

**Michigan Department of Treasury  
Tax Compliance Bureau  
Audit Division**



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**Other Deductions  
Manual**

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**June 2015**

## **Disclosure**

This manual is not intended as a statement of law, Department policy, or of the Treasurer's official position. The information contained in this manual has been prepared as instructional text. The purpose of this manual is to explain key provisions of the General Sales Tax Act and Use Tax Act.

Any references in this manual to Rules, Revenue Administrative Bulletins (RABs), Internal Policy Directives (IPDs) and Letter Rulings are based on the most recent versions available as of the date of this edition. The materials will be reviewed regularly and revised as needed. Where changes in the law supersede and conflict with anything in this document then the new law shall control.

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## **Chapter 1 – Introduction**

In general, sales and use tax exemptions are based on:

- What the item is
- Who purchases the item
- How the item is used

Frequently, a qualifying exemption from tax will be based on a combination of 2 or more of the 3 basic exemption types.

Currently, there are over 100 distinct exemptions provided for in the General Sales and Use Tax Acts. Generally, exemptions in one act are mirrored in the other, but there are instances when an exemption is not provided for in both acts. This manual highlights some of the more common exemptions and is not intended to be all-inclusive.

The industrial processing exemption is not addressed in this manual; there is a separate manual that deals specifically with the industrial processing exemption and its complexity.

It is the responsibility of all taxpayers to maintain adequate records and required exemption claims, certificates and documents.

**Note: Always reference current tax law. Do not rely solely on this manual for current interpretation of tax law since this manual may not keep pace with changes in the law. This manual replaces any earlier versions.**

References pertaining to this information can be found in the index under [Chapter 1](#)



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## Chapter 2 – Agricultural Production

### Sales Tax

The General Sales Tax Act provides an exemption for tangible personal property sold to persons engaged in a business enterprise and using or consuming the property in:

- Tilling, planting, caring for, or harvesting things of the soil
- Breeding, raising, or caring for livestock, poultry or horticultural products, including transfers of such products for further growth; or
- Commercial Fishing

The agricultural producing exemption in the General Sales Tax Act also includes the following when used in the production of agricultural products as a business enterprise:

- Machinery that is capable of simultaneously harvesting grain or other crops and biomass residue from grain or other crops.<sup>1</sup> Biomass is defined in the General Sales Tax Act and Use Tax Act as “crop residue used to produce energy or agricultural crops grown specifically for the production of energy.”
- Agricultural land tile, which means fired clay or perforated plastic tubing used as part of a subsurface drainage system for land
- Subsurface irrigation pipe
- Portable grain bins used to shelter grain and designed to be disassembled without significant damage to their component parts
- Grain drying fuel and equipment

**Note: This same kind of equipment and fuel may qualify for the industrial processing exemption if the grain is owned by the industrial processor.**

This exemption extends to servicers who use their equipment for agricultural or horticultural growth.

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<sup>1</sup> Machinery manufactured after 12/23/08 that is used for the purpose of harvesting agricultural biomass grown solely as an energy crop is included in this exemption.

## **Use Tax**

The Use Tax Act provides an exemption for tangible personal property sold to persons engaged in a business enterprise and using or consuming the property in:

- Tilling, planting, caring for, or harvesting things of the soil; or
- Breeding, raising, or caring for livestock, poultry or horticultural products, including transfers of such products for further growth

The agricultural producing exemption in the Use Tax Act also includes the following when used in the production of agricultural products as a business enterprise:

- Machinery that is capable of simultaneously harvesting grain or other crops and biomass residue from grain or other crops.<sup>2</sup> Biomass is defined in the General Sales Tax Act and Use Tax Act as “crop residue used to produce energy or agricultural crops grown specifically for the production of energy.”
- Agricultural land tile, which means fired clay or perforated plastic tubing used as part of a subsurface drainage system for land
- Portable grain bins used to shelter grain and designed to be disassembled without significant damage to their component parts

This exemption extends to servicers who use their equipment for agricultural or horticultural growth.

In contrast to the General Sales Tax Act, the exemption provided in the Use Tax Act does **not** include:

- Tangible personal property used in commercial fishing
- Subsurface irrigation pipe
- Grain drying fuel and equipment

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<sup>2</sup> Machinery manufactured after 12/23/08 that is used for the purpose of harvesting agricultural biomass grown solely as an energy crop is included in this exemption.

## **Exclusions**

The agricultural exemptions in the General Sales Tax and the Use Tax Act specifically exclude:

- Transfers of food, fuel, clothing, or any similar tangible personal property for personal living or human consumption
- Tangible personal property permanently affixed and becoming a structural part of real estate

## **Livestock**

Although the term **livestock** is not defined in the statute, it is generally used to include horses, cattle, sheep and other useful animals kept or raised on a farm or ranch. It can also include dogs, cats, birds, goldfish, etc. The exemption includes only livestock or the offspring of an animal being bred if the offspring are intended to be sold or intended to be used as work animals on a commercial farm. The breeding of an animal whose offspring will be used for the enjoyment of its owner or any other non-commercial farm use would not be exempt from tax. Therefore, it will be necessary for a breeder to maintain records to substantiate property consumed in exempt activities versus property consumed in taxable activities. The owner of livestock producing offspring for resale is required to be licensed for sales tax.

## **Examples:**

- Livestock handling equipment and horse equipment, other than a trailer, are usually exempt when purchased by a farmer who raises livestock for resale or who uses horses to till the soil.
- Handling equipment sold to boarding ranches, riding stables or individuals are usually taxable.
- A mare is purchased tax-exempt to breed race horses for sale. When the offspring are sold, sales tax must be collected on the retail-selling price (see below).

## **Sales by Farmers**

Farmers who sell more than food to final consumers are required to be licensed and pay sales tax on their taxable sales. It is immaterial whether the retail sales are made at the place of production, a roadside stand, a market, from a vehicle, or elsewhere.

Exempt food for human consumption includes sales of live animals purchased with the intent to be slaughtered for human consumption.

### ***Contractors***

Some products are often purchased and installed by a contractor for an agricultural producer. Therefore, a resale sales/use tax exemption may apply to the contractor's purchase of grain bins, tile, or irrigation pipe for installation on another's farm. The contractor's sale of portable grain bins or agricultural land tile to an eligible agricultural producer is exempt from sales and use tax. The contractor's sale of subsurface irrigation pipe to an eligible agricultural producer is exempt from sales tax but may be subject to use tax.

### ***Other Examples***

Sales of the following are **usually not subject to sales or use tax** when used in agricultural production as a business enterprise:

- Seeds and other reproductive portions of plants
- Fertilizer and similar substances for improving the quality of the soil
- Spray materials for insecticides, germicides, and fungicides
- Livestock, poultry, their feeds, and foodstuffs, including salt, bone meal, cod-liver oil, limestone, grit, oyster shell, and other similar substances used to sustain animals or poultry
- Sacks, wrappers, and other nonreturnable containers resold with crops; also binding twine and baling wire
- Machinery, tools, other equipment, repair parts, motor fuel, oil, grease, and other tangible personal property necessary for their operation and maintenance, with the exception of licensed highway vehicles, maintenance of these licensed highway vehicles, and property attached to or becoming a part of real estate
- Irrigation systems that remain personal property
- Greenhouses constructed by driving pipe into the ground and covering with a plastic framework. This is personal property, as it does not meet the **three prong test** to determine realty. See *Chapter 2 - Real vs. Personal Property of the Contractor Manual*.

- Electricity or gas used directly in producing agricultural products. When one meter measures both taxable and exempt usage, the farmer will have to substantiate the exempt portion. If the farmer's total electrical consumption exceeds 1,500 kwh per month (or 2,500 kwh per month for a home with electric heat) during the period of November to March, the consumption in excess will be presumed exempt if the farmer provides the seller with the approved agricultural producing exemption certificate
- The airplane, gas, oil, and parts used in crop-dusting airplanes licensed for restrictive use in agricultural service or fuel consumed in other equipment used for spraying crops
- Readily movable equipment such as portable hog houses and feeding troughs
- Boxes used to harvest fruit or vegetables. These containers usually have dual uses and are taxed on a percentage basis
- Tractor blades used to scrape organic matter from the barn floor and feedlot area
- Accessories sold as original equipment with tractors, such as heaters, two-way radios and air conditioners. Two-way radios sold separately would not qualify for the exemption, as they are not used to produce agricultural products

Sales of the following are **usually subject to sales or use tax** because they do not qualify for the agricultural producing exemption:

- Grass seed, fertilizers, equipment, and all other tangible personal property sold to individuals for use on lawns, non-commercial gardens, parks, boulevards, and golf courses, or for use by landscape gardeners
- Sales of tangible personal property used to construct, maintain, or repair barns, fences (other than portable fences), water supply systems, drains, and all other structures forming a part of real estate, other than qualifying subsurface irrigation pipe and land tile
- Pea gravel, metal outlet pipe or culvert, if used in a subsurface drainage system even when the land tile or perforated tubing is exempt
- Land tile used in the yard around the farm house
- Free stalls bolted to barns to hold farm animals. Bolted is usually construed as a permanent attachment to realty and meets the **three prong test** for determining realty. See *Chapter 2 - Real vs. Personal Property of the Contractor Manual*.
- Computer-controlled ventilation fans bolted to the barn

- Trucks with inseparable sprayer units sold to servicers who will use them in providing a spraying service to farmers. Vehicles including attachments are taxable if licensed for use on public highways
- Boxes used to ship commercial production to the processor. The agricultural processing exemption ends with harvesting
- Tangible property used to construct a grain silo that will become part of real estate
- Game animals, feed, supplies, etc. purchased by one who provides animals to be hunted. This business is considered to be a service.
- Prescription and nonprescription drugs, animal health products, dog food, feed additives, and supplies sold to veterinarians. Unless purchasing for resale, veterinarian purchases are taxable as they are used in providing a professional service.
- Equipment used to measure temperatures to detect spoilage in a grain storage bin. Although the law exempts certain grain storage bins, storage after harvest does not fall into the scope of the exemption. Storage is not tilling, planting, caring for, harvesting or transferring for further growth.
- Truck scales, storage/processing tanks, storage tank inventory monitoring equipment, a liquid storage tank, and a personnel elevator not used and consumed in the breeding, raising or caring of livestock, poultry or horticultural products.

### ***Commercial Fishing***

The General Sales Tax Act exempts commercial fishing. **The Use Tax Act has no such exemption.** Purchases made from out-of-state sellers are not exempt. Also, lease arrangements where the lessor collects use tax on rental receipts are not exempt from tax.

To qualify for the exemption, the items purchased must be used only by an owner-operator of the business enterprise in the direct gathering of fish, by net, line, or otherwise, not including a charter fishing business enterprise.

There are individuals in the business of harvesting bait, etc. for sale to others. These businesses do not qualify for the commercial fishing exemption unless their catch is fish. The exemption is limited to items used in the direct gathering of fish.

Tangible personal property that may be purchased **exempt** from sales tax includes:

- Nets of all types
- Bottom stakes
- Hook lines
- Baits
- Winches
- Lines
- Ropes
- Commercial fishing boats
- Oil and fuel
- Fish and depth finders
- Buoys
- Markers
- Anchors
- Any safety equipment required by law to be on board
- Any other property used in the direct gathering of fish

The raising of fish on fish farms qualifies for the agricultural producing exemption and does not rely on the exemption established for commercial fishermen.

References pertaining to this information can be found in the index under [Chapter 2](#)

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## Chapter 3 – Aircraft/Aircraft Parts

### Sales Tax

The General Sales Tax Act provides an exemption for sales to a **domestic air carrier** of:

- **Aircraft** with a maximum certified takeoff weight of at least 6,000 pounds used solely in the transport of air cargo, passengers, or a combination of both.
- **Parts and materials**, excluding shop equipment or fuel, affixed or to be affixed to:
  - An aircraft with a maximum certified takeoff weight of at least 6,000 pounds used solely in the transport of air cargo, passengers, or a combination of both.

### Use Tax

The Use Tax Act provides an exemption for the storage, use, or consumption by a **domestic air carrier** of:

- **Aircraft** with a maximum certified takeoff weight of at least 6,000 pounds used solely in the transport of air cargo, passengers, or a combination of both.
- **Parts and materials**, excluding shop equipment or fuel, affixed to or to be affixed to an aircraft that is owned or used by a domestic air carrier and is any of the following:
  - An aircraft with a maximum certified takeoff weight of at least 6,000 pounds used solely in the transport of air cargo or a combination of air cargo and passengers
  - An aircraft that is used solely in the regular scheduled transport of passengers
  - An aircraft that has a maximum certified takeoff weight of at least 6,000 pounds 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

**Domestic Air Carrier** is defined in both acts as an entity primarily engaged in the commercial transport for hire of cargo and/or passengers as a business activity. Both



acts exempt aircraft sold or purchased for subsequent lease to a domestic air carrier operated under a certificate issued by the Federal Aviation Administration under 14 C.F.R. 121, for use solely in the regularly scheduled transport of passengers.

### ***Aircraft Temporarily Located in Michigan***

- **Aircraft** temporarily located in Michigan for the purpose of a sale and pre-purchase evaluation, customization, improvement, maintenance, or repair are exempt from sales and use tax if:
  - The aircraft leaves Michigan within 15 days after sale and the completion of any pre-purchase evaluation, customization, improvement, maintenance, or repair that is associated with the sale; and,
  - The aircraft was not based in Michigan or registered in Michigan before or after the sale and the completion of any pre-purchase evaluation, customization, improvement, maintenance, or repair that is associated with the sale
- **Parts and materials**, excluding shop equipment or fuel, affixed to an aircraft are exempt from sales and use tax if:
  - The aircraft leaves Michigan within 15 days after the issuance of the final billing or authorization 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; and,
  - The aircraft was not based or registered in Michigan before or after the parts or materials were affixed to it

References pertaining to this information can be found in the index under [Chapter 3](#)

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## Chapter 4 – Bad Debts

A bad debt is that portion of an account receivable resulting from a sale that has become worthless. For federal income tax purposes, the worthless portion is allowed by the Internal Revenue Code (IRC) as a deduction from income. The deduction is computed based on the direct write-off method or the allowance method.

The **direct write-off method** identifies specific accounts that have become uncollectible. The deduction per the IRC takes place in the year the specific account has been determined to be uncollectible.

A calculation of **estimated** expected uncollectible accounts is known as the **allowance method of computing bad debts**. The estimate is based on experience and is not comprised of specific, identifiable uncollectible accounts receivable. The write-off generally takes place in the period that the sales on account are made.

For sales tax purposes, a bad debt is defined as that portion of a debt related to a taxable sale at retail or to prepaid sales tax on gasoline that has become worthless or uncollectible and that could be eligible as a deduction under the IRC.

For use tax purposes a bad debt is defined as any portion of a debt resulting from a seller's collection of the use tax on the purchase of tangible personal property or taxable services that has become worthless or uncollectible and that could be eligible as a deduction under the IRC.

Bad debt deductions **are limited to taxable transactions**; they **do not** include amounts for any of the following:

- Interest or finance charges
- Sales or use tax charged on the original sale
- Uncollectible amounts on property that remains in the possession of the seller until the full purchase price is paid, e.g., property placed on layaway
- Expenses incurred attempting to collect any account receivable or any portion of the debt that is subsequently recovered
- Accounts receivable sold to and in possession of a third party for collection
- Repossessed property

The statute of limitations for claiming a bad debt is four years from the date the debt becomes worthless and is, or could be, written off for federal income tax purposes. Records **must** be maintained to establish the validity of the deductions. These records include the following:

- Name of purchaser/debtor
- Date of sale(s) giving rise to the bad debt
- Price of the property and the amount of sales or use tax charged
- Amount of interest, finance or service charges included in the debt or account
- Dates and amounts of any payments made on a debt or account
- Portion of the debt or account not subjected to tax in the original transaction

If documentation is not maintained, the allowable maximum deduction shall be equal to the following:

$$\text{Bad Debt Expense} \times \frac{\text{Prior Year Taxable Sales}}{\text{Prior Year Total Sales}}$$

Furthermore, the worthless debt or account receivable must be identifiable. If an amount is deducted on the federal income tax return and the allowance method was used, the deduction on the sales tax return is generally allowed only when **specific accounts are identified** and determined to be worthless. If a taxpayer subsequently collects all or a portion of an account previously written off as uncollectible, the collected portion should be reported as a taxable transaction **in the period collected**. If the deduction was based on the formula, then the percentage calculated by using the above formula would be applied to the **amount collected** and this would be reported as a taxable sale. If a wholesaler of gasoline later collects an amount for which a prepaid sales tax bad debt deduction was claimed, the tax collected is used to adjust the credit due to the wholesaler on the next Form 429, *Fuel Supplier and Wholesaler Prepaid Sales Tax Report*. Beginning April 1, 2013, a wholesaler of diesel fuel will also follow this process.

**Taxpayer** for purposes of the bad debt deduction includes 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. A lender is entitled to a bad debt deduction (or refund of tax previously paid) if:

- The taxpayer who reported the tax and the lender execute and maintain a written election designating that the lender may claim the deduction;
- No deduction/refund was previously claimed or allowed on any portion of the account receivable; and
- The account receivable has been found worthless and written off by the taxpayer that made the sale or the lender

The acts define **lender** and limit the persons that may qualify as a lender. Lender includes persons who hold or who have held accounts receivable either purchased directly from a taxpayer who reported the tax or pursuant to a contract directly with a taxpayer who reported the tax. Lender also includes the issuer of a private label credit card (a card or similar instrument that carries, refers to, or is branded with the name or logo of a vendor and that can **only** be used for purchases from that vendor). Lender does **not** include the issuer of a credit card or similar instrument that can be used to make purchases from a person other than the vendor whose name or logo appears on the card (or that vendor's affiliates).

