

# Isolated Sales

## Sales Tax Act - Section 2(1)

Michigan Sales Tax Act, in section 2(1) (MCL 205.52), exempts from the provision of the act isolated sales. The current statute exempts from the tax "isolated sales" by excluding sales that are not made by "persons engaged in the business of making sales at retail". Section 2(1) says "...there is levied upon and there shall be collected from all persons engaged in the business of making sales at retail, by which ownership of tangible personal property is transferred for consideration, ... (MCL 205.52(1))

Section 4d of the Sales Tax Act provides certain exemptions from the tax for an isolated transaction made outside of the ordinary course of the seller's business.

(i) A sale made outside of the ordinary course of the seller's business. MCL 205.54d(i))

(j) An isolated transaction by a person not licensed or required to be licensed under this act, in which tangible personal property is offered for sale, sold, or transferred and delivered by the owner. (MCL 205.54d(j))

These provision exempt from the Michigan Sales Tax Act the payment of the 6% sales tax on all isolated sales. However, there is no such exemption in the Use Tax Act.

## Rule 13 Casual Isolated Sales

Rule 13 of the "General Sales and Use Tax Rules" physically exempt casual isolated sales and provide definitions and guidance. A "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. 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.

An exception to the casual isolated sales rule involves sale of licensed or registered property. Specifically, "vehicles, airplanes, snowmobiles and watercraft inquired 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".

## **Holy Spirit Association For Unification Of World Christianity Vs. Michigan Department of Treasury (1984) Michigan Court Of Appeals**

The Michigan Court of Appeals rules that the distribution of personal property which is merely incidental to solicitation of contributions and, at best, is only an isolated sale by an entity not engaged in business of retail sales. Therefore the sale would not be subject to the retail sales tax act.

## **Terco, Inc. vs. Michigan Department of Treasury (1983) Michigan Court of Appeals**

The Michigan Court of Appeals upheld the imposition of a use tax on the purchaser and consumer of tangible personal property where the property was purchased in an isolated transaction. The court ruled that the isolated transaction exception to the sales tax act was not applicable to the purchaser of tangible personal property for use or consumption in Michigan. The use tax act does not contain an isolated transaction exception. Therefore, the Michigan Court of Appeals upheld the imposition of the 6% use tax on the purchase of a computer from an affiliated corporation.

Use Tax Act Section 4g (MCL 205.94g) clarifies the potential misinterpretation of the absence of an isolated transaction exemption in the Use Tax Act to the extent that the act may be construed to impose a tax liability on the purchaser or transferee in the case where the assets of a business are acquired.

The Use Tax levied shall not apply to property purchased from a seller or transferor if the property is part of the purchase or transfer of a business. (MCL 205.94g(1)) However, the exemption does not apply to the following:

(a) The purchase or transfer of tangible personal property that is stock-in-trade or other property of a kind which would properly be included in the inventory of the seller or transferor if on hand at the close of the seller's or transferor's tax period or property held by the seller or transferor for sale to customers in the ordinary course of its trade or business. (MCL 205.94g(2)(a))

(b) The purchase or transfer of a motor vehicle, ORV, mobile home, aircraft, snowmobile, or watercraft. (MCL 205.94g(2)(b))

The "purchase or transfer of a business" means one or more of the following:

(a) The purchaser or transferee has acquired and intends to use the seller's or transferor's trade name or good will. (MCL 205.94g(3)(a))

(b) The purchaser or transferee intends to continue all or part of the business of the seller or transferor at the same location or at another location. (MCL 205.94g(3)(b))

(c) The purchaser or transferee acquired at least 75% of the seller's or transferor's tangible personal property at 1 or more of the seller's or transferor's business locations. (MCL 205.94g(3)(c))

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