 2017, the interest calculations in subsections (3), (4), (5), and (6) also apply to refunds of credits authorized under section 36109 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.36109, for contracts that have been approved and processed by the department of agriculture and rural development and forwarded to the department. If the state disbursing authority does not pay or refund a credit described in this subsection within 45 days from the date the return was received by the department, the department shall notify the taxpayer of the status of the return and whether the taxpayer has filed a complete return.

History: Add. 1980, Act 162, Eff. Sept. 17, 1980;—Am. 1985, Act 211, Imd. Eff. Jan. 8, 1986;—Am. 1986, Act 58, Eff. May 1, 1986;—Am. 1993, Act 14, Imd. Eff. Apr. 1, 1993;—Am. 2013, Act 133, Imd. Eff. Oct. 15, 2013;—Am. 2014, Act 3, Imd. Eff. Feb. 6, 2014;—Am. 2014, Act 424, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 267, Imd. Eff. June 28, 2016.

Compiler's note: Enacting section 4 of Act 162 of 1980 provides:

"Section 4. This amendatory act shall take effect 90 days after signature by the Governor. All new appeals from an assessment,

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decision or order of the department shall be made to the tax tribunal effective with the effective date of this act. An appeal to the state board of tax appeals filed prior to the effective date of this act shall proceed as follows:

"(a) A matter which has not been heard on or before January 1, 1981, shall be transferred to the tax tribunal as of January 1, 1981.

"(b) A matter which has been heard on or before January 1, 1981 shall be completed by the board and a decision issued before December 31, 1981.

"(c) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

Act 138 of 1981 purported to amend enacting sections 3 and 4 of Act 162 of 1980 to read as follows:

"Section 3. Sections 7, 8, and 9 of Act No. 122 of the Public Acts of 1941, as amended, being sections 205.7, 205.8, and 205.9 of the Compiled Laws of 1970, are repealed effective September 30, 1982.

"Section 4. (1) This amendatory act shall take effect September 16, 1980. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective September 16, 1980. An appeal to the state board of tax appeals filed prior to September 16, 1980 shall proceed as follows:

"(a) A matter which has not been heard, and submitted to the board for decision, on or before January 1, 1982 shall be transferred to the tax tribunal as of January 1, 1982.

"(b) A matter which has been heard, and submitted to the board for decision, on or before January 1, 1982 shall be completed and a decision issued before September 30, 1982.

"(2) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

However, the provisions of Act 162 of 1980 had already taken effect prior to October 29, 1981, the effective date of Act 138 of 1981.

Enacting sections 2 and 3 of Act 58 of 1986 provide:

"Section 2. The changes in penalties and interest affected by this amendatory act shall take effect July 1, 1986.

"Section 3. Except for section 31 and the provisions of enacting section 2, this amendatory act shall take effect May 1, 1986."

Popular name: Revenue Act

205.30a Application of refund to liabilities of taxpayer; notice; nonobligated spouse allocation form; false statement; penalty; failure to file form; rules; definitions.

Sec. 30a. (1) If a taxpayer claims a refund that the department determines is valid as provided in section 30(2), and the department identifies a liability of the taxpayer described in subsection (2), the department shall first apply the amount of the refund as provided in subsections (2) and (3), and the excess, if any, shall be refunded or credited as provided in section 30.

(2) The amount of a refund described in subsection (1) shall be applied to the following in the order of priority stated:

(a) Any other known tax liability of the taxpayer to this state.

(b) Any other known liability of the taxpayer to this state, including a liability to pay support if the right to receive the support has been assigned to the state and the liability is the basis of a request for tax refund offset from the office of child support.

(c) Any of the following in the order of priority received, unless otherwise provided by law:

(*i*) A support liability of the taxpayer that is the basis of a request for tax refund offset from the office of child support, other than as provided by subdivision (b).

(*ii*) A writ of garnishment or other valid court order issued by a court of competent jurisdiction and directed to this state or the state treasurer to satisfy a liability of the taxpayer.

(*iii*) A known city income tax liability for a tax administered by the department through an agreement entered into under section 9 of chapter 1 of the city income tax act, 1964 PA 284, MCL 141.509.

(*iv*) A levy of the internal revenue service to satisfy a liability of the taxpayer.

(*v*) A liability to repay benefits obtained under the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75, to which the taxpayer was not entitled, upon a request for tax refund offset from the Michigan unemployment insurance agency.

(3) If the claim for refund is reflected on a joint tax return, the department shall allocate to each joint taxpayer his or her share of the refund. The amount allocated to each taxpayer shall be applied to his or her respective liabilities in the order of priority stated in subsection (2).

(4) If the department determines that all or a portion of a refund claimed on a joint tax return is subject to application to a liability of an obligated spouse, the department shall notify the joint taxpayers by first class mail sent to the address shown on the joint return. The notice shall be accompanied by a nonobligated spouse allocation form. The notice shall state all of the following:

(a) That all or a portion of the refund claimed by the joint taxpayers is subject to interception to satisfy a liability or liabilities of 1 or both spouses.

(b) The nature of the other liability or liabilities and the name of the obligated spouse or spouses.

(c) That a nonobligated spouse may claim his or her share of the refund by filing a nonobligated spouse allocation form with the department of treasury not more than 30 days after the date the notice was mailed.

(d) A statement of the penalties under subsection (7).

(5) A nonobligated spouse who wishes to claim his or her share of a tax refund shall file with the

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department a nonobligated spouse allocation form. The nonobligated spouse allocation form shall be in a form specified by the department and shall require the spouses to state the amount of income or other tax base and all adjustments to the income or other tax base, including all subtractions, additions, deductions, credits, and exemptions, stated on their joint income tax return or other joint tax return that is the basis for the claimed refund, and an allocation of those amounts between the obligated and nonobligated spouse. In allocating these amounts, all of the following apply:

(a) A federal deduction for 2-income married persons shall be allocated to the spouse with the lower income who claims the deduction.

(b) Individual income shall be allocated to the spouse who earned the income. Joint income shall be allocated equally between the spouses. The tax base appropriate to tax other than income tax shall be similarly allocated.

(c) Each spouse shall be allocated the personal exemptions he or she would be entitled to claim if separate federal returns had been filed, except that dependency exemptions shall be prorated according to the relative income of the spouses.

(d) Adjustments resulting from a business shall be allocated to the spouse who claimed income from the business.

(e) A homestead property tax credit shall be allocated to the spouse who owned the title or held the leasehold interest in the property claimed as a homestead. A homestead property tax credit for property jointly owned or leased shall be allocated jointly between the spouses.

(f) Ownership of other assets relevant to the allocation shall be disclosed upon request of the department.

(6) A nonobligated spouse allocation form shall be signed by both joint taxpayers. However, the form may be submitted without the signature of the obligated spouse if his or her signature cannot be obtained. The nonobligated spouse shall certify that he or she has made a good faith effort to obtain the signature and shall state the reason that the signature was not obtained.

(7) A person who knowingly makes a false statement on a nonobligated spouse allocation form shall be subject to a penalty of $25.00 or 25% of the excessive claim for his or her share of the refund, whichever is greater, and other penalties as provided in this act.

(8) A nonobligated spouse to whom the department has sent a notice under subsection (4), who fails to file a nonobligated spouse allocation form within 30 days after the date the notice was mailed, shall be barred from commencing any action against this state or the state treasurer to recover an amount withheld to satisfy a liability of the obligated spouse to which a joint tax refund is applied under this section. The payment by this state of any amount applied to a liability of a taxpayer under this section shall release this state and the state treasurer from all liability to the obligated spouse, the nonobligated spouse, and any other person having or claiming any interest in the amount paid.

(9) The department shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, as necessary to implement this section. The rules shall include a procedure for assuring that a taxpayer subject to application of a refund under this section and section 30 has received or will receive notice and an opportunity for a hearing with respect to the liability to which the refund is to be applied.

(10) As used in this section:

(a) "Nonobligated spouse" means a person who has filed a joint income tax return or other joint state tax return and who is not liable for an obligation of his or her spouse described in subsection (2).

(b) "Obligated spouse" means a person who has filed a joint income tax return or other joint state tax return and who is liable for an obligation described in subsection (2) for which his or her spouse is not liable.

(c) "Office of child support" means the agency created in section 2 of the office of child support act, 1971 PA 174, MCL 400.232.

History: Add. 1985, Act 211, Imd. Eff. Jan. 8, 1986;—Am. 1995, Act 116, Imd. Eff. June 29, 1995;—Am. 2018, Act 553, Imd. Eff. Dec. 28, 2018.

Popular name: Revenue Act

205.30b Report regarding application of revenue limitation; petition for refund; method of refund; escrow account.

Sec. 30b. (1) Within 45 days after the publication of the comprehensive annual financial report by the director of the department of management and budget pursuant to section 494 of the management and budget act, 1984 PA 431, MCL 18.1494, the director of the department of management and budget and the state treasurer shall issue a report regarding the application of the revenue limitation in section 26 of article IX of the state constitution of 1963 to the fiscal year for which the comprehensive annual financial report applies. Within 30 days after the director of the department of management and budget and the state treasurer issue

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their report, the auditor general shall audit that report. This audit shall examine the past and present methodology of calculating revenues and comment on differences, if any, from past practices.

(2) If a refund is required by section 26 of article IX of the state constitution of 1963, a taxpayer shall petition for the refund by filling out the appropriate line to be provided on the annual income tax return, single business tax return, or Michigan business tax return. The amount of refund shall be based on the tax liability for the taxpayer's year commencing in the state's fiscal year in which the revenue limit was exceeded. Failure to fill out the appropriate line on the annual income tax return, single business tax return, or Michigan business tax return shall not extinguish the taxpayer's right to petition for the refund pursuant to section 350d of the management and budget act, 1984 PA 431, MCL 18.1350d.

(3) If before November 1, 1986, a final determination is made that the method of refund provided for in subsection (2) is unconstitutional, the state treasurer shall cause the refunds due, if any, to be paid for the state fiscal year 1984-85 beginning January 1, 1987 and through February 28, 1987.

(4) The governor may create an escrow account in the general fund and set aside in that account an amount equal to the refunds required by section 26 of article IX of the state constitution of 1963.

History: Add. 1986, Act 58, Eff. May 1, 1986;—Am. 2007, Act 194, Imd. Eff. Dec. 21, 2007.

Compiler's note: Section 2 of Act 58 of 1986 provides: "The changes in penalties and interest affected by this amendatory act shall take effect July 1, 1986."

Section 3 of Act 58 of 1986 provides: "Except for section 31 and the provisions of enacting section 2, this amendatory act shall take effect May 1, 1986."

Popular name: Revenue Act

205.30c Voluntary disclosure agreement.

Sec. 30c. (1) The state treasurer, or an authorized representative of the state treasurer, on behalf of the department, may enter into a voluntary disclosure agreement pursuant to subsections (2) to (11) or an agreement with a federally recognized Indian tribe within the state of Michigan pursuant to subsections (12) and (13).

(2) A voluntary disclosure agreement may be entered into with a person who makes application, who is a nonfiler, and who meets 1 or more of the following criteria:

(a) Has a filing responsibility under nexus standards issued by the department or enacted into law after December 31, 1997.

(b) Has a reasonable basis to contest liability, as determined by the state treasurer, for a tax or fee administered under this act.

(3) All taxes and fees administered under this act are eligible for inclusion in a voluntary disclosure agreement.

(4) To be eligible for a voluntary disclosure agreement, subject to subsection (1), a person must meet all of the following requirements:

(a) Except as otherwise provided in this subdivision, has had no previous contact by the department or its agents regarding a tax covered by the agreement. For purposes of this subdivision, a letter of inquiry requesting information under section 21(2)(a) that was sent to a nonfiler shall not be considered a previous contact under this subdivision.

(b) Has had no notification of an impending audit by the department or its agents.

(c) Is not currently under audit by the department of treasury or under investigation by the department of state police, department of attorney general, or any local law enforcement agency regarding a tax covered by the agreement.

(d) Is not currently the subject of a civil action or a criminal prosecution involving any tax covered by the agreement.

(e) Has agreed to register, file returns, and pay all taxes due in accordance with all applicable laws of this state for all taxes administered under this act for all periods after the lookback period.

(f) Has agreed to pay all taxes due for each tax covered under the agreement for the lookback period, plus statutory interest as stated in section 23, within the period of time and in the manner specified in the agreement.

(g) Has agreed to file returns and worksheets for the lookback period as specified in the agreement.

(h) Has agreed not to file a protest or seek a refund of taxes paid to this state for the lookback period based on the issues disclosed in the agreement or based on the person's lack of nexus or contacts with this state.

(5) If a person satisfies all requirements stated in subsections (1), (2), and (4), the department shall enter into a voluntary disclosure agreement with that person providing the following relief:

(a) Notwithstanding section 28(1)(e) of this act, the department shall not assess any tax, delinquency for a tax, penalty, or interest covered under the agreement for any period before the lookback period identified in

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the agreement.

(b) The department shall not assess any applicable discretionary or nondiscretionary penalties for the lookback period.

(c) The department shall provide complete confidentiality of the agreement and shall also enter into an agreement not to disclose, in accordance with section 28(1)(f), any of the terms or conditions of the agreement to any tax authorities of any state or governmental authority or to any person except as required by exchange of information agreements authorized under section 28(1)(f), including the international fuel tax agreement under chapter 317 of title 49 of the United States Code, 49 USC 31701 to 31707. The department shall not exchange information obtained under this section with other states regarding the person unless information regarding the person is specifically requested by another state.

(6) The department shall not bring a criminal action against a person for failure to report or to remit any tax covered by the agreement before or during the lookback period if the facts established by the department are not materially different from the facts disclosed by the person to the department.

(7) A voluntary disclosure agreement is effective when signed by the person subject to the agreement, or his, her, or its lawful representative, and returned to the department within the time period specified in the agreement. The department shall only provide the relief specified in the executed agreement. Any verbal or written communication by the department before the effective date of the agreement shall not afford any penalty waiver, limited lookback period, or other benefit otherwise available under this section.

(8) A material misrepresentation of fact by an applicant relating to the applicant's current activity in this state renders an agreement null and void and of no effect. A change in the activities or operations of a person after the effective date of the agreement is not a material misrepresentation of fact and shall not affect the agreement's validity.

(9) The department may audit any of the taxes covered by the agreement within the lookback period or in any prior period if, in the department's opinion, an audit of a prior period is necessary to determine the person's tax liability for the tax periods within the lookback period or to determine another person's tax liability.

(10) Nothing in subsections (2) to (9) shall be interpreted to allow or permit unjust enrichment as that term is defined in subsection (15). Any tax collected or withheld from another person by an applicant shall be remitted to the department without respect to whether it was collected during or before the lookback period.

(11) The department shall not require a person who enters into a voluntary disclosure agreement to make any filings that are additional to those otherwise required by law.

(12) The department may enter into a tribal agreement with a federally recognized Indian tribe specifying the applicability of a tax administered under this act to that tribe, its members, and any person conducting business with them. The tribe, its members, and any person conducting business with them shall remain fully subject to this state's tax acts except as otherwise specifically provided by an agreement in effect for the period at issue. A tribal agreement shall include all of the following:

(a) A statement of its purpose.

(b) Provisions governing duration and termination that make the agreement terminable by either party if there is noncompliance and terminable at-will after a period of not more than 2 years.

(c) Provisions governing administration, collection, and enforcement. Those provisions shall include all of the following:

(*i*) Collection of taxes levied under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, or the use tax act, 1937 PA 94, MCL 205.91 to 205.111, on the sale of tangible personal property or the storage, use, or consumption of tangible personal property not exempt under the agreement.

(*ii*) Collection of taxes levied on tobacco products under the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436, and taxes levied under the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170, and the motor carrier fuel tax act, 1980 PA 119, MCL 207.211 to 207.234, on sales of tobacco products or motor fuels not exempt under the agreement.

(*iii*) Withholding and remittance of income taxes levied under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713, from employees not exempt under the agreement.

(*iv*) Reporting of gambling winnings to the same extent and in the same manner as reported to the federal government.

(*v*) A waiver of tribal sovereign immunity sufficient to make the agreement enforceable against both parties.

(d) Provisions governing disclosure of information between the department and the tribe as necessary for the proper administration of the tribal agreement.

(e) A provision ensuring that the members of the tribe will be bound by the terms of the agreement.

(f) A designation of the agreement area within which the specific provisions of the tribal agreement apply.

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(13) A tribal agreement authorized under subsection (12) may include 1 or more of the following:

(a) A provision for dispute resolution between this state and the tribe, which may include a nonjudicial forum.

(b) A provision for the sharing between the parties of certain taxes collected by the tribe and its members.

(c) Any other provisions beneficial to the administration or enforcement of the tribal agreement.

(14) A tribal agreement authorized under subsection (12) shall not authorize the approval of a class III gaming compact negotiated under the Indian gaming regulatory act, Public Law 100-497, 102 Stat. 2467.

(15) As used in this section:

(a) "Lookback period" means 1 or more of the following:

(*i*) The most recent 48-month period as determined by the department or the first date the person subject to an agreement under this section began doing business in this state if less than 48 months.

(*ii*) For business taxes levied under the former single business tax act, 1975 PA 228, the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, or part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.699, the combined lookback period for all taxes covered under the agreement shall be the 4 most recent completed fiscal or calendar years over a 48-month period or the first date the person subject to an agreement under this section began doing business in this state if less than 48 months.

(*iii*) Notwithstanding subparagraphs (*i*), (*ii*), and (*iv*), the most recent 36-month period as determined by the department or the first date the person subject to an agreement under this section began doing business in this state if less than 36 months, if tax returns filed in another state for a tax based on net income that included sales in the numerator of the apportionment formula that now must be included in the numerator of the apportionment formula under the former single business tax act, 1975 PA 228, the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, or part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.699, and those sales increased the net tax liability payable to that state.

(*iv*) If there is doubt as to liability for the tax during the lookback period, another period as determined by the state treasurer to be in the best interest of this state and to preserve equitable and fair administration of taxes.

(b) "Nonfiler" for a particular tax means, beginning July 1, 1998, a person that has not filed a return for the particular tax being disclosed for periods beginning after December 31, 1988.

(c) "Person" means an individual, firm, bank, financial institution, limited partnership, copartnership, partnership, joint venture, association, corporation, limited liability company, limited liability partnership, receiver, estate, trust, or any other group or combination acting as a unit.

(d) "Previous contact" means any notification of an impending audit pursuant to section 21(1), review, notice of intent to assess, or assessment. Previous contact also includes final letters of inquiry pursuant to section 21(2)(a) or a subpoena from the department.

(e) "Unjust enrichment" includes the withholding of income tax under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713, and the collection of any other tax administered by this act that has not been remitted to the department.

(f) "Voluntary disclosure agreement" or "agreement" means a written agreement that complies with this act.

(16) The department of treasury shall post a copy of each tribal agreement and any changes to a tribal agreement on the department of treasury's website not later than 60 days after the tribal agreement takes effect or the changes to the tribal agreement take effect.

(17) Not later than January 31 of each year, the department of treasury shall report to each house of the legislature, including the majority leader and minority leader of the senate and the speaker and minority leader of the house of representatives, on the tribal agreement and changes to the tribal agreement entered into during the immediately preceding calendar year. The report shall include all of the following:

(a) A copy of the tribal agreement.

(b) A summary of the changes since the immediately preceding report.

(c) A detailed listing and description of changes to any agreement areas described in a tribal agreement.

(18) If a taxpayer entered into a voluntary disclosure agreement after October 1, 2012 and before May 1, 2013, for business taxes levied under the former single business tax act, 1975 PA 228, the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, or part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.699, and the combined lookback period under that agreement exceeds the lookback period under subsection (15)(a)(*ii*), the department shall refund amounts paid attributable to the periods outside the lookback period under subsection (15)(a)(*ii*).

History: Add. 1998, Act 221, Imd. Eff. July 1, 1998;—Am. 1998, Act 493, Imd. Eff. Jan. 4, 1999;—Am. 2001, Act 168, Imd. Eff. Nov. 27, 2001;—Am. 2002, Act 616, Imd. Eff. Dec. 20, 2002;—Am. 2007, Act 194, Imd. Eff. Dec. 21, 2007;—Am. 2013, Act 135, Imd. Eff. Oct. 15, 2013.

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205.31 Waiver of criminal and civil penalties; conditions; amnesty period; limitation; administration of section by department; appropriation for administration and public awareness of amnesty program; work project; circumstances prohibiting waiver of criminal and civil penalties; notice.

Sec. 31. (1) If a taxpayer does not satisfy a tax liability or makes an excessive claim for a refund as a result of reliance on erroneous current written information provided by the department, the state treasurer shall waive all criminal and civil penalties provided by law for failing or refusing to file a return, for failing to pay a tax, or for making an excessive claim for a refund for a tax administered by the department of treasury pursuant to this act if the taxpayer makes a written request for a waiver, files a return or an amended return, and makes full payment of the tax and interest.

(2) For the period beginning May 15, 2011 and ending June 30, 2011, there shall be an amnesty period during which the state treasurer shall waive all criminal and civil penalties provided by law for failing or refusing to file a return, for failing to pay a tax, or for making an excessive claim for a refund for a tax administered by the department of treasury under this act if the taxpayer makes a written request for a waiver on a form prescribed by the department, submits any unfiled returns or amended returns, and makes full payment of the tax and interest due for any prior period not later than the last day of the amnesty period. This subsection does not apply to taxes due after December 31, 2009.

(3) This section applies to the nonreporting and underreporting of tax liabilities and to the nonpayment of taxes previously determined to be due, but only to the extent of the penalties attributable to the taxes that were previously due and that are paid during the amnesty period provided for in subsection (2).

(4) The department shall administer this section.

(5) There is appropriated from the revenues generated by taxes paid under subsection (2) the sum of $6,800,000.00 to the department of treasury for administration and public awareness of the amnesty program created by the amendatory act that amended this subsection. This appropriation is allotted for expenditure on and after October 1, 2010. The appropriation authorized in this subsection is a work project appropriation and any unencumbered or unallotted funds are carried forward into the following fiscal year. The following is in compliance with section 451a(1) of the management and budget act, 1984 PA 431, MCL 18.1451a:

(a) The purpose of the project is to provide technical and administrative support for and public awareness of the 2011 tax amnesty program in the department of treasury. Costs related to this project will include, but are not limited to:

(*i*) Information technology systems changes.

(*ii*) Staffing-related costs.

(*iii*) Costs to promote public awareness.

(*iv*) Any other costs related to implementation and dissolution of the program, including the resolution of accounts.

(b) The work project will be accomplished through the use of interagency agreements, grants, state employees, and contracts.

(c) The total estimated completion cost of the project is $6,800,000.00.

(d) The expected completion date is September 30, 2012.

(6) The state treasurer shall not waive criminal and civil penalties applicable to a tax under subsection (2) if 1 or more of the following circumstances apply:

(a) If the taxpayer is eligible to enter into a voluntary disclosure agreement under section 30c for that tax.

(b) If the tax is attributable to income derived from a criminal act, if the taxpayer is under criminal investigation or involved in a civil action or criminal prosecution for that tax, or if the taxpayer has been convicted of a felony under this act or the internal revenue code of 1986.

(7) The department shall provide reasonable notice to taxpayers that may be eligible for the amnesty program at least 30 days before the start of the designated amnesty period. Notification shall include, but is not limited to, a description of the amnesty program on appropriate tax instruction forms and on the internet.

History: Add. 1986, Act 58, Imd. Eff. Mar. 26, 1986;—Am. 1993, Act 14, Imd. Eff. Apr. 1, 1993;—Am. 2001, Act 168, Imd. Eff. Nov. 27, 2001;—Am. 2002, Act 657, Imd. Eff. Dec. 23, 2002;—Am. 2010, Act 198, Imd. Eff. Oct. 5, 2010.

Compiler's note: Section 2 of Act 58 of 1986 provides: “The changes in penalties and interest affected by this amendatory act shall take effect July 1, 1986.”

Section 3 of Act 58 of 1986 provides: “Except for section 31 and the provisions of enacting section 2, this amendatory act shall take effect May 1, 1986.”

Popular name: Revenue Act

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EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1991-16

205.35 Transfer of powers and duties of the revenue division of the department of treasury and the state commissioner of revenue to the state treasurer.

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, the Revenue Division and the State Commissioner of Revenue were created by Act No. 122 of the Public Acts of 1941, as amended, being Section 205.1 et seq. of the Michigan Compiled laws, as amended, and were thereafter transferred by a Type I transfer to the Department of Treasury; and

WHEREAS, the duties of the Revenue Division and the State Commissioner of Revenue are to enforce state tax laws and to collect state taxes, assessments, licenses, fees and other moneys as may be designated by law and to deposit moneys collected in the state treasury; and

WHEREAS, the functions, duties, and responsibilities assigned to the Revenue Division and the State Commissioner of Revenue can be more effectively organized and carried out under the supervision and direction of the State Treasurer as head of the Department of Treasury; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

(1) All the statutory authority, powers, duties, functions, and responsibilities of the Revenue Division and the State Commissioner of Revenue, created under Act No. 122 of the Public Acts of 1941, as amended, being Section 205.1 et seq. of the Michigan Compiled Laws, are hereby transferred to the State Treasurer as head of the Department of Treasury by a Type III transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

(2) The State Treasurer as head of the Department of Treasury may appoint a State Commissioner of Revenue or may administer the assigned functions in other ways to promote efficient administration.

(3) The State Treasurer shall provide executive direction and supervision for the implementation of the transfer. The assigned functions shall be administered under the direction and supervision of the State Treasurer, and all prescribed functions of rule making, issuing bulletins that explain interpretations of current state tax laws, examining the books and records of persons or taxpayers, issuing subpoenas and administering oaths, and licensing and registration of persons and taxpayers, shall be transferred to the State Treasurer.

(4) All records, personnel, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Revenue Division and the State Commissioner of Revenue for the activities transferred to the State Treasurer by this Order are hereby transferred to the Department of Treasury.

(5) The State Treasurer shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

(6) The State Treasurer as head of the Department of Treasury shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and State laws and regulations, or other obligations to be resolved by the Revenue Division.

(7) All rules, orders, contracts, and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, or repealed.

(8) Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Executive Order shall become effective 60 days after the filing of this Executive Order.

History: 1991, E.R.O. No. 1991-16, Eff. Sept. 10, 1991.

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COLLECTION OF MOTOR FUEL TAXES
Act 15 of 1959

AN ACT to transfer the collection of motor fuel taxes from the secretary of state to the department of revenue; to provide for the transfer of staff, records, files and other property; to provide that hearings shall not be abated; to transfer appropriations and other funds; to prescribe the powers and duties of the secretary of state and the department of revenue; and to fix the effective date of this act.

History: 1959, Act 15, Eff. Mar. 19, 1960.

The People of the State of Michigan enact:

205.41 Motor fuel taxes; collection transferred to department of revenue.

Sec. 1. All the powers and duties now vested by law in the secretary of state with respect to the collection of the motor fuel taxes are hereby transferred to the department of revenue. The state department of revenue shall be vested with full authority to collect the motor fuel taxes with reference to all such matters as have heretofore been vested in the secretary of state. Whenever any reference is made in the laws of this state to the collection of motor fuel taxes by the secretary of state, such reference shall be deemed intended to be made to the department of revenue.

History: 1959, Act 15, Eff. Mar. 19, 1960.

205.42 Motor fuel taxes; acts.

Sec. 2. The department of treasury shall administer and enforce the following acts and shall succeed to and is hereby vested with all the powers, duties, functions, responsibilities, and jurisdiction now or hereafter conferred upon the secretary of state with respect to the collection of motor fuel taxes as prescribed by:

(a) Motor fuel tax, Act No. 150 of the Public Acts of 1927, being sections 207.101 to 207.202 of the Michigan Compiled Laws.

(b) Highway finance act of 1955, former Act No. 87 of the Public Acts of 1955, or its successor.

(c) Aeronautics code of the state of Michigan, Act No. 327 of the Public Acts of 1945, being sections 259.1 to 259.208 of the Michigan Compiled Laws.

(d) Marine fuel tax, part 781 (Michigan state waterways commission) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.78101 to 324.78112 of the Michigan Compiled Laws.

History: 1959, Act 15, Eff. Mar. 19, 1960;—Am. 1996, Act 51, Imd. Eff. Feb. 26, 1996.

205.43 Motor fuel taxes; transfer of staff, records, files and property.

Sec. 3. All of the staff, records, files and other property, including property held in trust, belonging to the secretary of state with respect to the collection of the motor fuel taxes shall be transferred to the state department of revenue and shall be continued as part of the staff, records, files, and property of the department of revenue.

History: 1959, Act 15, Eff. Mar. 19, 1960.

205.44 Motor fuel taxes; hearings, orders, rules and regulations.

Sec. 4. All hearings and proceedings of whatever nature now pending before the secretary of state with respect to the collection of the motor fuel taxes shall not be abated, but shall be transferred to the state department of revenue, without notice to interested parties, and shall be conducted in the same manner and determined in accordance with the provisions of law concerning such hearings and proceedings. All orders, rules and regulations of the secretary of state with respect to the collection of the motor fuel taxes shall continue in effect as though the transfer were not made, and to the extent applicable, they shall be binding upon the department of revenue.

History: 1959, Act 15, Eff. Mar. 19, 1960.

205.45 Motor fuel taxes; transfer of appropriations.

Sec. 5. All appropriations and all other funds necessary to carry out all the powers, duties and responsibilities of the secretary of state with respect to the collection of motor fuel taxes shall be transferred to the state department of revenue.

History: 1959, Act 15, Eff. Mar. 19, 1960.

205.46 Continuance of services and functions.

Sec. 6. The secretary of state and the state department of revenue shall make all other arrangements as are

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necessary to provide for the uninterrupted conduct of the services and functions of government as prescribed by this act.

History: 1959, Act 15, Eff. Mar. 19, 1960.

205.47 Effective date of act.

Sec. 7. This act shall take effect on January 1, 1960.

History: 1959, Act 15, Eff. Mar. 19, 1960.

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GENERAL SALES TAX ACT
Act 167 of 1933

AN ACT to provide for the raising of additional public revenue by prescribing certain specific taxes, fees, and charges to be paid to the state for the privilege of engaging in certain business activities; to provide, incident to the enforcement thereof, for the issuance of licenses to engage in such occupations; to provide for the ascertainment, assessment and collection thereof; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act.

History: 1933, Act 167, Imd. Eff. June 28, 1933;—Am. 1949, Act 272, Eff. July 1, 1949.

The People of the State of Michigan enact:

205.51 Definitions; unlicensed person as agent of dealer, distributor, supervisor, or employer; regarding dealer, distributor, supervisor, or employer as making sales at retail prices.

Sec. 1. (1) As used in this act:

(a) "Person" means an individual, firm, partnership, joint venture, association, social club, fraternal organization, municipal or private corporation whether organized for profit or not, company, estate, trust, receiver, trustee, syndicate, the United States, this state, county, or any other group or combination acting as a unit, and includes the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(b) "Sale at retail" or "retail sale" means a sale, lease, or rental of tangible personal property for any purpose other than for resale, sublease, or subrent.

(c) "Gross proceeds" means sales price.

(d) "Sales price" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, and applies to the measure subject to sales tax. Sales price includes the following subparagraphs (*i*) through (*vii*) and excludes subparagraphs (*viii*) through (*xiv*):

(*i*) Seller's cost of the property sold.

(*ii*) Cost of materials used, labor or service cost, interest, losses, costs of transportation to the seller, taxes imposed on the seller other than taxes imposed by this act, and any other expense of the seller.

(*iii*) Charges by the seller for any services necessary to complete the sale, other than the following:

(A) An amount received or billed by the taxpayer for remittance to the employee as a gratuity or tip, if the gratuity or tip is separately identified and itemized on the guest check or billed to the customer.

(B) Labor or service charges involved in maintenance and repair work on tangible personal property of others if separately itemized.

(*iv*) Delivery charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property subject to the tax levied under this act from the seller to the purchaser. A seller is not liable under this act for delivery charges allocated to the delivery of exempt property.

(*v*) Installation charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property from the seller to the purchaser.

(*vi*) Except as otherwise provided in subparagraphs (*xi*), (*xii*), and (*xiv*), credit for any trade-in.

(*vii*) Except as otherwise provided in subparagraph (*x*), consideration received by the seller from third parties if all of the following conditions are met:

(A) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale.

(B) The seller has an obligation to pass the price reduction or discount through to the purchaser.

(C) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser.

(D) One of the following criteria is met:

(I) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented.

(II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in a group or organization.

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(III) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

(*viii*) Interest, financing, or carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(*ix*) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(*x*) Beginning January 1, 2000, employee discounts that are reimbursed by a third party on sales of motor vehicles.

(*xi*) Beginning November 15, 2013, credit for the agreed-upon value of a titled watercraft used as part payment of the purchase price of a new titled watercraft or used titled watercraft purchased from a watercraft dealer if the agreed-upon value is separately stated on the invoice, bill of sale, or similar document given to the purchaser. This subparagraph does not apply to leases or rentals.

(*xii*) Beginning December 15, 2013, credit for the agreed-upon value of a motor vehicle or recreational vehicle used as part payment of the purchase price of a new motor vehicle or used motor vehicle or recreational vehicle purchased from a dealer if the agreed-upon value is separately stated on the invoice, bill of sale, or similar document given to the purchaser. This subparagraph does not apply to leases or rentals. Except as otherwise provided under subparagraph (*xiv*), for purposes of this subparagraph, the agreed-upon value of a motor vehicle or recreational vehicle used as part payment shall be limited as follows:

(A) Beginning December 15, 2013, subject to sub-subparagraphs (B) and (C), the lesser of the following:

(I) $2,000.00.

(II) The agreed-upon value of the motor vehicle or recreational vehicle used as part payment.

(B) Beginning January 1, 2015 and each January 1 thereafter through December 31, 2018, the amount under sub-subparagraph (A)(I) shall be increased by an additional $500.00 each year.

(C) Beginning January 1, 2019, subject to sub-subparagraphs (D) and (E), the lesser of the following:

(I) $5,000.00.

(II) The agreed-upon value of the motor vehicle used as part payment.

(D) Beginning January 1, 2020 and each January 1 thereafter, the amount under sub-subparagraph (C)(I) shall be increased by an additional $1,000.00 each year.

(E) Beginning on January 1 in the year in which the amount under sub-subparagraph (C)(I) exceeds $14,000.00 and each January 1 thereafter, there shall be no limitation on the agreed-upon value of the motor vehicle used as part payment.

(*xiii*) Beginning January 1, 2017, credit for the core charge attributable to a recycling fee, deposit, or disposal fee for a motor vehicle or recreational vehicle part or battery if the recycling fee, deposit, or disposal fee is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(*xiv*) Beginning January 1, 2018, credit for the agreed-upon value of a recreational vehicle used as part payment of the purchase price of a recreational vehicle purchased from a dealer if the agreed-upon value is separately stated on the invoice, bill of sale, or similar document given to the purchaser. This subparagraph does not apply to leases or rentals.

(e) "Business" includes an activity engaged in by a person or caused to be engaged in by that person with the object of gain, benefit, or advantage, either direct or indirect.

(f) "Tax year" or "taxable year" means the fiscal year of the state or the taxpayer's fiscal year if permission is obtained by the taxpayer from the department to use the taxpayer's fiscal year as the tax period instead.

(g) "Department" means the department of treasury.

(h) "Taxpayer" means a person subject to a tax under this act.

(i) "Tax" includes a tax, interest, or penalty levied under this act.

(j) "Textiles" means goods that are made of or incorporate woven or nonwoven fabric, including, but not limited to, clothing, shoes, hats, gloves, handkerchiefs, curtains, towels, sheets, pillows, pillow cases, tablecloths, napkins, aprons, linens, floor mops, floor mats, and thread. Textiles also include materials used to repair or construct textiles, or other goods used in the rental, sale, or cleaning of textiles.

(k) "New motor vehicle" means that term as defined in section 33a of the Michigan vehicle code, 1949 PA 300, MCL 257.33a.

(*l*) "Recreational vehicle" means that term as defined in section 49a of the Michigan vehicle code, 1949 PA 300, MCL 257.49a.

(m) "Dealer" means that term as defined in section 11 of the Michigan vehicle code, 1949 PA 300, MCL 257.11.

(n) "Watercraft dealer" means a dealer as that term is defined in section 80102 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80102.

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(2) If the department determines that it is necessary for the efficient administration of this act to regard an unlicensed person, including a salesperson, representative, peddler, or canvasser as the agent of the dealer, distributor, supervisor, or employer under whom the unlicensed person operates or from whom the unlicensed person obtains the tangible personal property sold by the unlicensed person, irrespective of whether the unlicensed person is making sales on the unlicensed person's own behalf or on behalf of the dealer, distributor, supervisor, or employer, the department may so regard the unlicensed person and may regard the dealer, distributor, supervisor, or employer as making sales at retail at the retail price for the purposes of this act.

History: 1933, Act 167, Imd. Eff. June 28, 1933;—Am. 1935, Act 77, Imd. Eff. May 23, 1935;—Am. 1939, Act 123, Imd. Eff. May 19, 1939;—Am. 1939, Act 313, Imd. Eff. June 22, 1939;—Am. 1941, Act 59, Imd. Eff. May 5, 1941;—Am. 1941, Act 249, Imd. Eff. June 16, 1941;—Am. 1943, Act 29, Imd. Eff. Mar. 24, 1943;—Am. 1945, Act 259, Imd. Eff. May 25, 1945;—Am. 1948, Ex. Sess., Act 30, Imd. Eff. May 10, 1948;—CL 1948, 205.51;—Am. 1949, Act 272, Eff. July 1, 1949;—Am. 1950, 1st Ex. Sess., Act 9, Imd. Eff. May 9, 1950;—Am. 1951, Act 245, Eff. Sept. 28, 1951;—Am. 1952, Act 166, Imd. Eff. Apr. 24, 1952;—Am. 1953, Act 204, Imd. Eff. June 10, 1953;—Am. 1955, Act 236, Eff. Oct. 14, 1955;—Am. 1960, Act 76, Imd. Eff. Apr. 25, 1960;—Am. 1964, Act 214, Eff. Aug. 28, 1964;—Am. 1970, Act 16, Eff. May 1, 1970;—Am. 1973, Act 45, Imd. Eff. July 4, 1973;—Am. 1976, Act 70, Imd. Eff. Apr. 5, 1976;—Am. 1982, Act 218, Eff. Jan. 1, 1984;—Am. 1984, Act 32, Imd. Eff. Mar. 14, 1984;—Am. 1987, Act 259, Imd. Eff. Dec. 28, 1987;—Am. 1993, Act 325, Eff. May 1, 1994;—Am. 1994, Act 127, Eff. Aug. 1, 1994;—Am. 1995, Act 209, Imd. Eff. Nov. 29, 1995;—Am. 1997, Act 193, Eff. Jan. 1, 1998;—Am. 1998, Act 365, Imd. Eff. Oct. 20, 1998;—Am. 1998, Act 451, Imd. Eff. Dec. 30, 1998;—Am. 1999, Act 116, Imd. Eff. July 14, 1999;—Am. 2000, Act 390, Imd. Eff. Jan. 8, 2001;—Am. 2004, Act 173, Eff. Sept. 1, 2004;—Am. 2008, Act 438, Imd. Eff. Jan. 9, 2009;—Am. 2013, Act 159, Imd. Eff. Nov. 6, 2013;—Am. 2013, Act 160, Imd. Eff. Nov. 6, 2013;—Am. 2016, Act 8, Imd. Eff. Feb 2, 2016;—Am. 2016, Act 515, Eff. Mar. 29, 2017;—Am. 2018, Act 2, Imd. Eff. Jan. 18, 2018.

Compiler's note: Act 76 of 1984 amended Act 32 of 1984 by adding enacting section 2 to read as follows:

"Section 2. (1) This amendatory act shall not apply to qualified purchase agreements, or verified purchase agreements if in relation to a refund under subsection (4), for a motor vehicle, trailer coach, or titled watercraft entered into on or before March 14, 1984 if the transfer of ownership occurs on or before February 1, 1985 and if a motor vehicle or trailer coach or titled watercraft is used as part payment of the purchase price.

"(2) A taxpayer may submit a claim for refund to the department if all of the following occur:

"(a) A qualified purchase agreement is entered into on or before March 14, 1984.

"(b) The transfer of ownership occurs after March 14, 1984 and on or before 10 days after the effective date of this amendatory act that added this enacting section.

"(c) The tax imposed upon the sale at retail was in an amount greater than the tax required if pursuant to this enacting section, this amendatory act had not been applied in determining the gross proceeds upon which the tax was computed.

"(d) The taxpayer who paid the excess tax provides satisfactory proof that the taxpayer has reimbursed the purchaser of the motor vehicle, trailer coach, or titled watercraft for the excess paid by the purchaser if applicable.

"(3) Upon verification of a claim made pursuant to subsection (2), the department shall refund the exempt tax paid to the claimant.

"(4) The department may establish procedures to refund any excess tax paid by the purchaser, directly to the purchaser, when the taxpayer has failed to claim a refund for an overpayment made by the purchaser.

"(5) For the purposes of this section, "qualified purchase agreement" means a purchase agreement filed with the department on or before 10 days after the effective date of this amendatory act that added this enacting section."

Enacting section 2 of Act 116 of 1999 provides:

"Enacting section 2. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, a taxpayer may exclude a sale of tangible personal property from gross proceeds only to the extent that the property is used for exempt purposes. For telecommunications equipment exempt under section 4v of the general sales tax act, 1933 PA 167, MCL 205.54v, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

Enacting section 1 of Act 8 of 2016 provides:

"Enacting section 1. This amendatory act is retroactive and is effective December 15, 2013."

Senate Bill No. 94 was vetoed by the Governor on July 25, 2017. On January 17, 2018, two-thirds of the members of the Senate and House of Representatives voted to pass the bill, the objections of the Governor to the contrary notwithstanding. Senate Bill No. 94 was filed with the Secretary of State on January 18, 2018, and became 2018 PA 2, Imd. Eff. Jan 18, 2018.

Administrative rules: R 205.1 et seq. and R 205.401 et seq. of the Michigan Administrative Code.

205.51a Additional definitions.

Sec. 1a. As used in this act:

(a) "Alcoholic beverage" means a beverage suitable for human consumption that contains 1/2 of 1% or more of alcohol by volume.

(b) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(c) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(d) "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.

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(e) "Delivery charges" means charges by the seller for preparation and delivery to a location designated by the purchaser of tangible personal property or services. Delivery charges include, but are not limited to, transportation, shipping, postage, handling, crating, and packing. Beginning September 1, 2004, delivery charges do not include the charges for delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the purchaser. If a shipment includes both exempt property and taxable property, the seller shall allocate the delivery charge using 1 of the following methods:

(*i*) Multiply the delivery price by a fraction, the numerator of which is the total sales prices of the taxable property and the denominator of which is the total sales prices of all property in the shipment.

(*ii*) Multiply the delivery price by a fraction, the numerator of which is the total weight of the taxable property and the denominator of which is the total weight of all property in the shipment.

(f) "Dental prosthesis" means a bridge, crown, denture, or other similar artificial device used to repair or replace intraoral defects such as missing teeth, missing parts of teeth, and missing soft or hard structures of the jaw or palate.

(g) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that is all of the following:

(*i*) Required to be labeled as a dietary supplement identifiable by the "supplement facts" box found on the label as required by 21 CFR 101.36.

(*ii*) Contains 1 or more of the following dietary ingredients:

(A) A vitamin.

(B) A mineral.

(C) An herb or other botanical.

(D) An amino acid.

(E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake.

(F) A concentrate, metabolite, constituent, extract, or combination of any ingredient listed in sub-subparagraphs (A) to (E).

(*iii*) Intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in 1 of those forms, is not represented as conventional food or for use as a sole item of a meal or of the diet.

(h) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser if the cost of the items are not billed directly to the recipients, including tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material, but not including multiple items of printed material delivered to a single address.

(i) "Drug" means a compound, substance, or preparation, or any component of a compound, substance, or preparation, other than food or food ingredients, dietary supplements, or alcoholic beverages, intended for human use that is 1 or more of the following:

(*i*) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or in any of their supplements.

(*ii*) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

(*iii*) Intended to affect the structure or any function of the body.

(j) "Durable medical equipment" means equipment for home use, other than mobility enhancing equipment, dispensed pursuant to a prescription, including durable medical equipment repair or replacement parts, that does all of the following:

(*i*) Can withstand repeated use.

(*ii*) Is primarily and customarily used to serve a medical purpose.

(*iii*) Is not useful generally to a person in the absence of illness or injury.

(*iv*) Is not worn in or on the body.

(k) "Durable medical equipment repair or replacement parts" includes all components or attachments used in conjunction with durable medical equipment.

(*l*) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(m) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration and may include future options to purchase or extend. This definition applies only to leases and rentals entered into after September 1, 2004 and has no retroactive impact on leases and rentals that existed on that date. Lease or rental does not include the following subparagraphs (*i*) to (*iii*) and includes subparagraph (*iv*):

(*i*) A transfer of possession or control of tangible personal property under a security agreement or deferred

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payment plan that requires the transfer of title upon completion of the required payments.

(*ii*) A transfer of possession or control of tangible personal property under an agreement requiring transfer of title upon completion of the required payments and payment of an option price that does not exceed $100.00 or 1% of the total required payments, whichever is greater.

(*iii*) The provision of tangible personal property along with an operator for a fixed or indeterminate period of time, if that operator is necessary for the equipment to perform as designed. To be necessary, an operator must do more than maintain, inspect, or set up the tangible personal property.

(*iv*) An agreement covering motor vehicles or trailers if the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in section 7701(h)(1) of the internal revenue code of 1986, 26 USC 7701(h)(1).

(n) "Mobility enhancing equipment" means equipment, other than durable medical equipment or a motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer, dispensed pursuant to a prescription, including repair or replacement parts for that equipment, that is all of the following:

(*i*) Primarily and customarily used to provide or increase the ability to move from 1 place to another and is appropriate for use at home or on a motor vehicle.

(*ii*) Not generally used by a person with normal mobility.

(o) "Prescription" means an order, formula, or recipe, issued in any form of oral, written, electronic, or other means of transmission by a licensed physician or other health professional as defined in section 3501 of the insurance code of 1956, 1956 PA 218, MCL 500.3501. For a hearing aid, prescription includes an order, instruction, or direction of a hearing aid dealer or salesperson licensed under article 13 of the occupational code, 1980 PA 299, MCL 339.1301 to 339.1309.

(p) "Prewritten computer software" means computer software, including prewritten upgrades, that is delivered by any means and that is not designed and developed by the author or other creator to the specifications of a specific purchaser. Prewritten computer software includes the following:

(*i*) Any combination of 2 or more prewritten computer software programs or portions of prewritten computer software programs.

(*ii*) Computer software designed and developed by the author or other creator to the specifications of a specific purchaser if it is sold to a person other than that specific purchaser.

(*iii*) The modification or enhancement of prewritten computer software or portions of prewritten computer software if the modification or enhancement is designed and developed to the specifications of a specific purchaser unless there is a reasonable, separately stated charge or an invoice or other statement of the price is given to the purchaser for the modification or enhancement. If a person other than the original author or creator modifies or enhances prewritten computer software, that person is considered to be the author or creator of only that person's modifications or enhancements.

(q) "Prosthetic device" means, except as provided in section 4ff, a replacement, corrective, or supportive device, other than contact lenses and dental prosthesis, dispensed pursuant to a prescription, including repair or replacement parts for that device, worn on or in the body to do 1 or more of the following:

(*i*) Artificially replace a missing portion of the body.

(*ii*) Prevent or correct a physical deformity or malfunction of the body.

(*iii*) Support a weak or deformed portion of the body.

(r) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses and includes electricity, water, gas, steam, and prewritten computer software.

(s) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

History: Add. 2004, Act 173, Eff. Sept. 1, 2004;—Am. 2006, Act 434, Imd. Eff. Oct. 5, 2006;—Am. 2008, Act 438, Imd. Eff. Jan. 9, 2009;—Am. 2017, Act 221, Imd. Eff. Dec. 20, 2017;—Am. 2020, Act 46, Imd. Eff. Mar. 3, 2020.

Compiler's note: Enacting section 1 of Act 221 of 2017 provides:
"Enacting section 1. This amendatory act is retroactive and is effective beginning July 1, 2017."

205.52 Sales tax; rate; additional applicability; separate books required; penalty; tax as personal obligation of taxpayer; exemption.

Sec. 2. (1) Except as provided in section 2a, there is levied upon and there shall be collected from all persons engaged in the business of making sales at retail, by which ownership of tangible personal property is transferred for consideration, an annual tax for the privilege of engaging in that business equal to 6% of the gross proceeds of the business, plus the penalty and interest if applicable as provided by law, less deductions allowed by this act.

(2) The tax under subsection (1) also applies to the following:

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(a) The transmission and distribution of electricity, whether the electricity is purchased from the delivering utility or from another provider, if the sale is made to the consumer or user of the electricity for consumption or use rather than for resale.

(b) The sale of a prepaid telephone calling card or a prepaid authorization number for telephone use, rather than for resale, including the reauthorization of a prepaid telephone calling card or a prepaid authorization number.

(c) A conditional sale, installment lease sale, or other transfer of property, if title is retained as security for the purchase but is intended to be transferred later.

(3) Any person engaged in the business of making sales at retail who is at the same time engaged in some other kind of business, occupation, or profession not taxable under this act shall keep books to show separately the transactions used in determining the tax levied by this act. If the person fails to keep separate books, there shall be levied upon him or her the tax provided for in subsection (1) equal to 6% of the entire gross proceeds of both or all of his or her businesses. The taxes levied by this section are a personal obligation of the taxpayer.

(4) A meal provided free of charge or at a reduced rate to an employee during work hours by a food service establishment licensed by the Michigan department of agriculture for the convenience of the employer is not considered transferred for consideration.

History: 1933, Act 167, Imd. Eff. June 28, 1933;—CL 1948, 205.52;—Am. 1949, Act 272, Eff. July 1, 1949;—Am. 1960, 2nd Ex. Sess., Act 1, Eff. Jan. 1, 1961;—Am. 1984, Act 228, Imd. Eff. July 30, 1984;—Am. 1993, Act 325, Eff. May 1, 1994;—Am. 2004, Act 173, Eff. Sept. 1, 2004.

Compiler's note: Enacting section 1 of Act 467 of 2014 provides:

"Enacting section 1. This amendatory act does not take effect unless House Joint Resolution UU of the 97th Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

House Joint Resolution UU was presented to the electors as Proposal 15-1 at the May 5, 2015 special election. The proposal to amend the constitution was not approved by the voters and Act 467 of 2014 does not go into effect.

205.52a Reduction of tax on vehicle for which special registration secured; limitation; certification.

Sec. 2a. (1) For a sale at retail to a person of a vehicle for which a special registration is secured pursuant to section 226(9) of the Michigan vehicle code, 1949 PA 300, MCL 257.226, the tax imposed under this act shall be reduced by the sum of the following amounts:

(a) The use tax imposed on the vehicle by the state to which the vehicle was removed and in which it is registered.

(b) The amount obtained, even if negative, by subtracting the sales tax that would have been imposed on the vehicle by the state to which the vehicle was removed and in which it is registered if the vehicle had been purchased in that state, from the tax otherwise due under this act.

(2) The reduction in the tax made pursuant to subsection (1) shall not exceed the tax otherwise due under this act.

(3) The person purchasing the vehicle shall furnish to the seller a certification, on a form prescribed by the department, containing the name, address, and signature of the purchaser, a statement indicating the vehicle shall be primarily used, stored, and registered outside of this state, and the name of the jurisdiction in which the vehicle shall be registered.

History: Add. 1984, Act 228, Imd. Eff. July 30, 1984;—Am. 2004, Act 173, Eff. Sept. 1, 2004.

205.52b Retail sale of tangible personal property to purchaser; presumptions; agreement to purchase advertisements; effectiveness of section; definitions.

Sec. 2b. (1) A seller who sells tangible personal property to a purchaser in this state is presumed to be engaged in the business of making sales at retail in this state if the seller or a person, including an affiliated person, other than a common carrier acting as a common carrier, engages in or performs any of the following activities in this state:

(a) Sells a similar line of products as the seller and does so under the same business name as the seller or a similar business name as the seller.

(b) Uses its employees, agents, representatives, or independent contractors in this state to promote or facilitate sales by the seller to purchasers in this state.

(c) Maintains, occupies, or uses an office, distribution facility, warehouse, storage place, or similar place of business in this state to facilitate the delivery or sale of tangible personal property sold by the seller to the seller's purchasers in this state.

(d) Uses, with the seller's consent or knowledge, trademarks, service marks, or trade names in this state that are the same or substantially similar to those used by the seller.

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(e) Delivers, installs, assembles, or performs maintenance or repair services for the seller's purchasers in this state.

(f) Facilitates the sale of tangible personal property to purchasers in this state by allowing the seller's purchasers in this state to pick up or return tangible personal property sold by the seller at an office, distribution facility, warehouse, storage place, or similar place of business maintained by that person in this state.

(g) Shares management, business systems, business practices, or employees with the seller, or in the case of an affiliated person, engages in intercompany transactions related to the activities occurring with the seller to establish or maintain the seller's market in this state.

(h) Conducts any other activities in this state that are significantly associated with the seller's ability to establish and maintain a market in this state for the seller's sales of tangible personal property to purchasers in this state.

(2) The presumption under subsection (1) may be rebutted by demonstrating that a person's activities in this state are not significantly associated with the seller's ability to establish or maintain a market in the state for the seller's sales of tangible personal property to purchasers in this state.

(3) In addition to the presumption under subsection (1), a seller of tangible personal property is presumed to be engaged in the business of making sales at retail of tangible personal property in this state if the seller enters into an agreement, directly or indirectly, with 1 or more residents of this state under which the resident, for a commission or other consideration, directly or indirectly, refers potential purchasers, whether by a link on an internet website, in-person oral presentation, or otherwise, to the seller, if all of the following conditions are satisfied:

(a) The cumulative gross receipts from sales by the seller to purchasers in this state who are referred to the seller by all residents of this state with an agreement with the seller are greater than $10,000.00 during the immediately preceding 12 months.

(b) The seller's total cumulative gross receipts from sales to purchasers in this state exceed $50,000.00 during the immediately preceding 12 months.

(4) The presumption under subsection (3) may be rebutted by demonstrating that the residents of this state with whom the seller has an agreement did not engage in any solicitation or any other activity within this state that was significantly associated with the seller's ability to establish or maintain a market in this state for the seller's sales of tangible personal property to purchasers in this state. The presumption under subsection (3) shall be considered rebutted by evidence of all of the following:

(a) Written agreements prohibiting all of the residents with an agreement with the seller from engaging in any solicitation activities in this state on behalf of the seller.

(b) Written statements from all of the residents with an agreement with the seller stating that the resident representatives did not engage in any solicitation or other activities in this state on behalf of the seller during the immediately preceding 12 months, if the statements are provided and obtained in good faith.

(5) An agreement under which a seller purchases advertisements from a person or persons in this state to be delivered through television, radio, print, the internet, or any other medium is not an agreement described in subsection (3) unless the advertisement revenue paid to the person or persons in this state consists of commissions or other consideration that is based upon completed sales of tangible personal property.

(6) This section applies to transactions occurring on or after the effective date of the amendatory act that added this section and without regard to the date the seller and the resident entered into an agreement described in subsection (3). The 12 months before the effective date of the amendatory act that added this section are included as part of the immediately preceding 12 months for purposes of subsection (3).

(7) As used in this section:

(a) "Affiliated person" means either of the following:

(*i*) Any person that is a part of the same controlled group of corporations as the seller.

(*ii*) Any other person that, notwithstanding its form of organization, bears the same ownership relationship to the seller as a corporation that is a member of the same controlled group of corporations.

(b) "Controlled group of corporations" means that term as defined in section 1563(a) of the internal revenue code, 26 USC 1563.

History: Add. 2014, Act 553, Eff. Oct. 1, 2015.

205.52c Seller of tangible personal property or services; nexus; conditions; application to transactions after October 1, 2018; inclusion of sales of marketplace facilitator and marketplace seller; exception; definitions.

Sec. 2c. (1) A seller of tangible personal property is engaged in the business of making sales at retail in this state if the seller meets either of the following conditions:

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(a) The seller's gross receipts from sales to purchasers in this state exceed $100,000.00 in the previous calendar year.

(b) The seller has 200 or more separate transactions into this state in the previous calendar year.

(2) This section applies regardless of whether the seller has a physical presence in this state or is presumed to be engaged in the business of making sales at retail in this state under section 2b. This section does not eliminate or alter the obligation of a seller that has a physical presence in this state or is presumed to be engaged in the business of making sales at retail in this state under section 2b to remit the tax levied under this act.

(3) This section applies to transactions occurring on or after October 1, 2018.

(4) A person that is a marketplace facilitator under section 2d shall include sales by marketplace sellers on its marketplace and its direct sales in determining its gross receipts under subsection (1)(a) or its number of transactions under subsection (1)(b).

(5) A person that is a marketplace seller under section 2d shall include its sales through a marketplace facilitator and its direct sales in determining its gross receipts under subsection (1)(a) or its number of transactions under subsection (1)(b).

(6) Notwithstanding anything else in this section, a seller that makes no sales at retail is not required to obtain a license under this act or file returns. A seller that makes both sales at retail and sales for purposes of resale shall obtain a license under this act, file required returns, and remit tax as required by this act.

(7) As used in this section:

(a) "Marketplace facilitator" means that term as defined in section 2d.

(b) "Marketplace seller" means that term as defined in section 2d.

History: Add. 2019, Act 145, Imd. Eff. Dec. 12, 2019.

205.52d Marketplace facilitators; nexus; report; class action prohibited; audit; liability; conditions; definitions.

Sec. 2d. (1) Notwithstanding anything to the contrary in this act, a marketplace facilitator engaged in the business of making sales at retail of tangible personal property in this state shall remit the tax due under this act on all taxable sales made by the marketplace facilitator or facilitated for marketplace sellers to a purchaser in this state regardless of whether the marketplace seller for whom sales are facilitated has nexus with this state.

(2) A marketplace facilitator is a person engaged in the business of making sales at retail for purposes of this act regardless of whether the marketplace facilitator makes only facilitated sales for marketplace sellers or a combination of direct and facilitated sales and has all the rights and duties of a taxpayer under this act.

(3) A marketplace facilitator shall report its direct sales and the sales it facilitates to purchasers in this state in a manner as prescribed by the department.

(4) A class action shall not be brought against a marketplace facilitator in any court of this state on behalf of purchasers arising from or in any way related to an overpayment of sales tax remitted on sales facilitated by the marketplace facilitator, regardless of whether that claim is characterized as a tax refund claim. Nothing in this subsection affects a purchaser's right to seek a refund as provided under section 12.

(5) Nothing in this section affects the obligation of a purchaser to remit use tax under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, for a taxable transaction on which a marketplace facilitator or marketplace seller does not remit sales tax.

(6) Except as otherwise provided in this subsection, if a marketplace facilitator is required to remit tax under subsection (1), the department shall audit only the marketplace facilitator for sales made by marketplace sellers that were facilitated by the marketplace facilitator. The department shall not audit a marketplace seller for sales facilitated by a marketplace facilitator required to remit tax under subsection (1) unless the marketplace seller fails to provide the marketplace facilitator with sufficient information to the extent that the marketplace facilitator is not liable under subsection (7).

(7) A marketplace facilitator is relieved of liability under this section for failure to remit the correct amount of tax to the extent that the marketplace facilitator demonstrates, to the satisfaction of the department, that the failure was due to incorrect or insufficient information given to the marketplace facilitator by the marketplace seller. The relief under this subsection does not apply if the marketplace seller is an affiliate of the marketplace facilitator.

(8) A marketplace facilitator is relieved of liability under this section if the marketplace facilitator demonstrates, to the satisfaction of the department, that the tax levied under this act on a sale facilitated by the marketplace facilitator was paid to the department by the marketplace seller or provides a claim of exemption provided by the marketplace seller's purchaser.

(9) A marketplace seller is not liable for the tax imposed by this act on sales made through a marketplace

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facilitator required to remit tax under subsection (1) unless the marketplace seller fails to provide the marketplace facilitator with sufficient information to the extent that the marketplace facilitator is not liable under subsection (7).

(10) This section applies regardless of whether the marketplace facilitator has a physical presence in this state.

(11) As used in this section:

(a) "Affiliate" means an affiliated person as that term is defined in section 2b.

(b) "Marketplace facilitator" means a person that meets the requirements of subparagraph (*i*), but does not include a person described in subparagraph (*ii*):

(*i*) A person is a marketplace facilitator if the person facilitates a retail sale by a marketplace seller by listing or advertising for sale by a marketplace seller in a marketplace, tangible personal property and either directly or indirectly through agreements or arrangements with third parties or its affiliates collecting payment from the customer and transmitting that payment to the marketplace seller for consideration.

(*ii*) Marketplace facilitator does not include a person who operates a platform or forum that provides internet, print, electronic, or any other form of advertising services, including listing tangible personal property for sale, if the person does not also engage directly or indirectly, through 1 or more affiliates, in the activities described in subparagraph (*i*).

(c) "Marketplace seller" means a person that makes retail sales through a physical or electronic marketplace operated by a marketplace facilitator.

History: Add. 2019, Act 143, Eff. Jan. 1, 2020.

Compiler's note: Enacting sections 1 and 2 of Act 143 of 2019 provide:

"Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this amendatory act is severable."

"Enacting section 2. This amendatory act takes effect January 1, 2020. An obligation to collect sales tax under this amendatory act does not apply retroactively."

205.53 License required to engage in business for which privilege tax imposed; bond or deposit; renewal; exemptions; suspension and restoration of license; violation as misdemeanor; penalty; registration under streamlined sales and use tax agreement; person subject to tobacco products tax act; affirmative defense.

Sec. 3. (1) Subject to subsections (4) and (5), if a person engages or continues in a business for which a privilege tax is imposed by this act, the person shall, under rules the department prescribes, apply for and obtain from the department a license to engage in and to conduct that business for the current tax year. If the department considers it necessary in order to secure the collection of the tax or if an applicant taxpayer has at any time failed, refused, or neglected to pay any tax or interest or penalty upon a tax or has attempted to evade the payment of any tax or interest or penalty upon a tax by means of petition in bankruptcy, or if the applicant taxpayer is a corporation and the department has reason to believe that the management or control of the corporation is under persons who have failed to pay any tax or interest or penalty upon a tax under this act, the department shall require a surety bond payable to the state of Michigan, upon which the applicant or taxpayer shall be the obligor, in the sum of not less than $1,000.00 nor more than $25,000.00. The surety bond shall be conditioned that the applicant or taxpayer shall comply with this act and shall promptly file true reports and pay the taxes, interest, and penalties provided for or required by this act. The bonds shall be approved as to the amount and surety by the department. The applicant or taxpayer may in lieu of the surety bond deposit a sum of money with the department in an amount the department determines to guarantee the payment of the tax, interest, and penalty and compliance with this act. However, the amount determined by the department shall not exceed the estimated tax payable during a 1-year period. The applicant or taxpayer shall be licensed to engage in and conduct the business. The department may require the applicant or taxpayer to furnish any additional bond that it considers necessary within the limits in this section, after giving a 30-day notice in writing. The license shall be renewed annually if the taxpayer pays the tax accrued to this state under this act. A person shall not engage or continue in a business taxable under this act without securing a license. A person, firm, or corporation engaged solely in industrial processing or agricultural producing under this act and who makes no sales at retail within the meaning of this act is not required to have a license.

(2) The state treasurer or his or her designee, after notice and hearing, may suspend the license of a person who violates or fails to comply with this act or a rule promulgated by the department under this act. The state treasurer or his or her designee may restore licenses after suspension. If a person engages in business taxable under this act while his or her license is in suspension, the tax imposed under this act is imposed and payable with respect to that business.

(3) A person who engages in any business in this state that is taxable under this act and who fails to secure

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from the department a license to engage in that business or who continues to engage in business after the license has expired or was suspended by the state treasurer or his or her designee is guilty of a misdemeanor punishable by a fine of not more than $1,000.00 or imprisonment for not more than 1 year, or both.

(4) A seller registered under the streamlined sales and use tax agreement who is not otherwise obligated to obtain a sales tax license in this state is not required to obtain a sales tax license because of that registration.

(5) A person who engages in any business in this state that is taxable under this act shall indicate on the application or renewal for a license issued under this section if that person is subject to the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436. The state treasurer or his or her designee may deny an application or renewal and may suspend a license issued under this section if a person fails to comply with this subsection or if a person fraudulently indicates that that person is not subject to the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436. The state treasurer or his or her designee may restore a license suspended under this subsection if all delinquent taxes, interest, penalties, and fees due under this act or the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436, are paid in full.

(6) The state treasurer or his or her designee may prohibit the sale of any products subject to the tax levied under this act at any location where a person knowingly violated section 8(3) to (7) and (11) of the tobacco products tax act, 1993 PA 327, MCL 205.428.

(7) Notwithstanding section 28(1)(f) of 1941 PA 122, MCL 205.28, if a person is prohibited from the sale of products subject to the tax levied under this act under this section, the department shall identify the name, address, and location where the person knowingly violated the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436, on the department website.

(8) A person that knowingly violated section 8(3) to (7) and (11) of the tobacco products tax act, 1993 PA 327, MCL 205.428, which violation resulted in a seizure of tobacco products under section 9 of the tobacco products liability act, 1993 PA 327, MCL 205.429, is subject to the following penalties:

(a) For a first offense, if the amount of the illegal tobacco products seized is less than an aggregate retail value of $5,000.00, a fine of $400.00, or, if the amount of the illegal tobacco products seized is $5,000.00 or more in aggregate retail value, a fine of not less than $1,000.00 and suspension of his or her sales tax license at that location where the violation occurred for not less than 3 days.

(b) For a second offense, if the amount of the illegal tobacco products seized is less than an aggregate retail value of $3,000.00, a fine of $700.00, or, if the amount of the illegal tobacco products seized is $3,000.00 or more in aggregate retail value, a fine of not less than $1,000.00 and suspension of his or her sales tax license at that location where the violation occurred for not less than 3 days.

(c) For a third offense and each subsequent offense, a fine of not less than $1,000.00 and suspension of his or her sales tax license at that location where the violation occurred for not less than 3 days.

(9) It is an affirmative defense in an action against a retailer or a person licensed under this section for a violation committed by an employee of the retailer or licensed person that the retailer or licensed person had in force at the time of the violation and continues to have in force a written policy prohibiting sale of prohibited products by employees and that the retailer or licensed person enforced and continues to enforce that policy.

History: 1933, Act 167, Imd. Eff. June 28, 1933;—Am. 1939, Act 180, Eff. Sept. 29, 1939;—CL 1948, 205.53;—Am. 1949, Act 272, Eff. July 1, 1949;—Am. 1961, Act 228, Eff. Sept. 8, 1961;—Am. 1980, Act 164, Eff. Sept. 17, 1980;—Am. 2002, Act 457, Imd. Eff. June 21, 2002;—Am. 2004, Act 173, Eff. Sept. 1, 2004;—Am. 2008, Act 459, Imd. Eff. Jan. 9, 2009.

205.54 Deductions; filing estimated returns and annual periodic reconciliations; registration under streamlined sales and use tax agreement.

Sec. 4. (1) In computing the amount of tax levied under this act for any month, a taxpayer not subject to section 6(2) may deduct the amount provided by subdivision (a) or (b), whichever is greater:

(a) If the tax that accrued to this state from the sales at retail during the preceding month is remitted to the department on or before the twelfth day of the month in which remittance is due, 0.75% of the tax due at a rate of 4% for the preceding monthly period, but not to exceed $20,000.00 of the tax due for that month. If the tax that accrued to this state from the sales at retail during the preceding month is remitted to the department after the twelfth day and on or before the twentieth day of the month in which remittance is due, 0.50% of the tax due at a rate of 4% for the preceding monthly period, but not to exceed $15,000.00 of the tax due for that month.

(b) The tax at a rate of 4% due on $150.00 of taxable gross proceeds for the preceding monthly period, or a prorated portion of $150.00 of the taxable gross proceeds for the preceding month if the taxpayer engaged in business for less than a month.

(2) Beginning January 1, 1999, in computing the amount of tax levied under this act for any month, a taxpayer who is subject to section 6(2) may deduct from the amount of the tax paid 0.50% of the tax due at a

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rate of 4%.

(3) A deduction is not allowed under this section for payments of taxes made to the department after the day the taxpayer is required to pay, pursuant to section 6, the tax imposed by this act.

(4) If, pursuant to section 6(4), the department prescribes the filing of returns and the payment of the tax for periods in excess of 1 month, a taxpayer is entitled to a deduction from the tax collections remitted to the department for the extended payment period that is equivalent to the deduction allowed under subsection (1) or (2) for monthly periods.

(5) The department may prescribe the filing of estimated returns and annual periodic reconciliations as necessary to carry out the purposes of this section.

(6) A seller registered under the streamlined sales and use tax agreement may claim a deduction under this section if provided for in the streamlined sales and use tax administration act.

History: 1933, Act 167, Imd. Eff. June 28, 1933;—Am. 1939, Act 313, Imd. Eff. June 22, 1939;—CL 1948, 205.54;—Am. 1949, Act 272, Eff. July 1, 1949;—Am. 1981, Act 219, Eff. Mar. 31, 1982;—Am. 1993, Act 18, Imd. Eff. Apr. 14, 1993;—Am. 1993, Act 325, Eff. May 1, 1994;—Am. 1998, Act 267, Imd. Eff. July 17, 1998;—Am. 2004, Act 173, Eff. Sept. 1, 2004.

Compiler's note: Enacting section 1 of Act 467 of 2014 provides:

"Enacting section 1. This amendatory act does not take effect unless House Joint Resolution UU of the 97th Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

House Joint Resolution UU was presented to the electors as Proposal 15-1 at the May 5, 2015 special election. The proposal to amend the constitution was not approved by the voters and Act 467 of 2014 does not go into effect.

205.54a Sales tax; exemptions; limitation.

Sec. 4a. (1) Subject to subsection (2), the following are exempt from the tax under this act:

(a) A sale of tangible personal property not for resale to a nonprofit school, nonprofit hospital, or nonprofit home for the care and maintenance of children or aged individuals operated by an entity of government, a regularly organized church, religious organization, or fraternal organization, a veterans' organization, or a corporation incorporated under the laws of this state, if the income or benefit from the operation does not inure, in whole or in part, to an individual or private shareholder, directly or indirectly, and if the activities of the entity or agency are carried on exclusively for the benefit of the public at large and are not limited to the advantage, interests, and benefits of its members or any restricted group. A sale of tangible personal property to a parent cooperative preschool is exempt from taxation under this act. As used in this subdivision, "parent cooperative preschool" means a nonprofit, nondiscriminatory educational institution, maintained as a community service and administered by parents of children currently enrolled in the preschool, that provides an educational and developmental program for children younger than compulsory school age, that provides an educational program for parents, including active participation with children in preschool activities, that is directed by qualified preschool personnel, and that is licensed under 1973 PA 116, MCL 722.111 to 722.128.

(b) A sale of tangible personal property not for resale to a regularly organized church or house of religious worship, except the following:

(*i*) Sales in activities that are mainly commercial enterprises.

(*ii*) Sales of vehicles licensed for use on public highways other than a passenger van or bus with a manufacturer's rated seating capacity of 10 or more that is used primarily for the transportation of individuals for religious purposes.

(c) The sale of food to bona fide enrolled students by a school or other educational institution not operated for profit.

(d) The sale of a vessel designated for commercial use of registered tonnage of 500 tons or more, if produced upon special order of the purchaser, and bunker and galley fuel, provisions, supplies, maintenance, and repairs for the exclusive use of the vessel engaged in interstate commerce.

(e) Except as otherwise provided under subsection (3), a sale of tangible personal property to a person engaged in a business enterprise that uses or consumes the tangible personal property, directly or indirectly, for either the tilling, planting, draining, caring for, maintaining, or harvesting of things of the soil or the breeding, raising, or caring for livestock, poultry, or horticultural products, including the transfers of livestock, poultry, or horticultural products for further growth.

(f) Except as otherwise provided under subsection (3), a sale of any of the following to a person engaged in a business enterprise that uses or consumes the following for purposes as described in subdivision (e):

(*i*) Machinery that is capable of simultaneously harvesting grain or other crops and biomass and machinery used for the purpose of harvesting biomass.

(*ii*) Agricultural land tile and subsurface irrigation pipe.

(*iii*) Portable grain bins, including tangible personal property affixed or to be affixed to portable grain bins and directly used in the operation of a portable grain bin.

(*iv*) Grain drying equipment and the fuel or energy source that powers that equipment, including tangible

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personal property affixed or to be affixed to that equipment and directly used in the operation of grain drying equipment.

(*v*) Tangible personal property purchased and installed as a component part of a structure such as a barn or shop, including, but not limited to, a water supply system, heating and cooling system, lighting system, milking system, or any other appurtenance used for purposes described in this subdivision or subdivision (e), including the maintenance or improvement of existing structures, to the extent that it is not permanently affixed to and does not become a structural part of real estate. For purposes of this subparagraph and subsection (3), property installed as a component part of a structure as provided in this subparagraph is not permanently affixed to or a structural part of real estate if it is assembled and installed in a manner that it can be disassembled without affecting the physical structural functionality of the original structure and reassembled and reused for any of the purposes described in this subdivision or subdivision (e).

(*vi*) Greenhouses, including tangible personal property affixed to or to be affixed to greenhouses and directly used in the operation of a greenhouse. For purposes of subsection (3), a greenhouse is not permanently affixed to or a structural part of real estate if it is assembled and installed in a manner that it can be disassembled and reassembled without affecting the functionality of the greenhouse upon being reassembled.

(g) The sale of agricultural land tile, subsurface irrigation pipe, portable grain bins, greenhouses, and grain drying equipment to a person in the business of constructing, altering, repairing, or improving real estate for others to the extent that it is affixed to and made a structural part of real estate for others and is used for an exempt purpose described under subdivision (e) or (f).

(h) The sale of tangible personal property used in the direct gathering of fish, by net, line, or otherwise, by an owner-operator of a business enterprise, not including a charter fishing business enterprise.

(i) The sale of a copyrighted motion picture film or a newspaper or periodical admitted under federal postal laws and regulations effective September 1, 1985 as second-class mail matter or as a controlled circulation publication or qualified to accept legal notices for publication in this state, as defined by law, or any other newspaper or periodical of general circulation, established not less than 2 years, and published not less than once a week. Tangible personal property used or consumed in producing a copyrighted motion picture film, a newspaper published more than 14 times per year, or a periodical published more than 14 times per year, and not becoming a component part of that film, newspaper, or periodical is subject to the tax. Tangible personal property used or consumed in producing a newspaper published 14 times or less per year or a periodical published 14 times or less per year and that portion or percentage of tangible personal property used or consumed in producing an advertising supplement that becomes a component part of a newspaper or periodical is exempt from the tax under this subdivision. For purposes of this subdivision, tangible personal property that becomes a component part of a newspaper or periodical and consequently not subject to tax includes an advertising supplement inserted into and circulated with a newspaper or periodical that is otherwise exempt from tax under this subdivision, if the advertising supplement is delivered directly to the newspaper or periodical by a person other than the advertiser, or the advertising supplement is printed by the newspaper or periodical.

(j) A sale of tangible personal property to persons licensed to operate commercial radio or television stations if the property is used in the origination or integration of the various sources of program material for commercial radio or television transmission. This subdivision does not include a vehicle licensed and titled for use on public highways or property used in the transmission to or receiving from an artificial satellite.

(k) The sale of a prosthetic device, durable medical equipment, or mobility enhancing equipment.

(*l*) The sale of a vehicle not for resale to a Michigan nonprofit corporation organized exclusively to provide a community with ambulance or fire department services.

(m) Before October 1, 2012, a sale of tangible personal property to inmates in a penal or correctional institution purchased with scrip or its equivalent issued and redeemed by the institution.

(n) A sale of textbooks sold by a public or nonpublic school to or for the use of students enrolled in any part of a kindergarten through twelfth grade program.

(o) A sale of tangible personal property installed as a component part of a water pollution control facility for which a tax exemption certificate is issued under part 37 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.3701 to 324.3708, or an air pollution control facility for which a tax exemption certificate is issued under part 59 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5901 to 324.5908.

(p) The sale or lease of the following to an industrial laundry:

(*i*) Textiles and disposable products including, but not limited to, soap, paper, chemicals, tissues, deodorizers and dispensers, and all related items such as packaging, supplies, hangers, name tags, and identification tags.

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(*ii*) Equipment, whether owned or leased, used to repair and dispense textiles including, but not limited to, roll towel cabinets, slings, hardware, lockers, mop handles and frames, and carts.

(*iii*) Machinery, equipment, parts, lubricants, and repair services used to clean, process, and package textiles and related items, whether owned or leased.

(*iv*) Utilities such as electric, gas, water, or oil.

(*v*) Production washroom equipment and mending and packaging supplies and equipment.

(*vi*) Material handling equipment including, but not limited to, conveyors, racks, and elevators and related control equipment.

(*vii*) Wastewater pretreatment equipment and supplies and related maintenance and repair services.

(q) A sale of tangible personal property to a person holding a direct payment permit under section 8 of the use tax act, 1937 PA 94, MCL 205.98.

(r) The sale of a dental prosthesis.

(s) A sale of tangible personal property that is specifically designed for, and directly used in, the harvesting of aquatic vegetation from the waters of the state, including parts and materials used for repairs of that tangible personal property, to a person engaged in a business enterprise of harvesting aquatic vegetation and ultimately used for purposes described in subdivision (e) or (f). This exemption does not include a motor vehicle licensed or required to be licensed for use on the public roads or highways of this state or tangible personal property permanently affixed to and becoming a structural part of real estate.

(t) A sale or lease of a school bus or transportation-related services, and parts or adaptive equipment affixed or to be affixed to a school bus that are used in the repair, maintenance, accommodation, or modification of a school bus, if the school bus or services are primarily used in the performance of a contract entered into with an authorized representative of a school for the transportation of preprimary, primary, or secondary school pupils to or from a school or school-related events authorized by the administration of the school. However, if the school bus is used to provide transportation-related services other than to or from a school or school-related event authorized by the administration of the school to a nonexempt entity, then the amount paid for those services by the nonexempt entity is not exempt under this subdivision. As used in this subdivision:

(*i*) "Lease" means any transfer of possession or control for a fixed or indeterminate term for consideration and may include future options to purchase or extend.

(*ii*) "School" means a public school or public school academy as those terms are defined in section 5 of the revised school code, 1976 PA 451, MCL 380.5.

(*iii*) "School bus" means that term as defined in section 7 of the pupil transportation act, 1990 PA 187, MCL 257.1807.

(u) The sale of feminine hygiene products. As used in this subdivision, "feminine hygiene products" means tampons, panty liners, menstrual cups, sanitary napkins, and other similar tangible personal property designed for feminine hygiene in connection with the human menstrual cycle.

(2) The tangible personal property under subsection (1) is exempt only to the extent that that property is used for the exempt purpose if one is stated in subsection (1). The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

(3) The exemptions under subsection (1)(e), (f), (g), and (h) do not include transfers of food, fuel, clothing, or any similar tangible personal property for personal living or human consumption or tangible personal property permanently affixed to and becoming a structural part of real estate unless it is agricultural land tile, subsurface irrigation pipe, a portable grain bin, or grain drying equipment.

(4) Subsection (1)(e), (f), and (g) as amended by 2018 PA 113 is intended to be retroactive and to apply to all periods open under section 27a of 1941 PA 122, MCL 205.27a, but does not apply to any refund claims filed before April 9, 2018.

(5) As used in this section:

(a) "Agricultural land tile" means fired clay or perforated plastic tubing used as part of a subsurface drainage system for land.

(b) "Algae" means any of the group of nonvascular aquatic plants that do not have stems, flowers, leaves, and roots, and that are single-celled, colonial, or filamentous forms.

(c) "Aquatic vegetation" means both algae and higher aquatic plants.

(d) "Biomass" means crop residue used to produce energy or agricultural crops grown specifically for the production of energy.

(e) "Greenhouse" means a structure covered with transparent or translucent materials for the purpose of admitting natural light and controlling the atmosphere for growing horticultural products. Greenhouse does not include a structure primarily used to grow marihuana.

(f) "Higher aquatic plant" means any of the group of vascularized plants that have true stems, flowers,

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leaves, and roots, that live in water, and that belong to the class Angiospermae.

(g) "Portable grain bin" means a structure that is used or is to be used to shelter grain and that is designed to be disassembled without significant damage to its component parts.

(h) "Waters of the state" means that term as defined in section 3302 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.3302.

History: Add. 1935, Act 77, Imd. Eff. May 23, 1935;—Am. 1939, Act 313, Imd. Eff. June 22, 1939;—CL 1948, 205.54a;—Am. 1949, Act 272, Eff. July 1, 1949;—Am. 1950, 1st Ex. Sess., Act 9, Imd. Eff. May 9, 1950;—Am. 1951, Act 245, Eff. Sept. 28, 1951;—Am. 1952, Act 165, Imd. Eff. Apr. 24, 1952;—Am. 1953, Act 204, Imd. Eff. June 10, 1953;—Am. 1955, Act 76, Imd. Eff. May 26, 1955;—Am. 1958, Act 52, Eff. July 1, 1958;—Am. 1962, Act 220, Eff. July 1, 1962;—Am. 1970, Act 16, Eff. May 1, 1970;—Am. 1971, Act 207, Imd. Eff. Dec. 29, 1971;—Am. 1973, Act 136, Imd. Eff. Nov. 9, 1973;—Am. 1976, Act 33, Imd. Eff. Mar. 5, 1976;—Am. 1978, Act 263, Imd. Eff. June 29, 1978;—Am. 1978, Act 498, Imd. Eff. Dec. 11, 1978;—Am. 1982, Act 218, Eff. Jan. 1, 1984;—Am. 1985, Act 16, Imd. Eff. May 16, 1985;—Am. 1986, Act 51, Imd. Eff. Mar. 17, 1986;—Am. 1987, Act 87, Imd. Eff. July 1, 1987;—Am. 1988, Act 519, Imd. Eff. Jan. 19, 1989;—Am. 1990, Act 143, Imd. Eff. June 27, 1990;—Am. 1991, Act 87, Imd. Eff. July 18, 1991;—Am. 1993, Act 325, Eff. May 1, 1994;—Am. 1994, Act 156, Imd. Eff. June 13, 1994;—Am. 1996, Act 52, Imd. Eff. Feb. 26, 1996;—Am. 1996, Act 435, Imd. Eff. Dec. 10, 1996;—Am. 1998, Act 365, Imd. Eff. Oct. 20, 1998;—Am. 1998, Act 398, Imd. Eff. Dec. 17, 1998;—Am. 1998, Act 490, Imd. Eff. Jan. 4, 1999;—Am. 1999, Act 116, Imd. Eff. July 14, 1999;—Am. 2004, Act 173, Eff. Sept. 1, 2004;—Am. 2008, Act 332, Imd. Eff. Dec. 23, 2008;—Am. 2008, Act 415, Imd. Eff. Jan. 6, 2009;—Am. 2012, Act 126, Imd. Eff. May 8, 2012;—Am. 2016, Act 431, Eff. Mar. 29, 2017;—Am. 2017, Act 219, Imd. Eff. Dec. 20, 2017;—Am. 2018, Act 113, Imd. Eff. Apr. 25, 2018;—Am. 2018, Act 673, Eff. Mar. 29, 2019;—Am. 2021, Act 108, Eff. Feb. 3, 2022.

Compiler's note: Enacting section 2 of Act 116 of 1999 provides:

"Enacting section 2. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, a taxpayer may exclude a sale of tangible personal property from gross proceeds only to the extent that the property is used for exempt purposes. For telecommunications equipment exempt under section 4v of the general sales tax act, 1933 PA 167, MCL 205.54v, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

Enacting section 1 of Act 219 of 2017 provides:

"Enacting section 1. This amendatory act is retroactive and effective beginning July 1, 2017."

Enacting section 1 of Act 113 of 2018 provides:

"Enacting section 1. This amendatory act does not apply to a claim for a refund filed prior to April 9, 2018."

205.54b Deductible sales of gasoline; statement of transferee.

Sec. 4b. Any taxpayer, who does not include in the amount of his gross proceeds used for the computation of the tax on sales of gasoline pursuant to the provisions of subdivision (f) of section 4a by reason of the filing with him by the transferee of a statement in a form approved by the department of revenue, shall not hereafter be subject to the requirements of this act as to any portion of such sales of gasoline which are not used by the transferee for the purposes described in said statement: Provided, That this section shall also apply to and be effective in relation to similar transactions of the taxpayer subsequent to January 1, 1949.

History: Add. 1955, Act 131, Imd. Eff. June 7, 1955.

205.54c Repealed. 2004, Act 173, Eff. Sept. 1, 2004.

Compiler's note: The repealed section pertained to exemptions of property affixed to real estate under certain contracts.

205.54d Additional sales excluded from tax.

Sec. 4d. The following are exempt from the tax under this act:

(a) The sale of tangible personal property to a person who is a lessor licensed under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, and whose rental receipts are taxed or specifically exempt under the use tax act, 1937 PA 94, MCL 205.91 to 205.111.

(b) The sale of a vehicle acquired for lending or leasing to a public or parochial school for use in a course in driver education.

(c) The sale of a vehicle purchased by a public or parochial school if that vehicle is certified for driver education and is not reassigned for personal use by the school's administrative personnel.

(d) The sale of water through water mains, the sale of water delivered in bulk tanks in quantities of not less than 500 gallons, or the sale of bottled water.

(e) The sale of tangible personal property to a person for demonstration purposes. For a dealer selling a new car or truck, the exemption for demonstration purposes shall be determined by the number of new cars and trucks sold during the current calendar year or the immediately preceding year without regard to specific make or style in accordance with the following schedule of 0 to 25, 2 units; 26 to 100, 7 units; 101 to 500, 20 units; 501 or more, 25 units; but not to exceed 25 cars and trucks in a calendar year for demonstration purposes.

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(f) Specific charges for technical support or for adapting or modifying prewritten computer software programs to a purchaser's needs or equipment if those charges are separately stated and identified.

(g) The sale of computer software originally designed for the exclusive use and special needs of the purchaser.

(h) The sale of a commercial advertising element if the commercial advertising element is used to create or develop a print, radio, television, or other advertisement, the commercial advertising element is discarded or returned to the provider after the advertising message is completed, and the commercial advertising element is custom developed by the provider for the purchaser. As used in this subdivision, "commercial advertising element" means a negative or positive photographic image, an audiotape or videotape master, a layout, a manuscript, writing of copy, a design, artwork, an illustration, retouching, and mechanical or keyline instructions. This exemption does not include black and white or full color process separation elements, an audiotape reproduction, or a videotape reproduction.