References pertaining to this information can be found in the index under [Chapter 4](#)

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## **Chapter 5 – Broadcasters**

Tax does not apply on tangible personal property sold to or purchased by persons licensed to operate commercial radio or television stations if the tangible personal property is used in the origination or integration of the various sources of program material for commercial radio or television transmission.

The exemption does not apply to vehicles for use on public roadways or to property used in the transmitting to or receiving from an artificial satellite.

The exemption specifically excludes a vehicle licensed and titled for use on public highways. Equipment which is an integral part of a vehicle licensed and titled for use on public highways is excluded from this exemption, even if it is used in the origination or integration of the various sources of program material for commercial radio or television transmission. If the equipment is bought or sold with the vehicle, it is considered an integral part of the vehicle and would not qualify for the exemption. However, equipment purchased separately from the vehicle and later placed in the vehicle does not automatically qualify for the exemption. **Only equipment that is readily removable from the vehicle and used in the origination or integration of the various sources of program material for commercial radio or television transmission may qualify for the exemption.**

References pertaining to this information can be found in the index under [Chapter 5](#)

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## **Chapter 6 – Churches**

The General Sales Tax Act and the Use Tax Act provide an exemption for churches to purchase items with **church funds** for **church use**.

Effective March 28, 2013, a church exempt from sales tax as (a) a health, welfare, educational, cultural arts, charitable, or benevolent organization not operated for profit that has been issued an exemption ruling letter to purchase items exempt from tax before July 17, 1998, signed by the administrator of the sales, use, and withholding taxes division of the Department, or (b) an organization not operated for profit and exempt from federal income tax under IRC 501(c)(3) or 501(c)(4), may purchase tangible property exempt from sales tax to the extent that it is used to raise funds or obtain resources necessary to carry out the purposes of the organization as stated in the organization's bylaws or articles of incorporation. The exemption for purposes of carrying out the purposes of the organization as stated in its bylaws or articles of incorporation is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the Department. The exemption for any single item of tangible personal property or vehicle used to raise funds or obtain resources is limited to a sales price that does not exceed \$5,000.

### ***Taxable Purchases***

A purchase by an individual on behalf of the organization is taxable, even if the church later reimburses the individual. Sales to religious organizations and societies composed of church members are taxable (e.g., men's club, women's guild) unless the exemption discussed above applies. No exemption applies if members or others reimburse the church for participation in a tour or program.

Vehicles purchased by a church and licensed for use on public highways are generally taxable. The exception is the purchase of a passenger van or bus that has a manufacturer's rated seating capacity of 10 or more and is used primarily for transporting people for religious purposes. Repairs, gas and maintenance on all church vehicles are exempt if paid for with church funds.

Sales of property used in a commercial enterprise by a church or a house of worship are taxable.

## ***Sales by Churches***

Retail sales made by a church are exempt from tax if aggregate sales at retail for the calendar year are less than \$5,000. Churches making retail sales are still required to register for a sales tax license even if their total sales are below the limit. If the total sales at retail are \$5,000 or greater, the tax is due on the entire amount. Sales tax billed separately must be remitted regardless of the \$5,000 exception.

### **Example:**

A church has a weekly fish fry during Lent. They contract with a caterer, who prepares the food. A ticket is purchased at the door to cover the cost of the meal, as well as the cost of the church's overhead (lights, heat, etc.). This is considered a commercial enterprise transaction, and the church is required to register and obtain a sales tax license.

## ***Contractors***

Generally, a contractor that affixes materials to realty is the consumer of materials and is liable for use tax, even when the church purchases the materials. Only tangible personal property acquired by a contractor and affixed to or made a structural part of a sanctuary is exempt from sales and use tax. As defined in the statutes, **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". The religious organization must be qualified under IRC 501(c)(3).

References pertaining to this information can be found in the index under [Chapter 6](#)

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## **Chapter 7 – Coins and Bullion**

The sale, purchase, storage, use, or consumption of investment coins and bullion is exempt from sales and use tax.

The acts define **bullion** as 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.

The acts also define **investment coins** as numismatic (collector) coins or other forms of money and legal tender manufactured of gold, silver, platinum, palladium (metallic element alloy mixed with gold, silver, etc.), 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.

References pertaining to this information can be found in the index under [Chapter 7](#)



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## ***Chapter 8 – Contact Lenses, Prosthetic Devices, Durable Medical Equipment, and Mobility Enhancing Equipment***

The following items are exempt from tax:

- A prosthetic device
- Durable medical equipment
- Mobility enhancing equipment

Repair and replacement parts for the above items are also exempt.

### ***Prosthetic Device***

**Prosthetic device** means 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 one or more of the following:

- Artificially replace a missing portion of the body
- Prevent or correct a physical deformity or malfunction of the body
- Support a weak or deformed portion of the body

### ***Durable Medical Equipment***

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

- Can withstand repeated use
- Is primarily and customarily used to serve a medical purpose
- Is not useful generally to a person in the absence of illness or injury
- Is not worn in or on the body

Durable medical equipment repair or replacement parts are defined by statute to include the components or attachments used in conjunction with durable medical equipment.

Therefore, single patient use items such as diabetic test strips and lancets are included in this exemption.

### ***Mobility Enhancing Equipment***

**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:

- Primarily and customarily used to provide or increase the ability to move from one place to another and is appropriate for use at home or on a motor vehicle
- Not generally used by a person with normal mobility

**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, the definition of 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.

Exempt prescription sales **must** be supported by **all** of the following:

- Record showing the date the prescription was issued
- Name of the person issuing the prescription
- Name of the individual for whose consumption prescription was issued
- Brief description of the property sold
- Amount charged to the customer

The original prescription should be attached to the seller's copy of the sales invoice as proof of its authenticity and exemption.

**Examples of items that may qualify as exempt if sold pursuant to a prescription or order:**

- Artificial eyes, limbs
- Braces
- Canes
- Corrective shoes
- Crutches
- Eyeglasses
- Hearing aids and hearing aid batteries
- Hydraulic lift (patient lift for vehicles and homes)
- Hypodermic syringes and needles
- Oxygen equipment
- Pacemakers
- Specially built hospital beds
- Trusses
- Walkers
- Wheelchairs

The sales of **nonprescription** apparatus, devices or equipment and their repair and replacement parts are **taxable**. All **contact lenses** are taxable.

***Medicare and Medicaid Purchases***

**Medicare** is a medical insurance program covering certain health services and drugs obtained by the insured with the cost of the program being shared between the federal government and the individual. The supplier sells tangible property or services directly to the person insured. Sales, other than prescription items, made to persons covered by Medicare are subject to tax.

**Medicaid** is a medical assistance program administered by the State of Michigan for the medically indigent. Sales of tangible property or services can be made **directly to** the appropriate state agency or there may be a contract arrangement with a fiscal agent. Payment made directly from state funds for Medicaid sales are exempt.

References pertaining to this information can be found in the index under [Chapter 8](#)

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## **Chapter 9 – Commercial Advertising**

The sale or purchase of commercial advertising elements is exempt when:

- The element is used to create or develop a print, radio, television, or other advertisement;
- The element is discarded or returned to the provider after the advertising message is completed; and
- The element is custom developed by the provider for the purchaser

**Commercial advertising elements** are specifically defined in the statute as:

- A negative or positive photographic image
- An audiotape or videotape master
- A layout
- A manuscript
- Writing of copy
- A design
- Artwork
- An illustration
- Retouching
- Mechanical or key line instructions

**Commercial advertising elements do not include** black and white or full color process separation elements, an audiotape reproduction or a videotape reproduction; therefore, these items are taxable.

References pertaining to this information can be found in the index under [Chapter 9](#)

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## **Chapter 10 – Communication Service Providers**

### **Sales Tax**

The sale of a prepaid telephone calling card or a prepaid authorization number for telephone use rather than resale, including the reauthorization of a prepaid telephone calling card or a prepaid authorization number, is subject to sales tax.

### **Use Tax**

The use or consumption of certain **communication services** is subject to use tax in the same manner as tangible personal property.

### **Intrastate (Within Michigan)**

**Taxable** intrastate telecommunications services include:

- Private communications service
- Ancillary services
- Conference bridging service
- 900 service
- Pay telephone service other than coin-operated telephone service
- Paging service; and
- Value-added non-voice data service

**Exempt** intrastate telecommunications services include:

- 800 service
- Coin-operated telephone service
- Fixed wireless service
- Prepaid calling service
- Telecommunications nonrecurring charges

- Directory advertising proceeds

### ***Interstate (Between States)***

Interstate telephone communications are generally taxable. This includes telephone communications that originate **or** terminate in this state if the charge for the service is billed to a Michigan service address or phone number.

#### **Taxable** interstate telecommunications services **include**:

- Conference bridging service
- 900 service
- Pay telephone service other than coin-operated telephone service
- Value-added non-voice data service
- Paging service

#### **Exempt** interstate telecommunications services **include**:

- Private communications service
- 800 service
- Coin-operated telephone service
- Fixed wireless service
- Prepaid calling service
- Telecommunications nonrecurring charges
- International telecommunications service

**Note:** In the case of a bundled transaction that includes telecommunications service, ancillary service, internet access, or audio or video programming, the purchase price may be attributable to both taxable and nontaxable products. The Department may tax the purchase price attributable to the nontaxable products unless the provider can identify that portion from its regularly kept books and records. The same rule applies to intrastate telecommunications services or telecommunications services between Michigan and another state and other billed services not subject to use tax if they are aggregated with and not separately stated from charges for taxable telecommunications services.

### ***Exempt Entities***

Sales of communication services to the following **are exempt** from tax:

- United States Government and its entities
- State of Michigan and its entities
- American Red Cross
- Nonprofit schools
- Nonprofit hospitals
- Nonprofit homes for the aged or children
- Nonprofit charitable institutions

### ***Purchases by Communication Service Providers***

**Machinery and equipment** used in providing taxable communication services are exempt from tax if they are:

- Located on the premises of the subscriber; or
- Central office equipment or wireless equipment directly used or consumed in transmitting, receiving, or switching 2-way interactive communication. Central office equipment or wireless equipment does not include distribution equipment including cable or wire facilities



The qualifying machinery and equipment is only exempt to the extent it is used for an exempt purpose. However, the statute contains an irrefutable presumption that 90% of total use is for exempt purposes.

References pertaining to this information can be found in the index under [Chapter 10](#)

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## Chapter 11 – Computer Software

### Definitions

**Computer Software** is a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task. This includes operating software, systems software, or application software.

**Prewritten Computer Software (Canned Software)** is computer software that is **delivered by any means** and that is not designed and developed to the specifications of a specific purchaser.

Although not specifically defined in either the Sales Tax Act or Use Tax Act, **Custom Software** generally refers to computer software originally designed for the **exclusive** use and special needs of the purchaser.

The following computer software charges are exempt from sales and use tax:

- Charges for custom software
- Charges for technical support (e.g., phone support), if optional **and** separately stated
- Charges for modifying prewritten computer software to a purchaser's needs, **if** the modification charges are separately stated and identified
- Charges for software, which is to be used in an exempt activity (e.g., industrial processing)

### Software Maintenance Contracts

In many cases, sales of prewritten computer software are accompanied by the sale of a software maintenance contract. Software maintenance contracts may include any combination of phone support, software updates, and software upgrades. In the majority of instances, these maintenance contracts allow the purchaser to receive upgrades/updates for a stated period of time. If the purchaser receives an upgrade during the period of time covered, the maintenance contract would be subject to tax.

- **Single Period Agreements** – Agreement covers one period (typically a year) with payment being made at the beginning of the period or at stated intervals throughout the period covered. If an update or upgrade is received during this single period, the contract would be subject to tax

- **Multiple Period Agreements** – Agreement to cover multiple periods (typically multiple years) that is paid in full at the beginning of the contract or at stated intervals throughout the period covered (e.g., annually). These agreements are not renewed each period. If an update or upgrade is received during any of the periods covered, the entire contract would be subject to tax
- **Renewable Agreements** – Agreement covers a stated number of periods (typically a number of years) but must be renewed each period. Each period is considered a separate transaction and tax would apply if an update or upgrade is received during that specific period

If software updates or software upgrades were received and the maintenance contract separately states taxable items (upgrades/updates) and non-taxable items (phone support), tax would be applied to the taxable items of the maintenance contract. If the maintenance contract is one lump sum amount, then the entire amount would be subject to tax.

If the purchaser does not receive an upgrade/update during the period of time covered, the maintenance contract would be exempt from tax.

### ***License/Subscription to Use Prewritten Computer Software***

The term **license** is not defined in the Sales or Use Tax Act; however, a license is an agreement granting a **right to use** a software program or code under the terms and conditions contained in the license. A license may be granted whether or not a copy of the program or any code is provided to the licensee. In general, a subscription to access software will be treated the same as a license to use software.

### ***Sales Tax***

License to use prewritten computer software is subject to sales tax if a copy of the software code or program is provided to the buyer along with the license.

### ***Use Tax***

License to use prewritten computer software is subject to use tax regardless of whether or not a copy of the code or software is provided to the buyer along with the license.

## ***Right to Access/Use Prewritten Computer Software***

The right to access/use prewritten computer software will generally not be subject to sales tax if the consumer does not receive either a copy of the software program or any part of the program's computer code. However, since a license to use tangible personal property is taxable under the Use Tax Act, the right to access prewritten computer software pursuant to a license or subscription agreement will be subject to use tax.

Reciprocity and credit for tax due and paid to another state may be applicable.

## ***Sourcing***

If a transaction includes not only a license agreement but also a copy of the software itself and the software is received by the purchaser at a business location of the seller, the sale is sourced to that business location. If the software is not received by the purchaser at the 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, as indicated by instructions for delivery.

Where access to and use of prewritten computer software is purchased by a Michigan taxpayer, where no copy of the software is provided to the purchaser, and the software is placed or remains on the seller's (or a third party's) server in Michigan or in another state, the transaction would be sourced according to the hierarchy outlined in MCL 205.110(1)(c) and 205.110(1)(d), as follows:

**(1)(c):** to the location indicated by an address for the purchaser available from the seller's business records maintained in the ordinary course of business, provided use of the address does not constitute bad faith, or;

**(1)(d):** if (1)(c) above does not apply, 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.

## ***Mixed Transactions***

A Single Mixed Transaction (one transaction) requires application of the incidental test, which is based on *Catalina's incidental to service* test.

A Multiple Mixed Transaction involves more than one transaction and each transaction is evaluated separately.

**Example 1:**

Company A purchases prewritten computer software from Company B. At the time of purchase, Company A purchases optional phone support, which is separately itemized and negotiated. In this example, there are two separate transactions: the purchase of the prewritten computer software, which is taxable, and the purchase of optional and separately itemized/negotiated phone support, which is exempt.

**Example 2:**

Company A purchases prewritten computer software from Company B. At the time of purchase, Company A negotiates with Company B to modify a portion of the software to their specific needs. The modifications are optional, separately negotiated, and separately itemized on the purchase contract/sales invoice. The purchase of the prewritten computer software is taxable, while the charges to modify the software to the specific needs of Company A are exempt (custom software).

References pertaining to this information can be found in the index under [Chapter 11](#)

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## **Chapter 12 – Conversion**

The Use Tax Act defines **convert** to mean 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 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 titled in the name of the dealer shall not be considered to be converted prior to sale or lease by that dealer.

In addition, the definition of **purchase** per the Use Tax Act includes converting tangible personal property acquired for a use exempt from the tax levied under the act to a use not exempt from the tax levied under the act. The Use Tax Act also states as part of the definition of **use** that converting tangible personal property acquired for a use exempt from the tax levied under the act to a use not exempt from the tax levied under the act is a taxable use.

### ***Application for All Taxpayer and Business Types***

The following items should be considered in relation to the definition of **convert**:

- With the exception of certain motor vehicles (discussed below), all tangible personal property and all services can be converted from an exempt use to a taxable use
- Conversion under the statute is a one-way scenario and will only result in a tax. No credits or refunds are available when tangible personal property or services are converted from a taxable use to an exempt use
- With the exception of new vehicle dealers (discussed below), the Act does not specify a different tax base upon which use tax is calculated when property or services are converted; therefore, the tax base is the original purchase price

### ***Application to Automobile Dealers***

See the “Vehicles” section of this text.

References pertaining to this information can be found in the index under [Chapter 12](#)

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## **Chapter 13 – Delivery Charges**

**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 transportation, shipping, postage, handling, crating, and packing. Delivery charges do not include charges for delivery of direct mail from delivery charges if the direct mail charges are separately stated on an invoice or similar billing document given to the purchaser.

Delivery charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property from the seller to the purchaser, are included in the definition of **sales price** under the Sales Tax Act and **purchase price** under the Use Tax Act. It is immaterial whether such transportation charges are billed separately or whether they are paid by the seller or the purchaser.

### **Ownership**

Ownership can be determined by (this list is not all inclusive):

- Who bears the risk of loss?

Ownership generally resides with the party who bears the risk of loss. This is determined by the party who is responsible to replace damaged or destroyed product. Risk of loss generally resides with the seller unless formally transferred by an agreement or contract to the purchaser.

