

DEPARTMENT OF TREASURY

STATE TREASURER

GENERAL SALES AND USE TAX RULES

SPECIFIC SALES AND USE TAX RULES

(By authority conferred on the Department of Treasury by section 3 of 1941 PA 122, MCL 205.3)

GENERAL SALES AND USE TAX RULES

R 205.1 Sales tax licenses.

Rule 1. (1) Except as provided in subrules (7) and (8) of this rule, a Michigan sales tax license must be obtained by every person engaged in the business of selling tangible personal property at retail in this state. A person shall not engage or continue in the business of making sales at retail in this state without securing a license, regardless of the amount of sales or the manner of obtaining goods for sale. An application for a license, before or at the time of beginning business, must be made to the department of treasury on a form or in a manner prescribed by the department of treasury. All licenses must be displayed on the licensed premises.

(2) Every sales tax license expires on September 30 of each year, regardless of the date the license is issued, and must be renewed by furnishing the information as the department of treasury may require. A person selling at retail at more than 1 location or place of business shall display a copy of the license at each location. If a valid license is lost or destroyed, it may be replaced without charge by notifying the department of treasury.

(3) A license is not transferable and a new license must be secured immediately if there is a change of ownership of the business. For example, if a partner is added or dropped, or if a corporation is formed or dissolved, this constitutes a change of ownership necessitating application in the name of the new ownership for a sales tax license to sell at retail. If the new owner fails to apply for a license, the new owner may be subjected to penalty for operating without a valid sales tax license.

(4) The fact that a person is licensed by the department of treasury to sell at retail does not automatically mean that sales to the licensed person are exempt from sales tax as sales for resale.

(5) The department of treasury may deny a license to an applicant if the department of treasury considers the applicant to be the agent or representative of a principal required to be licensed and responsible for filing the sales tax returns.

(6) The department of treasury may require an applicant for a sales tax license to submit a surety bond as provided by statute.

(7) A person making retail sales at 2 or fewer events per calendar year is not required to obtain a license, but instead shall file a per event tax return as follows

(a) If the 2 or fewer events are for purposes of fundraising, a special events sales tax return must be filed.

(b) If the 2 or fewer sales events are not for fundraising purposes, a concessionaire's sales tax return must be filed.

(8) A person only making casual and isolated sales as described in R 205.13 is not required to obtain a Michigan sales tax license.

History: 1979 AC; 2013 AACCS; 2023 MR 15, Eff. August 11, 2023.

R 205.2 Rescinded.

History: 1944 AC; 1954 AC; 1979 AC; 1996 AACCS; 1997 AACCS.

R 205.3 Rescinded.

History: 1944 AC; 1954 AC; 1979 AC; 1996 AACCS; 1997 AACCS.

R 205.4 Rescinded.

History: 1944 AC; 1954 AC; 1979 AC; 1996 AACCS; 1997 AACCS.

R 205.5 Rescinded.

History: 1979 AC; 2013 AACCS.

R 205.6 Rescinded.

History: 1944 AC; 1954 AC; 1979 AC; 1996 AACCS; 1997 AACCS.

R 205.7 Rescinded.

History: 1944 AC; 1954 AC; 1979 AC; 1996 AACCS; 1997 AACCS.

R 205.8 Rescinded.

History: 1979 AC; 2013 AACCS; 2023 MR 15, Eff. August 11, 2023.

R 205.9 Rescinded.

History: 1979 AC; 2013 AACCS.

R 205.10 Rescinded.

History: 1944 AC; 1954 AC; 1979 AC; 1996 AACS; 1997 AACS.

R 205.11 Rescinded.

History: 1944 AC; 1954 AC; 1979 AC; 1996 AACS; 1997 AACS.

R 205.12 Rescinded.

History: 1944 AC; 1954 AC; 1979 AC; 1996 AACS; 1997 AACS.

R 205.13 Casual or isolated sales.

Rule 13. (1) Sales at retail must not include an isolated transaction made other than in the ordinary course of repeated and successive transactions of a like character, which includes, but is not limited to, a situation where an individual sells personal household furniture, a farmer sells farm machinery or other farm equipment, or a merchant sells a cash register, counters or other store fixtures at auction or otherwise. These sales are casual or isolated transactions and are not subject to tax. However, any individual who in any manner or at any time advertises, solicits, or offers tangible personal property for sale for the purpose of repeated sales is determined to be regularly engaged in business and those sales are not considered casual or isolated, even though they may be few or infrequent.

(2) Vehicles, aircraft other than a qualified aircraft under section 11 of the streamlined sales and use tax revenue equalization act, 2004 PA 175, MCL 205.181, ORVs, manufactured housing, snowmobiles, and watercraft acquired in an isolated transaction from a person that is not a retailer are subject to an equalization tax. The equalization tax on vehicles, snowmobiles, and watercraft must be paid to the secretary of state before the transfer of a vehicle title, snowmobile registration, or watercraft registration. The equalization tax on the transactions is imposed at a rate of 6% of the retail dollar value of the item at the time of acquisition. The equalization tax on the transfer of aircraft, other than a qualified aircraft under section 11 of the streamlined sales and use tax revenue equalization act, 2004 PA 175, MCL 205.181, must be paid directly to the department of treasury by the purchaser. The equalization tax on manufactured housing must be collected by the secretary of state before the transfer of the certificate of title. All use tax exemptions also apply to the equalization tax. Credit is given for any use tax paid against equalization tax that is due on the same transaction.

(3) A person that is not licensed as an automobile dealer by the secretary of state is presumed to be in the business of making retail sales when selling or offering for sale 3 or more used vehicles in the previous 12 months.

(4) A person that holds a single sales event per calendar year, such as a garage or yard sale to sell personal household items, that lasts no longer than 3 consecutive days, is not making sales at retail and is not liable for tax on the transactions.

(5) The tax base under the streamlined sales and use tax revenue equalization act, 2004 PA 175, MCL 205.179, is the retail dollar value of the property as listed in an industry accepted pricing guide applicable to the property. It is solely within the department of treasury's discretion to determine if a pricing guide is industry accepted.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.14 Rescinded.

History: 1944 AC; 1954 AC; 1979 AC; 1996 AACs; 1997 AACs.

R 205.15 Trade-in deduction and core charges.

Rule 15. (1) Except as provided in subrules (2) and (3) of this rule, no deduction from the sales price of a retail sale is allowed for any credit given by the seller for a trade-in taken in exchange or as partial payment for tangible personal property and the tax applies to the full selling price.

Example: A customer purchases an LP tank filled with propane gas for the sales price of \$49.95. Tax is due on the sales price of \$49.95. Months later, the customer returns for more propane gas, trades in an empty LP tank, and receives an LP tank full of propane gas. The customer is charged \$24.95, and the seller credits \$25.00 for the empty LP tank traded in. No deduction is allowed for the empty LP tank taken in trade on the transaction. Tax is due on the total amount of \$49.95, \$24.95 plus \$25.00, without a reduction for the trade-in amount.

(2) Credit given by a seller, except for rentals and leases, is not part of the sales price and is not subject to tax if the agreed-upon value is separately stated on the invoice, bill of sale, or similar document given to the purchaser, in the following circumstances:

(a) Credit for the agreed-upon value of a titled watercraft used as part payment of the purchase price of a new titled watercraft or used titled watercraft purchased from a watercraft dealer.

(b) Credit for the agreed-upon value of a motor vehicle used as part payment of the purchase price of a new or used motor vehicle or new or used recreational vehicle purchased from a dealer. This deduction does not apply to a recreational vehicle used as part payment for a motor vehicle. This deduction is limited, as follows:

(i) Beginning January 1, 2019, the lesser of the following:

(A) \$5,000.00. Beginning January 1, 2020, and each January 1 after that, this limit is increased by \$1,000.00.

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

(ii) Beginning January 1, 2029, the full agreed-upon value of the traded-in motor vehicle is eligible for the deduction.

(iii) Beginning January 1, 2018, credit for the full agreed-upon value of a recreational vehicle used as part payment for a new or used recreational vehicle purchased from a dealer.

Example: A customer purchases a new motor vehicle on February 1, 2019 from a dealer for \$25,000.00. The dealer agrees to take the customer's used motor vehicle in on trade and agrees to credit the customer \$10,000.00 for the traded in vehicle. The customer pays the remaining \$15,000.00 through a financing agreement. Only up to \$5,000.00 of the trade-in vehicle is eligible for the deduction, therefore, the taxable sales price of the vehicle is \$20,000.00.

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

Example: A retailer sells a customer a car battery for \$100.00. The invoice given to the customer separately itemizes a \$20.00 charge for a recycling fee for the battery. The taxable sales price of the battery is \$80.00.

(4) Tangible personal property acquired by the seller through a trade-in that is later sold at retail is subject to sales tax on the full sales price.

History: 1979 AC; 2013 AACCS; 2023 MR 15, Eff. August 11, 2023.

R 205.16 Returned goods.

Rule 16. (1) The term "returned goods" does not include repossession or recapture of merchandise by legal process, abandonment of contract, voluntary surrender of goods without a refund or credit being given for the amount paid, or goods accepted in trade or barter.

