



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RACHAEL EUBANKS
STATE TREASURER

Craig Johnson
Executive Director
Streamlined Sales Tax Governing Board, Inc.
100 Majestic Drive, Suite 400
Westby, WI 54667

Re: Michigan's 2023 SSUTA Statement of Non-compliance

Dear Mr. Johnson:

Pursuant to Section 803 of the Streamlined Sales and Use Tax Agreement ("Agreement") and Rule 803.1, on behalf of the state of Michigan, a Streamlined Sales Tax Governing Board member state, and as Treasurer of the State of Michigan, I am submitting Michigan's Statement of Non-compliance with the Agreement as of July 1, 2023, for the reasons discussed below.

On April 26, 2023, Michigan enacted 2023 PAs 20 and 21, amending its sales and use tax acts to provide that separately itemized delivery and installation charges are not subject to tax. However, PAs 20 and 21 provide that delivery and/or installation charges associated with the sale of electricity, natural gas, or artificial gas by a utility remain taxable even if those charges are separately itemized. This exception for utilities was not permissible under the Agreement's definition of "delivery charges" until the Agreement was amended to allow for such tax treatment at the Governing Board meeting held on May 23, 2023. Thus, Michigan was not compliant with the Agreement's definition of "delivery charges" from April 26, 2023, through May 23, 2023. Because of the May 23, 2023, amendment, this compliance issue is now resolved.

Additionally, on November 19, 2020, the Michigan Court of Appeals issued *Imagine Entertainment, Inc v Dep't of Treasury*,¹ holding that Treasury's Rule 86(5), Mich Admin Code R 205.136(5), was invalid. Rule 86(5) incorporated the 75% prepared food threshold as required by the Agreement's definition of "food and food ingredients" and Interpretation 2006-4. Pursuant to Section 805.C of the Agreement, Michigan had until January 1, 2023, to correct this issue before it could be found not substantially compliant. Although this issue has not been corrected, House Bills 4377 and 4378 were introduced in April 2023 which will correct this issue and bring Michigan back into compliance. The bills were approved by the House of Representatives on June 22, 2023. Treasury continues to work closely with the Legislature and interested stakeholders to advance these bills.

¹ 334 Mich App 658 (2020).

As part of this annual recertification, Michigan updated its Online Certificate of Compliance and Taxability Matrix that reflect Michigan's laws as enacted through August 1, 2023, and has approved them to be published on the Streamlined Sales Tax Governing Board website beginning August 1, 2023. Links to them will be posted on the Department of Treasury's website at: <https://www.michigan.gov/taxes/business-taxes/sales-use-tax/streamlined>.

If you have any questions regarding Michigan's compliance with the Streamlined Sales and Use Tax Agreement, please contact Lance Wilkinson at 517-335-7477.

As the chief executive of the Michigan Department of Treasury, I also declare that the Online Certificate of Compliance and Online Taxability Matrix are true, correct, and complete to the best of my knowledge and belief.


Rachael Eubanks

State Treasurer
Title

7/25/23
Date