- What are the shipping details?

Free on Board (FOB) with an identified physical location can be used to determine the point at which ownership for the shipment passes from the seller to the purchaser.

### **Examples:**

FOB Origin:

- Buyer assumes title and control of the goods when carrier signs bill of lading
- Buyer assumes risk of transportation and is entitled to route the shipment
- Buyer can file claims for loss or damage

FOB Destination:

- Seller maintains title and control of the goods until delivered and contract completed
- Seller selects carrier and is responsible for risk of transportation
- Seller can file claims for loss or damage

Shipping details cannot be relied upon as the determining factor in all situations.

### ***Seller Engaged in a Separate Delivery Business***

Delivery charges for a seller delivering its own product are exempt from tax if:

- The charges are incurred or to be incurred after the transfer of ownership from the seller to the purchaser; and
- The seller is simultaneously engaged in a separate delivery service business

A seller, simultaneously engaged in a separate delivery service business, can substantiate delivery charges are exempt from tax when all four of the following requirements are met:

- The customer has the option to either pick up or have the merchandise delivered (thus, the delivery service is not always necessary to complete the transfer of tangible personal property or the performance of the transaction);
- The delivery service charge is separately negotiated and contracted for on a competitive basis and is not a cost in calculating the merchandise price, as the customer pays a separate price (thus, the delivery charge is not incidental to the purchase price - demonstrating a separate service transaction);
- The taxpayer's books and records separately identify the transactions used to determine the tax on the sale at retail; and
- Delivery service records show a net profit (thus, the delivery service has evidence of a separate competitive, commercial endeavor)



### ***Seller Not Engaged in a Separate Delivery Business***

Delivery charges on merchandise delivered by a seller who is not engaged in a separate delivery service business are taxable if the charges are incurred prior to the transfer of ownership. Delivery charges are not taxable if incurred after the transfer of ownership.

### ***Exempt Property***

A seller is not liable under the Act for delivery charges allocated to the delivery of exempt property.

If a shipment is comprised of both taxable and exempt property, the seller should allocate the delivery charge based on:

- A fraction equal to the total sales price of the taxable property divided by the total sales price of all property in the shipment; or
- A fraction equal to the total weight of the taxable property divided by the total weight of all property in the shipment

References pertaining to this information can be found in the index under [Chapter 13](#)

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## **Chapter 14 – Demonstration**

Property purchased for demonstration purposes is exempt. See the “Vehicles” section of this text.

Demonstration is the display or operation of a product in order to induce actual retail sales by enticing actual customers to buy the product.

**All** of the following guidelines must be met to qualify for demonstration purposes:

- The product was purchased
- The product is being used for bona fide demonstration purposes
- The sole use of the product is for demonstration
- The item is not a sample. Title and possession is transferred when samples are given away.
- The taxpayer is in the business of selling the type of property demonstrated
- Title is retained by the company using the product for demonstration

Demonstration activities may include:

- Product display
- Salesperson using the product to show the use or features of the product
- Customer using the product to see how the product operates

Activities that do not constitute demonstration include:

- Advertising of the product
- Company personnel using the product for their own personal use
- Company personnel using the product for testing, quality control, or marketing purposes

If **all** of the above guidelines are not met, refer to *Chapter 13 - Inventory Withdrawals/Consumed Goods* of the *Industrial Processing Manual* for further guidance.

If a company retains title to the property and the above criteria are met, the item can qualify as demonstration property even if independent representatives make the demonstration.

Any shelving, equipment, software, electricity, etc. used in displaying or demonstrating the demonstration property is taxable, since those items are not sold in the ordinary course of business.

Any subsequent sale of the item used for demonstration is subject to sales tax on the retail selling price. If the items used for demonstration are eventually given away, tax is due on purchase price unless an exemption applies (e.g., a qualified exempt entity).

### ***Exempt Examples***

#### **Example 1:**

A furniture retailer withdraws furniture from purchased inventory. The furniture is used in company showrooms in Michigan and throughout the country. The furniture is used for display purposes only and **not** used for the retailer's own general use at any time. The furniture is not sellable and is destroyed.

#### **Example 2:**

A chain saw retailer has its own salespersons demonstrate chain saws to prospective customers. The chain saws are not used for any other purpose.

### ***Taxable Examples***

#### **Example 1:**

A retailer of computers uses inventory items for display and **after-market** training purposes.

#### **Example 2:**

A retailer of snowmobiles uses the same snowmobile for display and racing purposes.

**Example 3:**

A furniture manufacturer withdraws furniture from finished goods inventory. The furniture is used in company showrooms in Michigan and throughout the country. The furniture is used for display purposes only and **not** used for the manufacturer's own general use at any time. The furniture is not exempt for demonstration purposes because it was not purchased.

References pertaining to this information can be found in the index under [Chapter 14](#)

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## **Chapter 15 – Direct Mail**

**Direct mail** means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are 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.

The statutes also explain the sourcing of a sale of direct mail. 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.

The following are methods to collect and remit tax for direct mail.

- If **an exemption form** is provided to the seller, the purchaser is obligated to remit the tax on a direct pay basis. The exemption form remains in effect for all subsequent sales of direct mail by the seller to the purchaser until revoked in writing
- If the purchaser provides information to the seller indicating the taxing jurisdictions (states and others who tax where direct mail is distributed) of the recipients of direct mail, the seller is obligated to collect and remit the tax according to that delivery information
- If the purchaser provides the seller with a direct pay permit the purchaser is responsible for remitting the tax
- If none of the above applies, the seller collects tax from the purchaser and the seller remits tax to this state

References pertaining to this information can be found in the index under [Chapter 15](#)

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## **Chapter 16 – Drop Shipments**

A **drop shipment** (or third party sale) is a transaction where an out-of-state retailer accepts an order from a Michigan consumer. The out-of-state retailer then places this order with a third party. The out-of-state retailer directs the Michigan wholesaler to ship the property directly to the Michigan consumer.

To be a drop shipment, all of the following **must be true**:

- Wholesaler or manufacturer is located in Michigan
- The retailer must be located outside Michigan
- The consumer must be located in Michigan

**Michigan wholesalers are not liable** for Michigan sales tax on drop shipments **if** they submit a list to the Michigan Department of Treasury on an annual basis of all Michigan drop shipments. The list should include **all** of the following for both the Michigan purchaser and the out-of-state retailer:

- Name
- Address
- Federal ID Number (if available)

The Michigan purchaser **is liable for use tax** on the **purchase price** of tangible personal property, **unless** the tangible personal property was previously taxed or exempted by the Use Tax Act.

References pertaining to this information can be found in the index under [Chapter 16](#)

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## **Chapter 17 – Exemptions and Requirements**

### **Claim for Exemption from Tax**

A claim for exemption from sales or use tax is **a purchaser's statement to the seller stating that there is a reason for which tax should not be charged on the sale of tangible personal property or taxable services**. This claim can be achieved by the purchaser providing a document that tells the seller that the item(s) being purchased is (are) exempt from sales or use tax.

The seller shall obtain from the buyer identifying information and the reason for claiming the exemption. This relieves the seller from tax liability if it is established that the claim is invalid. This does not apply if the seller fraudulently fails to collect the tax, solicits a purchaser to make an improper claim for exemption, or accepts an exemption form for an entity-based exemption under the circumstances outlined in MCL 205.62(5)(a)&(b). An exemption claim must be made by the customer for each exempt purchase, unless a blanket exemption form is completed. A paper exemption form must contain the signature of an authorized purchaser. Additionally, a seller who obtains a fully completed exemption form or captures the relevant data within 120 days after the sale is not liable for the tax. If the seller has not obtained an exemption form or the relevant data, it may later prove that the transaction was not subject to tax by other means or by obtaining a fully completed exemption form from the purchaser according to the time limits prescribed in MCL 205.62(7).

### **Various Statutory Exemptions**

The more common exemptions allowed by the General Sales and Use Tax Acts are:

- Sales for resale
- Sales for agricultural production
- Sales for industrial processing
- Sales to governmental entities
- Sales not for resale to nonprofit schools, nonprofit hospitals, and churches
- Sales not for resale to other nonprofit organizations
- Sales for commercial fishing
- Sales of materials consumed in contracts and made a structural part of the real estate of a nonprofit hospital or nonprofit housing, or church sanctuary

### ***Documentation Needed to Support an Exemption***

If exemption is claimed, a record shall be kept of:

- The name and address of the person to whom the sale is made
- The date of the sale
- The article purchased
- The reason for claiming the exemption
- The amount of the sale
- The sales tax license number, if a resale/lease exemption is claimed

### ***Acceptable Exemption Claims***

- The prescribed claim Form 3372, *Michigan Sales and Use Tax Certificate of Exemption*
- Any exemption certificate found in a Sales and Use Tax Administrative Rule
- The Uniform Sales & Use Tax Certificate – Multi-jurisdiction, approved by the Multistate Tax Commission
- A purchase order issued by the purchaser
- The Streamlined Sales and Use Tax Agreement Certificate of Exemption
- The same information in another format, from the purchaser

### ***Blanket Purchase Exemption Form***

- Renewed every 4 years, unless there is a recurring business relationship between the seller and the purchaser (no more than 12 months between sales)
- Lesser period if agreed upon by the seller and the purchaser
- Will be superseded by conflicting purchase order for that particular purchase only



## ***Tax Exemption Numbers***

The Michigan Department of Treasury does not issue tax exemption numbers. Sellers should not accept a **number** as evidence of exemption from sales and use taxes. A sales tax license or use tax registration number may **support** a tax exemption claim based on resale or for lease.

**Note: The specific exemption requiring a copy of the nonprofit exemption letter supersedes the general exemption requirements.**

References pertaining to this information can be found in the index under [Chapter 17](#)

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## Chapter 18 – Extractive Operations

The State of Michigan allows an exemption from sales and use tax for extractive operators. This extractive operations exemption is allowed for tangible personal property used or consumed in the activity. The Sales and Use Tax Acts define extractive operations as the activity of taking or extracting for resale ore, oil, gas, coal, timber, stone, gravel, clay, minerals, or other natural resource material. An **extractive operator** is a person who, either directly or by contract, performs extractive operations. The natural resource material may be taken from the extractive operator's own land or from the land of another, but it must be extracted for resale.

Extractive operations begin when contact is made with the actual type of natural raw product being recovered. No exemption is available until such contact is made. Thus, activities such as drilling, prospecting, and exploration, as well as equipment, materials, and supplies used in these activities, are taxable.

Exempt activity includes:

- All necessary processing operations before shipment from the place of extraction
- 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

Generally, tangible personal property consumed or used in transporting the product from the place of extraction is taxable. However, the statute provides that 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.

Vehicles, including special bodies or attachments, that are required to display a vehicle permit or license plate to operate on public highways are specifically taxable. These vehicles are not eligible for any exemption based upon use in extractive operations.

Additionally, tangible personal property used or consumed in the construction, alteration, improvement or repair of buildings, storage tanks, storage and housing facilities is taxable. As in industrial processing, storage of extracted natural resources is a taxable activity and equipment, materials, and supplies used in storing, withdrawing, or distributing the resources are taxable.

*Exemption for property used as or at mineral-producing property:* Effective December 20, 2012, a person subject to sales tax may exclude from the gross proceeds used for the computation of sales tax the sale of tangible personal property to a taxpayer for use as or at mineral-producing property. Also effective December 20, 2012, use tax 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.

For both sales and use tax exemptions, the terms **taxpayer** and **mineral-producing property** means those terms as defined in MCL 211.782 of the mineral severance tax.

If tangible personal property is being used for both extractive operations and for a taxable activity, the exemption is only available to the extent of the exempt usage. The percentage of exempt use must be determined by a reasonable formula or method approved by the Department.

When selling the extracted natural resources to a wholesaler or manufacturer for the purpose of resale and a resale exemption from sales tax is claimed, the extractive operator is not required to pay tax. However, should the extractive operator make a sale to the ultimate consumer, sales tax must be remitted on the gross proceeds. Similarly, if the extractive operator self-consumes any of its own product, use tax on the fair market value of the product must be remitted.

The following charts list examples of common equipment and activities involved in extractive operations and the likely taxability of each. As noted in the charts, these categorizations are subject to change, as facts and circumstances differ from one taxpayer to another.

**Taxability Chart – Types of Logging Equipment**

No.	Description	Most Likely Categorization (Dependent on Facts & Circumstances)
1	<b>Axes</b> - Used to cut trees down	Exempt
2	<b>Bulldozer</b> - Used to build roads	Taxable
3	<b>Bunching Shears</b> - Cuts wood	Exempt
4	<b>Chain Saw</b> - Cuts wood	Exempt
5	<b>Chipper</b> - Used to chip wood branches after tree has been cut down	Exempt
6	<b>Chip Truck</b> - Used to haul the chipped wood	Taxable
7	<b>De-limber</b> - Cuts the limbs off the log of wood	Exempt
8	<b>Dump Trucks</b> - Used to move equipment, haul products, & build roads.	Taxable [unless used to transport to temporary storage – see #13 below]
9	<b>Forwarder</b> - Used for logging & skidding pulpwood. Also used for cutting after the trees are laid on the ground.	Exempt
10	<b>Grapple Hooks</b> - Grabs several logs to bring them out of the woods.	Exempt
11	<b>Grapple Skidder</b> - Brings the whole tree out of the woods after it has been cut & laid on the ground.	Exempt
12	<b>Harvester</b> - Used for logging & skidding pulpwood. Also used for cutting after the trees are laid on the ground.	Exempt
13	<b>Loader</b> - Used to transport timber from the point of extraction to a place of temporary storage at the extraction site and/or 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	Exempt
14	<b>Skyline/Skycar</b> - Brings the trees out of the woods	Exempt
15	<b>Vehicles licensed for highway use</b>	Taxable

**Taxability Chart – Types of Oil & Gas Extraction Equipment**

No.	Description	Most Likely Categorization (Dependent on Facts & Circumstances)
1	<b>Blow out preventers (BOP's)</b> - To control blowouts and casing pressure either in the annular space between the casing and drill pipe or in an open hole.	Taxable
2	<b>Brine and salt tanks</b> - Used for storage and disposal of waste	Exempt
4	<b>Buildings – Flooring</b> - If thicker for equipment to sit on.	Exempt
5	<b>Casing pipe and drive pipe</b> - If used in production and 8" (8 5/8" O.D.) or under	Exempt
6	<b>Casing pipe and drive pipe</b> - If over 8" (8 5/8" O.D.)	Taxable
7	<b>Casing cement</b> - Used to bond casing to the walls of the well bore.	Taxable
8	<b>Casing (pipes, heads, hangers, spools)</b> - Left in dry hole.	Taxable
9	<b>Casing heads, hangers, and spools</b> - If both ends are 8" or under	Exempt
10	<b>Casing heads, hangers, and spools</b> - If both ends are over 8"	Taxable
12	<b>Chemicals or acids</b> - Used in the treatment of crude oil, gas, brine, or other natural resources.	Exempt
13	<b>Christmas trees, derricks, or other wellhead equipment</b> - Control valves, pressure gauges, and chokes assembled at the top of the well to control the flow of oil and gas after the well has been drilled and completed.	Exempt
14	<b>Comminglers</b> - Sometimes called production packs.	Exempt
15	<b>Compressor</b> - Depends on use. Taxable if used to boost pressure for transmission in pipe lines. Exempt if used for the purpose of removing moisture from the product. Normally taxed as a percentage.	Taxable/Exempt
16	<b>Equipment, materials, and supplies</b> - Used in exploring, prospecting, or drilling for oil, gas, brine, or other natural resources.	Taxable
17	<b>Equipment, materials, and supplies</b> - Used in the storage, withdrawing, or distribution of oil, gas, or brine from a storage facility.	Taxable

No.	Description	Most Likely Categorization (Dependent on Facts & Circumstances)
18	<b>Explosives or acids</b> - Used in fracturing, acidizing, or shooting wells.	Exempt
19	<b>Fishing tools</b> - Used to recover equipment lost in well.	Taxable
20	<b>Flow lines</b> - Used for the movement of the oil and gas from one processing function to another.	Exempt
21	<b>Gas well unit equipment</b> - Heater treater, dehydrator, and separator.	Exempt
22	<b>Indirect heaters (Gas)</b> - Keeps gas from freezing. Can be near well head prior to separator. Depends on how and where used.	Exempt/Taxable
23	<b>Insulated tanks</b> - Used to recover natural gas from crude oil after the <b>heater treater</b> process.	Exempt
24	<b>L.A.C.T. (Lease Automatic Custody Transfer) units</b> - Automated system for measuring and transferring oil from a lease-gathering system into a pipeline.	Exempt
25	<b>Meters</b> - Used in production.	Exempt
26	<b>Meters</b> - Used to measure for payments to producers, royalty payments, and severance tax.	Taxable
27	<b>Mud (Magcobar, Magcogell, Lagel, and Mud Seal)</b> - Used to hold and seal casing to hold back subsurface pressure. Brings cuttings to surface, cools and lubricates the bit and drilling stem.	Taxable
28	<b>Packer</b> - Seals the hole. Used to block the flow of fluids through the annular space between the tubing and the wall of the wellbore by sealing of the space between them. Depends on how and where used.	Exempt/Taxable
29	<b>Piping, valves or pumps</b> - Used before movement or transportation of the natural resources from the production area.	Exempt
30	<b>Piping, valves or pumps</b> - Used after movement or transportation of the natural resources from the production area.	Taxable
31	<b>Safety equipment</b> - Alarms, fans, gas masks at sour gas plants.	Exempt
32	<b>Servicers</b>	Taxable
33	<b>Signs</b>	Taxable

