

# Records and Recordkeeping Requirements

Section 18 of the Sales Tax Act specifies the authority of the Department of Treasury auditors to examine books and records and the responsibility of the taxpayer to maintain books and records. Any person liable for any tax must keep accurate and complete records and those records must be made available for audit or examination by the Department of Treasury. (MCL 205.68)

The Department of Treasury, 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. (Rule 205.23)

A person liable for tax shall keep an accurate and complete beginning and annual inventory and purchase records of additions to inventory, complete daily sales records, receipts, invoices, bills of lading, and all pertinent documents. If an exemption from the tax is claimed by a person because the sale is for resale at retail, a record shall be kept of the sales tax license number if the person has a sales tax license. These records shall be retained for a period of 4 years after the tax imposed under this act to which the records apply is due or as otherwise provided by law. (MCL 205.68(1))

The Department of Treasury may require a person, by notice served upon that person, to make a return, render under oath certain statements, or keep certain records the department considers sufficient to show whether or not that person is liable for the tax under this act. (MCL 205.68(2))

A person knowingly making a sale of tangible personal property for the purpose of resale at retail to another person not licensed is liable for the tax unless the transaction is exempt. (MCL 205.68(3))

If the taxpayer fails to file a return or to maintain or preserve proper records, or the Department of Treasury has reason to believe that any records maintained or returns filed are inaccurate or incomplete and that additional taxes are due, the Department of Treasury may assess the amount of the tax due from the taxpayer based on information that is available or that may become available. (MCL 205.68(4))

Failure to produce and keep records for the purpose of examination by the Department of Treasury will be considered willful noncompliance and subject to penalties. In the absence of sufficient records the Department of Treasury 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. Section 17(1) provides: "That assessment is

considered prima facie correct for the purpose of this act and the burden of proof of refuting the assessment is upon the taxpayer.” (Rule 205.23)

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. (Rule 205.23)

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 type of exemption claimed, and the amount of the sale. If exemption is claimed by reason of a sale for resale, the taxpayer shall obtain the sales tax license number of the purchaser. (Rule 205.23)

If the taxpayer maintains the proper records, an exemption certificate is not required for an exemption claim by the following:

A person licensed by the Michigan liquor control commission as a wholesaler for purposes of sales of alcoholic liquor to another person licensed by the Michigan liquor control commission. (MCL 205.68(5)(a))

The Michigan liquor control commission or a person certified by the commission as an authorized distribution agent for purposes of the sale and distribution of alcoholic liquor to a person licensed by the Michigan liquor control commission. (MCL 205.68(5)(b))

A blanket exemption claim covers all exempt transfers between the taxpayer and the buyer for a period of 4 years or for a period of less than 4 years as stated on the blanket exemption claim if that period is agreed to by the buyer and taxpayer. (MCL 205.68(6))

The Michigan Sales Tax Act puts the responsibility for the payment of the sales tax on the retailer. However, Public Act 242 of 2000 amended the Sales Tax Act by stating:

“If a taxpayer maintains the records required under this section, and accepts an exemption certificate from the buyer in good faith on a form prescribed by the department, the taxpayer is not liable for collection of the unpaid tax after a finding that the sale did not qualify for exemption under this act. As used in this section, ‘good faith’ means that the taxpayer received a completed and signed certificate from the buyer.”

The amendment eliminated the “reasonable care and effort” requirement from the definition of “good faith”.

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. (Rule 205.23)

Any person not having his principal place of business in Michigan but maintaining within Michigan 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 in Michigan. 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. (Rule 205.23)

Our firm provides the information in this whitepaper for general guidance only, and does not constitute the provision of legal advice, tax advice, accounting services, investment advice, or professional consulting of any kind. The information provided herein should not be used as a substitute for consultation with professional tax, accounting, legal, or other competent advisers. Before making any decision or taking any action, you should consult a professional adviser who has been provided with all pertinent facts relevant to your particular situation. Tax articles in this whitepaper are not intended to be used, and cannot be used by any taxpayer, for the purpose of avoiding accuracy-related penalties that may be imposed on the taxpayer. The information is provided "as is," with no assurance or guarantee of completeness, accuracy, or timeliness of the information, and without warranty of any kind, express or implied, including but not limited to warranties of performance, merchantability, and fitness for a particular purpose.