MICHIGAN AGGREGATES ASSOCIATION

2937 Atrium Drive, Suite 201, Okemos, Michigan, 48864♦(517) 381-1732 ♦Fax: (517)381-1796
E-mail: contactmaa@miagg.org ♦Website: www.miagg.org

Submitted Via Email to *TreasPolicyDirOfc@michigan.gov*

December 12, 2022
Michigan Department of Treasury
Bureau of Tax Policy
Attn: Debbie Lange
PO Box 30828
Lansing, MI 48909

RE: Administrative Rules for Sales and Use Tax Rules, Rule Set 2022-9 TY

Dear Sir/Madam:

The Michigan Aggregate Association is submitting comments in opposition to the proposed rule set 2022-9 TY, specifically MCL 205.71, referred to as Rule 21.

As proposed, the revised rule would extend the Use Tax base, contradict existing statutory language and result in taxation inapposite to current law. Further, the proposed rule would impose higher costs on road repairs, and result in tax being paid twice for road projects (once on the equipment used to manufacture aggregate produced from recycling HMA and Concrete pavements/products, and again on the recycled aggregate when used in the state). This thwarts public policy, artificially inflates the cost of roadwork in the state, and increases the administrative burden of doing business in Michigan.

Michigan manufacturers have long been able to purchase machinery and equipment used in industrial processing activities exempt from sales and use tax. See, MCL 205.54o and 205.94o. Qualification for the exemption is based upon the activities performed by the machinery and equipment. However, Treasury has contested qualification of the exemption for aggregate producers, and has limited the exemption to the extent that sales tax will be paid on the product produced by the machinery and equipment or if the product is used to improve realty out-of-state. It is immaterial that contractors have paid use tax on the product produced.

As noted in the proposed draft at MCL 205.71(3), there is a disconnect between the Use Tax Act and the Sales Tax Act. When a contractor purchases materials to be affixed to and made a structural part of real estate in another state (such as aggregate), the purchase is not subject to the general rule that contracts must pay use tax on the materials, as sales/use tax will be due based

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on the state of destination/use. However, as noted in the subsection, there is no corresponding sales tax exemption. Without a corresponding sales tax exemption, the Department limits the permitted industrial processing exemption on purchases of the machinery and equipment used to manufacture the recycled aggregate, and requires the manufacturer to substantiate that the product will be sold at retail or "used to improved realty, ***but only if in another state***."

This is illogical and unworkable. If a contractor manufactures recycled aggregate for self-use, use tax will be paid by the contractor when he/she uses the recycled aggregate in a project in the state. However, due to the acknowledged disconnect, Treasury *will only* permit the industrial processing exemption to the extent that the machinery and equipment, over its useful life, produces product that ***will be sold or installed out of state***. As the recycled aggregate will be subject to use tax upon the contractor's use, the state has collected tax on the product and the machinery and equipment is permitted to be purchased with a full industrial processing exemption.

Qualification for the industrial processing exemption should not be determined based on where the recycled aggregate is laid (whether in the state or out-of-state). Nor is it possible for a contractor to know, at the time they purchase the machinery and equipment, what will be the percentage of the product produced by the machinery and equipment used in-state or out-of-state. The proposed rule set should address this issue and confirm that qualification for the industrial processing exemption is based upon the activities performed by the machinery and equipment, and if **"*sales or use tax*"** is paid on the product. Location of where the product is laid should not matter, as the state will receive use tax on all product laid in Michigan.

Critically, the failure to address this interpretation by the proposed rule set will increase costs for Michigan roadwork, and lead to higher costs of living and doing business in the state.

Sincerely,

Douglas E. Needham, P.E.
Executive Director

Mission Statement
Michigan Aggregates Association is the recognized advocate of the aggregate industry. We promote best practices for safe and efficient aggregate production, responsible environmental stewardship and reasonable material specifications for our members. Through community involvement, we educate the public as we create a sustainable industry for future generations by providing materials used by Michigan citizens in their daily lives.

Submitted Via Email to TreasPolicyDirOfc@michigan.gov

December 12, 2022

Michigan Department of Treasury
Bureau of Tax Policy
Attn: Debbie Lange
PO Box 30828
Lansing, MI 48909

RE: Administrative Rules for Sales and Use Tax Rules, Rule Set 2022-9 TY

Dear Sir/Madam:

Dean Transportation is submitting comments in opposition to the proposed rule set 2022-9 TY, specifically MCL 205.132, referred to as Rule 82.

As proposed, the revised rule would extend the Use Tax base, contradict the existing statutory language, and result in taxation inapposite to current law. Further, the proposed rule would impose higher costs for the providing of school buses to tax-exempt public-school districts, which would thwart public policy and result in a reduction of funding to the School Aid Fund.

For a number of years, Treasury, has taken the position that companies leasing buses to school districts must pay use tax on the buses if drivers are also provided. This is incorrect and has been previously resolved in favor of the use tax not being applicable, regardless of the operator of the vehicle, which is also consistent with current legislation. Buses are purchased for, and leased to specific public-school districts, with title to the vehicles issued in the name of the districts as Lessee by the Michigan Secretary of State. The decision whether to also request drivers is separately made by the districts. It is not the same as the leasing of equipment for which an operator must be provided, which is subject to use tax. Districts may choose to use their own drivers, may request us to furnish drivers, or a combination of both. The mere fact that a district also requests drivers does not change the nature of purchasing or leasing school buses that are dedicated to a specific district.

This issue was further clarified in 2018, when the Michigan Legislature enacted 2018 PA 673 and 679, effective March 29, 2019, amending MCL 205.54a and MCL 205.94. The purpose of the amendment was to specifically provide sales and use tax exemptions for the purchase, sale or lease of a "school bus or transportation-related services" and "parts or adaptive equipment affixed or to be affixed to a school bus which are used in the repair, maintenance, accommodation, or modification of a school bus" so long as the school bus or services "are primarily used in the performance of a contract entered into with an authorized representative of a school for the transportation of pre-primary, primary, or secondary school pupils to or from a school or school-related events authorized by the administration of the school."

