

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

611 W. Ottawa Street

Lansing, MI 48909

Phone: 517-335-8658 Fax: 517-335-9512

**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

Treasury

Bureau name:

Bureau of Tax and Economic Policy

Name of person filling out RIS:

David Matelski

Phone number of person filling out RIS:

517-335-7424

E-mail of person filling out RIS:

MatelskiD@michigan.gov

Rule Set Information:

ARD assigned rule set number:

2020-19 TY

Title of proposed rule set:

Specific Sales and Use Tax Rules

Comparison of Rule(s) to Federal/State/Association Standard:

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

There are no parallel federal rules or standards.

A. Are these rules required by state law or federal mandate?

Yes, MCL 205.59(2) of the General Sales Tax Act (GSTA) and MCL 205.100(2) of the Use Tax Act (UTA) state that Treasury shall promulgate rules to implement the acts.

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

This is not applicable because there is no comparable federal standard.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

Most states do not define bottled water, however, the state of Washington does and uses the same definition.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

The rule does not exceed standards in other states.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

There is currently no definition of "bottled water" in the GSTA, the UTA, or the Specific Sales and Use Tax Rules.

Therefore, there would be no duplication.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

There is nothing comparable at the federal or local level. The rule would not be duplicative.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules and an explanation of the exceptional circumstances that necessitate the more stringent standards is required.

MCL 24.232(8) is not applicable because the federal government has not mandated that the State promulgate this rule.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, either the statute that specifically authorizes the more stringent rules or a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules and an explanation of the exceptional circumstances that necessitate the more stringent standards is required.

MCL 24.232(9) is not applicable because there is no comparable federal standard.

6. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

The rule is designed to provide clarity to the business community regarding what constitutes non-taxable bottled water. There is currently no definition of the phrase, therefore, there is some confusion.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

It is anticipated that persons selling bottled water and similar beverages will rely on this rule to determine when such products are taxable.

B. Describe the difference between current behavior/practice and desired behavior/practice.

Current behavior and practices are currently unknown. However, it is likely that different taxpayers that sell various bottled water products are treating the taxability differently because there is not a standard definition of the phrase "bottled water."

C. What is the desired outcome?

The desired outcome is for all taxpayers to treat the taxability of "bottled water" the same and for Michigan to remain in compliance with the Streamlined Sales and Use Tax Agreement (SSUTA).

7. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

The likely harm the proposed rule is designed to avoid is taxpayers inconsistently taxing bottled water and causing a competitive disadvantage to those taxpayers that are taxing bottled water that should be exempt under the proposed definition.

Additionally, Michigan is a member of the SSUTA. Under the terms of the SSUTA, if a member state's sales/use tax acts or rules use a word or phrase that is defined in the SSUTA's Library of Definitions that state must also define that word or phrase using the SSUTA definition in its statute or rules in "substantially the same language." See SSUTA Article III, Section 327. Michigan uses the phrase "bottled water" in the General Sales Tax Act (GSTA), the Use Tax Act (UTA), and the Specific Sales and Use Tax Rules without providing any definition of the phrase in either act or the Specific Sales and Use Tax Rules. See MCL 205.54d(d), MCL 205.94(1)(q), and Mich Admin Code R 205.127, respectively. Therefore, Michigan is likely out of compliance with the SSUTA on this issue, and absent a correction, Treasury will be required to self-report this potential compliance issue when it files its annual Certificate of Compliance in August 2020. Michigan can correct this issue by adopting the SSUTA's definition of "bottled water" in its statute or rules. Once properly promulgated, this rule will prevent Michigan from being found out of compliance and facing sanctions.

A. What is the rationale for changing the rules instead of leaving them as currently written?

There is currently no definition of "bottled water," therefore, leaving the rule "as is" would not solve the problem. Additionally, there is a SSUTA compliance issue that can only be resolved by adding the definition to either the Specific Sales and Use Tax Rules or the statutes.

8. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The proposed rule would protect the welfare of taxpayers by ensuring that all persons are treated equally regarding the taxation of bottled water. It would reduce burden on businesses by providing a clear standard to use to determine if something constitutes non-taxable bottled water.

9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

R 205.127 requires amendment for Michigan to remain in compliance with the SSUTA. Treasury is currently conducting a comprehensive review of other Specific Sales and Use Tax Rules and will be submitting a request for rule making regarding those rules in the near future.

10. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

There should be no fiscal impact on Treasury because of this rule.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

There would be no expenditures associated with this rule.

12. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The rule is necessary to provide clarity to taxpayers regarding what constitutes non-taxable bottled water and to allow Michigan to remain in compliance with the SSUTA. There would be no burdens placed on any taxpayer or individual other than to apply the definition to products they sell.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

The proposed rule would provide clarity regarding what constitutes non-taxable bottled water and allow Michigan to remain in compliance with the SSUTA.

