

MICHIGAN DEPARTMENT OF TREASURY

General and Specific Sales and Use Tax Rules

WARNING: The following General and Specific Sales and Use Tax Rules were issued pursuant to authority conveyed to the Department of Treasury by the specific statutes listed below. Therefore, these rules have the force and effect of law and taxpayers must comply with the rules as with the law.

Most of the following rules were promulgated in 1979. Many of the rules are out of date and in need of revision. Taxpayer's should rely on these rules as they provide useful information for compliance with the law. However, taxpayer's should consult the current statute for changes in the law subsequent to the issue date of the rule.

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DEPARTMENT OF TREASURY

STATE TREASURER

GENERAL SALES AND USE TAX RULES

(By authority conferred on the Department of Treasury by Act No. 167 of the Public Acts of 1933, Act No. 94 of the Public Acts of 1937, sections 3 and 13 of Act No. 122 of the Public Acts of 1941, as amended, and sections 9 and 83 of Act No. 380 of the Public Acts of 1965, being SS205.51 et seq., 205.91 et seq., 205.3, 205.13, 16.109, and 16.183 of the Michigan Compiled Laws)

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

Rule 1. R 205.1 Sales Tax Licenses.

Rule 1. (1) A Michigan sales tax license shall be obtained by every person selling tangible personal property at retail. (See also R 205.3, R 205.5, R 205.6, and R 205.7) A person shall not engage or continue in a business taxable under the sales tax law 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, shall be made to the revenue division of the department of treasury on the form prescribed by the department. All licenses shall be displayed in full view on the licensed premises. Penalties for failure to secure a license or for remaining in business without a valid sales tax license are prescribed by R 205.19.

(2) Every sales tax license expires on June 30 each year and shall be renewed by furnishing such information as the department may require, together with the annual license fee of \$1.00. Regardless of the date a license is issued, it expires on the following June 30, and the fee charged for it is the same, even if the license is used only a portion of the year. Persons selling at retail at more than 1 location or place of business shall obtain a license for each location. If a valid license is lost or destroyed, it may be replaced without charge by notifying the department.

(3) A license is not transferable and a new license shall be secured immediately whenever 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, that person may be subjected to penalty for operating without a valid sales tax

license.

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

(5) Under the following circumstances the department shall require an applicant for a sales tax license to submit a surety bond of not less than \$1,000.00, nor more than \$25,000.00, payable to the state. At the discretion of the department, a cash bond may be accepted in lieu of the surety bond:

(a) If the applicant, at any previous time, has failed, refused, or neglected to pay a tax, interest, or penalty upon a tax due the state.

(b) If the applicant has ever attempted to evade payment of a tax, interest, or penalty by petition in bankruptcy.

(c) If the applicant is a corporation, and the department has reason to believe the corporation is under the management or control of a person who has failed to pay tax, interest, or penalty upon a tax.

(d) Whenever the department deems it necessary to ensure the collection of the tax.

History: 1979 AC.

Rule 2. R 205.2 Rescinded.

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

Rule 3. R 205.3 Rescinded.

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

Rule 4. R 205.4 Rescinded.

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

Rule 5. R 205.5 Tangible Personal Property.

Rule 5. Tangible personal property embraces all goods, wares, merchandise, products and commodities, all tangible things and substances which are dealt in, capable of being possessed and exchanged.

History: 1979 AC.

R 205.6 Rescinded.

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

R 205.7 Rescinded.

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

Rule 8. R 205.8 Consumer.

Rule 8. (1) "Consumer" means the person who shall have purchased tangible personal property for storage, consumption or use.

(2) A "consumer" is further defined as a person who does not purchase goods for sale. The buyer who disposes of goods in any other manner than by resale becomes the final consumer. He is the last person in the chain of transactions to make a purchase. The seller, who is the taxpayer under the sales tax act, is also the consumer for such articles used or consumed in the conduct of his business and sales made to him for his consumption or use are taxable. The fact that a person may be licensed by this department to sell at retail does not in itself exempt sales to such licensee.

History: 1979 AC.

Rule 9. R 205.9 Sales for Purposes of Resale.

Rule 9. Sales for purposes of resale include sales of tangible personal property not to be consumed or used by the immediate purchaser, but to be resold in the regular course of business by the purchaser; provided that property purchased for resale purposes which is not resold, but is used or consumed by the purchaser, is taxable on the delivered cost to the purchaser who shall remit the tax to the state.

History: 1979 AC.

Rule 10. R 205.10 Rescinded.

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

Rule 11. R 205.11 Rescinded.

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

Rule 12. R 205.12 Rescinded.

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

Rule 13. R 205.13 Casual or isolated sales.

Rule 13. (1) Sales at retail shall not include an isolated transaction made other than in the ordinary course of repeated and successive transactions of a like character. Examples: A person sells his household furniture, a farmer sells his farm machinery or other farm equipment, a merchant sells his cash register, counters or other store fixtures at auction or otherwise. Such sales are "casual or isolated transactions" and are not subject to tax. However, any person who in any manner or at any time advertises, solicits or offers tangible personal property for sale for the purpose of repeated sales is deemed to be regularly engaged in business and his sales are not considered casual or isolated, even though they may be few or infrequent.

(2) Vehicles, airplanes, snowmobiles and watercraft acquired in an isolated transaction from a person not a retailer are subject to use tax. The use tax on vehicles, snowmobiles and watercraft shall be paid to the secretary of state prior to the transfer of a vehicle title, snowmobile registration or watercraft registration. The use tax on airplanes shall be paid directly to the department of revenue by the purchaser. (See Rule 135. R 205.135. Isolated Vehicle, Aircraft, Watercraft, and Snowmobile Transfers.)

History: 1979 AC.

Rule 14. R 205.14 Rescinded.

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

Rule 15. R 205.15 Trade-in Deduction.

Rule 15. (1) No deduction from the gross proceeds of a sale is permitted for any credit allowed by the seller for a trade-in taken in exchange or part payment and the tax applies to the full selling price.

(2) The retail sale of used tangible personal property which has been acquired by the seller by purchase is taxable upon the full selling price. When an article acquired by the taxpayer by trade-in is sold, this sale also is taxable on the full selling price.

(3) No deduction for a trade-in may be taken under any circumstances in computing the use tax.

History: 1979 AC.

Rule 16. R 205.16 Returned Goods.

Rule 16. (1) Credits or refunds for returned goods, the sales of which have been subject to tax, may be deducted only if the goods are voluntarily returned for full exchange, an entire refund of purchase price, or full credit. When the property is returned within a reasonable time after the date of sale, and the purchase is made whole, a credit may be

had on the tax paid on the rescinded sale. The term "returned goods" does not include repossession or recapture of merchandise by legal process, abandonment of contract, voluntary surrender of goods without an entire refund, or full credit being given for the amount paid or for goods accepted in trade or barter.

(2) A rehandling charge by the seller in connection with returned goods is not deemed to be a reduction of the purchase price for refund purposes unless the charge includes cost attributable to use of the returned goods by the purchaser.

History: 1979 AC.

Rule 17. R 205.17 Rescinded.

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

Rule 18. R 205.18 Rescinded.

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

Rule 19. R 205.19 Rescinded.

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

Rule 20. R 205.20 General Application.

Rule 20. For the convenience of the taxpayer these rules and regulations are indexed, usually with reference to particular lines of business. The taxpayer is responsible for obtaining knowledge of all rules and regulations affecting his liability for tax, in order that the proper amount of tax can be ascertained and paid to the state. These rules and regulations must be read and interpreted in their entirety rather than merely acquainting yourself with a rule briefly stated pertaining to your particular type of business.

History: 1979 AC.

Rule 21. R 205.21 Rescinded.

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

Rule 22. R 205.22 Discounts.

Rule 22. (1) Cash, trade, and quantity discounts to customers are deductible in arriving at the net sale price which is taxable. Such discounts must appear on the invoices, records and accounts of the retailer and be substantiated to the satisfaction of the department.

(2) Trade and quantity discounts are usually known and available to the purchaser at the time of sale, and are deductible immediately on the invoice before determining the tax. A cash discount is usually offered by the seller as an inducement for payment within a specified time and may not be deducted by the seller until it has been given to the purchaser. Such discounts will be allowed as a deduction on the seller's tax return when there is sufficient evidence in the records of the taxpayer to indicate that such discounts have been the regular policy of the seller and have been given to the purchaser.

History: 1979 AC.

Rule 23. R 205.23 Records.

Rule 23. (1) The department, through its field auditors and other employees, may examine the books, records and papers of any person liable for payment of the sales and use taxes. It may issue a subpoena requiring any person to appear for examination and produce any books, records or papers within the scope of the inquiry.

(2) It is the duty of every person engaging in any business subject to the tax to keep and preserve suitable and adequate records of his business to enable such person, as well as the state, to determine the correct amount of the tax for which he is liable.

(3) Failure to produce and keep records for the purpose of examination by the department will be considered willful noncompliance with the sales tax law and subject to its penalties. In the absence of sufficient records the department may determine the amount of tax due the state by using any information available whether obtained at the taxpayer's place of business or from any other sources, and assess the taxpayer for any deficiencies, plus penalties.

(4) Licensees are required to keep complete and accurate daily records of all sales, whether for cash or credit, bartered or traded, irrespective of whether the seller regards the receipts from the sales as taxable or exempt. The taxpayer is also required to keep a complete and accurate record of beginning and ending inventories, purchase records, daily sales records, receipts, invoices, bills of lading and all other pertinent documents pertaining to the business.

(5) If the seller claims sales for exemption on certain sales, it shall be required that he will keep a record of the name and address of the person to whom the sale is made, the date of the sale, the article purchased, the amount of the exemption and the use to be made of the article sold. If exemption is claimed by reason of a sale for resale, the taxpayer shall obtain the sales tax license number of the purchaser.

(6) Records and files shall be kept on the premises of the place of business and maintained in a legible manner. They shall also be kept clean and as much as possible free from deterioration. All invoices, sales slips, bank statements and canceled checks should be kept in chronological order so as to be balanced with the records to which they pertain.

(7) Any person not having his principal place of business in Michigan but maintaining within this state a branch store, warehouse or distributing depot for the sale or distribution of tangible personal property is required to keep complete records showing all sales made within the state. If such records are not located in Michigan, then the seller must defray the additional expense incurred by the state in making an audit at the out-of-state location of the seller. Sellers desiring to follow the latter method must make suitable arrangements with the department.

History: 1979 AC.

Rule 24. R 205.24 Rescinded.

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

Rule 25. R 205.25 Rescinded.

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

Rule 26. R 205.26 Use Tax Registration.