The proposed rule, MCL 205.132, referred to as Rule 82, contravenes the existing statutory language and would impose use tax on the lessor of school buses. The lessor would pass this use tax through as a cost of leasing school buses, thus taxing what is currently exempt, and increasing leasing costs to Michigan public school districts. Such proposed revision is contrary to the impetus for the 2018 clarifying legislative amendment and represents a Department interpretation that is inconsistent with the Legislature's action.

Dean Transportation appreciates the opportunity to offer comments on Administrative Rules for Sales and Use Tax, Rule Set 2022-9 TY. If you have any questions, or if further clarification on our comments is required, please do not hesitate to contact me at 517-319-3300, or via email at patrickd@deantrans.com.

Sincerely,

Patrick Dean
President
Dean Transportation

Submitted Via Email to TreasPolicyDirOfc@michigan.gov

December 12, 2022

Michigan Department of Treasury
Bureau of Tax Policy
Attn: Debbie Lange
PO Box 30828
Lansing, MI 48909

RE: Opposition to Administrative Rules for Sales and Use Tax Rules, Rule Set 2022-9 TY (Rule 82)

Dear Sir/Madam:

The National School Transportation Association (NSTA) takes this opportunity to submit comments in opposition to the proposed rule set 2022-9 TY, specifically MCL 205.132, referred to as Rule 82.

About The National School Transportation Association

NSTA has been the leading resource for school transportation solutions and the voice for private school bus operators for over 57 years. We are a membership organization for school bus contract-operators engaged primarily in transporting students to and from school and school-related activities. Members range from small family businesses to large multi-state operators. Private school bus contractors account for 38 percent of the nation's pupil transportation services and employ more than 250,000 individuals as bus drivers, mechanics, maintenance workers, dispatch, and office workers. School transportation represents the largest form of mass transportation in the United States, and daily, almost 26 million K-12 students are transported by an estimated 480,000 yellow school buses.

NSTA Opposes the Extension of the Use Tax Base

As proposed, the revised rule would extend the Use Tax base, contradict the existing statutory language, and result in taxation inapposite to current law. Further, the proposed rule would impose higher costs for third-party district partners providing school buses to tax-exempt school districts—this would thwart public policy and effectively result in a reduction of funding to the School Aid Fund.

Michigan public schools have always been able to purchase or lease school buses, free of sales or use tax, regardless of from whom the school district elects to acquire or lease its buses. This should not be impacted by the mere coincidence of a district's determination that the same vendor is most appropriate to both provide buses to the district, as well as to provide drivers to operate those buses. Districts may choose to use their own drivers, or at their sole discretion under the law, they may request a third-party to furnish drivers, or a combination of both. The mere fact that a district also requests drivers does not change the nature of purchasing buses that are dedicated to a specific district.

This issue was clarified in 2018, when the Michigan Legislature enacted 2018 PA 673 and 679, effective March 29, 2019, amending MCL 205.54a and MCL 205.94. The purpose of the amendment was to specifically provide sales and use tax exemptions for the purchase, sale or lease of a "school bus or transportation-related services" and "parts or adaptive equipment affixed or to be affixed to a school bus which are used in the repair, maintenance, accommodation, or modification of a school bus" so long as the school bus or services "are primarily used in the performance of a contract entered into with an

authorized representative of a school for the transportation of pre-primary, primary, or secondary school pupils to or from a school or school-related events authorized by the administration of the school."

The proposed rule contravenes the existing statutory language and would impose use tax on the lessor of school buses. The lessor would pass this use tax through as a cost of leasing the school buses, thus taxing what is currently exempt, and increasing leasing costs to Michigan public schools. Such proposed revision is contrary to the impetus for the 2018 legislative amendment.

Most importantly, the consequence of this contradictory interpretation and new rule will be to reduce vehicle acquisition options for Michigan public schools, while increasing the cost of providing student transportation. Hidden within this interpretation is the simple fact that Michigan public schools will effectively, even if not directly, incur the cost of the proposed Sales/Use Tax assessment, while only a fraction of the revenue received by the state from the tax would return to schools. The Department of Treasury's proposal has the effect of taking money out of Michigan K-12 classrooms, and it redistributes it to non-education purposes - based on the mere randomness of who operates a school bus.

In conclusion, NSTA opposes this proposal, and it respectfully points out that the rule, if implemented, will become a de facto tax increase for Michigan citizens, because public school transportation, regardless of whether it is done by a public or private operation, remains funded by Michiganders. We thank you for the opportunity to voice these concerns, and please feel free to contact me at 703-684-3200, or via email at cmacysyn@yellowbuses.org, if you need further clarification.

Sincerely,

Curt Macysyn
Executive Director
National School Transportation Association

Submitted Via Email to TreasPolicyDirOfc@michigan.gov

December 12, 2022

Michigan Department of Treasury
Bureau of Tax Policy
Attn: Debbie Lange
PO Box 30828
Lansing, MI 48909

RE: Administrative Rules for Sales and Use Tax Rules, Rule Set 2022-9 TY

Dear Sir/Madam:

Shiawassee RESD is submitting comments in opposition to the proposed rule set 2022-9 TY, specifically MCL 205.132, referred to as Rule 82.

As proposed, the revised rule would extend the Use Tax base, contradict the existing statutory language, and result in taxation inapposite to current law. Further, the proposed rule would impose higher costs for third-party district partners providing school buses to tax-exempt school districts—this would thwart public policy and effectively result in a reduction of funding to the School Aid Fund.