(2) If the seller provides a full or partial refund or credit on returned goods within the time period for returns stated in the seller's refund policy or 180 days after the initial sale, whichever is sooner, the seller shall refund tax on the full amount or that portion of the purchase price that was refunded or credited. If the seller allows for a full or partial refund or credit on returned goods after the time period for returns stated in the seller's refund policy or 180 days after the initial sale, the seller may refund tax on the full amount or that portion of the purchase price that was refunded or credited. The seller may claim a refund or credit of the tax paid to the department of treasury on all or that portion of the purchase price that was refunded or credited to the seller's customer. The seller's claim for refund must be submitted to the department of treasury within 4 years after the date set for the filing of the original return for the period in which the tax was due.

(3) A refund or credit of tax must not be given on goods returned to the seller for a refund or exchange without proof that Michigan tax was paid on the original sale.

(4) A rehandling or restocking charge by the seller in connection with returned goods is not a reduction of the sales or purchase price for refund purposes. Charges attributable to use of the returned goods by the purchaser are taxable.

(5) A credit or refund of tax is allowed for a motor vehicle returned to a manufacturer under 1986 PA 87, MCL 257.1401 to 257.1410, less allowances for use certified by the manufacturer on a form provided by the department of treasury.

History: 1979 AC; 2013 AACCS; 2023 MR 15, Eff. August 11, 2023.

R 205.17 Rescinded.

History: 1944 AC; 1954 AC; 1979 AC; 1996 AACS; 1997 AACS.

R 205.18 Rescinded.

History: 1944 AC; 1954 AC; 1979 AC; 1996 AACS; 1997 AACS.

R 205.19 Rescinded.

History: 1944 AC; 1954 AC; 1979 AC; 1996 AACS; 1997 AACS.

R 205.20 Interpretation of rules.

Rule 20. These rules must be read and interpreted in their entirety, taking into account the effect of all pertinent legislation, rules, and court decisions.

History: 1979 AC; 2013 AACS; 2023 MR 15, Eff. August 11, 2023.

R 205.21 Rescinded.

History: 1944 AC; 1954 AC; 1979 AC; 1996 AACS; 1997 AACS.

R 205.22 Discounts, coupons, and rebates generally; discounts on certain motor vehicle sales.

Rule 22. (1) Except as provided in subrule (2) of this rule, trade, quantity, or other discounts given directly by a seller to a purchaser are deductible in arriving at the net sales price subject to tax. These discounts are not deductible until the actual discount has been given to the purchaser. For discounts offered directly by a seller after the time of sale, through the mail or other means, the purchaser may seek a refund of the sales tax paid on the discount or rebate amount from the seller if the seller collected the tax from the purchaser. The seller may request a refund from the department of treasury after the seller has refunded the tax to its customer. The discounts must appear on the invoices, records, and accounts of the seller and be substantiated to the satisfaction of the department of treasury.

Example 1: ABC is a retailer that sells widgets for a sales price of \$10.00 each. ABC offers a quantity discount of \$2.00 per widget if the customer purchases 10 widgets. Customer purchases 10 widgets at a sales price of \$80.00. The taxable sales price of the widgets is \$80.00.

Example 2: ABC is a retailer that sells musical instruments. ABC sells a baby grand piano to a customer for a sales price of \$25,000.00. ABC's contract with the customer provides that if the customer pays \$20,000.00 within 60 days, ABC must reduce the price of the piano to \$20,000.00. The customer pays in 59 days. The taxable

sales price of the property is \$20,000.00. However, when the sale is first reported by ABC it must include gross proceeds of \$25,000.00 on its return and remit the appropriate tax. If ABC collected tax from the customer on the \$5,000.00 discount, ABC shall refund its customer before taking a credit or seeking a refund.

(2) A discount or rebate does not reduce the taxable sales price of a sale at retail and is subject to tax, if all the following conditions are met:

(a) The seller receives consideration from a person other than the purchaser, for example, from a manufacturer, and the consideration is directly related to the price reduction or discount.

(b) The seller is obligated to pass the price reduction or discount through to the purchaser.

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

(d) One of the following criteria are met:

(i) The purchaser presents documentation to the seller to claim a price reduction or discount granted by a third-party with the understanding that the third-party will reimburse any seller to whom the documentation is presented.

(ii) The purchaser identifies himself or herself as a member of a group or organization entitled to a reduction or discount. Preferred customer cards that are available to any patron do not constitute membership in a group or organization.

(iii) The price reduction or discount is identified as a third-party reduction or discount on the invoice received by the purchaser or on other documentation presented by the purchaser.

Example 3: ABC is a retailer that sells widgets manufactured by XYZ for a sales price of \$10.00. XYZ mails manufacturer coupons to the public for \$2.00 off per widget. ABC and XYZ have an agreement that XYZ will reimburse ABC \$2.00 per widget sold when the coupon is presented. The agreement requires ABC to pass this discount on to its customers. A customer presents XYZ's coupon to ABC and ABC sells the customer a widget for \$8.00. The taxable sales price of the widget for purposes of the seller's liability is \$10.00. Even though the retailer only charged the purchaser a sales price of \$8.00, the seller may collect the full 60 cents from the purchaser to reimburse itself for the sales tax due on the transaction in accordance with section 23(1) of the General Sales Tax Act, 1933 PA 167, MCL 205.73.

Example 4: XYZ, a non-profit member association and service organization, has agreements with various merchants and service providers under which XYZ's members are entitled to discounts. Membership in XYZ is based on a fee and is not available to the public free of charge. ACME Hotel Group is a merchant that provides its accommodations throughout this state to XYZ members at a discount under such an agreement. Depending on the location within this state, XYZ reimburses ACME Hotel Group in an amount equal to or less than the amount of the discount. At one of ACME Hotel Group's locations, a \$100.00 hotel room is rented at a 10% discount to a XYZ member who pays \$90.00 with the remaining \$10.00 paid to ACME Hotel Group by XYZ. At another ACME Hotel Group location, a \$100.00 hotel room is rented at a 10% discount to a XYZ member who pays \$90.00 with only \$6.00 of the remaining \$10.00 paid by XYZ to ACME Hotel Group. ACME Hotel Group absorbs the remaining \$4.00 to have the hotel room rented out. Use tax is due on the full

consideration paid to ACME Hotel Group by the XYZ member and XYZ. In the first transaction, use tax of \$6.00 is due on the consideration received by ACME Hotel Group of the \$100.00 purchase price, while in the second transaction, use tax of \$5.76 is due on the consideration of \$96.00 received by ACME Hotel Group.

(3) For the sale of a motor vehicle, a discount given to a purchaser because of the purchaser's status as a current employee, where the amount of the discount is reimbursed to the seller by a third-party, is not included in sales price and is not subject to tax. Retired employees and relatives of an employee are not considered current employees.

(4) An automobile dealer may reduce the taxable sales price, calculate a credit, or seek a refund for consideration received from an automobile manufacturer to reimburse the dealer for a discount or price reduction given on the sale of a motor vehicle, to a member of a group designated by the manufacturer as entitled to a price identified on the manufacturer's invoice to the automobile dealer that the manufacturer requires the dealer to charge the purchaser of that vehicle, if all of the following conditions are met:

(a) The purchaser is not employed by the manufacturer when the discount or price reduction is given.

(b) The dealer did not reimburse itself tax on the portion of the sales price it receives from the manufacturer.

(c) The amount of the credit or refund does not exceed the actual amount of sales tax paid on the portion of the sales price received from the manufacturer.

History: 1979 AC; 2013 AACs; 2023 MR 15, Eff. August 11, 2023.

R 205.23 Rescinded.

History: 1979 AC; 2013 AACs.

R 205.24 Rescinded.

History: 1944 AC; 1954 AC; 1979 AC; 1996 AACs; 1997 AACs.

R 205.25 Rescinded.

History: 1944 AC; 1954 AC; 1979 AC; 1996 AACs; 1997 AACs.

R 205.26 Use tax registration.

Rule 26. (1) Except as provided in subrules (5) and (6) of this rule, activities that require a registration under the Use Tax Act, 1937 PA 94, MCL 205.91 to 205.111, include, but are not limited to, the following:

(a) An out-of-state seller making sales into this state that has nexus with this state if the transfer of ownership of the tangible personal property occurs outside of this state.

(b) An out-of-state seller making sales into this state that voluntarily collects and remits use tax that does not have nexus with this state.

(c) A business in this state that purchases tangible personal property from a seller that does not provide proof that sales or use tax was due and paid on the transaction.

(d) A lessor of tangible personal property that elects to collect and remit use tax on its rental receipts.

(e) A provider of intrastate or interstate telecommunications services.

(f) A provider of rental accommodations for a continuous period of 1 month or less.

(g) A provider of laundering or textile cleaning service under a sale, rental, or service agreement with a term of not less than 5 days.

(h) A provider of mobile wireless services.

(i) A person holding a direct payment authorization.

(2) A use tax registration must be obtained as prescribed by the department of treasury.

(3) A use tax registration is not transferable.

(4) Registration under the Use Tax Act, 1937 PA 94, MCL 205.91 to 205.111, requires the filing of returns on forms and at a frequency required by the department of treasury. Filing by electronic means, by accelerated filing, or by other methods approved by the department of treasury may be required. Failure to register and file returns may subject the taxpayer to penalties.

(5) A seller holding a sales tax license under the General Sales Tax Act, 1933 PA 167, MCL 205.51 to MCL 205.78, is not required to register for use tax.

(6) A seller registered under the Streamlined Sales and Use Tax Agreement who is not otherwise subject to use tax under the Use Tax Act, 1937 PA 94, MCL 205.91 to 205.111, is not required to register for use tax because of the registration under the Streamlined Sales and Use Tax Agreement.