(i) A sale made outside of the ordinary course of the seller's business.

(j) An isolated transaction by a person not licensed or required to be licensed under this act, in which tangible personal property is offered for sale, sold, or transferred and delivered by the owner.

(k) The sale of oxygen for human use dispensed pursuant to a prescription.

(*l*) The sale of insulin for human use.

(m) Before January 1, 2016, the sale of tangible personal property for use in construction or renovation of a qualified convention facility under the regional convention facility authority act, 2008 PA 554, MCL 141.1351 to 141.1379. As used in this subdivision, "qualified convention facility" means that term as defined in section 5 of the regional convention facility authority act, 2008 PA 554, MCL 141.1355.

(n) The sale of tangible personal property for use in eligible activities described in section 2(o)(*iv*) of the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2652, on eligible property that is included in a transformational brownfield plan, to the extent that the tangible personal property will be affixed to and made a structural part of the real property or infrastructure improvements included within the transformational brownfield plan. As used in this subdivision, "eligible property", "infrastructure improvements", and "transformational brownfield plan" mean those terms as defined in section 2 of the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2652.

History: Add. 2004, Act 173, Eff. Sept. 1, 2004;—Am. 2008, Act 556, Eff. Jan. 20, 2009;—Am. 2014, Act 53, Imd. Eff. Mar. 25, 2014;—Am. 2017, Act 48, Eff. July 24, 2017.

Compiler's note: Former MCL 205.54d, which pertained to tax exemption for existing contracts, was repealed by Act 257 of 1998, Imd. Eff. July 17, 1998.

205.54e Sales of vehicles to members of armed forces.

Sec. 4e. A sale of a vehicle from a Michigan retailer for titling and registration in his or her home state of residency or domicile to a nonresident person of Michigan actually serving in the United States armed forces is exempt from the tax under this act. At the time of sale or purchase, the purchaser shall provide a sworn statement to the vendor from the immediate commanding officer of the purchaser certifying that the purchaser claiming the exemption is a member of the armed forces on active duty and furnishing the recorded domiciliary or home address of the purchaser.

History: Add. 1969, Act 204, Imd. Eff. Aug. 6, 1969;—Am. 2004, Act 173, Eff. Sept. 1, 2004.

205.54f Commissions paid to entities exempt under MCL 205.54a; exemptions.

Sec. 4f. Commissions paid to an entity exempt under the provisions of section 4a from sales of tangible personal property dispensed through a nonelectrically operated vending machine containing unsorted confections, nuts, or merchandise which, upon insertion of a coin dispenses the same in substantially equal portions, at random and without selection by the customer, and where the consideration is 10 cents or less, are exempt from the tax under this act.

History: Add. 1974, Act 100, Imd. Eff. May 14, 1974;—Am. 2004, Act 173, Eff. Sept. 1, 2004.

205.54g Sales exempt from tax; tax on sale of food or drink from vending machine; definitions.

Sec. 4g. (1) The following are exempt from the tax under this act:

(a) Sales of drugs for human use that can only be legally dispensed by prescription, over-the-counter drugs for human use that are legally dispensed by prescription, or food or food ingredients, except prepared food intended for immediate human consumption. As used in this subdivision, "over-the-counter drug" means a drug that is labeled in accordance with the format and content requirements required for labeling over-the-counter drugs under 21 CFR 201.66.

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(b) The deposit on a returnable container for a beverage or the deposit on a carton or case that is used for returnable containers.

(c) Food or tangible personal property purchased under the federal food stamp program or meals sold by a person exempt from the tax under this act that are eligible to be purchased under the federal food stamp program.

(d) Fruit or vegetable seeds and fruit or vegetable plants if purchased at a place of business authorized to accept food stamps by the Food and Nutrition Service of the United States Department of Agriculture or a place of business that has made a complete and proper application for authorization to accept food stamps but has been denied authorization and provides proof of denial to the department of treasury.

(e) Live animals purchased with the intent to be slaughtered for human consumption.

(2) Food or drink heated or cooled mechanically, electrically, or by other artificial means to an average temperature above 75 degrees Fahrenheit or below 65 degrees Fahrenheit before sale and sold from a vending machine, except milk, nonalcoholic beverages in a sealed container, and fresh fruit, is subject to the tax under this act. The tax due under this act on the sale of food or drink from a vending machine selling both taxable items and items exempt under this subsection shall be calculated under this act based on 1 of the following as determined by the taxpayer:

(a) Actual gross proceeds from sales at retail.

(b) Forty-five percent of proceeds from the sale of items subject to tax under this act or exempt from the tax levied under this act, other than from the sale of carbonated beverages.

(3) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food ingredients do not include alcoholic beverages and tobacco.

(4) "Prepared food" means the following:

(a) Food sold in a heated state or that is heated by the seller.

(b) Two or more food ingredients mixed or combined by the seller for sale as a single item.

(c) Food sold with eating utensils provided by the seller, including knives, forks, spoons, glasses, cups, napkins, straws, or plates, but not including a container or packaging used to transport the food.

(5) Prepared food does not include the following:

(a) Food that is only cut, repackaged, or pasteurized by the seller.

(b) Raw eggs, fish, meat, poultry, and foods containing those raw items requiring cooking by the consumer in recommendations contained in section 3-401.11 of part 3-4 of chapter 3 of the 2001 food code published by the Food and Drug Administration of the Public Health Service of the Department of Health and Human Services, to prevent foodborne illness.

(c) Food sold in an unheated state by weight or volume as a single item, without eating utensils.

(d) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, doughnuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas, sold without eating utensils.

(6) "Prepared food intended for immediate consumption" means prepared food.

History: Add. 1974, Act 310, Eff. Jan. 1, 1975;—Am. 1978, Act 275, Imd. Eff. July 3, 1978;—Am. 1987, Act 121, Eff. Oct. 1, 1987;—Am. 1991, Act 87, Imd. Eff. July 18, 1991;—Am. 1992, Act 266, Imd. Eff. Dec. 14, 1992;—Am. 1994, Act 49, Eff. May 1, 1994;—Am. 1995, Act 63, Imd. Eff. May 31, 1995;—Am. 1996, Act 576, Imd. Eff. Jan. 16, 1997;—Am. 1998, Act 60, Imd. Eff. Apr. 20, 1998;—Am. 1999, Act 116, Imd. Eff. July 14, 1999;—Am. 2000, Act 329, Eff. Oct. 1, 2001;—Am. 2000, Act 417, Imd. Eff. Jan. 8, 2001;—Am. 2004, Act 173, Eff. Sept. 1, 2004;—Am. 2008, Act 438, Imd. Eff. Jan. 9, 2009;—Am. 2013, Act 211, Eff. Mar. 14, 2014;—Am. 2015, Act 171, Imd. Eff. Nov. 3, 2015.

Compiler's note: Enacting sections 1 and 2 of Act 116 of 1999 provide:

"Enacting section 1. Sections 4g and 4r of this amendatory act are effective for taxes levied after April 30, 1999.

"Enacting section 2. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, a taxpayer may exclude a sale of tangible personal property from gross proceeds only to the extent that the property is used for exempt purposes. For telecommunications equipment exempt under section 4v of the general sales tax act, 1933 PA 167, MCL 205.54v, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

Enacting section 1 of Act 171 of 2015 provides:

"Enacting section 1. This amendatory act is retroactive and effective beginning March 14, 2014."

205.54h Exemptions.

Sec. 4h. Sales to the United States, its unincorporated agencies and instrumentalities, any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States, the American Red Cross and its chapters and branches, and this state or its departments and institutions or any of its political subdivisions are exempt from the tax under this act.

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History: Add. 2004, Act 173, Eff. Sept. 1, 2004.

Compiler's note: Former MCL 205.54h, which pertained to exemption of property sold for solar, wind, or water energy conservation device, was repealed by Act 190 of 1983, Eff. Jan. 1, 1984.

205.54i Bad debt; definitions; deduction; amount; payment of bad debt; liability; written election designating party claiming deduction; evidence required to support claim for deduction; change in tax rate; review; taxpayer under streamlined sales and use tax agreement.

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

(a) "Bad debt" means any portion of a debt that is related to a sale at retail taxable under this act for which gross proceeds are not otherwise deductible or excludable and that is eligible to be claimed, or could be eligible to be claimed if the taxpayer kept accounts on an accrual basis, as a deduction pursuant to section 166 of the internal revenue code, 26 USC 166. A bad debt shall not include any finance charge, interest, or sales tax on the purchase price, uncollectible amounts on property that remains in the possession of the taxpayer until the full purchase price is paid, expenses incurred in attempting to collect any account receivable or any portion of the debt recovered, any accounts receivable that have been sold to and remain in the possession of a third party for collection, and repossessed property.

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

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

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

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

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

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

(e) "Taxpayer" means a person that has remitted sales tax directly to the department on the specific sales at retail transaction for which the bad debt is recognized for federal income tax purposes or, after September 30, 2009, a lender holding the account receivable for which the bad debt is recognized, or would be recognized if the claimant were a corporation, for federal income tax purposes.

(2) In computing the amount of tax levied under this act for any month, a taxpayer may deduct the amount of bad debts from his or her gross proceeds used for the computation of the tax. The amount of gross proceeds deducted must be charged off as uncollectible on the books and records of the taxpayer at the time the debt becomes worthless and deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and must be eligible to be deducted for federal income tax purposes. For purposes of this section, a claimant who is not required to file a federal income tax return may deduct a bad debt on a return filed for the period in which the bad debt becomes worthless and is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return. If a consumer or other person pays all or part of a bad debt with respect to which a taxpayer claimed a deduction under this section, the taxpayer is liable for the amount of taxes deducted in connection with that portion of the debt for which payment is received and shall remit these taxes in his or her next payment to the department. Any payments made on a bad debt shall be applied proportionally first to the taxable price of the property and the tax on the property and second to any interest, service, or other charge.

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

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

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

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

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on the sale that constitutes the bad debt.

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

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

History: Add. 1982, Act 23, Eff. Jan. 1, 1984;—Am. 2004, Act 173, Eff. Sept. 1, 2004;—Am. 2007, Act 105, Imd. Eff. Oct. 1, 2007.

Compiler's note: Former MCL 205.54i, pertaining to tax exemption for qualified passenger automobile, claims for reimbursement, and sales agreements, expired by its own terms on August 1, 1980. Subsection (5) of former MCL 205.54i read:

"This section shall expire August 1, 1980, except that it shall be effective for bona fide purchase orders submitted to and accepted by, before August 1, 1980, a person subject to tax under this act."

Enacting section 1 of 2007 PA 105 provides:

"Enacting section 1. This amendatory act is curative and shall be retroactively applied, expressing the original intent of the legislature that a deduction for a bad debt for a taxpayer under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, is available exclusively to those persons with the legal liability to remit the tax on the specific sale at retail for which the bad debt deduction is recognized for federal income tax purposes, and correcting any misinterpretation of the meaning of the term "taxpayer" that may have been caused by the Michigan court of appeals decision in Daimler Chrysler Services North America LLC v Department of Treasury, No. 264323. However, this amendatory act is not intended to affect a refund required by a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired if the refund is payable without interest and after September 30, 2009 and before November 1, 2009."

205.54j Sale of tangible personal property for use in qualified business activity of purchaser; definition.

Sec. 4j. (1) A sale of tangible personal property used in a qualified business activity of the purchaser is exempt from the tax under this act.

(2) As used in this section, "qualified business activity" means that term as defined in the enterprise zone act, 1985 PA 224, MCL 125.2101 to 125.2123.

History: Add. 1985, Act 225, Imd. Eff. Jan. 13, 1986;—Am. 1999, Act 116, Imd. Eff. July 14, 1999;—Am. 2004, Act 173, Eff. Sept. 1, 2004.

Compiler's note: Enacting section 2 of Act 116 of 1999 provides:

“Enacting section 2. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, a taxpayer may exclude a sale of tangible personal property from gross proceeds only to the extent that the property is used for exempt purposes. For telecommunications equipment exempt under section 4v of the general sales tax act, 1933 PA 167, MCL 205.54v, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a.”

205.54k Drop shipment; definition.

Sec. 4k. (1) The sale of tangible personal property that is part of a drop shipment is exempt from the tax under this act if the taxpayer complies with the requirements of subsection (3).

(2) As used in this section, "drop shipment" means the direct delivery of tangible personal property to a purchaser in Michigan by a person who has sold the property to another person not licensed under this act but possessing a resale or exemption certificate, other written evidence of exemption authorized by another state, or any other acceptable information evidencing qualification for a resale exemption, for resale to the Michigan purchaser.

(3) For each transaction for which an exemption is claimed under subsection (1), the taxpayer shall provide, but not more frequently than annually, any information required by the board under the streamlined sales and use tax agreement in addition to the following information in a form prescribed by the department to the department:

(a) The name, address, and, if readily available, the federal taxpayer identification number of the person to whom the property is sold for resale.

(b) The name, address, and, if readily available, the federal taxpayer identification number of the person to whom the property is shipped in Michigan.

(4) A sale at retail includes a drop shipment.

History: Add. 1986, Act 42, Imd. Eff. Mar. 17, 1986;—Am. 2004, Act 173, Eff. Sept. 1, 2004;—Am. 2008, Act 438, Imd. Eff. Jan. 9, 2009.

205.54l Repealed. 2004, Act 173, Eff. Sept. 1, 2004.

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Compiler's note: The repealed section pertained to sale of tangible personal property to business engaged in high technology activity.

205.54m Sale of rail freight or passenger cars, locomotives or other rolling stock, roadway machines and certain work equipment; exemption.

Sec. 4m. A sale of rail freight or passenger cars, locomotives or other rolling stock, roadway machines and work equipment primarily of a flanged wheel nature, accessories, attachments including parts and materials used for repair, lubricants, or fuel, used in rail operations is exempt from the tax under this act. This exemption does not include vehicles licensed and titled for use on public highways.

History: Add. 1993, Act 238, Imd. Eff. Nov. 15, 1993;—Am. 2004, Act 173, Eff. Sept. 1, 2004.

Compiler's note: Another Sec. 4m, as added by Act 325 of 1993, was originally compiled at MCL 205.54m[1], to distinguish it from this Sec. 4m, as added by Act 238 of 1993. Former MCL 205.54m[1], which pertained to sale of material purchased in business of constructing, altering, repairing, or improving real estate, was repealed by Act 173 of 2004, Eff. Sept. 1, 2004.

205.54n Sale of electricity, natural or artificial gas, home heating fuels, or steam; exemption from sales tax at additional rate; application of additional rate.

Sec. 4n. The sale for residential use of electricity, natural or artificial gas, or home heating fuels is exempt from the sales tax at the additional rate of 2% approved by the electors on March 15, 1994. For purposes of applying the sales tax at the additional rate of 2% to the sale of electricity, natural or artificial gas, or steam, the taxpayer, with respect to all its customers to which the additional rate of 2% applies, shall prorate usage for a period that includes May 1, 1994 based on the number of days occurring after April 30, 1994 if the taxpayer has 100,000 or more customers in this state. If the taxpayer has less than 100,000 customers in this state, the taxpayer shall either prorate usage for a period that includes May 1, 1994 based on the number of days occurring after April 30, 1994, or shall apply the additional rate of 2% beginning with the first bill that covers a usage period that begins after April 30, 1994.

History: Add. 1994, Act 111, Imd. Eff. Apr. 29, 1994.

Compiler's note: Another Sec. 4n, as added by Act 156 of 1994, was compiled at MCL 205.54n[1] to distinguish it from this Sec. 54n, deriving from Act 111 of 1994. Former MCL 205.54n[1], which pertained to sales of tangible personal property not for resale, was repealed by Act 258 of 1998, Imd. Eff. July 17, 1998. See now MCL 205.54q.

205.54o School, church, hospital, parent cooperative preschool, or nonprofit organization; sale of tangible personal property for fund-raising purposes; exemption; "school" defined; veterans' organization; sale of tangible personal property for raising funds for benefit of active duty service member or veteran; exemption; definitions.

Sec. 4o. (1) The sale of the first $10,000.00 of tangible personal property in a calendar year for fund-raising purposes by a school, church, hospital, parent cooperative preschool, or nonprofit organization that has a tax-exempt status under section 4q(1)(a) or (b) and that has aggregate sales at retail in the calendar year of less than $25,000.00 are exempt from the tax under this act.

(2) A club, association, auxiliary, or other organization affiliated with a school, church, hospital, parent cooperative preschool, or nonprofit organization with a tax-exempt status under section 4q(1)(a) or (b) is not considered a separate person for purposes of this exemption. As used in this section, "school" means each elementary, middle, junior, or high school site within a local school district that represents a district attendance area as established by the board of the local school district.

(3) Except as otherwise limited under this subsection, the sale of tangible personal property by a veterans' organization that is exempt from federal income tax under section 501(c)(19) of the internal revenue code, 26 USC 501, for the purpose of raising funds for the benefit of an active duty service member or a veteran is exempt from the tax under this act. The exemption under this subsection is limited to $25,000.00 in aggregate sales of tangible personal property for each individual fund-raising event. A club, association, auxiliary, or other organization affiliated with a veterans' organization that is exempt from federal income tax under section 501(c)(19) of the internal revenue code, 26 USC 501, is not considered a separate person for purposes of this exemption. As used in this subsection:

(a) "Active duty" means active duty pursuant to an executive order of the President of the United States, an act of Congress, or an order of the governor.

(b) "Armed Forces of the United States" means the Army, Air Force, Navy, Marine Corps, Coast Guard, or other military force designated by Congress as a part of the Armed Forces of the United States.

(c) "Service member" means a member of the Armed Forces of the United States, a reserve branch of the Armed Forces of the United States, or the National Guard.

(d) "Veteran" means any of the following:

(*i*) A person who served on active duty in the Armed Forces of the United States for a period of more than

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180 days and separated from the Armed Forces of the United States in a manner other than a dishonorable discharge.

(*ii*) A person discharged or released from active duty because of a service-related disability.

(*iii*) A member of a reserve branch of the Armed Forces of the United States at the time he or she was ordered to active duty pursuant to subtitle E of title 10 of the United States Code, 10 USC 10001 to 18506, who served on active duty during a period of war, or in a campaign or expedition for which a campaign badge is authorized, and was released from active duty in a manner other than a dishonorable discharge.

History: Add. 1994, Act 156, Imd. Eff. June 13, 1994;—Am. 2004, Act 173, Eff. Sept. 1, 2004;—Am. 2016, Act 503, Eff. Apr. 9, 2017;—Am. 2018, Act 249, Eff. Sept. 26, 2018.

Compiler's note: The cite to section 4(n)(1)(a) or (b) in subsections (1) and (2) was originally compiled as MCL 205.54n[1], was repealed by Act 258 of 1988, Imd. Eff. July 17, 1998, and pertained to sales of tangible personal property. See now MCL 205.54q.

205.54p Property offered to or made structural part of sanctuary; exemption; "regularly organized church or house of religious worship" and "sanctuary" defined.

Sec. 4p. (1) A sale of tangible personal property purchased by a person engaged in the business of constructing, altering, repairing, or improving real estate for others if the property is to be affixed to or made a structural part of a sanctuary is exempt from the tax under this act.

(2) As used in this section:

(a) "Regularly organized church or house of religious worship" means a religious organization qualified under section 501(c)(3) of the internal revenue code, 26 USC 501.

(b) "Sanctuary" means only that portion of a building that is owned and occupied by a regularly organized church or house of religious worship that is used predominantly and regularly for public worship. Sanctuary includes a sanctuary to be constructed that will be owned and occupied by a regularly organized church or house of religious worship and that will be used predominantly and regularly for public worship.

History: Add. 1998, Act 274, Imd. Eff. July 22, 1998;—Am. 2004, Act 173, Eff. Sept. 1, 2004.

205.54q Sales of tangible personal property not for resale; exemption; applicability; duties of transferee; evidence of exemption; limitation.

Sec. 4q. (1) A sale of tangible personal property not for resale to the following, subject to subsection (5), is exempt from the tax under this act:

(a) A health, welfare, educational, cultural arts, charitable, or benevolent organization not operated for profit that has been issued an exemption ruling letter to purchase items exempt from tax before July 17, 1998 signed by the administrator of the sales, use, and withholding taxes division of the department.

(b) An organization not operated for profit and exempt from federal income tax under section 501(c)(3) or 501(c)(4) of the internal revenue code, 26 USC 501.

(c) An organization not operated for profit and exempt from federal income tax under section 501(c)(19) of the internal revenue code, 26 USC 501.

(2) The exemptions provided for in subsection (1) do not apply to any of the following:

(a) Sales of tangible personal property and sales of vehicles licensed for use on public highways that are not used primarily to carry out the purposes of the organization or to raise funds or obtain resources necessary to carry out the purposes of the organization as stated in the bylaws or articles of incorporation of the exempt entity.

(b) Sales of tangible personal property or vehicles used for purposes of raising funds or obtaining resources if the sales price exceeds the following:

(*i*) For an organization exempt under subsection (1)(a) or (b), $5,000.00.

(*ii*) For an organization exempt under subsection (1)(c), $25,000.00.

(3) At the time of the transfer of the tangible personal property exempt under subsection (1), the transferee shall do 1 of the following:

(a) Present the exemption ruling letter signed by the administrator of the sales, use, and withholding taxes division of the department certifying that the property is to be used or consumed in connection with the operation of the organization.

(b) Present a signed statement, on a form approved by the department, stating that the property is to be used or consumed in connection with the operation of the organization, to carry out the purpose or purposes of the organization, or to raise funds or obtain resources necessary for the operation of the organization, that the organization qualifies as an exempt organization under this section, and that the sales price of any single item of tangible personal property or vehicle purchased for purposes of raising funds or obtaining resources does not exceed the applicable cap amount established in subsection (2)(b). The transferee shall also provide to the transferor a copy of the federal exemption letter. However, a copy of the federal exemption letter is not

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required if the organization is exempt from filing an application for exempt status with the internal revenue service.

(4) The letter provided under subsection (3)(a) and the statement with the accompanying letter provided under subsection (3)(b) shall be accepted by all courts as prima facie evidence of the exemption and the statement shall provide that if the claim for tax exemption is disallowed, the transferee will reimburse the transferor for the amount of tax involved.

(5) The tangible personal property under subsection (1) is exempt only to the extent that the property is used to carry out the purposes of the organization or to raise funds or obtain resources necessary to carry out the purposes of the organization as stated in the organization's bylaws or articles of incorporation. The exemption for purposes of carrying out the purposes of the organization as stated in its bylaws or articles of incorporation is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department. The exemption for any single item of tangible personal property or vehicle used to raise funds or obtain resources is limited to a sales price that does not exceed $5,000.00 for an organization exempt under subsection (1)(a) or (b) and $25,000.00 for an organization exempt under subsection (1)(c).

History: Add. 1998, Act 258, Imd. Eff. July 17, 1998;—Am. 1999, Act 116, Imd. Eff. July 14, 1999;—Am. 2004, Act 173, Eff. Sept. 1, 2004;—Am. 2012, Act 573, Eff. Mar. 28, 2013;—Am. 2018, Act 530, Eff. Mar. 28, 2019.

Compiler's note: Enacting section 2 of Act 116 of 1999 provides:

"Enacting section 2. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, a taxpayer may exclude a sale of tangible personal property from gross proceeds only to the extent that the property is used for exempt purposes. For telecommunications equipment exempt under section 4v of the general sales tax act, 1933 PA 167, MCL 205.54v, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

205.54r Qualified truck, trailer, or rolling stock; exemption; definitions.

Sec. 4r. (1) All of the following are exempt from the tax under this act:

(a) The product of the out-of-state usage percentage and the gross proceeds otherwise taxable under this act from the sale of a qualified truck or a trailer designed to be drawn behind a qualified truck, purchased after December 31, 1996 and before May 1, 1999 by an interstate motor carrier and used in interstate commerce.

(b) A sale of rolling stock purchased by an interstate motor carrier or for rental or lease to an interstate motor carrier and used in interstate commerce.

(2) As used in this section:

(a) "Interstate motor carrier" means a person engaged in the business of carrying persons or property, other than themselves, their employees, or their own property, for hire across state lines, whose fleet mileage was driven at least 10% outside of this state in the immediately preceding tax year.

(b) "Out-of-state usage percentage" is a fraction, the numerator of which is the number of miles driven outside of this state in the immediately preceding tax year by qualified trucks used by the interstate motor carrier and the denominator of which is the total miles driven in the immediately preceding tax year by qualified trucks used by the interstate motor carrier. Miles driven by qualified trucks used solely in intrastate commerce shall not be included in calculating the out-of-state usage percentage.

(c) "Qualified truck" means a commercial motor vehicle power unit that has 2 axles and a gross vehicle weight rating in excess of 10,000 pounds or a commercial motor vehicle power unit that has 3 or more axles.

(d) "Rolling stock" means a qualified truck, a trailer designed to be drawn behind a qualified truck, and parts or other tangible personal property affixed to or to be affixed to and directly used in the operation of either a qualified truck or a trailer designed to be drawn behind a qualified truck.

History: Add. 1999, Act 116, Imd. Eff. July 14, 1999;—Am. 2004, Act 173, Eff. Sept. 1, 2004;—Am. 2012, Act 467, Imd. Eff. Dec. 27, 2012.

Compiler's note: Enacting sections 1 and 2 of Act 116 of 1999 provide:

"Enacting section 1. Sections 4g and 4r of this amendatory act are effective for taxes levied after April 30, 1999.

"Enacting section 2. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, a taxpayer may exclude a sale of tangible personal property from gross proceeds only to the extent that the property is used for exempt purposes. For telecommunications equipment exempt under section 4v of the general sales tax act, 1933 PA 167, MCL 205.54v, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

Enacting section 1 of Act 467 of 2012 provides:

"Enacting section 1. This amendatory act is curative and intended to clarify the original intent of 1999 PA 116."

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205.54s Sale of investment coins and bullion; exemptions; definitions.

Sec. 4s. (1) A sale of investment coins and bullion is exempt from the tax under this act.

(2) As used in this section:

(a) "Bullion" means gold, silver, or platinum in a bulk state, where its value depends on its content rather than its form, with a purity of not less than 900 parts per 1,000.

(b) "Investment coins" means numismatic coins or other forms of money and legal tender manufactured of gold, silver, platinum, palladium, or other metal and issued by the United States government or a foreign government with a fair market value greater than the face value of the coins.

History: Add. 1999, Act 105, Imd. Eff. July 7, 1999;—Am. 2004, Act 173, Eff. Sept. 1, 2004.

205.54t Exemptions; limitation; industrial processing; definitions.

Sec. 4t. (1) The sale of tangible personal property to the following after March 30, 1999, subject to subsection (2), is exempt from the tax under this act:

(a) An industrial processor for use or consumption in industrial processing.

(b) A person, whether or not the person is an industrial processor, if the tangible personal property is intended for ultimate use in and is used in industrial processing by an industrial processor.

(c) A person, whether or not the person is an industrial processor, if the tangible personal property is used by that person to perform an industrial processing activity for or on behalf of an industrial processor.

(d) A person, whether or not the person is an industrial processor, if the tangible personal property is 1 of the following:

(*i*) A computer used in operating industrial processing equipment.

(*ii*) Equipment used in a computer assisted manufacturing system.

(*iii*) Equipment used in a computer assisted design or engineering system integral to an industrial process.

(*iv*) A subunit or electronic assembly comprising a component in a computer integrated industrial processing system.

(*v*) Computer equipment used in connection with the computer assisted production, storage, and transmission of data if the equipment would have been exempt had the data transfer been made using tapes, disks, CD-ROMs, or similar media by a company whose business includes publishing doctoral dissertations and information archiving, and that sells the majority of the company's products to nonprofit organizations exempt under section 4q.

(*vi*) Equipment used in the production of prewritten computer software or software modified or adapted to the user's needs or equipment by the seller, only if the software is available for sale from a seller of software on an as-is basis or as an end product without modification or adaptation.

(2) The property under subsection (1) is exempt only to the extent that the property is used for the exempt purpose stated in this section. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

(3) Industrial processing includes the following activities:

(a) Production or assembly.

(b) Research or experimental activities.

(c) Engineering related to industrial processing.

(d) Inspection, quality control, or testing to determine whether particular units of materials or products or processes conform to specified parameters at any time before materials or products first come to rest in finished goods inventory storage.

(e) Planning, scheduling, supervision, or control of production or other exempt activities.

(f) Design, construction, or maintenance of production or other exempt machinery, equipment, and tooling.

(g) Remanufacturing.

(h) Processing of production scrap and waste up to the point it is stored for removal from the plant of origin.

(i) Recycling of used materials for ultimate sale at retail or reuse.

(j) Production material handling.

(k) Storage of in-process materials.

(4) Property that is eligible for an industrial processing exemption includes the following:

(a) Property that becomes an ingredient or component part of the finished product to be sold ultimately at retail.

(b) Machinery, equipment, tools, dies, patterns, foundations for machinery or equipment, or other processing equipment used in an industrial processing activity and in their repair and maintenance.

(c) Property that is consumed or destroyed or that loses its identity in an industrial processing activity.

(d) Tangible personal property, not permanently affixed and not becoming a structural part of real estate,

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that becomes a part of, or is used and consumed in installation and maintenance of, systems used for an industrial processing activity.

(e) Fuel or energy used or consumed for an industrial processing activity.

(f) Machinery, equipment, or materials used within a plant site or between plant sites operated by the same person for movement of tangible personal property in the process of production. Property exempt under this subdivision includes front end loaders, forklifts, pettibone lifts, skidsters, multipurpose loaders, knuckle-boom log loaders, tractors, and log loaders used to unload logs from trucks at a saw mill site for the purpose of processing at the site and to load lumber onto trucks at a saw mill site for purposes of transportation from the site.

(g) Office equipment, including data processing equipment, used for an industrial processing activity.

(h) Tangible personal property used or consumed in an industrial processing activity to produce alcoholic beverages that are sold at retail by that industrial processor through its own retail locations.

(5) Property that is not eligible for an industrial processing exemption includes the following:

(a) Tangible personal property permanently affixed and becoming a structural part of real estate including building utility systems such as heating, air conditioning, ventilating, plumbing, lighting, and electrical distribution, to the point of the last transformer, switch, valve, or other device at which point usable power, water, gas, steam, or air is diverted from distribution circuits for use in industrial processing.

(b) Office equipment, including data processing equipment used for nonindustrial processing purposes.

(c) Office furniture or office supplies.

(d) An industrial processor's own product or finished good that it uses or consumes for purposes other than industrial processing.

(e) Tangible personal property used for receiving and storage of materials, supplies, parts, or components purchased by the user or consumer.

(f) Tangible personal property used for receiving or storage of natural resources extracted by the user or consumer.

(g) Vehicles, including special bodies or attachments, required to display a vehicle permit or license plate to operate on public highways, except for a vehicle bearing a manufacturer's plate or a specially designed vehicle, together with parts, used to mix and agitate materials at a plant or job site in the concrete manufacturing process.

(h) Tangible personal property used for the preparation of food or beverages by a retailer for ultimate sale at retail through its own locations, except as provided in subsection (4)(h).

(i) Tangible personal property used or consumed for the preservation or maintenance of a finished good once it first comes to rest in finished goods inventory storage.

(j) Returnable shipping containers or materials, except as provided in subsection (4)(f).

(k) Tangible personal property used in the production of computer software originally designed for the exclusive use and special needs of the purchaser.

(6) Industrial processing does not include the following activities:

(a) Purchasing, receiving, or storage of raw materials.

(b) Sales, distribution, warehousing, shipping, or advertising activities.

(c) Administrative, accounting, or personnel services.

(d) Design, engineering, construction, or maintenance of real property and nonprocessing equipment.

(e) Plant security, fire prevention, or medical or hospital services.

(7) As used in this section:

(a) "Industrial processing" means the activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to be ultimately sold at retail. Industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory storage.

(b) "Industrial processor" means a person who performs the activity of converting or conditioning tangible personal property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail.

(c) "Product", as used in subdivision (e), includes, but is not limited to, a prototype, pilot model, process, formula, invention, technique, patent, or similar property, whether intended to be used in a trade or business or to be sold, transferred, leased, or licensed.

(d) "Remanufacturing" means the activity of overhauling, retrofitting, fabricating, or repairing a product or its component parts for ultimate sale at retail.

(e) "Research or experimental activity" means activity incident to the development, discovery, or modification of a product or a product related process. Research or experimental activity also includes activity

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necessary for a product to satisfy a government standard or to receive government approval. Research or experimental activity does not include the following:

(*i*) Ordinary testing or inspection of materials or products for quality control purposes.

(*ii*) Efficiency surveys.

(*iii*) Management surveys.

(*iv*) Market or consumer surveys.

(*v*) Advertising or promotions.

(*vi*) Research in connection with literacy, historical, or similar projects.

History: Add. 1999, Act 116, Imd. Eff. July 14, 1999;—Am. 2004, Act 173, Eff. Sept. 1, 2004;—Am. 2010, Act 116, Imd. Eff. July 13, 2010;—Am. 2015, Act 205, Imd. Eff. Nov. 30, 2015.

Compiler's note: Enacting section 2 of Act 116 of 1999 provides:

"Enacting section 2. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, a taxpayer may exclude a sale of tangible personal property from gross proceeds only to the extent that the property is used for exempt purposes. For telecommunications equipment exempt under section 4v of the general sales tax act, 1933 PA 167, MCL 205.54v, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

205.54u Extractive operation; exemptions; definition.

Sec. 4u. (1) A sale of tangible personal property to an extractive operator for use or consumption in extractive operations is exempt from the tax under this act.

(2) The property under subsection (1) is exempt only to the extent that the property is used for the exempt purposes stated in this section. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

(3) Extractive operations include the actual production of oil, gas, brine, or other natural resources. Property eligible for the exemption includes the following:

(a) Casing pipe or drive pipe.

(b) Tubing.

(c) Well-pumping equipment.

(d) Chemicals.

(e) Explosives or acids used in fracturing, acidizing, or shooting wells.

(f) Christmas trees, derricks, or other wellhead equipment.

(g) Treatment tanks.

(h) Piping, valves, or pumps used before movement or transportation of the natural resource from the production area.

(i) Chemicals or acids used in the treatment of crude oil, gas, brine, or other natural resources.

(j) Tangible personal property used or consumed in depositing tailings from hard rock mining processing.

(k) Tangible personal property used or consumed in extracting the lithologic units necessary to process iron ore.

(4) The extractive operation exemption does not include the following:

(a) Tangible personal property consumed or used in the construction, alteration, improvement, or repair of buildings, storage tanks, and storage and housing facilities.

(b) Tangible personal property consumed or used in transporting the product from the place of extraction, except for tangible personal property consumed or used in transporting extracted materials from the extraction site to the place where the extracted materials first come to rest in finished goods inventory storage.

(c) Tangible personal property that is a product the extractive operator produces and that is consumed or used by the extractive operator for a purpose other than the manufacturing or producing of a product for ultimate sale. The extractor shall account for and remit the tax to this state based upon the product's fair market value.

(d) Equipment, materials, and supplies used in exploring, prospecting, or drilling for oil, gas, brine, or other natural resources.

(e) Equipment, materials, and supplies used in the storing, withdrawing, or distribution of oil, gas, or brine from a storage facility.

(f) Vehicles, including special bodies or attachments, required to display a vehicle permit or license plate to operate on public highways.

(5) As used in this section:

(a) "Extractive operations" means the activity of taking or extracting for resale ore, oil, gas, coal, timber, stone, gravel, clay, minerals, or other natural resource material. An extractive operation begins when contact

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is made with the actual type of natural raw product being recovered. Extractive operation includes all necessary processing operations before shipment from the place of extraction. Extractive operations include all necessary processing operations and movement of the natural resource material until the point at which the natural raw product being recovered first comes to rest in finished goods inventory storage at the extraction site. Extractive operations for timber include transporting timber from the point of extraction to a place of temporary storage at the extraction site and loading or transporting timber from a place of temporary storage at the extraction site to a vehicle or other equipment located at the extraction site that will remove the timber from the extraction site.

(b) An extractive operator is a person who, either directly or by contract, performs extractive operations.

History: Add. 1999, Act 116, Imd. Eff. July 14, 1999;—Am. 2004, Act 173, Eff. Sept. 1, 2004;—Am. 2008, Act 556, Eff. Jan. 20, 2009.

Compiler's note: Enacting section 2 of Act 116 of 1999 provides:

"Enacting section 2. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, a taxpayer may exclude a sale of tangible personal property from gross proceeds only to the extent that the property is used for exempt purposes. For telecommunications equipment exempt under section 4v of the general sales tax act, 1933 PA 167, MCL 205.54v, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

205.54v Central office equipment or wireless equipment; presumption.

Sec. 4v. (1) The tax levied under this act does not apply to the purchase of machinery and equipment for use or consumption in the rendition of any combination of services, the use or consumption of which is taxable under section 3a(1)(a) or (c) or section 3b of the use tax act, 1937 PA 94, MCL 205.93a and 205.93b, except that this exemption is limited to the tangible personal property located on the premises of the subscriber and to central office equipment or wireless equipment, directly used or consumed in transmitting, receiving, or switching, or in the monitoring of switching of a 2-way interactive communication. As used in this subsection, central office equipment or wireless equipment does not include distribution equipment including cable or wire facilities.

(2) Beginning April 1, 1999, the property under subsection (1) is exempt only to the extent that the property is used for the exempt purposes stated in this section. There is an irrebuttable presumption that 90% of total use is for exempt purposes.

History: Add. 1999, Act 116, Imd. Eff. July 14, 1999;—Am. 2002, Act 452, Imd. Eff. June 21, 2002;—Am. 2006, Act 669, Imd. Eff. Jan. 10, 2007.

Compiler's note: Enacting section 2 of Act 116 of 1999 provides:

"Enacting section 2. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, a taxpayer may exclude a sale of tangible personal property from gross proceeds only to the extent that the property is used for exempt purposes. For telecommunications equipment exempt under section 4v of the general sales tax act, 1933 PA 167, MCL 205.54v, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

205.54w Nonprofit hospital or nonprofit housing; sale of personal property to person in business of constructing, altering, repairing, or improving real estate; tax exemption; definitions.

Sec. 4w. (1) For taxes levied after June 30, 1999, a sale of tangible personal property to a person directly engaged in the business of constructing, altering, repairing, or improving real estate for others to the extent that the property is affixed to and made a structural part of a nonprofit hospital or a nonprofit housing entity qualified as exempt under section 15a of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1415a, is exempt from the tax under this act. For purposes of a county long-term medical care facility, "affixed to and made a structural part of" means any physical connection to an existing county long-term medical care facility.

(2) An exemption shall not be granted under this section for any portion of property otherwise qualifying for exemption under this section if income or a benefit inures directly or indirectly to an individual, private stockholder, or other private person from the independent or nonessential operation of that portion of property.

(3) As used in this section:

(a) "Nonprofit hospital" means 1 of the following:

(*i*) That portion of a building to which 1 of the following applies:

(A) Is owned or operated by an entity exempt under section 501(c)(3) of the internal revenue code, 26 USC

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501, that is licensed as a hospital under part 215 of the public health code, 1978 PA 368, MCL 333.21501 to 333.21571.

(B) Is owned or operated by a governmental unit in which medical attention is provided.

(C) Is owned or operated by an entity or entities exempt under section 501(c)(2) or (3) of the internal revenue code, 26 USC 501, in which medical attention is provided.

(*ii*) That portion of real property necessary and related to a building described in subparagraph (*i*) in which medical attention is provided.

(*iii*) A county long-term medical care facility, including any addition to an existing county long-term medical care facility, if the addition is owned and operated by the county long-term medical care facility and offers health services provided by the county long-term medical care facility. For purposes of this subparagraph, "addition" includes a freestanding building as long as that freestanding building is operated under the same license held by the county long-term medical care facility and continues to offer the same health services as the county long-term medical care facility in that freestanding building. An exemption under this section shall be granted until January 1, 2008, regardless of whether the addition is licensed as a nursing home or skilled nursing facility under part 217 of the public health code, 1978 PA 368, MCL 333.21701 to 333.21799e, or whether the addition meets the requirements set forth in subsection (1).

(b) "Nonprofit hospital" does not include the following:

(*i*) Except as otherwise provided under subsection (3)(a)(*iii*), a freestanding building or other real property of a nursing home or skilled nursing facility licensed under part 217 of the public health code, 1978 PA 368, MCL 333.21701 to 333.21799e.

(*ii*) A hospice licensed under part 214 of the public health code, 1978 PA 368, MCL 333.21401 to 333.21420.

(*iii*) A home for the aged licensed under part 213 of the public health code, 1978 PA 368, MCL 333.21301 to 333.21335.

(c) "Medical attention" means that level of medical care in which a physician provides acute care or active treatment of medical, surgical, obstetrical, psychiatric, chronic, or rehabilitative conditions, that require the observation, diagnosis, and daily treatment by a physician.

History: Add. 1999, Act 116, Imd. Eff. July 14, 1999;—Am. 2004, Act 173, Eff. Sept. 1, 2004;—Am. 2006, Act 665, Eff. June 30, 1999;—Am. 2016, Act 372, Eff. Mar. 29, 2017.

Compiler's note: Enacting section 2 of Act 116 of 1999 provides:

"Enacting section 2. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, a taxpayer may exclude a sale of tangible personal property from gross proceeds only to the extent that the property is used for exempt purposes. For telecommunications equipment exempt under section 4v of the general sales tax act, 1933 PA 167, MCL 205.54v, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

Enacting section 1 of Act 665 of 2006 provides:

"Enacting section 1. This amendatory act is retroactive and is effective for taxes levied after June 30, 1999."

Enacting section 1 of Act 372 of 2016 provides:

"Enacting section 1. This amendatory act is retroactive and effective for taxes levied after December 31, 2012."

205.54x Sales to domestic air carrier; tax exemption; definitions.

Sec. 4x. (1) A sale to a domestic air carrier of 1 or more of the following is exempt from the tax under this act:

(a) An aircraft that has a maximum certificated takeoff weight of at least 6,000 pounds for use solely in the transport of air cargo, passengers, or a combination of air cargo and passengers.

(b) Parts and materials, excluding shop equipment or fuel, affixed or to be affixed to an aircraft that has a maximum certificated takeoff weight of at least 6,000 pounds for use solely in the transport of air cargo, passengers, or a combination of air cargo and passengers.

(2) The tax levied under this act does not apply to the sale of parts or materials, excluding shop equipment or fuel, affixed or to be affixed to an aircraft that meets all of the following conditions:

(a) The aircraft leaves this state within 15 days after the sooner of the issuance of the final billing or authorized approval for final return to service, completion of the maintenance record entry, and completion of the test flight and ground test for inspection as required under 14 CFR 91.407.

(b) The aircraft was not based in this state or registered in this state before the parts or materials are affixed to the aircraft and the aircraft is not based in this state or registered in this state after the parts or materials are affixed to the aircraft.

(3) The tax levied under this act does not apply to the sale of an aircraft temporarily located in this state for the purpose of a sale and prepurchase evaluation, customization, improvement, maintenance, or repair if all of

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the following conditions are satisfied:

(a) The aircraft leaves this state within 15 days after the sale and the completion of any prepurchase evaluation, customization, improvement, maintenance, or repair that is associated with the sale, whichever is later.

(b) The aircraft was not based in this state or registered in this state before the sale and any prepurchase evaluation, customization, improvement, maintenance, or repair that is associated with the sale is completed and the aircraft is not based in this state or registered in this state after the sale and any prepurchase evaluation, customization, improvement, maintenance, or repair that is associated with the sale is completed.

(4) A sale of an aircraft to a person for subsequent lease to a domestic air carrier operating under a certificate issued by the federal aviation administration under 14 CFR 121, for use solely in the regularly scheduled transport of passengers is exempt from the tax under this act.

(5) As used in this section:

(a) "Based in this state" means hangared or stored in this state for not less than 10 days in not less than 3 nonconsecutive months during the immediately preceding 12-month period.

(b) "Customization" means any improvement, maintenance, or repair that is performed on an aircraft that is associated with the sale of the aircraft.

(c) "Domestic air carrier" is limited to entities engaged primarily in the commercial transport for hire of air cargo, passengers, or a combination of air cargo and passengers as a business activity.

(d) "Prepurchase evaluation" means an examination of an aircraft to provide a potential purchaser with information relevant to the potential purchase.

(e) "Registered in this state" means an aircraft registered with the state transportation department, bureau of aeronautics or registered with the federal aviation administration to an address located in this state.

History: Add. 2000, Act 204, Imd. Eff. June 27, 2000;—Am. 2001, Act 40, Imd. Eff. July 11, 2001;—Am. 2004, Act 173, Eff. Sept. 1, 2004;—Am. 2006, Act 17, Imd. Eff. Feb. 9, 2006;—Am. 2009, Act 53, Eff. June 11, 2009.

Compiler's note: Enacting section 1 of Act 53 of 2009 provides:
"Enacting section 1. This amendatory act shall be retroactively applied to transactions occurring after June 11, 2009."

205.54y Industrial processing; exemption; limitation.

Sec. 4y. (1) Subject to subsection (2), a person subject to the tax under this act may exclude from the gross proceeds used for the computation of the tax the sale of tangible personal property to the following after March 30, 1995 but before March 31, 1999:

(a) An industrial processor for use or consumption in industrial processing. Property used or consumed in industrial processing does not include tangible personal property permanently affixed and becoming a structural part of real estate; office furniture, office supplies, and administrative office equipment; or vehicles licensed and titled for use on public highways other than a specially designed vehicle, together with parts, used to mix and agitate materials added at a plant or job site in the concrete manufacturing process. Industrial processing does not include receipt and storage of raw materials purchased or extracted by the user or consumer, or the preparation of food and beverages by a retailer for retail sale. As used in this subdivision, "industrial processor" means a person who transforms, alters, or modifies tangible personal property by changing the form, composition, or character of the property for ultimate sale at retail or sale to another industrial processor to be further processed for ultimate sale at retail. Sales to a person performing a service who does not act as an industrial processor while performing the service may not be excluded under this subdivision, except as provided in subdivision (b).

(b) A person, whether or not the person is an industrial processor, if the property is a computer used in operating industrial processing equipment; equipment used in a computer assisted manufacturing system; equipment used in a computer assisted design or engineering system integral to an industrial process; a subunit or electronic assembly comprising a component in a computer integrated industrial processing system; or computer equipment used in connection with the computer assisted production, storage, and transmission of data if the equipment would have been exempt had the data transfer been made using tapes, disks, CD-ROMs, or similar media by a company whose business includes publishing doctoral dissertations and information archiving, and that sells the majority of the company's products to nonprofit organizations exempt under section 4q.

(2) The property under subsection (1) is exempt only to the extent that the property is used for the exempt purposes stated in this section. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

History: Add. 1999, Act 116, Imd. Eff. July 14, 1999.

Compiler's note: Enacting section 2 of Act 116 of 1999 provides:
"Enacting section 2. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a

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of the use tax act, 1937 PA 94, MCL 205.93a, a taxpayer may exclude a sale of tangible personal property from gross proceeds only to the extent that the property is used for exempt purposes. For telecommunications equipment exempt under section 4v of the general sales tax act, 1933 PA 167, MCL 205.54v, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

205.54z Construction, alteration, repair, or improvement to nonprofit hospital before July 1, 1999.

Sec. 4z. (1) For taxes levied after December 31, 1990 and before July 1, 1999, the tax levied under this act does not apply to a claimed exemption of tangible personal property used in the construction, alteration, repair, or improvement of the real estate or is affixed to and made a structural part of a building of a nonprofit hospital provided the following criteria have been met:

(a) A nonprofit hospital is an entity described in section 4w(3)(a)(*i*).

(b) A binding contract had been entered into for the construction, alteration, repair, or improvement of the real estate or the affixation to the building before July 1, 1999.

(c) The claimed exemption was made in good faith.

(2) The provisions of this section shall not be applied to affect any final decision of a court.

(3) A claim for refund for an exemption under this section shall be filed not later than July 15, 1999. The approved refunds shall be paid without interest.

History: Add. 1999, Act 116, Imd. Eff. July 14, 1999.

Compiler's note: Enacting section 2 of Act 116 of 1999 provides:

"Enacting section 2. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, a taxpayer may exclude a sale of tangible personal property from gross proceeds only to the extent that the property is used for exempt purposes. For telecommunications equipment exempt under section 4v of the general sales tax act, 1933 PA 167, MCL 205.54v, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

205.54aa Tax exemption; resident tribal member.

Sec. 4aa. (1) The tax under this act does not apply to the sale of a motor vehicle, recreational watercraft, snowmobile, or all terrain vehicle, not for resale, to a resident tribal member if the motor vehicle, recreational watercraft, snowmobile, or all terrain vehicle is for personal use and is principally garaged, berthed, or stored within that resident tribal member's tribe agreement area.

(2) The tax under this act does not apply to the sale of a mobile home, not for resale, to a resident tribal member if the mobile home is to be used as that resident tribal member's principal residence and the mobile home is located within that resident tribal member's tribe agreement area.

(3) As used in this section, "resident tribal member" means an individual who meets all of the following criteria:

(a) Is an enrolled member of a federally recognized tribe.

(b) The individual's tribe has an agreement with this state pursuant to section 30c of 1941 PA 122, MCL 205.30c, that is in full force and effect.

(c) The individual's principal place of residence is located within the agreement area as designated in the agreement under subdivision (b).

History: Add. 2002, Act 617, Imd. Eff. Dec. 20, 2002.

205.54bb Sale of eligible automobile to qualified recipient; exemption; definitions.

Sec. 4bb. (1) Beginning January 1, 2005, the sale of an eligible automobile to a qualified recipient by a qualified organization that is subject to the tax under this act is exempt.

(2) As used in this section:

(a) "Eligible automobile" means an automobile that meets all of the following requirements:

(*i*) The automobile has been inspected by a mechanic certified under the motor vehicle service and repair act, 1974 PA 300, MCL 257.1301 to 257.1340.

(*ii*) The automobile is insured as required under state law.

(*iii*) The automobile is registered to a qualified recipient.

(b) "Qualified organization" means an organization that applies for certification not later than July 1 of the year in which an exemption is claimed under this section and is certified by the department of treasury as meeting all of the following requirements:

(*i*) The organization is exempt from taxation under section 501(c)(3) of the internal revenue code, 26 USC 501.

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(*ii*) The organization is licensed under the charitable organizations and solicitations act, 1975 PA 169, MCL 400.271 to 400.294.

(*iii*) The organization administers a program to provide a qualified recipient with an eligible automobile for transportation to his or her place of employment or for employment-related activities.

(c) "Qualified recipient" means a person certified by a qualified organization as meeting all of the following qualifications:

(*i*) The qualified recipient receives or, if he or she applied, would be eligible to receive public assistance through a program created and administered under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

(*ii*) The qualified recipient has a valid Michigan operator's or chauffeur's license.

(*iii*) The qualified recipient is financially capable of meeting any loan payment, insurance payment, or other expenditure associated with the eligible vehicle.

(*iv*) Public transportation is not reasonably available to the qualified recipient, the qualified recipient has no other reliable means by which to commute to his or her place of employment, and the qualified recipient will use the eligible vehicle as his or her primary means of transportation to commute to and from his or her place of employment.

(*v*) The qualified recipient has a demonstrated ability to maintain employment.

(*vi*) If the qualified recipient is currently employed for not less than an average of 20 hours per week, the qualified recipient requires an automobile to retain his or her current employment or to accept a verified offer of employment in a position that is demonstrably superior to his or her current position of employment.

(*vii*) If the qualified recipient is not currently employed or is employed for less than an average of 20 hours per week, the qualified recipient requires an automobile to accept a verified offer of employment of not less than an average of 20 hours per week and cannot begin employment in that position without an automobile.

History: Add. 2004, Act 301, Imd. Eff. July 23, 2004;—Am. 2008, Act 438, Imd. Eff. Jan. 9, 2009.

205.54cc Repealed. 2008, Act 78, Eff. Dec. 31, 2009.

Compiler's note: The repealed section pertained to tax credit relating to motion picture production company.

205.54dd Sale of tangible personal property for use as or at mineral-producing property; exemption; limitation; "mineral-producing property" and "taxpayer" defined.

Sec. 4dd. (1) Subject to subsection (2), a person subject to the tax under this act may exclude from the gross proceeds used for the computation of the tax the sale of tangible personal property to a taxpayer for use as or at mineral-producing property.

(2) The property under subsection (1) is exempt only to the extent that the property is used for the exempt purposes stated in this section. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

(3) As used in this section, "mineral-producing property" and "taxpayer" mean those terms as defined in section 2 of the nonferrous metallic minerals extraction severance tax act.

History: Add. 2012, Act 412, Imd. Eff. Dec. 20, 2012.

205.54ee Data center equipment; exemption from tax; conditions; report; definitions.

Sec. 4ee. (1) Subject to subsections (2) and (3), beginning January 1, 2016 through December 31, 2035, a sale of data center equipment to the owner or operator of a qualified data center or a colocated business for assembly, use, or consumption in the operations of the qualified data center or a sale of data center equipment to a person engaged in the business of constructing, altering, repairing, or improving real estate for others to the extent the data center equipment is to be affixed to or made a structural part of a qualified data center is exempt from the tax under this act.

(2) The exemption under this section only continues to apply after January 1, 2022, if the numbers gathered by the local economic development corporations are certified and reported to the department of talent and economic development and subsequently forwarded to the department and demonstrate that the qualified data centers, the colocated businesses, and the contractors of the qualified data centers, collectively, have, in aggregate, established in this state at least 400 data center industry jobs or data center industry related jobs, or a combination of both, since January 1, 2016. The department of talent and economic development shall submit a report no later than April 1, 2022 related to the number of data center industry jobs or data center industry related jobs that have been established since January 1, 2016 to the speaker and minority leader of the house of representatives, the majority and minority leaders of the senate, and the governor.

(3) The exemption under this section only continues to apply after January 1, 2026, if the numbers gathered by the local economic development corporations are certified and reported to the department of

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talent and economic development and subsequently forwarded to the department and demonstrate that the qualified data centers, the colocated businesses, and the contractors of the qualified data centers, collectively, have, in aggregate, established in this state at least 1,000 data center industry jobs or data center industry related jobs, or a combination of both, since January 1, 2016. The department of talent and economic development shall submit a report no later than April 1, 2026 related to the number of data center industry jobs or data center industry related jobs that have been established since January 1, 2016 to the speaker and minority leader of the house of representatives, the majority and minority leaders of the senate, and the governor.

(4) As used in this section:

(a) "Affiliate" means a person that directly, or indirectly through 1 or more intermediaries, controls, is controlled by, or is under common control with a specified person.

(b) "Colocated business" means a person that has entered into a contract with the owner or operator of a qualified data center to use or deploy data center equipment physically located within the qualified data center for a period of 1 or more years.

(c) "Data center equipment" means only computers, servers, routers, switches, peripheral computer devices, racks, shelving, cabling, wiring, storage batteries, back-up generators, uninterrupted power supply units, environmental control equipment, other redundant power supply equipment, and prewritten computer software used in operating, managing, or maintaining the qualified data center or the business of the qualified data center or a colocated business. Data center equipment also includes any construction materials used or assembled under the qualified data center's proprietary method for the construction or modification of a qualified data center, including, but not limited to, building materials, infrastructure, machinery, wiring, cabling, devices, tools, and equipment that would otherwise be considered a fixture or related equipment. Data center equipment does not include any equipment owned by a third party that is used to supply the qualified data center's primary power.

(d) "Qualified data center" means a facility composed of 1 or more buildings located in this state and the facility is owned or operated by an entity engaged at that facility in operating, managing, or maintaining a group of networked computers or networked facilities for the purpose of centralizing, or allowing 1 or more colocated businesses to centralize, the storage, processing, management, or dissemination of data of 1 or more other persons who is not an affiliate of the owner or operator of a qualified data center or of a colocated business and that entity receives 75% or more of its revenue from colocated businesses that are not an affiliate of the owner or operator of the qualified data center.

History: Add. 2015, Act 251, Imd. Eff. Dec. 23, 2015.

Compiler's note: Enacting section 1 of Act 251 of 2015 provides:

"Enacting section 1. The legislature shall annually appropriate sufficient funds from the state general fund to the state school aid fund created in section 11 of article IX of the state constitution of 1963 to fully compensate for any loss of revenue to the state school aid fund resulting from the enactment of this amendatory act."

For transfer of authority, powers, duties, functions, and responsibilities of the department of talent and economic development to the Michigan strategic fund, see E.R.O. No. 2019-3, compiled at MCL 125.1998.

205.54ff Sales of certain prosthetic devices; exemption; definitions.

Sec. 4ff. (1) The sale to a hospital or freestanding surgical outpatient facility of a prosthetic device for implantation into a human is exempt from the tax imposed by this act.

(2) As used in this section:

(a) "Freestanding surgical outpatient facility" means a facility licensed under part 208 of the public health code, 1978 PA 368, MCL 333.20801 to 333.20821.

(b) "Hospital" means a hospital licensed under part 215 of the public health code, 1978 PA 368, MCL 333.21501 to 333.21571.

(c) "Prosthetic device" means a replacement, corrective, or supportive device, other than contact lenses and dental prosthesis, including repair or replacement parts for that device, worn on or in the body to do 1 or more of the following:

(*i*) Artificially replace a missing portion of the body.

(*ii*) Prevent or correct a physical deformity or malfunction of the body.

(*iii*) Support a weak or deformed portion of the body.

History: Add. 2020, Act 46, Imd. Eff. Mar. 3, 2020.

205.55 Additional tax.

Sec. 5. Additional tax. The tax imposed by this act shall be in addition to all other license fees and taxes levied by law as a condition precedent to engaging or continuing in any business taxable hereunder, except as in this act otherwise specifically provided.

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History: 1933, Act 167, Imd. Eff. June 28, 1933;—CL 1948, 205.55.

205.55a Repealed. 2004, Act 173, Eff. Sept. 1, 2004.

Compiler's note: The repealed section pertained to labor or services charges.

205.55b Repealed. 2006, Act 590, Eff. Jan. 1, 2011.

Compiler's note: The repealed section pertained to tax exemption at qualified athletic event.

205.56 Sales and gross proceeds tax returns; monthly filing; form; contents; transmitting return with remittance for amount of tax; electronic funds transfer; accrual of tax to state; filing returns and payment of tax for other than monthly periods; taxpayer as materialperson; "credit sale" and "materialperson" defined; due date.

Sec. 6. (1) Each taxpayer, unless otherwise provided by law or as required pursuant to subsection (2), (4), or (5), on or before the twentieth day of each month shall make out a return for the preceding month on a form prescribed by the department showing the entire amount of all sales and gross proceeds of his or her business, the allowable deductions, and the amount of tax for which he or she is liable. The taxpayer shall also transmit the return, together with a remittance for the amount of the tax, to the department on or before the twentieth day of that month.

(2) Each taxpayer that had a total tax liability after subtracting the tax payments made to the secretary of state under this act or the use tax act, 1937 PA 94, MCL 205.91 to 205.111, or after subtracting the tax credits available under section 6a, in the immediately preceding calendar year of $720,000.00 or more shall remit to the department, by an electronic funds transfer method approved by the department on or before the twentieth day of the month, an amount equal to the following:

(a) Beginning January 1, 1999 through December 31, 2013, 50% of the taxpayer's liability under this act for the same month in the immediately preceding calendar year, or 50% of the actual liability for the month being reported, whichever is less, plus a reconciliation payment equal to the difference between the tax liability determined for the immediately preceding month minus the amount of tax previously paid for that month. Additionally, the seller shall remit to the department, by an electronic funds transfer method approved by the department on or before the last day of the month, an amount equal to 50% of the taxpayer's liability under this act for the same month in the immediately preceding calendar year, or 50% of the actual liability for the month being reported, whichever is less.

(b) Beginning January 1, 2014, 75% of the taxpayer's liability under this act in the immediately preceding month or 75% of the taxpayer's liability for the same month in the immediately preceding calendar year, whichever is less, plus a reconciliation payment equal to the difference between the tax liability determined for the immediately preceding month minus the amount of tax previously paid for that month. Payment remitted to the department by electronic funds transfer may include as a single payment any amount due under section 6 of the use tax act, 1937 PA 94, MCL 205.96.

(3) The tax imposed under this act shall accrue to this state on the last day of the month in which the sale is incurred.

(4) The department, if necessary to insure payment of the tax or to provide a more efficient administration, may require the filing of returns and payment of the tax for other than monthly periods.

(5) A taxpayer who is a materialperson may at the option of the taxpayer include the amount of all taxable sales and gross proceeds from materials furnished to an owner, contractor, subcontractor, repairperson, or consumer on a credit sale basis for the purpose of making an improvement to real property in his or her return in the first quarterly return due following the date in which the materialperson made the credit sale to the owner, contractor, subcontractor, repairperson, or consumer. Notwithstanding subsections (1) through (3), a materialperson may at the option of the taxpayer file quarterly returns for a credit sale only as determined by the department. As used in this subsection, "credit sale" means an extension of credit for the sale of taxable goods by a seller other than a credit card sale; and "materialperson" means a person who provides materials for the improvement of real property, who has registered with and has demonstrated to the department that he or she is primarily engaged in the sale of lumber and building material related products, precast concrete products, or conduit or fitting products used in the collection, conveyance, or distribution of water or sewage to owners, contractors, subcontractors, repairpersons, or consumers, and who is authorized to file a construction lien upon real property and improvements under the construction lien act, 1980 PA 497, MCL 570.1101 to 570.1305.

(6) If a due date falls on a Saturday, Sunday, state holiday, or legal banking holiday, the taxes are due on the next succeeding business day.

History: 1933, Act 167, Imd. Eff. June 28, 1933;—Am. 1939, Act 313, Imd. Eff. June 22, 1939;—CL 1948, 205.56;—Am. 1949, Act

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272, Eff. July 1, 1949;—Am. 1963, Act 74, Imd. Eff. May 8, 1963;—Am. 1975, Act 99, Imd. Eff. June 2, 1975;—Am. 1980, Act 186, Imd. Eff. July 3, 1980;—Am. 1993, Act 18, Imd. Eff. Apr. 14, 1993;—Am. 1993, Act 325, Eff. May 1, 1994;—Am. 1998, Act 265, Imd. Eff. July 17, 1998;—Am. 1998, Act 453, Imd. Eff. Dec. 30, 1998;—Am. 2004, Act 173, Eff. Sept. 1, 2004;—Am. 2011, Act 71, Imd. Eff. June 28, 2011;—Am. 2012, Act 118, Imd. Eff. May 2, 2012;—Am. 2012, Act 458, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 425, Imd. Eff. Dec. 30, 2014.

205.56a Prepayment of tax by purchaser or receiver of fuel; rate of prepayment; determination; claiming estimated prepayment credits; bad debt deduction; actual shrinkage; accounting for and remitting prepayments; schedule; penalties; deduction prohibited; liability; date of prepayment; definitions.

Sec. 6a. (1) Through March 31, 2013, at the time of purchase or shipment from a refiner, pipeline terminal operator, or marine terminal operator, a purchaser or receiver of gasoline shall prepay a portion of the tax imposed by this act at the rate provided in this section to the refiner, pipeline terminal operator, or marine terminal operator for the purchase or receipt of gasoline. If the purchase or receipt of gasoline is made outside this state for shipment into and subsequent sale within this state, the purchaser or receiver, other than a refiner, pipeline terminal operator, or marine terminal operator, shall make the prepayment required by this section directly to the department. Prepayments for gasoline shall be made at a cents-per-gallon rate determined by the department and shall be based on 6% of the statewide average retail price of a gallon of self-serve unleaded regular gasoline as determined and certified by the department rounded up to the nearest 1/10 of 1 cent. A person that makes prepayments directly to the department shall make those prepayments according to the schedule in subsection (6).

(2) Beginning April 1, 2013 through March 31, 2016, at the time of purchase or shipment from a refiner, pipeline terminal operator, or marine terminal operator, a purchaser or receiver of fuel shall prepay a portion of the tax imposed by this act at the rates provided in this section to the refiner, pipeline terminal operator, or marine terminal operator for the purchase or receipt of fuel. If the purchase or receipt of fuel is made outside this state for shipment into and subsequent sale within this state, the purchaser or receiver, other than a refiner, pipeline terminal operator, or marine terminal operator, shall make the prepayment required by this section directly to the department. Prepayments for gasoline shall be made at a cents-per-gallon rate determined by the department and shall be based on 6% of the statewide average retail price of a gallon of self-serve unleaded regular gasoline as determined and certified by the department rounded up to the nearest 1/10 of 1 cent. Prepayments for diesel fuel shall be made at a cents-per-gallon rate determined by the department and shall be based on 6% of the statewide average retail price of a gallon of undyed No. 2 ultra-low sulfur diesel fuel as determined and certified by the department rounded up to the nearest 1/10 of 1 cent. A person that makes prepayments directly to the department shall make those prepayments according to the schedule in subsection (6).

(3) Beginning April 1, 2016, at the time of purchase or shipment in this state from a refiner, pipeline terminal operator, or marine terminal operator, a purchaser or receiver of fuel other than an exporter or supplier for immediate export, as evidenced by the terminal's shipping papers or bill of lading, shall prepay a portion of the tax imposed by this act at the rates provided in this section to the refiner, pipeline terminal operator, or marine terminal operator for the purchase or receipt of fuel. If the purchase or receipt of fuel is made outside this state for shipment into and subsequent sale within this state, the purchaser or receiver, other than a refiner, pipeline terminal operator, or marine terminal operator as part of a bulk transfer, shall make the prepayment required by this section directly to the department. Prepayments for gasoline shall be made at a cents-per-gallon rate determined by the department and shall be based on 6% of the statewide average retail price of a gallon of self-serve unleaded regular gasoline as determined and certified by the department rounded up to the nearest 1/10 of 1 cent. Prepayments for diesel fuel shall be made at a cents-per-gallon rate determined by the department and shall be based on 6% of the statewide average retail price of a gallon of undyed No. 2 ultra-low sulfur diesel fuel as determined and certified by the department rounded up to the nearest 1/10 of 1 cent. A person that makes prepayments directly to the department shall make those prepayments according to the schedule in subsection (6).

(4) The rates of prepayment applied pursuant to subsections (2) and (3) shall be determined every month by the department. The department shall publish notice of the rates of prepayment applicable to gasoline and diesel fuel pursuant to subsections (2) and (3) not later than the tenth day of the month immediately preceding the month in which the rate is effective.

(5) A person subject to tax under this act that makes prepayment to another person as required by this section for gasoline may claim an estimated prepayment credit on its regular monthly return filed pursuant to section 6. The credit shall be for prepayments made during the month for which the return is required and shall be based upon the difference between prepayments made in the immediately preceding month and

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collections of prepaid tax received from sales or transfers during the month for which the return required under section 6 is made. A sale or transfer for which collection of prepaid tax is due the taxpayer is subject to a bad debt deduction under section 4i, whether or not the sale or transfer is a sale at retail. The credit shall not be reduced because of actual shrinkage. A taxpayer that does not, in the ordinary course of business, sell gasoline in each month of the year may, with the approval of the department, base the initial prepayment deduction in each tax year on prepayments made in a month other than the immediately preceding month. The difference in actual prepayments shall be reconciled on the annual return in accordance with procedures prescribed by the department.

(6) Notwithstanding the other provisions for the payment and remitting of tax due under this act, a refiner, pipeline terminal operator, or marine terminal operator shall account for and remit to the department the prepayments received pursuant to this section in accordance with the following schedule:

(a) On or before the twenty-fifth of each month, prepayments received after the end of the preceding month and before the sixteenth of the month in which the prepayments are made.

(b) On or before the tenth of each month, payments received after the fifteenth and before the end of the preceding month.

(7) A refiner, pipeline terminal operator, or marine terminal operator that fails to remit prepayments made by a purchaser or receiver of fuel is subject to the penalties provided by 1941 PA 122, MCL 205.1 to 205.31.

(8) The refiner, pipeline terminal operator, or marine terminal operator shall not receive a deduction under section 4 for receiving and remitting prepayments from a purchaser or receiver pursuant to this section.

(9) The purchaser or receiver of fuel that makes prepayments is not subject to further liability for the amount of the prepayment if the refiner, pipeline terminal operator, or marine terminal operator fails to remit the prepayment.

(10) A person subject to tax under this act that makes prepayment to another person as required by this section for diesel fuel may claim an estimated prepayment credit on its regular monthly return filed pursuant to section 6. The credit shall be for prepayments made during the month for which the return is required and shall be based upon the difference between the prepayments made in the immediately preceding month and collections of prepaid tax received from sales or transfers during the month for which the return required under section 6 is made. A sale or transfer for which collection of prepaid tax is due the taxpayer is subject to a bad debt deduction under section 4i, whether or not the sale or transfer is a sale at retail. The credit shall not be reduced because of actual shrinkage. A taxpayer that does not, in the ordinary course of business, sell diesel fuel in each month of the year may, with the approval of the department, base the initial prepayment deduction in each tax year on prepayments made in a month other than the immediately preceding month. Estimated prepayment credits claimed with the return due in April 2013 shall be based on the taxpayer's retail sales of diesel fuel in March 2013. The difference in actual prepayments shall be reconciled on the annual return in accordance with procedures prescribed by the department. Repayment of the credit claimed on the return due in April 2013 shall be made by the earlier of the date that the taxpayer stops selling diesel fuel or October 15, 2013.

(11) As used in this section:

(a) "Alcohol" means fuel grade ethanol or a mixture of fuel grade ethanol and another product.

(b) "Blendstock" includes all of the following:

(*i*) Any petroleum product component of fuel, such as naphtha, reformate, or toluene.

(*ii*) Any oxygenate that can be blended for use in a motor fuel.

(c) "Boat terminal transfer" means a dock, a tank, or equipment contiguous to a dock or a tank, including equipment used in the unloading of fuel from a ship and in transferring the fuel to a tank pending wholesale bulk reshipment.

(d) "Bulk transfer" means a transfer of fuel from, or purchase for resale by, a refiner, pipeline terminal operator, or marine terminal operator to or from another refiner, pipeline terminal operator, or marine terminal operator through pipeline tender or marine delivery, including pipeline movements of fuel or marine vessel movements of fuel. Bulk transfer also includes a transaction involving the transfer by any transportation means to, or purchase for resale by, a refiner, pipeline terminal operator, or marine terminal operator of alcohol to be used exclusively for blending with gasoline. Notwithstanding anything to the contrary in this definition, fuel transferred to, or purchased for resale by, a refiner, pipeline terminal operator, or marine terminal operator must be delivered to, or otherwise remain within, the bulk transfer terminal system prior to removal across the rack in order to constitute a bulk transfer.

(e) "Bulk transfer terminal system" means the fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals and includes fuel storage tanks and fuel storage facilities that are part of a refinery, boat terminal transfer, or terminal owned, operated, or controlled by a refiner, marine terminal operator, or pipeline terminal operator.

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(f) "Diesel fuel" means any liquid other than gasoline that is capable of use as a fuel or a component of a fuel in a motor vehicle that is propelled by a diesel-powered engine or in a diesel-powered train. Diesel fuel includes number 1 and number 2 fuel oils, kerosene, and mineral spirits. Diesel fuel also includes any blendstock or additive that is sold for blending with diesel fuel and any liquid prepared, advertised, offered for sale, sold for use as, or used in the generation of power for the propulsion of a diesel-powered engine, airplane, or marine vessel. An additive or blendstock is presumed to be sold for blending unless a certification is obtained for federal purposes that the substance is for a use other than blending for diesel fuel. Diesel fuel does not include dyed diesel fuel, dyed kerosene, or an excluded liquid.

(g) "Dyed diesel fuel" means diesel fuel that is dyed in accordance with internal revenue service rules or pursuant to any other internal revenue service requirements, including any invisible marker requirements.

(h) "Dyed kerosene" means kerosene that is dyed in accordance with internal revenue service rules or pursuant to any other internal revenue service requirements, including invisible marker requirements.

(i) "Excluded liquid" means that term as defined in 26 CFR 48.4081-1.

(j) "Export" means to purchase or receive fuel in this state for immediate shipment and subsequent sale outside of this state.

(k) "Exporter" means a person that exports fuel and is licensed under section 86 of the motor fuel tax act, 2000 PA 403, MCL 207.1086.

(*l*) "Fuel" means gasoline and diesel fuel that is subject to tax under this act, collectively, except when gasoline or diesel fuel is referred to separately.

(m) "Gasoline" means and includes gasoline, alcohol, gasohol, casing head or natural gasoline, benzol, benzine, naphtha, methanol, transmix, any blendstock additive, or other product that is sold for blending with gasoline or for use on the road, other than products typically sold in containers of less than 5 gallons. Gasoline also includes a liquid prepared, advertised, offered for sale, sold for use as, or used in the generation of power for the propulsion of a motor vehicle, airplane, or marine vessel, including a product obtained by blending together any 1 or more products of petroleum, with or without another product, and regardless of the original character of the petroleum products blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle, airplane, or marine vessel. The blending of all of the above-named products, regardless of their name or characteristics, shall conclusively be presumed to have been done to produce fuel, unless the product obtained by the blending is entirely incapable of use as fuel. An additive or blendstock is presumed to be sold for blending unless a certification is obtained for federal purposes that the substance is for a use other than blending for gasoline. Gasoline does not include diesel fuel, dyed diesel fuel, dyed kerosene, or an excluded liquid.

(n) "Kerosene" means all grades of kerosene, including, but not limited to, the 2 grades of kerosene, No. 1-K and No. 2-K, commonly known as K-1 kerosene and K-2 kerosene, respectively, described in American society for testing and materials specification D-3699, in effect on January 1, 1999, and kerosene-type jet fuel described in American society for testing and materials specification D-1655 and military specifications MIL-T-5624r and MIL-T-83133d (grades jp-5 and jp-8), and any successor internal revenue service rules or regulations, as the specification for kerosene and kerosene-type jet fuel. Kerosene does not include dyed kerosene or an excluded liquid.

(o) "Marine terminal operator" means a person that stores fuel at a boat terminal transfer.

(p) "Pipeline terminal operator" means a person that stores fuel in tanks and equipment used in receiving and storing fuel from interstate and intrastate pipelines pending wholesale bulk reshipment.

(q) "Purchase", "receipt", or "shipment" does not include a two-party exchange, a bulk transfer, or a receipt of fuel as part of a bulk transfer.

(r) "Rack" means a mechanism for delivering fuel from a refiner, a pipeline terminal operator, or a marine terminal operator into a railroad tank car, a transport truck, a tank wagon, or the fuel supply tank of a marine vessel.

(s) "Refiner" means a person that meets all of the following requirements:

(*i*) Manufactures or produces fuel at a refinery by any process involving substantially more than the blending of fuel.

(*ii*) Is a taxable fuel registrant that is a refiner for purposes of 26 CFR 48.4081-1.

(t) "Refinery" means a facility used by a refiner to produce fuel from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons and from which fuel may be removed by pipeline or marine vessel or at a rack.

(u) "Removal" or "removed" means a physical transfer other than by evaporation, loss, or destruction of fuel from a refiner, pipeline terminal operator, or marine terminal operator.

(v) "Supplier" means a supplier or permissive supplier licensed under section 70 or 73 of the motor fuel tax act, 2000 PA 403, MCL 207.1070 and 207.1073.

(w) "Tank wagon" means a straight truck having 1 or more compartments other than the fuel supply tank

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designed or used to carry fuel.

(x) "Terminal" means a fuel storage and distribution facility that meets all of the following requirements:

(*i*) Is registered as a qualified terminal by the internal revenue service.

(*ii*) Is supplied by pipeline or marine vessel.

(*iii*) Has a rack from which fuel may be removed.

(y) "Transport truck" means a semitrailer combination rig designed or used for the purpose of transporting fuel over the public roads or highways.

(z) "Transmix" means the mixed product that results from the buffer or interface of 2 different products in a pipeline shipment, or a mixture of 2 different products within a terminal operated by a pipeline terminal operator, within a boat terminal transfer operated by a marine terminal operator, or at a refinery that results in an off-grade mixture.

(aa) "Two-party exchange" means a transaction, including a book transfer, in which fuel is transferred from 1 supplier to another supplier where all of the following occur:

(*i*) The transaction includes a transfer of fuel from the person who holds the original inventory position for the fuel in fuel storage tanks as reflected in the records of the refiner, pipeline terminal operator, or marine terminal operator.

(*ii*) The exchange transaction is completed before removal across the rack by the receiving supplier.

(*iii*) The refiner, pipeline terminal operator, or marine terminal operator in its books and records treats the receiving exchange party as the supplier that removes the fuel across a rack for purposes of reporting the transaction to the department under the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170.

History: Add. 1983, Act 244, Eff. Jan. 1, 1984;—Am. 1985, Act 23, Imd. Eff. May 24, 1985;—Am. 1993, Act 325, Eff. May 1, 1994 ;—Am. 2008, Act 556, Eff. Jan. 20, 2009;—Am. 2012, Act 509, Eff. Mar. 28, 2013;—Am. 2013, Act 1, Imd. Eff. Mar. 12, 2013;—Am. 2015, Act 264, Eff. Apr. 1, 2016.

Compiler's note: Enacting section 1 of Act 467 of 2014 provides:

"Enacting section 1. This amendatory act does not take effect unless House Joint Resolution UU of the 97th Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

House Joint Resolution UU was presented to the electors as Proposal 15-1 at the May 5, 2015 special election. The proposal to amend the constitution was not approved by the voters and Act 467 of 2014 does not go into effect.

205.56b Returned goods or motor vehicle; tax credit.

Sec. 6b. A taxpayer may claim a credit or refund for returned goods or a refund less an allowance for use made for a motor vehicle returned under 1986 PA 87, MCL 257.1401 to 257.1410, as certified by the manufacturer on a form provided by the department.

History: Add. 2004, Act 173, Eff. Sept. 1, 2004.

205.56c Aviation fuel; informational report; "aviation fuel" defined.

Sec. 6c. (1) Beginning April 1, 2016 and each calendar quarter thereafter, each taxpayer making sales at retail of aviation fuel shall, on or before the last day of the month in the month that immediately follows the end of a calendar quarter, file an informational report with the department on a form prescribed by the department showing all of the following for the immediately preceding calendar quarter:

(a) The entire amount of the taxpayer's taxable sales at retail of aviation fuel.

(b) The gross proceeds of the taxpayer's business from taxable sales at retail of aviation fuel.

(c) The amount of tax for which the taxpayer is liable from sales at retail of aviation fuel.

(d) The number of taxable gallons of aviation fuel sold by the taxpayer at each airport and the gross proceeds from the sales of those gallons of aviation fuel.

(e) Any other information the department considers necessary for the proper administration of this act.

(2) The report required under this section shall not include any remittance for tax, and does not constitute a return or otherwise alleviate the taxpayer's obligations under section 6.

(3) A taxpayer required to file the informational report under this section that fails or refuses to file the informational report within the time and in the manner specified in this section shall be liable for a penalty of $10.00 per day for each day for each separate failure or refusal up to, but not exceeding, a maximum penalty of $500.00 for each separate violation. The department may waive the penalty if the taxpayer demonstrates to the satisfaction of the department that the failure to file was due to reasonable cause.

(4) As used in this section, "aviation fuel" means fuel as that term is defined in section 4 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.4.

History: Add. 2015, Act 262, Eff. Mar. 22, 2016.

205.57-205.57b Repealed. 2004, Act 173, Eff. Sept. 1, 2004.

Compiler's note: The repealed sections pertained to sale of motor vehicle to dealer or private individual.

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205.58 Consolidated returns.

Sec. 8. Any person engaging in 2 or more places in the same business or businesses taxable under this act, shall file a consolidated return covering all the business activities engaged in within this state.

History: 1933, Act 167, Imd. Eff. June 28, 1933;—Am. 1939, Act 313, Imd. Eff. June 22, 1939;—CL 1948, 205.58;—Am. 2004, Act 173, Eff. Sept. 1, 2004.

205.59 Administration of tax; conflicting provisions; rules.

Sec. 9. (1) The tax imposed by this act shall be administered by the department pursuant to 1941 PA 122, MCL 205.1 to 205.31, the streamlined sales and use tax administration act, and this act. If the provisions of 1941 PA 122, MCL 205.1 to 205.31, the streamlined sales and use tax administration act, and this act conflict, the provisions of this act apply.

(2) The department shall promulgate rules to implement this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 1933, Act 167, Imd. Eff. June 28, 1933;—Am. 1939, Act 313, Imd. Eff. June 22, 1939;—CL 1948, 205.59;—Am. 1949, Act 272, Eff. July 1, 1949;—Am. 1964, Act 38, Eff. Aug. 28, 1964;—Am. 1971, Act 83, Imd. Eff. Aug. 4, 1971;—Am. 1975, Act 10, Imd. Eff. Mar. 25, 1975;—Am. 1980, Act 164, Eff. Sept. 17, 1980;—Am. 1988, Act 375, Eff. Mar. 22, 1989;—Am. 1991, Act 87, Imd. Eff. July 18, 1991;—Am. 1998, Act 365, Imd. Eff. Oct. 20, 1998;—Am. 2004, Act 173, Eff. Sept. 1, 2004.

Administrative rules: R 205.1 et seq. of the Michigan Administrative Code.

205.60 Refund by taxpayer for returned property; written notice; refund under MCL 445.360a.

Sec. 10. (1) If a taxpayer refunds or provides a credit for all or a portion of the amount of the purchase price of returned tangible personal property within the time period for returns stated in the taxpayer's refund policy or 180 days after the initial sale, whichever is sooner, the taxpayer shall also refund or provide a credit for the tax levied under this act that the taxpayer added to all or that portion of the amount of the purchase price that is refunded or credited.

(2) A cause of action against a seller for overcollected sales or use taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had 60 days to respond. The purchaser shall provide in the notice sufficient information to determine the validity of the request. In matters relating to the request, a seller is presumed to have a reasonable business practice if in the collection of sales and use tax, the seller has a certified service provider or a system, including a proprietary system, certified by the department and has remitted to this state all taxes collected less any deductions, credits, or collection allowances.

(3) If a taxpayer tenders an amount to a buyer under section 10a of 1976 PA 449, MCL 445.360a, the taxpayer shall refund the tax levied under this act on the difference between the price stamped or affixed to the item and the price charged.

History: Add. 2000, Act 149, Imd. Eff. June 7, 2000;—Am. 2004, Act 173, Eff. Sept. 1, 2004.

Compiler's note: Former MCL 205.60, which pertained to remittances of taxes, was repealed by Act 164 of 1980, Eff. Sept. 17, 1980.

205.61 Motor vehicle used as partial payment; value.

Sec. 11. In a taxable sale at retail of a motor vehicle where another motor vehicle is used as partial payment of the purchase price, the value of the motor vehicle used as partial payment is that value agreed to by the parties to the sale as evidenced by the signed statement executed under section 251 of the Michigan vehicle code, 1949 PA 300, MCL 257.251.

History: Add. 2004, Act 173, Eff. Sept. 1, 2004.

Compiler's note: Former MCL 205.61, which pertained to failure or refusal to file tax return, was repealed by Act 164 of 1980, Eff. Sept. 17, 1980.

205.62 Information to be obtained from purchaser; exception; format; signature; record of exempt transactions; liability; proof that transaction not subject to tax or obtaining exemption form from purchaser; date; additional time for compliance; blanket exemption form; "certified service provider" defined; process to claim exemption after purchase.

Sec. 12. (1) If an exemption from the tax under this act is claimed, the seller shall obtain identifying information of the purchaser and the reason for claiming the exemption at the time of the purchase or at a later date. The seller shall obtain the same information for a claimed exemption regardless of the medium in which the transaction occurred. If the seller is a person described in section 18(6)(a) or (b), obtaining the purchaser's license number issued by the Michigan liquor control commission satisfies the requirements of this subsection.

(2) A seller shall use a standard format for claiming an exemption electronically as adopted by the

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governing board under the streamlined sales and use tax agreement.

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

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

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

(a) Fraudulently fails to collect the tax.

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

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

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

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

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

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

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

(b) The date an assessment becomes final.

(c) The denial of a claim for refund.

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

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

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

(9) A seller is not liable for the tax under this act if the seller obtains a blanket exemption form for a purchaser with which the seller has a recurring business relationship. Renewals of blanket exemption forms or updates of exemption form information or data elements are not required if there is a recurring business relationship between the seller and the purchaser. For purposes of this section, a recurring business relationship exists when a period of not more than 12 months elapses between sales transactions.

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

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

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

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

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

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

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

History: Add. 2004, Act 173, Eff. Sept. 1, 2004;—Am. 2008, Act 438, Imd. Eff. Jan. 9, 2009;—Am. 2015, Act 251, Imd. Eff. Dec. 23, 2015;—Am. 2018, Act 167, Eff. Jan. 1, 2019;—Am. 2022, Act 3, Imd. Eff. Feb. 1, 2022.

Compiler's note: Former MCL 205.62, which pertained to collection of sales tax due state, was repealed by Act 164 of 1980, Eff. Sept. 17, 1980.

Enacting section 1 of Act 251 of 2015 provides:

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"Enacting section 1. The legislature shall annually appropriate sufficient funds from the state general fund to the state school aid fund created in section 11 of article IX of the state constitution of 1963 to fully compensate for any loss of revenue to the state school aid fund resulting from the enactment of this amendatory act."

205.63, 205.64 Repealed. 1980, Act 164, Eff. Sept. 17, 1980.

Compiler's note: The repealed sections pertained to tax lien and jeopardy assessments.

205.65 Certificate of dissolution or withdrawal.

Sec. 15. A domestic corporation, a foreign corporation, or other business entity authorized to transact business in this state that submits a certificate of dissolution or requests a certificate of withdrawal from this state shall request a certificate from the department stating that taxes are not due under section 27a of 1941 PA 122, MCL 205.27a, not more than 60 days after submitting the certificate of dissolution or requesting the certificate of withdrawal. A corporation or other business entity that does not request a certificate stating that taxes are not due is subject to the same penalties under section 24 of 1941 PA 122, MCL 205.24, that a taxpayer would be subject to for failure to file a return.

History: 1933, Act 167, Imd. Eff. June 28, 1933;—CL 1948, 205.65;—Am. 1949, Act 272, Eff. July 1, 1949;—Am. 1971, Act 160, Imd. Eff. Nov. 24, 1971;—Am. 1993, Act 325, Eff. May 1, 1994;—Am. 2002, Act 579, Imd. Eff. Oct. 14, 2002;—Am. 2003, Act 25, Imd. Eff. June 24, 2003.

Compiler's note: Enacting section 1 of Act 25 of 2003 provides:

"Enacting section 1. This amendatory act takes effect for returns and remittances for those returns that are due or filed on or after the effective date of this amendatory act."

