

SALES, USE AND WITHHOLDING TAXES

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SALES TAX

The General Sales Tax Act was enacted as Public Act (PA) 167 in 1933. The tax is imposed on the seller for the privilege of making a “sale at retail” in Michigan. The tax rate has increased over the years to its current 6 percent level. Tax increases are currently restricted to authorization by amendment to the Michigan Constitution by a vote of the people.

Consumption of electricity, natural or artificial gas and home heating fuel for residential use is taxed at a rate of only four percent.

All sales of tangible personal property at retail in Michigan are subject to the tax unless a specific exemption applies and is claimed by the purchaser.

USE TAX

The Use Tax Act was enacted as PA 94 in 1937. Shortly after the sales tax was enacted, it became apparent that sales tax revenue was being lost by purchases of tangible personal property being made in neighboring states for consumption in Michigan. This was also recognized as a competitive disadvantage for Michigan sellers.

This tax was enacted as a tax for the privilege of storing, using or consuming tangible personal property in Michigan. The impact of this tax is felt most by remote sellers such as mail order sellers, Internet sellers and other similar direct marketers. To a limited extent, the use tax statute also supplements the sales tax statute by taxing some transactions that the sales tax does not reach.

“Use” is defined to include a transaction in which possession is given. This includes leases of tangible personal property as being subject to use tax. A lessor has the option of paying sales or use tax on the full cost of tangible personal property acquired for lease or of paying use tax on the total lease/rental receipts. However, the lessor must first be registered in order to have the option available.

Certain services are also taxed “in the same manner as tangible personal property” under the use tax act. These services are: intrastate telecommunications and similar communications, interstate telecommunications that either originate or terminate in Michigan when billed to a Michigan address, accommodations (hotel, motel, bed and breakfasts, etc.) of less than 30 continuous days and the laundering or cleaning of textiles under a rental agreement with a term of at least five days.

The rate has increased along with the sales tax rate over the years until reaching its current rate of six percent. As with the sales tax, the use tax rate is also restricted to authorization by amendment to the Michigan Constitution by a vote of the people.

In 1999 Treasury added a separate line to the Michigan income tax return to simplify the reporting and payment of this use tax liability by individuals.

EXEMPTIONS

In general, sales and use tax exemptions are based on: (1) what the item is, (2) who purchases the item, and (3) how the item is used. Frequently, a qualifying exemption from the tax will be based on a combination of these three basic exemption types.

There are currently over 100 distinct exemptions provided in the sales and use tax statutes. Generally, exemptions in one law are mirrored in the other, but there are instances when exemption is not provided for in both laws.

For persons claiming exemption, a completed and signed exemption certificate must be presented. If the exemption claim is accepted in “good faith,” the seller will not be held liable for any tax that may be due if, when audited, the sale (or purchase) is found to have been taxable.

ADMINISTRATIVE

Filing of Returns

When a person files form 518 REGISTRATION FOR MICHIGAN TAXES to obtain a sales tax license or a use tax registration, he or she is assigned a filing status, either monthly, quarterly or annually. It is imperative for the taxpayer to file returns based on the frequency assigned. Failure to file a return when due will result in a letter of inquiry being issued. Additional action including the issuance of an estimated tax due Intent to Assess and Final Assessment (Bill for Taxes Due) may result.

Pre-identified returns are mailed to a taxpayer when he or she becomes registered and each year thereafter. These pre-identified returns contain magnetic ink that facilitates processing of the return. It is very important that a taxpayer use the individualized (pre-identified) return for the correct filing period.

Form 165 ANNUAL RETURN FOR SALES, USE AND WITHHOLDING TAXES has been updated with the following:

- The columns for reporting Sales Tax and Use Tax on Sales and Rentals collected at the four percent rate have been removed. Businesses identified to collect some tax at the four percent rate will be mailed instructions, monthly/quarterly worksheets and an annual return providing both tax rate columns.
- An indicator box and date field to be completed if form 165 is used to submit amended figures has been added. Space is provided on page 2 of the form to explain the reason for the amendment.

