

HOUSE BILL No. 5497

January 27, 1998, Introduced by Reps. Quarles, Crissman, Birkholz, Kukuk, Whyman, Anthony, DeHart, McBryde, Hammerstrom, Cassis, Scranton, Lowe, Kaza, Goschka, Geiger, Dobb, Stallworth, Raczkowski and Perricone and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 2 (MCL 205.92), as amended by 1995 PA 208.

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, munic-
4 ipal or private corporation whether or not organized for profit,
5 company, estate, trust, receiver, trustee, syndicate, the United
6 States, this state, county, or any other group or combination
7 acting as a unit, and the plural as well as the singular number,
8 unless the intention to give a more limited meaning is disclosed
9 by the context.

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

1 property including transfer of the property in a transaction
2 where possession is given.

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

6 (d) "Seller" means the person from whom a purchase is made
7 and includes every person selling tangible personal property or
8 services for storage, use, or other consumption in this state.

9 If, in the opinion of the department, it is necessary for the
10 efficient administration of this act to regard a salesperson,
11 representative, peddler, or canvasser as the agent of a dealer,
12 distributor, supervisor, or employer under whom the person oper-
13 ates or from whom he or she obtains tangible personal property or
14 services sold by him or her for storage, use, or other consump-
15 tion in this state, irrespective of whether or not he or she is
16 making the sales on his or her own behalf or on behalf of the
17 dealer, distributor, supervisor, or employer, the department may
18 so consider him or her, and may consider the dealer, distributor,
19 supervisor, or employer as the seller for the purpose of this
20 act.

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

1 (f) "Price" means the aggregate value in money of anything
2 paid or delivered, or promised to be paid or delivered, by a
3 consumer to a seller in the consummation and complete performance
4 of the transaction by which tangible personal property or serv-
5 ices are purchased or rented for storage, use, or other consump-
6 tion in this state ~~—, AFTER A DEDUCTION FOR THE AMOUNT OF A~~
7 REBATE, DISCOUNT, OR COUPON USED, BUT without a deduction for the
8 cost of the property sold, cost of materials used, labor or serv-
9 ice cost, interest, ~~—or discount paid,—~~ or any other expense.
10 The price of tangible personal property, for affixation to real
11 estate, withdrawn by a construction contractor from inventory
12 available for sale to others or made available by publication or
13 price list as a finished product for sale to others is the fin-
14 ished goods inventory value of the property. If a construction
15 contractor manufactures, fabricates, or assembles tangible per-
16 sonal property before affixing it to real estate, the price of
17 the property is equal to the sum of the materials cost of the
18 property and the cost of labor to manufacture, fabricate, or
19 assemble the property but does not include the cost of labor to
20 cut, bend, assemble, or attach property at the site of affixation
21 to real estate. For the purposes of the preceding sentence, for
22 property withdrawn by a construction contractor from inventory
23 available for sale to others or made available by publication or
24 price list as a finished product for sale to others, the materi-
25 als cost of the property means the finished goods inventory value
26 of the property. For purposes of this subdivision, "manufacture"
27 means to convert or condition tangible personal property by

1 changing the form, composition, quality, combination, or
2 character of the property and "fabricate" means to modify or pre-
3 pare tangible personal property for affixation or assembly. The
4 price of a motor vehicle, trailer coach, or titled watercraft is
5 the full retail price of the motor vehicle, trailer coach, or
6 titled watercraft being purchased. The tax collected by the
7 seller from the consumer or lessee under this act is not consid-
8 ered part of the price, but is a tax collection for the benefit
9 of the state, and a person other than the state shall not derive
10 a benefit from the collection or payment of this tax. A price
11 does not include an assessment imposed under the convention and
12 tourism marketing act, ~~Act No. 383 of the Public Acts of 1980,~~
13 ~~being sections 141.881 to 141.889 of the Michigan Compiled Laws,~~
14 ~~Act No. 263 of the Public Acts of 1974, being sections 141.861 to~~
15 ~~141.867 of the Michigan Compiled Laws~~ 1980 PA 383, MCL 141.881
16 TO 141.889, 1974 PA 263, MCL 141.861 TO 141.867, the state con-
17 vention facility development act, ~~Act No. 106 of the Public Acts~~
18 ~~of 1985, being sections 207.621 to 207.640 of the Michigan~~
19 ~~Compiled Laws~~ 1985 PA 106, MCL 207.621 TO 207.640, the regional
20 tourism marketing act, ~~Act No. 244 of the Public Acts of 1989,~~
21 ~~being sections 141.891 to 141.900 of the Michigan Compiled Laws,~~
22 ~~Act No. 180 of the Public Acts of 1991, being sections 207.751 to~~
23 ~~207.759 of the Michigan Compiled Laws~~ 1989 PA 244, MCL 141.891
24 TO 141.900, 1991 PA 180, MCL 207.751 TO 207.759, or the community
25 convention or tourism marketing act, ~~Act No. 395 of the Public~~
26 ~~Acts of 1980, being sections 141.871 to 141.880 of the Michigan~~
27 ~~Compiled Laws~~ 1980 PA 395, MCL 141.871 TO 141.880, that was

1 added to charges for rooms or lodging otherwise subject, pursuant
2 to section 3a, to tax under this act. Price does not include
3 specific charges for technical support or for adapting or modify-
4 ing prewritten, standard, or canned computer software programs to
5 a purchaser's needs or equipment if the charges are separately
6 stated and identified. The tax imposed under this act shall not
7 be computed or collected on rental receipts if the tangible per-
8 sonal property rented or leased has previously been subjected to
9 a Michigan sales or use tax when purchased by the lessor.

10 (g) "Consumer" means the person who has purchased tangible
11 personal property or services for storage, use, or other consump-
12 tion in this state and includes a person acquiring tangible per-
13 sonal property if engaged in the business of constructing, alter-
14 ing, repairing, or improving the real estate of others.

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

18 (i) "Department" means the revenue division of the depart-
19 ment of treasury.

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

22 (k) "Tangible personal property" includes computer software
23 offered for general use by the public or software modified or
24 adapted to the user's needs or equipment by the seller, only if
25 the software is available from a seller of software on an as is
26 basis or as an end product without modification or adaptation.
27 Tangible personal property does not include computer software

1 originally designed for the exclusive use and special needs of
2 the purchaser. As used in this subdivision, "computer software"
3 means a set of statements or instructions that when incorporated
4 in a machine usable medium is capable of causing a machine or
5 device having information processing capabilities to indicate,
6 perform, or achieve a particular function, task, or result.

7 (1) "Tangible personal property" does not include a commer-
8 cial advertising element if the commercial advertising element is
9 used to create or develop a print, radio, television, or other
10 advertisement, the commercial advertising element is discarded or
11 returned to the provider after the advertising message is com-
12 pleted, and the commercial advertising element is custom devel-
13 oped by the provider for the purchaser. As used in this subdivi-
14 sion, "commercial advertising element" means a negative or posi-
15 tive photographic image, an audiotape or videotape master, a
16 layout, a manuscript, writing of copy, a design, artwork, an
17 illustration, retouching, and mechanical or keyline
18 instructions. "Tangible personal property" includes black and
19 white or full color process separation elements, an audiotape
20 reproduction, or a videotape reproduction.