

HOUSE BILL No. 5075

November 10, 2015, Introduced by Rep. Yonker and referred to the Committee on Tax Policy.

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending section 12 (MCL 205.62), as amended by 2008 PA 438, and
by adding section 4ee.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 4EE. (1) SUBJECT TO SUBSECTION (2), A SALE OF DATA CENTER
2 EQUIPMENT TO THE OWNER OR OPERATOR OF A DATA CENTER OR A COLOCATED
3 BUSINESS FOR USE OR CONSUMPTION IN THE OPERATIONS OF THE DATA
4 CENTER IS EXEMPT FROM THE TAX UNDER THIS ACT.

5 (2) THE PROPERTY UNDER SUBSECTION (1) IS EXEMPT ONLY TO THE
6 EXTENT THAT THE PROPERTY IS USED FOR THE EXEMPT PURPOSES STATED IN
7 THIS SECTION. THE EXEMPTION IS LIMITED TO THE PERCENTAGE OF EXEMPT
8 USE TO TOTAL USE DETERMINED BY A REASONABLE FORMULA OR METHOD
9 APPROVED BY THE DEPARTMENT.

10 (3) AS USED IN THIS SECTION:

1 (A) "COLOCATED BUSINESS" MEANS A PERSON THAT HAS ENTERED INTO
2 A CONTRACT WITH THE OWNER OR OPERATOR OF A DATA CENTER TO USE OR
3 DEPLOY DATA CENTER EQUIPMENT IN THIS STATE FOR A PERIOD OF 2 OR
4 MORE YEARS.

5 (B) "DATA CENTER" MEANS 1 OR MORE BUILDINGS LOCATED IN THIS
6 STATE OWNED OR OPERATED BY AN ENTITY WHOSE PRIMARY BUSINESS IS
7 OWNING, OPERATING, MANAGING, OR MAINTAINING A GROUP OF NETWORKED
8 COMPUTERS FOR THE PURPOSE OF CENTRALIZING THE STORAGE, PROCESSING,
9 MANAGEMENT, OR DISSEMINATION OF DATA AND INCLUDES ANY MODULAR OR
10 PREASSEMBLED COMPONENTS, ASSOCIATED TELECOMMUNICATIONS AND STORAGE
11 SYSTEMS AND, IF THE DATA CENTER INCLUDES MORE THAN 1 BUILDING OR
12 PHYSICAL LOCATION, ANY NETWORK OR CONNECTION BETWEEN THOSE
13 BUILDINGS OR LOCATIONS, AND THE PERSONAL PROPERTY USED TO OPERATE,
14 MAINTAIN, OR MANAGE THE FACILITY AND ITS BUSINESS.

15 (C) "DATA CENTER EQUIPMENT" MEANS ANY MATERIAL USED IN OR IN
16 SUPPORT OF A DATA CENTER, INCLUDING, BUT NOT LIMITED TO, COMPUTERS,
17 SERVERS, CONSTRUCTION MATERIALS, INFRASTRUCTURE, MACHINERY, WIRING,
18 CABLING, DEVICES, TOOLS, VEHICLES, TECHNOLOGY, SOFTWARE, HARDWARE,
19 EQUIPMENT THAT WOULD OTHERWISE BE CONSIDERED A FIXTURE, OR RELATED
20 EQUIPMENT.

21 Sec. 12. (1) If an exemption from the tax under this act is
22 claimed, the seller shall obtain identifying information of the
23 purchaser and the reason for claiming the exemption at the time of
24 the purchase or at a later date. The seller shall obtain the same
25 information for a claimed exemption regardless of the medium in
26 which the transaction occurred.

27 (2) A seller shall use a standard format for claiming an

1 exemption electronically as adopted by the governing board under
2 the streamlined sales and use tax agreement.

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

6 (4) A seller shall maintain a proper record of all exempt
7 transactions and shall provide the record if requested by the
8 department.

9 (5) A seller who complies with the requirements of this
10 section is not liable for the tax if a purchaser improperly claims
11 an exemption. A purchaser who improperly claims an exemption is
12 liable for the tax due under this act. This subsection does not
13 apply if a seller fraudulently fails to collect the tax, solicits a
14 purchaser to make an improper claim for exemption, or accepts an
15 exemption form when the purchaser claims an entity-based exemption
16 if both of the following circumstances occur:

17 (a) The subject of the transaction sought to be covered by the
18 exemption form is actually received by the purchaser at a location
19 operated by the seller.

20 (b) The state in which that location operated by the seller is
21 located provides an exemption form that clearly and affirmatively
22 indicates that the claimed exemption is not available in that
23 state.

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

27 (7) If the seller has not obtained an exemption form or all

1 relevant data elements, the seller may either prove that the
2 transaction was not subject to tax by other means or obtain a fully
3 completed exemption form from the purchaser, by the later of the
4 following:

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

6 (b) The date an assessment becomes final.

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

8 (d) In the instance of a credit audit, the issuance of an
9 audit determination letter or informal conference decision and
10 order of determination.

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

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

16 (9) A seller is not liable for the tax **UNDER THIS ACT** if the
17 seller obtains a blanket exemption form for a purchaser with which
18 the seller has a recurring business relationship. Renewals of
19 blanket exemption forms or updates of exemption form information or
20 data elements are not required if there is a recurring business
21 relationship between the seller and the purchaser. For purposes of
22 this section, a recurring business relationship exists when a
23 period of not more than 12 months elapses between sales
24 transactions.

25 (10) A certified service provider shall be considered a seller
26 under this section. As used in this section, "certified service
27 provider" means that term as defined in section 25 of the

1 streamlined sales and use tax administration act, 2004 PA 174, MCL
2 205.825.