13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

To the extent that this reduces tax sharing to local governmental units, Treasury estimates that any revenue impact of this change is indeterminant, but likely small.

14. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

Any local unit of government or school district that is required to remit sales tax on sales of taxable beverages would need to use the new definition of bottled water to determine if water beverages are taxable.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

Governmental units that sell taxable beverages would need to determine which beverages they sell qualify as non-taxable bottled water under the new definition.

15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

An appropriation has not been made because there would be little to no additional expenditures associated with the proposed rule.

16. In general, what impact will the rules have on rural areas?

The rule would have no specific impact on rural areas.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

The rule would have no specific impact on rural areas.

17. Do the proposed rules have any impact on the environment? If yes, please explain.

No.

18. Describe whether and how the agency considered exempting small businesses from the proposed rules.

Treasury did not consider exempting small businesses from the proposed rule. The purpose of the rule is consistent tax treatment and exempting any taxpayer from it would be contrary to that purpose. Additionally, exempting any taxpayer would likely still cause Michigan to be out of compliance with the SSUTA. Finally, except under limited circumstances not present here, Treasury is prohibited from compromising a tax. MCL 205.28(1)(e). Therefore, Treasury is not statutorily permitted to exempt small businesses from the proposed rule.

19. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

There should be little to no impact on small businesses due to the proposed rule.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

Treasury estimates that approximately 24,650 small businesses will be affected by the proposed rule.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

There should be little to no additional reporting, record-keeping, or other administrative costs due to the proposed rule. Therefore, no different reporting requirements are proposed to be established.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

There should be little to no additional reporting, record-keeping, or other administrative costs due to the proposed rule.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

The proposed rule does not establish performance standards.

20. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

The proposed rule will not have a disproportionate impact on small businesses.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

The proposed rule would not require any additional report.

22. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

There will be either no or a negligible cost of complying with the new rule.

23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

There should be little to no cost associated with these services incurred by small businesses in complying with the rule.

24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

There should be little to no cost associated with these services incurred by small businesses in complying with the rule.

25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

Treasury did not estimate the cost of enforcing a rule that exempts or sets lesser standards for small businesses. The purpose of the rule is consistent tax treatment and exempting any taxpayer from it would be contrary to that purpose. Additionally, exempting any taxpayer would still cause Michigan to likely be out of compliance with the SSUTA.

Finally, except under limited circumstances not present here, Treasury is prohibited from compromising a tax. MCL 205.28(1)(e). Therefore, Treasury is not statutorily permitted to exempt small businesses from the proposed rule.

26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

Exempting or setting a lesser standard for small businesses from the proposed rule would have a negative impact on the public interest because inconsistent tax treatment would continue and Michigan could face sanctions for being out of compliance with the SSUTA.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

In order to remain in compliance with the SSUTA, Michigan must adopt the definition provided for under the SSUTA. The only proposed substantive change made to the rule is the definition. Therefore, Treasury did not involve small businesses in the development of the rule.

A. If small businesses were involved in the development of the rules, please identify the business(es).

This is not applicable.

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

The statewide compliance cost for businesses to comply with the proposed rule should be negligible.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

Any business that sells various water products that may meet the proposed definition of “bottled water.”

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

No additional costs will be imposed on businesses as a result of the proposed rule.

29. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

There will be no statewide compliance costs for individuals because of the proposed rule.

A. How many and what category of individuals will be affected by the rules?

No individuals will be impacted by the proposed rule.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

No individuals will be impacted by the proposed rule.

30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

There will be no cost reduction for businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

The benefit of the proposed rule is that it will create consistency on the tax treatment of the sale of bottled water.

Adopting the proposed rule will also keep Michigan in compliance with the SSUTA.

32. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

The proposed rule will not have a positive or negative impact on business growth or job creation.

33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

No individuals or businesses will be disproportionately affected by the rule as a result of their industrial sector, segment of the public, business size, or geographic location.

34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

Treasury relied on the expertise of its Tax Policy Division and its Office of Revenue and Tax Analysis.

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rules.

Treasury’s Office of Revenue and Tax Analysis reviewed the number of restaurants and other persons that sell beverages that may qualify as “bottled water.”

35. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

For Michigan to remain in compliance with the SSUTA it must add the SSUTA definition of “bottled water” to either its Specific Sales and Use Tax Rules or the GSTA and UTA. Therefore, there is no alternative.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

The same definition would need to be adopted by statutory amendment to achieve the same result.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

It is not feasible to establish a regulatory program similar to the proposed rule that would operate through private market-based mechanisms. No other state uses a private market-based system to define sales and use tax words and phrases because it is not possible.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

No alternatives were considered because there is only one definition of “bottled water” that would allow Michigan to remain in compliance with the SSUTA.

38. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

Taxpayers subject to the proposed rule will need to review the definition of “bottled water” and determine the taxability of any products that may qualify as exempt bottled water under the definition.