

DESTINATION MARKETING ORGANIZATION MANUAL FOR MICHIGAN ASSESSMENT DISTRICTS

Prepared by:

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Development Corporation**

And

**The Michigan Association of Convention
and Visitor Bureaus**

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This manual is a product of the Michigan Association of Convention and Visitors Bureaus (“MACVB”), a private non-profit organization, and is intended merely as a guideline for local convention and visitors bureaus. Of course, each bureau’s circumstances are different (including the assessment authorizing legislation that may be applicable to any particular CVB), and so the examples in the manual may not be applicable to the particular circumstances faced by a CVB. Moreover, while the manual is published on the website of the Michigan Economic Development Corporation as a convenience to the members of MACVB, the statements and opinions reflected in the manual are not endorsed by the MEDC, Travel Michigan, the State of Michigan, or any of its other agencies, are not law, do not represent the official positions of the State of Michigan and are not binding upon it.

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Section I Background

- A. Agricultural Commodities Act**
- B. First Room Assessment Law**
- C. Present Assessment Program Structures**
- D. Court Challenges**

I. BACKGROUND - HOW THE ASSESSMENT CONCEPT WAS DEVELOPED

A. The Agricultural Commodities Act

The original concept for tourism assessment was actually borrowed from the agriculture industry in Michigan. Act 232 of 1965 was the prototype for the Michigan room assessment program. Also known as the Agricultural Commodities Act, it created a program to promote Michigan agricultural products. It authorized the creation of quasi-public entities called commodities committees made up of representatives of the growers or producers of a particular agricultural product. It provided for a referendum of those growers to determine if an assessment on that particular product would be implemented as the means of generating funds to conduct marketing programs for that product. The commodities committee was empowered to enforce the collection of the assessment on all growers of that commodity in the state. They also made decisions about the types of promotional programs conducted with the funds. Producers of such products as cherries, apples, beans, beef, and wine have established commodities committees in Michigan.

The Agricultural Commodities Act was unique because it established the concept of an assessment. This levy was to be a self-imposed industry assessment controlled by a private, nonprofit organization. That organization existed as a representative of a particular group of commodity growers or producers. The only government involvement was to ensure that the assessment was fairly implemented and to give authority to the committee to enforce collection of the assessment.

B. The First Room Assessment Law

By the late 1970's, the Detroit Metro Convention and Visitors Bureau (DMCVB), though established in the 1890s, was one of the few major cities in the country that did not rely on a room tax as its major funding source. Detroit had elected not to participate in the county room tax program established under P.A. 263 of 1974 for its funding base. This limited their revenue generating capabilities and put them at a competitive disadvantage with other major convention cities across the country.

Their answer was to borrow the concept of the assessment from the Agricultural Commodities Act, which eventually became Public Act 383 of 1980 or the Convention and Tourism Marketing Act.

Act 383 was specifically designed for the metropolitan Detroit area. It specified that the DMCVB would establish an Owner Advisory Committee made up of lodging representatives whose primary purpose was to oversee the use of assessment funds in the development and promotion of convention and tourism business in the district. The assessment district was to be established according to county boundary lines. A marketing program notice was to be prepared which served as notification to the potentially affected lodging facilities within the proposed assessment district. That notice included a description of the promotional activities that would be undertaken on behalf of the lodging facilities.

At the same time the notice was sent to the lodging facilities, it was also sent to the Michigan Department of Commerce. At that point, the Commerce Department was to conduct a referendum of all the potentially affected lodging facilities, on a one vote per room basis. If the referendum passed, the CVB would be able to implement an assessment on the rental of overnight rooms within the assessment district.

The law further specified that assessment funds were not "state funds," a rather unique concept. This was a critical component of the room assessment program. It meant that once the referendum was conducted there would be little government involvement after that point. The collection of the assessment, implementation of the marketing programs, and all other activities were to become the responsibility of the nonprofit organization, in this case DMCVB.

The law also required all lodging facilities to pay the assessment collections monthly and submit a copy of their quarterly state use tax form. This allowed the CVB to verify that the assessment paid was the correct amount. The CVB was also empowered to levy interest and delinquency charges for late payments, and to sue to collect assessments, interest, and delinquent charges. Another important aspect of the law was that it did not include any enforcement provisions to be performed by government. Finally an annual audited financial statement and an annual report were required of the Bureau. That report was to be submitted to the Michigan Department of Commerce.

As the Detroit law was in the process of being enacted, two other communities, Grand Traverse County and Mackinaw City, learned of the proposed program and were interested in creating a similar program. However, Act 383 of 1980 was passed covering only the metropolitan Detroit area. Later that same year another law, Act 395 of 1980, was passed authorizing a similar program in Grand Traverse County and Mackinaw City.

C. Present Assessment Program Structures

Because of early successes in implementing the programs in Detroit, Traverse City, and Mackinaw City, other areas of the state quickly became interested in the concept of an assessment. However, there was no enabling legislation permitting others to implement a room assessment other than the three authorized by Acts 383 and 395. Acting on behalf of the lodging industry in Michigan, the Michigan Lodging Association (today known as the Michigan Lodging & Tourism Association), the Michigan affiliate of the American Hotel and Motel Association, helped draft and supported passage of a law that would allow any area of the state to implement an assessment. The MLA was interested in protecting the interests of the lodging industry and felt the assessment concept was more acceptable than traditional room taxes because of the control it gave lodging owners. The MLA worked with the Michigan Legislature to adopt an acceptable statute for a program for the rest of the state.

The result was Act 59 of 1984, an amendment to Act 395. The new law, with some variations, was similar to earlier laws except that any community in the state was now eligible to implement an assessment. Lodging facilities with ten or more rooms were

subject to the assessment. Within a few months, new assessment districts were being formed around the state.

Since then there have been a number of other amendments to the law to accommodate specific situations around the state. One important successful variation to the room assessment concept was a law passed for the Upper Peninsula of Michigan called the Regional Tourism Marketing Act, Act 244/245 of 1989. It allows an additional one percent to go to the regional marketing organization representing the area, the Upper Peninsula Travel and Recreation Association.

D. Court Challenges

The legal challenges to assessment laws have proven to be important in reinforcing the legitimacy of assessment programs. To date, most efforts to enforce collection of the assessment at the local level have been supported by the courts. However, the most important legal challenge to the concept of an assessment actually occurred before the passage of Acts 383 and 395. The Agricultural Commodities Act was not only the prototype for the room assessment program, but its ensuing court cases also established the legal underpinnings.

In 1979, Dukesherer Farms, Inc. appealed a lower court decision in which the Michigan Department of Agriculture and the Michigan Association of Cherry Producers had sued Dukesherer Farms for non-payment of its assessment. Dukesherer Farms argued that the Michigan Legislature had unconstitutionally delegated taxing authority to a non-governmental agency. The Michigan constitution expressly forbids the state legislature from delegating taxing authority to any entity other than governmental agencies. In ruling against Dukesherer Farms, the Michigan courts (*Dukesherer Farms, Inc. v. Ball*, 1979) clarified the difference in definitions between a tax and an assessment. The court said that even though both are involuntary exactions or contributions of money, the collection of which is sanctioned by law and is enforceable by the courts; an assessment lacks the essential elements of a tax. A tax is imposed primarily for public rather than private purposes. Revenue from taxes, therefore, must be used for the general benefit of all persons in the taxing district, or some other public good. An assessment is an exaction from a few, with benefits that accrue primarily to the persons or groups assessed. Thus the courts ruled that the legislature had not unconstitutionally delegated its taxing powers to a non-governmental agency because the assessment was not a tax. This principle has become the basis of the current Community Tourism Marketing program in Michigan.

As a direct result of this ruling, the primary test of an appropriate use of assessment funds is if the programs conducted with those funds are designed to primarily benefit the lodging facilities paying the assessment. Furthermore, many other laws relating to taxing authority do not apply to assessments. For example, it is widely accepted that simply because an agency may be classified as a tax-exempt organization does not necessarily exempt it or its employees from paying the assessment.

Michigan room assessment programs have been thoroughly tested in the courts since that time. Early on, both the Detroit Metro and the Grand Traverse Convention and Visitors Bureaus received higher court rulings supporting Acts 383, 395, and 59. Because these laws have been successfully defended, today it is usually enough for a CVB to threaten a civil action in cases of delinquent lodging facilities. The courts have, in the end, tended to support claims for all past due assessments from delinquent lodging facilities. Much of the rationale for the support of these programs goes back to the decision made in the Dukesherer Farms case.

But litigation should not be considered lightly! Recent challenges concerning the legality of government authorized assessment programs have battled their way all the way to the US Supreme Court before being ruled legal. Bureaus should be aware of the possibility of starting another round of prolonged challenges by beginning legal action against delinquent members and are strongly advised to consult with the MACVB Executive Director before considering such action.

Section II

Key Legislation

- A. P.A. 263 of 1974 – Room Tax
- B. P.A. 383 of 1980 – Detroit Assessment
- C. P.A. 395 of 1980 – Traverse City and Mackinaw City Assessment
- D. P.A. 59 of 1984 – Generic Assessment
- E. P.A. 106 of 1985 – Cobo Hall Tax
- F. P.A. 244/245 of 1989 – U.P. Assessment
- G. P.A. 180 of 1991 – Tiger Stadium Tax
- H. P.A. 224 of 1993 – Lansing Area Assessment
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- J. P.A. 25 of 2007 – Grand Rapids/Lansing Area Assessment
- K. P.A. 254 of 2010 – Great Lakes Bay Region Assessment

II. KEY LEGISLATION

A. Act No. 263, Public Acts of 1974

1. Title: Accommodations Tax Act
2. Elements: Allows county government, in a county with a population of less than 600,000 and a city of more than 40,000 to levy a room tax of up to 5 percent on the rental of overnight rooms. Funds may be used for:
 - a. Costs of administration.
 - b. Costs related to convention and entertainment facilities.
 - c. Promotion and encouragement of tourist and convention business.
3. Status: Eight counties have the tax: Calhoun, Ingham, Genesee, Kalamazoo, Kent, Muskegon, Saginaw, and Washtenaw.

B. Act No. 383, Public Acts of 1980

1. Title: Convention and Tourism Marketing Act
2. Elements: Allows a nonprofit tourism organization in a county with a population of more than 1.5 million, and any contiguous counties, to implement a tourism marketing program and assessment of up to 2 percent. The population requirements effectively limit participation to Wayne County and surrounding counties under this law. It also provides specifications for potentially affected lodging facilities, how the governing board is to be structured, program operating parameters, and reporting requirements.
3. Status: The Detroit Metro Convention and Visitors Bureau currently administers the assessment program in an assessment district of Wayne, Oakland, and Macomb Counties.

C. Act No. 395, Public Acts of 1980

1. Title: Community Convention or Tourism Marketing Act (SEE APPENDIX FOR A COPY OF THE STATUTE)
2. Elements: Allowed nonprofit tourism organizations in certain municipalities to implement a tourism marketing program and assessment of up to 5 percent on the rental of overnight rooms. As with Act 383, it also specified the potentially affected lodging facilities, how the governing board was to be structured, program operating parameters, and reporting requirements, though these specifications were somewhat different from the original law. Assessment district requirements effectively limited eligibility to Grand Traverse County and Mackinaw City.