Rule 26. (1) The following activities require a registration under the use tax act:

(a) An out-of-state seller, not registered as a retailer under Act No. 167 of the Public Acts of 1933 (sales tax act), actively soliciting sales of tangible personal property in Michigan. (See section 5 of Act No. 94 of the Public Acts of 1937, as amended.)

(b) A Michigan consumer buying tangible personal property from nonregistered sellers. (See section 6 of Act No. 94 of the Public Acts of 1937, as amended.)

(c) A lessor of tangible personal property when rental receipts are taxable under Act No. 94 of the Public Acts of 1937, as amended. (See R 205.132)

(d) A seller of intrastate communication services. (See R 205.110)

(e) A seller of rental accommodations to the public. (See R 205.88)

(2) An application for a use tax registration shall be obtained from the department of revenue upon a form prescribed by the department. A license fee is not required.

(3) A use tax registration is not transferable from 1 ownership to another. For example: if a partner is added or dropped, or if a corporation is formed or dissolved, this constitutes a change in ownership necessitating an application in the name of the new ownership for another registration.

(4) Registration under the use tax act requires the filing of monthly, quarterly or annual tax returns on forms furnished and pre-identified by the department. Failure to register and file returns can subject the taxpayer to heavy penalties.

History: 1979 AC.

Rule 27. R 205.27 Rescinded.

History: 1979 AC; 1996 AACS; 1997 AACS.

Rule 28. 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 item and forbids the including of such charge as part of the sales price. Therefore, a deduction cannot be taken, computed on the "tax in gross" method, and only that portion of the gross proceeds that represents use tax actually collected can be deducted on the monthly return.

History: 1979 AC.

DEPARTMENT OF TREASURY

STATE TREASURER

SPECIFIC SALES AND USE TAX RULES

Rule 1. 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.

Rule 2. R 205.52 Antiques, Works of Art, and Artists.

Rule 2. Sales of antiques and works of art are taxable, without deductions for trade-in values or expenses of any kind. If the seller is regularly engaged in the business of selling antiques or works of art, his sales are taxable, regardless of the infrequency of the sales.

History: 1979 AC.

Rule 3. 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.

Rule 4. R 205.54 Automobile and Other Vehicle Dealers.

Rule 4. (1) Sales of new and used automobiles, buses, trucks, tractors, trailers, housetrailer, motorcycles, motor scooters, and other vehicles for consumption or use are subject to the tax on the full original retail sales price without any deductions for federal taxes, freight, handling, delivery, commissions, trade-ins, repossessions, advertising, future free service, or any expense incurred as part of the cost of doing business.

(2) The sales tax shall be paid to the secretary of state at the time application for title is submitted by the dealer. Vehicle transfers between individuals are subject to use tax to be paid to the secretary of state at the time application for title is submitted by the purchaser.

(3) When a vehicle is sold by a dealer the same delivered selling price, together with the amount of sales tax to be paid to the secretary of state, shall be indicated on the invoice, sales order, the statement of Michigan retail sales tax paid (form RD 108), and on the records of the dealer. Authorized discounts are deductible only when given to the purchaser at the time of sale and shown on the invoice, sales order, the statement of sales tax paid (form RD 108), and on the records of the dealer.

(4) The sale of a vehicle for delivery and use outside Michigan is exempt if all the following conditions exist:

(a) The dealer, in order to consummate a sale, must deliver and assume all responsibility for delivery without knowledge that such vehicle will be returned to Michigan except for a temporary use therein.

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

(d) A Michigan vehicle title and license are not required.

(d) The dealer's records substantiate each of the 3 preceding facts.

(5) A dealer may claim exemption on the sale of a new or used vehicle

when the purchaser will license and title the unit for use in another state. To obtain such an exemption, the purchaser shall qualify for a special registration issued by the secretary of state and appear in person, or by power of attorney, at an office of the secretary of state to attest that he is the bona fide purchaser and that the vehicle is dedicated for use in another state. If the purchaser later returns the vehicle to Michigan for registration, a use tax will apply on the value of the vehicle at that time.

(6) Vehicles which will be used in Michigan for a period of more than 30 days are subject to sales tax irrespective of whether the purchaser may be a legal resident of Michigan or whether the vehicle will be titled in another state except when purchaser is an active nonresident military person, a sworn statement of nonresidency is furnished by his commanding officer and the vehicle is titled and registered by the purchaser in his state of residency or domicile.

(7) When a vehicle that has been sold is returned to the dealer voluntarily by the purchaser and the dealer refunds the full amount of 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, but only by submitting an affidavit in the following form:

(8) Upon the sale of a new or used vehicle, the tax applies to the total amount of the sale and no deduction is allowed for another vehicle taken in trade on such transaction. The total amount of the sale means the amount received in money, credits, property or other money's worth. When credits, property or other money's worth becomes all or part of the consideration, then the dollar value of such credits, property or other money's worth must be determined and made a part of the seller's record. For sales tax purposes the trade-in value of a vehicle shall not be less than its wholesale dollar value at the time of trade. The dealer may use, as a guide, the wholesale dollar value as shown in the current issue of any nationally recognized used vehicle guide for financial institution appraisal purposes in Michigan. However, when such traded-in vehicle is resold, the sales tax applied to the full amount of the sale of such traded-in vehicle and not upon the amount originally allowed for the trade-in.

(9) Each franchised new car dealer shall be allowed a certain number of tax-free demonstrators in accordance with the total number of new cars and trucks sold in a calendar year as follows:

| | |
|-------------|---------------------------|
| Zero to 25 | 2 tax-free demonstrators |
| 26-100 | 7 tax-free demonstrators |
| 101-500 | 20 tax-free demonstrators |
| 501 or more | 25 tax-free demonstrators |

(Maximum allowable for each calendar year)

(10) To qualify as a demonstrator the vehicle shall be titled in the name of a dealer upon submission of an affidavit in the following form:

(11) Vehicle dealers may also be engaged in the business of leasing vehicles wherein the use tax will apply on rental income. It is not necessary that a dealer have a separate use tax registration to report tax on

such rentals unless the ownership of the leasing company is different from that of the dealership. It is required, however, that the rental income be reported in the use tax column of the combined sales and use tax return. Dealers leasing vehicles to salesmen or employees will be required to remit use tax on a base rental figure which cannot be less than their monthly costs of ownership. This would include depreciation, finance charges, insurance charges and any other incidental costs involved in operating the vehicle. (See Rule 132. R 205.132--Rentals.)

(12) The annual surety bond required of each new and used vehicle dealer under the Michigan vehicle code shall 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.

Rule 5. R 205.55 Automotive Parts Dealers.

Rule 5. (1) Sales at retail of automobile parts for consumption or use are taxable. (See R 205.117--Repairers and servicers.) Every retailer of automotive parts such as a garage, car dealer, service station, etc., is required to have a sales tax license. Sales for resale by a wholesaler to such a licensed retailer are exempt. However, the wholesaler is liable for the tax when he sells to the consumer or user, including a person with a sales tax license who purchases automobile 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 who 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 a trade-in, which is being reconditioned for sale. However, the sale of the rings to the retailer is taxable if he installs them in a vehicle kept for his own use, such as a wrecker used in his business or a car kept for use by his family.

(2) All sales not for resale to a person not having a sales tax license are taxable, regardless of what he buys, the nature of his business or the manner in which he uses the material.

(3) Any amount allowed or allowable as a trade-in, exchange or deposit is part of the gross proceeds subject to tax.

History: 1979 AC.

Rule 6. R 205.56 Bakeries.

Rule 6. (1) Sales of bakery products for home consumption are exempt, except that sales of bakery products which are "prepared food," as defined in MCL 205.54g(4), are taxable.

(2) Sales of bakery items described in MCL 205.54g(5)(d) are not sales of "prepared food" and are exempt. (See Rule 136. R 205.136)

(3) Tangible personal property is taxable, unless that tangible personal property becomes an ingredient or component part of bakery products produced for sale by a retailer for retail sale.

History: 1944 AC; 1954 AC; 1979 AC; 2007 AACs.

Rule 7. R 205.57 Barber and Beauty Shops.

Rule 7. (1) Barber or beauty shop operators are engaged primarily in rendering personal services not subject to tax. Sales of tangible personal property to them are taxable. Sellers of cosmetics, tonics, lotions, shaving soaps, barber tools and supplies, barber chairs, shop equipment, furniture and fixtures and other tangible personal property purchased for use in barber and beauty shops are required to remit the tax thereon.

(2) However, if a barber or beauty shop operator sells tangible personal property separately from the rendering of personal services, these sales are taxable but he may deduct in his tax return the amount on which tax was paid at the time of purchase.

History: 1979 AC.

Rule 8. R 205.58 Beer, Wine, and Liquors.

Rule 8. (1) Sales of beer, wine, and spirituous liquors for consumption and use are taxable. The seller shall also include in the gross sales reported on his tax return all other retail sales.

(2) Sales of spirituous liquor and wine by specially designated distributors shall be included in total gross sales reported by such distributors. Sales of spirituous liquor and wine by a club to its members and guests are subject to the tax on the full retail price with no deduction for the cost of such liquor and wine. (See R 205.68--Containers, cartons, and wrapping materials.)

History: 1979 AC.

Rule 9. R 205.59 Rescinded.

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

Rule 10. R 205.60 Bookbinders and Paper Cutters.

Rule 10. (1) Persons engaged in the business of binding books, magazines, and printed matter for others, wherein the value of the tangible property transferred is negligible, are considered to be selling a service and tax applies on the cost of the equipment, materials, and supplies purchased.

(2) If a bookbinder binds his own printed matter and sells the finished products to users or consumers or makes and sells loose-leaf binders or

other articles at retail, he shall remit the tax on the entire receipts from such sales.

(3) A person engaged in the business of paper cutting, folding, gathering, padding, or punching circulars, office forms, or other printed matter belonging to others renders nontaxable services. Sales of tangible personal property to such persons for use or consumption in the performance of these services are taxable.

History: 1979 AC.

Rule 11. R 205.61 Rescinded.

History: 1979 AC; 1996 AACS; 1997 AACS.

Rule 12. R 205.62 Airplanes and Airlines.

Rule 12. (1) The sales of new and used aircraft are subject to sales tax on the full selling price without any deductions for expenses incurred as part of the cost of doing business. Trade-ins are not deductible.

(2) Gasoline, jet fuel, oil, repair parts, and other tangible personal property sold and delivered in Michigan for operation of aircraft are subject to sales tax regardless of where the plane will be flown or used. Tax applies whether such sales are to private or commercial airlines.

(3) An airplane retailer is required to remit sales tax on sales of planes solicited through his sales organization regardless of whether such sales are on his own behalf or on behalf of the plane owner. So-called "brokerage" transactions are taxable on the full selling price.

