

Act No. 208
Public Acts of 1995
Approved by the Governor
November 29, 1995
Filed with the Secretary of State
November 29, 1995

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1995**

Introduced by Reps. Profit and Bullard

ENROLLED HOUSE BILL No. 4453

AN ACT to amend section 2 of Act No. 94 of the Public Acts of 1937, entitled as amended "An act to provide for the levy, assessment and collection of a specific excise tax on the storage, use or consumption in this state of tangible personal property and certain services; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act," as amended by Act No. 78 of the Public Acts of 1995, being section 205.92 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 2 of Act No. 94 of the Public Acts of 1937, as amended by Act No. 78 of the Public Acts of 1995, being section 205.92 of the Michigan Compiled Laws, is amended to read as follows:

Sec. 2. As used in this act:

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

(b) "Use" means the exercise of a right or power over tangible personal property incident to the ownership of that property including transfer of the property in a transaction where possession is given.

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

(d) "Seller" means the person from whom a purchase is made and includes every person selling tangible personal property or services for storage, use, or other consumption in this state. If, in the opinion of the department, it is necessary for the efficient administration of this act to regard a salesperson, representative, peddler, or canvasser as the agent of a dealer, distributor, supervisor, or employer under whom the person operates or from whom he or she obtains tangible personal property or services sold by him or her for storage, use, or other consumption in this state, irrespective of whether or not he or she is making the sales on his or her own behalf or on behalf of the dealer,

distributor, supervisor, or employer, the department may so consider him or her, and may consider the dealer, distributor, supervisor, or employer as the seller for the purpose of this act.

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

(f) "Price" means the aggregate value in money of anything paid or delivered, or promised to be paid or delivered, by a consumer to a seller in the consummation and complete performance of the transaction by which tangible personal property or services are purchased or rented for storage, use, or other consumption in this state, without a deduction for the cost of the property sold, cost of materials used, labor or service cost, interest or discount paid, or any other expense. The price of tangible personal property, for affixation to real estate, withdrawn by a construction contractor from inventory available for sale to others or made available by publication or price list as a finished product for sale to others is the finished goods inventory value of the property. If a construction contractor manufactures, fabricates, or assembles tangible personal property before affixing it to real estate, the price of the property is equal to the sum of the materials cost of the property and the cost of labor to manufacture, fabricate, or assemble the property but does not include the cost of labor to cut, bend, assemble, or attach property at the site of affixation to real estate. For the purposes of the preceding sentence, for property withdrawn by a construction contractor from inventory available for sale to others or made available by publication or price list as a finished product for sale to others, the materials cost of the property means the finished goods inventory value of the property. For purposes of this subdivision, "manufacture" means to convert or condition tangible personal property by changing the form, composition, quality, combination, or character of the property and "fabricate" means to modify or prepare tangible personal property for affixation or assembly. The price of a motor vehicle, trailer coach, or titled watercraft is the full retail price of the motor vehicle, trailer coach, or titled watercraft being purchased. The tax collected by the seller from the consumer or lessee under this act is not considered part of the price, but is a tax collection for the benefit of the state, and a person other than the state shall not derive a benefit from the collection or payment of this tax. A price does not include an assessment imposed under the convention and tourism marketing act, Act No. 383 of the Public Acts of 1980, being sections 141.881 to 141.889 of the Michigan Compiled Laws, Act No. 263 of the Public Acts of 1974, being sections 141.861 to 141.867 of the Michigan Compiled Laws, the state convention facility development act, Act No. 106 of the Public Acts of 1985, being sections 207.621 to 207.640 of the Michigan Compiled Laws, the regional tourism marketing act, Act No. 244 of the Public Acts of 1989, being sections 141.891 to 141.900 of the Michigan Compiled Laws, Act No. 180 of the Public Acts of 1991, being sections 207.751 to 207.759 of the Michigan Compiled Laws, or the community convention or tourism marketing act, Act No. 395 of the Public Acts of 1980, being sections 141.871 to 141.880 of the Michigan Compiled Laws, that was added to charges for rooms or lodging otherwise subject, pursuant to section 3a, to tax under this act. Price does not include specific charges for technical support or for adapting or modifying prewritten, standard, or canned computer software programs to a purchaser's needs or equipment if the charges are separately stated and identified. The tax imposed under this act shall not be computed or collected on rental receipts if the tangible personal property rented or leased has previously been subjected to a Michigan sales or use tax when purchased by the lessor.

(g) "Consumer" means the person who has purchased tangible personal property or services for storage, use, or other consumption in this state and includes a person acquiring tangible personal property if engaged in the business of constructing, altering, repairing, or improving the real estate of others.

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

(i) "Department" means the revenue division of the department of treasury.

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

(k) "Tangible personal property" includes computer software offered for general use by the public or software modified or adapted to the user's needs or equipment by the seller, only if the software is available from a seller of software on an as is basis or as an end product without modification or adaptation. Tangible personal property does not include computer software originally designed for the exclusive use and special needs of the purchaser. As used in this subdivision, "computer software" means a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result.

(l) "Tangible personal property" does not include a commercial advertising element if the commercial advertising element is used to create or develop a print, radio, television, or other advertisement, the commercial advertising element is discarded or returned to the provider after the advertising message is completed, and the commercial advertising element is custom developed by the provider for the purchaser. As used in this subdivision, "commercial advertising element" means a negative or positive photographic image, an audiotape or videotape master, a layout, a manuscript, writing of copy, a design, artwork, an illustration, retouching, and mechanical or keyline instructions. "Tangible personal property" includes black and white or full color process separation elements, an audiotape reproduction, or a videotape reproduction.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.