205.66 Injunction for failure to pay tax or obtain license.

Sec. 16. Any person against whom a tax shall be assessed as herein provided may be restrained and enjoined by proper proceedings instituted in the name of the state of Michigan, brought by the attorney general at the request of the department, from engaging and/or continuing in a business for which a privilege tax is required by the provisions of this act, until such tax shall have been paid, and/or license secured, and until such person shall have complied with the provisions of this act.

History: 1933, Act 167, Imd. Eff. June 28, 1933;—CL 1948, 205.66;—Am. 1949, Act 272, Eff. July 1, 1949.

205.66a Duty of assessing officers.

Sec. 16a. It shall be the duty of each assessing officer of each city, village or township in preparing the annual property tax roll of personal property to show on the assessment roll the sales tax license number of each person engaged in the business of making retail sales of tangible personal property subject to tax under this act. It shall be the duty of each said assessing officer to immediately report to the department of revenue the name and address and type of business of any person found in the business of making such retail sales and not licensed to do so as required by section 3 of this act.

Any city, village or township clerk, marketmaster, or any other state, county or municipal official whose duty it is to issue licenses or permits to engage in a business involving the sale at retail of tangible personal property subject to tax under this act shall, before issuing such license or permit, require proof that the person to whom such license or permit is to be issued is the holder of a sales tax license as required by section 3 of this act or has applied to the department of revenue for such license.

Any city, village, township or state officer who shall receive information which leads him to believe that a person making retail sales subject to tax under this act is about to close his business or cease making retail sales shall immediately notify the department of revenue of this fact in order that the department may make such investigation as may be necessary to protect the interests of the state.

History: Add. 1949, Act 272, Eff. July 1, 1949.

205.67 Repealed. 2008, Act 438, Imd. Eff. Jan. 9, 2009.

Compiler's note: The repealed section pertained to multiple points of use exemption forms.

205.68 Annual inventory and purchase records; retention; tax liability; failure to file return or maintain records; tax assessment; basis; burden of proof; indirect audit; exemption claim; blanket exemption claim; "indirect audit procedure" and "sufficient records" defined.

Sec. 18. (1) A person liable for any tax imposed under this act shall keep in a paper, electronic, or digital format an accurate and complete beginning and annual inventory and purchase records of additions to inventory, complete daily sales records, receipts, invoices, bills of lading, and all pertinent documents in a form the department requires. Except as otherwise provided for a person described under subsection (6), if an exemption from the tax under this act is claimed by a person because the sale is for resale at retail, a record must be kept of the sales tax license number if the person has a sales tax license. These records must be

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retained for a period of 4 years after the tax imposed under this act to which the records apply is due or as otherwise provided by law.

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

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

(4) If a taxpayer fails to file a return or to maintain or preserve sufficient records as prescribed in this section, or the department has reason to believe that any records maintained or returns filed are inaccurate or incomplete and that additional taxes are due, the department may assess the amount of the tax due from the taxpayer based on an indirect audit procedure or any other information that is available or that may become available to the department. That assessment is considered prima facie correct for the purpose of this act and the burden of proof of refuting the assessment is upon the taxpayer. An indirect audit of a taxpayer under this subsection must be conducted in accordance with 1941 PA 122, MCL 205.1 to 205.31, and the standards published by the department under section 21 of 1941 PA 122, MCL 205.21, and must include all of the following elements:

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

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

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

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

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

(6) If the information required under section 12(1) is maintained, an exemption certificate or any other documentation or information is not required for an exemption claim obtained by any of the following:

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

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

(7) For purposes of this act, a blanket exemption claim covers all exempt transfers between the taxpayer and the buyer for a period of 4 years or for a period of less than 4 years as stated on the blanket exemption claim if that period is agreed to by the buyer and taxpayer. Renewal of a blanket exemption claim or an update of exemption claim information or data elements is not required if there is a recurring business relationship between the seller and the purchaser. For purposes of this subsection, a recurring business relationship exists when a period of not more than 12 months elapses between sales transactions.

(8) As used in this section:

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

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

History: Add. 2004, Act 173, Eff. Sept. 1, 2004;—Am. 2008, Act 438, Imd. Eff. Jan. 9, 2009;—Am. 2014, Act 108, Imd. Eff. Apr. 10, 2014;—Am. 2022, Act 3, Imd. Eff. Feb. 1, 2022.

Compiler's note: Former MCL 205.68, which pertained to examination of records and subpoena of witnesses, was repealed by Act 164 of 1980, Eff. Sept. 17, 1980.

205.69 Sourcing sale at retail or lease or rental property.

Sec. 19. (1) For sourcing a sale at retail for taxation under this act, the following apply:

(a) If a product is received by the purchaser at a business location of the seller, the sale is sourced to that

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business location.

(b) If a product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where the product is received by the purchaser or the purchaser's designee, including the location indicated by instructions for delivery to the purchaser, known to the seller.

(c) If subdivision (a) or (b) does not apply, the sale is sourced to the location indicated by an address for the purchaser available from the seller's business records maintained in the ordinary course of the seller's business, provided use of the address does not constitute bad faith.

(d) If subdivisions (a) through (c) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained at the completion of the sale, including the address of the purchaser's payment instrument if no other address is available, provided use of the address does not constitute bad faith.

(e) If subdivisions (a) through (d) do not apply or the seller has insufficient information to apply subdivisions (a) through (d), the sale will be sourced to the location indicated by the address from which the tangible personal property was shipped or from which the computer software delivered electronically was first available for transmission by the seller.

(2) For sourcing the lease or rental of tangible personal property, other than property included in subsection (3) or (4), for taxation under this act, the following apply:

(a) For a lease or rental requiring recurring periodic payments, the first payment is sourced in the same manner provided for a retail sale in subsection (1). Subsequent payments shall be sourced to the primary property location for each period covered by the payment as indicated by the address of the property provided by the lessee and available to the lessor from the lessor's records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not considered altered by intermittent use at different locations such as business property that accompanies employees on business trips or service calls.

(b) For a lease or rental not requiring recurring periodic payments, the payment is sourced in the same manner provided for a retail sale in subsection (1).

(3) For sourcing the lease or rental of motor vehicles, trailers, semitrailers, or aircraft that are not transportation equipment, the following apply:

(a) For a lease or rental requiring recurring periodic payments, each payment is sourced to the primary property location as indicated by the address of the property provided by the lessee and available to the lessor from the lessor's records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not considered altered by intermittent use at a different location.

(b) For a lease or rental not requiring recurring periodic payments, the payment is sourced in the same manner provided for a retail sale in subsection (1).

(4) The lease or rental of transportation equipment shall be sourced in the same manner provided for a retail sale in subsection (1).

(5) Subsections (2) and (3) do not affect the imposition or computation of sales tax on leases or rentals based on a lump-sum or accelerated basis or on the acquisition of property for lease.

(6) As used in this section:

(a) "Receive" and "receipt" mean 1 or more of the following but exclude possession by a shipping company on behalf of the purchaser:

(*i*) Taking possession of tangible personal property.

(*ii*) Making first use of services.

(b) "Transportation equipment" means 1 or more of the following:

(*i*) Locomotives and railcars utilized for the carriage of persons or property in interstate commerce.

(*ii*) Trucks and truck-tractors with a gross vehicle weight rating of 10,001 pounds or greater, trailers, semitrailers, or passenger buses, which are registered through the international registration plan and operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(*iii*) Aircraft operated by air carriers authorized and certificated by the United States department of transportation or other federal or foreign authority to transport air cargo or passengers in interstate or foreign commerce.

(*iv*) Containers designed for use on or component parts attached or secured to the equipment included in subparagraphs (*i*) to (*iii*).

(7) A person may deviate from the sourcing requirements under this section as provided in section 20 or 21.

History: Add. 2004, Act 173, Eff. Sept. 1, 2004.

Compiler's note: Former MCL 205.69, which pertained to testimony, was repealed by Act 164 of 1980, Eff. Sept. 17, 1980.

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205.70 Repealed. 2008, Act 438, Imd. Eff. Jan. 9, 2009.

Compiler's note: The repealed section pertained to maintenance of records.

205.71 Repealed. 2016, Act 159, Eff. Sept. 7, 2016.

Compiler's note: The repealed section pertained to an exemption form or certain other information provided by purchaser of direct mail.

205.71a Sales of advertising and promotional direct mail; sales of other direct mail; direct payment authorization or exemption form provided by purchaser; limitation; definitions.

Sec. 21a. (1) For sales of advertising and promotional direct mail all of the following apply:

(a) If the purchaser provides the seller with a direct payment authorization issued under section 8 of the use tax act, 1937 PA 94, MCL 205.98, or an exemption form as prescribed by the department for claiming direct mail, the seller, in the absence of bad faith, is relieved of all obligation to collect, pay, or remit any applicable tax under this act on any transaction involving advertising and promotional direct mail to which the direct payment authorization or exemption form applies, and the purchaser shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered to the recipients and shall report and pay any applicable tax due.

(b) If the purchaser provides the seller with information indicating the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients, the seller shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered and shall collect and remit the applicable tax due. In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of advertising and promotional direct mail if the seller sourced the sale and collected the tax in accordance with the delivery information provided by the purchaser.

(c) If the purchaser does not provide the seller with a direct payment authorization, an exemption form prescribed by the department, or any information indicating the jurisdictions to which the advertising and promotional direct mail is to be delivered, the sale shall be sourced in accordance with section 19(1)(e).

(2) Except as otherwise provided under this subsection, sales of other direct mail shall be sourced in accordance with section 19(1)(c). If the purchaser provides the seller with a direct payment authorization issued under section 8 of the use tax act, 1937 PA 94, MCL 205.98, or an exemption form as prescribed by the department for claiming direct mail, the seller, in the absence of bad faith, is relieved of all obligation to collect, pay, or remit any applicable tax under this act on any transaction involving other direct mail to which the direct payment authorization or exemption form applies and the sale shall be sourced to the jurisdictions to which the other direct mail is to be delivered to the recipients and the purchaser shall report and pay any applicable tax due.

(3) This section only applies to a transaction characterized as a sale of services if the service is an integral part of the production and distribution of direct mail.

(4) This section does not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental, regardless of whether advertising and promotional direct mail is included in the same mailing.

(5) If a transaction is a single transaction that includes a component in addition to advertising and promotional direct mail, this section only applies if the primary purpose of the transaction is to attract public attention or to sell, popularize, or secure financial support for the sale of the product or service.

(6) Nothing in this section limits a purchaser's obligation for sales or use tax due to any state to which the direct mail is delivered or limits a purchaser's right under any other law for a credit or refund of sales or use taxes paid to any other jurisdiction.

(7) As used in this section:

(a) "Advertising and promotional direct mail" means direct mail the primary purpose of which is to attract public attention to a product, service, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, service, person, business, or organization.

(b) "Other direct mail" means any direct mail that is not advertising and promotional direct mail regardless of whether advertising and promotional direct mail is included in the same mailing. Other direct mail includes, but is not limited to, any of the following:

(*i*) Transactional direct mail that contains personal information specific to the addressee such as invoices, bills, statements of account, and payroll advices.

(*ii*) Any legally required mailings such as privacy notices, tax reports, and stockholder reports.

(*iii*) Any other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents such as newsletters and informational pieces.

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History: Add. 2016, Act 159, Eff. Sept. 7, 2016.

205.72 Repealed. 1980, Act 164, Eff. Sept. 17, 1980.

Compiler's note: The repealed section pertained to hearing and appeal of tax assessment.

205.73 Advertisement; amounts added to sales prices for reimbursement purposes; brackets; tax imposed under tobacco products tax act.

Sec. 23. (1) A person engaged in the business of selling tangible personal property at retail shall not advertise or hold out to the public in any manner, directly or indirectly, that the tax imposed under this act is not considered as an element in the price to the consumer. This act does not prohibit any taxpayer from reimbursing himself or herself by adding to the sale price any tax levied by this act.

(2) Subject to subsection (3), in determining amounts to be added to the sales prices for reimbursement purposes, the seller shall compute the tax to the third decimal place and round up to a whole cent when the third decimal place is greater than 4 or round down to a whole cent when the third decimal place is 4 or less.

(3) The following brackets may be used through December 31, 2005 by retailers in determining amounts to be added to sales prices for reimbursement purposes:

Amount of Sale	Tax
1 cent to 10 cents.....	0
11 cents to 24 cents.....	1 cent
25 cents to 41 cents.....	2 cents
42 cents to 58 cents.....	3 cents
59 cents to 74 cents.....	4 cents
75 cents to 91 cents.....	5 cents
92 cents to 99 cents.....	6 cents

For $1.00 and each multiple of $1.00, 6% of the sale price.

(4) A person other than this state may not enrich himself or herself or gain any benefit from the collection or payment of the tax.

(5) A person subject to tax under this act shall not separately state on an invoice, bill of sale, or other similar document given to the purchaser the tax imposed under the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436.

History: 1933, Act 167, Imd. Eff. June 28, 1933;—CL 1948, 205.73;—Am. 1949, Act 272, Eff. July 1, 1949;—Am. 1964, Act 194, Eff. Aug. 28, 1964;—Am. 1993, Act 325, Eff. May 1, 1994;—Am. 2004, Act 173, Eff. Sept. 1, 2004.

205.74 Repealed. 1980, Act 164, Eff. Sept. 17, 1980.

Compiler's note: The repealed section pertained to penalties for offenses.

205.75 Disposition of money received and collected; definitions.

Sec. 25. (1) All money received and collected under this act must be deposited by the department in the state treasury to the credit of the general fund, except as otherwise provided in this section.

(2) Fifteen percent of the collections of the tax imposed at a rate of 4% must be distributed to cities, villages, and townships pursuant to the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.901 to 141.921.

(3) Sixty percent of the collections of the tax imposed at a rate of 4% must be deposited in the state school aid fund established in section 11 of article IX of the state constitution of 1963 and distributed as provided by law. In addition, all of the collections of the tax imposed at the additional rate of 2% approved by the electors on March 15, 1994 must be deposited in the state school aid fund.

(4) Except as otherwise provided in this subsection, not less than 27.9% of 25% of the collections of the general sales tax imposed at a rate of 4% directly or indirectly on fuels sold to propel motor vehicles upon highways, on the sale of motor vehicles, and on the sale of the parts and accessories of motor vehicles by new and used car businesses, used car businesses, accessory dealer businesses, and gasoline station businesses as classified by the department must be deposited each year into the comprehensive transportation fund. For the fiscal year ending September 30, 2021 only, the amount deposited into the comprehensive transportation fund under this subsection must be reduced by $18,000,000.00 and that $18,000,000.00 must be deposited into the transportation administration collection fund.

(5) Beginning October 1, 2016 and the first day of each calendar quarter thereafter, an amount equal to the collections for the calendar quarter that is 2 calendar quarters immediately preceding the current calendar quarter of the tax imposed under this act at the additional rate of 2% approved by the electors on March 15, 1994 from the sale at retail of aviation fuel must be distributed as follows:

(a) An amount equal to 35% of the collections of the tax imposed at a rate of 2% on the sale at retail of

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aviation fuel must be deposited in the state aeronautics fund and must be expended, on appropriation, only for those purposes authorized in the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.1 to 259.208.

(b) An amount equal to 65% of the collections of the tax imposed at a rate of 2% on the sale at retail of aviation fuel must be deposited in the qualified airport fund and must be expended, on appropriation, only for those purposes authorized under section 35 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.35.

(6) The department shall, on an annual basis, reconcile the amounts distributed under subsection (5) during each fiscal year with the amounts actually collected for a particular fiscal year and shall make any necessary adjustments, positive or negative, to the amounts to be distributed for the next successive calendar quarter that begins January 1. The state treasurer or his or her designee shall annually provide to the operator of each qualified airport a report of the reconciliation performed under this subsection. The reconciliation report is subject to the confidentiality restrictions and penalties provided in section 28(1)(f) of 1941 PA 122, MCL 205.28.

(7) An amount equal to the collections of the tax imposed at a rate of 4% under this act from the sale at retail of computer software must be deposited in the Michigan health initiative fund created in section 5911 of the public health code, 1978 PA 368, MCL 333.5911, and must be considered in addition to, and is not intended as a replacement for any other money appropriated to the department of health and human services. The funds deposited in the Michigan health initiative fund on an annual basis must not be less than $9,000,000.00 or more than $12,000,000.00.

(8) An amount equal to all revenue lost to the state school aid fund as a result of the exemptions under sections 4a(1)(u) and 4ee, as determined by the department, must be deposited into the state school aid fund established in section 11 of article IX of the state constitution of 1963. Money deposited into the state school aid fund under this subsection must not include and must be considered in addition to money deposited in the state school aid fund under subsection (3). A person that claims an exemption under section 4ee shall report the sales price of the data center equipment as defined in section 4ee and any other information necessary to determine the amount of revenue lost to the state school aid fund as a result of the exemption under section 4ee annually on a form at the time and in a manner prescribed by the department. The report required under this subsection must not include any remittance for tax, and does not constitute a return or otherwise alleviate any obligations under section 6.

(9) The balance in the state general fund shall be disbursed only on an appropriation or appropriations by the legislature.

(10) As used in this section:

(a) "Aviation fuel" means fuel as that term is defined in section 4 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.4.

(b) "Comprehensive transportation fund" means the comprehensive transportation fund created in section 10b of 1951 PA 51, MCL 247.660b.

(c) "Qualified airport" means that term as defined in section 109 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.109.

(d) "Qualified airport fund" means the qualified airport fund created in section 34(2) of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.34.

(e) "State aeronautics fund" means the state aeronautics fund created in section 34(1) of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.34.

(f) "Transportation administration collection fund" means the transportation administration collection fund created in section 810b of the Michigan vehicle code, 1949 PA 300, MCL 257.810b.

History: 1933, Act 167, Imd. Eff. June 28, 1933;—Am. 1935, Act 77, Imd. Eff. May 23, 1935;—CL 1948, 205.75;—Am. 1949, Act 272, Eff. July 1, 1949;—Am. 1964, Act 49, Imd. Eff. May 7, 1964;—Am. 1978, Act 428, Imd. Eff. Sept. 30, 1978;—Am. 1982, Act 305, Imd. Eff. Oct. 13, 1982;—Am. 1982, Act 440, Eff. Mar. 30, 1983;—Am. 1987, Act 236, Imd. Eff. Dec. 28, 1987;—Am. 1987, Act 259, Imd. Eff. Dec. 28, 1987;—Am. 1991, Act 70, Imd. Eff. July 8, 1991;—Am. 1993, Act 325, Eff. May 1, 1994;—Am. 2003, Act 139, Imd. Eff. Aug. 1, 2003;—Am. 2004, Act 544, Imd. Eff. Jan. 3, 2005;—Am. 2006, Act 69, Imd. Eff. Mar. 20, 2006;—Am. 2007, Act 69, Imd. Eff. Sept. 28, 2007;—Am. 2008, Act 361, Imd. Eff. Dec. 23, 2008;—Am. 2010, Act 160, Imd. Eff. Sept. 17, 2010;—Am. 2012, Act 225, Imd. Eff. June 29, 2012;—Am. 2012, Act 226, Imd. Eff. June 29, 2012;—Am. 2015, Act 262, Eff. Mar. 22, 2016;—Am. 2020, Act 29, Imd. Eff. Feb. 13, 2020;—Am. 2021, Act 38, Imd. Eff. July 1, 2021;—Am. 2021, Act 108, Eff. Feb. 3, 2022.

Compiler's note: Enacting section 1 of Act 467 of 2014 provides:

"Enacting section 1. This amendatory act does not take effect unless House Joint Resolution UU of the 97th Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

House Joint Resolution UU was presented to the electors as Proposal 15-1 at the May 5, 2015 special election. The proposal to amend the constitution was not approved by the voters and Act 467 of 2014 does not go into effect.

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205.76 Repealed. 1949, Act 272, Eff. July 1, 1949.

Compiler's note: The repealed section pertained to appropriation from general fund for administration of sales tax act and provided for its repayment.

205.78 Short title; general sales tax act.

Sec. 28. This act may be cited as the "General Sales Tax Act."

History: 1933, Act 167, Imd. Eff. June 28, 1933;—CL 1948, 205.78.

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USE TAX ACT
Act 94 of 1937

AN ACT to provide for the levy, assessment, and collection of a specific excise tax on the storage, use, or consumption in this state of tangible personal property and certain services; to appropriate the proceeds of that tax; to prescribe penalties; and to make appropriations.

History: 1937, Act 94, Eff. Oct. 29, 1937;—Am. 1959, Act 263, Eff. Sept. 1, 1959;—Am. 1960, 2nd Ex. Sess., Act 2, Eff. Jan. 1, 1961;—Am. 2007, Act 93, Eff. Dec. 1, 2007.

The People of the State of Michigan enact:

205.91 Use tax act; short title.

Sec. 1. This act may be cited as the "Use Tax Act".

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.91.

205.92 Definitions.

Sec. 2. As used in this act:

(a) "Person" means an individual, firm, partnership, joint venture, association, social club, fraternal organization, municipal or private corporation whether or not organized for profit, company, limited liability company, estate, trust, receiver, trustee, syndicate, the United States, this state, county, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(b) "Use" means the exercise of a right or power over tangible personal property incident to the ownership of that property including transfer of the property in a transaction where possession is given. Converting tangible personal property acquired for a use exempt from the tax levied under this act to a use not exempt from the tax levied under this act is a taxable use.

(c) "Storage" means a keeping or retention of property in this state for any purpose after the property loses its interstate character.

(d) "Seller" means the person from whom a purchase is made and includes every person selling tangible personal property or services for storage, use, or other consumption in this state. If, in the opinion of the department, it is necessary for the efficient administration of this act to regard a salesperson, representative, peddler, or canvasser as the agent of a dealer, distributor, supervisor, or employer under whom the person operates or from whom he or she obtains tangible personal property or services sold by him or her for storage, use, or other consumption in this state, irrespective of whether or not he or she is making the sales on his or her own behalf or on behalf of the dealer, distributor, supervisor, or employer, the department may so consider him or her, and may consider the dealer, distributor, supervisor, or employer as the seller for the purpose of this act.

(e) "Purchase" means to acquire for a consideration, whether the acquisition is effected by a transfer of title, of possession, or of both, or a license to use or consume; whether the transfer is absolute or conditional, and by whatever means the transfer is effected; and whether consideration is a price or rental in money, or by way of exchange or barter. Purchase includes converting tangible personal property acquired for a use exempt from the tax levied under this act to a use not exempt from the tax levied under this act.

(f) "Purchase price" or "price" means the total amount of consideration paid by the consumer to the seller, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, and applies to the measure subject to use tax. Purchase price includes the following subparagraphs (*i*) through (*vii*) and excludes subparagraphs (*viii*) through (*xiv*):

(*i*) Seller's cost of the property sold.

(*ii*) Cost of materials used, labor or service cost, interest, losses, costs of transportation to the seller, taxes imposed on the seller other than taxes imposed by this act, and any other expense of the seller.

(*iii*) Charges by the seller for any services necessary to complete the sale, other than the following:

(A) An amount received or billed by the taxpayer for remittance to the employee as a gratuity or tip, if the gratuity or tip is separately identified and itemized on the guest check or billed to the customer.

(B) Labor or service charges involved in maintenance and repair work on tangible personal property of others if separately itemized.

(*iv*) Delivery charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property subject to the tax levied under this act from the seller to the purchaser.

(*v*) Installation charges incurred or to be incurred before the completion of the transfer of ownership of

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tangible personal property from the seller to the purchaser.

(*vi*) Except as otherwise provided in subparagraphs (*xi*), (*xii*), and (*xiv*), credit for any trade-in.

(*vii*) Except as otherwise provided in subparagraph (*x*), consideration received by the seller from third parties if all of the following conditions are met:

(A) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale.

(B) The seller has an obligation to pass the price reduction or discount through to the purchaser.

(C) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser.

(D) One of the following criteria is met:

(I) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented.

(II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in a group or organization.

(III) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

(*viii*) Interest, financing, or carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(*ix*) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(*x*) Beginning January 1, 2000, employee discounts that are reimbursed by a third party on sales of motor vehicles.

(*xi*) Beginning November 15, 2013, credit for the agreed-upon value of a titled watercraft used as part payment of the purchase price of a new titled watercraft or used titled watercraft purchased from a watercraft dealer if the agreed-upon value is separately stated on the invoice, bill of sale, or similar document given to the purchaser. This subparagraph does not apply to leases or rentals.

(*xii*) Beginning December 15, 2013, credit for the agreed-upon value of a motor vehicle or recreational vehicle used as part payment of the purchase price of a new motor vehicle or used motor vehicle or recreational vehicle purchased from a dealer if the agreed-upon value is separately stated on the invoice, bill of sale, or similar document given to the purchaser. This subparagraph does not apply to leases or rentals. Except as otherwise provided under subparagraph (*xiv*), for purposes of this subparagraph, the agreed-upon value of a motor vehicle or recreational vehicle used as part payment shall be limited as follows:

(A) Beginning December 15, 2013, subject to sub-subparagraphs (B) and (C), the lesser of the following:

(I) $2,000.00.

(II) The agreed-upon value of the motor vehicle or recreational vehicle used as part payment.

(B) Beginning January 1, 2015 and each January 1 thereafter through December 31, 2018, the amount under sub-subparagraph (A)(I) shall be increased by an additional $500.00 each year.

(C) Beginning January 1, 2019, subject to sub-subparagraphs (D) and (E), the lesser of the following:

(I) $5,000.00.

(II) The agreed-upon value of the motor vehicle used as part payment.

(D) Beginning January 1, 2020 and each January 1 thereafter, the amount under sub-subparagraph (C)(I) shall be increased by an additional $1,000.00 each year.

(E) Beginning on January 1, in the year in which the amount under sub-subparagraph (C)(I) exceeds $14,000.00 and each January 1 thereafter, there shall be no limitation on the agreed-upon value of the motor vehicle used as part payment.

(*xiii*) Beginning January 1, 2017, credit for the core charge attributable to a recycling fee, deposit, or disposal fee for a motor vehicle or recreational vehicle part or battery if the recycling fee, deposit, or disposal fee is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(*xiv*) Beginning January 1, 2018, credit for the agreed-upon value of a recreational vehicle used as part payment of the purchase price of a recreational vehicle purchased from a dealer if the agreed-upon value is separately stated on the invoice, bill of sale, or similar document given to the purchaser. This subparagraph does not apply to leases or rentals.

(g) "Consumer" means the person who has purchased tangible personal property or services for storage, use, or other consumption in this state and includes, but is not limited to, 1 or more of the following:

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(*i*) A person acquiring tangible personal property if engaged in the business of constructing, altering, repairing, or improving the real estate of others.

(*ii*) A person who has converted tangible personal property or services acquired for storage, use, or consumption in this state that is exempt from the tax levied under this act to storage, use, or consumption in this state that is not exempt from the tax levied under this act.

(h) "Business" means all activities engaged in by a person or caused to be engaged in by a person with the object of gain, benefit, or advantage, either direct or indirect.

(i) "Department" means the department of treasury.

(j) "Tax" includes all taxes, interest, or penalties levied under this act.

(k) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses and includes electricity, water, gas, steam, and prewritten computer software.

(*l*) "Textiles" means goods that are made of or incorporate woven or nonwoven fabric, including, but not limited to, clothing, shoes, hats, gloves, handkerchiefs, curtains, towels, sheets, pillows, pillowcases, tablecloths, napkins, aprons, linens, floor mops, floor mats, and thread. Textiles also include materials used to repair or construct textiles, or other goods used in the rental, sale, or cleaning of textiles.

(m) "Interstate motor carrier" means a person who operates or causes to be operated a qualified commercial motor vehicle on a public road or highway in this state and at least 1 other state or Canadian province.

(n) "Qualified commercial motor vehicle" means that term as defined in section 1(*l*), (m), and (n) of the motor carrier fuel tax act, 1980 PA 119, MCL 207.211.

(o) "Diesel fuel" means that term as defined in section 2(q) of the motor fuel tax act, 2000 PA 403, MCL 207.1002.

(p) "Sale" means a transaction by which tangible personal property or services are purchased or rented for storage, use, or other consumption in this state.

(q) "Convert" means putting a service or tangible personal property acquired for a use exempt from the tax levied under this act at the time of acquisition to a use that is not exempt from the tax levied under this act, whether the use is in whole or in part, or permanent or not permanent. A motor vehicle purchased for resale by a new vehicle dealer licensed under section 248(8)(a) of the Michigan vehicle code, 1949 PA 300, MCL 257.248, and not titled in the name of the dealer shall not be considered to be converted prior to sale or lease by that dealer.

(r) "New motor vehicle" means that term as defined in section 33a of the Michigan vehicle code, 1949 PA 300, MCL 257.33a.

(s) "Recreational vehicle" means that term as defined in section 49a of the Michigan vehicle code, 1949 PA 300, MCL 257.49a.

(t) "Dealer" means that term as defined in section 11 of the Michigan vehicle code, 1949 PA 300, MCL 257.11.

(u) "Watercraft dealer" means a dealer as that term is defined in section 80102 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80102.

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.92;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1953, Act 203, Imd. Eff. June 10, 1953;—Am. 1959, Act 263, Eff. Sept. 1, 1959;—Am. 1969, Act 214, Imd. Eff. Aug. 6, 1969;—Am. 1981, Act 166, Imd. Eff. Dec. 2, 1981;—Am. 1982, Act 219, Eff. Jan. 1, 1984;—Am. 1982, Act 479, Eff. Mar. 30, 1983;—Am. 1984, Act 178, Imd. Eff. July 3, 1984;—Am. 1987, Act 260, Imd. Eff. Dec. 28, 1987;—Am. 1988, Act 506, Imd. Eff. Dec. 29, 1988;—Am. 1995, Act 78, Imd. Eff. June 13, 1995;—Am. 1995, Act 208, Imd. Eff. Nov. 29, 1995;—Am. 1998, Act 366, Imd. Eff. Oct. 20, 1998;—Am. 2000, Act 391, Imd. Eff. Jan. 3, 2001;—Am. 2002, Act 511, Imd. Eff. July 23, 2002;—Am. 2002, Act 669, Eff. Mar. 31, 2003;—Am. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2007, Act 103, Eff. Sept. 30, 2002;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009;—Am. 2013, Act 234, Imd. Eff. Dec. 26, 2013;—Am. 2016, Act 7, Imd. Eff. Feb. 2, 2016;—Am. 2016, Act 516, Eff. Mar. 29, 2017;—Am. 2018, Act 1, Imd. Eff. Jan. 18, 2018.

Compiler's note: Enacting section 2 of Act 506 of 1988 provides:

"This amendatory act is effective for all taxes due beginning on April 1, 1983."

Enacting section 2 of Act 78 of 1995 provides:

"This amendatory act is effective for taxes levied after 1980."

Enacting sections 1 and 2 of 2007 PA 103 provide:

"Enacting section 1. It is the intent of the legislature that this amendatory act clarify that a person who acquires tangible personal property for a purpose exempt under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, who subsequently converts that property to a use taxable under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, is liable for the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111.

"Enacting section 2. This amendatory act is curative and intended to prevent any misinterpretation of the ability of a taxpayer to claim an exemption from the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, based on the purchase of tangible personal property or services for resale that may result from the decision of the Michigan court of appeals in Betten Auto Center, Inc v Department

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of Treasury, No. 265976, as affirmed by the Michigan Supreme Court. This amendatory act is retroactive and is effective beginning September 30, 2002 and for all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

Enacting section 1 of Act 7 of 2016 provides:

"Enacting section 1. This amendatory act is retroactive and is effective December 15, 2013."

Senate Bill No. 95 was vetoed by the Governor on July 25, 2017. On January 17, 2018, two-thirds of the members of the Senate and House of Representatives voted to pass the bill, the objections of the Governor to the contrary notwithstanding. Senate Bill No. 95 was filed with the Secretary of State on January 18, 2018, and became 2018 PA 1, Imd. Eff. Jan. 18, 2018.

205.92b Additional definitions.

Sec. 2b. As used in this act:

(a) "Alcoholic beverage" means a beverage suitable for human consumption that contains 1/2 of 1% or more of alcohol by volume.

(b) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(c) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(d) "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.

(e) "Delivery charges" means charges by the seller for preparation and delivery to a location designated by the purchaser of tangible personal property or services. Delivery charges include, but are not limited to, transportation, shipping, postage, handling, crating, and packing. Beginning September 1, 2004, delivery charges do not include the charges for delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the purchaser. If a shipment includes both exempt property and taxable property, the seller shall allocate the delivery charge using 1 of the following methods:

(*i*) Multiply the delivery price by a fraction, the numerator of which is the total sales prices of the taxable property and the denominator of which is the total sales prices of all property in the shipment.

(*ii*) Multiply the delivery price by a fraction, the numerator of which is the total weight of the taxable property and the denominator of which is the total weight of all property in the shipment.

(f) "Dental prosthesis" means a bridge, crown, denture, or other similar artificial device used to repair or replace intraoral defects such as missing teeth, missing parts of teeth, and missing soft or hard structures of the jaw or palate.

(g) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that is all of the following:

(*i*) Required to be labeled as a dietary supplement identifiable by the "supplement facts" box found on the label as required by 21 CFR 101.36.

(*ii*) Contains 1 or more of the following dietary ingredients:

(A) A vitamin.

(B) A mineral.

(C) An herb or other botanical.

(D) An amino acid.

(E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake.

(F) A concentrate, metabolite, constituent, extract, or combination of any ingredient listed in sub-subparagraphs (A) to (E).

(*iii*) Intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in 1 of those forms, is not represented as conventional food or for use as a sole item of a meal or of the diet.

(h) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser if the cost of the items is not billed directly to the recipients, including tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material but not including multiple items of printed material delivered to a single address.

(i) "Drug" means a compound, substance, or preparation, or any component of a compound, substance, or preparation, other than food or food ingredients, dietary supplements, or alcoholic beverages, intended for human use that is 1 or more of the following:

(*i*) Recognized in the official United States Pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or in any of their supplements.

(*ii*) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

(*iii*) Intended to affect the structure or any function of the body.

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(j) "Durable medical equipment" means equipment for home use, other than mobility enhancing equipment, dispensed pursuant to a prescription, including durable medical equipment repair or replacement parts, that does all of the following:

(*i*) Can withstand repeated use.

(*ii*) Is primarily and customarily used to serve a medical purpose.

(*iii*) Is not useful generally to a person in the absence of illness or injury.

(*iv*) Is not worn in or on the body.

(k) "Durable medical equipment repair or replacement parts" includes all components or attachments used in conjunction with durable medical equipment.

(*l*) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(m) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration and may include future options to purchase or extend. This definition applies only to leases and rentals entered into after September 1, 2004 and has no retroactive impact on leases and rentals that existed on that date. Lease or rental does not include the following subparagraphs (*i*) to (*iii*) and includes subparagraph (*iv*):

(*i*) A transfer of possession or control of tangible personal property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.

(*ii*) A transfer of possession or control of tangible personal property under an agreement requiring transfer of title upon completion of the required payments and payment of an option price that does not exceed $100.00 or 1% of the total required payments, whichever is greater.

(*iii*) The provision of tangible personal property along with an operator for a fixed or indeterminate period of time, if that operator is necessary for the equipment to perform as designed. To be necessary, an operator must do more than maintain, inspect, or set up the tangible personal property.

(*iv*) An agreement covering motor vehicles or trailers if the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in section 7701(h)(1) of the internal revenue code of 1986, 26 USC 7701(h)(1).

(n) "Mobility enhancing equipment" means equipment, other than durable medical equipment or a motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer, dispensed pursuant to a prescription, including repair or replacement parts for that equipment, that is all of the following:

(*i*) Primarily and customarily used to provide or increase the ability to move from 1 place to another and is appropriate for use at home or on a motor vehicle.

(*ii*) Not generally used by a person with normal mobility.

(o) "Prescription" means an order, formula, or recipe, issued in any form of oral, written, electronic, or other means of transmission by a licensed physician or other health professional as defined in section 3501 of the insurance code of 1956, 1956 PA 218, MCL 500.3501. For a hearing aid, prescription includes an order, instruction, or direction of a hearing aid dealer or salesperson licensed under article 13 of the occupational code, 1980 PA 299, MCL 339.1301 to 339.1309.

(p) "Prewritten computer software" means computer software, including prewritten upgrades, that is delivered by any means and that is not designed and developed by the author or other creator to the specifications of a specific purchaser. Prewritten computer software includes all of the following:

(*i*) Any combination of 2 or more prewritten computer software programs or portions of prewritten computer software programs.

(*ii*) Computer software designed and developed by the author or other creator to the specifications of a specific purchaser if it is sold to a person other than that specific purchaser.

(*iii*) The modification or enhancement of prewritten computer software or portions of prewritten computer software if the modification or enhancement is designed and developed to the specifications of a specific purchaser unless there is a reasonable, separately stated charge or an invoice or other statement of the price is given to the purchaser for the modification or enhancement. If a person other than the original author or creator modifies or enhances prewritten computer software, that person is considered to be the author or creator of only that person's modifications or enhancements.

(q) "Prosthetic device" means, except as provided in section 4ff, a replacement, corrective, or supportive device, other than contact lenses and dental prosthesis, dispensed pursuant to a prescription, including repair or replacement parts for that device, worn on or in the body to do 1 or more of the following:

(*i*) Artificially replace a missing portion of the body.

(*ii*) Prevent or correct a physical deformity or malfunction of the body.

(*iii*) Support a weak or deformed portion of the body.

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(r) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

History: Add. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2006, Act 428, Imd. Eff. Oct. 5, 2006;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009;—Am. 2017, Act 220, Imd. Eff. Dec. 20, 2017;—Am. 2020, Act 47, Imd. Eff. Mar. 3, 2020.

Compiler's note: Enacting section 1 of Act 220 of 2017 provides:
"Enacting section 1. This amendatory act is retroactive and is effective beginning July 1, 2017."

205.92c Definitions.

Sec. 2c. As used in this act:

(a) "Authority" means the local community stabilization authority created under the local community stabilization authority act.

(b) "Basic school operating mills" means school operating mills used to calculate the state portion of a local school district's foundation allowance under section 20 of the state school aid act of 1979, 1979 PA 94, MCL 388.1620, and levied under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211, by a local school district that receives from this state a portion of its foundation allowance, as calculated under section 20(4) of the state school aid act of 1979, 1979 PA 94, MCL 388.1620.

(c) "Local community stabilization share" means the local community stabilization share tax described in section 3(5), authorized by the amendatory act that added this section, and included in the specific tax levied under section 3(1).

(d) "Personal property growth factor" means the average annual growth rate for industrial and commercial personal property taxable value from 1996 through 2012 rounded up to the nearest tenth of a percent, which is 1.0%.

(e) "State fiscal year" means the annual period fiscal beginning on October 1 of each year and ending on September 30 in the immediately succeeding year.

(f) "State share" means the state share tax described in section 3(5) and included in the specific tax levied under section 3(1).

History: Add. 2014, Act 80, Eff. Jan 1, 2015.

Compiler's note: Enacting section 1 of Act 80 of 2014 provides:
"Enacting section 1. This amendatory act does not take effect unless approved by a majority of the registered and qualified electors of this state voting on the question at an election to be held on the August regular election date in 2014. Except as otherwise provided in this enacting section, this amendatory act shall be submitted to the registered and qualified electors of this state at that election as provided by the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, and for the purpose of complying with section 31 of article IX of the state constitution of 1963. Notwithstanding other law, when submitted to the registered and qualified electors of this state, this amendatory act shall be presented with the following question:
"APPROVAL OR DISAPPROVAL OF AMENDATORY ACT TO REDUCE STATE USE TAX AND REPLACE WITH A LOCAL COMMUNITY STABILIZATION SHARE TO MODERNIZE THE TAX SYSTEM TO HELP SMALL BUSINESSES GROW AND CREATE JOBS
The amendatory act adopted by the Legislature would:
1. Reduce the state use tax and replace with a local community stabilization share of the tax for the purpose of modernizing the tax system to help small businesses grow and create jobs in Michigan.
2. Require Local Community Stabilization Authority to provide revenue to local governments dedicated for local purposes, including police safety, fire protection, and ambulance emergency services.
3. Increase portion of state use tax dedicated for aid to local school districts.
4. Prohibit Authority from increasing taxes.
5. Prohibit total use tax rate from exceeding existing constitutional 6% limitation.
Should this law be approved?
YES [ ]
NO [ ]"."
Enacting section 2 of Act 80 of 2014 provides:
"Enacting section 2. If approved by the registered and qualified electors of this state as provided in enacting section 1, this amendatory act takes effect January 1, 2015."

Compiler's note: Act 80 of 2014 was approved by a majority of the voters at the August 5, 2014 primary election. The election results were certified by the Michigan Board of State Canvassers on August 22, 2014.

Compiler's note: This section, which was added by Act 80 of 2014, should have evidently amended the section added by Act 408 of 2012.

Compiler's note: The conditions in enacting section 1 of Act 408 of 2012 were not met. Act 408 of 2012 did not go into effect.

Compiler's note: The conditions in enacting section 1 of Act 81 of 2014 were not met. Act 81 of 2014 did not go into effect.

205.93 Tax rate; applicability to tangible personal property or services; conversion to taxable use; penalties and interest; presumption; using, storing, or consuming vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft; collection; price tax base; exemptions; services, information, or records of other department or agency; state share tax and local community stabilization share; total combined rate levied by state and

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authority; limitation.

Sec. 3. (1) There is levied upon and there shall be collected from every person in this state a specific tax, including both the local community stabilization share and the state share, for the privilege of using, storing, or consuming tangible personal property in this state at a total combined rate equal to 6% of the price of the property or services specified in section 3a or 3b. The tax levied under this act applies to a person who acquires tangible personal property or services that are subject to the tax levied under this act for any tax-exempt use who subsequently converts the tangible personal property or service to a taxable use, including an interim taxable use. If tangible personal property or services are converted to a taxable use, the tax levied under this act shall be imposed without regard to any subsequent tax-exempt use. Penalties and interest shall be added to the tax if applicable as provided in this act. For the purpose of the proper administration of this act and to prevent the evasion of the tax, all of the following shall be presumed:

(a) That tangible personal property purchased is subject to the tax if brought into this state within 90 days of the purchase date and is considered as acquired for storage, use, or other consumption in this state.

(b) That tangible personal property used solely for personal, nonbusiness purposes that is purchased outside of this state and that is not an aircraft is exempt from the tax levied under this act if 1 or more of the following conditions are satisfied:

(*i*) The property is purchased by a person who is not a resident of this state at the time of purchase and is brought into this state more than 90 days after the date of purchase.

(*ii*) The property is purchased by a person who is a resident of this state at the time of purchase and is brought into this state more than 360 days after the date of purchase.

(2) The tax imposed by this section for the privilege of using, storing, or consuming a vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft shall be collected before the transfer of the vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft, except a transfer to a licensed dealer or retailer for purposes of resale that arises by reason of a transaction made by a person who does not transfer vehicles, ORVs, manufactured housing, aircraft, snowmobiles, or watercraft in the ordinary course of his or her business done in this state. The tax on a vehicle, ORV, snowmobile, and watercraft shall be collected by the secretary of state before the transfer of the vehicle, ORV, snowmobile, or watercraft registration. The tax on manufactured housing shall be collected by the department of licensing and regulatory affairs, mobile home commission, or its agent before the transfer of the certificate of title. The tax on an aircraft shall be collected by the department of treasury. The price tax base of a new or previously owned car or truck held for resale by a dealer and that is not exempt under section 4(1)(c) is the purchase price of the car or truck multiplied by 2.5% plus $30.00 per month beginning with the month that the dealer uses the car or truck in a nonexempt manner.

(3) The following transfers or purchases are not subject to use tax:

(a) A transaction or a portion of a transaction if the transferee or purchaser is the spouse, mother, father, brother, sister, child, stepparent, stepchild, stepbrother, stepsister, grandparent, grandchild, legal ward, or a legally appointed guardian with a certified letter of guardianship, of the transferor.

(b) A transaction or a portion of a transaction if the transfer is a gift to a beneficiary in the administration of an estate.

(c) If a vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft that has once been subjected to the Michigan sales or use tax is transferred in connection with the organization, reorganization, dissolution, or partial liquidation of an incorporated or unincorporated business and the beneficial ownership is not changed.

(d) If an insurance company licensed to conduct business in this state acquires ownership of a late model distressed vehicle as defined in section 12a of the Michigan vehicle code, 1949 PA 300, MCL 257.12a, through payment of damages in response to a claim or when the person who owned the vehicle before the insurance company reacquires ownership from the company as part of the settlement of a claim.

(4) The department may utilize the services, information, or records of any other department or agency of state government or of the authority in the performance of its duties under this act, and other departments or agencies of state government and the authority are required to furnish those services, information, or records upon the request of the department.

(5) Beginning on October 1, 2015, the specific tax levied under subsection (1) includes both a state share tax levied by this state and a local community stabilization share tax authorized by 2014 PA 80 and levied by the authority, which replaces the reduced state share at the following rates in each of the following state fiscal years:

(a) For fiscal year 2015-2016, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate

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$96,400,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(b) For fiscal year 2016-2017, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $380,900,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(c) For fiscal year 2017-2018, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $410,800,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(d) For fiscal year 2018-2019, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $438,000,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(e) For fiscal year 2019-2020, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $465,900,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(f) For fiscal year 2020-2021, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $491,500,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(g) For fiscal year 2021-2022, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $521,300,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(h) For fiscal year 2022-2023, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $548,000,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(i) For fiscal year 2023-2024, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $561,700,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(j) For fiscal year 2024-2025, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $569,800,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(k) For fiscal year 2025-2026, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $571,400,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(*l*) For fiscal year 2026-2027, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $572,200,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(m) For fiscal year 2027-2028, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $572,600,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(n) For fiscal year 2028-2029 and each fiscal year thereafter, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate the amount distributed under this section in the immediately preceding year adjusted by the personal property growth factor and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(6) The state share includes the portion of the use tax imposed at the additional rate of 2% approved by the electors of this state on March 15, 1994 and dedicated for aid to schools under section 21(2). The local community stabilization share does not include the portion of the use tax imposed at the additional rate of 2%

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approved by the electors of this state on March 15, 1994.

(7) The total combined rate of the tax levied by this state and the authority under this act, including both the state share, as reduced by 2014 PA 80, and the local community stabilization share, shall not exceed the constitutional limit of 6% under section 8 of article IX of the state constitution of 1963. The authority shall not increase any tax or tax rate, but is authorized to and shall levy the local community stabilization share at the rate provided in subsection (5).

History: 1937, Act 94, Eff. Oct. 29, 1937;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1953, Act 211, Eff. Oct. 2, 1953;—Am. 1957, Act 167, Imd. Eff. May 29, 1957;—Am. 1959, Act 263, Eff. Sept. 1, 1959;—Am. 1959, Act 272, Eff. Jan. 1, 1960;—Am. 1960, 2nd Ex. Sess., Act 2, Eff. Jan. 1, 1961;—Am. 1962, Act 219, Eff. July 1, 1962;—Am. 1964, Act 48, Eff. Aug. 28, 1964;—Am. 1971, Act 51, Eff. Sept. 1, 1971;—Am. 1982, Act 219, Eff. Jan. 1, 1984;—Am. 1982, Act 478, Imd. Eff. Dec. 30, 1982;—Am. 1984, Act 178, Imd. Eff. July 3, 1984;—Am. 1990, Act 86, Eff. June 6, 1990;—Am. 1993, Act 326, Eff. May 1, 1994;—Am. 1995, Act 67, Imd. Eff. May 31, 1995;—Am. 1999, Act 117, Imd. Eff. July 14, 1999;—Am. 2002, Act 110, Imd. Eff. Mar. 27, 2002;—Am. 2002, Act 456, Imd. Eff. June 21, 2002;—Am. 2002, Act 511, Imd. Eff. July 23, 2002;—Am. 2002, Act 669, Eff. Mar. 31, 2003;—Am. 2003, Act 27, Eff. Mar. 30, 2004;—Am. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2007, Act 103, Eff. Sept. 30, 2002;—Am. 2014, Act 80, Eff. Jan. 1, 2015;—Am. 2015, Act 124, Imd. Eff. July 10, 2015.

Compiler's note: Enacting section 1 of Act 117 of 1999 provides:

"Enacting section 1. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, the tax levied does not apply to the price of property or services to the extent that the property or services are stored, used, or consumed for exempt purposes. For telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides for a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

Enacting sections 1 and 2 of 2007 PA 103 provide:

"Enacting section 1. It is the intent of the legislature that this amendatory act clarify that a person who acquires tangible personal property for a purpose exempt under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, who subsequently converts that property to a use taxable under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, is liable for the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111.

"Enacting section 2. This amendatory act is curative and intended to prevent any misinterpretation of the ability of a taxpayer to claim an exemption from the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, based on the purchase of tangible personal property or services for resale that may result from the decision of the Michigan court of appeals in Betten Auto Center, Inc v Department of Treasury, No. 265976, as affirmed by the Michigan Supreme Court. This amendatory act is retroactive and is effective beginning September 30, 2002 and for all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

Enacting section 1 of Act 80 of 2014 provides:

"Enacting section 1. This amendatory act does not take effect unless approved by a majority of the registered and qualified electors of this state voting on the question at an election to be held on the August regular election date in 2014. Except as otherwise provided in this enacting section, this amendatory act shall be submitted to the registered and qualified electors of this state at that election as provided by the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, and for the purpose of complying with section 31 of article IX of the state constitution of 1963. Notwithstanding other law, when submitted to the registered and qualified electors of this state, this amendatory act shall be presented with the following question:

"APPROVAL OR DISAPPROVAL OF AMENDATORY ACT TO REDUCE STATE USE TAX AND REPLACE WITH A LOCAL COMMUNITY STABILIZATION SHARE TO MODERNIZE THE TAX SYSTEM TO HELP SMALL BUSINESSES GROW AND CREATE JOBS

The amendatory act adopted by the Legislature would:

1. Reduce the state use tax and replace with a local community stabilization share of the tax for the purpose of modernizing the tax system to help small businesses grow and create jobs in Michigan.

2. Require Local Community Stabilization Authority to provide revenue to local governments dedicated for local purposes, including police safety, fire protection, and ambulance emergency services.

3. Increase portion of state use tax dedicated for aid to local school districts.

4. Prohibit Authority from increasing taxes.

5. Prohibit total use tax rate from exceeding existing constitutional 6% limitation.

Should this law be approved?

YES [ ]

NO [ ]"."

Enacting section 2 of Act 80 of 2014 provides:

"Enacting section 2. If approved by the registered and qualified electors of this state as provided in enacting section 1, this amendatory act takes effect January 1, 2015."

Compiler's note: Act 80 of 2014 was approved by a majority of the voters at the August 5, 2014 primary election. The election results were certified by the Michigan Board of State Canvassers on August 22, 2014.

Compiler's note: The conditions in enacting section 1 of Act 408 of 2012 were not met. Act 408 of 2012 did not go into effect.

Compiler's note: The conditions in enacting section 1 of Act 81 of 2014 were not met. Act 81 of 2014 did not go into effect.

Compiler's note: Enacting section 1 of Act 474 of 2014 provides:

"Enacting section 1. This amendatory act does not take effect unless House Joint Resolution UU of the 97th Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

House Joint Resolution UU was presented to the electors as Proposal 15-1 at the May 5, 2015 special election. The proposal to amend the constitution was not approved by the voters and Act 474 of 2014 does not go into effect.

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205.93a Tax for use or consumption; services; charges for intrastate telecommunications services or telecommunications services between state and another state; bundled transaction; definitions.

Sec. 3a. (1) The use or consumption of the following services is taxed under this act in the same manner as tangible personal property is taxed under this act:

(a) Except as provided in section 3b, intrastate telecommunications services that both originate and terminate in this state, including, but not limited to, intrastate private communications services, ancillary services, conference bridging service, 900 service, pay telephone service other than coin-operated telephone service, paging service, and value-added nonvoice data service, but excluding 800 service, coin-operated telephone service, fixed wireless service, prepaid calling service, telecommunications nonrecurring charges, and directory advertising proceeds.

(b) Rooms or lodging furnished by hotelkeepers, motel operators, and other persons furnishing accommodations that are available to the public on the basis of a commercial and business enterprise, irrespective of whether or not membership is required for use of the accommodations, except rooms and lodging rented for a continuous period of more than 1 month. As used in this act, "hotel" or "motel" means a building or group of buildings in which the public may obtain accommodations for a consideration, including, without limitation, such establishments as inns, motels, tourist homes, tourist houses or courts, lodging houses, rooming houses, nudist camps, apartment hotels, resort lodges and cabins, camps operated by other than nonprofit organizations but not including those licensed under 1973 PA 116, MCL 722.111 to 722.128, and any other building or group of buildings in which accommodations are available to the public, except accommodations rented for a continuous period of more than 1 month and accommodations furnished by hospitals or nursing homes.

(c) Except as provided in section 3b, interstate telecommunications services that either originate or terminate in this state and for which the charge for the service is billed to a service address in this state or phone number by the provider either within or outside this state including, but not limited to, ancillary services, conference bridging service, 900 service, paging service, pay telephone service other than coin-operated telephone service, and value-added nonvoice data services, but excluding interstate private communications service, 800 service, coin-operated telephone service, fixed wireless service, prepaid calling service, telecommunications nonrecurring charges, and international telecommunications service.

(d) The laundering or cleaning of textiles under a sale, rental, or service agreement with a term of at least 5 days. This subdivision does not apply to the laundering or cleaning of textiles used by a restaurant or retail sales business. As used in this subdivision, "restaurant" means a food service establishment defined and licensed under the food law of 2000, 2000 PA 92, MCL 289.1101 to 289.8111.

(e) The transmission and distribution of electricity, whether the electricity is purchased from the delivering utility or from another provider, if the sale is made to the consumer or user of the electricity for consumption or use rather than for resale.

(f) For a manufacturer who affixes its product to real estate in this state and maintains an inventory of its product that is available for sale to others or who makes its product available for sale to others by publication or price list, the price is the direct production costs and indirect production costs of the product affixed to the real estate in this state that are incident to and necessary for production or manufacturing operations or processes, as defined by the department.

(g) For a manufacturer who affixes its product to real estate in this state but does not maintain an inventory of its product available for sale to others or make its product available for sale to others by publication or price list, the price is the sum of the materials cost of the property and the cost of labor to manufacture, fabricate, or assemble the property affixed to the real estate in this state, but not the cost of labor to cut, bend, assemble, or attach the property at the site for affixation to real estate in this state.

(2) If charges for intrastate telecommunications services or telecommunications services between this state and another state and other billed services not subject to the tax under this act are aggregated with and not separately stated from charges for telecommunications services that are subject to the tax under this act, the nontaxable telecommunications services and other nontaxable billed services are subject to the tax under this act unless the service provider can reasonably identify charges for telecommunications services not subject to the tax under this act from its books and records that are kept in the regular course of business.

(3) If charges for intrastate telecommunications services or telecommunications services between this state and another state and other billed services not subject to the tax under this act are aggregated with and not separately stated from telecommunications services that are subject to the tax under this act, a customer may not rely upon the nontaxability of those telecommunications services and other billed services unless the customer's service provider separately states the charges for nontaxable telecommunications services and

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other nontaxable billed services from taxable telecommunications services or the service provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the service provider's books and records that are kept in the regular course of business that reasonably identify the nontaxable services.

(4) All of the following apply in the case of a bundled transaction that includes telecommunications service, ancillary service, internet access, or audio or video programming:

(a) If the purchase price is attributable to products that are taxable and products that are nontaxable, the portion of the purchase price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards that portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes.

(b) The provisions of this subsection apply unless otherwise provided by federal law.

(5) As used in this section:

(a) "Ancillary services" means services that are associated with or incidental to the provision of telecommunications services, including, but not limited to, detailed telecommunications billing, directory assistance, vertical service, and voice mail services.

(b) "Bundled transaction" means the purchase of 2 or more distinct and identifiable products, except real property and services to real property, where the products are sold for a single nonitemized price. A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction. As used in this subdivision:

(*i*) "Distinct and identifiable products" does not include any of the following:

(A) Packaging, such as containers, boxes, sacks, bags, and bottles or other materials such as wrapping, labels, tags, and instruction guides, that accompany the purchase of the products and are incidental or immaterial to the purchase of the products, including grocery sacks, shoeboxes, dry cleaning garment bags, and express delivery envelopes and boxes.

(B) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge.

(C) Items included in purchase price.

(*ii*) "Purchase price" means the price paid by the seller for the property.

(*iii*) "Sales price" means that term as defined in section 1 of the general sales tax act, 1933 PA 167, MCL 205.51.

(*iv*) "Single nonitemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the purchaser in paper or electronic form, including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

(*v*) Bundled transaction does not include any of the following:

(A) The purchase of tangible personal property and a service if the tangible personal property is essential to the use of the service and is provided exclusively in connection with the service and the true object of the transaction is the service.

(B) The purchase of services if 1 service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service.

(C) A transaction that includes taxable and nontaxable products and the purchase price of the taxable products is de minimis. As used in this sub-subparagraph, "de minimis" means the seller's purchase price or sales price of the taxable products is 10% or less of the total purchase price or sales price of the products. A seller shall use the full term of a service contract to determine if the taxable products are de minimis. A seller shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. A seller shall not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis.

(D) The retail sale of exempt tangible personal property and taxable tangible personal property if all of the following conditions are satisfied:

(I) The transaction includes food and food ingredients, prescription or over-the-counter drugs, durable medical equipment, mobility enhancing equipment, medical supplies, or prosthetic devices.

(II) Where the seller's purchase price or sales price of the taxable tangible personal property is 50% or less of the total purchase price or sales price of the bundled tangible personal property. A seller may not use a combination of the purchase price and sales price of the tangible personal property when making the 50% determination for a transaction.

(c) "Coin-operated telephone service" means a telecommunications service paid for by inserting money

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into a telephone that accepts direct deposits of money to operate.

(d) "Conference bridging service" means an ancillary service that links 2 or more participants of an audio or video conference call and may include the provision of a telephone number, but does not include the telecommunications services used to reach the conference bridge.

(e) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(f) "Directory assistance" means an ancillary service of providing telephone number information or address information.

(g) "Fabricate" means to modify or prepare tangible personal property for affixation or assembly.

(h) "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points.

(i) "International" means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia and any possession or territory of the United States.

(j) "Interstate" means a telecommunications service that originates in 1 United States state, territory, or possession and terminates in a different United States state, territory, or possession.

(k) "Intrastate" means a telecommunications service that originates in a United States state, territory, or possession and terminates in the same United States state, territory, or possession.

(*l*) "Manufacture" means to convert or condition tangible personal property by changing the form, composition, quality, combination, or character of the property.

(m) "Manufacturer" means a person who manufactures, fabricates, or assembles tangible personal property.

(n) "Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers, which may include messages or sounds.

(o) "Pay telephone service" means a telecommunications service provided through any pay telephone.

(p) "Prepaid calling service" means the right to access exclusively telecommunications services that must be paid for in advance and that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars that decline with use in a known amount.

(q) "Private communications service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which that channel or group of channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of that channel or group of channels.

(r) "Telecommunications nonrecurring charges" means an amount billed for the installation, connection, change, or initiation of telecommunications service received by the customer.

(s) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, including a transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether that service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. Telecommunications service does not include any of the following:

(*i*) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information.

(*ii*) Installation or maintenance of wiring or equipment on a customer's premises.

(*iii*) Tangible personal property.

(*iv*) Advertising, including, but not limited to, directory advertising.

(*v*) Billing and collection services provided to third parties.

(*vi*) Internet access service.

(*vii*) Radio and television audio and video programming services, including, but not limited to, cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers as defined in 47 CFR 20.3, regardless of the medium, including the furnishing of transmission, conveyance, and routing of those services by the programming service provider.

(*viii*) Ancillary services.

(*ix*) Answering services, if the primary purpose of the transaction is the answering service rather than message transmission.

(*x*) Digital products delivered electronically, including, but not limited to, software, music, video, reading

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materials, or ring tones.

(t) "Value-added nonvoice data service" means a telecommunications service in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

(u) "Vertical service" means an ancillary service that is offered in connection with 1 or more telecommunications services that offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(v) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages, but does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

(w) "800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call, typically marketed under the designation "800", "855", "866", "877", or "888" toll-free calling, or any subsequent number designated by the federal communications commission.

(x) "900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service, typically marketed under the designation "900" service, and any subsequent number designated by the federal communications commission, but does not include a charge for collection services provided by the seller of the telecommunications services to the subscriber, or the service or product sold by the subscriber to the subscriber's customer.

History: Add. 1959, Act 263, Eff. Sept. 1, 1959;—Am. 1959, Act 272, Eff. Jan. 1, 1960;—Am. 1960, Act 119, Imd. Eff. Apr. 26, 1960;—Am. 1962, Act 219, Eff. July 1, 1962;—Am. 1993, Act 326, Eff. May 1, 1994;—Am. 1998, Act 366, Imd. Eff. Oct. 20, 1998;—Am. 2002, Act 455, Imd. Eff. June 21, 2002;—Am. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2007, Act 93, Eff. Dec. 1, 2007;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009;—Am. 2012, Act 299, Imd. Eff. Aug. 23, 2012;—Am. 2012, Act 474, Imd. Eff. Dec. 27, 2012.

Compiler's note: Act 219 of 1962 was presented to the governor on June 14, 1962, and became a law without his approval upon the expiration of 10 days, Sundays excepted, after presentation.

Enacting section 1 of Act 299 of 2012 provides:

"Enacting section 1. This amendatory act is retroactive and is effective January 1, 2006."

Enacting section 1 of Act 474 of 2012 provides:

"Enacting section 1. This amendatory act is retroactive and is effective January 1, 2006."

Enacting section 1 of Act 121 of 2014 provides:

"Enacting section 1. This amendatory act is retroactive and is effective January 1, 2005."

205.93b Tax for use or consumption; mobile wireless services; customer's place of primary use; record; reliance upon exempt status for mobile wireless services; repeal of section; condition; air-ground radiotelephone service; bundled transaction; definitions.

Sec. 3b. (1) The use or consumption of mobile wireless services is subject to the tax levied under this act in the same manner as tangible personal property regardless of where the mobile wireless services originate, terminate, or pass through, subject to all of the following:

(a) Mobile wireless services provided to a customer, the charges for which are billed by or for the customer's home service provider, are considered to be provided by the customer's home service provider if the customer's place of primary use for the mobile wireless services is in this state. If the customer's place of primary use for mobile wireless services is outside of this state, the mobile wireless services are not subject to the tax levied under this act.

(b) A home service provider is responsible for obtaining and maintaining a record of the customer's place of primary use. Subject to subsection (2), in obtaining and maintaining a record of the customer's place of primary use, a home service provider may do all of the following:

(*i*) Rely in good faith on information provided by a customer as to the customer's place of primary use.

(*ii*) Treat the address used for a customer under a service contract or agreement in effect on August 1, 2002 as that customer's place of primary use for the remaining term of the service contract or agreement, excluding any extension or renewal of the service contract or agreement.

(c) Notwithstanding section 9 and subject to subsection (5), if the department chooses to create or provide a database that complies with the provisions of 4 USC 119, a home service provider shall use that database to determine the assignment of the customer's place of primary use to this state. If a database is not provided by the department, a home service provider may use an enhanced zip code to determine the assignment of the customer's place of primary use to this state. A home service provider that uses a database provided by the department is not liable for any tax that otherwise would be due solely as a result of an error or omission in that database. A home service provider that uses an enhanced zip code is not liable for any tax that otherwise would be due solely as a result of an assignment of a street address to another state if the home provider exercised due diligence to ensure that the appropriate street addresses are assigned to this state.

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(d) If a customer believes that the amount of the tax levied under this act or that the home service provider's record of the customer's place of primary use is incorrect, the customer shall notify the home service provider in writing and provide all of the following information:

(*i*) The street address of the customer's place of primary use.

(*ii*) The account name and number for which the customer requests the correction.

(*iii*) A description of the error asserted by the customer.

(*iv*) Any other information that the home service provider reasonably requires to process the request.

(e) Not later than 60 days after the home service provider receives a request under subdivision (d) or subsection (5)(b), the home service provider shall review its record of the customer's place of primary use and the customer's enhanced zip code to determine the correct amount of the tax levied under this act. If the home service provider determines that the tax levied under this act or its record of the customer's place of primary use is incorrect, the home service provider shall correct the error and refund or credit any tax erroneously collected from the customer. A refund under this subdivision shall not exceed a period of 4 years. If the home service provider determines that the tax levied under this act and the customer's place of primary use are correct, the home service provider shall provide a written explanation of that determination to the customer. The procedures prescribed in this subdivision and in subdivision (d) are the first course of remedy available to a customer requesting a correction of the provider's record of place of primary use or a refund of taxes erroneously collected by the home service provider.

(2) If the department makes a final determination that the home service provider's record of a customer's place of primary use is incorrect, the home service provider shall change its records to reflect that final determination. The corrected record of a customer's place of primary use shall be used to calculate the tax levied under this act prospectively, from the date of the department's final determination. The department shall not make a final determination under this subsection before the department has notified the customer that the department has found that the home service provider's record of the customer's place of primary use is incorrect and the customer has been afforded an opportunity to appeal that finding. An appeal to the department shall be conducted according to the provision of section 22 of 1941 PA 122, MCL 205.22.

(3) Notwithstanding section 8 and subject to section 5, if the department makes a final determination under subsection (2) that a customer's place of primary use is incorrect, a home service provider is not liable for any taxes that would have been levied under this act if the customer's place of primary use had been correct.

(4) If charges for mobile wireless services and other billed services not subject to the tax levied under this act are aggregated with and not separately stated from charges for mobile wireless services that are subject to the tax levied under this act, the nontaxable mobile wireless services and other billed services are subject to the tax levied under this act unless the home service provider can reasonably identify billings for services not subject to the tax levied under this act from its books and records kept in the regular course of business.

(5) If charges for mobile wireless services and other billed services not subject to the tax levied under this act are aggregated with and not separately stated from charges for mobile wireless services that are subject to the tax levied under this act, a customer may not rely upon the exempt status for those mobile wireless services and other billed services unless 1 or more of the following conditions are satisfied:

(a) The customer's home service provider separately states the charges for mobile wireless services that are exempt and other exempt billed services from taxable mobile wireless services.

(b) The home service provider elects, after receiving a written request from the customer in the form required by the home service provider, to identify the exempt mobile wireless services and other exempt billed services by reference to the home service provider's books and records kept in the regular course of business.

(6) This section is repealed as of the date of entry of a final judgment by a court of competent jurisdiction that substantially limits or impairs the essential elements of sections 116 to 126 of title 4 of the United States Code, 4 USC 116 to 126, and that final judgment is no longer subject to appeal.

(7) For an air-ground radiotelephone service, the tax under this act is imposed at the location of the origination of the air-ground radiotelephone service in this state as identified by the home service provider or information received by the home service provider from its servicing carrier.

(8) All of the following apply in the case of a bundled transaction that includes telecommunications service, ancillary service, internet access, or audio or video programming:

(a) If the purchase price is attributable to products that are taxable and products that are nontaxable, the portion of the purchase price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards that portion from its books and records kept in the regular course of business for other purposes, including, but not limited to, nontax purposes.

(b) If the purchase price is attributable to products that are subject to tax at different tax rates, the total purchase price may be treated as attributable to the products subject to tax at the highest tax rate unless the

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provider can identify by reasonable and verifiable standards the portion of the purchase price attributable to the products subject to tax at the lower rate from its books and records kept in the regular course of business for other purposes, including, but not limited to, nontax purposes.

(c) The provisions of this subsection shall apply unless otherwise provided by federal law.

(9) As used in this section:

(a) "Air-ground radiotelephone service" means that term as defined in 47 CFR part 22.

(b) "Commercial mobile radio service" means that term as defined in 47 CFR 20.3.

(c) "Charge", "charges", or "charge for mobile wireless services" means any charge for, or associated with, the provision of commercial mobile radio service, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to a customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

(d) "Customer" means 1 of the following, but does not include a reseller or a serving carrier:

(*i*) The person who contracts with the home service provider for mobile wireless services.

(*ii*) If the end user of mobile wireless services is not the contracting party, then the end user of the mobile wireless service. This subparagraph applies only for the purpose of determining the place of primary use.

(e) "Enhanced zip code" means a United States postal zip code of 9 or more digits.

(f) "Home service provider" means the facilities-based carrier or reseller that enters into a contract with a customer for mobile wireless services.

(g) "Licensed service area" means the geographic area in which a home service provider is authorized by law or contract to provide commercial mobile radio services to its customers.

(h) "Mobile wireless services" means a telecommunications service that is transmitted, conveyed, or routed, regardless of the technology used, whereby the origination or termination points of the transmission, conveyance, or routing are not fixed, including, but not limited to, telecommunications services that are provided by a commercial mobile radio service provider.

(i) "Place of primary use" means the residential street address or the primary business street address within the licensed service area of the home service provider at which a customer primarily uses mobile wireless services. For mobile wireless services, place of primary use shall be within the licensed service area of the home service provider.

(j) "Prepaid mobile wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, which shall be paid for in advance and that is sold in predetermined units or dollars that decline with use in a known amount.

(k) "Reseller" means a telecommunications services provider who purchases telecommunications services from another telecommunications services provider and then resells the telecommunications services, uses the telecommunications services as a component part of a mobile wireless service, or integrates the telecommunications services into a mobile wireless service. Reseller does not include a serving carrier.

(*l*) "Serving carrier" means a facilities-based telecommunications services provider that contracts with a home service provider for mobile wireless services to a customer outside of the home service provider's or reseller's licensed service area.

(m) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, including a transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether that service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. Telecommunications service does not include any of the following:

(*i*) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information.

(*ii*) Installation or maintenance of wiring or equipment on a customer's premises.

(*iii*) Tangible personal property.

(*iv*) Advertising, including, but not limited to, directory advertising.

(*v*) Billing and collection services provided to third parties.

(*vi*) Internet access service.

(*vii*) Radio and television audio and video programming services, including, but not limited to, cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3, regardless of the medium, including the furnishing

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of transmission, conveyance, and routing of those services by the programming service provider.

(*viii*) Ancillary services.

(*ix*) Answering services, if the primary purpose of the transaction is the answering service rather than message transmission.

(*x*) Digital products delivered electronically, including, but not limited to, software, music, video, reading materials, or ring tones.

History: Add. 2002, Act 456, Imd. Eff. June 21, 2002;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009.

205.93c Sale of telecommunications services; definitions.

Sec. 3c. (1) Except for the defined telecommunications services in section 3b and subsection (3), the sale of telecommunications service sold on a call-by-call basis shall be sourced to each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(2) Except for the defined telecommunications services in section 3b and subsection (3), a sale of telecommunications services sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

(3) The sale of the following telecommunications services shall be sourced to each level of taxing jurisdiction as follows:

(a) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either the seller's telecommunications system, or information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(b) A sale of prepaid calling service or prepaid wireless calling service is sourced in accordance with section 20. However, for a sale of a prepaid wireless calling service, the rule provided in section 20(1)(e) shall include as an option the location associated with the mobile telephone number.

(c) The sale of an ancillary service is sourced to the customer's place of primary use.

(4) As used in this section:

(a) "Ancillary services" means services that are associated with or incidental to the provision of telecommunications services, including, but not limited to, detailed telecommunications billing, directory assistance, vertical service, and voice mail services.

(b) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(c) "Channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(d) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service for purposes of this section. Customer does not include a reseller of telecommunications service or for mobile wireless service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(e) "Customer channel termination point" means the location where the customer either inputs or receives the communications.

(f) "End user" means the person who utilizes the telecommunications service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.

(g) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. For mobile wireless services, place of primary use must be within the licensed service area of the home service provider.

(h) "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number that is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service.

(i) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(j) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital

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products delivered electronically, content, and ancillary services, which shall be paid for in advance and that is sold in predetermined units or dollars that decline with use in a known amount.

(k) "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(*l*) "Service address" means the following:

(*i*) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

(*ii*) If the location in subparagraph (*i*) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport the signals is not that of the seller.

(*iii*) If the location in subparagraphs (*i*) and (*ii*) is not known, the service address means the location of the customer's place of primary use.

(m) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, including a transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether the service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. Telecommunications service does not include any of the following:

(*i*) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser if the purchaser's primary purpose for the underlying transaction is the processed data or information.

(*ii*) Installation or maintenance of wiring or equipment on a customer's premises.

(*iii*) Tangible personal property.

(*iv*) Advertising, including, but not limited to, directory advertising.

(*v*) Billing and collection services provided to third parties.

(*vi*) Internet access service.

(*vii*) Radio and television audio and video programming services, including, but not limited to, cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3, regardless of the medium, including the furnishing of transmission, conveyance, and routing of those services by the programming service provider.

(*viii*) Ancillary services.

(*ix*) Answering services, if the primary purpose of the transaction is the answering service rather than message transmission.

(*x*) Digital products delivered electronically, including, but not limited to, software, music, video, reading materials, or ring tones.

History: Add. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009.

205.93d Repealed. 2007, Act 145, Imd. Eff. Dec. 1, 2007.

Compiler's note: The repealed section pertained to services taxed in same manner as tangible personal property.

Enacting section 2 of Act 145 of 2007 provides:

"Enacting section 2. Section 3d of the use tax act, 1937 PA 94, MCL 205.93d, is repealed. It is the intent of the legislature that the repeal of section 3d of the use tax act, 1937 PA 94, MCL 205.93d, is retroactive and is effective immediately after section 3d of the use tax act, 1937 PA 94, MCL 205.93d, took effect on December 1, 2007."

205.93e Persons providing services subject to tax; collection; refund; liability for failure to collect tax; remittance; certain collections or penalties by department of treasury prohibited.

Sec. 3e. Beginning December 1, 2007, all of the following apply:

(a) A person that provides 1 or more of the services subject to the tax under this act pursuant to section 3d shall not collect the tax from any person that receives a service subject to the tax under this act pursuant to section 3d. Prior to the effective date of the amendatory act that added this section, if a person that provides 1 or more of the services subject to the tax under this act pursuant to section 3d collects the tax from a person that receives a service subject to the tax under this act pursuant to section 3d, the tax shall be returned to the person that received the service or remitted to the department and the person that received the service may file

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an application for a refund of the tax. The application shall be in a form prescribed by the department.

(b) A person that provides 1 or more of the services subject to the tax under this act pursuant to section 3d is not liable for any failure to collect the tax levied under this act on services subject to the tax under section 3d. However, if a person that provides 1 or more of the services subject to the tax under this act pursuant to section 3d collects the tax from a person that receives a service subject to the tax under this act pursuant to section 3d prior to the effective date of the amendatory act that added this section, the tax shall be remitted as provided in subdivision (a). If a person that provides 1 or more of the services subject to the tax under this act pursuant to section 3d fails to remit any tax collected from a person that receives a service subject to the tax under this act pursuant to section 3d prior to the effective date of the amendatory act that added this section, the person that collected the tax is subject to the penalties provided in section 16 unless the tax collected was returned to the person that received the service.

(c) The department of treasury shall not do any of the following:

(*i*) Collect the tax levied under this act from a person that provides 1 or more of the services subject to the tax under this act pursuant to section 3d. However, if a person that provides 1 or more of the services subject to the tax under this act pursuant to section 3d collects the tax from a person that receives a service subject to the tax under this act pursuant to section 3d prior to the effective date of the amendatory act that added this section and does not return or remit that tax as provided in subdivision (a), the department shall collect that tax. A person that receives a service subject to the tax under this act pursuant to section 3d and who paid that tax may apply for a refund of that tax as provided in subdivision (a).

(*ii*) Except as otherwise provided in subdivision (b), penalize a person that provides 1 or more of the services subject to the tax under this act pursuant to section 3d for failure to collect, return, or remit the tax levied under this act on services subject to the tax under section 3d.

History: Add. 2007, Act 148, Imd. Eff. Dec. 10, 2007.

205.93f Use or consumption of medical services provided under social welfare act; tax; "medical services" defined.

Sec. 3f. Except as otherwise provided under this section, beginning April 1, 2014 through December 31, 2016, the use or consumption of medical services provided by entities identified in, and pursuant to contracts identified under, section 106(2)(a) and section 109f(2) of the social welfare act, 1939 PA 280, MCL 400.106 and 400.109f, shall be taxed in the same manner as tangible personal property is taxed under this act notwithstanding any other provision or exemption under this act. As used in this section, "medical services" means those medical services provided only to Medicaid beneficiaries enrolled under title XIX of the social security act, 42 USC 1396 to 1396w-5.

History: Add. 2008, Act 440, Imd. Eff. Jan. 9, 2009;—Am. 2011, Act 141, Imd. Eff. Sept. 20, 2011;—Am. 2014, Act 161, Imd. Eff. June 11, 2014;—Am. 2016, Act 390, Imd. Eff. Dec. 28, 2016;—Am. 2018, Act 174, Imd. Eff. June 11, 2018.

Compiler's note: Enacting section 1 of Act 161 of 2014 provides:
"Enacting section 1. This amendatory act is retroactive and is effective April 1, 2014."

205.94 Use tax; exemptions; limitation.

Sec. 4. (1) The following are exempt from the tax levied under this act, subject to subsection (2):

(a) Property sold in this state on which transaction a tax is paid under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, if the tax was due and paid on the retail sale to a consumer.

(b) Property, the storage, use, or other consumption of which this state is prohibited from taxing under the Constitution or laws of the United States, or under the constitution of this state.

(c) All of the following:

(*i*) Property purchased for resale. Property purchased for resale includes promotional merchandise transferred pursuant to a redemption offer to a person located outside this state or any packaging material, other than promotional merchandise, acquired for use in fulfilling a redemption offer or rebate to a person located outside this state.

(*ii*) Property purchased for lending or leasing to a public or parochial school offering a course in automobile driving except that a vehicle purchased by the school must be certified for driving education and must not be reassigned for personal use by the school's administrative personnel.

(*iii*) Property purchased for demonstration purposes. For a new vehicle dealer selling a new car or truck, exemption for demonstration purposes is determined by the number of new cars and trucks sold during the current calendar year or the immediately preceding calendar year, without regard to specific make or style, according to the following schedule but not to exceed 25 cars and trucks in 1 calendar year for demonstration purposes:

(A) 0 to 25, 2 units.

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(B) 26 to 100, 7 units.

(C) 101 to 500, 20 units.

(D) 501 or more, 25 units.

(*iv*) Motor vehicles purchased for resale purposes by a new vehicle dealer licensed under section 248(8)(a) of the Michigan vehicle code, 1949 PA 300, MCL 257.248.

(d) Property that is brought into this state by a nonresident person for storage, use, or consumption while temporarily within this state, except if the property is used in this state in a nontransitory business activity for a period exceeding 15 days.

(e) Property the sale or use of which was already subjected to a sales tax or use tax equal to, or in excess of, that imposed by this act under the law of any other state or a local governmental unit within a state if the tax was due and paid on the retail sale to the consumer and the state or local governmental unit within a state in which the tax was imposed accords like or complete exemption on property the sale or use of which was subjected to the sales or use tax of this state. If the sale or use of property was already subjected to a tax under the law of any other state or local governmental unit within a state in an amount less than the tax imposed by this act, this act applies, but at a rate measured by the difference between the rate provided in this act and the rate by which the previous tax was computed.

(f) Except as otherwise provided under subsection (3), property sold to a person engaged in a business enterprise that uses or consumes the property, directly or indirectly, for either the tilling, planting, draining, caring for, maintaining, or harvesting of things of the soil or the breeding, raising, or caring for livestock, poultry, or horticultural products, including the transfers of livestock, poultry, or horticultural products for further growth.

(g) Property or services sold to the United States, an unincorporated agency or instrumentality of the United States, an incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States, the American Red Cross and its chapters or branches, this state, a department or institution of this state, or a political subdivision of this state.

(h) Property or services sold to a school, hospital, or home for the care and maintenance of children or aged individuals, operated by an entity of government, a regularly organized church, religious organization, or fraternal organization, a veterans' organization, or a corporation incorporated under the laws of this state, if not operated for profit, and if the income or benefit from the operation does not inure, in whole or in part, to an individual or private shareholder, directly or indirectly, and if the activities of the entity or agency are carried on exclusively for the benefit of the public at large and are not limited to the advantage, interests, and benefits of its members or a restricted group. The tax levied does not apply to property or services sold to a parent cooperative preschool. As used in this subdivision, "parent cooperative preschool" means a nonprofit, nondiscriminatory educational institution, maintained as a community service and administered by parents of children currently enrolled in the preschool that provides an educational and developmental program for children younger than compulsory school age, that provides an educational program for parents, including active participation with children in preschool activities, that is directed by qualified preschool personnel, and that is licensed under 1973 PA 116, MCL 722.111 to 722.128.

(i) Property or services sold to a regularly organized church or house of religious worship except the following:

(*i*) Sales in which the property is used in activities that are mainly commercial enterprises.

(*ii*) Sales of vehicles licensed for use on the public highways other than a passenger van or bus with a manufacturer's rated seating capacity of 10 or more that is used primarily for the transportation of individuals for religious purposes.

(j) A vessel designed for commercial use of registered tonnage of 500 tons or more, if produced upon special order of the purchaser, and bunker and galley fuel, provisions, supplies, maintenance, and repairs for the exclusive use of a vessel of 500 tons or more engaged in interstate commerce.

(k) Property purchased for use in this state if actual personal possession is obtained outside this state, the purchase price or actual value of which does not exceed $10.00 during 1 calendar month.

(*l*) A newspaper or periodical classified under federal postal laws and regulations effective September 1, 1985 as second-class mail matter or as a controlled circulation publication or qualified to accept legal notices for publication in this state, as defined by law, or any other newspaper or periodical of general circulation, established not less than 2 years, and published at least once a week, and a copyrighted motion picture film. Tangible personal property used or consumed in producing a copyrighted motion picture film, a newspaper published more than 14 times per year, or a periodical published more than 14 times per year, and not becoming a component part of that film, newspaper, or periodical is subject to the tax. Tangible personal property used or consumed in producing a newspaper published 14 times or less per year or a periodical published 14 times or less per year and that portion or percentage of tangible personal property used or

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consumed in producing an advertising supplement that becomes a component part of a newspaper or periodical is exempt from the tax under this subdivision. For purposes of this subdivision, tangible personal property that becomes a component part of a newspaper or periodical and consequently not subject to tax, includes an advertising supplement inserted into and circulated with a newspaper or periodical that is otherwise exempt from tax under this subdivision, if the advertising supplement is delivered directly to the newspaper or periodical by a person other than the advertiser, or the advertising supplement is printed by the newspaper or periodical.

(m) Property purchased by persons licensed to operate a commercial radio or television station if the property is used in the origination or integration of the various sources of program material for commercial radio or television transmission. This subdivision does not include a vehicle licensed and titled for use on public highways or property used in the transmitting to or receiving from an artificial satellite.

(n) An individual who is a resident of this state who purchases an automobile in another state while in the military service of the United States and who pays a sales tax in the state where the automobile is purchased.

(o) A vehicle for which a special registration is secured in accordance with section 226(9) of the Michigan vehicle code, 1949 PA 300, MCL 257.226.

(p) The sale of a prosthetic device, durable medical equipment, or mobility enhancing equipment.

(q) Water if delivered through water mains, water sold in bulk tanks in quantities of not less than 500 gallons, or the sale of bottled water.

(r) A vehicle not for resale used by a nonprofit corporation organized exclusively to provide a community with ambulance or fire department services.

(s) Tangible personal property purchased and installed as a component part of a water pollution control facility for which a tax exemption certificate is issued under part 37 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.3701 to 324.3708, or an air pollution control facility for which a tax exemption certificate is issued under part 59 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5901 to 324.5908.

(t) Tangible real or personal property donated by a manufacturer, wholesaler, or retailer to an organization or entity exempt under subdivision (h) or (i) or section 4a(1)(a) or (b) of the general sales tax act, 1933 PA 167, MCL 205.54a.

(u) The storage, use, or consumption of an aircraft by a domestic air carrier for use solely in the transport of air cargo, passengers, or a combination of air cargo and passengers, that has a maximum certificated takeoff weight of at least 6,000 pounds. For purposes of this subdivision, the term "domestic air carrier" is limited to a person engaged primarily in the commercial transport for hire of air cargo, passengers, or a combination of air cargo and passengers as a business activity. The state treasurer shall estimate on January 1 each year the revenue lost by this act from the school aid fund and deposit that amount into the school aid fund from the general fund.

(v) The storage, use, or consumption of an aircraft by a person who purchases the aircraft for subsequent lease to a domestic air carrier operating under a certificate issued by the Federal Aviation Administration under 14 CFR part 121, for use solely in the regularly scheduled transport of passengers.

(w) Property or services sold to an organization not operated for profit and exempt from federal income tax under section 501(c)(3) or (4) of the internal revenue code of 1986, 26 USC 501; or to a health, welfare, educational, cultural arts, charitable, or benevolent organization not operated for profit that has been issued before June 13, 1994 an exemption ruling letter to purchase items exempt from tax signed by the administrator of the sales, use, and withholding taxes division of the department. The department shall reissue an exemption letter after June 13, 1994 to each of those organizations that had an exemption letter that remains in effect unless the organization fails to meet the requirements that originally entitled it to this exemption. The exemption does not apply to sales of tangible personal property and sales of vehicles licensed for use on public highways, that are not used primarily to carry out the purposes of the organization as stated in the bylaws or articles of incorporation of the exempt organization.

(x) The use or consumption of services described in section 3a(1)(a) or (c) or 3b by means of a prepaid telephone calling card, a prepaid authorization number for telephone use, or a charge for internet access.

(y) The purchase, lease, use, or consumption of the following by an industrial laundry:

(*i*) Textiles and disposable products including, but not limited to, soap, paper, chemicals, tissues, deodorizers and dispensers, and all related items such as packaging, supplies, hangers, name tags, and identification tags.

(*ii*) Equipment, whether owned or leased, used to repair and dispense textiles including, but not limited to, roll towel cabinets, slings, hardware, lockers, mop handles and frames, and carts.

(*iii*) Machinery, equipment, parts, lubricants, and repair services used to clean, process, and package textiles and related items, whether owned or leased.

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(*iv*) Utilities such as electric, gas, water, or oil.

(*v*) Production washroom equipment and mending and packaging supplies and equipment.

(*vi*) Material handling equipment including, but not limited to, conveyors, racks, and elevators and related control equipment.

(*vii*) Wastewater pretreatment equipment and supplies and related maintenance and repair services.

(z) Property purchased or manufactured by a person engaged in the business of constructing, altering, repairing, or improving real estate for others, to the extent that the property is affixed to and made a structural part of real estate located in another state, regardless of whether sales or use tax was due and paid in the state in which the property is affixed to real estate.