Michigan public schools have always been able to purchase or lease school buses, free of sales or use tax, regardless of from whom the school district elects to acquire or lease its buses. This should not be impacted by the mere coincidence of a district's determination that the same vendor is most appropriate to both provide buses to the district, as well as to provide drivers to operate those buses. Districts may choose to use their own drivers, or at their sole discretion under the law, they may request a third-party to furnish drivers, or a combination of both. The mere fact that a district also requests drivers does not change the nature of purchasing buses that are dedicated to a specific district.

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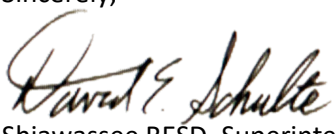
The proposed rule contravenes the existing statutory language and would impose use tax on the lessor of school buses. The lessor would pass this use tax through as a cost of leasing the school buses, thus taxing what is currently exempt, and increasing leasing costs to Michigan public schools. Such proposed revision is contrary to the impetus for the 2018 legislative amendment and represents an intent to circumvent the Legislature in order to impose Treasury's "interpretation" as law.

Most importantly, the only possible effect of this contradictory interpretation and rule is to reduce the vehicle acquisition options for Michigan public schools and increase the cost. Further, Michigan public schools will effectively, even if not directly, incur the cost of the proposed sales / use tax assessment, while only a fraction of the revenue received by the state from such tax would come back to the schools. Treasury's proposal takes money out of Michigan classrooms and redistributes it to non-education purposes based on the mere randomness of who operates a school bus.

Sincerely,



Shiawassee RESD, Superintendent

Shaping the Future Through Education

Gratiot Isabella RESD

December 13, 2022

Michigan Department of Treasury
Bureau of Tax Policy
Attn: Debbie Lange
PO Box 30828
Lansing, MI 48909

RE: Administrative Rules for Sales and Use Tax Rules, Rule Set 2022-9 TY

Dear Sir/Madam:

Gratiot-Isabella RESD is submitting comments in opposition to the proposed rule set 2022-9 TY, specifically MCL 205.132, referred to as Rule 82.

As proposed, the revised rule would extend the Use Tax base, contradict the existing statutory language, and result in taxation inapposite to current law. Further, the proposed rule would impose higher costs for third-party district partners providing school buses to tax-exempt school districts—this would thwart public policy and effectively result in a reduction of funding to the School Aid Fund.

Michigan public schools have always been able to purchase or lease school buses, free of sales or use tax, regardless of from whom the school district elects to acquire or lease its buses. This should not be impacted by the mere coincidence of a district's determination that the same vendor is most appropriate to both provide buses to the district, as well as to provide drivers to operate those buses. Districts may choose to use their own drivers, or at their sole discretion under the law, they may request a third-party to furnish drivers, or a combination of both. The mere fact that a district also requests drivers does not change the nature of purchasing buses that are dedicated to a specific district.

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The proposed rule contravenes the existing statutory language and would impose use tax on the lessor of school buses. The lessor would pass this use tax through as a cost of leasing the school buses, thus taxing what is currently exempt, and increasing leasing costs to Michigan public schools. Such proposed revision is contrary to the impetus for the 2018 legislative amendment and represents an intent to circumvent the Legislature in order to impose Treasury's "interpretation" as law.

Most importantly, the only possible effect of this contradictory interpretation and rule is to reduce the vehicle acquisition options for Michigan public schools and increase the cost. Further, Michigan public schools will effectively, even if not directly, incur the cost of the proposed sales / use tax assessment, while only a fraction of the revenue received by the state from such tax would come back to the schools. Treasury's proposal takes money out of Michigan classrooms and redistributes it to non-education purposes based on the mere randomness of who operates a school bus.

Sincerely,

Paul Hungerford, Superintendent
Gratiot-Isabella RESD

Submitted Via Email to TreasPolicyDirOfc@michigan.gov

December 13, 2022

Michigan Department of Treasury
Bureau of Tax Policy
Attn: Debbie Lange
PO Box 30828
Lansing, MI 48909

RE: Administrative Rules for Sales and Use Tax Rules, Rule Set 2022-9 TY

Dear Sir/Madam:

Berrien Regional Education Service Agency is submitting comments in opposition to the proposed rule set 2022-9 TY, specifically MCL 205.132, referred to as Rule 82.

As proposed, the revised rule would extend the Use Tax base, contradict the existing statutory language, and result in taxation inapposite to current law. Further, the proposed rule would impose higher costs for third-party district partners providing school buses to tax-exempt school districts—this would thwart public policy and effectively result in a reduction of funding to the School Aid Fund.

Michigan public schools have always been able to purchase or lease school buses, free of sales or use tax, regardless of from whom the school district elects to acquire or lease its buses. This should not be impacted by the mere coincidence of a district's determination that the same vendor is most appropriate to both provide buses to the district, as well as to provide drivers to operate those buses. Districts may choose to use their own drivers, or at their sole discretion under the law, they may request a third-party to furnish drivers, or a combination of both. The mere fact that a district also requests drivers does not change the nature of purchasing buses that are dedicated to a specific district.

This issue was clarified in 2018, when the Michigan Legislature enacted 2018 PA 673 and 679, effective March 29, 2019, amending MCL 205.54a and MCL 205.94. The purpose of the amendment was to specifically provide sales and use tax exemptions for the purchase, sale or lease of a "school bus or transportation-related services" and "parts or adaptive equipment affixed or to be affixed to a school bus which are used in the repair, maintenance, accommodation, or modification of a school bus" so long as the school bus or services "are primarily used in the performance of a contract entered into with an authorized representative of a school for the transportation of pre-primary, primary, or secondary school pupils to or from a school or school-related events authorized by the administration of the school." See also, Michigan Senate Fiscal Agency, Finance Committee, *Bill Analysis of Senate Bills 906 and 907*, March 29, 2018.

