Why SB 335 and SB 336 are Needed

- Treasury's position hurts Michigan job creation since it:
  - Imposes a new "Headquarters Tax" on Michigan companies
    - Treasury treats SaaS as a taxable, *AND*
    - Treats global access to SaaS as fully taxable to a company's Michigan billing address
  - Deters Michigan expansion in the growing cloud computing industry
  - Creates uncertainty related to the cost of doing business in Michigan

Why SB 335 and SB 336 are Needed

- The business community needs clarity
  - Treasury's treatment of SaaS has been inconsistent
    - In private rulings, Treasury has changed its position
      - 2007 private ruling found SaaS to be a service (non-taxable)
      - 2009 private ruling found SaaS to a use of prewritten software (taxable)
    - Since ownership, control and possession of the software never transfers in a SaaS transaction, there cannot be a taxable use
  - The bills do not change current law, they merely clarify
  - Many states that do not tax services have provided guidance in 2011 clarifying that SaaS is non-taxable
    - Colorado, Louisiana, Missouri, Nebraska, Rhode Island and Tennessee

What is Software as a Service

- SaaS is a type of cloud computing transaction where:
  - An Application Service Provider (ASP) uses its hardware and software to provide a service to customers that have access to the ASP's webpage
  - The ASP owns, controls, and has full possession of the software
  - The customer never has ownership, control or possession of the software
    - Customer billed based on access to the service
    - All customer access is lost at the end of the contract
  - No software is downloaded
- Simply stated, SaaS is a *SERVICE*

Sales and Use tax on Software as a Service (Cloud Computing) SB 335 and SB 336

House Tax Policy Committee
October 26, 2011

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