No.	Description	Most Likely Categorization (Dependent on Facts & Circumstances)
34	<b>Storage tanks</b> - Storage of oil produced.	Taxable
35	<b>Tangible personal property</b> - Consumed or used in extracting the lithologic units necessary to process iron ore or used or consumed in depositing tailings from hard rock mining processing.	Exempt
36	<b>Tangible personal property</b> - Consumed or used in the construction, alteration, improvement, or repair of buildings, storage tanks, and storage and housing facilities.	Taxable
37	<b>Tangible personal property</b> - 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.	Taxable
38	<b>Tangible personal property</b> - Produced and-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.	Taxable
39	<b>Tanks</b> - on lease site on Central Production Facility (CPF) – Used to separate gas and oil.	Exempt
40	<b>Thread protectors</b> - Screws onto or into pipe threads to protect threads from damage when the pipe is not in use.	Taxable
41	<b>Tools</b> - on licensed vehicles	Taxable
42	<b>Treatment tanks</b>	Exempt
43	<b>Vehicles</b> - licensed to operate on public highways.	Taxable
44	<b>Weather protection</b> - For exempt equipment and gauges. Does not include buildings.	Exempt
45	<b>Well pump equipment</b>	Exempt

**Taxability Chart – Types of Sand & Gravel Extraction Equipment & Activities**

No.	Description	Most Likely Categorization (Dependent on Facts & Circumstances)
1	<b>Bulldozer</b> - Used to build roads	Taxable
2	<b>Bulldozer</b> - Used in pit	Exempt
3	<b>Compressors</b> - to pump water out of pit	Exempt
4	<b>Conveyors</b>	Exempt
5	<b>Crushing Equipment</b>	Exempt
6	<b>Hoppers</b>	Exempt
7	<b>Feeders</b>	Exempt
8	<b>Removal of topsoil/trees before contact with gravel</b>	Taxable
9	<b>Screening</b>	Exempt
10	<b>Separators</b>	Exempt
11	<b>Sorters</b>	Exempt
12	<b>Trucks or Vehicles</b> – not used to move gravel out of pit	Taxable
13	<b>Trucks or Vehicles</b> - used to move gravel out of pit, not licensed for use on public highways	Exempt
14	<b>Washing Equipment</b>	Exempt
15	<b>Road Grading</b>	Taxable
16	<b>Snow Removal</b>	Taxable

References pertaining to this information can be found in the index under [Chapter 18](#)



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## **Chapter 19 – Federal Preemption**

The General Sales and Use Tax Acts grant exemption to the following:

- Sales to the United States Government
- Sales to its unincorporated agencies and instrumentalities
- Sales to any incorporated agency or instrumentality which is **wholly** owned by the United States
- Sales to the American Red Cross and its chapters and branches

### ***Purchases by Federal Government Agencies:***

Sales to and purchases by the United States Government are not taxable if such sales are ordered on the prescribed government forms with payment made directly to the seller by warrants on government funds.

Credit cards used by federal employees to pay for products or services are referred to as SmartPay cards. There are three types of federal credit cards: purchase, fleet and travel.

**Purchase and Fleet Cards** are used for purchasing general supplies and services, and for vehicle fuel and maintenance, respectively. Acquisitions using these cards are exempt from Michigan's taxes because they are billed direct to the federal government.

**Travel and Integrated Cards** are for official travel and are used at hotels, restaurants and similar establishments. Purchases using one of these cards can be taxable (billed to the employee) while another card's purchases can be exempt (billed direct to the government). Taxability depends upon the numbers on the card. A card billed to the individual (taxable) will:

- Start with 4486, 4614, 5565, or 5568 and have a sixth digit that is either 1, 2, 3, or 4; or
- Have an account number that begins with 55826 from the Department of the Interior, the traveler does not carry an I.D. from the Bureau of Reclamation, and the purchase is for lodging or food

The above categories of SmartPay cards are different colors with different graphics. They can say **For Official Government Travel** or **For Official Government Purchases Only** but, to be taxable, they must have the billing digits mentioned above.

All other SmartPay cards with the other numbers are centrally billed and are exempt from Michigan's taxes.

### ***Federal Credit Unions and Federal Home Loan Banks***

Included in the definition of a federal instrumentality are federal credit unions and federal home loan banks. The federal credit union exemption is unique because it was granted by the court in the decision of *U.S. v State of Michigan*, 851 F2d 803 (CA 6, 1988). The Sixth Circuit Court of Appeals decision stated that the incidence of the Michigan Sales Tax falls upon federal credit unions as purchasers rather than upon the retailer selling to them. Therefore, federal credit unions, which are exempt from direct state taxation by federal law, are not subject to sales tax on their purchases of tangible personal property for their own use. This exemption does not extend to national banks or federally chartered savings and loan institutions.

### ***Sales by Federal Government Agencies***

Sales made by federal credit unions and federal home loan banks are subject to tax. This includes sales of checks or drafts to their customers. If checks were provided and a **service charge** was assessed, a sale was made.

Sales by the United States Postal Service of un-cancelled United States postage stamps, stamp books, envelopes, packaging materials, video tapes, neckties, etc. are handled differently from sales made by federal credit unions or by private entrepreneurs making sales on federal land. These sales by the United States Postal Service are not subject to tax.

The reason that tax is not imposed on the above sales is that the federal government is claiming **federal preemption** (states may not impose a tax on the federal government). Michigan's sales tax is statutorily imposed on the seller for the privilege of making sales at retail in Michigan. Thus, Michigan tax cannot be imposed on the federal government.

### ***Sales by Private Entrepreneurs from Federal Areas***

Tax applies on sales made by private entrepreneurs who sell their wares on federal property, if the sale is not made directly to an exempt entity, including federal instrumentalities and nonprofit organizations. An example of this would be a privately operated concession stand at a national park.

References pertaining to this information can be found in the index under [Chapter 19](#)

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## Chapter 20 – Food for Human Consumption

Generally, food and food ingredients are exempt from sales and use tax.

**Food and food ingredients** are 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 (beverages suitable for human consumption that contain  $\frac{1}{2}$  of 1% or more of alcohol by volume) and tobacco (cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco).

### **Prepared food is subject to sales and use tax. Prepared food is:**

- Food sold in a heated state or that is heated by the seller;
- Two or more food ingredients mixed or combined by the seller for sale as a single item; or
- Food sold with eating utensils provided by the seller

An **eating utensil** is a tool, instrument, or item used or intended to be used to facilitate the eating of food. Eating utensil does not include a container or packaging used to transport food, such as a plastic container in which take-out soup or salad is sold. Eating utensils include, but are not limited to, knives, forks, spoons, glasses, cups, napkins, straws, plates, and bowls. Waxed paper sheets (e.g., for doughnuts or cookies), paper wrappers (e.g., for ice cream cones), and skewers (e.g., for kabobs or fruit) used to transport food are presumed not to be eating utensils unless there is evidence to the contrary.

Eating utensils are provided by the seller under the following conditions:

- For a seller with a prepared food sales percentage greater than 75%, when the utensils are made available to purchasers
- For a seller with a prepared food sales percentage of 75% or less, if the seller's practice, as represented by the seller, is to physically give or hand the utensils to purchasers, except that plates, bowls, glasses, or cups necessary for the purchaser to receive the food, for example, dispensed soft drink or milk, or salad bar, need only be made available

### **Prepared food does not include:**

- Food that is only cut, repackaged, or pasteurized by the seller;

- 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;
- Food sold in an unheated state by weight or volume as a single item, without eating utensils; or
- 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

Regardless if an item might otherwise fall within the definition of prepared food outlined above, **if that item is described in one of the exclusions to prepared food, it is not prepared food.**

### ***Meals Provided by Schools and Qualified Exempt Non-Profit Organizations***

The sale of food to bona fide enrolled students by a school or other educational institution not operated for profit is exempt.

A sale of tangible personal property, not for resale, to a qualified exempt non-profit organization is exempt.

Sales by a qualified exempt nonprofit organization are not exempt simply because of the nonprofit status of the organization.

#### **Examples of taxable food or meals:**

- Food provided by a nonprofit organization at an event where an admission fee is required or a donation is made
- Meals sold by schools to nonstudents, including teachers
- Meals or direct sales from the caterer to the students

#### **Examples of exempt food or meals:**

- Meals provided to nonprofit groups, where the group pays for the meals, not the individuals attending

- Snacks such as coffee, juice or donuts, provided by nonprofit groups as part of a conference with no extra charge to persons attending
- Meals sold by schools to students duly enrolled in a program of that school

The tax base for food and drink items included in a mandatory lump sum donation is the gross proceeds. The tax base is the fair market value of the food sold. Usually the fair market value is the price of admission or a donation to attend the fundraiser or to purchase and prepare the food. If the admission or a donation exceeds the fair market value of the food or drink, fair market value may be determined by any reasonable method. When food is provided by a caterer, sales tax is paid by the caterer, who may add the tax to the customer's bill. If the fundraising organization claims a sales tax exemption for resale on the caterer's purchase, then sales tax must be paid by the organization.

The sale of alcoholic beverages at a fund-raiser is taxable. Sales tax is due on the total amount of the sales of beer, wine, and liquor. If an organization pays sales tax on alcoholic beverages when purchased and provides the alcoholic beverages at the fund-raiser at no additional charge to attendees, then no additional sales tax is owed. If at the fund-raiser there is a charge for alcoholic beverages, sales tax is due on the total gross proceeds of the beverage sales (a credit may be taken for any sales tax paid when the organization purchased the alcoholic beverages).

### ***Catered Meals***

All meals sold by caterers are subject to sales tax, except those sold to qualified exempt entities as not for resale. **Not for resale** means that the catered meals are paid directly from the exempt entity's funds, with no reimbursement from the individuals attending the event. When a tax-exempt entity pays a subsidy to the caterer, this amount is not taxable.

#### **Example of an exempt catered meal:**

- The United Way sponsors a dinner for individuals that worked on the previous year's campaign. The dinner is paid for from United Way funds with no reimbursement from the individuals attending.

#### **Example of a taxable catered meal:**

- The United Way hosts a dinner for business owners to encourage them to donate to the current year's campaign. The business owners are required to purchase a ticket in order to attend the dinner.

### **Example of a third party taxable catered meal:**

- A catering company provides food service to a university. The food service is exempt from tax for the meals provided by the university to the enrolled students. An association within the university contracts with the university to have a banquet in the university's ballroom. This is a taxable event. The university would provide the catering company with a resale exemption certificate, then charge the association the appropriate taxes due.

### **Example of third party exempt catered meal:**

- Assume the same facts as above, with one difference; the association provides the university with a proper claim for exemption as a non-profit organization, plus a copy of its exempt letter from the IRS as a designated 501(c)(3) or (4) entity.

### ***Employee Meals***

Meals provided free of charge or at a reduced rate to employees during work hours by a food service establishment licensed by the U.S. Department of Agriculture are exempt.

### ***Free Meals (To Non-Employees)***

Meals given to non-employees are exempt from tax. These could be gratis meals, food provided upon presentation of a coupon, or meals given away for other goodwill or marketing purposes.

Meals given to restaurant patrons who have made a related purchase (the related purchase is subject to tax) are not subject to tax as the price for the first meal covers the cost of the item given away. This is a tie-in sale.

### ***Vending Machines and Other Automatic Sales Devices***

Food or drink which is 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 sales and use tax.

A taxpayer selling both taxable and exempt items from a vending machine must calculate the tax using actual gross proceeds from sales at retail or 45% of the items subject to and exempt from tax, not including the sales of carbonated beverages.

## ***Federal Food Stamp Program***

The General Sales Tax Act and the Use Tax Act include provisions referencing the Federal Food Stamp Program, and exempt the following items from sales tax and from use tax:

- Food or tangible personal property purchased under the federal food stamp program
- Meals sold by a person exempt from tax eligible to be purchased under the federal food stamp program (e.g., Meals-on-Wheels meals)
- 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 U.S. 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 of Treasury

For example, the purchase of a raspberry plant at a qualifying business would be exempt from sales and use tax, while the purchase of an ornamental flowering plum tree would be taxable. The purchase of carrot seeds at a qualifying business would be exempt from sales and use tax, while the purchase of zinnia seeds would be taxable.

## ***Dietary Supplements***

Dietary supplements are exempt from sales and use tax as food for human consumption if they have nutritional value.

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

- Required to be labeled as a dietary supplement identifiable by the **supplemental facts** box found on the label as required by 21 CFR 101.36
- Contains 1 or more of the following dietary ingredients:
  - A vitamin
  - A mineral
  - An herb or other botanical
  - An amino acid

- A dietary substance for use by humans to supplement the diet by increasing the total dietary intake
- A concentrate, metabolite, constituent, extract, or combination of any ingredient listed above
- Intended for ingestion in tablet, capsule, powder, soft gel, gel cap, or liquid form, or if not intended for ingestion in one of those forms, is not represented as conventional food or for use as a sole item of a meal or of the diet

Where such nutritional value is evident, marketing or labeling as a homeopathic or natural drug should not be a determining factor in whether these types of items should be considered food. An example would be a substance advertised for relief of joint pain, which is no more than a vitamin or mineral supplement.

Under this definition, few items would be taxable if sold as a product for human consumption whose primary purpose is to supplement daily dietary requirements. Items such as nicotine replacement gums or tablets, Aspergum, some cough drops, or other similar items consumed for their medicinal value, and not for their taste or nutritional value, would be taxable.



### Taxability Chart – Food Items

No.	Description	Taxable or Exempt
<b>Items sold at concessions at special events and entertainment facilities (i.e. theaters, fairs, recreation centers, athletic events, parks and zoos), bakeries, food bars, delicatessens, carryout-restaurants, or convenience stores</b>		
1	Prepackaged items (candy bars, chips, ice cream, popcorn, nuts, cans or bottles of soda pop), in an unheated state and w/o eating utensils provided by the seller	Exempt
2	Fruit and vegetables sold in an unheated state by weight or volume in a container w/o utensils provided by seller	Exempt
3	Fruit and vegetables sold in a container w/ utensils provided by seller or in a heated state	Taxable
4	Prepackaged candy bar/chips w/ napkin	Taxable
5	Cookies, doughnuts and muffins sold with a waxed paper sheet provided by the seller and used for transport	Exempt
6	Cookies, doughnuts and muffins sold with a waxed paper sheet used as an eating utensil	Taxable
7	Box of doughnuts w/o eating utensils	Exempt
8	Popcorn heated by seller	Taxable
9	Popcorn <b>made</b> by seller, sold in unheated state w/eating utensils provided by the seller	Taxable
10	Sandwich <b>made</b> by seller (not sold by weight or volume)	Taxable
11	Sandwich, pre-made, sold in an unheated state, w/ utensils provided by seller	Taxable
12	Sandwich, pre-made, sold in an unheated state, w/o utensils provided by seller	Exempt
13	Deli tray, sold below room temp, in container, by weight, w/o utensils	Exempt
14	Deli tray, sold below room temp, in container, by weight, w/ utensils provided by seller	Taxable
15	Chicken (seller roasts/fries, maintains in heated state)	Taxable
16	Ready-made soup, sold heated by seller, cup/pint/quart.	Taxable
17	Tuna salad sold by the pound in an unheated state, w/o eating utensils	Exempt
18	Container of macaroni salad in an unheated state, w/o eating utensils	Exempt
19	Bottled Water	Exempt

No.	Description	Taxable or Exempt
20	Water delivered in bulk tanks $\geq$ 500 gallons	Exempt
21	Water delivered in bulk tanks < 500 gallons	Taxable
22	Ice-cubes w/o eating utensils	Exempt
23	Ice-block (not intended for human consumption)	Taxable
24	Hot dogs available in heated state on roller grill and pizza heated by seller	Taxable
25	Sausage and egg biscuit, pre-packaged by third party, buyer heats in seller's microwave after purchase, w/o utensils provided by seller	Exempt
26	Sausage and egg biscuit, pre-packaged by third party, buyer heats in seller's microwave prior to purchase, w/o utensils provided by seller	Taxable
27	Fruit basket/cheese and cheeseboard set/candy dish with candy - primary purchase is fruit/cheese/candy	Exempt
28	Fruit basket/cheese and cheeseboard set/candy dish with candy - primary purchase is basket/cheeseboard	Taxable
29	Soda pop sold by the cup or coffee sold by the cup, brewed by seller	Taxable
30	Pre-made frozen pizza, heated by seller w/ eating utensils	Taxable
31	Ice cream, pre-packaged with wooden spoon	Taxable
32	Ice cream sold by the gallon, no eating utensils provided by seller	Exempt
33	Dish of ice cream w/eating utensils provided by seller	Taxable
34	Ice cream cone with cone wrapped in paper to facilitate transport	Exempt
35	Popsicle in a wrapper to facilitate transport	Exempt
36	Food purchased under Federal Food Stamp Program	Exempt
37	Meals on Wheels (eligible to be purchased with food stamps and sold to an exempt entity)	Exempt
38	Catered meals sold to tax-exempt entities, not for resale	Exempt
39	Catered meals resold by tax-exempt entities that are reimbursed by an individual or for-profit organization.	Taxable
<b>Items sold at business authorized or that made proper application for authorization to accept food stamps</b>		
40	Fruit or vegetable plant	Exempt
41	Fruit or vegetable seeds	Exempt

42	Ornamental flowering plum tree (not intended for human consumption)	Taxable
<b>No.</b>	<b>Description</b>	<b>Taxable or Exempt</b>
43	Flower seeds (not intended for human consumption)	Taxable
<b>Food sold through Vending Machines or Other Automatic Sales Devices (subject to % chosen by taxpayer)</b>		
44	Gum, nuts, crackers, chips, candy, cookies (sold at room temperature)	Exempt
45	Bakery items w/o utensils at room temperature	Exempt
46	Sandwich cooled < 65°, w/o eating utensils	Taxable
47	Chilled pop in sealed container	Exempt
48	Chilled pop in cup	Taxable
49	Milk in a sealed container	Exempt
50	Hot coffee in cup	Taxable

References pertaining to this information can be found in the index under [Chapter 20](#)

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## **Chapter 21 – House Rentals (Rentals of Rooms and Lodging)**

The receipts for room and lodging are generally taxable under the Use Tax Act, except receipts for rooms and lodging rented for a continuous period of more than one month are exempt. The statute covers 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. Included in the meaning of hotel and motel are:

- 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 corporations where a structure is rented
- Any other building or group of buildings in which accommodations are available to the public

Not included in the meaning are childcare facilities licensed under 1973 PA 116.