(4) Aircraft purchased for consumption or use in Michigan from individuals or retailers outside the state of Michigan are subject to the 4% use tax.

(5) A purchaser of airplanes who is licensed as a retailer of airplanes, who uses such property solely for demonstration or display and for which no charge is made while holding it for sale in the regular course of business, is not required to pay a tax on account of such use.

(6) A retailer of aircraft who purchases new or used aircraft for the primary purpose of demonstration, who is licensed by the Michigan department of revenue as an aircraft retailer and, further, who has secured registration certificates for each aircraft from the Michigan department of aeronautics, shall pay a use tax on all revenue derived from the utilization of such aircraft or on the amount taken as depreciation charges plus operating costs, whichever is greater, during the period such property is held in inventory and retained as a valid demonstrator.

(7) Sales tax applies to the retail sale of the airplane following its use for demonstration, display, or other use. This is a distinct and separate transaction from the prior election to convert the plane to personal use. Thus, sales tax must be paid by the dealer on the full

selling price without deduction for use tax previously paid.

(8) The transfer of an aircraft registration from one individual owner to another is subject to imposition of use tax. Such tax shall be paid directly to the Michigan department of revenue. (See R 205.135--Isolated vehicle, aircraft, watercraft, and snowmobile transfers.)

History: 1979 AC.

Rule 13. R 205.63 Cemeteries and Crematories.

Rule 13. (1) Sales of tangible personal property (boxes, urns, markers, vases, flowers, etc.) by cemeteries and crematories are taxable.

(2) The sale of lots, crypts, and niches are considered to be real estate and are not taxable.

(3) Sales not for resale to cemeteries and crematories are taxable. These include materials and supplies used in construction, maintenance, improvement, or alteration of buildings and grounds, such as seeds, plants, fertilizer, etc.

(4) Sales of equipment to cemeteries and crematories for consumption and use are taxable.

History: 1979 AC.

Rule 14. R 205.64 Chemicals.

Rule 14. (1) Sales of chemicals are taxable when sold to persons who consume or use them in experimental or development work not connected with an industrial process. Chemicals used in the rendering of services, repair work, and other nonindustrial activities are taxable.

(2) Sales of chemicals are not taxable when consumed or used in industrial processing. (See R 205.90--Industrial processing.)

History: 1979 AC.

Rule 15. 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

Signature and title of person making certification DATE

History: 1979 AC.

Rule 16. R 205.66 Clipping Bureaus.

Rule 16. (1) Sales of press clippings are taxable. If a press clipping bureau merely furnishes special information derived from press clippings to which it retains title, its receipts are deemed to be derived from rendering service and not taxable.

(2) Sales of lists of names, statistics, and other information in the form of cards, sheets, or other tangible personal property are taxable.

History: 1979 AC.

Rule 17. R 205.67 Coal and Other Fuel Dealers.

Rule 17. (1) The sale of coal, coke, wood, fuel oil, liquid petroleum gas, and other fuel to consumers or users is taxable on the basis of the

delivery price, including all transportation charges. However, a separate charge for wheeling or carrying coal from the residence street of purchaser to his bin or cellar is deemed to be a service charge and is not taxable since such services are beyond the trade practice of dumping from vehicle into purchaser's bin.

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

(3) Sales of bottle gas equipment to dealers and distributors are subject to sales or use tax except when purchased for rental to the gas user with use tax then to be paid on the rental charge. For purposes of determination, only those rentals which are collected under a specific written rental agreement carrying a reasonable rental rate consistent with the actual cost of the equipment will be considered as a rental subject to use tax. All other use of bottle gas equipment will be subject to tax at the time of purchase. (See Rule 82. R 205.132--Rentals.)

(4) The sale of fuel is taxable if for consumption or use by ships, tugs, dredges, barges, fishing boats, and other watercraft, either for commercial, pleasure, or private use, irrespective of where the buyer and seller are located or whether the purchaser, subsequent to the delivery of such property within the state, transports it out of the state or uses it in interstate commerce. Sales of bunker and galley fuel sold for use by certain vessels with a registered tonnage of 500 tons or more, and engaged in interstate commerce, are exempt. Sales for use of vessels operating in foreign commerce are taxable.

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

History: 1979 AC.

Rule 18. R 205.68 Containers, Cartons, and Wrapping Materials.

Rule 18. (1) "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 such containers are manufactured.

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

(3) Sales of containers to persons for resale are exempt. If a separate charge is made for the sale of a container to a person, other than for resale, the receipts from the sales are taxable.

(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 who 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.

Rule 19. R 205.69 Rescinded.

History: 1979 AC.

Rule 20. R 205.70 Consignments.

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

(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 his compensation, he shall include the total amount received from the sale of such goods in his tax return.

History: 1979 AC.

Rule 21. R 205.71 Contractors.

Rule 21. (1) "Contractor" includes only prime, general, and subcontractors directly engaged in the business of constructing, altering, repairing, or improving real estate for others.

(2) Contractors are consumers of the materials used by them. All sales to or purchases by contractors of tangible personal property are taxable, except when affixed and made a structural part of real estate for a qualified exempt nonprofit hospital or a nonprofit housing entity qualified as exempt under the sales and use tax acts. All materials consumed in the performance of such contracts and not affixed and made a structural part of real property are taxable. Retailers making exempt sales shall obtain the following exemption certificate:

SALES OR USE TAX

Certification is made that the merchandise specified in the instrument to which this is made part will become part of the completed structure for a nonprofit hospital or a nonprofit housing entity qualified as exempt under the sales and use tax acts.

Should determination be made that any or all of this merchandise is used for a taxable purpose, it is agreed that tax, penalty, and interest will be paid to the seller.

Name of exempt entity

Name of contractor

Signed by _____ Dated _____

(3) Sales and rentals of tools, machinery, and equipment to contractors are taxable.

(4) Where a contractor is exclusively engaged in the contracting business and makes no direct sales to other contractors or consumers, he does not need a sales tax license. Such nonlicensed contractors are required to maintain a use tax registration and pay the use tax to the state on purchases made from out-of-state sellers.

(5) Where a contractor is not engaged exclusively in the contracting business but makes sales of tangible property at retail to other contractors and consumers, he shall secure a sales tax license and file returns to report sales on such transactions. Use tax due on out-of-state purchases and on merchandise acquired for resale and later consumed in contract operations shall be reported on the combined sales and use tax return.

(6) Where a manufacturer affixes his product to real estate for others, he qualifies as a contractor and shall remit use tax on the inventory value of the property at the time the property is converted to the contract which value shall include all costs of manufacturing, fabricating, and processing.

(7) A contractor purchasing tangible personal property for affixation to realty where delivery is taken in Michigan is subject to sales or use tax on the purchase price whether the improvement or construction of realty takes place within or without Michigan, except as noted in subrule (2).

History: 1979 AC.

Rule 22. R205.72 Milk and Dairy Products.

Rule 22. (1) The commercial production of milk, for sale, by persons regularly engaged in business as farmers or agriculturists, is set forth in R 205.51.

(2) Transportation of milk from the place where it is produced for sale by persons regularly engaged in business as farmers or agriculturists, as well as the receiving and storage of the milk at the processing plant, is taxable. Processing includes all necessary operations performed on the milk prior to

shipment from the plant. Sales of tools and equipment used directly in the processing of milk or milk products, and lubricants and other materials consumed or used in the repair or maintenance of that equipment, are not taxable. Sales of tangible personal property consumed or used in the construction, alteration, repair, or improvement of buildings and grounds are taxable.

(3) Sales of equipment used or consumed in the transportation or delivery of milk and milk products are taxable, including vehicles, cases, crates, and property used for the maintenance and operation of that equipment.

(4) Sales of milk bottles and milk cans to dairies for use in processing milk for sale at retail by others, including washing machines and cleaning compounds used in connection therewith by such processors, are not subject to tax. Sales of milk bottle crates or cases for transportation, receiving, storage, or delivery are subject to tax. Sales of milk cans to farmers or agriculturists for use in cooling milk prior to shipment to dairies are not taxable.

History: 1979 AC; 2007 AACS.

Rule 23. R 205.73 Directories.

Rule 23. (1) Sales of business, telephone, city, and other similar directories are taxable.

(2) When such directories are given without charge to users, the tax applies to the cost when sold to the donor.

History: 1979 AC.

Rule 24. 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

Signature and title of person making certification DATE

(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.

Rule 25. R 205.75 Employee Associations and Organizations.

Rule 25. Organizations of employees which sell tangible personal property of any kind to their members or others must procure a sales tax license and pay the tax on such sales.

History: 1979 AC.

Rule 26. R 205.76 Employer Sales to Employees.

Rule 26. (1) When an employer sells tangible personal property to his employees, permits them to purchase through his organization or to buy from others on discounts available to him or in any other manner obtain goods through him, such sales are taxable. The employer shall include such sales in his tax return and pay the tax regardless of whether such articles are charged to the employee.

(2) If the employer is exempt from the tax on his regular business, he must apply for a license and pay the tax on such sales.

(3) When an employer purchases tangible property for free distribution to employees, the tax applies to the sale of such property to him. (See R 205.112--Premiums and gifts.)

History: 1979 AC.

Rule 27. R 205.77 Fairs, Circuses, Carnivals, and Other Public Exhibitions.

Rule 27. (1) Persons conducting games of chance or skill at fairs, carnivals, circuses, expositions, celebrations, bazaars, picnics, and similar places and delivering merchandise as prizes are deemed consumers of such articles. All sales to them of tangible personal property, including merchandise, devices, apparatus, furnishings, and other equipment are taxable. Credit cards and extension of credit in any form, given as prizes, will be deemed merchandise and taxable, unless the tax is paid at the time the credit is exchanged for merchandise.

(2) Concessionaires at fairs, circuses, carnivals, etc., shall procure a sales tax license and pay the tax on all their sales at retail. The department reserves the right to require a concessionaire to file a report and pay the tax at the close of any business day or period during which he operates.

(3) Persons operating or sponsoring a fair, circus, carnival, etc., shall be held 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 such exhibition, unless the tax is paid by the dispenser of such property.

History: 1979 AC.

Rule 28. R 205.78 Farmers, Market Masters, and Other Marketers.

Rule 28. (1) Farmers, market masters, and other persons who sell at retail tangible personal property, other than food for home consumption or use, shall secure a license and pay the tax on those sales.

(2) Sales of the property specified in subrule (1) for resale to persons possessing a sales tax license are not taxable.

(3) Where a person selling other than food at retail rents or occupies space in a general market or other place operated for the purpose of transacting sales, that person shall secure a sales tax license, and shall pay the tax on the sales made by that person. If the seller does not have a sales tax license, the market master, as the principal, is responsible for paying the tax on the sales made by that person.