The proposed rule contravenes the existing statutory language and would impose use tax on the lessor of school buses. The lessor would pass this use tax through as a cost of leasing the school buses, thus taxing what is currently exempt, and increasing leasing costs to Michigan public schools. Such proposed revision is contrary to the impetus for the 2018 legislative amendment and represents an intent to circumvent the Legislature in order to impose Treasury's "interpretation" as law.

Most importantly, the only possible effect of this contradictory interpretation and rule is to reduce the vehicle acquisition options for Michigan public schools and increase the cost. Further, Michigan public schools will effectively, even if not directly, incur the cost of the proposed sales / use tax assessment, while only a fraction of the revenue received by the state from such tax would come back to the schools. Treasury's proposal takes money out of Michigan classrooms and redistributes it to non-education purposes based on the mere randomness of who operates a school bus.

Sincerely,

Eric Hoppstock

Eric Hoppstock, Superintendent
Berrien RESA

From:	Michael Bannasch
To:	TreasPolicyDirOfc
Subject:	Attn: Debbie Lange - Comments re: Department of Treasury, Bureau of Tax and Economic Policy, Administrative Rules for Sales and Use Tax Rules, Rule Set 2022-9 TY
Date:	Monday, December 12, 2022 2:57:53 PM

Ms. Lange:

I am writing to provide comments on the proposed rules referred to in the subject line. My comments are made individually on my own behalf, and do not represent the position or thoughts of my employer (RKL LLP) or any professional organizations of which I am a member (AICPA, Michigan Association of Certified Public Accountants, or Pennsylvania Institute of Certified Public Accountants).

- R 205.26 Use tax registration – It would be helpful if this rule, or another rule yet to be written, addresses the use tax registration requirement in light of the changes to the statute of limitations from PA 3 of 2014. I do not mean to suggest that use tax registration is not required if a taxpayer is registered for and/or remitting sales tax or withholding tax on a combined return, but a succinct statement in the rules for the sake of clarity about the consequences for lack of registration would be appreciated. Specifically, what is the statute of limitations for an assessment for a SUW combined return filer that is not registered for use tax, and what civil or criminal penalties apply for failure to register.
    - Additionally, in light of the proposed rescission of R 205.91 Interstate commerce, subrule (1)(a) should provide definition or example of when a sale is made into Michigan but the transfer of ownership occurs outside Michigan.

- R 205.68 Containers, cartons, and wrapping materials – The example addresses a situation where golf balls are packaged by the dozen for sale to a retailer, who will then resell the packaged dozen to customers. In the example, the larger box that the golf ball manufacturer uses to ship the packaged golf balls to the retailer is taxable, as the example is presented as the manufacturer picking the packaged golf balls from finished inventory. But what if the manufacturer instead packages a gross of golf balls (a dozen boxes of a dozen) for shipment to retailers, with the gross packaging being done before the dozen packs of balls come to rest in finished goods inventory. In that case, it seems the larger box that holds the gross would also be exempt because it becomes a component part of the product that is sold to retailers before the manufacturing process is complete. I would ask that Treasury consider this situation and provide a second example discussing the tax exemption ramifications.

- R 205.71 Contractors – While I do not think the existing rule should be retained, given its last revision date in 1979, I am confused and troubled by Treasury's decision to gut this rule down to nothing more than a surface-level definition of what a contractor is. Contractors face extremely complex sales and use tax issues, yet the proposed ruleset now provides the

industry even less guidance than it does for, for instance, “fairs, circuses, carnivals, and other public exhibitions.” Possibly Treasury is considering that a robust rule for contractors is not needed because it has issued several Revenue Administrative Bulletins for the industry in the past six years. While that type of guidance is appreciated, Treasury’s usage of that type of guidance runs contrary to what is needed here for a significant and complex industry in our state, which is transparency of, and an ability for the industry to comment on, the rule-making process. Far from essentially rescinding this rule, I would encourage Treasury to rewrite this rule to specifically address issues of when tangible personal property is presumed affixed to real estate or not, so that the industry can avoid having to try to apply fact-specific court cases to their circumstances. I would suggest Treasury could look to 61 Pennsylvania Code §31.11 as an example of how it could provide presumptive rules on this exceptionally important and controversial issue.

- General comment – There are numerous instances of rules containing language like “unless otherwise exempt…” I would encourage Treasury to take the time in this re-write project to try to minimize instances where this or similar language is used, and instead actually provide the instances where the sale or purchase in question is exempt. The rules should be written in a balanced way to address both situations of taxability and situations of exemption, but as written there are too many instances where a taxpayer is left to wonder whether an exemption applies because the rules allude to the possibility of one.

I appreciate your, and Treasury’s, attention to these comments.

Regards,

Michael R. Bannasch, CPA, MST
STATE AND LOCAL TAX PRACTICE LEADER

rkl ADVISORS for WHAT'S NEXT

phone: 717.409.8847 | fax: 717.394.0693 | cell: 517.262.5923
email: mrbannasch@rklcpa.com | website: rklcpa.com

Comments on Michigan Department of Treasury's Proposed Rewrite of Sales and Use Tax Rules
Michael R. Bannasch, CPA
April 16, 2021

- Will/can the rewritten rules be renumbered? Currently, R205.1 through R205.141 exist, but there are already only 84 active rules within that range, and that is proposed to decrease to 42 active rules with this rewrite. On the one hand, consolidation would be beneficial for taxpayers and practitioners to have a concise set to work with. On the other hand, might there be confusion if a renumbering results in a rule number being used post-renumber that is currently a rescinded rule number?