History: 1979 AC; 2013 AACS; 2023 MR 15, Eff. August 11, 2023.

R 205.27 Rescinded.

History: 1979 AC; 1996 AACS; 1997 AACS.

R 205.28 Use tax included in gross proceeds.

Rule 28. The use tax act requires a seller to collect use tax as a separate line item and prohibits the inclusion of such charge as part of the sales price or purchase price.

History: 1979 AC.; 2013 AACS.

R 205.29 Exemption for use tax already paid on tangible personal property or services.

Rule 29. (1) A person in this state that purchases or otherwise acquires from a seller located in another state tangible personal property that is used, stored, or consumed in this state is not liable for the tax levied under the Use Tax Act, 1937 PA 94, MCL 205.91 to 205.111, if the use tax was already paid to the seller by that person for the tangible personal property. In addition, a person who uses or consumes a service in this state that

is taxable to that person under the Use Tax Act, 1937 PA 94, MCL 205.91 to 205.111, is not liable for the use tax if the seller or provider of the service collected the use tax from that person in connection with the sale or provision of the service or the person otherwise paid the use tax that was billed by the provider of the service.

(2) For purposes of subrule (1) of this rule, it is the responsibility of the person using, storing, or consuming the tangible personal property in this state, or using or consuming the service in this state, to retain proof that the use tax was paid by that person for the purchase or acquisition of the tangible personal property or service, or was otherwise collected from that person by the seller or provider of the tangible personal property or service.

History: 2023 MR 15, Eff. August 11, 2023.

SPECIFIC SALES AND USE TAX RULES

R 205.51 Agricultural producing.

Rule 1. (1) For the purpose of this rule, "agricultural producing" means the commercial production, for sale, of crops, livestock, poultry, and other products by persons regularly engaged in business as farmers, nurserymen, or agriculturists.

(2) Sales of tangible personal property are subject to the sales or use tax under this rule, if the sales are to persons other than those specified in subrule (1), or if the sales are made to persons specified in subrule (1), but the property is used or consumed by those persons for a purpose other than the commercial production of agricultural products for sale.

(3) Sales to farmers of fuel, clothing, and all other tangible personal property for personal living or human consumption or use are taxable. Sales of tangible personal property to all persons are taxable when the property is used in producing food or other products for personal consumption and not for sale.

(4) All sales to persons using land, but not included in the definition of "agricultural producing" in subrule (1), are taxable. For example, a mowing machine is taxable when sold to the operator of a riding stable for use in cutting hay to be fed to the operator's riding horses. The sale of the machine is exempt, however, if made to a person regularly engaged in business as a farmer for use in cutting hay to be fed to the farmer's work horses or cattle.

(5) Sales of the following are exempt only when used in "agricultural producing" as defined in subrule (1):

- (a) Seeds and other propagative portions of plants.
- (b) Fertilizer and similar substances for improving quality of the soil.
- (c) Spray materials for insecticides, germicides, and fungicides.
- (d) 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.
- (e) Sacks, wrappers, and other nonreturnable containers resold with crops; also, binding twine and baling wire.

(f) Machinery, tools, other equipment, repair parts, motor fuel, oil, grease, and other tangible personal property necessary for their operation and maintenance, except that sales of such equipment are taxable under the following circumstances:

(i) If the equipment is to be attached to and becomes a part of real estate.

(ii) If a motor vehicle is used on a public highway and is required by the motor vehicle law to have registration license plates.

(iii) Gasoline, oil, tires, and parts for a motor vehicle specified in paragraph (ii).

(g) Electricity or gas used directly in producing agricultural products.

When a separate meter is not installed for recording exempt electrical use, an allocation for exemption may be utilized if the total electrical consumption exceeds 1,500 kwh per month, or 2,500 kwh per month for homes with electric heat during the months of November to March. (See R 205.115)

(6) Sales of all tangible personal property used to improve real estate, or attached to and becoming a structural part of real estate, are taxable. Sales of tangible personal property consumed or used in the construction, alteration, repair, or maintenance of houses, barns, water supply systems, fences, drains, and all other structures and appurtenances forming a part of real estate are taxable. Readily movable equipment, such as portable hog houses and feeding troughs, is not considered a part of real estate and is not taxable if used in commercial agricultural producing. Sales of tangible personal property used in clearing land of trees, stumps, and rocks or used in ditching, tiling, or otherwise improving real estate are taxable.

(7) Sales of seed, fertilizer, equipment, and all other tangible personal property to anyone for use on homes or other noncommercial gardens, lawns, parks, boulevards, and golf courses or for use by landscape gardeners are taxable.

(8) Every person, including farmers, nurserymen, and agriculturists, who sells tangible personal property, other than food at retail, to persons for consumption or use, and not for resale, shall obtain a sales tax license and pay the tax to the state on the entire gross proceeds from those 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.

(9) A retail sale of tangible personal property used for agricultural production may be deducted from gross proceeds before computation of the tax if, at the time of sale, the following certificate is signed by the purchaser:

CERTIFICATE UNDER AGRICULTURAL PRODUCING EXEMPTION

The undersigned hereby certifies that all items, except as indicated hereon, are purchased for use of consumption in connection with the production of horticultural or agricultural products as a business enterprise, and agrees to reimburse the seller the sales tax if used or consumer otherwise.

DATE _____
SIGNED _____
Purchaser

ADDRESS

Unlawful use of this certificate subjects persons to the penalties of the sales tax act.

(10) A deduction for sales in agricultural producing shall not be taken from gross sales for agricultural production in the absence of an executed exemption certificate, as specified in subrule (9), covering each deductible sale. A blanket or so-called standing or continuous certificate is not acceptable, except for continuous sales of utilities wherein the taxability for consumption does not change from month to month. More than 1 item upon which a claim for exemption is made may be covered by 1

certificate if all the items are purchased at the time of the given sale. Taxable and nontaxable sales may be listed on the sales invoice, if taxable items are indicated. For example, the letter "T" may be placed before a taxable item.

(11) Separate copies of the certificate may be used by sellers, or the wording may be imprinted or rubber-stamped on sales invoices. All language expressed in the certificate shall be used. The date of purchase or address of the purchaser may be made to appear anywhere on the invoices;

however, provision for the signature of the purchaser shall follow the wording of the certificate. Selection of the size of type used in the preparation of certificates is discretionary.

(12) A deduction for agricultural producing shall not be considered in the absence of the seller being in possession of executed certificates.

History: 1979 AC.

R 205.52 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.53 Auctioneers, agents, factors, and brokers.

Rule 3. (1) Auctioneers, agents, factors, brokers, etc., selling tangible personal property on a repeated basis from a fixed location, are retailers regardless of whether the sales are on their own behalf or for a principal.

(2) Where an auctioneer is engaged by a manufacturer, farmer, or householder to act as his agent in selling tangible property at the premises of the manufacturer, farmer, or householder, the auctioneer will not be liable for sales tax on such sales unless the auctioneer actually purchases the merchandise and then sells the property acquired on his own behalf.

History: 1979 AC.

R 205.54 Automobile and other vehicle sales.

Rule 4. (1) Sales of new and used automobiles, buses, trucks, tractors, trailers, house trailers, motorcycles, motor scooters, and other vehicles for consumption or use are subject to the tax on the full retail sales price. The sales price includes the total amount of consideration, including cash, credit, property, and services, for which the vehicle is sold, whether received in money or otherwise, and without any deductions for federal taxes, freight, handling, delivery, commissions, repossessions, advertising, future free service, or any expense incurred as part of the cost of doing business. The sales tax must be paid to the secretary of state when the application of title is submitted by the dealer.

(2) In calculating the retail sales price of a motor vehicle subject to tax, if separately stated on the invoice, bill of sale, or similar document given to the purchaser, the following may be excluded:

(a) The agreed-upon value of a vehicle used as partial payment to a dealer, subject to the limitations set forth in R 205.15.

(b) Interest, financing, or carrying charges from credit extended on the sale of the vehicle.

(c) Taxes legally imposed directly on the consumer.

(3) Unless otherwise exempt, vehicle transfers between individuals are subject to use tax on the purchase price of the vehicle. In addition, equalization tax as computed under section 9 of the streamlined sales and use tax revenue equalization act, 2004 PA 175, MCL 205.179, is imposed to the extent that the retail dollar value at the time of acquisition exceeds the purchase price of the vehicle. The use tax and equalization tax due in a vehicle transfer between individuals is payable to the secretary of state when the application for title is submitted by the purchaser.

(4) When a vehicle is sold by a dealer, the sales price, together with the amount of sales tax to be paid to the secretary of state, must be indicated on the invoice, sales order, the statement of this state's retail sales tax paid as provided by the secretary of state, and on the records of the dealer. Authorized discounts are deductible only when given to the purchaser by the dealer at the time of sale and shown on the invoice, sales order, the statement of sales tax paid as provided by the secretary of state, and on the records of the dealer. See R 205.22.

(5) The sale of a vehicle for delivery and use outside this state is not subject to tax if all the following conditions exist:

(a) The dealer delivers and assumes all responsibility for delivery without knowledge that the vehicle will be returned to this state, except for a temporary use in this state.

(b) Title to the vehicle passes to the purchaser at a point outside this state.

(c) A vehicle registration for this state is not required.

(d) The dealer's records substantiate subdivisions (a) to (c) of this subrule.

