

HOUSE SUBSTITUTE FOR SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5107

(As amended, November 10, 2005)

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending sections 3a and 4 (MCL 205.93a and 205.94), as amended
by 2004 PA 172.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3a. (1) The use or consumption of the following is taxed
2 under this act in the same manner as tangible personal property is
3 taxed under this act:

4 (a) Except as provided in section 3b, intrastate telephone,
5 telegraph, leased wire, and other similar communications, including
6 local telephone exchange and long distance telephone service that
7 both originates and terminates in Michigan, and telegraph, private
8 line, and teletypewriter service between places in Michigan, but

1 excluding telephone service by coin-operated installations,
2 switchboards, concentrator-identifiers, interoffice circuitry and
3 their accessories for telephone answering service, and directory
4 advertising proceeds.

5 (b) Rooms or lodging furnished by hotelkeepers, motel
6 operators, and other persons furnishing accommodations that are
7 available to the public on the basis of a commercial and business
8 enterprise, irrespective of whether or not membership is required
9 for use of the accommodations, except rooms and lodging rented for
10 a continuous period of more than 1 month. As used in this act,
11 "hotel" or "motel" means a building or group of buildings in which
12 the public may obtain accommodations for a consideration,
13 including, without limitation, such establishments as inns, motels,
14 tourist homes, tourist houses or courts, lodging houses, rooming
15 houses, nudist camps, apartment hotels, resort lodges and cabins,
16 camps operated by other than nonprofit organizations but not
17 including those licensed under 1973 PA 116, MCL 722.111 to 722.128,
18 and any other building or group of buildings in which
19 accommodations are available to the public, except accommodations
20 rented for a continuous period of more than 1 month and
21 accommodations furnished by hospitals or nursing homes.

22 (c) Except as provided in section 3b, interstate telephone
23 communications that either originate or terminate in this state and
24 for which the charge for the service is billed to a Michigan
25 service address or phone number by the provider either within or
26 outside this state, including calls between this state and any
27 place within or without the United States of America outside of

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1 this state. ~~However, if the tax under this act is levied at a rate~~
 2 ~~of 6%~~ THIS SUBDIVISION DOES NOT APPLY TO AN 800 PREFIX SERVICE OR
 3 SIMILAR TYPE SERVICE. FOR CUSTOMER BILLS RENDERED BEFORE JANUARY 1,
 4 2006, this subdivision does not apply to a wide area
 5 telecommunication service or a similar type service, ~~an 800 prefix~~
 6 ~~service or similar type service,~~ an interstate private network and
 7 related usage charges, or an international call either inbound or
 8 outbound. IF <<SECTION >> 35F, OF THE SINGLE BUSINESS TAX ACT,
 9 1975 PA 228, MCL <<208.35F, IS >> IN EFFECT, FOR CUSTOMER
 10 BILLS RENDERED ON OR AFTER JANUARY 1, 2006, A WIDE AREA
 11 TELECOMMUNICATION SERVICE OR A SIMILAR TYPE SERVICE, AN INTERSTATE
 12 PRIVATE NETWORK AND RELATED USAGE CHARGES, OR AN INTERNATIONAL CALL
 13 EITHER INBOUND OR OUTBOUND IS TAXED UNDER THIS ACT IN THE SAME
 14 MANNER AS INTERSTATE TELEPHONE COMMUNICATIONS.

15 (d) The laundering or cleaning of textiles under a sale,
 16 rental, or service agreement with a term of at least 5 days. This
 17 subdivision does not apply to the laundering or cleaning of
 18 textiles used by a restaurant or retail sales business. As used in
 19 this subdivision, "restaurant" means a food service establishment
 20 defined and licensed under the food law of 2000, 2000 PA 92, MCL
 21 289.1101 to 289.8111.

22 (e) The transmission and distribution of electricity, whether
 23 the electricity is purchased from the delivering utility or from
 24 another provider, if the sale is made to the consumer or user of
 25 the electricity for consumption or use rather than for resale.

26 (f) For a manufacturer who affixes its product to real estate
 27 and maintains an inventory of its product that is available for

1 sale to others by publication or price list, the direct production
2 costs and indirect production costs of the product affixed to the
3 real estate that are incident to and necessary for production or
4 manufacturing operations or processes, as defined by the
5 department.

6 (g) For a manufacturer who affixes its product to real estate
7 but does not maintain an inventory of its product available for
8 sale to others or make its product available for sale to others by
9 publication or price list, the sum of the materials cost of the
10 property and the cost of labor to manufacture, fabricate, or
11 assemble the property, but ~~does~~ not ~~include~~ the cost of labor
12 to cut, bend, assemble, or attach the property at the site for
13 affixation to real estate.

