USE TAX ACT
Act 94 of 1937

AN ACT to provide for the levy, assessment, and collection of a specific excise tax on the storage, use, or consumption in this state of tangible personal property and certain services; to appropriate the proceeds of that tax; to prescribe penalties; and to make appropriations.

History: 1937, Act 94, Eff. Oct. 29, 1937;—Am. 1959, Act 263, Eff. Sept. 1, 1959;—Am. 1960, 2nd Ex. Sess., Act 2, Eff. Jan. 1, 1961;—Am. 2007, Act 93, Eff. Dec. 1, 2007.

The People of the State of Michigan enact:

205.91 Use tax act; short title.

Sec. 1. This act may be cited as the "Use Tax Act".

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.91.

205.92 Definitions; applicability to delivery and installation charges.

Sec. 2. (1) As used in this act:

(a) "Person" means an individual, firm, partnership, joint venture, association, social club, fraternal organization, municipal or private corporation whether or not organized for profit, company, limited liability company, estate, trust, receiver, trustee, syndicate, the United States, this state, county, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(b) "Use" means the exercise of a right or power over tangible personal property incident to the ownership of that property including transfer of the property in a transaction where possession is given. Converting tangible personal property acquired for a use exempt from the tax levied under this act to a use not exempt from the tax levied under this act is a taxable use.

(c) "Storage" means a keeping or retention of property in this state for any purpose after the property loses its interstate character.

(d) "Seller" means the person from whom a purchase is made and includes every person selling tangible personal property or services for storage, use, or other consumption in this state. If, in the opinion of the department, it is necessary for the efficient administration of this act to regard a salesperson, representative, peddler, or canvasser as the agent of a dealer, distributor, supervisor, or employer under whom the person operates or from whom the person obtains tangible personal property or services sold by the person for storage, use, or other consumption in this state, irrespective of whether or not the person is making the sales on the person's own behalf or on behalf of the dealer, distributor, supervisor, or employer, the department may so consider the person, and may consider the dealer, distributor, supervisor, or employer as the seller for the purpose of this act.

(e) "Purchase" means to acquire for a consideration, whether the acquisition is effected by a transfer of title, of possession, or of both, or a license to use or consume; whether the transfer is absolute or conditional, and by whatever means the transfer is effected; and whether consideration is a price or rental in money, or by way of exchange or barter. Purchase includes converting tangible personal property acquired for a use exempt from the tax levied under this act to a use not exempt from the tax levied under this act.

(f) "Purchase price" or "price" means the total amount of consideration paid by the consumer to the seller, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, and applies to the measure subject to use tax. Purchase price includes the following subparagraphs (*i*) to (*vii*) and excludes subparagraphs (*viii*) to (*xv*):

(*i*) Seller's cost of the property sold.

(*ii*) Cost of materials used, labor or service cost, interest, losses, costs of transportation to the seller, taxes imposed on the seller other than taxes imposed by this act, and any other expense of the seller.

(*iii*) Charges by the seller for any services necessary to complete the sale, other than the following:

(A) An amount received or billed by the taxpayer for remittance to the employee as a gratuity or tip, if the gratuity or tip is separately identified and itemized on the guest check or billed to the customer.

(B) Labor or service charges involved in maintenance and repair work on tangible personal property of others if separately itemized.

(*iv*) Except as otherwise provided in subparagraph (*xv*), delivery charges. A seller is not liable under this act for delivery charges allocated to the delivery of exempt property.

(*v*) Except as otherwise provided in subparagraph (*xv*), installation charges.

(*vi*) Except as otherwise provided in subparagraphs (*xi*), (*xii*), and (*xiv*), credit for any trade-in.

(*vii*) Except as otherwise provided in subparagraph (*x*), consideration received by the seller from third parties if all of the following conditions are met:

(A) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale.

(B) The seller has an obligation to pass the price reduction or discount through to the purchaser.

(C) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser.

(D) One of the following criteria is met:

(I) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented.

(II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in a group or organization.

(III) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

(*viii*) Interest, financing, or carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(*ix*) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(*x*) Beginning January 1, 2000, employee discounts that are reimbursed by a third party on sales of motor vehicles.

(*xi*) Beginning November 15, 2013, credit for the agreed-upon value of a titled watercraft used as part payment of the purchase price of a new titled watercraft or used titled watercraft purchased from a watercraft dealer if the agreed-upon value is separately stated on the invoice, bill of sale, or similar document given to the purchaser. This subparagraph does not apply to leases or rentals.

(*xii*) Beginning December 15, 2013, credit for the agreed-upon value of a motor vehicle or recreational vehicle used as part payment of the purchase price of a new motor vehicle or used motor vehicle or recreational vehicle purchased from a dealer if the agreed-upon value is separately stated on the invoice, bill of sale, or similar document given to the purchaser. This subparagraph does not apply to leases or rentals. Except as otherwise provided under subparagraph (*xiv*), for purposes of this subparagraph, the agreed-upon value of a motor vehicle or recreational vehicle used as part payment is limited as follows:

(A) Beginning December 15, 2013, subject to sub-subparagraphs (B) and (C), the lesser of the following:

(I) $2,000.00.

(II) The agreed-upon value of the motor vehicle or recreational vehicle used as part payment.

(B) Beginning January 1, 2015 and each January 1 thereafter through December 31, 2018, the amount under sub-subparagraph (A)(I) is increased by an additional $500.00 each year.

(C) Beginning January 1, 2019, subject to sub-subparagraphs (D) and (E), the lesser of the following:

(I) $5,000.00.

(II) The agreed-upon value of the motor vehicle used as part payment.

(D) Beginning January 1, 2020 and each January 1 thereafter, the amount under sub-subparagraph (C)(I) is increased by an additional $1,000.00 each year.

(E) Beginning on January 1, in the year in which the amount under sub-subparagraph (C)(I) exceeds $14,000.00 and each January 1 thereafter, there is no limitation on the agreed-upon value of the motor vehicle used as part payment.

(*xiii*) Beginning January 1, 2017, credit for the core charge attributable to a recycling fee, deposit, or disposal fee for a motor vehicle or recreational vehicle part or battery if the recycling fee, deposit, or disposal fee is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(*xiv*) Beginning January 1, 2018, credit for the agreed-upon value of a recreational vehicle used as part payment of the purchase price of a recreational vehicle purchased from a dealer if the agreed-upon value is separately stated on the invoice, bill of sale, or similar document given to the purchaser. This subparagraph does not apply to leases or rentals.

(*xv*) Delivery or installation charges if such charges are separately stated on the invoice, bill of sale, or similar document provided to the purchaser, and the taxpayer maintains its books and records to show separately the transactions used to determine the tax levied by this act. This subdivision does not apply to delivery or installation charges involving or relating to the sale of electricity, natural gas, or artificial gas by a

utility.

(g) "Consumer" means the person who has purchased tangible personal property or services for storage, use, or other consumption in this state and includes, but is not limited to, 1 or more of the following:

(*i*) A person acquiring tangible personal property if engaged in the business of constructing, altering, repairing, or improving the real estate of others.

(*ii*) A person who has converted tangible personal property or services acquired for storage, use, or consumption in this state that is exempt from the tax levied under this act to storage, use, or consumption in this state that is not exempt from the tax levied under this act.

(h) "Business" means all activities engaged in by a person or caused to be engaged in by a person with the object of gain, benefit, or advantage, either direct or indirect.

(i) "Department" means the department of treasury.

(j) "Tax" includes all taxes, interest, or penalties levied under this act.

(k) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses and includes electricity, water, gas, steam, and prewritten computer software.

(*l*) "Textiles" means goods that are made of or incorporate woven or nonwoven fabric, including, but not limited to, clothing, shoes, hats, gloves, handkerchiefs, curtains, towels, sheets, pillows, pillowcases, tablecloths, napkins, aprons, linens, floor mops, floor mats, and thread. Textiles also include materials used to repair or construct textiles, or other goods used in the rental, sale, or cleaning of textiles.

(m) "Interstate motor carrier" means a person who operates or causes to be operated a qualified commercial motor vehicle on a public road or highway in this state and at least 1 other state or Canadian province.

(n) "Qualified commercial motor vehicle" means that term as defined in section 1(*l*), (m), and (n) of the motor carrier fuel tax act, 1980 PA 119, MCL 207.211.

(o) "Diesel fuel" means that term as defined in section 2(q) of the motor fuel tax act, 2000 PA 403, MCL 207.1002.

(p) "Sale" means a transaction by which tangible personal property or services are purchased or rented for storage, use, or other consumption in this state.

(q) "Convert" means putting a service or tangible personal property acquired for a use exempt from the tax levied under this act at the time of acquisition to a use that is not exempt from the tax levied under this act, whether the use is in whole or in part, or permanent or not permanent. A motor vehicle purchased for resale by a new vehicle dealer licensed under section 248(8)(a) of the Michigan vehicle code, 1949 PA 300, MCL 257.248, and not registered in the name of the dealer is not considered to be converted before sale or lease by that dealer.

(r) "New motor vehicle" means that term as defined in section 33a of the Michigan vehicle code, 1949 PA 300, MCL 257.33a.

(s) "Recreational vehicle" means that term as defined in section 49a of the Michigan vehicle code, 1949 PA 300, MCL 257.49a.

(t) "Dealer" means that term as defined in section 11 of the Michigan vehicle code, 1949 PA 300, MCL 257.11.

(u) "Watercraft dealer" means a dealer as that term is defined in section 80102 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80102.

(v) "Utility" means either of the following:

(*i*) A person regulated by the Michigan public service commission as a utility.

(*ii*) A person that operates equipment or facilities for producing, generating, transmitting, delivering, or furnishing electricity within this state for the public for compensation, regardless of the person's owner, ownership structure, or regulation by the Michigan public service commission.

(2) Notwithstanding anything to the contrary in this act, the following applies only to delivery and installation charges described in subsection (1)(f)(*iv*) or (*v*), except that this subsection does not apply to delivery and installation charges involving or relating to the sale of electricity, natural gas, or artificial gas by a utility:

(a) Not later than July 25, 2023, the department shall cancel all outstanding balances related to such delivery and installation charges on notices of intent to assess that were issued under section 21 of 1941 PA 122, MCL 205.21, for the tax levied under this act and that were issued before April 26, 2023.

(b) Not later than July 25, 2023, the department shall cancel all outstanding balances related to such delivery and installation charges on final assessments that were issued under section 22 of 1941 PA 122, MCL 205.22, for the tax levied under this act, and that were issued before April 26, 2023.

(c) Beginning April 26, 2023, the department shall not issue any new assessments for the tax levied under

this act on such delivery and installation charges for any tax period before April 26, 2023, that is open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a.

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.92;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1953, Act 203, Imd. Eff. June 10, 1953;—Am. 1959, Act 263, Eff. Sept. 1, 1959;—Am. 1969, Act 214, Imd. Eff. Aug. 6, 1969;—Am. 1981, Act 166, Imd. Eff. Dec. 2, 1981;—Am. 1982, Act 219, Eff. Jan. 1, 1984;—Am. 1982, Act 479, Eff. Mar. 30, 1983;—Am. 1984, Act 178, Imd. Eff. July 3, 1984;—Am. 1987, Act 260, Imd. Eff. Dec. 28, 1987;—Am. 1988, Act 506, Imd. Eff. Dec. 29, 1988;—Am. 1995, Act 78, Imd. Eff. June 13, 1995;—Am. 1995, Act 208, Imd. Eff. Nov. 29, 1995;—Am. 1998, Act 366, Imd. Eff. Oct. 20, 1998;—Am. 2000, Act 391, Imd. Eff. Jan. 3, 2001;—Am. 2002, Act 511, Imd. Eff. July 23, 2002;—Am. 2002, Act 669, Eff. Mar. 31, 2003;—Am. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2007, Act 103, Eff. Sept. 30, 2002;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009;—Am. 2013, Act 234, Imd. Eff. Dec. 26, 2013;—Am. 2016, Act 7, Imd. Eff. Feb. 2, 2016;—Am. 2016, Act 516, Eff. Mar. 29, 2017;—Am. 2018, Act 1, Imd. Eff. Jan. 18, 2018;—Am. 2023, Act 21, Imd. Eff. Apr. 26, 2023;—Am. 2023, Act 94, Imd. Eff. July 19, 2023.

Compiler's note: Enacting section 2 of Act 506 of 1988 provides:

"This amendatory act is effective for all taxes due beginning on April 1, 1983."

Enacting section 2 of Act 78 of 1995 provides:

"This amendatory act is effective for taxes levied after 1980."

Enacting sections 1 and 2 of 2007 PA 103 provide:

"Enacting section 1. It is the intent of the legislature that this amendatory act clarify that a person who acquires tangible personal property for a purpose exempt under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, who subsequently converts that property to a use taxable under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, is liable for the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111.

"Enacting section 2. This amendatory act is curative and intended to prevent any misinterpretation of the ability of a taxpayer to claim an exemption from the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, based on the purchase of tangible personal property or services for resale that may result from the decision of the Michigan court of appeals in Betten Auto Center, Inc v Department of Treasury, No. 265976, as affirmed by the Michigan Supreme Court. This amendatory act is retroactive and is effective beginning September 30, 2002 and for all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

Enacting section 1 of Act 7 of 2016 provides:

"Enacting section 1. This amendatory act is retroactive and is effective December 15, 2013."

Senate Bill No. 95 was vetoed by the Governor on July 25, 2017. On January 17, 2018, two-thirds of the members of the Senate and House of Representatives voted to pass the bill, the objections of the Governor to the contrary notwithstanding. Senate Bill No. 95 was filed with the Secretary of State on January 18, 2018, and became 2018 PA 1, Imd. Eff. Jan. 18, 2018.

205.92b Additional definitions.

Sec. 2b. As used in this act:

(a) "Alcoholic beverage" means a beverage suitable for human consumption that contains 1/2 of 1% or more of alcohol by volume.

(b) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(c) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(d) "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.

(e) "Delivery charges" means charges by the seller for preparation and delivery to a location designated by the purchaser of tangible personal property or services. Delivery charges include, but are not limited to, transportation, shipping, postage, handling, crating, and packing. Beginning September 1, 2004, delivery charges do not include the charges for delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the purchaser. If a shipment includes both exempt property and taxable property, the seller shall allocate the delivery charge using 1 of the following methods:

(*i*) Multiply the delivery price by a fraction, the numerator of which is the total sales prices of the taxable property and the denominator of which is the total sales prices of all property in the shipment.

(*ii*) Multiply the delivery price by a fraction, the numerator of which is the total weight of the taxable property and the denominator of which is the total weight of all property in the shipment.

(f) "Dental prosthesis" means a bridge, crown, denture, or other similar artificial device used to repair or replace intraoral defects such as missing teeth, missing parts of teeth, and missing soft or hard structures of the jaw or palate.

(g) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that is all of the following:

(*i*) Required to be labeled as a dietary supplement identifiable by the "supplement facts" box found on the label as required by 21 CFR 101.36.

(*ii*) Contains 1 or more of the following dietary ingredients:

(A) A vitamin.

(B) A mineral.

(C) An herb or other botanical.

(D) An amino acid.

(E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake.

(F) A concentrate, metabolite, constituent, extract, or combination of any ingredient listed in sub-subparagraphs (A) to (E).

(*iii*) Intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in 1 of those forms, is not represented as conventional food or for use as a sole item of a meal or of the diet.

(h) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser if the cost of the items is not billed directly to the recipients, including tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material but not including multiple items of printed material delivered to a single address.

(i) "Drug" means a compound, substance, or preparation, or any component of a compound, substance, or preparation, other than food or food ingredients, dietary supplements, or alcoholic beverages, intended for human use that is 1 or more of the following:

(*i*) Recognized in the official United States Pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or in any of their supplements.

(*ii*) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

(*iii*) Intended to affect the structure or any function of the body.

(j) "Durable medical equipment" means equipment for home use, other than mobility enhancing equipment, dispensed pursuant to a prescription, including durable medical equipment repair or replacement parts, that does all of the following:

(*i*) Can withstand repeated use.

(*ii*) Is primarily and customarily used to serve a medical purpose.

(*iii*) Is not useful generally to a person in the absence of illness or injury.

(*iv*) Is not worn in or on the body.

(k) "Durable medical equipment repair or replacement parts" includes all components or attachments used in conjunction with durable medical equipment.

(*l*) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(m) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration and may include future options to purchase or extend. This definition applies only to leases and rentals entered into after September 1, 2004 and has no retroactive impact on leases and rentals that existed on that date. Lease or rental does not include the following subparagraphs (*i*) to (*iii*) and includes subparagraph (*iv*):

(*i*) A transfer of possession or control of tangible personal property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.

(*ii*) A transfer of possession or control of tangible personal property under an agreement requiring transfer of title upon completion of the required payments and payment of an option price that does not exceed $100.00 or 1% of the total required payments, whichever is greater.

(*iii*) The provision of tangible personal property along with an operator for a fixed or indeterminate period of time, if that operator is necessary for the equipment to perform as designed. To be necessary, an operator must do more than maintain, inspect, or set up the tangible personal property.

(*iv*) An agreement covering motor vehicles or trailers if the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in section 7701(h)(1) of the internal revenue code of 1986, 26 USC 7701(h)(1).

(n) "Mobility enhancing equipment" means equipment, other than durable medical equipment or a motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer, dispensed pursuant to a prescription, including repair or replacement parts for that equipment, that is all of the following:

(*i*) Primarily and customarily used to provide or increase the ability to move from 1 place to another and is appropriate for use at home or on a motor vehicle.

(*ii*) Not generally used by a person with normal mobility.

(o) "Prescription" means an order, formula, or recipe, issued in any form of oral, written, electronic, or other means of transmission by a licensed physician or other health professional as defined in section 3501 of the insurance code of 1956, 1956 PA 218, MCL 500.3501. For a hearing aid, prescription includes an order, instruction, or direction of a hearing aid dealer or salesperson licensed under article 13 of the occupational

code, 1980 PA 299, MCL 339.1301 to 339.1309.

(p) "Prewritten computer software" means computer software, including prewritten upgrades, that is delivered by any means and that is not designed and developed by the author or other creator to the specifications of a specific purchaser. Prewritten computer software includes all of the following:

(*i*) Any combination of 2 or more prewritten computer software programs or portions of prewritten computer software programs.

(*ii*) Computer software designed and developed by the author or other creator to the specifications of a specific purchaser if it is sold to a person other than that specific purchaser.

(*iii*) The modification or enhancement of prewritten computer software or portions of prewritten computer software if the modification or enhancement is designed and developed to the specifications of a specific purchaser unless there is a reasonable, separately stated charge or an invoice or other statement of the price is given to the purchaser for the modification or enhancement. If a person other than the original author or creator modifies or enhances prewritten computer software, that person is considered to be the author or creator of only that person's modifications or enhancements.

(q) "Prosthetic device" means, except as provided in section 4ff, a replacement, corrective, or supportive device, other than contact lenses and dental prosthesis, dispensed pursuant to a prescription, including repair or replacement parts for that device, worn on or in the body to do 1 or more of the following:

(*i*) Artificially replace a missing portion of the body.

(*ii*) Prevent or correct a physical deformity or malfunction of the body.

(*iii*) Support a weak or deformed portion of the body.

(r) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

History: Add. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2006, Act 428, Imd. Eff. Oct. 5, 2006;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009;—Am. 2017, Act 220, Imd. Eff. Dec. 20, 2017;—Am. 2020, Act 47, Imd. Eff. Mar. 3, 2020.

Compiler's note: Enacting section 1 of Act 220 of 2017 provides:
"Enacting section 1. This amendatory act is retroactive and is effective beginning July 1, 2017."

205.92c Definitions.

Sec. 2c. As used in this act:

(a) "Authority" means the local community stabilization authority created under the local community stabilization authority act.

(b) "Basic school operating mills" means school operating mills used to calculate the state portion of a local school district's foundation allowance under section 20 of the state school aid act of 1979, 1979 PA 94, MCL 388.1620, and levied under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211, by a local school district that receives from this state a portion of its foundation allowance, as calculated under section 20(4) of the state school aid act of 1979, 1979 PA 94, MCL 388.1620.

(c) "Local community stabilization share" means the local community stabilization share tax described in section 3(5), authorized by the amendatory act that added this section, and included in the specific tax levied under section 3(1).

(d) "Personal property growth factor" means the average annual growth rate for industrial and commercial personal property taxable value from 1996 through 2012 rounded up to the nearest tenth of a percent, which is 1.0%.

(e) "State fiscal year" means the annual period fiscal beginning on October 1 of each year and ending on September 30 in the immediately succeeding year.

(f) "State share" means the state share tax described in section 3(5) and included in the specific tax levied under section 3(1).

History: Add. 2014, Act 80, Eff. Jan 1, 2015.

Compiler's note: Enacting section 1 of Act 80 of 2014 provides:
"Enacting section 1. This amendatory act does not take effect unless approved by a majority of the registered and qualified electors of this state voting on the question at an election to be held on the August regular election date in 2014. Except as otherwise provided in this enacting section, this amendatory act shall be submitted to the registered and qualified electors of this state at that election as provided by the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, and for the purpose of complying with section 31 of article IX of the state constitution of 1963. Notwithstanding other law, when submitted to the registered and qualified electors of this state, this amendatory act shall be presented with the following question:
"APPROVAL OR DISAPPROVAL OF AMENDATORY ACT TO REDUCE STATE USE TAX AND REPLACE WITH A LOCAL COMMUNITY STABILIZATION SHARE TO MODERNIZE THE TAX SYSTEM TO HELP SMALL BUSINESSES GROW AND CREATE JOBS
The amendatory act adopted by the Legislature would:
1. Reduce the state use tax and replace with a local community stabilization share of the tax for the purpose of modernizing the tax system to help small businesses grow and create jobs in Michigan.
2. Require Local Community Stabilization Authority to provide revenue to local governments dedicated for local purposes, including

police safety, fire protection, and ambulance emergency services.

3. Increase portion of state use tax dedicated for aid to local school districts.

4. Prohibit Authority from increasing taxes.

5. Prohibit total use tax rate from exceeding existing constitutional 6% limitation.

Should this law be approved?

YES [ ]

NO [ ]"."

Enacting section 2 of Act 80 of 2014 provides:

"Enacting section 2. If approved by the registered and qualified electors of this state as provided in enacting section 1, this amendatory act takes effect January 1, 2015."

Compiler's note: Act 80 of 2014 was approved by a majority of the voters at the August 5, 2014 primary election. The election results were certified by the Michigan Board of State Canvassers on August 22, 2014.

Compiler's note: This section, which was added by Act 80 of 2014, should have evidently amended the section added by Act 408 of 2012.

Compiler's note: The conditions in enacting section 1 of Act 408 of 2012 were not met. Act 408 of 2012 did not go into effect.

Compiler's note: The conditions in enacting section 1 of Act 81 of 2014 were not met. Act 81 of 2014 did not go into effect.

205.93 Tax rate; applicability to tangible personal property or services; conversion to taxable use; penalties and interest; presumption; using, storing, or consuming vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft; collection; price tax base; exemptions; services, information, or records of other department or agency; state share tax and local community stabilization share; total combined rate levied by state and authority; limitation.

Sec. 3. (1) There is levied upon and there shall be collected from every person in this state a specific tax, including both the local community stabilization share and the state share, for the privilege of using, storing, or consuming tangible personal property in this state at a total combined rate equal to 6% of the price of the property or services specified in section 3a or 3b. The tax levied under this act applies to a person who acquires tangible personal property or services that are subject to the tax levied under this act for any tax-exempt use who subsequently converts the tangible personal property or service to a taxable use, including an interim taxable use. If tangible personal property or services are converted to a taxable use, the tax levied under this act shall be imposed without regard to any subsequent tax-exempt use. Penalties and interest shall be added to the tax if applicable as provided in this act. For the purpose of the proper administration of this act and to prevent the evasion of the tax, all of the following shall be presumed:

(a) That tangible personal property purchased is subject to the tax if brought into this state within 90 days of the purchase date and is considered as acquired for storage, use, or other consumption in this state.

(b) That tangible personal property used solely for personal, nonbusiness purposes that is purchased outside of this state and that is not an aircraft is exempt from the tax levied under this act if 1 or more of the following conditions are satisfied:

(*i*) The property is purchased by a person who is not a resident of this state at the time of purchase and is brought into this state more than 90 days after the date of purchase.

(*ii*) The property is purchased by a person who is a resident of this state at the time of purchase and is brought into this state more than 360 days after the date of purchase.

(2) The tax imposed by this section for the privilege of using, storing, or consuming a vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft shall be collected before the transfer of the vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft, except a transfer to a licensed dealer or retailer for purposes of resale that arises by reason of a transaction made by a person who does not transfer vehicles, ORVs, manufactured housing, aircraft, snowmobiles, or watercraft in the ordinary course of his or her business done in this state. The tax on a vehicle, ORV, snowmobile, and watercraft shall be collected by the secretary of state before the transfer of the vehicle, ORV, snowmobile, or watercraft registration. The tax on manufactured housing shall be collected by the department of licensing and regulatory affairs, mobile home commission, or its agent before the transfer of the certificate of title. The tax on an aircraft shall be collected by the department of treasury. The price tax base of a new or previously owned car or truck held for resale by a dealer and that is not exempt under section 4(1)(c) is the purchase price of the car or truck multiplied by 2.5% plus $30.00 per month beginning with the month that the dealer uses the car or truck in a nonexempt manner.

(3) The following transfers or purchases are not subject to use tax:

(a) A transaction or a portion of a transaction if the transferee or purchaser is the spouse, mother, father, brother, sister, child, stepparent, stepchild, stepbrother, stepsister, grandparent, grandchild, legal ward, or a legally appointed guardian with a certified letter of guardianship, of the transferor.

(b) A transaction or a portion of a transaction if the transfer is a gift to a beneficiary in the administration

of an estate.

(c) If a vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft that has once been subjected to the Michigan sales or use tax is transferred in connection with the organization, reorganization, dissolution, or partial liquidation of an incorporated or unincorporated business and the beneficial ownership is not changed.

(d) If an insurance company licensed to conduct business in this state acquires ownership of a late model distressed vehicle as defined in section 12a of the Michigan vehicle code, 1949 PA 300, MCL 257.12a, through payment of damages in response to a claim or when the person who owned the vehicle before the insurance company reacquires ownership from the company as part of the settlement of a claim.

(4) The department may utilize the services, information, or records of any other department or agency of state government or of the authority in the performance of its duties under this act, and other departments or agencies of state government and the authority are required to furnish those services, information, or records upon the request of the department.

(5) Beginning on October 1, 2015, the specific tax levied under subsection (1) includes both a state share tax levied by this state and a local community stabilization share tax authorized by 2014 PA 80 and levied by the authority, which replaces the reduced state share at the following rates in each of the following state fiscal years:

(a) For fiscal year 2015-2016, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $96,400,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(b) For fiscal year 2016-2017, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $380,900,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(c) For fiscal year 2017-2018, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $410,800,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(d) For fiscal year 2018-2019, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $438,000,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(e) For fiscal year 2019-2020, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $465,900,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(f) For fiscal year 2020-2021, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $491,500,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(g) For fiscal year 2021-2022, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $521,300,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(h) For fiscal year 2022-2023, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $548,000,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(i) For fiscal year 2023-2024, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $561,700,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(j) For fiscal year 2024-2025, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $569,800,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(k) For fiscal year 2025-2026, the local community stabilization share tax rate to be levied by the authority

is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $571,400,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(*l*) For fiscal year 2026-2027, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $572,200,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(m) For fiscal year 2027-2028, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate $572,600,000.00 in revenue and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(n) For fiscal year 2028-2029 and each fiscal year thereafter, the local community stabilization share tax rate to be levied by the authority is that rate calculated by the department of treasury on behalf of the authority sufficient to generate the amount distributed under this section in the immediately preceding year adjusted by the personal property growth factor and the state share tax rate is that rate determined by subtracting the local community stabilization share tax rate from 6%.