(6) For a vehicle sold and delivered in this state to a person securing special registration under section 226 of the Michigan vehicle code, 1949 PA 300, MCL 257.226, to register and use that vehicle in a state that does not impose use tax upon registration in that state or that does not have a sales tax reciprocity agreement with this state, no tax is collected upon the sale and delivery of that vehicle in this state.

(7) Unless otherwise exempt, tax is levied on any vehicle sold and delivered in this state if the purchaser intends to register and use that vehicle in another country or does not qualify for special registration issued by the secretary of state. (See MCL 257.226.) A

vehicle purchased and remaining in this state for a period of more than 30 days is subject to sales tax even if the purchaser is not a legal resident of this state or the vehicle will be registered in another state. If the purchaser is not a resident and is actively serving in the Armed Forces of the United States, the sale may be exempt from tax if that purchaser provides a sworn statement of nonresidency from that purchaser's commanding officer and registers the vehicle in the purchaser's state of residency or domicile.

(8) For a vehicle sold and delivered in this state to a person securing special registration under section 226 of the Michigan vehicle code, 1949 PA 300, MCL 257.226, to register and use that vehicle in a state having a sales tax reciprocity agreement with this state, tax is imposed on the lesser of the tax to be imposed on the vehicle by the state in which the vehicle will be registered and the amount of Michigan sales tax due on the sale of the vehicle. In computing the tax due in each state under this provision, the value of any trade-in should be deducted in accordance with the respective law of each state. See R 205.15.

(9) When a vehicle that has been sold is returned to the dealer voluntarily by the purchaser and the dealer refunds money or other consideration given by the purchaser, the dealer may receive a refund or credit for the amount of sales tax paid to the state on the portion of the original price that was refunded. When a vehicle that has been sold is returned to the manufacturer under 1986 PA 87, MCL 257.1401 to 257.1410, and the manufacturer certifies the amount of money or consideration paid by the purchaser that has been refunded, less an allowance for the purchaser's use of the vehicle, a refund for the amount of sales tax paid to the state may be issued to the manufacturer.

(10) Each new vehicle dealer is allowed a maximum number of tax-free demonstrators in a calendar year in accordance with the total number of new cars and trucks sold in the current calendar year or the immediately preceding calendar year as follows:

- (a) Zero to 25 2 tax-free demonstrators
- (b) 26-100 7 tax-free demonstrators
- (c) 101-500 20 tax-free demonstrators
- (d) 501 or more 25 tax-free demonstrators

(11) To qualify as a demonstrator the vehicle must be registered in the name of a dealer as provided on an affidavit prescribed the department of treasury.

(12) A vehicle dealer that is engaged in the business of renting or leasing vehicles shall pay tax on the vehicle at the time of purchase, unless that dealer elects to pay use tax on rental receipts. See R 205.132(5).

(13) The annual surety bond required of each new and used vehicle dealer under this state's vehicle code must provide for indemnification or reimbursement to the state for sales or use tax deficiencies for the year in which the bond was in effect upon the entry of a final judgment in a court of record against the dealer.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.55 Sale of Automotive Parts.

Rule 5. (1) Sales at retail of automotive parts for consumption or use are taxable. Every retailer of automotive parts, such as a garage, car dealer, or service station, shall have a sales tax license. Sales for resale by a wholesaler to a licensed retailer are exempt.

A wholesaler is liable for the tax for retail sales to the consumer or user, including a person with a sales tax license who purchases automotive parts or tools, equipment, and supplies for consumption or use. For instance, the sale of piston rings to a duly licensed garage operator is exempt if the rings are to be resold over the counter to a person that will install them, sold in connection with repair work for a customer, or installed in a used car that the retailer has purchased or taken as trade-in, which is being reconditioned for sale. However, the sale of the rings to the retailer is taxable if the retailer installs them in a vehicle maintained for the retailer's own use, such as a wrecker used in the retailer's business or a car maintained for use by the retailer's family.

(2) Any amount allowed or allowable as a trade-in, exchange, or deposit is part of the gross proceeds subject to tax. Beginning January 1, 2017, any core charges attributable to a recycling fee, deposit, or disposal fee for a motor vehicle or recreational vehicle part or battery are excluded if the core charge is separately stated on the invoice, bill of sale, or similar document given to the purchaser. See R 205.15.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.56 Rescinded.

History: 1944 AC; 1954 AC; 1979 AC; 2007 AACs; 2023 MR 15, Eff. August 11, 2023.

R 205.57 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.58 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.59 Rescinded.

History: 1944 AC; 1954 AC; 1979 AC; 1996 AACs; 1997 AACs.

R 205.60 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.61 Rescinded.

History: 1979 AC; 1996 AACs; 1997 AACs.

R 205.62 Aircraft.

Rule 12. (1) Except for exempt sales under section 4x of the General Sales Tax Act, 1933 PA 167, MCL 205.54x, and sales to a purchaser that has made a valid lessor election under section 5(4) of the Use Tax Act, 1937 PA 94, MCL 205.95, sales of new and used aircraft are subject to sales tax on the full selling price without deductions for expenses incurred as part of the cost of doing business or trade-in credit given to a purchaser. To make a valid election under section 5(4) of the Use Tax Act, 1937 PA 94, MCL 204.95, a lessor of an aircraft must register for use tax by the earlier of the date set for the first payment of use tax under the lease or rental agreement or 90 days after the lessor first brings the aircraft into this state.

(2) Unless exempt under section 4x of the General Sales Tax Act, 1933 PA 167, MCL 205.54x, gasoline, jet fuel, oil, repair parts, and other tangible personal property sold and delivered in this state for operation of aircraft are subject to sales tax regardless of where the plane will be flown or used.

(3) A seller in the ordinary course of business, including an aircraft dealer engaged in the purchasing, selling, brokering, exchanging, or dealing in aircraft parts or in aircraft of a type required to be registered under the Aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.1 to 259.208, shall remit sales tax on the full sales price of an aircraft, regardless of whether the sales are on its own behalf or on behalf of the aircraft owner.

(4) Aircraft purchased for consumption or use in this state from sellers outside this state are subject to use tax.

(5) A dealer, as that term is defined in section 3 of the Aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.3, that uses the property solely for demonstration and for which no charge is made while holding it for sale is exempt from tax on account of such use.

(6) When an aircraft used for demonstration is converted to a taxable use, such as for personal use, use tax is owed on the dealer's original purchase price, if the aircraft was converted to a purpose other than selling, brokering, exchanging, or dealing in aircraft parts or in sales of aircraft.

(7) Sales tax applies to the retail sale of the aircraft following its use for demonstration without deduction for use tax previously paid under subrule (6) of this rule.

(8) A specific tax under the streamlined sales and use tax revenue equalization act, 2004 PA 175, MCL 205.171 to 205.191, of 6% is owed, less an amount equal to the use tax paid, on the retail value of a qualified aircraft for the privilege of storing, registering, or transferring ownership in this state, unless exempt from sales or use tax, including for purposes of resale. The retail value is determined at the time the aircraft first enters this state and is to be based on an industry accepted pricing guide applicable to the aircraft. It is solely within the department of treasury's discretion to determine if a pricing guide is industry accepted. As used in this subrule, "qualified aircraft" means an aircraft purchased outside of this state, used solely for personal, non-business purposes, and either brought into this state more than 90 days after the date of purchase by a nonresident or brought into this state more than 360 days after the date of purchase by a resident.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.63 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.64 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.65 Churches and houses of religious worship.

Rule 15. (1) Sales, not for resale, to regularly organized churches and houses of religious worship are not subject to the tax if the item purchased is paid for by the church from church funds; however, sales of property used in a commercial enterprise by a church or house of religious worship, and sales of vehicles licensed for use on the public highways, are taxable. Sales of tangible personal property, including sales of meals in a commercial activity, when conducted as a retail business for gain, benefit, or advantage, direct or indirect, are taxable, and a sales tax license shall be obtained for the purpose of reporting and paying the tax due.

(2) Sales to religious organizations and societies composed of church members are taxable.

(3) Sales of merchandise to be given as prizes in games of skill or chance are taxable.

(4) Sales to all church employees for their own use are taxable.

(5) If an exemption is to be claimed, the seller, at the time of transfer of the tangible personal property, shall retain, as part of the seller's records, an executed exemption certificate which reads as follows:

CERTIFICATE TO BE EXECUTED WHEN TAX EXEMPT SALE
IS MADE TO AN EXEMPT INSTITUTION OR AGENCY

The undersigned hereby certifies that the item or items being purchased are to be used or consumer in connection with the operation of the exempt institution for agency named in the space provided below, and that the consideration for this purchase moves from the funds of the designated institution or agency. In the event this claim is disallowed, the transferee promises to reimburse the seller for the amount of the tax involved.

Name of exempt institution or agency

DATE _____

Signature and title of person making certification

History: 1979 AC.

R 205.66 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.67 Fuel dealers.

Rule 17. (1) The sale of coal, coke, wood, fuel oil, liquid petroleum gas, and other fuel that is not otherwise exempt is taxable based on the sales or purchase price. The sale for residential use of electricity, natural or artificial gas, or home heating fuels is exempt from the sales tax at the additional rate of 2%, as approved by the electors on March 15, 1994.

(2) The sale of equipment, tools, materials and supplies, consumed or used in handling and preparing fuel for market or delivery is taxable.