(aa) The sale of a dental prosthesis.

(bb) Except as otherwise provided under subsection (3), a sale of any of the following to a person engaged in a business enterprise that uses or consumes the following for purposes as described in subdivision (f):

(*i*) Machinery that is capable of simultaneously harvesting grain or other crops and biomass and machinery used for the purpose of harvesting biomass.

(*ii*) Agricultural land tile and subsurface irrigation pipe.

(*iii*) Portable grain bins, including tangible personal property affixed or to be affixed to portable grain bins and directly used in the operation of a portable grain bin.

(*iv*) Grain drying equipment and the fuel or energy source that powers that equipment, including tangible personal property affixed or to be affixed to that equipment and directly used in the operation of grain drying equipment.

(*v*) Tangible personal property purchased and installed as a component part of a structure such as a barn or shop, including, but not limited to, a water supply system, heating and cooling system, lighting system, milking system, or any other appurtenance used for purposes described in this subdivision or subdivision (f), including the maintenance or improvement of existing structures, to the extent that it is not permanently affixed to and does not become a structural part of real estate. For purposes of this subparagraph and subsection (3), property installed as a component part of a structure as provided in this subparagraph is not permanently affixed to or a structural part of real estate if it is assembled and installed in a manner that it can be disassembled without affecting the physical structural functionality of the original structure and reassembled and reused for any of the purposes described in this subdivision or subdivision (f).

(*vi*) Greenhouses, including tangible personal property affixed to or to be affixed to greenhouses and directly used in the operation of a greenhouse. For purposes of subsection (3), a greenhouse is not permanently affixed to or a structural part of real estate if it is assembled and installed in a manner that it can be disassembled and reassembled without affecting the functionality of the greenhouse upon being reassembled.

(cc) The sale of agricultural land tile, subsurface irrigation pipe, portable grain bins, greenhouses, and grain drying equipment to a person in the business of constructing, altering, repairing, or improving real estate for others to the extent that it is affixed to and made a structural part of real estate for others and is used for an exempt purpose described under subdivision (f) or (bb).

(dd) The sale of tangible personal property used in the direct gathering of fish, by net, line, or otherwise, by an owner-operator of a business enterprise, not including a charter fishing business enterprise.

(ee) A sale of tangible personal property that is specifically designed for, and directly used in, the harvesting of aquatic vegetation from the waters of the state, including parts and materials used for repairs of that tangible personal property, to a person engaged in a business enterprise of harvesting aquatic vegetation and ultimately used for purposes described in subdivision (f) or (bb). This exemption does not include a motor vehicle licensed or required to be licensed for use on the public roads or highways of this state or tangible personal property permanently affixed to and becoming a structural part of real estate.

(ff) The purchase or lease of a school bus or transportation-related services, and parts or adaptive equipment affixed or to be affixed to a school bus that are used in the repair, maintenance, accommodation, or modification of a school bus, if the school bus or services are primarily used in the performance of a contract entered into with an authorized representative of a school for the transportation of preprimary, primary, or secondary school pupils to or from a school or school-related events authorized by the administration of the school. However, if the school bus is used to provide transportation-related services other than to or from a school or school-related event authorized by the administration of the school to a nonexempt entity, then the amount paid for those services by the nonexempt entity is not exempt under this subdivision. As used in this subdivision:

(*i*) "Lease" means any transfer of possession or control for a fixed or indeterminate term for consideration and may include future options to purchase or extend.

(*ii*) "School" means a public school or public school academy as defined in section 5 of the revised school

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code, 1976 PA 451, MCL 380.5.

(*iii*) "School bus" means that term as defined in section 7 of the pupil transportation act, 1990 PA 187, MCL 257.1807.

(gg) The sale of feminine hygiene products. As used in this subdivision, "feminine hygiene products" means tampons, panty liners, menstrual cups, sanitary napkins, and other similar tangible personal property designed for feminine hygiene in connection with the human menstrual cycle.

(2) The property or services under subsection (1) are exempt only to the extent that the property or services are used for the exempt purposes if one is stated in subsection (1). The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

(3) The exemptions under subsection (1)(f), (bb), (cc), and (dd) do not include the transfers of food, fuel, clothing, or any similar tangible personal property for personal living or human consumption or tangible personal property permanently affixed to and becoming a structural part of real estate unless it is agricultural land tile, subsurface irrigation pipe, a portable grain bin, or grain drying equipment.

(4) Subsection (1)(f), (bb), and (cc) as amended by 2018 PA 114 is intended to be retroactive and to apply to all periods open under section 27a of 1941 PA 122, MCL 205.27a, but does not apply to any refund claims filed before April 9, 2018.

(5) As used in this section:

(a) "Agricultural land tile" means fired clay or perforated plastic tubing used as part of a subsurface drainage system for land.

(b) "Algae" means any of the group of nonvascular aquatic plants that do not have stems, flowers, leaves, and roots, and that are single-celled, colonial, or filamentous forms.

(c) "Aquatic vegetation" means both algae and higher aquatic plants.

(d) "Biomass" means crop residue used to produce energy or agricultural crops grown specifically for the production of energy.

(e) "Greenhouse" means a structure covered with transparent or translucent materials for the purpose of admitting natural light and controlling the atmosphere for growing horticultural products. Greenhouse does not include a structure primarily used to grow marihuana.

(f) "Higher aquatic plant" means any of the group of vascularized plants that have true stems, flowers, leaves, and roots, that live in water, and that belong to the class Angiospermae.

(g) "Portable grain bin" means a structure that is used or is to be used to shelter grain and that is designed to be disassembled without significant damage to its component parts.

(h) "Waters of the state" means that term as defined in section 3302 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.3302.

History: 1937, Act 94, Eff. Oct. 29, 1937;—Am. 1945, Act 180, Imd. Eff. May 16, 1945;—CL 1948, 205.94;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1950, 1st Ex. Sess., Act 7, Imd. Eff. May 8, 1950;—Am. 1952, Act 164, Imd. Eff. Apr. 24, 1952;—Am. 1953, Act 203, Imd. Eff. June 10, 1953;—Am. 1955, Act 235, Eff. Oct. 14, 1955;—Am. 1959, Act 263, Eff. Sept. 1, 1959;—Am. 1959, Act 272, Eff. Jan. 1, 1960;—Am. 1962, Act 219, Eff. July 1, 1962;—Am. 1964, Act 164, Eff. Aug. 28, 1964;—Am. 1969, Act 214, Imd. Eff. Aug. 6, 1969;—Am. 1970, Act 15, Eff. May 1, 1970;—Am. 1971, Act 208, Imd. Eff. Dec. 29, 1971;—Am. 1976, Act 29, Imd. Eff. Mar. 5, 1976;—Am. 1976, Act 72, Imd. Eff. Apr. 7, 1976;—Am. 1978, Act 262, Imd. Eff. June 29, 1978;—Am. 1978, Act 457, Imd. Eff. Oct. 16, 1978;—Am. 1984, Act 288, Imd. Eff. Dec. 20, 1984;—Am. 1986, Act 48, Imd. Eff. Mar. 17, 1986;—Am. 1986, Act 52, Imd. Eff. Mar. 17, 1986;—Am. 1987, Act 141, Imd. Eff. July 24, 1987;—Am. 1988, Act 459, Imd. Eff. Dec. 27, 1988;—Am. 1989, Act 141, Imd. Eff. June 29, 1989;—Am. 1993, Act 326, Eff. May 1, 1994;—Am. 1994, Act 34, Imd. Eff. Mar. 7, 1994;—Am. 1994, Act 157, Imd. Eff. June 13, 1994;—Am. 1994, Act 214, Imd. Eff. June 23, 1994;—Am. 1994, Act 424, Imd. Eff. Jan. 6, 1995;—Am. 1996, Act 53, Imd. Eff. Feb. 26, 1996;—Am. 1996, Act 436, Imd. Eff. Dec. 10, 1996;—Am. 1997, Act 194, Imd. Eff. Dec. 30, 1997;—Am. 1998, Act 366, Imd. Eff. Oct. 20, 1998;—Am. 1998, Act 452, Imd. Eff. Dec. 30, 1998;—Am. 1998, Act 491, Imd. Eff. Jan. 4, 1999;—Am. 1999, Act 117, Imd. Eff. July 14, 1999;—Am. 2000, Act 200, Imd. Eff. June 27, 2000;—Am. 2001, Act 39, Imd. Eff. July 11, 2001;—Am. 2002, Act 456, Imd. Eff. June 21, 2002;—Am. 2002, Act 669, Eff. Mar. 31, 2003;—Am. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2007, Act 103, Eff. Sept. 30, 2002;—Am. 2008, Act 314, Imd. Eff. Dec. 18, 2008;—Am. 2012, Act 474, Imd. Eff. Dec. 27, 2012;—Am. 2016, Act 432, Eff. Mar. 29, 2017;—Am. 2017, Act 218, Imd. Eff. Dec. 20, 2017;—Am. 2018, Act 114, Imd. Eff. Apr. 25, 2018;—Am. 2018, Act 679, Eff. Mar. 29, 2019;—Am. 2021, Act 109, Eff. Feb. 3, 2022.

Compiler's note: Enacting section 2 of Act 52 of 1986 provides:

"It is the intent of the legislature that this amendatory act be curative of any past misinterpretation of the coverage of the exemption provided by subdivision (n) of this amendatory act."

Enacting section 1 of Act 117 of 1999 provides:

"Enacting section 1. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, the tax levied does not apply to the price of property or services to the extent that the property or services are stored, used, or consumed for exempt purposes. For telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides for a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all

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tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

Enacting sections 1 and 2 of 2007 PA 103 provide:

"Enacting section 1. It is the intent of the legislature that this amendatory act clarify that a person who acquires tangible personal property for a purpose exempt under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, who subsequently converts that property to a use taxable under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, is liable for the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111.

"Enacting section 2. This amendatory act is curative and intended to prevent any misinterpretation of the ability of a taxpayer to claim an exemption from the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, based on the purchase of tangible personal property or services for resale that may result from the decision of the Michigan court of appeals in Betten Auto Center, Inc v Department of Treasury, No. 265976, as affirmed by the Michigan Supreme Court. This amendatory act is retroactive and is effective beginning September 30, 2002 and for all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

Enacting section 1 of Act 474 of 2012 provides:

"Enacting section 1. This amendatory act is retroactive and is effective January 1, 2006."

Enacting section 1 of Act 121 of 2014 provides:

"Enacting section 1. This amendatory act is retroactive and is effective January 1, 2005."

Enacting section 1 of Act 218 of 2017 provides:

"Enacting section 1. This amendatory act is retroactive and effective July 1, 2017."

Enacting section 1 of Act 114 of 2018 provides:

"Enacting section 1. This amendatory act does not apply to a claim for a refund filed prior to April 9, 2018."

205.94a Additional exemptions.

Sec. 4a. The following are exempt from the tax under this act:

(a) Rental receipts if the tangible personal property rented or leased was previously subject to 1 of the following when purchased by the lessor:

(*i*) This act.

(*ii*) The general sales tax act, 1933 PA 167, MCL 205.51 to 205.78.

(b) Rental receipts if the tangible personal property rented or leased was previously taxed under a sales or use tax act of another state or a political subdivision of another state levied at a rate of 6% or more.

(c) Specific charges for technical support or for adapting or modifying prewritten computer software programs to a purchaser's needs or equipment if those charges are separately stated and identified.

(d) The sale of computer software originally designed for the exclusive use and special needs of the purchaser.

(e) The sale of a commercial advertising element if the commercial advertising element is used to create or develop a print, radio, television, or other advertisement, the commercial advertising element is discarded or returned to the provider after the advertising message is completed, and the commercial advertising element is custom developed by the provider for the purchaser. As used in this subdivision, "commercial advertising element" means a negative or positive photographic image, an audiotape or videotape master, a layout, a manuscript, writing of copy, a design, artwork, an illustration, retouching, and mechanical or keyline instructions. This exemption does not include black and white or full color process separation elements, an audiotape reproduction, or a videotape reproduction.

(f) The sale of oxygen for human use dispensed pursuant to a prescription.

(g) The sale of insulin for human use.

(h) A meal provided free of charge or at a reduced rate to an employee during work hours by a food service establishment licensed by the department of agriculture.

(i) The sale of diesel fuel to a person who is an interstate motor carrier for use in a qualified commercial motor vehicle.

History: Add. 1959, Act 272, Eff. Jan. 1, 1960;—Am. 2004, Act 172, Eff. Sept. 1, 2004.

205.94b, 205.94c Repealed. 2004, Act 172, Eff. Sept. 1, 2004.

Compiler's note: The repealed sections pertained to tax exemptions for certain property and existing contracts.

205.94d Exemptions; food or drink from vending machines; definitions.

Sec. 4d. (1) The following are exempt from the tax under this act:

(a) Sales of drugs for human use that can only be legally dispensed by prescription, over-the-counter drugs for human use that are legally dispensed by prescription, or food or food ingredients, except prepared food intended for immediate human consumption. As used in this subdivision, "over-the-counter drug" means a drug that is labeled in accordance with the format and content requirements required for labeling over-the-counter drugs under 21 CFR 201.66.

(b) The deposit on a returnable container for a beverage or the deposit on a carton or case that is used for returnable containers.

(c) Food or tangible personal property purchased under the federal food stamp program or meals sold by a

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person exempt from the tax under this act eligible to be purchased under the federal food stamp program.

(d) Fruit or vegetable seeds and fruit or vegetable plants if purchased at a place of business authorized to accept food stamps by the Food and Nutrition Service of the United States Department of Agriculture or a place of business that has made a complete and proper application for authorization to accept food stamps but has been denied authorization and provides proof of denial to the department of treasury.

(e) Live animals purchased with the intent to be slaughtered for human consumption.

(2) Food or drink heated or cooled mechanically, electrically, or by other artificial means to an average temperature above 75 degrees Fahrenheit or below 65 degrees Fahrenheit before sale and sold from a vending machine, except milk, nonalcoholic beverages in a sealed container, and fresh fruit, is subject to the tax under this act. The tax due under this act on the sale of food or drink from a vending machine selling both taxable items and items exempt under this subsection shall be calculated under this act after December 31, 1994 based on 1 of the following as determined by the taxpayer:

(a) Actual gross proceeds from sales at retail.

(b) Forty-five percent of proceeds from the sale of items subject to tax under this act or exempt from the tax levied under this act, other than from the sale of carbonated beverages.

(3) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food ingredients do not include alcoholic beverages and tobacco.

(4) "Prepared food" means the following:

(a) Food sold in a heated state or that is heated by the seller.

(b) Two or more food ingredients mixed or combined by the seller for sale as a single item.

(c) Food sold with eating utensils provided by the seller, including knives, forks, spoons, glasses, cups, napkins, straws, or plates, but not including a container or packaging used to transport the food.

(5) Prepared food does not include the following:

(a) Food that is only cut, repackaged, or pasteurized by the seller.

(b) Raw eggs, fish, meat, poultry, and foods containing those raw items requiring cooking by the consumer in recommendations contained in section 3-401.11 of part 3-4 of chapter 3 of the 2001 food code published by the Food and Drug Administration of the Public Health Service of the Department of Health and Human Services, to prevent foodborne illness.

(c) Food sold in an unheated state by weight or volume as a single item, without eating utensils.

(d) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, doughnuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas, sold without eating utensils.

(6) "Prepared food intended for immediate consumption" means prepared food.

History: Add. 1974, Act 309, Eff. Jan. 1, 1975;—Am. 1978, Act 276, Imd. Eff. July 3, 1978;—Am. 1987, Act 120, Eff. Oct. 1, 1987;—Am. 1992, Act 267, Imd. Eff. Dec. 14, 1992;—Am. 2000, Act 328, Eff. Oct. 1, 2001;—Am. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009;—Am. 2015, Act 172, Imd. Eff. Nov. 3, 2015.

205.94e Repealed. 2004, Act 172, Eff. Sept. 1, 2004.

Compiler's note: The repealed section pertained to tax exemption for property used in constructing, altering, repairing, or improving real estate.

205.94f Computing monthly tax payments; deductions by seller collecting tax from purchaser; disallowance of deduction; deduction for extended payment period; filing estimated returns and annual periodic reconciliations; registration under streamlined sales and use tax agreement.

Sec. 4f. (1) In computing the amount of tax payments required for any month of a seller not subject to section 6(2) who collects the tax from the purchaser under the provisions of this act, the seller who collects the tax from a purchaser may deduct the amount provided by subdivision (a) or (b), whichever is greater:

(a) If the tax that accrued to the state from the purchase of tangible personal property or services during the preceding month is remitted to the department on or before the twelfth day of the month in which remittance is due, 0.75% of the tax collected at a rate of 4% for the preceding monthly period, but not to exceed $20,000.00 of the tax collected for that month. If the tax that accrued to the state from the purchase of tangible personal property or services during the preceding month is remitted to the department after the twelfth day of the month and on or before the twentieth day of the month in which remittance is due, 0.50% of the tax collected at a rate of 4% for the preceding monthly period, but not to exceed $15,000.00 of the tax collected for that month.

(b) The tax collected at a rate of 4% on $150.00 of taxable purchase price for the preceding monthly period or a prorated portion of $150.00 of the taxable purchase price for the preceding month if the seller engaged in

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business for less than a month.

(2) Beginning January 1, 1999, in computing the amount of tax levied under this act for any month, a seller who collects the tax from the purchaser under this act and who is subject to section 6(2) may deduct from the amount of the tax paid 0.50% of the tax due at a rate of 4%.

(3) A deduction is not allowed under this section for payments of taxes made to the department after the day the person is required to pay the tax imposed by this act pursuant to section 6.

(4) If, pursuant to section 6(3), the department prescribes the filing of returns and the payment of the tax for periods in excess of 1 month, a seller who collects the tax from the purchaser is entitled to a deduction from the tax collections remitted to the department for the extended payment period that is equivalent to the deduction allowed under subsection (1) or (2) for monthly periods.

(5) The department may prescribe the filing of estimated returns and annual periodic reconciliations as necessary to carry out the purposes of this section.

(6) A seller registered under the streamlined sales and use tax agreement may claim a deduction under this section if provided for in the streamlined sales and use tax administration act.

History: Add. 1981, Act 220, Eff. Mar. 31, 1982;—Am. 1993, Act 17, Imd. Eff. Apr. 14, 1993;—Am. 1993, Act 326, Eff. May 1, 1994;—Am. 1998, Act 266, Imd. Eff. July 17, 1998;—Am. 2004, Act 172, Eff. Sept. 1, 2004.

205.94g Exemption of property purchased as part of purchase or transfer of business; exceptions; definition.

Sec. 4g. (1) The tax levied shall not apply to property purchased from a seller or transferor if the property is part of the purchase or transfer of a business.

(2) The exemption provided by this section shall not apply to all of the following:

(a) The purchase or transfer of tangible personal property that is stock-in-trade or other property of a kind which would properly be included in the inventory of the seller or transferor if on hand at the close of the seller's or transferor's tax period or property held by the seller or transferor for sale to customers in the ordinary course of its trade or business.

(b) The purchase or transfer of a motor vehicle, ORV, mobile home, aircraft, snowmobile, or watercraft.

(3) As used in this section, "purchase or transfer of a business" means 1 or more of the following:

(a) The purchaser or transferee has acquired and intends to use the seller's or transferor's trade name or good will.

(b) The purchaser or transferee intends to continue all or part of the business of the seller or transferor at the same location or at another location.

(c) The purchaser or transferee acquired at least 75% of the seller's or transferor's tangible personal property at 1 or more of the seller's or transferor's business locations.

History: Add. 1985, Act 66, Imd. Eff. July 1, 1985.

Compiler's note: Section 2 of Act 66 of 1985 provides: “This amendatory act is intended to clarify the misinterpretation of Act No. 94 of the Public Acts of 1937, being sections 205.91 to 205.111 of the Michigan Compiled Laws, to the extent that the act may be construed to impose tax liability on the purchaser or transferee in cases where the seller or transferor of a business is entitled to claim an exemption for an isolated sale under section 1(f) of the general sales tax act, Act No. 167 of the Public Acts of 1933, being section 205.51 of the Michigan Compiled Laws.”

205.94h Tax inapplicable to property for use in qualified business activity.

Sec. 4h. The tax levied under this act does not apply to tangible real or personal property to the extent the tangible real or personal property is used in a qualified business activity of the purchaser. As used in this section, "qualified business activity" means that term as defined in the enterprise zone act, 1985 PA 224, MCL 125.2101 to 125.2123.

History: Add. 1986, Act 13, Imd. Eff. Mar. 3, 1986;—Am. 1999, Act 117, Imd. Eff. July 14, 1999.

Compiler's note: Enacting section 1 of Act 117 of 1999 provides:

“Enacting section 1. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, the tax levied does not apply to the price of property or services to the extent that the property or services are stored, used, or consumed for exempt purposes. For telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides for a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a.”

205.94i Exemption for drop shipments; definition.

Sec. 4i. (1) A seller required to collect the tax under this act shall be exempt from collecting the tax on sales of tangible personal property if the tangible personal property is part of a drop shipment and if the taxpayer complies with the requirements of subsection (3).

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(2) As used in this section, "drop shipment" means the direct delivery of tangible personal property to a purchaser in Michigan by a person who has sold the property to another person not licensed under this act but possessing a resale or exemption certificate or other written evidence of exemption authorized by another state, or any other acceptable information evidencing qualification for a resale exemption, for resale to the Michigan purchaser.

(3) For each transaction for which an exemption is claimed under subsection (1), the taxpayer shall provide the following information to the department annually in any reasonable form:

(a) The name, address, and, if readily available, the federal taxpayer identification number of the person to whom the property is sold for resale.

(b) The name, address, and, if readily available, the federal taxpayer identification number of the person to whom the property is shipped in Michigan.

(4) A person making a drop shipment is a seller.

History: Add. 1986, Act 41, Imd. Eff. Mar. 17, 1986;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009.

205.94j Exemption of motor vehicle acquired by towing company from police agency; definitions.

Sec. 4j. (1) The tax levied under this act does not apply to a motor vehicle acquired by a towing company from a police agency as satisfaction for towing and storage charges if the motor vehicle was impounded by the police agency or determined to be an abandoned vehicle or an abandoned scrap vehicle by the police agency.

(2) As used in this section:

(a) "Abandoned vehicle" means a vehicle that has remained on public property or any other place open to travel by the public without the consent of the local police agency for a period of 48 hours after a police agency has affixed a written notice to the vehicle.

(b) "Abandoned scrap vehicle" means a vehicle that meets all of the following requirements:

(*i*) Is on public property or any other place open to travel by the public.

(*ii*) Is 7 or more years old.

(*iii*) Is apparently inoperable or is extensively damaged to the extent that the cost of repairing the vehicle so that it is operational and safe would exceed the fair market value of that vehicle.

(*iv*) Is not currently registered pursuant to the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.

(*v*) Is not removed within 48 hours after a police agency has affixed a written notice to the vehicle.

History: Add. 1989, Act 141, Imd. Eff. June 29, 1989.

205.94k Tax inapplicable to parts and materials affixed to certain aircraft, sale of aircraft, rolling stock, and qualified truck or trailer; definitions.

Sec. 4k. (1) The tax levied under this act does not apply to parts and materials, excluding shop equipment or fuel, affixed to or to be affixed to an aircraft owned or used by a domestic air carrier that is any of the following:

(a) An aircraft for use solely in the transport of air cargo or a combination of air cargo and passengers that has a maximum certificated takeoff weight of at least 12,500 pounds for taxes levied before January 1, 1997 and at least 6,000 pounds for taxes levied after December 31, 1996.

(b) An aircraft that is used solely in the regularly scheduled transport of passengers.

(c) An aircraft other than an aircraft described in subdivision (b), that has a maximum certificated takeoff weight of at least 12,500 pounds for taxes levied before January 1, 1997 and at least 6,000 pounds for taxes levied after December 31, 1996, and that is designed to have a maximum passenger seating configuration of more than 30 seats and is used solely in the transport of passengers.

(2) The tax levied under this act does not apply to the sale of parts or materials, excluding shop equipment or fuel, affixed or to be affixed to an aircraft that meets all of the following conditions:

(a) The aircraft leaves this state within 15 days after the sooner of the issuance of the final billing or authorized approval for final return to service, completion of the maintenance record entry, and completion of the test flight and ground test for inspection as required under 14 CFR 91.407.

(b) The aircraft was not based in this state or registered in this state before the parts or materials are affixed to the aircraft and the aircraft is not based in this state or registered in this state after the parts or materials are affixed to the aircraft.

(3) The tax levied under this act does not apply to the sale of an aircraft temporarily located in this state for the purpose of a sale and prepurchase evaluation, customization, improvement, maintenance, or repair if all of the following conditions are satisfied:

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(a) The aircraft leaves this state within 15 days after the sale and the completion of any prepurchase evaluation, customization, improvement, maintenance, or repair that is associated with the sale, whichever is later.

(b) The aircraft was not based in this state or registered in this state before the sale and any prepurchase evaluation, customization, improvement, maintenance, or repair associated with the sale is completed and the aircraft is not based in this state or registered in this state after the sale and any prepurchase evaluation, customization, improvement, maintenance, or repair associated with the sale is completed.

(4) For taxes levied after December 31, 1992, the tax levied under this act does not apply to the storage, use, or consumption of rolling stock used in interstate commerce and purchased, rented, or leased by an interstate fleet motor carrier. A refund for taxes paid before January 1, 1997 shall not be paid under this subsection if the refund claim is made after June 30, 1997.

(5) For taxes levied after December 31, 1996 and before May 1, 1999, the tax levied under this act does not apply to the product of the out-of-state usage percentage and the price otherwise taxable under this act of a qualified truck or a trailer designed to be drawn behind a qualified truck, purchased, rented, or leased in this state by an interstate fleet motor carrier and used in interstate commerce.

(6) As used in this section:

(a) "Based in this state" means hangared or stored in this state for not less than 10 days in not less than 3 nonconsecutive months during the immediately preceding 12-month period.

(b) "Customization" means any improvement, maintenance, or repair that is performed on an aircraft that is associated with the sale of the aircraft.

(c) "Domestic air carrier" means a person engaged primarily in the commercial transport for hire of air cargo, passengers, or a combination of air cargo and passengers as a business activity.

(d) "Interstate fleet motor carrier" means a person engaged in the business of carrying persons or property, other than themselves, their employees, or their own property, for hire across state lines, whose fleet mileage was driven at least 10% outside of this state in the immediately preceding tax year.

(e) "Out-of-state usage percentage" is a fraction, the numerator of which is the number of miles driven outside of this state in the immediately preceding tax year by qualified trucks used by the taxpayer and the denominator of which is the total miles driven in the immediately preceding tax year by qualified trucks used by the taxpayer. Miles driven by qualified trucks used solely in intrastate commerce shall not be included in calculating the out-of-state usage percentage.

(f) "Prepurchase evaluation" means an examination of an aircraft to provide a potential purchaser with information relevant to the potential purchase.

(g) "Qualified truck" means a commercial motor vehicle power unit that has 2 axles and a gross vehicle weight rating in excess of 10,000 pounds or a commercial motor vehicle power unit that has 3 or more axles.

(h) "Registered in this state" means an aircraft registered with the state transportation department, bureau of aeronautics or registered with the federal aviation administration to an address located in this state.

(i) "Rolling stock" means a qualified truck, a trailer designed to be drawn behind a qualified truck, and parts or other tangible personal property affixed to or to be affixed to and directly used in the operation of either a qualified truck or a trailer designed to be drawn behind a qualified truck.

History: Add. 1992, Act 5, Imd. Eff. Feb. 27, 1992;—Am. 1995, Act 11, Imd. Eff. Mar. 29, 1995;—Am. 1996, Act 477, Imd. Eff. Dec. 26, 1996;—Am. 1999, Act 70, Imd. Eff. June 25, 1999;—Am. 2000, Act 200, Imd. Eff. June 27, 2000;—Am. 2002, Act 669, Eff. Mar. 31, 2003;—Am. 2006, Act 18, Imd. Eff. Feb. 9, 2006;—Am. 2009, Act 54, Eff. June 11, 2009;—Am. 2012, Act 429, Imd. Eff. Dec. 21, 2012.

Compiler's note: Section 2 of Act 5 of 1992 reads as follows:

"Not later than July 1, 1996, the state treasurer shall report to the House taxation committee and the Senate finance committee on the effects of this amendatory act. The report shall include an estimate of the amount of use tax revenue foregone as a result of this amendatory act and an explanation of how the estimate was determined. The report shall also contain an analysis of the effect of this amendatory act on aircraft maintenance employment within this state, including an estimate of the number of aircraft maintenance jobs created or maintained and an explanation of the methodology for obtaining that estimate."

Enacting section 1 of Act 70 of 1999 provides:

"Enacting section 1. This amendatory act is effective for taxes levied after April 30, 1999."

Enacting section 1 of Act 54 of 2009 provides:

"Enacting section 1. This amendatory act shall be retroactively applied to transactions occurring after June 11, 2009."

Enacting section 1 of Act 429 of 2012 provides:

"Enacting section 1. This amendatory act is curative and intended to clarify the original intent of 1996 PA 477."

205.94*l* Storage, use, or consumption of rail freight or passenger cars, locomotives or other rolling stock, roadway machines and certain work equipment; applicability of tax; exception.

Sec. 4*l*. The tax levied under this act does not apply to the storage, use, or consumption of rail freight or

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passenger cars, locomotives or other rolling stock, roadway machines and work equipment primarily of a flanged wheel nature, accessories, attachments including parts and materials used for repair, lubricants, or fuel, used in rail operations. This exemption does not include vehicles licensed and titled for use on public highways.

History: Add. 1993, Act 239, Imd. Eff. Nov. 15, 1993.

205.94m Personal property affixed to or made structural part of sanctuary; applicability of tax; "regularly organized church or house of religious worship" or "sanctuary" defined.

Sec. 4m. (1) The tax levied under this act does not apply to tangible personal property acquired by a person engaged in the business of constructing, altering, repairing, or improving real estate for others if the property is to be affixed to or made a structural part of a sanctuary.

(2) As used in this section:

(a) "Regularly organized church or house of religious worship" means a religious organization qualified under section 501(c)(3) of the internal revenue code of 1986.

(b) "Sanctuary" means only that portion of a building that is owned and occupied by a regularly organized church or house of religious worship that is used predominantly and regularly for public worship. Sanctuary includes a sanctuary to be constructed that will be owned and occupied by a regularly organized church or house of religious worship and that will be used predominantly and regularly for public worship.

History: Add. 1998, Act 275, Imd. Eff. July 22, 1998.

205.94n Electricity, natural gas, and home heating fuels for residential use; exemption from use tax at additional rate.

Sec. 4n. The consumption of electricity, natural gas, and home heating fuels for residential use is exempt from the use tax at the additional rate of 2% approved by the electors on March 15, 1994.

History: Add. 1993, Act 326, Eff. May 1, 1994.

205.94o Exemptions; limitation; industrial processing; definitions.

Sec. 4o. (1) The tax levied under this act does not apply to property sold to the following after March 30, 1999, subject to subsection (2):

(a) An industrial processor for use or consumption in industrial processing.

(b) A person, whether or not the person is an industrial processor, if the tangible personal property is intended for ultimate use in and is used in industrial processing by an industrial processor.

(c) A person, whether or not the person is an industrial processor, if the tangible personal property is used by that person to perform an industrial processing activity for or on behalf of an industrial processor.

(d) A person, whether or not the person is an industrial processor, if the tangible personal property is 1 of the following:

(*i*) A computer used in operating industrial processing equipment.

(*ii*) Equipment used in a computer assisted manufacturing system.

(*iii*) Equipment used in a computer assisted design or engineering system integral to an industrial process.

(*iv*) A subunit or electronic assembly comprising a component in a computer integrated industrial processing system.

(*v*) Computer equipment used in connection with the computer assisted production, storage, and transmission of data if the equipment would have been exempt had the data transfer been made using tapes, disks, CD-ROMs, or similar media by a company whose business includes publishing doctoral dissertations and information archiving, and that sells the majority of the company's products to nonprofit organizations exempt under section 4(1)(w).

(*vi*) Equipment used in the production of prewritten computer software or software modified or adapted to the user's needs or equipment by the seller, only if the software is available for sale from a seller of software on an as-is basis or as an end product without modification or adaption.

(2) The property under subsection (1) is exempt only to the extent that the property is used for the exempt purpose stated in this section. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

(3) Industrial processing includes the following activities:

(a) Production or assembly.

(b) Research or experimental activities.

(c) Engineering related to industrial processing.

(d) Inspection, quality control, or testing to determine whether particular units of materials or products or processes conform to specified parameters at any time before materials or products first come to rest in

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finished goods inventory storage.

(e) Planning, scheduling, supervision, or control of production or other exempt activities.

(f) Design, construction, or maintenance of production or other exempt machinery, equipment, and tooling.

(g) Remanufacturing.

(h) Processing of production scrap and waste up to the point it is stored for removal from the plant of origin.

(i) Recycling of used materials for ultimate sale at retail or reuse.

(j) Production material handling.

(k) Storage of in-process materials.

(4) Property that is eligible for an industrial processing exemption includes the following:

(a) Property that becomes an ingredient or component part of the finished product to be sold ultimately at retail or affixed to and made a structural part of real estate.

(b) Machinery, equipment, tools, dies, patterns, foundations for machinery or equipment, or other processing equipment used in an industrial processing activity and in their repair and maintenance.

(c) Property that is consumed or destroyed or that loses its identity in an industrial processing activity.

(d) Tangible personal property, not permanently affixed and not becoming a structural part of real estate, that becomes a part of, or is used and consumed in installation and maintenance of, systems used for an industrial processing activity.

(e) Fuel or energy used or consumed for an industrial processing activity.

(f) Machinery, equipment, or materials used within a plant site or between plant sites operated by the same person for movement of tangible personal property in the process of production. Property exempt under this subdivision includes front end loaders, forklifts, pettibone lifts, skidsters, multipurpose loaders, knuckle-boom log loaders, tractors, and log loaders used to unload logs from trucks at a saw mill site for the purpose of processing at the site and to load lumber onto trucks at a saw mill site for purposes of transportation from the site.

(g) Office equipment, including data processing equipment, used for an industrial processing activity.

(h) Tangible personal property used or consumed in an industrial processing activity to produce alcoholic beverages that are sold at retail by that industrial processor through its own locations.

(5) Property that is not eligible for an industrial processing exemption includes the following:

(a) Tangible personal property permanently affixed and becoming a structural part of real estate in this state including building utility systems such as heating, air conditioning, ventilating, plumbing, lighting, and electrical distribution, to the point of the last transformer, switch, valve, or other device at which point usable power, water, gas, steam, or air is diverted from distribution circuits for use in industrial processing.

(b) Office equipment, including data processing equipment used for nonindustrial processing purposes.

(c) Office furniture or office supplies.

(d) An industrial processor's own product or finished good that it uses or consumes for purposes other than industrial processing.

(e) Tangible personal property used for receiving and storage of materials, supplies, parts, or components purchased by the user or consumer.

(f) Tangible personal property used for receiving or storage of natural resources extracted by the user or consumer.

(g) Vehicles, including special bodies or attachments, required to display a vehicle permit or license plate to operate on public highways, except for a vehicle bearing a manufacturer's plate or a specially designed vehicle, together with parts, used to mix and agitate materials at a plant or job site in the concrete manufacturing process.

(h) Tangible personal property used for the preparation of food or beverages by a retailer for ultimate sale at retail through its own locations, except as provided in subsection (4)(h).

(i) Tangible personal property used or consumed for the preservation or maintenance of a finished good once it first comes to rest in finished goods inventory storage.

(j) Returnable shipping containers or materials, except as provided in subsection (4)(f).

(k) Tangible personal property used in the production of computer software originally designed for the exclusive use and special needs of the purchaser.

(6) Industrial processing does not include the following activities:

(a) Purchasing, receiving, or storage of raw materials.

(b) Sales, distribution, warehousing, shipping, or advertising activities.

(c) Administrative, accounting, or personnel services.

(d) Design, engineering, construction, or maintenance of real property and nonprocessing equipment.

(e) Plant security, fire prevention, or medical or hospital services.

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(7) As used in this section:

(a) "Industrial processing" means the activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to be ultimately sold at retail or affixed to and made a structural part of real estate located in another state. Industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory storage.

(b) "Industrial processor" means a person who performs the activity of converting or conditioning tangible personal property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail or affixed to and made a structural part of real estate located in another state.

(c) "Product", as used in subdivision (e), includes, but is not limited to, a prototype, pilot model, process, formula, invention, technique, patent, or similar property, whether intended to be used in a trade or business or to be sold, transferred, leased, or licensed.

(d) "Remanufacturing" means the activity of overhauling, retrofitting, fabricating, or repairing a product or its component parts for ultimate sale at retail.

(e) "Research or experimental activity" means activity incident to the development, discovery, or modification of a product or a product related process. Research or experimental activity also includes activity necessary for a product to satisfy a government standard or to receive government approval. Research or experimental activity does not include the following:

(*i*) Ordinary testing or inspection of materials or products for quality control purposes.

(*ii*) Efficiency surveys.

(*iii*) Management surveys.

(*iv*) Market or consumer surveys.

(*v*) Advertising or promotions.

(*vi*) Research in connection with literacy, historical, or similar projects.

History: Add. 1999, Act 117, Imd. Eff. July 14, 1999;—Am. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2010, Act 115, Imd. Eff. July 13, 2010;—Am. 2012, Act 474, Imd. Eff. Dec. 27, 2012;—Am. 2015, Act 204, Imd. Eff. Nov. 30, 2015.

Compiler's note: Enacting section 1 of Act 117 of 1999 provides:

"Enacting section 1. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, the tax levied does not apply to the price of property or services to the extent that the property or services are stored, used, or consumed for exempt purposes. For telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides for a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

Enacting section 1 of Act 474 of 2012 provides:

"Enacting section 1. This amendatory act is retroactive and is effective January 1, 2006."

Enacting section 1 of Act 121 of 2014 provides:

"Enacting section 1. This amendatory act is retroactive and is effective January 1, 2005."

205.94p Extractive operations; exemption; limitation; eligible property; definitions.

Sec. 4p. (1) The tax under this act does not apply to property sold to an extractive operator for use or consumption in extractive operations.

(2) The property under subsection (1) is exempt only to the extent that the property is used for the exempt purposes stated in this section. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

(3) Extractive operations include the actual production of oil, gas, brine, or other natural resources. Property eligible for the exemption includes the following:

(a) Casing pipe or drive pipe.

(b) Tubing.

(c) Well-pumping equipment.

(d) Chemicals.

(e) Explosives or acids used in fracturing, acidizing, or shooting wells.

(f) Christmas trees, derricks, or other wellhead equipment.

(g) Treatment tanks.

(h) Piping, valves, or pumps used before movement or transportation of the natural resource from the production area.

(i) Chemicals or acids used in the treatment of crude oil, gas, brine, or other natural resources.

(j) Tangible personal property used or consumed in depositing tailings from hard rock mining processing.

(k) Tangible personal property used or consumed in extracting the lithologic units necessary to process

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iron ore.

(4) The extractive operation exemption does not include the following:

(a) Tangible personal property consumed or used in the construction, alteration, improvement, or repair of buildings, storage tanks, and storage and housing facilities.

(b) Tangible personal property consumed or used in transporting the product from the place of extraction, except for tangible personal property consumed or used in transporting extracted materials from the extraction site to the place where the extracted materials first come to rest in finished goods inventory storage.

(c) Tangible personal property that is a product the extractive operator produces and that is consumed or used by the extractive operator for a purpose other than the manufacturing or producing of a product for ultimate sale. The extractor shall account for and remit the tax to the state based upon the product's fair market value.

(d) Equipment, materials, and supplies used in exploring, prospecting, or drilling for oil, gas, brine, or other natural resources.

(e) Equipment, materials, and supplies used in the storing, withdrawing, or distribution of oil, gas, or brine from a storage facility.

(f) Vehicles, including special bodies or attachments, required to display a vehicle permit or license plate to operate on public highways.

(5) As used in this section:

(a) "Extractive operations" means the activity of taking or extracting for resale ore, oil, gas, coal, timber, stone, gravel, clay, minerals, or other natural resource material. An extractive operation begins when contact is made with the actual type of natural raw product being recovered. Extractive operation includes all necessary processing operations before shipment from the place of extraction. Extractive operations include all necessary processing operations and movement of the natural resource material until the point at which the natural raw product being recovered first comes to rest in finished goods inventory storage at the extraction site. Extractive operations for timber include transporting timber from the point of extraction to a place of temporary storage at the extraction site and loading or transporting timber from a place of temporary storage at the extraction site to a vehicle or other equipment located at the extraction site that will remove the timber from the extraction site.

(b) An extractive operator is a person who, either directly or by contract, performs extractive operations.

History: Add. 1999, Act 117, Imd. Eff. July 14, 1999;—Am. 2008, Act 555, Eff. Jan. 20, 2009.

Compiler's note: Enacting section 1 of Act 117 of 1999 provides:

"Enacting section 1. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, the tax levied does not apply to the price of property or services to the extent that the property or services are stored, used, or consumed for exempt purposes. For telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides for a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

205.94q Central office equipment or wireless equipment; presumption.

Sec. 4q. (1) The tax levied under this act does not apply to the purchase of machinery and equipment for use or consumption in the rendition of any combination of services, the use or consumption of which is taxable under section 3a(1)(a) or (c) or 3b except that this exemption is limited to the tangible personal property located on the premises of the subscriber and to central office equipment or wireless equipment, directly used or consumed in transmitting, receiving, or switching, or in the monitoring of switching of a 2-way interactive communication. As used in this subsection, central office equipment or wireless equipment does not include distribution equipment including cable or wire facilities.

(2) Beginning April 1, 1999, the property under subsection (1) is exempt only to the extent that the property is used for the exempt purposes stated in this section. There is an irrebuttable presumption that 90% of total use is for exempt purposes.

History: Add. 1999, Act 117, Imd. Eff. July 14, 1999;—Am. 2002, Act 456, Imd. Eff. June 21, 2002;—Am. 2006, Act 670, Imd. Eff. Jan. 10, 2007.

Compiler's note: Enacting section 1 of Act 117 of 1999 provides:

"Enacting section 1. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, the tax levied does not apply to the price of property or services to the extent that the property or services are stored, used, or consumed for exempt purposes. For telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides for a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

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205.94r Repealed. 2004, Act 172, Eff. Sept. 1, 2004.

Compiler's note: The repealed section pertained to property used or consumed in industrial processing.

205.94s Nonprofit hospital or nonprofit housing; sale of personal property to person in business of constructing, altering, repairing, or improving real estate; tax exemption; definitions.

Sec. 4s. (1) For taxes levied after June 30, 1999, the tax levied under this act does not apply to property purchased by a person engaged in the business of constructing, altering, repairing, or improving real estate for others to the extent that the property is affixed to and made a structural part of a nonprofit hospital or a nonprofit housing entity qualified as exempt under section 15a of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1415a. For purposes of a county long-term medical care facility, "affixed to and made a structural part of" means any physical connection to an existing county long-term medical care facility.

(2) An exemption shall not be granted under this section for any portion of property otherwise qualifying for exemption under this section if income or a benefit inures directly or indirectly to an individual, private stockholder, or other private person from the independent or nonessential operation of that portion of property.

(3) As used in this section:

(a) "Nonprofit hospital" means 1 of the following:

(*i*) That portion of a building to which 1 of the following applies:

(A) Is owned or operated by an entity exempt under section 501(c)(3) of the internal revenue code, 26 USC 501, that is licensed as a hospital under part 215 of the public health code, 1978 PA 368, MCL 333.21501 to 333.21571.

(B) Is owned or operated by a governmental unit in which medical attention is provided.

(C) Is owned or operated by an entity or entities exempt under section 501(c)(2) or (3) of the internal revenue code, 26 USC 501, in which medical attention is provided.

(*ii*) That portion of real property necessary and related to a building described in subparagraph (*i*) in which medical attention is provided.

(*iii*) A county long-term medical care facility, including any addition to an existing county long-term medical care facility, if the addition is owned and operated by the county long-term medical care facility and offers health services provided by the county long-term medical care facility. For purposes of this subparagraph, "addition" includes a freestanding building as long as that freestanding building is operated under the same license held by the county long-term medical care facility and continues to offer the same health services as the county long-term medical care facility in that freestanding building. An exemption under this section shall be granted until January 1, 2008 regardless of whether the addition is licensed as a nursing home or skilled nursing facility under part 217 of the public health code, 1978 PA 368, MCL 333.21701 to 333.21799e, or whether the addition meets the requirements set forth in subsection (1).

(b) "Nonprofit hospital" does not include the following:

(*i*) Except as otherwise provided under subsection (3)(a)(*iii*), a freestanding building or other real property of a nursing home or skilled nursing facility licensed under part 217 of the public health code, 1978 PA 368, MCL 333.21701 to 333.21799e.

(*ii*) A hospice licensed under part 214 of the public health code, 1978 PA 368, MCL 333.21401 to 333.21420.

(*iii*) A home for the aged licensed under part 213 of the public health code, 1978 PA 368, MCL 333.21301 to 333.21335.

(c) "Medical attention" means that level of medical care in which a physician provides acute care or active treatment of medical, surgical, obstetrical, psychiatric, chronic, or rehabilitative conditions, that require the observation, diagnosis, and daily treatment by a physician.

History: Add. 1999, Act 117, Imd. Eff. July 14, 1999;—Am. 2006, Act 666, Imd. Eff. Jan. 10, 2007;—Am. 2016, Act 373, Eff. Mar. 29, 2017.

Compiler's note: Enacting section 1 of Act 117 of 1999 provides:

"Enacting section 1. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, the tax levied does not apply to the price of property or services to the extent that the property or services are stored, used, or consumed for exempt purposes. For telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides for a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

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Enacting section 1 of Act 666 of 2006 provides:
"Enacting section 1. This amendatory act is retroactive and is effective for taxes levied after June 30, 1999."
Enacting section 1 of Act 373 of 2016 provides:
"Enacting section 1. This amendatory act is retroactive and effective for taxes levied after December 31, 2012."

205.94u Storage, use, or consumption of investment coins and bullion; applicability of tax; definitions.

Sec. 4u. (1) Beginning July 7, 1999, the tax under this act does not apply to the storage, use, or consumption of investment coins and bullion.

(2) As used in this section:

(a) "Bullion" means gold, silver, or platinum in a bulk state, where its value depends on its content rather than its form, with a purity of not less than 900 parts per 1,000.

(b) "Investment coins" means numismatic coins or other forms of money and legal tender manufactured of gold, silver, platinum, palladium, or other metal and issued by the United States government or a foreign government with a fair market value greater than the face value of the coins.

History: Add. 1999, Act 225, Eff. Mar. 10, 2000.

205.94v Repealed. 2004, Act 172, Eff. Sept. 1, 2004.

Compiler's note: The repealed section pertained to construction or improvement of building of nonprofit hospital.

205.94w Applicability of tax; exceptions; definitions.

Sec. 4w. (1) Beginning April 1, 2005, the tax levied under this act does not apply to either of the following:

(a) The donation of a motor vehicle to a regularly organized church or house of religious worship that received the motor vehicle with the intent that it be donated to a qualified recipient.

(b) The donation of a motor vehicle from or through a regularly organized church or house of religious worship to a qualified recipient that was received by the church or house of religious worship with the intent that it be donated to a qualified recipient.

(2) As used in this section:

(a) "Qualified recipient" means an individual certified by the regularly organized church or house of religious worship on a form prescribed by the department and provided to a qualified recipient as meeting all of the following qualifications:

(*i*) Before October 1, 2005, all of the following qualifications:

(A) The individual receives or, if he or she applied, would be eligible to receive public assistance through a program created and administered under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

(B) The individual has a valid Michigan operator's or chauffeur's license.

(C) Public transportation is not reasonably available to the individual, the individual has no other reliable means by which to commute to his or her place of employment, and the individual will use the eligible vehicle as his or her primary means of transportation to commute to and from his or her place of employment.

(D) If the individual is currently employed for not less than an average of 20 hours per week, the individual requires an automobile to retain his or her current employment or to accept a verified offer of employment in a position that is demonstrably superior to his or her current position of employment.

(E) If the individual is not currently employed or is employed for less than an average of 20 hours per week, the individual requires an automobile to accept a verified offer of employment of not less than an average of 20 hours per week and cannot begin employment in that position without an automobile.

(*ii*) After September 30, 2005, all of the following qualifications:

(A) The individual receives or, if he or she applied, would be eligible to receive public assistance through a program created and administered under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, or the individual has a total household income below 200% of the federal poverty guidelines updated annually in the federal register of the United States department of health and human services.

(B) The individual has a valid Michigan operator's or chauffeur's license.

(b) "Regularly organized church or house of religious worship" means a religious organization qualified under section 501(c)(3) of the internal revenue code of 1986.

History: Add. 2004, Act 435, Imd. Eff. Dec. 21, 2004.

205.94x Tax exemption; resident tribal member.

Sec. 4x. (1) The tax under this act does not apply to the sale of a motor vehicle, recreational watercraft, snowmobile, or all terrain vehicle, not for resale, to a resident tribal member if the motor vehicle, recreational watercraft, snowmobile, or all terrain vehicle is for personal use and is principally garaged, berthed, or stored within that resident tribal member's tribe agreement area.

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(2) The tax under this act does not apply to the sale of a mobile home, not for resale, to a resident tribal member if the mobile home is to be used as that resident tribal member's principal residence and the mobile home is located within that resident tribal member's tribe agreement area.

(3) As used in this section, "resident tribal member" means an individual who meets all of the following criteria:

(a) Is an enrolled member of a federally recognized tribe.

(b) The individual's tribe has an agreement with this state pursuant to section 30c of 1941 PA 122, MCL 205.30c, that is in full force and effect.

(c) The individual's principal place of residence is located within the agreement area as designated in the agreement under subdivision (b).

History: Add. 2002, Act 614, Imd. Eff. Dec. 20, 2002.

205.94y Storage, use, or consumption of automobile provided by family independence agency or qualified organization; applicability of tax.

Sec. 4y. (1) Beginning January 1, 2005, the tax levied under this act does not apply to the storage, use, or consumption of an eligible automobile provided to a qualified recipient by the family independence agency or by a qualified organization.

(2) As used in this section:

(a) "Eligible automobile" means an automobile that meets all of the following requirements:

(*i*) The automobile has been inspected by a mechanic certified under the motor vehicle service and repair act, 1974 PA 300, MCL 257.1301 to 257.1340.

(*ii*) The automobile is insured as required under state law.

(*iii*) The automobile is registered to a qualified recipient.

(b) "Qualified organization" means an organization that applies for certification not later than July 1 of the year in which an exemption is claimed under this section and is certified by the department of treasury as meeting all of the following requirements:

(*i*) The organization is exempt from taxation under section 501(c)(3) of the internal revenue code, 26 USC 501.

(*ii*) The organization is licensed under the charitable organizations and solicitations act, 1975 PA 169, MCL 400.271 to 400.294.

(*iii*) The organization administers a program to provide a qualified recipient with an eligible automobile for transportation to his or her place of employment or for employment-related activities.

(c) "Qualified recipient" means a person certified by a qualified organization as meeting all of the following qualifications:

(*i*) The qualified recipient receives or, if he or she applied, would be eligible to receive public assistance through a program created and administered under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

(*ii*) The qualified recipient has a valid Michigan operator's or chauffeur's license.

(*iii*) The qualified recipient is financially capable of meeting any loan payment, insurance payment, or other expenditure associated with the eligible vehicle.

(*iv*) Public transportation is not reasonably available to the qualified recipient, the qualified recipient has no other reliable means by which to commute to his or her place of employment, and the qualified recipient will use the eligible vehicle as his or her primary means of transportation to commute to and from his or her place of employment.

(*v*) The qualified recipient has a demonstrated ability to maintain employment.

(*vi*) If the qualified recipient is currently employed for not less than an average of 20 hours per week, the qualified recipient requires an automobile to retain his or her current employment or to accept a verified offer of employment in a position that is demonstrably superior to his or her current position of employment.

(*vii*) If the qualified recipient is not currently employed or is employed for less than an average of 20 hours per week, the qualified recipient requires an automobile to accept a verified offer of employment of not less than an average of 20 hours per week and cannot begin employment in that position without an automobile.

History: Add. 2004, Act 312, Imd. Eff. Aug. 27, 2004.

205.94z Certain property affixed to or made structural part of qualified convention facility; "qualified convention facility" defined.

Sec. 4z. The tax levied under this act does not apply to tangible personal property acquired before January 1, 2016 by a person engaged in the business of altering, repairing, or improving real estate for others if the property is to be affixed to or made a structural part of a qualified convention facility under the regional

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convention facility authority act, 2008 PA 554, MCL 141.1351 to 141.1379. As used in this subdivision, "qualified convention facility" means that term as defined in section 5 of the regional convention facility authority act, 2008 PA 554, MCL 141.1355.

History: Add. 2008, Act 555, Eff. Jan. 20, 2009;—Am. 2014, Act 54, Imd. Eff. Mar. 25, 2014.

205.94aa Storage, use, or consumption of tangible personal property for use as or at mineral-producing property; exemption; "mineral-producing property" and "taxpayer" defined.

Sec. 4aa. (1) Subject to subsection (2), the tax under this act does not apply to the storage, use, or consumption of tangible personal property sold to a taxpayer for use as or at mineral-producing property.

(2) The property under subsection (1) is exempt only to the extent that the property is used for the exempt purposes stated in this section. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

(3) As used in this section, "mineral-producing property" and "taxpayer" mean those terms as defined in section 2 of the nonferrous metallic minerals extraction severance tax act.

History: Add. 2012, Act 413, Imd. Eff. Dec. 20, 2012.

205.94bb Applicability of tax to certain transfers.

Sec. 4bb. Beginning January 1, 2014, the tax under this act does not apply to a transfer of a vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft if the transferee or purchaser is the father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, or grandparent-in-law of the transferor.

History: Add. 2014, Act 248, Imd. Eff. June 27, 2014.

205.94cc Data center equipment; exemption from tax; conditions; report; definitions.

Sec. 4cc. (1) Subject to subsections (2) and (3), beginning January 1, 2016 through December 31, 2035, the tax under this act does not apply to the storage, use, or consumption of data center equipment sold to the owner or operator of a qualified data center or a colocated business for assembly, use, or consumption in the operations of the qualified data center or data center equipment sold or provided to a person engaged in the business of constructing, altering, repairing, or improving real estate for others to the extent the data center equipment is to be affixed to or made a structural part of a qualified data center.

(2) The exemption under this section only continues to apply after January 1, 2022, if the numbers gathered by the local economic development corporations are certified and reported to the department of talent and economic development and subsequently forwarded to the department and demonstrate that the qualified data centers, the colocated businesses, and the contractors of the qualified data centers, collectively, have, in aggregate, established in this state at least 400 data center industry jobs or data center industry related jobs, or a combination of both, since January 1, 2016. The department of talent and economic development shall submit a report no later than April 1, 2022 related to the number of data center industry jobs or data center industry related jobs that have been established since January 1, 2016 to the speaker and minority leader of the house of representatives, the majority and minority leaders of the senate, and the governor.

(3) The exemption under this section only continues to apply after January 1, 2026, if the numbers gathered by the local economic development corporations are certified and reported to the department of talent and economic development and subsequently forwarded to the department and demonstrate that the qualified data centers, the colocated businesses, and the contractors of the qualified data centers, collectively, have, in aggregate, established in this state at least 1,000 data center industry jobs or data center industry related jobs, or a combination of both, since January 1, 2016. The department of talent and economic development shall submit a report no later than April 1, 2026 related to the number of data center industry jobs or data center industry related jobs that have been established since January 1, 2016 to the speaker and minority leader of the house of representatives, the majority and minority leaders of the senate, and the governor.

(4) As used in this section:

(a) "Affiliate" means a person that directly, or indirectly through 1 or more intermediaries, controls, is controlled by, or is under common control with a specified person.

(b) "Colocated business" means a person that has entered into a contract with the owner or operator of a qualified data center to use or deploy data center equipment physically located within the qualified data center for a period of 1 or more years.

(c) "Data center equipment" means only computers, servers, routers, switches, peripheral computer devices, racks, shelving, cabling, wiring, storage batteries, back-up generators, uninterrupted power supply

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units, environmental control equipment, other redundant power supply equipment, and prewritten computer software used in operating, managing, or maintaining the qualified data center or the business of the qualified data center or a colocated business. Data center equipment also includes any construction materials used or assembled under the qualified data center's proprietary method for the construction or modification of a qualified data center, including, but not limited to, building materials, infrastructure, machinery, wiring, cabling, devices, tools, and equipment that would otherwise be considered a fixture or related equipment. Data center equipment does not include any equipment owned by a third party that is used to supply the qualified data center's primary power.

(d) "Qualified data center" means a facility composed of 1 or more buildings located in this state and the facility is owned or operated by an entity engaged at that facility in operating, managing, or maintaining a group of networked computers or networked facilities for the purpose of centralizing, or allowing 1 or more colocated businesses to centralize, the storage, processing, management, or dissemination of data of 1 or more other persons who is not an affiliate of the owner or operator of a qualified data center or of a colocated business and the entity receives 75% or more of its revenue from colocated businesses that are not an affiliate of the owner or operator of the qualified data center.

History: Add. 2015, Act 252, Imd. Eff. Dec. 23, 2015.

Compiler's note: Enacting section 1 of Act 252 of 2015 provides:

"Enacting section 1. The legislature shall annually appropriate sufficient funds from the state general fund to the state school aid fund created in section 11 of article IX of the state constitution of 1963 to fully compensate for any loss of revenue to the state school aid fund resulting from the enactment of this amendatory act."

For transfer of authority, powers, duties, functions, and responsibilities of the department of talent and economic development to the Michigan strategic fund, see E.R.O. No. 2019-3, compiled at MCL 125.1998.

205.94dd Improvements to real property included within transformational brownfield plan; applicability of tax levy applied to tangible personal property; "eligible property" and "transformational brownfield plan" defined.

Sec. 4dd. The tax levied under this act does not apply to tangible personal property acquired by a person engaged in the business of altering, repairing, or improving real estate for others, or to the manufacture of a product as described under section 3a(1)(f) or (g), if the property or product is to be affixed to or made a structural part of improvements to real property included within a transformational brownfield plan, to the extent that those improvements are included as eligible activities described in section 2(o)(*iv*) of the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2652, on eligible property that is included in a transformational brownfield plan. As used in this section, "eligible property" and "transformational brownfield plan" mean those terms as defined in section 2 of the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2652.

History: Add. 2017, Act 49, Eff. July 24, 2017.

205.94ee Storage, use, or consumption of certain tangible personal property acquired by a contractor; exemption from tax.

Sec. 4ee. A person engaged in the business of constructing, altering, repairing, or improving real estate for others is not liable for the tax levied under this act for storing, using, or consuming tangible personal property acquired from another person to the extent that the tangible personal property was purchased by that other person and that person is not exempt from the tax levied under this act or the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, and that tangible personal property was acquired by the person engaged in the business of constructing, altering, repairing, or improving real estate for others for the sole purpose of affixing that tangible personal property to real estate on behalf of that other person.

History: Add. 2018, Act 201, Imd. Eff. June 20, 2018.

Compiler's note: "Enacting section 1. It is the intent of the legislature that this amendatory act clarifies that existing law as originally intended provides that the tax levied under this act does not apply to tangible personal property acquired by a person engaged in the business of installing tangible personal property if that tangible personal property is purchased by another for installation on behalf of that other person."

205.94ff Sales of certain prosthetic devices; exemption; definitions.

Sec. 4ff. (1) The sale to a hospital or freestanding surgical outpatient facility of a prosthetic device for implantation into a human is exempt from the tax imposed by this act.

(2) As used in this section:

(a) "Freestanding surgical outpatient facility" means a facility licensed under part 208 of the public health code, 1978 PA 368, MCL 333.20801 to 333.20821.

(b) "Hospital" means a hospital licensed under part 215 of the public health code, 1978 PA 368, MCL

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333.21501 to 333.21571.

(c) "Prosthetic device" means a replacement, corrective, or supportive device, other than contact lenses and dental prosthesis, including repair or replacement parts for that device, worn on or in the body to do 1 or more of the following:

(*i*) Artificially replace a missing portion of the body.

(*ii*) Prevent or correct a physical deformity or malfunction of the body.

(*iii*) Support a weak or deformed portion of the body.

History: Add. 2020, Act 47, Imd. Eff. Mar. 3, 2020.

205.95 Registration requirements; seller to collect tax from consumer; foreign corporations; dissolution or withdrawal of corporation; election of lessor on payment of taxes; registration under streamlined sales and use tax agreement.

Sec. 5. (1) Except as otherwise provided in this subsection or subsection (5), a person subject to the tax under this act shall register with the department and give the name and address of each agent operating in this state, the location of all distribution or sales houses or offices or other places of business in this state, and any other information that the department requires relevant to the enforcement of this act. However, a seller holding a sales tax license obtained under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, is not required to separately register with the department under this act. Every person subject to the tax under this act shall source sales in accordance with section 20 and collect the tax imposed by this act from the consumer.

(2) The corporation, securities, and land development bureau of the department of labor and economic growth shall not issue to any foreign corporation subject to the tax under this act a certificate of authority to do business in this state or approve and file the proposed articles of incorporation submitted to it by any domestic corporation authorizing or permitting that corporation to conduct any business subject to the tax under this act unless the corporation submits with the application for the certificate of authority or proposed articles of incorporation an application for registration of the corporation under this act or an application for a sales tax license under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78. The application shall be transmitted to the department by the corporation, securities, and land development bureau.

(3) A domestic corporation or a foreign corporation authorized to transact business in this state that submits a certificate of dissolution or requests a certificate of withdrawal from this state shall request a certificate from the department stating that taxes are not due under section 27a of 1941 PA 122, MCL 205.27a, not more than 60 days after submitting the certificate of dissolution or requesting the certificate of withdrawal. A corporation that does not request a certificate stating that taxes are not due is subject to the same penalties under section 24 of 1941 PA 122, MCL 205.24, that a taxpayer would be subject to for failure to file a return.

(4) A lessor may elect to pay use tax on receipts from the rental or lease of the tangible personal property in lieu of payment of sales or use tax on the full cost of the property at the time it is acquired. For tax years that begin after December 31, 2001, in order to make a valid election under this subsection, a lessor of tangible personal property that is an aircraft shall obtain a use tax registration by the earlier of the date set for the first payment of use tax under the lease or rental agreement or 90 days after the lessor first brings the aircraft into this state.

(5) A seller registered under the streamlined sales and use tax agreement who is not otherwise subject to the tax under this act is not required to register under this section because of the registration under the streamlined sales and use tax agreement.

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.95;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1959, Act 263, Eff. Sept. 1, 1959;—Am. 1959, Act 272, Eff. Jan. 1, 1960;—Am. 2002, Act 255, Imd. Eff. May 1, 2002;—Am. 2002, Act 580, Imd. Eff. Oct. 14, 2002;—Am. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2007, Act 93, Eff. Dec. 1, 2007.

205.95a Sale of tangible personal property; nexus with state; presumptions; purchase of advertisements; agreement; effectiveness of section; definitions.

Sec. 5a. (1) A seller who sells tangible personal property is presumed to have nexus with this state and shall register with the department and collect the tax levied under this act if the seller or a person, including an affiliated person, other than a common carrier acting as a common carrier, engages in or performs any of the following activities in this state:

(a) Sells a similar line of products as the seller and does so under the same business name as the seller or a similar business name as the seller.

(b) Uses its employees, agents, representatives, or independent contractors in this state to promote or facilitate sales by the seller to purchasers in this state.

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(c) Maintains, occupies, or uses an office, distribution facility, warehouse, storage place, or similar place of business in this state to facilitate the delivery or sale of tangible personal property sold by the seller to the seller's purchasers in this state for storage, use, or consumption in this state.

(d) Uses, with the seller's consent or knowledge, trademarks, service marks, or trade names in this state that are the same or substantially similar to those used by the seller.

(e) Delivers, installs, assembles, or performs maintenance or repair services for the seller's purchasers in this state.

(f) Facilitates the sale of tangible personal property to purchasers in this state by allowing the seller's purchasers in this state to pick up or return tangible personal property sold by the seller at an office, distribution facility, warehouse, storage place, or similar place of business maintained by that person in this state.

(g) Shares management, business systems, business practices, or employees with the seller, or in the case of an affiliated person, engages in intercompany transactions related to the activities occurring with the seller to establish or maintain the seller's market in this state.

(h) Conducts any other activities in this state that are significantly associated with the seller's ability to establish and maintain a market in this state for the seller's sales of tangible personal property to purchasers in this state for storage, use, or consumption in this state.

(2) The presumption under subsection (1) may be rebutted by demonstrating that a person's activities in this state are not significantly associated with the seller's ability to establish or maintain a market in the state for the seller's sales of tangible personal property to purchasers in this state.

(3) In addition to the presumption under subsection (1), a seller of tangible personal property is presumed to have nexus in this state and shall register with the department and collect the tax levied under this act if the seller enters into an agreement, directly or indirectly, with 1 or more residents of this state under which the resident, for a commission or other consideration, directly or indirectly, refers potential purchasers, whether by a link on an internet website, in-person oral presentation, or otherwise, to the seller, if all of the following conditions are satisfied:

(a) The cumulative gross receipts from sales by the seller for storage, use, or consumption in this state to purchasers in this state who are referred to the seller by all residents of this state with an agreement with the seller are greater than $10,000.00 during the immediately preceding 12 months.

(b) The seller's total cumulative gross receipts from sales for storage, use, or consumption to purchasers in this state exceed $50,000.00 during the immediately preceding 12 months.

(4) The presumption under subsection (3) may be rebutted by demonstrating that the residents of this state with whom the seller has an agreement did not engage in any solicitation or any other activity within this state that was significantly associated with the seller's ability to establish or maintain a market in this state for the seller's sales of tangible personal property to purchasers in this state for storage, use, or consumption in this state. The presumption under subsection (3) shall be considered rebutted by evidence of all of the following:

(a) Written agreements prohibiting all of the residents with an agreement with the seller from engaging in any solicitation activities in this state on behalf of the seller.

(b) Written statements from all of the residents with an agreement with the seller stating that the resident representatives did not engage in any solicitation or other activities in this state on behalf of the seller during the immediately preceding 12 months, if the statements are provided and obtained in good faith.

(5) An agreement under which a seller purchases advertisements from a person or persons in this state to be delivered through television, radio, print, the internet, or any other medium is not an agreement described in subsection (3) unless the advertisement revenue paid to the person or persons in this state consists of commissions or other consideration that is based upon completed sales of tangible personal property.

(6) This section applies to transactions occurring on or after the effective date of the amendatory act that added this section and without regard to the date the seller and the resident entered into an agreement described in subsection (3). The 12 months before the effective date of the amendatory act that added this section are included as part of the immediately preceding 12 months for purposes of subsection (3).

(7) As used in this section:

(a) "Affiliated person" means either of the following:

(*i*) Any person that is a part of the same controlled group of corporations as the seller.

(*ii*) Any other person that, notwithstanding its form of organization, bears the same ownership relationship to the seller as a corporation that is a member of the same controlled group of corporations.

(b) "Controlled group of corporations" means that term as defined in section 1563(a) of the internal revenue code, 26 USC 1563.

History: Add. 2014, Act 554, Eff. Oct. 1, 2015.

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205.95b Seller of tangible personal property or services; nexus; conditions; application to transactions after October 1, 2018; inclusion of sales of marketplace facilitator and marketplace seller; exception; definitions.

Sec. 5b. (1) A seller of tangible personal property or services subject to the tax under this act has nexus in this state and shall register with the department and collect and remit the tax levied under this act if the seller meets either of the following conditions:

(a) The seller's gross receipts from sales for storage, use, or consumption in this state to purchasers in this state exceed $100,000.00 in the previous calendar year.

(b) The seller has 200 or more separate transactions into this state in the previous calendar year.

(2) This section applies regardless of whether the seller has a physical presence in this state or has nexus in this state under section 5a. This section does not eliminate or alter the obligation of a seller that has a physical presence in this state or nexus in this state under section 5a to collect and remit the tax levied under this act.

(3) This section applies to transactions occurring on or after October 1, 2018.

(4) A person that is a marketplace facilitator under section 5c shall include sales by marketplace sellers on its marketplace and its direct sales in determining its gross receipts under subsection (1)(a) or its number of transactions under subsection (1)(b).

(5) A person that is a marketplace seller under section 5c shall include its sales through a marketplace facilitator and its direct sales in determining its gross receipts under subsection (1)(a) or its number of transactions under subsection (1)(b).

(6) Notwithstanding anything else in this section, a seller that only makes sales for purposes of resale is not required to register for the tax imposed by this act. A seller that makes both sales that it is required to collect and remit tax on under this act and sales for purposes of resale shall register under this act, file required returns, and remit tax as required by this act.

(7) As used in this section:

(a) "Marketplace facilitator" means that term as defined in section 5c.

(b) "Marketplace seller" means that term as defined in section 5c.

History: Add. 2019, Act 146, Imd. Eff. Dec. 12, 2019.

205.95c Marketplace facilitators; nexus; report; class action prohibited; audit; liability; conditions; definitions.

Sec. 5c. (1) Notwithstanding anything to the contrary in this act, a marketplace facilitator that has nexus in this state shall collect and remit the tax due under this act on all taxable sales made by the marketplace facilitator or facilitated for marketplace sellers to a purchaser in this state regardless of whether the marketplace seller for whom sales are facilitated has nexus with this state.

(2) A marketplace facilitator is a person liable for the tax imposed under this act, regardless of whether the marketplace facilitator makes only facilitated sales for marketplace sellers or a combination of direct and facilitated sales and has all the rights and duties of a taxpayer under this act.

(3) A marketplace facilitator shall report its direct sales and the sales it facilitates to purchasers in this state in a manner as prescribed by the department.

(4) A class action shall not be brought against a marketplace facilitator in any court of this state on behalf of purchasers arising from or in any way related to an overpayment of use tax collected and remitted on sales facilitated by the marketplace facilitator, regardless of whether that claim is characterized as a tax refund claim. Nothing in this subsection affects a purchaser's right to seek a refund as provided under section 14b.

(5) Nothing in this section affects the obligation of a purchaser to remit the tax imposed by this act for a taxable transaction on which a marketplace facilitator or marketplace seller does not remit sales or use tax.

(6) Except as otherwise provided in this subsection, if a marketplace facilitator is required to collect and remit tax under subsection (1), the department shall audit only the marketplace facilitator for sales made by marketplace sellers that were facilitated by the marketplace facilitator. The department shall not audit a marketplace seller for sales facilitated by a marketplace facilitator required to collect and remit tax under subsection (1) unless the marketplace seller fails to provide the marketplace facilitator with sufficient information to the extent that the marketplace facilitator is not liable under subsection (7).

(7) A marketplace facilitator is relieved of liability under this section for failure to collect and remit the correct amount of tax to the extent that the marketplace facilitator demonstrates, to the satisfaction of the department, that the failure was due to incorrect or insufficient information given to the marketplace facilitator by the marketplace seller. The relief under this subsection does not apply if the marketplace seller is an affiliate of the marketplace facilitator.

(8) A marketplace facilitator is relieved of liability under this section if the marketplace facilitator

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demonstrates, to the satisfaction of the department, that the tax levied under this act on a sale facilitated by the marketplace facilitator was paid to the department by the marketplace seller or provides a claim of exemption provided by the marketplace seller's purchaser.

(9) A marketplace seller is not liable for the tax imposed by this act on sales made through a marketplace facilitator required to collect and remit tax under subsection (1) unless the marketplace seller fails to provide the marketplace facilitator with sufficient information to the extent that the marketplace facilitator is not liable under subsection (7).

(10) This section applies regardless of whether the marketplace facilitator has a physical presence in this state.

(11) As used in this section:

(a) "Affiliate" means an affiliated person as that term is defined in section 5a.

(b) "Marketplace facilitator" means a person that meets the requirements of subparagraph (*i*), but does not include a person described in subparagraph (*ii*), (*iii*), or (*iv*):

(*i*) A person is a marketplace facilitator if the person facilitates a retail sale by a marketplace seller by listing or advertising for sale by a marketplace seller in a marketplace, tangible personal property or taxable services and either directly or indirectly through agreements or arrangements with third parties or its affiliates collecting payment from the customer and transmitting that payment to the marketplace seller for consideration.

(*ii*) Marketplace facilitator does not include a person who operates a platform or forum that provides internet, print, electronic, or any other form of advertising services, including listing tangible personal property or services for sale, if the person does not also engage directly or indirectly, through 1 or more affiliates, in the activities described in subparagraph (*i*).

(*iii*) A person is not a marketplace facilitator with respect to the sale of or charges for rooms, lodgings, or accommodations described in section 3a if the rooms, lodgings, or accommodations are provided by a hotelkeeper, motel operator, or other person that is registered under section 5 or licensed under section 3 of the general sales tax act, 1933 PA 167, MCL 205.53.

(*iv*) A person is not a marketplace facilitator with respect to the sale of telecommunications services as described in section 3a.

(c) "Marketplace seller" means a person that makes retail sales through a physical or electronic marketplace operated by a marketplace facilitator.

History: Add. 2019, Act 144, Eff. Jan. 1, 2020.

Compiler's note: Enacting sections 1 and 2 of Act 144 of 2019 provide:

"Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this amendatory act is severable."

"Enacting section 2. This amendatory act takes effect January 1, 2020. An obligation to collect sales tax under this amendatory act does not apply retroactively."

205.96 Use tax returns; filing; form; contents; payment of tax; remittance for certain total tax liability after subtracting tax payments; electronic funds transfer; filing other than monthly returns; accrual to state; due date.

Sec. 6. (1) Every person storing, using, or consuming tangible personal property or services, the storage, use, or consumption of which is subject to the tax imposed by this act when the tax was not paid to a seller, and every seller collecting the tax from the purchaser, unless otherwise prescribed by the department under the provisions of subsection (2) or (3), on or before the twentieth day of each calendar month shall file with the department a return for the preceding calendar month, in a form prescribed by the department, showing the price of each purchase of tangible personal property or services during the preceding month, and other information the department considers necessary for the proper administration of this act. At the same time, each person shall pay to the department the amount of tax imposed by this act with respect to the purchases covered by the return.

(2) Each seller that had a total tax liability after subtracting the tax payments made to the secretary of state under this act or the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, or after subtracting the tax credits available under section 6a of the general sales tax act, 1933 PA 167, MCL 205.56a, in the immediately preceding calendar year of $720,000.00 or more shall remit to the department, by an electronic funds transfer method approved by the department on or before the twentieth day of the month, an amount equal to the following:

(a) Beginning January 1, 1999 through December 31, 2013, 50% of the taxpayer's liability under this act for the same month in the immediately preceding calendar year, or 50% of the actual liability for the month being reported, whichever is less, plus a reconciliation payment equal to the difference between the tax liability determined for the immediately preceding month minus the amount of tax previously paid for that

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month. Additionally, the seller shall remit to the department, by an electronic funds transfer method approved by the department on or before the last day of the month, an amount equal to 50% of the taxpayer's liability under this act for the same month in the immediately preceding calendar year, or 50% of the actual liability for the month being reported, whichever is less.

(b) Beginning January 1, 2014, 75% of the taxpayer's liability under this act in the immediately preceding month or 75% of the taxpayer's liability for the same month in the immediately preceding calendar year, whichever is less, plus a reconciliation payment equal to the difference between the tax liability determined for the immediately preceding month minus the amount of tax previously paid for that month. Payment remitted to the department by electronic funds transfer may include as a single payment any amount due under section 6 of the general sales tax act, 1933 PA 167, MCL 205.56.

(3) If considered necessary to insure payment of the tax or to provide a more efficient administration, the department may require and prescribe the filing of returns and payment of the tax for other than monthly periods.

(4) The tax imposed under this act shall accrue to this state on the last day of each calendar month.

(5) If a due date falls on a Saturday, Sunday, state holiday, or legal banking holiday, the taxes are due on the next succeeding business day.

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.96;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1959, Act 263, Eff. Sept. 1, 1959;—Am. 1963, Act 75, Imd. Eff. May 8, 1963;—Am. 1971, Act 161, Imd. Eff. Nov. 24, 1971;—Am. 1975, Act 97, Imd. Eff. June 2, 1975;—Am. 1993, Act 17, Imd. Eff. Apr. 14, 1993;—Am. 1993, Act 326, Eff. May 1, 1994;—Am. 1998, Act 266, Imd. Eff. July 17, 1998;—Am. 2003, Act 24, Imd. Eff. June 24, 2003;—Am. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2012, Act 117, Imd. Eff. May 2, 2012;—Am. 2012, Act 585, Eff. Mar. 28, 2013;—Am. 2014, Act 426, Imd. Eff. Dec. 30, 2014.

Compiler's note: Enacting section 1 of Act 24 of 2003 provides:

"Enacting section 1. This amendatory act takes effect for returns and remittances for those returns that are due or filed on or after the effective date of this amendatory act."

205.96a Reepaled. 2006, Act 673, Eff. Jan. 1, 2011.

Compiler's note: The repealed section pertained to qualified athletic event.

205.96c Aviation fuel; informational report; "aviation fuel" defined.

Sec. 6c. (1) Beginning April 1, 2016 and each calendar quarter thereafter, every person storing, using, or consuming aviation fuel, the storage, use, or consumption of which is subject to the tax imposed by this act when the tax was not paid to a seller, and every seller collecting the tax from the purchaser from sales of aviation fuel shall, on or before the last day of the month in the month that immediately follows the end of a calendar quarter, file an informational report with the department on a form prescribed by the department showing all of the following for the immediately preceding calendar quarter:

(a) The entire amount of taxable aviation fuel sold or purchased by the person, as applicable.

(b) The amount of tax for which the person is liable from the purchase or sale of aviation fuel.

(c) The number of taxable gallons of aviation fuel sold or purchased by the person, as applicable, at each airport and the gross proceeds from the sales or purchase of those gallons of aviation fuel, as applicable.

(d) Any other information the department considers necessary for the proper administration of this act.

(2) The report required under this section shall not include any remittance for tax and does not constitute a return or otherwise alleviate the person's obligations under section 6.

(3) A person required to file the informational report under this section that fails or refuses to file the informational report within the time and in the manner specified in this section shall be liable for a penalty of $10.00 per day for each day for each separate failure or refusal up to, but not exceeding, a maximum penalty of $500.00 for each separate violation. The department may waive the penalty if the taxpayer demonstrates to the satisfaction of the department that the failure to file was due to reasonable cause.

(4) As used in this section, "aviation fuel" means fuel as that term is defined in section 4 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.4.

History: Add. 2015, Act 263, Eff. Mar. 22, 2016.

205.97 Liability for tax.

Sec. 7. (1) Each person storing, using, or consuming in this state tangible personal property or services is liable for the tax levied under this act, and that liability shall not be extinguished until the tax levied under this act has been paid to the department.

(2) A person who acquires tangible personal property or services for any tax-exempt use who subsequently converts the tangible personal property or service to a taxable use, including an interim taxable use, is liable for the tax levied under this act. If tangible personal property or services are converted to a taxable use, the tax levied under this act shall be imposed without regard to any subsequent tax-exempt use. The payment to

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the department of the tax, interest, and any penalty assessed by the department relieves the seller, who sold the property or services with regard to the storing, use, or consumption on which the tax was paid from the payment of the amount of the tax that he or she may be required under this act to collect from the purchaser.

(3) Beginning January 1, 2009, except as limited by subsection (4), a consumer is relieved from liability, including liability for tax, penalty, and interest, for having failed to pay the correct amount of tax imposed under this act in the following circumstances:

(a) The consumer's seller or the seller's certified service provider, as defined in the streamlined sales and use tax administration act, 2004 PA 174, MCL 205.801 to 205.833, relied on erroneous data contained in the taxability matrix.

(b) The consumer relied on erroneous data contained in the taxability matrix.

(4) Liability relief under subsection (3) is limited to the erroneous classification in the taxability matrix of terms included in the streamlined sales and use tax agreement's library of definitions as taxable or exempt, included in sales price, excluded from sales price, or excluded from the definition.

(5) As used in this section:

(a) "Penalty" means an amount imposed for noncompliance that is not fraudulent, willful, or intentional and that is in addition to the correct amount of tax imposed under this act and in addition to interest.

(b) "Taxability matrix" means the taxability matrix published by the department pursuant to the streamlined sales and use tax administration act, 2004 PA 174, MCL 205.801 to 205.833.

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.97;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1959, Act 263, Eff. Sept. 1, 1959;—Am. 2007, Act 103, Eff. Sept. 30, 2002;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009.

Compiler's note: Enacting sections 1 and 2 of 2007 PA 103 provide:

"Enacting section 1. It is the intent of the legislature that this amendatory act clarify that a person who acquires tangible personal property for a purpose exempt under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, who subsequently converts that property to a use taxable under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, is liable for the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111.

"Enacting section 2. This amendatory act is curative and intended to prevent any misinterpretation of the ability of a taxpayer to claim an exemption from the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, based on the purchase of tangible personal property or services for resale that may result from the decision of the Michigan court of appeals in Betten Auto Center, Inc v Department of Treasury, No. 265976, as affirmed by the Michigan Supreme Court. This amendatory act is retroactive and is effective beginning September 30, 2002 and for all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

205.98 Direct payment authorization.

Sec. 8. (1) The department may authorize a person to assume the obligation of self-accruing and remitting use tax due on purchases or leases directly to the department under a direct payment authorization, if the following conditions are met:

(a) The authorization is to be used for the purchase or lease of tangible personal property or services.

(b) The authorization is necessary because it is either impractical at the time of acquisition to determine the manner in which the tangible personal property or services will be used or it will facilitate improved compliance with the tax laws of this state.

(c) The person requesting authorization for direct payment maintains accurate and complete records of all purchases or leases and uses of tangible personal property or services purchased pursuant to the direct payment authorization in a form acceptable to the department.

(2) The department has the authority to identify items that are not eligible for a direct payment authorization.

History: Add. 1999, Act 117, Imd. Eff. July 14, 1999;—Am. 2004, Act 172, Eff. Sept. 1, 2004.

Compiler's note: Former MCL 205.98, which pertained to remittances, was repealed by Act 165 of 1980, Eff. Sept. 17, 1980.

Enacting section 1 of Act 117 of 1999 provides:

“Enacting section 1. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, the tax levied does not apply to the price of property or services to the extent that the property or services are stored, used, or consumed for exempt purposes. For telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides for a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a.”

205.99 Personal liability of seller or certified service provider for failure to collect tax; definition.

Sec. 9. (1) If a seller or certified service provider who is required or authorized to collect the tax fails to do so, the seller or certified service provider is liable personally for the amount the seller or certified service provider failed to collect together with penalty and interest on the tax. In that case, the department has the

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power to make an assessment against the seller or certified service provider, based upon any information in or that comes into the department's possession. The department shall give to the seller or certified service provider written notice of the assessment. The notice may be served upon the seller or certified service provider personally or by registered mail, addressed to the last known or business address.

(2) As used in this section, "certified service provider" means that term as defined in section 3 of the streamlined sales and use tax administration act.

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.99;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1959, Act 263, Eff. Sept. 1, 1959;—Am. 1959, Act 272, Eff. Jan. 1, 1960;—Am. 2004, Act 172, Eff. Sept. 1, 2004.

205.99a Bad debt deduction.

Sec. 9a. (1) In computing the amount of tax levied under this act for any month, a seller may deduct the amount of bad debts from his or her gross sales, rentals, or services used for the computation of the tax. The amount of gross sales, rentals, or services deducted must be charged off as uncollectible on the books and records of the seller at the time the debt becomes worthless and deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and must be eligible to be deducted for federal income tax purposes. For purposes of this section, a claimant who is not required to file a federal income tax return may deduct a bad debt on a return filed for the period in which the bad debt becomes worthless and is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return. If a consumer or other person pays all or part of a bad debt with respect to which a seller claimed a deduction under this section, the seller is liable for the amount of taxes deducted in connection with that portion of the debt for which payment is received and shall remit these taxes in his or her next payment to the department. Any payments made on a bad debt shall be applied proportionally first to the taxable price of the property and the tax on the property and second to any interest, service, or other charge.

(2) Any claim for a bad debt deduction under this section shall be supported by that evidence required by the department. The department shall review any change in the rate of taxation applicable to any taxable sales, rentals, or services by a seller claiming a deduction pursuant to this section and shall ensure that the deduction on any bad debt does not result in the seller claiming the deduction recovering any more or less than the taxes imposed on the sale, rental, or service that constitutes the bad debt.

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

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

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

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

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

(6) As used in this section:

(a) "Bad debt" means any portion of a debt resulting from a seller's collection of the use tax under this act on the purchase of tangible personal property or services that is not otherwise deductible or excludable and that is eligible to be claimed, or could be eligible to be claimed if the seller kept accounts on an accrual basis, as a deduction pursuant to section 166 of the internal revenue code, 26 USC 166. A bad debt does not include any of the following:

(*i*) Interest, finance charge, or use tax on the purchase price.

(*ii*) Uncollectible amounts on property that remains in the possession of the seller until the full purchase price is paid.

(*iii*) Expenses incurred in attempting to collect any account receivable or any portion of the debt recovered.

(*iv*) Any accounts receivable that have been sold to and remain in the possession of a third party for collection.

(*v*) Repossessed property.

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

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

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

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

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

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

(e) "Seller" means a person who has remitted use tax directly to the department on the specific sales, rental, or service transaction for which the bad debt is recognized for federal income tax purposes or, after September 30, 2009, a lender holding the account receivable for which the bad debt is recognized, or would be recognized if the claimant were a corporation, for federal income tax purposes.

History: Add. 1999, Act 117, Imd. Eff. July 14, 1999;—Am. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2007, Act 104, Imd. Eff. Oct. 1, 2007.

Compiler's note: Enacting section 1 of Act 117 of 1999 provides:

"Enacting section 1. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, the tax levied does not apply to the price of property or services to the extent that the property or services are stored, used, or consumed for exempt purposes. For telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides for a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

Enacting section 1 of Act 104 of 2007 provides:

"Enacting section 1. This amendatory act is curative and shall be retroactively applied, expressing the original intent of the legislature that a deduction for a bad debt for a seller under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, is available exclusively to those persons with the legal liability to remit the tax on the specific sales, rental, or service transaction for which the bad debt is recognized for federal income tax purposes, and correcting any misinterpretation of the meaning of the term "seller" that may have been caused by the Michigan court of appeals decision in Daimler Chrysler Services North America LLC v Department of Treasury, No. 264323. However, this amendatory act is not intended to affect a refund required by a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired if the refund is payable without interest and after September 30, 2009 and before November 1, 2009."

