

**HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 1370**

A bill to amend 1937 PA 94, entitled  
"Use tax act,"  
by amending sections 2 and 3 (MCL 205.92 and 205.93), section 2  
as amended by 2000 PA 391 and section 3 as amended by 2002 PA  
110, and by adding section 6a; and to repeal acts and parts of  
acts.

**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, LIMITED LIABILITY COMPANY, estate, trust, receiver,  
6 trustee, syndicate, the United States, this state, county, or any  
7 other group or combination acting as a unit, and the plural as

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1 well as the singular number, unless the intention to give a more  
2 limited meaning is disclosed by the context.

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

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

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

25 (e) "Purchase" means to acquire for a consideration, whether  
26 the acquisition is effected by a transfer of title, of  
27 possession, or of both, or a license to use or consume; whether

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1 the transfer is absolute or conditional, and by whatever means  
2 the transfer is effected; and whether consideration is a price or  
3 rental in money, or by way of exchange or barter.

4 (f) "Price" means the aggregate value in money of anything  
5 paid or delivered, or promised to be paid or delivered, by a con-  
6 sumer to a seller in the consummation and complete performance of  
7 the transaction by which tangible personal property or services  
8 are purchased or rented for storage, use, or other consumption in  
9 this state, without a deduction for the cost of the property  
10 sold, cost of materials used, labor or service cost, interest or  
11 discount paid, or any other expense. The price of tangible per-  
12 sonal property, for affixation to real estate, withdrawn by a  
13 construction contractor from inventory available for sale to  
14 others or made available by publication or price list as a fin-  
15 ished product for sale to others is the finished goods inventory  
16 value of the property. If a construction contractor manufac-  
17 tures, fabricates, or assembles tangible personal property before  
18 affixing it to real estate, the price of the property is equal to  
19 the sum of the materials cost of the property and the cost of  
20 labor to manufacture, fabricate, or assemble the property but  
21 does not include the cost of labor to cut, bend, assemble, or  
22 attach property at the site of affixation to real estate. For  
23 the purposes of the preceding sentence, for property withdrawn by  
24 a construction contractor from inventory available for sale to  
25 others or made available by publication or price list as a fin-  
26 ished product for sale to others, the materials cost of the  
27 property means the finished goods inventory value of the

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1 property. For purposes of this subdivision, "manufacture" means  
2 to convert or condition tangible personal property by changing  
3 the form, composition, quality, combination, or character of the  
4 property and "fabricate" means to modify or prepare tangible per-  
5 sonal property for affixation or assembly. The price of a motor  
6 vehicle, trailer coach, or titled watercraft is the full retail  
7 price of the motor vehicle, trailer coach, or titled watercraft  
8 being purchased. The tax collected by the seller from the con-  
9 sumer or lessee under this act is not considered part of the  
10 price, but is a tax collection for the benefit of the state, and  
11 a person other than the state shall not derive a benefit from the  
12 collection or payment of this tax. A price does not include an  
13 assessment imposed under the convention and tourism marketing  
14 act, 1980 PA 383, MCL 141.881 to 141.889, 1974 PA 263,  
15 MCL 141.861 to 141.867, the state convention facility development  
16 act, 1985 PA 106, MCL 207.621 to 207.640, the regional tourism  
17 marketing act, 1989 PA 244, MCL 141.891 to 141.900, 1991 PA 180,  
18 MCL 207.751 to 207.759, or the community convention or tourism  
19 marketing act, 1980 PA 395, MCL 141.871 to 141.880, that was  
20 added to charges for rooms or lodging otherwise subject, pursuant  
21 to section 3a, to tax under this act. Price does not include  
22 specific charges for technical support or for adapting or modify-  
23 ing prewritten, standard, or canned computer software programs to  
24 a purchaser's needs or equipment if the charges are separately  
25 stated and identified. The tax imposed under this act shall not  
26 be computed or collected on rental receipts if the tangible

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1 personal property rented or leased has previously been subjected  
2 to a Michigan sales or use tax when purchased by the lessor.

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

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

11 (i) "Department" means the revenue division of the depart-  
12 ment of treasury.

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

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

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1           (l) "Tangible personal property" beginning September 20,  
2 1999, includes electricity, natural or artificial gas, or steam  
3 and also the transmission and distribution of electricity used by  
4 the consumer or user of the electricity, whether the electricity  
5 is purchased from the delivering utility or from another  
6 provider.

7           (m) "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.

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

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1           Sec. 3. (1) There is levied upon and there shall be  
2 collected from every person in this state a specific tax for the  
3 privilege of using, storing, or consuming tangible personal prop-  
4 erty in this state at a rate equal to 6% of the price of the  
5 property or services specified in section 3a OR 3B. Penalties  
6 and interest shall be added to the tax if applicable as provided  
7 in this act. For the purpose of the proper administration of  
8 this act and to prevent the evasion of the tax, it is presumed  
9 that tangible personal property purchased is subject to the tax  
10 if brought into the state within 90 days of the purchase date and  
11 is considered as acquired for storage, use, or other consumption  
12 in this state.

