

USE TAX ACT (EXCERPT)
Act 94 of 1937

205.104a Inventory and records; maintenance; preservation; tax liability; failure to file return or preserve records; tax assessment; basis; indirect audit; burden of proof; blanket exemption; "indirect audit procedure" and "sufficient records" defined.

Sec. 14a. (1) A person in the business of selling tangible personal property and liable for any tax under this act shall keep in a paper, electronic, or digital format an accurate and complete beginning and annual inventory and purchase records of additions to inventory, complete daily sales records, receipts, invoices, bills of lading, and all pertinent documents in a form the department requires. If an exemption from use tax is claimed by a person because the sale is for resale at retail, a record shall be kept of the sales tax license number if the person has a sales tax license. These records shall be retained for a period of 4 years after the tax imposed under this act to which the records apply is due or as otherwise provided by law.

(2) If the department considers it necessary, the department may require a person, by notice served upon that person, to make a return, render under oath certain statements, or keep certain records the department considers sufficient to show whether or not that person is liable for the tax under this act.

(3) A person knowingly making a sale of tangible personal property for the purpose of resale at retail to another person not licensed under this act is liable for the tax imposed under this act unless the transaction is exempt under the provisions of section 4i.

(4) If a taxpayer fails to file a return or to maintain or preserve sufficient records as prescribed in this section, or the department has reason to believe that any records maintained or returns filed are inaccurate or incomplete and that additional taxes are due, the department may assess the amount of the tax due from the taxpayer based on an indirect audit procedure or any other information that is available or that may become available to the department. That assessment is considered prima facie correct for the purpose of this act and the burden of proof of refuting the assessment is upon the taxpayer. An indirect audit of a taxpayer under this subsection shall be conducted in accordance with 1941 PA 122, MCL 205.1 to 205.31, and the standards published by the department under section 21 of 1941 PA 122, MCL 205.21, and shall include all of the following elements:

(a) A review of the taxpayer's books and records. The department may use an indirect method to test the accuracy of the taxpayer's books and records.

(b) Both the credibility of the evidence and the reasonableness of the conclusion shall be evaluated before any determination of tax liability is made.

(c) The department may use any method to reconstruct income, deductions, or expenses that is reasonable under the circumstances. The department may use third-party records in the reconstruction.

(d) The department shall investigate all reasonable evidence presented by the taxpayer refuting the computation.

(5) If a taxpayer has filed all the required returns and has maintained and preserved sufficient records as required under this section, the department shall not base a tax deficiency determination or assessment on any indirect audit procedure unless the department has a documented reason to believe that any records maintained or returns filed are inaccurate or incomplete and that additional taxes are due.

(6) For purposes of this act, exemption certificate includes a blanket exemption certificate on a form prescribed by the department that covers all exempt transfers between the taxpayer and the buyer for a period of 4 years or for a period of less than 4 years as stated on the blanket exemption certificate if that period is agreed to by the buyer and taxpayer.

(7) As used in this section:

(a) "Indirect audit procedure" is an audit method that involves the determination of tax liabilities through an analysis of a taxpayer's business activities using information from a range of sources beyond the taxpayer's declaration and formal books and records.

(b) "Sufficient records" means records that meet the department's need to determine the tax due under this act.

History: Add. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009;—Am. 2014, Act 109, Imd. Eff. Apr. 10, 2014.