(3) The sale of bottled gas cylinders by dealers and distributors is subject to tax at the time of sale. A dealer or distributor that rents bottled gas cylinders to its customers may elect to pay use tax on the rental receipts instead of paying sales tax when the dealer or distributor purchases the cylinder for use in its rental business. See R 205.132.

(4) The sale of fuel used in rail operations is exempt from tax, except for use in vehicles licensed and titled for use on public highways.

(5) The sale of fuel used or consumed in the manufacturing of power, heat, light, or gas to be sold at retail is not taxable.

(6) The sale of fuel used for an exempt agricultural purpose or industrial processing is exempt from tax.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.68 Containers, cartons, and wrapping materials.

Rule 18. (1) As used in this rule, “containers” means the articles and devices in which tangible personal property is placed for shipment and delivery, such as wrapping materials, bags, cans, twines, gummed tapes, barrels, boxes, tote boxes, pallets, racks, bottles, drums, carboys, cartons, sacks, and materials from which the containers are manufactured.

(2) Sales of containers to persons engaged in rendering a service are taxable.

(3) Sales of containers that will be resold with the product are eligible for a resale exemption. If a separate charge is made for the sale of a container to a person, other than for resale, it is taxable. Sales of containers that are not resold with the property it contains are taxable.

Example 1: ABC manufactures golf balls. ABC sells its golf balls for resale to retailers. When a retailer places an order, ABC packages its golf balls by the dozen into boxes that are intended to be sold with the golf balls. When ABC receives an order from a retailer it places multiple boxes of golf balls into a larger box for shipment. The box that is sold with the golf balls is eligible for the resale exemption.

However, the larger box used to ship multiple boxes of golf balls is taxable because it is not resold. ABC shall pay sales tax when it purchases the larger box or remit use tax on the purchase price of the box.

Example 2: Same facts as Example 1 except that ABC packages a gross of golf balls, a dozen boxes of a dozen golf balls, for shipment to retailers with the packaging into the larger box occurring before the packages of golf balls first come to rest in finished goods inventory. The larger box, and associated packing materials such as popcorn, styrofoam, and peanuts, are exempt as it was used in the packaging before the golf ball boxes came to rest in finished goods inventory.

(4) Sales of containers to a person, such as a manufacturer, wholesaler, jobber, or retailer, who uses the containers to ship or deliver goods, and retains the ownership or legal right of possession of the containers, are taxable.

(5) Sales or purchases, for a single use only, of bracings, blocking, skidding, shoring, and other materials, commonly known as dunnage are taxable when used in the shipment of a product to a customer.

(6) Deposits on a returnable container for a beverage, or the deposit on a carton or case which is used for returnable beverage containers, are not taxable when sold in conjunction with a sale of a beverage.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.69 Rescinded.

History: 1979 AC.

R 205.70 Consignments.

Rule 20. (1) Sales of tangible personal property consigned, delivered, or entrusted to a retailer for the purpose of selling at retail are taxable to the retailer on the total retail sale price without deduction for any expense, such as storage, rental, commission, or repairs. It is immaterial whether the goods are different from those sold in the regular business of the retailer.

(2) Where a retailer selling tangible personal property belonging to another has the right to withhold or claim a portion of the sale price as compensation, the retailer shall include the total amount received from the sale of the goods in its tax return.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.71 Contractors

Rule 21. A contractor includes only prime, general, and subcontractors directly engaged in the business of constructing, altering, repairing, or improving real estate for others.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.72 Rescinded.

History: 1979 AC; 2007 AACCS; 2023 MR 15, Eff. August 11, 2023.

R 205.73 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.74 Educational institutions.

Rule 24. (1) Sales, not for resale, to regularly organized educational institutions not operated for profit are not taxable. "Not operated for profit," as used in this rule, means operated by an entity of government, a regularly organized church, religious or fraternal organization, where the

income from the operation does not inure, in whole or in part, to the benefit of individuals or private shareholders, directly or indirectly, and where the activities of the entity are carried on exclusively for the benefit of the public at large and are not limited to the advantage, interests, or benefits of its members or a restricted group. "Educational institution," as used in this rule, 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 specific curriculum.

(2) Sales of athletic equipment to a regularly organized educational institution for consumption or use are not taxable 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.

(3) Educational institutions which are not operated for profit, and which operate lunchrooms, cafeterias, or dining rooms for the exclusive use of bona fide enrolled students, are not taxable. Whenever such a lunchroom, school cafeteria, or dining room sells to nonstudents, including teachers, the institution operating it is subject to the tax on those sales.

(4) Sales of class pins, rings, and similar articles are taxable when paid for, directly or indirectly, by the students.

(5) Sales to educational associations, parent teacher organizations, teachers, and other personnel of an educational institution are taxable.

(6) If an exemption is claimed, then at the time of the transfer of the tangible personal property, the seller shall retain, as part of the seller's records, an executed exemption certificate which reads as follows:

**CERTIFICATE TO BE EXECUTED WHEN TAX EXEMPT SALE
IS MADE TO AN EXEMPT INSTITUTION OR AGENCY**

The undersigned hereby certifies that the item or items being purchased are to be used or consumed in connection with the operation of the exempt institution or agency named in the space provided below and that the consideration for this purchase

moves from the funds of the designated institution or agency. In the event this claim is disallowed the transferee promises to reimburse the seller for the amount of tax involved.

Name of exempt institution or agency

Date _____

Signature and title of person making certification

(7) Schools operating a kindergarten through twelfth grade program are not required to pay tax on the sales of textbooks to enrolled students. Sales of textbooks to nonstudents are taxable. Sales of yearbooks and annuals to both students and nonstudents are taxable.

History: 1979 AC.

R 205.75 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.76 Employer sales and employer-sponsored incentive programs.

Rule 26. (1) When an employer sells tangible personal property to employees, allows them to purchase through the organization or to buy from others on discounts available to the employer, or in another manner obtain goods through the employer, the sales are taxable.

(2) An employer shall report and pay tax on sales to employees under subrule (1) of this rule, even if the employer is exempt from tax on the employer's regular business.

(3) Tax applies on the sale of tangible personal property to an employer who purchases that tangible personal property for free distribution to employees, unless the tangible personal property is otherwise exempt. For example, tax would not apply to the sale of goggles, protective gear, and other safety equipment to a manufacturer for use by employees engaged in an exempt industrial process.

(4) The sale of tangible personal property to an employee by a third-party retailer through an employer-sponsored rewards, performance improvement, or other incentive program is taxable. The tax on any such transaction is imposed on the total value of the points, rewards, or other consideration redeemed in the transaction for the tangible personal property. Tax is not imposed on the redemption of any product that is not tangible personal property.

Example: An employer contracts with a company to operate a points-based incentive plan for employees. Under the plan, employees accumulate points that may be used to redeem certain prizes from the company, including tangible personal property and travel packages. Under the service agreement, the company then bills the

employer based upon the value of points redeemed each period. Under this arrangement, tax is imposed on any redemption of tangible personal property by the employee based upon the total value of the points used to redeem that tangible personal property. Tax is not imposed on any redemption of prizes that does not involve tangible personal property, such as travel packages. The payments from the employer to the company for the points redeemed each period relate to the operation of the service agreement and are not taxable.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.77 Fairs, circuses, carnivals, and other public exhibitions.

Rule 27. Persons operating or sponsoring a fair, circus, carnival, exposition, bazaar, or similar event are liable, as the principal, for the tax upon the sale or use of tangible personal property sold, given as prizes, or otherwise disposed of by a person engaged in business without a sales tax license at the exhibition, unless the tax is paid by the dispenser of the property.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.78 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.79 Federal and state governments.

Rule 29. (1) Sales to the United States government, its unincorporated agencies and instrumentalities, any incorporated agency wholly owned by the United States or by a corporation wholly owned by the United States, the American Red Cross and its chapters and branches, and this state and its political subdivisions, departments, and institutions are not taxable if the sales are paid for directly to the seller with government funds.

(2) When the sales are made without the required purchase order form being supplied in advance, the sale is taxable, but the licensee may later take credit for the tax payment upon the licensee's receipt of purchase order and warrant covering the sales.

(3) Sales to governmental employees for their own consumption or use are taxable.

(4) Sales to and purchases by non-governmental entities doing business on federal areas are taxable, if the sale is not made directly to an exempt federal instrumentality.

(5) A person subject to a tax under this act need not include in the amount of his or her gross proceeds used for the computation of the tax any proceeds of his or her business derived from sales to the United States, its unincorporated agencies and instrumentalities, any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States, the American Red Cross and its chapters and branches, and this state or its departments and institutions or any of its political subdivisions.

(6) Sales to and purchases by national banks are taxable.

(7) Sales made by political subdivisions of this state, including counties, municipalities, villages, school districts, water districts, and airport districts, are taxable, unless otherwise specifically exempted.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.80 Florists and nurserymen.

Rule 30. (1) Flowers, trees, plants, shrubs, seeds, grass, and other similar property are tangible personal property subject to tax. Florists, nurserymen, and other persons engaged in the business of selling such tangible personal property are liable for the tax on their gross sales. The tax applies regardless of where or how the items are grown or produced and regardless of whether sold from a store, curb, market, greenhouse, farm, or other place.

(2) The following apply only to sales made through telegraphic delivery association, wire service, or in similar manner:

(a) On all orders taken by a florist in this state and communicated to a second florist, either located in this state or another state, the florist taking the order is liable for the tax.