For purposes of this topic, business is defined as an activity engaged in by a person with the **object of gain, benefit or advantage, either direct or indirect.**

### Taxability Chart – Hotels/Motels

No.	Description	Taxable Yes or No	Tax Type	Comments
<b>Hotel Revenue</b>				
1	Transient rooms revenue	Yes	Use	MCL 205.93a(1)(b)
2	Guaranteed no-show revenue - room is unavailable to re-rent	Yes	Use	MCL 205.93a(1)(b)
3	Complimentary rooms - provided at no charge to guests, travel agents, advertisers, etc. (hotel does not receive consideration from anyone)	No		If the room is provided through a hotel reward program, the answer will depend on the nature of the program.
4	Early departure fees	No, if able to re-rent	Use	If the hotel is able to re-rent the room, the fee charged to the customer is a penalty, not a taxable use.
5	Late departure fees	Yes	Use	MCL 205.93a(1)(b)
6	Cancellation fees - liquidated damages charged when a scheduled event is cancelled. Guest never occupies or has the right to occupy the room.	No, if able to re-rent		If the hotel is able to re-rent the room, the fee charged to the customer is a penalty, not a taxable use.
7	Attrition fees - liquidated damages charged because a group did not fulfill their total event commitment.	No, if able to re-rent		<p>If the hotel is able to re-rent the room, the fee charged to the customer is a penalty, not a taxable use.</p> <p>Example - an event books 200 rooms and only 150 are rented and occupied. A penalty is charged for the 50 remaining rooms. At no time does a guest occupy or have the right to occupy the 50 remaining rooms.</p>

No.	Description	Taxable Yes or No	Tax Type	Comments
8	Minibar revenue	Yes/No	Sales	MCL 205.54g; R205.136; RAB 2009-8; Alcohol is subject to tax. Water is exempt. The revenue of the minibar must be combined with hotel's other sales of prepared food.
9	Packages - golf, honeymoon, ski, etc.	Yes	Use	In order to determine the taxability of a single mixed transaction that includes both the provision of a taxable and nontaxable product, follow the <i>Catalina</i> "incidental to service test."
10	Rooms sold to tour operators, meeting planners, and others who resell rooms to their customers.	Yes	Use	Unless exemption claim for resale is provided
11	Pet charges (pet's occupancy of guest room)	Yes	Use	MCL 205.93a
12	Mandatory pet clean-up fees (cleaning of room after stay)	Yes	Use	MCL 205.93a
13	Child care charges - provided by hotel employees or by an unrelated third party	No		
14	Charges for refrigerator, rollaway bed, safe, etc.	Yes	Use	Subject to tax as part of accommodations furnished.
15	Complimentary meal/beverage provided for each room occupant - meal/beverage is included in the price of the room, and the guest cannot opt out of the meal/beverage for a lower rate.	Yes	Use	Subject to tax as part of accommodations furnished.
16	Bottled water provided in room: <ul style="list-style-type: none"> <li>• complimentary</li> <li>• at retail</li> </ul>	Yes No	Use Use	Subject to tax as part of accommodations furnished. MCL 205.54d; MCL 205.94

No.	Description	Taxable Yes or No	Tax Type	Comments
17	Damage fee - fee charged by the hotel to repair or replace items damaged by the guest. The guest does not gain ownership of any damaged property.	No		Sales/use tax is paid by the hotel upon purchase of a replacement item.
18	Food and beverage sales - restaurant operated by hotel	Yes	Sales	MCL 205.54g(4)
19	Gratuities - voluntary or mandatory <ul style="list-style-type: none"> <li>• fully distributed to server as a tip</li> <li>• restaurant retains a portion</li> </ul>	No	Sales	MCL 205.51(1)(d)(iii)(A); If the gratuity or tip is separately identified or itemized on the guest check or billed to the customer, it is not subject to sales tax. However, if the gratuity is paid out to the employee as a wage through payroll, it is subject to sales tax.
Yes	Sales			
20	Room Service <ul style="list-style-type: none"> <li>• food and beverage</li> <li>• separately stated delivery charges</li> </ul>	Yes Yes	Sales Sales	MCL 205.54g(4) MCL 205.51(1)(d)(iv)
21	Cover or minimum charges	Yes	Sales	R205.116(2); Sales tax applies to the cover or minimum charge and all other charges, except to those charges for entertainment and dancing, separately listed on the bill or collected as an admission fee or fixed charge.
22	Corkage - charge for re-corking	No		Separately stated
23	Cake-cutting charges - guest provides cake	No		Separately stated
24	Ice-carving charges – hotel provides ice	Yes	Sales	MCL 205.51(1)(d)(ii)
25	Employee meals - free, at, below, or above cost	No		MCL 205.52(4); If provided by a licensed food service establishment during work hours

No.	Description	Taxable Yes or No	Tax Type	Comments
26	Complimentary food - e.g., food provided to entertain a prospective guest, for customer satisfaction, or for promotional purposes	Yes	Use	The hotel will owe use tax on the ingredients.
27	Meeting room revenue (no meals served)	Yes	Use	MCL 205.93a(1)(b)
28	Meeting room revenue (meals served) <ul style="list-style-type: none"> <li>• room rental, separately stated from meal</li> <li>• separately billed food</li> <li>• lump sum billing</li> <li>• complimentary food</li> </ul>	Yes	Use	MCL 205.93a(1)(b)
		Yes	Sales/ Use	MCL 205.54g
		Yes	Use	MCL 205.93a(1)(b); MCL 205.54g
		Yes	Use	MCL 205.93a(1)(b); MCL 205.54g
29	Banquet room/convention charges - separately stated fees/labor for rigging, electrical cabling, theme equipment, decorations, phone line/internet setup, etc. <ul style="list-style-type: none"> <li>• performed by an unrelated third party</li> <li>• performed by hotel employees</li> </ul>			If an employee is required to operate the equipment in a. or b., the transaction would become taxable.
		No	Use	MCL 205.92(2)(f)
		No	Use	
30	Flowers provided by the hotel for a banquet <ul style="list-style-type: none"> <li>• itemized/separately stated</li> <li>• not separately stated</li> </ul>	Yes	Sales	
		Yes	Use	Subject to tax as part of the banquet room rental



No.	Description	Taxable Yes or No	Tax Type	Comments
31	Cancellation fees (banquet rooms) - liquidated damages when an event is cancelled. Damages may cover lost revenue from the room rental, food that was ordered and must be thrown away, party decorations ordered, etc. Guest never occupies or has the right to occupy the room. <ul style="list-style-type: none"> <li>• room only</li> <li>• room and other taxable product (e.g., prepared food, decorations, etc.)</li> </ul>	No No		If the hotel is able to re-rent the room, the fee charged to the customer is a penalty, not a taxable use.  In order to determine the taxability of a single mixed transaction that includes both the provision of a taxable and nontaxable product, follow the <i>Catalina</i> "incidental to service test."
32	Attrition fees (banquet rooms) - liquidated damages charged because a group did not fulfill their total event commitment.	Yes	Use	MCL 205.92(f)  Example - an event books a banquet for 200 people, and only 150 attend. A penalty is charged for 50 non-attendees.
33	Telephone charges	Yes	Use	MCL 205.93a
34	High-speed internet access	No		If optional to the guest and separately stated
35	Guest laundry/dry cleaning <ul style="list-style-type: none"> <li>• Performed by hotel</li> <li>• Performed by outside vendor</li> <li>• Coin-operated facilities</li> </ul>	No No No		
36	Pay-per-view television and pay-per-play video game rental -provider owns and services equipment in the hotel. Service and selections are controlled by the provider via the internet. The provider, not the hotel, is the seller of the service, per the terms of the provider's contract with the hotel.	No		Pay-per-view movies or video rentals are nontaxable services. The provider of the service must pay tax on the acquisition of all property purchased, used, or consumed in providing the service. The receipts from the hotel guests are not subject to tax.

No.	Description	Taxable Yes or No	Tax Type	Comments
37	Parking, transportation charges, destination services - separately itemized	No		In order to determine the taxability of a single mixed transaction that includes both the provision of a taxable and nontaxable product, follow the <i>Catalina</i> "incidental to service test."
38	Retail video or DVD rental	Yes	Use	MCL 205.95; Lessor has the option of paying tax on the acquisition of the tangible personal property that is to be leased or collecting and remitting use tax on rental receipts.
39	Retail food, candy	No/Yes	Sales	MCL 205.54g; R205.136; RAB 2009-8; The revenue of the gift shop must be combined with hotel's other sales of prepared food.
40	Retail beer/wine sales	Yes	Sales	MCL 205.94g
41	Non-food retail sales	Yes	Sales	MCL 205.94g
42	Newspapers and periodicals	No		MCL 205.54a(1)(f)
43	Miscellaneous fees - club membership fees, green fees, tennis court fees, swimming fees, charges for lessons, etc.	No		
44	Commissions paid to hotel by outside vendors and service providers	No		

No.	Description	Taxable Yes or No	Tax Type	Comments
45	Resort Fees - per diem charge for additional amenities provided by a resort (e.g., beach chairs, bottled water in the hotel room, access to the hotel fitness center, newspaper delivery, shuttle service, etc.). <ul style="list-style-type: none"> <li>• mandatory</li> <li>• optional</li> </ul>	Yes  No		Subject to tax as part of accommodations furnished If separately itemized/stated
46	Health spa and salon services	No		
47	Computer usage and fax charges	No		
48	Copy charges	Yes		MCL 205.51(1)(b)
49	Equipment rental - e.g., audio visual equipment	Yes	Use	MCL 205.95; Lessor has the option of paying tax on the acquisition of the tangible personal property that is to be leased or collecting and remitting use tax on rental receipts.
50	Vending machine sales - hotel maintains vending machine	Yes	Sales	MCL 205.54g; R205.136; RAB 2009-8; The General Sales Tax Act states that "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 tax under this act."
51	Meeting supplies	Yes	Sales/ Use	MCL 205.51(1)(b); MCL 205.92(b)

No.	Description	Taxable Yes or No	Tax Type	Comments
52	Salvage Sale	Yes	Sales	MCL 205.51(1)(b)
<b>Hotel Expenses/Purchases</b>				
53	Uniforms	Yes	Sales/ Use	Subject to tax at time of purchase by hotel.
54	Cleaning of Uniforms	Yes	Use	MCL 205.93a(1)(d); The laundering or cleaning of textiles under a sale, rental, or service agreement with a term of at least 5 days is taxed in the same manner as tangible personal property. However, an exemption is allowed for the laundering or cleaning of textiles used by a restaurant or retail sales business.
55	In-room amenities provided with the guest room at no charge - shampoo, soap, toilet paper, laundry bag, coffee	No		Subject to tax when accommodations are furnished.
56	Newspapers provided to guests	No		MCL 205.54a(1)(f)
57	Linens/ towels, in-room coffeemakers, decorative items, other operating supplies	Yes	Sales/ Use	
58	China, glassware, utensils, dining linens	Yes	Sales/ Use	
59	Disposable napkins, plates, etc. - <ul style="list-style-type: none"> <li>• provided with purchased meal</li> <li>• provided with a complimentary meal included in room charge</li> <li>• provided with a complimentary meal for a prospective guest, customer satisfaction, or promotional purposes.</li> </ul>	No  No  Yes	   Use	Hotel may claim exemption for resale. Hotel may claim exemption for resale.  Hotel will owe use tax on the ingredients.

No.	Description	Taxable Yes or No	Tax Type	Comments
<b>Miscellaneous</b>				
60	Are any state or local taxes, fees, or assessments billed to the guest subject to any state or local tax? E.g., a local transient occupancy tax subject to state sales tax.	Yes/No		MCL 205.183; Assessments imposed under the Convention and Tourism Act, the Convention Facility Development Act, the Regional Tourism Marketing Act or the Community Convention or Tourism Marketing Act may be deducted from gross sales provided use tax on the assessment was not charged to the customers. See Streamlined Sales and Use Tax Revenue Equalization Act.
61	If telephone charges are taxable, is there a credit for taxes paid to the telephone company?	Yes		If a hotel bills the guest the exact amount of its cost without markup, the hotel may pay tax to the telephone company and not itemize tax on the bill to the guest, or the hotel may claim exemption for resale at the time of purchase from the telephone company and bill the guest for use tax. If the hotel charges any markup, it may purchase tax-exempt "for resale" from the telephone company and collect use tax on the price charged to the customer. This would include the hotel's charge for .50 per call, etc. If the hotel pays tax to the telephone company based on the price billed to the hotel, and collects tax on the price billed to the guest, the hotel may take a credit on the tax return worksheet for tax paid at source.

References pertaining to this information can be found in the index under [Chapter 21](#)

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## **Chapter 22 – Industrial Laundries**

Sales or leases of the following categories of products to industrial laundries are exempt from taxation:

- Textiles and disposable products, e.g., soap, paper, chemicals, tissue, deodorizer and dispensers, packaging, supplies, hangers and name tags
- Equipment used to repair and dispense textiles
- Machinery, equipment, parts, lubricants, and repair services used to clean, process, and package textiles and related items
- Various utilities
- Production washroom equipment and mending/package supplies and equipment
- Material handling equipment
- Wastewater pretreatment equipment, supplies and related maintenance and repair services

The Michigan Use Tax Act contains similar language.

The Use Tax Act imposes tax on the laundering or cleaning of textiles under a sale, rental, or service agreement with a term of at least five days. However, the tax does not apply to the laundering or cleaning of textiles used by a restaurant or retail sales business.

**Restaurant** means a food service establishment defined and licensed under the Public Health Code.

**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.

References pertaining to this information can be found in the index under [Chapter 22](#)

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## **Chapter 23 – Installation Charges**

**Sales price** (for sales tax purposes) and **purchase price** or **price** (for use tax purposes) includes installation charges incurred or to be incurred before ownership is transferred from seller to buyer.

### **Ownership**

Ownership can be determined by (this list is not all inclusive):

- Who bears the risk of loss?

Ownership generally resides with the party who bears the risk of loss. This is determined by the party who is responsible to replace damaged or destroyed product. Risk of loss generally resides with the seller unless formally transferred by an agreement or contract to the purchaser.

- What are the shipping details?

Free-on-Board (FOB) with an identified physical location can be used to determine the point at which ownership for the shipment passes from the seller to the purchaser.

References pertaining to this information can be found in the index under [Chapter 23](#)

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## **Chapter 24 – Interstate Commerce**

Interstate or foreign commerce means any activity between different states and countries. Sales where ownership transfers out of this state are not subject to Michigan's Sales Tax as these transactions involve interstate commerce activities. Taxation of these activities is prohibited by constitutional laws of the United States. Intrastate transactions, or those transactions in which tangible personal property is located within this state at the time of sale and is delivered within this state, are subject to sales tax.

To make a valid claim of deduction for interstate commerce, a seller must document **each shipment** outside this state. Acceptable documentation includes the following:

- A waybill or bill of lading
- An insurance or registry receipt issued by the U.S. Postal Service
- Original shipping documents

### ***Examples of Interstate Commerce Transactions:***

- An in-state seller delivers goods to an out-of-state buyer who will not return the goods to Michigan for storage, use or consumption
- A Michigan resident purchases goods for delivery and use outside the state

### ***Example of a Transaction Which Is Not Interstate Commerce:***

- Property delivered to a buyer in Michigan which is subsequently shipped out of state by the buyer or used in interstate commerce

References pertaining to this information can be found in the index under [Chapter 24](#)



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## **Chapter 25 – Interstate Motor Carriers**

The General Sales Tax and Use Tax Acts do not apply to the sale, storage, use, or consumption of **rolling stock** used in **interstate commerce** and purchased, rented, or leased by an **interstate fleet motor carrier**.

**Rolling Stock** - 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. Amendments in 2012 specify that **rolling stock** includes 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 state.

**Qualified Truck** - A commercial motor vehicle power unit that has two axles and a gross vehicle weight rating in excess of 10,000 pounds or a commercial motor vehicle power unit that has three or more axles.

