

**SUBSTITUTE FOR
SENATE BILL NO. 852**

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 14a (MCL 205.104a), as amended by 2022 PA 4.

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 in a paper, electronic, or digital format an accurate and complete
4 beginning and annual inventory and purchase records of additions to
5 inventory, complete daily sales records, receipts, invoices, bills
6 of lading, and all pertinent documents in a form the department
7 requires. Except as otherwise provided for a person described under
8 subsection (6), if an exemption from use tax is claimed by a person
9 because the sale is for resale at retail, a record must be kept of

1 the sales tax license number if the person has a sales tax license.
2 These records must be retained for a period of 4 years after the
3 tax imposed under this act to which the records apply is due or as
4 otherwise provided by law.

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

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

15 (4) If a taxpayer fails to file a return or to maintain or
16 preserve sufficient records as prescribed in this section, or the
17 department has reason to believe that any records maintained or
18 returns filed are inaccurate or incomplete and that additional
19 taxes are due, the department may assess the amount of the tax due
20 from the taxpayer based on an indirect audit procedure or any other
21 information that is available or that may become available to the
22 department. That assessment is considered prima facie correct for
23 the purpose of this act and the burden of proof of refuting the
24 assessment is upon the taxpayer. An indirect audit of a taxpayer
25 under this subsection must be conducted in accordance with 1941 PA
26 122, MCL 205.1 to 205.31, and the standards published by the
27 department under section 21 of 1941 PA 122, MCL 205.21, and must
28 include all of the following elements:

29 (a) A review of the taxpayer's books and records. The

1 department may use an indirect method to test the accuracy of the
2 taxpayer's books and records.

3 (b) Both the credibility of the evidence and the
4 reasonableness of the conclusion must be evaluated before any
5 determination of tax liability is made.

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

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

11 (5) If a taxpayer has filed all the required returns and has
12 maintained and preserved sufficient records as required under this
13 section, the department shall not base a tax deficiency
14 determination or assessment on any indirect audit procedure unless
15 the department has a documented reason to believe that any records
16 maintained or returns filed are inaccurate or incomplete and that
17 additional taxes are due.

18 (6) If the information required under section 14b(1) is
19 maintained, an exemption certificate or any other documentation or
20 information is not required for an exemption claim obtained by any
21 of the following:

22 (a) A person licensed by the Michigan liquor control
23 commission as a wholesaler for purposes of sales of alcoholic
24 liquor to another person licensed by the Michigan liquor control
25 commission. As used in this subsection, "alcoholic liquor",
26 "authorized distribution agent", and "wholesaler" mean those terms
27 as defined in the Michigan liquor control code of 1998, 1998 PA 58,
28 MCL 436.1101 to 436.2303.

29 (b) The Michigan liquor control commission or a person

1 certified by the commission as an authorized distribution agent for
2 purposes of the sale and distribution of alcoholic liquor to a
3 person licensed by the Michigan liquor control commission.

4 **(c) A person licensed by the Michigan liquor control**
5 **commission as a micro brewer for purposes of sales of alcoholic**
6 **liquor to another person licensed by the Michigan liquor control**
7 **commission. As used in this subdivision, "micro brewer" means that**
8 **term as defined in section 109 of the Michigan liquor control code**
9 **of 1998, 1998 PA 58, MCL 436.1109.**

10 (7) For purposes of this act, exemption certificate includes a
11 blanket exemption certificate on a form prescribed by the
12 department that covers all exempt transfers between the taxpayer
13 and the buyer for a period of 4 years or for a period of less than
14 4 years as stated on the blanket exemption certificate if that
15 period is agreed to by the buyer and taxpayer.

16 (8) As used in this section:

17 (a) "Indirect audit procedure" is an audit method that
18 involves the determination of tax liabilities through an analysis
19 of a taxpayer's business activities using information from a range
20 of sources beyond the taxpayer's declaration and formal books and
21 records.

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

24 Enacting section 1. This amendatory act does not take effect
25 unless Senate Bill No. 853 of the 101st Legislature is enacted into
26 law.