(b) Where florists in this state receive instructions from other florists either located in this state or another state for the delivery of flowers, the florist receiving the instructions is not held liable for the tax with respect to any proceeds from the transaction.

(3) A florist or nurseryman that contracts to provide and plant flowers, trees, plants, shrubs, seeds, grass, and other similar property for others is improving real estate and use tax will apply based on the purchase price of the property consumed.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.81 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.82 Rescinded.

History: 1979 AC; 1996 AACS; 1997 AACS.

R 205.83 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.84 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.85 Rescinded.

History: 1979 AC; 1996 AACS; 1997 AACS.

R 205.86 Rescinded.

History: 1979 AC; 1996 AACS; 1997 AACS.

R 205.87 Hospitals.

Rule 37. (1) Sales, not for resale, of tangible personal property to hospitals not operated for profit, are not taxable. 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. The sales tax exemption for sales to a hospital which is not operated for profit does not apply to an institution, establishment, or organization that is not a hospital as defined above, notwithstanding the fact that it may not be operated for profit. "Not operated for profit" means that the income or benefit from the operation of

the hospital does not inure, in whole or in part, to individuals or private shareholders, directly or indirectly, and that the activities of the entity or agency are carried on exclusively for the benefit of the public at large, and are not limited to the advantage, interests, and

benefits of its members or a restricted group.

(2) If an exemption is claimed, then, at the time of transfer of the tangible personal property, the seller shall retain, as part of the seller's records, an executed exemption certificate which reads as follows:

CERTIFICATE TO BE EXECUTED WHEN TAX EXEMPT SALE IS
MADE TO AN EXEMPT INSTITUTION OR AGENCY

The undersigned hereby certifies that the item or items being purchased are to be used or consumed in connection with the operation of the exempt institution or agency named in the space provided below and that the consideration for the purchase moves from the funds of the designed institution or agency. In the event this claim is disallowed, the transferee promises to reimburse the seller for the amount of tax involved.

Date _____

Name of exempt institution or agency

Signature and title of person making certification

(3) A hospital claiming an exemption shall prove by its articles of association and bylaws that it is not directly or indirectly operated for profit, and that its income and assets may not inure, in whole or in part, directly or indirectly, to the benefit of any individuals, members, or private shareholders whatsoever. A copy of the articles of association and bylaws shall be submitted to the revenue division of the department of treasury for determination as to whether the hospital is entitled to the exemption.

(4) Sales by hospitals which are taxable retail sales include, but are not limited to, the following:

(a) Meals sold to visitors and employees.

(b) Nonprescription drugs, nonprescription medicines, and supplies sold to patients, doctors, employees, and the general public for consumption off the premises.

(c) Sales of cosmetics, souvenirs, and other similar merchandise.

(5) Sales by hospitals which are not taxable retail sales include, but are not limited to, the following:

(a) Drugs, medicines, insulin, and meals furnished patients and consumed on the premises.

(b) Charges for oxygen, blood plasma, and blood administered to patients.

(c) Dressings and bandages applied in the hospital.

(d) Charges for X-ray radiation treatments, braces, splints, cases, therapeutic diets, and intravenous solutions furnished patients.

(e) Charges for anesthesia supplies and laboratory tests.

(f) 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. (See R 205.104.)

(6) Hospitals making sales at retail shall be licensed and shall pay the sales tax, where applicable, whether organized for profit or not.

History: 1979 AC.

R 205.88 Lodging provided by hotels, motels, cabins and camps.

Rule 38. (1) Use tax is imposed on rental receipts from rooms or lodgings furnished by hotel keepers, motel operators, and other persons furnishing accommodations that are available to the public based on commercial and business enterprise, irrespective of whether membership is required for use of the accommodations.

(2) The following rentals are not taxable:

(a) Rooms or lodging rented for a continuous period of more than 1 month to the same tenant. As used in this subdivision, "1 month" means 30 days or the calendar month of the rental period, whichever is shorter.

(b) Rooms or lodging furnished by hospitals, nursing homes, convalescent homes, and mental institutions or similar institutions dedicated to the care and treatment of the sick under medical supervision.

(c) Rooms or lodging furnished by camps operated by a nonprofit organization and camps licensed under 1973 PA 116, MCL 722.111 to 722.128.

(3) The following rentals are exempt from the tax:

(a) Rooms or lodging furnished directly to the United States government, its unincorporated agencies or instrumentalities, any incorporated agency wholly owned by the United States or by a corporation wholly owned by the United States, the American Red Cross or its chapters or branches, if paid for directly to the seller with government funds.

(b) Rooms or lodging furnished directly to this state or its political subdivisions, departments, or institutions, if paid for directly to the seller with government funds.

(c) Rooms or lodging furnished directly to nonprofit organizations, as provided under the Use Tax Act, 1937 PA 94, MCL 205.91 to 205.111.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.89 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.90 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.91 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.92 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.93 Sales and breeding of animals.

Rule 43. (1) Unless otherwise exempt, sales of horses, dogs, cats, birds, goldfish, guinea pigs, reptiles, and other animals, including household pets, are taxable sales of tangible personal property.

(2) Persons that breed and sell animals as pets, including those who engage in the activities merely as a hobby or pastime, are engaged in the business of making retail sales and are required to pay sales tax on all sales of animals not for resale. While a single, isolated sale of an animal would not be subject to tax, a breeder who advertises or offers animals for sale at any time and in any manner, including on the internet, for purposes of repeated sales is determined to be regularly engaged in the business of making retail sales, and their sales are not considered casual or isolated, even if they are few or infrequent as described under R 205.13.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.94 Labels, tags, and other property included in or affixed to containers.

Rule 44. (1) Sales of labels, tags, or nameplates to persons using them in rendering services or for personal or business use or which do not accompany products sold, are sales for consumption and are taxable.

(2) Sales of labels, tags, or nameplates is not subject to tax if the labels, tags, or nameplates will be affixed to tangible personal property that will be sold at retail or affixed to the containers sold with the property.

(3) Sales of labels to persons retaining title to containers to which the labels are affixed are not sales for resale but are sales for consumption and subject to tax.

(4) Sales of manuals, pamphlets, warranty cards, and other similar tangible personal property that is included in the container or packaged with a product that is sold at retail is not subject to tax.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.95 Leased departments.

Rule 45. (1) Where an established business leases a portion of its shelves, counters, or floor space to other persons selling tangible personal property to consumers, the sales of tangible personal property by the leased departments shall be included in the tax return of the lessor, who shall pay the tax thereon to the state. A lessor not otherwise subject to the tax shall obtain a license in behalf of the lessee.

(2) When the lessee conducts the leased department in the same manner as an established like business, and gives evidence to the public that he is conducting his department separately from the lessor's business, or if separate business records are kept, the lessee may apply for a sales tax license, if the lessee keeps separate records of his business and files separate returns. The lessor shall be responsible for the tax unless the lessee obtains such a license.

(3) The word "lease," as used in this rule, includes permitted occupancy, regardless of consideration. The liquor commission restrains persons licensed by the commission from subleasing or surrendering any part of the business conducted at or on the licensed premises.

History: 1979 AC.

R 205.96 Rescinded.

History: 1979 AC; 1996 AACS; 1997 AACS.

R 205.97 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.98 Sales made in transit.

Rule 48. Prepared food or other tangible personal property sold or otherwise provided on any form of transportation, including, but not limited to, a railcar, watercraft, or airplane while operating in this state, or upon this state's waters, is subject to tax as described under R 205.136.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.99 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.100 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.101 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.102 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.103 Rescinded.

History: 1979 AC; 1996 AACCS; 1997 AACCS.

R 205.104 Optometrists, ophthalmologists, opticians, and optical supply houses.

Rule 54. (1) Licensed optometrists and ophthalmologists that examine, prescribe, and dispense eyeglasses and contact lenses are considered, for sales tax purposes, to be making retail sales. A sales tax license is required for this activity.

(2) Eyeglasses dispensed to a patient by an ophthalmologist, optometrist, or optician pursuant to a prescription to correct that patient's vision, and repair and replacement parts for the eyeglasses, are exempt. Contact lenses are taxable. If necessary to complete the sale of contact lenses, examination charges or other service charges are taxable, even if billed separately.

(3) Sales by opticians and optical supply houses to optometrists and ophthalmologists are exempt when sold for resale, provided the optometrist or ophthalmologist is properly licensed as a retailer as noted in subrule (1) of this rule.

(4) Physicians acting in the capacity of optometrists or ophthalmologists are subject to this rule, see R 205.111.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.105 Rescinded.

History: 1979 AC; 1996 AACCS; 1997 AACCS.

R 205.106 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.107 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.108 Postage stamps.

Rule 58. (1) Sales by the United States Postal Service or by an approved postal provider of uncanceled United States postage valid for transportation of mail are not taxable. Sales of these items made by other sellers are subject to tax. Sales of canceled domestic or foreign stamps or of uncanceled foreign postage stamps not valid for transportation of mail in the United States are taxable.

(2) As used in this rule, “approved postal provider” means a business that has entered into a contractual agreement with the United States Postal Service to provide authorized postal services, including the sale of postage stamps, to the public.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.109 Photographers and photo processors.

Rule 59. (1) If a photographer’s sitting fee or session fee is part of a package that includes tangible personal property, such as prints, the total amount charged for the package is taxable, even if the packaged parts are separately itemized on the invoice. If a sitting fee or session fee is charged as a separate transaction, and the customer is not required to also purchase prints or other products, then the sitting fee or session fee is not taxable.