(6) The state share includes the portion of the use tax imposed at the additional rate of 2% approved by the electors of this state on March 15, 1994 and dedicated for aid to schools under section 21(2). The local community stabilization share does not include the portion of the use tax imposed at the additional rate of 2% approved by the electors of this state on March 15, 1994.

(7) The total combined rate of the tax levied by this state and the authority under this act, including both the state share, as reduced by 2014 PA 80, and the local community stabilization share, shall not exceed the constitutional limit of 6% under section 8 of article IX of the state constitution of 1963. The authority shall not increase any tax or tax rate, but is authorized to and shall levy the local community stabilization share at the rate provided in subsection (5).

History: 1937, Act 94, Eff. Oct. 29, 1937;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1953, Act 211, Eff. Oct. 2, 1953;—Am. 1957, Act 167, Imd. Eff. May 29, 1957;—Am. 1959, Act 263, Eff. Sept. 1, 1959;—Am. 1959, Act 272, Eff. Jan. 1, 1960;—Am. 1960, 2nd Ex. Sess., Act 2, Eff. Jan. 1, 1961;—Am. 1962, Act 219, Eff. July 1, 1962;—Am. 1964, Act 48, Eff. Aug. 28, 1964;—Am. 1971, Act 51, Eff. Sept. 1, 1971;—Am. 1982, Act 219, Eff. Jan. 1, 1984;—Am. 1982, Act 478, Imd. Eff. Dec. 30, 1982;—Am. 1984, Act 178, Imd. Eff. July 3, 1984;—Am. 1990, Act 86, Eff. June 6, 1990;—Am. 1993, Act 326, Eff. May 1, 1994;—Am. 1995, Act 67, Imd. Eff. May 31, 1995;—Am. 1999, Act 117, Imd. Eff. July 14, 1999;—Am. 2002, Act 110, Imd. Eff. Mar. 27, 2002;—Am. 2002, Act 456, Imd. Eff. June 21, 2002;—Am. 2002, Act 511, Imd. Eff. July 23, 2002;—Am. 2002, Act 669, Eff. Mar. 31, 2003;—Am. 2003, Act 27, Eff. Mar. 30, 2004;—Am. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2007, Act 103, Eff. Sept. 30, 2002;—Am. 2014, Act 80, Eff. Jan. 1, 2015;—Am. 2015, Act 124, Imd. Eff. July 10, 2015.

Compiler's note: Enacting section 1 of Act 117 of 1999 provides:

"Enacting section 1. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, the tax levied does not apply to the price of property or services to the extent that the property or services are stored, used, or consumed for exempt purposes. For telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides for a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

Enacting sections 1 and 2 of 2007 PA 103 provide:

"Enacting section 1. It is the intent of the legislature that this amendatory act clarify that a person who acquires tangible personal property for a purpose exempt under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, who subsequently converts that property to a use taxable under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, is liable for the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111.

"Enacting section 2. This amendatory act is curative and intended to prevent any misinterpretation of the ability of a taxpayer to claim an exemption from the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, based on the purchase of tangible personal property or services for resale that may result from the decision of the Michigan court of appeals in Betten Auto Center, Inc v Department of Treasury, No. 265976, as affirmed by the Michigan Supreme Court. This amendatory act is retroactive and is effective beginning September 30, 2002 and for all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

Enacting section 1 of Act 80 of 2014 provides:

"Enacting section 1. This amendatory act does not take effect unless approved by a majority of the registered and qualified electors of this state voting on the question at an election to be held on the August regular election date in 2014. Except as otherwise provided in this enacting section, this amendatory act shall be submitted to the registered and qualified electors of this state at that election as provided by the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, and for the purpose of complying with section 31 of article IX of the state constitution of 1963. Notwithstanding other law, when submitted to the registered and qualified electors of this state, this amendatory act shall be presented with the following question:

"APPROVAL OR DISAPPROVAL OF AMENDATORY ACT TO REDUCE STATE USE TAX AND REPLACE WITH A LOCAL COMMUNITY STABILIZATION SHARE TO MODERNIZE THE TAX SYSTEM TO HELP SMALL BUSINESSES GROW AND CREATE JOBS

The amendatory act adopted by the Legislature would:

1. Reduce the state use tax and replace with a local community stabilization share of the tax for the purpose of modernizing the tax system to help small businesses grow and create jobs in Michigan.

2. Require Local Community Stabilization Authority to provide revenue to local governments dedicated for local purposes, including police safety, fire protection, and ambulance emergency services.

3. Increase portion of state use tax dedicated for aid to local school districts.

4. Prohibit Authority from increasing taxes.

5. Prohibit total use tax rate from exceeding existing constitutional 6% limitation.

Should this law be approved?

YES [ ]

NO [ ]"."

Enacting section 2 of Act 80 of 2014 provides:

"Enacting section 2. If approved by the registered and qualified electors of this state as provided in enacting section 1, this amendatory act takes effect January 1, 2015."

Compiler's note: Act 80 of 2014 was approved by a majority of the voters at the August 5, 2014 primary election. The election results were certified by the Michigan Board of State Canvassers on August 22, 2014.

Compiler's note: The conditions in enacting section 1 of Act 408 of 2012 were not met. Act 408 of 2012 did not go into effect.

Compiler's note: The conditions in enacting section 1 of Act 81 of 2014 were not met. Act 81 of 2014 did not go into effect.

Compiler's note: Enacting section 1 of Act 474 of 2014 provides:

"Enacting section 1. This amendatory act does not take effect unless House Joint Resolution UU of the 97th Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

House Joint Resolution UU was presented to the electors as Proposal 15-1 at the May 5, 2015 special election. The proposal to amend the constitution was not approved by the voters and Act 474 of 2014 does not go into effect.

205.93a Tax for use or consumption; services; charges for intrastate telecommunications services or telecommunications services between state and another state; bundled transaction; definitions.

Sec. 3a. (1) The use or consumption of the following services is taxed under this act in the same manner as tangible personal property is taxed under this act:

(a) Except as provided in section 3b, intrastate telecommunications services that both originate and terminate in this state, including, but not limited to, intrastate private communications services, ancillary services, conference bridging service, 900 service, pay telephone service other than coin-operated telephone service, paging service, and value-added nonvoice data service, but excluding 800 service, coin-operated telephone service, fixed wireless service, prepaid calling service, telecommunications nonrecurring charges, and directory advertising proceeds.

(b) Rooms or lodging furnished by hotelkeepers, motel operators, and other persons furnishing accommodations that are available to the public on the basis of a commercial and business enterprise, irrespective of whether or not membership is required for use of the accommodations, except rooms and lodging rented for a continuous period of more than 1 month. As used in this act, "hotel" or "motel" means a building or group of buildings in which the public may obtain accommodations for a consideration, including, without limitation, such establishments as inns, motels, tourist homes, tourist houses or courts, lodging houses, rooming houses, nudist camps, apartment hotels, resort lodges and cabins, camps operated by other than nonprofit organizations but not including those licensed under 1973 PA 116, MCL 722.111 to 722.128, and any other building or group of buildings in which accommodations are available to the public, except accommodations rented for a continuous period of more than 1 month and accommodations furnished by hospitals or nursing homes.

(c) Except as provided in section 3b, interstate telecommunications services that either originate or terminate in this state and for which the charge for the service is billed to a service address in this state or phone number by the provider either within or outside this state including, but not limited to, ancillary services, conference bridging service, 900 service, paging service, pay telephone service other than coin-operated telephone service, and value-added nonvoice data services, but excluding interstate private communications service, 800 service, coin-operated telephone service, fixed wireless service, prepaid calling service, telecommunications nonrecurring charges, and international telecommunications service.

(d) The laundering or cleaning of textiles under a sale, rental, or service agreement with a term of at least 5 days. This subdivision does not apply to the laundering or cleaning of textiles used by a restaurant or retail sales business. As used in this subdivision, "restaurant" means a food service establishment defined and licensed under the food law of 2000, 2000 PA 92, MCL 289.1101 to 289.8111.

(e) The transmission and distribution of electricity, whether the electricity is purchased from the delivering utility or from another provider, if the sale is made to the consumer or user of the electricity for consumption or use rather than for resale.

(f) For a manufacturer who affixes its product to real estate in this state and maintains an inventory of its product that is available for sale to others or who makes its product available for sale to others by publication

or price list, the price is the direct production costs and indirect production costs of the product affixed to the real estate in this state that are incident to and necessary for production or manufacturing operations or processes, as defined by the department.

(g) For a manufacturer who affixes its product to real estate in this state but does not maintain an inventory of its product available for sale to others or make its product available for sale to others by publication or price list, the price is the sum of the materials cost of the property and the cost of labor to manufacture, fabricate, or assemble the property affixed to the real estate in this state, but not the cost of labor to cut, bend, assemble, or attach the property at the site for affixation to real estate in this state.

(2) If charges for intrastate telecommunications services or telecommunications services between this state and another state and other billed services not subject to the tax under this act are aggregated with and not separately stated from charges for telecommunications services that are subject to the tax under this act, the nontaxable telecommunications services and other nontaxable billed services are subject to the tax under this act unless the service provider can reasonably identify charges for telecommunications services not subject to the tax under this act from its books and records that are kept in the regular course of business.

(3) If charges for intrastate telecommunications services or telecommunications services between this state and another state and other billed services not subject to the tax under this act are aggregated with and not separately stated from telecommunications services that are subject to the tax under this act, a customer may not rely upon the nontaxability of those telecommunications services and other billed services unless the customer's service provider separately states the charges for nontaxable telecommunications services and other nontaxable billed services from taxable telecommunications services or the service provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the service provider's books and records that are kept in the regular course of business that reasonably identify the nontaxable services.

(4) All of the following apply in the case of a bundled transaction that includes telecommunications service, ancillary service, internet access, or audio or video programming:

(a) If the purchase price is attributable to products that are taxable and products that are nontaxable, the portion of the purchase price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards that portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes.

(b) The provisions of this subsection apply unless otherwise provided by federal law.

(5) As used in this section:

(a) "Ancillary services" means services that are associated with or incidental to the provision of telecommunications services, including, but not limited to, detailed telecommunications billing, directory assistance, vertical service, and voice mail services.

(b) "Bundled transaction" means the purchase of 2 or more distinct and identifiable products, except real property and services to real property, where the products are sold for a single nonitemized price. A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction. As used in this subdivision:

(*i*) "Distinct and identifiable products" does not include any of the following:

(A) Packaging, such as containers, boxes, sacks, bags, and bottles or other materials such as wrapping, labels, tags, and instruction guides, that accompany the purchase of the products and are incidental or immaterial to the purchase of the products, including grocery sacks, shoeboxes, dry cleaning garment bags, and express delivery envelopes and boxes.

(B) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge.

(C) Items included in purchase price.

(*ii*) "Purchase price" means the price paid by the seller for the property.

(*iii*) "Sales price" means that term as defined in section 1 of the general sales tax act, 1933 PA 167, MCL 205.51.

(*iv*) "Single nonitemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the purchaser in paper or electronic form, including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

(*v*) Bundled transaction does not include any of the following:

(A) The purchase of tangible personal property and a service if the tangible personal property is essential to the use of the service and is provided exclusively in connection with the service and the true object of the transaction is the service.

(B) The purchase of services if 1 service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service.

(C) A transaction that includes taxable and nontaxable products and the purchase price of the taxable products is de minimis. As used in this sub-subparagraph, "de minimis" means the seller's purchase price or sales price of the taxable products is 10% or less of the total purchase price or sales price of the products. A seller shall use the full term of a service contract to determine if the taxable products are de minimis. A seller shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. A seller shall not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis.

(D) The retail sale of exempt tangible personal property and taxable tangible personal property if all of the following conditions are satisfied:

(I) The transaction includes food and food ingredients, prescription or over-the-counter drugs, durable medical equipment, mobility enhancing equipment, medical supplies, or prosthetic devices.

(II) Where the seller's purchase price or sales price of the taxable tangible personal property is 50% or less of the total purchase price or sales price of the bundled tangible personal property. A seller may not use a combination of the purchase price and sales price of the tangible personal property when making the 50% determination for a transaction.

(c) "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone that accepts direct deposits of money to operate.

(d) "Conference bridging service" means an ancillary service that links 2 or more participants of an audio or video conference call and may include the provision of a telephone number, but does not include the telecommunications services used to reach the conference bridge.

(e) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(f) "Directory assistance" means an ancillary service of providing telephone number information or address information.

(g) "Fabricate" means to modify or prepare tangible personal property for affixation or assembly.

(h) "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points.

(i) "International" means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia and any possession or territory of the United States.

(j) "Interstate" means a telecommunications service that originates in 1 United States state, territory, or possession and terminates in a different United States state, territory, or possession.

(k) "Intrastate" means a telecommunications service that originates in a United States state, territory, or possession and terminates in the same United States state, territory, or possession.

(*l*) "Manufacture" means to convert or condition tangible personal property by changing the form, composition, quality, combination, or character of the property.

(m) "Manufacturer" means a person who manufactures, fabricates, or assembles tangible personal property.

(n) "Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers, which may include messages or sounds.

(o) "Pay telephone service" means a telecommunications service provided through any pay telephone.

(p) "Prepaid calling service" means the right to access exclusively telecommunications services that must be paid for in advance and that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars that decline with use in a known amount.

(q) "Private communications service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which that channel or group of channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of that channel or group of channels.

(r) "Telecommunications nonrecurring charges" means an amount billed for the installation, connection, change, or initiation of telecommunications service received by the customer.

(s) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, including a transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to

whether that service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. Telecommunications service does not include any of the following:

(*i*) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information.

(*ii*) Installation or maintenance of wiring or equipment on a customer's premises.

(*iii*) Tangible personal property.

(*iv*) Advertising, including, but not limited to, directory advertising.

(*v*) Billing and collection services provided to third parties.

(*vi*) Internet access service.

(*vii*) Radio and television audio and video programming services, including, but not limited to, cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers as defined in 47 CFR 20.3, regardless of the medium, including the furnishing of transmission, conveyance, and routing of those services by the programming service provider.

(*viii*) Ancillary services.

(*ix*) Answering services, if the primary purpose of the transaction is the answering service rather than message transmission.

(*x*) Digital products delivered electronically, including, but not limited to, software, music, video, reading materials, or ring tones.

(t) "Value-added nonvoice data service" means a telecommunications service in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

(u) "Vertical service" means an ancillary service that is offered in connection with 1 or more telecommunications services that offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(v) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages, but does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

(w) "800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call, typically marketed under the designation "800", "855", "866", "877", or "888" toll-free calling, or any subsequent number designated by the federal communications commission.

(x) "900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service, typically marketed under the designation "900" service, and any subsequent number designated by the federal communications commission, but does not include a charge for collection services provided by the seller of the telecommunications services to the subscriber, or the service or product sold by the subscriber to the subscriber's customer.

History: Add. 1959, Act 263, Eff. Sept. 1, 1959;—Am. 1959, Act 272, Eff. Jan. 1, 1960;—Am. 1960, Act 119, Imd. Eff. Apr. 26, 1960;—Am. 1962, Act 219, Eff. July 1, 1962;—Am. 1993, Act 326, Eff. May 1, 1994;—Am. 1998, Act 366, Imd. Eff. Oct. 20, 1998;—Am. 2002, Act 455, Imd. Eff. June 21, 2002;—Am. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2007, Act 93, Eff. Dec. 1, 2007;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009;—Am. 2012, Act 299, Imd. Eff. Aug. 23, 2012;—Am. 2012, Act 474, Imd. Eff. Dec. 27, 2012.

Compiler's note: Act 219 of 1962 was presented to the governor on June 14, 1962, and became a law without his approval upon the expiration of 10 days, Sundays excepted, after presentation.

Enacting section 1 of Act 299 of 2012 provides:

"Enacting section 1. This amendatory act is retroactive and is effective January 1, 2006."

Enacting section 1 of Act 474 of 2012 provides:

"Enacting section 1. This amendatory act is retroactive and is effective January 1, 2006."

Enacting section 1 of Act 121 of 2014 provides:

"Enacting section 1. This amendatory act is retroactive and is effective January 1, 2005."

205.93b Tax for use or consumption; mobile wireless services; customer's place of primary use; record; reliance upon exempt status for mobile wireless services; repeal of section; condition; air-ground radiotelephone service; bundled transaction; definitions.

Sec. 3b. (1) The use or consumption of mobile wireless services is subject to the tax levied under this act in the same manner as tangible personal property regardless of where the mobile wireless services originate, terminate, or pass through, subject to all of the following:

(a) Mobile wireless services provided to a customer, the charges for which are billed by or for the customer's home service provider, are considered to be provided by the customer's home service provider if

the customer's place of primary use for the mobile wireless services is in this state. If the customer's place of primary use for mobile wireless services is outside of this state, the mobile wireless services are not subject to the tax levied under this act.

(b) A home service provider is responsible for obtaining and maintaining a record of the customer's place of primary use. Subject to subsection (2), in obtaining and maintaining a record of the customer's place of primary use, a home service provider may do all of the following:

(*i*) Rely in good faith on information provided by a customer as to the customer's place of primary use.

(*ii*) Treat the address used for a customer under a service contract or agreement in effect on August 1, 2002 as that customer's place of primary use for the remaining term of the service contract or agreement, excluding any extension or renewal of the service contract or agreement.

(c) Notwithstanding section 9 and subject to subsection (5), if the department chooses to create or provide a database that complies with the provisions of 4 USC 119, a home service provider shall use that database to determine the assignment of the customer's place of primary use to this state. If a database is not provided by the department, a home service provider may use an enhanced zip code to determine the assignment of the customer's place of primary use to this state. A home service provider that uses a database provided by the department is not liable for any tax that otherwise would be due solely as a result of an error or omission in that database. A home service provider that uses an enhanced zip code is not liable for any tax that otherwise would be due solely as a result of an assignment of a street address to another state if the home provider exercised due diligence to ensure that the appropriate street addresses are assigned to this state.

(d) If a customer believes that the amount of the tax levied under this act or that the home service provider's record of the customer's place of primary use is incorrect, the customer shall notify the home service provider in writing and provide all of the following information:

(*i*) The street address of the customer's place of primary use.

(*ii*) The account name and number for which the customer requests the correction.

(*iii*) A description of the error asserted by the customer.

(*iv*) Any other information that the home service provider reasonably requires to process the request.

(e) Not later than 60 days after the home service provider receives a request under subdivision (d) or subsection (5)(b), the home service provider shall review its record of the customer's place of primary use and the customer's enhanced zip code to determine the correct amount of the tax levied under this act. If the home service provider determines that the tax levied under this act or its record of the customer's place of primary use is incorrect, the home service provider shall correct the error and refund or credit any tax erroneously collected from the customer. A refund under this subdivision shall not exceed a period of 4 years. If the home service provider determines that the tax levied under this act and the customer's place of primary use are correct, the home service provider shall provide a written explanation of that determination to the customer. The procedures prescribed in this subdivision and in subdivision (d) are the first course of remedy available to a customer requesting a correction of the provider's record of place of primary use or a refund of taxes erroneously collected by the home service provider.

(2) If the department makes a final determination that the home service provider's record of a customer's place of primary use is incorrect, the home service provider shall change its records to reflect that final determination. The corrected record of a customer's place of primary use shall be used to calculate the tax levied under this act prospectively, from the date of the department's final determination. The department shall not make a final determination under this subsection before the department has notified the customer that the department has found that the home service provider's record of the customer's place of primary use is incorrect and the customer has been afforded an opportunity to appeal that finding. An appeal to the department shall be conducted according to the provision of section 22 of 1941 PA 122, MCL 205.22.

(3) Notwithstanding section 8 and subject to section 5, if the department makes a final determination under subsection (2) that a customer's place of primary use is incorrect, a home service provider is not liable for any taxes that would have been levied under this act if the customer's place of primary use had been correct.

(4) If charges for mobile wireless services and other billed services not subject to the tax levied under this act are aggregated with and not separately stated from charges for mobile wireless services that are subject to the tax levied under this act, the nontaxable mobile wireless services and other billed services are subject to the tax levied under this act unless the home service provider can reasonably identify billings for services not subject to the tax levied under this act from its books and records kept in the regular course of business.

(5) If charges for mobile wireless services and other billed services not subject to the tax levied under this act are aggregated with and not separately stated from charges for mobile wireless services that are subject to the tax levied under this act, a customer may not rely upon the exempt status for those mobile wireless services and other billed services unless 1 or more of the following conditions are satisfied:

(a) The customer's home service provider separately states the charges for mobile wireless services that are

exempt and other exempt billed services from taxable mobile wireless services.

(b) The home service provider elects, after receiving a written request from the customer in the form required by the home service provider, to identify the exempt mobile wireless services and other exempt billed services by reference to the home service provider's books and records kept in the regular course of business.

(6) This section is repealed as of the date of entry of a final judgment by a court of competent jurisdiction that substantially limits or impairs the essential elements of sections 116 to 126 of title 4 of the United States Code, 4 USC 116 to 126, and that final judgment is no longer subject to appeal.

(7) For an air-ground radiotelephone service, the tax under this act is imposed at the location of the origination of the air-ground radiotelephone service in this state as identified by the home service provider or information received by the home service provider from its servicing carrier.

(8) All of the following apply in the case of a bundled transaction that includes telecommunications service, ancillary service, internet access, or audio or video programming:

(a) If the purchase price is attributable to products that are taxable and products that are nontaxable, the portion of the purchase price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards that portion from its books and records kept in the regular course of business for other purposes, including, but not limited to, nontax purposes.

(b) If the purchase price is attributable to products that are subject to tax at different tax rates, the total purchase price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the purchase price attributable to the products subject to tax at the lower rate from its books and records kept in the regular course of business for other purposes, including, but not limited to, nontax purposes.

(c) The provisions of this subsection shall apply unless otherwise provided by federal law.

(9) As used in this section:

(a) "Air-ground radiotelephone service" means that term as defined in 47 CFR part 22.

(b) "Commercial mobile radio service" means that term as defined in 47 CFR 20.3.

(c) "Charge", "charges", or "charge for mobile wireless services" means any charge for, or associated with, the provision of commercial mobile radio service, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to a customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

(d) "Customer" means 1 of the following, but does not include a reseller or a serving carrier:

(*i*) The person who contracts with the home service provider for mobile wireless services.

(*ii*) If the end user of mobile wireless services is not the contracting party, then the end user of the mobile wireless service. This subparagraph applies only for the purpose of determining the place of primary use.

(e) "Enhanced zip code" means a United States postal zip code of 9 or more digits.

(f) "Home service provider" means the facilities-based carrier or reseller that enters into a contract with a customer for mobile wireless services.

(g) "Licensed service area" means the geographic area in which a home service provider is authorized by law or contract to provide commercial mobile radio services to its customers.

(h) "Mobile wireless services" means a telecommunications service that is transmitted, conveyed, or routed, regardless of the technology used, whereby the origination or termination points of the transmission, conveyance, or routing are not fixed, including, but not limited to, telecommunications services that are provided by a commercial mobile radio service provider.

(i) "Place of primary use" means the residential street address or the primary business street address within the licensed service area of the home service provider at which a customer primarily uses mobile wireless services. For mobile wireless services, place of primary use shall be within the licensed service area of the home service provider.

(j) "Prepaid mobile wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, which shall be paid for in advance and that is sold in predetermined units or dollars that decline with use in a known amount.

(k) "Reseller" means a telecommunications services provider who purchases telecommunications services from another telecommunications services provider and then resells the telecommunications services, uses the telecommunications services as a component part of a mobile wireless service, or integrates the telecommunications services into a mobile wireless service. Reseller does not include a serving carrier.

(*l*) "Serving carrier" means a facilities-based telecommunications services provider that contracts with a home service provider for mobile wireless services to a customer outside of the home service provider's or

reseller's licensed service area.

(m) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, including a transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether that service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. Telecommunications service does not include any of the following:

(*i*) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information.

(*ii*) Installation or maintenance of wiring or equipment on a customer's premises.

(*iii*) Tangible personal property.

(*iv*) Advertising, including, but not limited to, directory advertising.

(*v*) Billing and collection services provided to third parties.

(*vi*) Internet access service.

(*vii*) Radio and television audio and video programming services, including, but not limited to, cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3, regardless of the medium, including the furnishing of transmission, conveyance, and routing of those services by the programming service provider.

(*viii*) Ancillary services.

(*ix*) Answering services, if the primary purpose of the transaction is the answering service rather than message transmission.

(*x*) Digital products delivered electronically, including, but not limited to, software, music, video, reading materials, or ring tones.

History: Add. 2002, Act 456, Imd. Eff. June 21, 2002;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009.

205.93c Sale of telecommunications services; definitions.

Sec. 3c. (1) Except for the defined telecommunications services in section 3b and subsection (3), the sale of telecommunications service sold on a call-by-call basis shall be sourced to each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(2) Except for the defined telecommunications services in section 3b and subsection (3), a sale of telecommunications services sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

(3) The sale of the following telecommunications services shall be sourced to each level of taxing jurisdiction as follows:

(a) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either the seller's telecommunications system, or information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(b) A sale of prepaid calling service or prepaid wireless calling service is sourced in accordance with section 20. However, for a sale of a prepaid wireless calling service, the rule provided in section 20(1)(e) shall include as an option the location associated with the mobile telephone number.

(c) The sale of an ancillary service is sourced to the customer's place of primary use.

(4) As used in this section:

(a) "Ancillary services" means services that are associated with or incidental to the provision of telecommunications services, including, but not limited to, detailed telecommunications billing, directory assistance, vertical service, and voice mail services.

(b) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(c) "Channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(d) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service for purposes of this section. Customer does not include a reseller of telecommunications service or for mobile wireless service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(e) "Customer channel termination point" means the location where the customer either inputs or receives

the communications.

(f) "End user" means the person who utilizes the telecommunications service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.

(g) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. For mobile wireless services, place of primary use must be within the licensed service area of the home service provider.

(h) "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number that is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service.

(i) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(j) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, which shall be paid for in advance and that is sold in predetermined units or dollars that decline with use in a known amount.

(k) "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(*l*) "Service address" means the following:

(*i*) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

(*ii*) If the location in subparagraph (*i*) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport the signals is not that of the seller.

(*iii*) If the location in subparagraphs (*i*) and (*ii*) is not known, the service address means the location of the customer's place of primary use.

(m) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, including a transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether the service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. Telecommunications service does not include any of the following:

(*i*) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser if the purchaser's primary purpose for the underlying transaction is the processed data or information.

(*ii*) Installation or maintenance of wiring or equipment on a customer's premises.

(*iii*) Tangible personal property.

(*iv*) Advertising, including, but not limited to, directory advertising.

(*v*) Billing and collection services provided to third parties.

(*vi*) Internet access service.

(*vii*) Radio and television audio and video programming services, including, but not limited to, cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3, regardless of the medium, including the furnishing of transmission, conveyance, and routing of those services by the programming service provider.

(*viii*) Ancillary services.

(*ix*) Answering services, if the primary purpose of the transaction is the answering service rather than message transmission.

(*x*) Digital products delivered electronically, including, but not limited to, software, music, video, reading

materials, or ring tones.

History: Add. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009.

205.93d Repealed. 2007, Act 145, Imd. Eff. Dec. 1, 2007.

Compiler's note: The repealed section pertained to services taxed in same manner as tangible personal property.

