

CITY UTILITY USERS TAX ACT (EXCERPT)
Act 100 of 1990

CHAPTER 1
CITY UTILITY USERS TAX

141.1151 Short title.

Sec. 1. This act shall be known and may be cited as the "city utility users tax act".

History: 1990, Act 100, Imd. Eff. June 13, 1990.

141.1152 Uniform city utility users tax ordinance; contract with lighting authority; adoption; rescission; amendment; notice; report; placement of revenue in police department budget; payment to lighting authority; "police officer" and "lighting authority" defined.

Sec. 2. (1) The governing body of a city having a population of 600,000 or more, by a lawfully adopted ordinance that incorporates by reference the uniform city utility users tax ordinance set forth in chapter 2, may levy, assess, and collect from those users in that city a utility users tax as provided in the ordinance. However, a uniform city utility users tax ordinance containing substantially the same provisions provided for in chapter 2 adopted by the governing body of a city before June 13, 1990 that has not been rescinded by that governing body is considered an ordinance adopted under this act and a tax imposed and collected under that ordinance is revived. The governing body shall set the rate of tax in increments of 1/4 of 1% that shall not exceed 5%. If a city currently eligible to levy a tax under this act enters into a contract with a lighting authority, in which it pledges revenues from the taxes levied under this act, the city is authorized to levy the tax under this act until all related outstanding bonds of the lighting authority have been paid notwithstanding the population of that city.

(2) A uniform city utility users tax ordinance may be lawfully adopted or unless revenues have been otherwise pledged rescinded by the governing body at any time and its adoption shall become effective on the first day of any month, following adoption of the ordinance, as specified in the ordinance. The ordinance may be rescinded at any time by the governing body in the same manner in which the ordinance was adopted and with appropriate enforcement, collection, and refund provisions with respect to liabilities incurred before the effective date of its rescission. The ordinance shall not be amended except as provided by the legislature. A village and a city under 600,000 population shall not impose and collect a utility users tax except as otherwise provided in subsection (1). A city that adopts or rescinds the tax shall notify within 7 days by certified mail all public utilities or resale customers affected by the action of the governing body. Except as otherwise provided in this section, a city now having or that may attain a population of 600,000 or more shall not impose a utility users tax except by adopting the entire uniform city utility users tax ordinance as set forth in chapter 2.

(3) The administrator, as that term is defined in chapter 2, of the tax shall file a report indicating the total amount of revenue collected in the prior fiscal year with the state revenue commissioner by August 1 of each year, beginning on August 1, 1985. The administrator shall make the report available to the public at the same time.

(4) Unless revenues have been otherwise pledged to pay bonds issued by a lighting authority, the revenue generated from this tax shall be placed directly in the budget of the police department of a city described in this act and shall be used exclusively to retain or hire police officers.

(5) Notwithstanding subsection (4) or any ordinance of a city to the contrary, a city that forms a lighting authority shall pay \$12,500,000.00 annually to that lighting authority from the proceeds of the tax authorized under this act. If the lighting authority issues bonds pursuant to a contract with the city under this act and pledges revenues from taxes levied under this act, those revenues shall be deposited and used as provided in this act. After a contract described in this subsection is entered into, the trustee, after setting aside funds as required by the trust indenture, shall pay to the lighting authority \$12,500,000.00, less the amount set aside. The trust indenture shall provide that the remaining revenues be returned to the city. Nothing in this subsection shall obligate a city or trustee to remit to the lighting authority more than is collected from taxes levied under this act.

(6) As used in this section, "police officer" means a police officer, investigator, or police sergeant.

(7) As used in this act, "lighting authority" means a lighting authority created under the municipal lighting authority act.

History: 1990, Act 100, Imd. Eff. June 13, 1990;—Am. 1998, Act 548, Imd. Eff. Jan. 20, 1999;—Am. 2005, Act 197, Imd. Eff. Nov. 9, 2005;—Am. 2011, Act 57, Eff. Jan. 1, 2011;—Am. 2012, Act 393, Imd. Eff. Dec. 19, 2012.

Compiler's note: Enacting section 1 of Act 57 of 2011 provides:

"Enacting section 1. This amendatory act is retroactive and takes effect January 1, 2011."