History: 1979 AC.

Rule 29. R 205.79 Federal and State Governments.

Rule 29. (1) Sales to the United States government, the state and its political subdivisions, departments and institutions are not taxable if such sales are ordered on the prescribed respective government form or purchase order and are paid for directly to the seller by warrant on government funds.

(2) When such 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 his subsequent receipt of purchase order and warrant covering such sales.

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

(4) The tax applies on sales by private entrepreneurs on federal areas, if the sale is not made directly to an exempt federal instrumentality.

(5) The tax does not apply on sales to the regular departments of the United States government. Exempt also are sales to federal agencies, offices, establishments and instrumentalities which the state is prohibited from taxing under the constitution or laws of the United States. Address inquiries to the department of revenue as to the taxability of sales to specific federal agencies, giving full information concerning the transaction.

(6) A person subject to a tax under this act need not include in the amount of his gross proceeds used for the computation of the tax any proceeds of his 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 the state or its departments and institutions or any of its political subdivisions.

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

History: 1979 AC.

Rule 30. R 205.80 Florists and Nurserymen.

Rule 30. (1) Florists and nurserymen regularly engaged in the business of selling tangible personal property at retail, such as flowers, trees,

plants, shrubs, seeds, grass, etc., are liable for the tax on their gross sales. The tax is applicable irrespective of where or how such items are grown or produced and regardless of whether sold from a store, curb, market, greenhouse, farm, or other place. (Sales for commercial production explained in Rule 1. R 205.51, Agricultural producing.)

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

(a) On all orders taken by a Michigan florist and telegraphed to a second florist, either in Michigan or to a point outside the state, the florist taking the order is liable for the tax.

(b) Where Michigan florists receive telegraphic instructions from other florists located either within or outside of Michigan for the delivery of flowers, the florist receiving the telegraphic instructions is not held liable for the tax with respect to any proceeds which he may realize from the transaction.

(3) Where a florist or nurseryman contracts to furnish and plant shrubbery, plants, trees, etc., for others he is deemed to be improving real estate and use tax, based on the fair market value of the stock consumed, will apply.

History: 1979 AC.

Rule 31. R 205.81 Foreign Commerce.

Rule 31. (1) The tax does not apply to export sales when, as a necessary incident to the contract of sale, the exporter must and does deliver the goods to the purchaser at a foreign destination, or is bound, under terms of contract of sale, to place the goods in the hands of a common carrier consigned to the buyer at a foreign destination. It is immaterial whether title to the goods passes upon delivery to the carrier or upon arrival of the goods at their destination.

(2) A sale to an exporter is not taxable if the contract requires the seller to deliver the goods on board ship or in the hands of a common carrier consigned on board ship.

(3) The principal factors giving evidence to a shipment for export are that the foreign destination be shown on the container of such goods and on a bill of lading or other evidence of shipment to a carrier or forwarder acting for the shipper or carrier and that the goods remain in the original, unbroken container until arrival at destination.

(4) The tax will apply to sales made by an importer of tangible personal property imported into the state from a foreign country in like manner and to the same extent as sales made by a retailer of domestic tangible personal property.

History: 1979 AC.

Rule 32. R 205.82 Rescinded.

History: 1979 AC; 1996 AACS; 1997 AACS.

Rule 33. R 205.83 Gasoline Stations and Other Motor Fuel Retailers.

Rule 33. (1) The sale of motor fuel, oil, grease, antifreeze, and other tangible personal property for use or consumption in motor vehicles operated on public highways or for any other use not specifically exempted by law is taxable. Such sales are taxable on the basis of the total receipts, without deduction for labor or other expenses or losses.

(2) The sale of aviation gasoline, turbojet fuel, jet fuel, and other fuels, oils, and lubricants to commercial airlines and to other operators of aircraft is taxable on the total receipts, without deduction for labor or other expenses or losses.

(3) The sale of fuel and lubricants for use in commercial fishing craft, pleasure craft, and boats under 500 tons is taxable.

(4) The sale of equipment, material, and supplies consumed or used by a person in the business of marketing gasoline and other petroleum products is taxable.

(5) The sale of chassis lubricants, wheel greases, and other products sold to a gasoline station operator or to others for use in performing a service is taxable.

(6) Motor fuel retailers may take a deduction from gross proceeds on their sales tax returns for the state motor fuel taxes paid by the retailer to the state or to the distributor.

(7) The manufacturers' federal excise tax on gasoline, lubricating oils, tires, and tubes shall be included as part of the retailers' gross proceeds subject to tax.

(8) Dealers paying retailers' federal excise taxes on special motor fuels, such as diesel fuel or liquid petroleum gas, are not required to include the excise taxes as part of the gross proceeds subject to sales tax.

(9) Sales or use tax does not apply on sales or purchases of diesel fuel for use in passenger vehicles of 10 or more capacity operated for hire under a certificate issued by the public service commission when such vehicles operate over regularly scheduled routes in this state. Exemption does not prevail for charter trips.

History: 1979 AC.

Rule 34. R 205.84 Golf and Country Clubs.

Rule 34. (1) Sales of tangible personal property by golf and country clubs are taxable and such clubs must obtain and maintain a sales tax

license.

(2) Sales, not for resale, to these clubs are taxable, including seeds, plants, fertilizer, etc., used to improve the grounds, and equipment, supplies and other tangible personal property. (See also R 205.116--Restaurants, hotels, lunchrooms, and other establishments; R 205.95--Leased departments; and R 205.98--Meals.)

History: 1979 AC.

Rule 35. R 205.85 Rescinded.

History: 1979 AC; 1996 AACS; 1997 AACS.

Rule 36. R 205.86 Rescinded.

History: 1979 AC; 1996 AACS; 1997 AACS.

Rule 37. 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.

Name of exempt institution or agency

Signature and title of person making certification DATE

(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.

(b) 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.

(c) 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.

Rule 38. R 205.88 Hotels, Motels, Cabins, and Camps; Accommodations.

Rule 38. (1) Effective September 1, 1959, a 4% 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 on the basis of a commercial and business enterprise, irrespective of whether membership is required for use of the accommodations.

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

(a) Rooms or accommodations rented for a continuous period of more than 1 month to the same tenant.

(b) Rooms or accommodations 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 accommodations furnished by summer camps operated by a legally qualified nonprofit corporation or association and camps licensed under Act No. 47, Public Acts of 1944, as amended, administered by the social welfare department.

(d) Rooms or accommodations furnished directly to the federal government provided exemption certificates are executed as issued by the comptroller general.

(e) Rooms or accommodations furnished directly to state and local governmental entities provided payment for such accommodations are made to the seller by a prescribed warrant on government funds.

(f) Rooms or accommodations furnished directly to legally qualified nonprofit corporations or associations, as prescribed in section 4, subsection (j), of the use tax act, and regularly organized churches and houses of religious worship. Organizations and societies of church members are taxable.

(3) As used in the act "hotel" or "motel" means a building or group of buildings in which the public may obtain accommodations for a consideration, including, without limitation, such establishments as inns, motels, tourist homes, tourist houses or units, lodging houses, apartment hotels, rooming houses, camps, resort lodges and cabins and any other building or group of buildings in which accommodations are available to the public.

(4) All tangible personal property purchased by a hotel or motel operator is subject to sales or use tax.

(5) A motel or hotel operator making sales of tangible personal property, in addition to the renting of rooms, will be required to have a sales tax license for the purpose of reporting both sales and use tax. If no retail sales of tangible personal property are made, a use tax registration is needed.

History: 1979 AC.

Rule 39. R 205.89 Ice Producing.

Rule 39. (1) Sales tax applies on the full retail selling price of ice sold to the final consumer by a retailer maintaining a sales tax license. The entire gross proceeds from sales of ice through vending machines and other automatic sales devices are taxable without any deductions for commissions, rentals and other expenses paid. It is immaterial whether the business operator owns such machine or the merchandise sold thereby.

(2) Ice producers and manufacturers selling directly to final consumers, except sales through vending machines as provided in subrule (1), shall maintain a sales tax license and remit tax on the sales.

(3) The sale of tools, equipment, materials and supplies consumed or used by an ice producer in the manufacturing of ice for sale is not taxable. Tangible personal property acquired for storing and delivery of ice is taxable.

History: 1979 AC.

Rule 40. R 205.90 Industrial Processing.

Rule 40. (1) This rule applies to sales, purchases and rentals of tangible personal property to persons for use or consumption in industrial processing, and the word "sales" hereafter used shall be construed to be either sale, purchase or rental. The word "manufacturing" as used in this rule is included within those activities which are considered "industrial processing."

(2) "Industrial processing" means the activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination or character of the property for ultimate sale at retail or use in manufacturing of a product to be ultimately sold at retail.

(3) The sale of tangible personal property to manufacturers, which property becomes an ingredient or component part of the finished product or that which is consumed, destroyed or loses its identity in a manufacturing process, together with the processing machinery and equipment (including maintenance and repairs thereof) used in the manufacturing of a product which is either to be sold ultimately at retail or to be used as tangible personal property in the manufacture of a product to be sold ultimately at retail, is not taxable. The consumption or use of the tangible personal property rather than the kind or character of the property sold is the determining factor as to whether or not such a sale is taxable. The industrial processing exemption does not include:

(a) Tangible personal property permanently affixed and becoming a structural part of real estate. This includes building utility systems such as heating, air conditioning, ventilating, plumbing, lighting and electrical distribution. Example: all electrical transmission and distribution materials and equipment which are installed in the construction of plant facilities for, or by, an industrial processor for use in transmitting electrical energy is taxable up to the last

transformer, switch or other device at which point usable power is diverted from distribution circuits for use in industrial processing.

(b) Tangible personal property used or consumed in performing services upon property owned by others where the services do not transform, alter or modify the property so as to place it in a different form, composition or character.

(c) Office equipment, including data processing equipment used for nonindustrial processing purposes, and office furniture and office supplies wherever and however used.

(d) Tangible personal property used for receiving and storage of materials, supplies, parts and components purchased by the user or consumer.

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

(f) Vehicles, including special bodies or attachments, licensed and titled for use on public highways.

(g) Tangible personal property used for preparation of food and beverages by a retailer for retail sale.

(h) Tangible personal property used or consumed for the preserving or maintaining of a product in the form and condition in which it is to be sold.

(4) The following examples of nontaxable sales illustrate the application of the industrial processing exemption:

(a) Property which becomes an ingredient or component part of the finished product to be sold ultimately at retail.

(b) Machinery, tools, dies, patterns, machinery and equipment foundations and other processing equipment, including repair and maintenance of all of these, used in an industrial processing operation.