205.100 Administration of tax; conflicting provisions; rules; filing claims for refund; payment of refunds; payment of refund filed for interstate access telephone services; tax imposed under tobacco products tax act.

Sec. 10. (1) The tax imposed by this act shall be administered by the department under 1941 PA 122, MCL 205.1 to 205.31, the streamlined sales and use tax administration act, and this act. If the provisions of 1941 PA 122, MCL 205.1 to 205.31, the streamlined sales and use tax administration act, and this act conflict, the provisions of this act apply.

(2) Rules shall be promulgated to implement this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(3) Claims for refund pursuant to the 1988 amendatory act amending section 2 shall be filed not later than March 31, 1989. The approved refunds shall be paid without interest. The department shall not pay refunds totaling more than $1,000,000.00 in any 1 fiscal year, unless the single business tax act, 1975 PA 228, MCL 208.1 to 208.145, is amended to impose a 1-year surcharge on the business activity of contract construction to recover the cost of the refunds.

(4) A claim for a refund pursuant to the final decision of the Michigan court of appeals in the case of GTE Sprint Communications Corp. v Michigan Department of Treasury, 179 Mich App 276, 1989, LV DEN 436 Mich 875, 1990, shall be filed not later than January 1, 1994 by a person that paid the tax under this act for interstate access telephone services for the period beginning August 1, 1988 through January 1, 1991. The approved refund shall be paid without interest. The department shall pay the refund in 12 equal installments commencing in the month that the person begins applying the refunds to the billings of its current Michigan interstate subscribers in a manner consistent with the requirements of the federal communications commission.

(5) A seller shall not separately state on an invoice, bill of sale, or other similar document given to the purchaser the tax imposed under the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436.

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.100;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1964, Act 39, Eff. Aug. 28, 1964;—Am. 1971, Act 88, Imd. Eff. Aug. 4, 1971;—Am. 1975, Act 8, Imd. Eff. Mar. 25, 1975;—Am. 1980, Act 165, Eff. Sept.

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17, 1980;—Am. 1988, Act 376, Imd. Eff. Dec. 21, 1988;—Am. 1993, Act 263, Imd. Eff. Dec. 14, 1993;—Am. 1998, Act 366, Imd. Eff. Oct. 20, 1998;—Am. 2004, Act 172, Eff. Sept. 1, 2004.

Administrative rules: R 205.1 et seq. of the Michigan Administrative Code.

205.100a Receipt and collection of local community stabilization share.

Sec. 10a. The department shall administer under this act and under 1941 PA 122, MCL 205.1 to 205.31, the receipt and collection of the local community stabilization share on behalf of the authority as an agent of the authority. The department may enter into an agreement with the authority relating to the receipt and collection of the local community stabilization share and the payment of authority revenue generated by the local community stabilization share to the authority, which is dedicated to local purposes, including, but not limited to, police safety, fire protection, and ambulance emergency services.

History: Add. 2014, Act 80, Eff. Jan. 1, 2015.

Compiler's note: Enacting section 1 of Act 80 of 2014 provides:

"Enacting section 1. This amendatory act does not take effect unless approved by a majority of the registered and qualified electors of this state voting on the question at an election to be held on the August regular election date in 2014. Except as otherwise provided in this enacting section, this amendatory act shall be submitted to the registered and qualified electors of this state at that election as provided by the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, and for the purpose of complying with section 31 of article IX of the state constitution of 1963. Notwithstanding other law, when submitted to the registered and qualified electors of this state, this amendatory act shall be presented with the following question:

"APPROVAL OR DISAPPROVAL OF AMENDATORY ACT TO REDUCE STATE USE TAX AND REPLACE WITH A LOCAL COMMUNITY STABILIZATION SHARE TO MODERNIZE THE TAX SYSTEM TO HELP SMALL BUSINESSES GROW AND CREATE JOBS

The amendatory act adopted by the Legislature would:

1. Reduce the state use tax and replace with a local community stabilization share of the tax for the purpose of modernizing the tax system to help small businesses grow and create jobs in Michigan.

2. Require Local Community Stabilization Authority to provide revenue to local governments dedicated for local purposes, including police safety, fire protection, and ambulance emergency services.

3. Increase portion of state use tax dedicated for aid to local school districts.

4. Prohibit Authority from increasing taxes.

5. Prohibit total use tax rate from exceeding existing constitutional 6% limitation.

Should this law be approved?

YES [ ]

NO [ ]"."

Enacting section 2 of Act 80 of 2014 provides:

"Enacting section 2. If approved by the registered and qualified electors of this state as provided in enacting section 1, this amendatory act takes effect January 1, 2015."

Compiler's note: Act 80 of 2014 was approved by a majority of the voters at the August 5, 2014 primary election. The election results were certified by the Michigan Board of State Canvassers on August 22, 2014.

Compiler's note: This section, which was added by Act 80 of 2014, should have evidently amended the section added by Act 408 of 2012.

Compiler's note: The conditions in enacting section 1 of Act 408 of 2012 were not met. Act 408 of 2012 did not go into effect.

Compiler's note: The conditions in enacting section 1 of Act 81 of 2014 were not met. Act 81 of 2014 did not go into effect.

205.101 Refund or credit for returned tangible personal property or service; written notice.

Sec. 11. (1) If a person liable for collection of the tax under this act refunds or provides a credit for all or a portion of the amount of the purchase price paid for returned tangible personal property within the time period for returns stated in that person's refund policy or 180 days after the initial sale, whichever is sooner, that person shall also refund or provide a credit for the tax levied under this act that was added to all or that portion of the amount of the purchase price paid that is refunded or credited.

(2) If a person liable for collection of the tax under this act refunds or provides a credit for all or a portion of an amount paid for a service taxable under this act within the time period for returns stated in that person's refund policy or 180 days after the initial sale, whichever is sooner, that person shall also refund or provide a credit for the tax paid under this act on all or that portion of the amount paid for services that is refunded or credited.

(3) A cause of action against a seller for overcollected sales or use taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had 60 days to respond. The purchaser shall provide in the notice sufficient information to determine the validity of the request. In matters relating to the request, a seller is presumed to have a reasonable business practice if in the collection of sales and use tax, the seller has a certified service provider or a system, including a proprietary system, certified by the department and has remitted to this state all taxes collected less any deductions, credits, or collection allowances.

History: Add. 2000, Act 153, Imd. Eff. June 12, 2000;—Am. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2004, Act 172, Eff. Sept. 1, 2004.

Compiler's note: Former MCL 205.101, which pertained to assessment, was repealed by Act 165 of 1980, Eff. Sept. 17, 1980.

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205.101a Selling or quitting business; final return; withholding of purchase money to cover taxes, interest, and penalties; liability for failure to withhold purchase money; purchaser liability for taxes, interest, and penalties of former owner.

Sec. 11a. If any person liable for a tax levied under this act sells a business or stock of goods, or quits the business, that person shall make a final return within 15 days after the date of selling or quitting business. The person's successor or succeeding successors, if any, shall withhold a sufficient amount of the purchase money to cover the amount of the taxes, interest, and penalties due and unpaid until the time the former owner shall produce either a receipt from the department showing that the taxes, interest, and penalties have been paid, or a certificate stating that taxes are not due. If the purchaser or succeeding purchasers of a business or stock of goods fail to withhold a portion of the purchase money as required by this section, that person shall be personally liable for the payment of the taxes, interest, and penalties accrued and unpaid because of the operation of the business by the former owner. Unless the department files a lien for total tax liability at the register of deeds office in the county where the business or stock or goods are located, the purchaser shall not be held liable for payment of the taxes, interest, and penalties accrued and unpaid by the former owner.

History: Add. 1982, Act 478, Imd. Eff. Dec. 30, 1982.

Compiler's note: Former MCL 205.101a pertaining to tax as lien against property, was repealed by Act 165 of 1980.

205.102 Repealed. 2008, Act 439, Imd. Eff. Jan. 9, 2009.

Compiler's note: The repealed section pertained to MPU exemption.

205.103 Repealed. 2016, Act 160, Eff. Sept. 7, 2016.

Compiler's note: The repealed section pertained to exemption form provided by purchaser of direct mail.

205.103a Sales of advertising and promotional direct mail; sales of other direct mail; direct payment authorization or exemption form provided by purchaser; limitation; definitions.

Sec. 13a. (1) For sales of advertising and promotional direct mail all of the following apply:

(a) If the purchaser provides the seller with a direct payment authorization issued under section 8 or an exemption form as prescribed by the department for claiming direct mail, the seller, in the absence of bad faith, is relieved of all obligation to collect, pay, or remit any applicable tax under this act on any transaction involving advertising and promotional direct mail to which the direct payment authorization or exemption form applies and the purchaser shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered to the recipients and shall report and pay any applicable tax due.

(b) If the purchaser provides the seller with information indicating the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients, the seller shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered and shall collect and remit the applicable tax due. In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of advertising and promotional direct mail if the seller sourced the sale and collected the tax in accordance with the delivery information provided by the purchaser.

(c) If the purchaser does not provide the seller with a direct payment authorization, an exemption form prescribed by the department, or any information indicating the jurisdictions to which the advertising and promotional direct mail is to be delivered, the sale shall be sourced in accordance with section 20(1)(e).

(2) Except as otherwise provided under this subsection, sales of other direct mail shall be sourced in accordance with section 20(1)(c). If the purchaser provides the seller with a direct payment authorization issued under section 8 or an exemption form as prescribed by the department for claiming direct mail, the seller, in the absence of bad faith, is relieved of all obligation to collect, pay, or remit any applicable tax under this act on any transaction involving other direct mail to which the direct payment authorization or exemption form applies and the sale shall be sourced to the jurisdictions to which the other direct mail is to be delivered to the recipients and the purchaser shall report and pay any applicable tax due.

(3) This section only applies to a transaction characterized as a sale of services if the service is an integral part of the production and distribution of direct mail.

(4) This section does not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental, regardless of whether advertising and promotional direct mail is included in the same mailing.

(5) If a transaction is a single transaction that includes a component in addition to advertising and promotional direct mail, this section only applies if the primary purpose of the transaction is to attract public attention or to sell, popularize, or secure financial support for the sale of the product or service.

(6) Nothing in this section limits a purchaser's obligation for sales or use tax due to any state to which the

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direct mail is delivered or limits a purchaser's right under any other law for a credit or refund of sales or use taxes paid to any other jurisdiction.

(7) As used in this section:

(a) "Advertising and promotional direct mail" means direct mail the primary purpose of which is to attract public attention to a product, service, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, service, person, business, or organization.

(b) "Other direct mail" means any direct mail that is not advertising and promotional direct mail regardless of whether advertising and promotional direct mail is included in the same mailing. Other direct mail includes, but is not limited to, any of the following:

(*i*) Transactional direct mail that contains personal information specific to the addressee such as invoices, bills, statements of account, and payroll advices.

(*ii*) Any legally required mailings such as privacy notices, tax reports, and stockholder reports.

(*iii*) Any other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents such as newsletters and informational pieces.

History: Add. 2016, Act 160, Eff. Sept. 7, 2016.

205.104 Repealed. 2008, Act 439, Imd. Eff. Jan. 9, 2009.

Compiler's note: The repealed section pertained to requirements for keeping inventory of daily records.

205.104a Inventory and records; maintenance; preservation; tax liability; failure to file return or preserve records; tax assessment; basis; indirect audit; information exception; blanket exemption; "indirect audit procedure" and "sufficient records" defined.

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

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

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

(4) If a taxpayer fails to file a return or to maintain or preserve sufficient records as prescribed in this section, or the department has reason to believe that any records maintained or returns filed are inaccurate or incomplete and that additional taxes are due, the department may assess the amount of the tax due from the taxpayer based on an indirect audit procedure or any other information that is available or that may become available to the department. That assessment is considered prima facie correct for the purpose of this act and the burden of proof of refuting the assessment is upon the taxpayer. An indirect audit of a taxpayer under this subsection must be conducted in accordance with 1941 PA 122, MCL 205.1 to 205.31, and the standards published by the department under section 21 of 1941 PA 122, MCL 205.21, and must include all of the following elements:

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

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

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

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

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

(6) If the information required under section 14b(1) is maintained, an exemption certificate or any other

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documentation or information is not required for an exemption claim obtained by any of the following:

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

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

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

(8) As used in this section:

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

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

History: Add. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009;—Am. 2014, Act 109, Imd. Eff. Apr. 10, 2014;—Am. 2022, Act 4, Imd. Eff. Feb. 1, 2022.

205.104b Exemption claimed by purchaser; duties of seller; process to claim exemption after purchase.

Sec. 14b. (1) If an exemption from the tax under this act is claimed, the seller shall obtain identifying information of the purchaser and the reason for claiming the exemption at the time of the purchase or at a later date. The seller shall obtain the same information for a claimed exemption regardless of the medium in which the transaction occurred. If the seller is a person described in section 14a(6)(a) or (b), obtaining the purchaser's license number issued by the Michigan liquor control commission satisfies the requirements of this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

(b) The date an assessment becomes final.

(c) The denial of a claim for refund.

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

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

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

(9) A seller is not liable for the tax under this act if the seller obtains a blanket exemption form for a purchaser with which the seller has a recurring business relationship. Renewals of blanket exemption forms or updates of exemption form information or data elements are not required if there is a recurring business relationship between the seller and the purchaser. For purposes of this section, a recurring business relationship exists when a period of not more than 12 months elapses between sales transactions.

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

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

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

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

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

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

History: Add. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009;—Am. 2015, Act 252, Imd. Eff. Dec. 23, 2015;—Am. 2018, Act 168, Eff. Jan. 1, 2019;—Am. 2022, Act 4, Imd. Eff. Feb. 1, 2022.

Compiler's note: Enacting section 1 of Act 252 of 2015 provides:

"Enacting section 1. The legislature shall annually appropriate sufficient funds from the state general fund to the state school aid fund created in section 11 of article IX of the state constitution of 1963 to fully compensate for any loss of revenue to the state school aid fund resulting from the enactment of this amendatory act."

205.105 Failing to register; penalty.

Sec. 15. Any seller who fails to register with the department as required under this act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined the sum of $25.00 for each day such failure, neglect or refusal to so register continues after notice to such seller from the department that he is required to register under this act.

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.105;—Am. 1949, Act 273, Eff. July 1, 1949.

205.106 Seller's failure to comply with act; penalty.

Sec. 16. Any seller who fails, neglects or refuses to collect the tax as required by this act, or fails, neglects or refuses to comply with the provisions of this act, or excepting as expressly authorized pursuant to this act, refunds, remits or rebates to a consumer, either directly or indirectly and by whatsoever means, all or any part of the tax levied by this act, or makes in any form of advertising, verbal or otherwise, any statements which might imply he is absorbing the tax or paying the tax for the consumer by an adjustment of prices or at a price including the tax, or in any other manner whatsoever, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $100.00 nor more than $500.00, and upon conviction for a second or subsequent offense shall be fined not less than $500.00 nor more than $5,000.00, or imprisoned in the county jail not more than 1 year, or by both such fine and imprisonment in the discretion of the court.

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.106;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1959, Act 263, Eff. Sept. 1, 1959.

205.107 Computation of tax amount; rounding up to whole cent.

Sec. 17. Beginning not later than January 1, 2006, in determining the amount of the tax under this act, the seller shall compute the tax to the third decimal place and round up to a whole cent when the third decimal place is greater than 4 or round down to a whole cent when the third decimal place is 4 or less.

History: Add. 2004, Act 172, Eff. Sept. 1, 2004.

Compiler's note: Former MCL 205.107, which pertained to failure to make tax return, was repealed by Act 165 of 1980, Eff. Sept. 17, 1980.

205.108 Consumer's failure to comply with act; making false statement; penalty.

Sec. 18. Any consumer who refuses to pay the tax as required by this act, or refuses to comply with the

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provisions of this act, or makes to the seller a false statement or certificate indicating that the storage, use or consumption is not subject to the tax herein imposed, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500.00 nor more than $5,000.00, or imprisoned in the county jail not more than 1 year, or by both such fine and imprisonment in the discretion of the court.

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.108;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1959, Act 263, Eff. Sept. 1, 1959.

205.109 Collection or payment of tax; benefit to state, authority, and metropolitan areas.

Sec. 19. (1) The tax collected by the seller from the consumer or lessee under this act is for the benefit of this state, the authority, and the metropolitan areas of this state, including, but not limited to, local communities within the metropolitan areas. A person other than this state, the authority, and the metropolitan areas of this state shall not derive a benefit from the collection or payment of this tax.

(2) The legislature finds and declares that the purpose of the amendatory act that added this subsection is modernizing the tax system to help small businesses grow and create jobs in this state.

History: Add. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2014, Act 80, Eff. Jan. 1, 2015.

Compiler's note: Former MCL 205.109, which pertained to penalty for general violations, was repealed by Act 165 of 1980, Eff. Sept. 17, 1980.

Enacting section 1 of Act 80 of 2014 provides:

"Enacting section 1. This amendatory act does not take effect unless approved by a majority of the registered and qualified electors of this state voting on the question at an election to be held on the August regular election date in 2014. Except as otherwise provided in this enacting section, this amendatory act shall be submitted to the registered and qualified electors of this state at that election as provided by the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, and for the purpose of complying with section 31 of article IX of the state constitution of 1963. Notwithstanding other law, when submitted to the registered and qualified electors of this state, this amendatory act shall be presented with the following question:

"APPROVAL OR DISAPPROVAL OF AMENDATORY ACT TO REDUCE STATE USE TAX AND REPLACE WITH A LOCAL COMMUNITY STABILIZATION SHARE TO MODERNIZE THE TAX SYSTEM TO HELP SMALL BUSINESSES GROW AND CREATE JOBS

The amendatory act adopted by the Legislature would:

1. Reduce the state use tax and replace with a local community stabilization share of the tax for the purpose of modernizing the tax system to help small businesses grow and create jobs in Michigan.

2. Require Local Community Stabilization Authority to provide revenue to local governments dedicated for local purposes, including police safety, fire protection, and ambulance emergency services.

3. Increase portion of state use tax dedicated for aid to local school districts.

4. Prohibit Authority from increasing taxes.

5. Prohibit total use tax rate from exceeding existing constitutional 6% limitation.

Should this law be approved?

YES [ ]

NO [ ]"."

Enacting section 2 of Act 80 of 2014 provides:

"Enacting section 2. If approved by the registered and qualified electors of this state as provided in enacting section 1, this amendatory act takes effect January 1, 2015."

Compiler's note: Act 80 of 2014 was approved by a majority of the voters at the August 5, 2014 primary election. The election results were certified by the Michigan Board of State Canvassers on August 22, 2014.

Compiler's note: The conditions in enacting section 1 of Act 408 of 2012 were not met. Act 408 of 2012 did not go into effect.

Compiler's note: The conditions in enacting section 1 of Act 81 of 2014 were not met. Act 81 of 2014 did not go into effect.

205.110 Sourcing requirements.

Sec. 20. (1) For sourcing a sale subject to tax under this act, the following apply:

(a) If a product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(b) If a product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where the product is received by the purchaser or the purchaser's designee, including the location indicated by instructions for delivery to the purchaser, known to the seller.

(c) If subdivision (a) or (b) does not apply, the sale is sourced to the location indicated by an address for the purchaser available from the seller's business records maintained in the ordinary course of the seller's business, provided use of the address does not constitute bad faith.

(d) If subdivisions (a) through (c) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained at the completion of the sale, including the address of the purchaser's payment instrument if no other address is available, provided use of the address does not constitute bad faith.

(e) If subdivisions (a) through (d) do not apply or the seller has insufficient information to apply subdivisions (a) through (d), the sale will be sourced to the location indicated by the address from which the tangible personal property was shipped or from which the computer software delivered electronically was first available for transmission by the seller.

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(2) For sourcing the lease or rental of tangible personal property, other than property included in subsection (3) or (4), subject to tax under this act, the following apply:

(a) For a lease or rental requiring recurring periodic payments, the first payment is sourced in the same manner provided for a sale in subsection (1). Subsequent payments shall be sourced to the primary property location for each period covered by the payment as indicated by the address of the property provided by the lessee and available to the lessor from the lessor's records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not considered altered by intermittent use at different locations such as business property that accompanies employees on business trips or service calls.

(b) For a lease or rental not requiring recurring periodic payments, the payment is sourced in the same manner provided for a sale in subsection (1).

(3) For sourcing the lease or rental of motor vehicles, trailers, semitrailers, or aircraft that are not transportation equipment, the following apply:

(a) For a lease or rental requiring recurring periodic payments, each payment is sourced to the primary property location as indicated by the address of the property provided by the lessee and available to the lessor from the lessor's records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not considered altered by intermittent use at a different location.

(b) For a lease or rental not requiring recurring periodic payments, the payment is sourced in the same manner provided for a sale in subsection (1).

(4) The lease or rental of transportation equipment shall be sourced in the same manner provided for a sale in subsection (1).

(5) Subsections (2) and (3) do not affect the imposition or computation of the tax under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, on leases or rentals based on a lump-sum or accelerated basis or on the acquisition of property for lease.

(6) As used in this section:

(a) "Receive" and "receipt" mean 1 or more of the following but exclude possession by a shipping company on behalf of the purchaser:

(*i*) Taking possession of tangible personal property.

(*ii*) Making first use of services.

(b) "Transportation equipment" means 1 or more of the following:

(*i*) Locomotives and railcars utilized for the carriage of persons or property in interstate commerce.

(*ii*) Trucks and truck-tractors with a gross vehicle weight rating of 10,001 pounds or greater, trailers, semitrailers, or passenger buses, which are registered through the international registration plan and operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(*iii*) Aircraft operated by air carriers authorized and certificated by the United States department of transportation or other federal or foreign authority to transport air cargo or passengers in interstate or foreign commerce.

(*iv*) Containers designed for use on or component parts attached or secured to the equipment included in subparagraphs (*i*) to (*iii*).

(7) A person may deviate from the sourcing requirements under this section as provided in section 12 or 13.

History: Add. 2004, Act 172, Eff. Sept. 1, 2004.

Compiler's note: Former MCL 205.10, which pertained to jeopardy assessments, was repealed by Act 165 of 1980, Eff. Sept. 17, 1980.

205.111 Deposit and disbursement of money; definitions.

Sec. 21. (1) Except as provided in subsections (2), (3), (4), and (5), all money received and collected under this act must be deposited by the department of treasury in the state treasury to the credit of the general fund, to be disbursed only by appropriations by the legislature.

(2) The collections from the use tax imposed at the additional rate of 2% approved by the electors on March 15, 1994 must be deposited in the state school aid fund established in section 11 of article IX of the state constitution of 1963.

(3) From the money received and collected under this act for the state share, an amount equal to all revenue lost under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, and all revenue lost from basic school operating mills, as a result of the exemption of personal property under sections 9m, 9n, and 9o of the general property tax act, 1893 PA 206, MCL 211.9m, 211.9n, and 211.9o, and all revenue lost to the school aid fund as a result of the exemptions under sections 4(1)(gg) and 4cc, as determined by the department, must

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be deposited into the state school aid fund established by section 11 of article IX of the state constitution of 1963. Funds deposited into the state school aid fund under this subsection must not include the portion of the state share of the use tax imposed at the additional rate of 2% approved by the electors of this state on March 15, 1994 and dedicated for aid to schools under subsection (2). A person that claims an exemption under section 4cc shall report the purchase price of the data center equipment as defined in section 4cc and any other information necessary to determine the amount of revenue lost to the school aid fund as a result of the exemption under section 4cc annually on a form at the time and in a manner prescribed by the department. The report required under this subsection must not include any remittance for tax and does not constitute a return or otherwise alleviate the person's obligations under section 6.

(4) Money received and collected under this act for the local community stabilization share is not state funds, must not be credited to the state treasury, and must be transmitted to the authority for deposit in the treasury of the authority, to be disbursed by the authority only as authorized under the local community stabilization authority act, 2014 PA 86, MCL 123.1341 to 123.1362. The local community stabilization share is a local tax, not a state tax, and money received and collected for the local community stabilization share is money of the authority and not money of this state.

(5) Beginning October 1, 2016 and the first day of each calendar quarter thereafter, from the money received and collected under this act for the state share, an amount equal to the collections for the calendar quarter that is 2 calendar quarters immediately preceding the current calendar quarter of the tax imposed under this act at the additional rate of 2% approved by the electors on March 15, 1994 from the use, storage, or consumption of aviation fuel must be distributed as follows:

(a) An amount equal to 35% of the collections of the tax imposed at a rate of 2% on the use, storage, or consumption of aviation fuel must be deposited in the state aeronautics fund and must be expended, on appropriation, only for those purposes authorized in the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.1 to 259.208.

(b) An amount equal to 65% of the collections of the tax imposed at a rate of 2% on the use, storage, or consumption of aviation fuel must be deposited in the qualified airport fund and must be expended, on appropriation, only for those purposes authorized under section 35 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.35.

(6) The department shall, on an annual basis, reconcile the amounts distributed under subsection (5) during each fiscal year with the amounts actually collected for a particular fiscal year and shall make any necessary adjustments, positive or negative, to the amounts to be distributed for the next successive calendar quarter that begins January 1. The state treasurer or his or her designee shall annually provide to the operator of each qualified airport a report of the reconciliation performed under this subsection. The reconciliation report is subject to the confidentiality restrictions and penalties provided in section 28(1)(f) of 1941 PA 122, MCL 205.28.

(7) As used in this section:

(a) "Aviation fuel" means fuel as that term is defined in section 4 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.4.

(b) "Qualified airport" means that term as defined in section 109 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.109.

(c) "Qualified airport fund" means the qualified airport fund created in section 34(2) of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.34.

(d) "State aeronautics fund" means the state aeronautics fund created in section 34(1) of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.34.

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.111;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1959, Act 263, Eff. Sept. 1, 1959;—Am. 1974, Act 309, Eff. Jan. 1, 1975;—Am. 1987, Act 260, Imd. Eff. Dec. 28, 1987;—Am. 1993, Act 326, Eff. May 1, 1994;—Am. 1994, Act 34, Imd. Eff. Mar. 7, 1994;—Am. 2010, Act 37, Imd. Eff. Mar. 31, 2010;—Am. 2014, Act 80, Eff. Jan. 1, 2015;—Am. 2015, Act 263, Eff. Mar. 22, 2016;—Am. 2020, Act 30, Imd. Eff. Feb. 13, 2020;—Am. 2021, Act 109, Eff. Feb. 3, 2022.

Compiler's note: Enacting section 1 of Act 80 of 2014 provides:

"Enacting section 1. This amendatory act does not take effect unless approved by a majority of the registered and qualified electors of this state voting on the question at an election to be held on the August regular election date in 2014. Except as otherwise provided in this enacting section, this amendatory act shall be submitted to the registered and qualified electors of this state at that election as provided by the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, and for the purpose of complying with section 31 of article IX of the state constitution of 1963. Notwithstanding other law, when submitted to the registered and qualified electors of this state, this amendatory act shall be presented with the following question:

"APPROVAL OR DISAPPROVAL OF AMENDATORY ACT TO REDUCE STATE USE TAX AND REPLACE WITH A LOCAL COMMUNITY STABILIZATION SHARE TO MODERNIZE THE TAX SYSTEM TO HELP SMALL BUSINESSES GROW AND CREATE JOBS

The amendatory act adopted by the Legislature would:

1. Reduce the state use tax and replace with a local community stabilization share of the tax for the purpose of modernizing the tax

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system to help small businesses grow and create jobs in Michigan.

2. Require Local Community Stabilization Authority to provide revenue to local governments dedicated for local purposes, including police safety, fire protection, and ambulance emergency services.

3. Increase portion of state use tax dedicated for aid to local school districts.

4. Prohibit Authority from increasing taxes.

5. Prohibit total use tax rate from exceeding existing constitutional 6% limitation.

Should this law be approved?

YES [ ]

NO [ ]"."

Enacting section 2 of Act 80 of 2014 provides:

"Enacting section 2. If approved by the registered and qualified electors of this state as provided in enacting section 1, this amendatory act takes effect January 1, 2015."

Compiler's note: Act 80 of 2014 was approved by a majority of the voters at the August 5, 2014 primary election. The election results were certified by the Michigan Board of State Canvassers on August 22, 2014.

Compiler's note: The conditions in enacting section 1 of Act 408 of 2012 were not met. Act 408 of 2012 did not go into effect.

Compiler's note: The conditions in enacting section 1 of Act 81 of 2014 were not met. Act 81 of 2014 did not go into effect.

Compiler's note: Enacting section 1 of Act 474 of 2014 provides:

"Enacting section 1. This amendatory act does not take effect unless House Joint Resolution UU of the 97th Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

House Joint Resolution UU was presented to the electors as Proposal 15-1 at the May 5, 2015 special election. The proposal to amend the constitution was not approved by the voters and Act 474 of 2014 does not go into effect.

TAXATION OF INTANGIBLE PERSONAL PROPERTY
Act 301 of 1939

205.131-205.147 Repealed. 1967, Act 269, Eff. Jan. 1, 1968;—1975, Act 229, Imd. Eff. Aug. 27, 1975;—1980, Act 168, Eff. Sept. 17, 1980;—1995, Act 5, Eff. Jan. 1, 1998.

Popular name: Intangibles Tax Act

EQUITABLE SALES AND USE TAX ADMINISTRATION ACT
Act 122 of 2001

205.151-205.167 Repealed. 2001, Act 122, Eff. Dec. 31, 2002.

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STREAMLINED SALES AND USE TAX REVENUE EQUALIZATION ACT
Act 175 of 2004

AN ACT to impose taxes and create credits and refundable credits to modify and equalize the impact of changes made to the general sales tax act and use tax act necessary to bring those taxes into compliance with the streamlined sales tax agreement so this state may participate in the streamlined sales tax system and governing board; to prescribe certain powers and duties of certain state departments; and to provide for the disbursement of certain proceeds.

History: 2004, Act 175, Eff. Sept. 1, 2004.

The People of the State of Michigan enact:

205.171 Short title.

Sec. 1. This act shall be known and may be cited as the "streamlined sales and use tax revenue equalization act".

History: 2004, Act 175, Eff. Sept. 1, 2004.

205.173 Definitions.

Sec. 3. As used in this act:

(a) "Alternative fuel" means that term as defined in section 151 of the motor fuel tax act, 2000 PA 403, MCL 207.1151.

(b) "Department" means the department of treasury.

(c) "Diesel fuel" means that term as defined in section 2 of the motor fuel tax act, 2000 PA 403, MCL 207.1002.

(d) "Gallon equivalent" means that term as defined in section 151 of the motor fuel tax act, 2000 PA 403, MCL 207.1151.

(e) "Gasoline" means that term as defined in section 3 of the motor fuel tax act, 2000 PA 403, MCL 207.1003.

(f) "Interstate motor carrier" means a person who operates or causes to be operated a qualified commercial motor vehicle on a public road or highway in this state and at least 1 other state or Canadian province.

(g) "Motor fuel" means diesel fuel and gasoline.

(h) "Person" means an individual, firm, partnership, joint venture, association, social club fraternal organization, municipal or private corporation whether or not organized for profit, company, limited liability company, estate, trust receiver, trustee, syndicate, the United States, this state, country, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(i) "Qualified commercial motor vehicle" means that term as defined in section 1 of the motor carrier fuel tax act, 1980 PA 119, MCL 207.211.

(j) "Sales tax" means the tax levied under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78.

(k) "Tax" includes all taxes, interest, or penalties levied under this act.

(*l*) "Taxpayer" means a person subject to tax under this act.

(m) "Use tax" means the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111.

History: 2004, Act 175, Eff. Sept. 1, 2004;—Am. 2015, Act 177, Eff. Jan. 1, 2017.

205.175 Tax on motor fuel and alternative fuel used by interstate motor carrier; rate; credit under international fuel tax agreement; applicability under qualified fuel tax reciprocity agreement.

Sec. 5. (1) There is levied upon and there shall be collected from every person in this state who is an interstate motor carrier a specific tax for the privilege of using or consuming motor fuel and alternative fuel in a qualified commercial motor vehicle in this state.

(2) For motor fuel upon which the tax imposed under subsection (1) applies, the tax shall be imposed at a cents-per-gallon rate equal to 6% of the statewide average retail price of a gallon of self-serve undyed No. 2 ultra-low sulfur diesel fuel or self-serve unleaded regular gasoline, as applicable, rounded down to the nearest 1/10 of a cent as determined and certified quarterly by the department. This tax on motor fuel used by interstate motor carriers in a qualified commercial motor vehicle shall be collected under the international fuel tax agreement. An interstate motor carrier is entitled to a credit for 6% of the price of motor fuel purchased in this state and used in a qualified commercial motor vehicle. This credit shall be claimed on the returns filed under the international fuel tax agreement.

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(3) For alternative fuel upon which the tax imposed under subsection (1) applies, the tax shall be imposed at a cents-per-gallon rate, or cents-per-gallon equivalent rate, as applicable, equal to 6% of the average retail price of a gallon or gallon equivalent, as applicable, of the applicable alternative fuel rounded down to the nearest 1/10 of a cent as determined and certified quarterly by the department. For purposes of this subsection, the average retail price is to be based on the statewide average price of the particular alternative fuel, as determined by the department, unless the department determines that a statewide average is not readily available. If a statewide average is not readily available, the department may use available regional or nationwide average retail pricing information, or when regional or nationwide pricing information cannot be readily obtained, may use the average retail price applicable to gasoline under subsection (2) for compressed natural gas or the average retail price applicable to diesel fuel under subsection (2) for all other types of alternative fuel, with adjustments as the department determines are appropriate to convert gasoline or diesel fuel prices to prices for alternative fuel.

(4) The tax on alternative fuel under subsection (3) used by interstate motor carriers in a qualified commercial motor vehicle shall be collected under the international fuel tax agreement. An interstate motor carrier is entitled to a credit for 6% of the price of alternative fuel purchased in this state and used in a qualified commercial motor vehicle. This credit shall be claimed on the returns filed under the international fuel tax agreement.

(5) This section does not apply to an interstate motor carrier to the extent that the interstate motor carrier is exempt from the requirements of this section under a qualified fuel tax reciprocity agreement as that term is defined in section 3 of 1960 PA 124, MCL 3.163.

History: 2004, Act 175, Eff. Sept. 1, 2004;—Am. 2015, Act 177, Eff. Jan. 1, 2017;—Am. 2022, Act 24, Imd. Eff. Mar. 10, 2022.

205.179 Storing, registering, or transferring ownership of vehicle; tax; exemption; credit.

Sec. 9. (1) Except as provided in subsection (2), there is levied upon and there shall be collected from every person in this state a specific tax on the privilege of storing, registering, or transferring ownership of any vehicle other than a vehicle stored, registered, or transferred by a new or used vehicle dealer licensed by the department of state, ORV, manufactured housing, aircraft other than a qualified aircraft under section 11, snowmobile, or watercraft in this state at a rate of 6% of the retail dollar value at the time of acquisition as determined by the department of treasury. The tax shall be paid by the transferee. The tax on a vehicle, ORV, snowmobile, and watercraft shall be collected by the secretary of state before the transfer of the vehicle, ORV, snowmobile, or watercraft registration. The tax on an aircraft shall be paid to the department. The tax on manufactured housing shall be collected by the department of consumer and industry services, mobile home commission, or its agent before the transfer of the certificate of title.

(2) A transfer for purposes of resale or a transfer that is exempt under any other exemption under the use tax act is exempt from the tax levied under subsection (1). A transfer subject to tax under the general sales tax act is exempt from the tax levied under subsection (1).

(3) A credit against the tax levied under subsection (1) is allowed for an amount equal to any use tax paid by the taxpayer on the same property. The credit under this section shall not exceed the tax imposed by this act.

History: 2004, Act 175, Eff. Sept. 1, 2004.

205.181 Storage, registration, or transfer of aircraft; tax.

Sec. 11. (1) Except as provided in subsection (2), there is levied upon and there shall be collected from every person in this state a specific tax for the privilege of storing, registering, or transferring ownership in this state of a qualified aircraft at a rate of 6% of the retail value of the aircraft at the time it first enters this state. The transferee shall pay the tax to the department. An aircraft is qualified if it was purchased outside of this state and is used solely for personal, nonbusiness purposes and if 1 of the following applies:

(a) The aircraft is purchased by a person who is not a resident of this state at the time of purchase and is brought into this state more than 90 days after the date of purchase.

(b) The aircraft is purchased by a person who is a resident of this state at the time of purchase and is brought into this state more than 360 days after the date of purchase.

(2) The storage, registration, or transfer of an aircraft for purposes of resale or of an aircraft that is exempt under any other exemption under the use tax act is exempt from the tax levied under subsection (1).

(3) A credit against the tax levied under subsection (1) is allowed in an amount equal to the amount by which any use tax on the aircraft if paid exceeds the amount of the tax under this act, which shall be refunded by the department.

History: 2004, Act 175, Eff. Sept. 1, 2004.

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205.182 Sale of motor vehicle to group designated by automobile manufacturer; calculation of credit; refund; conditions; reduction in sales tax.

Sec. 12. (1) For a transaction occurring after December 31, 1999, a taxpayer may calculate a credit and seek a refund from the department under this act in an amount equal to 6% of the consideration received by that taxpayer from an automobile manufacturer to reimburse that taxpayer for a discount or price reduction given on the sale of a motor vehicle to a member of a group designated by an automobile manufacturer as entitled to a price identified on the automobile manufacturer's invoice to the automobile dealer that the automobile manufacturer requires the automobile dealer to charge that vehicle purchaser, if all of the following conditions are met:

(a) The motor vehicle purchaser was not employed by that automobile manufacturer at the time the discount or price reduction was given.

(b) The taxpayer calculating the credit and seeking the refund did not reimburse himself or herself by adding sales tax on that portion of the sales price received from an automobile manufacturer.

(c) The amount of the credit or refund does not exceed the actual amount of sales tax paid on that portion of the sales price received from an automobile manufacturer by the taxpayer calculating the credit and seeking the refund.

(2) At the option of the taxpayer, the credit and refund provided in this section may be applied to reduce the sales tax due and the procedures implementing those sales tax payment obligations.

History: Add. 2008, Act 436, Imd. Eff. Jan. 9, 2009.

205.183 Charges for rooms or lodgings; tax credit.

Sec. 13. A person who paid a tax under the use tax act may calculate a credit and seek a refund from the department under this act in an amount equal to 6% of an assessment imposed under the convention and tourism marketing act, 1980 PA 383, MCL 141.881 to 141.889, 1974 PA 263, MCL 141.861 to 141.867, the state convention facility development act, 1985 PA 106, MCL 207.621 to 207.640, the regional tourism marketing act, 1989 PA 244, MCL 141.891 to 141.900, 1991 PA 180, MCL 207.751 to 207.759, or the community convention or tourism marketing act, 1980 PA 395, MCL 141.871 to 141.880, that was added to charges for rooms or lodgings subject to tax under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, but not to exceed the actual amount of use tax paid on those assessments.

History: 2004, Act 175, Eff. Sept. 1, 2004.

205.184 Sale of auctioned item; tax credit or refund; calculation; definitions.

Sec. 14. (1) A qualified person who paid a tax under the general sales tax act may calculate a credit and seek a refund from the department equal to 6% of the gross proceeds of a qualified sale of an auctioned item in excess of the fair market value of that auctioned item.

(2) A qualified person may not seek a credit or refund from the department under this section for any portion of a qualified sale of an auctioned item for which a tax under the general sales tax act was collected from the purchaser, unless the tax collected was refunded to the purchaser.

(3) A qualified person seeking a credit or refund under this section shall obtain and retain in its records a certification of fair market value supplied by the donor of an auctioned item on a form prescribed by the department.

(4) At the option of the qualified person, the credit calculated under this section may be applied to reduce the tax due under the general sales tax act, in accordance with the procedures implementing those sales tax payment obligations.

(5) As used in this section:

(a) "General sales tax act" means the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78.

(b) "Qualified person" means an organization not operated for profit that is exempt from federal income tax under section 501(c)(3) or 501(c)(4) of the internal revenue code, 26 USC 501.

(c) "Qualified sale" means a sale made by a qualified person through a charitable auction.

History: Add. 2006, Act 577, Eff. Mar. 4, 2007.

205.184a Component, part, or battery for heavy earthmoving equipment; tax credit on core charge attributable to recycling fee, deposit, or disposal fee; refund.

Sec. 14a. A person who paid sales tax on a core charge attributable to a recycling fee, deposit, or disposal fee for a component, part, or battery for heavy earthmoving equipment may calculate a credit and seek a refund from the department under this act in an amount equal to the sales tax paid.

History: Add. 2010, Act 333, Imd. Eff. Dec. 21, 2010.

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205.185 Money received and refunds paid; disposition.

Sec. 15. All money received and refunds paid under the provisions of this act shall be deposited or disbursed in the following manner:

(a) Money received and refunds paid under section 5 of this act shall be deposited or disbursed in accordance with the provisions of section 9 of article IX of the state constitution of 1963.

(b) Money received and refunds paid pursuant to all other sections of this act shall be deposited or disbursed in the same manner as funds are received or paid pursuant to the use tax act.

History: 2004, Act 175, Eff. Sept. 1, 2004.

205.187 Administration of taxes; controlling provisions.

Sec. 17. The taxes imposed by this act shall be administered by the department under 1941 PA 122, MCL 205.1 to 205.31, and this act. If 1941 PA 122, MCL 205.1 to 205.31, and this act conflict, the provisions of this act apply.

History: 2004, Act 175, Eff. Sept. 1, 2004.

205.189 Returns; date of filing.

Sec. 19. Every person required to pay a tax to the department under this act shall file a return in a form prescribed by the department on or before the twentieth day of each month, except as otherwise provided by section 5 of this act. Taxes imposed under this act shall accrue to this state on the last day of each calendar month. To ensure payment or provide a more efficient administration, the department may require and prescribe the filing of returns and payment of the tax for other than monthly periods.

History: 2004, Act 175, Eff. Sept. 1, 2004.

205.191 Applying credits and returns to reduce use tax.

Sec. 21. At the option of the taxpayer, the credits and refunds provided in this act may be applied to reduce the use tax due under the use tax act and the procedures implementing those use tax payment obligations.

History: 2004, Act 175, Eff. Sept. 1, 2004.

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MICHIGAN ESTATE TAX ACT
Act 188 of 1899

An act to provide for the taxation of estates and generation-skipping transfers of property; to prescribe the powers and duties of certain personal representatives and state departments; to provide for the assessment and collection of the tax; and to provide for the administration and enforcement of this act.

History: 1899, Act 188, Eff. Sept. 23, 1899;—Am. 1993, Act 54, Imd. Eff. June 3, 1993.

Popular name: Inheritance Tax

The People of the State of Michigan enact:

205.201 Inheritance tax; taxable transfers; residents; nonresidents; transfer in contemplation of death; presumption; power of appointment; personal property exemption; conditions; exception; exemption of property passing to trustee of trust agreement or deed under terms of contract of insurance; unincorporated foundation; winding up; exemption of foreign benevolent, charitable, religious, or educational entities; reciprocity; effective date of exemption; refund; exemption of transfer to surviving spouse; conditions; definitions.

Sec. 1. (1) A tax is imposed upon the transfer of any property, real or personal, of the value of $100.00 or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, not exempt by law in this state from taxation on real or personal property or not heretofore or hereafter existing within this state as incorporated foundations or not heretofore existing within this state as established nonprofit unincorporated foundations operated exclusively for benevolent, charitable, or educational purposes, in the following cases:

(a) When the transfer is by will or by the intestate laws of this state from any person dying seized or possessed of the property while a resident of this state.

(b) When the transfer is by will or intestate law of property within the state, and the decedent was a nonresident of the state at the time of his or her death.

(c) When the transfer is of property made by a resident or by nonresident, when the nonresident's property is within this state, by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor, or donor or intended to take effect, in possession or enjoyment at or after such death. Any transfer of a material part of this property in the nature of a final disposition or distribution made by the decedent within 2 years prior to his or her death, except in case of a bona fide sale for a fair consideration in money or money's worth, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this section. The tax shall also be imposed when any such grantee, vendee, or donee becomes beneficially entitled in possession or expectancy to any property or the income of the property by any such transfer, whether made before or after the passage of this act.

(d) Whenever any person or persons, corporation or association, whether voluntary or organized pursuant to law, shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, the appointment when made shall be deemed a transfer taxable under this act in the same manner as though the property to which the appointment relates belonged absolutely to the donee of the power and had been bequeathed or devised to the donee by will; and whenever any person or persons, corporation or association, whether voluntary or organized pursuant to law, possessing such a power of appointment so derived shall omit or fail to exercise the power of appointment within the time provided, in whole or in part, a transfer taxable under this act shall be deemed to take place to the extent of the omission or failure, in the same manner as though the person or persons, corporation or association thereby becoming entitled to the possession or enjoyment of the property to which the power related had succeeded thereto by a will of the donee of the power failing to exercise the power, taking effect at the time of the omission or failure. This subdivision is construed so that the exercise of a power of appointment or the omission or failure to exercise a power of appointment does not constitute a taxable transfer under this act if the transfer, by the donor of the power, of the property to which the appointment relates is not described within subdivision (a), (b), or (c).

(2) Notwithstanding subsection (1), a tax shall not be imposed in respect of personal property, except tangible personal property having an actual situs in this state, if 1 of the following apply:

(a) The transferor at the time of the transfer was a resident of a state or territory of the United States, or of any foreign country, which at the time of the transfer did not impose a transfer tax or death tax of any character in respect of personal property of residents of this state, except tangible personal property having an actual situs in that state or territory or foreign country.

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(b) If the laws of the state, territory, or country of residence of the transferor at the time of the transfer contained a reciprocal exemption provision under which nonresidents were exempted from transfer taxes or death taxes of every character in respect of personal property, except tangible personal property having an actual situs therein, provided the state, territory, or country of residence of such nonresidents allowed a similar exemption to residents of the state, territory, or country of residence of the transferor. For the purposes of this section the District of Columbia and possessions of the United States shall be considered territories of the United States. As used in this subsection, "foreign country" and "country" mean both any foreign country and any political subdivision of that country, and either of them of which the transferor was domiciled at the time of his or her death. For the purposes of this section, "tangible personal property" shall be construed to exclude all property commonly classed as intangible personal property, such as deposits in banks, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in property, evidences of debt, and like incorporeal personal property.

(3) Notwithstanding subsection (1), a tax shall not be imposed in respect of property passing to a trustee or trustees of any trust agreement or trust deed heretofore or hereafter executed by a resident or nonresident decedent by virtue of or under the terms and provisions of any contract or contracts of insurance heretofore or hereafter in force, insuring the life of such decedent, and paid or payable at or after the death of the decedent to the trustee or trustees for the benefit of a beneficiary or beneficiaries having any present or future, vested, contingent, or defeasible interest under such trust deed or trust agreement.

(4) If an unincorporated foundation provided tax exempt status by subsection (1) ceases to operate if its funds are diverted from the lawful purposes of its organization, or if it becomes unable to lawfully serve its purposes, the legislature may by law provide for the winding up of its affairs and for the conservation and disposition of its property, in such way as may best promote and perpetuate the purposes for which the unincorporated foundation was originally organized.

(5) Every transfer to any corporation, society, institution, or person or persons, or association of persons for benevolent, charitable, religious, or educational purposes, organized, existing, or operating under the laws of or within a state or territory of the United States, other than this state, or of the District of Columbia, also shall be exempt from taxation under this act, if at the date of the transfer which, excepting as to gifts by living persons, shall be deemed to be the date of decedent's death, the laws of the state or territory or of the District of Columbia, under which such corporation, society, institution, person or persons, or association of persons was organized, existing, or operating did not impose a death tax of any character in respect to property transferred to such a corporation, society, institution, person or persons, or association of persons organized, existing, or operating under the laws of or within this state, or if at the date of the transfer the laws of the state or territory or of the District of Columbia contained a reciprocal provision under which such a transfer to such a corporation, society, institution, person or persons, or association of persons organized, existing, or operating under the laws of or within another state or territory or of the District of Columbia were exempted from death taxes of every character, if the other state or territory or of the District of Columbia allowed a similar exemption to such a corporation, society, institution, person or persons, or association of persons organized, existing, or operating under the laws of another state or territory or of the District of Columbia.

The exemption provided in this subsection shall be effective with respect to transfers from decedents whose death occurred on or after May 1, 1950. Any tax previously paid on transfers made exempt by this subsection shall be refunded.

(6) Notwithstanding subsection (1), but subject to subsection (7), if the decedent dies after December 31, 1982 and if the decedent makes or has made a transfer otherwise subject to tax under this act to the surviving spouse of the decedent or to the surviving spouse of the decedent and another person or persons, and if this transfer qualifies for the marital deduction for purposes of the federal estate tax in the estate of the decedent or if this transfer would have qualified for the federal estate tax marital deduction if the transfer had been included in the gross estate of the decedent for purposes of the federal estate tax, the transfer, using values as finally determined for purposes of this act, shall be exempt from taxation under this act.

(7) The exemption provided by subsection (6) shall be subject to the following:

(a) On the death of the first spouse to die, if the executor properly elects to treat a transfer or specific portion of a transfer as qualified terminable interest property, then on the death of the surviving spouse, the transfer of qualified terminable interest property, using values on the death of the surviving spouse, shall be considered a transfer of the surviving spouse subject to subsection (1). For purposes of determining tax rates and exemptions applicable to such transfer, the relationship of each successor on the death of the surviving spouse shall be to the spouse to which the successor bears the closer relationship, and other transfers from the surviving spouse to such successors shall be taken into account first. If the executor is not required by federal law to file a federal estate tax return, the provisions in this subsection will apply if the executor makes an irrevocable election to have them apply on or before 9 months after the date of decedent's death, and files

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such election on or before that date with the revenue division of the department of treasury.

(b) If a transfer to the surviving spouse, or to the surviving spouse and other persons, is of an interest in a group of assets not all of which are subject to tax under this act, for purposes of the application of subsection (6), on the death of the first spouse to die, the surviving spouse or the surviving spouse and others persons, shall be considered to have received a pro rata portion of the group of assets in the same proportion that the value of that portion of the group of assets not subject to tax under this act bears to the value of the entire group of assets.

(8) For purposes of subsections (6) and (7):

(a) "Executor" means that term as defined by section 2203 of the internal revenue code.

(b) "Qualified terminable interest property" means a transfer or a specific portion of a transfer which the executor elects to treat as qualified terminable interest property, as that term is defined by section 2056(b)(7) of the internal revenue code, for purposes of the federal estate tax or for purposes of subsection (7), to the extent subsections (6) and (7) apply to the transfer or specific portion of the transfer.

(c) The inheritance tax imposed on the estate of the surviving spouse with respect to qualified terminable interest property shall be paid from qualified terminable interest property unless the surviving spouse's will specifically provides otherwise.

History: 1899, Act 188, Eff. Sept. 23, 1899;—Am. 1903, Act 195, Imd. Eff. June 9, 1903;—CL 1915, 14524;—Am. 1919, Act 148, Eff. Aug. 14, 1919;—Am. 1923, Act 257, Eff. Aug. 30, 1923;—Am. 1929, Act 231, Imd. Eff. May 21, 1929;—CL 1929, 3672;—Am. 1941, Act 302, Eff. Jan. 10, 1942;—CL 1948, 205.201;—Am. 1949, Act 177, Eff. Sept. 23, 1949;—Am. 1951, Act 75, Imd. Eff. May 28, 1951;—Am. 1962, Act 168, Eff. Mar. 28, 1963;—Am. 1982, Act 351, Imd. Eff. Dec. 21, 1982;—Am. 1992, Act 65, Imd. Eff. May 28, 1992.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

205.201a Death taxes of estates of non-resident decedents; executor or administrator; duties; filing and form of proof; notice to domiciliary state; final account; applicability; construction.

Sec. 1a. (1) The terms "death tax" and "death taxes", as used in the 5 following subsections, include inheritance, succession, transfer and estate taxes and any taxes levied against the estate of a decedent upon the occasion of his or her death.

(2) Before the expiration of 18 months after the qualification in any probate court in this state of any executor of the will or administrator of the estate of any non-resident decedent, the executor or administrator shall file with the court proof that all death taxes, together with interest or penalties on those taxes, which are due to the state of domicile of the decedent, or to any political subdivision, have been paid or secured, or that no taxes, interest, or penalties are due, as the case may be, unless it appears that letters testamentary or of administration have been issued on the estate of the decedent in the state of his or her domicile, in subsections (3), (4), (5), or (6), called the domiciliary state.

(3) The proof required by subsection (2) may be in the form of a certificate issued by the official or body charged with the administration of the death tax laws of the domiciliary state. If that proof has not been filed within the time limited in subsection (2), and if within that time it does not appear that letters testamentary or of administration have been issued in the domiciliary state, the register of probate shall immediately upon the expiration of the time notify by mail the official or body of the domiciliary state charged with the administration of the death tax laws with respect to that estate, and shall state in the notice so far as is known to him or her the name, date of death, and last domicile of the decedent, the name and address of each executor or administrator, a summary of the values of the real estate, tangible personalty, and intangible personalty, wherever situated, belonging to the decedent at the time of his or her death, and the fact that the executor or administrator has not filed the proof required in subsection (2). The register shall attach to the notice a plain copy of the will and codicils of the decedent, if he or she died testate, or, if he or she died intestate, a list of his or her heirs and next of kin, so far as is known to such register. Within 60 days after the mailing of the notice the official or body charged with the administration of the death tax laws of the domiciliary state may file with the probate court in this state a petition for an accounting in the estate, and the official or body of the domiciliary state shall, for the purposes of this section, be a party interested for the purpose of petitioning the probate court for the accounting. If the petition is filed within 60 days, the probate court shall order an accounting. When the accounting is filed and approved, the probate court shall decree either the payment of any tax found to be due to the domiciliary state or subdivision of that state or the remission to a fiduciary, appointed or to be appointed by the probate court or other court charged with the administration of estates of decedents of the domiciliary state, of the balance of the intangible personalty after the payment of creditors and expenses of administration in this state.

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(4) No final account of an executor or administrator of a non-resident decedent shall be allowed unless 1 of the following applies:

(a) Proof has been filed as required by subsection (2).

(b) Notice under subsection (3) has been given to the official or body charged with the administration of the death tax laws of the domiciliary state, and either of the following applies:

(*i*) That official or body has not petitioned for an accounting under subsection (3) within 60 days after the mailing of the notice.

(*ii*) An accounting has been had under subsection (3), a decree has been made upon the accounting, and it appears that the executor or administrator has paid the sums and remitted such securities, if any, as he was required to pay or remit by such decree.

(c) It appears that letters testamentary or of administration have been issued by the domiciliary state and that no notice has been given under subsection (3).

(5) Subsections (1) to (4), inclusive, shall apply to the estate of a non-resident decedent, only in case the laws of the domiciliary state contain a provision, of any nature or however expressed, whereby this state is given reasonable assurance, as finally determined by the state treasurer, of the collection of its death taxes, interest and penalties from the estates of decedents dying domiciled in this state, when the estates are administered in whole or in part by a probate court, or other court charged with the administration of estates of decedents, in such other state.

(6) Subsections (1) to (5) shall be liberally construed in order to ensure that the domiciliary state of any non-resident decedent whose estate is administered in this state shall receive any death taxes, together with interest and penalties thereon, due to it from the estate of the decedent.

History: Add. 1937, Act 76, Eff. Oct. 29, 1937;—CL 1948, 205.201a;—Am. 2002, Act 347, Imd. Eff. May 23, 2002.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

EXCEPTIONS AND LIMITATIONS.

205.202 Tax on certain transfers of property; exemptions; tax rate on excess; exemption applicable to beneficiary's interest; allowance granted by court order to widow or family of decedent; tax rate in cases other than those specified; exemption on transfer of property or ownership of family-owned business.

Sec. 2. (1) Where the persons entitled to a beneficial interest in the property are the grandfather, grandmother, father, mother, husband, wife, child, legally adopted child, stepchild, brother, sister, wife or widow of a son, or the husband or widower of a daughter of the decedent grantor, donor, or vendor, or for the use of a person to whom the decedent grantor, donor, or vendor stood in the mutually acknowledged relation of a parent, if the relationship began at or before the child's seventeenth birthday and continued until the death of the decedent grantor, donor, or vendor, or to or for the use of a lineal descendant of or a lineal descendant of a stepchild of the decedent grantor, donor, or vendor, the transfer of property of the clear market value of $10,000.00 or for a decedent who dies after December 31, 1992 but before January 1, 1994, $15,000.00, for a decedent who dies after December 31, 1993 but before January 1, 1995, $25,000.00, or, for a decedent who dies after December 31, 1994, $50,000.00 is exempt from all taxation under this act.

(2) Where the transfer is to a husband or wife the transfer of property of the clear market value of $65,000.00 shall be exempt from all taxation under this act. If property is not transferred to a minor child or children, the widow shall be entitled to an additional exemption of $5,000.00 for each child to whom property is not transferred.

(3) If the clear market value of the property transferred to each of the persons included in the classes specified in subsection (1) exceeds the exemptions specified, the exemptions shall first be deducted from the value of the property. When the clear market value of the property does not exceed $50,000.00 before deducting the exemptions, the transfer of the property in excess of the exemptions and up to $50,000.00 shall be taxed at the rate of 2% of the clear market value of the property. When the clear market value of the property exceeds $50,000.00 the excess over exemptions of the first $50,000.00 shall be taxed as provided in this subsection and the transfer of that portion of the property in excess of $50,000.00 and up to $250,000.00 shall be taxed at the rate of 4% of the clear market value of the property. The transfer of that portion of the property in excess of $250,000.00 and up to $500,000.00 shall be taxed at the rate of 7% of the clear market value of the property. The transfer of that portion of the property in excess of $500,000.00 and up to $750,000.00 shall be taxed at the rate of 8% of the clear market value of the property. The transfer of that portion of the property in excess of $750,000.00 shall be taxed at the rate of 10% of the clear market value of the property.

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(4) The exemptions of section 1 and subsections (1), (2), and section 2d shall apply and be granted to each beneficiary's interest in the property, and not to the entire estate of a decedent. A deduction or exemption from the tax shall not be made for an allowance granted by the order of a court for the maintenance and support of the widow or family of a decedent pending the administration of the estate when there is income from the estate accruing after death, which is available to pay the allowance, or for a longer period than 1 year, or for a greater amount than is actually used and expended for the maintenance and support of the widow or family for 1 year.

(5) Except as provided in this act, in cases other than those specified in subsection (3), the tax shall be at the rate of 12% upon the clear market value of the property transferred not exceeding $50,000.00, 14% upon all in excess of $50,000.00 and up to $500,000.00, and 17% upon all in excess of $500,000.00.

(6) For the estate of a decedent who dies after December 31, 1992, a tax is not imposed under this section on the transfer of any property, real or personal, of a family-owned business or the transfer of the ownership of a family-owned business to a qualified heir or heirs.

History: 1899, Act 188, Eff. Sept. 23, 1899;—Am. 1903, Act 195, Imd. Eff. June 9, 1903;—Am. 1913, Act 30, Eff. Aug. 14, 1913;—Am. 1915, Act 198, Eff. Aug. 24, 1915;—CL 1915, 14525;—Am. 1919, Act 148, Eff. Aug. 14, 1919;—Am. 1923, Act 257, Eff. Aug. 30, 1923;—Am. 1925, Act 380, Eff. Aug. 27, 1925;—Am. 1929, Act 35, Imd. Eff. Apr. 8, 1929;—CL 1929, 3673;—Am. 1935, Act 161, Imd. Eff. June 6, 1935;—CL 1948, 205.202;—Am. 1971, Act 55, Imd. Eff. July 6, 1971;—Am. 1978, Act 628, Imd. Eff. Jan. 6, 1979;—Am. 1992, Act 65, Imd. Eff. May 28, 1992;—Am. 1993, Act 54, Imd. Eff. June 3, 1993.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

205.202a Additional estate tax; purpose and construction of section; tax on generation-skipping transfers; “federal estate tax” defined.

Sec. 2a. (1) If the total of inheritance taxes levied and imposed by this act upon the inheritance or transfers of property of a resident or nonresident decedent does not equal or exceed the maximum credit for state death taxes allowable to the estate of the decedent against the federal estate tax imposed with respect thereto, there is levied and imposed an additional estate tax that is equal to the differences between the maximum credit allowed and the tax otherwise imposed by this act.

(2) A proper reduction of the amount of tax levied under subsection (1) shall be made on account of any real and tangible personal property located outside this state that is a part of the gross transfers of a resident decedent.

(3) The tax levied under subsection (1) upon the transfers of nonresident decedents shall be that proportion of the total tax as the gross property within this state bears to the gross property of the decedent wherever located.

(4) The purpose of this section is to obtain the maximum benefit of the credit allowed under the provisions of the federal estate tax and it shall be liberally construed to effect this purpose.

(5) The additional tax shall be levied and assessed upon the transfers and against the interests of beneficiaries liable for inheritance taxes, who would be liable to pay the federal estate tax before deducting the credit. The person required to file the federal estate tax return shall file a duplicate of the federal return and all adjustments, corrections, and the final determination of that return with the probate court. Upon the final determination of the federal estate tax and the maximum credit allowable, appropriate adjustment shall be made to any partial or interim inheritance tax determinations or orders.

(6) A tax is imposed upon every generation-skipping transfer in which the original transferor is a resident of this state at the date of the transfer by the original transferor. The tax is equal to the maximum allowable federal credit under the internal revenue code for state generation-skipping transfer taxes paid to the states. This tax shall be reduced by the amount of all generation-skipping taxes paid to states other than this state, which amount shall not exceed an amount equal to the proportional share of that maximum allowable federal credit that the gross value of all transferred real and tangible personal property subject to generation-skipping transfer taxes located in states other than this state bears to the gross value of all transferred property subject to generation-skipping taxes wherever located. A tax is imposed upon every generation-skipping transfer in which the original transferor is not a resident of this state at the date of the transfer by the original transferor but in which the property transferred includes real or tangible personal property located in this state. The tax is an amount equal to the proportional share of the maximum allowable federal credit under the internal revenue code for state generation-skipping transfer taxes paid to the states that the gross value of all transferred real and tangible personal property subject to generation-skipping transfer taxes located in this state bears to the gross value of all transferred property subject to generation-skipping transfer taxes wherever located. The time for the filing of the return and the due date of the taxes under this subsection are the same as the filing of the return date and due date of the federal generation-skipping transfer tax provided for in the

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internal revenue code.

(7) "Federal estate tax" means the tax levied and imposed under the provisions of the internal revenue code, in effect on the date of death of the decedent.

History: Add. 1971, Act 55, Imd. Eff. July 6, 1971;—Am. 1992, Act 65, Imd. Eff. May 28, 1992;—Am. 1993, Act 54, Imd. Eff. June 3, 1993.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

205.202b Repealed. 1971, Act 55, Imd. Eff. July 6, 1971.

Compiler's note: The repealed section pertained to additional inheritance taxes.

Popular name: Inheritance Tax

205.202c Amount received by surviving spouse pursuant to survivor benefit plan, annuity, retirement plan, or pension.

Sec. 2c. An amount received by a surviving spouse as a result of the death of a decedent pursuant to a survivor benefit plan, an annuity, retirement plan, or pension shall not be subject to the tax imposed by this act.

History: Add. 1978, Act 357, Imd. Eff. July 20, 1978.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

205.202d Tax on transfer of qualified farm real property to qualified heir; exemption conditioned on execution of farmland development rights agreement; election to defer taxes due; affidavit; powers and duties of probate judge; sale of real property or ceasing to use real property for agricultural use; notice; amount due state; applicability of subsections (1) to (5) and (7); exemption under MCL 205.202.

Sec. 2d. (1) The transfer of qualified farm real property to the qualified heir shall be exempt in the amount of 50% of the clear market value from all taxation under this act if the qualified heir executes a farmland development rights agreement pursuant to part 361 (farmland and open space preservation) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.36101 to 324.36117 of the Michigan Compiled Laws. The qualified heir who is party to an executed farmland development rights agreement may elect to defer the balance of the taxes due under this act on the transfer of qualified farm real property for a period of 10 years without penalty or interest. The executor, administrator, or trustee of the estate and the qualified heir may make the election provided by this subsection by filing an affidavit with the judge of probate, which shall be made in the time and manner and with the content prescribed by the judge of probate. The judge of probate shall consider all of the following:

(a) Whether both the executor, administrator, or trustee of the estate and the qualified heir have made the election provided by this subsection by filing an affidavit within the prescribed time and manner.

(b) Whether the proposed transfer is to a qualified heir as defined in section 21.

(c) Whether the proposed transfer is of qualified farm real property as defined in section 21.

(2) The judge of probate may request assistance from either the soil conservation district agency or the state land use agency in finding if the real property in question is farmland. If the judge of probate finds all of the factors described in subsection (1), the judge of probate shall issue an order which shall suspend for a period of 6 months the payment of any tax imposed by this act, authorize the transfer of the qualified farm real property to the qualified heir, and require the qualified heir of the qualified farm real property to apply for a farmland development rights agreement pursuant to part 361 of Act No. 451 of the Public Acts of 1994 within 30 days after the date of the order. The judge of probate shall notify the state land use agency in the department of natural resources of this order. If the qualified heir fails to apply for a farmland development rights agreement, the tax imposed by this act shall be immediately due and there shall be added the maximum penalty and interest allowed in section 4 and any costs the judge of probate considers appropriate for this failure. The procedures, provisions and terms of a farmland development rights agreement shall be consistent with part 361 of Act No. 451 of the Public Acts of 1994. If the state land use agency either executes on behalf of the state a farmland development rights agreement or rejects an application for that agreement, it shall notify the judge of probate. Beginning 10 years after the effective date of the farmland development rights agreement, the 50% exemption for qualified farm real property provided by subsection (1) shall be a permanent exemption if the requirements of the farmland development rights agreement are satisfied under part 361 of Act No. 451 of the Public Acts of 1994. If the owner of record of real property subject to a

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farmland development rights agreement either sells the real property or ceases to use the real property for an agricultural use, the owner of record shall immediately notify the state land use agency and the commissioner of revenue of the sale or the nonagricultural use in form and content as prescribed by each.

(3) If real property subject to a farmland development rights agreement is sold by the owner of record within 5 years after the effective date of the agreement, the following amount shall be immediately due to the state by the seller:

(a) Taxes shall not be due if the successor in title is another qualified heir of the decedent and the successor in title complies with the provisions contained in the farmland development rights agreement. The exempt and deferred tax liability shall be transferred to the successor in title.

(b) The total amount of otherwise exempt and deferred taxes shall be due without penalty or interest if the successor in title is not a qualified heir of the decedent and the successor in title complies with the provisions contained in the farmland development rights agreement.

(c) The total amount of otherwise exempt and deferred taxes shall be due with interest at the rate of 3/4 of 1% per month compounded from the time the exemption was received until the taxes are paid if the request by the owner of record for relinquishment of the farmland development rights agreement is approved pursuant to section 36111(2)(b) of part 361 of Act No. 451 of the Public Acts of 1994, being section 324.36111 of the Michigan Compiled Laws.

(d) The total amount of otherwise exempt and deferred taxes shall be due without penalty or interest, in a case where the farmland development rights agreement is relinquished by the state pursuant to either section 36110(2) or 36111(2)(a) of part 361 of Act No. 451 of the Public Acts of 1994, being sections 324.36110 and 324.36111 of the Michigan Compiled Laws.

(4) If real property subject to a farmland development rights agreement is sold by the owner of record not less than 6 but not more than 10 years after the effective date of the agreement, a proration of the remaining months multiplied by the following amount shall be immediately due to the state by the seller:

(a) Taxes shall not be due if the successor in title is another qualified heir of the decedent and the successor in title complies with the provisions contained in the farmland development rights agreement. The exempt and deferred tax liability shall be transferred to the successor in title.

(b) The total amount of otherwise exempt and deferred taxes shall be due without penalty or interest if the successor in title is not a qualified heir of the decedent and the successor in title complies with the provisions contained in the farmland development rights agreement.

(c) The total amount of otherwise exempt and deferred taxes shall be due with interest at the rate of 3/4 of 1% per month compounded added to this amount from the time this exemption was received until the taxes are paid if the request by the owner of record for relinquishment of the farmland development rights agreement is approved pursuant to section 36111(2)(b) of part 361 of Act No. 451 of the Public Acts of 1994.

(d) The total amount of otherwise exempt and deferred taxes shall be due without penalty or interest if the farmland development rights agreement is relinquished by the state pursuant to either section 36110(2) or 36111(2)(a) of part 361 of Act No. 451 of the Public Acts of 1994.

(5) If the owner of record ceases to use real property subject to a farmland development rights agreement for an agricultural use, the total amount of otherwise and deferred taxes shall be due with interest at the rate of 3/4 of 1% per month compounded added to this amount from the time the exemption was received until the taxes are paid.

(6) Subsections (1) through (5) apply to a transfer of a decedent who dies before January 1, 1993. Subsection (7) applies to a transfer of a decedent who dies after December 31, 1992.

(7) For the estate of a decedent who dies after December 31, 1992, the transfer of qualified farm real and personal property or the transfer of the ownership of qualified farm real and personal property to a qualified heir is exempt from taxation under section 2.

History: Add. 1978, Act 628, Imd. Eff. Jan. 6, 1979;—Am. 1992, Act 65, Imd. Eff. May 28, 1992;—Am. 1996, Act 54, Imd. Eff. Feb. 26, 1996.

Compiler's note: In subsection (5), the phrase "total amount of otherwise and deferred taxes" evidently should read "total amount of otherwise exempt and deferred taxes."

For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

205.202e Credit for certain inheritances or transfers.

Sec. 2e. For a decedent dying after December 31, 1991, for inheritances or transfers not subject to the additional tax imposed under section 2a, there is allowed a credit for 10% of the tax imposed under this act.

History: Add. 1992, Act 65, Imd. Eff. May 28, 1992.

Compiler's note: For applicability of section, see MCL 205.223(a).

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LIEN OF TAX AND PAYMENT THEREOF.

205.203 Tax and interest on tax as lien on property transferred; liability; payment; notice; deferral where decedent professional artist; proceeding to enforce lien; parties; information; evidence of determination and nonpayment of tax; service of process on infant or mentally incompetent person; guardian ad litem; decree; redemption; affidavit; order to sell property; adjournment, publication, and report of sale; deeds; fees.

Sec. 3. (1) The tax and the interest on the tax provided for in this act shall become a lien upon the property transferred until paid, unless payment of the tax has been deferred as permitted by this section or section 2d. If a deferral of payment is granted under this section or section 2d, the lien provided by this section shall attach at the end of the deferral period granted by this section or section 2d.

(2) The person to whom the property is transferred and the administrator, executor, and trustee of every estate transferred, shall be personally liable for the tax until its payments; except that the executor or administrator shall not be personally liable for the tax upon a reversion or remainder consisting of real estate where the election provided for in section 7 or the deferral in this section or section 2d is made. The tax shall be paid to the state.

(3) When the inheritance tax, administration fee, and penalty and interest, if applicable, for the estate are paid, the revenue commissioner shall provide notice, on a form prescribed by the department, to the judge of probate who shall file and preserve it in that office. It shall be a voucher in settlement of the accounts of the executor, administrator, or trustee of the estate upon which the tax is paid. The preparation and mailing of the receipts shall not prejudice the right of the state to a review of the determination fixing the tax. The receipts issued under this section shall show whether the amount paid is a payment of the tax upon any beneficial interest or upon the entire transfer. An executor, administrator, or trustee of an estate, in settlement of which a tax is due under this act, shall not be discharged and the estate or trust closed by a decree of the court, unless there is produced a receipt signed by the revenue commissioner.

(4) All taxes imposed by this act shall accrue and be due and payable at the time of transfer, which is the date of death, except that taxes upon the transfer of any estate, property, or interest limited, conditioned, dependent, or determinable upon the happening of a contingency or future event, by reason of which the clear market value cannot be ascertained at the time of the transfer, shall accrue and become due and payable when the persons or corporations beneficially entitled shall come into actual possession or enjoyment.

(5) The tax and the interest on the tax provided for in this act may be deferred for reasonable cause shown by the executor, administrator, or trustee of the estate of a decedent who was a professional artist at the date of his or her death for not more than 10 years without penalty or interest. The executor, administrator, or trustee of the estate may make the deferral provided by this subsection by filing an affidavit with the judge of probate, which shall be made in the time and manner and with the content prescribed by the judge of probate. The judge of probate shall determine whether there is reasonable cause shown to grant a deferral, the length of time for the deferral, and the manner of payment of the tax.

(6) A proceeding to enforce a lien against any property under this act shall be instituted by information, in the name of the people of this state, addressed to the circuit court for the county in which the property is situated. It shall be signed by the attorney general and need not be otherwise verified. A person owning the property or an interest in the property as shown by the record in the office of the register of deeds, or by the records of the probate court, at the time of the commencement of the proceedings, shall be made a party to the action, and all other persons having a right or interest in the property, may make themselves parties to the proceeding, on motion to the court, and notice to complainant, and may file their intervening or cross-claims, or answers claiming the benefit of cross-claims, and notices of lis pendens therein. Intervening or cross-claims shall be made on oath.

(7) The information shall show the name of the deceased, the date of death, the place of residence at the time of death, the county in which the estate was probated, the description of the property transferred, whether by will or under the intestate laws, and against which the lien exists, the name of the person or persons to whom it was transferred, the amount of taxes determined by the probate court upon the transfer, the date of the determination and whether the property is owned by the person or persons to whom it was transferred by will or under the intestate laws or by a subsequent purchaser, naming that purchaser. The information shall also show that the taxes determined upon the transfer of the property have not been paid and the amount of interest due upon the date of the filing of the information. In those cases in which the property upon which the lien exists is owned by the person or persons to whom it was transferred by will or under the intestate laws, the petition for relief shall be that the court determine the amount due; that the defendant pay to the county

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treasurer of the county, in which the estate was probated, for and in behalf of this state, whatever sum shall appear to be due, together with the costs of the proceeding, and that in default of that payment the property upon which the lien exists, may be sold in the manner provided in this act, to satisfy the taxes, interest, and cost.

(8) In those cases in which the property upon which the lien exists is owned by a subsequent purchaser, the petition for relief shall be that the court determine the amount due and that the property upon which the lien exists may be sold in the manner provided in this act to satisfy the taxes, interest, and costs of the proceeding.

(9) The information may contain other and further allegations and petitions considered material and permitted by the rules and practice of the court.

(10) A certified copy of the order of determination of the inheritance tax, for which the lien exists, certified by either the judge or register of probate of the court that determined the tax or by the revenue commissioner, may be attached to the information. When attached, the copy shall be considered a part of the information and shall be prima facie evidence of the determination of the inheritance tax and the accruing of the lien against the property. A certificate of the revenue commissioner stating that the inheritance tax, or any part of the tax determined upon the transfer of the property upon which the lien exists, has not been paid, may be attached to the information. When attached, the certificate shall be considered a part of the information and shall be prima facie evidence of the nonpayment of the amount of the tax and interest shown to be unpaid by the certificate.

(11) If an infant, insane, or otherwise mentally incompetent person has an interest in the property upon which the lien exists, service of process shall be made upon that person in the same manner and with the same effect as upon persons not under a disability, whether the infant, insane, or otherwise mentally incompetent person is within or without the jurisdiction.

(12) After the issuing and service of process against the infant, insane, or otherwise incompetent person, a guardian ad litem may be appointed for the infant, insane, or otherwise incompetent person by the court upon motion of the attorney general, or the guardian ad litem may be appointed by the court upon the request of the infant, and in the case of an insane or otherwise incompetent person, at the request of the person's general guardian.

(13) If upon the hearing of the cause it appears that the inheritance taxes or interest, or both, upon the transfer of the property upon which the lien exists have not been paid, the court shall decree the amount of taxes and interest on the taxes found to be due, together with costs to be determined by the court, to be paid by the person or persons owning the property, or any interest in the property, within 3 months after the entry of the decree and that in default of payment that the property upon which the lien exists, be sold to satisfy the taxes, interest, and costs. If it appears that the person or persons to whom was transferred the property by will or under the intestate laws have parted with their interest before the institution of the proceedings provided for in this section, and that the property is owned by a subsequent purchaser, the court shall decree that the property be sold to satisfy the taxes, interest, and costs, unless the owner satisfies the taxes, interest, and costs within 3 months after the entry of the decree.

(14) In cases in which it appears that 2 or more pieces or parcels of land were transferred by will or under the intestate laws to 1 person, and that that person, before the institution of the proceedings provided for in this section, has parted with any or all of the pieces or parcels of land, and that the court can ascertain from the order of determination the amount of inheritance tax determined upon the transfer of each piece or parcel, and that the lien against all of the pieces or parcels is being foreclosed in 1 proceeding, the court may decree the sale of that piece or parcel to satisfy the amount of tax determined upon the transfer of that piece or parcel, together with the interest thereon and pro rata costs of the proceeding. A piece or parcel of property shall not be sold to satisfy taxes, interest, and costs within 3 months after the entry of the decree.

(15) If the person or persons owning the property or an interest in the property, or the person's heirs, executors, administrators, or a person lawfully claiming under that person, within 6 months after the date of the sale redeems the entire premises sold, by paying to the register of deeds in whose office the deed is deposited, as provided by subsection (20), for the benefit of the purchaser, or the purchaser's executors, administrators, or assigns the sum which was bid on the date of sale, with interest, at the rate of 6%, together with the sum of $1.00 as a fee for the care and custody of the redemption money, and the fee paid by the purchaser for recording his or her deed, then the deed is void. If a distinct lot or parcel separately sold is redeemed leaving a portion of the premises unredeemed, then the deed shall be void only to the parcel or parcels redeemed.

(16) The register of deeds shall not determine the amount necessary for redemption. The purchaser shall attach an affidavit with the deed to be recorded that states the exact amount required to redeem the property under subsection (15), including any daily per diem amounts, and the date by which the property must be redeemed shall be stated in the certificate of the commissioner or other person making the sale. The purchaser may include in the affidavit the name of a designee responsible on behalf of the purchaser to assist the person

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redeeming the property in computing the exact amount required to redeem the property. The designee may charge a fee as stated in the affidavit and may be authorized by the purchaser to receive redemption funds. The purchaser shall accept the amount computed by the designee.

(17) If it appears to the court after the expiration of 3 months from the date of entry of the decree from a certificate of the state of Michigan to whom the taxes, interest, penalties, and costs were to be paid, attached to a petition of the attorney general for an order of sale of the property, that the same have not been paid, the court shall enter an order directing the circuit court commissioner, or some other person duly authorized by the order of the court, to sell the property. The sale shall be at public vendue between the hours of 9 a.m. and 6 p.m. at the courthouse or at another place as the court directs, within 60 days after the date of the order and on the date specified on the order. The court may, if necessary, by further order adjourn the sale from time to time. The circuit court commissioner, or other person authorized to make the sale, may, if bids are not received equal to the amount of taxes, interest, and costs, adjourn the sale from time to time, but the sale shall not be adjourned for more than 60 days at any 1 time.

(18) Upon receipt of a certified copy of the order of sale the circuit court commissioner, or other person duly authorized by the order of the court to conduct the sale, shall publish the sale in some newspaper printed in the county or another paper as the court may direct, once in each week, for 3 weeks in succession. If the sale is adjourned by order of the court, or by the circuit court commissioner, or other person duly authorized by the order of the court, to conduct the sale the same publication shall be had of the order or notice adjourning the sale as is provided in this section for publishing the order of sale. Proof of publication shall be filed with the court before the sale.

(19) The circuit court commissioner, or other person authorized to make the sale shall make and file a report of the sale. The report shall be entitled in the court and cause, and shall be certified and filed with the court.

(20) Deeds shall thereupon be executed by the circuit court commissioner or other person making the sale, specifying the names of the parties in the action, the date of the determination of the inheritance tax, the name of the deceased, the county in which the estate was probated, with a description of the premises and the amount for which each parcel of land described was sold. The commissioner, or other person making the sale, shall indorse upon each deed when the deed shall become operative, if the premises are not redeemed according to law. The deed or deeds, as soon as practicable and within 20 days after the sale, shall be deposited with the register of deeds of the county in which the land described is situated, and the register shall indorse on the deed the time the deed was received, shall record the deed at length in a book to be provided for in his or her office for that purpose, and shall index the deed in the regular index of deeds. The fees for recording the deed shall be paid by the purchaser and be included among the other costs and expenses. If the premises or a parcel of the premises shall be redeemed, the register of deeds shall write on the face of the record the word "Redeemed", stating at what date the entry is made and signing the entry with his or her official signature. Unless the premises described in the deed, or a parcel of the premises, is redeemed within the time limited for redemption, as provided in this section, the deed shall thereupon as to all parcels not redeemed, become operative and shall vest in the grantee named in the deed, the grantee's heirs or assigns all the right, title, and interest therein which the person or persons received either from the deceased by reason of the transfer to them by will or under the intestate laws, or as subsequent purchasers.

(21) The proceeds of each sale provided for in this section shall be paid to the treasurer of the county where the estate was probated, to be applied to the discharge of the tax, interest, penalty, and costs, and if there is any surplus, it shall be brought into court for the use of the defendant, or the person entitled to the money, subject to the order of the court.

(22) The circuit court commissioner, or other person authorized by the court to make the sale, shall be entitled to only the following fees: For attending and adjourning a sale, $1.00; for attending and making a sale, $1.50; mileage, 1 way, 10 cents per mile; executing deed or deeds on real estate sales, 25 cents for each deed necessarily executed; making and filing a report of sale, $1.00. The cost of publishing any legal notices required to be published shall be at the rate of 70 cents per folio for the first insertion, and 35 cents per folio for each subsequent insertion. The fees which are provided for in this act shall be added by the circuit court commissioner, or other person duly authorized to make the sale, to the tax, interest, penalties, and costs awarded by the court as charges against the land.

(23) The amount stated in any affidavits recorded under this section shall be the amount necessary to satisfy the requirements for redemption under this section.

History: 1899, Act 188, Eff. Sept. 23, 1899;—Am. 1903, Act 195, Imd. Eff. June 9, 1903;—Am. 1907, Act 155, Imd. Eff. June 17, 1907;—CL 1915, 14526;—CL 1929, 3675;—CL 1948, 205.203;—Am. 1978, Act 628, Imd. Eff. Jan. 6, 1979;—Am. 1980, Act 474, Imd. Eff. Jan. 17, 1981;—Am. 1993, Act 54, Eff. Sept. 1, 1993;—Am. 2004, Act 539, Eff. Mar. 30, 2005.

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Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

205.203a Application of statute of limitations.

Sec. 3a. No statute of limitations shall apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax, penalty or interest, prescribed by this act, until the final determination of the tax by the judge of probate is entered, or unless an order has been entered assigning the estate and this provision shall be construed as having been in effect as of the date of the original enactment of the inheritance tax law: Provided, however, That when a final order of determination of inheritance tax has been made by the judge of probate the statute of limitations shall begin to run on the date of such final determination or order, as to the transfers of real and personal property listed on such final order of determination, or, if there be no order of determination, from the date of such order assigning the estate.

History: Add. 1955, Act 232, Imd. Eff. June 18, 1955.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

DISCOUNT, INTEREST AND PENALTY.

205.204 Accrual of tax; when tax due and payable; failure or refusal to file return, report, or remittance; partial or interim payment; extension; penalty; interest; waiver of penalty; filing; waiver of filing.

Sec. 4. (1) The tax imposed by this act accrues on the date of death and is due and payable on or before the expiration of 9 months after the date of death for a decedent dying before January 1, 1992 or, for a decedent dying after December 31, 1991, 105 days after the date of death or September 1, 1992, whichever is later. For a decedent dying after December 31, 1991, taxes are delinquent if paid after 105 days after the date of death or September 1, 1992, whichever is later. For a decedent dying after December 31, 1991, a penalty of 8% of the tax is added to the tax, if delinquent, for failure to pay the tax required by this act by the due date required under this subsection. For failure or refusal to pay the tax required by this act within 9 months from the accruing thereof, there is added an additional penalty of $5.00 or 5% of the tax, whichever is greater, if the failure is for not more than 1 month or a fraction of 1 month, with an additional 5% for each additional month or fraction of a month during which the failure continues, or the tax and penalty are not paid, to a maximum of 25%. For failure to pay the tax by the due date, in addition to the penalty, there is added interest at the rate of 3/4 of 1% per month on the amount of the tax from the time the tax was accrued until the date of payment.

(2) If by reason of claims made upon the estate, necessary litigation, or other unavoidable cause of delay, the tax cannot be completely determined and paid, a partial or interim payment of not less than 50% of the total tax liability, together with a request for extension, shall be made before the due date. If the department of treasury grants the request for extension, the 8% penalty under subsection (1) is waived and an additional payment of not less than 25% of the total tax liability shall be made before 9 months from the date of death. Interest at the rate of 3/4 of 1% per month is added to the amount of tax unpaid for the period of extension until the tax is determined or could be determined. If the balance of the tax due remains unpaid for more than 30 days from the date the tax is determined or could be determined, there is added a penalty of $5.00 or 5% of the tax not paid, whichever is greater, if the failure is for not more than 1 month or a fraction of 1 month, with an additional 5% for each additional month or fraction of a month during which the failure continues, or the tax and penalty are not paid, to a maximum of 25%. In addition to the penalty, there is added interest at the rate of 3/4 of 1% per month on the amount of the tax from the time the tax was determined or could have been determined until the date of payment.

(3) If payment is deferred as provided in section 7, interest is charged at the rate of 3/4 of 1% per month from the accrual of the tax until the date of payment.

(4) For failure or refusal to file an information return or information report required by this act, within the time specified by this act, there is added a penalty of $5.00 per day for each day for each separate failure or refusal. The total penalty for each separate failure or refusal shall not exceed $200.00.

(5) If a return, report, or remittance is filed after the time specified by this act and it is shown to the satisfaction of the department that the failure to file was due to reasonable cause and not to willful neglect, the penalty may be waived.

(6) The administrator, personal representative, executor, or trustee of each estate shall file a form, as prescribed by the department, containing data required for the proper administration of the tax not later than the due date or within the period of extension granted under subsection (2). The filing of this form may be waived by the department of treasury.

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History: 1899, Act 188, Eff. Sept. 23, 1899;—Am. 1903, Act 195, Imd. Eff. June 9, 1903;—Am. 1907, Act 155, Imd. Eff. June 17, 1907;—CL 1915, 14527;—CL 1929, 3676;—CL 1948, 205.204;—Am. 1971, Act 55, Imd. Eff. July 6, 1971;—Am. 1975, Act 6, Imd. Eff. Mar. 25, 1975;—Am. 1992, Act 65, Imd. Eff. May 28, 1992.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

COLLECTION OF TAX BY EXECUTORS, ADMINISTRATORS AND TRUSTEES.