(2) The development and processing of photographic images, whether using a physical or digital process, together with the production of prints, film strips, slides, or other tangible personal property, are subject to sales tax on the total price charged to the customer. Whether equipment, materials, and supplies purchased for use in the creation and development of photographic images are used in industrial processing and are therefore exempt from tax, depends upon the process used to develop the photographic

images. Equipment, materials, and supplies purchased for use in the creation, development, and sale of digital products, including digital photographic images, are not used in industrial processing, and are taxable. However, equipment, materials, and supplies purchased for use in the physical processing of non-digital photographic images, such as the development of exposed film or film negatives, may be used in industrial processing and are exempt from tax, as described in section 4t of the General Sales Tax Act, 1933 PA 167, MCL 205.54t and section 4o of the Use Tax Act, 1937 PA 94, MCL 205.94o.

(3) Coloring, tinting, retouching, restoration, and similar services, if performed on photographs or images owned by the customer, are nontaxable. If the services are performed as part of a package that includes tangible personal property, or in connection with the photographer's creation of photographic images to be sold as prints or other tangible personal property, the total amount charged to the customer is taxable.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.110 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.111 Physicians, surgeons, dentists, veterinarians, osteopaths, and other health professionals.

Rule 61. (1) Physicians, surgeons, dentists, veterinarians, osteopaths or other health professionals not otherwise specifically provided for in these rules render nontaxable services.

(2) Unless otherwise exempt, sales of drugs, medications, instruments, equipment, and other tangible personal property to persons for use in rendering professional services or for use within their offices, laboratories, or other similar quarters are taxable.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.112 Premiums and gifts.

Rule 62. (1) Unless an exemption applies, donors of tangible personal property are regarded as consumers of that tangible personal property and the sale of that property to them is taxable. Similarly, the sale to an employer of tangible personal property for free distribution to its employees may also be taxable, under R 205.76. The sale of goods to be given away for advertising purposes is also taxable.

(2) If goods purchased for resale are subsequently given away or used by the retailer, the retailer is liable for use tax on the purchase price of the goods, unless otherwise exempt.

(3) The redemption of scrips, whether in the form of punch cards, certificates, box tops, tokens, proofs of purchase, points, or similar promotional consideration for premiums is a taxable sale at retail and sales tax must be paid on the redemption value of the scrips. Sales tax does not apply if the consideration is redeemed for cash rather than

for tangible personal property. Premiums acquired for resale purposes are not subject to sales or use tax.

(4) Purchasers of tangible personal property to be awarded as prizes, the winning of which depends upon chance or skill, are regarded as consumers of that property and the tax applies to sales of the property to them. Similarly, purchasers of tangible personal property for use in games, promotions, and similar operations, in which each customer receives some merchandise or prize regardless of skill or chance, are regarded as the consumers of that property and the tax applies to sales of the property to them.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.113 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.114 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.115 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.116 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.117 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.118 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.119 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.120 Rescinded.

History: 1979 AC; 1996 AACCS; 1997 AACCS.

R 205.121 Rescinded.

History: 1979 AC; 1996 AACCS; 1997 AACCS.

R 205.122 Rescinded.

History: 1979 AC; 1996 AACCS; 1997 AACCS.

R 205.123 Rescinded.

History: 1979 AC; 1996 AACCS; 1997 AACCS.

R 205.124 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.125 Rescinded.

History: 1979 AC; 1996 AACCS; 1997 AACCS.

R 205.126 Rescinded.

History: 1979 AC; 2007 AACCS; 2023 MR 15, Eff. August 11, 2023.

R 205.127 Water

Rule 77. (1) Sales of water are taxable except when delivered through water mains, sold in bulk tanks in quantities of not less than 500 gallons, sold as bottled water, or sold for an exempt use.

(2) The sale of equipment, tools, machinery, pipes, fittings and supplies to a person for consumption or use in distributing and carrying water is taxable. Sales of tangible personal property for installation as a component part of a water pollution control facility are exempt if the facility was issued a tax exemption certificate under part 37 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.3701 to 324.3708.

(3) As used in this rule, “bottled water” means water that is placed in a safety sealed container or package for human consumption, including water that is delivered to the buyer in a reusable container that is not sold with the water. Bottled water is calorie free

and does not contain sweeteners or other additives except that it may contain 1 or more of the following:

- (a) Antimicrobial agents.
- (b) Fluoride.
- (c) Carbonation.
- (d) Vitamins, minerals, and electrolytes.
- (e) Oxygen.
- (f) Preservatives.
- (g) Only those flavors, extracts, or essences derived from a spice or fruit.

History: 1979 AC; 2007 AACCS; 2020 MR 24, Eff. Dec 22, 2020.

R 205.128 Federal and state taxes.

Rule 78. (1) Federal manufacturers' excise taxes imposed on the following products are not deductible from a retailer's gross proceeds in computing sales or use taxes: Trucks, buses, tractors, accessories and similar products, tires and tubes, gasoline and lubricating oil, fishing equipment, and firearms.

(2) The federal retailers' excise taxes imposed on the following products are deductible from a retailer's gross proceeds in computing sales or use taxes: Diesel fuel, liquid petroleum gas, and other special motor fuels.

(3) The federal communications tax imposed on persons using communication services is not part of the tax base for computing the use tax on such services.

(4) Michigan taxes which are deductible when included in gross are as follows:

(a) Motor fuel retailers may deduct from gross proceeds on their sales tax return the amount of Michigan motor fuel tax paid to the state or to the distributor.

(b) The Michigan cigarette tax may be deducted only by taxpayers engaged in the business of selling cigarettes at retail if the seller is not enriched by collecting the sales tax on the full selling price.

History: 1979 AC.

R 205.129 Rescinded.

History: 1979 AC; 1996 AACCS; 1997 AACCS.

R 205.130 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.131 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.132 Lease or rental.

Rule 82. (1) A lessor is a person engaged in the business of renting or leasing tangible personal property.

(2) The terms “lease” and “rental” have the same meaning and may be used interchangeably. For agreements entered into after September 1, 2004, a lease or rental means either of the following:

(a) Any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration and may include future options to purchase or extend.

(b) An agreement covering motor vehicles or trailers if the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property, as that term is defined in 26 USC 7701(h)(1).

(3) A lease or rental does not include any of the following:

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

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

(c) Except as provided in subrule (4) of this rule, the provision of tangible personal property along with an operator for a fixed or indeterminate period of time, where that operator is necessary for the equipment to perform as designed. To be necessary, an operator shall do more than maintain, inspect, or set up the tangible personal property.

(4) Beginning March 29, 2019, a lease also includes the transfer of possession or control for consideration, for a fixed or indeterminate term and including future options to purchase or extend, of a school bus primarily used in the performance of a contract entered into with an authorized representative of a school for the transportation of preprimary, primary, or secondary school pupils to or from a school or school-related events authorized by the administration of the school. A transaction described in this subrule qualifies as a lease even if the operator of the school bus is also provided under the lease.

(5) A lessor may elect to pay use tax on the rental receipts for tangible personal property that would otherwise be taxed on the full cost at the time of purchase. The election to pay on rental receipts is made on each item of tangible personal property. The election is made by claiming an exemption from sales or use tax at the time of purchase and paying use tax on the rental receipts.

(6) A lessor remitting tax on rental receipts must hold a sales tax license, or register under the Use Tax Act, 1937 PA 94, MCL 205.91 to 205.111. For aircraft, a person shall register for use tax with the department of treasury by the earlier of the date set for the first payment of use tax under the lease or rental agreement or 90 days after the lessor first brings the aircraft into this state.

(7) The remittance of use tax on rental receipts is the obligation of the lessor. If the lessor places the economic burden of the tax on the lessee, the charge must be separately itemized.

(8) A taxpayer that makes the lessor election will lose that election if tangible personal property is converted to personal use. Tax is owed at the time of conversion on the original purchase price of the property.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.133 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.134 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.135 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.136 Food for human consumption.

Rule 86. (1) Retail sales of food for human consumption normally considered as grocery items for home consumption are tax exempt.

(2) Alcoholic beverages (containing $\frac{1}{2}$ of 1% or more of alcohol by volume) such as beer, wine, and liquor, are subject to tax.

(3) Tobacco and tobacco products are subject to tax.

(4) "Prepared food" is subject to tax. All of the following apply:

(a) "Prepared food" means any of the following:

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

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

(iii) Food sold with eating utensils provided by the seller.

(b) "Prepared food" does not include any of the following:

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

(ii) Raw eggs, fish, meat, poultry, and foods containing those raw items requiring cooking.

(iii) Food sold in an unheated state by weight or volume as a single item, without eating utensils. The following are used to determine weight or volume:

(A) Weight is a measure of heaviness, expressed in units such as pounds or grams.

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

(C) An item is sold by weight or volume when the sales price is determined by multiplying its per unit price by the item's weight or volume.

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

(5) An eating utensil is considered a tool, instrument, or item used or intended to be used to facilitate the eating of food. Examples of eating utensils include, but are not limited to, knives, forks, spoons, ice cream/popsicle sticks, skewers, glasses, cups, napkins, straws, and plates. The following apply:

(a) An eating utensil does not include a container or packaging used to transport food, such as a plastic carton in which take-out soup or salad is sold. A waxed paper sheet used to select an item, such as a donut or cookie, and then placed in a box or bag for transport with the baked good, is not considered an eating utensil.

