

**Michigan Office of Administrative Hearings and Rules**  
MOAHR-Rules@michigan.gov

**AGENCY REPORT TO THE  
JOINT COMMITTEE ON ADMINISTRATIVE RULES (JCAR)**

**1. Agency Information**

**Agency name:**

Treasury

**Division/Bureau/Office:**

Bureau of Tax and Economic Policy

**Name of person completing this form:**

David Matelski

**Phone number of person completing this form:**

517-335-7424

**E-mail of person completing this form:**

matelskid@michigan.gov

**Name of Department Regulatory Affairs Officer reviewing this form:**

Sarah Rowley

**2. Rule Set Information**

**MOAHR assigned rule set number:**

2022-9 TY

**Title of proposed rule set:**

Sales and Use Tax Rules

**3. Purpose for the proposed rules and background:**

The general purpose of the amendments to the rules is to revise, update, rename, rescind and create certain Sales and Use Tax Rules.

**4. Summary of proposed rules:**

The purpose of the rules is to update and modernize the sales and use tax rules to make them consistent with current law.

**5. List names of newspapers in which the notice of public hearing was published and publication dates:**

The Mining Journal – December 1, 2022

Grand Rapids Press – December 1, 2022

Detroit News and Free Press – December 1, 2022

**6. Date of publication of rules and notice of public hearing in Michigan Register:**

12/1/2022

**7. Date, time, and location of public hearing:**

12/12/2022 09:00 AM at Michigan Department of Treasury, Austin Building, State Treasurer's Board Room, 430 W. Allegan St., Lansing, MI 48922

**8. Provide the link the agency used to post the regulatory impact statement and cost-benefit analysis on its website:**

<https://ARS.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=1368>

**9. List of the name and title of agency representative(s) who attended the public hearing:**

Dave Matelski, Administrator, Tax Policy Division, Michigan Department of Treasury

**10. Persons submitting comments of support:**

No comments of support were received.

**11. Persons submitting comments of opposition:**

No comments of opposition were submitted for the general rule set. However, the following persons submitted comments of opposition to a specific rule:

- Douglas E. Needham, P.E., Executive Director, Michigan Aggregates Association (MAA)
- Patrick Dean, President, Dean Transportation
- Eric Toomey, Director of Accounting, Dean Transportation
- Curt Macysyn, Executive Director, National School Transportation Association (NSTA)
- David Schulte, Superintendent, Shiawassee RESD
- Paul Hungerford, Superintendent, Gratiot-Isabella RESD
- Eric Hoppstock, Superintendent, Berrien RESA

**12. Persons submitting other comments:**

The following persons submitted other comments, including requests for clarification or proposed revisions:

Michael R. Bannasch, CPA

**13. Identify any changes made to the proposed rules based on comments received during the public comment period:**

	<b>Name &amp; Organization</b>	<b>Comments made at public hearing</b>	<b>Written Comments</b>	<b>Agency Rationale for Rule Change and Description of Change(s) Made</b>	<b>Rule number &amp; citation changed</b>
1	Patrick Dean, President, Dean Transportation		Opposition – Claims that rule “contravenes existing statutory language and would impose use tax on the lessor of school buses” contrary to 2018 PAs 673 and 679.	Comment reflects misunderstanding of the effect of subrule (4). Based on comment, however, Treasury modified the rule to provide more clarity that certain transactions involving the	205.132(3)(c), and (4)

			<p>provision of school buses (with or without an operator) qualify as leases such that they would be exempt beginning March 29, 2019.</p> <p>The subrule does not expressly address taxability as that would be controlled by statute (e.g., MCL 205.54a(1)(t) and/or MCL 205.94(1)(ff)). Recognition as a “lease” facilitates the exemption from sales and/or use tax under those statutes as it provides an exception to the following position stated in Revenue Administrative Bulletin (RAB) 2020-16: “If an operator is supplied along with property, and the operator is necessary for the equipment to perform as designed, then the transaction is a service and not a lease of property.” See also, MCL 205.92b(m)(iii).</p>	
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2	Michael R. Bannasch, CPA		Discuss the consequences of lack of registration and clarify when a sale is made into Michigan, but the transfer of ownership occurs outside Michigan.	<p>Subrule 1: The Department does not believe that incorporating penalties, especially potential criminal sanctions, is well suited for a rule, which is binding on both taxpayers and the Department.</p> <p>No changes were made regarding the transfer of ownership as the rule lays out the general principle and determining ownership is based on specific facts and circumstances which are better handled in a bulletin or other guidance.</p> <p>Subrule 6: This subrule was added based on the general comment regarding clarity in registration requirements and is based on MCL 205.95(5).</p>	205.26(1) and (6)
3	Michael R. Bannasch, CPA		Subrule 3: Seeks additional example to address specific circumstance.	Added additional example to address, and consistent with, comment.	205.68(3)

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4	Michael R. Bannasch, CPA		Subrule 1: Clarify to account for online license application.	Subrule 1: revised consistent with comment.	205.1(1)
5	Michael R. Bannasch, CPA		Include reference in Subrule 2 to address ORVs and manufactured housing. Explain how “retail dollar value” is determined.	Modified subrule 2 consistent with comment and to harmonize with statute. Added a new Subrule 5 to explain “retail dollar value” determination.	205.13(2) and (5)
6	Michael R. Bannasch, CPA		Subrule 2: Clarify policy concerning refunds for returned goods made after the period in the seller’s stated refund policy or after the 180 day period referenced in the statute.	Modified Subrule 2 to address, and consistent with, comment.	205.16(2)
7	Michael R. Bannasch, CPA		Clarify provision applicable to a “member of a group or organization entitled to a reduction or discount.” Clarify seller’s tax base where seller receives consideration from third party.	Modified rule to address, and consistent with, comments.	205.22(2)(d) (iii)

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8	Michael R. Bannasch, CPA		Remove Subrule 3 for the reason that the R. 205.54 is related to auto dealers whereas the current draft of Subrule 3 refers to vehicle sales between individuals.	Modified rule title in response to comment on subrule 3 to better reflect the content to be covered by the rule.	205.54
9	Michael R. Bannasch, CPA		Comment requests rule be renamed to better reflect auto repair shops that might be subject to the rule.	Change proposed rule title.	205.55
10	Michael R. Bannasch, CPA		Subrules 1: Expound on type of sales that are exempt under MCL 205.54x.  Subrule 6: Clarify taxable demonstrations.  Subrule 8: Clarify retail value.	Modified Subrule 1 in part to clarify lessor election. Department does not believe reciting exemptions under MCL 205.54x in these subrules is warranted as rule points to the specific statute.  Subrule 6: Change made to note that personal use is an example of a taxable use.  Subrule 8: Modified to address, and consistent with, comment.	205.62(1), (6) and (8)

**14.Date report completed:**

6/20/2023