**Parts** - **Parts** do not include fluids (e.g., oil, windshield solvents), gases (e.g., Freon), or decals and markings.

**Interstate Commerce** – Trade in goods or services between different states.

**Used in Interstate Commerce** – Rolling stock that never leaves the State of Michigan but carries freight originating in or destined for locations outside of Michigan is used in interstate commerce and qualifies for exemption from sales and use tax. Even if a vehicle never leaves a state, it is **used in interstate commerce** if it carries goods moving in a continuous stream from an origin in one state to a destination in another.

In determining whether or not the goods are destined for another state, consider whether there was any change (value added) to the general form of the product being transported that would create a different product. If so, the point of origin would change accordingly. For example, a mirror is manufactured in Grand Rapids, Michigan and transported (by a transportation company) to Detroit, Michigan. In Detroit, the mirror is attached to an automobile, which ultimately is shipped to Alabama. While the mirror ends up in Alabama, the transportation between Grand Rapids and Detroit would constitute one trip in **intrastate** commerce.

If a company has two rolling stock fleets, one operating only within Michigan and another operating both inside and outside of Michigan, with each fleet carrying goods that are destined for another state or from another state destined for Michigan, then both rolling stock fleets would be considered interstate commerce.

The phrase **rolling stock used in interstate commerce** does not mean that a carrier needs only to be part of an interstate freight business to obtain exempt status. Rather, it is possible that a vehicle is part of an interstate freight business but does not qualify for the exemption because it is not used in interstate commerce, (e.g., it carries no interstate goods or services). Similarly, a single freight company does not have to carry the goods from the out-of-state location to the in-state location or from the in-state location to an out-of-state location in order for the freight company to be engaged in interstate commerce. It's only necessary that the freight company transports goods that travel from one state to another.

**Interstate Fleet Motor Carrier** - 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 and whose **fleet mileage was driven at least 10% outside of this state in the immediate preceding tax year**.

### ***Immediate Preceding Tax Year***

The **immediate preceding tax year** requirement means that a business must have at least 12 months of activity to qualify for a sale or use tax exemption.

References pertaining to this information can be found in the index under [Chapter 25](#)

### ***Isolated/Casual Transactions***

An isolated or casual transaction by a person not licensed or required to be licensed under the General Sales Tax Act is an exemption from a **sale at retail**. A sales tax exemption for an isolated or casual transaction does not apply if a person is licensed or required to be licensed under the General Sales Tax Act. Isolated transactions are not directly defined in the statutes, rules, etc. Sales made on a repeated or successive basis are not isolated.

Also see the “Purchase of Business” section of this text.

### ***Auctions***

Auctions often qualify as casual or isolated transactions exempt from tax. The sale of household furniture by a homeowner, a farmer’s sale of his farm machinery or equipment, or a merchant’s sale of his store’s cash registers and fixtures is unlikely to be part of the ordinary course of repeated and successive transactions of a like character. If sales at an auction are isolated transactions, they are not subject to sales tax. However, the purchasers are subject to use tax on the acquisition amounts.

### ***Auctioneers***

An auctioneer, agent, factor, broker, etc. is a retailer when he/she sells tangible personal property on a repeated basis from a fixed location. This is true whether the auctioneer is selling goods on his own behalf or on behalf of a principal. As a general rule, an auctioneer should be registered for and remitting sales tax.

Under certain circumstances, an auctioneer is relieved of his or her sales tax liability. This exception applies when:

- The auctioneer is engaged by a manufacturer, farmer, or householder to act at his agent
- The auctioneer is selling tangible property at the premises of the manufacturer, farmer, or householder; and
- The auctioneer does not purchase the merchandise and sell it on his own behalf

Specific types of auctions are listed below. Assume these auctions are being conducted on the client's premises, and the client retains ownership of the goods being auctioned. The factors that determine whether the client is responsible for sales tax or the purchaser is responsible for use tax are:

- The type of goods sold
- Repetitiveness
- Whether the client has or should have a sales tax license

### ***Federal Bankruptcy Auctions***

Appointed bankruptcy trustees conduct these auctions in the ordinary course of business. These auctions would be considered taxable. The bankruptcy trustee would be required to remit sales tax.

### ***Municipal Surplus Equipment Auctions***

These auctions are conducted in the ordinary course of business by the municipal entity. These auctions would be considered taxable. The municipality would be required to remit sales tax.

### ***Industrial Processing Auctions***

These auctions normally contain a mixture of items; some items are goods sold in the ordinary course of business and some items are not. Goods that would be sold in the ordinary course of business would be subject to sales tax. This includes goods that are not the normal stock of goods sold, but are sold on a regular or repeated basis. For example, a business that sells excess office equipment at auction once every two years or when volume warrants would be subject to sales tax on these sales.

### ***Retail Store Inventory***

Inventory is ordinarily sold in the normal course of business **and is subject to sales tax**. Sales of inventory are taxable if the items sold are ordinarily of a taxable nature. For example, if the inventory of a grocery store is auctioned, food items would not be taxable, but items such as paper products would be taxable. The retailer would be required to remit sales tax. Also see "Sale or Transfer of a Business" below.

### ***Retail Store Equipment & Fixtures***

Sales of depreciable tangible personal property used in a seller's business are subject to sales tax if the seller is licensed or required to be licensed for sales tax.

### ***Sale or Transfer of a Business***

Property purchased or transferred as part of the purchase or transfer of a business is exempt from use tax. However, inventory items purchased in the sale or transfer of a business are subject to use tax unless they are exempt for resale or another valid exemption applies. The purchase of a motor vehicle, ORV, mobile home, aircraft, snowmobile, or watercraft is also subject to use tax unless another valid exemption applies.

The sale or transfer of a business is not specifically exempted or included in the Sales Tax Act. However, the transferor is generally entitled to claim a sales tax exemption for an isolated sale.

### ***Vehicles***

Normally, vehicle auction sales for clients other than vehicle dealers are not considered goods sold in the normal course of the client's business activity. However, if the client sold five or more vehicles in a twelve-month period, the client would be required to remit sales tax. This number includes vehicles sold at the auction. The seller must collect sales tax if the auction is a multiple client auction. If fewer than five vehicles have been sold by the client within twelve months, these sales would not be subject to sales tax.

Vehicle transactions are generally taxable, and if the sale is not subject to tax at the auction, the purchaser must pay use tax.

### ***Charity Auction of Donated Gifts***

Auctions of donated gifts do not represent isolated transactions. The charity would be considered to be engaged in **fundraising** in the ordinary course of business, regardless of the frequency of auctions. The charity would be required to remit sales tax on its return.

A qualified nonprofit organization may claim a credit on the amount equal to 6% of the gross proceeds of a qualified sale of an auctioned item in excess of the fair market value of that auctioned item, provided sales tax was not collected from the purchaser. The person seeking the credit must be able to document the fair market value of the item.

The sale of tangible personal property for fund-raising purposes by a school, church, hospital, parent cooperative preschool, or nonprofit organization with a tax-exempt status and has aggregate retail sales in the calendar year of less than \$5,000 are exempt.

### ***Wholesaler or Distributor of Industrial Machinery or Retail Equipment***

These items are ordinarily sold in the normal course of business and are subject to sales tax. Sales of industrial machinery can quite often be taxable; however, sales for certain uses or to certain purchasers may be exempt.

### ***Real Estate***

Sales tax is imposed upon transactions involving tangible personal property, **not real property**. Sales of real estate are not subject to sales tax. However, an item normally considered real estate can become tangible personal property when sold. For example, a farmer sells his barn with the condition that it be dismantled and removed from the land. This represents tangible personal property in the form of wood representing a barn structure without the accompanying rights to the land upon which the barn sits.

Likewise, the sale of a house with the condition that it be removed from the land upon which it sits represents a sale of tangible personal property for the same reasons.

If the client makes regular repeated sales of this nature, the client would be required to remit sales tax when tangible personal property is being sold.

### ***Construction Contractor's Machinery***

These items would not ordinarily be sold in the contractor's normal course of business. These auctions would not be taxable **unless** the contractor is in the business of selling machinery or sells his machinery on a repeated basis. Transactions would be taxable should the contractor have a sales tax license or be required to have a sales tax license.

### ***Rental Equipment Company Inventory***

This inventory would fall within the definition of ordinary goods sold (rented) in the normal course of the client's business. The auction of this inventory would represent taxable sales. The rental equipment company would be required to remit sales tax on its return.

References pertaining to this information can be found in the index under [Chapter 26](#)

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## **Chapter 27 – Newspapers, Periodicals and Other Publications**

Sales of the following items are exempt from sales tax:

- A newspaper or periodical admitted under federal postal laws and regulations effective September 1, 1985 as:
  - Second-class mail matter (now designated as a **periodical**)
  - A controlled circulation publication (now called **requestor publications**)
- A newspaper or periodical qualified to accept legal notices for publication in this state, as defined by law
- Any other newspaper or periodical of general circulation, if:
  - Established not less than 2 years; and
  - Published not less than once a week
- Advertising supplements (political pamphlets, grocery coupons, clothing store ads, etc.) distributed as a component part of an exempt newspaper or periodical and delivered directly to the newspaper or periodical by a person other than the advertiser, or printed by the newspaper or periodical.

**Note: An advertising supplement delivered to the advertiser or retailer, even if it will be distributed as part of an exempt newspaper or periodical, is subject to sales tax because the printer is making a retail sale to the advertiser/retailer.**

- Service sales where the printer is merely printing on stock furnished by the customer. For example, the printing of business cards on customer furnished stock would be exempt.

**Note: The identification statement “Periodicals postage paid” will appear in a qualifying tax-exempt newspaper or periodical. It can be found on one of the first five pages, which may exclude advertising pages, or on one of the last three editorial pages inside the back cover.**

References pertaining to this information can be found in the index under [Chapter 27](#)

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## **Chapter 28 – Nonprofit Organizations**

This section addresses the sales and use tax exemptions available to:

- nonprofit organizations that are exempt from federal income tax under IRC § 501(c)(3) or 501(c)(4); and
- nonprofit health, welfare, educational, cultural arts, charitable, or benevolent organizations that have been issued an exemption ruling letter by the Sales and Use Tax Division.

To be exempt from sales and use tax, the property purchased must be used or consumed primarily in carrying out the purposes of the organization, as stated in the organization's bylaws or articles of incorporation. Fundraising is not the stated purpose of an organization, even if the bylaws allow for such activities.

The sales and use tax exemptions available to schools, hospitals, churches, homes for the care and maintenance of children or aged persons, and other entities specifically identified in the sales and use tax statutes are addressed elsewhere in this manual (see *Chapter 6 - Churches* and *Chapter 34 - Schools, Hospitals and Certain Nonprofit Institutions*).

### **Sales to Nonprofit Organizations**

On or after March 28, 2013, the **sales** tax exemption was expanded to include items sold to an eligible organization and used primarily for fundraising or to obtain resources necessary to carry out the purposes of the organization as stated in its bylaws or articles of incorporation. The exemption for any single item of tangible personal property or vehicle used to raise funds or obtain resources is limited to a maximum sales price of \$5,000.

For the sales to be exempt, the payment for the purchase must come directly from the funds of the exempt nonprofit organization. If the organization is selling the items to the members at cost or above cost, the purchase is not exempt unless a valid resale exemption applies.

In order to receive a sales tax exemption, the transferee must provide:

- Exemption ruling letter issued before 07/17/1998 by the Sales and Use Tax Division and certifying that the property is for use or consumption in connection with the operation of the nonprofit organization; or



- A signed statement, on a form approved by the Department, stating that:
  - the property is for use or consumption in connection with the operation of the organization, to carry out the purpose(s) of the organization, or to raise funds or obtain resources necessary for the operation of the organization;
  - the organization qualifies for this exemption; and
  - the sales price of any single item of tangible personal property or vehicle purchased for purposes of raising funds or obtaining resources does not exceed \$5,000.

The organization must also provide a copy of its federal exemption letter unless it is not required to apply for exempt status with the IRS.

A **use** tax exemption requires a ruling letter reissued after 06/13/1994 by the Sales and Use Tax Division unless the organization is exempt under IRC 501(c)(3) or 501(c)(4). The use tax statute does not include an exemption for items used to raise funds or obtain resources necessary to carry out the purposes of the organization.

### ***Sales by Nonprofit Organizations***

The statute provides exclusion for organizations that qualify for either of the above exemptions. These organizations may exclude, from gross proceeds, sales at retail totaling less than \$5,000 for the calendar year. Nonprofit organizations making retail sales are still required to register and obtain a sales tax license even if their total sales are below the limit. If the total sales at retail are \$5,000 or greater, tax is due on the entire amount. Sales tax billed separately must be remitted regardless of the \$5,000 exclusion, pursuant to the unjust enrichment provisions.

References pertaining to this information can be found in the index under [Chapter 28](#)

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## **Chapter 29 – Pollution Control Facilities, Component Parts**

The General Sales Tax and Use Tax Acts allow a deduction or exemption for the sale or purchase of tangible personal property to be installed as a component part of a water or air pollution control facility. The deduction or exemption is dependent on a tax exemption certificate issued by the State Tax Commission. Issuance of a certificate is contingent upon satisfying the conditions found in the Natural Resources and Environmental Protection Act, Act No. 451 of the Public Acts of 1994.

The General Sales Tax and Use Tax Acts are interpreted in 1979, AC R 205.137 (Rule 87), *Air and Water Pollution* as follows:

- Tangible personal property purchased for installation as a component part of an air or water pollution control facility for which the State Tax Commission issues a tax exemption certificate is exempt from tax.
- When tax has been paid on tangible personal property which later qualifies for exemption as a result of obtaining a certificate of exemption from the State Tax Commission, a refund may be requested upon submission of both of the following documents to the Department:
  - A copy of the exemption certificate issued, indicating the approved cost of the tangible personal property installed and entitled to exemption
  - A copy of the seller's invoice showing the name and address of seller, identification of the purchaser, identification of the items purchased, date of purchase, and amount of tax paid

The entity that paid the tax to the Department requests the refund. Their customer, who provides a copy of the Pollution Control Exemption Certificate and asks for their tax to be refunded, prompts the request.

To facilitate the refund process, the owner of the pollution control facility can provide the Department with a copy of the Pollution Control Exemption Certificate, together with a list of vendor invoices qualifying for the sales tax credit. The Department will respond with approval or disapproval to facilitate the refund process through the vendor.

The certificate describes the property that qualifies for tax exemption. It includes items that become part of real property. **The flow through exemption applies when the contractor purchases exempt personal property for these pollution control projects.**

## **Summary**

- An entity must apply for and be granted a Pollution Control Exemption Certificate by the State Tax Commission before any of its purchases qualify for this exemption
- The certificate will state the total cost of the property entitled to exemption. The final cost of material in the pollution control facility may exceed this amount. Amounts exceeding this limitation are subject to tax
- Equipment benefiting the business or personnel will be taxable. Examples would include but are not limited to heat recovery equipment, air make-up units, equipment used to prepare and return contaminants to the process, etc.
- Replacement equipment and repair parts acquired in subsequent years may be taxable items if their additional costs would cause the project to exceed the stated exempt value in the original exemption certificate
- The utility costs associated with the operation of these facilities do not qualify for the exemption given to the facilities
- The effective date of the certificate is its date of issue
- It continues in force until it is revoked or the facility is no longer used for its primary purpose

If the State Tax Commission, through a Pollution Control Exemption Certificate, states that certain property is exempt from sales and use taxes, it is exempt.

References pertaining to this information can be found in the index under [Chapter 29](#)

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## **Chapter 30 – Prescription Drugs**

### **Prior to March 14, 2014:**

Sales or purchases of drugs for human use that can only be legally dispensed by a qualified licensed health professional are not subject to tax.

Prescription drugs for human use include:

- Insulin
- Drugs that can only be dispensed by a licensed pharmacist
- Oxygen dispensed pursuant to a written prescription or order issued by a licensed physician or other health professional as defined in PA 368 of 1978

As a general rule, if you can purchase the identical drug at any time over the counter, it does not qualify for the exclusion.

Samples of drugs given out by a manufacturer to physicians and dispensed as free samples to patients are not taxable because they can only be dispensed legally by a licensed pharmacist or health professional. However, any packaging or container that comes with the sample drug is taxable.

### **On and After March 14, 2014:**

**General Sales Tax Act:** MCL 205.54g(1)(a) was amended effective March 14, 2014 to exempt from the sales tax drugs sold for human use that are either a **prescription drug** or a drug sold over the counter pursuant to a prescription. The amendment adopts a new definition of a **prescription** and a **prescription drug**. Specifically, the amendment incorporates the definitions of those terms as they appear in section 17708 of the Public Health Code, 1978 PA 368, MCL 333.17708.

**Use Tax Act:** The changes discussed above to the General Sales Tax Act were not made to the Use Tax Act. Consequently, the law prior to March 14, 2014 as discussed above continues to apply for purposes of the Use Tax Act. This means vendors with nexus in Michigan are required to collect and remit use tax on sales of over the counter drugs even if they are sold pursuant to a prescription. Furthermore, the definitions in MCL 333.17708 do not apply for use tax purposes.

References pertaining to this information can be found in the index under [Chapter 30](#)

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### ***Chapter 31 – Promotional Products***

Promotional merchandise and packaging material acquired for use in fulfilling a redemption offer or rebate to a person located outside this state are exempt.