3. Status: Most of the provisions in this law are no longer in effect. P.A. 59 of 1984 superseded most of its sections. The only portion of the law that remains in place is Sec. 6 (1), (2), and (3). This section provides for collection of funds, financial and program reporting requirements, and submission of those reports.

D. Act No. 59 Public Acts of 1984

1. Title: Community Convention or Tourism Marketing Act, amendment to P.A. 395 of 1980. (SEE APPENDIX FOR A COPY OF THE STATUTE)
2. Elements: This act superseded most of the provisions of P.A. 395 of 1980. It provides for the promotion of convention business or tourism in any grouping of municipalities in the state; provides for tourism or convention marketing programs in those municipalities through a nonprofit convention and visitors bureau; provides for the imposition and collection of an assessment of up to 5 percent on the owners of transient facilities of 10 or more rooms to support tourism or convention marketing programs and provides for the disbursement of the assessments.
3. Status: P.A. 59 is the principal legislation used to establish assessment district programs in Michigan. Districts range in size from a single township to multi-county areas. Over 70 organizations in Michigan collect room assessment revenues from one or more assessment districts within their jurisdiction.

E. Act No. 106 of 1985

1. Title: State Convention Facility Development Act (Cobo Hall Tax)
2. Elements: This act permits a county which has a convention facility with 350,000 square feet or more of exhibit space to collect an excise tax on room charges to help pay for the facility. The tax rate varies from 1 ½ percent to 6 percent depending on the number of rooms and if in or out of the city limits of Detroit. If a hotel has less than 80 rooms, no tax is collected.
3. Status: This tax remains in effect and is being used for debt retirement on expansions of Cobo Hall.

F. Act No. 244 and Act No. 245 of 1989

1. Title: P.A. 244 - Regional Tourism Marketing Act
P.A. 245 - Amendments to P.A. 395 of 1980 and P.A. 59 of 1984
(SEE APPENDIX FOR A COPY OF THE STATUTE)

2. Elements: Provides for the creation of a regional assessment district to be administered by a regional marketing organization that has been in existence for 10 or more years and represents a region composed of 15 counties. It allows for the implementation of a 1 percent assessment that may be in addition to a local 5 percent assessment operated under P.A. 59 of 1984. Assessment district and regional marketing organization definitions effectively limit eligibility to the Upper Peninsula and the U.P. Travel & Recreation Association.
3. Status: The U.P. Travel & Recreation Association currently operates and is funded through a 1 percent assessment that is in existence across the U.P. In most locations in the Upper Peninsula the effective rate charged for a room is 3 to 6 percent, 2 to 5 percent for a local assessment and 1 percent for the regional assessment.

G. Act No. 180 of 1991

1. Title: Tiger Stadium Tax
2. Elements: This act was to assist the financing of a stadium or convention facilities by permitting certain cities to impose and collect an excise tax of 1 percent on room charges, 1 percent on food charges, and 2 percent on car rental charges. This law requires voter approval on a single ballot question. The law also repealed P.A. 232 of 1971, which would have allowed a 5 percent excise tax on room charges.
3. Status: Wayne County voters ratified the tax in 1996 (excluding the 1 percent tax on food charges).

H. Act No. 224 of 1993

1. Title: Community Convention or Tourism Marketing Act, amendment to P.A. 395 of 1980. (SEE APPENDIX FOR A COPY OF THE STATUTE)
2. Elements: Provides for an assessment of up to 4 percent in a township meeting a series of specific criteria adjacent to a county with a county room tax. The specific criteria for the township effectively limit eligibility to Delta Township, which is adjacent to Ingham County.
3. Status: This provision was deleted when P.A. 283 of 2010 was enacted which raised the statutory cap on assessments from 2 percent to 5 percent.

I. Act No. 589 of 1997

1. Title: Community Convention or Tourism Marketing Act, amendment to P.A. 395 of 1980. (SEE APPENDIX FOR A COPY OF THE STATUTE)
2. Elements: Removes the provision that a 2 percent assessment cannot be implemented in a county that has already implemented a county room tax under Act No. 263 of 1974.
3. Status: Kent County is the only county of the eight in the state with a county room tax that also has implemented a 2 percent assessment under Act 395 of 1980.

J. Act No. 25 of 2007

1. Title: Convention and Tourism Promotion Act
2. Elements: Narrowly defines the counties of Ingham and Kent and allows for an additional room assessment up to 2 percent on transient guests at hotels with 35 rooms or more after submission of a marketing plan and vote of the hotels.
3. Kent County now imposes two 2 percent assessments along with their 5 percent accommodations tax. Ingham County assesses the additional 2 percent.

K. Act No. 254 of 2010

1. Title: Regional Convention & Tourism Promotion Act
2. Elements: Narrowly defines the counties of Midland and Bay to allow for referendums to increase their assessments up to 5% and form a regional marketing partnership with Saginaw County (a P.A. 263 hotel tax district). This Act applies to all transient facilities within the assessment district with 2 rooms or more.
3. Status: The referendums passed and the funding for the Great Lakes Bay Regional CVB marketing partnership was secured.

Section III

Frequently Asked Questions About Assessment Programs

- **Can a lodging facility outside the assessment district join without creating a new assessment district?**

No, not without establishing a new assessment district under Act 59 of 1984. A lodging facility outside the assessment district may be an associate member of the CVB, but it cannot charge the assessment to its customers unless it is within the boundaries of an existing assessment district.

- **How is a new area added to an existing assessment district?**

Technically, this process is the same as starting an entirely new assessment district and nonprofit organization. The only difference is that the nonprofit organization represents both the existing assessment district and the new assessment district.

- **Does a new property or a new owner of an existing property in an Act 59 of 1984 assessment district pay the assessment?**

Yes. For those with a property of 10 or more rooms the assessment continues to be paid as part of doing business. For a property with less than 10 rooms a new agreement would need to be signed.

- **What kinds of limitations are there on how funds can be spent?**

The test of the appropriate use of assessment funds is if those funds are used to the direct benefit or in the best interest of the lodging facilities within the assessment district. The mechanism for making the judgment of what is appropriate is that the board of directors approved the expenditure.

- **Can assessment funds be used to pay the cost of buildings, new construction, maintenance, or administration?**

As long as the board of directors has approved this type of expenditure as benefiting the lodging facilities within the assessment district, these would be considered appropriate expenditures.

- **Can non-lodging facilities be dues paying members of the CVB?**

Yes. In many CVBs there is an associate member status assigned to non-lodging facilities that pay membership dues at a rate determined by the board of directors, though there are also examples of CVBs that are exclusively made up of the lodging facilities within the assessment district. The types of membership categories and dues' structures are decisions made by the board of directors.

- **Can non-lodging facilities (such as campgrounds or marinas) collect the assessment?**

Neither campgrounds nor marinas are defined as transient facilities under the Act, unless those campgrounds have transient facilities on site (such as rustic cabins). This does not, however, prevent such a business from being an associate member of the CVB.

- **Can a lodging facility with less than *10 rooms in the district collect the assessment?**

Yes. There is a provision within Act 59 that allows for lodging facilities fewer than 10 rooms within the assessment district to collect the assessment from its customers through a written agreement with the CVB. It should be noted, however, that this is a binding agreement and, once entered into, that lodging facility has all the same obligations as any other facility within the district and cannot opt out of the program.

- **Can non-lodging facilities be on the board of directors?**

Yes, as long as the overall make up of the board is a majority of lodging representatives.

- **Can the board of directors be made up of lodging facilities exclusively?**

Yes. This would be a policy decision made by the board and/or the membership.

- **Does the financial audit for the CVB need to be an audit by a CPA? Can it be another form of CPA report?**

Yes, the financial statement must be an audit by a CPA. While CPAs may sometimes conduct other types of financial reports for their clients, such as compilations or reviews, an audit is required in order to be in compliance with the law. Reports, including audits should be sent annually to:

Assessment District Reports
Travel Michigan
Michigan Economic Development Corporation
300 North Washington Square
Lansing, MI 48913

- **Does the state help in pursuing non-paying or delinquent facilities?**

No. Neither the State of Michigan, nor any other governmental agency (with the exception of a court through the outcome of a civil suit) has legal authority to pursue delinquent lodging facilities.

- **Is the CVB obligated to pursue non-paying or delinquent facilities?**

The Act allows, but does not require, the CVB to bring a suit against non-paying or delinquent facilities. The decision to enter into a civil action is entirely the decision and responsibility of the CVB and its board of directors (see Section D on page 7) however the 2014 amendment mandated payment of reasonable attorney fees and court costs by delinquent properties for court action.

- **Can we collect more than 5 percent? ... less than 5 percent?**

Act 59, 1984 allows for the collection of up to 5 percent. This means a district may have an assessment of less than 5 percent, but not more. To exceed the 5 percent limit would require an amendment to the enabling legislation by the Michigan Legislature such as was last completed by P.A. 283 of 2010.

- **Are CVB records subject to the Freedom of Information Act?**

The Freedom of Information Act applies only to governmental agencies and nonprofit corporations in the State of Michigan are not considered governmental agencies. However, incorporated entities within the state are required to maintain certain publicly available records. For information on what those publicly available records should contain **see item 'F' on page 26 of this manual** or contact the Department of Licensing and Regulatory Affairs, Bureau of Commercial Services. It should be noted, however, that because many within the community view the local CVB as a quasi-public agency, many CVBs issue annual reports itemizing program accomplishments and some of the financial information of the bureau in order to satisfy public interest. The decision as to the type and amount of information released is one made by the CVBs' board of directors.

- **What obligations does the CVB have to local government (city, county, and township)?**

Other than that which might be viewed as socially responsible, there are technically no specific responsibilities that a CVB or its assessment district have toward local government under the Act. Though not required, some CVBs, as a courtesy, offer a seat on its board of directors to a local governmental official such as a mayor, city council member, or county board of commissioners' member.

- **What happens if a CVB is delinquent in their annual report to Travel Michigan?**

There is a specific process that has been set out by Travel Michigan in consultation with the Attorney General's office, which may ultimately lead to the dissolution of a CVB along with the possibility of certain other penalties, for non-compliance by a CVB with respect to the Act. **(See Section IV E(4) on page 25 of this manual - PROCEDURE FOR IMPLEMENTING AND OPERATING AN ASSESSMENT PROGRAM IN MICHIGAN)**

- **Do the municipalities in the assessment district have to be adjacent?**

No. There are a number of examples across the state where an assessment district includes non-adjacent cities or townships.

- **Once established, can a municipality be split apart within an assessment district?**

No. The Act specifically requires that an assessment district be defined as some combination of municipalities that are defined to be counties, cities, villages, or townships. Realigning the definition of an assessment district requires the dissolution of that district and the formation of a new district under the law. Finally, a definition of an assessment district that, for example, follows streets or highways as boundary lines is not permitted under the Act.

- **Do lodging facilities under *10 rooms participate in the referendum to determine whether or not an assessment is to be implemented?**

No. While there is a provision in the Act for a lodging facility under *10 rooms to pay the assessment in an existing assessment district, there is no provision to allow a lodging facility under *10 rooms to participate in the original referendum.

