

HOUSE BILL No. 5928

September 22, 2016, Introduced by Rep. Graves and referred to the Committee on Commerce and Trade.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 2 (MCL 205.92), as amended by 2016 PA 7.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Person" means an individual, firm, partnership, joint
3 venture, association, social club, fraternal organization,
4 municipal or private corporation whether or not organized for
5 profit, company, limited liability company, estate, trust,
6 receiver, trustee, syndicate, the United States, this state,
7 county, or any other group or combination acting as a unit, and the
8 plural as well as the singular number, unless the intention to give
9 a more limited meaning is disclosed by the context.

10 (b) "Use" means the exercise of a right or power over tangible
11 personal property incident to the ownership of that property

1 including transfer of the property in a transaction where
2 possession is given. Converting tangible personal property acquired
3 for a use exempt from the tax levied under this act to a use not
4 exempt from the tax levied under this act is a taxable use.

5 (c) "Storage" means a keeping or retention of property in this
6 state for any purpose after the property loses its interstate
7 character.

8 (d) "Seller" means the person from whom a purchase is made and
9 includes every person selling tangible personal property or
10 services for storage, use, or other consumption in this state. If,
11 in the opinion of the department, it is necessary for the efficient
12 administration of this act to regard a salesperson, representative,
13 peddler, or canvasser as the agent of a dealer, distributor,
14 supervisor, or employer under whom the person operates or from whom
15 he or she obtains tangible personal property or services sold by
16 him or her for storage, use, or other consumption in this state,
17 irrespective of whether or not he or she is making the sales on his
18 or her own behalf or on behalf of the dealer, distributor,
19 supervisor, or employer, the department may so consider him or her,
20 and may consider the dealer, distributor, supervisor, or employer
21 as the seller for the purpose of this act.

22 (e) "Purchase" means to acquire for a consideration, whether
23 the acquisition is effected by a transfer of title, of possession,
24 or of both, or a license to use or consume; whether the transfer is
25 absolute or conditional, and by whatever means the transfer is
26 effected; and whether consideration is a price or rental in money,
27 or by way of exchange or barter. Purchase includes converting

1 tangible personal property acquired for a use exempt from the tax
2 levied under this act to a use not exempt from the tax levied under
3 this act.

4 (f) "Purchase price" or "price" means the total amount of
5 consideration paid by the consumer to the seller, including cash,
6 credit, property, and services, for which tangible personal
7 property or services are sold, leased, or rented, valued in money,
8 whether received in money or otherwise, and applies to the measure
9 subject to use tax. Purchase price includes the following
10 subparagraphs (i) through (vii) and excludes subparagraphs (viii)
11 through ~~(xii)~~ (xiii) :

12 (i) Seller's cost of the property sold.

13 (ii) Cost of materials used, labor or service cost, interest,
14 losses, costs of transportation to the seller, taxes imposed on the
15 seller other than taxes imposed by this act, and any other expense
16 of the seller.

17 (iii) Charges by the seller for any services necessary to
18 complete the sale, other than the following:

19 (A) An amount received or billed by the taxpayer for
20 remittance to the employee as a gratuity or tip, if the gratuity or
21 tip is separately identified and itemized on the guest check or
22 billed to the customer.

23 (B) Labor or service charges involved in maintenance and
24 repair work on tangible personal property of others if separately
25 itemized.

26 (iv) Delivery charges incurred or to be incurred before the
27 completion of the transfer of ownership of tangible personal

1 property subject to the tax levied under this act from the seller
2 to the purchaser.

3 (v) Installation charges incurred or to be incurred before the
4 completion of the transfer of ownership of tangible personal
5 property from the seller to the purchaser.

6 (vi) Except as otherwise provided in subparagraphs (xi) and
7 (xii), credit for any trade-in.

8 (vii) Except as otherwise provided in subparagraph (x),
9 consideration received by the seller from third parties if all of
10 the following conditions are met:

11 (A) The seller actually receives consideration from a party
12 other than the purchaser and the consideration is directly related
13 to a price reduction or discount on the sale.

14 (B) The seller has an obligation to pass the price reduction
15 or discount through to the purchaser.

16 (C) The amount of the consideration attributable to the sale
17 is fixed and determinable by the seller at the time of the sale of
18 the item to the purchaser.

19 (D) One of the following criteria is met:

20 (I) The purchaser presents a coupon, certificate, or other
21 documentation to the seller to claim a price reduction or discount
22 where the coupon, certificate, or documentation is authorized,
23 distributed, or granted by a third party with the understanding
24 that the third party will reimburse any seller to whom the coupon,
25 certificate, or documentation is presented.

26 (II) The purchaser identifies himself or herself to the seller
27 as a member of a group or organization entitled to a price

1 reduction or discount. A preferred customer card that is available
2 to any patron does not constitute membership in a group or
3 organization.

4 (III) The price reduction or discount is identified as a third
5 party price reduction or discount on the invoice received by the
6 purchaser or on a coupon, certificate, or other documentation
7 presented by the purchaser.

8 (viii) Interest, financing, or carrying charges from credit
9 extended on the sale of personal property or services, if the
10 amount is separately stated on the invoice, bill of sale, or
11 similar document given to the purchaser.

12 (ix) Any taxes legally imposed directly on the consumer that
13 are separately stated on the invoice, bill of sale, or similar
14 document given to the purchaser.