141.1153 Uniform rules governing appeal.

Sec. 3. The state commissioner of revenue shall publish uniform rules in accordance with and subject to Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, governing the form and manner of appeal from a final determination by a city affecting a utility, resale customer, utility user, or other person and purporting to be made under or in administration of the uniform city utility users tax ordinance. The rules shall provide for at least 30 days after notice of a final assessment, denial of claim for refund, or special ruling in which the appeal may be filed. They shall provide to the utility, resale customer, utility user, or other person or his or her duly authorized representative and to the city an opportunity to present evidence and argument and to examine witnesses relating to the matter under appeal. Promptly after completion of the hearing, the commissioner shall affirm, reverse or modify by written order the action of the city which is the subject matter of the appeal, and shall furnish a copy of his or her order and opinion thereon to the utility, resale customer, utility user, or other person and to the duly authorized official of the city.

History: 1990, Act 100, Imd. Eff. June 13, 1990.

141.1154 Compliance with order; grievance; appeal; recovery; payment.

Sec. 4. (1) The parties, within 30 days after receipt of the order of the state commissioner of revenue, shall fully comply with all directions and requirements of the order unless theretofore excused therefrom during or as a result of a final determination pursuant to an appeal from the order of the commissioner as hereinafter provided. If the utility, resale customer, utility user, or other person or the city is aggrieved by any such order of the commissioner, he or she may appeal within 90 days after receipt of notice of the order to the circuit court for the county in which the taxing jurisdiction is located.

(2) If a utility, resale customer, utility user, or other person, as the result of an appeal, is found entitled to recover any sums paid, they shall be paid from the general fund of the city. The city shall promptly and uniformly comply with a final order upon appeal hereunder affecting the interpretation, administration, or application of the ordinance.

History: 1990, Act 100, Imd. Eff. June 13, 1990.

141.1155 Applicability; exemption; qualified start-up business.

Sec. 5. (1) The uniform city utility users tax ordinance does not apply to a person or corporation as to whom or which it is beyond the power of the city to impose the tax provided for in the uniform city utility users tax ordinance.

(2) For tax years beginning after December 31, 1996, a person or corporation, except a casino, is exempt from the tax imposed under this ordinance for public utility services provided in a renaissance zone to the extent and for the duration provided pursuant to the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696. As used in this subsection, "casino" means a casino or a parking lot, hotel, motel, or retail store owned or operated by a casino, an affiliate, or an affiliated company, regulated by this state pursuant to the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226.

(3) For tax years beginning after December 31, 2004, a qualified start-up business is exempt from the tax imposed under this ordinance for the 12-month period beginning November 1 for each tax year in which all of the following occur:

(a) The qualified start-up business applies for the exemption as provided in subsection (4).

(b) The governing body of the city adopts a resolution approving the exemption as provided in subsection (5).

(4) A qualified start-up business may claim the exemption under subsection (3) by filing an exemption affidavit claiming the exemption with the treasurer of the city that imposes the tax under this ordinance on a form prescribed by the city. The affidavit under this subsection shall be filed on or before September 1 of each year that a taxpayer claims the exemption under subsection (3) and shall include all of the following:

(a) A statement that the qualified start-up business was eligible for and claimed the credit allowed under section 31a of the single business tax act, 1975 PA 228, MCL 208.31a, or section 415 of the Michigan business tax act, 2007 PA 36, MCL 208.1415, in the tax year that ended immediately before the November 1 in which the exemption under subsection (3) will be claimed.

(b) A copy of the qualified start-up business's annual return required under the single business tax act, 1975 PA 228, MCL 208.1 to 208.145, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, for the year in which the credit was claimed under section 31a of the single business tax act, 1975 PA 228, MCL 208.31a, or section 415 of the Michigan business tax act, 2007 PA 36, MCL 208.1415, upon which the exemption under subsection (3) is based.

(c) A statement authorizing the department of treasury to release information contained in the qualified start-up business's annual return filed under the single business tax act, 1975 PA 228, MCL 208.1 to 208.145, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, that pertains to the qualified start-up business credit claimed under section 31a of the single business tax act, 1975 PA 228, MCL 208.31a, or section 415 of the Michigan business tax act, 2007 PA 36, MCL 208.1415, upon which an exemption under subsection (3) is based to the city.