- **A transient room can sometimes be rented for more than 30 days. What impact does this have on determining the number of rooms in the facility, and the amount of assessment revenues it pays?**

Even though a given room may occasionally be rented for more than 30 days to the same person, as long as it is normally available for rent for less than 30 days (e.g., daily or weekly) it is defined as a transient room for purposes of the Act.

Room revenue for rooms contracted for more than 30 days to the same person is not subject to the assessment beginning on the 30th day.

- **Is a cabin with three bedrooms considered one unit or three?**

If rented as one cabin, it would be considered one room. If the three bedrooms were available for rental separately, then it would be defined as three rooms.

- **Does a condominium building with different owners qualify as a lodging facility?**

If those condominium units are located on the same property and are available for rent on a transient basis through a single rental management company (such as a local realtor), that facility would be considered a transient facility.

- **What if the rental units (e.g. cottages) in the lodging facility are not attached or adjacent to each other?**

Transient units need not be physically attached to each other to be considered part of the same transient facility.

- **A member hotel hosted a tax-exempt group (church, governmental agency, etc.) and did not charge the state sales/use 6 percent or the bureau assessment. Do they owe the bureau the assessment? Could/should the hotel have charged the group the assessment?**

Section 2 of P.A. 59 stipulates that the assessment applies “...against aggregate room charges...” and is technically (tax exempt is not assessment exempt) payable to the bureau. Each bureau through its board of directors should establish its own policy in this regard. Some bureaus that do not demand the assessment solve the accounting problem by calculating the assessment percentage from line three of the monthly Use Tax deposit coupon (Form 160) rather than line two of the monthly Use Tax Worksheet (Form 165).

- **In an existing assessment district, an innkeeper with less than *10 rooms demands to be a member of the bureau. Do you have to allow them to participate?**

Section 9 of P.A. 59 allows for their participation, upon vote of the CVB Board of Directors, as long as they otherwise meet the definition of the Act. Generally the only disqualification (i.e. B & Bs and cottages) is if they do not file Use Tax reports to the state.

- **The law states that the Michigan Department of Commerce is responsible for conducting referendums for new assessment district programs and for receiving the required annual reports. However, the Michigan Department of Commerce no longer exists. Which state agency now has those responsibilities and whom can we contact for questions about this program?**

The Michigan Travel Bureau (now Travel Michigan) had originally been designated by the director of the Michigan Department of Commerce to administer the program on behalf of Commerce. By executive order of the Governor, the Commerce Department was dissolved and Travel Michigan was ultimately transferred to the Michigan Economic Development Corporation. All State of Michigan responsibilities under this program now rest with Travel Michigan. To submit required reports, initiate requests for new assessment districts, and other questions about the program contact:

**Travel Michigan
Michigan Economic Development Corporation
300 North Washington Square
Lansing, MI 48913
Phone: (517) 335-1879
Fax: (517) 373-0059**

- **We contract with a CPA to account for the collection of deposits. Can the same CPA do our audit?**

As a result of some catastrophic business disasters over the last two decades (S&Ls and junk bonds in the 90's to Enron more recently) Congress enacted the Sarbanes-Oxley Act of 2002. Among other things, the Act has dictated to the American Institute of Certified Public Accountants (AICPA) and the Securities and Exchange Commission (SEC) certain rules that outline CPA 'independence'. Although there is much gray area, it is appropriate for the same CPA who collects the monthly information and provides information to a bureau for their 'approval' and posting may also do the audit and relevant tax services provided that they do not engage in any other type of 'management functions' (e.g. payroll), engage in auditing their own work or serve in an advocacy role for the bureau. If additional functions are required (bookkeeping, payroll, etc.), it is suggested to seek the services of a bookkeeping service rather than suffer the additional expense of employing two CPAs.

- **Our assessment is currently 2% and we would like to increase up to 5%.**

Any increase follows the same rules and guidelines as establishing your original assessment district. Travel Michigan will handle the referendum but for assistance contact the Executive Director of the Michigan Association of Convention and Visitor Bureaus, Larisa Draves at visitmichigan@gmail.com or 231.823.0015.

- **Some people contend that the assessment is nothing more than a hotel tax and is therefore public funds. Why isn't it?**

The assessment program, as it differs from a tax, was upheld and defined in various court decisions including - the *Indian River Tourist Bureau v George Galbraith d/b/a The Landings on Indian River* 2000 citing *Bolt v City of Lansing* 1998 and *Dukesherer Farms v Ball* 1979 among others.

- **One of our smaller properties now claims (and can prove) that they have less than *10 rooms and will no longer be part of the assessment program. Can they do this?**

If the property was a member, other than one defined in Section 9 of PA 59 (volunteer participation of a property under ten rooms), and goes below *10 rooms, upon demand they must be released as a transient lodging facility member of the bureau qualifying for the assessment. At the Court of Appeals in *Houghton Lake Area T&CB v Rose-O-Day Motel* 2003 it was concluded, "The legislature did not include a provision making mandatory membership permanent."

- **What about longer term rentals (over 30 days) – are they charged the assessment, the hotel tax and/or state Use Tax?**

A person is subject to both the assessment and hotel tax for the first 29 days of their stay unless under contract for a longer duration. Beginning on the 30th day they are exempt for the balance of their stay [PA 59, Sec 2(n) and PA 263, Sec 1(f)]. The 6% Michigan Use Tax is also exempt beginning on the 30th day and also excused, credited or refunded for the first 29 days.

- **Does a guest staying at a transient facility, whether by contract or not, for over 30 days change the relationship from guest/innkeeper to that of a tenant/landlord?**

Although every situation is a bit different legal counsel is best to review the facts of the Michigan Court of Appeals in Ann Arbor Tenants Union v Ann Arbor YMCA (Docket No. 201565 of 1998) that determined “The length of a person’s stay and the rate or method of payment are merely evidentiary and not controlling.” Essentially stating ‘once a transient guest, always a transient guest’ when staying in a traditional transient facility.

Section IV

Outline for Implementing an Assessment Program & Disclosure Requirements

A. Establish a Convention and Visitors Bureau

1. A CVB is a separate entity unto itself. Assessment legislation does not authorize the establishment of a CVB, it only requires that a CVB be organized according to certain specifications in order to implement an assessment program under the enabling legislation. CVBs are normally established in one of two ways:
 - a. Incorporated as an independent private nonprofit corporation under the laws of the State of Michigan (through the Bureau of Corporations, Securities & Commercial Licensing, Department of Licensing and Regulatory Affairs).
 - b. If a division of an existing nonprofit corporation, such as a chamber of commerce, establishes an independent board of directors that otherwise meets the requirements of the law, to oversee the use of funds generated by the assessment, under clearly established bylaws of the existing parent organization. Bylaws should further state that ultimate authority for the uses of assessment revenues rests in the hands of the independent board of directors and not the chamber of commerce or its board of directors.
2. Define as the primary purpose of the organization to promote or develop convention business or tourism.
3. Procedures for conducting the day-to-day business of the CVB most commonly use one of the following methods.
 - a. The board of directors voluntarily contributes its time to implement marketing programs and conduct administrative functions of the CVB.
 - b. The board hires a staff to act as full-time professional representatives of the CVB and conduct CVB business as a separate, independent entity.
 - c. The board enters into a contract with a provider to implement its marketing programs and assist with administrative overhead on behalf of the CVB. Often this is a chamber of commerce or a local economic development corporation (EDC).
 - d. The CVB is set up as an actual division of another existing nonprofit entity (e.g., chamber or EDC) with that parent organization conducting day-to-day responsibilities on behalf of the board.
 - e. The board hires a professional, private sector contractor (e.g., advertising agency) to implement the marketing program. Administrative responsibilities are conducted under one of the above-mentioned scenarios.

B. Prepare a Marketing Program Notice (This is not necessarily a “marketing plan.”)

1. State that the bureau intends to create a marketing program under Acts 395 of 1980 and 59 of 1984.
2. Describe the bureau:
 - a. Membership.
 - b. Corporate structure.
 - c. All activities likely to be conducted by the bureau during its existence.
 - d. Amount of the assessment (up to 5 percent).
 - e. Structure of the board of directors (at least 51 percent transient facility owners).
 - f. Definition of the assessment district (counties, cities, villages, or townships).

C. Send Out the Marketing Program Notice

1. Send the Marketing Program Notice to all potentially affected lodging facilities within the proposed assessment district by registered or certified mail.
2. Send the same information to Travel Michigan with the following additional information:
 - a. A listing of all potentially affected lodging facilities including the mailing address, contact person, number of units (rooms) in each facility, and the municipality within which the lodging facility is located.
 - b. A copy of the Articles of Incorporation, bylaws and certification of status of the convention and visitor bureau, or its parent organization, as a nonprofit private corporation under the laws of the State of Michigan.

D. The Referendum Process

1. A review of the marketing program notice and marketing program will be completed by Travel Michigan within 30 days for compliance with the law.
2. A referendum for the proposed marketing program and approval of the assessment will be conducted by Travel Michigan.
 - a. Each transient facility receives one vote per transient room.
 - b. The referendum must pass by a majority of votes actually cast in each municipality of the proposed assessment district separately.
3. If passed, the program may go into effect on the first day of the month that is more than 30 days after the certification of the results of the referendum.

4. If it does not pass, the convention bureau must wait 60 days before a new program may be proposed.

E. Management of the Assessment Program

1. Once in place, the management of the assessment program, including the process of collecting the assessment funds themselves, enforcement of the collections, program implementation, and reporting are all the responsibilities of the convention bureau implementing the assessment program.
2. Reporting requirements are defined by the Act (P.A. 395 or 59). The components of a report include:
 - a. An audit report prepared by a CPA for the most recently completed fiscal year of the CVB as required by the Act.
 - b. A marketing program report. While details of the report are not specified in the law, reports should briefly review activities from the previous year and be certified by the bureau director as representative of the program. Suggested components to that report could include, though are not limited to, a brief description of the following types of activities (See **Appendix B, page 66** for Recommended Annual Marketing Report form):
 - 1) Paid advertising campaign implemented.
 - 2) Brochures produced and distributed.
 - 3) Press and public relations efforts.
 - 4) Special events and festivals sponsored or supported.
 - 5) Significant new administrative efforts; e.g., new offices.
 - 6) Membership support services; e.g., customer service training.
 - c. The marketing plan for the current fiscal year, if available at the time of the report. As with the report on the previous fiscal year, exact length and level of details are not specified in the law. As such, marketing plans can be brief and to the point. The marketing plan should be certified by the bureau director as being the proposed plan for the upcoming year.

THE MACVB IN COOPERATION WITH TRAVEL MICHIGAN HAS DEVELOPED A RECOMMENDED ANNUAL MARKETING REPORT FORM BEGINNING ON PAGE 66 OF THIS MANUAL.

3. Reports are due 150 days after the end of the bureau's fiscal year and should be sent to:

Assessment District Reports
Travel Michigan
Michigan Economic Development Corporation
300 North Washington Square
Lansing, MI 48913

4. Delinquent Reports - Procedures and Penalties.
 - a. If a complete report is not submitted within the required time period, Travel Michigan will send certified mailings reminding the delinquent CVB of its reporting requirements and the possibility of referral to the State Attorney General's office.
 - b. If no satisfactory response is received to these reminder mailings, the matter is forwarded to the Attorney General's office.
 - c. Further non-compliance may result in the Attorney General seeking a civil action against the CVB to request that the courts revoke its charter, dissolve the CVB, and/or impose a fine of up to \$10,000.

