



HOUSE BILL No. 4453

February 22, 1995, Introduced by Reps. Profit and Bullard and referred to the Committee on Tax Policy.

A bill to amend sections 2 and 4 of Act No. 94 of the Public Acts of 1937, entitled as amended

"Use tax act,"

section 2 as amended by Act No. 506 of the Public Acts of 1988 and section 4 as amended by Act No. 424 of the Public Acts of 1994, being sections 205.92 and 205.94 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2 and 4 of Act No. 94 of the Public
2 Acts of 1937, section 2 as amended by Act No. 506 of the Public
3 Acts of 1988 and section 4 as amended by Act No. 424 of the
4 Public Acts of 1994, being sections 205.92 and 205.94 of the
5 Michigan Compiled Laws, are amended to read as follows:

6 Sec. 2. As used in this act:

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

9 (b) "Use" means the exercise of a right or power over tangi-
10 ble personal property incident to the ownership of that property
11 including transfer of the property in a transaction where posses-
12 sion is given.

13 (c) "Storage" means a keeping or retention in this state for
14 any purpose after losing its interstate character.

15 (d) "Seller" means the person from whom a purchase is made
16 and includes every person selling tangible personal property or
17 services for storage, use, or other consumption in this state.
18 If, in the opinion of the department, it is necessary for the
19 efficient administration of this act to regard a salesperson,
20 representative, peddler, or canvasser as the agent of a dealer,
21 distributor, supervisor, or employer under whom the person oper-
22 ates or from whom he or she obtains tangible personal property or
23 services ~~—~~ sold by him or her for storage, use, or other con-
24 sumption in this state, irrespective of whether or not he or she
25 is making the sales on his or her own behalf or on behalf of the
26 dealer, distributor, supervisor, or employer, the department may
27 so consider him or her, and may consider the dealer, distributor,

1 supervisor, or employer as the seller for the purpose of this
2 act.

3 (e) "Purchase" means ~~acquired~~ THE ACQUISITION for a con-
4 sideration, whether the acquisition ~~was~~ IS effected by a trans-
5 fer of title, of possession, or of both, or a license to use or
6 consume; whether the transfer ~~was~~ IS absolute or conditional,
7 and by whatever means the transfer ~~was~~ IS effected; and whether
8 consideration is a price or rental in money, or by way of
9 exchange or barter.

10 (f) "Price" means the aggregate value in money of anything
11 paid or delivered, or promised to be paid or delivered, by a con-
12 sumer to a seller in the consummation and complete performance of
13 the transaction by which tangible personal property or services
14 ~~were~~ ARE purchased or rented for storage, use, or other con-
15 sumption in this state, without a deduction for the cost of the
16 property sold, cost of materials used, labor or service cost,
17 interest or discount paid, or any other expense. The price of
18 tangible personal property, for affixation to real estate, with-
19 drawn by a construction contractor from inventory available for
20 sale to others or made available by publication or price list as
21 a finished product for sale to others is the finished goods
22 inventory value of the property. For contracts entered into
23 after March 31, 1989, if a construction contractor manufactures,
24 fabricates, or assembles tangible personal property ~~prior to~~
25 BEFORE affixing it to real estate, the price of the property
26 ~~shall be~~ IS equal to the sum of the materials cost of the
27 property and the cost of labor to manufacture, fabricate, or