(c) Property which is consumed, destroyed or loses its identity in a manufacturing or other production process.

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

(d) Fuel or energy used or consumed for industrial processing.

(f) Machinery, equipment and materials used within a plant site for movement of tangible personal property in process of production.

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

(5) Industrial processing includes the following activities:

(a) Production.

(b) Patent, experimental, development, engineering inspection and quality control.

(b) Planning, scheduling and production control.

(d) Design, construction and maintenance of factory machinery, equipment and tooling.

(c) Disposal of production scrap and waste.

(e) Production supervision.

(f) Production material handling.

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

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

(b)

(b) Sales, distribution, warehousing, shipping and advertising departments. (See R 205.68.)

(c) Administrative, accounting and personnel.

(d)

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

(e) Plant security, fire prevention and hospitals.

(7) The foregoing examples of taxable and exempt activities shall not be considered as exclusive in either category but are included as generally descriptive of industrial processing operations which are considered exempt as distinguished from nonexempt activities.

(8) Where the industrial processing areas or spaces are not separate and distinct from other departments or activities, or where the same tangible personal property can be used or consumed in the industrial processing area and 1 or more other areas, the tax will apply to such property unless it can be determined and substantiated to the satisfaction of the revenue division, department of treasury that a percentage or other apportionment thereof is equitable and practical.

History: 1979 AC.

Rule 41. R 205.91 Interstate Commerce.

Rule 41. (1) The tax does not apply on any sale of tangible personal property when such tax is prohibited by the constitution or laws of the United States. Whether or not the tax on a sale at retail is prohibited by the constitution or laws of the United States depends primarily on the

facts in each individual case. The department requests your inquiries concerning specific transactions involving interstate commerce.

(2) Where tangible personal property is located within the state at the time of sale and is delivered within the state it is taxable. It is immaterial that the purchaser may, subsequent to the sale, transport the property out of the state or use it in interstate commerce.

(3) A sale taking place within the state is taxable as an intrastate transaction. For example: tax would apply when a customer in Michigan purchases tangible personal property from a Michigan retailer, pays the seller the required sales price together with insurance or postage or freight regardless of the destination of the property purchased; tax would not apply on sales where the seller is obligated to make delivery to the purchaser at an out-of-state delivery point when the property will not be returned to Michigan for storage, use or consumption.

(4) When making a valid sale in interstate commerce, it is necessary for the seller to retain documentary evidence of shipment outside the state for the purpose of substantiating a deduction on the tax return. If the shipment of the property is diverted in transit or if for any reason it does not arrive at the indicated destination outside the state, or is reshipped into the state, the sale is taxable. The documents acceptable to the department are any of the following:

(a) A waybill or bill of lading made out to the seller's order and calling for delivery outside the state.

(b) An insurance or registry receipt issued by the United States postal service.

(c) A trip sheet signed by the seller's delivery agent and showing the signature and address of the person, outside the state, who received the goods delivered.

(d) Sales slips or other sales and shipping forms regularly used by the seller for interstate transactions must be filed separately from intrastate, in an accessible manner to facilitate an audit by the state.

History: 1979 AC.

Rule 42. R 205.92 Jewelers and Jewelry Repairers.

Rule 42. (1) Sales, not for resale, of watches, clocks, jewelry and other items by jewelers and jewelry repairers, are taxable.

(2) Sales of jewelry, such as class rings and pins, to high school and college students, members of fraternities, sororities, etc., are subject to the tax. This is true even when sales are made through a school official acting as agent either for the seller or the purchaser. Manufacturing jewelers making such sales by contract, either through school officials or through retail jewelers acting as commission agents, are to report and pay the tax on the full sales price of such transactions. They are not deemed to be either sales for resale or sales to

educational institutions.

(3) Sales of trophies, medals, etc., to nonprofit educational institutions, intended for awards to students, are not taxable.

History: 1979 AC.

Rule 43. R 205.93 Kennels, Stables, and Pet Shops.

Rule 43. (1) Sales, not for resale, of tangible personal property for use and consumption in operating boarding kennels and stables, or pet shops, are subject to tax.

(2) Persons operating boarding kennels and stables only, and making no retail sales of animals, are considered as consumers subject to tax on acquisition cost of property purchased.

(3) Sales of horses, dogs, other animals, birds, goldfish and other pets are subject to tax, except when sold to a person regularly engaged in the business of breeding such livestock for resale and conditioned that such breeder or propagator is the holder of a sales tax license.

History: 1979 AC.

Rule 44. R 205.94 Labels, Tags, and Nameplates.

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 or nameplates to be affixed to tangible personal property which is taxable when sold at retail, or to the containers sold with such property, are not subject to tax if the labels or nameplates are an inseparable part of the property sold and purchased by the buyer as a part of such 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.

History: 1979 AC.

Rule 45. 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.

Rule 46. R 205.96 Rescinded.

History: 1979 AC; 1996 AACS; 1997 AACS.

Rule 47. R 205.97 Linen and Laundry Suppliers and Laundries.

Rule 47. (1) Persons engaged in the business of laundering clothes and other textiles for others and persons operating a linen service or providing the use of clean jackets and other garments, towels and similar articles to hotels, barber shops and other establishments are deemed to be rendering a service. All sales to them of tangible personal property of any kind are taxable.

(2) Sales of tangible personal property at retail by such persons are taxable, but they may deduct on their tax returns the amount of gross sales upon which they paid the tax at time of purchase.

(3) Rentals of linens and other similar articles are subject to use tax unless the lessor has paid Michigan sales or use tax on the purchase price of the articles to be rented. A person remitting tax on the purchase price as a purchaser-consumer or remitting tax on rental receipts as a lessor, shall follow 1 or the other methods of remitting for his entire business operation.

History: 1979 AC.

Rule 48. R 205.98 Meals.

Rule 48. (1) The sale of meals or other tangible personal property by railroad, pullman car, steamship, airplane, or other transportation companies, while operating in the state of Michigan, or upon Michigan waters, is taxable.

(2) Fraternities, sororities, and other student societies, with members residing at a common location and jointly sharing household expenses, including meals, are not considered to be selling at retail, and meals furnished to members are not taxable. Caterers or other persons selling meals to fraternities and sororities are taxable on their gross proceeds from meals so furnished.

History: 1979 AC.

Rule 49. R 205.99 Mining, Oil Wells, and Extractive Operations.

Rule 49. (1) An extractive operator includes a person who, from his own land or from the land of another, either directly or by contract, takes or extracts for resale ore, oil, gas, coal, timber, stone, gravel, clay, minerals or other natural resource material.

(2) An extractive operation begins when contact is made with the actual type of natural raw product being recovered and no exemptions in the nature of industrial processing are to be considered pending such contact. Processing includes all necessary processing operations before shipment from the place of extraction, except that tangible personal property consumed or used in the construction, alteration, improvement or repair of buildings, storage tanks, storage and housing facilities is taxable. The sale of tangible personal property for consumption or use in transporting the product from the place of extraction is taxable.

(3) If an extractive operator sells any part of his product at retail, or if he consumes or uses it himself in other than the manufacturing or producing of a product for ultimate sale, extractions thus sold or used are taxable and the extractor shall account for and remit the tax to the state. When he consumes or uses his own product, the tax shall be based upon its fair market value. Where an extractor sells to a wholesaler, refiner, manufacturer or other person for resale, the tax does not apply. However, where an extractor sells to a final buyer or ultimate consumer, the tax applies to the gross proceeds of such sales.

(4) The drilling or prospecting for oil, gas, brine or other natural resources does not constitute industrial processing. Sales of equipment, materials and supplies used in exploring for natural resources and sales of equipment and materials used in the drilling of oil, gas and brine wells are taxable.

(5) The actual production of oil, gas, brine or other natural resources constitutes industrial processing and exempts from application of the tax casing pipe and drive pipe commonly known as 8-inch or under (8 5/8-inch O.D.); tubing; well-pumping equipment; chemicals, explosives and acids used in fracturing, acidizing or shooting wells; Christmas trees and other wellhead equipment; treatment tanks; piping, valves and pumps used before movement or transportation of the natural resource from the production area; and chemicals and acids used in treating such crude oil, gas, brine or other natural resources.

(6) The storage of oil, gas, brine or other natural resources (including underground storage) does not constitute industrial processing. Sales of equipment, material and supplies used in the storing, withdrawing or distribution of oil, gas or brine from a storage facility are taxable.

History: 1979 AC.

Rule 50. R 205.100 Tombstones, Markers, and Other Memorials.

Rule 50. (1) Memorial dealers are retailers of tombstones, markers and

other memorials sold by them and also of the materials used in setting a memorial in the cemetery. Such sales are subject to tax.

(2) If the memorial dealer furnishes a memorial and sets it in the cemetery for a lump sum, the tax applies to the entire amount charged. If a separate and additional charge is made for the labor of setting the memorial, the tax does not apply to this labor charge. No deduction may be made of charges for cutting, shaping, polishing or lettering a memorial or for transporting it to the cemetery.

(3) When a cemetery constructs the foundation upon which a memorial is placed and collects the charges therefor from the memorial dealer who then either collects that amount from his customer or includes it in the charge for the memorial, the memorial dealer is the retailer of the foundation or the material used therein and must pay the tax on it. The cemetery in this case is deemed to be acting as the agent of the memorial dealer in constructing the foundation.

(4) If the cemetery collects the charges for foundations directly from customers of the memorial dealer, the cemetery is the retailer and must pay the tax to the state on the charges for the foundations or for the materials alone when the latter are charged separately.

History: 1979 AC.

Rule 51. R 205.101 Morticians, Undertakers, and Funeral Directors.

Rule 51. (1) Morticians, undertakers, and funeral directors are construed to be rendering a service beyond the selling of tangible personal property, therefore, their sales are taxable as follows.

(2) Where a lump sum charge is made for the ordinary funeral, consisting of the casket complete with rough box, embalming and care of the deceased, use of hearse, limousine, funeral chapel and establishment and professional services, it is assumed that 50% of such lump sum charge is tangible personal property and subject to the tax.

(3) The tax will apply to the entire charges made on purchases that are not included in lump sum billing which may be in the nature of extras. The tax will not apply to accommodation cash advances for such items as cemetery charges, newspaper notices, railroad tickets, ministerial fee, choir, etc.

(4) If the casket and other tangible personal property furnished for a funeral are segregated on the invoice and also in the records of the undertaker, the tax applies to the price charged for each item of tangible personal property, provided such price is the fair retail value of such personal property.

(5) Direct sales to a governmental entity are exempt. This exemption does not include payments from social security benefits, veterans' administration benefits, and similar participation benefits accruing to the deceased under various federal and state laws.