References pertaining to this information can be found in the index under [Chapter 31](#)

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## **Chapter 32 – Purchase of Business**

The Use Tax Act provides that sales of business assets purchased as part of the purchase or transfer of a business are exempt. Although isolated/casual transactions are not subject to sales tax, there are no provisions in the Use Tax Act to exempt them. Therefore, the Use Tax Act provides an exemption for property purchased from a seller if the property is part of the purchase or transfer of a business. A purchase or transfer of a business takes place if **one or more of the following occurs**:

- Acquirer intends to use the seller's trade name or goodwill
- Acquirer intends to continue all or part of the seller's business
- At least 75% of the seller's tangible personal property is acquired at 1 or more of the existing locations

The exemption **does not** apply to:

- Property that would be sold in the ordinary course of a trade or business (inventory items). Inventory items purchased in the lump sum sale of a business are subject to tax unless they are exempt for resale or another valid exemption applies
- Motor vehicles, ORVs, mobile homes, aircraft, snowmobiles or watercraft

References pertaining to this information can be found in the index under [Chapter 32](#)

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## **Chapter 33 – Railroads**

Sales and use tax does not apply to the sale, 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 or material for track repairs.

This exemption applies to anyone with flanged wheel rolling stock capable of being moved on rail tracks. For example, this exemption would apply to an industrial processor hauling materials from one location to another or merely storing raw materials in a rail car on rail tracks connected to a rail line.

References pertaining to this information can be found in the index under [Chapter 33](#)

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## **Chapter 34 – Schools, Hospitals and Certain Nonprofit Institutions**

Gross proceeds used for the computation of sales or use taxes generally need not include sales **not for resale** of tangible personal property to nonprofit schools, nonprofit hospitals, or certain nonprofit institutions. This deduction is not limited to institutions incorporated or domiciled in Michigan. For example, ownership of personal property can transfer to an out-of-state nonprofit hospital in Michigan and the sale can be exempt from sales tax.

The exclusion also applies to homes for the care of children or aged persons which are operated either by an entity of government, a church, a religious or fraternal organization, a veteran's organization, or a corporation incorporated under the laws of this state.

All of the above entities must have nonprofit status and meet the various qualifications and restrictions mentioned below before a deduction can be allowed. Acceptable exemption claims supporting tax exempt sales are discussed in the "Exemptions and Requirements" section of this text.

### **Schools**

An **educational institution** as defined in R205.74, means an institution of learning, organized solely for educational purposes, which maintains a faculty of qualified instructors, and teaches regular, continuous courses of study, and which confers upon students a recognized diploma after completion of a specified curriculum. It must be operated by an entity of government, a church or a religious or fraternal organization and be organized solely for educational purposes. To qualify for a sales tax exemption, an **educational institution** must also be not operated for profit.

Public and nonprofit private schools, charter schools, and colleges may qualify. Public schools could be operated, for example, by the State of Indiana and be exempt from sales tax when purchasing in Michigan.

Purchases made by nonprofit schools are exempt **if** payment moves from the funds of the school **and** the item(s) acquired is (are) to be used or consumed in connection with the operation or purpose of the institution.

A sale of tangible personal property to a parent cooperative preschool is exempt from taxation under both the General Sales Tax and Use Tax Acts.



**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 by the Department of Consumer and Industry Services pursuant to Act No. 116 of the Public Acts of 1973, being sections 722.111 to 722.128 of the Michigan Compiled Laws.

**Note: Because the exemption is limited to institutions that are licensed by Michigan’s Department of Consumers and Industry Services, an out-of-state “parent cooperative preschool” is not exempt under the school deduction.**

### ***Sales by Schools***

A schools sale of tangible personal property for fund raising purposes are exempt from sales tax if the total calendar year sales at retail are less than \$5,000 and the sales tax was not collected as a separate item. **School** is defined to allow a separate exemption to the elementary, middle, and junior or high school sites.

Total calendar year sales at retail include all sales other than for resale or for lease. Examples of these sales at retail would be exempt meals and textbooks sold to students, meals sold to teachers, and fund-raising items sold to the public.

### ***Examples of Exempt Sales:***

- Sales made by a nonprofit educational institution of food to its enrolled students
- Textbooks sold by public or nonpublic schools to their enrolled students in kindergarten through the twelfth grade
- Athletic equipment sold to an educational institution for consumption or use if the athletic activities are under the management and control of the educational institution and the entire receipts are expended for athletic or educational purposes
- Printing materials sold to a school for use by the student government, school newspaper and school magazine, if the items were purchased on a nonprofit school's purchase order using general funds
- Building materials sold to a school for use in their building trades’ curriculum (The materials are used by the students to build homes that are sold upon completion.)

- A manufacturer and seller of jackets sell its wares to a school after accepting an exemption claim. The seller did not know that the jackets would later be sold to student groups, booster clubs, and PTA groups. The school would be liable for sales tax on its sales of these jackets assuming its total calendar year sales at retail met or exceeded \$5,000

### ***Examples of Taxable Sales:***

- Food sold to teachers or visitors by schools or educational institutions
- Food sold by a state college to students attending a high school prom
- Fundraising items sold to a nonprofit school without an exemption claim
- Sales of class pins, rings, and similar articles when paid for, directly or indirectly, by the students
- Sales to educational associations, parent teacher organizations, teachers, and other personnel of an educational institution

### ***Hospitals***

The term hospital is not defined in the General Sales Tax or Use Tax Act. It is, however, defined in 1979, AC R 205.87 (Rule 37), *Hospitals* as follows:

A **hospital**, for the purpose of this rule, means only a separately organized institution or establishment, the primary purpose of which is to provide medical, obstetrical, psychiatric or surgical attention **and** nursing to persons requiring the same.

For sales and use tax purposes, the Department will use the above description to identify a hospital. It is the only definition of a hospital available when determining if the purchase is by or the sale is to a nonprofit hospital.

**Note: A different definition of hospital is used for purposes of the contractor flow through exemption. See the “Contractor” section of this text.**

In order for a hospital to qualify for the sales tax exemption it must meet the following requirements:

- The entity must be a nonprofit hospital. Parent holding companies, brother/sister or subsidiary property companies are not entitled to the exemption.

- The **medical, obstetrical, psychiatric, or surgical attention** must be of an acute nature and required in treating the illness, injury, disease or other similar medical condition. **Usually** this treatment would require the daily supervision of a physician and admittance to the hospital of **all** patients. A few individuals receiving acute care in a nursing facility setting would not qualify the facility for the hospital exemption
  - Nursing **must** be provided but it cannot be the primary function of the facility

Only a hospital can lawfully use the word **hospital** in its name. However, a veterinary hospital may use the word and not qualify for the exemption. The lack of state or federal government accreditation may suggest that an entity is not a hospital. Not all hospitals (e.g., VA hospitals) are required to be accredited.

### ***Sales by Hospitals***

When a hospital makes retail sales, they must be licensed for and collect sales tax. Sales by non-profit hospitals which are **taxable** retail sales include, but are not limited to the following:

- Meals sold to visitors and employees
- Non-prescription drugs, non-prescription medicines, and supplies sold to the public through the hospital pharmacy
- Sales of cosmetics, souvenirs and other similar merchandise
- Equipment sales to doctors or professional corporations. Hospitals sometimes use their purchasing power to acquire items at prices below those available to a colleague associated with the hospital.
- Utility sales where the hospital is prorating its tax exempt utility bills among its lessees of office space

Retail sales by non-profit hospitals that are **not taxable** include, but are not limited to, the following:

- Drugs, medicines, insulin, meals, and other miscellaneous items furnished to patients and consumed on the premises
- Charges for oxygen, blood plasma, and blood administered to patients
- Dressings and bandages applied in the hospital
- Charges for X-ray radiation treatments, braces, splints, cases, therapeutic diets, and intravenous solutions furnished to patients
- Charges for anesthesia supplies and laboratory tests
- Sales of eyeglasses prescribed or dispensed to correct a person's vision by an ophthalmologist, optometrist, or optician, and repair and replacement parts for such eyeglasses

### ***Other Types of Nonprofit Institutions***

Churches, schools and governmental agencies are nonprofit entities that are discussed elsewhere in this manual. This section addresses other nonprofit institutions that are limited to homes for the care and maintenance of children or aged persons. To qualify for the exemptions found in the General Sales Tax and Use Tax Acts, the following conditions have to exist:

- The home must be operated by an entity of government, a regularly organized church, religious or fraternal organization, a veteran's organization, or a corporation incorporated under the laws of this state. The home does not have to be separately incorporated
- The home cannot be operated for profit, which means that the income does not inure, in whole or in part, to an individual or private shareholder
- The activities of the home 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

Purchases are still not automatically exempt from tax. Items sold to or acquired by these homes are exempt to the extent they are used or consumed primarily in carrying out the purposes of the institution or agency as stated in its bylaws or articles of incorporation and not resold. In addition, the sales tax exemption requires that the transferee sign a statement, approved by the Department, stating that the property is to be used or consumed in connection with the operation of the institution or agency and that it qualifies as exempt under the statute.

References pertaining to this information can be found in the index under [Chapter 34](#)

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## **Chapter 35 – Transfers Between Related Entities and Within the Same Legal Entity**

### **Transfers from Parent to Subsidiary, Subsidiary to Parent, or Subsidiary to Subsidiary:**

- Since two different entities exist, a transfer to a Michigan-based manufacturing firm could be taxable (if not exempt for industrial processing or exempt for another reason). If the transferor is licensed or required to be licensed for Michigan Sales Tax, the transferor is responsible for collecting and remitting sales tax. If the transferor is not licensed or required to be licensed for Michigan Sales Tax, the transferee is responsible for remitting use tax
- The tax base is selling price on the date of transfer. This is the value or price recorded in the purchaser's books, oftentimes representing the net book value at the time of transfer
- No credit is allowed for tax paid at the time of purchase by the transferring entity
- Tax is not due on the transfer of a business. See the Use Tax Act for what constitutes a **transfer of a business** and for exceptions to the definition

**Exceptions to the Above:** If the item being transferred is a motor vehicle, ORV, manufactured house, aircraft, snowmobile, or watercraft, tax is due on the higher of the transfer selling price, or retail market value. A vehicle could be exempt if transferred in connection with the organization, reorganization, dissolution, or partial liquidation of a business and the beneficial ownership is not changed and Michigan Tax has been previously paid.

### **Transfers within the Same Legal Entity:**

- As no sale has taken place, the tax base would be the original cost (not net book value) of any fixed asset transferred from out-of-state to Michigan
- Credit is given for any sales or use tax due and paid to another state or other local jurisdiction, if proof can be shown
- Tax is generally not due on transfers between Michigan-based divisions
- The date of transfer to a Michigan division determines whether the transaction is within the 4-year statutory audit period, not the purchase date

**Note: Transfers between divisions or within divisions are generally not supported by invoices or other documentation. It may be necessary to review journal entries, asset location records, property apportionment worksheets, etc. when auditing taxpayers with substantial intra-corporate transfers from out-state into the State of Michigan.**

References pertaining to this information can be found in the index under [Chapter 35](#)

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## Chapter 36 – Vehicles

### Sales Tax

The General Sales Tax Act provides exemptions for sales of vehicles when specific criteria are met.

#### ***New Car Dealerships - Demonstration Vehicles***

Vehicles acquired by a new car or truck dealer for demonstration purposes may be eligible for exemption. The exemption is determined by the number of new cars and trucks sold during the current calendar year or immediately preceding year without regard to the specific make or style. The statute provides the following schedule:

0 – 25 units sold	2 exempt demonstrators
26 – 100 units sold	7 exempt demonstrators
101 – 500 units sold	20 exempt demonstrators
501 or more units sold	25 exempt demonstrators

Once the number of exempt demonstrators has been exceeded, subsequent vehicles would be subject to use tax. The tax base of these vehicles is calculated using the **demo formula** which is: Purchase price of the vehicle x 2.5% + \$30 per month. This is the monthly tax base which should be reported for each month of non-exempt use until the vehicle is sold.

#### ***Vehicles for Resale***

- New vehicles at a new car dealership that are purchased for resale
  - Titled in the dealership's name – The first 25 (or other allowable number) would be exempt for demonstration purposes. Demonstration use would include spouse-assigned vehicles; vehicles assigned to any employee, shuttle vehicles, loaners, etc., but would **not** include a parts runner vehicle. The #26 titled vehicle (or other taxable number) would be subject to use tax on the demo formula.
  - Parts runner vehicle titled in the dealership's name – Taxable at cost
  - Not titled – All vehicles would be exempt without limitation, unless converted



- Used vehicles at a new car dealership that are purchased for resale
  - Titled in the dealership's name – Taxable use would be calculated using the demo formula beginning with the first vehicle each year
  - Not titled – All vehicles would be exempt without limitation, unless converted
- A new or used vehicle held for resale by a new or used car dealer that is used for a non-exempt purpose and is not exempt as a demonstrator is taxed beginning with the month that the non-exempt use begins and should be calculated using the **demo formula**.

### ***Used Car Dealerships***

- Used vehicles at a used car dealership that are purchased for resale:
  - Titled in the dealership's name – Taxable at cost
  - Not titled - All vehicles would be exempt without limitation, unless converted
- A vehicle held for resale by a used car dealer that is used for a non-exempt purpose and is not exempt as a demonstrator is taxed beginning with the month that the non-exempt use begins using the **demo formula**.

Charges made to employees for the use of a demonstrator will not be considered a taxable rental receipt subject to use tax.

### ***Automobile Manufacturers***

The exemptions provided to automobile dealers for resale and demonstration purposes do not apply to automobile manufacturers. MCL 205.94(l)(c)(i) & (iii) state: "Property purchased for resale..." and "Property purchased for demonstration purposes..." A prerequisite for the application of either exemption is that the property be **purchased**. A manufacturer does not purchase its vehicles, it manufactures them. In addition, the Motor Vehicle Code defines a **demonstrator** as "a motor vehicle used by a prospective customer or a motor vehicle dealer or his agent for testing and demonstration purposes."

## ***Vehicles Purchased for Resale, Not Titled, and Used for Demonstration Purposes***

- If a vehicle accumulates more than 1,000 miles between acquisition and disposition, the vehicle will be assumed to have been used for non-exempt purposes. A dealer may overcome this presumption by presenting records that document the breakdown of non-exempt and exempt use. The Department will allow a de-minimus 1,000-mile safe-harbor between the time of purchase and sale.
- If there are no mileage records for a vehicle it will be presumed that the vehicle accumulated more than 1,000 miles after entering inventory, and has been converted
- The first month of non-exempt use triggers tax. A log or record should be maintained to document the breakdown of non-exempt and exempt usage

### **Example:**

A vehicle accumulates 2,500 miles between purchase and sale. The vehicle cost the dealer \$14,000. If no record has been kept to document the breakdown of non-exempt and exempt usage, tax should be computed using the demo formula.  $2\frac{1}{2}\%$  of \$14,000 + \$30 = \$380 tax base for each month in possession or  $\$380 \times 6\% = \$22.80$  tax per month.

### ***Non-Michigan Residents***

If a non-resident is issued a special registration (in-transit permit) for the purchase of a vehicle to be titled and registered in his/her home state, Michigan sales tax must be reduced by the use tax imposed on the vehicle by the state to which it was removed and registered; and by the sales tax that would have been charged by the other state. Non-reciprocal states are exempt from Michigan sales tax with the special registration. In computing the tax due in the non-resident's home state, trade-ins, if applicable, are part of the tax base to the extent permitted under Michigan law.

The dealer must obtain a certificate from the purchaser and furnish the Department the following information:

- Name of the purchaser
- Address of the purchaser
- Signature of the purchaser

- Statement that the vehicle shall be primarily used, stored, and registered outside of Michigan
- Jurisdiction of registration

The information can be provided by way of certification on the RD-108, *Application for Title and Registration* form that is completed at the dealership.

A sale of a vehicle in interstate or foreign commerce is exempt if the following conditions are met:

- The dealer must not have knowledge that the vehicle will be returned to Michigan
- Vehicle ownership passes outside the state
- A Michigan title and license are not required
- The dealer maintains records to substantiate the above facts

### ***Ambulances and Fire Department Vehicles***

Ambulances and fire department vehicles not for resale and sold to a Michigan nonprofit corporation organized exclusively to provide a community with ambulance or fire department services are exempt from sales and use tax.

**Note: The Federal government and the State of Michigan and its local governmental entities are exempt from tax. Therefore, any ambulance or fire department vehicle purchased by them is exempt.**

### ***Non-Resident Military Personnel***

A vehicle sold to non-resident military personnel for registration in his/her home state is exempt from Sales Tax. At the time the vehicle is sold, the purchaser shall provide a sworn statement to the vendor from his/her immediate commanding officer certifying that the purchaser is a member of the armed forces on active duty and furnishing the recorded domiciliary or home address of the purchaser.

## **Use Tax**

A vehicle brought into Michigan within 90 days of purchase from outside of the state is presumed to be subject to tax. The burden of proof of exemption rests with the purchaser. This presumption does **not** mean items brought into Michigan on the 91<sup>st</sup> day or thereafter are not subject to tax if the intent was to bring the item(s) into Michigan.

An exemption from use tax is provided for property used solely for personal, non-business purposes that is purchased outside this state and that is not an aircraft if one or more of the following conditions are satisfied:

- 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
- 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

Tax must be collected by the designated state department before the transfer of title of vehicles, ORVs, manufactured housing, aircraft, snowmobiles or watercraft unless the purchaser is a licensed dealer or retailer purchasing for resale.