1 assemble the property but ~~shall~~ DOES not include the cost of
2 labor to cut, bend, assemble, or attach property at the site of
3 affixation to real estate. For the purposes of the preceding
4 sentence, for property withdrawn by a construction contractor
5 from inventory available for sale to others or made available by
6 publication or price list as a finished product for sale to
7 others, the materials cost of the property means the finished
8 goods inventory value of the property. For purposes of this sub-
9 division, "manufacture" means to convert or condition tangible
10 personal property by changing the form, composition, quality,
11 combination, or character of the property, ~~—~~ and "fabricate"
12 means to modify or prepare tangible personal property for affixa-
13 tion or assembly. ~~Beginning January 1, 1984 and until July 3,~~
14 ~~1984, if a purchase is made of or a qualified purchase agreement~~
15 ~~is entered into for the purchase of a motor vehicle or trailer~~
16 ~~coach with an exchange of a used motor vehicle or a used trailer~~
17 ~~coach or if a purchase is made of or a qualified purchase agree-~~
18 ~~ment is entered into for the purchase of a titled watercraft with~~
19 ~~an exchange of a used titled watercraft, the price shall be the~~
20 ~~difference between the agreed upon value of the motor vehicle,~~
21 ~~trailer coach, or titled watercraft used as part payment of the~~
22 ~~purchase price and the full retail price of the motor vehicle,~~
23 ~~trailer coach, or titled watercraft being purchased. A qualified~~
24 ~~purchase agreement means a purchase agreement presented to the~~
25 ~~secretary of state at the time the vehicle is registered in this~~
26 ~~state for a transfer of ownership that shall occur on or before~~
27 ~~February 1, 1985. Beginning July 3, 1984, the~~ THE price of a

1 motor vehicle, trailer coach, or titled watercraft ~~shall be~~ IS
2 the full retail price of the motor vehicle, trailer coach, or
3 titled watercraft being purchased. The tax collected by the
4 seller from the consumer or lessee under this act ~~shall~~ IS not
5 ~~be considered as a~~ part of the price, but ~~shall be considered~~
6 ~~as~~ IS a tax collection for the benefit of the state, and a
7 person other than the state shall not derive a benefit from the
8 collection or payment of this tax. A price does not include an
9 assessment imposed pursuant to either the convention and tourism
10 marketing act, Act No. 383 of the Public Acts of 1980, being sec-
11 tions 141.881 to 141.889 of the Michigan Compiled Laws, or the
12 community convention ~~and~~ OR tourism marketing act, Act No. 395
13 of the Public Acts of 1980, being sections 141.871 to 141.880 of
14 the Michigan Compiled Laws, ~~which~~ THAT was added to charges for
15 rooms or lodging otherwise subject, pursuant to section 3a, to
16 tax under this act. Price does not include specific charges for
17 technical support or for adapting or modifying prewritten, stan-
18 dard, or canned computer software programs to a purchaser's needs
19 or equipment if the charges are separately stated and
20 identified. ~~Tax~~ THE TAX imposed pursuant to this act shall not
21 be computed or collected on rental receipts ~~when~~ IF the tangi-
22 ble personal property rented or leased has previously been sub-
23 jected to a Michigan sales or use tax when purchased by the
24 lessor.

25 (g) "Consumer" means the person who has purchased tangible
26 personal property or services for storage, use, or other
27 consumption in this state and includes a person acquiring

1 tangible personal property ~~when~~ IF engaged in the business of
2 constructing, altering, repairing, or improving the real estate
3 of others.

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

7 (i) "Department" means the revenue division of the depart-
8 ment of treasury.

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

11 (k) "Tangible personal property" includes ~~beginning~~
12 ~~December 28, 1987,~~ computer software offered for general use by
13 the public or software modified or adapted to the user's needs or
14 equipment by the seller, only if the software is available from a
15 seller of software on an as is basis or as an end product without
16 modification or adaptation. Tangible personal property does not
17 include computer software originally designed for the exclusive
18 use and special needs of the purchaser. As used in this subdivi-
19 sion, "computer software" means a set of statements or instruc-
20 tions that when incorporated in a machine usable medium is
21 capable of causing a machine or device having information pro-
22 cessing capabilities to indicate, perform, or achieve a particu-
23 lar function, task, or result.