(6) All equipment, ambulances, hearses, embalming equipment and materials, chapel furnishings, etc., are presumed to be used or consumed by the mortician, undertaker or funeral director in rendering a service and such sales to them are subject to the tax. Generally speaking, these commodities are classified as trade tools or equipment that have more than a onetime use.

History: 1979 AC.

Rule 52. R 205.102 Multigraphers and Mimeographers.

Rule 52. (1) Sales of tangible personal property by multigraphers, mimeographers, and similar establishments are taxable, when for resale or to be used in "industrial processing" (R 205.90).

(2) A multigrapher or mimeographer may not deduct, from the selling price of an item, the labor or other service charge in performing the job even though it is shown separately and regardless of when the services are performed. The labor cost is considered part of the cost of the article sold. Amount paid for postal privileges never becomes part of the price upon which tax is figured.

(3) When a customer furnishes his own printed paper stock and a multigrapher or mimeographer imprints thereon the name, address, telephone number, etc., this is merely service and not taxable.

(4) If government postcards or stamped envelopes are furnished by the customer to the multigrapher or mimeographer, receipts for imprinting the cards or envelopes are not taxable.

(5) Sales to multigraphers and mimeographers of equipment and materials consumed or used directly in the processing of their product are not taxable. However, when sold to persons not regularly engaged in mimeographing or multigraphing for sale, they are taxable.

(6) This rule also applies to persons engaged in the business of conducting a letter service for others, regardless of the method used to produce such letters.

History: 1979 AC.

Rule 53. R 205.103 Rescinded.

History: 1979 AC; 1996 AACS; 1997 AACS.

Rule 54. R 205.104 Optometrists, Ophthalmologists, Opticians, and Optical Supply Houses.

Rule 54. (1) Licensed optometrists and ophthalmologists who 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) 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, are exempt. Contact lenses are taxable, except when prescribed by an optometrist or ophthalmologist for a specific disease which precludes the use of eyeglasses. Examination charges when billed separately are exempt.

(3) Sales by opticians and optical supply houses to optometrists and ophthalmologists are exempt in both of the following situations:

(a) When sold for resale, provided the optometrist or ophthalmologist is properly registered as a retailer as noted in subrule (1).

(b) When sold pursuant to a specific prescription, except as noted in subrule (2).

(4) Sales of machinery and apparatus used directly in the manufacture of eyeglasses for resale are not taxable. Sales of all other equipment and materials to opticians are taxable.

(5) Sales at retail by a person regularly engaged in any of the businesses mentioned above of stock accessories, such as sunglasses, barometers, thermometers, telescopes, opera glasses, solutions for cleaning glasses, lorgnettes, chains, ribbons, and similar items, are taxable.

(6) If an optician employs an optometrist or ophthalmologist, and sells eyeglasses directly to the ultimate consumer, the sale will be exempt if in fulfillment of a prescription issued by the optometrist or ophthalmologist.

(7) Physicians acting in the capacity of optometrists or ophthalmologists are subject to this rule. (See R 205.111.)

History: 1979 AC.

Rule 55. R 205.105 Rescinded.

History: 1979 AC; 1996 AACS; 1997 AACS.

Rule 56. R 205.106 Pawnbrokers.

Rule 56. Pawnbrokers are engaged primarily in the business of lending money for the repayment of which they accept as security tangible personal property from the pawner or pledger. In case the pawner or pledger does not redeem the property pledged or pawned within the specified time and the property is forfeited and title rests in the pawnbroker, the gross proceeds realized by the pawnbroker from a subsequent sale of the articles are taxable.

History: 1979 AC.

Rule 57. R 205.107 Pharmacists.

Rule 57. (1) The sale of prescription drugs for human use by a licensed pharmacist is exempt from tax. To qualify for this exemption, the pharmacist shall have a specific prescription as prescribed by a physician or other licensed practitioner of the healing arts.

(2) Retail sales of any apparatus, device, appliance, or equipment used to replace or substitute for any part of the human body, or used to assist the disabled person to lead a reasonably normal life, are exempt when the tangible personal property is purchased on a written prescription or order issued by a licensed health professional. (See R 205.139 for definition of "licensed health professional.")

(3) To support the exemption claimed when filing the required return, a pharmacist shall keep a record showing the date the prescription is issued, the name of the person issuing it, the name of the individual for whose consumption it is issued, the contents of the formula prescribed, and the amount charged to the consumer. This information may appear either in the form of the original prescription attached to a substantial record in chronological order or in a transcribed record in the same order. These records shall be kept for a period of 4 years.

(4) Insulin dispensed by a pharmacist, either with or without a prescription, is exempt from the tax.

(5) The sale to consumers of drugs without a prescription is taxable.

(6) Sales of nonprescription apparatuses, devices, or equipment are taxable. Repair and replacement parts are also taxable.

History: 1979 AC.

Rule 58. R 205.108 Philatelists; Antiques, Curios, and Old Coins.

Rule 58. (1) Sales of curios, antiques, art work, coins, postage stamps and like articles to art collectors, philatelists, numismatists or other persons who purchase such items for use or storage and not for immediate resale are sales subject to tax.

(2) Sales of uncanceled United States postage or revenue stamps valid for transportation of mail or for revenue tax purposes are not taxable. 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.

History: 1979 AC.

Rule 59. R 205.109 Photographers and Photo Finishers.

Rule 59. (1) The making of photographs for sale is an industrial

process, and tangible personal property used and consumed directly in the process is not taxable.

(2) The total amount charged for making photographs, including the camera charge, is taxable. When an order is not received from proofs, the amount of the deposit retained is not taxable.

(3) The development and processing of exposed film or negatives in black and white or in color, and the production of film strips, slides, or prints therefrom, are subject to sales tax on the total price charged to the customer. The purchase of machinery, equipment, materials, and supplies used by the processor in processing the exposed film, and in the production of the film strips, slides, and prints, are exempt from tax as being a part of an industrial process.

(4) The coloring or tinting of photographs returned to the photographer for such a purpose is a nontaxable service. However, if the coloring or tinting of the photograph is included in a quoted price, the total amount is taxable.

(5) Sales of cameras, films, frames, and other articles to the consumer are taxable.

(6) Sales of x-ray films to laboratories, physicians, surgeons, and dentists, and to other persons primarily engaged in rendering x-ray services, are taxable.

History: 1979 AC.

Rule 60. R 205.110 Telephone and Telegraph.

Rule 60. (1) Use tax applies on income derived from intrastate telephone, telegraph, leased wire, private line, teletypewriter and similar communications services. The tax applies only on such services which both originate and terminate in Michigan.

(2) The tax does not apply on income from coin-operated installations, directory advertising proceeds, or on charges to telephone answering services for switchboards, concentrator-identifiers, interoffice circuitry and their accessories. Charges for lines, stations, toll calls and other services and equipment to such answering services which are normally furnished to a subscriber are taxable.

(3) The tax does not apply on sales of services to the United States government, the state of Michigan, political subdivisions of the state of Michigan or to the American red cross.

(4) The tax does not apply on services sold to schools, hospitals, homes for the aged or children, or other health, welfare, educational or charitable institutions or agencies not operated for profit or benefit to the shareholders.

(5) Sales or use tax applies on purchases of tangible personal property by sellers of taxable communication services except exemption will prevail on

the necessary exchange equipment and on the tangible personal property acquired for installation on the premises of the subscriber.

(6) Sales or use tax will apply on tangible personal property purchased and used in providing the exempt services noted in preceding paragraphs.

History: 1979 AC.

Rule 61. R 205.111 Physicians, Surgeons, Dentists, Veterinarians, Osteopaths, and Other Practitioners.

Rule 61. (1) Physicians, surgeons, dentists, veterinarians, osteopaths or other practitioners of the healing arts not otherwise specifically provided for in these rules render nontaxable services.

(2) Sales of drugs, medications, instruments, equipment and other tangible personal property to such persons for use in rendering professional services or in connection with their office, laboratory or other similar quarters are taxable.

(3) Sales by dental supply houses and others to dentists or dental laboratories of materials, supplies and equipment used in the rendition of their services are taxable.

(4) If a dental laboratory sells to dentists tangible personal property in its original form upon which no professional services are performed such as cement, gold, cleaning preparations, etc., then such sales shall be considered as sales at retail and the dental laboratory so engaged must obtain a sales tax license and pay the tax on these sales.

History: 1979 AC.

Rule 62. R 205.112 Premiums and Gifts.

Rule 62. (1) Donors of tangible personal property are regarded as consumers thereof and the sale of such property to them is taxable. The sale of goods to be given away for advertising purposes is taxable.

(2) If goods purchased for resale are subsequently given away or used by the retailer, he must include in his use tax return the cost of such goods and pay the tax thereon.

(3) The redemption of trading stamps for premiums is a taxable sale at retail and sales tax is to be paid on the redemption value of the stamps. Sales tax will not apply on stamps redeemed for cash rather than for merchandise. Premiums acquired for "resale" purposes are not subject to sales or use tax.

(4) Purchasers of property to be awarded as prizes, the winning of which depends upon chance or skill, are regarded as consumers thereof and the tax applies to sales of such property to them. Sales of tangible personal property to the operator of a game of skill or chance or similar device are taxable as he is considered the consumer of property used in

connection therewith.

History: 1979 AC.

Rule 63. R 205.113 Printers, Lithographers, Photostaters, Typographers, and Blueprinters.

Rule 63. (1) Sales of tangible personal property by printers, lithographers, photostaters, typographers and blueprinters are taxable except when such sales are for resale purposes or used in "industrial processing." (See R 205.90.)

(2) Labor charges involved in producing the property for sale cannot be deducted from the selling price regardless of whether or not the charge is billed separately on the sales invoice. The labor cost is considered as part of the "gross proceeds" derived from the sale.

(3) If a customer furnishes his own printing stock which was acquired from another source and the printer imprints thereon the name, address and telephone number, this constitutes the rendition of a service and is not taxable.

(4) Purchases of tangible personal property by a printer, lithographer, photostater, typographer or blueprinter are not taxable when such materials are to be consumed in the producing of a product for resale. (See R 205.90.)

History: 1979 AC.

Rule 64. R 205.114 Professional Shoppers.

Rule 64. (1) When a professional shopper purchases tangible personal property either in his own name or in the name of his client, such sales are taxable without deduction for any commission or other compensation of the shopper.

(2) The commission or other compensation paid to professional shoppers employed by retailers to assist customers in selecting and purchasing tangible personal property is not deductible from the selling price of such property on which the tax applies.

History: 1979 AC.

Rule 65. R 205.115 Public Utilities; Gas, Electricity, and Steam.