15 (x) Beginning January 1, 2000, employee discounts that are
16 reimbursed by a third party on sales of motor vehicles.

17 (xi) Beginning November 15, 2013, credit for the agreed-upon
18 value of a titled watercraft used as part payment of the purchase
19 price of a new titled watercraft or used titled watercraft
20 purchased from a watercraft dealer if the agreed-upon value is
21 separately stated on the invoice, bill of sale, or similar document
22 given to the purchaser. This subparagraph does not apply to leases
23 or rentals.

24 (xii) Beginning December 15, 2013, credit for the agreed-upon
25 value of a motor vehicle or recreational vehicle used as part
26 payment of the purchase price of a new motor vehicle or used motor
27 vehicle or recreational vehicle purchased from a dealer if the

1 agreed-upon value is separately stated on the invoice, bill of
2 sale, or similar document given to the purchaser. This subparagraph
3 does not apply to leases or rentals. For purposes of this
4 subparagraph, the agreed-upon value of a motor vehicle or
5 recreational vehicle used as part payment shall be limited as
6 follows:

7 (A) Beginning December 15, 2013, subject to sub-subparagraphs

8 (B) and (C), the lesser of the following:

9 (I) \$2,000.00.

10 (II) The agreed-upon value of the motor vehicle or
11 recreational vehicle used as part payment.

12 (B) Beginning January 1, 2015 and each January 1 thereafter,
13 the amount under sub-subparagraph (A) (I) shall be increased by an
14 additional \$500.00 each year.

15 (C) Beginning on January 1, in the year in which the amount
16 under sub-subparagraph (A) (I) exceeds \$14,000.00 and each January 1
17 thereafter, there shall be no limitation on the agreed-upon value
18 of the motor vehicle or recreational vehicle used as part payment.

19 **(xiii) A CORE CHARGE ATTRIBUTABLE TO A RECYCLING FEE, DEPOSIT,**
20 **OR DISPOSAL FEE FOR A MOTOR VEHICLE OR RECREATIONAL VEHICLE PART OR**
21 **BATTERY.**

22 (g) "Consumer" means the person who has purchased tangible
23 personal property or services for storage, use, or other
24 consumption in this state and includes, but is not limited to, 1 or
25 more of the following:

26 (i) A person acquiring tangible personal property if engaged
27 in the business of constructing, altering, repairing, or improving

1 the real estate of others.

2 (ii) A person who has converted tangible personal property or
3 services acquired for storage, use, or consumption in this state
4 that is exempt from the tax levied under this act to storage, use,
5 or consumption in this state that is not exempt from the tax levied
6 under this act.

7 (h) "Business" means all activities engaged in by a person or
8 caused to be engaged in by a person with the object of gain,
9 benefit, or advantage, either direct or indirect.

10 (i) "Department" means the department of treasury.

11 (j) "Tax" includes all taxes, interest, or penalties levied
12 under this act.

13 (k) "Tangible personal property" means personal property that
14 can be seen, weighed, measured, felt, or touched or that is in any
15 other manner perceptible to the senses and includes electricity,
16 water, gas, steam, and prewritten computer software.

17 (l) "Textiles" means goods that are made of or incorporate
18 woven or nonwoven fabric, including, but not limited to, clothing,
19 shoes, hats, gloves, handkerchiefs, curtains, towels, sheets,
20 pillows, pillowcases, tablecloths, napkins, aprons, linens, floor
21 mops, floor mats, and thread. Textiles also include materials used
22 to repair or construct textiles, or other goods used in the rental,
23 sale, or cleaning of textiles.

24 (m) "Interstate motor carrier" means a person who operates or
25 causes to be operated a qualified commercial motor vehicle on a
26 public road or highway in this state and at least 1 other state or
27 Canadian province.

1 (n) "Qualified commercial motor vehicle" means that term as
2 defined in section ~~1(i), (j), and (k)~~ **1 (l), (m), AND (n)** of the
3 motor carrier fuel tax act, 1980 PA 119, MCL 207.211.

4 (o) "Diesel fuel" means that term as defined in section ~~2(p)~~
5 **2 (q)** of the motor fuel tax act, 2000 PA 403, MCL 207.1002.

6 (p) "Sale" means a transaction by which tangible personal
7 property or services are purchased or rented for storage, use, or
8 other consumption in this state.

9 (q) "Convert" means putting a service or tangible personal
10 property acquired for a use exempt from the tax levied under this
11 act at the time of acquisition to a use that is not exempt from the
12 tax levied under this act, whether the use is in whole or in part,
13 or permanent or not permanent. A motor vehicle purchased for resale
14 by a new vehicle dealer licensed under section 248(8)(a) of the
15 Michigan vehicle code, 1949 PA 300, MCL 257.248, and not titled in
16 the name of the dealer shall not be considered to be converted
17 prior to sale or lease by that dealer.

18 (r) "New motor vehicle" means that term as defined in section
19 33a of the Michigan vehicle code, 1949 PA 300, MCL 257.33a.

20 (s) "Recreational vehicle" means that term as defined in
21 section 49a of the Michigan vehicle code, 1949 PA 300, MCL 257.49a.

22 (t) "Dealer" means that term as defined in section 11 of the
23 Michigan vehicle code, 1949 PA 300, MCL 257.11.

24 (u) "Watercraft dealer" means a dealer as that term is defined
25 in section 80102 of the natural resources and environmental
26 protection act, 1994 PA 451, MCL 324.80102.