

# SENATE BILL NO. 852

February 01, 2022, Introduced by Senators RUNESTAD, CHANG, BULLOCK, WOJNO, MCCANN, MOSS, WOZNIAK, BUMSTEAD, BARRETT and HORN and referred to the Committee on Finance.

A bill to amend 1937 PA 94, entitled  
"Use tax act,"  
by amending sections 14a and 14b (MCL 205.104a and 205.104b),  
section 14a as amended by 2014 PA 109 and section 14b as amended by  
2018 PA 168.

## **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

1 beginning and annual inventory and purchase records of additions to  
2 inventory, complete daily sales records, receipts, invoices, bills  
3 of lading, and all pertinent documents in a form the department  
4 requires. ~~If~~ **Except as otherwise provided for a person described**  
5 **under subsection (6), if** an exemption from use tax is claimed by a  
6 person because the sale is for resale at retail, a record ~~shall~~  
7 **must** be kept of the sales tax license number if the person has a  
8 sales tax license. These records ~~shall~~ **must** be retained for a  
9 period of 4 years after the tax imposed under this act to which the  
10 records apply is due or as otherwise provided by law.

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

16 (3) A person knowingly making a sale of tangible personal  
17 property for the purpose of resale at retail to another person not  
18 licensed under this act is liable for the tax imposed under this  
19 act unless the transaction is exempt under the provisions of  
20 section 4i.

21 (4) If a taxpayer fails to file a return or to maintain or  
22 preserve sufficient records as prescribed in this section, or the  
23 department has reason to believe that any records maintained or  
24 returns filed are inaccurate or incomplete and that additional  
25 taxes are due, the department may assess the amount of the tax due  
26 from the taxpayer based on an indirect audit procedure or any other  
27 information that is available or that may become available to the  
28 department. That assessment is considered prima facie correct for  
29 the purpose of this act and the burden of proof of refuting the

1 assessment is upon the taxpayer. An indirect audit of a taxpayer  
2 under this subsection ~~shall~~**must** be conducted in accordance with  
3 1941 PA 122, MCL 205.1 to 205.31, and the standards published by  
4 the department under section 21 of 1941 PA 122, MCL 205.21, and  
5 ~~shall~~**must** include all of the following elements:

6 (a) A review of the taxpayer's books and records. The  
7 department may use an indirect method to test the accuracy of the  
8 taxpayer's books and records.

9 (b) Both the credibility of the evidence and the  
10 reasonableness of the conclusion ~~shall~~**must** be evaluated before any  
11 determination of tax liability is made.

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

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

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

24 (6) If the information required under section 14b(1) is  
25 maintained, an exemption certificate or any other documentation or  
26 information is not required for an exemption claim obtained by any  
27 of the following:

28 (a) A person licensed by the Michigan liquor control  
29 commission as a wholesaler for purposes of sales of alcoholic

1 liquor to another person licensed by the Michigan liquor control  
 2 commission. As used in this subsection, "alcoholic liquor",  
 3 "authorized distribution agent", and "wholesaler" mean those terms  
 4 as defined in the Michigan liquor control code of 1998, 1998 PA 58,  
 5 MCL 436.1101 to 436.2303.

6 (b) The Michigan liquor control commission or a person  
 7 certified by the commission as an authorized distribution agent for  
 8 purposes of the sale and distribution of alcoholic liquor to a  
 9 person licensed by the Michigan liquor control commission.

10 (c) A person licensed by the Michigan liquor control  
 11 commission as a micro brewer for purposes of sales of alcoholic  
 12 liquor to another person licensed by the Michigan liquor control  
 13 commission. As used in this subdivision, "micro brewer" means that  
 14 term as defined in section 109 of the Michigan liquor control code  
 15 of 1998, 1998 PA 58, MCL 436.1109.

16 (7) ~~(6)~~—For purposes of this act, exemption certificate  
 17 includes a blanket exemption certificate on a form prescribed by  
 18 the department that covers all exempt transfers between the  
 19 taxpayer and the buyer for a period of 4 years or for a period of  
 20 less than 4 years as stated on the blanket exemption certificate if  
 21 that period is agreed to by the buyer and taxpayer.