- Regarding rescinding many industry-specific rules, I actually think more might be able to be rescinded. This rewrite is such a substantial project that it may be beneficial to think not just from a perspective of "This rule exists – do we want to keep it?" but maybe more from a perspective of "If no rules existed at all yet, which ones would we write (taking into consideration other existing guidance like RABs)?". I think that blank slate perspective, if not already considered by Treasury, might lead to an even more concise and coherent set of rules regarding industry-specific matters. For instance, to the extent that jewelers and animal breeders know of existing Rules 42 and 43, the rescission of the jeweler rule but only revision of the animal breeder rule could cause confusion beyond simply the concern about losing "special guidance." Might jewelers interpret this as a sign that Treasury is no longer much interested in their industry, thus emboldening some to be less rigorous in their adherence to sales/use tax laws? Might animal breeders think they are being targeted by Treasury in some way such that they need a rule to keep them in line? What does it mean for some industries to have rules while others have RABs? I think with the (much-appreciated) resurgence in Treasury's issuance of RABs, it should be carefully considered why something ends up in an RAB vs. in a rule, and consistency should be a goal. I don't know that I would say the ruleset should not contain any industry-specific rules, but rather that there should be a clear reason why some industry-specific guidance rises to the level of a rule vs. other guidance that goes in an RAB. And I wouldn't say, given the current context, that "because the rule already exists" is a clear enough reason to keep it.
    - I see a number of industry-specific rules (e.g. R 205.51 Agricultural producing and R 205.53 Auctioneers, agents, factors, and brokers) are not being revised or rescinded. Agricultural producing, and likely others not being revised or rescinded, has been affected by legislation since it was last revised in 1979. Is there a planned second round of rule revisions coming soon? If not, can these obsolete rules be rescinded? R 205.136 needs to be rescinded in light of the recent Emagine Entertainment case.

- Where a rule is being updated to be consistent with current statutory language / recent legislation, might it be prudent or beneficial for the rule to reference the MCL which it relates to? This would go beyond the Rule 20 blanket statement about how to interpret rules. For instance, Rule 1 could say something like "Pursuant to MCL 205.53…" or "As required by MCL 205.53…" I realize there is a slight risk the reference itself could become outdated by a statutory revision – although the likelihood of this is decreased by referring only to the section of MCL 205.53 instead of the subsection of MCL 205.53(1) – but it seems there could be benefit that outweighs the risk. By providing the statutory reference, the reader of the rule is easily able to look at the statute to see if it has been amended more recently than the rule has, thus allowing

them to analyze whether there may be a conflict between the statute and the rule such that the rule is obsolete. Historically speaking, this has been an issue.

- Might it make sense to have a definitions rule? Yes, it would largely, if not completely, just restate definitions per statute, but might be helpful to a reader of the rules to know what is meant by, for instance, "sales at retail" or "person." Possibly instead of terms defined here, just a reference to the appropriate MCL sections for words not otherwise defined in a particular rule?

- Although noted in one or more rule-specific comments below, I wanted to provide a blanket statement that I feel these rules could do better on explaining exemptions. There are a number of instances where language is added, such as "unless otherwise exempt" or "unless an exemption applies." While the rules do in many instances adequately address exemptions, this type of language tends to read like the emphasis of the rules is on a priority of Treasury to declare things taxable and then let the reader try to find whether any exemptions apply. In at least some instances of this type of "unless…" language, there might not even be a pertinent exemption applicable to the topic at hand, in which case the language feels a bit like Treasury saying "we couldn't figure out whether an exemption might apply here, but we didn't want to go so far as to say there couldn't possibly be an exemption." This diminishes the value of the rules as a binding source of departmental interpretation of statute. Overall, the rules should be more fairly weighted to discussion of taxable vs. non-taxable/exempt items/transactions, and if Treasury has an exemption in mind that applies to a topic it should state its position as opposed to just a broad and ambiguous "unless…" statement that leaves the reader to wonder whether an exemption applies. Note that I do not mean that each rule should contain

- R 205.1 –
    - Subrule 1 – Consider that an application for a license is generally done online these days. Possibly reword "on a form prescribed by…" to "in a manner prescribed by…"
    - Subrule 2 – Renewals of licenses happen automatically, so revise language indicating the taxpayer shall "furnish[] such information as the Michigan department of treasury may require"?
    - Subrule 3 – Consider revising or removing the partnership example so that there is some mention of LLCs, since those are more prevalent than partnerships? Possibly some differentiation that the adding or dropping of a partner creates a new partnership, whereas a change of member of an LLC does not create a new entity? Possibly tie the requirement for a new license to whether a new FEIN is created, since Michigan does not assign sales tax account ID numbers? It seems the primary reason for Treasury wanting a new sales tax license to be issued would be to gather information through the registration process about owners and officers for purposes of the "responsible person" provisions of MCL 205.27a(5), but in practice does Treasury look first or only to the persons listed on Form 518 as responsible persons? Since Treasury is not restricted to individuals listed on Form 518, the requirement to obtain a new license upon an ownership change of a partnership seems unnecessary and onerous.
    - Subrule 8 – This is not a complete sentence and reads awkwardly since not just part of a list. Consider adding "are not required to obtain a sales tax license" to the end.

- R 205.8 – Yes, the current rule does mostly just restate statute, but the conversion concept could use some clarity, and I would consider retaining this rule in revised form. The issues that could be clarified here include:
    - The base for use tax remittance upon conversion is the original price paid by the consumer to the seller. Some may think that if the conversion happens at a time when the TPP has less value than it did when originally purchased, that the value at time of conversion should be the base.
    - A taxable conversion occurs even if the post-conversion taxable use is "in whole or in part, or permanent or not permanent." MCL 205.92(q). It would be great to have clarity (including possible examples) of how this provision interacts with, for instance, MCL 205.94o(2) re: partial exemption for mixed-use property. For example, if an industrial processor purchases a forklift for use exclusively in industrial processing activities (e.g. moving WIP throughout the process) and then two years later moves that forklift to use exclusively in its warehouse for shipping functions, is that a conversion that makes the forklift entirely taxable upon its original purchase price or is it mixed use as measured during the entire life of the forklift such that MCL 205.94o(2) allows only partial taxability? To further the example, what if the timeframe is shorter and the forklift moves back and forth – for six months out of the year it is used exclusively for manufacturing and for six months it is used exclusively for warehousing/shipping?