Amending Returns for Withholding

Annual returns may not be amended when the withholding on a corrected form W-2 WAGE AND TAX STATEMENT is for less than on the original W-2. These corrections must be handled between the employer and the employee or by the employee on form MI-1040 MICHIGAN INDIVIDUAL INCOME TAX RETURN. Refund requests on form 165 for this type of error will not be honored.

Electronic Fund Transfer

Payments of sales, use and withholding taxes can be made by electronic fund transfer (EFT). Paying by EFT eliminates the need to file a paper return. Payments made by EFT must be made monthly. Once the taxpayer begins to transmit electronically, the taxpayer no longer files monthly returns. The only return required is form 165, due February 28 each year. Application forms for Automated Clearing House (ACH) Debit (form 2248) and ACH Credit (form 2328) are available on Treasury's Web site at www.michigan.gov/biztaxpayments.

Before mailing a return, make sure:

1. The pre-identified label is removed from the return booklet cover and placed on form 165.
2. Monthly or quarterly form 160 COMBINED RETURN FOR MICHIGAN TAXES is completed using tax figures only. Gross sales figures are reported on the annual return only.
3. Figures entered on return correspond to the description provided for that tax line.
4. Subtotal amounts have not been entered on form 160.
5. Account information changes, such as change in account number or address, have not been requested on the return. Form 163 NOTICE OF CHANGE OR DISCONTINUANCE for these changes should be filed.
6. A return is submitted for each filing period required according to your filing status. **A return must be filed even for a period that has zero tax due or no activity.**
7. Payment for the Michigan Business Tax (MBT) estimate is enclosed with form 160 if reporting MBT estimate on that form.
8. All discounts have been calculated and reported correctly.
9. Appropriate pre-identified return is used for filing period indicated on that return.
10. Negative/credit figures have not been entered on the return.
11. Form 2189 GASOLINE RETAILER SUPPLEMENTAL REPORT is completed to take credit for sales tax prepaid on gasoline. Make sure name, account number and tax period are completed.

12. Form 92 VEHICLE DEALER SUPPLEMENTAL REPORT is completed to take discount on tax paid to Secretary of State on vehicle sales. Make sure name, account number and tax period are completed.
13. Tax payment is enclosed with return. Payments received with no documentation or explanation cannot be processed.

STREAMLINED SALES AND USE TAX AGREEMENT

Representatives from 43 states, from local governments and from the business community worked for several years to implement the Streamlined Sales and Use Tax Agreement. The Agreement is a multi-state pact providing for a system that simplifies sales and use tax collection and administration by retailers and states. Among other things, the Agreement addresses and provides for state-level administration of sales and use taxes, uniform definitions, rate simplification, uniform determination of where sales occur (sourcing), simplified exemption administration and uniform audit and registration.

The approval of the Agreement by the Streamlined delegates did not modify the laws of any state. The determination as to whether and how to implement the terms of the Agreement rests with each state. Since approval of the Agreement, over 25 states have introduced or enacted legislation intended to conform to the provisions of the Agreement.

Michigan law does not allow for local jurisdictions, such as cities or counties, to impose sales or use taxes. Further, administration of sales and use tax is centralized at the state level in the Michigan Department of Treasury (Treasury). Accordingly, Michigan law prior to Streamlined was already in compliance with the Agreement provisions addressing those two major simplification issues. Prior Michigan law diverged from the Agreement in some of its definitions and administrative provisions. These issues included product definitions such as food and medical goods, administrative definitions such as what was included in "sales price" and administrative provisions such as the time for filing returns. Michigan enacted legislation in 2004 to bring Michigan law into compliance with the requirements of the Agreement.

Under its terms, the Agreement would become binding and effective when at least ten states comprising at least 20 percent of the total population of states with a sales tax approved the Agreement. That threshold was achieved on July 1, 2005 with an affirmative vote on 18 states that had petitioned to become members of the Agreement.

Full members (states whose sales tax laws and policies are in substantial compliance with each of the provisions of the Agreement) include Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Jersey, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Vermont and West Virginia. Associate member states are Arkansas, Nevada, Ohio, Tennessee, Utah, Washington and Wyoming; associate member states will become full members when certain amendments to their sales tax laws that have been approved by their legislatures become effective or following the passage of certain amendments to their conforming legislation.