(b) Eating utensils are "provided by the seller" under all of the following conditions:

(i) For a seller with a prepared food sales percentage greater than 75%, eating utensils are "provided by the seller" when the utensils are made available to purchasers.

(ii) For a seller with a prepared food sales percentage of 75% or less, eating utensils are "provided by the seller" if the seller's practice, as represented by the seller, is to physically give or hand the utensils to purchasers. Plates, bowls, glasses, or cups necessary for the purchaser to receive the food, for example, a glass for a dispensed soft drink or milk, or a plate for salad from a salad bar, need only be made available.

(iii) A seller's "prepared food sales percentage" is a fraction determined by dividing the following described numerator by the following described denominator:

(A) The numerator shall consist of the seller's annual sales of all of the following:

(1) Food sold in a heated state or heated by the seller.

(2) Two or more food ingredients mixed or combined by the seller for sale as a single item, not including food items specifically excluded in subrule (4)(b) of this rule.

(3) Food where plates, bowls, glasses, or cups are necessary to receive the food, for example, dispensed soft drink or milk, or salad bar.

(B) The denominator shall consist of the seller's total annual sales of all food and food ingredients at the establishment including prepared food, candy, dietary supplements, and soft drinks.

(C) Sales of alcoholic beverages are not included in the numerator or denominator.

(c) For a seller with a prepared food sales percentage greater than 75% who sells an item that contains 4 or more servings packaged as 1 item sold for a single price, that item does not become prepared food due to the seller having utensils available. Both of the following shall apply:

(i) If the seller provides utensils for that item as in subdivision (b) of this subrule, then the item is considered prepared food.

(ii) Whenever available, serving sizes shall be determined based on a label on an item sold. If no label is available, then a seller shall reasonably determine the number of servings in an item.

(d) When a seller sells a food item that has a utensil placed in the package by a person other than the seller, both of the following shall apply:

(i) If that person's North American Industry Classification System (NAICS) classification code is that of manufacturer (sector 311), the seller is not considered to

have provided the utensil except as provided in subdivisions (a), (b) and (d) of this subrule.

(ii) For any other packager with any other NAICS classification code, for example, sector 722 for caterers, the seller is considered to have provided the utensil.

(e) The prepared food sales percentage shall be calculated by a seller for each tax year or business fiscal year, based on the seller's data from the prior tax year or business fiscal year, as soon as possible after accounting records are available, but not later than 90 days after the beginning of the seller's tax year or business fiscal year.

(f) A single prepared food sales percentage shall be determined annually, for all of the seller's establishments in this state.

(g) A new business shall make a good faith estimate of its prepared food sales percentage for its first year. A new business shall adjust its good faith estimate prospectively after the first 3 months of operation if actual prepared food sales percentages materially affect the 75% threshold test.

(6) Examples of nontaxable food items sold without eating utensils by a grocer or other food retailer for human consumption include, but are not limited to, the following:

- (a) Baked goods and baking ingredients.
- (b) Bouillon and soups.
- (c) Butter, margarine, and peanut butter.
- (d) Candy, chocolate, and confectionery.
- (e) Carbonated beverages (bottle deposits are not subject to tax).
- (f) Cereal and cereal products.
- (g) Chewing gum, non-medicated.
- (h) Cocktail mixes, dry or liquid.
- (i) Coffee, coffee substitutes, coffee beans, and tea (loose or bags).
- (j) Condiments, relishes, and spices.
- (k) Diet food, dietary supplements (identified as a dietary supplement in the supplemental facts box on the label, and containing a vitamin, mineral, herb or other botanical, or amino acid), energy drinks, and health foods.
- (l) Eggs and egg products.
- (m) Extracts and flavoring as an ingredient of food products.
- (n) Fruit and fruit products.
- (o) Gelatin.
- (p) Ice, only when to be ingested by humans.
- (q) Ice cream, sherbets, and toppings.
- (r) Meat and meat products.
- (s) Milk and milk products.
- (t) Powdered drink mixes, pre-sweetened or natural.
- (u) Pre-packaged snack foods such as, crackers, potato chips, and popcorn.
- (v) Shortening.
- (w) Vegetables and vegetable products.
- (x) Vitamins and vitamin drinks.
- (y) Water, bottled.

(7) Examples of items subject to tax include, but are not limited to, the following:

- (a) Alcoholic beverages (containing $\frac{1}{2}$ of 1% or more of alcohol by volume).
- (b) Animal and pet foods.

- (c) Animal bait such as, carrots, sugar beets, corn.
- (d) Cough drops and cough syrup.
- (e) Decorative gourds and jack-o-lanterns.
- (f) Ice not for ingestion by humans, such as for use in a cooler or an ice chest.
- (g) Medicated chewing gum.
- (h) Salt blocks.
- (i) Toothpaste and mouthwash.
- (j) Throat lozenges.

History: 1979 AC; 2007 AACCS; 2013 AACCS.

R 205.137 Air and water pollution control facility.

Rule 87. (1) Tangible personal property purchased for installation as a component part of a water pollution control facility or an air pollution control facility for which a tax exemption certificate is issued by the state tax commission is exempt from sales and use tax. The exemption is effective for dates on and after the date the certificate is issued by the state tax commission. If a tax exemption certificate previously issued is revoked by the state tax commission, the exemption may no longer be claimed beginning on the effective date of the revocation.

(2) When sales or use 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 by the purchaser upon submission of both of the following documents to the department of treasury:

(a) A copy of the exemption certificate issued by the tax commission indicating the approved cost of the tangible personal property installed and entitled to exemption.

(b) A copy of the seller's invoice showing the name and address of the seller, identification of purchaser, identification of the items purchased, the date of purchase, and amount of tax paid to seller.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.138 Rescinded.

History: 1979 AC; 1996 AACCS; 1997 AACCS.

R 205.139 Rescinded.

History: 1979 AC; 2023 MR 15, Eff. August 11, 2023.

R 205.140 Nonprofit entities.

Rule 90. (1) Sales of tangible personal property and services to properly qualified nonprofit entities for their own use and consumption, but not for resale, are exempt.

(2) The claimant shall meet the following requirements for exemption:

(a) Qualify as a school, hospital, home for the care and maintenance of children or aged persons, and other health, welfare, educational, charitable, or benevolent institutions and agencies.

(b) Be operated by an entity of government, a regularly organized church, religious or fraternal organization, a veterans organization, or a corporation incorporated under laws of the state.

(c) The income or benefit from the operation shall not inure, in whole or in part, to any individuals or private shareholders, directly or indirectly.

(d) The activities of the entity or agency shall be carried on exclusively for the benefit of the public at large and not limited to the advantage, interests, and benefits of its members or any restricted group.

(3) When an exemption is claimed, the seller, at the time of the transfer of the tangible property or services, shall retain, as part of the seller's records, an executed exemption certificate which reads as follows:

CERTIFICATE IS TO BE EXECUTED WHEN TAX EXEMPT SALE
IS MADE TO AN EXEMPT INSTITUTION OR AGENCY

The undersigned hereby certifies that the item or items being purchased are to be used or consumed in connection with the operation of the exempt institution or agency named in the space provided below, and that the consideration for this purchase moves from the funds of the designed institution or agency. In the event this claim is disallowed, the transferee promises to reimburse the seller for the amount of tax involved.

Date _____

Name of exempt institution or agency

Signature and title of person making certification

(4) The department does not issue so-called "exemption numbers." If there is some question regarding exemption status, the claimant may contact the department for a ruling.

(5) Nonprofit entities engaged in a retail sales activity of any kind are required to have a sales tax license. The fact that the receipts or profits from such sales may be used for otherwise exempt purposes is not material.

History: 1979 AC.

R 205.141 Marihuana.

Rule 91. (1) All sales of marihuana, whether legal or illegal, are subject to the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, based on the "sales price" of the property as defined by section 1(1)(d) of the general sales tax act, 1933 PA 167, MCL

205.51(1)(d). The taxable “sales price” of marihuana includes the 10% excise tax levied under section 13(1) of the Michigan regulation and taxation of marihuana act, 2018 IL 1, MCL 333.27963(1).

Example: ABC Inc. is licensed to sell adult-use marihuana as a marihuana retailer under the Michigan regulation and taxation of marihuana act, 2018 IL 1, MCL 333.27951 to 333.27967. ABC sells marihuana to customer for \$100.00. ABC is liable for \$10.00 of marihuana excise tax. ABC is also liable for sales tax on this transaction. The amount of sales tax due is 6% of \$110.00 or \$6.60.

(2) The use, storage, or consumption of marihuana in this state is subject to the use tax act, 1937 PA 94, MCL 205.91 to 205.111.

(3) For purposes of the general sales tax act and the use tax act, marihuana, in any form, does not constitute the exempt sale, use, storage, or consumption of food or prescription drugs under MCL 205.54g or 205.94d.

History: 2020 AACCS.

R 205.142 Exemption for Diesel Fuel Used in Certain Vehicles Operated for Hire.

Rule 92. Sales or use tax does not apply on retail sales or purchases of diesel fuel for use in passenger vehicles of a capacity of 10 or more operated for hire under a certificate of authority issued by the state transportation department. As used in this rule, “diesel fuel” means that term as defined in section 2 of the motor fuel tax act, 2000 PA 403, MCL 207.1002.

History: 2023 MR 15, Eff. August 11, 2023.