- R 205.13 – Subrule 2 should also include reference to ORVs and manufactured housing in accordance with MCL 205.179. Also consider a definition of "retail dollar value" so that taxpayers understand the equalization tax might be based on an amount greater than what they paid for the item. This is currently addressed in Rule 85, which is slated to be rescinded. Yes, the issue is also addressed in RAB 2017-26, but the non-binding nature of an RAB may make it prudent to keep the definition of "retail dollar value" in a rule.

- R 205.15 – Subrule 2(b) states that if an RV is traded in as partial payment for a motor vehicle, there is no trade-in allowance to reduce the sales tax base. I do not believe this is supported by statute. MCL 205.51(1)(d)(xii) provides a trade-in allowance for either "a motor vehicle *or recreational vehicle*" used as partial payment on the purchase of "a new motor vehicle or used motor vehicle or recreational vehicle…"

- R 205.16 – Subrule 2 states that a seller shall refund collected tax on returned goods if the seller refunds some or all of the purchase price within the sooner of 180 days after the initial sale or the seller's stated return policy. What about if the seller refunds some or all of the purchase price after the expiration of either the 180 days or their stated return policy (i.e. they allow a refund even though their return policy does not require it, as a gesture of goodwill)? In that case, may the seller also refund the collected tax and claim their own refund or credit from Treasury? Or is the seller prohibited from refunding collected tax at that point (in which case they certainly couldn't claim their own refund/credit from Treasury, in order to avoid unjust enrichment)? Consider whether these rules re: returned goods are in accordance with the provisions of Streamlined Sales Tax in order to not be out of compliance with that agreement.

- R 205.22 – Subrule 2 is mostly just a restatement of MCL 205.51(1)(d)(vii). Might there be more value in discussing one or both of the following:
    - What does it mean to be a member of a group or organization entitled to a price reduction or discount? For instance, I am a member of AAA because I pay annual dues,

and I utilize the benefit of discounted AAA rates at participating hotels. I presume a participating hotel receives some form of compensation from AAA when I take advantage of the discounted AAA rate. Is this the type of group/organization membership contemplated by MCL 205.51(1)(d)(vii)(D)(II)?

- Particularly in the context of hotels because of the benefit they receive by filling unfilled rooms, but maybe also applicable to sellers of TPP as well, consider discussion of whether all the conditions are met in a fact pattern like this… The normal room rate is $110 per night. The AAA room rate is $100 per night. But AAA does not provide $10 of consideration to the hotel, they only provide $6. That is, the hotel is willing to take a $4 haircut on the rate in order to get a AAA member in as a guest because they are wanting to fill rooms that might otherwise go unoccupied. It could be interpreted that the sales tax base is either of the following, so guidance is welcomed here:
  - $106 – The hotel actually received $106 as $100 from the guest and $6 from AAA, and everything received, from whatever source, is part of the sales price.
  - $100 – MCL 205.51(1)(d)(vii) does not cause inclusion of the $6 from AAA because not all conditions are met. The consideration received from AAA is not directly related to a price reduction or discount on the sale because the discount was $10 instead of just the $6 from AAA.
  - Note that $110 should not be a possible answer because even though the normal rate is $110, the hotel only received $106 and the other $4 differential was a discount they provided out of their own pocket.

- The example in this subrule is appreciated. Possibly there could be some discussion (whether through the example or on its own) of what tax could/should be charged to the customer. It is understood that a seller's liability exists even if they don't charge any or all of the sales tax to the customer. But in a case where the base for the seller's liability exceeds the price charged to the customer (because the difference will be made up by third-party consideration), can the seller charge the customer tax on the whole base? From your example, if the seller's base is $10, can they charge $0.60 tax to the customer even though the receipt/invoice to the customer only shows an $8 sale price?

- R 205.26 –
  - Consider whether there should be any discussion about the interplay of the use tax registration requirement of MCL 205.95 and the changes brought about at MCL 205.27a(13) by Public Act 3 of 2014 regarding the statute of limitations for taxes that are reported on a combined return, as use tax is with sales and withholding tax. While a seller holding a sales tax license does not need to register for use tax, what about a business not registered as a seller because, for instance, all their sales are of nontaxable services. Presuming they are registered for and remitting Michigan withholding tax, they cannot be audited for use tax for more than the four year statute of limitations, regardless of whether they are registered for use tax. I understand this rule cannot contradict the use tax registration requirement at MCL 205.95, but I am wondering how much could be written into this rule to reflect the reality of lack of consequence for failure to register for use tax as long as the taxpayer is filing combined SUW returns? Arguably, even filing without registering for any of S, U, or W starts the running of the statute for purposes of deficiency assessments, so the only real consequence for lack of use tax registration would be if there is a civil or criminal penalty specifically associated