(5) An exemption under subsection (3) is not allowed unless the governing body of the city that collects the tax under this act adopts a resolution approving the exemption. Exemptions under subsection (3) shall be approved at the last official meeting of the governing body of the city in September of each year. The resolution adopted by the governing body of the city may approve the exemption provided in subsection (3) for 1 or more of the qualified start-up businesses that claim the exemption under subsection (3) by filing an affidavit on or before September 1 as provided in subsection (4).

(6) A qualified start-up business shall not receive the exemption under subsection (3) for more than a total of 5 tax years. A qualified start-up business may receive the exemption under subsection (3) in nonconsecutive tax years.

(7) As used in this section, "qualified start-up business" means that term as defined in section 31a of the single business tax act, 1975 PA 228, MCL 208.31a, or section 415 of the Michigan business tax act, 2007 PA 36, MCL 208.1415.

History: 1990, Act 100, Imd. Eff. June 13, 1990;—Am. 1996, Act 455, Imd. Eff. Dec. 19, 1996;—Am. 1998, Act 241, Imd. Eff. July 3, 1998;—Am. 2004, Act 322, Imd. Eff. Aug. 27, 2004;—Am. 2007, Act 175, Imd. Eff. Dec. 21, 2007.

141.1156 Ordinance set forth in chapter 2.

Sec. 6. The uniform city utility users tax ordinance is as set forth in chapter 2.

History: 1990, Act 100, Imd. Eff. June 13, 1990.

141.1157 Retroactive application.

Sec. 7. This act shall be applied retroactively beginning July 1, 1988. The authority of a city to impose, collect, and enforce a utility users tax prior to and up to the date this act is signed into law is validated and ratified.

History: 1990, Act 100, Imd. Eff. June 13, 1990.

141.1158 Legislative intent.

Sec. 8. This act is intended to eliminate the confusion surrounding the legal status of Act No. 198 of the Public Acts of 1970 resulting from an opinion of the attorney general regarding the validity of enactment of various public acts, OAG, 1987-1988, No 6438, p 80 (May 21, 1987) and a circuit court decision in the matter of Ace Tex Corp v Detroit rendered on February 2, 1990 (Wayne County Circuit Court Case No. 88-807858-CZ), as to which an appeal is pending, and to resolve legislatively the issues raised by the appeal. Before that circuit court decision, the legislature had been advised by the attorney general's office in May 1987 that legislative action was not necessary to authorize the collection of the city utility users tax after July 1, 1988 under Act No. 198 of the Public Acts of 1970. In light of the circuit court decision of February 2, 1990, which is presently on appeal, it appears that legislative action is advisable to clarify the authorization for and to ratify the collection of the tax from July 1, 1988, to authorize the continued collection of the tax, and to resolve legislatively the issues raised by appeal. The legislature by enactment of this act intends to validate, ratify, and revive effective from July 1, 1988 a city utility users tax. This act is remedial and curative and is intended to revive and assure an uninterrupted continuation of the authority to collect a city utility users tax. The legislature finds the city utility users tax was authorized by law on the date when section 31 of article IX of the state constitution of 1963 was ratified.

History: 1990, Act 100, Imd. Eff. June 13, 1990.

141.1158a Contract with lighting authority.

Sec. 8a. Notwithstanding any ordinance of a city levying a tax authorized by this act, if a city levying the tax authorized by this act enters into a contract with a lighting authority, all of the following shall apply:

(a) The city shall send notice to each public utility and resale customer to remit taxes collected under this act to a trustee until notified by that trustee to return the funds to the city.

(b) After receiving a notice described in subdivision (a), each public utility and resale customer so notified shall remit taxes as directed by the notice to the trustee until notified by the trustee to remit taxes to the city.

(c) The trustee shall notify each public utility and resale customer to remit taxes collected under this act to the city within 45 days of the retirement of debt service on the bonds issued by a lighting authority.

History: Add. 2012, Act 393, Imd. Eff. Dec. 19, 2012.

141.1158b Amount held in trust.

Sec. 8b. Notwithstanding any ordinance of a city levying the tax or any other provision of this act, any utility, resale customer, other entity, or person that collects a tax or any money represented to be a tax authorized under this act holds the amount so collected in trust for the benefit of the city, or for bondholders secured by a pledge with a lighting authority.

History: Add. 2012, Act 393, Imd. Eff. Dec. 19, 2012.