13           (2) The tax imposed by this section for the privilege of  
14 using, storing, or consuming a vehicle, ORV, ~~mobile home~~  
15 MANUFACTURED HOUSING, aircraft, snowmobile, or watercraft shall  
16 be collected before the transfer of the vehicle, ORV, ~~mobile~~  
17 ~~home~~ MANUFACTURED HOUSING, aircraft, snowmobile, or watercraft,  
18 except a transfer to a licensed dealer or retailer for purposes  
19 of resale that arises by reason of a transaction made by a person  
20 who does not transfer vehicles, ORVs, ~~mobile homes~~ MANUFACTURED  
21 HOUSING, aircraft, snowmobiles, or watercraft in the ordinary  
22 course of his or her business done in this state. The tax on a  
23 vehicle, ORV, snowmobile, and watercraft shall be collected by  
24 the secretary of state before the transfer of the vehicle, ORV,  
25 snowmobile, or watercraft registration. The tax on ~~a mobile~~  
26 ~~home~~ MANUFACTURED HOUSING shall be collected by the department  
27 of consumer and industry services, mobile home commission, or its

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1 agent before the transfer of the certificate of title. The tax  
2 on an aircraft shall be collected by the department of treasury.  
3 Notwithstanding any limitation contained in section 2 and except  
4 as provided in this subsection, the price tax base of any vehi-  
5 cle, ORV, ~~mobile home~~ MANUFACTURED HOUSING, aircraft, snowmo-  
6 bile, or watercraft subject to taxation under this act shall be  
7 not less than its retail dollar value at the time of acquisition  
8 as fixed pursuant to rules promulgated by the department. The  
9 price tax base of a new or previously owned car or truck held for  
10 resale by a dealer and that is not exempt under section 4(1)(c)  
11 is the purchase price of the car or truck multiplied by 2.5% plus  
12 \$30.00 per month beginning with the month that the dealer uses  
13 the car or truck in a nonexempt manner.

14 (3) The following transfers or purchases are not subject to  
15 use tax:

16 (a) A transaction or a portion of a transaction if the  
17 transferee or purchaser is the spouse, mother, father, brother,  
18 sister, child, stepparent, stepchild, stepbrother, stepsister,  
19 grandparent, grandchild, legal ward, or a legally appointed  
20 guardian with a certified letter of guardianship, of the  
21 transferor.

22 (b) A transaction or a portion of a transaction if the  
23 transfer is a gift to a beneficiary in the administration of an  
24 estate.

25 (c) If a vehicle, ORV, ~~mobile home~~ MANUFACTURED HOUSING,  
26 aircraft, snowmobile, or watercraft that has once been subjected  
27 to the Michigan sales or use tax is transferred in connection

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1 with the organization, reorganization, dissolution, or partial  
2 liquidation of an incorporated or unincorporated business and the  
3 beneficial ownership is not changed.

4 (d) If an insurance company licensed to conduct business in  
5 this state acquires ownership of a late model distressed vehicle  
6 as defined in section 12a of the Michigan vehicle code, 1949  
7 PA 300, MCL 257.12a, through payment of damages in response to a  
8 claim or when the person who owned the vehicle before the insur-  
9 ance company reacquires ownership from the company as part of the  
10 settlement of a claim.

11 (4) The department may utilize the services, information, or  
12 records of any other department or agency of state government in  
13 the performance of its duties under this act, and other depart-  
14 ments or agencies of state government are required to furnish  
15 those services, information, or records upon the request of the  
16 department.

17 SEC. 6A. (1) NOTWITHSTANDING THE PROVISIONS OF SECTION 2,  
18 THE ORGANIZING ENTITY OF A QUALIFIED ATHLETIC EVENT THAT SELLS  
19 CORPORATE SPONSOR CONTRACTS FOR THE EVENT MAY APPLY THE TAX UNDER  
20 THIS ACT ONLY TO THE AMOUNT CHARGED FOR THE RENTAL OF TAXABLE  
21 TANGIBLE PERSONAL PROPERTY OR TAXABLE SERVICES IF ALL OF THE FOL-  
22 LOWING CRITERIA HAVE BEEN MET:

23 (A) THE ORGANIZING ENTITY IS EXEMPT OR IS WHOLLY OWNED BY AN  
24 ENTITY EXEMPT UNDER SECTION 501(c)(6) OF THE INTERNAL REVENUE  
25 CODE OF 1986.

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1 (B) THE ORGANIZING ENTITY PROVIDED BOTH OF THE FOLLOWING TO  
2 THE DEPARTMENT AT LEAST 180 DAYS IN ADVANCE OF ENTERING INTO THE  
3 FIRST CORPORATE SPONSOR CONTRACT:

4 (i) WRITTEN NOTICE OF ITS INTENT TO ENTER INTO CORPORATE  
5 SPONSOR CONTRACTS.

6 (ii) AN ITEMIZED SCHEDULE OF THE TAXABLE TANGIBLE PERSONAL  
7 PROPERTY AND TAXABLE SERVICES THAT WILL BE PROVIDED UNDER EACH  
8 CORPORATE SPONSOR CONTRACT.

9 (C) THE DEPARTMENT HAS GIVEN WRITTEN APPROVAL TO THE ORGA-  
10 NIZING ENTITY'S ALLOCATION OF THE TAX.

11 (2) AS USED IN THIS SECTION, "QUALIFIED ATHLETIC EVENT"  
12 MEANS EITHER OF THE FOLLOWING:

13 (A) A PROFESSIONAL SPORTING COMPETITION IN WHICH INDIVIDUALS  
14 OFFICIALLY REPRESENTING AT LEAST 2 COUNTRIES OR NATIONS COMPETE.

15 (B) A PROFESSIONAL FOOTBALL COMPETITION IN WHICH TEAMS COM-  
16 PETE IN A POSTSEASON EVENT TO DETERMINE THE LEAGUE CHAMPION.

17 (3) THIS SECTION IS REPEALED EFFECTIVE JANUARY 1, 2007.