with failure to be registered, or a broad-based penalty for failure to comply with statute administered under the Revenue Act.
    - Consider that one purpose of rules can be to provide binding information from the agency tasked with administering statute in a way that helps those subject to those laws tie together the disparate parts of statute in a meaningful way. For instance, statute will say things like "failure to comply with Section X, Subsection Y, or Subclause 82(a)(3)(x)(D)(VIII) will result in a penalty equal to 10% of the amount determined under Section A of Part III of Chapter 99, but without consideration of Part II of Title 4…" These rules are an opportunity for Treasury to tie all of that together to say something like "If you are required to but do not register for use tax, you will be subject to a penalty of $1,000." I think, looking at the entire scope of what is being done with these rules, any opportunity along these lines should be taken so that Michigan taxpayers can have the best chance for a clear understanding of law that can be difficult at times to determine if just relying on statutory language.
  - Subrule (1)(a) – For clarity, please define, or provide examples of, when a sale is made into Michigan but the transfer of ownership occurs outside Michigan such that an out-of-state seller should be registered for use tax instead of sales tax. For instance, Amazon makes sales into Michigan and has warehouses in Michigan but does not make over-the-counter sales such that possession of the TPP is transferred directly from Amazon to the buyer in Michigan. How do you determine where the transfer of ownership occurs? Does it occur in Michigan if it comes from a Michigan warehouse? And if so, does that mean Amazon should be registered for sales tax instead of use tax? What about a seller that has no Michigan warehouses – is transfer of ownership based on legal FOB terms & conditions or on something else? Is it even possible for a seller in that situation to have situations where the transfer of ownership occurs in Michigan?
  - Subrule (1)(c) – The statement re: use tax registration required if purchases are made for which the seller does not provide proof of sales/use tax due and paid seems to be in response to the Michigan Supreme Court's decision in *Andrie.* Could there be some discussion of what constitutes said proof and/or when said proof can/must be obtained by the buyer from the seller? Is there anything that needs to be considered here to ensure compliance with SSUTA?

- R 205.54 –
  - Subrule 3 re: vehicle transfers between individuals is already covered at R 205.13(2), and there are some differences here (use tax vs. equalization tax) that could create confusion. I would remove this, considering the subject of this rule is Automobile and Other Vehicle Dealers.
  - In subrule 10 re: demonstrators, please state, in instances where the number of vehicles a dealer sells in the current year falls into a different range than the number sold in the prior year, whether the dealer is allowed to use the higher range of the two years or must use the lower range of the two years. For example, in 2019 a dealer sold 125 vehicles, but in 2020 only sold 75. For 2020, is that dealer allowed 20 tax-free demonstrators or only 7?

- R 205.55 – Consider renaming (and reworking the content) to be more specific to Automobile Service/Repair Shops. As currently named, some might think the rule is not pertinent to them because it is for places like AutoZone that just sell parts. Service/repair shops need guidance

more than just an over-the-counter parts store, so they can understand when they are selling TPP vs. using TPP in the provision of a service. This rule could cover everything from oil changes to auto body repairs, and could include discussion of how the way a shop invoices its customers can impact how much tax should be charged.

- R 205.62 –
    - Subrules 1 and 2 could be improved in regard to how the domestic air carrier provisions of MCL 205.54x are addressed. I believe Treasury is trying to avoid having the rules simply restate statute, but many existing rules (even some being kept) substantially do that, even if they also then put some more meat on the bones of the statute. Thus the way MCL 205.54x is simply being referenced here instead of any discussion of what type of business can be exempt under 205.54x seems jarring and almost "lazy" where the reader of the rule might think "this is unhelpful… I have to go look this up and interpret it myself." I suggest that unless there is going to be a mass rewrite to prevent other rules from restating statute, that it would be better for this rule to do more than reference an MCL section. Also, this is particularly problematic re: subrule 2 where both taxable and exempt items are listed and the message to the reader is essentially "here is a list of things someone might buy in connection with operating aircraft, now go to MCL 205.54x to figure out whether these things are exempt or not."
    - Subrule 6 could benefit from a non-exhaustive list of taxable uses and/or an example or two. For instance, defining what constitutes non-taxable demonstration (e.g. a potential buyer must be in the aircraft, but is there any criteria to determine who is a potential buyer and may any other people be in the aircraft at the same time?). Also, being clear that personal use is a taxable use resulting in tax due on the original purchase price, even if de minimis.
    - Subrule 8 should reference that the retail value on which equalization tax is owed for a qualified aircraft is the retail value at the time the aircraft first enters Michigan. In all other instances of application of sales, use, and equalization tax, the value is determined at time of sale/purchase, so this special rule merits attention.

- R 205.68 – Regarding the example, I believe there are circumstances under which the larger box would also be exempt. If Treasury also has this view, an example of those circumstances would be appreciated. For instance, if the golf ball manufacturer does not put golf balls into finished goods inventory and then pick and pack out of inventory upon receiving an order from a retailer, but instead the manufacturer's industrial process packages the balls into dozen-size boxes and the dozen-size boxes into larger boxes (say a dozen dozen per larger box as a standard size to sell to retailers) before those larger boxes become the finished goods inventory, then even the larger boxes are exempt because the industrial process has not ended until the larger boxes are packed.
    - Also, I think another example (or two) in which there is no subsequent sale by a separate retailer would be helpful. For instance, does it make a difference for container taxability if a manufacturer makes parts that it will sell to another company to repair their own equipment? In this case, manufacturer makes 20 widgets and packages them into a box for sale to a customer who will use the widgets in its business. Does Treasury view the box as taxable or exempt simply based on there not being another sale of the widgets by the manufacturer's customer? Does it matter whether the manufacturer put the widgets straight into the box at the end of the processing line before the widgets went into finished goods inventory? And what about the taxable vs. exempt status of

any bubble wrap, etc. that goes in the box to protect the widgets but which is not the box itself to fall within the definition of "container" nor is it "dunnage" as that term is commonly used?