F. Disclosure Requirements

1. Convention and visitor bureaus are not subject to the state's Freedom of Information Act (FOIA). However, records that are submitted to a public body may be subject to FOIA through that public body.
2. Any organization classified as a nonprofit organization under the regulations of the Internal Revenue Service (e.g., 501c(3) or 501c(6)) is required to make available for public review, upon request, copies of their last three years of form 990's (nonprofit organization tax returns), their application for tax exempt status with supporting documents, and any corresponding IRS-issued documents.
3. Upon demand, Michigan nonprofit corporations must make available for public inspection their most recent copy of form BCS/CD 2000: Nonprofit Corporation Information Update.
4. Copies of the audited financial statements and the certified report shall be submitted to Travel Michigan, who shall make it available to the public on the internet.

FOR ANNUAL REPORTS, NEW REFERENDUM REQUESTS, OR QUESTIONS:

**Travel Michigan
Michigan Economic Development Corporation
300 North Washington Square
Lansing, MI 48913
Phone: (517) 335-1879
Fax: (517) 373-0059**

Section V

Michigan Association of Convention and Visitor Bureau Information

- A. MACVB Overview**
- B. Glossary of Terms**
- C. MACVB Bylaws**
- D. Membership Directory**

MICHIGAN ASSOCIATION OF CONVENTION AND VISITOR BUREAUS OVERVIEW

The Michigan Association of Convention and Visitor Bureaus (MACVB) is an organization of the Chief Executive Officers and Executive staff of Convention and Visitor Bureaus throughout the state. The mission is to serve as an advocate for its members through education and communication, while representing their legislative interests.

Membership in MACVB immediately incorporates a Bureau CEO into a network of professionals with hundreds of years of destination marketing experience. Membership automatically includes a Bureau listing on the MACVB web site (www.visitmichigan.org) with hyper-links, designates the new CEO as a member, and offers select committee assignments as well as a host of professional and personal development opportunities.

To further support new members, MACVB has an extensive Mentoring Program designed to facilitate a smooth transition into the Michigan world of Destination Marketing and the community of CVB and travel professionals.

To support the MACVB through membership gives a certain notoriety to each member and allows for their organization to continue representing tourism interests in Lansing through ongoing direct contact with legislators. It also allows support for the work of the Legislative, Education and Communication Committees among others.

The MACVB is a professionally managed association. Draves and Associates of Stanwood, Michigan directs the day-to-day operations, does the accounting and assists in facilitating resolve to member challenges. Michigan Legislative Consultants (MLC) is the oldest lobbying firm in Lansing and represents the legislative interests of MACVB.

We actively encourage all Michigan Convention and Visitor Bureau CEOs who are dedicated to professional development and taking an active role in Michigan tourism to join and support the MACVB.

Please contact Larisa Draves at visitmichigan@gmail.com or 231.823.0015 for any questions.

CVB GLOSSARY – Commonly used terminology in the travel, tourism, hospitality and CVB industry

501c	The designation awarded to non profit organizations by the IRS, after application and acceptance. There are 25 different 501c organizations, the most common are the 501c(3) - Human service, Charitable and Educational organizations and 501c(6) – Business leagues, CVB's, Chambers of Commerce. www.irs.gov
American Bus Association (ABA)	A national trade association representing inner city and charter bus companies, planners and industry partners. www.buses.org
American Hotel & Lodging Association	A federation of state and regional lodging associations covering the USA, Canada, Mexico and Central and South America. Renamed the American Hotel & Lodging Association effective April 2001. www.ahla.com
American Plan (AP)	A hotel rate that includes lodging and three meals daily (also see Modified American Plan).
American Society of Composers, Artists and Publishers (ASCAP)	One of the music licensing organizations that collects fees for the commercial rebroadcast of their copyrighted music.
American Society of Travel Agents (ASTA)	The national trade association of US travel agents.
American Society of Association Executives (ASAE)	National association for individuals who manage non-profit Associations. www.asaecenter.org
Assessment (Hotel)	In Michigan, authorized by PA 59, '84, is a self-imposed program voted into being by its participants (innkeepers within a municipality) with all funds retained and managed by the same participants. The assessment may be up to 5% applied against the transient lodging revenue of a member hotel, which may be passed along to the guest. An assessment is not a tax as it relates to Michigan hotels and CVB's.
Available (or Availability)	Denotes a conditional status. "Space available", for example, means "if the space is available".

Average Daily Rate (ADR)	The net daily room revenue of a lodging facility divided by the total number of rooms rented. A benchmark number used by owners and operators to determine a variety of things, such as discounting, selling, up selling, etc. Also see RevPar
Bed & Breakfast (B&B)	Overnight accommodation, usually in a private home with a full or continental style breakfast included in the rate (Modified AP or Bermuda Plan).
Bermuda Plan	A hotel rate that includes lodging and a full American style breakfast.
Blocked Space	Multiple rooms held at a property with the anticipation that the rooms within the block will be resold or otherwise reserved.
Broadcast Music Inc (BMI)	One of the music licensing organizations that collects fees for the commercial rebroadcast of their copyrighted music.
Brochure	A printed folder describing a tour, package, area (lure brochure), etc. and specifying the conditions of the offering.
Bus	A large highway vehicle for passengers. In the travel industry, the word "bus" is reserved for a vehicle that provides ground transportation for individually ticketed passengers. When used to perform any tour service, the vehicle is called a motorcoach.
Byways	A trade magazine for the motorcoach tour operator, published by the National Bus Trader.
Charter (Boat, Bus, Tour)	To hire the exclusive or partial use of a transportation vehicle for business or pleasure.
Circle Michigan	A statewide organization of tour suppliers (CVB's, Attractions, Hotels, etc.) committed to providing first class service to the motorcoach market through direct sales, marketing, education and networking. www.circlemichigan.com
Claritas, Inc.	Produces the nations leading lifestyle segmentation report. See PRIZM.

Commercial Rate	A special rate agreed upon by a company and a hotel whereby the hotel agrees to provide specified quality rooms at a discounted rate and the company generally agrees to have its employees use the hotels facilities when in the area on company business.
Commission	The amount, generally 10%, that a travel agent receives from a hotel for selling accommodations. Other products sold such as food and beverage may or may not be fully commissionable.
Common Carrier	Anyone or any organization that offers transportation for hire to the public.
Complimentary Room	An occupied guest room for which no charge is made. This may include a room arrangement with a tour group where, in consideration for bringing the tour they will have a "comp" room for the driver and escort.
Condominium	A destination property, located in a resort area. Condominiums are in clusters (Condo complex or Condo Hotel); units may have several bedrooms, but must have a minimum of a bedroom a kitchen and a living room.
Confidentiality (CVB)	1. Section 5(3) MI PA 59 of 84 guarantees that Sales and Use Tax returns from innkeepers, in compliance with the act, will remain confidential and not be disclosed <u>unless necessary to enforce the act</u> as specified in Section 5(4) for delinquency of payments over 90 days. 2. IRS Publication 557 (Jan 95) <i>Tax exempt status for Your Organization</i> , page 13, requires that all 501c organizations must make available, upon demand, public inspection of their form 990's for the previous 3 years as well as their application for recognition of exemption. Also see Inspection.
Continental Breakfast	At a minimum, a beverage (coffee, tea, milk) and rolls or toast. Often includes fruit juice.
Courier	A trade magazine for the professional motorcoach tour operator, published by the National Tour Association (NTA).
Day Rate	A reduced rate granted for the use of a guest room during the daytime, not overnight (e.g. for displays, office, small meetings etc.).

Deposit Reservation	A reservation for which a hotel has received advanced payment for at least one night's lodging. The hotel then is obliged to hold the room regardless of the guests' arrival. Cancellation policies vary for full refunds of deposits (up to 30 days) and are best verified in advance.
Destination	(1) The place to which a traveler is going. (2) In the travel industry: Any city, area or country that can be marketed as a single entity to tourists.
Destination Marketing Organizations (DMOs)	A generic term also used to define Convention & Visitor Bureaus.
<i>Destinations</i>	A trade magazine for motorcoach group tour operators, published by the American Bus Association.
DMA	Designated Market Area. Term used by researchers to define the geographic area containing certain affinity groups. See PRIZM.
DMAI	Destination Marketing Association International (see IACVB). www.destinationmarketing.org
Double	Loosely, any hotel room for two persons; more specifically, a room with a double bed. A room with two smaller beds is a twin.
Double Occupancy Rate	The price per person for a room shared with another person. This is the rate most frequently quoted in tour brochures.
Double Room Rate	The full price of a room for two people.
Escort	(1) A person, usually employed by a tour operator, who accompanies a tour from departure to return as a guide and troubleshooter. (2) A person who performs such functions only at the destinations; the terms <i>host</i> and <i>step-on guide</i> are both used to describe this service.
European Plan (EP)	A hotel rate that includes room charge only. Any meals are extra.
Ex Officio	Literally means "by virtue of office". Some bylaws will extend this status on their board of directors (Mayor, past president, etc.). The term defines the status and, unless otherwise defined, the same power and authority of any other board member.

Fam Tour	Familiarization Tour. A complimentary or reduced rate travel program which is designed to acquaint participants with specific destinations or suppliers and to stimulate the sale of travel; when offered to journalists, the purpose is to cultivate positive media coverage of specific travel products, again, to stimulate sales.
Family Plan	A discount price offered by hotels and resorts to second and successive members of families who travel together.
Fishbowl	A meeting technique: An interchange between an inner circle debating an issue and an outer circle of observers.
For Individual Travel (FIT)	Complete tour packages sold to individuals, generally by Travel Agents. Individuals purchase the pre-arranged tours and are issued coupons which correspond to all components of the tour.
Group Leaders of America (GLAMER)	An organization which holds marketplaces around the country, selling booth space to suppliers (DMOs, hotels, attractions, etc.) and inviting local Group Leaders to attend and plan itineraries for their constituents (Senior Centers, Banks, etc.). These Group Leaders are held in very low regard by professional Tour Operators mainly from an "unfair competition" standpoint.
Guaranteed Payment	A hotel reservation secured by the guest's agreement to pay for the accommodation whether or not it is used (also see Deposit Reservation).
Host	A representative of the tour operator, destination or other tour principal who provides escort service at the destination. The term <i>host-escort</i> is often used as well as <i>step-on guide</i> .
Hotel	A multi-story lodging facility, usually three or more floors, with interior corridors, dining room, lounge, meeting and recreation facilities (e.g. Pool, whirlpool, etc.).
House	A synonym for hotel commonly used within the industry. Examples are: full house, house count, house bank and house charge.
Inn	Like a hotel, with interior corridors and usually one other amenity such as restaurant or pool. Often are historic and may include a continental breakfast.