Enacting section 2 of Act 145 of 2007 provides:

"Enacting section 2. Section 3d of the use tax act, 1937 PA 94, MCL 205.93d, is repealed. It is the intent of the legislature that the repeal of section 3d of the use tax act, 1937 PA 94, MCL 205.93d, is retroactive and is effective immediately after section 3d of the use tax act, 1937 PA 94, MCL 205.93d, took effect on December 1, 2007."

205.93e Persons providing services subject to tax; collection; refund; liability for failure to collect tax; remittance; certain collections or penalties by department of treasury prohibited.

Sec. 3e. Beginning December 1, 2007, all of the following apply:

(a) A person that provides 1 or more of the services subject to the tax under this act pursuant to section 3d shall not collect the tax from any person that receives a service subject to the tax under this act pursuant to section 3d. Prior to the effective date of the amendatory act that added this section, if a person that provides 1 or more of the services subject to the tax under this act pursuant to section 3d collects the tax from a person that receives a service subject to the tax under this act pursuant to section 3d, the tax shall be returned to the person that received the service or remitted to the department and the person that received the service may file an application for a refund of the tax. The application shall be in a form prescribed by the department.

(b) A person that provides 1 or more of the services subject to the tax under this act pursuant to section 3d is not liable for any failure to collect the tax levied under this act on services subject to the tax under section 3d. However, if a person that provides 1 or more of the services subject to the tax under this act pursuant to section 3d collects the tax from a person that receives a service subject to the tax under this act pursuant to section 3d prior to the effective date of the amendatory act that added this section, the tax shall be remitted as provided in subdivision (a). If a person that provides 1 or more of the services subject to the tax under this act pursuant to section 3d fails to remit any tax collected from a person that receives a service subject to the tax under this act pursuant to section 3d prior to the effective date of the amendatory act that added this section, the person that collected the tax is subject to the penalties provided in section 16 unless the tax collected was returned to the person that received the service.

(c) The department of treasury shall not do any of the following:

(*i*) Collect the tax levied under this act from a person that provides 1 or more of the services subject to the tax under this act pursuant to section 3d. However, if a person that provides 1 or more of the services subject to the tax under this act pursuant to section 3d collects the tax from a person that receives a service subject to the tax under this act pursuant to section 3d prior to the effective date of the amendatory act that added this section and does not return or remit that tax as provided in subdivision (a), the department shall collect that tax. A person that receives a service subject to the tax under this act pursuant to section 3d and who paid that tax may apply for a refund of that tax as provided in subdivision (a).

(*ii*) Except as otherwise provided in subdivision (b), penalize a person that provides 1 or more of the services subject to the tax under this act pursuant to section 3d for failure to collect, return, or remit the tax levied under this act on services subject to the tax under section 3d.

History: Add. 2007, Act 148, Imd. Eff. Dec. 10, 2007.

205.93f Use or consumption of medical services provided under social welfare act; tax; "medical services" defined.

Sec. 3f. Except as otherwise provided under this section, beginning April 1, 2014 through December 31, 2016, the use or consumption of medical services provided by entities identified in, and pursuant to contracts identified under, section 106(2)(a) and section 109f(2) of the social welfare act, 1939 PA 280, MCL 400.106 and 400.109f, shall be taxed in the same manner as tangible personal property is taxed under this act notwithstanding any other provision or exemption under this act. As used in this section, "medical services" means those medical services provided only to Medicaid beneficiaries enrolled under title XIX of the social security act, 42 USC 1396 to 1396w-5.

History: Add. 2008, Act 440, Imd. Eff. Jan. 9, 2009;—Am. 2011, Act 141, Imd. Eff. Sept. 20, 2011;—Am. 2014, Act 161, Imd. Eff. June 11, 2014;—Am. 2016, Act 390, Imd. Eff. Dec. 28, 2016;—Am. 2018, Act 174, Imd. Eff. June 11, 2018.

Compiler's note: Enacting section 1 of Act 161 of 2014 provides:

"Enacting section 1. This amendatory act is retroactive and is effective April 1, 2014."

205.94 Use tax; exemptions; limitation.

Sec. 4. (1) The following are exempt from the tax levied under this act, subject to subsection (2):

(a) Property sold in this state on which transaction a tax is paid under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, if the tax was due and paid on the retail sale to a consumer.

(b) Property, the storage, use, or other consumption of which this state is prohibited from taxing under the Constitution or laws of the United States, or under the constitution of this state.

(c) All of the following:

(*i*) Property purchased for resale. Property purchased for resale includes promotional merchandise transferred pursuant to a redemption offer to a person located outside this state or any packaging material, other than promotional merchandise, acquired for use in fulfilling a redemption offer or rebate to a person located outside this state.

(*ii*) Property purchased for lending or leasing to a public or parochial school offering a course in automobile driving except that a vehicle purchased by the school must be certified for driving education and must not be reassigned for personal use by the school's administrative personnel.

(*iii*) Property purchased for demonstration purposes. For a new vehicle dealer selling a new car or truck, exemption for demonstration purposes is determined by the number of new cars and trucks sold during the current calendar year or the immediately preceding calendar year, without regard to specific make or style, according to the following schedule but not to exceed 25 cars and trucks in 1 calendar year for demonstration purposes:

(A) 0 to 25, 2 units.

(B) 26 to 100, 7 units.

(C) 101 to 500, 20 units.

(D) 501 or more, 25 units.

(*iv*) Motor vehicles purchased for resale purposes by a new vehicle dealer licensed under section 248(8)(a) of the Michigan vehicle code, 1949 PA 300, MCL 257.248.

(d) Property that is brought into this state by a nonresident person for storage, use, or consumption while temporarily within this state, except if the property is used in this state in a nontransitory business activity for a period exceeding 15 days.

(e) Property the sale or use of which was already subjected to a sales tax or use tax equal to, or in excess of, that imposed by this act under the law of any other state or a local governmental unit within a state if the tax was due and paid on the retail sale to the consumer and the state or local governmental unit within a state in which the tax was imposed accords like or complete exemption on property the sale or use of which was subjected to the sales or use tax of this state. If the sale or use of property was already subjected to a tax under the law of any other state or local governmental unit within a state in an amount less than the tax imposed by this act, this act applies, but at a rate measured by the difference between the rate provided in this act and the rate by which the previous tax was computed.

(f) Except as otherwise provided under subsection (3), property sold to a person engaged in a business enterprise that uses or consumes the property, directly or indirectly, for either the tilling, planting, draining, caring for, maintaining, or harvesting of things of the soil or the breeding, raising, or caring for livestock, poultry, or horticultural products, including the transfers of livestock, poultry, or horticultural products for further growth.

(g) Property or services sold to the United States, an unincorporated agency or instrumentality of the United States, an incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States, the American Red Cross and its chapters or branches, this state, a department or institution of this state, or a political subdivision of this state.

(h) Property or services sold to a school, hospital, or home for the care and maintenance of children or aged individuals, operated by an entity of government, a regularly organized church, religious organization, or fraternal organization, a veterans' organization, or a corporation incorporated under the laws of this state, if not operated for profit, and if the income or benefit from the operation does not inure, in whole or in part, to an individual or private shareholder, directly or indirectly, and if the activities of the entity or agency are carried on exclusively for the benefit of the public at large and are not limited to the advantage, interests, and benefits of its members or a restricted group. The tax levied does not apply to property or services sold to a parent cooperative preschool. As used in this subdivision, "parent cooperative preschool" means a nonprofit, nondiscriminatory educational institution, maintained as a community service and administered by parents of children currently enrolled in the preschool that provides an educational and developmental program for children younger than compulsory school age, that provides an educational program for parents, including active participation with children in preschool activities, that is directed by qualified preschool personnel, and that is licensed under 1973 PA 116, MCL 722.111 to 722.128.

(i) Property or services sold to a regularly organized church or house of religious worship except the

following:

(*i*) Sales in which the property is used in activities that are mainly commercial enterprises.

(*ii*) Sales of vehicles licensed for use on the public highways other than a passenger van or bus with a manufacturer's rated seating capacity of 10 or more that is used primarily for the transportation of individuals for religious purposes.

(j) A vessel designed for commercial use of registered tonnage of 500 tons or more, if produced upon special order of the purchaser, and bunker and galley fuel, provisions, supplies, maintenance, and repairs for the exclusive use of a vessel of 500 tons or more engaged in interstate commerce.

(k) Property purchased for use in this state if actual personal possession is obtained outside this state, the purchase price or actual value of which does not exceed $10.00 during 1 calendar month.

(*l*) A newspaper or periodical classified under federal postal laws and regulations effective September 1, 1985 as second-class mail matter or as a controlled circulation publication or qualified to accept legal notices for publication in this state, as defined by law, or any other newspaper or periodical of general circulation, established not less than 2 years, and published at least once a week, and a copyrighted motion picture film. Tangible personal property used or consumed in producing a copyrighted motion picture film, a newspaper published more than 14 times per year, or a periodical published more than 14 times per year, and not becoming a component part of that film, newspaper, or periodical is subject to the tax. Tangible personal property used or consumed in producing a newspaper published 14 times or less per year or a periodical published 14 times or less per year and that portion or percentage of tangible personal property used or consumed in producing an advertising supplement that becomes a component part of a newspaper or periodical is exempt from the tax under this subdivision. For purposes of this subdivision, tangible personal property that becomes a component part of a newspaper or periodical and consequently not subject to tax, includes an advertising supplement inserted into and circulated with a newspaper or periodical that is otherwise exempt from tax under this subdivision, if the advertising supplement is delivered directly to the newspaper or periodical by a person other than the advertiser, or the advertising supplement is printed by the newspaper or periodical.

(m) Property purchased by persons licensed to operate a commercial radio or television station if the property is used in the origination or integration of the various sources of program material for commercial radio or television transmission. This subdivision does not include a vehicle licensed and titled for use on public highways or property used in the transmitting to or receiving from an artificial satellite.

(n) An individual who is a resident of this state who purchases an automobile in another state while in the military service of the United States and who pays a sales tax in the state where the automobile is purchased.

(o) A vehicle for which a special registration is secured in accordance with section 226(9) of the Michigan vehicle code, 1949 PA 300, MCL 257.226.

(p) The sale of a prosthetic device, durable medical equipment, or mobility enhancing equipment.

(q) Water if delivered through water mains, water sold in bulk tanks in quantities of not less than 500 gallons, or the sale of bottled water.

(r) A vehicle not for resale used by a nonprofit corporation organized exclusively to provide a community with ambulance or fire department services.

(s) Tangible personal property purchased and installed as a component part of a water pollution control facility for which a tax exemption certificate is issued under part 37 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.3701 to 324.3708, or an air pollution control facility for which a tax exemption certificate is issued under part 59 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5901 to 324.5908.

(t) Tangible real or personal property donated by a manufacturer, wholesaler, or retailer to an organization or entity exempt under subdivision (h) or (i) or section 4a(1)(a) or (b) of the general sales tax act, 1933 PA 167, MCL 205.54a.

(u) The storage, use, or consumption of an aircraft by a domestic air carrier for use solely in the transport of air cargo, passengers, or a combination of air cargo and passengers, that has a maximum certificated takeoff weight of at least 6,000 pounds. For purposes of this subdivision, the term "domestic air carrier" is limited to a person engaged primarily in the commercial transport for hire of air cargo, passengers, or a combination of air cargo and passengers as a business activity. The state treasurer shall estimate on January 1 each year the revenue lost by this act from the school aid fund and deposit that amount into the school aid fund from the general fund.

(v) The storage, use, or consumption of an aircraft by a person who purchases the aircraft for subsequent lease to a domestic air carrier operating under a certificate issued by the Federal Aviation Administration under 14 CFR part 121, for use solely in the regularly scheduled transport of passengers.

(w) Property or services sold to an organization not operated for profit and exempt from federal income tax

under section 501(c)(3) or (4) of the internal revenue code of 1986, 26 USC 501; or to a health, welfare, educational, cultural arts, charitable, or benevolent organization not operated for profit that has been issued before June 13, 1994 an exemption ruling letter to purchase items exempt from tax signed by the administrator of the sales, use, and withholding taxes division of the department. The department shall reissue an exemption letter after June 13, 1994 to each of those organizations that had an exemption letter that remains in effect unless the organization fails to meet the requirements that originally entitled it to this exemption. The exemption does not apply to sales of tangible personal property and sales of vehicles licensed for use on public highways, that are not used primarily to carry out the purposes of the organization as stated in the bylaws or articles of incorporation of the exempt organization.

(x) The use or consumption of services described in section 3a(1)(a) or (c) or 3b by means of a prepaid telephone calling card, a prepaid authorization number for telephone use, or a charge for internet access.

(y) The purchase, lease, use, or consumption of the following by an industrial laundry:

(*i*) Textiles and disposable products including, but not limited to, soap, paper, chemicals, tissues, deodorizers and dispensers, and all related items such as packaging, supplies, hangers, name tags, and identification tags.

(*ii*) Equipment, whether owned or leased, used to repair and dispense textiles including, but not limited to, roll towel cabinets, slings, hardware, lockers, mop handles and frames, and carts.

(*iii*) Machinery, equipment, parts, lubricants, and repair services used to clean, process, and package textiles and related items, whether owned or leased.

(*iv*) Utilities such as electric, gas, water, or oil.

(*v*) Production washroom equipment and mending and packaging supplies and equipment.

(*vi*) Material handling equipment including, but not limited to, conveyors, racks, and elevators and related control equipment.

(*vii*) Wastewater pretreatment equipment and supplies and related maintenance and repair services.

(z) Property purchased or manufactured by a person engaged in the business of constructing, altering, repairing, or improving real estate for others, to the extent that the property is affixed to and made a structural part of real estate located in another state, regardless of whether sales or use tax was due and paid in the state in which the property is affixed to real estate.

(aa) The sale of a dental prosthesis.

(bb) Except as otherwise provided under subsection (3), a sale of any of the following to a person engaged in a business enterprise that uses or consumes the following for purposes as described in subdivision (f):

(*i*) Machinery that is capable of simultaneously harvesting grain or other crops and biomass and machinery used for the purpose of harvesting biomass.

(*ii*) Agricultural land tile and subsurface irrigation pipe.

(*iii*) Portable grain bins, including tangible personal property affixed or to be affixed to portable grain bins and directly used in the operation of a portable grain bin.

(*iv*) Grain drying equipment and the fuel or energy source that powers that equipment, including tangible personal property affixed or to be affixed to that equipment and directly used in the operation of grain drying equipment.

(*v*) Tangible personal property purchased and installed as a component part of a structure such as a barn or shop, including, but not limited to, a water supply system, heating and cooling system, lighting system, milking system, or any other appurtenance used for purposes described in this subdivision or subdivision (f), including the maintenance or improvement of existing structures, to the extent that it is not permanently affixed to and does not become a structural part of real estate. For purposes of this subparagraph and subsection (3), property installed as a component part of a structure as provided in this subparagraph is not permanently affixed to or a structural part of real estate if it is assembled and installed in a manner that it can be disassembled without affecting the physical structural functionality of the original structure and reassembled and reused for any of the purposes described in this subdivision or subdivision (f).

(*vi*) Greenhouses, including tangible personal property affixed to or to be affixed to greenhouses and directly used in the operation of a greenhouse. For purposes of subsection (3), a greenhouse is not permanently affixed to or a structural part of real estate if it is assembled and installed in a manner that it can be disassembled and reassembled without affecting the functionality of the greenhouse upon being reassembled.

(cc) The sale of agricultural land tile, subsurface irrigation pipe, portable grain bins, greenhouses, and grain drying equipment to a person in the business of constructing, altering, repairing, or improving real estate for others to the extent that it is affixed to and made a structural part of real estate for others and is used for an exempt purpose described under subdivision (f) or (bb).

(dd) The sale of tangible personal property used in the direct gathering of fish, by net, line, or otherwise,

by an owner-operator of a business enterprise, not including a charter fishing business enterprise.

(ee) A sale of tangible personal property that is specifically designed for, and directly used in, the harvesting of aquatic vegetation from the waters of the state, including parts and materials used for repairs of that tangible personal property, to a person engaged in a business enterprise of harvesting aquatic vegetation and ultimately used for purposes described in subdivision (f) or (bb). This exemption does not include a motor vehicle licensed or required to be licensed for use on the public roads or highways of this state or tangible personal property permanently affixed to and becoming a structural part of real estate.

(ff) The purchase or lease of a school bus or transportation-related services, and parts or adaptive equipment affixed or to be affixed to a school bus that are used in the repair, maintenance, accommodation, or modification of a school bus, if the school bus or services are primarily used in the performance of a contract entered into with an authorized representative of a school for the transportation of preprimary, primary, or secondary school pupils to or from a school or school-related events authorized by the administration of the school. However, if the school bus is used to provide transportation-related services other than to or from a school or school-related event authorized by the administration of the school to a nonexempt entity, then the amount paid for those services by the nonexempt entity is not exempt under this subdivision. As used in this subdivision:

(*i*) "Lease" means any transfer of possession or control for a fixed or indeterminate term for consideration and may include future options to purchase or extend.

(*ii*) "School" means a public school or public school academy as defined in section 5 of the revised school code, 1976 PA 451, MCL 380.5.

(*iii*) "School bus" means that term as defined in section 7 of the pupil transportation act, 1990 PA 187, MCL 257.1807.

(gg) The sale of feminine hygiene products. As used in this subdivision, "feminine hygiene products" means tampons, panty liners, menstrual cups, sanitary napkins, and other similar tangible personal property designed for feminine hygiene in connection with the human menstrual cycle.

(2) The property or services under subsection (1) are exempt only to the extent that the property or services are used for the exempt purposes if one is stated in subsection (1). The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

(3) The exemptions under subsection (1)(f), (bb), (cc), and (dd) do not include the transfers of food, fuel, clothing, or any similar tangible personal property for personal living or human consumption or tangible personal property permanently affixed to and becoming a structural part of real estate unless it is agricultural land tile, subsurface irrigation pipe, a portable grain bin, or grain drying equipment.

(4) Subsection (1)(f), (bb), and (cc) as amended by 2018 PA 114 is intended to be retroactive and to apply to all periods open under section 27a of 1941 PA 122, MCL 205.27a, but does not apply to any refund claims filed before April 9, 2018.

(5) As used in this section:

(a) "Agricultural land tile" means fired clay or perforated plastic tubing used as part of a subsurface drainage system for land.

(b) "Algae" means any of the group of nonvascular aquatic plants that do not have stems, flowers, leaves, and roots, and that are single-celled, colonial, or filamentous forms.

(c) "Aquatic vegetation" means both algae and higher aquatic plants.

(d) "Biomass" means crop residue used to produce energy or agricultural crops grown specifically for the production of energy.

(e) "Greenhouse" means a structure covered with transparent or translucent materials for the purpose of admitting natural light and controlling the atmosphere for growing horticultural products. Greenhouse does not include a structure primarily used to grow marihuana.

(f) "Higher aquatic plant" means any of the group of vascularized plants that have true stems, flowers, leaves, and roots, that live in water, and that belong to the class Angiospermae.

(g) "Portable grain bin" means a structure that is used or is to be used to shelter grain and that is designed to be disassembled without significant damage to its component parts.

(h) "Waters of the state" means that term as defined in section 3302 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.3302.

History: 1937, Act 94, Eff. Oct. 29, 1937;—Am. 1945, Act 180, Imd. Eff. May 16, 1945;—CL 1948, 205.94;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1950, 1st Ex. Sess., Act 7, Imd. Eff. May 8, 1950;—Am. 1952, Act 164, Imd. Eff. Apr. 24, 1952;—Am. 1953, Act 203, Imd. Eff. June 10, 1953;—Am. 1955, Act 235, Eff. Oct. 14, 1955;—Am. 1959, Act 263, Eff. Sept. 1, 1959;—Am. 1959, Act 272, Eff. Jan. 1, 1960;—Am. 1962, Act 219, Eff. July 1, 1962;—Am. 1964, Act 164, Eff. Aug. 28, 1964;—Am. 1969, Act 214, Imd. Eff. Aug. 6, 1969;—Am. 1970, Act 15, Eff. May 1, 1970;—Am. 1971, Act 208, Imd. Eff. Dec. 29, 1971;—Am. 1976, Act 29, Imd. Eff. Mar. 5, 1976;—Am. 1976, Act 72, Imd. Eff. Apr. 7, 1976;—Am. 1978, Act 262, Imd. Eff. June 29, 1978;—Am. 1978, Act 457, Imd. Eff. Oct.

16, 1978;—Am. 1984, Act 288, Imd. Eff. Dec. 20, 1984;—Am. 1986, Act 48, Imd. Eff. Mar. 17, 1986;—Am. 1986, Act 52, Imd. Eff. Mar. 17, 1986;—Am. 1987, Act 141, Imd. Eff. July 24, 1987;—Am. 1988, Act 459, Imd. Eff. Dec. 27, 1988;—Am. 1989, Act 141, Imd. Eff. June 29, 1989;—Am. 1993, Act 326, Eff. May 1, 1994;—Am. 1994, Act 34, Imd. Eff. Mar. 7, 1994;—Am. 1994, Act 157, Imd. Eff. June 13, 1994;—Am. 1994, Act 214, Imd. Eff. June 23, 1994;—Am. 1994, Act 424, Imd. Eff. Jan. 6, 1995;—Am. 1996, Act 53, Imd. Eff. Feb. 26, 1996;—Am. 1996, Act 436, Imd. Eff. Dec. 10, 1996;—Am. 1997, Act 194, Imd. Eff. Dec. 30, 1997;—Am. 1998, Act 366, Imd. Eff. Oct. 20, 1998;—Am. 1998, Act 452, Imd. Eff. Dec. 30, 1998;—Am. 1998, Act 491, Imd. Eff. Jan. 4, 1999;—Am. 1999, Act 117, Imd. Eff. July 14, 1999;—Am. 2000, Act 200, Imd. Eff. June 27, 2000;—Am. 2001, Act 39, Imd. Eff. July 11, 2001;—Am. 2002, Act 456, Imd. Eff. June 21, 2002;—Am. 2002, Act 669, Eff. Mar. 31, 2003;—Am. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2007, Act 103, Eff. Sept. 30, 2002;—Am. 2008, Act 314, Imd. Eff. Dec. 18, 2008;—Am. 2012, Act 474, Imd. Eff. Dec. 27, 2012;—Am. 2016, Act 432, Eff. Mar. 29, 2017;—Am. 2017, Act 218, Imd. Eff. Dec. 20, 2017;—Am. 2018, Act 114, Imd. Eff. Apr. 25, 2018;—Am. 2018, Act 679, Eff. Mar. 29, 2019;—Am. 2021, Act 109, Eff. Feb. 3, 2022.

Compiler's note: Enacting section 2 of Act 52 of 1986 provides:

"It is the intent of the legislature that this amendatory act be curative of any past misinterpretation of the coverage of the exemption provided by subdivision (n) of this amendatory act."

Enacting section 1 of Act 117 of 1999 provides:

"Enacting section 1. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, the tax levied does not apply to the price of property or services to the extent that the property or services are stored, used, or consumed for exempt purposes. For telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides for a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

Enacting sections 1 and 2 of 2007 PA 103 provide:

"Enacting section 1. It is the intent of the legislature that this amendatory act clarify that a person who acquires tangible personal property for a purpose exempt under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, who subsequently converts that property to a use taxable under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, is liable for the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111.

"Enacting section 2. This amendatory act is curative and intended to prevent any misinterpretation of the ability of a taxpayer to claim an exemption from the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, based on the purchase of tangible personal property or services for resale that may result from the decision of the Michigan court of appeals in Betten Auto Center, Inc v Department of Treasury, No. 265976, as affirmed by the Michigan Supreme Court. This amendatory act is retroactive and is effective beginning September 30, 2002 and for all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

Enacting section 1 of Act 474 of 2012 provides:

"Enacting section 1. This amendatory act is retroactive and is effective January 1, 2006."

Enacting section 1 of Act 121 of 2014 provides:

"Enacting section 1. This amendatory act is retroactive and is effective January 1, 2005."

Enacting section 1 of Act 218 of 2017 provides:

"Enacting section 1. This amendatory act is retroactive and effective July 1, 2017."

Enacting section 1 of Act 114 of 2018 provides:

"Enacting section 1. This amendatory act does not apply to a claim for a refund filed prior to April 9, 2018."

205.94a Additional exemptions.

Sec. 4a. The following are exempt from the tax under this act:

(a) Rental receipts if the tangible personal property rented or leased was previously subject to 1 of the following when purchased by the lessor:

(*i*) This act.

(*ii*) The general sales tax act, 1933 PA 167, MCL 205.51 to 205.78.

(b) Rental receipts if the tangible personal property rented or leased was previously taxed under a sales or use tax act of another state or a political subdivision of another state levied at a rate of 6% or more.

(c) Specific charges for technical support or for adapting or modifying prewritten computer software programs to a purchaser's needs or equipment if those charges are separately stated and identified.

(d) The sale of computer software originally designed for the exclusive use and special needs of the purchaser.

(e) The sale of a commercial advertising element if the commercial advertising element is used to create or develop a print, radio, television, or other advertisement, the commercial advertising element is discarded or returned to the provider after the advertising message is completed, and the commercial advertising element is custom developed by the provider for the purchaser. As used in this subdivision, "commercial advertising element" means a negative or positive photographic image, an audiotape or videotape master, a layout, a manuscript, writing of copy, a design, artwork, an illustration, retouching, and mechanical or keyline instructions. This exemption does not include black and white or full color process separation elements, an audiotape reproduction, or a videotape reproduction.

(f) The sale of oxygen for human use dispensed pursuant to a prescription.

(g) The sale of insulin for human use.

(h) A meal provided free of charge or at a reduced rate to an employee during work hours by a food service establishment licensed by the department of agriculture.

(i) The sale of diesel fuel to a person who is an interstate motor carrier for use in a qualified commercial motor vehicle.

History: Add. 1959, Act 272, Eff. Jan. 1, 1960;—Am. 2004, Act 172, Eff. Sept. 1, 2004.

205.94b, 205.94c Repealed. 2004, Act 172, Eff. Sept. 1, 2004.

Compiler's note: The repealed sections pertained to tax exemptions for certain property and existing contracts.

205.94d Exemptions; food or drink from vending machines; definitions.

Sec. 4d. (1) The following are exempt from the tax under this act:

(a) Sales of drugs for human use that can only be legally dispensed by prescription, over-the-counter drugs for human use that are legally dispensed by prescription, or food or food ingredients, except prepared food intended for immediate human consumption. As used in this subdivision, "over-the-counter drug" means a drug that is labeled in accordance with the format and content requirements for over-the-counter drug product labeling under 21 CFR 201.66.

(b) The deposit on a returnable container for a beverage or the deposit on a carton or case that is used for returnable containers.

(c) Food or tangible personal property purchased under the federal food stamp program or meals sold by a person exempt from the tax under this act that are eligible to be purchased under the federal food stamp program.

(d) Fruit or vegetable seeds and fruit or vegetable plants if purchased at a place of business authorized to accept food stamps by the Food and Nutrition Service of the United States Department of Agriculture or a place of business that has made a complete and proper application for authorization to accept food stamps but has been denied authorization and provides proof of denial to the department.

(e) Live animals purchased with the intent to be slaughtered for human consumption.

(2) Food or drink heated or cooled mechanically, electrically, or by other artificial means to an average temperature above 75 degrees Fahrenheit or below 65 degrees Fahrenheit before sale and sold from a vending machine, except milk, nonalcoholic beverages in a sealed container, and fresh fruit, is subject to the tax under this act. The tax due under this act on the sale of food or drink from a vending machine selling both taxable items and items exempt under this subsection shall be calculated under this act after December 31, 1994 based on 1 of the following as determined by the taxpayer:

(a) Actual gross proceeds from sales at retail.