The Agreement became effective on October 1, 2005. The effective date of the Agreement triggered a Web-based centralized point of sales tax registration for the member states, an amnesty period for qualified sellers and the process for certification of software and service providers that will assist in sales tax collection responsibilities. The simplified system reduces the number of sales tax rates, brings uniformity to definitions of items in the sales tax base, reduces the paperwork burden on retailers and incorporates new technology to modernize many administrative procedures.

The Agreement is administered by the Streamlined Sales Tax Governing Board, Inc. The Governing Board has certified two service providers and one automated system. The Governing Board's contracts with certified service providers (CSPs) provide for compensation of the CSPs by the states for taxes remitted on behalf of "volunteer" sellers. While current law does not require e-commerce and direct mail companies to collect and remit sales taxes on transactions that occur in states where they do not have a physical presence, it is expected that some of these companies will come forward and volunteer to collect taxes under the simplified system.

Information on the Streamlined Sales and Use Tax Agreement and the new simplified system can be found at www.streamlinedsalestax.org.

NEW LEGISLATION

Public Act 428 of 2006

Enrolled House Bill 6089

Filed October 5, 2006, Immediate Effect

This act amended Section 2b of the Use Tax Act [MCL 205.92b] to provide that effective September 1, 2004 the definition of delivery charges does not include charges for delivery of direct mail if the charges are separately stated on an invoice given to the purchaser.

Public Act 434 of 2006

Enrolled House Bill 6090

Filed October 5, 2006, Immediate Effect

This act complements Public Act 428 above and amended Section 1a of the General Sales Tax Act [MCL 205.51a] to provide that effective September 1, 2004 the definition of delivery charges does not include charges for delivery of direct mail if the charges are separately stated on an invoice given to the purchaser.

Public Act 577 of 2006

Enrolled Senate Bill 1039

Filed January 3 2007, Immediate Effect

This act amended Section 14 to the Streamlined Sales and Use Tax Revenue Equalization Act [MCL 205.184] that allows a credit against the sales tax due or paid on an item sold through a charitable auction. The credit is calculated as 6 percent of the gross proceeds from the sales price of the item that is in excess of the fair market value of such item. This credit cannot be claimed if the sales tax was collected from the purchaser, unless such tax is first refunded. Treasury is preparing a certificate of fair market value form to be used to document market value.

Public Act 590 of 2006
Enrolled House Bill 6387
Filed January 3, 2007, Immediate Effect

This act amended Section 5b of the General Sales Tax Act [MCL 205.55b] to exempt from the tax sales of corporate sponsor contracts for qualified athletic events as defined in the statute. This section of the law is set to expire January 1, 2011.

Public Act 609 of 2006
Enrolled House Bill 5545
Filed January 3, 2007, Immediate Effect

This act amended Section 3 of the State Convention Facility Development Act [MCL 207.623]. This section now defines a Convention hotel as being located within a county having a population, according to the most recent decennial census, of 750,000 or more. Previously the population threshold was 600,000.

Public Act 657 of 2006
Enrolled House Bill 5204
Filed January 9, 2007, Immediate Effect

This act added Section 4cc to the General Sales Tax Act [MCL 205.54cc] which provides that the Michigan film office in the Department of History, Arts and Libraries may enter into an agreement with a motion picture production company to allow a credit against the tax imposed by the General Sales Tax Act. There are various qualifications that need to be met to qualify for this credit. It is suggested interested parties contact the Department of History, Arts and Libraries for further information.

Public Act 665 of 2006
Enrolled House Bill 6076
Filed January 10, 2007, Effective June 30, 1999

This act amended Section 4w of the General Sales Tax Act [MCL 205.54w]. This act expanded the meaning of a county long-term medical care facility to include an addition to the facility if the addition is owned and operated by either the county or the medical care facility and offers services provided by the facility. The exemption provided in this section is granted until January 1, 2008 regardless of whether the addition is licensed as a nursing home or skilled nursing facility or whether the addition meets the requirements set forth in subsection 1 of MCL 205.54w. This amendatory act is effective for taxes levied after June 30, 1999.

