

# HOUSE BILL NO. 5139

October 28, 2025, Introduced by Reps. Roth, Tisdell, Wooden, Kuhn and McKinney and referred to Committee on Economic Competitiveness.

A bill to amend 1937 PA 94, entitled  
"Use tax act,"

by amending sections 5 and 5c (MCL 205.95 and 205.95c), section 5  
as amended by 2007 PA 93 and section 5c as added by 2019 PA 144.

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 5. (1) Except as otherwise provided in this subsection or  
2 subsection (5) **or (6)**, a person subject to the tax under this act  
3 shall register with the department and give the name and address of  
4 each agent operating in this state, the location of all  
5 distribution or sales houses or offices or other places of business

1 in this state, and any other information that the department  
 2 requires relevant to the enforcement of this act. However, a seller  
 3 holding a sales tax license obtained under the general sales tax  
 4 act, 1933 PA 167, MCL 205.51 to 205.78, is not required to  
 5 separately register with the department under this act. Every  
 6 person subject to the tax under this act shall source sales in  
 7 accordance with section 20 and collect the tax imposed by this act  
 8 from the consumer.

9 (2) The ~~corporation,~~ **corporations**, securities, and ~~land~~  
 10 ~~development~~ **commercial licensing** bureau of the department of ~~labor~~  
 11 ~~and economic growth~~ **licensing and regulatory affairs** shall not  
 12 issue to any foreign corporation subject to the tax under this act  
 13 a certificate of authority to do business in this state or approve  
 14 and file the proposed articles of incorporation submitted to it by  
 15 any domestic corporation authorizing or permitting that corporation  
 16 to conduct any business subject to the tax under this act unless  
 17 the corporation submits with the application for the certificate of  
 18 authority or proposed articles of incorporation an application for  
 19 registration of the corporation under this act or an application  
 20 for a sales tax license under the general sales tax act, 1933 PA  
 21 167, MCL 205.51 to 205.78. The **corporations, securities, and**  
 22 **commercial licensing bureau shall transmit the** application ~~shall be~~  
 23 ~~transmitted to the department. by the corporation, securities, and~~  
 24 ~~land development bureau.~~

25 (3) A domestic corporation or a foreign corporation authorized  
 26 to transact business in this state that submits a certificate of  
 27 dissolution or requests a certificate of withdrawal from this state  
 28 shall request a certificate from the department stating that taxes  
 29 are not due under section 27a of 1941 PA 122, MCL 205.27a, not more

1 than 60 days after submitting the certificate of dissolution or  
 2 requesting the certificate of withdrawal. A corporation that does  
 3 not request a certificate stating that taxes are not due is subject  
 4 to the same penalties under section 24 of 1941 PA 122, MCL 205.24,  
 5 that a taxpayer would be subject to for failure to file a return.

6 (4) A lessor may elect to pay use tax on receipts from the  
 7 rental or lease of the tangible personal property in lieu of  
 8 payment of sales or use tax on the full cost of the property at the  
 9 time it is acquired. For tax years that begin after December 31,  
 10 2001, in order to make a valid election under this subsection, a  
 11 lessor of tangible personal property that is an aircraft shall  
 12 obtain a use tax registration by the earlier of the date set for  
 13 the first payment of use tax under the lease or rental agreement or  
 14 90 days after the lessor first brings the aircraft into this state.

15 (5) A seller registered under the streamlined sales and use  
 16 tax agreement ~~who~~**that** is not otherwise subject to the tax under  
 17 this act is not required to register under this section because of  
 18 the registration under the streamlined sales and use tax agreement.

19 **(6) Unless the marketplace seller fails to provide the**  
 20 **marketplace facilitator with sufficient information to the extent**  
 21 **that the marketplace facilitator is not liable under section 5c(7)**  
 22 **or engages in business other than furnishing rooms, lodgings, or**  
 23 **accommodations described in section 3a that requires registration**  
 24 **under this act, a marketplace seller of rooms, lodgings, or**  
 25 **accommodations described in section 3a is not required to register**  
 26 **under this section or file a return under this act if both of the**  
 27 **following requirements are met:**

28 (a) All of the sales of or charges for rooms, lodgings, or  
 29 accommodations described in section 3a are booking transactions

1 made by a marketplace facilitator required to remit tax under  
2 section 5c.

3 (b) The marketplace seller files an attestation with the  
4 department, in the form and manner prescribed by the department,  
5 that all of the marketplace seller's sales of or charges for rooms,  
6 lodgings, or accommodations described in section 3a are booking  
7 transactions made by a marketplace facilitator required to remit  
8 tax under section 5c. An attestation under this subdivision is  
9 effective for 12 months beginning with the month in which the  
10 attestation is made, and, thereafter, the attestation is due  
11 annually on a date determined by the department. A marketplace  
12 seller may file a single attestation for purposes of this  
13 subdivision and section 2d(9) of the essential services tax  
14 enabling act, 1974 PA 263, MCL 141.862d.

15 (7) As used in this section:

16 (a) "Booking transaction" means that term as defined in  
17 section 1 of the essential services tax enabling act, 1974 PA 263,  
18 MCL 141.861.

19 (b) "Marketplace facilitator" means that term as defined in  
20 section 5c.

21 (c) "Marketplace seller" means that term as defined in section  
22 5c.

