

HOUSE BILL No. 5417

September 17, 2009, Introduced by Rep. Smith and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 9a (MCL 205.99a), as amended by 2007 PA 104.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9a. (1) In computing the amount of tax levied under this
2 act for any month **PRIOR TO OCTOBER 1, 2009**, a seller may deduct the
3 amount of bad debts from his or her gross sales, rentals, or
4 services used for the computation of the tax. **IN COMPUTING THE**
5 **AMOUNT OF TAX LEVIED UNDER THIS ACT FOR ANY MONTH AFTER SEPTEMBER**
6 **30, 2009, A TAXPAYER MAY DEDUCT 80% OF THE AMOUNT OF BAD DEBTS FROM**
7 **HIS OR HER GROSS PROCEEDS USED FOR THE COMPUTATION OF THE TAX.** The
8 amount of gross sales, rentals, or services deducted must be
9 charged off as uncollectible on the books and records of the seller

1 at the time the debt becomes worthless and deducted on the return
2 for the period during which the bad debt is written off as
3 uncollectible in the claimant's books and records and must be
4 eligible to be deducted for federal income tax purposes. For
5 purposes of this section, a claimant who is not required to file a
6 federal income tax return may deduct a bad debt on a return filed
7 for the period in which the bad debt becomes worthless and is
8 written off as uncollectible in the claimant's books and records
9 and would be eligible for a bad debt deduction for federal income
10 tax purposes if the claimant was required to file a federal income
11 tax return. If a consumer or other person pays all or part of a bad
12 debt with respect to which a seller claimed a deduction under this
13 section, the seller is liable for the amount of taxes deducted in
14 connection with that portion of the debt for which payment is
15 received and shall remit these taxes in his or her next payment to
16 the department. Any payments made on a bad debt shall be applied
17 proportionally first to the taxable price of the property and the
18 tax on the property and second to any interest, service, or other
19 charge.

20 (2) Any claim for a bad debt deduction under this section
21 shall be supported by that evidence required by the department. The
22 department shall review any change in the rate of taxation
23 applicable to any taxable sales, rentals, or services by a seller
24 claiming a deduction pursuant to this section and shall ensure that
25 the deduction on any bad debt does not result in the seller
26 claiming the deduction recovering any more or less than the taxes
27 imposed on the sale, rental, or service that constitutes the bad

1 debt.

2 (3) After September 30, 2009, if a taxpayer who reported the
3 tax and a lender execute and maintain a written election
4 designating which party may claim the deduction, a claimant is
5 entitled to a deduction or refund of the tax related to a sale at
6 retail that was previously reported and paid if all of the
7 following conditions are met:

8 (a) No deduction or refund was previously claimed or allowed
9 on any portion of the account receivable.

10 (b) The account receivable has been found worthless and
11 written off by the taxpayer that made the sale or the lender on or
12 after September 30, 2009.

13 (4) If a certified service provider assumed filing
14 responsibility under the streamlined sales and use tax
15 administration act, 2004 PA 174, MCL 205.801 to 205.833, the
16 certified service provider may claim, on behalf of the seller, any
17 bad debt allowable to the seller and shall credit or refund that
18 amount of bad debt allowed or refunded to the seller.

19 (5) If the books and records of a seller under the streamlined
20 sales and use tax agreement under the streamlined sales and use tax
21 administration act, 2004 PA 174, MCL 205.801 to 205.833, that
22 claims a bad debt allowance support an allocation of the bad debts
23 among member states of that agreement, the seller may allocate the
24 bad debts.

25 (6) As used in this section:

26 (a) "Bad debt" means any portion of a debt resulting from a
27 seller's collection of the use tax under this act on the purchase

1 of tangible personal property or services that is not otherwise
2 deductible or excludable and that is eligible to be claimed, or
3 could be eligible to be claimed if the seller kept accounts on an
4 accrual basis, as a deduction pursuant to section 166 of the
5 internal revenue code, 26 USC 166. A bad debt does not include any
6 of the following:

7 (i) Interest, finance charge, or use tax on the purchase price.

8 (ii) Uncollectible amounts on property that remains in the
9 possession of the seller until the full purchase price is paid.

10 (iii) Expenses incurred in attempting to collect any account
11 receivable or any portion of the debt recovered.

12 (iv) Any accounts receivable that have been sold to and remain
13 in the possession of a third party for collection.

14 (v) Repossessed property.

15 (b) Except as provided in subdivision (c), "lender" includes
16 any of the following:

17 (i) Any person who holds or has held an account receivable
18 which that person purchased directly from a taxpayer who reported
19 the tax.

20 (ii) Any person who holds or has held an account receivable
21 pursuant to that person's contract directly with the taxpayer who
22 reported the tax.

23 (iii) The issuer of the private label credit card.

24 (c) "Lender" does not include the issuer of a credit card or
25 instrument that can be used to make purchases from a person other
26 than the vendor whose name or logo appears on the card or
27 instrument or that vendor's affiliates.

1 (d) "Private label credit card" means any charge card, credit
2 card, or other instrument serving a similar purpose that carries,
3 refers to, or is branded with the name or logo of a vendor and that
4 can only be used for purchases from the vendor.

5 (e) "Seller" means a person who has remitted use tax directly
6 to the department on the specific sales, rental, or service
7 transaction for which the bad debt is recognized for federal income
8 tax purposes or, after September 30, 2009, a lender holding the
9 account receivable for which the bad debt is recognized, or would
10 be recognized if the claimant were a corporation, for federal
11 income tax purposes.