205.205 Sale of property of estate to pay tax; collection from devisee; legacy not delivered until tax paid; money legacy.

Sec. 5. Every executor, administrator, trustee or other person shall have full power to sell or mortgage so much of the property of the decedent as will enable him or her to pay such tax in the same manner as he or she might be entitled by law to do for the payment of the debts of a decedent or ward; except that in cases where the transfer is to 2 or more persons in common, and 1 or more of them shall have paid his or her proportion of such tax, such executor, administrator, trustee, or other person shall sell or mortgage only the interest of such of the persons to whom the property was transferred as have not paid the tax, to pay the tax due upon such share or shares. Any such administrator, executor, trustee or other person having in charge or in trust any legacy or property for distribution subject to such tax, shall deduct the tax therefrom; and within 30 days thereafter shall pay over the same to the state of Michigan as herein provided. If such legacy or property be not in money, he or she shall collect the tax thereon as determined by the judge of probate from the person entitled thereto, unless such tax has been paid to the state of Michigan. He or she shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this act to any person until the tax assessed thereon has been paid to him or her or to the state of Michigan. If any such legacy shall be charged upon or payable out of real property and is taxable under this act, the devisee charged with the payment of such legacy shall deduct such tax therefrom and pay it to the state of Michigan or the administrator, executor or trustee. And the payment thereof shall be enforced by the executor, administrator or trustee, in the same manner as payment of the legacy might be enforced, or by the attorney general or prosecuting attorney by the appropriate legal proceeding. If such legacy shall be given in money to any such person for a limited period, the administrator, executor, trustee or other person shall retain the tax upon the whole amount, but if not in money, he or she shall make such application to the court having jurisdiction of an accounting by him or her, to make an apportionment, if the case require it, of the sum to be paid by such legatee and for such further order relative thereto as the case may require.

History: 1899, Act 188, Eff. Sept. 23, 1899;—Am. 1903, Act 195, Imd. Eff. June 9, 1903;—CL 1915, 14528;—CL 1929, 3677;—CL 1948, 205.205;—Am. 1993, Act 54, Eff. Sept. 1, 1993.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

REFUND OF TAX ERRONEOUSLY PAID.

205.206 Tax refund.

Sec. 6. If any debt shall be allowed against the estate of a decedent after the payment of any legacy or distributive share from which any tax has been deducted or upon which it has been paid by the person entitled to the legacy or distributive share, and that person is required to refund the amount of the debts, an equitable proportion of the tax shall, upon the order of the court, be paid to him or her by the executor, administrator, trustee or other person, if the tax has not been paid to the state of Michigan. When any amount of said tax shall have been paid erroneously to the state of Michigan by reason of the allowance of debts or otherwise, it shall be lawful for the state treasurer, upon satisfactory proof by the order or certificate of the proper court of the allowance of the debts or of the reversal, correction or alteration, in accordance with law, of the order fixing the tax, to draw his or her warrant upon the state treasury for the erroneous payment, to be refunded to the executor, administrator, trustee, person or persons entitled to receive it, and charge the warrant to the fund which receives credit from the payment of taxes under the provisions of this act. However, applications for the refunding of erroneous tax shall be made within 6 months from the allowance of the debts or the reversal, correction or alteration of the order.

History: 1899, Act 188, Eff. Sept. 23, 1899;—Am. 1903, Act 195, Imd. Eff. June 9, 1903;—CL 1915, 14529;—CL 1929, 3678;—CL 1948, 205.206;—Am. 1993, Act 54, Eff. Sept. 1, 1993;—Am. 2002, Act 347, Imd. Eff. May 23, 2002.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

DEFERRED PAYMENT.

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205.207 Election to make deferred payments; bond.

Sec. 7. Any person or corporation beneficially interested in the reversion or remainder of any property chargeable with a tax under this act, and executors, administrators and trustees thereof, may elect within 1 year from the transfer thereof as herein provided, not to pay such tax until the person or persons beneficially interested therein shall come into the actual possession or enjoyment thereof. If it be personal property, the person or persons so electing shall give a bond to the state in the penalty of 3 times the amount of such tax, with such sureties as the judge of probate of the proper county may approve, conditioned for the payment of such tax and interest thereon at such time and period as the person or persons beneficially interested therein may come into the actual possession or enjoyment of such property, which bond shall be executed and filed and a full return of such property upon oath made to the probate court within 1 year from the date of the transfer thereof, as herein provided, and such bond must be renewed every 5 years: Provided, That the time fixed herein for making such election may be extended by the court in its discretion for a period not to exceed 2 years.

History: 1899, Act 188, Eff. Sept. 23, 1899;—Am. 1903, Act 195, Imd. Eff. June 9, 1903;—CL 1915, 14530;—CL 1929, 3679;—CL 1948, 205.207.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

TAXES UPON DEVISES AND BEQUESTS IN LIEU OF COMMISSIONS.

205.208 Bequest to executors or trustees subject to tax.

Sec. 8. If a testator bequeath or devise his property to 1 or more executors or trustees in lieu of their commissions or allowances, to an amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed or devised above the amount of commissions or allowances prescribed by law shall be taxable under this act.

History: 1899, Act 188, Eff. Sept. 23, 1899;—Am. 1903, Act 195, Imd. Eff. June 9, 1903;—CL 1915, 14531;—CL 1929, 3680;—CL 1948, 205.208.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

LIABILITY OF CERTAIN CORPORATIONS TO TAX.

205.209 Delivering or surrendering possession or custody of assets of resident decedent; notice; further duty not imposed.

Sec. 9. A safe and collateral deposit company, trust company, corporation, bank, or other institution, or person having in possession or custody, securities, deposits, or other assets at the date of death of a decedent who was a resident of this state, belonging to such resident decedent, or belonging to such resident decedent and 1 or more persons, except securities, deposits, or other assets the indicated ownership or registered title of which denotes ownership by right of survivorship, and except securities, deposits, or other assets contained in a safe deposit box or compartment shall not make delivery or surrender possession or custody thereof to the personal representative of such resident decedent, or to joint owners except if the indicated ownership or registered title denotes ownership by right of survivorship, unless notice of the time and place of such intended delivery or surrender of possession or custody is served, either personally or by registered mail, upon the department of treasury pursuant to section 9f. Nothing contained in this section shall be construed as imposing any further duty on such safe and collateral deposit company, trust company, corporation, bank, or other institution, or person with respect to those securities, deposits, or other assets.

History: 1899, Act 188, Eff. Sept. 23, 1899;—Am. 1903, Act 195, Imd. Eff. June 9, 1903;—Am. 1913, Act 17, Eff. Aug. 14, 1913;—Am. 1915, Act 195, Eff. Aug. 24, 1915;—CL 1915, 14532;—Am. 1919, Act 145, Eff. Aug. 14, 1919;—CL 1929, 3681;—Am. 1941, Act 235, Eff. Jan. 10, 1942;—CL 1948, 205.209;—Am. 1982, Act 378, Eff. Mar. 30, 1983.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

205.209a Delivering or surrendering possession or custody of property of nonresident decedent; waiver, receipt, or probate court order; notice; duties of institution or person.

Sec. 9a. A safe and collateral deposit company, trust company, corporation, bank, or other institution, or person having in possession or custody, at the date of death of a decedent who was a nonresident of this state, any property, belonging to the nonresident decedent, or belonging to the nonresident decedent and 1 or more persons, except intangible personal property and except securities, deposits, or other assets contained in a safe

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deposit box or compartment shall not make delivery or surrender possession or custody thereof to the foreign personal representative of the nonresident decedent, or to joint owners except if the indicated ownership or registered title denotes ownership by right of survivorship, unless furnished with a waiver issued by the attorney general with respect thereto, or a receipt, or an order of the probate court as provided for in section 18. If any securities, deposits, or other assets contained in a safe deposit box or compartment become subject to the jurisdiction of a probate court of this state through regular probate proceedings, any safe and collateral deposit company, trust company, corporation, bank, or other institution, or person having possession or custody thereof may make delivery or surrender possession or custody thereof to the personal representative appointed by a probate court of this state, without being furnished with such waiver, receipt, or order, if notice of the time and place of such intended delivery or surrender of possession or custody is served, either personally or by registered mail, upon the department of treasury pursuant to section 9f. The duties of the safe and collateral deposit company, trust company, corporation, bank, or other institution, or person with respect thereto shall be the same as those pertaining to securities, deposits, or other assets of a resident decedent as provided in section 9.

History: Add. 1941, Act 235, Eff. Jan. 10, 1942;—CL 1948, 205.209a;—Am. 1962, Act 168, Eff. Mar. 28, 1963;—Am. 1982, Act 378, Eff. Mar. 30, 1983.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

205.209b Repealed. 1982, Act 378, Eff. Mar. 30, 1983.

Compiler's note: The repealed section pertained to safe deposit boxes.

Popular name: Inheritance Tax

205.209c Wrongful delivery or surrender of possession or custody of assets; liability for tax, interest, and penalty; payment enforceable in civil action by attorney general; taxation of costs.

Sec. 9c. Any safe and collateral deposit company, trust company, corporation, bank, or other institution, or person delivering or surrendering possession or custody of securities, deposits, or other assets without compliance with the applicable provisions of sections 9, 9a, 9e, and 9f shall be liable for the amount of the tax and interest and penalty due or thereafter to become due with respect to the estate of any resident or nonresident decedent of which such securities, deposits, or other assets of the contents of a safe deposit box or compartment are a part, to the extent that any tax, interest, and penalty is due or may become due upon the amount of such estate represented by such securities, deposits, or other assets so delivered or surrendered, or by the contents of such safe deposit box or compartment, and the payment thereof may be enforced in a civil action instituted and maintained by the attorney general, or other person or officer duly authorized by the attorney general. Any judgment rendered in such action shall carry costs to be taxed as in other cases.

History: Add. 1941, Act 235, Eff. Jan. 10, 1942;—CL 1948, 205.209c;—Am. 1963, Act 100, Eff. Sept. 6, 1963;—Am. 1982, Act 378, Eff. Mar. 30, 1983.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

205.209d Repealed. 1962, Act 168, Eff. Mar. 28, 1963.

Compiler's note: The repealed section pertained to inheritance tax, prohibited discharge of mortgage of decedent from record, and contained exceptions.

Popular name: Inheritance Tax

205.209e Payment, delivery, or surrender of custody of assets of resident decedent to other than executors or administrators; notice.

Sec. 9e. Except as otherwise provided in this act, a safe and collateral deposit company, trust company, corporation, bank, or other institution, or person having in possession or custody, securities, deposits, or any other assets subject to tax under this act at the death of a decedent who was a resident of this state, which become payable other than to the decedent's executors or administrators upon the death or by reason of the death of the resident decedent, shall not make payment, delivery, or surrender custody thereof unless notice as prescribed by the department of treasury, of the time and place of the intended payment, delivery, or surrender is served upon the department of treasury at least 15 days prior thereto. The notice and 15-day period may be waived by the department of treasury.

History: Add. 1963, Act 100, Eff. Sept. 6, 1963;—Am. 1982, Act 378, Eff. Mar. 30, 1983.

Compiler's note: For applicability of section, see MCL 205.223(a).

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Popular name: Inheritance Tax

205.209f Service of notice upon department of treasury; conditions.

Sec. 9f. Any safe and collateral deposit company, trust company, corporation, bank, institution, or person required under section 9 or 9a to serve notice upon the department of treasury shall serve such notice on the department of treasury under conditions prescribed by the department of treasury.

History: Add. 1963, Act 100, Eff. Sept. 6, 1963;—Am. 1982, Act 378, Eff. Mar. 30, 1983.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

205.209g Order to examine safe deposit box of decedent for will or burial plot deed; delivery of will or deed; receipt; removal of other items; statement of persons in attendance; fee.

Sec. 9g. Notwithstanding section 9c, wherever it appears to the probate judge of any county in this state by petition of an interested party that a safe and collateral deposit company, trust company, corporation, bank, or other institution has leased to a decedent alone a safe deposit box in the county in which the probate court has jurisdiction and that the safe deposit box may contain a will of the decedent or a deed to a burial plot in which the decedent is to be interred, the probate judge may make an order directing the safe and collateral deposit company, trust company, corporation, bank, or other institution to permit a person named in the order to examine the safe deposit box in the presence of an officer or other authorized employee of the safe deposit and collateral company, trust company, corporation, bank, or other institution and if a paper purporting to be a will of the decedent or a deed to a burial plot is found in the box, to deliver the will or deed to the probate register or his or her deputy. The probate register or his or her deputy shall furnish a receipt therefor to the safe and collateral deposit company, trust company, corporation, bank, or other institution. Items contained in the safe deposit box other than the will or deed shall not be removed from the safe deposit box. At the time of the opening of the safe deposit box all persons in attendance shall execute a written statement certifying as to whether or not any will or deed to a burial plot was found and that no other items were removed, which statement shall be delivered forthwith to the probate register or his or her deputy. Before the judge of probate shall enter the order there shall be paid to the probate register a fee of $10.00, which shall be credited to the general fund of the county. If the decedent's estate is administered in any probate court in this state, the party making payment of such fee may file a claim in the estate for such amount, which shall be charged as costs of administration.

History: Add. 1972, Act 114, Imd. Eff. Apr. 11, 1972;—Am. 1982, Act 378, Eff. Mar. 30, 1983.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

JURISDICTION OF THE PROBATE COURT.

205.210 Inheritance tax; jurisdiction of probate court; determination and payment of tax required prior to closing estate.

Sec. 10. The probate court of every county of this state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under this act, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of this act and to do any act in relation thereto authorized by law to be done by a judge of probate in other matters or proceedings coming within his jurisdiction, and if 2 or more probate courts shall be entitled to exercise any such jurisdiction, the judge of probate first acquiring jurisdiction hereunder shall retain the same, to the exclusion of every other judge of probate. Every petition for ancillary letters testamentary or ancillary letters of administration shall set forth a true and correct statement of all the decedent's property in this state and the value thereof.

In no case shall the judge of probate or judges of probate issue an order of final distribution or an order discharging a fiduciary unless there shall have been issued an order of determination of inheritance tax and there is filed a receipt showing the payment in full of the tax as determined.

History: 1899, Act 188, Eff. Sept. 23, 1899;—Am. 1903, Act 195, Imd. Eff. June 9, 1903;—CL 1915, 14533;—CL 1929, 3682;—Am. 1941, Act 293, Eff. Jan. 10, 1942;—CL 1948, 205.210.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

APPOINTMENT OF APPRAISERS.

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205.211 Appraiser; appointment; appraisement of vested and contingent estates; insurance commissioner; duties; money legacy.

Sec. 11. The judge of probate, upon the application of any interested party, including the state treasurer and county treasurers, or upon his or her own motion, shall, as often as and whenever occasion may require, appoint a competent person as appraiser to fix the clear market value at the time of the transfer of property which shall be subject to the payment of any tax imposed by this act. A description of the property and the names and residences of the persons to whom it passes shall be given by the judge of probate to the appraiser. If the property, upon the transfer of which the tax is imposed, is an estate, income or interest for a term of years or for life, or determinable upon any future or contingent estate, or is a remainder or reversion or other expectancy, real or personal, the entire property or fund by which the estate, income or interest is supported, or of which it is a part, shall be appraised immediately after the transfer, or as soon thereafter as may be practicable, at the clear market value as of that date. If the estate, income or interest is of such a nature that its clear market value cannot be ascertained at that time, it shall be appraised in like manner at the time when the value first became ascertainable. The value of every future or contingent or limited estate, income, interest or annuity, dependent upon any life or lives in being, shall be determined by the rule, method or standard of mortality and value employed by the commissioner of the office of insurance and financial services in ascertaining the value of policies of life insurance companies, except that the rate of interest for computing the present value of all future and contingent interests or estates shall be 5% per annum. The commissioner of the office of insurance and financial services shall, upon request of the state treasurer, prepare the tables of values, expectancies and other matters as may be necessary for use in computing, under the provisions of this act, the value of life estates, annuities, reversions and remainders, which shall be printed and furnished by the auditor general to the several judges of probate upon request. The clear market value of the transfer of a money legacy, presently taxable, shall for the purposes of this act be taken to be the face value of the money at the date of death of decedent.

History: 1899, Act 188, Eff. Sept. 23, 1899;—Am. 1903, Act 195, Imd. Eff. June 9, 1903;—Am. 1907, Act 155, Imd. Eff. June 17, 1907;—CL 1915, 14534;—CL 1929, 3683;—CL 1948, 205.211;—Am. 2002, Act 347, Imd. Eff. May 23, 2002.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

PROCEEDINGS BY APPRAISERS.

205.212 Proceedings by appraisers, compensation, fees.

Sec. 12. Every such appraiser shall forthwith give notice by mail to all such persons as he is notified by the judge of probate are interested in the property to be appraised, and to the county treasurer, of the time and place when he will appraise the property. He shall at such time and place appraise the same at its clear market value as herein prescribed, and for that purpose said appraiser is authorized to issue subpoenas to compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make report thereof and of such value in writing to said judge of probate, together with the depositions of the witnesses examined and such other facts in relation thereto and to the said matter as the said judge of probate may order and require. Every appraiser shall be reimbursed for his actual and necessary traveling and other expenses and shall be entitled to 3 dollars per day for every day actually and necessarily employed in such appraisement. The fees of the necessary witnesses shall be the same as those now paid to witnesses subpoenaed to attend a court of record. A statement in detail of such compensation and disbursements as are authorized by this section shall be approved by the judge of probate and paid by the county treasurer from the general or contingent fund of the county.

History: 1899, Act 188, Eff. Sept. 23, 1899;—Am. 1903, Act 195, Imd. Eff. June 9, 1903;—CL 1915, 14535;—CL 1929, 3684;—CL 1948, 205.212.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

DETERMINATION BY JUDGE OF PROBATE.

205.213 Filing report of appraiser; determining clear market value and amount of tax; petition.

Sec. 13. (1) The report of the appraiser shall be filed in the office of the judge of probate, and from such report and other proof relating to any estate before the judge of probate, the judge of probate shall forthwith, as of course, determine the clear market value of all estates as of the date of transfer, and the amount of tax to which the same is liable, or the judge of probate may so determine the clear market value of all estates and the

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amount of tax to which the same are liable without appointing an appraiser. The judge of probate may, and shall on application of the attorney general or commissioner of revenue, require the executor, administrator or trustee of any estate to file with him or her a petition containing an itemized statement, under oath, of the personal property and real property within his or her knowledge or possession or under his or her control as executor, administrator or trustee, which statement shall indicate the date from which interest and dividends were due and unpaid upon each item of the personal estate, together with the rate of such interest and also of the amount and character of any encumbrances upon such real estate at the time of the death of the deceased, and other data, such as debts, expenses of administration and other charges which constitute proper deductions in reaching a taxable remainder under the provisions of this act.

(2) The judge of probate before final determination of the tax upon the estate of decedent, may make a partial determination of tax upon any legacies or devises, or upon the real estate of a decedent, or upon the estate of the decedent as a whole, and may authorize and direct any executor or administrator to pay to the state of Michigan a sum in gross on account of the inheritance tax due from the estate when by reason of claims made against the estate, litigation, nonreceipt of final determinations made in federal estate tax returns or other unavoidable cause of delay, the tax cannot be completely determined by the court within either 105 days of the date of death or 9 months from its accrual. The judge of probate in the order determining the tax upon such estate shall state the amount authorized to be paid in gross and the date of such order.

(3) The commissioner of insurance, on the application of any judge of probate, or the commissioner of revenue, shall determine the value of any future or contingent estate, income or interest limited, contingent, dependent or determinable upon the life or lives of persons in being, upon the facts contained in any appraiser's report, or facts stated by the judge of probate, and certify the same to the commissioner of revenue or the judge of probate, and his or her certificate shall be prima facie evidence that the method of computation adopted therein is correct.

(4) The judge of probate shall immediately give notice upon the final determination by him or her of the value of any estate which is taxable under this act, and of the tax to which the same is liable, to each heir, legatee or devisee or his or her attorney and of the tax assessed upon his or her share of the estate, by mailing such notice postage prepaid to the last known address of each such persons, or his or her attorney except those who were in court in person or by attorney at the time the tax was so determined.

(5) The judge of probate upon the written application of any person interested, filed with him or her within 90 days after the final determination by him or her of any tax under this act, may grant a rehearing upon the matter of determining such tax. The attorney general may file the written application for rehearing upon the matter of determining such tax any time prior to the allowance of the final account. If the state appeals from the appraisement, assessment or determination of the tax, it shall not be necessary to give any bond. If, on rehearing, the judge shall modify his or her former determination he or she shall enter an order redetermining the tax, and make the necessary entries in the book provided for in section 17, and make report thereof to the commissioner of revenue and county treasurer as provided in section 18.

History: 1899, Act 188, Eff. Sept. 23, 1899;—Am. 1903, Act 195, Imd. Eff. June 9, 1903;—Am. 1915, Act 198, Eff. Aug. 24, 1915;—CL 1915, 14536;—CL 1929, 3685;—Am. 1947, Act 273, Eff. Oct. 11, 1947;—CL 1948, 205.213;—Am. 1971, Act 55, Imd. Eff. July 6, 1971;—Am. 1993, Act 54, Eff. Sept. 1, 1993.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

PROCEEDINGS FOR THE COLLECTION OF TAXES.

205.214 Collection of unpaid taxes; estate closed without payment.

Sec. 14. If the state treasurer or the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the persons liable therefor to pay the same, he or she shall notify the attorney general in writing of that failure or neglect, and the attorney general may apply, or cause the prosecuting attorney of the county to apply, in behalf of the state, to the probate court for an order requiring the persons liable to pay the tax to appear before the court on a day specified, not more than 3 months after the date of the order, and show cause why the tax should not be paid. The judge of probate upon such application, and whenever it shall appear to him or her that any such tax accruing under this act has not been paid as required by law, shall issue a citation, and the service of a citation, and the time, manner, and proof of the citation and the hearing and determination of the citation, and the enforcement of the determination or order made by the judge of probate shall conform to the practice of the probate court in like cases made and provided for the service of citations out of the probate court, and the hearing and determination thereon and its enforcement, so far as the same may be applicable. In all cases where an estate has been declared closed without fixing or payment of the tax upon the transfers therein, and the attorney

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general believes that the transfers are subject to a tax and the real estate in the estate is subject to a lien and anticipates the institution of proceedings for the fixing and enforcing, or the enforcing of the lien when it has been fixed, he or she may file with the register of deeds of the county a notice setting forth the fact together with a description of the real estate claimed to be subject to the lien which shall operate with the same force and effect as a lis pendens under existing statutes. However, the failure to file such notice shall not in any manner prejudice the rights of the state. The judge of probate or the probate clerk or register shall, upon the request of the attorney general, prosecuting attorney, or treasurer of the county, furnish 1 or more transcripts of such decree which shall be docketed and filed by the county clerk of any county of the state without fees, in the same manner and with the same effect as provided by law for filing and docketing transcripts, judgments, and decrees of circuit courts in this state. As a cumulative remedy for the collection of the tax, the state may proceed by an action of assumpsit in any court of competent jurisdiction. Whenever the probate judge issues a citation and undertakes the proceedings specified in this section, he or she shall certify that fact to the county treasurer, together with an itemized bill of all expenses incurred for the services of the citation, and other lawful disbursements not otherwise paid. Upon receipt of the bill, the county treasurer shall pay the bill from the general or contingent fund of the county. In all proceedings to which any county treasurer, or the state treasurer, is cited to appear under sections 11 and 12 of this act and all proceedings arising or instituted under this section, the attorney general shall represent the interests of the state, the compensation and expenses of necessary assistants and the expenses of the attorney general to be paid after approval by the attorney general on the warrant of the state treasurer out of the general fund in the state treasury.

History: 1899, Act 188, Eff. Sept. 23, 1899;—Am. 1903, Act 195, Imd. Eff. June 9, 1903;—CL 1915, 14537;—CL 1929, 3686;—CL 1948, 205.214;—Am. 2002, Act 347, Imd. Eff. May 23, 2002.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

(RECEIPT) RECEIPTS FROM THE COUNTY TREASURER.

205.215 Receipts; certified copy; recording.

Sec. 15. Any person shall, upon written request to the department of treasury, be entitled to a certified copy of the receipt issued by the state of Michigan under section 3 of this act for the payment of any tax under this act, which receipt shall designate upon what real property, if any, such tax shall have been paid, by whom paid, and whether in full of such tax. Such receipts may be recorded in the office of the register of deeds of the county in which such property is situated, in a book to be kept by him or her for that purpose, which shall be labeled "Transfer Tax."

History: 1899, Act 188, Eff. Sept. 23, 1899;—Am. 1903, Act 195, Imd. Eff. June 9, 1903;—CL 1915, 14538;—CL 1929, 3687;—CL 1948, 205.215;—Am. 1993, Act 54, Eff. Sept. 1, 1993.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

FEES FOR COUNTY TREASURER.

205.216 Additional fee; credit to general fund.

Sec. 16. The treasurer for the state of Michigan shall collect on all taxes paid under this act an additional 1/2 of 1%, which fee shall be paid to the county having jurisdiction of the decedent's estate. This fee is an administration fee for the costs incurred by the probate court in administering this act. This fee shall be credited to the general fund of the county.

History: 1899, Act 188, Eff. Sept. 23, 1899;—Am. 1903, Act 195, Imd. Eff. June 9, 1903;—Am. 1911, Act 265, Eff. Aug. 1, 1911;—CL 1915, 14539;—CL 1929, 3688;—CL 1948, 205.216;—Am. 1965, Act 160, Imd. Eff. July 15, 1965;—Am. 1993, Act 54, Eff. Sept. 1, 1993.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

BOOKS AND FORMS TO BE FURNISHED BY THE AUDITOR GENERAL.

205.217 Record books furnished by state treasurer; contents; entries; form.

Sec. 17. The state treasurer shall furnish to each judge of probate a book, which shall be a public record, in which the judge of probate shall enter a formal order containing the name of every decedent upon whose estate letters of administration or letters testamentary or ancillary letters have issued, the date of death, and place of residence at the time of death of the decedent, the names, places of residence and relationship to the decedent of his or her heirs at law, in case the decedent died intestate or left estate not disposed of by will; the

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names, places of residence, and relationship to the decedent of the legatees and devisees in the will of the decedent, in case the decedent died testate, the ages of all life tenants and beneficiaries under life estates, the clear market value of the decedent's real and personal property, the clear market value of the property, real and personal, passing to each heir, legatee and devisee, and the clear market value of annuities, life estates, terms of years, and other property of the decedent, or given by the decedent in his or her will and otherwise, as fixed and determined by the judge of probate, and the amount of tax assessed thereon, and the amount of tax assessed on the share of each heir, legatee and devisee, when from the records of the court or the testimony given there appears to be property in such estate liable to tax under this act. However, a description of real estate need not be given unless the real estate is taxable under this act, in which case a sufficiently definite description shall be given to fully identify the taxable real estate and the persons to whom the several parcels are devised. The judge of probate shall also enter in the book the name, date of death, and place of residence at time of death of every decedent, grantor, vendor or donor who has made a transfer of property in contemplation of death or intended to take effect in possession or enjoyment at or after his or her death, subject to tax under this act; the name and residence of the grantee, vendee or donee and his or her relationship to the grantor, vendor or donor, the clear market value as determined by the judge of probate of the property so transferred by him or her and the tax determined by the court payable thereon. These entries shall be made from data contained in the papers filed in the probate court and testimony taken in any proceedings relating to the estate of the decedent. The judge of probate shall also enter in the book the amount of the real and personal property of the decedent as shown by the inventory thereof when made and filed in his or her office. If the judge of probate determines the amount of tax to be paid upon any legacies or devises or upon the real estate of a decedent or upon the estate of the decedent as a whole before the final determination of the tax by him or her, only such entries need be made in the book in that particular case as refer to the partial determination, and it shall be distinctly stated in the book that it is but a partial determination by the judge of probate of the tax due from the estate. Whenever the determination of the tax in such estate by the judge of probate is general, partial or final, the deductions made by the judge of probate from the full value of the estate shall be particularly specified, so that the several reasons for the deductions made clearly appear upon the record. The record required to be furnished by the state treasurer shall be in the following form, and shall be of such size and so arranged as he or she determines will best meet the requirements of this act:

Abstract of Taxable Inheritances. Vol. No. ..... Page No. .....

State of Michigan.

The Probate Court for the County of.....

At a session of said court held at ....., in said county the ..... day of ....., A.D. ....

Present, The Honorable ....., Probate Judge.

In the matter of the inheritance tax upon transfers in the estate of ....., deceased.

In this matter it being represented to me and appearing that the said deceased was, at the time of his or her death on the ..... day of ....., a resident of ..... and possessed property the transfer of which or some interest or estate therein is taxable under the Michigan estate tax act, 1899 PA 188, MCL 205.201 to 205.256; that ..... of ..... was duly and regularly appointed ..... of the said estate and ....., and that as appears from the inventory on file in this court, the amount of property belonging to said estate is stated to be as follows:

Personal property, $.....; real property, $.....

It further appears and I hereby find that the debts of said deceased owing at the time of his or her death (exclusive of interest accruing thereafter) amount to $.....; that the funeral expenses of said deceased amount to $.....; and that the expenses of administration of the estate of said decedent (exclusive of all items of disbursement for repairs to buildings or other property belonging to, or taxes accruing after death, upon the estate of said deceased, all allowances for the support of widow and children of said deceased, expenses incurred in contesting the will of said deceased, and other items of disbursement for the benefit of the beneficiaries of said estate, not strictly expenses of administration) amount to the sum of $.....; the total debts and expenses of administration being $.....

After due and careful investigation, examination and consideration, I find and determine that the clear market value of all of said decedent's personal property and real estate, at the date of his or her death, was as follows: Personal property, $.....; real property, $....., and that after deduction therefrom of the total debts and expenses of administration (debts secured upon realty being deducted from the value of the real estate, and debts unsecured and secured on personalty being deducted from the value of the personalty), there remains subject to taxation under the provisions of said act before deducting statutory exemptions, transfers of personal property to the amount of $.....; and transfers of real property to the amount of $.....; and that of said transfers certain interests hereinafter set forth in detail in the schedule hereto are not

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presently taxable by reason of the following contingency, rendering it impossible to determine presently the value of the interests passing and the amount of the tax thereon, namely .....

And I hereby find and determine that the tax upon the presently taxable transfers in said estate amounts to the sum of $..... and find that the several names, residences, relationships and ages, where interest consists of life estates or annuities, of the several beneficiaries, together with the character and amount of the several interests or estates passing thereto, the rate of tax to which each is subject, and the portion of the tax fixed upon, apportioned to, and required to be borne by each of the several taxable transfers, is as set forth in detail in the following schedule:

(The schedule shall contain the following headings for the several columns and space for sufficient entries, remarks, etc.)

A	B	C	D	E
Name of Heir at Law, Legatee or Devisee to whom estate passes	Residence	Relationship	Age of Life Tenant or Annuitant	Rate of Tax .....%
F	G	H	I	J
Value of Legacy or Person Estate Passing	Value of Personal Estate Exempt	Value of Legacy or Personal Estate Taxable	Amount of Tax on Personal Estate	Value of Real Estate Passing
K	L	M	N	O
Value of Real Estate Exempt	Value of Real Estate Taxable	Amount of Tax on Real Estate	Value of Annuities, Life Estates, etc. Passing	Value of Annuities, Life Estates, etc. Exempt
P	Q	R		
Value of Annuities Life Estates, etc., Taxable	Amount of Tax on Annuities, Life Estates, etc.	Total Amount of Tax		

Remarks:Including descriptions of real estate taxed and any explanations necessary to a complete understanding of the foregoing entries.

.....

Judge of Probate.

The department of treasury may prescribe and furnish to the judge of probate, in lieu of the book and the form prescribed in this section, a form or forms containing such data as is required for proper determination of the tax.

History: 1899, Act 188, Eff. Sept. 23, 1899;—Am. 1903, Act 195, Imd. Eff. June 9, 1903;—CL 1915, 14540;—CL 1929, 3689;—Am. 1947, Act 273, Eff. Oct. 11, 1947;—CL 1948, 205.217;—Am. 1955, Act 232, Imd. Eff. June 18, 1955;—Am. 2002, Act 347, Imd. Eff. May 23, 2002.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

REPORTS OF PROBATE JUDGE AND REGISTER OF DEEDS.

205.218 Order of determination, duties of probate judge; report of register of deeds; property of nonresident, waiver, fee; petition, contents; hearing, notice; redetermination.

Sec. 18. Each judge of probate shall, within 3 days after he shall have determined the tax and entered the order required in the preceding section, make a duly certified copy of such order upon forms furnished by the department of revenue containing all the data and matter required, 1 of which shall be immediately delivered to the county treasurer, from which data the said county treasurer shall obtain the information for making the duplicate receipt required by this act, and the other transmitted to the department of revenue. If in any calendar quarter beginning January, April, July or October first in each year, there has been no tax determined, the judge of probate shall make a report to the department of revenue affirmatively showing this fact. The register of deeds of each county shall, upon blanks prescribed and furnished by the department of revenue, as often as any deed or other conveyance is filed or recorded in his office of any property which appears to have been made in contemplation of death or intended to take effect in possession or enjoyment after the death of the grantor or vendor, make reports in duplicate containing a statement of the name and place of residence of such grantor or vendor, the name, relationship and place of residence of the grantee or vendee, and a description and the value of the property transferred and the consideration for the transfer as

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stated in the instrument filed or recorded, 1 of which duplicates shall be immediately delivered to the county treasurer, and the other transmitted to the department of revenue. Whenever any non-resident shall die leaving property or any interest therein, in this state which has not been duly administered under the laws of this state and it shall be necessary to have the question of the taxation of the transfer thereof determined, such question may be presented and determined upon petition of the department of revenue to be filed by the attorney general in any probate court of this state. In any such case where the department of revenue is satisfied from the proofs submitted or obtained as hereinafter provided, that such transfer is not taxable the department of revenue may thereupon issue a waiver with respect thereto which, upon being countersigned by the attorney general, his deputy, or assistant, shall operate as a determination that such transfer is not taxable. The department of revenue shall charge and collect in advance a fee of $1.00 for each such waiver and keep a proper record thereof. The said petition shall set forth the name of decedent; residence at time of death; and total amount of property constituting said estate; a description of and the value of all property in Michigan; and any and all such other data as may be necessary to inform the court of the facts in connection with such matter. It shall be the duty of the probate court with which such petition is filed to fix a date for hearing thereon and to give notice of such hearing in such manner as shall be prescribed. Publication of the notice of such hearing shall not be necessary unless ordered by the court. It shall be the duty of the executor, administrator, trustee or any interested party in said estate to furnish all such facts, data, information, reports and certified copies of proceedings had in connection with said estate in any other court, as shall be required by the attorney general or department of revenue or directed by the probate court. The probate court shall appoint a resident of Michigan to represent the said estate at such hearing and the person so appointed shall perform such duties as shall be required by the court. The person so appointed shall have and possess all of the powers of an executor or administrator for the purposes of this section, but shall not be personally liable for any inheritance tax in said estate and shall not be required to give any bond unless so directed by the court. The said probate court shall at the hearing on said petition or at an adjourned hearing, determine whether the transfer of such property is taxable and, if found taxable, he shall proceed as in all other cases to fix and determine the amount thereof. If it is found that the transfer of such property is not taxable, an order to that effect shall be entered in the said probate court. A redetermination of said order may be had and an appeal therefrom may be taken in the same manner provided for in this act. A certified copy of all such orders determining that there is no inheritance tax due and payable may be procured from the probate court upon the payment of 50 cents. No order shall be entered in any such case until there is filed in said probate court receipts showing full payment of all expenses incurred including compensation due the person appointed to represent said estate, all of which expenses or compensation shall be paid by the executor, administrator or any person interested in said estate. In case it may be necessary to have any such property subjected to regular probate proceedings in this state, or if any such estate shall have been administered in this state, the right to proceed under this section shall be discretionary with the probate court. This section shall not operate to relieve any such person, as is referred to in section 9c of this act from the liability therein expressed until 60 days after the date of entry of the order determining that there is no tax upon the transfers in said estate, or in case a tax is determined, until proper receipts showing payment thereof as required in section 3 of this act have been duly signed. No proceedings shall be required and no inheritance tax shall be fixed and determined or collected, and no waivers or consents shall be required for the transfer or delivery of intangible personal property of a nonresident decedent. The department of revenue may prescribe or approve a form of affidavit which may be relied upon by corporations or their transfer agents in making delivery or transfer of intangible personal property in accordance with this act.

History: 1899, Act 188, Eff. Sept. 23, 1899;—Am. 1903, Act 195, Imd. Eff. June 9, 1903;—Am. 1911, Act 73, Eff. Aug. 1, 1911;—CL 1915, 14541;—Am. 1925, Act 111, Eff. Aug. 27, 1925;—Am. 1929, Act 231, Imd. Eff. May 21, 1929;—CL 1929, 3690;—Am. 1931, Act 141, Imd. Eff. May 21, 1931;—Am. 1947, Act 273, Eff. Oct. 11, 1947;—CL 1948, 205.218;—Am. 1962, Act 168, Eff. Mar. 28, 1963.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

REPORTS OF COUNTY TREASURER.

205.219 Interest rate in addition to delinquent fees.

Sec. 19. If the fee collected on the inheritance tax under section 16 for a county is not paid to the county treasurer, the state treasurer shall pay interest at the rate of 8% per annum in addition to the amount of delinquent fees then in arrears.

History: 1899, Act 188, Eff. Sept. 23, 1899;—Am. 1903, Act 195, Imd. Eff. June 9, 1903;—Am. 1907, Act 155, Imd. Eff. June 17, 1907;—Am. 1909, Act 44, Imd. Eff. Apr. 21, 1909;—CL 1915, 14542;—Am. 1917, Act 336, Imd. Eff. May 10, 1917;—CL 1929, 3691;

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—CL 1948, 205.219;—Am. 1975, Act 6, Imd. Eff. Mar. 25, 1975;—Am. 1993, Act 54, Eff. Sept. 1, 1993.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

APPLICATION OF TAXES.

205.220 Disposition of taxes levied and collected.

Sec. 20. The taxes levied and collected under this act shall be paid into the state treasury to the credit of the general fund, to be disbursed only by appropriation of the legislature.

History: 1899, Act 188, Eff. Sept. 23, 1899;—CL 1915, 14543;—CL 1929, 3692;—CL 1948, 205.220;—Am. 1975, Act 6, Imd. Eff. Mar. 25, 1975.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

DEFINITIONS.

205.221 Definitions.

Sec. 21. As used in this act:

(a) "Estate" or "property" means the property or interest in property of the testator, intestate, grantor, bargainor, or vendor, passing or transferred to those not specifically exempted from this act, and not as the property or interest in property passing or transferred to the individual legatees, devisees, heirs, next of kin, grantees, donees, or vendees, and includes all property or interest in property whether situated within or without this state and including all property represented or evidenced by note, certificate, stock, land, contract, mortgage or other kind or character of evidence thereof, and regardless of whether that evidence of property is owned, kept or possessed within or without this state.

(b) "Transfer" includes the passing of property or an interest in property in possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale, or gift in the manner prescribed in this act.

(c) "County treasurer" or "prosecuting attorney" means the county treasurer or prosecuting attorney of the county having jurisdiction pursuant to section 10.

(d) "Qualified farm real and personal property" means real and personal property located in this state that on the date of the decedent's death was devoted primarily to an agricultural use, and, for a decedent who dies before January 1, 1993, meets all the following conditions or, for a decedent who dies after December 31, 1992, meets the conditions in either subparagraph (*ii*) or (*iii*):

(*i*) The real property is eligible as farmland pursuant to part 361 (farmland and open space preservation) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.36101 to 324.36117 of the Michigan Compiled Laws.

(*ii*) Fifty percent or more of the adjusted value of the estate consists of the adjusted value of real or personal property that on the date of the decedent's death, was devoted primarily to an agricultural use, and that was acquired from or transferred from the decedent to a qualified heir.

(*iii*) Twenty-five percent or more of the adjusted value of the estate consists of the adjusted value of real property that was acquired from or transferred from the decedent to a qualified heir and that meets the requirements of subparagraph (*iv*).

(*iv*) During the 8-year period ending on the date of the decedent's death, there have been periods aggregating 5 years or more during which the real property was owned by the decedent or a qualified heir in the operation of the farm and there was material participation by the decedent or a qualified heir in the operation of the farm.

(*v*) The real property is designated in the agreement referred to in section 2d.

(e) "Adjusted value" as used in subdivision (d) means:

(*i*) For the estate, the clear market value of the estate for purposes of this act, reduced by any proper deductions consisting of unpaid mortgages, debts, or liens on the property.

(*ii*) For real or personal property, the clear market value of that property for purposes of this act, reduced by any proper deductions consisting of unpaid mortgages, debts, or liens on the property.

(f) "Agricultural use" means property that is substantially devoted to the production of plants and animals useful to people, including forages and sod crops; grains and feed crops; dairy and dairy products; poultry; livestock, including breeding and grazing; fish; timber; fruits; vegetables; flowers; Christmas trees; plants or trees grown in an agricultural nursery; and other similar uses and activities.

(g) "Qualified heir" means an individual entitled to any beneficial interest in property who is the grandfather, grandmother, father, mother, husband, wife, child, legally adopted child, stepchild, brother,

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sister, wife or widow of a son, or husband or widower of a daughter of the decedent grantor, donor, or vendor, or for the use of a person to whom the decedent grantor, donor, or vendor stood in the mutually acknowledged relation of a parent, if the relationship began at or before the child's seventeenth birthday and continued until the death of the decedent grantor, donor, or vendor, or to or for the use of a lineal descendant of or a lineal descendant of a stepchild of the decedent grantor, donor, or vendor, or farm business partner, or to or for the use of any person to whom the decedent grantor, donor, or vendor stood in the mutually acknowledged relation of a farm business partner.

(h) "Soil conservation district agency" means the agency of the district where the real property is located created pursuant to part 93 (soil conservation districts) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.9301 to 324.9313 of the Michigan Compiled Laws.

(i) "State land use agency" means the land use agency within the department of natural resources.

(j) "Material participation" shall be determined in the same manner as used in section 2032a of the internal revenue code and in any federal regulations relating to that section.

(k) "Family-owned" means participation by the decedent or a qualified heir in the operation of the business for not less than 500 hours in 5 out of the 8 years immediately preceding the decedent's death and either of the following:

(*i*) The business is 100% owned by the decedent and qualified heirs, or for a corporation, 100% of the stock is owned by the decedent and qualified heirs.

(*ii*) The business is 49% or more owned by the decedent, or for a corporation, 49% or more of the stock is owned by the decedent.

History: 1899, Act 188, Eff. Sept. 23, 1899;—Am. 1903, Act 195, Imd. Eff. June 9, 1903;—Am. 1907, Act 328, Imd. Eff. June 28, 1907;—CL 1915, 14544;—CL 1929, 3693;—CL 1948, 205.221;—Am. 1978, Act 628, Imd. Eff. Jan. 6, 1979;—Am. 1992, Act 65, Imd. Eff. May 28, 1992;—Am. 1993, Act 54, Imd. Eff. June 3, 1993;—Am. 1996, Act 54, Imd. Eff. Feb. 26, 1996.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

205.222 Report.

Sec. 22. Not later than January 1, 1996, the state treasurer shall submit a report to the committees of the house and senate having jurisdiction over matters of taxation that contains the following:

(a) The cost of the exemptions and reductions provided for in sections 2(6) and 2d(7).

(b) A summary and review of policy and procedures concerning the taxation of the exercise of or failure to exercise limited powers of appointment.

History: Add. 1992, Act 65, Imd. Eff. May 28, 1992.

Compiler's note: Former section 22 was not compiled.
For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax

205.223 Applicability of sections.

Sec. 23. Notwithstanding any other provisions of this act, the following apply:

(a) Sections 1 through 22 apply only to the estate of a resident or nonresident decedent dying before October 1, 1993 or to a generation-skipping transfer that occurs after December 31, 1992 but before October 1, 1993.

(b) Sections 31 to 56 apply only to the estate of a resident or nonresident decedent dying after September 30, 1993 or to a generation-skipping transfer that occurs after September 30, 1993.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993.

Popular name: Inheritance Tax

205.231 Short title.

Sec. 31. This act shall be known and may be cited as the "Michigan estate tax act".

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993.

Popular name: Inheritance Tax

205.232 Tax on transfer of estate of residents and nonresidents.

Sec. 32. (1) A tax is imposed upon the transfer of the estate of every person who at the time of death was a resident of this state. The tax is equal to the maximum allowable federal credit under the internal revenue code for estate, inheritance, legacy, and succession taxes paid to the states. This tax shall be reduced by the amount of all estate, inheritance, legacy, and succession taxes paid to states other than Michigan, which

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amount shall not exceed an amount equal to the proportional share of that maximum allowable federal credit that the gross value of all real and tangible personal property located in states other than this state bears to the gross value of all property included in the decedent's gross estate wherever located.

(2) A tax is imposed upon the transfer of property located in this state of every person who at the time of death was not a resident of this state. The tax is an amount equal to the proportional share of the maximum allowable federal credit under the internal revenue code for estate, inheritance, legacy, and succession taxes paid to the states, that the gross value of all real and tangible personal property located in this state bears to the gross value of all property included in the decedent's gross estate wherever located.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993.

Popular name: Inheritance Tax

205.233 Tax on generation-skipping transfer for residents and nonresidents.

Sec. 33. (1) A tax is imposed upon every generation-skipping transfer in which the original transferor is a resident of this state at the date of the transfer made by the original transferor. The tax is equal to the maximum allowable federal credit under the internal revenue code for state generation-skipping transfer taxes paid to the states. This tax shall be reduced by the amount of all generation-skipping taxes paid to states other than this state, which amount shall not exceed an amount equal to the proportional share of that maximum allowable federal credit that the gross value of all transferred real and tangible personal property subject to generation-skipping transfer taxes located in states other than this state bears to the gross value of all transferred property subject to generation-skipping taxes wherever located.

(2) A tax is imposed upon every generation-skipping transfer in which the original transferor is not a resident of this state at the date of the transfer by the original transferor but in which the property transferred includes real or tangible personal property located in this state. The tax is an amount equal to the proportional share of the maximum allowable federal credit under the internal revenue code for state generation-skipping transfer taxes paid to the states that the gross value of all transferred real and tangible personal property subject to generation-skipping transfer taxes located in this state bears to the gross value of all transferred property subject to generation-skipping transfer taxes wherever located.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993.

Popular name: Inheritance Tax

205.234 Notification as personal representative; waiver of notice.

Sec. 34. The personal representative, within 2 months after the decedent's death, or within 2 months after qualifying as the personal representative, whichever is later, shall give written notice that he or she is the personal representative to the department on a form prescribed by the department. However, the department may waive the filing of this notice.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993.

Popular name: Inheritance Tax

205.235 Filing return; waiver; extension of time for filing.

Sec. 35. The personal representative of every estate required by the laws of the United States to file a federal return shall file a return with the department on or before the last day prescribed by law for filing the federal return including all supplemental data, if any, necessary to determine the correct tax under this act. However, the department may waive this requirement. The department shall extend the time for filing the return if the time for filing the federal return is extended. The aggregate of extensions granted under this act with respect to any return shall not exceed the aggregate of extensions allowable under the internal revenue code for the federal return.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993.

Popular name: Inheritance Tax

205.236 Transfer taxes; payment; extension; interest and penalties.

Sec. 36. The transfer taxes imposed by this act are due and payable on or before the last day prescribed by law for paying the corresponding federal transfer taxes pursuant to the federal return excluding extensions and shall be paid by the personal representative to the department. The department shall extend the time for payment of the tax or any part of the tax if the time for paying the federal transfer tax is extended. The aggregate of extensions granted under this act with respect to any transfer shall not exceed the aggregate of extensions allowable under the internal revenue code with respect to that transfer. Interest and penalties as provided for in Act No. 122 of the Public Acts of 1941, being sections 205.1 to 205.31 of the Michigan Compiled Laws, shall be added to the amount of the tax unpaid for the period of the extension.

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History: Add. 1993, Act 54, Imd. Eff. June 3, 1993.

Popular name: Inheritance Tax

205.237 Liability.

Sec. 37. The person liable for payment of the federal transfer tax is personally liable for the tax, penalties, and interest imposed by this act to the same extent as the federal transfer tax.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993.

Popular name: Inheritance Tax

205.238 Amended return; filing; claim for refund; final determination of federal transfer tax; refund prohibited under certain conditions.

Sec. 38. (1) If the federal authorities increase or decrease the amount of the federal transfer tax, an amended return shall be filed with the department showing all changes made in the original return and the amount of increase or decrease in the federal transfer tax within 60 days after a final determination if there is an increase in the amount owed the state, or within 1 year after a final determination if there is a refund owed by the state.

(2) A claim for a refund of the tax shall be made within 1 year from the date of the final determination of the federal transfer tax. For purposes of this subsection, a determination is considered to have become final on the date of the internal revenue service closing letter or the date of receipt of a refund of a federal transfer tax, whichever is later.

(3) Notwithstanding any other provision of this section, a tax may not be refunded pursuant to any allegation that the decedent was a resident of another state unless this state is a party to a compromise agreement between the decedent's transferee and the other state or unless this state is allowed to intervene as a party in any action in the other state in which the residency of the decedent is at issue.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993.

Popular name: Inheritance Tax

205.239 Assessment of additional tax interest or penalty.

Sec. 39. If upon examination of any return the department determines that any additional tax interest or penalty is owing, the tax together with any applicable penalty and interest shall be assessed.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993.

Popular name: Inheritance Tax

205.240 Calculation of penalties and interest; accrual of interest on refunds.

Sec. 40. (1) Penalties and interest provided for under sections 23 and 24 of 1941 PA 122, MCL 205.23 and 205.24, shall be calculated on the balance of the tax due.

(2) Interest on refunds shall accrue in accordance with section 30 of 1941 PA 122, MCL 205.30.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993;—Am. 1998, Act 277, Imd. Eff. July 27, 1998.

Popular name: Inheritance Tax

205.241 Issuance of receipts; determination of tax and discharge from personal liability; operation of discharge.

Sec. 41. Upon payment of the tax under this act, the department shall issue to the personal representative receipts in triplicate, each of which is sufficient evidence of payment and entitles the personal representative to be credited and allowed that amount by the probate court having jurisdiction. If the personal representative files a complete return and makes a written application to the department for determination of the amount of the tax and discharge from personal liability for the tax, the department as soon as possible, but not later than 1 year after receipt of the application, shall notify the personal representative of the amount of the tax. Upon payment of the tax, the personal representative is discharged from personal liability for any additional tax found to be due and is entitled to receive from the department a receipt in writing showing the discharge. The department shall prepare the discharge of liability receipt in a form recordable by the register of deeds. However, a discharge does not operate to release the gross estate of the lien of any additional tax subsequently found to be due while the title to the gross estate remains in the personal representative or in the heirs, devisees, or distributees. If after a discharge is given the title to any portion of the gross estate has passed to a bona fide purchaser for value, that portion of the gross estate is not subject to a lien or any claim or demand for the tax.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993;—Am. 1998, Act 277, Imd. Eff. July 27, 1998.

Popular name: Inheritance Tax

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205.242 Apportionment of tax.

Sec. 42. The tax due under this act shall be apportioned as provided by the uniform estate tax apportionment act, Act No. 144 of the Public Acts of 1963, being sections 720.11 to 720.21 of the Michigan Compiled Laws, or any successor act in effect.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993.

Popular name: Inheritance Tax

205.243 Tax as lien against gross estate; attachment to consideration received for property; waiver.

Sec. 43. The tax imposed under section 32 is a lien upon the gross estate of the decedent until paid in full. Any part of the gross estate used for the payment of claims against the estate and expenses of its administration is divested of any lien for taxes. Any part of the gross estate, other than real estate, of a resident decedent transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth is divested of the lien, and the lien then attaches to the consideration received for the property from the purchaser, mortgagee, or pledgee. Any real estate that is part of the gross estate of a decedent transferred to a bona fide purchaser or mortgagee is divested of the lien, the lien attaches to the consideration received for the real property, and the department shall issue a waiver releasing the property from the lien in a form recordable with the register of deeds if 1 or more of the following apply:

(a) The transfer of the real estate is necessary for payment of claims against the estate and expenses of administration even though other assets are then available for sale or mortgage.

(b) The department is satisfied that no tax liability exists or that the tax liability of an estate has been fully discharged or provided for.

(c) Except when the department has filed a notice of tax lien with the county in which the real estate is located, a partial payment is made with the department of an amount equal to either of the following, whichever is applicable:

(*i*) If the transfer occurs before the due date for the filing of the return including extensions, 8% of the net cash proceeds payable at closing to the seller for a sale or to the mortgagor for a mortgage.

(*ii*) If the transfer occurs after the due date for the filing of the return including extensions, 16% of the net cash proceeds payable at closing to the seller for a sale or to the mortgagor for a mortgage, or the amount of the unpaid tax as reflected on the return filed with the department, whichever is less.

(d) The seller, purchaser, or mortgagee makes a partial payment of an amount determined by the department to be sufficient to ensure payment of the tax.

(e) The seller, purchaser, or mortgagee makes a partial payment of an amount determined by the probate court to be sufficient to ensure payment of the tax.

(f) The seller or mortgagor is a person who holds the real property as a surviving joint tenant or tenant by the entireties.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993;—Am. 1998, Act 277, Imd. Eff. July 27, 1998.

Popular name: Inheritance Tax

205.244 Personal representative; distribution without payment of tax or release from lien; personal liability.

Sec. 44. If a personal representative makes a distribution either in whole or in part of any of the property subject to the transfer tax under this act to the heirs, next of kin, distributees, legatees, or devisees without having paid or secured the tax due the state under this act or without having obtained the release of the property from the lien of the tax, the personal representative becomes personally liable for the tax, accrued penalties, and interest due the state, or as much of the tax, penalties, and interest that remains due and unpaid, to the full extent of the full value of any property belonging to the person or estate that comes into the personal representative's possession, custody, or control as required by law.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993.

Popular name: Inheritance Tax

205.245 Personal representative; rights and powers.

Sec. 45. Every personal representative has the same right and power to take possession of or sell, convey, and dispose of real estate as assets of the estate for the payment of the tax imposed by this act as the personal representative has for the payment of the debts of the decedent.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993.

Popular name: Inheritance Tax

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205.246 Probate court; jurisdiction; appeal of department decision; action to recover taxes, penalties, and interest; other actions.

Sec. 46. (1) The probate court has exclusive jurisdiction of any court proceedings concerning this act. Every action shall be brought in the probate court for the county in which the estate is being or has been administered or, if there has been no administration in this state, in the county where any of the property of the estate is situated.

(2) A personal representative or any person who is in actual or constructive possession of any property included in the gross estate of the decedent who is aggrieved by a decision by the department may appeal that decision by petitioning the probate court with notice to the department and to all other interested parties as determined by court rule.

(3) An action may be brought by the department in the probate court within the times provided by this act to recover the amount of any taxes, penalties, and interest due under this act.

(4) Nothing in this act shall be construed to prevent a personal representative from bringing or maintaining an action in probate court within any period otherwise prescribed by law to determine any question bearing upon the taxable situs of property, the domicile of a decedent, or otherwise affecting the jurisdiction of the state to impose a tax under this act with respect to a particular item or items of property.

(5) All appeals of determinations made by the department under this act shall be made to the probate court.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993.

Popular name: Inheritance Tax

205.247 Final account.

Sec. 47. A final account of a personal representative of the estate when the value of the gross estate wherever situated exceeds the federal unified credit equivalent under the internal revenue code shall not be allowed by the probate court unless the account shows, and the probate judge finds, that the tax imposed by the provisions of this act upon the personal representative, which has become payable, has been paid. The department's certificate of nonliability for the tax or its receipt for the amount of tax paid shall be conclusive in the proceedings as to the liability or the payment of the tax.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993.

Popular name: Inheritance Tax

205.248 Probate court; notice of certain information to department.

Sec. 48. Upon the request of the department each probate court of this state, on or before the tenth day of every month, shall notify the department of the names of all decedents; the names and addresses of the respective personal representatives appointed; the amount of the bonds, if any, required by the court; and the probable value of the estates, in all estates of decedents whose wills have been probated or upon which letters of authority have been sought or granted during the preceding month. A probate court shall also furnish any further information from the records and files of the probate court in regard to those estates requested by the department.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993.

Popular name: Inheritance Tax

205.249 Corporation as personal representative; powers and duties.

Sec. 49. If the personal representative of the estate of a nonresident is a corporation duly authorized, qualified, and acting as a personal representative in the jurisdiction of the domicile of the decedent, the corporation has the same powers and duties concerning notices and the filing of returns required by this act and may bring and defend actions as authorized or permitted by this act to the same extent as an individual personal representative. However, nothing in this act shall be taken or construed as authorizing a corporation not authorized to do business in this state to qualify or act as a personal representative, an administrator, or in any other fiduciary capacity, if otherwise prohibited by the laws of this state, except to the extent expressly provided in this act.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993.

Popular name: Inheritance Tax

205.250 Certificate of nonliability.

Sec. 50. If it appears to the department that an estate is not subject to any tax under this act, the department shall issue to the personal representative or his or her legal representative, or to the heirs, devisees, or distributees of the decedent a certificate in writing to that effect, showing nonliability to tax. The certificate of

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nonliability has the same force and effect as a receipt showing payment. The certificate of nonliability shall be in a form recordable with the register of deeds and admissible in evidence in the same manner as receipts showing payment of taxes.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993;—Am. 1998, Act 277, Imd. Eff. July 27, 1998.

Popular name: Inheritance Tax

205.251 Discharge of liability.

Sec. 51. If a receipt for the payment of taxes or a certificate of nonliability for taxes has not been issued or recorded as provided for in this act, the property constituting the estate of the decedent in this state is considered discharged of all liability for taxes under this act 20 years from the date of the decedent's death.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993.

Compiler's note: Former MCL 205.251, deriving from Act 298 of 1909 which pertained to collection of inheritance taxes, was repealed by Act 256 of 1964, Eff. Aug. 28, 1964.

Popular name: Inheritance Tax

205.252 Disposition of taxes and fees.

Sec. 52. All taxes and fees levied and collected under this act shall be paid into the state treasury to the credit of the general fund.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993.

Popular name: Inheritance Tax

205.253 Tax on personal property.

Sec. 53. A tax shall not be imposed in respect of personal property, except tangible personal property having an actual situs in this state, if 1 of the following applies:

(a) The transferor at the time of the transfer was a resident of a state or territory of the United States, or of any foreign country, that at the time of the transfer did not impose a transfer tax or death tax of any character in respect of personal property of residents of this state, except tangible personal property having an actual situs in that state or territory or foreign country.

(b) If the laws of the state, territory, or country of residence of the transferor at the time of the transfer contained a reciprocal exemption provision under which nonresidents were exempted from transfer taxes or death taxes of every character in respect of personal property, except tangible personal property having an actual situs in that state, territory, or country, provided the state, territory, or country of residence of the nonresidents allowed a similar exemption to residents of the state, territory, or country of residence of the transferor. For the purposes of this section, the District of Columbia and possessions of the United States are considered territories of the United States. As used in this section, "foreign country" and "country" mean both any foreign country and any political subdivision of that country, and either of them of which the transferor was domiciled at the time of his or her death. For the purposes of this section, "tangible personal property" is construed to exclude all property commonly classified as intangible personal property, such as deposits in banks, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in property, evidences of debt, and like incorporeal personal property.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993.

Popular name: Inheritance Tax

205.254 Administration of tax; rules; forms.

Sec. 54. (1) The taxes imposed by this act shall be administered by the revenue division of the department of treasury pursuant to Act No. 122 of the Public Acts of 1941, being sections 205.1 to 205.31 of the Michigan Compiled Laws. If there is a conflict between the provisions of this act and Act No. 122 of the Public Acts of 1941, the provisions of this act apply.

(2) The department may promulgate rules under this act pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, necessary for the administration and enforcement of this act.

(3) The department may prescribe and make available forms considered necessary under this act.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993.

Popular name: Inheritance Tax

205.255 Application of rules of interpretation and construction; “value or gross value of property” explained.

Sec. 55. (1) If not otherwise provided for in this act, the rules of interpretation and construction applicable

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to the internal revenue code shall apply to and be followed in the interpretation of this act.

(2) The value or gross value of property under this act shall be the value of that property as finally determined for federal transfer tax purposes. That value is conclusive and is not subject to challenge in this state.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993.

Popular name: Inheritance Tax

205.256 Additional definitions.

Sec. 56. As used in this act:

(a) "Decedent" means a deceased person and includes, but is not limited to, a testator, grantor, bargainor, vendor, donor, or person who dies intestate.

(b) "Department" means the bureau of revenue of the department of treasury.

(c) "Federal generation-skipping transfer tax" means the tax imposed by chapter 13 of subtitle B of the internal revenue code.

(d) "Federal return" means any United States transfer tax return including federal estate tax returns and generation-skipping tax returns unless the context indicates a similar Michigan tax return.

(e) "Generation-skipping transfer" means every transfer subject to the federal generation-skipping transfer tax in which the original transferor is a resident of this state at the date of the transfer by the original transferor or the property transferred is real or personal property situated in this state.

(f) "Gross estate" means the gross estate determined under the internal revenue code.

(g) "Internal revenue code" means the United States internal revenue code of 1986, in effect on January 1, 1998 or, at the option of the personal representative, in effect on the date of the decedent's death.

(h) "Intangible personal property" means incorporeal personal property including, but not limited to, deposits in banks, negotiable instruments, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in property, evidences of debt, and choses in action generally.

(i) "Nonresident" means an individual who is not a resident.

(j) "Original transferor" means any grantor, donor, trustor, testator, or person who by grant, gift, trust, will, or otherwise, makes a transfer of real or personal property that results in a federal generation-skipping transfer tax.

(k) "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, company, estate, or any other group or combination acting as a unit. Person does not include public corporations.

(*l*) "Personal representative" means the personal representative appointed by the probate court, including an independent personal representative, or, if a personal representative is not acting, then any person who is in the actual or constructive possession of any property included in the gross estate of the decedent or any other person who is required to file a return or pay the taxes due under any provision of this act. A safe and collateral deposit company, trust company, corporation, bank, or other institution is not the personal representative of property held in a safe deposit box or of money or property on deposit if the indicated ownership or registered title denotes ownership by right of survivorship. A safe and collateral deposit company, trust company, corporation, bank, or other institution is the personal representative of property that it is holding if it is a court-appointed personal representative, including an independent personal representative, or, if a personal representative is not acting, if it is holding property in a fiduciary capacity as a trustee or successor trustee.

(m) "Resident" means that term as defined in section 18 of the income tax act of 1967, 1967 PA 281, MCL 206.18. However, nothing in this act diminishes the settling of domiciles of decedents under 1956 PA 173, MCL 205.601 to 205.607.

(n) "Tangible personal property" means corporeal personal property.

(o) "Transfer" means the passing of property or any interest in property, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment.

(p) "Transfer tax" includes an estate, generation-skipping, inheritance, legacy, or succession tax for residents and nonresidents, including aliens.

(q) "United States" when used in a geographical sense includes only the 50 states and the District of Columbia.

History: Add. 1993, Act 54, Imd. Eff. June 3, 1993;—Am. 1994, Act 372, Imd. Eff. Dec. 27, 1994;—Am. 1998, Act 277, Imd. Eff. July 27, 1998.

Popular name: Inheritance Tax

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SEVERANCE TAX ON OIL OR GAS
Act 48 of 1929

AN ACT levying a specific tax to be known as the severance tax upon all producers engaged in the business of severing oil and gas from the soil; prescribing the method of collecting the tax; requiring all producers of such products or purchasers thereof to make reports; to provide penalties; to provide exemptions and refunds; to prescribe the disposition of the funds so collected; and to exempt those paying such specific tax from certain other taxes.

History: 1929, Act 48, Eff. Aug. 28, 1929;—Am. 1965, Act 299, Imd. Eff. July 22, 1965.

The People of the State of Michigan enact:

205.301 Severance tax on oil or gas.

Sec. 1. There is hereby levied upon each producer engaged in the business of severing from the soil, oil or gas, a specific tax to be known as the severance tax.

History: 1929, Act 48, Eff. Aug. 28, 1929;—CL 1929, 3604;—CL 1948, 205.301;—Am. 1965, Act 299, Imd. Eff. July 22, 1965.

205.302 Monthly reports; contents, form.

Sec. 2. (1) Every corporation, association, person, common carrier, pipe line company or common purchaser, who shall receive or purchase or transport any such oil or gas, shall make a report on or before the twenty-fifth day of each month in the form and manner required by the department of revenue, showing the total amount of such oil and gas received, purchased, stored or transported during the preceding month, and the actual market value thereof at the time it is received, purchased, stored or transported, and such other information as may be required by the department.

(2) Each producer, when requested by the department, shall file such report in the form and manner required by the department.

History: 1929, Act 48, Eff. Aug. 28, 1929;—CL 1929, 3605;—CL 1948, 205.302;—Am. 1965, Act 299, Imd. Eff. July 22, 1965.

205.303 Severance tax; rate; computing value of production; payment; lien; withholding; deduction; reimbursement; exception; carbon dioxide secondary or enhanced recovery projects.

Sec. 3. (1) Except as provided in subsections (2), (3), and (4), the severance tax required to be paid by each producer at the time of rendering each monthly report, or by a pipeline company, common carrier, or common purchaser, for and on behalf of a producer, shall be in the amount of 5% of the gross cash market value of the total production of gas or 6.6% of the gross cash market value of the total production of oil during the preceding monthly period, exclusive of the production or proceeds from the production attributable to this state, the government of the United States, or a political subdivision of this state or government of the United States. The value of all production shall be computed as of the time when and at the place where the production was severed or taken from the soil immediately after the severance. Except as otherwise provided in this section, the payment of the severance tax shall be required of each producer. If the production is sold or delivered to a pipeline company and is transported by the pipeline company through lines connected with the oil or gas well of the owner, or of a common purchaser, the pipeline company, or common purchaser shall receive and accept all the oil and gas, subject to a lien, and the pipeline company shall withhold out of the proceeds or price to be paid for the products severed, the proportionate parts of the tax due by the respective owners of the oil and gas at the time of severance and, at the time required for the filing of the monthly reports required in section 2, shall pay to the department of treasury all the tax money collected or withheld. Each pipeline company, common carrier, or common purchaser shall deduct from the purchase price paid to a producer from whom it may receive the oil or gas the amount of the severance tax levied in this section before making the payment. If under the terms of a contract the pipeline company, common carrier, or common purchaser is required to reimburse a producer of oil or gas for the amount of the severance tax or a part of the severance tax, the tax reimbursement shall not be considered a part of the gross cash market value of the total production of the oil or gas.

(2) The severance tax required to be paid by each producer at the time of rendering each monthly report, or by a pipeline company, common carrier, or common purchaser, for and on behalf of a producer, on stripper well crude oil, as defined in former section 8 of the emergency petroleum allocation act of 1973, 15 USC 757 and on crude oil from marginal properties as defined in former part 212, subpart D, of chapter II of title 10 of the code of federal regulations 10 CFR 212.72 to 212.77, shall be in the amount of 4% of the gross cash market value of the total production of the oil, during the preceding monthly period, exclusive of the

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production or proceeds from the production attributable to this state, the government of the United States, or a political subdivision of this state or government of the United States. The value of all production shall be computed as of the time when and at the place where the production was severed or taken from the soil immediately after the severance.

(3) A producer is not required to pay a severance tax on income received from the hydrocarbons produced from devonian or antrim shale qualifying for the nonconventional fuel credit contained in section 45k of the internal revenue code, 26 USC 45k and acquired pursuant to a royalty interest sold by this state under section 503 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503.

(4) For carbon dioxide secondary or enhanced recovery projects approved after March 30, 2014, the severance tax required to be paid by each producer at the time of rendering each monthly report, on oil or gas produced from a carbon dioxide secondary or enhanced recovery project, shall be 4.0% of the gross cash market value for oil and 4.0% of the gross cash market value for gas. This subsection does not apply to a producer convicted of an antitrust violation or conspiracy to commit an antitrust violation that is a crime under the laws of this state.

History: 1929, Act 48, Eff. Aug. 28, 1929;—CL 1929, 3606;—CL 1948, 205.303;—Am. 1965, Act 299, Imd. Eff. July 22, 1965;—Am. 1975, Act 5, Imd. Eff. Mar. 25, 1975;—Am. 1979, Act 198, Eff. Jan. 1, 1980;—Am. 1996, Act 135, Imd. Eff. Mar. 19, 1996;—Am. 2014, Act 82, Imd. Eff. Apr. 1, 2014.

205.304 Production record, keeping, open to inspection; penalty.

Sec. 4. Each corporation, association or person mentioned and included in sections 1 and 2 of this act shall make, keep and preserve a full and complete record of all such oil produced in this state during the time so engaged in its production, and said record shall be open at all times to the inspection of the Michigan tax commission. Any corporation, association or person failing to comply with this requirement shall be subject to a penalty of not less than 500 and not more than 1,500 dollars payable to the state of Michigan, and such penalty shall accrue for each 20 days of failure to comply with this section with reference to each separate oil or gas well.

History: 1929, Act 48, Eff. Aug. 28, 1929;—CL 1929, 3607;—CL 1948, 205.304.

205.305 Report, contents.

Sec. 5. In each report required to be made by this act, such corporation, association or person making the same shall show in detail the disposition made of any such oil or gas. Said report shall show to whom any such oil or gas was sold or delivered to each, and shall show the name and location of the person, refinery, pipe line establishment, plant, factory, railroad, institution or place to which or to whom delivery was made.

History: 1929, Act 48, Eff. Aug. 28, 1929;—CL 1929, 3608;—CL 1948, 205.305.

205.306 Administration of tax; conflicting provisions; rules; statute of limitations; assignment of claim against state prohibited.

Sec. 6. (1) The tax imposed by this act shall be administered by the revenue commissioner of the department of treasury, under Act No. 122 of the Public Acts of 1941, as amended, being sections 205.1 to 205.19 of the Michigan Compiled Laws, and this act. In case of conflict between Act No. 122 of the Public Acts of 1941, as amended, and this act, the provisions of this act shall prevail.

(2) Rules shall be promulgated under this act pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

(3) A deficiency, interest, or penalty shall not be assessed after the expiration of 4 years after the date set for the filing of the required return or the date the return was filed, whichever is later. The taxpayer shall not claim refund of any amount paid to the department after the expiration of 4 years after the date of the payment. A taxpayer shall not assign a claim against the state to any other person. If a person subject to tax under this act fraudulently conceals any liability for the tax or a part of the tax, the commissioner, upon discovery of the fraud and within 2 years thereafter, shall proceed to assess the tax with penalties and interest as provided, computed from the date on which the tax liability originally accrued and the tax, penalties, and interest shall become due and payable after notice and hearing as provided.

(4) The running of the statute of limitations shall be suspended for:

(a) The period pending a final determination of tax after issuance of a notice of intent.

(b) A period which the taxpayer and the commissioner consent to in writing.

History: 1929, Act 48, Eff. Aug. 28, 1929;—CL 1929, 3609;—CL 1948, 205.306;—Am. 1975, Act 5, Imd. Eff. Mar. 25, 1975;—Am. 1980, Act 166, Eff. Sept. 17, 1980.

205.307-205.309 Repealed. 1980, Act 166, Eff. Sept. 17, 1980.

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Compiler's note: The repealed sections pertained to failure to file return, report, or remittance, and to liens.

205.310 Injunction.

Sec. 10. Upon a bill being filed under the direction of the attorney general in the circuit court for the county of Ingham, that court shall have power to restrain by injunction, any corporation, association or person who has failed to comply with any of the provisions of this act and in the same manner to restrain any corporation, association or person from continuing to produce oil or gas while delinquent in the filing of any report or the paying of any tax, penalty or cost required under the provisions of this act.

History: 1929, Act 48, Eff. Aug. 28, 1929;—CL 1929, 3613;—CL 1948, 205.310.

205.311 “Oil” and “gas” defined.

Sec. 11. (1) The word "oil" as used in this act means petroleum oil, mineral oil, or other oil taken from the earth.

(2) "Gas" as used in this act does not include methane gas extracted from a landfill.

History: 1929, Act 48, Eff. Aug. 28, 1929;—CL 1929, 3614;—CL 1948, 205.311;—Am. 1989, Act 126, Imd. Eff. June 28, 1989.

205.311a "Carbon dioxide secondary or enhanced recovery project" defined.

Sec. 11a. As used in this act, "carbon dioxide secondary or enhanced recovery project" means operations designed to increase the amount of oil or gas recoverable from a reservoir by injection of carbon dioxide, either alone or as a primary component of a mixture with other substances, provided the project has been approved as a secondary or enhanced recovery project by order of the supervisor of wells under the authority of part 615 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.61501 to 324.61527, or part 617 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.61701 to 324.61738.

History: Add. 2014, Act 82, Imd. Eff. Apr. 1, 2014.

205.312 “Person” and “producer” defined.

Sec. 12. (1) "Person" as used in this act shall include any person, firm, concern, receiver, receivers, trustee, executor, administrator, agent, institution, association, partnership, company, corporations, and persons acting under declarations of trust.

(2) "Producer" as used in this act means a person who owns, or is entitled to delivery of a share in kind or a share of the monetary proceeds from the sale of, gas or oil as of the time of its production or severance.

History: 1929, Act 48, Eff. Aug. 28, 1929;—CL 1929, 3615;—CL 1948, 205.312;—Am. 1965, Act 299, Imd. Eff. July 22, 1965.

205.313 Receipt; contents.

Sec. 13. Any corporation, association or person paying any tax, penalty or cost under the provisions of this act, to the state tax commission shall be entitled to a receipt for the same, showing the time of payment and the purpose for which paid.

History: 1929, Act 48, Eff. Aug. 28, 1929;—CL 1929, 3616;—CL 1948, 205.313.

205.314 Taxes to accompany report; disposition of taxes, penalties, and costs; payment of credits for heating fuel costs.

Sec. 14. (1) All taxes shall accompany the report provided for in section 2. Except as provided in subsection (2), all taxes, penalties, or costs paid to the state treasurer under this act shall be paid into the state treasury and shall be credited as follows:

(a) Two percent of the revenue received during each fiscal year, but not less than $1,000,000.00 shall be credited to the orphan well fund created in the orphan well fund act. However, whenever the unexpended balance of the orphan well fund exceeds $3,000,000.00, further revenues shall not be credited to the orphan well fund under this subdivision until the unexpended balance of the orphan well fund becomes less than $3,000,000.00.

(b) The remaining revenue received during each fiscal year that is not allocated pursuant to subdivision (a) shall be credited to the general fund of the state and shall be available for any purpose for which the general fund is made available by law.

(2) The revenue collected under subsection (1) in excess of $16,000,000.00, shall be deposited in the general fund and shall be allocated for the payment of credits for heating fuel costs provided under section 527a of Act No. 281 of the Public Acts of 1967, being section 206.527a of the Michigan Compiled Laws, for the fiscal year ending September 30, 1980 only.

History: 1929, Act 48, Eff. Aug. 28, 1929;—CL 1929, 3617;—Am. 1939, Act 124, Imd. Eff. May 23, 1939;—Am. 1941, Act 301,

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Eff. Jan. 10, 1942;—Am. 1947, Act 321, Imd. Eff. July 1, 1947;—CL 1948, 205.314;—Am. 1979, Act 198, Eff. Jan. 1, 1980;—Am. 1994, Act 307, Eff. Oct. 1, 1994.

205.315 In lieu of other taxes; exceptions.

Sec. 15. The severance tax herein provided for shall be in lieu of all other taxes, state or local, upon the oil or gas, the property rights attached thereto or inherent therein, or the values created thereby; upon all leases or the rights to develop and operate any lands of this state for oil or gas, the values created thereby and the property rights attached to or inherent therein: Provided, however, Nothing herein contained shall in anywise exempt the machinery, appliances, pipe lines, tanks and other equipment used in the development or operation of said leases, or used to transmit or transport the said oil or gas: And provided further, That nothing herein contained shall in anywise relieve any corporation or association from the payment of any franchise or privilege taxes required by the provisions of the state corporation laws.

History: 1929, Act 48, Eff. Aug. 28, 1929;—CL 1929, 3618;—CL 1948, 205.315.

205.316 Repealed. 1980, Act 166, Eff. Sept. 17, 1980.

Compiler's note: The repealed section pertained to overpayments.

205.317 Information as to production; availability, conditions.

Sec. 17. The department of revenue may provide information to any person as to the quantities of oil or gas purchased or reported when the department is satisfied that the information will be used for public or petroleum industry educational or research purposes.

History: Add. 1965, Act 299, Imd. Eff. July 22, 1965.

BRANCH OR CHAIN STORE OR COUNTERS
Act 265 of 1933

205.401-205.413 Repealed. 1968, Act 193, Eff. Mar. 31, 1969.

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TOBACCO PRODUCTS TAX ACT
Act 327 of 1993

AN ACT to provide for a tax upon the sale and distribution of tobacco products; to regulate and license manufacturers, wholesalers, secondary wholesalers, vending machine operators, unclassified acquirers, transportation companies, transporters, and retailers of tobacco products; to prescribe the powers and duties of the revenue division and the department of treasury in regard to tobacco products; to provide for the administration, collection, and disposition of the tax; to levy an assessment; to provide for the administration, collection, defense, and disposition of the assessment; to provide for the enforcement of this act; to provide for the appointment of special investigators as peace officers for the enforcement of this act; to prescribe penalties and provide remedies for the violation of this act; to make and supplement appropriations; and to repeal acts and parts of acts.

History: 1993, Act 327, Eff. Mar. 15, 1994;—Am. 1997, Act 187, Imd. Eff. Dec. 30, 1997;—Am. 2003, Act 285, Imd. Eff. Jan. 8, 2004;—Am. 2012, Act 188, Imd. Eff. June 20, 2012.

The People of the State of Michigan enact:

205.421 Short title.

Sec. 1. This act shall be known and may be cited as the "tobacco products tax act".

History: 1993, Act 327, Eff. Mar. 15, 1994.

205.422 Definitions.

Sec. 2. As used in this act:

(a) "Cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco. Cigar does not include a cigarette.

(b) "Cigarette" means a roll for smoking or heating that is made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, which roll has a wrapper or cover made of paper or any other material. Cigarette does not include cigars.

(c) "Cigarette making machine" means any machine or other mechanical device that meets all of the following criteria:

(*i*) Is capable of being loaded with loose tobacco, cigarette tubes or cigarette papers, and any other components related to the production of cigarettes, including, but not limited to, cigarette filters.

(*ii*) Is designed to automatically or mechanically produce, roll, fill, dispense, or otherwise generate cigarettes.

(*iii*) Is commercial-grade or otherwise designed or suitable for commercial use.

(*iv*) Is designed to be powered or otherwise operated by a main or primary power source other than human power.

(d) "Container" or "shipping case" means an individual receptacle within which a tobacco product or group of tobacco products is placed for shipment, storage, or distribution, such as a box, case, or tote. A container or shipping case does not include any of the following:

(*i*) An individual package of cigarettes or cigarette carton containing cigarettes that are not counterfeit cigarettes.

(*ii*) Except for counterfeit cigarettes, the package or other article containing the tobacco product that is sold or transferred directly to the ultimate consumer.

(*iii*) A bag or similar package containing bulk or loose hookah tobacco, pipe tobacco, or roll-your-own cigarette tobacco that a retailer uses to fill bins, barrels, or tubs located at the retailer's place of business from which either the retailer sells a specified quantity of those tobacco products or a blend or mixture of those tobacco products to the consumer, or the consumer removes or draws a specified quantity of those tobacco products or a blend or mixture of those tobacco products for purchase at retail from the retailer.

(*iv*) A pallet or similar article or device upon which an individual receptacle or group of receptacles, containing the tobacco products, is placed for shipment, storage, or distribution.

(*v*) Property used as a protective covering for, or to keep together during shipment, storage, or distribution, a receptacle or group of receptacles within which the tobacco product is placed for shipment, storage, or distribution including shrink wrap or other wrapping materials, but excluding the protective covering that forms, gives shape to, or otherwise constitutes the receptacle within which the tobacco product is placed for shipment, storage, or distribution.

(e) "Counterfeit cigarette" means a cigarette in an individual package of cigarettes or other container with a

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false manufacturing label or a cigarette in an individual package of cigarettes or other container with a counterfeit stamp.

(f) "Counterfeit cigarette paper" means a cigarette paper with a false manufacturing label or that has not been printed, manufactured, or made by authority of the trademark owner.

(g) "Counterfeit stamp" means any stamp, label, or print, indicium, or character, that evidences, or purports to evidence, the payment of any tax levied under this act and that has not been printed, manufactured, or made by authority of the department as provided in this act and has not been issued, sold, or circulated by the department.

(h) "Department" means the department of treasury.

(i) "Financially sound" means a determination by the department that the wholesaler or unclassified acquirer is able to pay the tax due on the tobacco products it sells, imports, or acquires, as applicable, in the ordinary course of business based on criteria including, but not limited to, all of the following:

(*i*) Past filing and payment history with the department.

(*ii*) Outstanding liabilities.

(*iii*) Review of current financial statements including, but not limited to, balance sheets and income statements.

(*iv*) Duration that the wholesaler or unclassified acquirer has been licensed under this act.

(*v*) Ability to pay for its stamps, if required under this act.

(j) "Gray market cigarette" means any cigarette the package of which bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including, but not limited to, a label stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording.

(k) "Gray market cigarette paper" means any cigarette paper the package of which bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarette papers to be sold, distributed, or used in the United States, including, but not limited to, a label stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", "For Use in _____ (another country) Only", or similar wording.

(*l*) "Hookah tobacco" means tobacco that is designed, manufactured, or otherwise intended for consumption by smoking in a hookah and that is flavored with honey, molasses, fruit, or other natural or artificial flavors. Hookah tobacco includes those products commonly known or referred to as narghile, argileh, shisha, hubble-bubble, molasses tobacco, waterpipe tobacco, maassel, or goza.

(m) "Hookah" means a device, including a waterpipe, used for smoking hookah tobacco that consists of a tube connected to a chamber where the smoke is cooled passing through water.

(n) "Individual package" means an individual packet or pack used to contain or to convey cigarettes to the consumer. Individual package does not include cartons, cases, or shipping or storage containers that contain smaller packaging units of cigarettes.

(o) "Licensee" means a person licensed under this act.

(p) "Manufacturer" means, except as otherwise provided in subdivision (q), any of the following:

(*i*) A person who manufactures or produces a tobacco product.

(*ii*) A person who operates or who permits any other person to operate a cigarette making machine in this state for the purpose of producing, filling, rolling, dispensing, or otherwise generating cigarettes. A person who is a manufacturer under this subparagraph constitutes a nonparticipating manufacturer for purposes of sections 6c and 6d.

(q) Manufacturer does not include any of the following:

(*i*) A person who operates or otherwise uses a machine or other mechanical device, other than a cigarette making machine, to produce, roll, fill, dispense, or otherwise generate cigarettes as long as the cigarettes are produced or otherwise generated in that person's dwelling and for that person's self-consumption. As used in this subparagraph and subparagraph (*ii*), "self-consumption" means production for personal consumption or use and not for sale, resale, or any other profit-making endeavor.

(*ii*) A person who does any of the following:

(A) Mixes or blends 2 or more different tobacco products to create a custom mix or blend of those products if each of the constituent tobacco products mixed or blended together is a finished tobacco product that the person could or does otherwise sell to consumers and upon which the tax under this act has been paid.

(B) Creates or produces, by filling a fruit with hookah tobacco, what is commonly known as a fruit bowl or fruit head for use in a hookah.

(C) Rolls a cigar for his or her own self-consumption.

(r) "Noncigarette smoking tobacco" means tobacco sold in loose or bulk form that is intended for consumption by smoking and also includes roll-your-own cigarette tobacco, hookah tobacco, pipe tobacco, or

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a wrap.

(s) "Person" means an individual, partnership, fiduciary, association, limited liability company, corporation, or other legal entity.

(t) "Pipe tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to smoke in a pipe.

(u) "Place of business" means a place where a tobacco product is sold or where a tobacco product is brought or kept for the purpose of sale or consumption, including a vessel, airplane, train, or vending machine.

(v) "Remote retail sale" means a sale of a tobacco product to a consumer in this state if either of the following applies:

(*i*) The consumer submits the order for the sale by means of a telephone or other method of voice transmission, the mail, or the internet or other online service, or the seller is otherwise not in the physical presence of the purchaser when the request for purchase or order is made.

(*ii*) The tobacco product is delivered to the purchaser by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the purchaser when the purchaser obtains possession of the tobacco product.

(w) "Retailer" means a person other than a transportation company who operates a place of business in this state, or who directs, manages, or has control over the day-to-day operations of a place of business in this state, for the purpose of making, or who does make, sales of a tobacco product at retail other than a remote retail sale. A person described in this subdivision qualifies as a retailer regardless of whether that person owns the place of business.

(x) "Roll-your-own cigarette tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

(y) "Sale" means a transaction by which the ownership of tangible personal property is transferred for consideration and applies also to use, gifts, exchanges, barter, and theft.

(z) "Secondary wholesaler" means either of the following:

(*i*) A person, other than a manufacturer or a person licensed under this act as a vending machine operator, wholesaler, or unclassified acquirer, who engages in the sale of a tobacco product for resale.

(*ii*) A retailer, not otherwise licensed under this act, who transfers or exchanges a tobacco product from one place of business of the retailer to another place of business of the retailer.

(aa) "Smokeless tobacco" means snuff, snus, chewing tobacco, moist snuff, and any other tobacco that is intended to be used or consumed, whether chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested, by any means other than smoking or combustion.

(bb) "Stamp" means a distinctive character, indication, or mark, as determined by the department, attached or affixed to an individual package of cigarettes by mechanical device or other means authorized by the department to indicate that the tax imposed under this act has been paid.

(cc) "Stamping agent" means a wholesaler or unclassified acquirer who is licensed and authorized by the department to affix stamps to individual packages of cigarettes on behalf of themselves and other wholesalers or unclassified acquirers.

(dd) "Tobacco product" means a product containing any amount of tobacco regardless of form including, but not limited to, cigarettes, cigars, noncigarette smoking tobacco, or smokeless tobacco. A tobacco product does not include drugs, devices, or combination products authorized for sale as tobacco cessation products by the United States Food and Drug Administration, as those terms are defined in subchapter V of the federal food, drug, and cosmetic act, 21 USC 351 to 360fff-8.

(ee) "Transportation company" means a person operating, or supplying to common carriers, cars, boats, or other vehicles for the transportation or accommodation of passengers and engaged in the sale of a tobacco product at retail.