Taxable price is not less than retail market value.

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

- Among and between the following specific relatives:
  - Spouse
  - Mother or step-mother
  - Father or step-father
  - Brother or step-brother
  - Sister or step-sister
  - Child
  - Step-child
  - Grandparent
  - Grandchild
  - Legal ward
  - Legally appointed guardian with a certified letter of guardianship
- Beginning January 1, 2014, 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

- A gift received as a beneficiary in the administration of an estate
- As part of a(n) organization, reorganization, partial liquidation or dissolution of a business, if the beneficial ownership is not changed
- Distressed vehicles acquired by an insurance company

The use tax base for a vehicle cannot be less than its retail dollar value at the time of the transfer or purchase. The Department may request and use information from any other state agency in order to verify vehicle exemption or questionable valuation claims.

**Sales Price on the Difference for Purchases of Vehicles and Watercraft on and after December 15, 2013:** Prior to 2013, the General Sales Tax and Use Tax Acts imposed tax on trade-in allowance for vehicles and watercraft. The amendments remove some or all of the trade-in allowance from the tax base for specific watercraft and vehicles by altering the definition of **sales price** in the General Sales Tax Act and **purchase price** in the Use Tax Act. As of December 15, 2013, credit given for eligible motor vehicles used as partial payment for another eligible motor vehicle will not be subject to tax on the agreed upon value of the trade-in up to \$2,000. This deduction amount increases by \$500 each January 1 beginning 2015, and continuing through 2030, at which point the entire agreed upon trade-in value will be eligible for the deduction. The deduction for motor vehicles is only available for vehicles that are required to be registered and titled under the Michigan Vehicle Code (MVC) pursuant to MCL 257.216 or vehicles that meet the MVC definition of **recreational vehicle**. The deduction only applies when the trade-in is to a dealer licensed in Michigan as a new or used vehicle dealership; it is not available when the vehicle is purchased from an out-of-state dealer.

The amendments also provide that as of November 15, 2013, credit for the agreed-upon value of eligible titled watercraft used as partial payment for the purchase of a new or used titled watercraft from a watercraft dealer is not subject to tax up to the full value of the trade-in (no limit and no phase-in). To qualify for the deduction, both the trade-in watercraft and the newly purchased watercraft must be titled. Titled watercraft trade-ins to out-of-state dealers do qualify for the deduction. The dealer must separately state the agreed-upon trade-in value of the motor vehicle or titled watercraft on the sales invoice. Motor vehicles used as partial payment for titled watercraft or titled watercraft used as partial payment for a motor vehicle do not qualify for the deduction. Finally, lease transactions are not eligible for the deduction.

References pertaining to this information can be found in the index under [Chapter 36](#)

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## **Chapter 37 – Vessels**

Both the General Sales Tax and Use Tax Acts exempt the sale/purchase of certain commercial (water) vessels. Exempt vessels must be:

- Specially ordered by the purchaser
- Net registered tonnage of 500 tons or more

### ***Sales Tax***

The sale of bunker and galley fuel, provisions, supplies, maintenance, and repairs are exempt if they are for the exclusive use of the vessel produced upon special order and the vessel is engaged in interstate commerce. Sales of these items to vessels operating in foreign commerce are taxable.

### ***Use Tax***

Bunker and galley fuel, provisions, supplies, maintenance, and repairs are exempt from use tax if they are for the exclusive use of any vessel of 500 tons or more, and the vessel is engaged in interstate commerce.

Fuel and supplies for use on pleasure craft are subject to tax.

Food sold for resale on vessels plying the Great Lakes is exempt if the vessel operator has a sales tax license and remits tax on all sales within Michigan waters.

References pertaining to this information can be found in the index under [Chapter 37](#)

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## ***Index of References***

### **Chapter 1 - Introduction:**

- None

### **Chapter 2 – Agricultural Production:**

- MCL 205.54a(1)(e)
- MCL 205.94(1)(f)
- 1979 AC R 205.51 (Rule 1), *Agricultural Producing*
- 1979 AC R 205.115 (Rule 65), *Public Utilities; Gas, Electricity, and Steam*
- RAB 1990-2, *Sales and Use Taxes\_ - Storage Facilities*
- RAB 1990-24, *Sales and Use Tax Guidelines for Veterinarians*
- RAB 1991-11, *Sales and Use Taxes - Agricultural Production Amendments*
- LR 72-10, *Agricultural Production (Eggs)*
- LR 79-16, *Agricultural Production (Tractor Accessories)*
- LR 83-7, *Agricultural Production (Temperature Measuring Unit)*
- LR 85-16, *Agricultural Production (Greenhouse)*
- LR 86-37, *Agricultural Production (Crop Dusting)*
- LR 89-1, *Lease of Farm Equipment*

### **Chapter 3 – Aircraft/Aircraft Parts:**

- MCL 205.54x
- MCL 205.94(1)(u) and (v)
- MCL 205.94k

### **Chapter 4 – Bad Debts:**

- MCL 205.54i
- MCL 205.56a
- MCL 205.99a
- RAB 1989-61, *Sales and Use Taxes - Revised Bad Debt Guidelines*

### **Chapter 5 – Broadcasters:**

- MCL 205.54a(1)(g)
- MCL 205.94(1)(m)
- RAB 1997-1, *Sales and Use Tax Exemption for Commercial Radio and Television Broadcasters*

## **Chapter 6 – Churches:**

- MCL 205.54a(1)(b)
- MCL 205.54o
- MCL 205.54p
- MCL 205.54q
- MCL 205.94(1)(h) and (i)
- MCL 205.94m
- 1979 AC R 205.65 (Rule 15), *Churches and Houses of Religious Worship*
- RAB 1991-19, *Tax Base Used in Determining Sales Tax Liability on Food and Beverages Served at Fundraising Events*
- RAB 1995-3, *Sales and Use Tax – Nonprofit Entities*
- RAB 1999-2, *Sales and Use Taxation in the Construction Industry Including Nonprofit Hospital, Nonprofit Housing, and Church Sanctuary Exemptions*
- LR 81-4, *Sales to a Church*

## **Chapter 7 – Coins and Bullion:**

- MCL 205.54s
- MCL 205.94u

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- MCL 205.51a(i), (m), and (p)
- MCL 205.54a(1)(h)
- MCL 205.92b(i), (m), and (p)
- MCL 205.94(1)(p)
- 1979 AC R 205.139, *Medical Equipment and Appliances*
- LR 78-8, *Medical Equipment and Appliances*
- LR 87-46, *Hot Tub*
- LR 87-51, *Hydraulic Wheel Chair Lifts*
- LR 87-52, *Medical Equipment and Appliances*
- LR 2002-1, *Sales and Use Tax Medical Equipment Exemption: The Meaning of "Device"*
- LR 2002-2, *Sales and Use Tax Medical Equipment Exemption: Orthotics*

## **Chapter 9 – Commercial Advertising:**

- MCL 205.54d(h)
- MCL 205.94a(e)



## **Chapter 10 – Communication Service Providers:**

- MCL 205.52(2)(b)
- MCL 205.54v
- MCL 205.93a(1)(a) and (c)
- MCL 205.93a(2)-(4)
- MCL 205.94q
- MCL 205.94(1)(x)
- 1979 AC R 205.110 (Rule 60), *Telephone and Telegraph*

## **Chapter 11 – Computer Software:**

- MCL 205.51a(c),(d) and (o)
- MCL 205.54d(f) and (g)
- MCL 205.69(1)(e)
- MCL 205.110(1)(c) and (d)
- MCL 205.92b(c),(d) and (o)
- MCL 205.92(e),(f) and (k)
- MCL 205.94a(c) and (d)
- RAB 1999-5, *Sales and Use Taxation of Computer Software*

## **Chapter 12 – Conversion:**

- MCL 205.92(b),(e) and (q)
- MCL 205.93
- MCL 205.94
- MCL 205.97
- MCL 257.11a
- 2013 AACS R 205.8, *Consumer; Use; Conversion*

## **Chapter 13 – Delivery Charges:**

- MCL 205.51a(e)
- MCL 205.92b(e)
- MCL 205.51(1)(d)(iv)
- MCL 205.92(f)(iv)
- 1979 AC R205.124 (Rule 74), *Transportation Charges*
- RAB 2002-11, *Sales Tax Treatment of Delivery Services Provided by Retailers*

## **Chapter 14 – Demonstration:**

- MCL 205.54t(5)(d)
- MCL 205.94o(5)(d)
- MCL 205.94(1)(c)(iii)

### **Chapter 15 – Direct Mail:**

- MCL 205.51a(g)
- MCL 205.54a(n)
- MCL 205.69(1)(b)
- MCL 205.71
- MCL 205.92(b)
- MCL 205.92b(g)
- MCL 205.93(1)
- MCL 205.103
- MCL 205.110(1)(b)

### **Chapter 16 – Drop Shipments:**

- MCL 205.54k
- MCL 205.94i
- RAB 2002-10, *Sales and Use Taxes - Drop Shipments*

### **Chapter 17 – Exemptions and Requirements:**

- MCL 205.54q
- MCL 205.62
- MCL 205.94(1)(c)(i)
- RAB 2002-15, *Sales and Use Tax Exemptions and Requirements*
- Form 3372, *Michigan Sales and Use Tax Certificate of Exemption*
- 2013 AACCS R 205.1, *Sales Tax Licenses*

### **Chapter 18 – Extractive Operations:**

- MCL 205.94p
- MCL 205.54u
- MCL 205.54dd
- MCL 205.94aa
- MCL 211.784
- 1979 AC R 205.99 (Rule 49), *Mining, Oil Wells, and Extractive Operations*
- RAB 1989-56, *Sales and Use Tax - Taxability of Dry Hole or Dry Well Casing for Oil and Gas Well Drilling Operations*
- LR 81-1, *Drilling Equipment, Supplies and Materials: 8 Inch or Under Casing and Dry Pipe*
- LR 86-2, *Sand and Gravel Processing*
- LR 86-18, *Production of Electrical Energy from Waste Materials*

## **Chapter 19 – Federal Preemption:**

- MCL 205.54h
- MCL 205.94(1)(g)
- 1979 AC R 205.79 (Rule 29), *Federal and State Governments*
- RAB 1989-64, *Sales Tax - Federal Credit Unions and Federal Home Loan Banks*
- LR 90-24, *State Government Contracts*
- *U.S. v State of Michigan*, 851 F2d 803 (CA 6, 1988)

## **Chapter 20 – Food for Human Consumption:**

- MCL 205.51a
- MCL 205.52(4)
- MCL 205.54a
- MCL 205.54d(d)
- MCL 205.54g
- MCL 205.94(1)(q) & (w)
- MCL 205.94a(h)
- MCL 205.94d
- 2007 AACS R 205.56 (Rule 6), *Bakeries*
- 1979 AC, R 205.58 (Rule 8), *Beer, Wine, and Liquors*
- 2007 AACS R 205.126 (Rule 76), *Vending Machines and Other Automatic Sales Devices*
- 2007 AACS R 205.127 (Rule 77), *Water*
- 2013 AACS R 205.136 (Rule 86), *Food for Human Consumption*
- RAB 2009-8, *Sales Tax - Food for Human Consumption*
- RAB 1988-42, *Sales Tax – Catered Meals*

## **Chapter 21 – House Rentals (Rentals of Rooms and Lodging):**

- MCL 205.92(h)
- MCL 205.93a(1)(b)
- 1979 AC R 205.88 (Rule 38), *Hotels, Motels, Cabins, and Camps; Accommodations*
- RAB 2013-4, *Exemption for Foreign Diplomatic Personnel*
- LR 71-3, *Church [Travel Accommodations]*
- LR 86-6, *Schools*
- LR 87-8, *Hotel/Motel Charges*
- LR 89-3, *Sales to Other State Agencies*

## **Chapter 22 – Industrial Laundries:**

- MCL 205.54a(1)(m)
- MCL 205.92(l)

- MCL 205.93a(1)(d)
- MCL 205.94(1)(y)

### **Chapter 23 – Installation Charges:**

- MCL 205.51(1)(d)(v)
- MCL 205.92(f)(v)

### **Chapter 24 – Interstate Commerce:**

- MCL 205.69
- MCL 205.110
- 1979 AC R 205.81 (Rule 31), *Foreign Commerce*
- 1979 AC R 205.91 (Rule 41), *Interstate Commerce*

### **Chapter 25 – Interstate Motor Carriers:**

- MCL 205.54r
- MCL 205.94k
- IPD 2003-1, *Interstate Commerce Requirement of the Rolling Stock Exemption*

### **Chapter 26 – Isolated/Casual Transactions and Auctioneers:**

- MCL 205.54d(i) and (j)
- MCL 205.94g
- 1979 AC R 205.13 (Rule 13), *Casual or Isolated Sales*
- 1979 AC R 205.53 (Rule 3), *Auctioneers, Agents, Factors, and Brokers*
- RAB 2004-3 *Sales and Use Tax Guidelines for Distinguishing Between the Sale of a Service and the Sale of Tangible Personal Property*
- LR 72-8, *Isolated Transaction/Estate*
- LR 77-2, *Commercially Promoted Community Garage Sale Determined to be Rental Event Subject to Sales Tax*
- LR 79-1, *Isolated Transactions/Purchase of Existing Business*
- LR 85-7, *Duty of Assessing Officer - Unlicensed Seller*
- LR 86-30, *Casual or Isolated Garage Sales*

## **Chapter 27 – Newspapers, Periodicals and Other Publications:**

- MCL 205.54a(1)(f)
- MCL 205.94(1)(l)
- 1979 AC R 205.117 (Rule 67), *Repairers and Servicers*
- 1979 AC R 205.113 (Rule 63), *Printers, Lithographers, Photostaters, Typographers, and Blueprinters*
- RAB 1988-33 *Newspaper Supplements*
- LR 72-1, *Newspapers, Magazines and Other Publications*
- LR 76-11, *Newspapers and Periodicals*
- LR 80-6, *Newspapers, Magazines and Other Publications*
- LR 87-24, *Sale of Books*

## **Chapter 28 – Nonprofit Organizations:**

- MCL 205.54a(1)(a) & (i)
- MCL 205.94(1)
- MCL 205.54q
- RAB 1995-3, *Nonprofit Entities*
- RAB 2002-15, *Exemptions and Requirements*
- LR 78-5, *Sales to Nonprofit Organizations*

## **Chapter 29 – Pollution Control Facilities, Component Parts:**

- MCL 205.54a(1)(l)
- MCL 205.94(1)(s)
- 1979 AC R 205.137 (Rule 87), *Air and Water Pollution*
- RAB 1990-2, *Storage Facilities*
- RAB 1999-2, *Sales and Use Taxation in the Construction Industry, including Nonprofit Hospital, Nonprofit Housing, and Sanctuary Exemptions*

## **Chapter 30 – Prescription Drugs:**

- MCL 205.54d(k) & (l)
- MCL 205.54g(1)(a)
- MCL 205.94a(f) & (g)
- MCL 205.94d(1)(a)
- RAB 1993-3, *Taxation of Prescription Drugs*

## **Chapter 31 – Promotional Products:**

- MCL 205.94 (1)(c)

### Chapter 32 – Purchase of Business:

- MCL 205.94g

### Chapter 33 – Railroads:

- MCL 205.54m
- MCL 205.94l

### Chapter 34 – Schools, Hospitals and Certain Nonprofit Institutions:

- MCL 205.54a(1)(a)
- MCL 205.54q
- MCL 205.94(h)
- 1979 AC R 205.74 (Rule 24), *Educational Institutions*.
- 1979 AC R 205.87 (Rule 37), *Hospitals*
- 1979 AC R 205.104 (Rule 54), *Optometrists, Ophthalmologists, Opticians, and Optical Supply Houses*
- 1979 AC R 205.140 (Rule 90)
- RAB 1995-3, *Non-Profit Entities, IRC 501(3) & (4)*
- RAB 2002-15, *Sales and Use Tax Exemptions and Requirements*
- LR 73-4, *Schools* (Ohio State University, Aviation Fuel)

### Chapter 35 – Transfers Between Related Entities and within the Same Legal Entity:

- MCL 205.51(g)
- MCL 205.93(3)(c)
- MCL 205.93(2)
- MCL 205.94g

### Chapter 36 – Vehicles:

- MCL 205.52a
- MCL 205.54a
- MCL 205.54d(b)-(c) & (e)
- MCL 205.54e
- MCL 205.54r
- MCL 205.61
- MCL 205.92
- MCL 205.93
- MCL 205.94
- MCL 205.94bb
- 1979 AC R 205.54 (Rule 4), *Automobile and Other Vehicle Dealers*

- 1979 AC R 205.135 (Rule 85), *Isolated Vehicle, Aircraft, Watercraft, and Snowmobile Transfers*
- RAB 1991-1, *Use Tax Exemption on Transfer of Vehicle, ORV, Mobile Home, Aircraft, Snowmobile, or Watercraft to or from a Business*
- RAB 2002-19, *Limited Use Tax Exemption on the Transfer of Motor Vehicles, Aircraft, Watercraft, Mobile Homes, Off-road Vehicles, and Snowmobiles between Relatives and Others*
- LR 2014-2

### **Chapter 37 – Vessels:**

- MCL 205.54a(1)(d)
- MCL 205.94(1)(j)
- 1979 AC R 205.131 (Rule 81), *Vessels and Watercraft*