



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RICK SNYDER
GOVERNOR

NICK A. KHOURI
STATE TREASURER

October 11, 2016

[Redacted]

Re: [Redacted] Subscription Program – Michigan Sales and Use Tax

Dear [Redacted]:

Thank you for your letter dated September 13, 2016, requesting a Letter Ruling regarding the applicability of Michigan sales and use tax to the [Redacted] Subscription Program (“[Redacted] Program”).

This letter is a Technical Advice Letter under RAB 2016-20 (formerly 1989-34) and is not intended to constitute either a “bulletin” or a “letter ruling” as those terms are defined in MCLA 205.6a and the RAB. A Technical Advice Letter may be relied upon only by the taxpayer requesting its issuance. However, conclusions in this letter are subject to subsequent legislation, regulations, court decisions, and bulletins. In addition, if the facts you provided are incomplete or change, you may not be able to rely on this letter.

You have provided the following facts with regard to your request [footnotes omitted]:

One of [Redacted] significant investments in [Redacted] is in a new [Redacted] program, evidenced by recently constructed [Redacted] in prominent geographical locations across Michigan. The program provides customers with a way to voluntarily support the development of [Redacted] in Michigan. Any [Redacted] customer of [Redacted] is eligible to subscribe to the [Redacted]. Eligible customers can subscribe to one or more [Redacted], pay the subscription fee, and in return receive [Redacted] credits.

These [Redacted] are constructed, owned, operated, and maintained by [Redacted]. The [Redacted] produced by the [Redacted] goes into the [Redacted] together with [Redacted]. [Redacted] makes no representation that program participants will receive [Redacted] from a [Redacted].

* * *

Participants may voluntarily cancel their subscription to the program at any time. However, they do not receive a monetary refund for uncredited portions of their contribution, unless the participant relocates outside of [REDACTED].

* * *

The subscription fee and credit (described below) are reflected as separate line items on the participant's monthly [REDACTED] bill that are in addition to the participant's normal monthly [REDACTED] charges.

* * *

The amount of the credit is linked to the value of the [REDACTED]. The actual [REDACTED] has no impact on the amount of the [REDACTED] subscription fee paid or the credit received, except that the subscription cannot exceed a [REDACTED] (measured by the [REDACTED] in the twelve months prior to the subscription).

* * *

Given the different subscription fees paid for the same subscription level and changing market prices for [REDACTED], the credit received will not equal the subscription fee paid for many, if not all, of the participants. "Although the value of the [REDACTED] may increase over the life of the [REDACTED] program, there is no guarantee the value will be greater than the subscription payment and participants should not enroll in this program with any expectation of profit or financial gain." [Appendix A, emphasis in original.]

Specifically, you asked the following: "The issue is whether or not under Michigan's Sales Tax Act the [REDACTED] subscription fee and credit should be included when calculating sales tax on monthly bills."

Answer: Retail sales of tangible personal property, [REDACTED], are subject to the Michigan General Sales Tax Act and the Michigan Use Tax Act. MCL 205.52(2)(a); MCL 205.93a(1)(e). Based on the facts provided, a customer should pay tax on the charge for [REDACTED], before any reductions or additions due to participation in the [REDACTED] Program. Participation in the [REDACTED] Program, including the separately stated subscription fee and [REDACTED] credits, is not subject to sales or use tax, although there may be income tax ramifications to the customer.


October 11, 2016

Page 3

Please let me know if I can be of any further assistance.

Sincerely,

Michael A. Eschelbach, Director
Bureau of Tax Policy