24 (l) "TANGIBLE PERSONAL PROPERTY" DOES NOT INCLUDE A SERVICE
25 IMPLEMENT PRODUCED BY A PERSON PROVIDING A SERVICE WHOSE FEE, IF
26 ANY, IS BASED ON THE SERVICE PROVIDED RATHER THAN A TANGIBLE
27 PRODUCT OF THAT SERVICE. AS USED IN THIS SUBDIVISION, "SERVICE

1 IMPLEMENT" MEANS A TANGIBLE OBJECT THAT IS UNIQUE, OF NO
2 INTRINSIC VALUE, OF NO LITERARY OR ARTISTIC VALUE, AND OF NO
3 VALUE TO ANYONE OTHER THAN THE PERSON WHO COMMISSIONED THE
4 SERVICE. SERVICE IMPLEMENT INCLUDES, BUT IS NOT LIMITED TO, AN
5 ANNUAL REPORT OR FINANCIAL AUDIT PREPARED BY AN ACCOUNTANT; AN
6 AUDIOTAPE OR VIDEOTAPE MASTER FOR AN ADVERTISEMENT PREPARED BY A
7 POSTPRODUCTION SERVICE; AN ORIGINAL DESIGN OR PLAN PREPARED BY AN
8 ARCHITECT; A WILL, CONTRACT, DEED, OR OTHER LEGAL DOCUMENT PRE-
9 PARED BY AN ATTORNEY; A LAYOUT OR ARTWORK FOR AN ADVERTISEMENT
10 PREPARED BY A COMMERCIAL ARTIST; A TAX RETURN PREPARED BY AN
11 INCOME TAX SERVICE; A PHOTOGRAPH FOR REPRODUCTION IN AN ADVER-
12 TISEMENT CREATED BY A PHOTOGRAPHER; OR AN ELECTROCARDIOGRAM OR
13 PRESCRIPTION ORDERED BY A PHYSICIAN.

14 Sec. 4. The tax levied does not apply to the following:

15 (a) Property sold in this state on which transaction a tax
16 is paid under the general sales tax act, Act No. 167 of the
17 Public Acts of 1933, ~~as amended,~~ being sections 205.51 to
18 205.78 of the Michigan Compiled Laws, if the tax was due and paid
19 on the retail sale to a consumer.

20 (b) Property, the storage, use, or other consumption of
21 which, this state is prohibited from taxing under the constitu-
22 tion or laws of the United States, or under the constitution of
23 this state.

24 (c) Property purchased for resale, demonstration purposes,
25 or lending or leasing to a public or parochial school offering a
26 course in automobile driving except that a vehicle purchased by
27 the school shall be certified for driving education and shall not

1 be reassigned for personal use by the school's administrative
2 personnel. For a dealer selling a new car or truck, exemption
3 for demonstration purposes shall be determined by the number of
4 new cars and trucks sold during the current calendar year or the
5 immediately preceding year without regard to specific make or
6 style according to the following schedule of 0 to 25, 2 units; 26
7 to 100, 7 units; 101 to 500, 20 units; 501 or more, 25 units; but
8 not to exceed 25 cars and trucks in 1 calendar year for demon-
9 stration purposes. For tax years beginning after December 31,
10 1987, property purchased for resale includes promotional merchan-
11 dise transferred pursuant to a redemption offer to a person
12 located outside this state.

13 (d) Property that is brought into this state by a nonresi-
14 dent person for storage, use, or consumption while temporarily
15 within this state, except if the property is used in this state
16 in a nontransitory business activity for a period exceeding 15
17 days.

18 (e) Property the sale or use of which was already subjected
19 to a sales tax or use tax equal to, or in excess of, that imposed
20 by this act under the law of any other state or a local govern-
21 mental unit within a state if the tax was due and paid on the
22 retail sale to the consumer and the state or local governmental
23 unit within a state in which the tax was imposed accords like or
24 complete exemption on property the sale or use of which was sub-
25 jected to the sales or use tax of this state. If the sale or use
26 of property was already subjected to a tax under the law of any
27 other state or local governmental unit within a state in an

1 amount less than the tax imposed by this act, this act shall
2 apply, but at a rate measured by the difference between the rate
3 provided in this act and the rate by which the previous tax was
4 computed.