Inspection	IRS Publication 557, <i>Tax Exempt Status For Your Organization</i> , page 13, requires that any 501c organization submit for public inspection, on demand, a copy of their form 990 for the previous three years. Additionally they must produce a copy of their application for recognition of exemption and their current Michigan <i>Nonprofit Corporation Information Update</i> (C&S 2000). See Confidentiality.
Intermodal Tour	A tour using more than one kind of transportation (e.g. Fly/Drive).
International Association of Convention and Visitors Bureaus (IACVB)	The worldwide professional association of Chief Executive Officers of convention and visitors bureaus. Renamed DMAI – Destination Marketing Association International.
Itinerary	The travel schedule provided, or suggested, to maximize the travel experience of a client.
Lake-to-Lake Bed and Association	The Michigan statewide association of Bed and Breakfast owners. www.laketolake.com
Low Season	That time of year at any given destination when tourist traffic and often rates are at their lowest. See also "Shoulder Season".
Lure Brochure	A generic brochure of an area or attraction, positioning the destination as a desirable travel product.
MEDC	Michigan Economic Development Corporation. The quasi-governmental parent corporation of Travel Michigan. Their focus is the attraction of new business to Michigan as well as business-related assistance.
Michigan Lodging & Tourism Association	The Michigan component of the AH&LA, serves innkeeper members with a variety of personnel, marketing, educational and lobbying services. www.milodging.org
Michigan Travel Commission	A voluntary commission appointed by the governor and comprised of travel professionals to lend guidance and private sector expertise to Travel Michigan.
Michigan Association of Convention & Visitors Bureaus (MACVB)	The state association of Destination Marketing Organizations incorporated under the provisions of MI PA 59, '84, MI PA 263, '74, PA 244 or MI PA 383, '80. Among their activities are education, research, networking and legislative action. www.visitmichigan.org

Michigan Society of Association Executives (MSAE)	The state association of ASAE. www.msae.org
Midwest Travel Writers (MTWA)	The oldest travel writer organization in the country with professional members from 13 states. www.mtwa.org
Modified American Plan (MAP)	A hotel room rate that also includes breakfast and either lunch or dinner.
Motel	An exterior entrance, one or two story lodging facility with limited or no food service facilities.
Motorcoach	A large highway passenger vehicle used to perform any travel service other than scheduled transportation for individually ticketed passengers (also see "Bus").
National Motorcoach Network	A national marketing consortium of motorcoach tour operators (see <i>Byways</i>).
National Tour Association (NTA)	A trade association of North American motorcoach tour operators and suppliers. www.ntaonline.com
Net Rate	A wholesale rate to be marked up for eventual resale to the consumer. Net rates are the lowest possible rates offered by a hotel and are not commissionable.
Occupancy	The percentage of available rooms occupied for a given period. It is computed by dividing the number of rooms occupied for the period by the number of rooms available for the same period.
Official Airline Guide (OAG)	Any of several passenger and cargo air service manuals used throughout the world.
Official Domestic Tour Manual (DTM)	An annual publication of <i>Travel Agent Magazine</i> lists tours directed at the group volume market that involve motorcoach transportation. DTM is distributed to Travel Agents, group tour producers abroad and bus companies.
Official Hotel and Resort Guide (OHRG)	A directory that describes and rates hotels, resorts and motor hotels throughout the world.

Off-Season	(1) Those periods or seasons when a supplier's traffic volume or occupancy is not at its heaviest. (2) Those fares or hotel rates that apply during periods that are not the busiest. Also known as "shoulder season".
Online Travel Agencies (OTAs)	Intermediaries who resell travel products (hotel rooms, air, etc.) for a standard commission (generally 30% on hotels). Companies, Orbitz, hotels.com, Expedia, and others.
Ontario Motorcoach Association (OMCA)	The Provincial association of professional motorcoach tour operators. www.omca.com
Option	A tour extension or side trip offered at an extra cost.
Overbooking	(1) The practice of confirming reservations beyond capacity in expectation of cancellation or no-shows. (2) The same occurrence due to error. (3) Any reservation(s) not honored due to lack of space.
Package	The combination of overnight accommodation with other amenities, attractions and/or services. Examples include a simple Modified American Plan, Golf Package, Honeymoon Package or motorcoach group tour to Fly/Drive packages, Caribbean cruises, etc.
Panel	A discussion with a moderator and two or more expert presenters.
Peak	(1) Those periods of seasons when a supplier's traffic or volume is heaviest. (2) Those fares or rates that apply during the busiest periods.
PRIZM	The lifestyle segmentation system of Claritas, Inc. The premise is "birds of the feather flock together". The system classifies every US neighborhood into one of 62 distinct consumer types.
Protected	As in "commissions protected", "agents protected", or "all departures protected": a supplier's or wholesaler's guarantee to pay commissions plus full refunds to clients on prepaid, confirmed bookings, regardless of subsequent cancellation of a tour.
Rack Rate	The official tariff as established and posted by a hotel and charged to the general public.

Receptive Operator	A tour operator or Travel Agent who specializes in services for incoming visitors, from planning and establishing tours to meeting guests at airports and facilitating their transfers to hotels.
Resort	May apply to any type of lodging. Has a vacation atmosphere offering extensive recreational facilities such as golf, tennis, fishing, etc. Rates generally include meals under American or Modified American Plans along with recreation.
RevPar	Revenue per Available Room is an important measure of financial performance of hotels and a measure against competitors in the market and nationally.
Sales Tax (hotel)	The tax a lodging facilities pay on goods sold other than room and telephone resale revenue (food, beverage, banquet room rental, etc.).
Self Drive	A type of tour in which the traveler drives either a private or rental car. See also FIT.
Service Charge	A specified percentage of a hotel bill (usually 15 or 20 percent) assessed against a guest. In return, the guest presumably is relieved of responsibility for tipping.
Shoulder Season	See "Off-Season".
Single	A guest room occupied by one person regardless of capacity.
SMERF	Acronym for a general type of meetings market: Social, Military, Educational, Religious and Fraternal.
Society of American Travel Writers (SATW)	North America's largest association of writers, photographers, editors, broadcasters and public relations representatives whose purpose is to serve the traveling public. Principal among its stated goals are: 'to gain wider acceptance of travel as an essential cultural activity; and to encourage responsible professional standards among travel journalists. www.satw.org
Step-On Guide	See "Escort" and "Host".
Studio	A hotel room with a Murphy bed or couch that converts into a bed, thus having the ability to be used as a parlor or small meeting or display area as well as a sleeping room.

Supplier	The actual producer of a unit of travel merchandise, such as a hotel, attraction, carrier, or sightseeing operator.
Symposium	Experts discuss a particular subject and audience opinions are gathered and discussed.
Tax (Hotel Tax)	A set percentage applied against transient lodging room sales which is levied by and paid to a governmental unit, diluted to pay for specific operational expenses (e.g.. administrative fees, debt retirement on a convention facility), and a portion returned to the local CVB to accomplish its marketing program. A tax is not an assessment as they relate to Michigan CVB's.
Travel Industry Coalition of Michigan (TICOM)	A coalition of Michigan travel professionals from diverse interests with goals to unify and strengthen the Michigan travel industry through government advocacy, public relations, collaboration and educational efforts. www.tourismworksformichigan.org
Travel Michigan	A division of the Michigan Economic Development Corporation; serves as the State's umbrella marketing organization and whose "partners" are the Michigan CVBs and other DMOs.
<i>Tour and Travel News</i>	A trade publication on leisure travel published by CMP Travel Press and circulated throughout North America.
Tour Operator	A professional company whose major business is the creation, marketing, selling and implementation of group tours to individuals, special interest or preformed groups and others.
Tourism	(1) The business of providing and marketing services and facilities for pleasure travelers. (2) The act of participating in pleasure travel: "Tourist".
Transient Lodging	Lodging lasting for a period of less than thirty days and subject to Michigan Use Tax and CVB assessments or taxes.
Travel Agent	The individual who sells travel services, issues tickets and provides other travel services to the traveler at the retail level.

Travel and Tourism Research Association (TTRA)	A professional society of travel industry market research specialists; Michigan is in the nine state CENSTATES chapter. www.ttra.com
Twin	A room for two guests with two single beds.
Twin-Double	A room for two, three or four persons with two double beds. Also called a "double-double".
Use Tax (Hotel)	In Michigan, the 6% tax applied to the transient lodging portion of a hotel bill; this figure, reported and paid not less than quarterly by the hotels is the audit point for CVB's. Use tax includes other elements including: resale of telephone services, lease of tangible personal property, and others.
Unrelated Business Income Tax (UBIT)	Reference IRS Publication 598. Generally, a tax-exempt organization (501c) is granted exemption to engage in the type of activity for which it claims exemption. Gross income of \$1000. or more for the year from an unrelated trade or business must file a tax return (form 990-T) and pay any tax due.
United States Travel Association (USTA)	A member organization whose mission is to increase travel to and within the US. www.ustravel.org
Vacation Rentals	Previously a product of professional managers is now promoted worldwide for individual homeowners through websites like Airbnb.com, HomeAway.com, vrbo.com and others. These private home rentals are not subject to local assessments and compete for transient lodging guests.
Vouchers, Tour	Documents (sometimes called coupons) issued by tour operators to be exchanged for accommodations, meals, sightseeing, and other services.
Wholesaler	A company that usually creates and certainly markets inclusive tours and FITs for sale through Travel Agents. Often used interchangeably with tour operator, but several distinctions are drawn: (1) A wholesaler presumably sells nothing at retail; a tour operator often does both; (2) A wholesaler does not always create its own products; a tour operator virtually always does; (3) A wholesaler is less inclined than a tour operator to perform local services

MICHIGAN ASSOCIATION OF CONVENTION & VISITOR BUREAUS, INC.

BYLAWS

ARTICLE I - NAME

The name of the organization shall be the "Michigan Association of Convention & Visitor Bureaus, Inc. hereinafter referred to as the "MACVB".

ARTICLE II - INCORPORATION

The MACVB shall be incorporated under the laws of the State of Michigan.

ARTICLE III - PURPOSE

The MACVB shall be a cooperative association of individual Convention and Visitor Bureaus, who share broad based local community support and whose primary focus is the promotion of their respective areas as convention, group meetings and/or tourist destinations.

The purpose of the MACVB shall be to provide a vehicle for education, the exchange of ideas, opinions and experience through discussion, study and personal contact. The MACVB will engage in marketing activities as economic and legislative conditions warrant.

ARTICLE IV - MEMBERSHIP

SECTION 1. - ELIGIBILITY

Any Michigan Convention and Visitor Bureau, hereinafter referred to as "CVB", receiving funds under the provisions of Public Act 59 of 1984, Public Act 263 of 1974, Public Act 244 of 1989, or Public Act 383 of 1980, is eligible for Membership upon completion of an application and approval of the Board of Directors. The Membership will be for the not for profit CVB and not for any of its parent or sub corporations.

SECTION 2. - CLASSIFICATION

A. Member

This classification shall be extended to any Michigan CVB who meets the definition of Article IV, Section 1 and who pays an annual fee to the MACVB in the amount which the Board of Directors shall decide. The principal paid executive of the Member will be the "Member Representative" of their organization in the MACVB and shall be eligible to participate in all programs offered as well as vote in the elections of the MACVB.

B. Honorary Member

This non-voting classification may be extended to individuals by

the MACVB Board of Directors, as it shall decide. Individuals thus extended this membership classification may attend all meetings of the MACVB and serve on all committees, however, they are not eligible for election to the Board of Directors.