Rule 65. (1) Sales of tangible personal property, including sales of gas, electricity, and steam by public and private utilities, are subject to sales tax, except in those cases wherein the purchaser is entitled to exemption as specifically provided in the sales and use tax statutes. (See R 205.51 and R 205.90.)

(2) When gas, electricity, or steam is sold to a customer for 2 or more

purposes through 1 meter, and 1 of the purposes is taxable while another is exempt, the total consumption as shown by the meter is taxable, except where it is impractical to install separate meters and the consumption for each use can be substantiated in a manner acceptable to the department. On sales of electricity to farmers, if the farmer's total electrical consumption exceeds 1,500 kwh per month, or 2,500 kwh per month for a home with electric heat, during the period of November to March, the consumption in excess will be considered exempt if the farmer provides the seller with the prescribed agricultural producing exemption certificate.

(3) The sale of tangible personal property is not taxable when consumed or used in the process of manufacturing or generating electricity, gas, or steam which is taxable when sold at retail. Transformers used in industrial processing are not taxable. Property consumed or used in the transmission or distribution of electricity, gas, or steam is taxable. Such transmission or distribution starts at the place where the product leaves the immediate premises from which it is manufactured.

(5) When a public utility uses or consumes its own product for purposes not included in "industrial processing" (see R 205.90), the tax applies upon the basis of the cost of the part of its product thus used.

History: 1979 AC.

Rule 66. R 205.116 Restaurants, Hotels, Lunchrooms, and Other Establishments.

Rule 66. (1) The tax applies to sales of meals, foods, or beverages of any kind, and to sales of other tangible personal property, by restaurants, hotels, cafes, bars, caterers, lunch counters, lunch wagons, and other establishments engaged in the business of preparing and selling food or beverages for direct consumption, on or off the premises.

(2) The tax applies to the cover or minimum charge and all other charges, except to those charges for entertainment and dancing, separately listed on the bill or collected as an admission fee or fixed charge.

(3) When food is delivered or served at a location other than the place of business of the retailer or in a room other than a regular dining room, and an extra charge is made for that service, the entire amount is taxable.

(4) Banquets, dinners, and similar functions served by hotels or other establishments covered by this rule are subject to tax at the contracted price per plate or seat, or at the minimum price, whichever is greater. Charges for flowers are taxable.

(5) Amounts paid as a gratuity and distributed to the employees as a gratuity, and not as a wage, are not considered as part of the tax base when that gratuity is separately identified and itemized on the guest check or billed to the customer. All service charges in connection with the transfer of tangible personal property shall be included as part of the tax base.

(6) All tools, equipment, and materials used or consumed in the preparation of food or beverages for retail sale are taxable. Materials which become an ingredient or component part of the prepared food or beverage may be purchased for resale by the preparer, tax exempt.

(7) Meals provided to employees are taxable. When provided without charge, the actual cost of the meals shall be taxed at the cost shown by the employer's records. When records are not available, each meal furnished shall be taxed at the cost of 45 cents a meal. The actual number of meals served shall be taxed if satisfactory records are maintained to establish the number. If the employer furnishes board and room, it is presumed that 3 meals a day per employee are served 7 days a week. If meals only are provided, it is presumed that 2 meals a day per employee are served each working day.

(8) Fraternities, sororities, and other student societies, with members residing at a common location and jointly sharing household expenses, including meals, are not considered to be selling at retail. Sales to these organizations of tangible personal property, other than food and nonalcoholic beverages for preparation and consumption at the consumer's location, are subject to tax.

History: 1979 AC.

Rule 67. R 205.117 Repairers and Servicicers.

Rule 67. (1) Persons regularly and exclusively engaged in the business of repairing, improving, or altering tangible personal property owned by others, in which work the value of the material used is incidental or negligible, render a nontaxable service. Sales of equipment, materials, and supplies to such persons are taxable. For example, sales to the following are taxable: Bootblacks, cleaners and dyers, garment repairers, jewelry and watch repairers, linen suppliers and laundries, radio repairers (radio tubes not being considered repair material), refrigerator repairers, small tool sharpeners, and welders.

(2) Sales for resale to a person who has a sales tax license and an established business of one of the following types are not taxable, but sales to such a person of all other tangible personal property are taxable: Automobile repairers or garages, electrical repairers, machinery repairers, upholsterers and furniture repairers, and shoe repairers.

(3) Persons selling tangible personal property in addition to providing labor or service shall obtain a sales tax license and pay the tax on their sales of tangible personal property, including such property sold in connection with repair work. When both labor and service charges are involved in repair work for others, the retailer shall separately itemize the amount charged for the tangible personal property sold; otherwise, the tax shall apply to the total gross proceeds.

(4) A person engaged in a repair or service business not specifically covered may write the department for information.

History: 1979 AC.

Rule 68. R 205.118 Shoe Repairers.

Rule 68. (1) When persons in the business of repairing shoes affix soles, heels, laces, sewing thread, nails, etc., to the property of their customers they sell tangible personal property at retail and also render services. It shall be considered that of the amount received by them for repairing shoes, etc., the taxable sale of tangible personal property is 35% and the sale of the nontaxable services 65% of such amount.

(2) The sale of leather, heels, laces and other shoe findings by shoe repairers (not used in connection with repair work but sold directly to purchasers for use) is taxable on the full amount of such sale.

(3) Vendors who sell machinery, tools and other equipment to shoe repairmen are subject to either the sales or use taxes, as the case may be, on the full amount of such sales.

History: 1979 AC.

Rule 69. R 205.119 Sign Painting.

Rule 69. (1) The painting and selling of detached metal, wood, cardboard or paper signs constitute a retail sale and tax applies on the full selling price without deduction for any costs incurred in producing the sign.

(2) A sign painter, working on the property of others, is a servicer and a sales tax license is not required unless, in addition to this work, he also makes retail sales of manufactured signs. Sales of tangible personal property to sign painters for use or consumption in performing services for others are taxable.

History: 1979 AC.

Rule 70. R 205.120 Rescinded.

History: 1979 AC; 1996 AACS; 1997 AACS.

Rule 71. R 205.121 Rescinded.

History: 1979 AC; 1996 AACS; 1997 AACS.

Rule 72. R 205.122 Rescinded.

History: 1979 AC; 1996 AACS; 1997 AACS.

Rule 73. R 205.123 Rescinded.

History: 1979 AC; 1996 AACS; 1997 AACS.

Rule 74. R 205.124 Transportation Charges.

Rule 74. For the purpose of computing the tax, no deduction is allowable on account of freight, express, mail, cartage or other transportation or delivery charges incurred or to be incurred on tangible personal property prior to completion of transfer of ownership of such property from the seller to the purchaser for use or consumption. It is immaterial whether such transportation charges are billed separately or whether they are paid by the seller or the purchaser.

History: 1979 AC.

Rule 75. R 205.125 Rescinded.

History: 1979 AC; 1996 AACS; 1997 AACS.

Rule 76. R 205.126 Vending Machines and Other Automatic Sales Devices.

Rule 76. (1) The gross receipts from sales of tangible personal property through vending machines and other automatic sale devices, including food or drink as specified in MCL 205.54g(2), are taxable. Vending machine sales of certain items described in MCL 205.54g(2), including candy, nuts, chewing gum, cookies, crackers and chips, are exempt from tax. It is immaterial whether the sales are made for money, coins, tokens, or coupons redeemable in money or merchandise. If both taxable and exempt merchandise is sold through the same vending machine, sales tax shall be calculated in accordance with MCL 205.54g(2).

(2) The operator of a nonelectric vending machine business, having sales of merchandise where the consideration is 10 cents or less, may deduct from the operator's gross proceeds the commissions paid to an exempt nonprofit entity, if the sales are of unsorted nuts, confections, or other merchandise, dispensed at random in substantially equal portions upon insertion of a coin.

(3) The business operator of a vending machine or other automatic sales device is defined, for the purpose of this rule, as the person who, personally or through an agent, removes the coins or other means of payment from the machines and is responsible for their disposition.

(4) The business operator of a vending machine or other automatic sales device shall maintain a sales tax license and shall pay the tax to the state on all taxable sales made through each machine or device operated by that person.

(5) It is immaterial whether the business operator owns the machine or the merchandise sold. If merchandise belonging to another is sold, the merchandise shall be considered consigned or entrusted to the control of the business operator for sale, in accordance with R 205.70.

(6) The name, address, and sales tax license number of its current business operator shall appear at all times on every vending machine or other automatic sales device from which tangible personal property is sold.

(7) Sales or purchases of vending machines and parts, as well as the tools and equipment for the maintenance thereof, are subject to sales or use tax. Machines used in retail vending of tangible personal property cannot qualify as exempt equipment acquired for "industrial processing" purposes.

History: 1979 AC; 2007 AACS.

Rule 77. R 205.127 Water

Rule 77. (1) Sales of water when delivered in any manner other than through mains, in bulk tanks in quantities of not less than 500 gallons to a consumer, or as bottled water, are taxable, regardless of the use or purpose of the water, unless exempt under R 205.90 or R 205.51.

(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.

History: 1979 AC; 2007 AACS.

Rule 78. 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.

Rule 79. R 205.129 Rescinded.

History: 1979 AC; 1996 AACS; 1997 AACS.

Rule 80. R 205.130 Tire Retreading and Vulcanizing.

Rule 80. (1) Gross receipts from retail sales of retreaded tires are taxable. When a person in the business of retreading tires purchases old tires and retreads and sells them to consumers or users, the sales tax applies to the full retail selling price of the tires. Sales of equipment and supplies used for retreading and vulcanizing tires for retail sale are exempt.

(2) When tires are supplied by a customer for retreading or vulcanizing, the sales tax shall apply on the selling price of the materials sold. Labor charges, billed separately to the customer, are not taxable. The materials consumed directly in the retreading or vulcanizing of tires may be purchased for resale without tax. However, sales of all equipment used for retreading and vulcanizing tires for others are taxable.

(3) If tires that require retreading or vulcanizing are traded in or credited for tires that have been retreaded or vulcanized, or for the purchase of other tires, the sales tax applies to the full selling price of the tires accepted by the purchaser.

History: 1979 AC.

Rule 81. R 205.131 Vessels and Watercraft.

Rule 81. (1) Sales of vessels designed for commercial use of registered tonnage of 500 tons or more, when produced upon special order of the purchaser, are exempt from tax. Also nontaxable are sales of bunker and galley fuel, provisions, supplies, maintenance, and repairs for the exclusive use of those vessels of 500 tons or more, if those vessels travel from a point in Michigan to a destination in another state. Sales of such items for the use of vessels operating in foreign commerce are taxable.