5 (f) Property sold to a person engaged in a business enter-
6 prise and using and consuming the property in the tilling, plant-
7 ing, caring for, or harvesting of the things of the soil or in
8 the breeding, raising, or caring for livestock, poultry, or
9 horticultural products, including transfers of livestock, poul-
10 try, or horticultural products for further growth. At the time
11 of the transfer of that tangible personal property, the trans-
12 feree shall sign a statement, in a form approved by the depart-
13 ment, stating that the property is to be used or consumed in con-
14 nection with the production of horticultural or agricultural
15 products as a business enterprise. The statement shall be
16 accepted by the courts as prima facie evidence of the exemption.
17 This exemption includes agricultural land tile, which means fired
18 clay or perforated plastic tubing used as part of a subsurface
19 drainage system for land used in the production of agricultural
20 products as a business enterprise and includes a portable grain
21 bin, which means a structure that is used or is to be used to
22 shelter grain and that is designed to be disassembled without
23 significant damage to its component parts. This exemption does
24 not include transfers of food, fuel, clothing, or similar tangi-
25 ble personal property for personal living or human consumption.
26 This exemption does not include tangible personal property

1 permanently affixed and becoming a structural part of real
2 estate.

3 (g) Property sold to the following:

4 (i) An industrial processor for use or consumption in indus-
5 trial processing. Property used or consumed in industrial pro-
6 cessing does not include tangible personal property permanently
7 affixed and becoming a structural part of real estate; office
8 furniture, office supplies, and administrative office equipment;
9 or vehicles licensed and titled for use on public highways other
10 than a specially designed vehicle, together with parts, used to
11 mix and agitate materials added at a plant or jobsite in the con-
12 crete manufacturing process. Industrial processing does not
13 include receipt and storage of raw materials purchased or
14 extracted by the user or consumer, or the preparation of food and
15 beverages by a retailer for retail sale. As used in this subdi-
16 vision, "industrial processor" means a person who transforms,
17 alters, or modifies tangible personal property by changing the
18 form, composition, or character of the property for ultimate sale
19 at retail or sale to another industrial processor to be further
20 processed for ultimate sale at retail. Sales to a person per-
21 forming a service who does not act as an industrial processor
22 while performing the service may not be excluded under this sub-
23 division, except as provided in subparagraph (ii).

24 (ii) A person, whether or not the person is an industrial
25 processor, when the property is a computer used in operating
26 industrial processing equipment; equipment used in a computer
27 assisted manufacturing system; equipment used in a computer

1 assisted design or engineering system integral to an industrial
2 process; or a subunit or electronic assembly comprising a compo-
3 nent in a computer integrated industrial processing system.

4 (h) Property or services sold to the United States, an unin-
5 corporated agency or instrumentality of the United States, an
6 incorporated agency or instrumentality of the United States
7 wholly owned by the United States or by a corporation wholly
8 owned by the United States, the American red cross and its chap-
9 ters or branches, this state, a department or institution of this
10 state, or a political subdivision of this state.

11 (i) Property or services sold to a school, hospital, or home
12 for the care and maintenance of children or aged persons, oper-
13 ated by an entity of government, a regularly organized church,
14 religious, or fraternal organization, a veterans' organization,
15 or a corporation incorporated under the laws of this state, if
16 not operated for profit, and if the income or benefit from the
17 operation does not inure, in whole or in part, to an individual
18 or private shareholder, directly or indirectly, and if the activ-
19 ities of the entity or agency are carried on exclusively for the
20 benefit of the public at large and are not limited to the advan-
21 tage, interests, and benefits of its members or a restricted
22 group. The tax levied shall not apply to property or services
23 sold to a parent cooperative preschool. As used in this subdivi-
24 sion, "parent cooperative preschool" means a nonprofit, nondis-
25 criminatory educational institution, maintained as a community
26 service and administered by parents of children currently
27 enrolled in the preschool that provides an educational and

1 developmental program for children younger than compulsory school
2 age, that provides an educational program for parents, including
3 active participation with children in preschool activities, that
4 is directed by qualified preschool personnel, and that is
5 licensed by the department of social services pursuant to Act
6 No. 116 of the Public Acts of 1973, ~~as amended,~~ being sections
7 722.111 to 722.128 of the Michigan Compiled Laws.

8 (j) Property or services sold to a regularly organized
9 church or house of religious worship except:

10 (i) Sales in which the property is used in activities that
11 are mainly commercial enterprises.