C. Professional Staff Member

This classification shall be extended to the paid staff of a Member, other than the principal paid executive, who pays an annual fee in the amount which the Board of Directors shall decide. Individuals thus extended this membership classification may attend the meetings of the MACVB, serve on all Committees and be eligible for election to the Board of Directors.

SECTION 3. - TERMINATION/SUSPENSION

A. Any member in default of payment of annual dues shall be suspended from all privileges of membership and, if after notice, such default is not remedied within a period of thirty (30) days, membership status shall be terminated.

B. Any Member who ceases to meet the criteria as defined in Article IV, Section 1.

C. Any Member incorporated under the provisions of public act 59 of 1984 certified as not in compliance with section 6 of the act, shall be suspended from Membership until such a time as the legal compliance is satisfied.

D. Any Member who is charged with violation of any provision of Article XI of these Bylaws shall be suspended and membership shall be terminated if found guilty by the Board of Directors.

ARTICLE V - BOARD OF DIRECTORS

SECTION 1 - HOW CONSTITUTED

The Governance of the MACVB, the direction of its activities and the control of its property shall be vested in a seven (7) member Board of Directors. Board members shall be elected from the Member and Professional Staff categories. Not more than one (1) representative per CVB may serve on the Board of Directors at any one time.

SECTION 2 - TERM OF OFFICE

A. The term of office shall be three (3) years with a maximum of two (2) consecutive terms after which there must be a minimum of one (1) year absence before again becoming eligible for election or appointment.

B. In the event of a vacancy, the Board shall appoint a Member or Professional Staff Member to fill the position until the next election in accordance with Section 7(C).

C. The terms of office shall be from January 1 to December 31.

SECTION 3 - DUTIES AND RESPONSIBILITIES

Directors shall serve in accordance with and subject to these Bylaws. The Board shall determine all policies under which the MACVB is to be operated and shall have the general charge, supervision and control of the affairs, staff, funds and property of the MACVB.

SECTION 4 - MEETINGS

The Board of Directors shall convene an Annual Meeting of the membership and shall meet thereafter as it may determine. Notices of all meetings of the Board of Directors shall be sent either electronically or by the United State postal service to all members of the MACVB not less than ten (10) nor more than sixty (60) days in advance.

SECTION 5 - QUORUM

A Quorum of the Board of Directors shall be attained when more than one half (1/2) of the members convene at any meeting.

SECTION 6 - COMPENSATION

Directors shall not receive any stated salaries or other compensation for their services on the board of the MACVB including, but not limited to, attendance at any regular or special meetings. Nothing herein contained shall be construed to preclude any director from serving the MACVB in any other capacity and receiving compensation therefore.

SECTION 7 - ELECTION

- A. The Nominations Committee shall be appointed by October 1 to communicate to all Members and Professional Staff Members the available Board positions in the ensuing election and to create a list of candidates prior to November 1. This initial list will be distributed to all Members and Professional Staff Members the first business day after November 1 to solicit any additional candidates for the slate with a November 30 deadline.
- B. The ballots shall be mailed to each member on the first business day after November 30 with a return deadline to a neutral third party of December 20. The ballots shall be tabulated and the report of those members elected shall be immediately announced by the Secretary of the Board to the membership.
- C. Nominations to seat the first Board of Directors will be: Three (3) for three (3) year terms, two (2) for two (2) year terms and two (2) for a one (1) year term. Subsequent elections will be for three (3) year terms unless it is to fill the unexpired term of a resigned Director.

SECTION 8 - OFFICERS AND TERMS

- A. The Officers shall be the President, Vice President, Secretary and Treasurer elected from and by the Board for one (1) year terms. No Officer may serve in the same office for more than two (2) full consecutive terms.
- B. The Officers shall be empowered to act on the affairs of the MACVB between regular meetings and shall report all action to the Board of Directors at its next regularly scheduled meeting.
- C. In the event of a vacancy of any office, it shall be filled by a Director by a majority vote of the Board of Directors at its next meeting following such vacancy.
- D. Officers shall serve from January 1 to December 31.

SECTION 9 - RESIGNATION/REMOVAL OF OFFICERS

An officer may resign from office by submitting a resignation in writing to the Board of Directors. Any Officer shall be removed from office by a three quarters (3/4) vote of the Board of Directors. In the event of an officer's resignation or removal, such vacancy shall be filled in accordance with Section 8 of this article.

SECTION 10 - PRESIDENT

The President shall serve as the Chief Elected Officer of the MACVB and shall preside at all meetings of The Board of Directors and Officers. The President shall determine all Committees and select their Chairmen. The President shall not serve as Chairman of any standing committees.

A. The President, with the advice and consent of the Board of Directors, shall be responsible for the hiring, discharging, directing and supervising of the Executive Director of the MACVB.

B. The President shall have the authority to make purchases and otherwise commit the MACVB in its normal operation and may sign contracts and other instruments of the MACVB when authorized to do so by the Board and within the approved budget. The President shall be the spokesman of the MACVB. The authority of this subsection is not privileged and is subject to the provisions of Article VI, Section 1.

SECTION 11 - VICE PRESIDENT

The Vice President shall perform such duties as the Board or President may assign. He/she shall exercise the powers and authority of the President in his/her absence to preside at the meetings of the Board of Directors and shall be a member of the Communications and Nominations Committees.

SECTION 12 - SECRETARY

The Secretary shall perform such duties as the Board or President may assign and shall exercise the powers and authority of the Vice President in his/her absence. He/she shall ensure and attest to the accurate recordings of any and all meetings of the Board of Directors. He/she shall ensure that proper notices for all meetings are prepared and distributed, shall act as the Parliamentarian at all meetings and shall be a member of the Bylaws Committee.

SECTION 13 - TREASURER

The Treasurer shall have general supervision of the financial affairs of the MACVB. He/she shall have custody of the records and funds of the MACVB and be responsible for their safekeeping and disbursement in accordance with procedures as authorized by the Board of Directors. He/she shall be responsible for the quarterly financial report made to the Board of Directors, the preparation of the Annual Budget and shall be a member of the Finance Committee.

ARTICLE VI - EXECUTIVE DIRECTOR/STAFF

MACVB may engage the services of an Executive Director and Staff upon determination by the Board of Directors that it is in the best interests of and necessary to conduct the activities of the MACVB.

SECTION 1. - EXECUTIVE DIRECTOR

The Executive Director shall be the principal paid executive of the MACVB and shall be employed by the Board of Directors on such terms and for such compensation as may be determined. He/she shall have complete responsibility for the operation of the MACVB in the pursuit of its purposes and assume the responsibilities detailed in Article V, Section 10(B).

He/she shall keep the accounts of the MACVB and render a quarterly financial report and an Annual Budget to the Treasurer for deliberation. He/she shall serve as an ex-officio/ non-voting member of the Board of Directors and all Committees and keep the minutes of all meetings for submission to the Secretary, conduct the correspondence of the MACVB and other such duties as the Board of Directors may determine.

SECTION 2 - STAFF

The Executive Director or President, with the approval of the Board of Directors, shall employ such personnel as may be required to conduct the activities of the MACVB.

ARTICLE VII - FINANCES

SECTION 1 - FUNDS

All monies paid to the MACVB shall be deposited in such banks, trust companies or other depositories as the Board of Directors may select. Upon approval of the Budget, the Executive Director and/or any of the officers are authorized to make disbursements on accounts and expenses provided for in the Budget without additional approval.

SECTION 2 - FISCAL YEAR

The Fiscal Year of the MACVB shall be January 1 to December 31 inclusive.

SECTION 3 - BUDGET

The Finance Committee along with the President or Executive Director shall draft a proposed budget to be submitted to the Board of Directors prior to the Annual Meeting. The Board shall review, amend if necessary and approve the budget.

SECTION 4 - BONDING

Any such Officers and Staff of the MACVB as the Board of Directors may designate shall be bonded by a sufficient fidelity bond in the amount set by the Board of Directors and paid for by the MACVB.

ARTICLE VIII - INDEMNIFICATION

This Corporation shall indemnify any Officers and any Directors and the MACVB staff to the fullest extent permitted by Michigan Law against all judgments, payments, in settlement, fines and other reasonable costs and expenses (including attorney fees) incurred by such Officer or by such Director in the connection with the defense of any action, suit or proceedings, which is brought or is threatened in which such a person is a part or otherwise involved because he or she was or is a Director or Officer of the MACVB. This right of indemnification shall continue as to a person who ceases to be a Director or Officer and shall inure to the benefit of the heirs, executors and administrators of that person.

ARTICLE IX - AMENDMENTS

These Bylaws may be amended at any regular meeting of the Board of Directors only by action initiated by a majority of the Directors present and shall become effective when approved by a majority of the Members based on one (1) vote per Member CVB.

ARTICLE X - DISSOLUTION

The MACVB shall use its funds only to accomplish the objectives and purposes specified in these Bylaws, and no part of said funds shall inure or be distributed to the Members of the MACVB. Upon dissolution

of the MACVB, any assets remaining shall be distributed to one or more organized and qualified marketing, business or educational organizations to be selected by the Board of Directors as defined in IRS Section 501(c).

ARTICLE XI - ANTI-TRUST

MACVB members shall not, at any time, discuss any actions to eliminate, restrict or govern competition among members. Among subjects never to be discussed are room rates, surcharges, conditions, terms and refusing to deal with a particular supplier or class of suppliers. Agreements among MACVB members relating to any of these subjects for the purpose of a common course of business conduct are per se violations of the anti-trust laws and shall be subject to suspension or termination of membership in the MACVB as provided in Article IV, Section 3(D).

ARTICLE XII - PROMOTIONAL MATERIALS

Logos and other copyrighted promotional materials registered to the MACVB shall be the property of the MACVB and not of its Members. Members are encouraged to use such materials in all brochures and collateral materials only upon written authorization. Authorization shall be issued to each MACVB Member upon receipt of the Member's Annual Dues.

ARTICLE XIII - COMMITTEES

The following shall be the standing committees of the MACVB. The chairman shall be appointed under the provisions of Article V, Section 10. Other task-oriented committees shall be named as the President and the Board may decide.

SECTION 1. EDUCATION COMMITTEE

The Education Committee shall consist of not less than five (5) members including not less than one Officer.

SECTION 2. BYLAWS COMMITTEE

The Bylaws Committee shall consist of not less than three (3) members including the current Secretary.

SECTION 3. FINANCE COMMITTEE

The Finance Committee shall consist of not less than three (3) members including the current Treasurer.

SECTION 4. COMMUNICATIONS COMMITTEE

The Communications Committee shall consist of not less than three (3) members including the current Vice President.

SECTION 5. NOMINATIONS COMMITTEE

The Nominations Committee shall consist of four (4) members including the current Vice President.

ARTICLE XIV - MISCELLANEOUS

SECTION 1 - PARLIAMENTARY PROCEDURE

All meetings and parliamentary decisions shall be governed by the current edition of Robert's Rules of Order where they are applicable and consistent with these Bylaws and Michigan Nonprofit Corporation Law.

SECTION 2 - REQUEST FOR INFORMATION

Members of the MACVB shall cooperate in responding to the MACVB's reasonable requests for information which would assist in its efforts.

SECTION 3 - NON-DISCRIMINATION

The MACVB shall be an equal employment opportunity employer and shall practice similar non-discrimination in the conduct of the MACVB affairs.