(b) Forty-five percent of proceeds from the sale of items subject to tax under this act or exempt from the tax levied under this act, other than from the sale of carbonated beverages.

(3) As used in this section:

(a) "Bottled water" means water that is placed in a safety sealed container or package for human consumption, including water that is delivered to the buyer in a reusable container that is not sold with the water. Bottled water is calorie-free and does not contain sweeteners or other additives except that it may contain antimicrobial agents, fluoride, carbonation, vitamins, minerals, and electrolytes, oxygen, preservatives, and only those flavors, extracts, or essences derived from a spice or fruit.

(b) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration.

(c) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food ingredients do not include alcoholic beverages and tobacco.

(d) "Food sold in an unheated state by weight or volume as a single item" means food sold in an unheated state and the sales price of which is determined by multiplying its per unit price by its weight or volume and the sales price of which varies based on its weight or volume.

(e) "Food sold with eating utensils provided by the seller" means food sold by a seller who meets the requirements of subparagraph (*i*) or (*ii*), but does not include food described in subparagraph (*iii*):

(*i*) For a seller with a prepared food sales percentage of greater than 75%, the seller makes eating utensils available to purchasers or, if a food item is bottled water, candy, or soft drinks, the seller gives or hands the eating utensils to purchasers or makes plates, bowls, glasses, or cups that are necessary for the purchaser to receive the food available to purchasers. If a food item has 4 or more servings packaged as 1 food item sold for a single price, the seller must give or hand the eating utensil to the purchaser. Serving sizes must be determined based on a label on an item sold, or if no label is available, then a seller shall determine the

reasonable number of servings in an item.

(*ii*) For a seller with a prepared food sales percentage of 75% or less, the seller's business practice is to give or hand eating utensils to purchasers. Eating utensils necessary for the purchaser to receive the food, such as bowls and cups, need only be made available to purchasers.

(*iii*) Food is not sold with eating utensils provided by the seller if the food items have a utensil placed in a package with the food items by a person other than the seller, and that other person's NAICS classification code is that of a manufacturer, subsector 311. If the packager has any other NAICS classification code, the seller is considered to have provided the eating utensil.

(f) "Prepared food", subject to subdivision (g), means the following:

(*i*) Food sold in a heated state or that is heated by the seller.

(*ii*) Two or more food ingredients mixed or combined by the seller for sale as a single item.

(*iii*) Food sold with eating utensils provided by the seller, including, but not limited to, knives, forks, spoons, glasses, cups, napkins, straws, or plates, but not including a container or packaging used to transport the food.

(g) Prepared food does not include the following:

(*i*) Food that is only cut, repackaged, or pasteurized by the seller.

(*ii*) Raw eggs, fish, meat, poultry, and foods containing those raw items requiring cooking by the consumer in recommendations contained in section 3-401.11 of part 3-4 of chapter 3 of the 2001 food code published by the Food and Drug Administration of the Public Health Service of the Department of Health and Human Services, to prevent foodborne illness.

(*iii*) Food sold in an unheated state by weight or volume as a single item, without eating utensils.

(*iv*) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, doughnuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas, sold without eating utensils.

(h) "Prepared food intended for immediate consumption" means prepared food.

(i) "Prepared food sales percentage" means the percentage described in subparagraph (*i*) and calculated pursuant to subparagraph (*ii*):

(*i*) A percentage determined by dividing the numerator described in sub-subparagraph (A) by the denominator described in sub-subparagraph (B):

(A) The numerator must consist of the seller's annual sales of prepared food described in subdivision (f)(*i*) and (*ii*) and food sold when plates, bowls, glasses, or cups are necessary to receive the food. The numerator must not include food described in subdivision (g) or alcoholic beverages.

(B) The denominator must consist of the seller's total annual sales of all food and food ingredients and prepared food, excluding alcoholic beverages.

(*ii*) A seller shall calculate the prepared food sales percentage for each tax year or business fiscal year, based on the seller's sales data from the prior tax year or business fiscal year, respectively, as soon as possible after accounting records are available, but not later than 90 days after the beginning of the seller's tax year or business fiscal year. A single prepared food sales percentage must be determined annually for all of the seller's establishments in this state. A seller shall make a good-faith estimate of its prepared food sales percentage for its first year in business. A seller shall adjust its good-faith estimate prospectively after the first 3 months of its business operation if actual prepared food sales percentages materially affect the 75% threshold described in subdivision (e).

(j) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than 50% of vegetable or fruit juice by volume.

(k) "Volume" means a 3-dimensional measure, expressed in units such as pints, quarts, cubic centimeters, or liters.

(*l*) "Weight" means a measure of heaviness, expressed in units such as pounds or grams.

History: Add. 1974, Act 309, Eff. Jan. 1, 1975;—Am. 1978, Act 276, Imd. Eff. July 3, 1978;—Am. 1987, Act 120, Eff. Oct. 1, 1987;—Am. 1992, Act 267, Imd. Eff. Dec. 14, 1992;—Am. 2000, Act 328, Eff. Oct. 1, 2001;—Am. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009;—Am. 2015, Act 172, Imd. Eff. Nov. 3, 2015;—Am. 2023, Act 141, Eff. Feb. 13, 2024.

205.94e Repealed. 2004, Act 172, Eff. Sept. 1, 2004.

Compiler's note: The repealed section pertained to tax exemption for property used in constructing, altering, repairing, or improving real estate.

205.94f Computing monthly tax payments; deductions by seller collecting tax from purchaser; disallowance of deduction; deduction for extended payment period; filing estimated returns and annual periodic reconciliations; registration under streamlined

sales and use tax agreement.

Sec. 4f. (1) In computing the amount of tax payments required for any month of a seller not subject to section 6(2) who collects the tax from the purchaser under the provisions of this act, the seller who collects the tax from a purchaser may deduct the amount provided by subdivision (a) or (b), whichever is greater:

(a) If the tax that accrued to the state from the purchase of tangible personal property or services during the preceding month is remitted to the department on or before the twelfth day of the month in which remittance is due, 0.75% of the tax collected at a rate of 4% for the preceding monthly period, but not to exceed $20,000.00 of the tax collected for that month. If the tax that accrued to the state from the purchase of tangible personal property or services during the preceding month is remitted to the department after the twelfth day of the month and on or before the twentieth day of the month in which remittance is due, 0.50% of the tax collected at a rate of 4% for the preceding monthly period, but not to exceed $15,000.00 of the tax collected for that month.

(b) The tax collected at a rate of 4% on $150.00 of taxable purchase price for the preceding monthly period or a prorated portion of $150.00 of the taxable purchase price for the preceding month if the seller engaged in business for less than a month.

(2) Beginning January 1, 1999, in computing the amount of tax levied under this act for any month, a seller who collects the tax from the purchaser under this act and who is subject to section 6(2) may deduct from the amount of the tax paid 0.50% of the tax due at a rate of 4%.

(3) A deduction is not allowed under this section for payments of taxes made to the department after the day the person is required to pay the tax imposed by this act pursuant to section 6.

(4) If, pursuant to section 6(3), the department prescribes the filing of returns and the payment of the tax for periods in excess of 1 month, a seller who collects the tax from the purchaser is entitled to a deduction from the tax collections remitted to the department for the extended payment period that is equivalent to the deduction allowed under subsection (1) or (2) for monthly periods.

(5) The department may prescribe the filing of estimated returns and annual periodic reconciliations as necessary to carry out the purposes of this section.

(6) A seller registered under the streamlined sales and use tax agreement may claim a deduction under this section if provided for in the streamlined sales and use tax administration act.

History: Add. 1981, Act 220, Eff. Mar. 31, 1982;—Am. 1993, Act 17, Imd. Eff. Apr. 14, 1993;—Am. 1993, Act 326, Eff. May 1, 1994;—Am. 1998, Act 266, Imd. Eff. July 17, 1998;—Am. 2004, Act 172, Eff. Sept. 1, 2004.

205.94g Exemption of property purchased as part of purchase or transfer of business; exceptions; definition.

Sec. 4g. (1) The tax levied shall not apply to property purchased from a seller or transferor if the property is part of the purchase or transfer of a business.

(2) The exemption provided by this section shall not apply to all of the following:

(a) The purchase or transfer of tangible personal property that is stock-in-trade or other property of a kind which would properly be included in the inventory of the seller or transferor if on hand at the close of the seller's or transferor's tax period or property held by the seller or transferor for sale to customers in the ordinary course of its trade or business.

(b) The purchase or transfer of a motor vehicle, ORV, mobile home, aircraft, snowmobile, or watercraft.

(3) As used in this section, "purchase or transfer of a business" means 1 or more of the following:

(a) The purchaser or transferee has acquired and intends to use the seller's or transferor's trade name or good will.

(b) The purchaser or transferee intends to continue all or part of the business of the seller or transferor at the same location or at another location.

(c) The purchaser or transferee acquired at least 75% of the seller's or transferor's tangible personal property at 1 or more of the seller's or transferor's business locations.

History: Add. 1985, Act 66, Imd. Eff. July 1, 1985.

Compiler's note: Section 2 of Act 66 of 1985 provides: "This amendatory act is intended to clarify the misinterpretation of Act No. 94 of the Public Acts of 1937, being sections 205.91 to 205.111 of the Michigan Compiled Laws, to the extent that the act may be construed to impose tax liability on the purchaser or transferee in cases where the seller or transferor of a business is entitled to claim an exemption for an isolated sale under section 1(f) of the general sales tax act, Act No. 167 of the Public Acts of 1933, being section 205.51 of the Michigan Compiled Laws."

205.94h Tax inapplicable to property for use in qualified business activity.

Sec. 4h. The tax levied under this act does not apply to tangible real or personal property to the extent the tangible real or personal property is used in a qualified business activity of the purchaser. As used in this section, "qualified business activity" means that term as defined in the enterprise zone act, 1985 PA 224,

MCL 125.2101 to 125.2123.

History: Add. 1986, Act 13, Imd. Eff. Mar. 3, 1986;—Am. 1999, Act 117, Imd. Eff. July 14, 1999.

Compiler's note: Enacting section 1 of Act 117 of 1999 provides:

"Enacting section 1. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, the tax levied does not apply to the price of property or services to the extent that the property or services are stored, used, or consumed for exempt purposes. For telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides for a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

205.94i Exemption for drop shipments; definition.

Sec. 4i. (1) A seller required to collect the tax under this act shall be exempt from collecting the tax on sales of tangible personal property if the tangible personal property is part of a drop shipment and if the taxpayer complies with the requirements of subsection (3).

(2) As used in this section, "drop shipment" means the direct delivery of tangible personal property to a purchaser in Michigan by a person who has sold the property to another person not licensed under this act but possessing a resale or exemption certificate or other written evidence of exemption authorized by another state, or any other acceptable information evidencing qualification for a resale exemption, for resale to the Michigan purchaser.

(3) For each transaction for which an exemption is claimed under subsection (1), the taxpayer shall provide the following information to the department annually in any reasonable form:

(a) The name, address, and, if readily available, the federal taxpayer identification number of the person to whom the property is sold for resale.

(b) The name, address, and, if readily available, the federal taxpayer identification number of the person to whom the property is shipped in Michigan.

(4) A person making a drop shipment is a seller.

History: Add. 1986, Act 41, Imd. Eff. Mar. 17, 1986;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009.

205.94j Exemption of motor vehicle acquired by towing company from police agency; definitions.

Sec. 4j. (1) The tax levied under this act does not apply to a motor vehicle acquired by a towing company from a police agency as satisfaction for towing and storage charges if the motor vehicle was impounded by the police agency or determined to be an abandoned vehicle or an abandoned scrap vehicle by the police agency.

(2) As used in this section:

(a) "Abandoned vehicle" means a vehicle that has remained on public property or any other place open to travel by the public without the consent of the local police agency for a period of 48 hours after a police agency has affixed a written notice to the vehicle.

(b) "Abandoned scrap vehicle" means a vehicle that meets all of the following requirements:

(*i*) Is on public property or any other place open to travel by the public.

(*ii*) Is 7 or more years old.

(*iii*) Is apparently inoperable or is extensively damaged to the extent that the cost of repairing the vehicle so that it is operational and safe would exceed the fair market value of that vehicle.

(*iv*) Is not currently registered pursuant to the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.

(*v*) Is not removed within 48 hours after a police agency has affixed a written notice to the vehicle.

History: Add. 1989, Act 141, Imd. Eff. June 29, 1989.

205.94k Tax inapplicable to parts and materials affixed to certain aircraft, sale of aircraft, rolling stock, and qualified truck or trailer; definitions.

Sec. 4k. (1) The tax levied under this act does not apply to parts and materials, excluding shop equipment or fuel, affixed to or to be affixed to an aircraft owned or used by a domestic air carrier that is any of the following:

(a) An aircraft for use solely in the transport of air cargo or a combination of air cargo and passengers that has a maximum certificated takeoff weight of at least 12,500 pounds for taxes levied before January 1, 1997 and at least 6,000 pounds for taxes levied after December 31, 1996.

(b) An aircraft that is used solely in the regularly scheduled transport of passengers.

(c) An aircraft other than an aircraft described in subdivision (b), that has a maximum certificated takeoff

weight of at least 12,500 pounds for taxes levied before January 1, 1997 and at least 6,000 pounds for taxes levied after December 31, 1996, and that is designed to have a maximum passenger seating configuration of more than 30 seats and is used solely in the transport of passengers.

(2) The tax levied under this act does not apply to the sale of parts or materials, excluding shop equipment or fuel, affixed or to be affixed to an aircraft that meets all of the following conditions:

(a) The aircraft leaves this state within 15 days after the sooner of the issuance of the final billing or authorized approval for final return to service, completion of the maintenance record entry, and completion of the test flight and ground test for inspection as required under 14 CFR 91.407.

(b) The aircraft was not based in this state or registered in this state before the parts or materials are affixed to the aircraft and the aircraft is not based in this state or registered in this state after the parts or materials are affixed to the aircraft.

(3) The tax levied under this act does not apply to the sale of an aircraft temporarily located in this state for the purpose of a sale and prepurchase evaluation, customization, improvement, maintenance, or repair if all of the following conditions are satisfied:

(a) The aircraft leaves this state within 15 days after the sale and the completion of any prepurchase evaluation, customization, improvement, maintenance, or repair that is associated with the sale, whichever is later.

(b) The aircraft was not based in this state or registered in this state before the sale and any prepurchase evaluation, customization, improvement, maintenance, or repair associated with the sale is completed and the aircraft is not based in this state or registered in this state after the sale and any prepurchase evaluation, customization, improvement, maintenance, or repair associated with the sale is completed.

(4) For taxes levied after December 31, 1992, the tax levied under this act does not apply to the storage, use, or consumption of rolling stock used in interstate commerce and purchased, rented, or leased by an interstate fleet motor carrier. A refund for taxes paid before January 1, 1997 shall not be paid under this subsection if the refund claim is made after June 30, 1997.

(5) For taxes levied after December 31, 1996 and before May 1, 1999, the tax levied under this act does not apply to the product of the out-of-state usage percentage and the price otherwise taxable under this act of a qualified truck or a trailer designed to be drawn behind a qualified truck, purchased, rented, or leased in this state by an interstate fleet motor carrier and used in interstate commerce.

(6) As used in this section:

(a) "Based in this state" means hangared or stored in this state for not less than 10 days in not less than 3 nonconsecutive months during the immediately preceding 12-month period.

(b) "Customization" means any improvement, maintenance, or repair that is performed on an aircraft that is associated with the sale of the aircraft.

(c) "Domestic air carrier" means a person engaged primarily in the commercial transport for hire of air cargo, passengers, or a combination of air cargo and passengers as a business activity.

(d) "Interstate fleet motor carrier" means a person engaged in the business of carrying persons or property, other than themselves, their employees, or their own property, for hire across state lines, whose fleet mileage was driven at least 10% outside of this state in the immediately preceding tax year.

(e) "Out-of-state usage percentage" is a fraction, the numerator of which is the number of miles driven outside of this state in the immediately preceding tax year by qualified trucks used by the taxpayer and the denominator of which is the total miles driven in the immediately preceding tax year by qualified trucks used by the taxpayer. Miles driven by qualified trucks used solely in intrastate commerce shall not be included in calculating the out-of-state usage percentage.

(f) "Prepurchase evaluation" means an examination of an aircraft to provide a potential purchaser with information relevant to the potential purchase.

(g) "Qualified truck" means a commercial motor vehicle power unit that has 2 axles and a gross vehicle weight rating in excess of 10,000 pounds or a commercial motor vehicle power unit that has 3 or more axles.

(h) "Registered in this state" means an aircraft registered with the state transportation department, bureau of aeronautics or registered with the federal aviation administration to an address located in this state.

(i) "Rolling stock" means a qualified truck, a trailer designed to be drawn behind a qualified truck, and parts or other tangible personal property affixed to or to be affixed to and directly used in the operation of either a qualified truck or a trailer designed to be drawn behind a qualified truck.

History: Add. 1992, Act 5, Imd. Eff. Feb. 27, 1992;—Am. 1995, Act 11, Imd. Eff. Mar. 29, 1995;—Am. 1996, Act 477, Imd. Eff. Dec. 26, 1996;—Am. 1999, Act 70, Imd. Eff. June 25, 1999;—Am. 2000, Act 200, Imd. Eff. June 27, 2000;—Am. 2002, Act 669, Eff. Mar. 31, 2003;—Am. 2006, Act 18, Imd. Eff. Feb. 9, 2006;—Am. 2009, Act 54, Eff. June 11, 2009;—Am. 2012, Act 429, Imd. Eff. Dec. 21, 2012.

Compiler's note: Section 2 of Act 5 of 1992 reads as follows:

"Not later than July 1, 1996, the state treasurer shall report to the House taxation committee and the Senate finance committee on the effects of this amendatory act. The report shall include an estimate of the amount of use tax revenue foregone as a result of this amendatory act and an explanation of how the estimate was determined. The report shall also contain an analysis of the effect of this amendatory act on aircraft maintenance employment within this state, including an estimate of the number of aircraft maintenance jobs created or maintained and an explanation of the methodology for obtaining that estimate."

Enacting section 1 of Act 70 of 1999 provides:

"Enacting section 1. This amendatory act is effective for taxes levied after April 30, 1999."

Enacting section 1 of Act 54 of 2009 provides:

"Enacting section 1. This amendatory act shall be retroactively applied to transactions occurring after June 11, 2009."

Enacting section 1 of Act 429 of 2012 provides:

"Enacting section 1. This amendatory act is curative and intended to clarify the original intent of 1996 PA 477."

205.94*l* Storage, use, or consumption of rail freight or passenger cars, locomotives or other rolling stock, roadway machines and certain work equipment; applicability of tax; exception.

Sec. 4*l*. The tax levied under this act does not apply to the storage, use, or consumption of rail freight or passenger cars, locomotives or other rolling stock, roadway machines and work equipment primarily of a flanged wheel nature, accessories, attachments including parts and materials used for repair, lubricants, or fuel, used in rail operations. This exemption does not include vehicles licensed and titled for use on public highways.

History: Add. 1993, Act 239, Imd. Eff. Nov. 15, 1993.

205.94m Personal property affixed to or made structural part of sanctuary; applicability of tax; "regularly organized church or house of religious worship" or "sanctuary" defined.

Sec. 4m. (1) The tax levied under this act does not apply to tangible personal property acquired by a person engaged in the business of constructing, altering, repairing, or improving real estate for others if the property is to be affixed to or made a structural part of a sanctuary.

(2) As used in this section:

(a) "Regularly organized church or house of religious worship" means a religious organization qualified under section 501(c)(3) of the internal revenue code of 1986.

(b) "Sanctuary" means only that portion of a building that is owned and occupied by a regularly organized church or house of religious worship that is used predominantly and regularly for public worship. Sanctuary includes a sanctuary to be constructed that will be owned and occupied by a regularly organized church or house of religious worship and that will be used predominantly and regularly for public worship.

History: Add. 1998, Act 275, Imd. Eff. July 22, 1998.

205.94n Electricity, natural gas, and home heating fuels for residential use; exemption from use tax at additional rate.

Sec. 4n. The consumption of electricity, natural gas, and home heating fuels for residential use is exempt from the use tax at the additional rate of 2% approved by the electors on March 15, 1994.

History: Add. 1993, Act 326, Eff. May 1, 1994.

205.94o Exemptions; limitation; industrial processing; definitions.

Sec. 4o. (1) The tax levied under this act does not apply to property sold to the following after March 30, 1999, subject to subsection (2):

(a) An industrial processor for use or consumption in industrial processing.

(b) A person, whether or not the person is an industrial processor, if the tangible personal property is intended for ultimate use in and is used in industrial processing by an industrial processor.

(c) A person, whether or not the person is an industrial processor, if the tangible personal property is used by that person to perform an industrial processing activity for or on behalf of an industrial processor.

(d) A person, whether or not the person is an industrial processor, if the tangible personal property is 1 of the following:

(*i*) A computer used in operating industrial processing equipment.

(*ii*) Equipment used in a computer assisted manufacturing system.

(*iii*) Equipment used in a computer assisted design or engineering system integral to an industrial process.

(*iv*) A subunit or electronic assembly comprising a component in a computer integrated industrial processing system.

(*v*) Computer equipment used in connection with the computer assisted production, storage, and transmission of data if the equipment would have been exempt had the data transfer been made using tapes, disks, CD-ROMs, or similar media by a company whose business includes publishing doctoral dissertations

and information archiving, and that sells the majority of the company's products to nonprofit organizations exempt under section 4(1)(w).

(*vi*) Equipment used in the production of prewritten computer software or software modified or adapted to the user's needs or equipment by the seller, only if the software is available for sale from a seller of software on an as-is basis or as an end product without modification or adaption.

(2) The property under subsection (1) is exempt only to the extent that the property is used for the exempt purpose stated in this section. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

(3) Industrial processing includes the following activities:

(a) Production or assembly.

(b) Research or experimental activities.

(c) Engineering related to industrial processing.

(d) Inspection, quality control, or testing to determine whether particular units of materials or products or processes conform to specified parameters at any time before materials or products first come to rest in finished goods inventory storage.

(e) Planning, scheduling, supervision, or control of production or other exempt activities.

(f) Design, construction, or maintenance of production or other exempt machinery, equipment, and tooling.

(g) Remanufacturing.

(h) Processing of production scrap and waste up to the point it is stored for removal from the plant of origin.

(i) Recycling of used materials for ultimate sale at retail or reuse.

(j) Production material handling.

(k) Storage of in-process materials.

(*l*) Production, manufacturing, or recycling of aggregate by the property, and for the purpose, described in subsection (4)(i) if that aggregate is subject to the tax levied under this act.

(4) Property that is eligible for an industrial processing exemption includes the following:

(a) Property that becomes an ingredient or component part of the finished product to be sold ultimately at retail or affixed to and made a structural part of real estate located in another state.

(b) Machinery, equipment, tools, dies, patterns, foundations for machinery or equipment, or other processing equipment used in an industrial processing activity and in their repair and maintenance.

(c) Property that is consumed or destroyed or that loses its identity in an industrial processing activity.

(d) Tangible personal property, not permanently affixed and not becoming a structural part of real estate, that becomes a part of, or is used and consumed in installation and maintenance of, systems used for an industrial processing activity.

(e) Fuel or energy used or consumed for an industrial processing activity.

(f) Machinery, equipment, or materials used within a plant site or between plant sites operated by the same person for movement of tangible personal property in the process of production. Property exempt under this subdivision includes front end loaders, forklifts, pettibone lifts, skidsters, multipurpose loaders, knuckle-boom log loaders, tractors, and log loaders used to unload logs from trucks at a saw mill site for the purpose of processing at the site and to load lumber onto trucks at a saw mill site for purposes of transportation from the site.

(g) Office equipment, including data processing equipment, used for an industrial processing activity.

(h) Tangible personal property used or consumed in an industrial processing activity to produce alcoholic beverages that are sold at retail by that industrial processor through its own locations.

(i) Notwithstanding anything to the contrary in subsection (6)(d), property that performs an industrial processing activity upon an aggregate product or material that will be used as an ingredient or component part for the construction, maintenance, repair, or reconstruction of real property in this state if that aggregate product or material is subject to the tax levied under this act.

(5) Property that is not eligible for an industrial processing exemption includes the following:

(a) Tangible personal property permanently affixed and becoming a structural part of real estate in this state including building utility systems such as heating, air conditioning, ventilating, plumbing, lighting, and electrical distribution, to the point of the last transformer, switch, valve, or other device at which point usable power, water, gas, steam, or air is diverted from distribution circuits for use in industrial processing.

(b) Office equipment, including data processing equipment used for nonindustrial processing purposes.

(c) Office furniture or office supplies.

(d) An industrial processor's own product or finished good that it uses or consumes for purposes other than industrial processing.

(e) Tangible personal property used for receiving and storage of materials, supplies, parts, or components

purchased by the user or consumer.

(f) Tangible personal property used for receiving or storage of natural resources extracted by the user or consumer.

(g) Vehicles, including special bodies or attachments, required to display a vehicle permit or license plate to operate on public highways, except for a vehicle bearing a manufacturer's plate or a specially designed vehicle, together with parts, used to mix and agitate materials at a plant or job site in the concrete manufacturing process.

(h) Tangible personal property used for the preparation of food or beverages by a retailer for ultimate sale at retail through its own locations, except as provided in subsection (4)(h).

(i) Tangible personal property used or consumed for the preservation or maintenance of a finished good once it first comes to rest in finished goods inventory storage.

(j) Returnable shipping containers or materials, except as provided in subsection (4)(f).

(k) Tangible personal property used in the production of computer software originally designed for the exclusive use and special needs of the purchaser.

(6) Industrial processing does not include the following activities:

(a) Purchasing, receiving, or storage of raw materials.

(b) Sales, distribution, warehousing, shipping, or advertising activities.

(c) Administrative, accounting, or personnel services.

(d) Design, engineering, construction, or maintenance of real property and nonprocessing equipment.

(e) Plant security, fire prevention, or medical or hospital services.

(7) Notwithstanding anything to the contrary in this act, the following applies only to industrial processing activities and property described in subsection (3)(*l*) or (4)(i):

(a) Not later than 90 days after the effective date of the amendatory act that added this subsection, the department shall cancel all outstanding balances related to such industrial processing activities and property on notices of intent to assess that were issued under section 21 of 1941 PA 122, MCL 205.21, for the tax levied under this act and that were issued before the effective date of the amendatory act that added this subsection.

(b) Not later than 90 days after the effective date of the amendatory act that added this subsection, the department shall cancel all outstanding balances related to such industrial processing activities and property on final assessments that were issued under section 22 of 1941 PA 122, MCL 205.22, for the tax levied under this act and that were issued before the effective date of the amendatory act that added this subsection.

(c) After the effective date of the amendatory act that added this subsection, the department shall not issue any new assessments for the tax levied under this act on such industrial processing activities and property for any tax period before the effective date of the amendatory act that added this subsection that is open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a.

(8) As used in this section:

(a) "Aggregate" means common variety building materials like sand, gravel, crushed stone, slag, recycled concrete, recycled asphalt, and geosynthetic aggregates.

(b) "Industrial processing" means the activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail, for use in the manufacturing of a product to be ultimately sold at retail or to be affixed to and made a structural part of real estate located in another state, or for the exempt purposes described in subsection (3)(*l*) or (4)(i). Industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory storage.

(c) "Industrial processor" means a person who performs the activity of converting or conditioning tangible personal property for ultimate sale at retail, for use in the manufacturing of a product to be ultimately sold at retail or to be affixed to and made a structural part of real estate located in another state, or for the exempt purposes described in subsection (3)(*l*) or (4)(i).