Public Act 666 of 2006
Enrolled House Bill 6077
Filed January 10, 2007, Effective June 30, 1999

This act complements Public Act 665 as discussed above and amended Section 4s of the Use Tax Act [MCL 205.94s]. This act expanded the meaning of a county long-term medical care facility to include an addition to the facility if the addition is owned and operated by either the county or the medical care facility and offers services provided by the facility. The exemption provided in this section is granted until January 1, 2008 regardless of whether the addition is licensed as a nursing home or skilled nursing facility or whether the addition meets the requirements set forth in subsection 1 of MCL 205.94s. This amendatory act is effective for taxes levied after Jun 30, 1999.

Public Act 669 of 2006
Enrolled House Bill 6277
Filed January 10, 2007, Immediate Effect

This act amended Section 4v of the General Sales Tax Act [MCL 205.54v] to remove the expiration date for the presumption that 90 percent of the equipment discussed in this section is exempt from tax. The 90 percent presumption was scheduled to expire April 1, 2006 at which time Treasury would have been required to re-determine the exemption presumption rate. Based on this act, future qualifying equipment acquired will continue to be allowed a 90 percent exemption from sales tax.

Public Act 670 of 2006
Enrolled House Bill 6278
Filed January 10, 2007, Immediate Effect

This act complements Public Act 669 above and amended Section 4q of the Use Tax Act [MCL 205.94q] to remove the expiration date for the presumption that 90 percent of the equipment discussed in this section is exempt from tax. The 90 percent presumption was scheduled to expire April 1, 2006 at which time Treasury would have been required to re-determine the exemption presumption rate. Based on this act, future equipment acquired will continue to be allowed a 90 percent exemption from use tax.

Public Act 673 of 2006
Enrolled House Bill 6386
Filed January 10, 2007, Immediate Effect

This act complements Public Act 590 discussed above and amended Section 6a of the Use Tax Act [MCL 205.96a] to exempt from the tax sale of corporate sponsor contracts for qualified athletic events as defined in the statute. This section of the law is set to expire January 1, 2011.

KEY COURT CASES

Ammex, Inc.
Michigan Court of Appeals
Published, No. 260049 and 265936

This case involved the imposition of Michigan sales tax on the sale of tangible personal property made at the taxpayer's retail facility located adjacent to the Ambassador Bridge in the City of Detroit, Michigan. The retail facility operated by the taxpayer was a United States Customs Class 9 bonded warehouse, also known as a "duty-free store." The courts ruled that the Federal Government's comprehensive regulatory scheme governing duty-free stores preempted the operation of Michigan statute, in this instance the General Sales Tax Act. Thus, Michigan sales tax does not apply to the sale of property made at the taxpayer's duty free store.

Betten Auto Center, Inc.
Betten Motor Sales, Inc.
Betten-Friendly Motors
Michigan Court of Appeals
Published, Nos. 265976, 265977 and 265978
Michigan Supreme Court 132343, 132344, 132245 and 132347

This case involved the imposition of Michigan use tax on a vehicle when such vehicle, which was acquired by the taxpayers for resale, was used by the taxpayer's employees before the vehicles were eventually resold. The courts ruled the resale exemption provided in the statute applied to the use of these vehicles.

Application for Leave to Appeal was filed with the Michigan Supreme Court. In lieu of granting leave, the Court affirmed the Court of Appeals judgment holding that the vehicles are exempt from use tax under resale exemption. A motion for reconsideration was also denied by the Supreme Court.

Chase Equipment Leasing, Inc., Successor in Interest to National Bank of Detroit
Michigan Court of Appeals
Unpublished, No. 272281

At issue in this case was the imposition of Michigan sales or use tax on transactions involving equipment lessors. The Court of Claims ruled that the transactions at issue did not represent sales transactions as they related to Chase. Thus Chase was neither the owner nor lessor of the equipment and thus not liable for either sales or use tax on the sale or lease of the equipment. In the Court of Appeals decision the court ruled on only two issues: one involving a motion for summary disposition and the second asking if the trial court properly altered its order and the agreement of parties on the basis of an untimely request by one party. The appellate court found the ruling by the lower court to be proper and thus upheld the decision by that court.