12 (ii) Sales of vehicles licensed for use on the public high-
13 ways other than a passenger van or bus with a manufacturer's
14 rated seating capacity of 10 or more that is used primarily for
15 the transportation of persons for religious purposes.

16 (k) A vessel designed for commercial use of registered ton-
17 nage of 500 tons or more, if produced upon special order of the
18 purchaser, and bunker and galley fuel, provisions, supplies,
19 maintenance, and repairs for the exclusive use of a vessel of 500
20 tons or more engaged in interstate commerce.

21 (l) Property purchased by a person engaged in the business
22 of constructing, altering, repairing, or improving real estate
23 for others to the extent the property is affixed to and made a
24 structural part of the real estate of a nonprofit hospital or a
25 nonprofit housing entity qualified as exempt pursuant to section
26 15a of the state housing development authority act of 1966, Act
27 No. 346 of the Public Acts of 1966, as amended, being section

1 125.1415a of the Michigan Compiled Laws. A nonprofit hospital or
2 nonprofit housing includes only the property of a nonprofit hos-
3 pital or the homes or dwelling places constructed by a nonprofit
4 housing entity, the income or property of which does not directly
5 or indirectly inure to the benefit of an individual, private
6 stockholder, or other private person.

7 (m) Property purchased for use in this state where actual
8 personal possession is obtained outside this state, the purchase
9 price or actual value of which does not exceed \$10.00 during 1
10 calendar month.

11 (n) A newspaper or periodical classified under federal
12 postal laws and regulations effective September 1, 1985 as second
13 class mail matter or as a controlled circulation publication or
14 qualified to accept legal notices for publication in this state,
15 as defined by law, or any other newspaper or periodical of gen-
16 eral circulation, established at least 2 years, and published at
17 least once a week, and a copyrighted motion picture film.

18 Tangible personal property used or consumed, and not becoming a
19 component part of a copyrighted motion picture film, newspaper or
20 periodical, except that portion or percentage of tangible per-
21 sonal property used or consumed in producing an advertising sup-
22 plement that becomes a component part of a newspaper or periodi-
23 cal is subject to tax. For purposes of this subdivision, tangi-
24 ble personal property that becomes a component part of a newspa-
25 per or periodical and consequently not subject to tax, includes
26 an advertising supplement inserted into and circulated with a
27 newspaper or periodical that is otherwise exempt from tax under

1 this subdivision, if the advertising supplement is delivered
2 directly to the newspaper or periodical by a person other than
3 the advertiser, or the advertising supplement is printed by the
4 newspaper or periodical.

5 (o) Property purchased by persons licensed to operate a com-
6 mercial OR EDUCATIONAL radio or television BROADCASTING station
7 if the property is PREDOMINANTLY STORED, used, OR CONSUMED in the
8 origination, ~~or~~ integration, OR BROADCAST of ~~the various~~
9 ~~sources of~~ RADIO OR TELEVISION program material. ~~for commercial~~
10 ~~radio or television transmission. This subdivision does not~~
11 ~~include a vehicle licensed and titled for use on public highways~~
12 ~~or property used in the transmitting to or receiving from an~~
13 ~~artificial satellite.~~

14 (p) A person who is a resident of this state who purchases
15 an automobile in another state while in the military service of
16 the United States and who pays a sales tax in the state where the
17 automobile is purchased.

18 (q) A vehicle for which a special registration is secured in
19 accordance with section 226(12) of the Michigan vehicle code, Act
20 No. 300 of the Public Acts of 1949, ~~as amended,~~ being section
21 257.226 of the Michigan Compiled Laws.

22 (r) A hearing aid, contact lenses if prescribed for a spe-
23 cific disease which precludes the use of eyeglasses, or any other
24 apparatus, device, or equipment used to replace or substitute for
25 any part of the human body, or used to assist the disabled person
26 to lead a reasonably normal life when the tangible personal
27 property is purchased on a written prescription or order issued

1 by a health professional as defined by section 4 of former Act
2 No. 264 of the Public Acts of 1974, or section 21005 of the
3 public health code, Act No. 368 of the Public Acts of 1978, being
4 section 333.21005 of the Michigan Compiled Laws, or eyeglasses
5 prescribed or dispensed to correct the person's vision by an oph-
6 thalmologist, optometrist, or optician.