(d) "Product", as used in subdivision (f), includes, but is not limited to, a prototype, pilot model, process, formula, invention, technique, patent, or similar property, whether intended to be used in a trade or business or to be sold, transferred, leased, or licensed.

(e) "Remanufacturing" means the activity of overhauling, retrofitting, fabricating, or repairing a product or its component parts for ultimate sale at retail.

(f) "Research or experimental activity" means activity incident to the development, discovery, or modification of a product or a product related process. Research or experimental activity also includes activity necessary for a product to satisfy a government standard or to receive government approval. Research or experimental activity does not include the following:

(*i*) Ordinary testing or inspection of materials or products for quality control purposes.
(*ii*) Efficiency surveys.
(*iii*) Management surveys.
(*iv*) Market or consumer surveys.
(*v*) Advertising or promotions.
(*vi*) Research in connection with literacy, historical, or similar projects.

History: Add. 1999, Act 117, Imd. Eff. July 14, 1999;—Am. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2010, Act 115, Imd. Eff. July 13, 2010;—Am. 2012, Act 474, Imd. Eff. Dec. 27, 2012;—Am. 2015, Act 204, Imd. Eff. Nov. 30, 2015;—Am. 2023, Act 27, Imd. Eff. May 8, 2023.

Compiler's note: Enacting section 1 of Act 117 of 1999 provides:
"Enacting section 1. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, the tax levied does not apply to the price of property or services to the extent that the property or services are stored, used, or consumed for exempt purposes. For telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides for a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."
Enacting section 1 of Act 474 of 2012 provides:
"Enacting section 1. This amendatory act is retroactive and is effective January 1, 2006."
Enacting section 1 of Act 121 of 2014 provides:
"Enacting section 1. This amendatory act is retroactive and is effective January 1, 2005."
Enacting section 2 of Act 27 of 2023 provides:
"Enacting section 2. It is the intent of the legislature to annually appropriate sufficient funds from the state general fund to the state school aid fund created in section 11 of article IX of the state constitution of 1963 to fully compensate for any loss of revenue to the state school aid fund resulting from the enactment of this amendatory act."

205.94p Extractive operations; exemption; limitation; eligible property; definitions.

Sec. 4p. (1) The tax under this act does not apply to property sold to an extractive operator for use or consumption in extractive operations.

(2) The property under subsection (1) is exempt only to the extent that the property is used for the exempt purposes stated in this section. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

(3) Extractive operations include the actual production of oil, gas, brine, or other natural resources. Property eligible for the exemption includes the following:

(a) Casing pipe or drive pipe.
(b) Tubing.
(c) Well-pumping equipment.
(d) Chemicals.
(e) Explosives or acids used in fracturing, acidizing, or shooting wells.
(f) Christmas trees, derricks, or other wellhead equipment.
(g) Treatment tanks.
(h) Piping, valves, or pumps used before movement or transportation of the natural resource from the production area.
(i) Chemicals or acids used in the treatment of crude oil, gas, brine, or other natural resources.
(j) Tangible personal property used or consumed in depositing tailings from hard rock mining processing.
(k) Tangible personal property used or consumed in extracting the lithologic units necessary to process iron ore.

(4) The extractive operation exemption does not include the following:

(a) Tangible personal property consumed or used in the construction, alteration, improvement, or repair of buildings, storage tanks, and storage and housing facilities.

(b) Tangible personal property consumed or used in transporting the product from the place of extraction, except for tangible personal property consumed or used in transporting extracted materials from the extraction site to the place where the extracted materials first come to rest in finished goods inventory storage.

(c) Tangible personal property that is a product the extractive operator produces and that is consumed or used by the extractive operator for a purpose other than the manufacturing or producing of a product for ultimate sale. The extractor shall account for and remit the tax to the state based upon the product's fair market value.

(d) Equipment, materials, and supplies used in exploring, prospecting, or drilling for oil, gas, brine, or other natural resources.

(e) Equipment, materials, and supplies used in the storing, withdrawing, or distribution of oil, gas, or brine from a storage facility.

(f) Vehicles, including special bodies or attachments, required to display a vehicle permit or license plate to operate on public highways.

(5) As used in this section:

(a) "Extractive operations" means the activity of taking or extracting for resale ore, oil, gas, coal, timber, stone, gravel, clay, minerals, or other natural resource material. An extractive operation begins when contact is made with the actual type of natural raw product being recovered. Extractive operation includes all necessary processing operations before shipment from the place of extraction. Extractive operations include all necessary processing operations and movement of the natural resource material until the point at which the natural raw product being recovered first comes to rest in finished goods inventory storage at the extraction site. Extractive operations for timber include transporting timber from the point of extraction to a place of temporary storage at the extraction site and loading or transporting timber from a place of temporary storage at the extraction site to a vehicle or other equipment located at the extraction site that will remove the timber from the extraction site.

(b) An extractive operator is a person who, either directly or by contract, performs extractive operations.

History: Add. 1999, Act 117, Imd. Eff. July 14, 1999;—Am. 2008, Act 555, Eff. Jan. 20, 2009.

Compiler's note: Enacting section 1 of Act 117 of 1999 provides:

"Enacting section 1. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, the tax levied does not apply to the price of property or services to the extent that the property or services are stored, used, or consumed for exempt purposes. For telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides for a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

205.94q Central office equipment or wireless equipment; presumption.

Sec. 4q. (1) The tax levied under this act does not apply to the purchase of machinery and equipment for use or consumption in the rendition of any combination of services, the use or consumption of which is taxable under section 3a(1)(a) or (c) or 3b except that this exemption is limited to the tangible personal property located on the premises of the subscriber and to central office equipment or wireless equipment, directly used or consumed in transmitting, receiving, or switching, or in the monitoring of switching of a 2-way interactive communication. As used in this subsection, central office equipment or wireless equipment does not include distribution equipment including cable or wire facilities.

(2) Beginning April 1, 1999, the property under subsection (1) is exempt only to the extent that the property is used for the exempt purposes stated in this section. There is an irrebuttable presumption that 90% of total use is for exempt purposes.

History: Add. 1999, Act 117, Imd. Eff. July 14, 1999;—Am. 2002, Act 456, Imd. Eff. June 21, 2002;—Am. 2006, Act 670, Imd. Eff. Jan. 10, 2007.

Compiler's note: Enacting section 1 of Act 117 of 1999 provides:

"Enacting section 1. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, the tax levied does not apply to the price of property or services to the extent that the property or services are stored, used, or consumed for exempt purposes. For telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides for a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

205.94r Repealed. 2004, Act 172, Eff. Sept. 1, 2004.

Compiler's note: The repealed section pertained to property used or consumed in industrial processing.

205.94s Nonprofit hospital or nonprofit housing; sale of personal property to person in business of constructing, altering, repairing, or improving real estate; tax exemption; definitions.

Sec. 4s. (1) For taxes levied after June 30, 1999, the tax levied under this act does not apply to property purchased by a person engaged in the business of constructing, altering, repairing, or improving real estate for others to the extent that the property is affixed to and made a structural part of a nonprofit hospital or a nonprofit housing entity qualified as exempt under section 15a of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1415a. For purposes of a county long-term medical care facility, "affixed to and made a structural part of" means any physical connection to an existing county long-term medical care facility.

(2) An exemption shall not be granted under this section for any portion of property otherwise qualifying for exemption under this section if income or a benefit inures directly or indirectly to an individual, private

stockholder, or other private person from the independent or nonessential operation of that portion of property.

(3) As used in this section:

(a) "Nonprofit hospital" means 1 of the following:

(*i*) That portion of a building to which 1 of the following applies:

(A) Is owned or operated by an entity exempt under section 501(c)(3) of the internal revenue code, 26 USC 501, that is licensed as a hospital under part 215 of the public health code, 1978 PA 368, MCL 333.21501 to 333.21571.

(B) Is owned or operated by a governmental unit in which medical attention is provided.

(C) Is owned or operated by an entity or entities exempt under section 501(c)(2) or (3) of the internal revenue code, 26 USC 501, in which medical attention is provided.

(*ii*) That portion of real property necessary and related to a building described in subparagraph (*i*) in which medical attention is provided.

(*iii*) A county long-term medical care facility, including any addition to an existing county long-term medical care facility, if the addition is owned and operated by the county long-term medical care facility and offers health services provided by the county long-term medical care facility. For purposes of this subparagraph, "addition" includes a freestanding building as long as that freestanding building is operated under the same license held by the county long-term medical care facility and continues to offer the same health services as the county long-term medical care facility in that freestanding building. An exemption under this section shall be granted until January 1, 2008 regardless of whether the addition is licensed as a nursing home or skilled nursing facility under part 217 of the public health code, 1978 PA 368, MCL 333.21701 to 333.21799e, or whether the addition meets the requirements set forth in subsection (1).

(b) "Nonprofit hospital" does not include the following:

(*i*) Except as otherwise provided under subsection (3)(a)(*iii*), a freestanding building or other real property of a nursing home or skilled nursing facility licensed under part 217 of the public health code, 1978 PA 368, MCL 333.21701 to 333.21799e.

(*ii*) A hospice licensed under part 214 of the public health code, 1978 PA 368, MCL 333.21401 to 333.21420.

(*iii*) A home for the aged licensed under part 213 of the public health code, 1978 PA 368, MCL 333.21301 to 333.21335.

(c) "Medical attention" means that level of medical care in which a physician provides acute care or active treatment of medical, surgical, obstetrical, psychiatric, chronic, or rehabilitative conditions, that require the observation, diagnosis, and daily treatment by a physician.

History: Add. 1999, Act 117, Imd. Eff. July 14, 1999;—Am. 2006, Act 666, Imd. Eff. Jan. 10, 2007;—Am. 2016, Act 373, Eff. Mar. 29, 2017.

Compiler's note: Enacting section 1 of Act 117 of 1999 provides:

"Enacting section 1. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, the tax levied does not apply to the price of property or services to the extent that the property or services are stored, used, or consumed for exempt purposes. For telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides for a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

Enacting section 1 of Act 666 of 2006 provides:

"Enacting section 1. This amendatory act is retroactive and is effective for taxes levied after June 30, 1999."

Enacting section 1 of Act 373 of 2016 provides:

"Enacting section 1. This amendatory act is retroactive and effective for taxes levied after December 31, 2012."

205.94u Storage, use, or consumption of investment coins and bullion; applicability of tax; definitions.

Sec. 4u. (1) Beginning July 7, 1999, the tax under this act does not apply to the storage, use, or consumption of investment coins and bullion.

(2) As used in this section:

(a) "Bullion" means gold, silver, or platinum in a bulk state, where its value depends on its content rather than its form, with a purity of not less than 900 parts per 1,000.

(b) "Investment coins" means numismatic coins or other forms of money and legal tender manufactured of gold, silver, platinum, palladium, or other metal and issued by the United States government or a foreign government with a fair market value greater than the face value of the coins.

History: Add. 1999, Act 225, Eff. Mar. 10, 2000.

205.94v Repealed. 2004, Act 172, Eff. Sept. 1, 2004.

Compiler's note: The repealed section pertained to construction or improvement of building of nonprofit hospital.

205.94w Applicability of tax; exceptions; definitions.

Sec. 4w. (1) Beginning April 1, 2005, the tax levied under this act does not apply to either of the following:

(a) The donation of a motor vehicle to a regularly organized church or house of religious worship that received the motor vehicle with the intent that it be donated to a qualified recipient.

(b) The donation of a motor vehicle from or through a regularly organized church or house of religious worship to a qualified recipient that was received by the church or house of religious worship with the intent that it be donated to a qualified recipient.

(2) As used in this section:

(a) "Qualified recipient" means an individual certified by the regularly organized church or house of religious worship on a form prescribed by the department and provided to a qualified recipient as meeting all of the following qualifications:

(*i*) Before October 1, 2005, all of the following qualifications:

(A) The individual receives or, if he or she applied, would be eligible to receive public assistance through a program created and administered under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

(B) The individual has a valid Michigan operator's or chauffeur's license.

(C) Public transportation is not reasonably available to the individual, the individual has no other reliable means by which to commute to his or her place of employment, and the individual will use the eligible vehicle as his or her primary means of transportation to commute to and from his or her place of employment.

(D) If the individual is currently employed for not less than an average of 20 hours per week, the individual requires an automobile to retain his or her current employment or to accept a verified offer of employment in a position that is demonstrably superior to his or her current position of employment.

(E) If the individual is not currently employed or is employed for less than an average of 20 hours per week, the individual requires an automobile to accept a verified offer of employment of not less than an average of 20 hours per week and cannot begin employment in that position without an automobile.

(*ii*) After September 30, 2005, all of the following qualifications:

(A) The individual receives or, if he or she applied, would be eligible to receive public assistance through a program created and administered under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, or the individual has a total household income below 200% of the federal poverty guidelines updated annually in the federal register of the United States department of health and human services.

(B) The individual has a valid Michigan operator's or chauffeur's license.

(b) "Regularly organized church or house of religious worship" means a religious organization qualified under section 501(c)(3) of the internal revenue code of 1986.

History: Add. 2004, Act 435, Imd. Eff. Dec. 21, 2004.

205.94x Tax exemption; resident tribal member.

Sec. 4x. (1) The tax under this act does not apply to the sale of a motor vehicle, recreational watercraft, snowmobile, or all terrain vehicle, not for resale, to a resident tribal member if the motor vehicle, recreational watercraft, snowmobile, or all terrain vehicle is for personal use and is principally garaged, berthed, or stored within that resident tribal member's tribe agreement area.

(2) The tax under this act does not apply to the sale of a mobile home, not for resale, to a resident tribal member if the mobile home is to be used as that resident tribal member's principal residence and the mobile home is located within that resident tribal member's tribe agreement area.

(3) As used in this section, "resident tribal member" means an individual who meets all of the following criteria:

(a) Is an enrolled member of a federally recognized tribe.

(b) The individual's tribe has an agreement with this state pursuant to section 30c of 1941 PA 122, MCL 205.30c, that is in full force and effect.

(c) The individual's principal place of residence is located within the agreement area as designated in the agreement under subdivision (b).

History: Add. 2002, Act 614, Imd. Eff. Dec. 20, 2002.

205.94y Storage, use, or consumption of automobile provided by family independence agency or qualified organization; applicability of tax.

Sec. 4y. (1) Beginning January 1, 2005, the tax levied under this act does not apply to the storage, use, or consumption of an eligible automobile provided to a qualified recipient by the family independence agency or

by a qualified organization.

(2) As used in this section:

(a) "Eligible automobile" means an automobile that meets all of the following requirements:

(*i*) The automobile has been inspected by a mechanic certified under the motor vehicle service and repair act, 1974 PA 300, MCL 257.1301 to 257.1340.

(*ii*) The automobile is insured as required under state law.

(*iii*) The automobile is registered to a qualified recipient.

(b) "Qualified organization" means an organization that applies for certification not later than July 1 of the year in which an exemption is claimed under this section and is certified by the department of treasury as meeting all of the following requirements:

(*i*) The organization is exempt from taxation under section 501(c)(3) of the internal revenue code, 26 USC 501.

(*ii*) The organization is licensed under the charitable organizations and solicitations act, 1975 PA 169, MCL 400.271 to 400.294.

(*iii*) The organization administers a program to provide a qualified recipient with an eligible automobile for transportation to his or her place of employment or for employment-related activities.

(c) "Qualified recipient" means a person certified by a qualified organization as meeting all of the following qualifications:

(*i*) The qualified recipient receives or, if he or she applied, would be eligible to receive public assistance through a program created and administered under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

(*ii*) The qualified recipient has a valid Michigan operator's or chauffeur's license.

(*iii*) The qualified recipient is financially capable of meeting any loan payment, insurance payment, or other expenditure associated with the eligible vehicle.

(*iv*) Public transportation is not reasonably available to the qualified recipient, the qualified recipient has no other reliable means by which to commute to his or her place of employment, and the qualified recipient will use the eligible vehicle as his or her primary means of transportation to commute to and from his or her place of employment.

(*v*) The qualified recipient has a demonstrated ability to maintain employment.

(*vi*) If the qualified recipient is currently employed for not less than an average of 20 hours per week, the qualified recipient requires an automobile to retain his or her current employment or to accept a verified offer of employment in a position that is demonstrably superior to his or her current position of employment.

(*vii*) If the qualified recipient is not currently employed or is employed for less than an average of 20 hours per week, the qualified recipient requires an automobile to accept a verified offer of employment of not less than an average of 20 hours per week and cannot begin employment in that position without an automobile.

History: Add. 2004, Act 312, Imd. Eff. Aug. 27, 2004.

205.94z Certain property affixed to or made structural part of qualified convention facility; "qualified convention facility" defined.

Sec. 4z. The tax levied under this act does not apply to tangible personal property acquired before January 1, 2016 by a person engaged in the business of altering, repairing, or improving real estate for others if the property is to be affixed to or made a structural part of a qualified convention facility under the regional convention facility authority act, 2008 PA 554, MCL 141.1351 to 141.1379. As used in this subdivision, "qualified convention facility" means that term as defined in section 5 of the regional convention facility authority act, 2008 PA 554, MCL 141.1355.

History: Add. 2008, Act 555, Eff. Jan. 20, 2009;—Am. 2014, Act 54, Imd. Eff. Mar. 25, 2014.

205.94aa Storage, use, or consumption of tangible personal property for use as or at mineral-producing property; exemption; "mineral-producing property" and "taxpayer" defined.

Sec. 4aa. (1) Subject to subsection (2), the tax under this act does not apply to the storage, use, or consumption of tangible personal property sold to a taxpayer for use as or at mineral-producing property.

(2) The property under subsection (1) is exempt only to the extent that the property is used for the exempt purposes stated in this section. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

(3) As used in this section, "mineral-producing property" and "taxpayer" mean those terms as defined in section 2 of the nonferrous metallic minerals extraction severance tax act.

History: Add. 2012, Act 413, Imd. Eff. Dec. 20, 2012.

205.94bb Applicability of tax to certain transfers.

Sec. 4bb. Beginning January 1, 2014, the tax under this act does not apply to a transfer of a vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft if the transferee or purchaser is the father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, or grandparent-in-law of the transferor.

History: Add. 2014, Act 248, Imd. Eff. June 27, 2014.

****** 205.94cc THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE: See 205.94cc.amended ******

205.94cc Data center equipment; exemption from tax; conditions; report; definitions.

Sec. 4cc. (1) Subject to subsections (2) and (3), beginning January 1, 2016 through December 31, 2035, the tax under this act does not apply to the storage, use, or consumption of data center equipment sold to the owner or operator of a qualified data center or a colocated business for assembly, use, or consumption in the operations of the qualified data center or data center equipment sold or provided to a person engaged in the business of constructing, altering, repairing, or improving real estate for others to the extent the data center equipment is to be affixed to or made a structural part of a qualified data center.

(2) The exemption under this section only continues to apply after January 1, 2022, if the numbers gathered by the local economic development corporations are certified and reported to the department of talent and economic development and subsequently forwarded to the department and demonstrate that the qualified data centers, the colocated businesses, and the contractors of the qualified data centers, collectively, have, in aggregate, established in this state at least 400 data center industry jobs or data center industry related jobs, or a combination of both, since January 1, 2016. The department of talent and economic development shall submit a report no later than April 1, 2022 related to the number of data center industry jobs or data center industry related jobs that have been established since January 1, 2016 to the speaker and minority leader of the house of representatives, the majority and minority leaders of the senate, and the governor.

(3) The exemption under this section only continues to apply after January 1, 2026, if the numbers gathered by the local economic development corporations are certified and reported to the department of talent and economic development and subsequently forwarded to the department and demonstrate that the qualified data centers, the colocated businesses, and the contractors of the qualified data centers, collectively, have, in aggregate, established in this state at least 1,000 data center industry jobs or data center industry related jobs, or a combination of both, since January 1, 2016. The department of talent and economic development shall submit a report no later than April 1, 2026 related to the number of data center industry jobs or data center industry related jobs that have been established since January 1, 2016 to the speaker and minority leader of the house of representatives, the majority and minority leaders of the senate, and the governor.

(4) As used in this section:

(a) "Affiliate" means a person that directly, or indirectly through 1 or more intermediaries, controls, is controlled by, or is under common control with a specified person.

(b) "Colocated business" means a person that has entered into a contract with the owner or operator of a qualified data center to use or deploy data center equipment physically located within the qualified data center for a period of 1 or more years.

(c) "Data center equipment" means only computers, servers, routers, switches, peripheral computer devices, racks, shelving, cabling, wiring, storage batteries, back-up generators, uninterrupted power supply units, environmental control equipment, other redundant power supply equipment, and prewritten computer software used in operating, managing, or maintaining the qualified data center or the business of the qualified data center or a colocated business. Data center equipment also includes any construction materials used or assembled under the qualified data center's proprietary method for the construction or modification of a qualified data center, including, but not limited to, building materials, infrastructure, machinery, wiring, cabling, devices, tools, and equipment that would otherwise be considered a fixture or related equipment. Data center equipment does not include any equipment owned by a third party that is used to supply the qualified data center's primary power.

(d) "Qualified data center" means a facility composed of 1 or more buildings located in this state and the facility is owned or operated by an entity engaged at that facility in operating, managing, or maintaining a group of networked computers or networked facilities for the purpose of centralizing, or allowing 1 or more colocated businesses to centralize, the storage, processing, management, or dissemination of data of 1 or more other persons who is not an affiliate of the owner or operator of a qualified data center or of a colocated

business and the entity receives 75% or more of its revenue from colocated businesses that are not an affiliate of the owner or operator of the qualified data center.

History: Add. 2015, Act 252, Imd. Eff. Dec. 23, 2015.

Compiler's note: Enacting section 1 of Act 252 of 2015 provides:

"Enacting section 1. The legislature shall annually appropriate sufficient funds from the state general fund to the state school aid fund created in section 11 of article IX of the state constitution of 1963 to fully compensate for any loss of revenue to the state school aid fund resulting from the enactment of this amendatory act."

For transfer of authority, powers, duties, functions, and responsibilities of the department of talent and economic development to the Michigan strategic fund, see E.R.O. No. 2019-3, compiled at MCL 125.1998.

****** 205.94cc.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE ******

205.94cc.amended Data center equipment; exemption from tax; conditions; report; definitions.

Sec. 4cc. (1) Subject to subsections (2) and (3), beginning January 1, 2016 through December 31, 2050, the tax under this act does not apply to the storage, use, or consumption of data center equipment sold to the owner or operator of a qualified data center or a colocated business for assembly, use, or consumption in the operations of the qualified data center or data center equipment sold or provided to a person engaged in the business of constructing, altering, repairing, or improving real estate for others to the extent the data center equipment is to be affixed to or made a structural part of a qualified data center.

(2) The exemption under subsection (1) continues to apply after January 1, 2022, only if the numbers gathered by the local economic development corporations are certified and reported to the Michigan strategic fund and subsequently forwarded to the department and demonstrate that the qualified data centers, the colocated businesses, and the contractors of the qualified data centers, collectively, have, in aggregate, established in this state at least 400 data center industry jobs or data center industry related jobs, or a combination of both, since January 1, 2016. The Michigan strategic fund shall submit a report no later than April 1, 2022 related to the number of data center industry jobs or data center industry related jobs that have been established since January 1, 2016 to the speaker and minority leader of the house of representatives, the majority and minority leaders of the senate, and the governor. As used in this subsection and subsection (3), "data center industry jobs" and "data center industry related jobs" do not include qualified new jobs as that term is defined in subsection (10)(e)(*v*)(C).

(3) The exemption under subsection (1) continues to apply after January 1, 2026, only if the numbers gathered by the local economic development corporations are certified and reported to the Michigan strategic fund and subsequently forwarded to the department and demonstrate that the qualified data centers, the colocated businesses, and the contractors of the qualified data centers, collectively, have, in aggregate, established in this state at least 1,000 data center industry jobs or data center industry related jobs, or a combination of both, since January 1, 2016. The Michigan strategic fund shall submit a report no later than April 1, 2026 related to the number of data center industry jobs or data center industry related jobs that have been established since January 1, 2016 to the speaker and minority leader of the house of representatives, the majority and minority leaders of the senate, and the governor.

(4) Subject to subsections (5) and (6), beginning on the effective date of the amendatory act that added this subsection through December 31, 2050 or, with respect to an enterprise data center subject to a certificate that is located on the property included in a brownfield plan under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2670, or on property that was once an industrial site used primarily as a power plant to generate electricity for sale, through December 31, 2065, the storage, use, or consumption of data center equipment sold to either of the following is exempt from the tax imposed by this act:

(a) A qualified entity or its affiliates for assembly, use, or consumption in the operations of an enterprise data center subject to a certificate.

(b) A person engaged in the business of constructing, altering, repairing, or improving real estate for others to the extent the data center equipment is to be affixed to or made a structural part of an enterprise data center subject to a certificate.

(5) In order for a purchaser to claim an exemption under subsection (4), at the time the data center equipment is sold to the purchaser, the qualified entity must have received a certificate for that facility which is in good standing.

(6) All of the following apply with respect to the exemption under subsection (4):

(a) A person seeking a certificate for an enterprise data center must apply to the Michigan strategic fund on a form and in the manner prescribed by the Michigan strategic fund. The application must include an affirmation signed by the applicant stating that it expects the facility to satisfy each of the criteria for an

enterprise data center under subsection (10)(e) and the anticipated time frame for doing so, which must not exceed 6 years. Subject to subsection (9), not later than 120 days after receiving a complete and correct application, the Michigan strategic fund or its designees, which may include authorized employees, officers, and agents of the Michigan strategic fund and employees of the Michigan economic development corporation, shall review the application and either issue a certificate to the applicant or provide written reasons for its denial. The certificate must specify a time frame for a facility to satisfy each of the criteria for an enterprise data center under subsection (10)(e), which time frame must be the lesser of 6 years or the time frame identified by the applicant on the application. The Michigan strategic fund shall provide the department with a copy of each certificate issued under this subdivision.

(b) The qualified entity of a facility for which a certificate has been issued shall report to the Michigan strategic fund purchases for which an exemption is claimed under subsection (4), and employment, tax withholding, capital investment, and other information required by the Michigan strategic fund to determine whether the facility continues to qualify as an enterprise data center. The Michigan strategic fund shall provide the department with a copy of each report received under this subdivision from a qualified entity. The report required by this subdivision is subject to audit and must be made on an annual basis following issuance of the certificate. The report required by this subdivision must not include any remittance for tax and does not constitute a return or otherwise alleviate any obligations under section 6. Except for the provision of a copy of each report to the department as required under this subdivision and the provision of each certificate to the department as required under subdivision (a), the Michigan strategic fund shall not disclose any information that is not aggregated or any information that could be used to identify a specific person or data center.

(c) All of the following apply regarding certifications to the Michigan strategic fund:

(*i*) Not later than 3 years after a facility for which a certificate has been issued is placed in service, the qualified entity of the facility shall certify to the Michigan strategic fund, in the form and manner prescribed by the Michigan strategic fund, that the facility has attained certification under 1 or more of the green building standards described in subsection (10)(e)(*vii*).

(*ii*) At the time an exemption is claimed under subsection (4), a qualified entity or its affiliates claiming the exemption shall certify to the Michigan strategic fund, in the form and manner prescribed by the Michigan strategic fund, that the facility is in compliance with subsection (10)(e)(*viii*).

(*iii*) At the time an exemption is claimed under subsection (4), a qualified entity or its affiliates claiming the exemption shall certify to the Michigan strategic fund, in the form and manner prescribed by the Michigan strategic fund, that the facility has procured or will procure clean energy as described in section 51 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1051, equivalent to 90% of the facility's forecasted electricity usage on an annual basis as required under subsection (10)(e)(*ix*).