DaimlerChrysler Services of North America, LLC
Michigan Court of Appeals
Published, No. 264323

The taxpayer in this matter sought a refund of sales tax paid on the retail sale of property in which the taxpayer provided the financing for the sale. Treasury denied the taxpayer's request on the belief that only the retail taxpayer having paid the tax to the State was entitled to seek a refund. The lower court determined DaimlerChrysler was not a taxpayer for purposes of the bad debt deduction and that no connection existed between the bad debt and the retail sales made by retail vehicle dealers. The taxpayer appealed this determination to the Court of Appeals who reversed the lower court ruling and agreed the taxpayer was entitled to a refund of sales tax under the bad debt language found in the statute in effect at the time of the request.

In an Order dated March 21, 2007, the Michigan Supreme Court denied Treasury's request for leave to appeal the appellate court's decision. On June 26, 2007, the court denied Treasury's motion for reconsideration of the March 21, 2007 denial.

Glieberman Aviation, L.L.C.
Michigan Court of Appeals
Unpublished, No. 261599

This case involved the imposition of Michigan use tax on the purchase of an aircraft, reportable for lease, when the purchaser was not registered with Treasury. The court ruled the taxpayer's failure to timely register for use tax resulted in tax being owed on the purchase of the aircraft in question.

Great Lakes Towing Company
Michigan Court of Appeals
Unpublished, No. 271556

In this matter the taxpayer contested the imposition of Michigan use tax on repair items, fuel and capital assets used in the operation of its tugboats. The taxpayer provided tugboat services to vessels having registered tonnage of 500 tons or more. The use tax act contains an exemption for the purchase of a vessel of greater than 500 tons as well as certain fuel, supplies, repair items, etc., for the exclusive use of the vessel. The taxpayer argued the tugboats should qualify for this exemption based on their activity of towing such exempt vessels. The court upheld the imposition of use tax as determined by Treasury.

Hamilton's Henry the VIII Lounge
Hamilton's Bogarts, Inc.
Jo-Bet
Garter Belt, Inc.
Michigan Court of Appeals
Unpublished, Nos. 267537, 267538 and 267539

In this matter Treasury assessed the taxpayer for additional sales tax owed resulting from understated sales made at their retail establishments. The taxpayer filed suit in the Court of Claims attempting to contest the assessment. Because the taxpayer had failed to first pay the amount due on the assessment, the lower court ruled the taxpayer lacked subject matter jurisdiction in the matter. The Court of Appeals affirmed the decision of the lower court.

WMS Gaming, Inc.
Michigan Court of Appeals
Published, No. 269114

In this case the taxpayer was a manufacturer of gaming machines used in casinos. The taxpayer was physically located in Illinois, including their manufacturing facility. At issue in this litigation was the proper tax base to be used by the taxpayer for the machines leased to non-Native American-owned casinos. Treasury assessed use tax based on the lease receipts received from the customers. The taxpayer argued they properly had an election to make to either pay tax on purchase of the material used to construct the machines or on the lease receipts. The Court of Claims ruled in favor of Treasury in upholding the assessment issued. However, the appellate court reversed the lower court in ruling that the election on how to compute the tax existed even though the property was purchased outside of Michigan.

AMENDED GENERAL SALES AND USE TAX RULES

The following amended rules were filed with the Secretary of State on March 16, 2007 with an effective date of March 26, 2007. These rules may be accessed on Treasury's Web page at www.michigan.gov/taxes. Click on Sales and Use Taxes, Other Helpful Information and General and Specific Rules.

The revisions to these rules relate primarily to the changes to the exemption for food and food ingredients as provided for in Sections 4d and 4g of the Sales and Use Tax Acts, respectively [MCL 205.54d and 205.94g].

- R205.56 Bakeries
- R205.72 Milk and dairy products
- R205.126 Vending machines and other automatic sales devices
- R205.127 Water
- R205.136 Food for human consumption.

REVENUE ADMINISTRATIVE BULLETINS

The following publications were issued since the last edition of this text and can be found on Treasury's Web page at www.michigan.gov/treasury. From Treasury's Web page, click on Reference Library and Revenue Administrative Bulletin.

Revenue Administrative Bulletin

2007-1 Notice of Change in Prepaid Gasoline Sales Tax Base

This bulletin announces the change in the prepaid gasoline sales tax rate effective May 1, 2007.

