

HOUSE BILL No. 5988

November 8, 2012, Introduced by Rep. Nesbitt and referred to the Committee on Tax Policy.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 14a. (1) A person in the business of selling tangible
2 personal property and liable for any tax under this act shall keep
3 accurate and complete beginning and annual inventory and purchase
4 records of additions to inventory, complete daily sales records,
5 receipts, invoices, bills of lading, and all pertinent documents in
6 a form the department requires. If an exemption from use tax is
7 claimed by a person because the sale is for resale at retail, a
8 record shall be kept of the sales tax license number if the person
9 has a sales tax license. These records shall be retained for a
10 period of 4 years after the tax imposed under this act to which the

1 records apply is due or as otherwise provided by law.

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

7 (3) A person knowingly making a sale of tangible personal
8 property for the purpose of resale at retail to another person not
9 licensed under this act is liable for the tax imposed under this
10 act unless the transaction is exempt under the provisions of
11 section 4i.

12 (4) If a taxpayer fails to file a return or to maintain or
13 preserve proper records as prescribed in this section, or the
14 department has reason to believe that any records maintained or
15 returns filed are inaccurate or incomplete and that additional
16 taxes are due, the department may assess the amount of the tax due
17 from the taxpayer based on **AN INDIRECT AUDIT PROCEDURE OR ANY OTHER**
18 information that is available or that may become available to the
19 department. That assessment is considered prima facie correct for
20 the purpose of this act and the burden of proof of refuting the
21 assessment is upon the taxpayer.

22 **(5) IF A TAXPAYER HAS FILED ALL THE REQUIRED RETURNS AND HAS**
23 **MAINTAINED AND PRESERVED ADEQUATE RECORDS AS REQUIRED UNDER THIS**
24 **SECTION, THE DEPARTMENT SHALL NOT BASE A TAX DEFICIENCY**
25 **DETERMINATION OR ASSESSMENT ON ANY INDIRECT AUDIT PROCEDURE UNLESS**
26 **THE DEPARTMENT HAS A DOCUMENTED REASON TO BELIEVE THAT ANY RECORDS**
27 **MAINTAINED OR RETURNS FILED ARE INACCURATE OR INCOMPLETE AND THAT**

1 ADDITIONAL TAXES ARE DUE. AN INDIRECT AUDIT OF A TAXPAYER UNDER
2 THIS SUBSECTION SHALL NOT BE CONDUCTED IN AN ARBITRARY FASHION AND
3 SHALL INCLUDE ALL OF THE FOLLOWING ELEMENTS:

4 (A) A REVIEW OF THE TAXPAYER'S BOOKS AND RECORDS. THE
5 DEPARTMENT MAY USE AN INDIRECT METHOD TO TEST THE ACCURACY OF THE
6 TAXPAYER'S BOOKS AND RECORDS.

7 (B) A TAX DEFICIENCY DETERMINATION OR AN ASSESSMENT OF TAX
8 DEFICIENCY SHALL NOT BE BASED ON A PROJECTION FROM A SAMPLE WITHOUT
9 THE WRITTEN APPROVAL OF THE TAXPAYER.

10 (C) BOTH THE CREDIBILITY OF THE EVIDENCE AND THE
11 REASONABLENESS OF THE CONCLUSION SHALL BE EVALUATED BEFORE ANY
12 DETERMINATION OF TAX LIABILITY IS MADE.

13 (D) THE DEPARTMENT MAY USE ANY METHOD TO RECONSTRUCT INCOME,
14 DEDUCTIONS, OR EXPENSES THAT IS REASONABLE UNDER THE CIRCUMSTANCES.
15 THE DEPARTMENT MAY USE THIRD-PARTY RECORDS IN THE RECONSTRUCTION.

16 (E) THE DEPARTMENT SHALL INVESTIGATE ALL REASONABLE EVIDENCE
17 PRESENTED BY THE TAXPAYER REFUTING THE COMPUTATION.

18 (6) ~~(5)~~—For purposes of this act, exemption certificate
19 includes a blanket exemption certificate on a form prescribed by
20 the department that covers all exempt transfers between the
21 taxpayer and the buyer for a period of 4 years or for a period of
22 less than 4 years as stated on the blanket exemption certificate if
23 that period is agreed to by the buyer and taxpayer.

24 (7) AS USED IN THIS SECTION:

25 (A) "CIRCUMSTANTIAL EVIDENCE" IS EVIDENCE FROM WHICH MORE THAN
26 1 LOGICAL CONCLUSION CAN BE REACHED.

27 (B) "INDIRECT AUDIT PROCEDURE" IS AN AUDIT METHOD THAT

1 INVOLVES THE USE OF CIRCUMSTANTIAL EVIDENCE TO DETERMINE A
2 LIABILITY FOR THE TAX UNDER THIS ACT BASED ON OMITTED INCOME,
3 OVERSTATED DEDUCTIONS OR EXPENSES, OR BOTH.