(d) The Michigan strategic fund shall revoke a certificate issued under subdivision (a) if it determines a facility no longer meets the definition of an enterprise data center. If the Michigan strategic fund determines revocation is appropriate, it shall provide written notice to the qualified entity and the department not less than 60 days, but not more than 180 days, before revocation, notifying the qualified entity of its preliminary determination to revoke the certificate and providing the qualified entity an opportunity to demonstrate, within the time period specified in the notice, that the facility continues to meet the definition of an enterprise data center. Following the expiration of the time period specified in the notice, if the Michigan strategic fund determines that the facility does not meet the definition of an enterprise data center, the Michigan strategic fund shall revoke the certificate. If revocation occurs not more than 10 years after issuance of the certificate, the former qualified entity shall pay to the department an amount equal to the entire amount of the tax exemptions stemming from the certificate that have been received under subsection (4) by all persons, plus interest as specified in section 23(2) of 1941 PA 122, MCL 205.23, calculated from January 1 of the year the exemption was received until the amount is paid to the department under this subdivision. If revocation occurs more than 10 years after issuance of the certificate, the former qualified entity shall pay to the department an amount equal to the entire amount of the tax exemptions stemming from the certificate that have been received under subsection (4) by all persons, plus interest as specified in section 23(2) of 1941 PA 122, MCL 205.23, calculated from January 1 of the year the exemption was received until the amount is paid to the department under this subdivision, unless the Michigan strategic fund determines, pursuant to published guidelines, that a lesser amount, but not less than an amount equal to 50% of the entire amount of the tax exemptions stemming from the certificate that have been received by all persons under subsection (4), is appropriate after evaluating the circumstances. During the time period specified in the notice described in this subdivision, all persons must cease claiming a tax exemption stemming from the certificate under subsection (4). If a certificate is revoked, the Michigan strategic fund shall notify the department not later than 5 days after the revocation.

(e) The Michigan strategic fund may charge and collect reasonable administrative fees to effectuate the

purpose of this section.

(7) A person engaged in the business of constructing, altering, repairing, or improving real estate for others that has claimed an exemption under subsection (4)(b) for a particular facility must submit an annual summary report to the qualified entity or former qualified entity to which a certificate for that facility was issued on or before January 1 of each year that provides, at a minimum, information sufficient to identify the person that made the purchases and the purchase price of all items purchased each month of that year. That person must also maintain all invoices, bills of sale, or similar documents for all claimed exempt purchases that indicate the date of purchase, the items purchased, and the purchase price of the property that is identified in the summary report for 4 years after the date of the purchase. Except as otherwise provided in subsection (6)(a) and (b), the Michigan strategic fund shall not disclose any information that is not aggregated or any information that could be used to identify a specific person or data center.

(8) The legislature encourages a person claiming an exemption under this section to take direct steps to adopt practices to mitigate negative environmental impacts resulting from expanded use of data centers, including through all of the following:

(a) To the extent possible, procuring or contracting for power from renewable sources.

(b) Adopting practices to improve the energy efficiency of existing data centers, including through upgrading and consolidating technology, managing data center airflow, and adjusting and improving heating, ventilation, and air conditioning systems.

(c) Taking actions to conserve, reuse, and replace water, including, but not limited to, all of the following:

(*i*) Using water efficient fixtures and practices.

(*ii*) Treating, infiltrating, and harvesting rainwater.

(*iii*) Recycling water before discharging.

(*iv*) Partnering with local water utilities to use discharged water for irrigation and other water conservation purposes.

(*v*) Using reclaimed water if possible for data center operations.

(*vi*) Supporting water restoration in local watersheds.

(9) The Michigan strategic fund shall not issue any new certificates under subsection (6)(a) after December 31, 2029. This subsection does not affect any existing certificates that are in effect on December 31, 2029.

(10) As used in this section:

(a) "Affiliate" means a person that directly, or indirectly through 1 or more intermediaries, controls, is controlled by, or is under common control with a specified person.

(b) "Certificate" means the document issued by the Michigan strategic fund to an applicant under subsection (6)(a) that certifies or otherwise establishes that the facility developed, owned, and operated by the applicant or an affiliate of the applicant, or to be developed, owned, and operated by the applicant or an affiliate of the applicant, and identified in that document qualifies as an enterprise data center under this section.

(c) "Colocated business" means a person that has entered into a contract with the owner or operator of a qualified data center to use or deploy data center equipment physically located within the qualified data center for a period of 1 or more years.

(d) "Data center equipment" means only computers, servers, routers, switches, peripheral computer devices, racks, shelving, cabling, wiring, storage batteries, back-up generators, uninterrupted power supply units, environmental control equipment, other redundant power supply equipment, and prewritten computer software used in operating, managing, or maintaining the qualified data center or enterprise data center or the business of the qualified data center or a colocated business. Data center equipment also includes any construction materials used or assembled for the construction or modification of an enterprise data center or, under the qualified data center's proprietary method, for the construction or modification of a qualified data center, including, but not limited to, building materials, infrastructure, machinery, wiring, cabling, devices, tools, and equipment that would otherwise be considered a fixture or related equipment. Data center equipment does not include any equipment owned by a third party that is used to supply the qualified data center's primary power.

(e) "Enterprise data center" means, subject to subdivision (f), a facility that the Michigan strategic fund determines meets, or is expected to meet within the time frame set forth in the certificate, all of the following requirements:

(*i*) The facility is located in this state.

(*ii*) The facility is composed of 1 or more buildings.

(*iii*) The facility is designed and intended for housing, and does house, data center equipment to centralize the storage and processing of data.

(*iv*) The aggregate capital investment in the facility described in this subdivision made by the qualified

entity, and any of its affiliates that will develop, own, and operate the facility, is not less than $250,000,000.00. As used in this subparagraph, "aggregate capital investment" means the capital investment made and maintained in the facility to the extent that investment results in an increase in the total capital investment that the qualified entity and its affiliates, in the aggregate, maintain in this state when compared to the total capital investment that the qualified entity and its affiliates, in the aggregate, maintained in this state before issuance of the certificate, as determined and verified by the Michigan strategic fund.

(*v*) The qualified entity and any of its affiliates, in the aggregate, create and maintain a minimum of 30 qualified new jobs in this state with an annual wage that is equal to 150% or more of the prosperity region median wage through December 31, 2050 or, for a facility that is located on the property included in a brownfield plan under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2670, or on property that was once an industrial site used primarily as a power plant to generate electricity for sale, through December 31, 2065. As used in this subparagraph:

(A) "Prosperity region" means each of the 10 prosperity regions identified by the department of technology, management, and budget on August 25, 2017.

(B) "Prosperity region median wage" means the median annual wage for the prosperity region where the facility is located based on the most recent data made available by the Michigan bureau of labor market information and strategic initiatives.

(C) "Qualified new job" means a full-time job created by the qualified entity or its affiliates at the facility that is in excess of the number of full-time jobs that the applicant and its affiliates maintained in this state before issuance of the certificate, as determined and verified by the Michigan strategic fund.

(*vi*) Except as otherwise provided in this subparagraph, the facility does not receive and, through the applicable date, will not receive any state or local property tax benefit, including, but not limited to, property tax benefits available under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, and 1974 PA 198, 207.551 to 207.572. This subparagraph does not apply if the governing body of each local unit of government affected by the property tax benefit approves the receipt of the property tax benefit by resolution. As used in this subparagraph:

(A) "Applicable date" means the date specified in sub-sub-subparagraph (I) or (II), as applicable:

(I) For a facility that is located on the property included in a brownfield plan under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2670, or on property that was once an industrial site used primarily as a power plant to generate electricity for sale, December 31, 2065.

(II) For any facility not described in sub-sub-subparagraph (I), December 31, 2050.

(B) "Governing body" means the body in which the legislative powers of a local unit of government are vested.

(C) "Local unit of government" means a city, village, township, or county.

(D) "Property tax benefits" means any benefits that reduce the property tax burden on the facility for purposes of encouraging economic development, such as property tax exemptions, millage rate or valuation reductions, and property tax capture, other than property tax capture under a brownfield plan that has been approved by the governing board under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2670, and that is in effect at the time of the application under subsection (6)(a).

(*vii*) Not later than 3 years after being placed in service, the facility will attain certification under, and the qualified entity of the facility will certify to the Michigan strategic fund in accordance with subsection (6)(c) that the facility has obtained certification under, 1 or more of the following green building standards:

(A) BREEAM for New Construction or BREEAM for In-Use.

(B) ENERGY STAR.

(C) Envision.

(D) ISO 50001 - energy management.

(E) LEED for Building Design and Construction or LEED for Operations and Maintenance.

(F) Green Globes for New Construction or Green Globes for Existing Buildings.

(G) UL 3223.

(*viii*) On being placed in service, the facility will use municipal water sourced from a municipal water system that has available capacity to serve the facility, and a qualified entity or its affiliates claiming the exemption will certify to the Michigan strategic fund in accordance with subsection (6)(c) that this requirement is met.

(*ix*) At the time an exemption is claimed under subsection (4), the facility will have procured or will procure clean energy as that term is defined in section 51 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1051, equivalent to 90% of the facility's forecasted electricity usage on an annual basis, and a qualified entity or its affiliates claiming the exemption will certify to the Michigan strategic fund in accordance with subsection (6)(c) that this requirement is met. Demonstration that this

requirement is met may be made by any of the following and electric utilities, cooperative electric utilities, and municipal utilities shall identify and, if necessary, develop tariffs, contracts, and other mechanisms that support the enterprise data center in making this demonstration:

(A) Self-supply through on-site generation that meets the definition of renewable energy as that term is defined in section 11 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1011.

(B) Long-term contract with the electric utility, cooperative electric utility, or municipal utility serving the geographic area where the facility is located, which ensures no costs to serve the facility are passed onto other customers of the electric utility, cooperative electricity utility, or municipal utility. This sub-subparagraph shall not be interpreted to require the facility to be allocated costs of network transmission upgrades that would otherwise be allocated to other customers through the electric utility, cooperative electric utility, or municipal utility's generally applicable rate-making processes for the recovery of such costs, such as power supply cost recovery proceedings under section 6j of 1939 PA 3, MCL 460.6j.

(C) Participation in a voluntary green pricing program as set forth in section 61 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1061.

(x) The facility will not take electric service under any of the following rates:

(A) The long-term industrial load rate established under section 10gg of 1939 PA 3, MCL 460.10gg, unless the designated power supply resource on which the long-term industrial load rate is based was placed in operation after January 1, 2024, and the rate is at least equivalent to the average industrial rate charged to other industrial customers of the electric utility that serves the facility.

(B) A tariff rate approved in Michigan Public Service Commission Case No. U-21160, U-21163, or U-21646.

(C) A rate that causes residential customers to subsidize the costs incurred to provide electric service to the facility.

(f) Enterprise data center does not include a facility that the Michigan strategic fund determines no longer meets, or is no longer expected to meet within the time frame set forth in the certificate, the requirements in subdivision (e).

(g) "Michigan economic development corporation" means that term as defined in section 4 of the Michigan strategic fund act, 1984 PA 270, MCL 125.2004.

(h) "Michigan strategic fund" means the Michigan strategic fund as described in the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2094.

(i) "Qualified data center" means a facility composed of 1 or more buildings located in this state and the facility is owned or operated by an entity engaged at that facility in operating, managing, or maintaining a group of networked computers or networked facilities for the purpose of centralizing, or allowing 1 or more colocated businesses to centralize, the storage, processing, management, or dissemination of data of 1 or more other persons who is not an affiliate of the owner or operator of a qualified data center or of a colocated business and the entity receives 75% or more of its revenue from colocated businesses that are not an affiliate of the owner or operator of the qualified data center.

(j) "Qualified entity" means an applicant to whom a certificate is issued for a particular enterprise data center project under subsection (6)(a) and who is in compliance with the requirements of subsections (5) and (6).

History: Add. 2015, Act 252, Imd. Eff. Dec. 23, 2015;—Am. 2024, Act 181, Eff. (sine die).

Compiler's note: Enacting section 1 of Act 252 of 2015 provides:

"Enacting section 1. The legislature shall annually appropriate sufficient funds from the state general fund to the state school aid fund created in section 11 of article IX of the state constitution of 1963 to fully compensate for any loss of revenue to the state school aid fund resulting from the enactment of this amendatory act."

For transfer of authority, powers, duties, functions, and responsibilities of the department of talent and economic development to the Michigan strategic fund, see E.R.O. No. 2019-3, compiled at MCL 125.1998.

205.94dd Improvements to real property included within transformational brownfield plan; applicability of tax levy applied to tangible personal property; "eligible property" and "transformational brownfield plan" defined.

Sec. 4dd. The tax levied under this act does not apply to tangible personal property acquired by a person engaged in the business of altering, repairing, or improving real estate for others, or to the manufacture of a product as described under section 3a(1)(f) or (g), if the property or product is to be affixed to or made a structural part of improvements to real property included within a transformational brownfield plan, to the extent that those improvements are included as eligible activities described in section 2(o)(*v*) of the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2652, on eligible property that is included

in a transformational brownfield plan. As used in this section, "eligible property" and "transformational brownfield plan" mean those terms as defined in section 2 of the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2652.

History: Add. 2017, Act 49, Eff. July 24, 2017;—Am. 2023, Act 92, Imd. Eff. July 19, 2023.

205.94ee Storage, use, or consumption of certain tangible personal property acquired by a contractor; exemption from tax.

Sec. 4ee. A person engaged in the business of constructing, altering, repairing, or improving real estate for others is not liable for the tax levied under this act for storing, using, or consuming tangible personal property acquired from another person to the extent that the tangible personal property was purchased by that other person and that person is not exempt from the tax levied under this act or the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, and that tangible personal property was acquired by the person engaged in the business of constructing, altering, repairing, or improving real estate for others for the sole purpose of affixing that tangible personal property to real estate on behalf of that other person.

History: Add. 2018, Act 201, Imd. Eff. June 20, 2018.

Compiler's note: "Enacting section 1. It is the intent of the legislature that this amendatory act clarifies that existing law as originally intended provides that the tax levied under this act does not apply to tangible personal property acquired by a person engaged in the business of installing tangible personal property if that tangible personal property is purchased by another for installation on behalf of that other person."

205.94ff Sales of certain prosthetic devices; exemption; definitions.

Sec. 4ff. (1) The sale to a hospital or freestanding surgical outpatient facility of a prosthetic device for implantation into a human is exempt from the tax imposed by this act.

(2) As used in this section:

(a) "Freestanding surgical outpatient facility" means a facility licensed under part 208 of the public health code, 1978 PA 368, MCL 333.20801 to 333.20821.

(b) "Hospital" means a hospital licensed under part 215 of the public health code, 1978 PA 368, MCL 333.21501 to 333.21571.

(c) "Prosthetic device" means a replacement, corrective, or supportive device, other than contact lenses and dental prosthesis, including repair or replacement parts for that device, worn on or in the body to do 1 or more of the following:

(*i*) Artificially replace a missing portion of the body.

(*ii*) Prevent or correct a physical deformity or malfunction of the body.

(*iii*) Support a weak or deformed portion of the body.

History: Add. 2020, Act 47, Imd. Eff. Mar. 3, 2020.

205.94ll Storage, use, or consumption of firearm safety devices; exemption; definitions.

Sec. 4*ll*. (1) Beginning 90 days after the effective date of the amendatory act that added this section through December 31, 2024, the tax levied under this act does not apply to the storage, use, or consumption of a firearm safety device. On the retail sale or transfer of a firearm, the seller shall provide a written notice to the purchaser and shall post in a conspicuous manner at all points of sale on the premises where firearms are sold a notice that says the following: "The state of Michigan has exempted the sale of firearm safety devices from the sales and use tax imposed by this state through December 31, 2024.".

(2) As used in this section:

(a) "Firearm safety device" means, except as otherwise provided in subdivision (b), equipment, designed to prevent unauthorized access to, or operation or discharge of, a firearm, that is either of the following:

(*i*) A device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device.

(*ii*) A gun safe, gun case, lockbox, or other device that is designed, in light of materials used, to prevent access to a firearm by any means other than a key, a combination, biometric data, or other similar means.

(b) Firearm safety device does not include a glass-faced cabinet or other form of storage that is primarily designed to allow for the display of firearms.

History: Add. 2023, Act 14, Eff. Feb. 13, 2024.

Compiler's note: Enacting section 1 of Act 14 of 2023 provides:

"Enacting section 1. It is the intent of the legislature to annually appropriate sufficient funds from the state general fund to the state school aid fund created in section 11 of article IX of the state constitution of 1963 to fully compensate for any loss of revenue to the state school aid fund resulting from the enactment of this amendatory act."

205.95 Registration requirements; seller to collect tax from consumer; foreign corporations;

dissolution or withdrawal of corporation; election of lessor on payment of taxes; registration under streamlined sales and use tax agreement.

Sec. 5. (1) Except as otherwise provided in this subsection or subsection (5), a person subject to the tax under this act shall register with the department and give the name and address of each agent operating in this state, the location of all distribution or sales houses or offices or other places of business in this state, and any other information that the department requires relevant to the enforcement of this act. However, a seller holding a sales tax license obtained under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, is not required to separately register with the department under this act. Every person subject to the tax under this act shall source sales in accordance with section 20 and collect the tax imposed by this act from the consumer.

(2) The corporation, securities, and land development bureau of the department of labor and economic growth shall not issue to any foreign corporation subject to the tax under this act a certificate of authority to do business in this state or approve and file the proposed articles of incorporation submitted to it by any domestic corporation authorizing or permitting that corporation to conduct any business subject to the tax under this act unless the corporation submits with the application for the certificate of authority or proposed articles of incorporation an application for registration of the corporation under this act or an application for a sales tax license under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78. The application shall be transmitted to the department by the corporation, securities, and land development bureau.

(3) A domestic corporation or a foreign corporation authorized to transact business in this state that submits a certificate of dissolution or requests a certificate of withdrawal from this state shall request a certificate from the department stating that taxes are not due under section 27a of 1941 PA 122, MCL 205.27a, not more than 60 days after submitting the certificate of dissolution or requesting the certificate of withdrawal. A corporation that does not request a certificate stating that taxes are not due is subject to the same penalties under section 24 of 1941 PA 122, MCL 205.24, that a taxpayer would be subject to for failure to file a return.

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

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

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.95;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1959, Act 263, Eff. Sept. 1, 1959;—Am. 1959, Act 272, Eff. Jan. 1, 1960;—Am. 2002, Act 255, Imd. Eff. May 1, 2002;—Am. 2002, Act 580, Imd. Eff. Oct. 14, 2002;—Am. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2007, Act 93, Eff. Dec. 1, 2007.

205.95a Sale of tangible personal property; nexus with state; presumptions; purchase of advertisements; agreement; effectiveness of section; definitions.

Sec. 5a. (1) A seller who sells tangible personal property is presumed to have nexus with this state and shall register with the department and collect the tax levied under this act if the seller or a person, including an affiliated person, other than a common carrier acting as a common carrier, engages in or performs any of the following activities in this state:

(a) Sells a similar line of products as the seller and does so under the same business name as the seller or a similar business name as the seller.

(b) Uses its employees, agents, representatives, or independent contractors in this state to promote or facilitate sales by the seller to purchasers in this state.

(c) Maintains, occupies, or uses an office, distribution facility, warehouse, storage place, or similar place of business in this state to facilitate the delivery or sale of tangible personal property sold by the seller to the seller's purchasers in this state for storage, use, or consumption in this state.

(d) Uses, with the seller's consent or knowledge, trademarks, service marks, or trade names in this state that are the same or substantially similar to those used by the seller.

(e) Delivers, installs, assembles, or performs maintenance or repair services for the seller's purchasers in this state.

(f) Facilitates the sale of tangible personal property to purchasers in this state by allowing the seller's purchasers in this state to pick up or return tangible personal property sold by the seller at an office, distribution facility, warehouse, storage place, or similar place of business maintained by that person in this

state.

(g) Shares management, business systems, business practices, or employees with the seller, or in the case of an affiliated person, engages in intercompany transactions related to the activities occurring with the seller to establish or maintain the seller's market in this state.

(h) Conducts any other activities in this state that are significantly associated with the seller's ability to establish and maintain a market in this state for the seller's sales of tangible personal property to purchasers in this state for storage, use, or consumption in this state.

(2) The presumption under subsection (1) may be rebutted by demonstrating that a person's activities in this state are not significantly associated with the seller's ability to establish or maintain a market in the state for the seller's sales of tangible personal property to purchasers in this state.

(3) In addition to the presumption under subsection (1), a seller of tangible personal property is presumed to have nexus in this state and shall register with the department and collect the tax levied under this act if the seller enters into an agreement, directly or indirectly, with 1 or more residents of this state under which the resident, for a commission or other consideration, directly or indirectly, refers potential purchasers, whether by a link on an internet website, in-person oral presentation, or otherwise, to the seller, if all of the following conditions are satisfied:

(a) The cumulative gross receipts from sales by the seller for storage, use, or consumption in this state to purchasers in this state who are referred to the seller by all residents of this state with an agreement with the seller are greater than $10,000.00 during the immediately preceding 12 months.

(b) The seller's total cumulative gross receipts from sales for storage, use, or consumption to purchasers in this state exceed $50,000.00 during the immediately preceding 12 months.

(4) The presumption under subsection (3) may be rebutted by demonstrating that the residents of this state with whom the seller has an agreement did not engage in any solicitation or any other activity within this state that was significantly associated with the seller's ability to establish or maintain a market in this state for the seller's sales of tangible personal property to purchasers in this state for storage, use, or consumption in this state. The presumption under subsection (3) shall be considered rebutted by evidence of all of the following:

(a) Written agreements prohibiting all of the residents with an agreement with the seller from engaging in any solicitation activities in this state on behalf of the seller.

(b) Written statements from all of the residents with an agreement with the seller stating that the resident representatives did not engage in any solicitation or other activities in this state on behalf of the seller during the immediately preceding 12 months, if the statements are provided and obtained in good faith.

(5) An agreement under which a seller purchases advertisements from a person or persons in this state to be delivered through television, radio, print, the internet, or any other medium is not an agreement described in subsection (3) unless the advertisement revenue paid to the person or persons in this state consists of commissions or other consideration that is based upon completed sales of tangible personal property.

(6) This section applies to transactions occurring on or after the effective date of the amendatory act that added this section and without regard to the date the seller and the resident entered into an agreement described in subsection (3). The 12 months before the effective date of the amendatory act that added this section are included as part of the immediately preceding 12 months for purposes of subsection (3).

(7) As used in this section:

(a) "Affiliated person" means either of the following:

(*i*) Any person that is a part of the same controlled group of corporations as the seller.

(*ii*) Any other person that, notwithstanding its form of organization, bears the same ownership relationship to the seller as a corporation that is a member of the same controlled group of corporations.

(b) "Controlled group of corporations" means that term as defined in section 1563(a) of the internal revenue code, 26 USC 1563.

History: Add. 2014, Act 554, Eff. Oct. 1, 2015.

205.95b Seller of tangible personal property or services; nexus; conditions; application to transactions after October 1, 2018; inclusion of sales of marketplace facilitator and marketplace seller; exception; definitions.

Sec. 5b. (1) A seller of tangible personal property or services subject to the tax under this act has nexus in this state and shall register with the department and collect and remit the tax levied under this act if the seller meets either of the following conditions:

(a) The seller's gross receipts from sales for storage, use, or consumption in this state to purchasers in this state exceed $100,000.00 in the previous calendar year.

(b) The seller has 200 or more separate transactions into this state in the previous calendar year.

(2) This section applies regardless of whether the seller has a physical presence in this state or has nexus in

this state under section 5a. This section does not eliminate or alter the obligation of a seller that has a physical presence in this state or nexus in this state under section 5a to collect and remit the tax levied under this act.

(3) This section applies to transactions occurring on or after October 1, 2018.

(4) A person that is a marketplace facilitator under section 5c shall include sales by marketplace sellers on its marketplace and its direct sales in determining its gross receipts under subsection (1)(a) or its number of transactions under subsection (1)(b).

(5) A person that is a marketplace seller under section 5c shall include its sales through a marketplace facilitator and its direct sales in determining its gross receipts under subsection (1)(a) or its number of transactions under subsection (1)(b).

(6) Notwithstanding anything else in this section, a seller that only makes sales for purposes of resale is not required to register for the tax imposed by this act. A seller that makes both sales that it is required to collect and remit tax on under this act and sales for purposes of resale shall register under this act, file required returns, and remit tax as required by this act.

(7) As used in this section:

(a) "Marketplace facilitator" means that term as defined in section 5c.

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

History: Add. 2019, Act 146, Imd. Eff. Dec. 12, 2019.

205.95c Marketplace facilitators; nexus; report; class action prohibited; audit; liability; conditions; definitions.

Sec. 5c. (1) Notwithstanding anything to the contrary in this act, a marketplace facilitator that has nexus in this state shall collect and remit the tax due under this act on all taxable sales made by the marketplace facilitator or facilitated for marketplace sellers to a purchaser in this state regardless of whether the marketplace seller for whom sales are facilitated has nexus with this state.

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

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

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

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

(6) Except as otherwise provided in this subsection, if a marketplace facilitator is required to collect and remit tax under subsection (1), the department shall audit only the marketplace facilitator for sales made by marketplace sellers that were facilitated by the marketplace facilitator. The department shall not audit a marketplace seller for sales facilitated by a marketplace facilitator required to collect and remit tax under subsection (1) unless the marketplace seller fails to provide the marketplace facilitator with sufficient information to the extent that the marketplace facilitator is not liable under subsection (7).

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

(8) A marketplace facilitator is relieved of liability under this section if the marketplace facilitator demonstrates, to the satisfaction of the department, that the tax levied under this act on a sale facilitated by the marketplace facilitator was paid to the department by the marketplace seller or provides a claim of exemption provided by the marketplace seller's purchaser.

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

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

(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.

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

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

History: Add. 2019, Act 144, Eff. Jan. 1, 2020.

Compiler's note: Enacting sections 1 and 2 of Act 144 of 2019 provide:

"Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this amendatory act is severable."

"Enacting section 2. This amendatory act takes effect January 1, 2020. An obligation to collect sales tax under this amendatory act does not apply retroactively."

205.96 Use tax returns; filing; form; contents; payment of tax; remittance for certain total tax liability after subtracting tax payments; electronic funds transfer; filing other than monthly returns; accrual to state; due date.

Sec. 6. (1) Every person storing, using, or consuming tangible personal property or services, the storage, use, or consumption of which is subject to the tax imposed by this act when the tax was not paid to a seller, and every seller collecting the tax from the purchaser, unless otherwise prescribed by the department under the provisions of subsection (2) or (3), on or before the twentieth day of each calendar month shall file with the department a return for the preceding calendar month, in a form prescribed by the department, showing the price of each purchase of tangible personal property or services during the preceding month, and other information the department considers necessary for the proper administration of this act. At the same time, each person shall pay to the department the amount of tax imposed by this act with respect to the purchases covered by the return.

(2) Each seller that had a total tax liability after subtracting the tax payments made to the secretary of state under this act or the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, or after subtracting the tax credits available under section 6a of the general sales tax act, 1933 PA 167, MCL 205.56a, in the immediately preceding calendar year of $720,000.00 or more shall remit to the department, by an electronic funds transfer method approved by the department on or before the twentieth day of the month, an amount equal to the following:

(a) Beginning January 1, 1999 through December 31, 2013, 50% of the taxpayer's liability under this act for the same month in the immediately preceding calendar year, or 50% of the actual liability for the month being reported, whichever is less, plus a reconciliation payment equal to the difference between the tax liability determined for the immediately preceding month minus the amount of tax previously paid for that month. Additionally, the seller shall remit to the department, by an electronic funds transfer method approved by the department on or before the last day of the month, an amount equal to 50% of the taxpayer's liability under this act for the same month in the immediately preceding calendar year, or 50% of the actual liability for the month being reported, whichever is less.