(ff) "Transporter" means a person importing or transporting into this state, or transporting in this state, a tobacco product obtained from a source located outside this state, or from any person not duly licensed under this act. Transporter does not include an interstate commerce carrier licensed by the Interstate Commerce Commission, or its successor federal agency, to carry commodities in interstate commerce, or a licensee maintaining a warehouse or place of business outside of this state if the warehouse or place of business is licensed under this act.

(gg) "Unclassified acquirer" means a person, except a transportation company or a purchaser at retail from a retailer licensed under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, who imports or acquires a tobacco product from a source other than a wholesaler or secondary wholesaler licensed under this act for use, sale, or distribution in this state. Unclassified acquirer also means a person who purchases or

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receives tobacco products directly from a manufacturer licensed under this act or from another source outside this state, which source is not licensed under this act. An unclassified acquirer also includes a person not located in this state that sells a tobacco product, through a mail order, catalog sale, telephone order, internet sale, or any other means, to a retailer or other person in this state that is not licensed under this act as a wholesaler, unclassified acquirer, or secondary wholesaler. Unclassified acquirer also includes a person located within or outside of this state that makes a remote retail sale of a tobacco product to a consumer in this state. An unclassified acquirer does not include a wholesaler.

(hh) "Vending machine operator" means a person who operates 1 or more vending machines in this state for the sale of a tobacco product.

(ii) "Wholesale price" means the actual price paid to a seller for a tobacco product, by a wholesaler or unclassified acquirer to acquire that tobacco product from the seller. The wholesale price includes any tax, fee, licensing, or other charge, except as otherwise provided in this subdivision, reflected on the invoice, bill of sale, purchase order, or other document evidencing the sale or purchase of the tobacco product. Wholesale price does not include, if separately stated on the invoice, bill of sale, purchase order, or other document evidencing the sale of the tobacco product, shipping or handling charges for cigarettes, and reasonable shipping or handling charges for tobacco products other than cigarettes such as transportation, shipping, postage, handling, crating, or packing. If items or products, other than tobacco products, are included in a transaction for the purchase of tobacco products by a wholesaler or unclassified acquirer, charges for those products or items that are not tobacco products, including shipping and handling charges, may be excluded from the wholesale price if separately stated on the invoice, bill of sale, purchase order, or other document evidencing the sale or purchase. The wholesale price shall not be reduced due to any rebate, trade allowance, licensing or exclusivity agreement, volume or other discount, or any other reduction given by the seller or passed on to or otherwise received by the wholesaler or unclassified acquirer from the seller. If the wholesaler or unclassified acquirer fails to keep or maintain the records as required under section 6, or has a relationship as described in section 267(b) of the internal revenue code of 1986, 26 USC 267, with the seller, the department may establish the wholesale price for the tobacco products based on the best available information or any other reasonable proxy for the wholesale price including, but not limited to, the wholesale price paid by other taxpayers for those tobacco products within the past 4 years. If an unclassified acquirer makes a remote retail sale and fails to keep or maintain the records required under section 6 for the remote retail sale, the department may determine the wholesale price of the tobacco product sold to the consumer in that remote retail sale based on the average price paid, during the immediately preceding calendar year, by the unclassified acquirer to acquire or purchase the same type of tobacco product if that information is made available to the department by the unclassified acquirer.

(jj) "Wholesaler" means a person who purchases all or part of its tobacco products from a manufacturer and who sells 75% or more of those tobacco products to others for resale. Wholesaler includes a chain of stores retailing a tobacco product to the consumer if 75% of its stock of tobacco products is purchased directly from the manufacturer.

(kk) "Wrap" means an individual tobacco wrapper that is made wholly or in part from tobacco, including reconstituted tobacco, whether in the form of tobacco leaf, sheet, or tube, if the wrap is designed to be offered, or is offered, for sale to consumers to create or to use as a component part of a tobacco product.

History: 1993, Act 327, Eff. Mar. 15, 1994;—Am. 1997, Act 187, Imd. Eff. Dec. 30, 1997;—Am. 2004, Act 474, Imd. Eff. Dec. 28, 2004;—Am. 2005, Act 238, Eff. Jan. 1, 2006;—Am. 2012, Act 188, Imd. Eff. June 20, 2012;—Am. 2020, Act 326, Eff. Jan. 1, 2022;—Am. 2022, Act 171, Imd. Eff. July 21, 2022.

205.423 Purchase, possession, importation, acquisition for resale or sale of tobacco product; remote retail sale; unclassified acquirer; license required; fees; disc or marker attached to vending machine; proof to be furnished with application; surety bond; financial statement; display of license; secondary wholesaler, vending machine operator, and wholesaler requirements.

Sec. 3. (1) Except as otherwise provided in section 3a and section 6(15), a person shall not purchase, possess, acquire for resale, import, or sell a tobacco product as a manufacturer, wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, transportation company, or transporter in or into this state unless licensed to do so. A person shall not make a remote retail sale to a consumer in this state unless that person is licensed under this act as an unclassified acquirer. A license granted under this act is not assignable.

(2) Upon proper application and the payment of the applicable fee, and subject to subsection (6), the department shall issue a license to each manufacturer, wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, transportation company, or transporter. The application must be on a form

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prescribed by the department and signed under penalty of perjury. The application must state the applicant's regular business hours. Except for transportation companies, each place of business must be separately licensed. If a person acts in more than 1 capacity at any 1 place of business, a license must be procured for each capacity. Each machine for vending tobacco products is considered a place of retail business. Each license or a duplicate copy must be prominently displayed on the premises covered by the license. In the case of vending machines, a disc or marker furnished by the department showing it to be licensed must be attached to the front of the machine in a place clearly visible to the public. For unclassified acquirers that do not maintain a place of business where tobacco products are sold, brought, or kept, the department may issue a license based on the physical address of the applicant's nonresidential building, office, or other facility where the records required under this act are to be kept and maintained.

(3) The fees for licenses are as follows:

(a) A wholesaler's license, $100.00.

(b) A secondary wholesaler's license, $25.00.

(c) A license for vending machine operators, $25.00.

(d) An unclassified acquirer's license, as follows:

(*i*) State of Michigan, no fee.

(*ii*) Retail importer of tobacco products other than cigarettes, $10.00.

(*iii*) Retail importer of cigarettes, $100.00.

(*iv*) Vending machine operator buying direct from a manufacturer, $100.00.

(*v*) Any other importer, $100.00.

(e) A transportation company's license, $5.00.

(f) A transporter's license, $50.00.

(g) A manufacturer's license, $100.00.

(4) If a manufacturer, wholesaler, secondary wholesaler, or vending machine operator maintains more than 1 place of business, the fee for each additional place of business is 1/4 of the fee otherwise prescribed in subsection (3). A fee, or a part of a fee, shall not be refunded by reason of relinquishment, suspension, or revocation of the license, or, except under order of a court of competent jurisdiction, for any other reason or cause.

(5) A person shall not possess a machine for vending tobacco products for a period in excess of 72 hours, or operate a machine for vending tobacco products, unless there is a disc or marker attached as provided by this section. This requirement does not apply to a machine not containing or used in selling a tobacco product. If a person possesses or operates a vending machine containing or used in selling a tobacco product that is not properly licensed or identified as required by this section, the department may seal or seize the machine, together with any tobacco products contained in the machine. The provisions of section 9 govern the seizure and subsequent disposition of a machine or tobacco product seized.

(6) Applications from persons applying for an initial license under this act must be accompanied by satisfactory proof, as determined by the department, of all the following:

(a) The applicant's financial responsibility, including but not limited to, satisfactory proof of a minimum net worth of $25,000.00.

(b) That the applicant owns, or has an executed lease for, a secure nonresidential facility for the purpose of receiving, storing, and distributing tobacco products, if applicable, and conducting its business in accordance with this act if the applicant owns or has an executed lease for such a facility. If the applicant carries on another business in conjunction with the secure nonresidential facility, the other business must also be identified.

(c) United States citizenship or eligibility to obtain employment within the United States if not a citizen. If the applicant is not an individual, the controlling shareholders, partners, directors, and principal officers shall be United States citizens or eligible to obtain employment within the United States if not a citizen.

(7) The department may require an applicant who is purchasing the business of a licensee to file a copy of the contract of sale and any related documents with its application. The department may require a licensee under this section to furnish a surety bond with a surety company authorized to do business in this state in an amount the department may fix, conditioned upon the payment of the tax provided by this act. The department may also require a licensee under this section to file a financial statement with the department showing all assets and liabilities and any other information the department may prescribe, to be filed within 30 days after the date requested. If there is a change of more than 50% of ownership or control or a change in the general partnership of a licensee, the department may require that licensee to file a new application for a license or an updated financial statement.

(8) Each place of business of a retailer, and any place of business or other nonresidential building, office, or facility licensed under this section, must display the name and address of the retailer or licensee in a

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manner that is readily visible to the general public from outside the place of business, nonresidential building, office, or facility, as applicable.

(9) Notwithstanding anything in this act to the contrary, the following requirements apply to a secondary wholesaler, vending machine operator, or wholesaler, as applicable:

(a) A secondary wholesaler may purchase or acquire a tobacco product for resale in this state only if that purchase or acquisition is directly from a wholesaler or unclassified acquirer that is licensed under this act and the tax imposed under this act has been paid on that tobacco product.

(b) Except for a secondary wholesaler described in section 2(z)(*ii*), a secondary wholesaler shall maintain an established place of business in this state where a substantial portion of the business is the sale of tobacco products and related merchandise at wholesale and where, at all times, a substantial stock of tobacco products and related merchandise is available for sale to retailers for resale.

(c) A wholesaler shall maintain an established place of business in this state where substantially all of the business is the sale of tobacco products and related merchandise at wholesale and where, at all times, a substantial stock of tobacco products and related merchandise is available for sale to retailers for resale.

(d) A vending machine operator may purchase a tobacco product only from a secondary wholesaler, a wholesaler, or an unclassified acquirer that is licensed under this act.

History: 1993, Act 327, Eff. Mar. 15, 1994;—Am. 1997, Act 187, Imd. Eff. Dec. 30, 1997;—Am. 2022, Act 171, Imd. Eff. July 21, 2022.

205.423a Sale of tobacco product by creditor with security interest; application; "creditor" and "security interest" defined.

Sec. 3a. (1) A creditor that acquires a tobacco product in this state as a result of exercising a security interest may sell that tobacco product without being licensed under this act if both of the following requirements are met:

(a) The creditor receives written approval from the department.

(b) The creditor sells or transfers the tobacco product to a person in this state licensed under this act as either a wholesaler or unclassified acquirer.

(2) A creditor shall apply for approval under this section on a form and in a manner prescribed by the department.

(3) As used in this section, "creditor" and "security interest" mean those terms as defined in section 1201 of the uniform commercial code, 1962 PA 174, MCL 440.1201.

History: Add. 2022, Act 171, Imd. Eff. July 21, 2022.

205.424 Expiration, return, reissue, and renewal of license.

Sec. 4. Each license issued under section 3 expires on the June 30 next succeeding the date of issuance unless revoked by the department, unless the business for which the license was issued changes ownership, or unless the holder of the license removes the business from the location covered by the license. Upon expiration of the license, revocation of the license, change of ownership of the business, or removal of the business from the location covered by the license, the holder of the license immediately shall return the license to the department. If a business moves to another location, the license may be reissued for the new location for the balance of the unexpired term without payment of an additional fee. The holder of each license may renew that license for another 1-year period by filing an application accompanied by the applicable fee with the department before the expiration date of that license.

History: 1993, Act 327, Eff. Mar. 15, 1994;—Am. 2022, Act 171, Imd. Eff. July 21, 2022.

205.425 Failure to comply with act; suspension, revocation, or refusal to issue or renew license; hearing.

Sec. 5. (1) The department may suspend, revoke, or refuse to issue or renew a license issued under this act for failure to comply with this act or for any other good cause. A person whose license is suspended, revoked, or not renewed shall not act as a stamping agent or acquire a stamp from the department or any other person, or sell a tobacco product during the period of suspension or revocation, or until the license is renewed.

(2) If a person who is a manufacturer, wholesaler, or unclassified acquirer licensed under this act is convicted of a felony under any provision of this act, the department shall revoke any license issued under this act to that person.

(3) Before the department suspends, revokes, or refuses to renew a license under this act, the department shall notify the person of its intent to hold a hearing before a representative of the state treasurer for purposes of determining whether to suspend, revoke, or refuse to renew a license not less than 14 days before the scheduled hearing date.

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(4) A person aggrieved by the suspension, revocation, or refusal to issue or renew a license may apply to the department for a hearing within 20 days after notice of the suspension, revocation, or refusal to issue or renew the license. A hearing must be held in the same manner provided in section 21 of 1941 PA 122, MCL 205.21. The decision in case of suspension, revocation, or refusal to renew must be issued within 45 days of receipt of the request for hearing.

History: 1993, Act 327, Eff. Mar. 15, 1994;—Am. 1997, Act 187, Imd. Eff. Dec. 30, 1997;—Am. 2022, Act 171, Imd. Eff. July 21, 2022.

205.425a Procurement of stamps; designs, denominations, and forms; request for proposal.

Sec. 5a. (1) The department shall procure stamps as needed in the various designs, denominations, and forms necessary as determined by the department. The department shall pay for the stamps.

(2) Not later than August 4, 2012, the department shall issue a request for proposal to acquire and use digital stamps that contain a unique nonrepeating code that can be read by a device that identifies the taxed product and also contain other security and enforcement features as determined by the department. The request for proposal must include a provision that requires the successful bidder on the proposal to share digital stamp technology so that handheld devices, including, but not limited to, smartphones, can be readily utilized in furtherance of the implementation of the use of digital stamps and so that the technology and equipment used by the stamping agents to affix the stamp to the product can be supplied, as may be permitted by the department, by the successful bidder on the proposal or by any other providers. The request for proposal must also include a provision permitting the department to manage or restrict access rights to all or part of the information contained within, or accessible from, the stamps and a provision requiring the successful bidder on the proposal to guarantee that the stamps will be designed and manufactured to ensure that stamps can be affixed to individual packages of cigarettes in accordance with the requirements under section 6a(2) and (3).

History: Add. 1997, Act 187, Imd. Eff. Dec. 30, 1997;—Am. 2012, Act 188, Imd. Eff. June 20, 2012;—Am. 2022, Act 171, Imd. Eff. July 21, 2022.

205.425b Advising stamping agents of license suspension, revocation, nonrenewal, or reinstatement; disclosure of information.

Sec. 5b. The department shall advise all stamping agents of all persons licensed under this act and any manufacturer, wholesaler, secondary wholesaler, unclassified acquirer, or other person whose license is suspended, revoked, or not renewed under this act. The department shall advise all stamping agents of any person whose license is reinstated. A stamping agent shall not disclose licensing information provided to the agent by the department. The department may disclose whether a person holds a license under this act.

History: Add. 1997, Act 187, Imd. Eff. Dec. 30, 1997.

205.426 Records and statements; markings required on shipping case, box, or container; examination of records; invoices or bills of lading in possession of transporter; transporter license required; exceptions.

Sec. 6. (1) A manufacturer, wholesaler, secondary wholesaler, vending machine operator, transportation company, unclassified acquirer, or retailer shall keep a complete and accurate record of each tobacco product manufactured, purchased, or otherwise acquired. Except for a manufacturer, the records must include a written statement containing the name and address of both the seller and the purchaser, the date of delivery, the quantity, the trade name or brand, and the price paid for each tobacco product purchased or otherwise acquired. Except as otherwise provided in this section, a licensee shall keep as part of the records a true copy of all purchase orders, invoices, bills of lading, and other written matter substantiating the purchase or acquisition of each tobacco product at the location where the tobacco product is stored or offered for sale. For an unclassified acquirer that does not maintain a place of business where tobacco products are sold, brought, or kept, the records required by this section must be kept at the physical address licensed under section 3. A retailer shall keep as part of the records a true copy of all purchase orders, invoices, bills of lading, and other written matter substantiating the purchase or acquisition of each tobacco product and related to any tobacco products subject to subsection (15), if applicable, at the location where the tobacco product is offered for sale for a period of 4 months from the date of purchase or acquisition. The department may, by giving prior written approval, authorize a person licensed under this act or a retailer to maintain records in a manner other than that required by this subsection. Other records shall be kept by these persons as the department reasonably prescribes.

(2) A manufacturer, wholesaler, unclassified acquirer, and secondary wholesaler shall deliver with each sale or consignment of a tobacco product a written statement containing the name or trade name and address

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of both the seller and the purchaser, the date of delivery, the quantity, and the trade name or brand of the tobacco product, correctly itemizing the prices paid for each brand purchased, and shall retain a duplicate of each statement.

(3) A vending machine operator shall keep a detailed record of each vending machine owned for the sale of tobacco products showing the location of the machine, the date of placing the machine on the location, the quantity of each tobacco product placed in the machine, the date when placed there, and the amount of the commission paid or earned on sales through the vending machine. When filling or refilling the vending machine, the operator shall deliver to the owner or tenant occupying the premises where the machine is located a written statement containing the operator's own name and address, the name and address of the owner or the tenant, the date when the machine was filled, and the quantity of each brand of tobacco product sold from the machine since the date when tobacco products were last placed in the machine. A person in possession of premises where a vending machine is located shall keep a record of each tobacco product sold through the vending machine located on the premises and the amount of commission paid by the person operating the vending machine. The records must consist of written statements required to be given by each person operating a vending machine for the sale of tobacco products as provided in this section.

(4) A licensee under this act shall not issue or accept a written statement or invoice that is known to the licensee to contain a statement or omission that falsely indicates the name of the customer, the type, trade name, or brand of merchandise, the quantity of each type, trade name, or brand of merchandise, the prices, the discounts, the date of the transaction, or the terms of sale. A person shall not use a device or game of chance to aid, promote, or induce sales or purchases of a tobacco product, or give a tobacco product in connection with a device or game of chance.

(5) Except as otherwise provided in subsection (6), all statements and other records required by this section must be in a form prescribed by the department and must be preserved for a period of 4 years from the date of purchase or acquisition of the tobacco product and offered for inspection at any time upon oral or written demand by the department or its authorized agent by every wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, and retailer.

(6) A licensee or retailer in possession or control of a tobacco product that has not preserved the statements and records required by this section because the licensee or retailer claims the tobacco product was purchased or acquired more than 4 years ago has the burden of proving that the tobacco product was purchased or acquired more than 4 years ago. A licensee or retailer that fails to preserve documentation sufficient to meet this burden of proof is in violation of the record-keeping requirements under this section for that tobacco product.

(7) A shipping case or container of a tobacco product other than cigarettes received or acquired within this state by a wholesaler or unclassified acquirer from a manufacturer or any person located outside this state must bear either the name and address of the wholesaler or unclassified acquirer that made the first purchase of that shipping case or container or any other markings the department prescribes. The point at which a shipping case or container is considered to be received or acquired in this state is to be determined based on the facts and circumstances including, but not limited to, all of the following:

(a) Ownership of the shipping case or container when it enters this state's borders or when it is delivered to the wholesaler or unclassified acquirer.

(b) The risk of loss.

(c) The use of a common carrier or a vehicle owned or leased by the wholesaler or unclassified acquirer to import or transport the shipping case or container into this state or deliver the shipping case or container to the wholesaler or unclassified acquirer.

(8) A wholesaler or unclassified acquirer, licensed under this act, shall place or otherwise affix the markings prescribed by the department on every shipping case or container of a tobacco product other than cigarettes that is sold, transferred, shipped, or delivered by the wholesaler or unclassified acquirer to a retailer or another licensee, in this state.

(9) If a marking prescribed by the department is to be affixed to a shipping case or container of tobacco products other than cigarettes by means of a mechanical or other device that applies the marking, the wholesaler or unclassified acquirer must obtain prior approval from the department to purchase, possess, or otherwise be permitted to use such a device. A wholesaler or unclassified acquirer whose license is revoked, is terminated, or has expired shall return all such devices in its possession to the department within 60 days of the revocation, termination, or expiration of its license. In addition to any other fine or any civil or criminal penalty or charge allowed by law, a wholesaler or unclassified acquirer that fails to return each device in its possession as required by this subsection is liable for a fine of $500.00 for each device not timely returned.

(10) The markings required by this section on shipping cases and containers of tobacco products other than cigarettes must not be affixed in a manner that makes the markings illegible or that covers up, in whole or in

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part, or that otherwise obstructs or makes illegible the information or markings described in subsection (7).

(11) If a tobacco product other than cigarettes is found in a place of business or otherwise in the possession of a wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, transporter, or retailer without the markings prescribed by the department or the information required by this section on the shipping case or container of the tobacco product, if required by this section, or if an individual package of cigarettes is found without a stamp affixed as provided under this act or if a tobacco product is found, or was acquired, imported, transferred, or sold, without proper substantiation by invoices or other records as required by this section, the presumption shall be that the tobacco product is kept in violation of this act and constitutes contraband subject to seizure and forfeiture under section 9. Notwithstanding anything in this act to the contrary, if any tobacco product is adjudicated by a court of competent jurisdiction to have been lawfully seized under this act, and if the adjudication of lawful seizure survives the exhaustion or lapse of any appeal rights, the tobacco product shall be automatically forfeited to this state and the person from whom that tobacco product was seized shall be liable for the tax imposed under this act on that tobacco product.

(12) If a tobacco product is to be or is being transported on a public highway, road, or street in this state for shipment outside this state, as indicated by the bills of lading, invoices, packing slips, or other documentation related to that shipment, the licensee shipping the tobacco product shall cause to be placed on every shipping case or container in which the tobacco product is shipped the name and address of the consignee or purchaser to whom the shipment is made outside of the state and, for tobacco products other than cigarettes, the marking prescribed by the department unless the shipping case or other container already bears that marking from the licensee. A tobacco product that was located in this state is considered to have been shipped outside this state for purposes of this subsection if the tobacco product crosses the border of this state regardless of whether the tobacco product is delivered to or accepted by the consignee or purchaser to whom the shipment is made outside this state.

(13) The department may require reports from a common carrier who transports a tobacco product to a point within this state from another person who, under contract, transports a tobacco product, or from a bonded warehouseperson or bailee who has in his or her possession a tobacco product. A carrier, bailee, warehouseperson, or other person shall permit the inspection of the tobacco products and examination by the department or its duly authorized agent of any records relating to the shipment of a tobacco product into, from, or within this state.

(14) Except as otherwise provided in subsection (15), any person transporting, possessing, or acquiring for the purpose of transporting a tobacco product upon a public highway, road, or street of this state shall be licensed under this act as a transporter, unless that person is licensed under this act as an unclassified acquirer, wholesaler, transportation company, vending machine operator, or secondary wholesaler, and shall have in the person's actual possession invoices or bills of lading containing the name and address of both the seller and the purchaser, the actual or estimated date of delivery, the person's name and address, the quantity and trade name or brand of each tobacco product, the price paid for each trade name or brand in the person's possession or custody, and a copy of the license as prescribed under this act.

(15) Notwithstanding anything in this act to the contrary, a retailer in this state, or other person acting on behalf of a retailer in this state, is not required to be licensed under this act to transport a tobacco product upon a public highway, road, or street of this state for the purpose of delivering a tobacco product to a consumer in this state if all of the following conditions are met:

(a) The tobacco product was purchased by the consumer from the retailer at retail.

(b) The consumer has paid for the tobacco product in full before the shipment and delivery of the tobacco product to the consumer.

(c) The retailer or other person making the delivery has in its possession, at all times during which the tobacco product is being transported on a public highway, road, or street of this state, an invoice, receipt, or other documentation substantiating the sale to the consumer that states the name and address of the retailer, the name and address of the consumer, the delivery date, the trade name or brand of the tobacco product, the quantity, and the price paid for the tobacco product.

History: 1993, Act 327, Eff. Mar. 15, 1994;—Am. 1997, Act 187, Eff. Apr. 15, 1998;—Am. 2022, Act 171, Imd. Eff. July 21, 2022.

205.426a Disbursement of stamps to wholesaler or unclassified acquirer; affixing stamp; resale of package or cigarette; inspection or inventory; exchanging or discontinuing unaffixed stamps; accepting, purchasing, or borrowing unaffixed stamps; appointment of stamping agent to affix stamps to individual packages; limitation; inquiries from department of state police.

Sec. 6a. (1) A wholesaler or unclassified acquirer may apply to the department for stamps to affix as

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provided in this act. The department may prescribe the method of shipment of the stamps. The department shall keep a record of all stamps disbursed, name of wholesaler or unclassified acquirer, and date of disbursement. The department may release the identity of the wholesaler or unclassified acquirer to whom specific stamps were disbursed to state or local police agencies.

(2) Except as otherwise provided in this subsection, before delivery, sale, or transfer to any person in this state, a wholesaler or an unclassified acquirer shall place or cause to be placed on the bottom of each individual package of cigarettes to be sold within this state a stamp provided by the department. If approved by the department, a stamp may be placed in a location other than the bottom of each individual package of cigarettes.

(3) Stamps must be firmly affixed in such a manner that the stamps cannot be removed without being mutilated or destroyed. A stamp must be affixed to each individual package in an aggregate denomination equal to the amount of the tax upon the contents of the individual package of cigarettes. A stamp is considered affixed if 90% or more of the stamp is affixed to the individual package.

(4) A retailer or person licensed under this act, other than a wholesaler or unclassified acquirer or a person acting as a transporter for a wholesaler or unclassified acquirer, shall not acquire for resale an individual package of cigarettes or a cigarette from an individual package unless that individual package of cigarettes has affixed to it a stamp as provided in this act.

(5) A retailer or vending machine operator shall not sell or offer for sale an individual package of cigarettes to the general public that does not have affixed the stamp required by this act. An individual package of cigarettes without a stamp may not be sold from, or placed or stored in, a vending machine. Except as otherwise provided by law, a person shall not sell a cigarette separately from its individual package.

(6) The department or its authorized agents may inspect the operations of a wholesaler and an unclassified acquirer for purposes of ensuring compliance with this act and to conduct an inventory of a wholesaler's or unclassified acquirer's stock of cigarettes, tobacco products other than cigarettes, and stamps during regular business hours and inspect the related statements and other records required in section 6. This inspection shall also verify that shipping cases and containers of tobacco products other than cigarettes bear any markings required by this act. An inspection under this section must be conducted during the regular business hours of the wholesaler or unclassified acquirer. Unless otherwise approved by the department, the regular business hours of a wholesaler or unclassified acquirer are those hours disclosed on that wholesaler's or unclassified acquirer's license application as required under section 3.

(7) The department or its authorized agents may inspect the operations of a secondary wholesaler, vending machine operator, or retailer, or the contents of a specific vending machine, during regular business hours. This inspection shall include inspection of all statements and other records required by section 6, of packages of cigarettes and tobacco products other than cigarettes, and of the contents of cartons and shipping or storage containers to ascertain that all individual packages of cigarettes have an affixed stamp of proper denomination as required by this act. This inspection may also verify that all the stamps were produced under the authority of the department and that shipping cases and containers of tobacco products other than cigarettes bear any markings required by this act. Unless otherwise approved by the department, the regular business hours of a secondary wholesaler or vending machine operator are those hours disclosed on that secondary wholesaler's or vending machine operator's license application as required under section 3. The regular business hours of a retailer are those hours that the retailer is open for business as evidenced by the retailer's commercial activity and signage, advertisements, or other information communicated to the general public.

(8) A person shall not prevent or hinder the department or its authorized agents from conducting an inspection authorized by this act.

(9) The department may require wholesalers and unclassified acquirers to exchange unaffixed stamps with the department as the department considers necessary. The department may require wholesalers, unclassified acquirers, secondary wholesalers, vending machine operators and retailers to discontinue offering for sale any unsold individual packages of cigarettes bearing a prior version of the stamp that the department has withdrawn from circulation. The department may set a reasonable timeline after which the prior version of the stamp may no longer be offered for sale and the new version of the stamp is required. A secondary wholesaler, retailer, or vending machine operator may return cigarette packages bearing discontinued stamps to a wholesaler for credit. A wholesaler or unclassified acquirer may take credit on its tax returns for individual packages of cigarettes bearing discontinued stamps that are returned to the manufacturer for credit less the appropriate discount paid.

(10) Except as provided in subsection (11), a wholesaler or unclassified acquirer shall not give, sell, or lend any unaffixed stamps to another person and except as otherwise provided in this act, a person shall not accept, purchase, or borrow any unaffixed stamps from another person.

(11) Upon written authorization of the department, a wholesaler or unclassified acquirer licensed under this

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act may appoint a stamping agent to affix stamps to individual packages of cigarettes.

(12) Stamps may only be affixed to an individual package of cigarettes if the manufacturer of the cigarettes is identified on the lists of participating manufacturers or nonparticipating manufacturers maintained by the department pursuant to sections 6c and 6d.

(13) The department of state police shall initiate inquiries to or otherwise access data from the department to support or in furtherance of its enforcement activities under this act.

History: Add. 1997, Act 187, Imd. Eff. Dec. 30, 1997;—Am. 2012, Act 188, Imd. Eff. June 20, 2012;—Am. 2022, Act 171, Imd. Eff. July 21, 2022.

205.426b Issuance of stamps to wholesaler or unclassified acquirer.

Sec. 6b. (1) Upon proper request in the form and manner prescribed by the department, a wholesaler or unclassified acquirer may obtain stamps from the department.

(2) The department shall not issue any stamps to a wholesaler or unclassified acquirer that is delinquent in paying the tax under this act.

History: Add. 1997, Act 187, Eff. Apr. 15, 1998;—Am. 2022, Act 171, Imd. Eff. July 21, 2022.

205.426c Acquisition of cigarettes from nonparticipating manufacturer.

Sec. 6c. (1) Every nonparticipating manufacturer whose cigarettes are sold in this state, whether directly or through a licensee or other distributor, retailer, or similar intermediary, shall by April 30 of each year certify to the department that it is not a participant in the master settlement agreement and that it has performed its obligation to establish a qualified escrow account and deposited funds into that account under 1999 PA 244, MCL 445.2051 to 445.2052.

(2) The certification of compliance must be on a form prescribed by the department, must contain all of the information requested on the form, and must include a list of all brand names of cigarettes sold by the nonparticipating manufacturer, whether directly or through a licensee or other distributor, retailer, or similar intermediary, for consumption in this state during the calendar year immediately preceding the certification date.

(3) A nonparticipating manufacturer shall provide a copy of the certification of compliance to the attorney general and any wholesaler, unclassified acquirer, or other person to whom the nonparticipating manufacturer makes a sale of its cigarettes for subsequent sale or consumption in this state.

(4) A wholesaler, unclassified acquirer, or other person who is provided with a certification of compliance under this section shall retain the certification of compliance for not less than 4 years from the date the certification of compliance was received.

(5) A wholesaler or unclassified acquirer shall report to the department all cigarettes that it acquires that were manufactured by a nonparticipating manufacturer. The report must be on a form prescribed by the department and attached to the return required under section 7. A wholesaler or unclassified acquirer that has not acquired any cigarettes from a nonparticipating manufacturer shall file the report with the return required under section 7 stating that it has not purchased, acquired, exported, or returned cigarettes related to a nonparticipating manufacturer. The information contained in this report is for the purposes of enforcing 1999 PA 244, MCL 445.2051 to 445.2052, and does not constitute information obtained in connection with the administration of a tax under section 28(1)(f) of 1941 PA 122, MCL 205.28. A wholesaler or unclassified acquirer shall retain a copy of the report for not less than 4 years from the date the report was filed with the department. If a wholesaler or unclassified acquirer does not file a report or knowingly files an incomplete or inaccurate report under this subsection, the department may do 1 or more of the following:

(a) Assess a penalty under this section.

(b) Prohibit the wholesaler or unclassified acquirer from obtaining cigarette stamps from the department until a complete and accurate report is filed.

(c) Revoke the wholesaler's or unclassified acquirer's license under section 5, only after conducting a hearing.

(6) A nonparticipating manufacturer that has not provided the certification of compliance required by this section shall not make a sale of cigarettes in this state or a sale within or outside this state to any person for sale, distribution, or consumption in this state.

(7) A person shall not purchase, acquire, possess, or sell cigarettes acquired from or manufactured by a nonparticipating manufacturer that has not provided the certification of compliance to the department as required under this section and that has not provided the person with a copy of the certification of compliance if required to do so under subsection (3).

(8) The department shall maintain and regularly update a list of participating manufacturers and nonparticipating manufacturers that have provided the certification of compliance required under this section.

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The department shall publish the list on its website and provide a copy of the list to a person upon request. Subject to section 6f, the department may delist a manufacturer that no longer complies with this section.

(9) If a wholesaler or unclassified acquirer receives a certification of compliance from a nonparticipating manufacturer that is not included in the list maintained by the department, the wholesaler or unclassified acquirer shall within 10 business days after receiving the certification of compliance provide a copy of the certification of compliance and the name and address of the nonparticipating manufacturer to the department.

(10) Thirty days after the department posts on its website and provides wholesalers and unclassified acquirers a notice of a second or subsequent knowing violation of a provision of 1999 PA 244, MCL 445.2051 to 445.2052, or a notice of a judgment the department has against a nonparticipating manufacturer, the department may seize or confiscate from any person any cigarettes in that person's possession that were acquired from or manufactured by that nonparticipating manufacturer. The department may seize or confiscate from any person any cigarettes in that person's possession that were acquired from or manufactured by a nonparticipating manufacturer if that nonparticipating manufacturer has not provided the certification required by this section. Seizure, confiscation, forfeiture, and sale of cigarettes under this section shall be accomplished under section 9.

(11) The department may impose on any person a civil fine not to exceed $1,000.00 for each violation of this section. The civil fine is in addition to all other fines or penalties imposed by this act or 1941 PA 122, MCL 205.1 to 205.31.

(12) As used in this section:

(a) "Cigarette" means that term as defined in 1999 PA 244, MCL 445.2051 to 445.2052.

(b) "Nonparticipating manufacturer" means a manufacturer of cigarettes that is not a participating manufacturer as that term is defined in 1999 PA 244, MCL 445.2051 to 445.2052. Nonparticipating manufacturer also includes the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States.

History: Add. 2002, Act 503, Imd. Eff. July 18, 2002;—Am. 2022, Act 171, Imd. Eff. July 21, 2022.

205.426d Sale of cigarettes by nonparticipating manufacturer; information to be provided to department; payment of equity assessment; prepayment; stamp; prohibited conduct; publication of list of compliant nonparticipating manufacturers; seizure or confiscation; violation; service of process; brand previously sold; audit or review; definitions.

Sec. 6d. (1) Before commencing sales of cigarettes in this state, whether directly or through a licensee or other distributor, retailer, or similar intermediary, a nonparticipating manufacturer shall provide to the department the information described in subsection (3) and shall pay the equity assessment as provided in subsections (4) and (5).

(2) A nonparticipating manufacturer selling cigarettes in this state on January 8, 2004, shall provide to the department the information described in subsection (3) and pay the equity assessment as provided in subsections (4) and (5) before February 8, 2004. If a nonparticipating manufacturer is not selling cigarettes in this state on January 8, 2004, before selling cigarettes in this state, the nonparticipating manufacturer shall pay the equity assessment imposed under subsections (4) and (5) for all cigarettes that are anticipated to be sold in the current calendar year as described in subsection (5).

(3) A nonparticipating manufacturer shall provide to the department on a form prescribed by the department the following information:

(a) The complete name, address, and telephone number of the nonparticipating manufacturer.

(b) The date that the nonparticipating manufacturer intends to begin or began selling cigarettes in this state.

(c) The brand names of the cigarettes the nonparticipating manufacturer will sell or is selling in this state.

(d) A statement of the nonparticipating manufacturer's intention to comply with its escrow obligation under 1999 PA 244, MCL 445.2051 to 445.2052, obligations under section 6c, and the obligations in this section.

(e) The name, address, and telephone number of the resident agent of the nonparticipating manufacturer.

(f) The name, address, telephone number, and signature of an officer of the nonparticipating manufacturer attesting to all of the information described in this subsection.

(4) An equity assessment in the amount of 17.5 mills per cigarette is imposed upon all cigarettes sold by a nonparticipating manufacturer, whether directly or through a licensee or other distributor, retailer, or similar intermediary, in this state. The purpose of the equity assessment is to fund enforcement and administration of 1999 PA 244, MCL 445.2051 to 445.2052, and this act. The equity assessment is in addition to all other fees, assessments, and taxes levied by law. The equity assessment shall be collected by the department from each nonparticipating manufacturer selling cigarettes in this state. The equity assessment shall be collected and reconciled by April 15 of each year for cigarettes sold in the previous calendar year. The department shall

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credit a nonparticipating manufacturer with any prepayment made by the nonparticipating manufacturer pursuant to subsection (5) for that calendar year.

(5) Except as provided in subsection (2), a nonparticipating manufacturer selling cigarettes in this state, whether directly or through a licensee or other distributor, retailer, or similar intermediary, shall prepay the equity assessment imposed in subsection (4) not later than March 1 for all cigarettes that are anticipated to be sold in the current calendar year. The prepayment amount shall be determined by multiplying 17.5 mills times the number of cigarettes that the department reasonably determines that the nonparticipating manufacturer will sell in this state in the current calendar year or $10,000.00, whichever is more. The department may require a nonparticipating manufacturer to provide any information reasonably necessary to determine the equity assessment prepayment amount. Not later than February 15 of each year, the department shall notify the nonparticipating manufacturer of the amount of the prepayment due for the current year. The department shall increase the equity assessment prepayment amount during the year if the increase is justified by the nonparticipating manufacturer's actual sales of cigarettes.

(6) A stamping agent shall not affix to any package of cigarettes or shipping container of roll-your-own tobacco of a nonparticipating manufacturer the stamp required under this act unless the nonparticipating manufacturer is listed on the department website as provided in subsection (9) or after receiving notice that the nonparticipating manufacturer has not prepaid or paid in full the equity assessment imposed under this section. A stamping agent that violates this subsection is subject to the penalties described in section 5. If a stamping agent intentionally and knowingly violates this subsection, the department may seize or confiscate any cigarettes in the stamping agent's possession that were stamped in violation of this subsection. Seizure, confiscation, forfeiture, and sale of cigarettes shall be accomplished under section 9.

(7) A nonparticipating manufacturer that does not provide the information required under subsection (3) or pay the equity assessment required by this section shall not make a sale of cigarettes in this state to any person for sale, distribution, or consumption in this state.

(8) A person shall not purchase, acquire, possess, or sell cigarettes acquired from or manufactured by a nonparticipating manufacturer that has not provided the information required under subsection (3) or made the payment of the equity assessment required by this section.

(9) The department shall maintain and regularly update a list of nonparticipating manufacturers that have complied with the requirements of this section. The department shall publish the list on its website and provide a copy of the list to a person upon request. Subject to section 6f, the department may delist a manufacturer that no longer complies with this section.

(10) Ninety days after the department posts on its website and provides wholesalers and unclassified acquirers notice that a nonparticipating manufacturer is in violation of subsection (1) or (2), the department may seize or confiscate from any person any cigarettes in that person's possession that were acquired from or manufactured by that nonparticipating manufacturer. Seizure, confiscation, forfeiture, and sale of cigarettes under this section shall be accomplished under section 9.

(11) The department may impose on any person a civil fine not to exceed $1,000.00 for each violation of this section. The civil fine is in addition to all other fines or penalties imposed by this act or 1941 PA 122, MCL 205.1 to 205.31.

(12) A nonparticipating manufacturer shall appoint and continually engage a resident agent for service of process. That service constitutes legal and valid service of process on the nonparticipating manufacturer.

(13) For purposes of this section, a nonparticipating manufacturer that intends to sell or is selling a brand of cigarettes in or into this state is presumed to be the same manufacturer that previously sold that same brand in or into the state, unless the nonparticipating manufacturer can prove that the 2 manufacturers are not affiliated. A nonparticipating manufacturer shall not sell in or into this state a cigarette brand that was previously sold in or into this state by another nonparticipating manufacturer if that other nonparticipating manufacturer did not escrow the entire amount due under 1999 PA 244, MCL 445.2051 to 445.2052, or pay the equity assessment due under this section.

(14) The department shall conduct an audit or review of nonparticipating manufacturers to ensure compliance with this section.

(15) As used in this section:

(a) "Cigarette" means that term as defined in 1999 PA 244, MCL 445.2051 to 445.2052.

(b) "Nonparticipating manufacturer" means a manufacturer of cigarettes that is not a participating manufacturer as that term is defined in 1999 PA 244, MCL 445.2051 to 445.2052. Nonparticipating manufacturer also includes the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States.

History: Add. 2003, Act 285, Imd. Eff. Jan. 8, 2004;—Am. 2022, Act 171, Imd. Eff. July 21, 2022.

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205.426e Enforcement of tobacco product manufacturer's escrow accounts act; disclosure of information to attorney general; consolidation of information received pursuant to agreements with Indian tribes; disclosure of information otherwise confidential; information received as result of NPM adjustment settlement agreement.

Sec. 6e. (1) Notwithstanding any law to the contrary, the department shall, upon request of the attorney general, disclose to the attorney general, or his or her designee, information obtained by the department that is relevant to the enforcement of the tobacco product manufacturers' escrow accounts act, 1999 PA 244, MCL 445.2051 to 445.2052. However, with regard to information received pursuant to any tax agreement entered into between this state and any Indian tribe, that includes limitations on disclosure of such information in addition to, or in lieu of, those contained in statute, the information provided under this section shall be consolidated to include all information received pursuant to such agreements with Indian tribes so as not to enable a person to ascertain any 1 Indian tribe's information. The department and the attorney general or his or her designee, except as provided in this subsection, may disclose information provided under this section that may otherwise be confidential if 1 or more of the following apply:

(a) In discharge of the duty to enforce or defend the provisions of this act or the tobacco product manufacturers' escrow accounts act, 1999 PA 244, MCL 445.2051 to 445.2052.

(b) In the course of any litigation, arbitration, or proceeding related to the tobacco product manufacturers' escrow accounts act, 1999 PA 244, MCL 445.2051 to 445.2052, the master settlement agreement, or the NPM adjustment settlement agreement.

(c) In complying with provisions in the NPM adjustment settlement agreement related to a data clearinghouse.

(2) Tobacco product sales data provided by another state, a manufacturer, or other person or entity to a data clearinghouse pursuant to the NPM adjustment settlement agreement that is also provided to the department pursuant to that agreement shall be treated as confidential tax information subject to section 28 of 1941 PA 122, MCL 205.28. This subsection only applies to information received by the department as a result of the NPM adjustment settlement agreement.

History: Add. 2016, Act 43, Eff. June 13, 2016.

205.426f Refusal to list or the removal of a tobacco product manufacturer from the director; exception; notice; deficiencies; demand for hearing; written order; appeal; definitions.

Sec. 6f. (1) This section establishes and sets forth the process by which the department may remove a tobacco product manufacturer or any associated or affiliated brand families of a tobacco product manufacturer from the directory, or refuse to list a tobacco product manufacturer or any associated or affiliated brand families of a tobacco product manufacturer on the directory. This section does not apply to any tobacco product manufacturer that voluntarily requests removal from, or rescinds a request to become listed on, the directory for either itself or an associated or an affiliated brand family of the tobacco product manufacturer.

(2) Except as otherwise provided in this section, the department shall not include in the directory or retain a tobacco product manufacturer or any brand family of a tobacco product manufacturer in the directory, if any of the following apply:

(a) The tobacco product manufacturer has not performed any of its obligations under this act, including those obligations set forth in sections 6c and 6d, or 1999 PA 244, MCL 445.2051 to 445.2052.

(b) The tobacco product manufacturer or any of the tobacco product manufacturer's brand families have been removed from a list maintained by another state that is equivalent to, or otherwise serves the same purposes as, the directory, based on acts or omissions that would, if the acts or omissions occurred in this state, serve as a basis for removal from the directory.

(c) The tobacco product manufacturer, or any of its officers or directors, have, in any jurisdiction, pleaded guilty or nolo contendere to, or been found guilty of, a felony relating to the sale, distribution, or taxation of a tobacco product.

(d) The tobacco product manufacturer sold, transferred, or distributed a tobacco product to a wholesaler or unclassified acquirer that it knew or had reason to know was not licensed under this act or whose license was suspended or revoked under this act.

(3) If the department intends to remove from the directory, or not include on the directory, a tobacco product manufacturer or an associated or affiliated brand family of a tobacco product manufacturer, the department shall send a notice to the tobacco product manufacturer or, if applicable, its agent for service of process. The notice must include all of the following:

(a) The factual and legal deficiencies upon which the department's intended action rests.

(b) The action that the tobacco product manufacturer must take to cure those deficiencies.

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(c) A statement that the tobacco product manufacturer has 15 calendar days, from the date of the notice, to cure those deficiencies and submit documentation of its attempt to cure.

(4) For good cause shown, as determined by the department in its discretion, the department may extend the 15 calendar day period under subsection (3) for a tobacco product manufacturer to cure its deficiencies up to an additional 15 calendar days.

(5) If the tobacco product manufacturer does not cure the deficiencies to the satisfaction of the department within the applicable period under subsections (3) and (4), the department shall issue a notice to the tobacco product manufacturer that, unless a demand for a hearing is made as provided in subsection (6), the department intends remove the tobacco product manufacturer or any of its brand families from, or not include the tobacco product manufacturer or any of its brand families on, the directory.

(6) Within 10 business days after the date of service of the notice issued under subsection (5), the tobacco product manufacturer may, by registered mail or personal service, file with the state treasurer a demand for a hearing before a representative of the department to determine whether the department's intention to remove from, or not include on, the directory the tobacco product manufacturer or any of its brand families is justified. If, within 10 business days after the date of service of the notice issued under subsection (5), the tobacco product manufacturer does not file with the state treasurer a demand for a hearing before the department as provided in this subsection, the department shall immediately remove from the directory, or refuse to include on the directory, the tobacco product manufacturer or any of its brand families at issue.

(7) Upon receipt of a demand for a hearing under subsection (6), the department shall hold the hearing within 15 business days. At the hearing, the tobacco product manufacturer is entitled to appear before the department, to be represented by counsel, and to present testimony and argument. The hearing is not a contested case proceeding and is not subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(8) After the hearing under subsection (7), the department shall render its decision in writing within 10 business days of the hearing and, by order, shall declare 1 of the following:

(a) That the tobacco product manufacturer or any of the associated or affiliated brand families at issue be removed from, or not included on, the directory.

(b) That the tobacco product manufacturer or any of the associated or affiliated brand families at issue be retained or included on the directory.

(9) If the department orders under subsection (8)(a) that the tobacco product manufacturer or its associated or affiliated brand families at issue should be removed from, or not included on, the directory and the tobacco product manufacturer does not appeal that order under subsection (10), the department shall immediately remove from the directory, or refuse to include on the directory, the tobacco product manufacturer or any of its brand families at issue.

(10) A tobacco product manufacturer aggrieved by the decision of the department under subsection (8) may appeal the department's order by filing an appeal to the Ingham County circuit court, designated as Michigan's master settlement court, within 30 days of the date the department mails the order to the aggrieved tobacco product manufacturer. If a proper appeal is taken in accordance with this section and applicable law, the department shall not remove a tobacco product manufacturer or any of its associated brand families from the directory until all appeal rights have been exhausted.

(11) As used in this section:

(a) "Cigarette" means that term as defined in 1999 PA 244, MCL 445.2051 to 445.2052.

(b) "Directory" means the lists established and described under sections 6c and 6d, separately or collectively, as applicable to the tobacco product manufacturer.

(c) "Master settlement agreement" means the settlement agreement (and related documents) entered into on November 23, 1998, and incorporated into a consent decree and final judgment entered into on December 7, 1998, in *Kelley Ex Rel. Michigan v Philip Morris Incorporated, et al.*, Ingham County circuit court, docket no. 96-84281CZ.

(d) "Nonparticipating manufacturer" means a manufacturer of cigarettes that is not a participating manufacturer. Nonparticipating manufacturer also includes the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States.

(e) "Participating manufacturer" means that term as defined in the master settlement agreement.

(f) "Tobacco product manufacturer" means a participating manufacturer or a nonparticipating manufacturer, as applicable.

History: Add. 2022, Act 171, Imd. Eff. July 21, 2022.

205.427 Levy of tax on sale of tobacco products and modified risk tobacco products; federal

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order; notification of rescission, withdrawal, or expiration of federal order; filing return; payment of tax; importation or acquisition of tobacco product; tax abatement or refund; reimbursement by adding to price of tobacco product; sale or transfer of unaffixed stamps by wholesaler or unclassified acquirer; prohibition; exchange of unaffixed stamps; inspection; reports; definitions.

Sec. 7. (1) Subject to subsection (2), a tax is levied on the sale of tobacco products sold in this state or sold for consumption in this state, which consumption is presumed when sold to a retailer or consumer in this state, as follows:

(a) For cigarettes, 100 mills per cigarette.

(b) For cigars, noncigarette smoking tobacco, smokeless tobacco, and any tobacco product other than cigarettes, 32% of the wholesale price. However, beginning November 1, 2012, the amount of tax levied under this subdivision on cigars shall not exceed 50 cents per individual cigar.

(2) Notwithstanding any other provision of law and beginning 180 days after the effective date of the amendatory act that added this subsection, if the Secretary of the United States Department of Health and Human Services has issued an order for a product under 21 USC 387k(g) and the manufacturer has notified the department of that order on a form and in a manner prescribed by the department, subject to subsections (3), (4), and (5), the tax imposed on the sale of that product under this section is as follows:

(a) If the order is a modified risk tobacco product order issued under 21 USC 387k(g)(1), reduced by 50% of the otherwise applicable rate under subsection (1).

(b) If the order is issued under 21 USC 387k(g)(2), reduced by 25% of the otherwise applicable rate under subsection (1).

(3) A rate under subsection (2) shall not take effect unless the department has received notice of the modified risk tobacco order by the manufacturer of the tobacco product, in the form and manner prescribed by the department, and the department has published notice of the rate for the tobacco product. The department shall publish notice of the rate not later than 10 days after receipt of the notice from the manufacturer. The effective date of a rate under subsection (2) for a tobacco product shall be the first day of the month following the month in which the department publishes notice of the rate as provided in this subsection.

(4) If a modified risk tobacco product order described in subsection (2) is renewed by the United States Food and Drug Administration, the manufacturer of the tobacco product subject to that order must provide notice of the renewal to the department not later than 10 days after issuance of the order or determination of renewal by the United States Food and Drug Administration, for the rate provided under subsection (2) to remain in effect for that tobacco product. If a modified risk tobacco product order described in subsection (2) is rescinded or withdrawn by the United States Food and Drug Administration or otherwise expires, the manufacturer of the tobacco product subject to that order shall notify the department of the rescission, withdrawal, or expiration of the order not later than 10 days after the issuance of the rescission or withdrawal order or determination by the United States Food and Drug Administration or the date of expiration, as applicable. The department shall publish notice of the rescission, withdrawal, or expiration of the modified risk tobacco product order not later than 10 days after receipt of the notice from the manufacturer or, if the manufacturer fails to provide the notice as required under this subsection, 10 days after the department becomes aware of the rescission, withdrawal, or expiration of the order. Except as otherwise provided in subsection (5), beginning on the first day of the month following the month in which the department publishes a notice of rescission, withdrawal, or expiration of a modified risk tobacco product order for a tobacco product, the rate under subsection (2) shall no longer apply to that tobacco product. Notices required to be made by a manufacturer to the department under this subsection shall be made in the form and manner prescribed by the department.

(5) Except as otherwise provided in this subsection, a tobacco product subject to the rate provided under subsection (2) that was purchased or otherwise acquired before the date a rescission, withdrawal, or expiration of a modified risk tobacco product order for that tobacco product becomes effective remains eligible for the rate provided under subsection (2). The tax rate provided in subsection (2) does not apply, and the otherwise applicable tax rate applies, to any of the following:

(a) A tobacco product purchased or otherwise acquired before the effective date of the rate provided under subsection (2) for that tobacco product.

(b) A tobacco product that is seized and forfeited as contraband as provided under this act.

(c) A person described in section 8(1) for purposes of determining the amount of tax and penalty under section 8(1).

(6) On or before the twentieth day of each calendar month, every licensee under section 3 other than a manufacturer or vending machine operator shall file a return with the department stating the wholesale price

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of each tobacco product other than cigarettes purchased, the quantity of cigarettes purchased, the wholesale price charged for all tobacco products other than cigarettes sold, the number of individual packages of cigarettes and the number of cigarettes in those individual packages, and the number and denominations of stamps affixed to individual packages of cigarettes sold by the licensee for each place of business in the preceding calendar month. The return must also include the number and denomination of unaffixed stamps in the possession of the licensee at the end of the preceding calendar month and any other reasonable information the department requires to ensure compliance with this act. Wholesalers shall also report accurate inventories of cigarettes, both stamped and unstamped at the end of the preceding calendar month. Wholesalers and unclassified acquirers shall also report accurate inventories of affixed and unaffixed stamps by denomination at the beginning and end of each calendar month and all stamps acquired during the preceding calendar month. The return must be signed under penalty of perjury. The return must be on a form, and filed in the manner, prescribed by the department and must contain or be accompanied by any further information the department requires. The department may also require licensees to report tobacco product acquisition, purchase, and sales information in other formats and frequency.

(7) To cover the cost of expenses incurred in the administration of this act, at the time of the filing of the return, the licensee shall pay to the department the tax levied in this section for tobacco products sold during the calendar month covered by the return, less compensation equal to the following:

(a) 1% of the total amount of the tax due on tobacco products sold other than cigarettes.

(b) 1.5% of the total amount of the tax due on cigarettes sold and, for sales of untaxed cigarettes to Indian tribes in this state, an amount equal to 1.5% of the total amount of the tax due on those cigarettes sold as if those cigarette sales were taxable sales under this act.

(c) For licensees who are stamping agents, 0.5% of the total amount of the tax due on cigarettes sold and, for sales of untaxed cigarettes to Indian tribes in this state, 0.5% of the total amount of the tax due on those cigarettes sold as if those cigarette sales were taxable sales under this act, until the stamping agent is compensated in an amount equal to the direct cost actually incurred by the stamping agent for the purchase of upgrades to technology and equipment, excluding the equipment reimbursed under subdivision (d), that are necessary to affix the digital stamp as determined by the department. Compensation under this subdivision may also be claimed by a stamping agent for the direct costs actually incurred by the stamping agent, as determined by the department and reflected in the net purchase price, for the initial and 1-time purchase of case packers or similar machines or conveyors as follows:

(*i*) Case packers or similar machines to be used exclusively to repack cigarette cartons into case boxes after digital stamps have been applied by eligible equipment to the individual packages of cigarettes contained within those cigarette cartons. Compensation under this subparagraph may only be claimed by a stamping agent if the case packers or similar machines are in addition to, and not a replacement for, 1 or more case packers or similar machines used in connection with cigarette stamping machines that do not use the digital stamp authorized under this act.

(*ii*) Conveyors to be used exclusively for that portion of a cigarette stamping line that is necessary for and dedicated to cigarette stamping operations using eligible equipment to affix digital stamps to individual packages of cigarettes to be sold in this state. Compensation under this subparagraph may only be claimed by a stamping agent if the cigarette stamping line served by the conveyors is in addition to 1 or more distinct and existing cigarette stamping lines using stamping machines that do not use the digital stamp authorized under this act and that compensation shall not exceed a total of 50% of the amount reimbursed under subdivision (d) for any particular stamping agent.

(*iii*) Compensation under subparagraphs (*i*) and (*ii*) shall also include any applicable sales or use taxes paid, and shipping and crating charges actually incurred, by the stamping agent in connection with the purchase, but shall exclude any other costs incurred by the stamping agent not otherwise expressly provided for in this subdivision, including, but not limited to, charges for installation and ongoing maintenance.

(d) Beginning in the first calendar month following the implementation of the use of digital stamps as provided in section 5a(2) and continuing for the immediately succeeding 17 months, for licensees who are stamping agents, reimbursement of direct costs actually incurred by the stamping agent, as determined by the department, for the initial purchase of eligible equipment in an amount equal to 5.55% of the total net purchase price of the eligible equipment necessary to affix the digital stamp. The reimbursement provided under this subdivision shall also include reimbursement for any applicable sales or use taxes paid and shipping and crating charges actually incurred by the stamping agent for the initial purchase of eligible equipment, but shall exclude reimbursement for any other costs incurred by the stamping agent not otherwise expressly provided for in this subdivision, including, but not limited to, charges for installation and ongoing maintenance related to eligible equipment. A stamping agent may only receive reimbursement under this subdivision to the extent that the eligible equipment purchased by the stamping agent does not exceed the

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total number of the stamping agent's existing equipment as certified by the stamping agent on a form prescribed by the department.

(e) For licensees who are stamping agents, reimbursement of qualified equipment costs actually incurred by the stamping agent, not otherwise compensated or reimbursed under subdivision (c) or (d), as determined by the department. The reimbursement provided under this subdivision shall not exceed $60,000.00 for all stamping agents combined.

(8) The department may require the payment of the tax imposed by this act upon the importation or acquisition of a tobacco product in or into this state. A tobacco product for which the tax under this act has once been imposed and that has not been refunded if paid is not subject upon a subsequent sale to the tax imposed by this act.

(9) An abatement or refund of the tax provided by this act may be made by the department for causes the department considers expedient. The department shall certify the amount and the state treasurer shall pay that amount out of the proceeds of the tax.

(10) A person liable for the tax may reimburse itself by adding to the price of the tobacco products an amount equal to the tax levied under this act.

(11) A wholesaler, unclassified acquirer, or other person shall not sell or transfer any unaffixed stamps acquired by the wholesaler or unclassified acquirer from the department. A wholesaler or unclassified acquirer who has any unaffixed stamps on hand when its license is revoked or expires, or when it discontinues the business of selling cigarettes, shall return those stamps to the department. The department shall refund the value of the stamps, less the appropriate discount paid.

(12) If the wholesaler or unclassified acquirer has unsalable packs returned from a retailer, secondary wholesaler, vending machine operator, wholesaler, or unclassified acquirer with stamps affixed, the department shall refund the amount of the tax less the appropriate discount paid. If the wholesaler or unclassified acquirer has unaffixed unsalable stamps, the department shall exchange with the wholesaler or unclassified acquirer new stamps in the same quantity as the unaffixed unsalable stamps. An application for refund of the tax must be filed on a form and in the manner prescribed by the department for that purpose, within 4 years from the date the stamps were originally acquired from the department. A wholesaler or unclassified acquirer shall make available for inspection by the department the unused or spoiled stamps and the stamps affixed to unsalable individual packages of cigarettes. The department may, at its own discretion, witness and certify the destruction of the unused or spoiled stamps and unsalable individual packages of cigarettes that are not returnable to the manufacturer. The wholesaler or unclassified acquirer shall provide certification from the manufacturer for any unsalable individual packages of cigarettes that are returned to the manufacturer.

(13) On or before the twentieth of each month, each manufacturer shall file a report with the department listing all sales of tobacco products to wholesalers and unclassified acquirers during the preceding calendar month and any other information the department finds necessary for the administration of this act. This report must be in the form and manner specified by the department.

(14) Each wholesaler or unclassified acquirer shall submit to the department an unstamped cigarette sales report on or before the twentieth day of each month covering the sale, delivery, or distribution of unstamped cigarettes during the preceding calendar month to points outside of this state. A separate schedule must be filed for each state, country, or province into which shipments are made. For purposes of the report described in this subsection, "unstamped cigarettes" means individual packages of cigarettes that do not bear a Michigan stamp. The department may provide the information contained in this report to a proper officer of another state, country, or province reciprocating in this privilege.

(15) As used in subsection (7):

(a) "Eligible equipment" means a cigarette tax stamping machine that meets all of the following conditions:

(*i*) Was purchased by a stamping agent who was licensed as a stamping agent as of December 31, 2011.

(*ii*) Enables the stamping agent to affix digital stamps to individual packages of cigarettes in accordance with the requirements under section 6a(2) and (3).

(*iii*) Was purchased to be used for the primary purpose of permitting the stamping agent to affix digital stamps to individual packages of cigarettes to be sold in this state following the implementation of the use of digital stamps as provided in section 5a(2).

(b) "Existing equipment" means a cigarette tax stamping machine that meets all of the following conditions:

(*i*) Was owned by a person who was licensed as a stamping agent as of December 31, 2011.

(*ii*) Was a cigarette tax stamping machine used prior to January 1, 2012 by the stamping agent to apply stamps using stamp rolls of 30,000 stamps.

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(c) "Qualified equipment" means equipment that was placed in service by a stamping agent that included conveyors and additional associated electrical line and compressed air line before August 15, 2014 in connection with the implementation of a digital stamping line under a pilot program with the department as determined by the department. Qualified equipment does not include the cost of installation of a conveyor.

History: 1993, Act 327, Eff. Mar. 15, 1994;—Am. 1997, Act 187, Eff. Apr. 15, 1998;—Am. 2002, Act 503, Imd. Eff. July 18, 2002;—Am. 2004, Act 164, Imd. Eff. June 24, 2004;—Am. 2008, Act 458, Imd. Eff. Jan. 9, 2009;—Am. 2012, Act 188, Imd. Eff. June 20, 2012;—Am. 2012, Act 325, Imd. Eff. Oct. 9, 2012;—Am. 2014, Act 298, Imd. Eff. Sept. 30, 2014;—Am. 2016, Act 86, Imd. Eff. Apr. 19, 2016;—Am. 2021, Act 102, Imd. Eff. Nov. 4, 2021;—Am. 2022, Act 171, Imd. Eff. July 21, 2022.

205.427a Imposition of tax on consumer; intent of act.

Sec. 7a. It is the intent of this act to impose the tax levied under this act upon the consumer of the tobacco products by requiring the consumer to pay the tax at the specified rate.

History: Add. 1997, Act 187, Imd. Eff. Dec. 30, 1997.

205.427b Bad debt; deduction; definition.

Sec. 7b. (1) A licensee may deduct the amount of bad debts from the tax levied under section 7. The amount deducted must be charged off as uncollectible on the books of the licensee. If a person pays all or part of a bad debt with respect to which a licensee claimed a deduction under this section, the licensee is liable for the amount of taxes deducted in connection with that portion of the debt for which payment is received and shall remit these taxes in his or her next payment to the department under section 7.

(2) Any claim for a bad debt deduction under this section must be supported by all of the following:

(a) A copy of the original invoice.

(b) Evidence that the tobacco products described in the invoice were delivered to the person who ordered them.

(c) Evidence that the person who ordered and received the tobacco products did not pay the licensee for the tobacco products and that the licensee used reasonable collection practices in attempting to collect the debt.

(3) As used in this section, "bad debt" means the taxes attributable to any portion of a debt that is related to a sale of tobacco products subject to tax under section 7 that is not otherwise deductible or excludable, that has become worthless or uncollectible in the time period between the date when taxes accrue to the state for the licensee's preceding tax return and the date when taxes accrue to the state for the present return, and that is eligible to be claimed, or could be eligible to be claimed if the licensee kept accounts on an accrual basis, as a deduction pursuant to section 166 of the internal revenue code of 1986, 26 USC 166. A bad debt does not include any interest on the wholesale price of a tobacco product, uncollectible amounts on property that remains in the possession of the licensee until the full purchase price is paid, expenses incurred in attempting to collect any account receivable or any portion of the debt recovered, any accounts receivable that have been sold to a third party for collection, and repossessed property.

History: Add. 2002, Act 607, Imd. Eff. Dec. 20, 2002;—Am. 2022, Act 171, Imd. Eff. July 21, 2022.

205.428 Personal liability for payment of tax; penalty; duties of manufacturer's representative; violations as felony; violations as misdemeanor; enforcement; exception; additional violations.

Sec. 8. (1) A person, other than a licensee, is personally liable for the tax imposed by this act, plus a penalty of 500% of the amount of that tax, under any of the following circumstances:

(a) The person is in control or in possession of a tobacco product contrary to this act or is in control or in possession of an individual package of cigarettes without a stamp in violation of this act.

(b) The person offers to sell or does sell a tobacco product to another for purposes of resale without being licensed to do so under this act.

(c) The person offers to sell at retail, or does sell at retail, an individual package of cigarettes without a stamp or any tobacco product purchased or acquired from a person that was not licensed under this act as secondary wholesaler, wholesaler, or unclassified acquirer, at the time of purchase or acquisition.

(2) The department may permit a representative of a licensed manufacturer of tobacco products whose duties require travel in this state to transport up to 138,000 cigarettes, of which not more than 36,000 cigarettes may bear no tax indicia or the tax indicia of another state. All 138,000 cigarettes must bear the stamp approved by the department or the tax indicia of another state, if any. The total value of tobacco products, excluding cigarettes, carried by a representative shall not exceed a wholesale value of $5,000.00. A manufacturer shall notify the department of the manufacturer's representatives that it currently employs who carry cigarettes or tobacco products other than cigarettes in performing work duties in this state. The manufacturer shall maintain a record of each transaction by the manufacturer's representative for a period of 4

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years immediately following the transaction and shall produce the records upon request of the state treasurer or the state treasurer's authorized agent. Each record must identify the quantity and identity of the tobacco products, detail whether exchanged, received, removed, or otherwise disposed of, and identify the retailer, wholesaler, secondary wholesaler, vending machine operator, or unclassified acquirer involved. The representative of the manufacturer shall provide a copy of the record to the retailer, wholesaler, secondary wholesaler, vending machine operator, or unclassified acquirer at the time of the exchange or disposal. The retailer, wholesaler, secondary wholesaler, vending machine operator, or unclassified acquirer shall retain the copy of the record in the same place and for the same time period as other records required by this section. A representative shall not exchange, or otherwise dispose of, within this state tobacco products bearing the tax indicia of another state or receive tobacco products bearing the tax indicia of another state from retailers located within this state. A representative who sells, exchanges, or otherwise disposes of cigarettes or tobacco products other than cigarettes that do not bear the stamp or other marking required by the department or sells, exchanges, or otherwise disposes of cigarettes or tobacco products other than cigarettes bearing the tax indicia of another state is guilty of a felony, punishable by a fine of not more than $5,000.00 or imprisonment for not more than 5 years, or both.

(3) A person who possesses, acquires, transports, or offers for sale contrary to this act 3,000 or more cigarettes, tobacco products other than cigarettes with an aggregate wholesale price of $250.00 or more, 3,000 or more counterfeit cigarettes, 3,000 or more counterfeit cigarette papers, 3,000 or more gray market cigarettes, or 3,000 or more gray market cigarette papers is guilty of a felony, punishable by a fine of not more than $50,000.00 or imprisonment for not more than 5 years, or both.

(4) A person who possesses, acquires, transports, or offers for sale contrary to this act 1,200 or more, but not more than 2,999, cigarettes, tobacco products other than cigarettes with an aggregate wholesale value of $100.00 or more but less than $250.00, or 1,200 or more, but not more than 2,999, counterfeit cigarettes, counterfeit cigarette papers, gray market cigarettes, or gray market cigarette papers is guilty of a misdemeanor punishable by a fine of not more than $5,000.00 or imprisonment of not more than 1 year, or both.

(5) A person who violates a provision of this act for which a criminal punishment is not otherwise provided is guilty of a misdemeanor, punishable by a fine of not more than $1,000.00 or 5 times the retail value of the tobacco products involved, whichever is greater, or imprisonment for not more than 1 year, or both. This subsection does not apply to conduct described in subsection (12).

(6) A person who manufactures, possesses, or uses a stamp or manufactures, possesses, or uses a counterfeit stamp or writing or device intended to replicate a stamp without authorization of the department, a licensee who purchases or obtains a stamp from any person other than the department, or who falsifies a manufacturer's label on cigarettes, counterfeit cigarettes, gray market cigarette papers, or counterfeit cigarette papers is guilty of a felony and shall be punished by imprisonment for not less than 1 year or more than 10 years and may be punished by a fine of not more than $50,000.00.

(7) A person who falsely makes, counterfeits, or alters a license, vending machine disc, or marker, or who purchases or receives a false or altered license, vending machine disc, or marker, or who assists in or causes to be made a false or altered license, vending machine disc, or marker, or who possesses a device used to forge, alter, or counterfeit a license, vending machine disc, or marker is guilty of a felony punishable by a fine of not more than $5,000.00 or imprisonment for not more than 5 years, or both. A person who alters or falsifies records or markings required under this act is guilty of a felony punishable by a fine of not more than $5,000.00 or imprisonment for not more than 5 years, or both.

(8) The attorney general has concurrent power with the prosecuting attorneys of this state to enforce this act.

(9) At the request of the department or its duly authorized agent, the state police and all local police authorities shall enforce the provisions of this act.

(10) The department does not have the authority to enforce the provisions of this section regarding gray market cigarette papers or counterfeit cigarette papers.

(11) A person who knowingly possesses, acquires, transports, or offers for sale contrary to this act 600 or more, but not more than 1,199, cigarettes, tobacco products other than cigarettes with an aggregate wholesale value of $50.00 or more but less than $100.00, or 600 or more, but not more than 1,199, counterfeit cigarettes, counterfeit cigarette papers, gray market cigarettes, or gray market cigarette papers is guilty of a misdemeanor punishable by a fine of not more than $1,000.00 or imprisonment of not more than 90 days, or both.

(12) A person shall not possess, acquire, transport, or offer for sale contrary to this act less than 600 cigarettes, tobacco products other than cigarettes with an aggregate wholesale value of less than $50.00, or less than 600 counterfeit cigarettes, counterfeit cigarette papers, gray market cigarettes, or gray market cigarette papers. A person who possesses, acquires, transports, or offers for sale contrary to this act 180 or more, but not more than 599, cigarettes, tobacco products other than cigarettes with an aggregate wholesale

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value of $25.00 or more but less than $50.00, or 180 or more, but not more than 599, counterfeit cigarettes, counterfeit cigarette papers, gray market cigarettes, or gray market cigarette papers is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $100.00.

History: 1993, Act 327, Eff. Mar. 15, 1994;—Am. 1997, Act 187, Eff. Apr. 15, 1998;—Am. 2004, Act 474, Imd. Eff. Dec. 28, 2004;—Am. 2005, Act 238, Eff. Jan. 1, 2006;—Am. 2008, Act 458, Imd. Eff. Jan. 9, 2009;—Am. 2022, Act 171, Imd. Eff. July 21, 2022.

205.429 Seizure and confiscation of contraband; investigation or search of vehicle; inventory statement of seized property; notice; publication; hearing; disposition of forfeited property; appeal; public sale; proceeds credited to general fund; other penalties not relieved; award and payment to person furnishing information; prohibited conduct by retailer; order.

Sec. 9. (1) A tobacco product held, owned, possessed, transported, or in control of a person in violation of this act, and a vending machine, vehicle, and other tangible personal property containing a tobacco product in violation of this act and any related books and records are contraband and may be seized and confiscated by the department as provided in this section.

(2) If an authorized inspector of the department or a police officer has reasonable cause to believe and does believe that a tobacco product is being acquired, possessed, transported, kept, sold, or offered for sale in violation of this act for which the penalty is a felony, the inspector or police officer may investigate or search the vehicle of transportation in which the tobacco product is believed to be located. If a tobacco product is found in a vehicle searched under this subsection or in a place of business inspected under this act, the tobacco product, vending machine, vehicle, other than a vehicle owned or operated by a transportation company otherwise transporting tobacco products in compliance with this act, or other tangible personal property containing those tobacco products and any books and records in possession of the person in control or possession of the tobacco product may be seized by the inspector or police officer and are subject to forfeiture as contraband as provided in this section.

(3) As soon as possible, but not more than 5 business days after seizure of any alleged contraband, the person making the seizure shall deliver personally or by registered mail to the last known address of the person from whom the seizure was made, if known, an inventory statement of the property seized. A copy of the inventory statement must also be filed with the state treasurer. The inventory statement must also contain a notice to the effect that unless demand for hearing as provided in this section is made within 10 business days, the designated property is forfeited to the state. If the person from whom the seizure was made is not known, the person making the seizure shall cause a copy of the inventory statement, together with the notice provided for in this subsection, to be published at least 3 times in a newspaper of general circulation in the county where the seizure was made. Within 10 business days after the date of service of the inventory statement, or in the case of publication, within 10 business days after the date of last publication, the person from whom the property was seized or any person claiming an interest in the property may by registered mail, facsimile transmission, or personal service file with the state treasurer a demand for a hearing before the state treasurer or a person designated by the state treasurer for a determination as to whether the property was lawfully subject to seizure and forfeiture. The person shall verify a request for hearing filed by facsimile transmission by also providing a copy of the original request for hearing by registered mail or personal service. The person or persons are entitled to appear before the department, to be represented by counsel, and to present testimony and argument. Upon receipt of a request for hearing, the department shall hold the hearing within 15 business days. The hearing is not a contested case proceeding and is not subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. After the hearing, the department shall render its decision in writing within 10 business days of the hearing and, by order, shall either declare the seized property subject to seizure and forfeiture, or declare the property returnable in whole or in part to the person entitled to possession. If, within 10 business days after the date of service of the inventory statement, the person from whom the property was seized or any person claiming an interest in the property does not file with the state treasurer a demand for a hearing before the department, the property seized is considered forfeited to the state by operation of law and may be disposed of by the department as provided in this section. If, after a hearing before the state treasurer or person designated by the state treasurer, the department determines that the property is lawfully subject to seizure and forfeiture and the person from whom the property was seized or any persons claiming an interest in the property do not take an appeal to the circuit court of the county in which the seizure was made within the time prescribed in this section, the property seized shall be considered forfeited to the state by operation of law and may be disposed of by the department as provided in this section.

(4) If a person is aggrieved by the decision of the department, that person may appeal to the circuit court of

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the county where the seizure was made to obtain a judicial determination of the lawfulness of the seizure and forfeiture. The action must be commenced within 20 days after notice of the department's determination is sent to the person or persons claiming an interest in the seized property. The court shall hear the action and determine the issues of fact and law involved in accordance with rules of practice and procedure as in other in rem proceedings. If a judicial determination of the lawfulness of the seizure and forfeiture cannot be made before deterioration of any of the property seized, the court shall order the destruction or sale of the property with public notice as determined by the court and require the proceeds to be deposited with the court until the lawfulness of the seizure and forfeiture is finally adjudicated.

(5) The department shall destroy all cigarettes forfeited to this state. The department may sell all tobacco products, except cigarettes, and other property forfeited pursuant to this section at public sale. Public notice of the sale must be given at least 5 days before the day of sale. The department may pay an amount not to exceed 25% of the proceeds of the sale to the local governmental unit whose law enforcement agency performed the seizure. The balance of the proceeds derived from the sale by the department must be credited to the general fund of the state.

(6) The seizure and destruction or sale of a tobacco product or other property under this section does not relieve a person from a fine, imprisonment, or other penalty for violation of this act.

(7) A person who is not an employee or officer of this state or a political subdivision of this state who furnishes to the department or to any law enforcement agency original information concerning a violation of this act, which information results in the collection and recovery of any tax or penalty or leads to the forfeiture of any cigarettes, or other property, may be awarded and paid by the state treasurer, compensation of not more than 10% of the net amount received from the sale of any forfeited cigarettes or other property, but not to exceed $5,000.00 which must be paid out of the receipts from the sale of the property. If any amount is issued to the local governmental unit under subsection (5), the amount awarded under this subsection to a person who provides original information that results in a seizure of cigarettes or other property by a local law enforcement agency must be paid from that amount issued under subsection (5). If in the opinion of the attorney general and the director of the department of state police it is considered necessary to preserve the identity of the person furnishing the information, the attorney general and the director of the department of state police shall file with the state treasurer an affidavit setting forth that necessity and a warrant may be issued jointly to the attorney general and the director of the department of state police. Upon payment to the person furnishing that information, the attorney general and the director of the department of state police shall file with the state treasurer an affidavit that the money has been by them paid to the person entitled to the money under this section.

(8) If a retailer possesses or sells cigarettes on which the tax imposed under this act has not been paid or accrued to a wholesaler, secondary wholesaler, or unclassified acquirer licensed under this act, the retailer shall be prohibited from purchasing, possessing, or selling any cigarettes or other tobacco products as follows:

(a) For a first violation, for a period of not more than 6 months.

(b) For a second violation within a period of 5 years, for a period of at least 6 months and not more than 36 months.

(c) For a third or subsequent violation within a period of 5 years, for a period of at least 1 year and not more than 5 years.

(9) The prohibition described in subsection (8) is effective upon service by certified mail or personal service on the retailer of notice issued by the department ordering the retailer to cease all sales and purchases of cigarettes and other tobacco products. Upon receipt of this notice, the retailer may return any tobacco products in the possession of the retailer upon which the tax imposed by this act has been paid or accrued to a wholesaler, secondary wholesaler, or unclassified acquirer licensed under this act. The department shall notify all licensed wholesalers, manufacturers, secondary wholesalers, vending machine operators, and unclassified acquirers of any retailer who has been prohibited from purchasing cigarettes or other tobacco products and the duration of the prohibition. A wholesaler, secondary wholesaler, or unclassified acquirer shall not sell cigarettes or other tobacco products to a retailer after receipt of notice from the department that the retailer is prohibited from purchasing tobacco products. Any cigarettes or other tobacco products found on the premises of the retailer during the period of prohibition are considered contraband and subject to seizure under this section, and constitute an additional improper possession under this subsection. The retailer may contest the order prohibiting purchase, possession, or sale of tobacco products in accordance with the appeal procedures and time limits provided in subsection (3) of this section. After completion of the appeals provided or upon expiration of the period to request such appeal, the department shall issue a final order and make service upon the retailer of an order to cease all purchases, possession, and sale of all cigarettes and other tobacco products for a specified period as appropriate. This order does not relieve the retailer from seizure and sale of a tobacco product or other property under this section, or relieve the retailer from a fine, imprisonment, or other penalty

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for violation of this act.

History: 1993, Act 327, Eff. Mar. 15, 1994;—Am. 1995, Act 118, Imd. Eff. June 29, 1995;—Am. 1997, Act 187, Imd. Eff. Dec. 30, 1997;—Am. 2004, Act 474, Imd. Eff. Dec. 28, 2004;—Am. 2022, Act 171, Imd. Eff. July 21, 2022.

205.430 Defenses.

Sec. 10. The seizure, forfeiture, sale, or destruction of a tobacco product or other property, or an action for recovery of amounts due, does not constitute a defense to the person owning or having control or possession of that property from criminal prosecution for an act or omission made or offense committed under this act or from liability to pay penalties provided by this act.

History: 1993, Act 327, Eff. Mar. 15, 1994.

205.431 Sale or solicitation of orders to be shipped, mailed, sent, or brought into state; license required; sales conducted through internet, by telephone, or mail-order transaction; affirmation; purchasers responsible to pay unpaid state taxes on cigars; sign; definitions.

Sec. 11. (1) A person, not licensed under this act as either a wholesaler or unclassified acquirer, shall not sell or solicit a sale of a tobacco product to be shipped, mailed, or otherwise imported, sent or brought into this state, to a person in this state that is not licensed under this act, unless the tobacco product is to be sold through a wholesaler or unclassified acquirer, licensed under this act.

(2) A person, in this state, that is not licensed under this act, shall not order, purchase, or otherwise engage in a transaction to acquire a tobacco product that is to be shipped, mailed, imported, sent, or brought into this state unless that tobacco product is to be sold through a wholesaler or unclassified acquirer, licensed under this act. A consumer in this state shall not purchase or otherwise acquire a tobacco product through a remote retail sale unless the seller is licensed under this act as an unclassified acquirer. A tobacco product ordered, purchased, or acquired by a person in violation of this subsection is contraband subject to seizure and forfeiture under section 9. A person who violates this subsection is considered to be in control or possession of a tobacco product in violation of this act for purposes of section 8(1), regardless of whether that tobacco product has been sold, consumed, or otherwise disposed of. Any limitation on the tax applicable to cigars under section 7(1)(b) shall not apply, or otherwise be taken into account, for purposes of determining the liability for taxes and penalties under section 8(1) arising from a violation of this subsection.

(3) Except as provided in section 8(2) regarding representatives of a licensed manufacturer, a retailer in this state shall not purchase, possess, acquire for resale at retail, or sell a tobacco product in this state unless that tobacco product was purchased or otherwise acquired directly from a wholesaler, unclassified acquirer, or secondary wholesaler, licensed under this act. A retailer who violates this subsection is considered to be in control or possession of a tobacco product in violation of this act for purposes of section 8(1), regardless of whether that tobacco product has been sold, consumed, or otherwise disposed of. Any limitation on the tax applicable to cigars under section 7(1)(b) shall not apply, or otherwise be taken into account, for purposes of determining the liability for taxes and penalties under section 8(1) arising from a violation of this subsection.

(4) A retailer is considered to have purchased or otherwise acquired a tobacco product in compliance with subsection (3) if all of the following conditions are met:

(a) The retailer obtains a copy of the license of the wholesaler, secondary wholesaler, or unclassified acquirer at the time of purchase or acquisition.

(b) The license described in subdivision (a) was not expired when the tobacco product was purchased or otherwise acquired by the retailer.

(c) The copy of the license is preserved by the retailer in the same manner, for the same period of time, and offered for inspection as required of other statements and records under section 6.

(5) Notwithstanding anything in this act to the contrary, a licensee may provide a copy of its license to a retailer for purposes of this section. A retailer that obtains a copy of the license for a particular licensee under this section is not required to obtain another copy of the license for subsequent purchases or acquisitions of tobacco products from that licensee that are made during the active license year and before the expiration of that license.

(6) Subject to subsection (1), all sales conducted through the internet, by telephone, or in a mail-order transaction must not be completed unless, before each delivery of tobacco products is made, whether through the mail, through a transportation company, or through any other delivery system, the seller has obtained from the purchaser an affirmation that includes a copy of a valid government-issued document that confirms the purchaser's name, address, and date of birth showing that the purchaser is at least the legal minimum age to purchase tobacco products; that the tobacco products purchased are not intended for consumption by an individual who is younger than the legal minimum age to purchase tobacco products; and a written statement

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signed by the purchaser that affirms the purchaser's address and that the purchaser is at least the minimum legal age to purchase tobacco products. The statement must also confirm that the purchaser understands that signing another person's name to the affirmation is illegal; that the sale of tobacco products to individuals under the legal minimum purchase age is illegal; and that the purchase of tobacco products by individuals under the legal minimum purchase age is illegal under the laws of the state of Michigan. The seller shall verify the information contained in the affirmation provided by the purchaser against a commercially available database of governmental records, or obtain a photocopy, fax copy, or other image of the valid, government-issued identification stating the date of birth or age of the purchaser.

(7) Subject to subsection (1), all invoices, bills of lading, sales receipts, or other documents related to tobacco product sales conducted through the internet, by telephone, or in a mail-order transaction must contain the current seller's valid Michigan sales tax license number or use tax registration number, business name and address of the seller, and a statement as to whether all sales taxes or use taxes, as applicable, and taxes levied under this act have been paid. All packages of tobacco products shipped from a tobacco product seller to purchasers who reside in Michigan, including consumers in a remote retail sale, must be clearly printed or stamped with the word "TOBACCO PRODUCTS" on the outside of all sides of the package so it is clearly visible to the shipper. If an order is made as a result of advertisement over the internet, the tobacco retailer, and an unclassified acquirer making a remote retail sale, shall request the email address of the purchaser and shall receive payment by credit card or check before completing the sale. This subsection does not apply to sales by wholesalers and unclassified acquirers licensed under this act other than remote retail sales.

(8) The deliverer of the tobacco products shall obtain proof from a valid government-issued document that the person signing for the tobacco products is the purchaser.

(9) A retailer not otherwise licensed or required to be licensed under this act shall post a sign, visible to the public inside the retail establishment that informs purchasers of cigars through catalog sales, telephone or mail orders, or internet sales of their liability for any applicable unpaid state taxes on those cigars and that cigars purchased in violation of this act are contraband.

(10) As used in this section:

(a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations, including logical, arithmetic, or memory functions with or on computer data or a computer program, and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

(b) "Computer network" means the interconnection of hardwire or wireless communication lines with a computer through remote terminals or a complex consisting of 2 or more interconnected computers.

(c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(d) "Computer system" means related, connected or unconnected, computer equipment, devices, software, or hardware.

(e) "Credit card" means a card or device issued by a person licensed under 1984 PA 379, MCL 493.101 to 493.114, or under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, or issued by a depository financial institution as defined in section 1a of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651a, under a credit card arrangement.

(f) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

(g) "Internet" means the connection to the World Wide Web through the use of a computer, a computer network, or a computer system.

(h) "Sale conducted through the internet" means a sale of, a solicitation to sell, a purchase of, or an offer to purchase tobacco products conducted all or in part by accessing an internet website and includes a remote retail sale.

History: 1993, Act 327, Eff. Mar. 15, 1994;—Am. 2004, Act 474, Imd. Eff. Dec. 28, 2004;—Am. 2012, Act 325, Imd. Eff. Oct. 9, 2012;—Am. 2016, Act 86, Imd. Eff. Apr. 19, 2016;—Am. 2020, Act 326, Eff. Jan. 1, 2022;—Am. 2022, Act 171, Imd. Eff. July 21, 2022.

205.432 Disposition of proceeds from taxes, fees, and penalties; disbursements; use of funds for enforcement and administration of act.

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Sec. 12. (1) The proceeds derived from the payment of taxes, fees, and penalties provided for under this act and the license fees received by the department shall be deposited with the state treasurer and disbursed only as provided in this section. However, before a distribution of funds is made under this section, subject to appropriation, the funds described in this section may be used by the department, the attorney general, and the department of state police for enforcement and administration of this act.

(2) The tax imposed on cigarettes under section 7(1)(a) must be disbursed as follows:

(a) 2.4375% of the proceeds must be credited to the health and safety fund created in the health and safety fund act, 1987 PA 264, MCL 141.471 to 141.479.

(b) 41.6200% of the proceeds must be credited to the state school aid fund established by section 11 of article IX of the state constitution of 1963.

(c) 3.7500% of the proceeds shall be credited to the healthy Michigan fund created under section 5953 of the public health code, 1978 PA 368, MCL 333.5953. Fifty percent of the proceeds described in this subdivision that are used for smoking prevention programs shall be used by the department of health and human services to expand the free smokers quit kit program to include the nicotine patch or nicotine gum.