(2) All sales and purchases of vessels and watercraft, except those noted in subrule (1), are subject to sales or use tax. Persons acquiring watercraft from other than a registered retailer shall be required to pay the use tax to the secretary of state at the time of registration. (See R 205.135--Isolated vehicle, aircraft, watercraft, and snowmobile transfers.)

(3) Sales of fuel and supplies for use on commercial fishing or pleasure craft are subject to tax.

(4) Sales of food for resale on vessels plying the Great Lakes are exempt if the vessel operator has a sales tax license and remits tax on

all sales within the territorial waters of Michigan.

History: 1979 AC.

Rule 82. R 205.132 Rentals.

Rule 82. (1) A person engaged in the business of renting or leasing tangible personal property to others shall pay the Michigan sales or use tax at the time he purchases tangible personal property, or he may report and pay use tax on the rental receipts from the rental thereof. A person remitting tax on the purchase price as a purchaser-consumer or remitting tax on rental receipts as a lessor, shall follow 1 or the other methods of remitting for his entire business operation. A person remitting tax on rental receipts shall be the holder of a sales tax license, or a registration as is provided in the use tax act. Each month such lessor shall compute and pay use taxes on the total rentals charged.

(2) A lessor remitting tax on rental receipts may deduct direct rentals to the United States, the state of Michigan or its local governmental entities, churches (excluding vehicles), schools and other qualified nonprofit institutions or agencies, or to persons or concerns for use in agricultural producing or industrial processing. However, rentals to construction contractors engaged in contract work for such entities are taxable.

History: 1979 AC.

Rule 83. R 205.133 Advertising Agencies.

Rule 83. (1) The primary function of an advertising agency is to plan, create and arrange for production of advertising on the special order of clients. Their activities are in the nature of special creative services. Part of their services consist in ordering the services, publication space, and the materials necessary to produce advertising as directed by the client. For the convenience of the client it is the practice for the agency to pay for these services and materials and to re-bill the client. The compensation of the agency is derived from discounts available to agencies, but not to advertisers from publications, and from percentage charges added to the cost of services and materials acquired for the client. The practice is to attach invoices from the suppliers to the agency invoice to the client. These activities constitute a service and not a purchase and resale of tangible personal property.

(2) Materials and supplies purchased by the agency and consumed in the operation of the agency are taxable except when such materials or supplies are purchased and are exempt by reason of R 205.69 or 205.103. When an advertising agency goes beyond the rendition of services and enters the business of selling matrices, sales manuals, record books, advertising novelties, data books, and other tangible personal property, it is required to be licensed and to remit the proper tax.

History: 1979 AC.

Rule 84. R 205.134 Radio and Television Stations.

Rule 84. (1) Sales of tangible personal property to operators of licensed commercial radio or television stations are taxable except when such property is used as a component in the direct production of a film, tape or recording produced for resale or transmission purposes. Production begins at the time of the electronic processing of the signal in the studio and ends at the point at which the signal leaves the studio production equipment and begins transmission to the transmitter.

(2) When a station makes retail sales of cookbooks or other books, toys, gadgets, nursery stock, building plans, pictures or other tangible personal property, the persons owning such station shall also hold a sales tax license and remit the tax.

History: 1979 AC.

Rule 85. R 205.135 Isolated Vehicle, Aircraft, Watercraft, and Snowmobile Transfers.

Rule 85. (1) The use tax applies on the transfer of vehicles, aircraft, watercraft, and snowmobiles between persons other than for resale by registered dealers. The tax shall be collected by the Michigan secretary of state before the transfer of any vehicle title or watercraft or snowmobile registration. The tax due on aircraft shall be paid directly to the revenue division, department of treasury, by the purchaser.

(2) All vehicles, aircraft, watercraft, and snowmobiles brought into the state of Michigan for registration purposes within 90 days after the date of purchase are taxable, unless the unit was properly registered by the purchaser in the state or country of purchase, thus signifying the intent of having purchased the unit for first use and consumption in that jurisdiction.

(3) Exemption from use tax is allowed only under the following conditions:

(a) When the transferee or purchaser is the spouse, mother, father, brother, sister, or child of the transferor.

(b) When the transfer is a gift to a beneficiary in the administration of an estate. Sales by an administrator of an estate are taxable.

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

(4) Vehicles, aircraft, watercraft, or snowmobiles purchased as part of the total assets of a business are taxable. The tax due shall be computed on the actual book value of the property at the time of transfer.

(5) The base price to be used in computing the tax liability shall not be less than its retail dollar value as listed in any recognized guide for use or appraisal purposes.

(6) Questions regarding taxability of specific transactions shall be referred to the revenue division, department of treasury.

History: 1979 AC.

Rule 86. 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 products, such as beer, wine, and liquor, are taxable.

(3) Tobacco and tobacco products are taxable.

(4) Both of the following apply:

(a) Sales of "prepared food," as defined in MCL 205.54g(4), are taxable.

(b) Notwithstanding subdivision (s) of this subrule, "prepared food" does not include items as specified in MCL 205.54g(5).

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

(a) 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.

(b) 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, except that plates, bowls, glasses, or cups necessary for the purchaser to receive the food, for example, dispensed soft drink or milk, or salad bar, need only be made available.

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

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

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

(B) 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.

(C) Food where plates, bowls, glasses or cups are necessary to receive the

food, for example, dispensed soft drink or milk, or salad bar.

(ii) 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.

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

(d) 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.

(e) 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 shall not be 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 shall be considered to have provided the utensil.

(f) 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.

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

(h) A new business shall make a good faith estimate of its prepared food sales percentage for its first year. A new business should 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) Prepared food sold by various organizations, such as churches or charitable, benevolent, social, or fraternal groups, including fund-raising projects, is taxable. Such organizations shall have a sales tax license for the purpose of reporting the tax due.

(7) Sales of prepared food and drink by a caterer are subject to tax.

(8) Sales of prepared food cooked to the order of the purchaser, or

maintained at a temperature higher than normal room temperature, are taxable.

(9) Examples of nontaxable food items sold without eating utensils by a grocer or other food retailer for human consumption are as follows to serve as a guide for both the retailer and the consumer:

- (a) Baby food.
- (b) Bakery products.
- (c) Baking soda.
- (d) Bouillon cubes.
- (e) Candy and confectionery.
- (f) Carbonated beverages (bottle deposits are exempt).
- (g) Candied apples.
- (h) Caramel-coated popcorn.
- (i) Cereal and cereal products.
- (j) Chewing gum (nonmedicated).
- (k) Chocolate.
- (l) Cocoa.
- (m) Coconut.
- (n) Coffee and coffee substitutes.
- (o) Condiments.
- (p) Cookies.
- (q) Crackers.
- (r) Dehydrated fruits and vegetables.
- (s) Diet food.
- (t) Dietary supplements.
- (u) Eggs and egg products.
- (v) Extracts, flavoring as an ingredient of food products.
- (w) Fish and fish products.
- (x) Flour.
- (y) Food coloring.
- (z) Fruit and fruit products.
- (aa) Gelatin.
- (bb) Health foods.
- (cc) Honey.
- (dd) Ice cream, topping, and novelties.
- (ee) Jams.
- (ff) Jellies.
- (gg) Lard.
- (hh) Marshmallows.
- (ii) Mayonnaise.
- (jj) Meat and meat products.
- (kk) Milk and milk products.
- (ll) Mustard.
- (mm) Nuts.
- (nn) Oleomargarine.
- (oo) Olives.
- (pp) Olive oil.
- (qq) Peanut butter.
- (rr) Pepper.
- (ss) Pickles.
- (tt) Popcorn.
- (uu) Potato chips.

- (vv) Powdered drink mixes (pre-sweetened or natural).
- (ww) Relishes.
- (xx) Salad dressings and dressing mixes.
- (yy) Salt.
- (zz) Sauces.
- (aaa) Sherbets.
- (bbb) Shortenings.
- (ccc) Soups.
- (ddd) Spices.
- (eee) Sandwich spreads.
- (fff) Sugar, sugar products, and sugar substitutes.
- (ggg) Syrups.
- (hhh) Tea.
- (iii) Vegetables and vegetable products.
- (jjj) Water, bottled.
- (kkk) Yeast.

(10) All of the following are examples of items subject to tax:

- (a) Alcoholic beverages (containing 0.5% or more of alcohol by volume).
- (b) Cocktail mixes (dry or liquid).
- (c) Drugs (nonprescription).
- (d) Household supplies.
- (e) Hot prepared foods.
- (f) Nonprescription medicines.
- (g) Paper products.
- (h) Pet foods and supplies.
- (i) Prepared foods for immediate consumption.
- (j) Soap and soap products.
- (k) Toothpaste.

History: 1979 AC; 2007 AACs.

Rule 87. R 205.137 Air and Water Pollution.

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 tax.

(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 revenue division:

(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 seller, identification of purchaser, identification of the items purchased, date of purchase, and amount of tax paid to seller.

History: 1979 AC.

Rule 88. R 205.138 Rescinded.

History: 1979 AC; 1996 AACS; 1997 AACS.

Rule 89. R 205.139 Medical Equipment and Appliances.

Rule 89. (1) Retail sales of hearing aids and replacement parts are exempt from tax.

(2) Retail sales of any apparatus, device, appliance, or equipment used to replace or substitute for any part of the human body, or used to assist the disabled person to lead a reasonably normal life, are exempt if purchased on a written prescription or order issued by a licensed health professional. Repair and replacement parts for such items are also exempt.

(3) A "licensed health professional" means a physician, dentist, nurse, podiatrist, optometrist, or other individual licensed, certified, or authorized by the director of the department of public health to practice that specific profession in his or her respective state.

(4) To support the exemption claimed for prescription sales when filing the required tax return, the seller shall keep a record showing the date the prescription was issued, the name of the person issuing it, the name of the individual for whose consumption it was issued, a brief description of the property sold, and the amount charged to the customer. The prescription should be attached to the seller's copy of the sales invoice or retained in such a manner as will permit the department to verify the authenticity of the exemption.

(5) Examples of the kind of medical appliances that may qualify for exemption if sold pursuant to a written prescription or order are as follows:

Artificial eyes
Oxygen equipment
Artificial limbs
Pacemakers
Braces
Post-surgical bust forms
Canes
Pressure pads
Corrective shoes
Specially built hospital beds
Crutches
Stoma appliances (colostomy, ileostomy)
Dialysis machine (ureterostomy, catheters)
Hydraulic (patient) lifts
Trusses
Hypodermic syringes & needles
Walkers
Orthotic supports (bandages, belts)

Wheelchairs and similar supplies

(6) Sales of nonprescription apparatus, devices, or equipment, are taxable. Repair and replacement parts are also taxable.

History: 1979 AC.

Rule 90. 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.

Name of exempt institution or agency

Signature and title of person making certification DATE

(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.