(b) Beginning January 1, 2014, 75% of the taxpayer's liability under this act in the immediately preceding month or 75% of the taxpayer's liability for the same month in the immediately preceding calendar year, whichever is less, plus a reconciliation payment equal to the difference between the tax liability determined for the immediately preceding month minus the amount of tax previously paid for that month. Payment remitted to the department by electronic funds transfer may include as a single payment any amount due under section 6 of the general sales tax act, 1933 PA 167, MCL 205.56.

(3) If considered necessary to insure payment of the tax or to provide a more efficient administration, the

department may require and prescribe the filing of returns and payment of the tax for other than monthly periods.

(4) The tax imposed under this act shall accrue to this state on the last day of each calendar month.

(5) If a due date falls on a Saturday, Sunday, state holiday, or legal banking holiday, the taxes are due on the next succeeding business day.

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.96;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1959, Act 263, Eff. Sept. 1, 1959;—Am. 1963, Act 75, Imd. Eff. May 8, 1963;—Am. 1971, Act 161, Imd. Eff. Nov. 24, 1971;—Am. 1975, Act 97, Imd. Eff. June 2, 1975;—Am. 1993, Act 17, Imd. Eff. Apr. 14, 1993;—Am. 1993, Act 326, Eff. May 1, 1994;—Am. 1998, Act 266, Imd. Eff. July 17, 1998;—Am. 2003, Act 24, Imd. Eff. June 24, 2003;—Am. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2012, Act 117, Imd. Eff. May 2, 2012;—Am. 2012, Act 585, Eff. Mar. 28, 2013;—Am. 2014, Act 426, Imd. Eff. Dec. 30, 2014.

Compiler's note: Enacting section 1 of Act 24 of 2003 provides:

"Enacting section 1. This amendatory act takes effect for returns and remittances for those returns that are due or filed on or after the effective date of this amendatory act."

205.96a Reepaled. 2006, Act 673, Eff. Jan. 1, 2011.

Compiler's note: The repealed section pertained to qualified athletic event.

205.96c Aviation fuel; informational report; "aviation fuel" defined.

Sec. 6c. (1) Beginning April 1, 2016 and each calendar quarter thereafter, every person storing, using, or consuming aviation fuel, the storage, use, or consumption of which is subject to the tax imposed by this act when the tax was not paid to a seller, and every seller collecting the tax from the purchaser from sales of aviation fuel shall, on or before the last day of the month in the month that immediately follows the end of a calendar quarter, file an informational report with the department on a form prescribed by the department showing all of the following for the immediately preceding calendar quarter:

(a) The entire amount of taxable aviation fuel sold or purchased by the person, as applicable.

(b) The amount of tax for which the person is liable from the purchase or sale of aviation fuel.

(c) The number of taxable gallons of aviation fuel sold or purchased by the person, as applicable, at each airport and the gross proceeds from the sales or purchase of those gallons of aviation fuel, as applicable.

(d) Any other information the department considers necessary for the proper administration of this act.

(2) The report required under this section shall not include any remittance for tax and does not constitute a return or otherwise alleviate the person's obligations under section 6.

(3) A person required to file the informational report under this section that fails or refuses to file the informational report within the time and in the manner specified in this section shall be liable for a penalty of $10.00 per day for each day for each separate failure or refusal up to, but not exceeding, a maximum penalty of $500.00 for each separate violation. The department may waive the penalty if the taxpayer demonstrates to the satisfaction of the department that the failure to file was due to reasonable cause.

(4) As used in this section, "aviation fuel" means fuel as that term is defined in section 4 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.4.

History: Add. 2015, Act 263, Eff. Mar. 22, 2016.

205.97 Liability for tax.

Sec. 7. (1) Each person storing, using, or consuming in this state tangible personal property or services is liable for the tax levied under this act, and that liability shall not be extinguished until the tax levied under this act has been paid to the department.

(2) A person who acquires tangible personal property or services for any tax-exempt use who subsequently converts the tangible personal property or service to a taxable use, including an interim taxable use, is liable for the tax levied under this act. If tangible personal property or services are converted to a taxable use, the tax levied under this act shall be imposed without regard to any subsequent tax-exempt use. The payment to the department of the tax, interest, and any penalty assessed by the department relieves the seller, who sold the property or services with regard to the storing, use, or consumption on which the tax was paid from the payment of the amount of the tax that he or she may be required under this act to collect from the purchaser.

(3) Beginning January 1, 2009, except as limited by subsection (4), a consumer is relieved from liability, including liability for tax, penalty, and interest, for having failed to pay the correct amount of tax imposed under this act in the following circumstances:

(a) The consumer's seller or the seller's certified service provider, as defined in the streamlined sales and use tax administration act, 2004 PA 174, MCL 205.801 to 205.833, relied on erroneous data contained in the taxability matrix.

(b) The consumer relied on erroneous data contained in the taxability matrix.

(4) Liability relief under subsection (3) is limited to the erroneous classification in the taxability matrix of

terms included in the streamlined sales and use tax agreement's library of definitions as taxable or exempt, included in sales price, excluded from sales price, or excluded from the definition.

(5) As used in this section:

(a) "Penalty" means an amount imposed for noncompliance that is not fraudulent, willful, or intentional and that is in addition to the correct amount of tax imposed under this act and in addition to interest.

(b) "Taxability matrix" means the taxability matrix published by the department pursuant to the streamlined sales and use tax administration act, 2004 PA 174, MCL 205.801 to 205.833.

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.97;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1959, Act 263, Eff. Sept. 1, 1959;—Am. 2007, Act 103, Eff. Sept. 30, 2002;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009.

Compiler's note: Enacting sections 1 and 2 of 2007 PA 103 provide:

"Enacting section 1. It is the intent of the legislature that this amendatory act clarify that a person who acquires tangible personal property for a purpose exempt under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, who subsequently converts that property to a use taxable under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, is liable for the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111.

"Enacting section 2. This amendatory act is curative and intended to prevent any misinterpretation of the ability of a taxpayer to claim an exemption from the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, based on the purchase of tangible personal property or services for resale that may result from the decision of the Michigan court of appeals in Betten Auto Center, Inc v Department of Treasury, No. 265976, as affirmed by the Michigan Supreme Court. This amendatory act is retroactive and is effective beginning September 30, 2002 and for all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

205.98 Direct payment authorization.

Sec. 8. (1) The department may authorize a person to assume the obligation of self-accruing and remitting use tax due on purchases or leases directly to the department under a direct payment authorization, if the following conditions are met:

(a) The authorization is to be used for the purchase or lease of tangible personal property or services.

(b) The authorization is necessary because it is either impractical at the time of acquisition to determine the manner in which the tangible personal property or services will be used or it will facilitate improved compliance with the tax laws of this state.

(c) The person requesting authorization for direct payment maintains accurate and complete records of all purchases or leases and uses of tangible personal property or services purchased pursuant to the direct payment authorization in a form acceptable to the department.

(2) The department has the authority to identify items that are not eligible for a direct payment authorization.

History: Add. 1999, Act 117, Imd. Eff. July 14, 1999;—Am. 2004, Act 172, Eff. Sept. 1, 2004.

Compiler's note: Former MCL 205.98, which pertained to remittances, was repealed by Act 165 of 1980, Eff. Sept. 17, 1980.

Enacting section 1 of Act 117 of 1999 provides:

"Enacting section 1. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, the tax levied does not apply to the price of property or services to the extent that the property or services are stored, used, or consumed for exempt purposes. For telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides for a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

205.99 Personal liability of seller or certified service provider for failure to collect tax; definition.

Sec. 9. (1) If a seller or certified service provider who is required or authorized to collect the tax fails to do so, the seller or certified service provider is liable personally for the amount the seller or certified service provider failed to collect together with penalty and interest on the tax. In that case, the department has the power to make an assessment against the seller or certified service provider, based upon any information in or that comes into the department's possession. The department shall give to the seller or certified service provider written notice of the assessment. The notice may be served upon the seller or certified service provider personally or by registered mail, addressed to the last known or business address.

(2) As used in this section, "certified service provider" means that term as defined in section 3 of the streamlined sales and use tax administration act.

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.99;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1959, Act 263, Eff. Sept. 1, 1959;—Am. 1959, Act 272, Eff. Jan. 1, 1960;—Am. 2004, Act 172, Eff. Sept. 1, 2004.

205.99a Bad debt deduction.

Sec. 9a. (1) In computing the amount of tax levied under this act for any month, a seller may deduct the

amount of bad debts from his or her gross sales, rentals, or services used for the computation of the tax. The amount of gross sales, rentals, or services deducted must be charged off as uncollectible on the books and records of the seller at the time the debt becomes worthless and deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and must be eligible to be deducted for federal income tax purposes. For purposes of this section, a claimant who is not required to file a federal income tax return may deduct a bad debt on a return filed for the period in which the bad debt becomes worthless and is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return. If a consumer or other person pays all or part of a bad debt with respect to which a seller claimed a deduction under this section, the seller is liable for the amount of taxes deducted in connection with that portion of the debt for which payment is received and shall remit these taxes in his or her next payment to the department. Any payments made on a bad debt shall be applied proportionally first to the taxable price of the property and the tax on the property and second to any interest, service, or other charge.

(2) Any claim for a bad debt deduction under this section shall be supported by that evidence required by the department. The department shall review any change in the rate of taxation applicable to any taxable sales, rentals, or services by a seller claiming a deduction pursuant to this section and shall ensure that the deduction on any bad debt does not result in the seller claiming the deduction recovering any more or less than the taxes imposed on the sale, rental, or service that constitutes the bad debt.

(3) After September 30, 2009, if a taxpayer who reported the tax and a lender execute and maintain a written election designating which party may claim the deduction, a claimant is entitled to a deduction or refund of the tax related to a sale at retail that was previously reported and paid if all of the following conditions are met:

(a) No deduction or refund was previously claimed or allowed on any portion of the account receivable.

(b) The account receivable has been found worthless and written off by the taxpayer that made the sale or the lender on or after September 30, 2009.

(4) If a certified service provider assumed filing responsibility under the streamlined sales and use tax administration act, 2004 PA 174, MCL 205.801 to 205.833, the certified service provider may claim, on behalf of the seller, any bad debt allowable to the seller and shall credit or refund that amount of bad debt allowed or refunded to the seller.

(5) If the books and records of a seller under the streamlined sales and use tax agreement under the streamlined sales and use tax administration act, 2004 PA 174, MCL 205.801 to 205.833, that claims a bad debt allowance support an allocation of the bad debts among member states of that agreement, the seller may allocate the bad debts.

(6) As used in this section:

(a) "Bad debt" means any portion of a debt resulting from a seller's collection of the use tax under this act on the purchase of tangible personal property or services that is not otherwise deductible or excludable and that is eligible to be claimed, or could be eligible to be claimed if the seller kept accounts on an accrual basis, as a deduction pursuant to section 166 of the internal revenue code, 26 USC 166. A bad debt does not include any of the following:

(*i*) Interest, finance charge, or use tax on the purchase price.

(*ii*) Uncollectible amounts on property that remains in the possession of the seller until the full purchase price is paid.

(*iii*) Expenses incurred in attempting to collect any account receivable or any portion of the debt recovered.

(*iv*) Any accounts receivable that have been sold to and remain in the possession of a third party for collection.

(*v*) Repossessed property.

(b) Except as provided in subdivision (c), "lender" includes any of the following:

(*i*) Any person who holds or has held an account receivable which that person purchased directly from a taxpayer who reported the tax.

(*ii*) Any person who holds or has held an account receivable pursuant to that person's contract directly with the taxpayer who reported the tax.

(*iii*) The issuer of the private label credit card.

(c) "Lender" does not include the issuer of a credit card or instrument that can be used to make purchases from a person other than the vendor whose name or logo appears on the card or instrument or that vendor's affiliates.

(d) "Private label credit card" means any charge card, credit card, or other instrument serving a similar purpose that carries, refers to, or is branded with the name or logo of a vendor and that can only be used for purchases from the vendor.

(e) "Seller" means a person who has remitted use tax directly to the department on the specific sales, rental, or service transaction for which the bad debt is recognized for federal income tax purposes or, after September 30, 2009, a lender holding the account receivable for which the bad debt is recognized, or would be recognized if the claimant were a corporation, for federal income tax purposes.

History: Add. 1999, Act 117, Imd. Eff. July 14, 1999;—Am. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2007, Act 104, Imd. Eff. Oct. 1, 2007.

Compiler's note: Enacting section 1 of Act 117 of 1999 provides:

"Enacting section 1. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, the tax levied does not apply to the price of property or services to the extent that the property or services are stored, used, or consumed for exempt purposes. For telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides for a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a."

Enacting section 1 of Act 104 of 2007 provides:

"Enacting section 1. This amendatory act is curative and shall be retroactively applied, expressing the original intent of the legislature that a deduction for a bad debt for a seller under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, is available exclusively to those persons with the legal liability to remit the tax on the specific sales, rental, or service transaction for which the bad debt is recognized for federal income tax purposes, and correcting any misinterpretation of the meaning of the term "seller" that may have been caused by the Michigan court of appeals decision in Daimler Chrysler Services North America LLC v Department of Treasury, No. 264323. However, this amendatory act is not intended to affect a refund required by a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired if the refund is payable without interest and after September 30, 2009 and before November 1, 2009."

205.100 Administration of tax; conflicting provisions; rules; filing claims for refund; payment of refunds; payment of refund filed for interstate access telephone services; tax imposed under tobacco products tax act.

Sec. 10. (1) The tax imposed by this act shall be administered by the department under 1941 PA 122, MCL 205.1 to 205.31, the streamlined sales and use tax administration act, and this act. If the provisions of 1941 PA 122, MCL 205.1 to 205.31, the streamlined sales and use tax administration act, and this act conflict, the provisions of this act apply.

(2) Rules shall be promulgated to implement this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(3) Claims for refund pursuant to the 1988 amendatory act amending section 2 shall be filed not later than March 31, 1989. The approved refunds shall be paid without interest. The department shall not pay refunds totaling more than $1,000,000.00 in any 1 fiscal year, unless the single business tax act, 1975 PA 228, MCL 208.1 to 208.145, is amended to impose a 1-year surcharge on the business activity of contract construction to recover the cost of the refunds.

(4) A claim for a refund pursuant to the final decision of the Michigan court of appeals in the case of GTE Sprint Communications Corp. v Michigan Department of Treasury, 179 Mich App 276, 1989, LV DEN 436 Mich 875, 1990, shall be filed not later than January 1, 1994 by a person that paid the tax under this act for interstate access telephone services for the period beginning August 1, 1988 through January 1, 1991. The approved refund shall be paid without interest. The department shall pay the refund in 12 equal installments commencing in the month that the person begins applying the refunds to the billings of its current Michigan interstate subscribers in a manner consistent with the requirements of the federal communications commission.

(5) A seller shall not separately state on an invoice, bill of sale, or other similar document given to the purchaser the tax imposed under the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436.

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.100;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1964, Act 39, Eff. Aug. 28, 1964;—Am. 1971, Act 88, Imd. Eff. Aug. 4, 1971;—Am. 1975, Act 8, Imd. Eff. Mar. 25, 1975;—Am. 1980, Act 165, Eff. Sept. 17, 1980;—Am. 1988, Act 376, Imd. Eff. Dec. 21, 1988;—Am. 1993, Act 263, Imd. Eff. Dec. 14, 1993;—Am. 1998, Act 366, Imd. Eff. Oct. 20, 1998;—Am. 2004, Act 172, Eff. Sept. 1, 2004.

Administrative rules: R 205.1 et seq. of the Michigan Administrative Code.

205.100a Receipt and collection of local community stabilization share.

Sec. 10a. The department shall administer under this act and under 1941 PA 122, MCL 205.1 to 205.31, the receipt and collection of the local community stabilization share on behalf of the authority as an agent of the authority. The department may enter into an agreement with the authority relating to the receipt and collection of the local community stabilization share and the payment of authority revenue generated by the local community stabilization share to the authority, which is dedicated to local purposes, including, but not limited to, police safety, fire protection, and ambulance emergency services.

History: Add. 2014, Act 80, Eff. Jan. 1, 2015.

Compiler's note: Enacting section 1 of Act 80 of 2014 provides:

"Enacting section 1. This amendatory act does not take effect unless approved by a majority of the registered and qualified electors of this state voting on the question at an election to be held on the August regular election date in 2014. Except as otherwise provided in this enacting section, this amendatory act shall be submitted to the registered and qualified electors of this state at that election as provided by the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, and for the purpose of complying with section 31 of article IX of the state constitution of 1963. Notwithstanding other law, when submitted to the registered and qualified electors of this state, this amendatory act shall be presented with the following question:

"APPROVAL OR DISAPPROVAL OF AMENDATORY ACT TO REDUCE STATE USE TAX AND REPLACE WITH A LOCAL COMMUNITY STABILIZATION SHARE TO MODERNIZE THE TAX SYSTEM TO HELP SMALL BUSINESSES GROW AND CREATE JOBS

The amendatory act adopted by the Legislature would:

1. Reduce the state use tax and replace with a local community stabilization share of the tax for the purpose of modernizing the tax system to help small businesses grow and create jobs in Michigan.

2. Require Local Community Stabilization Authority to provide revenue to local governments dedicated for local purposes, including police safety, fire protection, and ambulance emergency services.

3. Increase portion of state use tax dedicated for aid to local school districts.

4. Prohibit Authority from increasing taxes.

5. Prohibit total use tax rate from exceeding existing constitutional 6% limitation.

Should this law be approved?

YES [ ]

NO [ ]"."

Enacting section 2 of Act 80 of 2014 provides:

"Enacting section 2. If approved by the registered and qualified electors of this state as provided in enacting section 1, this amendatory act takes effect January 1, 2015."

Compiler's note: Act 80 of 2014 was approved by a majority of the voters at the August 5, 2014 primary election. The election results were certified by the Michigan Board of State Canvassers on August 22, 2014.

Compiler's note: This section, which was added by Act 80 of 2014, should have evidently amended the section added by Act 408 of 2012.

Compiler's note: The conditions in enacting section 1 of Act 408 of 2012 were not met. Act 408 of 2012 did not go into effect.

Compiler's note: The conditions in enacting section 1 of Act 81 of 2014 were not met. Act 81 of 2014 did not go into effect.

205.101 Refund or credit for returned tangible personal property or service; written notice.

Sec. 11. (1) If a person liable for collection of the tax under this act refunds or provides a credit for all or a portion of the amount of the purchase price paid for returned tangible personal property within the time period for returns stated in that person's refund policy or 180 days after the initial sale, whichever is sooner, that person shall also refund or provide a credit for the tax levied under this act that was added to all or that portion of the amount of the purchase price paid that is refunded or credited.

(2) If a person liable for collection of the tax under this act refunds or provides a credit for all or a portion of an amount paid for a service taxable under this act within the time period for returns stated in that person's refund policy or 180 days after the initial sale, whichever is sooner, that person shall also refund or provide a credit for the tax paid under this act on all or that portion of the amount paid for services that is refunded or credited.

(3) A cause of action against a seller for overcollected sales or use taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had 60 days to respond. The purchaser shall provide in the notice sufficient information to determine the validity of the request. In matters relating to the request, a seller is presumed to have a reasonable business practice if in the collection of sales and use tax, the seller has a certified service provider or a system, including a proprietary system, certified by the department and has remitted to this state all taxes collected less any deductions, credits, or collection allowances.

History: Add. 2000, Act 153, Imd. Eff. June 12, 2000;—Am. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2004, Act 172, Eff. Sept. 1, 2004.

Compiler's note: Former MCL 205.101, which pertained to assessment, was repealed by Act 165 of 1980, Eff. Sept. 17, 1980.

205.101a Selling or quitting business; final return; withholding of purchase money to cover taxes, interest, and penalties; liability for failure to withhold purchase money; purchaser liability for taxes, interest, and penalties of former owner.

Sec. 11a. If any person liable for a tax levied under this act sells a business or stock of goods, or quits the business, that person shall make a final return within 15 days after the date of selling or quitting business. The person's successor or succeeding successors, if any, shall withhold a sufficient amount of the purchase money to cover the amount of the taxes, interest, and penalties due and unpaid until the time the former owner shall produce either a receipt from the department showing that the taxes, interest, and penalties have been paid, or a certificate stating that taxes are not due. If the purchaser or succeeding purchasers of a business or stock of goods fail to withhold a portion of the purchase money as required by this section, that person shall be

personally liable for the payment of the taxes, interest, and penalties accrued and unpaid because of the operation of the business by the former owner. Unless the department files a lien for total tax liability at the register of deeds office in the county where the business or stock or goods are located, the purchaser shall not be held liable for payment of the taxes, interest, and penalties accrued and unpaid by the former owner.

History: Add. 1982, Act 478, Imd. Eff. Dec. 30, 1982.

Compiler's note: Former MCL 205.101a pertaining to tax as lien against property, was repealed by Act 165 of 1980.

205.102 Repealed. 2008, Act 439, Imd. Eff. Jan. 9, 2009.

Compiler's note: The repealed section pertained to MPU exemption.

205.103 Repealed. 2016, Act 160, Eff. Sept. 7, 2016.

Compiler's note: The repealed section pertained to exemption form provided by purchaser of direct mail.

205.103a Sales of advertising and promotional direct mail; sales of other direct mail; direct payment authorization or exemption form provided by purchaser; limitation; definitions.

Sec. 13a. (1) For sales of advertising and promotional direct mail all of the following apply:

(a) If the purchaser provides the seller with a direct payment authorization issued under section 8 or an exemption form as prescribed by the department for claiming direct mail, the seller, in the absence of bad faith, is relieved of all obligation to collect, pay, or remit any applicable tax under this act on any transaction involving advertising and promotional direct mail to which the direct payment authorization or exemption form applies and the purchaser shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered to the recipients and shall report and pay any applicable tax due.

(b) If the purchaser provides the seller with information indicating the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients, the seller shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered and shall collect and remit the applicable tax due. In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of advertising and promotional direct mail if the seller sourced the sale and collected the tax in accordance with the delivery information provided by the purchaser.

(c) If the purchaser does not provide the seller with a direct payment authorization, an exemption form prescribed by the department, or any information indicating the jurisdictions to which the advertising and promotional direct mail is to be delivered, the sale shall be sourced in accordance with section 20(1)(e).

(2) Except as otherwise provided under this subsection, sales of other direct mail shall be sourced in accordance with section 20(1)(c). If the purchaser provides the seller with a direct payment authorization issued under section 8 or an exemption form as prescribed by the department for claiming direct mail, the seller, in the absence of bad faith, is relieved of all obligation to collect, pay, or remit any applicable tax under this act on any transaction involving other direct mail to which the direct payment authorization or exemption form applies and the sale shall be sourced to the jurisdictions to which the other direct mail is to be delivered to the recipients and the purchaser shall report and pay any applicable tax due.

(3) This section only applies to a transaction characterized as a sale of services if the service is an integral part of the production and distribution of direct mail.

(4) This section does not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental, regardless of whether advertising and promotional direct mail is included in the same mailing.

(5) If a transaction is a single transaction that includes a component in addition to advertising and promotional direct mail, this section only applies if the primary purpose of the transaction is to attract public attention or to sell, popularize, or secure financial support for the sale of the product or service.

(6) Nothing in this section limits a purchaser's obligation for sales or use tax due to any state to which the direct mail is delivered or limits a purchaser's right under any other law for a credit or refund of sales or use taxes paid to any other jurisdiction.

(7) As used in this section:

(a) "Advertising and promotional direct mail" means direct mail the primary purpose of which is to attract public attention to a product, service, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, service, person, business, or organization.

(b) "Other direct mail" means any direct mail that is not advertising and promotional direct mail regardless of whether advertising and promotional direct mail is included in the same mailing. Other direct mail includes, but is not limited to, any of the following:

(*i*) Transactional direct mail that contains personal information specific to the addressee such as invoices, bills, statements of account, and payroll advices.

(*ii*) Any legally required mailings such as privacy notices, tax reports, and stockholder reports.

(*iii*) Any other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents such as newsletters and informational pieces.

History: Add. 2016, Act 160, Eff. Sept. 7, 2016.

205.104 Repealed. 2008, Act 439, Imd. Eff. Jan. 9, 2009.

Compiler's note: The repealed section pertained to requirements for keeping inventory of daily records.

****** 205.104a THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE: See 205.104a.amended ******

205.104a Inventory and records; maintenance; preservation; tax liability; failure to file return or preserve records; tax assessment; basis; indirect audit; information exception; blanket exemption; "indirect audit procedure" and "sufficient records" defined.

Sec. 14a. (1) A person in the business of selling tangible personal property and liable for any tax under this act shall keep in a paper, electronic, or digital format an accurate and complete beginning and annual inventory and purchase records of additions to inventory, complete daily sales records, receipts, invoices, bills of lading, and all pertinent documents in a form the department requires. Except as otherwise provided for a person described under subsection (6), if an exemption from use tax is claimed by a person because the sale is for resale at retail, a record must be kept of the sales tax license number if the person has a sales tax license. These records must be retained for a period of 4 years after the tax imposed under this act to which the records apply is due or as otherwise provided by law.

(2) If the department considers it necessary, the department may require a person, by notice served upon that person, to make a return, render under oath certain statements, or keep certain records the department considers sufficient to show whether or not that person is liable for the tax under this act.

(3) A person knowingly making a sale of tangible personal property for the purpose of resale at retail to another person not licensed under this act is liable for the tax imposed under this act unless the transaction is exempt under the provisions of section 4i.

(4) If a taxpayer fails to file a return or to maintain or preserve sufficient records as prescribed in this section, or the department has reason to believe that any records maintained or returns filed are inaccurate or incomplete and that additional taxes are due, the department may assess the amount of the tax due from the taxpayer based on an indirect audit procedure or any other information that is available or that may become available to the department. That assessment is considered prima facie correct for the purpose of this act and the burden of proof of refuting the assessment is upon the taxpayer. An indirect audit of a taxpayer under this subsection must be conducted in accordance with 1941 PA 122, MCL 205.1 to 205.31, and the standards published by the department under section 21 of 1941 PA 122, MCL 205.21, and must include all of the following elements:

(a) A review of the taxpayer's books and records. The department may use an indirect method to test the accuracy of the taxpayer's books and records.

(b) Both the credibility of the evidence and the reasonableness of the conclusion must be evaluated before any determination of tax liability is made.

(c) The department may use any method to reconstruct income, deductions, or expenses that is reasonable under the circumstances. The department may use third-party records in the reconstruction.

(d) The department shall investigate all reasonable evidence presented by the taxpayer refuting the computation.

(5) If a taxpayer has filed all the required returns and has maintained and preserved sufficient records as required under this section, the department shall not base a tax deficiency determination or assessment on any indirect audit procedure unless the department has a documented reason to believe that any records maintained or returns filed are inaccurate or incomplete and that additional taxes are due.

(6) If the information required under section 14b(1) is maintained, an exemption certificate or any other documentation or information is not required for an exemption claim obtained by any of the following:

(a) A person licensed by the Michigan liquor control commission as a wholesaler for purposes of sales of alcoholic liquor to another person licensed by the Michigan liquor control commission. As used in this subsection, "alcoholic liquor", "authorized distribution agent", and "wholesaler" mean those terms as defined in the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303.

(b) The Michigan liquor control commission or a person certified by the commission as an authorized distribution agent for purposes of the sale and distribution of alcoholic liquor to a person licensed by the Michigan liquor control commission.

(7) For purposes of this act, exemption certificate includes a blanket exemption certificate on a form prescribed by the department that covers all exempt transfers between the taxpayer and the buyer for a period of 4 years or for a period of less than 4 years as stated on the blanket exemption certificate if that period is agreed to by the buyer and taxpayer.