22 (8) ~~(7)~~—As used in this section:

23 (a) "Indirect audit procedure" is an audit method that  
 24 involves the determination of tax liabilities through an analysis  
 25 of a taxpayer's business activities using information from a range  
 26 of sources beyond the taxpayer's declaration and formal books and  
 27 records.

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

1       Sec. 14b. (1) If an exemption from the tax under this act is  
2       claimed, the seller shall obtain identifying information of the  
3       purchaser and the reason for claiming the exemption at the time of  
4       the purchase or at a later date. The seller shall obtain the same  
5       information for a claimed exemption regardless of the medium in  
6       which the transaction occurred. **If the seller is a person described**  
7       **in section 14a(6) (a), (b), or (c), obtaining the purchaser's**  
8       **license number issued by the Michigan liquor control commission**  
9       **satisfies the requirements of this subsection.**

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

13       (3) A purchaser is not required to provide a signature to  
14       claim an exemption under this act unless a paper exemption form is  
15       used.

16       (4) A seller shall maintain a proper record of all exempt  
17       transactions and shall provide ~~them when~~ **the record if** requested by  
18       the department.

19       (5) A seller who complies with the requirements of this  
20       section is not liable for the tax under this act if a purchaser  
21       improperly claims an exemption. A purchaser who improperly claims  
22       an exemption is liable for the tax due under this act. This  
23       subsection does not apply if a seller does any of the following:

24       (a) Fraudulently fails to collect the tax under this act.

25       (b) Solicits a purchaser to make an improper claim for  
26       exemption.

27       (c) Accepts an exemption form when the purchaser claims an  
28       entity-based exemption if both of the following occur:

29       (i) The subject of the transaction sought to be covered by the

1 exemption form is actually received by the purchaser at a location  
2 operated by the seller.

3 (ii) The state in which the location operated by the seller is  
4 located provides an exemption form that clearly and affirmatively  
5 indicates that the claimed exemption is not available in that  
6 state.

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

11 (7) If the seller has not obtained an exemption form or all  
12 relevant data elements, the seller may either prove that the  
13 transaction was not subject to the tax under this act by other  
14 means or obtain a fully completed exemption form from the  
15 purchaser, by the later of the following:

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

17 (b) The date an assessment becomes final.

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

19 (d) In the instance of a credit audit, the issuance of an  
20 audit determination letter or informal conference decision and  
21 order of determination.

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

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

27 (9) A seller is not liable for the tax under this act if the  
28 seller obtains a blanket exemption form for a purchaser with which  
29 the seller has a recurring business relationship. Renewals of

1 blanket exemption forms or updates of exemption form information or  
2 data elements are not required if there is a recurring business  
3 relationship between the seller and the purchaser. For purposes of  
4 this section, a recurring business relationship exists when a  
5 period of not more than 12 months elapses between sales  
6 transactions.

7 (10) A purchaser that fails to claim an exemption at the time  
8 of purchase by notifying the seller of the exemption and providing  
9 a complete and proper claim of exemption may submit a claim for a  
10 refund to the department for the tax related to that purchase if  
11 all of the following conditions are met:

12 (a) The claim for a refund is made within 4 years of the date  
13 of purchase.

14 (b) The purchaser submits to the department an accurate record  
15 of the purchase, including, but not limited to, a paper,  
16 electronic, or digital receipt, invoice, or purchase order related  
17 to the sale, that includes the date of the purchase and the amount  
18 of sales tax paid to the seller for which the purchaser is seeking  
19 a refund under this subsection.

20 (c) The purchaser submits to the department a form signed by  
21 the seller as prescribed by the department that contains  
22 information required by the department to substantiate the refund  
23 claim. The form ~~shall~~**must** contain a statement that the seller  
24 reported and paid the tax on the sale for which the purchaser is  
25 seeking a refund under this subsection and that the seller has not  
26 claimed, and will not claim, a refund of that tax.

27 (d) The purchaser submits to the department a proper exemption  
28 claim on a form as prescribed by the department under this  
29 subsection.

1           (e) The purchaser ~~shall submit~~**submits** to the department any  
2 additional information that the department ~~may require~~**requires**  
3 related to the purchaser's claim for refund under this subsection.