Approved November 1996
Amended January 1998
Amended October 2000
Ratified by membership 2001
Amended September 2004
Amended December 2009
Amended November 2013



Michigan Association of Convention and Visitor Bureaus

The Michigan Association of Convention & Visitors Bureaus is an organization of Convention & Visitor Bureau CEO's whose mission is to serve as the advocate for its members through education and communication, while representing their legislative interests. www.visitmichigan.org

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*The MACVB Membership Directory information is continually updated on the organizational website. Please visit www.visitmichigan.org for updated listings. If you have further questions, you may contact the MACVB office at 231/823-0015 or visitmichigan@gmail.com.

APPENDIX

- A. P.A. 59 of 1984**
- B. Recommended Annual Marketing Report Form**
- C. Current Sanctions for Non-Compliance**
- D. Sample Attorney General Letter**

APPENDIX A

P.A. 59 of Public Acts of 1984

COMMUNITY CONVENTION OR TOURISM MARKETING ACT

Act 395 of 1980

AN ACT relating to the promotion of convention business or tourism in municipalities in this state; to provide for tourism or convention marketing programs in municipalities through nonprofit convention and tourist bureaus; to provide for the imposition and collection of assessments on the owners of transient facilities to support tourism or convention marketing programs; to provide for the disbursement of the assessments; to establish the functions and duties of the department of commerce; and to prescribe remedies and penalties.

History: 1980, Act 395, Imd. Eff. Jan. 7, 1981;—Am. 1984, Act 59, Imd. Eff. Apr. 12, 1984.

The People of the State of Michigan enact:

141.871 Short title.

Sec. 1. This act shall be known and may be cited as the “community convention or tourism marketing act”.

History: 1980, Act 395, Imd. Eff. Jan. 7, 1981;—Am. 1984, Act 59, Imd. Eff. Apr. 12, 1984.

141.872 Definitions.

Sec. 2. As used in this act:

- (a) "Assessment" means the amount levied against an owner of a transient facility within an assessment district, computed by application of the applicable percentage against aggregate room charges with respect to that transient facility during the applicable assessment period.
- (b) "Assessment district" means a municipality or combination of municipalities as described in a marketing program. A combination of municipalities is not required to be contiguous.
- (c) "Assessment revenues" means the money derived from the assessment, including any interest and penalties on the assessment, imposed by this act.
- (d) "Board" means the board of directors elected by the members of a bureau. A majority of the members of a board shall be owners of transient facilities.
- (e) "Bureau" means a nonprofit corporation existing to promote convention business or tourism within this state or a portion of this state.
- (f) "Director" means the president of the Michigan strategic fund.
- (g) "Marketing program" means a program established by a bureau to develop, encourage, solicit, and promote convention business or tourism within this state or a portion of this state within which the bureau operates. The encouragement and promotion of convention business or tourism includes any service, function, or activity, whether or not performed, sponsored, or advertised by a bureau, that intends to attract transient guests to the assessment district. For a bureau described in section 3(8), a marketing program includes a contract with a nonprofit organization formed to promote convention business or tourism that receives funding from a tax levied under 1974 PA 263, MCL 141.861 to 141.867, in a contiguous county to provide for the promotion of convention business or tourism.
- (h) "Marketing program notice" means the notice described in section 3.
- (i) "Municipality" means a county with a population of less than 650,000 or a city, village, or township within a county with a population of less than 650,000.
- (j) "Owner" means the owner of a transient facility to be served by the bureau or, if the transient facility is operated or managed by a person other than the owner, then the operator or manager of that transient facility.
- (k) "Room" means a room or other space provided for sleeping that can be rented independently, including the furnishings and other accessories in the room. Room includes, but is not limited to, a condominium or time-sharing unit that, pursuant to a management agreement, may be used to provide dwelling, lodging, or sleeping quarters for a transient guest.
- (l) "Room charge" means the charge imposed for the use or occupancy of a room, excluding charges for food, beverages, state use tax, telephone service, or like services paid in connection with the charge, and excluding reimbursement of the assessment imposed by this act.
- (m) "Transient facility" means a building or combination of buildings under common ownership, operation, or management that contains 10 or more rooms used in the business of providing dwelling, lodging, or sleeping to transient guests, whether or not membership is required for the use of the rooms. Transient facility does not include a college or school dormitory, a hospital, a nursing home, or a facility owned and operated by an organization qualified for an exemption from federal taxation under section 501(c) of the internal revenue code.
- (n) "Transient guest" means a person who occupies a room in a transient facility for less than 30

Rendered Monday, December 15, 2014 Page 1 Michigan Compiled Laws Complete Through PA 358 of 2014

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consecutive days.

History: 1980, Act 395, Imd. Eff. Jan. 7, 1981;—Am. 1984, Act 59, Imd. Eff. Apr. 12, 1984;—Am. 1993, Act 224, Imd. Eff. Nov. 1, 1993;—Am. 2010, Act 82, Imd. Eff. May 21, 2010.

141.873 Marketing program and assessment district; establishment; marketing program notice; filing; contents; exclusion; excise or other tax; copies of notice; list of owners.

Sec. 3. (1) A bureau that intends to establish a marketing program and assessment district shall file a marketing program notice with the director. The marketing program notice shall state that the bureau proposes to create a marketing program under this act and cause an assessment to be collected from owners of transient facilities within the assessment district to pay the costs of the marketing program.

(2) The marketing program notice shall describe the structure, membership, and activities of the bureau.

(3) The marketing program notice shall describe the marketing program to be implemented by the bureau with the assessment revenues, specify the amount of the assessment proposed to be levied, which, except as provided in this subsection, shall not exceed 5% of the room charges in the applicable payment period, and describe the municipalities comprising the assessment district.

(4) Except as provided in section 10, an area shall not be included in the marketing program notice filed under this act and the assessment district specified in the notice if the area is part of an existing assessment district under this act for which a marketing program is in effect.

(5) If on the date of the mailing of the marketing program notice under this act an excise tax or other tax based on a room charge is not being collected, a municipality included in the marketing program notice shall not be subject to the collection of an excise tax imposed under 1974 PA 263, MCL 141.861 to 141.867, or another tax based on a room charge.

(6) If a part of a municipality is subject to an assessment under the convention and tourism marketing act, 1980 PA 383, MCL 141.881 to 141.889, that part of the municipality shall not be included in a marketing program notice or assessment district under this act.

(7) Simultaneously with the filing of the marketing program notice with the director, the bureau shall mail a copy of the notice, by registered or certified mail, to each owner of a transient facility located in the assessment district specified in the notice, in care of the respective transient facility. In assembling the list of owners to whom the notices shall be mailed, the bureau shall use any data that is reasonably available to the bureau.

History: 1980, Act 395, Imd. Eff. Jan. 7, 1981;—Am. 1984, Act 59, Imd. Eff. Apr. 12, 1984;—Am. 1989, Act 245, Imd. Eff. Dec. 21, 1989;—Am. 1991, Act 92, Imd. Eff. July 31, 1991;—Am. 1993, Act 224, Imd. Eff. Nov. 1, 1993;—Am. 1996, Act 589, Imd. Eff. Jan. 21, 1997;—Am. 2010, Act 283, Imd. Eff. Dec. 16, 2010.

141.873a Marketing program; approval or disapproval; referendum; effective date of marketing program and assessment; filing and serving another marketing program notice.

Sec. 3a. (1) Within 30 days after a marketing program notice is filed, the director shall approve or disapprove the marketing program. The director shall not disapprove a marketing program unless the program violates this act.

(2) Within 40 days after approval of a marketing program, the director shall require a written referendum to be held by mail or in person, as determined by the director, among all owners of transient facilities in each municipality in the proposed assessment district. For the purpose of the referendum, each owner shall have 1 vote for each room in an owner's transient facility.

(3) The marketing program and assessment set forth in the notice shall become effective on the first day of the month that is more than 30 days after certification by the director that the program was approved by a majority of the votes actually cast in each municipality in the assessment district. If a majority of the votes actually cast in any municipality counted separately is not in favor of the program and assessment, the program and assessment shall not go into effect in the assessment district. However, for purposes of tabulating the votes in the referendum for a marketing program proposed on or after April 12, 1984, each municipality in the proposed assessment district requiring a majority of votes cast in favor of the proposed assessment district shall be defined in the marketing program notice required under section 3. A bureau may file and serve another marketing program notice not less than 60 days after certification of the results of a referendum.

History: Add. 1984, Act 59, Imd. Eff. Apr. 12, 1984;—Am. 1993, Act 224, Imd. Eff. Nov. 1, 1993.

141.874 Marketing program; contents.

Sec. 4. A marketing program may include all or any of the following:

(a) Provisions for establishing and paying the costs of advertising, marketing, and promotional programs to encourage convention business or tourism in the assessment district.

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(b) Provisions for assisting transient facilities within the assessment district in promoting convention business or tourism.

(c) Provisions for the acquisition of personal property considered appropriate by the bureau in furtherance of the purposes of the marketing program.

- (d) Provisions for the hiring of and payment for personnel employed by the bureau to implement the marketing program.
- (e) Provisions for contracting with organizations, agencies, or persons for carrying out activities in furtherance of the purposes of the marketing program.
- (f) Programs for establishing and paying the costs of research designed to encourage convention business or tourism in the assessment district.
- (g) Provisions for incurring any other expense or cost which the board, in the exercise of its reasonable business judgment, considers reasonably related to promotion of the convention business or tourism within the assessment district.
- (h) Procedures for election of the board.

History: 1980, Act 395, Imd. Eff. Jan. 7, 1981;—Am. 1984, Act 59, Imd. Eff. Apr. 12, 1984.

141.875 Transient facility; assessment; computation; payment; reimbursement; agreement to accept payment of assessments; forwarding money; withholding portion of assessment for administrative costs; verification and audit of owner's assessment payments; state use tax returns; unpaid assessments; interest and delinquency charges; suit to collect; assessments as trust funds; notice.

Sec. 5. (1) Upon the effective date of an assessment under section 3a, each owner of a transient facility in the assessment district shall be liable for payment of the assessment, computed by multiplying the percentage set forth in the marketing program notice by the aggregate room charges imposed by the transient facility during a calendar month. The assessment shall be paid by the owner of each transient facility to the bureau or the person designated by the bureau within 30 days after the end of each calendar month, and shall be accompanied by a statement of room charges imposed by the transient facility for that calendar month. This act does not prohibit an owner from reimbursing the transient facility by adding the assessment imposed under this act to room charges payable by transient guests. However, the owner shall disclose that the transient facility has been reimbursed for the assessment imposed under this act on the bill presented to the transient guest.

(2) A bureau or person designated by the bureau may enter into an agreement with a regional tourism marketing organization established under the regional tourism marketing act, 1989 PA 244, MCL 141.891 to 141.900, to accept from owners subject to an assessment under this act the payment of assessments that are levied by a regional marketing organization under section 6 of the regional tourism marketing act, 1989 PA 244, MCL 141.896. A bureau or the person designated by the bureau shall forward the money received in payment of an assessment levied by a regional marketing organization under the regional tourism marketing act, 1989 PA 244, MCL 141.891 to 141.900, to the person designated by the regional marketing organization to receive the payment of assessments under section 6 of the regional tourism marketing act, 1989 PA 244, MCL 141.896. The bureau may withhold the portion of an assessment received on behalf of a regional marketing organization under this subsection and section 6 of the regional tourism marketing act, 1989 PA 244, MCL 141.896, as agreed upon between the bureau and the regional marketing organization to reimburse the bureau or person designated by the bureau for reasonable administrative costs to receive and forward assessments due a regional marketing organization.