23 Sec. 5c. (1) Notwithstanding anything to the contrary in this  
24 act **and except as otherwise provided in subsection (11)**, a  
25 marketplace facilitator that has nexus in this state shall collect  
26 and remit the tax due under this act on all taxable sales made by  
27 the marketplace facilitator or facilitated for marketplace sellers  
28 to a purchaser in this state regardless of whether the marketplace  
29 seller for whom sales are facilitated has nexus with this state.

1           (2) A marketplace facilitator is a person liable for the tax  
2 imposed under this act, regardless of whether the marketplace  
3 facilitator makes only facilitated sales for marketplace sellers or  
4 a combination of direct and facilitated sales and has all the  
5 rights and duties of a taxpayer under this act.

6           (3) A marketplace facilitator shall report its direct sales  
7 and the sales it facilitates to purchasers in this state in a  
8 manner as prescribed by the department.

9           (4) A class action shall not be brought against a marketplace  
10 facilitator in any court of this state on behalf of purchasers  
11 arising from or in any way related to an overpayment of use tax  
12 collected and remitted on sales facilitated by the marketplace  
13 facilitator, regardless of whether that claim is characterized as a  
14 tax refund claim. Nothing in this subsection affects a purchaser's  
15 right to seek a refund as provided under section 14b.

16           (5) Nothing in this section affects the obligation of a  
17 purchaser to remit the tax imposed by this act for a taxable  
18 transaction on which a marketplace facilitator or marketplace  
19 seller does not remit sales or use tax.

20           (6) Except as otherwise provided in this subsection, if a  
21 marketplace facilitator is required to collect and remit tax under  
22 subsection (1), the department shall audit only the marketplace  
23 facilitator for sales made by marketplace sellers that were  
24 facilitated by the marketplace facilitator. The department shall  
25 not audit a marketplace seller for sales facilitated by a  
26 marketplace facilitator required to collect and remit tax under  
27 subsection (1) unless the marketplace seller fails to provide the  
28 marketplace facilitator with sufficient information to the extent  
29 that the marketplace facilitator is not liable under subsection

1 (7).

2 (7) A marketplace facilitator is relieved of liability under  
3 this section for failure to collect and remit the correct amount of  
4 tax to the extent that the marketplace facilitator demonstrates, to  
5 the satisfaction of the department, that the failure was due to  
6 incorrect or insufficient information given to the marketplace  
7 facilitator by the marketplace seller. The relief under this  
8 subsection does not apply if the marketplace seller is an affiliate  
9 of the marketplace facilitator.

10 (8) ~~A~~**Notwithstanding subsection (11), a** marketplace  
11 facilitator is relieved of liability under this section if the  
12 marketplace facilitator demonstrates, to the satisfaction of the  
13 department, that the tax levied under this act on a sale  
14 facilitated by the marketplace facilitator was paid to the  
15 department by the marketplace seller or provides a claim of  
16 exemption provided by the marketplace seller's purchaser.

17 (9) A marketplace seller is not liable for the tax imposed by  
18 this act on sales made through a marketplace facilitator required  
19 to collect and remit tax under subsection (1) unless the  
20 marketplace seller fails to provide the marketplace facilitator  
21 with sufficient information to the extent that the marketplace  
22 facilitator is not liable under subsection (7).

23 (10) This section applies regardless of whether the  
24 marketplace facilitator has a physical presence in this state.

25 **(11) A marketplace seller that enters into a written agreement**  
26 **described in subsection (12) (b) (iii) is solely liable for remitting**  
27 **the tax due under this act to the department with respect to the**  
28 **sale of or charges for rooms, lodgings, or accommodations described**  
29 **in section 3a.**

(12) ~~(11)~~ As used in this section:

(a) "Affiliate" means an affiliated person as that term is defined in section 5a.

(b) "Marketplace facilitator" means a person that meets the requirements of subparagraph (i), but does not include a person described in subparagraph (ii), (iii), or (iv):

(i) A person is a marketplace facilitator if the person facilitates a retail sale by a marketplace seller by listing or advertising for sale by a marketplace seller in a marketplace, tangible personal property or taxable services and either directly or indirectly through agreements or arrangements with third parties or its affiliates collecting payment from the customer and transmitting that payment to the marketplace seller for consideration.

(ii) Marketplace facilitator does not include a person who operates a platform or forum that provides internet, print, electronic, or any other form of advertising services, including listing tangible personal property or services for sale, if the person does not also engage directly or indirectly, through 1 or more affiliates, in the activities described in subparagraph (i).

(iii) A person is not a marketplace facilitator with respect to the sale of or charges for rooms, lodgings, or accommodations described in section 3a if the ~~rooms, lodgings, or accommodations are provided by a hotelkeeper, motel operator, or other person that is registered under section 5 or licensed under section 3 of the general sales tax act, 1933 PA 167, MCL 205.53.~~ **person and the marketplace seller making the sale enter into a written agreement that requires the marketplace seller to remit the tax due under this act to the department.**

1           (iv) A person is not a marketplace facilitator with respect to  
2 the sale of telecommunications services as described in section 3a.

3           (c) "Marketplace seller" means a person that makes retail  
4 sales through a physical or electronic marketplace operated by a  
5 marketplace facilitator.

6           Enacting section 1. This amendatory act does not take effect  
7 unless all of the following bills of the 103rd Legislature are  
8 enacted into law:

9           (a) House Bill No. 5140 (request no. H04186'25).

10          (b) House Bill No. 5138 (request no. H04188'25).