- R 205.71 –
    - What about writing something into the rules to address affixation to real estate so that there is something more definitive and binding than the combination of a 1936 non-tax case in *Sequist v. Fabiano* and RAB 2016-4? I realize the 2017 Court of Appeals ruling in *Brunt Associates* provides recent, binding, tax-specific guidance on this issue, but I'm wondering if the rules could provide something along the lines of Pennsylvania Code 61 §31.11 with a list of things that are presumed to be real property.
    - Could we get one more example under subrule 5 regarding where a manufacturer purchases materials and provides those to the contractor? Some people may think a manufacturer is not exempt as an entity from sales/use tax (just that certain of their activities are exempt) and therefore the contractor is not liable for use tax even if the manufacturer incorrectly claimed an exemption on those materials, while others may think a manufacturer is exempt from sales/use tax and therefore the contractor is liable for use tax regardless of whether the manufacturer already paid sales/use tax.
    - For subrule 11, maybe the example could be expanded or modified to include discussion of the tax ramifications of ABC providing the materials for the job and just hiring XYZ as a sub to provide labor to install the materials provided by ABC.

- R 205.76 – For the rewards program described in subrule 4, while the payment from the employer to the company for the points redeemed is not a taxable transaction, can the company and employer agree that the company will charge the employer the sales tax for the value of the taxable TPP received by the employees by redeeming points? This way when redeeming points, the employees are not unexpectedly hit with sales tax they have to pay on an incentive they thought they were getting from their employer.

- R 205.88 –
    - Subrule 2(a) regarding one month defined as 30 days seems reasonable, and I would even suggest removing the language about a month meaning "the calendar month of the rental period, whichever is shorter." While this obviously is intended to encompass February, I would imagine the circumstances under which someone rents lodging for literally just February 1 – 28 (or 29) are very limited. On the flip side, by defining to include February, do you open Pandora's box for people saying their four-week rental should be non-taxable if the 28 day period of February is non-taxable? People renting for four weeks must happen much more often than people renting for February.
    - Consider including in the rule a definition of "rooms or lodging." On audit, Treasury is assessing use tax on rentals of banquet and conference rooms at hotels, and I think the only support for that currently is the SSUTA taxability matrix. The statute certainly can be interpreted that a conference room is a room and when a hotel rents it, it is taxable, but that does not seem to be the intent of the statute, as it seems to create a disparity between an identical room rental by a hotel vs. one rented by a conference center that does not provide overnight lodging like a hotelkeeper or motel operator. Not that Treasury has to write a rule that takes into account the apparent intent of the legislature, but without a rule clearly stating otherwise, it is much more likely that hotels

will unknowingly not charge tax on room rentals that Treasury deems taxable, as those hotels will mentally make a distinction between overnight lodging vs. day use rooms.

- R 205.91 – Retaining and revising this rule specific to interstate commerce while rescinding the rule on foreign commerce seems inconsistent, as some, if not all, of the issues contemplated here apply just as much if the other jurisdiction is a foreign country. Maybe consolidate these rules under a broader "sourcing" rule?

- R 205.98 – Could this rule provide a safe harbor that can be used to determine taxable sales based on either transit distance or mileage for sales made while in interstate travel? For instance, a ferry crossing Lake Michigan to Wisconsin may sell taxable goods throughout the journey and not know exactly when they have crossed the border into Wisconsin mid-lake. Could a safe harbor be provided to say that a percentage of their sales are deemed taxable based on the scheduled route for that trip being a certain percentage in Michigan waters vs. Wisconsin waters?

- R 205.104 – Subrule 2 states that examination or other service charges to complete the sale of eyeglasses are taxable, but I'm wondering if this is supposed to be about contact lenses and/or specific to non-prescription eyeglasses. Since prescription eyeglasses are non-taxable as prosthetic devices, shouldn't all charges associated with the sale of that non-taxable item also be non-taxable (e.g. not just exam/service charges, but also shipping)? I'm not aware of anything special about prescription eyeglasses or even the broader category of prosthetic devices dispensed pursuant to a prescription which would make the exam/service charges taxable even when the underlying product is exempt. If the rule for eyeglasses is written as proposed, then arguably wouldn't virtually any "charges by the seller for any services necessary to complete the sale" – MCL 205.51(1)(d)(iii) – for any type of tangible personal property become taxable even though the underlying TPP is not taxable by virtue of its nature or exempt by virtue of the nature of the purchaser?

- R 205.108 – I think this rule should still contain some discussion regarding coins. MCL 205.54s(2)(b) defines investment coins as being certain coins "with a fair market value greater than the face value of the coins." But does this mean that to be an exempt investment coin, the coin's FMV must be greater than face value when issued by the government? Or is the sale of a coin by anyone at any amount greater than face value considered to be exempt as an investment coin? By changing from a clear statement in the rule that coins sold for collectible purposes are taxable to not saying anything at all, some may interpret this to mean all collectible coins sold for greater than face value are now exempt from tax, which may not be Treasury's interpretation of the issue.

- R 205.132 – Subrule 4 maybe should include the March 29, 2019, effective date re: school buses, considering that subrule 2 contains the September 1, 2004, effective date (rule as proposed says 2014, but statute says 2004) re: the definition of leases. I realize the 2004 date is right in the statute, while the 2019 date for school buses is not, but a rewrite of the rules at this time is more likely to have a bearing on school bus issues pre-3/29/19 than it is to have a bearing on leases of TPP that began before 9/1/04.
    - P.S. Thank you for the change to an item-by-item lessor election in subrule 5. ☺

- Rule 205.XX1 – I agree with the position that a transaction between a supplier and a medical provider is not exempt under the prescription statutes, but possibly this rule could more fully incorporate the language of Letter Ruling 2019-2 that this transaction may be exempt for resale. The rule could clearly state that the purchase by the provider is exempt for resale if the provider subsequently sells the TPP to the patient by invoicing the patient for that TPP as a separate invoice or line item and dispenses the TPP to the patient by either administering the TPP to the patient or delivering the TPP to the patient.