

# HOUSE BILL No. 5342

February 19, 2014, Introduced by Rep. Lyons and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled  
"Use tax act,"  
by amending section 4d (MCL 205.94d), as amended by 2008 PA 439.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 4d. (1) The following are exempt from the tax under this  
2 act:

3           (a) ~~Sales of drugs for human use that can only be legally~~  
4 ~~dispensed by prescription~~ **THE SALE OF A PRESCRIPTION DRUG FOR HUMAN**  
5 **USE, AN OVER-THE-COUNTER DRUG FOR HUMAN USE PURSUANT TO A**  
6 **PRESCRIPTION,** or food or food ingredients, except prepared food  
7 intended for immediate human consumption. **AS USED IN THIS**  
8 **SUBDIVISION, "PRESCRIPTION" AND "PRESCRIPTION DRUG" MEAN THOSE**  
9 **TERMS AS DEFINED IN SECTION 17708 OF THE PUBLIC HEALTH CODE, 1978**  
10 **PA 368, MCL 333.17708.**

1           (b) The deposit on a returnable container for a beverage or  
2 the deposit on a carton or case that is used for returnable  
3 containers.

4           (c) Food or tangible personal property purchased under the  
5 federal food stamp program or meals sold by a person exempt from  
6 the tax under this act eligible to be purchased under the federal  
7 food stamp program.

8           (d) Fruit or vegetable seeds and fruit or vegetable plants if  
9 purchased at a place of business authorized to accept food stamps  
10 by the food and nutrition service of the United States department  
11 of agriculture or a place of business that has made a complete and  
12 proper application for authorization to accept food stamps but has  
13 been denied authorization and provides proof of denial to the  
14 department of treasury.

15           (e) Live animals purchased with the intent to be slaughtered  
16 for human consumption.

17           (2) Food or drink heated or cooled mechanically, electrically,  
18 or by other artificial means to an average temperature above 75  
19 degrees Fahrenheit or below 65 degrees Fahrenheit before sale and  
20 sold from a vending machine, except milk, nonalcoholic beverages in  
21 a sealed container, and fresh fruit, is subject to the tax under  
22 this act. The tax due under this act on the sale of food or drink  
23 from a vending machine selling both taxable items and items exempt  
24 under this subsection shall be calculated under this act after  
25 December 31, 1994 based on 1 of the following as determined by the  
26 taxpayer:

27           (a) Actual gross proceeds from sales at retail.

1 (b) Forty-five percent of proceeds from the sale of items  
2 subject to tax under this act or exempt from the tax levied under  
3 this act, other than from the sale of carbonated beverages.

4 (3) "Food and food ingredients" means substances, whether in  
5 liquid, concentrated, solid, frozen, dried, or dehydrated form,  
6 that are sold for ingestion or chewing by humans and are consumed  
7 for their taste or nutritional value. Food and food ingredients do  
8 not include alcoholic beverages and tobacco.

9 (4) "Prepared food" means the following:

10 (a) Food sold in a heated state or that is heated by the  
11 seller.

12 (b) Two or more food ingredients mixed or combined by the  
13 seller for sale as a single item.

14 (c) Food sold with eating utensils provided by the seller,  
15 including knives, forks, spoons, glasses, cups, napkins, straws, or  
16 plates, but not including a container or packaging used to  
17 transport the food.

18 (5) Prepared food does not include the following:

19 (a) Food that is only cut, repackaged, or pasteurized by the  
20 seller.

21 (b) Raw eggs, fish, meat, poultry, and foods containing those  
22 raw items requiring cooking by the consumer in recommendations  
23 contained in section 3-401.11 of part 3-4 of chapter 3 of the 2001  
24 food code published by the food and drug administration of the  
25 public health service of the department of health and human  
26 services, to prevent foodborne illness.

27 (c) Food sold in an unheated state by weight or volume as a

1 single item, without eating utensils.

2 (d) Bakery items, including bread, rolls, buns, biscuits,  
3 bagels, croissants, pastries, doughnuts, danish, cakes, tortes,  
4 pies, tarts, muffins, bars, cookies, and tortillas, sold without  
5 eating utensils.

6 (6) "Prepared food intended for immediate consumption" means  
7 prepared food.