(d) 19.7625% of the proceeds must be disbursed as follows:

(*i*) For each fiscal year, $3,000,000.00 to the Michigan state capitol historic site fund created in section 7 of the Michigan state capitol historic site act, 2013 PA 240, MCL 4.1947. For each fiscal year, the state treasurer shall adjust the figure described in this subparagraph by an amount determined by the state treasurer at the end of each calendar year to reflect the cumulative annual percentage change in the Consumer Price Index. For each fiscal year, if the cumulative annual percentage change in the Consumer Price Index is negative, then the adjustment for that fiscal year is zero. As used in this subsection, "Consumer Price Index" means the most comprehensive index of consumer prices available for this state from the Bureau of Labor Statistics of the United States Department of Labor. From the funds described in this subparagraph, not later than February 1 of each year, the Michigan state capitol commission created in section 5 of the Michigan state capitol historic site act, 2013 PA 240, MCL 4.1945, shall report to the chairpersons of the house and senate appropriations committees. The report must contain all of the following:

(A) The proposed maintenance plan for the Michigan State Capitol Historical Site for the immediately following fiscal year.

(B) The projected 5-year maintenance plan for the Michigan State Capitol Historical Site for the immediately following 5 fiscal years.

(C) Projected large-scale projects for the Michigan State Capitol Historical Site that exceed $1,000,000.00.

(*ii*) The remaining proceeds must be credited to the general fund of this state.

(e) 0.5550% of the proceeds must be paid to counties with a 2000 population of more than 2,000,000, to be used only for indigent health care.

(f) 31.8750% of the proceeds must be credited to the Michigan Medicaid benefits trust fund created under section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

(3) The tax imposed under section 7(1)(b) must be disbursed as follows:

(a) 75.0% of the proceeds must be credited to the Michigan Medicaid benefits trust fund created under section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

(b) 25.0% of the proceeds must be credited to the general fund of this state.

(4) The proceeds of the fees and penalties provided for in this act shall be used for the administration of this act.

History: 1993, Act 327, Eff. Mar. 15, 1994;—Am. 1997, Act 187, Imd. Eff. Dec. 30, 1997;—Am. 2002, Act 503, Imd. Eff. July 18, 2002;—Am. 2004, Act 164, Imd. Eff. June 24, 2004;—Am. 2012, Act 188, Imd. Eff. June 20, 2012;—Am. 2014, Act 272, Imd. Eff. July 2, 2014;—Am. 2016, Act 309, Imd. Eff. Oct. 6, 2016;—Am. 2018, Act 639, Eff. Mar. 29, 2019;—Am. 2022, Act 171, Imd. Eff. July 21, 2022.

Compiler's note: Subsection (10) of Sec. 12, as amended by Act 188 of 2012, was vetoed by the governor on June 20, 2012.

Subsection (10) of Sec. 12, as amended by Act 188 of 2012, reads as follows:

"(10) For fiscal year 2011-2012 only, from the funds described in subsections (3)(d), (4)(a), (7)(c), and (8)(c), $6,000,000.00 is appropriated to the following departments in the following amounts for enforcement and administration of this act:

(a) Department of treasury, $1,500,000.00.

(b) Department of attorney general, $500,000.00.

(c) Department of state police, $4,000,000.00."

205.433 Administration of tax; rules; forms; additional taxes; appointment of special investigator.

Sec. 13. (1) The tax imposed by this act shall be administered by the department pursuant to 1941 PA 122, MCL 205.1 to 205.31, and this act. In case of conflict between 1941 PA 122, MCL 205.1 to 205.31, and this act, the provisions of this act control.

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(2) The department may promulgate rules to implement this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(3) The department shall prescribe forms for use by taxpayers and the manner in which the forms must be filed.

(4) The tax imposed by this act is in addition to all other taxes for which the taxpayer may be liable.

(5) The state treasurer may appoint any department employee as a special investigator, who shall have the power to arrest a person violating this act.

History: 1993, Act 327, Eff. Mar. 15, 1994;—Am. 1995, Act 131, Imd. Eff. July 10, 1995;—Am. 2022, Act 171, Imd. Eff. July 21, 2022.

Administrative rules: R 205.401 et seq. and R 205.451 et seq. of the Michigan Administrative Code.

205.434 Requirements or prohibitions imposed by local units of government.

Sec. 14. Notwithstanding any other provision of law, beginning on the effective date of this act, a city, township, village, county, other local unit of government, or political subdivision of this state shall not impose any new requirement or prohibition pertaining to the sale or licensure of tobacco products for distribution purposes. This section does not invalidate or otherwise restrict a requirement or prohibition described in this section existing on the effective date of this act.

History: 1993, Act 327, Eff. Mar. 15, 1994.

205.435 Repeal of MCL 205.501 to 205.522.

Sec. 15. (1) Act No. 265 of the Public Acts of 1947, being sections 205.501 to 205.522 of the Michigan Compiled Laws, is repealed effective May 1, 1994.

(2) The provisions of Act No. 265 of the Public Acts of 1947, being sections 205.501 to 205.522 of the Michigan Compiled Laws, shall remain in effect for criminal liability and the collection and enforcement of the payment of any tax, fee, penalty, or interest due and payable under that act for any period in which that act was in effect prior to its repeal.

History: 1993, Act 327, Eff. Mar. 15, 1994.

205.436 Conditional effective date.

Sec. 16. This act shall not take effect unless Senate Joint Resolution S is submitted to the voters and the following bills are enacted into law:

(a) House Bill No. 5109.
(b) House Bill No. 5110.
(c) House Bill No. 5116.
(d) House Bill No. 5009.
(e) House Bill No. 5010.
(f) House Bill No. 5118.
(g) House Bill No. 5097.
(h) House Bill No. 5123.
(i) House Bill No. 4279.
(j) House Bill No. 5102.
(k) House Bill No. 5103.
(*l*) House Bill No. 5106.
(m) House Bill No. 5111.
(n) House Bill No. 5115.
(o) House Bill No. 5112.
(p) House Bill No. 5120.
(q) House Bill No. 5129.
(r) House Bill No. 5224.

History: 1993, Act 327, Eff. Mar. 15, 1994.

CIGARETTE TAX
Act 265 of 1947

205.501-205.523 Repealed. 1949, Act 312, Imd. Eff. June 17, 1949;—1951, Act 78, Imd. Eff. May 28, 1951;—1961, Act 156, Eff. July 1, 1961;—1980, Act 167, Eff. Sept. 17, 1980; —1993, Act 327, Eff. May 1, 1994.

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ADDITIONAL CIGARETTE TAX
Act 95 of 1959

205.541-205.543 Repealed. 1959, Act 274, Eff. Jan. 1, 1960.

INCOME TAX
Act 150 of 1953

205.551-205.574 Repealed. 1954, Act 17, Imd. Eff. Mar. 12, 1954;—1967, Act 281, Eff. Jan. 1, 1968.

MULTISTATE TAX COMPACT
Act 343 of 1969

205.581-205.589 Repealed. 2014, Act 282, Imd. Eff. Sept. 12, 2014.

Compiler's note: Enacting section 1 of Act 282 of 2014 provides:

"Enacting section 1. 1969 PA 343, MCL 205.581 to 205.589, is repealed retroactively and effective beginning January 1, 2008. It is the intent of the legislature that the repeal of 1969 PA 343, MCL 205.581 to 205.589, is to express the original intent of the legislature regarding the application of section 301 of the Michigan business tax act, 2007 PA 36, MCL 208.1301, and the intended effect of that section to eliminate the election provision included within section 1 of 1969 PA 343, MCL 205.581, and that the 2011 amendatory act that amended section 1 of 1969 PA 343, MCL 205.581, was to further express the original intent of the legislature regarding the application of section 301 of the Michigan business tax act, 2007 PA 36, MCL 208.1301, and to clarify that the election provision included within section 1 of 1969 PA 343, MCL 205.581, is not available under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713."

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DOMICILE OF DECEDENTS FOR DEATH TAX PURPOSES
Act 173 of 1956

AN ACT providing for the settlement of disputes respecting the domicile of decedents for death tax purposes.

History: 1956, Act 173, Eff. Aug. 11, 1956.

The People of the State of Michigan enact:

205.601 Domicile of decedents for death tax purposes, settlement of disputes; definitions.

Sec. 1. For the purposes of this act:

(1) The term "executor" means an executor of the will or administrator of the estate of the decedent, but does not include an ancillary administrator nor an administrator with the will annexed if an executor named in the will has been appointed and has qualified in another state.

(2) The term "taxing official" means the commissioner of revenue of the state of Michigan and the designated authority of a reciprocal state.

(3) The term "death tax" means any tax levied by a state on account of the transfer or shifting of economic benefits in property at death, or in contemplation thereof, or intended to take effect in possession or enjoyment at or after death, whether denominated an "inheritance tax,""transfer tax,""succession tax,""estate tax,""death duty,""death dues," or otherwise.

(4) The term "interested person" means any person who may be entitled to receive, or who has received any property or interest which may be required to be considered in computing the death tax of any state involved.

(5) The term "state" means any state, territory, or possession of the United States, or the District of Columbia. The term "this state" means the state of Michigan.

(6) The term "board" shall mean board of arbitration.

History: 1956, Act 173, Eff. Aug. 11, 1956.

205.602 Domicile of decedents for death tax purposes, settlement of disputes; notice of election, rejection.

Sec. 2. In any case in which this state and 1 or more other states each claims that it was the domicile of a decedent at his death, at any time prior to the commencement of legal action for determination of domicile within this state or within 60 days thereafter, any executor, or the taxing official of any such state, may elect to invoke the provisions of this act. Such executor or taxing official shall send a notice of such election by registered mail, receipt requested, to the taxing official of each such state and to each executor, ancillary administrator, and interested person. Within 40 days after the receipt of such notice of election any executor may reject such election by sending a notice, by registered mail, receipt requested, to all persons originally required to be sent a notice of election. When an election has been rejected by an executor, no further proceedings shall be had under this act. If such election is not rejected within the 40-day period, the dispute as to death taxes shall be determined solely as hereinafter provided. No other proceedings to determine or assess such death taxes shall thereafter be instituted in any court of this state or otherwise.

History: 1956, Act 173, Eff. Aug. 11, 1956.

205.603 Domicile of decedents for death tax purposes, settlement of disputes; written agreement with other taxing officials.

Sec. 3. In any case in which an election is made and not rejected the commissioner of revenue of this state may enter into a written agreement with the other taxing officials involved and with the executors to accept a certain sum in full payment of any death taxes, together with interest and penalties, that may be due this state, provided this agreement fixes the amount to be paid the other states involved in the dispute.

History: 1956, Act 173, Eff. Aug. 11, 1956.

205.604 Domicile of decedents for death tax purposes, settlement of disputes; arbitration board, procedure, determination.

Sec. 4. If in any such case it appears that an agreement cannot be reached, as provided in section 3, or if 1 year shall have elapsed from the date of the election without such an agreement having been reached, the domicile of the decedent at the time of his death shall be determined solely for death tax purposes as follows:

(a) Where only this state and 1 other state are involved, the commissioner of revenue of this state and the taxing official of the other state shall each appoint a member of a board of arbitration, and these members

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shall appoint the third member of the board. If this state and more than 1 other state are involved, the taxing officials thereof shall agree upon the authorities charged with the duty of administering death tax laws in 3 states not involved in the dispute and each of these authorities shall appoint a member of the board of arbitration. The board shall select 1 of its members as chairman.

(b) Such board shall hold hearings at such places as are deemed necessary, upon reasonable notice to the executors, ancillary administrators, all other interested persons, and to the taxing officials of the states involved, all of whom are entitled to be heard.

(c) Such board may administer oaths, take testimony, subpoena witnesses and require their attendance, require the production of books, papers and documents, issue commissions to take testimony. Subpoenas may be issued by any member of the board. Failure to obey a subpoena may be punished by any court of record in the same manner as if the subpoena had been issued by such court.

(d) Whenever practicable such board shall apply the rules of evidence then prevailing in the federal courts under the federal rules of civil procedure.

(e) Such board shall determine the domicile of the decedent at the time of his death. This determination is final and conclusive and binds this state, and all of its judicial and administrative officials on all questions concerning the domicile of the decedent for death tax purpose. If said board does not render a determination within 1 year from the time that it is fully constituted, all authority of said board shall cease and the bar to court proceedings set forth in section 2 shall no longer exist.

(f) The reasonable compensation and expenses of the members of the board and its employees shall be agreed upon among such members, the taxing officials involved, and the executors. If an agreement cannot be reached, such compensation and expenses shall be determined by such taxing officials; and, if they cannot agree, by the appropriate probate court of the state determined to be the domicile. Such amount shall be borne by the estate and shall be deemed an administration expense.

(g) The determination of such board and the record of its proceeding shall be filed with the authority having jurisdiction to assess the death tax in the state determined to be the domicile of the decedent and with the authorities which would have had jurisdiction to assess the death tax in each of the other states involved if the decedent had been found to be domiciled therein.

History: 1956, Act 173, Eff. Aug. 11, 1956.

205.605 Domicile of decedents for death tax purposes, settlement of disputes; written agreement after arbitration commenced.

Sec. 5. Notwithstanding the commencement of a legal action for determination of domicile within this state or the commencement of an arbitration proceeding, as provided in section 4, the commissioner of revenue of this state may in any case enter into a written agreement with the other taxing officials involved and with the executors to accept a certain sum in full payment of any death tax, together with interest and penalties, that may be due this state, provided this agreement fixes the amount to be paid the other states involved in the dispute, at any time before such proceeding is concluded. Upon the filing of this agreement with the authority which would have jurisdiction to assess the death tax of this state, if the decedent died domiciled in this state, an assessment shall be made as provided in such agreement, and this assessment finally and conclusively fixes the amount of death tax due this state. If the aggregate amount payable under such agreement or under an agreement made in accordance with the provisions of section 3 to the states involved is less than the minimum credit allowable to the estate against the United States estate tax imposed with respect thereto, the executor forthwith shall also pay to the commissioner of taxation of this state the same percentage of the difference between such aggregate amount of such credit as the amount payable to such commissioner under such agreement bears to such aggregate amount.

History: 1956, Act 173, Eff. Aug. 11, 1956.

205.606 Domicile of decedents for death tax purposes, settlement of disputes; maximum interest and penalties if decedent domiciled in this state.

Sec. 6. When in any case the board of arbitration determines that a decedent died domiciled in this state, the total amount of interest and penalties for nonpayment of the tax, between the date of the election and the final determination of the board, shall not exceed 4% of the amount of the taxes per annum.

History: 1956, Act 173, Eff. Aug. 11, 1956.

205.607 Domicile of decedents for death tax purposes, settlement of disputes; application of act.

Sec. 7. This act shall be applicable only to cases in which each of the states involved in the dispute has in effect therein a law substantially similar hereto. Except, nothing contained in this section shall prohibit the

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application of this act or any part hereof where any of the other states involved in the dispute have in effect therein a law empowering the tax authority to voluntarily enter into a binding arbitration or compromise agreement and such an agreement is so entered into.

History: 1956, Act 173, Eff. Aug. 11, 1956.

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TAX TRIBUNAL ACT
Act 186 of 1973

AN ACT to create the tax tribunal; to provide for personnel, jurisdiction, functions, practice and procedure; to provide for appeals; and to prescribe the powers and duties of certain state agencies; and to abolish certain boards.

History: 1973, Act 186, Eff. July 1, 1974.

Compiler's note: For transfer of the Tax Tribunal from the Department of Treasury to the Department of Commerce, budget procurement and management related functions from the Department of Treasury to the Director of the Department of Commerce, and the power to designate the chairperson of the Tax Tribunal to the Governor, see E.R.O. No. 1991-15 compiled at MCL 205.800 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

CHAPTER 1

205.701 Short title.

Sec. 1. This act shall be known and may be cited as the "tax tribunal act".

History: 1973, Act 186, Eff. July 1, 1974.

Compiler's note: For transfer of Michigan tax tribunal to Michigan administrative hearing system, see E.R.O. No. 2011-4, compiled at MCL 445.2030.

For the transfer of powers, duties, functions and responsibilities of the Michigan administrative hearing system to the Michigan office of administrative hearings and rules, and abolishment of the Michigan administrative hearing system, see E.R.O. 2019-1, compiled at MCL 324.99923.

205.703 Definitions.

Sec. 3. As used in this act:

(a) "Agency" means a board, official, or administrative agency empowered to make a decision, finding, ruling, assessment, determination, or order that is subject to review under the jurisdiction of the tribunal or that has collected a tax for which a refund is claimed.

(b) "Chairperson" means the chairperson of the tribunal.

(c) "Mediation" means a voluntary process in which a mediator facilitates communication between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable settlement.

(d) "Mediator" means a neutral third party who is certified by the tribunal under section 47 as a mediator in a proceeding before the tribunal or as a facilitator in the court of claims, and who is agreed to by the parties.

(e) "Proceeding" means an appeal taken under this act.

(f) "Property tax laws" does not include the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

(g) "Tribunal" means the tax tribunal created under section 21.

History: 1973, Act 186, Eff. July 1, 1974;—Am. 1976, Act 365, Imd. Eff. Dec. 23, 1976;—Am. 1980, Act 437, Imd. Eff. Jan. 14, 1981;—Am. 1992, Act 172, Imd. Eff. July 21, 1992;—Am. 2008, Act 125, Imd. Eff. May 9, 2008.

205.707 Provisions effective.

Sec. 7. The provisions of this act are effective nothwithstanding the provisions of any statute, charter, or law to the contrary.

History: 1973, Act 186, Eff. July 1, 1974.

CHAPTER 2

205.721 Tax tribunal; creation; quasi-judicial agency; appointment, reappointment, and terms of members; vacancy; training.

Sec. 21. (1) The tax tribunal is created and is a quasi-judicial agency which, for administrative purposes only, is in the department of licensing and regulatory affairs.

(2) The tribunal consists of 7 members appointed by the governor, with the advice and consent of the senate, for terms of 4 years.

(3) A member may be reappointed and a vacancy shall be filled for an unexpired term in the same manner as the appointment is made for a full term.

(4) Members shall receive training on matters relevant to the work of the tribunal, including, but not limited to, proper courtroom procedures, state and local tax issues, accepted appraisal practices, and proper assessing practices.

History: 1973, Act 186, Eff. July 1, 1974;—Am. 1976, Act 365, Imd. Eff. Dec. 23, 1976;—Am. 2018, Act 438, Eff. Oct. 1, 2019.

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Compiler's note: For transfer of the Tax Tribunal from the Department of Treasury to the Department of Commerce, budget procurement and management related functions from the Department of Treasury to the Director of the Department of Commerce, and the power to designate the chairperson of the Tax Tribunal to the Governor, see E.R.O. No. 1991-15 compiled at MCL 205.800 of the Michigan Compiled Laws.

205.722 Tax tribunal; qualifications of members; oath; requirements; prohibitions; compensation and expenses; motion for disqualification.

Sec. 22. (1) All of the following apply to tribunal membership:

(a) The members of the tribunal shall be citizens of the United States and residents of this state.

(b) At least 2 members shall be attorneys admitted to practice in this state who have been engaged for at least 5 years immediately preceding the appointment in active government, corporate, or private practice dealing with federal and state or local tax matters, including property taxes, or in the discharge of a judicial or quasi-judicial office.

(c) At least 1 member shall be a certified assessor holding the highest level of certification granted by the state tax commission.

(d) At least 1 member shall be a professional real estate appraiser holding a recognized certification indicating competence in the valuation of complex income producing and residential property of the type subject to property taxation, with a certification having required a review of sample appraisals and 5 years of experience as an appraiser.

(e) At least 1 member shall be a certified public accountant with 5 years of experience in state or local tax matters.

(f) Appointees who are not attorneys, certified assessors, professional real estate appraisers, or certified public accountants shall have at least 5 years of experience in state or local tax matters.

(2) Each member shall take and subscribe to the constitutional oath of office before entering on the discharge of his or her duties.

(3) Each member shall personally perform the duties of his or her office, including, but not limited to, the maintenance of his or her docket as assigned and directed by the chairperson and in accordance with rules prescribed under section 32. Subject to subsection (5), a member may engage in any other gainful employment or business or professional activity for remuneration.

(4) Each member shall receive an annual salary as determined by law and shall be reimbursed for his or her actual and necessary expenses at the rate determined by the administrative board.

(5) In a proceeding before the entire tribunal, on motion of a party to the proceeding or a tribunal member assigned to the proceeding, or by order of the chairperson, a member assigned to the proceeding may be disqualified for any reason listed in MCR 2.003(C)(1). A motion for disqualification by a party to the proceeding shall be reviewed and either approved or denied by the tribunal member presiding over the proceeding. If the motion is denied, the moving party may appeal to the chairperson unless the chairperson is presiding over the proceeding. If the chairperson is presiding over the proceeding, an appeal shall instead be randomly assigned to another member who is qualified under this section as an attorney. A motion for disqualification by a party to a proceeding must be filed not later than 14 days immediately succeeding the discovery of the grounds for disqualification. However, if a trial is scheduled on a date that is less than 15 days after the discovery, the motion must be made as far in advance of that trial date as is reasonably possible. Disqualification may be waived with the consent of all parties and shall be in writing or placed on the record.

History: 1973, Act 186, Eff. July 1, 1974;—Am. 1976, Act 365, Imd. Eff. Dec. 23, 1976;—Am. 2008, Act 127, Imd. Eff. May 9, 2008;—Am. 2018, Act 438, Eff. Oct. 1, 2019.

205.723 Tax tribunal; election and duties of chairman.

Sec. 23. Annually, the tribunal shall elect 1 of its members as chairman who shall assign matters, apportion business of the tribunal, and perform other duties prescribed by law.

History: 1973, Act 186, Eff. July 1, 1974.

205.724 Tax tribunal; chief clerk; deputy clerks; oath; bond.

Sec. 24. (1) The tribunal shall have 1 chief clerk.

(2) The tribunal shall have such deputy clerks as, with the chairman's approval, are required and assigned by the chief clerk. The chief clerk shall maintain the records and perform such other duties as the chairman directs or as are prescribed by law.

(3) Each clerk, before taking office, shall take and subscribe the constitutional oath of office and furnish a bond pursuant to Act No. 10 of the Public Acts of 1969, being sections 15.1 to 15.6 of the Michigan Compiled Laws.

History: 1973, Act 186, Eff. July 1, 1974.

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205.725 Principal office of tribunal and chief clerk; accommodations and equipment; legal, technical, and secretarial assistance; restrictions on clerks or employees; salaries and expenses of tribunal.

Sec. 25. (1) The principal office of the tribunal and its chief clerk shall be in the city of Lansing, and the department of administration shall furnish suitable accommodations and equipment there.

(2) Subject to appropriations therefor, the tribunal shall have such legal, technical, and secretarial assistance as the chairman deems necessary.

(3) A clerk or employee of the tribunal shall not provide legal, accounting, or technical assistance relevant to a federal, state or local tax matter, or to any other matter of which the tribunal may acquire jurisdiction.

(4) Salaries and expenses of the tribunal shall be paid as provided by law.

History: 1973, Act 186, Eff. July 1, 1974.

205.726 Appointment of hearing officers; conducting hearings; notice of hearing; proposed decision of hearing officer or referee.

Sec. 26. The tribunal may appoint 1 or more hearing officers to hold hearings. Hearings, except as otherwise provided in chapter 6, shall be conducted pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, and the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the hearing shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A proposed decision of a hearing officer or referee shall be considered and decided by 1 or more members of the tribunal.

History: Add. 1976, Act 365, Imd. Eff. Dec. 23, 1976;—Am. 1978, Act 439, Imd. Eff. Oct. 9, 1978;—Am. 1980, Act 437, Imd. Eff. Jan. 14, 1981;—Am. 2008, Act 126, Imd. Eff. May 9, 2008.

CHAPTER 3

205.731 Tax tribunal; jurisdiction.

Sec. 31. The tribunal has exclusive and original jurisdiction over all of the following:

(a) A proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under the property tax laws of this state.

(b) A proceeding for a refund or redetermination of a tax levied under the property tax laws of this state.

(c) Mediation of a proceeding described in subdivision (a) or (b) before the tribunal.

(d) Certification of a mediator in a tax dispute described in subdivision (c).

(e) Any other proceeding provided by law.

History: 1973, Act 186, Eff. July 1, 1974;—Am. 2008, Act 125, Imd. Eff. May 9, 2008.

205.732 Tax tribunal; powers.

Sec. 32. The tribunal's powers include, but are not limited to, all of the following:

(a) Affirming, reversing, modifying, or remanding a final decision, finding, ruling, determination, or order of an agency.

(b) Ordering the payment or refund of taxes in a matter over which it may acquire jurisdiction.

(c) Granting other relief or issuing writs, orders, or directives that it deems necessary or appropriate in the process of disposition of a matter over which it may acquire jurisdiction.

(d) Promulgating rules for the implementation of this act, including rules for practice and procedure before the tribunal and for mediation as provided in section 47, under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(e) Mediating a proceeding before the tribunal.

(f) Certifying mediators to facilitate claims in the court of claims and in the tribunal.

History: 1973, Act 186, Eff. July 1, 1974;—Am. 2008, Act 125, Imd. Eff. May 9, 2008.

Administrative rules: R 205.1101 et seq. of the Michigan Administrative Code.

205.733 Tax tribunal; adoption and effect of seal; process.

Sec. 33. (1) The tribunal shall adopt a seal, which when impressed upon a document issued by the tribunal, raises a rebuttable presumption of the validity and authenticity of the document.

(2) Process shall be styled: "In the name of the people of the state of Michigan", shall be effective anywhere in the state and may be served by an officer or person authorized to serve process issued by a circuit court.

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History: 1973, Act 186, Eff. July 1, 1974.

205.734 Hearing and deciding proceeding; location; accommodations and equipment; conducting business at public meeting; notice.

Sec. 34. (1) One or more members of the tribunal may hear and decide proceedings.

(2) The tribunal shall sit at places throughout the state as the tribunal determines. The county board of commissioners for the county in which the tribunal is sitting, except when the tribunal is sitting in the city of Lansing, shall provide the tribunal with suitable accommodations and equipment on request of the chairperson. The business which the tribunal may perform shall be conducted at a public meeting on the tribunal held in compliance with Act No. 267 of the Public Acts of 1976, as amended. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976, as amended.

History: 1973, Act 186, Eff. July 1, 1974;—Am. 1976, Act 365, Imd. Eff. Dec. 23, 1976;—Am. 1978, Act 439, Imd. Eff. Oct. 9, 1978;—Am. 1980, Act 437, Imd. Eff. Jan. 14, 1981.

205.735 Applicability before January 1, 2007; de novo proceedings; jurisdiction in assessment disputes; petition to invoke jurisdiction; service; appeal of contested tax bill; amendment of petition or answer; representation.

Sec. 35. (1) The provisions of this section apply to a proceeding before the tribunal that is commenced before January 1, 2007.

(2) A proceeding before the tribunal is original and independent and is considered de novo. For an assessment dispute as to the valuation of property or if an exemption is claimed, the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (3), except as otherwise provided in this section for a year in which the July or December board of review has authority to determine a claim of exemption for qualified agricultural property or for an appeal of a denial of a principal residence exemption by the department of treasury, and in section 37(5) and (7). For a dispute regarding a determination of a claim for exemption of qualified agricultural property for a year in which the July or December board of review has authority to determine a claim of exemption for qualified agricultural property, the claim for exemption must be presented to either the July or December board of review before the tribunal acquires jurisdiction of the dispute. For a special assessment dispute, the special assessment must be protested at the hearing held for the purpose of confirming the special assessment roll before the tribunal acquires jurisdiction of the dispute.

(3) The jurisdiction of the tribunal in an assessment dispute is invoked by a party in interest, as petitioner, filing a written petition on or before June 30 of the tax year involved. Except in the residential property and small claims division, a written petition is considered filed by June 30 of the tax year involved if it is sent by certified mail on or before June 30 of that tax year. In the residential property and small claims division, a written petition is considered filed by June 30 of the tax year involved if it is postmarked by first-class mail or delivered in person on or before June 30 of the tax year involved. All petitions required to be filed or served by a day during which the offices of the tribunal are not open for business shall be filed by the next business day. In all other matters, the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, determination, or order that the petitioner seeks to review. Except in the residential property and small claims division, a written petition is considered filed if it is sent by certified mail or delivered in person on or before expiration of the period in which an appeal may be made as provided by law. In the residential property and small claims division, a written petition is considered filed if it is postmarked by first-class mail or delivered in person on or before expiration of the period in which an appeal may be made as provided by law. An appeal of a contested tax bill shall be made within 60 days after mailing by the assessment district treasurer and the appeal is limited solely to correcting arithmetic errors or mistakes and is not a basis of appeal as to disputes of valuation of the property, the property's exempt status, or the property's equalized value resulting from equalization of its assessment by the county board of commissioners or the state tax commission. Service of the petition on the respondent shall be by certified mail. For an assessment dispute, service of the petition shall be mailed to the assessor of that governmental unit if the respondent is the local governmental unit. Except for petitions filed under chapter 6, a copy of the petition shall also be sent to the secretary of the school board in the local school district in which the property is located and to the clerk of any county that may be affected.

(4) The petition or answer may be amended at any time by leave of the tribunal and in compliance with its rules. If a tax was paid while the determination of the right to the tax is pending before the tribunal, the taxpayer may amend his or her petition to seek a refund of that tax.

(5) A person or legal entity may appear before the tribunal in his or her own behalf or may be represented

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by an attorney or by any other person.

History: 1973, Act 186, Eff. July 1, 1974;—Am. 1976, Act 365, Imd. Eff. Dec. 23, 1976;—Am. 1983, Act 163, Imd. Eff. July 24, 1983;—Am. 1985, Act 95, Imd. Eff. July 11, 1985;—Am. 1987, Act 23, Imd. Eff. Apr. 24, 1987;—Am. 1989, Act 65, Eff. July 31, 1989;—Am. 1994, Act 254, Imd. Eff. July 5, 1994;—Am. 2000, Act 165, Imd. Eff. June 20, 2000;—Am. 2003, Act 131, Eff. Jan. 1, 2004;—Am. 2006, Act 174, Imd. Eff. May 30, 2006.

Compiler's note: Section 2 of Act 95 of 1985 provides: "This amendatory act, which codifies the petition filing provisions of Rule 201 and Rule 620 of the Michigan tax tribunal, being R 205.1201 and R 205.1620 of the Michigan Administrative Code, is curative in nature and shall be retroactively effective from July 31, 1975."

Administrative rules: R 205.1101 et seq. of the Michigan Administrative Code.

205.735a Applicability after December 31, 2006; de novo proceedings; jurisdiction in assessment disputes; filing of petition; amendment of petition or answer; representation; "designated delivery service" defined.

Sec. 35a. (1) The provisions of this section apply to a proceeding before the tribunal that is commenced after December 31, 2006.

(2) A proceeding before the tribunal is original and independent and is considered de novo.

(3) Except as otherwise provided in this section or by law, for an assessment dispute as to the valuation or exemption of property, the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (6).

(4) In the 2007 tax year and each tax year after 2007, all of the following apply:

(a) For an assessment dispute as to the valuation or exemption of property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as commercial real property, industrial real property, or developmental real property, the assessment may be protested before the board of review or appealed directly to the tribunal without protest before the board of review as provided in subsection (6).

(b) For an assessment dispute as to the valuation or exemption of property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as commercial personal property, industrial personal property, or utility personal property, the assessment may be protested before the board of review or appealed directly to the tribunal without protest before the board of review as provided in subsection (6), if a statement of assessable property is filed under section 19 of the general property tax act, 1893 PA 206, MCL 211.19, prior to the commencement of the board of review for the tax year involved.

(c) For an assessment dispute as to the valuation of property that is subject to taxation under 1974 PA 198, MCL 207.551 to 207.572, the commercial redevelopment act, 1978 PA 255, MCL 207.651 to 207.668, the enterprise zone act, 1985 PA 224, MCL 125.2101 to 125.2123, the technology park development act, 1984 PA 385, MCL 207.701 to 207.718, the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2781 to 125.2797, the commercial rehabilitation act, 2005 PA 210, MCL 207.841 to 207.856, or 1953 PA 189, MCL 211.181 to 211.182, the assessment may be protested before the board of review or appealed directly to the tribunal without protest before the board of review as provided in subsection (6). This subdivision does not apply to property that is subject to the neighborhood enterprise zone act, 1992 PA 147, MCL 207.771 to 207.786.

(5) For a dispute regarding a determination of a claim of exemption of a principal residence or qualified agricultural property for a year in which the July or December board of review has authority to determine a claim of exemption for a principal residence or qualified agricultural property, the claim of exemption shall be presented to either the July or December board of review before the tribunal acquires jurisdiction of the dispute. For a special assessment dispute, the special assessment shall be protested at the hearing held for the purpose of confirming the special assessment roll before the tribunal acquires jurisdiction of the dispute.

(6) The jurisdiction of the tribunal in an assessment dispute as to property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as commercial real property, industrial real property, developmental real property, commercial personal property, industrial personal property, or utility personal property is invoked by a party in interest, as petitioner, filing a written petition on or before May 31 of the tax year involved. The jurisdiction of the tribunal in an assessment dispute as to property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as agricultural real property, residential real property, timber-cutover real property, or agricultural personal property is invoked by a party in interest, as petitioner, filing a written petition on or before July 31 of the tax year involved. In all other matters, the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, or determination. An appeal of a contested tax bill shall be made within 60 days after mailing by the assessment district treasurer and the appeal is limited solely to correcting arithmetic errors or mistakes and is not a basis of appeal as to disputes of valuation of the property, the property's exempt status, or the property's equalized value resulting from equalization of its assessment by

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the county board of commissioners or the state tax commission. Service of the petition on the respondent shall be by certified mail. For an assessment dispute, service of the petition shall be mailed to the assessor of that local tax collecting unit if the respondent is the local tax collecting unit. Except for petitions filed under chapter 6, a copy of the petition shall also be sent to the secretary of the school board in the local school district in which the property is located and to the clerk of any county that may be affected.

(7) A petition is considered filed on or before the expiration of the time period provided in this section or by law if 1 or more of the following occur:

(a) The petition is postmarked by the United States postal service on or before the expiration of that time period.

(b) The petition is delivered in person on or before the expiration of that time period.

(c) The petition is given to a designated delivery service for delivery on or before the expiration of that time period and the petition is delivered by that designated delivery service or, if the petition is not delivered by that designated delivery service, the petitioner establishes that the petition was given to that designated delivery service for delivery on or before the expiration of that time period.

(8) A petition required to be filed by a day during which the offices of the tribunal are not open for business shall be filed by the next business day.

(9) A petition or answer may be amended at any time by leave of the tribunal and in compliance with its rules. If a tax was paid while the determination of the right to the tax is pending before the tribunal, the taxpayer may amend his or her petition to seek a refund of that tax.

(10) A person or legal entity may appear before the tribunal in his or her own behalf or may be represented by an attorney or by any other person.

(11) As used in this section, "designated delivery service" means a delivery service provided by a trade or business that is designated by the tribunal for purposes of this subsection. The tribunal shall issue a tribunal notice not later than December 31 in each calendar year designating not less than 1 delivery service for the immediately succeeding calendar year. The tribunal may designate a delivery service only if the tribunal determines that the delivery service meets all of the following requirements:

(a) Is available to the general public.

(b) Is at least as timely and reliable on a regular basis as the United States postal service.

(c) Records electronically to a database kept in the regular course of business or marks on the petition the date on which the petition was given to the delivery service for delivery.

(d) Any other requirement the tribunal prescribes.

History: Add. 2006, Act 174, Imd. Eff. May 30, 2006;—Am. 2008, Act 125, Imd. Eff. May 9, 2008.

205.736 Tax tribunal; subpoenas; compliance; assistance from state and local governments.

Sec. 36. (1) Tribunal, upon written request of a party to a proceeding, shall issue subpoenas forthwith requiring the attendance and testimony of witnesses and the production of evidence including but not limited to books, records, correspondence, and documents in their possession or under their control. On written request, the tribunal shall revoke a subpoena if the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence, the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. In case of refusal to comply with a subpoena, the party on whose behalf it was issued may file a petition, in the circuit court for Ingham county or for the county in which the proceeding is held, for an order requiring compliance.

(2) When directed by the chairman, a state or local governmental unit or agency shall make available books, records, documents, information, and assistance to the tribunal.

History: 1973, Act 186, Eff. July 1, 1974.

205.737 Determination of property's taxable value; equalization; burden of proof; joinder of claims; motion fee; interest; motion to amend petition to add subsequent years; notice of hearing; appeal without prior protest.

Sec. 37. (1) The tribunal shall determine a property's taxable value pursuant to section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

(2) The tribunal shall determine a property's state equalized valuation by multiplying its finding of true cash value by a percentage equal to the ratio of the average level of assessment in relation to true cash values in the assessment district, and equalizing that product by application of the equalization factor that is uniformly applicable in the assessment district for the year in question. The property's state equalized valuation shall not exceed 50% of the true cash value of the property on the assessment date.

(3) The petitioner has the burden of proof in establishing the true cash value of the property. The assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true

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cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.

(4) If the taxpayer paid additional taxes as a result of the unlawful assessments on the same property after filing the petition, or if in subsequent years an unlawful assessment is made against the same property, the taxpayer, not later than the filing deadline prescribed in section 35 for a proceeding before the tribunal that is commenced before January 1, 2007 or section 35a for a proceeding before the tribunal that is commenced after December 31, 2006, except as otherwise provided in subsections (5) and (7), may amend the petition to join all of the claims for a determination of the property's taxable value, state equalized valuation, or exempt status and for a refund of payments based on the unlawful assessments. The motion to amend the petition to add a subsequent year shall be accompanied by a motion fee equal to 50% of the filing fee to file a petition to commence an appeal for that property in that year. A sum determined by the tribunal to have been unlawfully paid or underpaid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to date of its payment. However, a sum determined by the tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the tribunal's decision. Interest required by this subsection shall accrue for periods before April 1, 1982 at a rate of 6% per year, shall accrue for periods after March 31, 1982 but before April 1, 1985 at a rate of 12% per year, and shall accrue for periods after March 31, 1985 but before April 1, 1994 at a rate of 9% per year. After March 31, 1994 but before January 1, 1996, interest shall accrue at an interest rate set monthly at a per annum rate based on the auction rate of the 91-day discount treasury bill rate for the first Monday in each month, plus 1%. After December 31, 1995 but before July 1, 2012, interest shall accrue at an interest rate set each year based on the average auction rate of 91-day discount treasury bills in the immediately preceding state fiscal year as certified by the department of treasury, plus 1%. The department of treasury shall certify the interest rate within 60 days after the end of the immediately preceding fiscal year. After June 30, 2012, interest shall accrue at 1 percentage point above the adjusted prime rate. As used in this section, "adjusted prime rate" means the average predominant prime rate quoted by not fewer than 3 commercial banks to large businesses, as determined by the department of treasury. The adjusted prime rate is to be based on the average prime rate charged by not fewer than 3 commercial banks during the 6-month period ending on March 31 and the 6-month period ending on September 30. One percentage point shall be added to the adjusted prime rate and the resulting sum shall be divided by 12 to establish the current monthly interest rate. The resulting current monthly interest rate based on the 6-month period ending March 31 becomes effective on the following July 1, and the resulting current monthly interest rate based on the 6-month period ending September 30 becomes effective on January 1 of the following year. The tribunal shall order the refund of all or part of a property tax administration fee paid in connection with taxes that the tribunal determines were unlawfully paid.

(5) A motion to amend a petition to add subsequent years is not necessary in the following circumstances:

(a) If the tribunal has jurisdiction over a petition alleging that the property is exempt from taxation, the appeal for each subsequent year for which an assessment has been established shall be added automatically to the petition. However, upon leave of the tribunal, the petitioner or respondent may request that any subsequent year be excluded from appeal at the time of the hearing on the petition.

(b) If the residential property and small claims division of the tribunal has jurisdiction over a petition, the appeal for each subsequent year for which an assessment has been established shall be added automatically to the petition. The residential property and small claims division shall automatically add to an appeal of a final determination of a claim for exemption of a principal residence or of qualified agricultural property each subsequent year in which a claim for exemption of that principal residence or that qualified agricultural property is denied. However, upon leave of the tribunal, the petitioner or respondent may request that any subsequent year be excluded from appeal at the time of the hearing on the petition.

(6) The notice of the hearing on a petition shall include a statement advising the petitioner of the right to amend his or her petition to include or exclude subsequent years as provided by subsections (4) and (5).

(7) If the final equalization multiplier for the tax year is greater than the tentative multiplier used in preparing the assessment notice and as a result of action of the state board of equalization or county board of commissioners a taxpayer's assessment as equalized is in excess of 50% of true cash value, that person may appeal directly to the tax tribunal without a prior protest before the local board of review. The appeal shall be filed under this subsection on or before the third Monday in August and shall be heard in the same manner as other appeals of the tribunal. An appeal pursuant to this subsection shall not result in an equalized value less than the assessed value multiplied by the tentative equalization multiplier used in preparing the assessment notice.

History: 1973, Act 186, Eff. July 1, 1974;—Am. 1976, Act 365, Imd. Eff. Dec. 23, 1976;—Am. 1982, Act 57, Imd. Eff. Apr. 6, 1982 ;—Am. 1983, Act 163, Imd. Eff. July 24, 1983;—Am. 1985, Act 63, Imd. Eff. June 19, 1985;—Am. 1987, Act 23, Imd. Eff. Apr. 24,

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1987;—Am. 1992, Act 172, Imd. Eff. July 21, 1992;—Am. 1993, Act 21, Imd. Eff. Apr. 14, 1993;—Am. 1994, Act 254, Imd. Eff. July 5, 1994;—Am. 1995, Act 232, Imd. Eff. Dec. 19, 1995;—Am. 1996, Act 505, Imd. Eff. Jan. 9, 1997;—Am. 2003, Act 131, Eff. Jan. 1, 2004 ;—Am. 2006, Act 174, Imd. Eff. May 30, 2006;—Am. 2012, Act 220, Imd. Eff. June 28, 2012.

205.737a Extension of deadline for filing certain 2020 property tax appeals.

Sec. 37a. A petitioner shall have until August 31, 2020 to file any property tax appeal provided for under section 35a or 62 if the filing deadline otherwise provided for that appeal under this act or other law is any day after May 27, 2020 and before September 1, 2020. As used in this section, "petitioner" means a party who files a petition in the tribunal.

History: Add. 2020, Act 88, Imd. Eff. June 11, 2020.

CHAPTER 4

205.741 Tax tribunal; proceedings before state tax commission or circuit court.

Sec. 41. A person or legal entity which, immediately before the effective date of this act, was entitled to proceed before the state tax commission or circuit court of this state for determination of a matter subject to the tribunal's jurisdiction, as provided in section 31, shall proceed only before the tribunal.

History: 1973, Act 186, Eff. July 1, 1974.

205.743 Payment of taxes as condition to final decision; taxes to which section applicable; appeal to which section applicable.

Sec. 43. (1) If the date set by law for the payment of taxes has passed, the tribunal shall not make a final decision on the entire proceeding until the taxes are paid. This requirement may be waived at the tribunal's discretion.

(2) This section only applies to taxes paid under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, or 1953 PA 189, MCL 211.181 to 211.182.

(3) This section does not apply to an appeal to the residential property and small claims division of the tribunal under section 62a of a denial of a claim for exemption of a principal residence or of qualified agricultural property under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, from taxes levied under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211.

History: 1973, Act 186, Eff. July 1, 1974;—Am. 1976, Act 365, Imd. Eff. Dec. 23, 1976;—Am. 1994, Act 254, Imd. Eff. July 5, 1994;—Am. 2003, Act 131, Eff. Jan. 1, 2004.

205.744 Intervention or impleading.

Sec. 44. (1) Except for petitions filed under chapter 6, the tax tribunal may permit the intervention or impleading of any governmental unit which receives tax funds from the petitioner who is making the appeal.

(2) If a petition is filed under chapter 6, the tribunal may permit the intervention or impleading of a state or local governmental unit or officer thereof or of any person or other entity upon a showing of a material monetary interest in the decision of the tribunal which is not likely to be adequately presented by the parties to the proceeding.

History: 1973, Act 186, Eff. July 1, 1974;—Am. 1976, Act 365, Imd. Eff. Dec. 23, 1976.

205.745 Entering order or decision; appeal.

Sec. 45. An order or decision may be entered by a member of the tribunal upon written consent of the parties filed in the proceeding or stated in the record. The order or decision is not appealable and has like effect as an order or decision in a contested hearing.

History: 1973, Act 186, Eff. July 1, 1974;—Am. 1980, Act 437, Imd. Eff. Jan. 14, 1981.

205.746 Evidence; written decision; rules of privilege; objection; official report of proceeding; availability of writings to public; costs for transcripts.

Sec. 46. (1) In a proceeding before the tribunal all parties may submit evidence. The tribunal shall make its decision in writing. The tribunal may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. Effect shall be given to the rules of privilege recognized by law. An objection to an offer of evidence may be made.

(2) A proceeding before the tribunal shall be officially reported. A writing prepared, owned, used, in the possession of, or retained by the tribunal in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.247 of the Michigan Compiled Laws. Costs assessed for transcripts shall be collected by the clerk and paid into a

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revolving fund to be used solely to defray the costs of preparing transcripts.

History: 1973, Act 186, Eff. July 1, 1974;—Am. 1976, Act 365, Imd. Eff. Dec. 23, 1976;—Am. 1978, Act 439, Imd. Eff. Oct. 9, 1978.

Compiler's note: In subsection (2) of this section, "15.247" evidently should read "15.246".

205.747 Mediator; certification; application; rules; requirements; list; conflict of interest; conditions; appointment; report; use of statements at mediation conference; confidentiality; exceptions; meeting not subject to open meetings act; fee.

Sec. 47. (1) A person may apply to the tribunal to be certified as a mediator. Certification is for a period of 1 year. The application shall be in a form prescribed by the tribunal. A tribunal member or hearing officer may not be certified as a mediator.

(2) The tribunal shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that establish requirements for an applicant to be certified as a mediator. Whether an applicant meets the established requirements to be certified as a mediator shall be solely determined by the tribunal. The requirements for certification as a mediator shall include, but are not limited to, 5 years of state and local tax experience that occurred within 7 years immediately preceding submission of the application. If an applicant satisfies the requirements established by the tribunal, the tribunal shall certify that applicant as a mediator. The tribunal may charge each mediator certified by the tribunal an annual certification fee, as determined by the tribunal.

(3) The tribunal shall maintain a list of certified mediators available to conduct a mediation described in section 32. The list shall be published and shall indicate all of the following:

(a) The hourly rate charged by the mediator for his or her mediation services.

(b) The type of tax the mediator is certified to mediate.

(c) A summary of the mediator's experience and training.

(d) The forum in which the mediator is certified to practice.

(4) A mediator shall disclose to all parties any conflict of interest that may exist before agreeing to mediate a dispute.

(5) The tribunal shall mediate a proceeding in which it has exclusive and original jurisdiction under section 31 if all of the following conditions are satisfied:

(a) The parties have filed with the tribunal a stipulation that they agree to participate in mediation.

(b) The parties agree to a mediator.

(c) The tribunal issues an order designating the proceeding for mediation.

(6) The tribunal shall appoint the mediator agreed to by the parties. A mediator has no authoritative decision-making power to resolve a dispute in mediation. The mediator shall report the results of the mediation to the tribunal. If an agreement is reached in a proceeding before the tribunal, the tribunal shall accept the agreement if it meets the tribunal's requirements.

(7) Statements made during a mediation conference, including statements made in written submissions, shall not be used and are not admissible in any other proceedings, including trial. Any statements, written submissions or materials, or communications between the parties or counsel of the parties and the mediator relating to the mediation are confidential and shall not be disclosed without the written consent of all parties and are not subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, except for the following:

(a) The report of the mediator. The report shall be in a form prescribed by the tribunal.

(b) Information reasonably required by tribunal personnel to administer and evaluate the mediation program under this section.

(c) Information necessary for the tribunal to resolve disputes regarding the mediator's fee.

(d) Consent judgments.

(8) A mediation conference is not a meeting of a public body for purposes of the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(9) The tribunal may charge a fee for mediation.

History: Add. 2008, Act 125, Imd. Eff. May 9, 2008.

205.749 Fees; Michigan tax tribunal fund; creation; deposit of fees; money remaining in fund at close of fiscal year; use.

Sec. 49. (1) The tribunal by rule shall prescribe filing fees and other fees to be paid in connection with a proceeding before the tribunal. The fees shall be paid to the clerk of the tribunal and by order of the tribunal may be taxed as costs.

(2) The residential property and small claims division of the tribunal shall not charge fees or costs on

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appeals of principal residence property as defined in rules promulgated by the tax tribunal.

(3) The Michigan tax tribunal fund is created in the department of labor and economic growth as a separate interest bearing fund. All fees collected pursuant to this act shall be deposited in the Michigan tax tribunal fund. The state treasurer shall direct the investment of the Michigan tax tribunal fund. Money in the Michigan tax tribunal fund shall remain in the Michigan tax tribunal fund at the close of the fiscal year and shall not revert to the general fund. Money in the Michigan tax tribunal fund shall be used solely for operation of the tribunal.

History: 1973, Act 186, Eff. July 1, 1974;—Am. 1980, Act 437, Imd. Eff. Jan. 14, 1981;—Am. 2008, Act 126, Imd. Eff. May 9, 2008.

Administrative rules: R 205.1101 et seq. of the Michigan Administrative Code.

CHAPTER 5

205.751 Tax tribunal; requirements as to decisions and opinions; decision delaying collection of taxes.

Sec. 51. (1) A decision and opinion of the tribunal shall be made within a reasonable period, shall be in writing or stated in the record, and shall include a concise statement of facts and conclusions of law, stated separately and, upon order of the tribunal, shall be officially reported and published.

(2) If the implementation of a decision of the tribunal would have the effect of delaying collection of taxes in a taxing unit due to the time of the year in which the decision is rendered, the tribunal shall not order immediate implementation of the decision without consent of all the taxing units involved, but shall order any required adjustment in rate by the taxing unit or units be made in the following tax year.

History: 1973, Act 186, Eff. July 1, 1974;—Am. 1978, Act 95, Imd. Eff. Apr. 5, 1978.

205.752 Tax tribunal; decisions or orders final and conclusive; copies; costs.

Sec. 52. (1) A decision or order of the tribunal is final and conclusive on all parties, unless reversed, remanded, or modified on appeal. A copy of the decision or order shall be mailed forthwith to each party or his attorney of record. Costs may be awarded in the discretion of the tribunal.

(2) The tribunal may order a rehearing upon written motion made by a party within 21 days after the entry of the decision or order. A decision or order may be amended or vacated after the rehearing.

History: 1973, Act 186, Eff. July 1, 1974;—Am. 2008, Act 125, Imd. Eff. May 9, 2008.

205.753 Tax tribunal; appeal from final order or decision; record.

Sec. 53. (1) Subject to section 28 of article VI of the state constitution of 1963, and pursuant to section 102 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being section 24.302 of the Michigan Compiled Laws, and in accordance with the Michigan court rules, an appeal from the tribunal's decision shall be by right to the court of appeals. For purposes of the constitutional provision, the tribunal is the final agency for the administration of property tax laws.

(2) Appeal from the final order or decision of the tribunal may be taken by filing an appeal in accordance with the Michigan court rules after the entry of the order or decision appealed from or after denial of a motion for rehearing timely filed.

(3) An order, ruling, or decision before the final decision of the tribunal is not reviewable unless leave to appeal is granted by the court of appeals.

(4) A decision of the tribunal as to the assessment of real property is binding for the first year of assessment that is determined in the proceeding before the tribunal.

(5) On taking of appeal from the order or decision of the tribunal, the chief clerk of the tribunal shall prepare an official record of the proceeding that shall include the following:

(a) A list showing dates and docket entries of all documents and proceedings as shown by the file of the proceeding.

(b) All notices, pleadings, motions, and intermediate rulings.

(c) A transcript of the hearing before the tribunal along with exhibits presented.

(d) The decision, opinion, or order of the tribunal from which appeal is taken.

History: 1973, Act 186, Eff. July 1, 1974;—Am. 1989, Act 284, Imd. Eff. Dec. 26, 1989.

205.755 Correction of rolls; collection or refund of tax; commencement of time periods.

Sec. 55. (1) Within 20 days after entry of the order, the officers charged with keeping the rolls on which the affected assessment and tax are spread shall correct the rolls and the officer charged with collecting or refunding to the affected tax shall thereafter collect or refund it, in accordance with the order.

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(2) When an appeal is taken, the time periods within which action would otherwise be taken pursuant to subsection (1) shall commence running upon entry of the final order on appeal.

History: 1973, Act 186, Eff. July 1, 1974.

CHAPTER 6

205.761 Residential property and small claims division; creation; composition; duties of hearing officers and referees; authority to contract with other persons or referees; consideration of proposed decision.

Sec. 61. (1) A residential property and small claims division of the tribunal is created and consists of 1 or more members of the tribunal appointed and serving pursuant to this act and those hearing officers and referees appointed by the tribunal who shall hear and decide proceedings before the residential property and small claims division.

(2) The tribunal may contract with qualified persons other than tribunal employees to act as referees to hear and decide proceedings before the residential property and small claims division.

(3) In matters before the residential property and small claims division, a proposed decision of a hearing officer or referee shall be considered and decided by 1 or more members of the tribunal.

History: 1973, Act 186, Eff. July 1, 1974;—Am. 1976, Act 365, Imd. Eff. Dec. 23, 1976;—Am. 1992, Act 172, Imd. Eff. July 21, 1992;—Am. 2008, Act 126, Imd. Eff. May 9, 2008.

205.762 Residential property and small claims division; jurisdiction; “inflation rate” defined; election to proceed; exceptions to proposed order; modification; rehearing; location of proceeding; form for filing of residential property and small claims appeals; filing fee; "residential property" defined.

Sec. 62. (1) The residential property and small claims division created in section 61 has jurisdiction over a proceeding, otherwise cognizable by the tribunal, in which residential property is exclusively involved. Property other than residential property may be included in a proceeding before the residential property and small claims division if the amount of that property's taxable value or state equalized valuation in dispute is not more than $100,000.00. The residential property and small claims division also has jurisdiction over a proceeding involving an appeal of any other tax over which the tribunal has jurisdiction if the amount of the tax in dispute is $20,000.00 or less, adjusted annually by the inflation rate. As used in this subsection, "inflation rate" means the ratio of the general price level for the state fiscal year ending in the calendar year immediately preceding the current year divided by the general price level for the state fiscal year ending in the calendar year before the year immediately preceding the current year.

(2) A person or legal entity entitled to proceed under section 31, and whose proceeding meets the jurisdictional requirements of subsection (1), may elect to proceed before either the residential property and small claims division or the entire tribunal. A formal record of residential property and small claims division proceedings is not required. Within 20 days after a hearing officer or referee issues a proposed order, a party may file exceptions to the proposed order. The tribunal shall review the exceptions to determine if the proposed order shall be adopted as a final order. Upon a showing of good cause or at the tribunal's discretion, the tribunal may modify the proposed order and issue a final order or hold a rehearing by a tribunal member. A rehearing is not limited to the evidence presented before the hearing officer or referee.

(3) Except as otherwise provided in this subsection, the residential property and small claims division shall meet in the county in which the property in question is located or in a county contiguous to the county in which the property in question is located. A petitioner-appellant shall not be required to travel more than 100 miles from the location of the property in question to the hearing site, except that a rehearing by a tribunal member shall be at a site determined by the tribunal. By leave of the tribunal and with the mutual consent of all parties, a residential property and small claims division proceeding may take place at a location mutually agreed upon by all parties or may take place by the use of amplified telephonic or video conferencing equipment.

(4) The tribunal shall make a short form for the simplified filing of residential property and small claims appeals.

(5) In a proceeding before the residential property and small claims division for property other than residential property, if the amount of taxable value or state equalized valuation in dispute is greater than $20,000.00, or in nonproperty matters if the amount in dispute is greater than $1,000.00, the filing fee is the amount that would have been paid if the proceeding was brought before the entire tribunal and not the residential property and small claims division.

(6) As used in this chapter, "residential property" means any of the following:

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(a) Real property exempt under section 7cc of the general property tax act, 1893 PA 206, MCL 211.7cc.

(b) Real property classified as residential real property under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c.

(c) Real property with less than 4 rental units.

(d) Real property classified as agricultural real property under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c.

History: 1973, Act 186, Eff. July 1, 1974;—Am. 1976, Act 365, Imd. Eff. Dec. 23, 1976;—Am. 1980, Act 437, Imd. Eff. Jan. 14, 1981;—Am. 1992, Act 172, Imd. Eff. July 21, 1992;—Am. 1993, Act 21, Imd. Eff. Apr. 14, 1993;—Am. 1995, Act 232, Imd. Eff. Dec. 19, 1995;—Am. 2008, Act 128, Imd. Eff. May 9, 2008.

205.762a Appeal of final determination of claim for exemption of principal residence or qualified agricultural property; jurisdiction; filing.

Sec. 62a. (1) The residential property and small claims division created under section 61 has exclusive jurisdiction over an appeal of a final determination of a claim for exemption of a principal residence by the department of treasury or of qualified agricultural property under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, from taxes levied under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211.

(2) An appeal of a final determination of a claim for exemption of a principal residence under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, shall be filed not later than 35 days after the department of treasury determines a claim for exemption. An appeal is considered filed if it is postmarked by first-class mail or delivered in person within 35 days after the department of treasury denies a claim for exemption.

(3) An appeal of a final determination of a claim for exemption of qualified agricultural property under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, shall be filed not later than 30 days after the July or December board of review determines a claim for exemption. An appeal is considered filed if it is postmarked by first-class mail or delivered in person within 30 days after the July or December board of review denies a claim for exemption.

History: Add. 1994, Act 254, Imd. Eff. July 5, 1994;—Am. 2003, Act 131, Eff. Jan. 1, 2004.

205.762b Informal settlement conference; manner; stipulation for judgment; appeal; section not applicable to claim for exemption of principal residence.

Sec. 62b. (1) Except as otherwise provided in this section, after a petitioner has filed a petition under this chapter and the residential property and small claims division has issued notice of the docket number assigned to the petition and before a hearing for the petition has been scheduled, the petitioner or the respondent local tax collecting unit may request an informal settlement conference as provided in this section.

(2) A petitioner shall submit a written request for an informal settlement conference to the local tax collecting unit and shall file a copy of that written request with the residential property and small claims division. A local tax collecting unit shall submit a written request for an informal settlement conference to the petitioner and shall file a copy of that written request with the residential property and small claims division. A written request shall include a statement attesting to the service of the written request on the petitioner or local tax collecting unit, as appropriate. The statement shall identify the person upon whom the request was served and the date and method by which the written request was served on that person.

(3) If a petitioner has requested an informal settlement conference under subsection (2), the local tax collecting unit shall schedule and hold an informal settlement conference within 60 days after receipt of the written request. The informal settlement conference shall be held telephonically or at the offices of the local tax collecting unit. If the local tax collecting unit does not schedule and hold an informal settlement conference within 60 days after receipt of the written request, the petitioner may file a motion with the residential property and small claims division for an order to compel the informal settlement conference. If the residential and small claims division issues an order compelling an informal settlement conference, the local tax collecting unit shall conduct an informal settlement conference as required by the order. If the local tax collecting unit does not schedule and hold an informal settlement conference as required by the order to compel the informal settlement conference, the residential property and small claims division shall schedule an expedited default hearing.

(4) If a local tax collecting unit has requested an informal settlement conference under subsection (2), the local tax collecting unit shall schedule and hold an informal settlement conference within 60 days after delivery of the written request to the petitioner. The informal settlement conference shall be held telephonically or at the offices of the local tax collecting unit. A petitioner is not required to respond to the local tax collecting unit's request for an informal settlement conference or to attend the informal settlement

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conference. If a petitioner does not respond to the local tax collecting unit's request for an informal settlement conference or attend the informal settlement conference, the petitioner's appeal shall continue as provided in this act.

(5) At the informal settlement conference, the petitioner and the local tax collecting unit may enter into a stipulation for judgment. The stipulation for judgment shall be filed with the residential property and small claims division. The residential property and small claims division shall review the stipulation for judgment to determine if the stipulation for judgment shall be adopted as a final order. Upon a showing of good cause or at the residential property and small claims division's discretion, the residential property and small claims division may reject the proposed stipulation for judgment.

(6) If the petitioner and the local tax collecting unit do not agree to a stipulation for judgment or if the residential property and small claims division rejects the proposed stipulation for judgment, the petitioner's appeal shall continue as provided in this act.

(7) This section does not apply to the denial of a claim for exemption of a principal residence under section 7cc(8) or (11) of the general property tax act, 1893 PA 206, MCL 211.7cc.

History: Add. 2012, Act 463, Imd. Eff. Dec. 27, 2012.

205.763 Appearances.

Sec. 63. A person or legal entity may appear before the division in his own behalf, or may be represented by an attorney or by such other person as the appellant may choose.

History: 1973, Act 186, Eff. July 1, 1974.

205.764 Referral of proceedings; transfer of matter for hearing and decision; fees, costs, and expenses.

Sec. 64. (1) With the permission of the petitioner-appellant, the division or the chairperson may refer a proceeding to the tribunal for its decision.

(2) A party or an intervening party may request a transfer of a matter to the tribunal for hearing and decision. If the request is granted the party requesting the transfer shall pay:

(a) The fees and costs related to the transfer.

(b) The reasonable expenses incurred by the other parties incidental to the transfer from the division.

(c) Costs resulting from subsequent appeals if the other party prevails.

History: 1973, Act 186, Eff. July 1, 1974;—Am. 1976, Act 365, Imd. Eff. Dec. 23, 1976;—Am. 1980, Act 437, Imd. Eff. Jan. 14, 1981.

205.765 Decision as precedent; designation.

Sec. 65. A decision of the division is not a precedent unless so designated by the tribunal.

History: 1973, Act 186, Eff. July 1, 1974;—Am. 1980, Act 437, Imd. Eff. Jan. 14, 1981.

205.766 Repealed. 2008, Act 129, Imd. Eff. May 9, 2008.

Compiler's note: The repealed section pertained to evening hearing of the tax tribunal.

CHAPTER 7

205.771 Provisions applicable to matters pending on effective date of act.

Sec. 71. The following subdivisions are applicable to a matter subject to the tribunal's jurisdiction, but which is pending on the effective date of this act before any forum, described in section 41:

(a) A matter which has not been heard on or before August 31, 1974, is transferred to the tribunal on September 1, 1974.

(b) A matter which has been heard on or before August 31, 1974, but which has not been decided on or before September 30, 1974, is transferred to the tribunal on October 1, 1974.

(c) Where a matter is transferred pursuant to subdivisions (a) or (b), the forum shall transfer to the tribunal, within 30 days after the date of transfer of the matter, all relevant books, records, documents, files, transcripts, funds, deposits, and securities.

(d) Where a matter is transferred pursuant to subdivisions (a) or (b), the forum shall notify, by certified mail, return receipt requested, not later than the date of transfer, the parties to such matter of the transfer, and of the fees required by section 49.

(e) Where a matter is transferred pursuant to subdivisions (a) or (b), the moving party shall pay not later than 30 days after the date of transfer, the filing fee and other fees required by section 49. In default of the payment, or on request of the moving party made before the expiration of the 30 days, the tribunal may dismiss the matter with prejudice.

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(f) On the basis of prior proceedings and such supplemental proceedings as it deems necessary, the tribunal shall decide all matters transferred pursuant to subdivisions (a) or (b) as if they had been originally commenced before the tribunal. The tribunal may, in its discretion, waive any defects in pleadings or procedure occurring prior to July 1, 1974, that are not jurisdictional in nature.

History: 1973, Act 186, Eff. July 1, 1974;—Am. 1976, Act 365, Imd. Eff. Dec. 23, 1976.

205.772 Transfer of books, records, documents, files, transcripts, funds, deposits, and securities.

Sec. 72. When a matter is decided by a forum described in section 41, and when, after the effective date of this act, the decision is appealed, the forum shall transfer to the tribunal within 30 days after the date of the filing of the notice of appeal, all relevant books, records, documents, files, transcripts, funds, deposits, and securities.

History: 1973, Act 186, Eff. July 1, 1974.

205.773 Remands.

Sec. 73. When a matter is decided by a forum described in section 41 and the decision is appealed, and when, after the effective date of this act, the matter is remanded, the remand shall be to the tribunal for such action as the appellate court may direct.

History: 1973, Act 186, Eff. July 1, 1974.

205.774 Right to sue agency for refund abolished; payments under protest not required.

Sec. 74. The right to sue any agency for refund of any taxes other than by proceedings before the tribunal is abolished as of September 30, 1974. If a tax paid to an agency is erroneous or unlawful, it shall not be requisite that the payment be made under protest in order to invoke a right to refund by proceedings before the tribunal.

History: 1973, Act 186, Eff. July 1, 1974.

205.779 Effective date; commencement of new proceeding; hearing of new or transferred proceeding; certain persons or legal entities to proceed before tax tribunal only; cases filed under prior law; transfer of certain cases to board of tax appeals.

Sec. 79. (1) This act shall be effective July 1, 1974, but a new proceeding shall not be commenced before the tribunal before September 1, 1974, and a new or transferred proceeding shall not be heard by the tribunal before October 1, 1974.

(2) Except as provided in subsection (3) a person or legal entity which, immediately before January 1, 1976, was entitled to proceed before any quasi-judicial body, court of claims, probate court, district court, municipal court, common pleas court, or circuit court of this state for determination of a matter relating to the state income tax under Act No. 281 of the Public Acts of 1967, as amended, being sections 206.1 to 206.535 of the Michigan Compiled Laws, to the intangibles tax under Act No. 301 of the Public Acts of 1933, as amended, being sections 205.131 to 205.147 of the Michigan Compiled Laws, to the inheritance tax under Act No. 188 of the Public Acts of 1899, as amended, being sections 205.201 to 205.221 of the Michigan Compiled Laws, to the franchise fee under Act No. 284 of the Public Acts of 1972, as amended, being sections 450.1101 to 450.2099 of the Michigan Compiled Laws, to the general sales tax under Act No. 167 of the Public Acts of 1933, as amended, being sections 205.51 to 205.78 of the Michigan Compiled Laws, to the use tax under Act No. 94 of the Public Acts of 1937, as amended, being sections 205.91 to 205.111 of the Michigan Compiled Laws, to gasoline, liquified petroleum gas, and diesel motor fuel taxes under Act No. 150 of the Public Acts of 1927, as amended, being sections 207.101 to 207.194 of the Michigan Compiled Laws, to the cigarette tax under Act No. 265 of the Public Acts of 1947, as amended, being sections 205.501 to 205.522 of the Michigan Compiled Laws, or to the oil and gasoline severance tax under Act No. 48 of the Public Acts of 1929, as amended, being sections 205.301 to 205.317 of the Michigan Compiled Laws, shall proceed only before the tribunal. A case filed under previous law before January 1, 1976, shall proceed under those laws.

(3) Cases appealable to the state board of tax appeals and corporation tax appeal board shall continue to be filed with those boards until December 31, 1976. All such appeals commencing after December 31, 1976 shall be made to the state tax tribunal. Any appeals pending before the state board of tax appeals and the corporation tax appeal board shall be transferred to the tribunal on December 31, 1977, and the boards are abolished as of such date.

(4) Cases subject to the jurisdiction of the state board of tax appeals which were filed with the tribunal on or after January 1, 1976, and before the effective date of this amendatory act shall be transferred to the board

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of tax appeals.

History: 1973, Act 186, Eff. July 1, 1974;—Am. 1976, Act 37, Imd. Eff. Mar. 9, 1976.

Constitutionality: Op. Att'y Gen. No. 5138 (1976) states, in part: "I am, therefore, of the opinion that the legislation did not intend to abolish the State Board of Tax Appeals unless its jurisdiction was effectively transferred to another administrative or quasi-judicial body. Consequently, I conclude that 1973 PA 186, section 79, as originally enacted and as amended by 1976 PA 37 is invalid in its entirety and that it does not abolish the State Board of Tax Appeals."

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EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1991-15

205.800 Transfer of tax tribunal to the department of commerce.

WHEREAS, Article V, Section 1, of the Constitution of the State of Michigan of 1963 vests the executive power in the Governor; and

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, Article V, Section 8, of the Constitution of the State of Michigan of 1963 provides that each principal department shall be under the supervision of the Governor unless otherwise provided by the Constitution; and

WHEREAS, the Tax Tribunal was created by Act No. 186 of the Public Acts of 1973, as amended, being Section 205.701 et seq. of the Michigan Compiled Laws, in the Department of Treasury; and

WHEREAS, there may be at least the appearance of conflicting objectives with respect to the current location of the Tax Tribunal in the Department of Treasury in that the Department of Treasury is also charged with the responsibility of collecting tax revenues for the State of Michigan; and

WHEREAS, the functions, duties, and responsibilities assigned to the Tax Tribunal can be more effectively organized and carried out in the Department of Commerce; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

(1) All the statutory authority, powers, duties, functions, and responsibilities of the Tax Tribunal, created under Act No. 186 of the Public Acts of 1973, as amended, being Section 205.701 et seq. of the Michigan Compiled Laws, are hereby transferred to the Department of Commerce by a Type I transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws; provided, however, that:

(a) The functions of budget procurement and management-related functions of the Tax Tribunal are transferred to the Director of the Department of Commerce, as head of the Department of Commerce.

(b) Pursuant to Article V, Sections 1, 2 and 8, of the Constitution of the State of Michigan of 1963, the power to designate a member of the Tax Tribunal as chairperson is hereby vested in the Governor and such chairperson shall serve at the pleasure of the Governor.

(2) The Director of the Department of Commerce shall provide executive direction and supervision for the implementation of the transfers. The Tax Tribunal shall exercise its prescribed statutory power, duties, and functions of rule making, licensing, and registration, including the prescription of rules, rates, regulations, standards, and adjudications, independently of the Director of the Department of Commerce.

(3) All records, personnel, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Tax Tribunal for the activities transferred to the Department of Commerce by this Executive Order are hereby transferred to the Department of Commerce.

(4) The Chairperson of the Tax Tribunal, designated by the Governor, shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Executive Order.

(5) The Director of the Department of Commerce and the State Treasurer shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and State laws and regulations, or other obligations to be resolved by the Tax Tribunal.

(6) All rules, orders, contracts, and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Executive Order shall continue to be effective until revised, amended, or repealed.

(7) Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this Executive Order shall not abate by reason of the taking effect of this Executive Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Executive Order.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Executive Order shall become effective 60 days after the filing of this Executive

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Order.

History: 1991, E.R.O. No. 1991-15, Eff. Aug. 28, 1991.

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STREAMLINED SALES AND USE TAX ADMINISTRATION ACT
Act 174 of 2004

AN ACT to provide for a streamlined system of sales and use tax collection; to prescribe the requirements necessary for this state to adopt a multistate agreement; to provide for a board with certain powers and duties; to provide for the registration of sellers who select a model of collection and remittance; to forgive liability of collection of sales and use taxes on past transactions for certain sellers; to assure privacy of buyers; and to prescribe certain powers and duties of state officials and state departments.

History: 2004, Act 174, Eff. July 1, 2004.

The People of the State of Michigan enact:

205.801 Short title.

Sec. 1. This act shall be known and may be cited as the "streamlined sales and use tax administration act".

History: 2004, Act 174, Eff. July 1, 2004.

205.803 Definitions.

Sec. 3. As used in this act:

(a) "Agreement" means the streamlined sales and use tax agreement.

(b) "Board" means the governing board under the agreement.

(c) "Certified automated system" means computer software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(d) "Certified service provider" means an agent certified under the agreement to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(e) "Department" means the department of treasury.

(f) "General sales tax act" means 1933 PA 167, MCL 205.51 to 205.78.

(g) "Member state" means a state that has entered into the agreement.

(h) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

(i) "Purchaser" means a person to whom a sale of tangible personal property is made or to whom a service is furnished.

(j) "Sales tax" means the tax levied under the general sales tax act.

(k) "Seller" means any person who sells, leases, or rents tangible personal property or services to another person.

(*l*) "Sourcing" means determining the tax situs of a transaction.

(m) "State" means any state of the United States or the District of Columbia.

(n) "Use tax" means the tax levied under the use tax act.

(o) "Use tax act" means 1937 PA 94, MCL 205.91 to 205.111.

(p) "Voluntary seller" means a seller who does not have a requirement to obtain a license or register to collect the sales or use tax for this state.

History: 2004, Act 174, Eff. July 1, 2004.

205.805 Purpose of act.

Sec. 5. This act simplifies the sales tax and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

History: 2004, Act 174, Eff. July 1, 2004.

205.807 Payment, collection, and remittance of sales and use taxes; provisions.

Sec. 7. The payment, collection, and remittance of the sales and use taxes under this act are subject to the provisions of the general sales tax act and the use tax act.

History: 2004, Act 174, Eff. July 1, 2004.

205.809 Streamlined sales and use tax agreement; powers and duties of state treasurer and department; rules.

Sec. 9. The state treasurer on behalf of this state may enter into the streamlined sales and use tax agreement with 1 or more states. The state treasurer or his or her designee may also certify and recertify this state's compliance with the agreement and take any other action reasonably necessary to participate or continue to

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participate under the agreement. The department may take actions reasonably required to implement the provisions of this act including, but not limited to, the promulgation of rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and regulations, and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

History: 2004, Act 174, Eff. July 1, 2004.

205.811 Controlling effect; parties to agreement; construction of act.

Sec. 11. (1) Any provision of the agreement or any application of a provision of the agreement to any person or circumstance that is inconsistent with any law of this state does not have effect.

(2) The agreement authorized by this act binds and inures only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than this state is established by the law of this state and the other member states and not by the terms of the agreement.

(3) Nothing in the agreement shall be construed to limit the authority of the courts in this state. A person has all the rights, remedies, and obligations provided for in 1941 PA 122, MCL 205.1 to 205.31. A person does not have any cause of action or defense under the agreement because of this state's approval of the agreement or on the ground that the department's action or inaction is inconsistent with the agreement.

(4) A law of this state, or the application of a law, may not be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

(5) No provision of the agreement authorized by this act in whole or in part invalidates or amends any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state.

History: 2004, Act 174, Eff. July 1, 2004.

205.813 Appointment of members to board; terms; membership; representation by state delegation; voting; report; administration of taxes by department; participation by state delegation.

Sec. 13. (1) A state delegation of 4 representatives from this state shall be appointed to the board on July 1, 2004 according to the following:

(a) A member or former member of the senate or an employee of the senate or the senate fiscal agency appointed jointly by the majority and minority leaders of the senate for a term of 2-1/2 years.

(b) A member or former member of the house of representatives or an employee of the house of representatives or the house fiscal agency appointed jointly by the speaker and minority leader of the house of representatives for a term of 1-1/2 years.

(c) The state treasurer or his or her designee for a term of 2-1/2 years.

(d) The governor or his or her designee for a term of 1-1/2 years.

(2) At the end of each initial appointment, a member shall be appointed every 2 years for a 2-year term as follows:

(a) A member or former member of the senate or an employee of the senate or the senate fiscal agency appointed jointly by the majority and minority leaders of the senate.

(b) A member or former member of the house of representatives or an employee of the house of representatives or the house fiscal agency appointed jointly by the speaker and minority leader of the house of representatives.

(c) The state treasurer or his or her designee.

(d) The governor or his or her designee.

(3) The state delegation may represent this state in all meetings of the board. The state delegation shall vote on behalf of this state and represent the position of this state in all of the following coming before the board:

(a) Certify a person as a certified service provider.

(b) Certify a software program as a certified automated system.

(c) Establish 1 or more sales or use tax performance standards for multistate sellers that meet eligibility criteria set by the board and that have developed a proprietary system to determine the amount of sales and use tax due on transactions.

(d) Participate in the issue resolution process.

(e) Participate in determining the compliance of petitioning states.

(f) Any other actions necessary and proper to fulfill the purposes of the agreement.

(4) The state delegation shall report quarterly in writing to the committees responsible for reviewing tax issues in the senate and the house of representatives on the board's activities and shall recommend what state

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statutes are required to be amended to be substantially in compliance with the agreement. The report shall be posted on the department's website.

(5) The taxes imposed under the sales tax act and the use tax act shall be administered by the department under the provisions of those acts, 1941 PA 122, MCL 205.1 to 205.31, and this act.

(6) The state delegation may also participate as a member of the streamlined sales and use tax implementing states in all matters.

History: 2004, Act 174, Eff. July 1, 2004.

205.815 Withdrawal from membership.

Sec. 15. (1) If the state treasurer or the state legislature by resolution determines that it is in the best interest of this state, this state may withdraw from membership in the agreement. This state may withdraw from membership by submitting a notice of intent to withdraw to the governing board, the chief executive of each member state's tax agency, and the committees responsible for reviewing tax issues in the senate and the house of representatives and by posting the notice of intent on this state's website. The withdrawal will be effective on the first day of the calendar quarter that begins not less than 60 days after notice is given.

(2) This state will remain liable for its share of any financial or contractual obligations incurred by the governing board before the effective date of withdrawal. The appropriate share of those obligations shall be determined by this state and the board in good faith based on the benefits received and burdens incurred by both.

History: 2004, Act 174, Eff. July 1, 2004.

205.817 Finding of noncompliance; sanctions; expulsion.

Sec. 17. (1) If this state is found to be out of substantial compliance with the agreement, this state may be subject to sanctions, including expulsion from membership in the agreement by a 3/4 vote of the entire board not including this state.

(2) If this state is expelled from membership in the agreement or sanctioned in any manner, this state will remain liable for its share of any financial or contractual obligations incurred by the board before the effective date of expulsion. The appropriate share of those obligations shall be determined by this state and the governing board in good faith based on the benefits received and burdens incurred by both.

History: 2004, Act 174, Eff. July 1, 2004.

205.819 Registration.

Sec. 19. (1) A person may participate under the agreement only by registering in the central registration system provided for by the agreement.

(2) The department shall participate in an online registration system with other member states that allows sellers to register online. There is no registration fee or written signature required of a seller for registration under the agreement.

(3) A seller registered under the agreement is considered registered in each of the member states. A seller may also choose to register directly with other member states.

(4) A seller may cancel its registration under the agreement at any time according to the agreement. A seller who cancels its registration remains liable for remitting taxes collected to this state.

(5) By registering under the agreement, the seller agrees to be subject to the general sales tax act and use tax act and to collect and remit sales and use taxes for all taxable sales into this state.

(6) Registration of a person under the agreement and collection of sales and use taxes by that person in this state does not provide nexus with this state and shall not be used as a factor in determining nexus with this state for any tax purpose.

(7) A seller may use an agent to register for the seller under the agreement in this state.

(8) Withdrawal or revocation of this state does not relieve a seller of its responsibility to remit taxes collected on behalf of this state.

(9) A seller or certified service provider is not liable for having charged and collected an incorrect amount of sales or use tax resulting from their reliance on erroneous data provided in the taxability matrix provided for under section 31 or by the department on tax rates.

History: 2004, Act 174, Eff. July 1, 2004.

205.821 Models; selection for purposes of collecting and remitting sales and use taxes.

Sec. 21. A seller registered under the agreement may select 1 of the following models for purposes of collecting and remitting sales and use taxes under the agreement:

(a) Model 1. The seller uses a certified service provider to act as the seller's agent to perform all of the

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seller's sales and use tax collection functions other than the seller's obligation to remit sales or use tax on its own purchases.

(b) Model 2. The seller uses a certified automated system to perform part of the seller's sales and use tax collection functions, but the seller retains responsibility for remitting the tax.

(c) Model 3. The seller has sales in at least 5 member states, has total annual sales of $500,000,000.00 or more, has a proprietary system that calculates the amount of tax due in each taxing jurisdiction, and has entered into a performance agreement with the member states establishing a tax performance standard for the seller. For purposes of Model 3, "seller" includes an affiliated group of sellers using the same proprietary system.

(d) Model 4. Any other system approved by the department.

History: 2004, Act 174, Eff. July 1, 2004.

205.823 Computation of tax remitted.

Sec. 23. (1) In computing the amount of tax remitted to this state, a certified service provider under Model 1 described in section 21 may take a deduction from the revenue collected under Model 1 in this state as determined by the contract between the board and that certified service provider. The deduction under this section may be based on 1 or more of the following:

(a) A base rate applicable to taxable transactions processed by the certified service provider for this state.

(b) For a voluntary seller, a percentage of tax revenue generated for this state by that voluntary seller for a period not to exceed 24 months after the voluntary seller registered under the agreement.

(2) In computing the amount of tax remitted to this state, a seller who has selected Model 2 as described in section 21 may take a deduction in addition to the deductions taken under section 4 of the general sales tax act or section 4f of the use tax act for a period not to exceed 24 months after the seller registered under the agreement equal to 1 or more of the following:

(a) For all sellers, a base rate established by the board after the base rate is established for certified service providers under subsection (1).

(b) For a voluntary seller, a percentage of tax revenue generated for this state by that voluntary seller.

(3) In computing the amount of tax remitted to this state, a seller who has selected Model 3 as described in section 21 or a seller who has not selected any model described in section 21 may take the deductions under section 4 of the general sales tax act or section 4f of the use tax act. In addition, a voluntary seller who selected Model 3 or a voluntary seller who has not selected any model described in section 21 may take a deduction for a period not to exceed 24 months after the seller registered under the agreement equal to a percentage, determined by the board, of tax revenue generated for this state by that voluntary seller.

History: 2004, Act 174, Eff. July 1, 2004.

205.825 Certified service provider as seller's agent.

Sec. 25. (1) A certified service provider is the agent of a seller, with whom the certified service provider has contracted for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due to this state on all sales transactions it processes for the seller unless the seller made a material misrepresentation or committed fraud.

(2) A seller that uses a certified automated system is responsible and is liable to this state for reporting and remitting tax.

(3) A certified service provider or a seller that uses a certified automated system is not liable for sales tax and use tax if it relied on the department's determination that the software program submitted to the board for certification as a certified automated system under the agreement accurately reflected the taxability of the product categories included in the software program. Relief from liability under this section does not apply if a certified service provider or a seller that uses a certified automated system has incorrectly classified an item or transaction into a product category of the certified automated system.

(4) A certified service provider is considered a seller and is eligible for relief from liability for sales tax as provided in section 12(9) of the general sales tax act, 1933 PA 167, MCL 205.62.

(5) If the department determines that an item or transaction is incorrectly classified as to its taxability by a certified service provider or by a seller that uses a certified automated system, the department shall notify that certified service provider or seller of the incorrect classification. The certified service provider or seller shall revise the classification within 10 days after receipt of notice from the department. If the classification is not changed within 10 days of notice from the department, the certified service provider or seller that uses a certified automated system is liable for the failure to collect the correct amount of sales or use tax due and owing to this state.

History: 2004, Act 174, Eff. July 1, 2004;—Am. 2008, Act 437, Imd. Eff. Jan. 9, 2009;—Am. 2009, Act 138, Imd. Eff. Nov. 4, 2009.

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205.827 Personal identifiable information.

Sec. 27. (1) Except as provided in subsection (3), a certified service provider shall not retain or disclose the personally identifiable information of consumers. A certified service provider's system shall be designed and tested to assure the privacy of consumers by protecting their anonymity.

(2) A certified service provider shall provide clear and conspicuous notice of its information practices to consumers, including, but not limited to, what information it collects, how it collects the information, how it uses the information, how long it retains the information, and whether it discloses the information to member states.

(3) A certified service provider's retention or disclosure to member states of personally identifiable information is limited to that required to ensure the validity of exemptions claimed because of a consumer's status or intended use of the goods or services purchased.

(4) A certified service provider shall provide the necessary technical, physical, and administrative safeguards to protect personally identifiable information from unauthorized access and disclosure.

(5) This privacy policy is subject to enforcement by the attorney general.

(6) If personally identifiable information is retained by this state for the purpose of subsection (3), in the absence of exigent circumstances, a person shall be afforded reasonable access to their own data, with a right to correct inaccurately recorded data.

(7) The agreement does not enlarge or limit this state's authority to do any of the following:

(a) Conduct audits or other reviews as provided under the agreement or this state's law.

(b) Provide records pursuant to this state's freedom of information act, disclosure laws with governmental agencies, or other regulations.

(c) Prevent, consistent with this state's law, disclosures of confidential taxpayer information.

(d) Prevent, consistent with federal law, disclosures or misuse of federal return information obtained under a disclosure agreement with the internal revenue service.

(e) Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.

(8) The department shall publish on the department's website this state's policy relating to the collection, use, and retention of personally identifiable information obtained from a certified service provider under subsection (3).

(9) The department shall destroy personally identifiable information obtained from a certified service provider when the information is no longer required for purposes under subsection (3).

(10) If a person other than a member state or person authorized by a member state's law or the agreement seeks to discover personally identifiable information about an individual from this state, the department shall make a reasonable and timely effort to notify that individual of the request.

(11) As used in this section, "personally identifiable information" means information that identifies a specific person.

History: 2004, Act 174, Eff. July 1, 2004.

205.829 Liability of registered seller; exceptions.

Sec. 29. (1) A seller registered under the agreement is not liable for any uncollected or nonremitted sales or use tax on transactions with purchasers in this state before the date of registration if the seller was not licensed or registered under the general sales tax act or the use tax act in this state in the 12-month period preceding the effective date of this state's participation in the agreement. The seller is also not responsible for any penalty or interest that may be due on those transactions. This subsection applies only if the seller is registered in this state within 12 months of the effective date of this state's participation in the agreement.

(2) Subsection (1) does not apply to the following:

(a) Any tax liability of the registered seller for transactions that are subject to sales or use tax in this state in which the registered seller is the purchaser.

(b) Any sales or use taxes already paid or remitted to this state or to taxes collected by the seller.

(c) Any transactions for which the seller received notice of the commencement of an audit and the audit is not finally resolved, including related administrative or judicial processes.

(3) Subsection (1) applies to the seller absent the seller's fraud or intentional misrepresentation of a material fact only if the seller continues to be registered under the agreement and continues collection and remittance of applicable sales and use taxes in this state for at least 36 months. The statute of limitations applicable to assessing a tax liability is tolled during this 36-month period.

History: 2004, Act 174, Eff. July 1, 2004.

205.831 Notification of change in rate or tax base.

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Sec. 31. (1) The department shall publish on the state website a notification to sellers registered under the agreement of a change in rate or tax base within 5 business days of receiving notice of the public act number assigned by the secretary of state to the act that changes that tax rate or base or of an amendment to sales and use tax rules or regulations. Whenever possible, a rate or tax base change should occur on the first day of a calendar quarter.

(2) Failure of a seller to receive notice under subsection (1), however, does not relieve the seller of its obligation to collect the sales or use tax.

(3) The department shall complete a taxability matrix as provided for under section 328 of the agreement, maintain it in a database in a downloadable format approved by the board, and provide notice of changes in the matrix.

History: 2004, Act 174, Eff. July 1, 2004.

205.833 Business advisory group.

Sec. 33. The state delegation shall appoint a business advisory group of not more than 8 members to consult with the delegation on streamlined sales and use tax matters as requested by the delegation.

History: 2004, Act 174, Eff. July 1, 2004.

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