

SUBSTITUTE FOR  
HOUSE BILL NO. 5075

A bill to amend 1933 PA 167, entitled  
"General sales tax act,"  
by amending section 12 (MCL 205.62), as amended by 2008 PA 438, and  
by adding section 4ee.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1        SEC. 4EE. (1) BEGINNING JANUARY 1, 2016 THROUGH DECEMBER 31,  
2        2035, A SALE OF DATA CENTER EQUIPMENT TO THE OWNER OR OPERATOR OF A  
3        QUALIFIED DATA CENTER OR A COLOCATED BUSINESS FOR USE OR  
4        CONSUMPTION IN THE OPERATIONS OF THE QUALIFIED DATA CENTER IS  
5        EXEMPT FROM THE TAX UNDER THIS ACT.

6        (2) AS USED IN THIS SECTION:

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

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

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

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

10 (i) COMPUTER HARDWARE AND SOFTWARE.

11 (ii) DATA COMMUNICATIONS.

12 (iii) INFORMATION TECHNOLOGIES.

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

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

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

26 Sec. 12. (1) If an exemption from the tax under this act is  
27 claimed, the seller shall obtain identifying information of the

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

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

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

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

14 (5) A seller who complies with the requirements of this  
15 section is not liable for the tax if a purchaser improperly claims  
16 an exemption. A purchaser who improperly claims an exemption is  
17 liable for the tax due under this act. This subsection does not  
18 apply if a seller fraudulently fails to collect the tax, solicits a  
19 purchaser to make an improper claim for exemption, or accepts an  
20 exemption form when the purchaser claims an entity-based exemption  
21 if both of the following circumstances occur:

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

25 (b) The state in which that location operated by the seller is  
26 located provides an exemption form that clearly and affirmatively  
27 indicates that the claimed exemption is not available in that

1 state.

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

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

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

11 (b) The date an assessment becomes final.

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

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

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

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

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

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

3 (10) A certified service provider shall be considered a seller  
4 under this section. As used in this section, "certified service  
5 provider" means that term as defined in section 25 of the  
6 streamlined sales and use tax administration act, 2004 PA 174, MCL  
7 205.825.