7 (s) Water when delivered through water mains or in bulk
8 tanks in quantities of not less than 500 gallons.

9 (t) The purchase of machinery and equipment for use or con-
10 sumption in the rendition of a service, the use or consumption of
11 which is taxable under section 3a(a) except that this exception
12 is limited to the tangible personal property located on the
13 premises of the subscriber and the necessary exchange equipment.

14 (u) A vehicle not for resale used by a nonprofit corporation
15 organized exclusively to provide a community with ambulance or
16 fire department services.

17 (v) Tangible personal property purchased and installed as a
18 component part of a water pollution control facility for which a
19 tax exemption certificate is issued pursuant to Act No. 222 of
20 the Public Acts of 1966, ~~as amended,~~ being sections 323.351 to
21 323.358 of the Michigan Compiled Laws, or an air pollution con-
22 trol facility for which a tax exemption certificate is issued
23 pursuant to Act No. 250 of the Public Acts of 1965, ~~as amended,~~
24 being sections 336.1 to 336.8 of the Michigan Compiled Laws.

25 (w) Tangible real or personal property donated by a manufac-
26 turer, wholesaler, or retailer to an organization or entity
27 exempt pursuant to subdivision (i) or (j) or section 4a(a) or (b)

1 of ~~the general sales tax act,~~ Act No. 167 of the Public Acts of
2 1933, ~~as amended,~~ being section 205.54a of the Michigan
3 Compiled Laws.

4 (x) The storage, use, or consumption by a domestic air car-
5 rier of an aircraft purchased after December 31, 1992 for use
6 solely in the transport of air cargo that has a maximum certifi-
7 cated takeoff weight of at least 12,500 pounds. For purposes of
8 this subdivision, the term "domestic air carrier" is limited to
9 entities engaged in the commercial transport for hire of cargo or
10 entities engaged in the commercial transport of passengers as a
11 business activity.

12 (y) The storage, use, or consumption by a domestic air car-
13 rier of an aircraft purchased after June 30, 1994 that is used
14 solely in the regularly scheduled transport of passengers. For
15 purposes of this subdivision, the term "domestic air carrier" is
16 limited to entities engaged in the commercial transport for hire
17 of cargo or entities engaged in the commercial transport of pas-
18 sengers as a business activity.

19 (z) The storage, use, or consumption by a domestic air car-
20 rier of an aircraft, other than an aircraft described under
21 subdivision (y), purchased after December 31, 1994, that has a
22 maximum certificated takeoff weight of at least 12,500 pounds and
23 that is designed to have a maximum passenger seating configura-
24 tion of more than 30 seats and used solely in the transport of
25 passengers. For purposes of this subdivision, the term "domestic
26 air carrier" is limited to entities engaged in the commercial

1 transport for hire of cargo or entities engaged in the commercial
2 transport of passengers as a business activity.

3 (aa) Property or services sold to a health, welfare, educa-
4 tional, cultural arts, charitable, or benevolent organization not
5 operated for profit that has been issued before June 13, 1994 an
6 exemption ruling letter to purchase items exempt from tax signed
7 by the administrator of the sales, use, and withholding taxes
8 division of the department. The department shall reissue an
9 exemption letter to each of those organizations after June 13,
10 1994 that shall remain in effect unless the organization fails to
11 meet the requirements that originally entitled it to this exemp-
12 tion; or to an organization not operated for profit and exempt
13 from federal income tax under section 501(c)(3) or 501(c)(4) of
14 the internal revenue code OF 1986, 26 U.S.C. 501. The exemption
15 does not apply to sales of tangible personal property and sales
16 of vehicles licensed for use on public highways, that are not
17 used primarily to carry out the purposes of the organization as
18 stated in the bylaws or articles of incorporation of the exempt
19 organization.