(8) As used in this section:

(a) "Indirect audit procedure" is an audit method that involves the determination of tax liabilities through an analysis of a taxpayer's business activities using information from a range of sources beyond the taxpayer's declaration and formal books and records.

(b) "Sufficient records" means records that meet the department's need to determine the tax due under this act.

History: Add. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009;—Am. 2014, Act 109, Imd. Eff. Apr. 10, 2014;—Am. 2022, Act 4, Imd. Eff. Feb. 1, 2022.

****** 205.104a.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE ******

205.104a.amended Inventory and records; maintenance; preservation; tax liability; failure to file return or preserve records; tax assessment; basis; indirect audit; information exception; blanket exemption; "indirect audit procedure" and "sufficient records" defined.

Sec. 14a. (1) A person in the business of selling tangible personal property and liable for any tax under this act shall keep in a paper, electronic, or digital format an accurate and complete beginning and annual inventory and purchase records of additions to inventory, complete daily sales records, receipts, invoices, bills of lading, and all pertinent documents in a form the department requires. Except as otherwise provided for a person described under subsection (6), if an exemption from use tax is claimed by a person because the sale is for resale at retail, a record must be kept of the sales tax license number if the person has a sales tax license. These records must be retained for a period of 4 years after the tax imposed under this act to which the records apply is due or as otherwise provided by law.

(2) If the department considers it necessary, the department may require a person, by notice served upon that person, to make a return, render under oath certain statements, or keep certain records the department considers sufficient to show whether or not that person is liable for the tax under this act.

(3) A person knowingly making a sale of tangible personal property for the purpose of resale at retail to another person not licensed under this act is liable for the tax imposed under this act unless the transaction is exempt under the provisions of section 4i.

(4) If a taxpayer fails to file a return or to maintain or preserve sufficient records as prescribed in this section, or the department has reason to believe that any records maintained or returns filed are inaccurate or incomplete and that additional taxes are due, the department may assess the amount of the tax due from the taxpayer based on an indirect audit procedure or any other information that is available or that may become available to the department. That assessment is considered prima facie correct for the purpose of this act and the burden of proof of refuting the assessment is upon the taxpayer. An indirect audit of a taxpayer under this subsection must be conducted in accordance with 1941 PA 122, MCL 205.1 to 205.31, and the standards published by the department under section 21 of 1941 PA 122, MCL 205.21, and must include all of the following elements:

(a) A review of the taxpayer's books and records. The department may use an indirect method to test the accuracy of the taxpayer's books and records.

(b) Both the credibility of the evidence and the reasonableness of the conclusion must be evaluated before any determination of tax liability is made.

(c) The department may use any method to reconstruct income, deductions, or expenses that is reasonable under the circumstances. The department may use third-party records in the reconstruction.

(d) The department shall investigate all reasonable evidence presented by the taxpayer refuting the computation.

(5) If a taxpayer has filed all the required returns and has maintained and preserved sufficient records as required under this section, the department shall not base a tax deficiency determination or assessment on any indirect audit procedure unless the department has a documented reason to believe that any records maintained or returns filed are inaccurate or incomplete and that additional taxes are due.

(6) If the information required under section 14b(1) is maintained, an exemption certificate or any other documentation or information is not required for an exemption claim obtained by any of the following:

(a) A person licensed by the Michigan liquor control commission as a wholesaler for purposes of sales of alcoholic liquor to another person licensed by the Michigan liquor control commission. As used in this

subsection, "alcoholic liquor", "authorized distribution agent", and "wholesaler" mean those terms as defined in the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303.

(b) The Michigan liquor control commission or a person certified by the commission as an authorized distribution agent for purposes of the sale and distribution of alcoholic liquor to a person licensed by the Michigan liquor control commission.

(c) A person licensed by the Michigan liquor control commission as a micro brewer for purposes of sales of alcoholic liquor to another person licensed by the Michigan liquor control commission. As used in this subdivision, "micro brewer" means that term as defined in section 109 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1109.

(7) For purposes of this act, exemption certificate includes a blanket exemption certificate on a form prescribed by the department that covers all exempt transfers between the taxpayer and the buyer for a period of 4 years or for a period of less than 4 years as stated on the blanket exemption certificate if that period is agreed to by the buyer and taxpayer.

(8) As used in this section:

(a) "Indirect audit procedure" is an audit method that involves the determination of tax liabilities through an analysis of a taxpayer's business activities using information from a range of sources beyond the taxpayer's declaration and formal books and records.

(b) "Sufficient records" means records that meet the department's need to determine the tax due under this act.

History: Add. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009;—Am. 2014, Act 109, Imd. Eff. Apr. 10, 2014;—Am. 2022, Act 4, Imd. Eff. Feb. 1, 2022;—Am. 2024, Act 61, Eff. (sine die).

***** *205.104b THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE: See 205.104b.amended* *****

205.104b Exemption claimed by purchaser; duties of seller; process to claim exemption after purchase.

Sec. 14b. (1) If an exemption from the tax under this act is claimed, the seller shall obtain identifying information of the purchaser and the reason for claiming the exemption at the time of the purchase or at a later date. The seller shall obtain the same information for a claimed exemption regardless of the medium in which the transaction occurred. If the seller is a person described in section 14a(6)(a) or (b), obtaining the purchaser's license number issued by the Michigan liquor control commission satisfies the requirements of this subsection.

(2) A seller shall use a standard format for claiming an exemption electronically as adopted by the governing board under the streamlined sales and use tax agreement.

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

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

(5) A seller who complies with the requirements of this section is not liable for the tax under this act if a purchaser improperly claims an exemption. A purchaser who improperly claims an exemption is liable for the tax due under this act. This subsection does not apply if a seller does any of the following:

(a) Fraudulently fails to collect the tax under this act.

(b) Solicits a purchaser to make an improper claim for exemption.

(c) Accepts an exemption form when the purchaser claims an entity-based exemption if both of the following occur:

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

(*ii*) The state in which the location operated by the seller is located provides an exemption form that clearly and affirmatively indicates that the claimed exemption is not available in that state.

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

(7) If the seller has not obtained an exemption form or all relevant data elements, the seller may either prove that the transaction was not subject to the tax under this act by other means or obtain a fully completed exemption form from the purchaser, by the later of the following:

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

(b) The date an assessment becomes final.

(c) The denial of a claim for refund.

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

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

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

(9) A seller is not liable for the tax under this act if the seller obtains a blanket exemption form for a purchaser with which the seller has a recurring business relationship. Renewals of blanket exemption forms or updates of exemption form information or data elements are not required if there is a recurring business relationship between the seller and the purchaser. For purposes of this section, a recurring business relationship exists when a period of not more than 12 months elapses between sales transactions.

(10) A purchaser that fails to claim an exemption at the time of purchase by notifying the seller of the exemption and providing a complete and proper claim of exemption may submit a claim for a refund to the department for the tax related to that purchase if all of the following conditions are met:

(a) The claim for a refund is made within 4 years of the date of purchase.

(b) The purchaser submits to the department an accurate record of the purchase, including, but not limited to, a paper, electronic, or digital receipt, invoice, or purchase order related to the sale, that includes the date of the purchase and the amount of sales tax paid to the seller for which the purchaser is seeking a refund under this subsection.

(c) The purchaser submits to the department a form signed by the seller as prescribed by the department that contains information required by the department to substantiate the refund claim. The form must contain a statement that the seller reported and paid the tax on the sale for which the purchaser is seeking a refund under this subsection and that the seller has not claimed, and will not claim, a refund of that tax.

(d) The purchaser submits to the department a proper exemption claim on a form as prescribed by the department under this subsection.

(e) The purchaser submits to the department any additional information that the department requires related to the purchaser's claim for refund under this subsection.

History: Add. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009;—Am. 2015, Act 252, Imd. Eff. Dec. 23, 2015;—Am. 2018, Act 168, Eff. Jan. 1, 2019;—Am. 2022, Act 4, Imd. Eff. Feb. 1, 2022.

Compiler's note: Enacting section 1 of Act 252 of 2015 provides:

"Enacting section 1. The legislature shall annually appropriate sufficient funds from the state general fund to the state school aid fund created in section 11 of article IX of the state constitution of 1963 to fully compensate for any loss of revenue to the state school aid fund resulting from the enactment of this amendatory act."

****** 205.104b.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE ******

205.104b.amended Exemption claimed by purchaser; duties of seller; process to claim exemption after purchase.

Sec. 14b. (1) If an exemption from the tax under this act is claimed, the seller shall obtain identifying information of the purchaser and the reason for claiming the exemption at the time of the purchase or at a later date. The seller shall obtain the same information for a claimed exemption regardless of the medium in which the transaction occurred. If the seller is a person described in section 14a(6)(a), (b), or (c), obtaining the purchaser's license number issued by the Michigan liquor control commission satisfies the requirements of this subsection.

(2) A seller shall use a standard format for claiming an exemption electronically as adopted by the governing board under the streamlined sales and use tax agreement.

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

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

(5) A seller who complies with the requirements of this section is not liable for the tax under this act if a purchaser improperly claims an exemption. A purchaser who improperly claims an exemption is liable for the tax due under this act. This subsection does not apply if a seller does any of the following:

(a) Fraudulently fails to collect the tax under this act.

(b) Solicits a purchaser to make an improper claim for exemption.

(c) Accepts an exemption form when the purchaser claims an entity-based exemption if both of the following occur:

(*i*) The subject of the transaction sought to be covered by the exemption form is actually received by the

purchaser at a location operated by the seller.

(*ii*) The state in which the location operated by the seller is located provides an exemption form that clearly and affirmatively indicates that the claimed exemption is not available in that state.

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

(7) If the seller has not obtained an exemption form or all relevant data elements, the seller may either prove that the transaction was not subject to the tax under this act by other means or obtain a fully completed exemption form from the purchaser, by the later of the following:

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

(b) The date an assessment becomes final.

(c) The denial of a claim for refund.

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

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

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

(9) A seller is not liable for the tax under this act if the seller obtains a blanket exemption form for a purchaser with which the seller has a recurring business relationship. Renewals of blanket exemption forms or updates of exemption form information or data elements are not required if there is a recurring business relationship between the seller and the purchaser. For purposes of this section, a recurring business relationship exists when a period of not more than 12 months elapses between sales transactions.

(10) A purchaser that fails to claim an exemption at the time of purchase by notifying the seller of the exemption and providing a complete and proper claim of exemption may submit a claim for a refund to the department for the tax related to that purchase if all of the following conditions are met:

(a) The claim for a refund is made within 4 years of the date of purchase.

(b) The purchaser submits to the department an accurate record of the purchase, including, but not limited to, a paper, electronic, or digital receipt, invoice, or purchase order related to the sale, that includes the date of the purchase and the amount of sales tax paid to the seller for which the purchaser is seeking a refund under this subsection.

(c) The purchaser submits to the department a form signed by the seller as prescribed by the department that contains information required by the department to substantiate the refund claim. The form must contain a statement that the seller reported and paid the tax on the sale for which the purchaser is seeking a refund under this subsection and that the seller has not claimed, and will not claim, a refund of that tax.

(d) The purchaser submits to the department a proper exemption claim on a form as prescribed by the department under this subsection.

(e) The purchaser submits to the department any additional information that the department requires related to the purchaser's claim for refund under this subsection.

History: Add. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009;—Am. 2015, Act 252, Imd. Eff. Dec. 23, 2015;—Am. 2018, Act 168, Eff. Jan. 1, 2019;—Am. 2022, Act 4, Imd. Eff. Feb. 1, 2022;—Am. 2024, Act 61, Eff. (sine die).

Compiler's note: Enacting section 1 of Act 252 of 2015 provides:

"Enacting section 1. The legislature shall annually appropriate sufficient funds from the state general fund to the state school aid fund created in section 11 of article IX of the state constitution of 1963 to fully compensate for any loss of revenue to the state school aid fund resulting from the enactment of this amendatory act."

205.105 Failing to register; penalty.

Sec. 15. Any seller who fails to register with the department as required under this act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined the sum of $25.00 for each day such failure, neglect or refusal to so register continues after notice to such seller from the department that he is required to register under this act.

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.105;—Am. 1949, Act 273, Eff. July 1, 1949.

205.106 Seller's failure to comply with act; penalty.

Sec. 16. Any seller who fails, neglects or refuses to collect the tax as required by this act, or fails, neglects or refuses to comply with the provisions of this act, or excepting as expressly authorized pursuant to this act, refunds, remits or rebates to a consumer, either directly or indirectly and by whatsoever means, all or any part of the tax levied by this act, or makes in any form of advertising, verbal or otherwise, any statements which might imply he is absorbing the tax or paying the tax for the consumer by an adjustment of prices or at a price including the tax, or in any other manner whatsoever, shall be deemed guilty of a misdemeanor and upon

conviction thereof shall be fined not less than $100.00 nor more than $500.00, and upon conviction for a second or subsequent offense shall be fined not less than $500.00 nor more than $5,000.00, or imprisoned in the county jail not more than 1 year, or by both such fine and imprisonment in the discretion of the court.

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.106;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1959, Act 263, Eff. Sept. 1, 1959.

205.107 Computation of tax amount; rounding up to whole cent.

Sec. 17. Beginning not later than January 1, 2006, in determining the amount of the tax under this act, the seller shall compute the tax to the third decimal place and round up to a whole cent when the third decimal place is greater than 4 or round down to a whole cent when the third decimal place is 4 or less.

History: Add. 2004, Act 172, Eff. Sept. 1, 2004.

Compiler's note: Former MCL 205.107, which pertained to failure to make tax return, was repealed by Act 165 of 1980, Eff. Sept. 17, 1980.

205.108 Consumer's failure to comply with act; making false statement; penalty.

Sec. 18. Any consumer who refuses to pay the tax as required by this act, or refuses to comply with the provisions of this act, or makes to the seller a false statement or certificate indicating that the storage, use or consumption is not subject to the tax herein imposed, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500.00 nor more than $5,000.00, or imprisoned in the county jail not more than 1 year, or by both such fine and imprisonment in the discretion of the court.

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.108;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1959, Act 263, Eff. Sept. 1, 1959.

205.109 Collection or payment of tax; benefit to state, authority, and metropolitan areas.

Sec. 19. (1) The tax collected by the seller from the consumer or lessee under this act is for the benefit of this state, the authority, and the metropolitan areas of this state, including, but not limited to, local communities within the metropolitan areas. A person other than this state, the authority, and the metropolitan areas of this state shall not derive a benefit from the collection or payment of this tax.

(2) The legislature finds and declares that the purpose of the amendatory act that added this subsection is modernizing the tax system to help small businesses grow and create jobs in this state.

History: Add. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2014, Act 80, Eff. Jan. 1, 2015.

Compiler's note: Former MCL 205.109, which pertained to penalty for general violations, was repealed by Act 165 of 1980, Eff. Sept. 17, 1980.

Enacting section 1 of Act 80 of 2014 provides:

"Enacting section 1. This amendatory act does not take effect unless approved by a majority of the registered and qualified electors of this state voting on the question at an election to be held on the August regular election date in 2014. Except as otherwise provided in this enacting section, this amendatory act shall be submitted to the registered and qualified electors of this state at that election as provided by the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, and for the purpose of complying with section 31 of article IX of the state constitution of 1963. Notwithstanding other law, when submitted to the registered and qualified electors of this state, this amendatory act shall be presented with the following question:

"APPROVAL OR DISAPPROVAL OF AMENDATORY ACT TO REDUCE STATE USE TAX AND REPLACE WITH A LOCAL COMMUNITY STABILIZATION SHARE TO MODERNIZE THE TAX SYSTEM TO HELP SMALL BUSINESSES GROW AND CREATE JOBS

The amendatory act adopted by the Legislature would:

1. Reduce the state use tax and replace with a local community stabilization share of the tax for the purpose of modernizing the tax system to help small businesses grow and create jobs in Michigan.

2. Require Local Community Stabilization Authority to provide revenue to local governments dedicated for local purposes, including police safety, fire protection, and ambulance emergency services.

3. Increase portion of state use tax dedicated for aid to local school districts.

4. Prohibit Authority from increasing taxes.

5. Prohibit total use tax rate from exceeding existing constitutional 6% limitation.

Should this law be approved?

YES [ ]

NO [ ]"."

Enacting section 2 of Act 80 of 2014 provides:

"Enacting section 2. If approved by the registered and qualified electors of this state as provided in enacting section 1, this amendatory act takes effect January 1, 2015."

Compiler's note: Act 80 of 2014 was approved by a majority of the voters at the August 5, 2014 primary election. The election results were certified by the Michigan Board of State Canvassers on August 22, 2014.

Compiler's note: The conditions in enacting section 1 of Act 408 of 2012 were not met. Act 408 of 2012 did not go into effect.

Compiler's note: The conditions in enacting section 1 of Act 81 of 2014 were not met. Act 81 of 2014 did not go into effect.

205.110 Sourcing requirements.

Sec. 20. (1) For sourcing a sale subject to tax under this act, the following apply:

(a) If a product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(b) If a product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where the product is received by the purchaser or the purchaser's designee, including the location indicated by instructions for delivery to the purchaser, known to the seller.

(c) If subdivision (a) or (b) does not apply, the sale is sourced to the location indicated by an address for the purchaser available from the seller's business records maintained in the ordinary course of the seller's business, provided use of the address does not constitute bad faith.

(d) If subdivisions (a) through (c) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained at the completion of the sale, including the address of the purchaser's payment instrument if no other address is available, provided use of the address does not constitute bad faith.

(e) If subdivisions (a) through (d) do not apply or the seller has insufficient information to apply subdivisions (a) through (d), the sale will be sourced to the location indicated by the address from which the tangible personal property was shipped or from which the computer software delivered electronically was first available for transmission by the seller.

(2) For sourcing the lease or rental of tangible personal property, other than property included in subsection (3) or (4), subject to tax under this act, the following apply:

(a) For a lease or rental requiring recurring periodic payments, the first payment is sourced in the same manner provided for a sale in subsection (1). Subsequent payments shall be sourced to the primary property location for each period covered by the payment as indicated by the address of the property provided by the lessee and available to the lessor from the lessor's records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not considered altered by intermittent use at different locations such as business property that accompanies employees on business trips or service calls.

(b) For a lease or rental not requiring recurring periodic payments, the payment is sourced in the same manner provided for a sale in subsection (1).

(3) For sourcing the lease or rental of motor vehicles, trailers, semitrailers, or aircraft that are not transportation equipment, the following apply:

(a) For a lease or rental requiring recurring periodic payments, each payment is sourced to the primary property location as indicated by the address of the property provided by the lessee and available to the lessor from the lessor's records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not considered altered by intermittent use at a different location.

(b) For a lease or rental not requiring recurring periodic payments, the payment is sourced in the same manner provided for a sale in subsection (1).

(4) The lease or rental of transportation equipment shall be sourced in the same manner provided for a sale in subsection (1).

(5) Subsections (2) and (3) do not affect the imposition or computation of the tax under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, on leases or rentals based on a lump-sum or accelerated basis or on the acquisition of property for lease.

(6) As used in this section:

(a) "Receive" and "receipt" mean 1 or more of the following but exclude possession by a shipping company on behalf of the purchaser:

(*i*) Taking possession of tangible personal property.

(*ii*) Making first use of services.

(b) "Transportation equipment" means 1 or more of the following:

(*i*) Locomotives and railcars utilized for the carriage of persons or property in interstate commerce.

(*ii*) Trucks and truck-tractors with a gross vehicle weight rating of 10,001 pounds or greater, trailers, semitrailers, or passenger buses, which are registered through the international registration plan and operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(*iii*) Aircraft operated by air carriers authorized and certificated by the United States department of transportation or other federal or foreign authority to transport air cargo or passengers in interstate or foreign commerce.

(*iv*) Containers designed for use on or component parts attached or secured to the equipment included in subparagraphs (*i*) to (*iii*).

(7) A person may deviate from the sourcing requirements under this section as provided in section 12 or 13.

History: Add. 2004, Act 172, Eff. Sept. 1, 2004.

Compiler's note: Former MCL 205.10, which pertained to jeopardy assessments, was repealed by Act 165 of 1980, Eff. Sept. 17, 1980.

205.111 Deposit and disbursement of money; definitions.

Sec. 21. (1) Except as otherwise provided in this section, all money received and collected under this act must be deposited by the department of treasury in the state treasury to the credit of the general fund, to be disbursed only by appropriations by the legislature.

(2) The collections from the use tax imposed at the additional rate of 2% approved by the electors on March 15, 1994 must be deposited in the state school aid fund.

(3) In addition to the money deposited in the state school aid fund under subsection (2), from the money received and collected under this act for the state share, an amount equal to the sum of the following, as determined by the department, must be deposited in the state school aid fund:

(a) All revenue lost under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, as a result of the exemption of personal property under sections 9m, 9n, and 9o of the general property tax act, 1893 PA 206, MCL 211.9m, 211.9n, and 211.9o.

(b) All revenue lost from basic school operating mills as a result of the exemption of personal property under sections 9m, 9n, and 9o of the general property tax act, 1893 PA 206, MCL 211.9m, 211.9n, and 211.9o.

(c) All revenue lost to the state school aid fund as a result of the exemption under section 4(1)(gg).

(d) All revenue lost to the state school aid fund as a result of the exemption under section 4cc. A person that claims an exemption under section 4cc shall report the purchase price of the data center equipment as defined in section 4cc and any other information necessary to determine the amount of revenue lost to the state school aid fund as a result of the exemption under section 4cc annually on a form at the time and in a manner prescribed by the department. The report required under this subdivision must not include any remittance for tax and does not constitute a return or otherwise alleviate the person's obligations under section 6.

(e) All revenue lost to the state school aid fund as a result of the exclusion under section 2(1)(f)(*xv*).

(4) Money received and collected under this act for the local community stabilization share is not state funds, must not be credited to the state treasury, and must be transmitted to the authority for deposit in the treasury of the authority, to be disbursed by the authority only as authorized under the local community stabilization authority act, 2014 PA 86, MCL 123.1341 to 123.1362. The local community stabilization share is a local tax, not a state tax, and money received and collected for the local community stabilization share is money of the authority and not money of this state.

(5) Beginning October 1, 2016 and the first day of each calendar quarter thereafter, from the money received and collected under this act for the state share, an amount equal to the collections for the calendar quarter that is 2 calendar quarters immediately preceding the current calendar quarter of the tax imposed under this act at the additional rate of 2% approved by the electors on March 15, 1994 from the use, storage, or consumption of aviation fuel must be distributed as follows:

(a) An amount equal to 35% of the collections of the tax imposed at a rate of 2% on the use, storage, or consumption of aviation fuel must be deposited in the state aeronautics fund and must be expended, on appropriation, only for those purposes authorized in the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.1 to 259.208.

(b) An amount equal to 65% of the collections of the tax imposed at a rate of 2% on the use, storage, or consumption of aviation fuel must be deposited in the qualified airport fund and must be expended, on appropriation, only for those purposes authorized under section 35 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.35.

(6) The department shall, on an annual basis, reconcile the amounts distributed under subsection (5) during each fiscal year with the amounts actually collected for a particular fiscal year and shall make any necessary adjustments, positive or negative, to the amounts to be distributed for the next successive calendar quarter that begins January 1. The state treasurer or the state treasurer's designee shall annually provide to the operator of each qualified airport a report of the reconciliation performed under this subsection. The reconciliation report is subject to the confidentiality restrictions and penalties provided in section 28(1)(f) of 1941 PA 122, MCL 205.28.

(7) Beginning with the fiscal year ending September 30, 2024 and each fiscal year thereafter, from the money received and collected under this act for the state share, $75,000,000.00 must be deposited into the local government reimbursement fund created in section 3a of the Michigan trust fund act, 2000 PA 489, MCL 12.253a.

(8) As used in this section:

(a) "Aviation fuel" means fuel as that term is defined in section 4 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.4.

(b) "Qualified airport" means that term as defined in section 109 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.109.

(c) "Qualified airport fund" means the qualified airport fund created in section 34(2) of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.34.

(d) "State aeronautics fund" means the state aeronautics fund created in section 34(1) of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.34.

(e) "State school aid fund" means the state school aid fund established in section 11 of article IX of the state constitution of 1963.

History: 1937, Act 94, Eff. Oct. 29, 1937;—CL 1948, 205.111;—Am. 1949, Act 273, Eff. July 1, 1949;—Am. 1959, Act 263, Eff. Sept. 1, 1959;—Am. 1974, Act 309, Eff. Jan. 1, 1975;—Am. 1987, Act 260, Imd. Eff. Dec. 28, 1987;—Am. 1993, Act 326, Eff. May 1, 1994;—Am. 1994, Act 34, Imd. Eff. Mar. 7, 1994;—Am. 2010, Act 37, Imd. Eff. Mar. 31, 2010;—Am. 2014, Act 80, Eff. Jan. 1, 2015;—Am. 2015, Act 263, Eff. Mar. 22, 2016;—Am. 2020, Act 30, Imd. Eff. Feb. 13, 2020;—Am. 2021, Act 109, Eff. Feb. 3, 2022;—Am. 2023, Act 21, Imd. Eff. Apr. 26, 2023;—Am. 2023, Act 175, Imd. Eff. Oct. 24, 2023.

Compiler's note: Enacting section 1 of Act 80 of 2014 provides:

"Enacting section 1. This amendatory act does not take effect unless approved by a majority of the registered and qualified electors of this state voting on the question at an election to be held on the August regular election date in 2014. Except as otherwise provided in this enacting section, this amendatory act shall be submitted to the registered and qualified electors of this state at that election as provided by the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, and for the purpose of complying with section 31 of article IX of the state constitution of 1963. Notwithstanding other law, when submitted to the registered and qualified electors of this state, this amendatory act shall be presented with the following question:

"APPROVAL OR DISAPPROVAL OF AMENDATORY ACT TO REDUCE STATE USE TAX AND REPLACE WITH A LOCAL COMMUNITY STABILIZATION SHARE TO MODERNIZE THE TAX SYSTEM TO HELP SMALL BUSINESSES GROW AND CREATE JOBS

The amendatory act adopted by the Legislature would:

1. Reduce the state use tax and replace with a local community stabilization share of the tax for the purpose of modernizing the tax system to help small businesses grow and create jobs in Michigan.

2. Require Local Community Stabilization Authority to provide revenue to local governments dedicated for local purposes, including police safety, fire protection, and ambulance emergency services.

3. Increase portion of state use tax dedicated for aid to local school districts.

4. Prohibit Authority from increasing taxes.

5. Prohibit total use tax rate from exceeding existing constitutional 6% limitation.

Should this law be approved?

YES [ ]

NO [ ]"."

Enacting section 2 of Act 80 of 2014 provides:

"Enacting section 2. If approved by the registered and qualified electors of this state as provided in enacting section 1, this amendatory act takes effect January 1, 2015."

Compiler's note: Act 80 of 2014 was approved by a majority of the voters at the August 5, 2014 primary election. The election results were certified by the Michigan Board of State Canvassers on August 22, 2014.

Compiler's note: The conditions in enacting section 1 of Act 408 of 2012 were not met. Act 408 of 2012 did not go into effect.

Compiler's note: The conditions in enacting section 1 of Act 81 of 2014 were not met. Act 81 of 2014 did not go into effect.

Compiler's note: Enacting section 1 of Act 474 of 2014 provides:

"Enacting section 1. This amendatory act does not take effect unless House Joint Resolution UU of the 97th Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

House Joint Resolution UU was presented to the electors as Proposal 15-1 at the May 5, 2015 special election. The proposal to amend the constitution was not approved by the voters and Act 474 of 2014 does not go into effect.