

Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)

611 W. Ottawa Street
Lansing, MI 48909
Phone: 517-335-8658 Fax: 517-335-9512

REQUEST FOR RULEMAKING (RFR)

1. Department:

Treasury

2. Bureau:

Bureau of Tax and Economic Policy

3. Promulgation type:

Full Process

4. Title of proposed rule set:

Specific Sales and Use Tax Rules

5. Rule numbers or rule set range of numbers:

R205.127

6. Estimated time frame:

6 months

Name of person filling out RFR:

David Matelski

E-mail of person filling out RFR:

MatelskiD@michigan.gov

Phone number of person filling out RFR:

517-335-7424

Address of person filling out RFR:

430 W. Allegan, Lansing MI

7. Describe the general purpose of these rules, including any problems the changes are intended to address.

Michigan is a member of the Streamlined Sales and Use Tax Agreement (SSUTA). Under the terms of the SSUTA, if a member state's sales/use tax acts or rules use a word or phrase that is defined in the SSUTA's Library of Definitions that state must also define that word or phrase using the SSUTA definition in its statute or rules in "substantially the same language." See SSUTA Article III, Section 327. Michigan uses the phrase "bottled water" in the General Sales Tax Act (GSTA), the Use Tax Act (UTA), and the Specific Sales and Use Tax Rules without providing any definition of the phrase in either act or the Specific Sales and Use Tax Rules. See MCL 205.54d (d), MCL 205.94(1)(q), and Mich Admin Code R 205.127, respectively. Therefore, Michigan is likely out of compliance with the SSUTA on this issue, and absent a correction, Treasury will be required to self-report this potential compliance issue when it files its annual Certificate of Compliance in August 2020. Michigan can correct this issue by adopting the SSUTA's definition of "bottled water" in its statute or rules. Once properly promulgated, this rule will prevent Michigan from being found out of compliance and facing sanctions.

8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).

MCL 205.59(2) in the GSTA, “The department [of treasury] shall promulgate rules to implement this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328,” and MCL 205.100(2) in the UTA, “Rules shall be promulgated to implement this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.”

A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).

MCL 205.59(2), MCL 205.100(2), MCL 205.54d(d), MCL 205.94(1)(q), and Mich Admin Code R 205.127.

B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.

Yes, as cited in number 8, MCL 205.59(2) in the GSTA and MCL 205.100(2) in the UTA direct that Treasury shall promulgate rules to implement those acts.

9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

Amendment of R 205.127 to define the phrase “bottled water” by adopting the SSUTA’s definition will bring Michigan into compliance with the national SSUTA.

10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

Michigan uses the phrase “bottled water” in the GSTA, the UTA, and the Specific Sales and Use Tax Rules without providing any definition of the phrase.

11. Are the rules listed on the department’s annual regulatory plan as rules to be processed for the current year?

No, amendment of R 205.127 is not listed in Treasury’s Annual Regulatory Plan.

12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

Full Process

13. Please describe the extent to which the rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

The Legislature has designated Treasury as the exclusive agency responsible for the collection of taxes. MCL 205.1(1). That exclusive duty is to be carried out through establishment of a specialized service for tax enforcement that contains uniformity in definition, regulation, return, and payment. MCL 205.1(1)(b). No similar regulations to the Specific Sales and Use Tax Rules exist.

14. Do the rules incorporate the recommendations received from the public regarding any complaints or comments regarding the rules? If yes, please explain.

The amendment to R 205.127 adding the definition of “bottled water” will address the need expressed for clarification of whether “sparkling water” is considered nontaxable “bottled water.”

15. If amending an existing rule set, please provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed the regulatory activity covered by the rules since the last evaluation.

Review of all Specific Sales and Use Tax Rules is ongoing currently. Technology, economic conditions, or other factors have not changed the regulatory activity covered by the rules since the last evaluation in 2013.

16. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?

No. The continued need for the Specific Sales and Use Tax Rules is certain.

17. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.

No