(3) Within 30 days after the close of each calendar quarter, each owner within an assessment district shall forward to the independent certified public accountants who audit the financial statements of the bureau, copies of the state use tax returns of the transient facility for the preceding quarter. The copies of the state use tax returns shall be used solely by the certified public accountants to verify and audit the payment by the owner of the assessments under this act, and shall not be disclosed to the bureau except as the director determines necessary to enforce this act.

(4) Interest shall be paid by an owner to the bureau on any assessments not paid within the time required under this act. The interest shall accrue at the rate of 1.5% per month. Owners delinquent for more than 90 days in paying assessments, in addition to the 1.5% interest, shall pay a delinquency charge of 1.5% per month or fraction of a month on the amount of the delinquent assessments and shall pay the costs of reasonable attorney fees and court costs incurred in collecting the delinquent assessments. In addition to any other remedy provided by law, the bureau may sue in its own name to collect the assessments, interest, and

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delinquency charges. All assessments collected but not paid to a bureau by an owner of a transient facility within an assessment district shall be considered trust funds and shall be remitted to the bureau as required by this section.

(5) The owner of a transient facility shall not be liable for payment of an assessment until a marketing program notice has been mailed to the transient facility of the owner pursuant to section 3.

History: 1980, Act 395, Imd. Eff. Jan. 7, 1981;—Am. 1984, Act 59, Imd. Eff. Apr. 12, 1984;—Am. 1989, Act 245, Imd. Eff. Dec. 21, 1989;—Am. 2014, Act 273, Eff. Sept. 30, 2014.

141.876 Assessment revenues not state funds; deposit and disbursement; financial statements; audit; report; copies; failure of bureau to provide copies; penalty.

Sec. 6. (1) The assessment revenues collected pursuant to this act shall not be state funds. The money shall be deposited in a bank or other depository in this state, in the name of the bureau, and shall be disbursed only for the expenses properly incurred by the bureau with respect to the marketing programs developed by the bureau under this act.

(2) The financial statements of the bureau shall be audited at least annually by a certified public accountant. A copy of the audited financial statements shall be mailed to each owner not more than 150 days after the close of the bureau's fiscal year. The financial statements shall include a statement of all assessment revenues received by the bureau during the fiscal year in question and include the amount of compensation for the chief executive director of the bureau and shall be accompanied by a detailed report, certified as correct by the chief operating officer of the bureau, describing the marketing programs implemented or, to the extent then known, to be implemented by the bureau.

(3) Copies of the audited financial statements and the certified report shall simultaneously be mailed to the director, who shall make it available to the public on the internet. If the bureau fails to submit copies of the audited financial statements and the certified report to the director as provided in this subsection, the director or his or her designee shall mail a demand letter to the bureau requesting copies of the audited financial statements and the certified report with a copy of that demand letter forwarded to the attorney general. If the director or his or her designee does not receive copies of the audited financial statement and the certified report described in this subsection within 90 days of the demand letter, upon notice by the director or the attorney general, for the period of noncompliance with this subsection, the bureau shall not expend any portion of the assessment collected during the period of noncompliance with this subsection. The attorney general may assist the director in enforcing the provisions of this act.

(4) If the bureau fails to provide the copies of the audited financial statement and the certified report within 90 days of the demand letter as provided in subsection (3), the bureau is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$10,000.00 and, in addition, the attorney general may bring action to dissolve the bureau as provided by law.

History: 1980, Act 395, Imd. Eff. Jan. 7, 1981;—Am. 2010, Act 283, Imd. Eff. Dec. 16, 2010.

141.877 Repealed. 1984, Act 59, Imd. Eff. Apr. 12, 1984.

Compiler's note: The repealed section pertained to an advisory committee.

141.878 Discontinuance of assessment; referendum; proposing new marketing program notice; failure to adopt resolution discontinuing assessment; further referendum.

Sec. 8. (1) At any time 2 years or more after the effective date of an assessment, and upon the written request of owners of transient facilities located within an assessment district representing not less than 40% of the total number of owners or not less than 40% of the total number of rooms in all of the transient facilities in the assessment district, the bureau shall conduct a referendum on whether the assessment shall be discontinued. The bureau shall cause a written referendum to be held by mail or in person, as the bureau chooses, among all owners of transient facilities in the petitioning assessment district within 60 days of the receipt of the requests. For the purposes of the referendum, each owner shall have 1 vote for each room in each of the owner's transient facilities within the petitioning assessment district. If a majority of the votes actually cast at the referendum for the assessment district supports discontinuance of the assessment, the assessment shall be discontinued for that area or county on the first day of the month following expiration of 60 days after the certification of the results of the referendum by the bureau.

(2) Passage of a resolution discontinuing the assessment shall not prevent a bureau from proposing a new marketing program notice during or after the 60-day period, in which case the procedures set forth in section 3 shall be followed.

(3) If a referendum is conducted under subsection (1) and if a resolution to discontinue the assessment is not adopted, a further referendum on the discontinuation of that assessment for the assessment district for

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which the referendum was held shall not be held for a period of 2 years.

History: 1980, Act 395, Imd. Eff. Jan. 7, 1981;—Am. 1984, Act 59, Imd. Eff. Apr. 12, 1984.

141.879 Building or combination of buildings with less than 10 rooms; agreement to be subject to assessment; participation in marketing program; duration of assessment.

Sec. 9. (1) The owner of a building or combination of buildings, which is within an assessment district, has less than 10 rooms, and otherwise meets the definition of transient facility, may agree in writing to be subject to the assessment. If an owner agrees to be subject to the assessment, the building or combination of buildings

shall be considered a transient facility for the purposes of this act. The owner and transient facility shall participate in the marketing program for that assessment district.

(2) A building or combination of buildings which becomes a transient facility under this section shall remain subject to the assessment unless the assessment is discontinued as provided in section 8.

History: Add. 1984, Act 59, Imd. Eff. Apr. 12, 1984.

141.880 Existing assessment district and marketing program.

Sec. 10. An assessment district and marketing program under this act which is in effect before the effective date of this section shall remain in effect for 365 days after the effective date of this section or until a new marketing program and assessment district, which includes any portion of an existing assessment district and which is established under this act, becomes effective, whichever is sooner.

History: Add. 1984, Act 59, Imd. Eff. Apr. 12, 1984.

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APPENDIX B

Recommended Annual Marketing Report Form

CVB ANNUAL MARKETING REPORT
For the Fiscal Year ending: _____, 20__

CVB Name:

Person completing report:

Title:

Corporate Officers:

President :
Vice President :
Secretary :
Treasurer :

Bureau Mission Statement:

Bureau Marketing Goals:

Brand Personality/Attributes:

Target Customer Groups (vertical and affinity markets, i.e., golf, ski, motorcoach, sports teams, etc.):

Promotional Methods (advertising, trade shows, PR, FAM tours, etc):

Target Geographic Markets:

Marketing Results (including any research methods):

CVB Sponsored/Co-sponsored Events:

Staff and Outside Professionals utilized in the Marketing Effort:

Marketing Programs to be implemented:

I CERTIFY THAT THIS REPORT IS CORRECT:

_____ date _____
CHIEF OPERATING OFFICER

ENCLOSURES:

Annual Audit – Required by PA 59 of 1984

Current brochures or travel planner.

Other attachments:

-
-
-
-

MACVB JUNE, 12

APPENDIX C

Current Sanctions for Non-Compliance

Dear:

I want to remind those organizations, which currently operate an assessment district established under Public Act 59 of 1984, that you are required to file copies of your annual audited financial statements and a certified marketing report with the Travel Michigan office within 150 days of the end of your fiscal year.

Certain sanctions can be enforced by Travel Michigan against non-compliant assessment districts, such as exclusion from any printed publications sponsored by Travel Michigan and any hyperlink from Travel Michigan's web site. Also, the Attorney General's office has advised, although P.A. 59 does not in itself contain any specific enforcement mechanism that, if an annual audit report is not submitted, it is possible to seek enforcement by way of a *quo warranto* action. If granted, a *quo warranto* action could result in the court revoking a corporation's charter and imposing monetary penalties.

Over the next few weeks, Travel Michigan staff will be mailing certified letters to all assessment districts that are not in compliance with P.A. 59, giving them 10 days to submit any delinquent reports. If you have any questions on this subject, please contact Dave Lorenz at (517) 335-0007.

Sincerely,

Travel Michigan

Dd

APPENDIX D

Sample Attorney General Letter

Dear Sir or Madam:

Travel Michigan has referred your organization to the Attorney General for enforcement since you failed to file certain audited financial statements and certified marketing reports with Travel Michigan as required by the Community Convention or Tourism Marketing Act, 1980 PA 395, as amended, MCL 141.871 *et seq* (the "Act").

As one of the tourism marketing organizations established under the Act, you are required to have your financial statement audited by a certified public accountant at least annually. MCL 141.876(2). The financial statement:

shall include a statement of all assessment revenues received by the bureau during the fiscal year in question and shall be accompanied by a detailed report, certified as correct by the chief operating officer of the bureau, describing the marketing programs implemented or, to the extent then known, to be implemented by the bureau. MCL 141.876(2).

A copy of the audited financial statement and the certified marketing report must be provided annually to the State of Michigan. MCL 141.876(3). The Governor has designated Travel Michigan to receive the financial statements and certified reports.

Travel Michigan, however, advises that your organization has failed to file audited financial statements and certified marketing reports for 1998 and 1999.

While the Act does not contain any specific enforcement mechanism, it does impose a clear legal duty upon tourism marketing organizations to obtain an audited financial statement and prepare a marketing report. The Attorney General may seek enforcement of these legal duties by way of a *quo warranto* action.

Quo warranto actions are brought by the Attorney General "when the facts clearly warrant the bringing of that action." MCL 600.4501. *Quo warranto* may be invoked against a corporation, which has "by any misuse, nonuse, or surrender, forfeited its corporate rights, privileges and franchises." MCL 600.4521. By court rule, the Attorney General is authorized to bring a *quo warranto* action against "a corporation that is in violation of a provision of the act or acts creating, offering, or renewing the corporation." MCR 3.306(B)(1)(d).

In a successful *quo warranto* action, the court has the authority to revoke the corporation's charter and dissolve the corporation and may impose a fine of up to \$10,000. MCL 600.4521. If a fine is imposed, "the court may cause the fine and the costs of the action to be collected by execution against the persons claiming to be a corporation, or against the directors or other officers of any such corporation." MCL 600.4525.

The statutory requirement to have audited financial statements and marketing reports prepared should not be taken lightly. The assessments made on transient facilities by your organization is collected under force of State law. These assessments must be handled with due care. It is only through proper financial reporting that the public and your members can be assured that your assessments have been properly collected, held, and spent.

This is the last request that you comply with the Act voluntarily. If you do not file the audited financial statements and marketing reports within 30 days, we will initiate the preparation of a *quo warranto* action against your organization.

Very truly yours,
Michigan Attorney General