14 (2) If charges for intrastate telecommunications services or
15 telecommunications services between this state and another state
16 and other billed services not subject to the tax under this act are
17 aggregated with and not separately stated from charges for
18 telecommunications services that are subject to the tax under this
19 act, the nontaxable telecommunications services and other
20 nontaxable billed services are subject to the tax under this act
21 unless the service provider can reasonably identify charges for
22 telecommunications services not subject to the tax under this act
23 from its books and records that are kept in the regular course of
24 business.

25 (3) If charges for intrastate telecommunications services or
26 telecommunications services between this state and another state
27 and other billed services not subject to the tax under this act are

1 aggregated with and not separately stated from telecommunications
2 services that are subject to the tax under this act, a customer may
3 not rely upon the nontaxability of those telecommunications
4 services and other billed services unless the customer's service
5 provider separately states the charges for nontaxable
6 telecommunications services and other nontaxable billed services
7 from taxable telecommunications services or the service provider
8 elects, after receiving a written request from the customer in the
9 form required by the provider, to provide verifiable data based
10 upon the service provider's books and records that are kept in the
11 regular course of business that reasonably identify the nontaxable
12 services.

13 (4) As used in this section:

14 (a) "Fabricate" means to modify or prepare tangible personal
15 property for affixation or assembly.

16 (b) "Manufacture" means to convert or condition tangible
17 personal property by changing the form, composition, quality,
18 combination, or character of the property.

19 (c) "Manufacturer" means a person who manufactures,
20 fabricates, or assembles tangible personal property.

21 Sec. 4. (1) The following are exempt from the tax levied under
22 this act, subject to subsection (2):

23 (a) Property sold in this state on which ~~transaction a tax is~~
24 ~~paid~~ **THE TRANSACTION WAS SUBJECT TO TAX** under the general sales
25 tax act, 1933 PA 167, MCL 205.51 to 205.78. ~~if the tax was due~~
26 ~~and paid on the retail sale to a consumer.~~

27 (b) Property, the storage, use, or other consumption of which

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1 this state is prohibited from taxing under the constitution or laws
2 of the United States, or under the constitution of this state.

3 (c) Property purchased for resale, demonstration purposes, or,
4 **BEFORE JANUARY 1, 2006**, lending or leasing to a public or parochial
5 school offering a course in automobile driving except that a
6 vehicle purchased by the school shall be certified for driving
7 education and shall not be reassigned for personal use by the
8 school's administrative personnel. **AFTER DECEMBER 31, 2005, IF**
9 **[SECTION << >>] 35F OF THE SINGLE BUSINESS TAX ACT, 1975 PA 228,**
10 **MCL << >> 208.35F, [IS] NOT IN EFFECT, THE USE OR CONSUMPTION**
11 **OF PROPERTY PURCHASED FOR LENDING OR LEASING TO A PUBLIC OR**
12 **PAROCHIAL SCHOOL OFFERING A COURSE IN AUTOMOBILE DRIVING [IS EXEMPT FROM**
13 **THE TAX LEVIED UNDER THIS ACT**
14 **], EXCEPT THAT A VEHICLE PURCHASED**
15 **BY THE SCHOOL SHALL BE CERTIFIED FOR DRIVING EDUCATION AND SHALL**
16 **NOT BE REASSIGNED FOR PERSONAL USE BY THE SCHOOL'S ADMINISTRATIVE**
17 **PERSONNEL.** For a dealer selling a new car or truck, exemption for
18 demonstration purposes shall be determined by the number of new
19 cars and trucks sold during the current calendar year or the
20 immediately preceding year without regard to specific make or style
21 according to the following schedule of 0 to 25, 2 units; 26 to 100,
22 7 units; 101 to 500, 20 units; 501 or more, 25 units; but not to
23 exceed 25 cars and trucks in 1 calendar year for demonstration
24 purposes. Property purchased for resale includes promotional
25 merchandise transferred pursuant to a redemption offer to a person
26 located outside this state or any packaging material, other than
27 promotional merchandise, acquired for use in fulfilling a

1 redemption offer or rebate to a person located outside this state.

2 (d) Property that is brought into this state by a nonresident
3 person for storage, use, or consumption while temporarily within
4 this state, except if the property is used in this state in a
5 nontransitory business activity for a period exceeding 15 days.

6 (e) Property the sale or use of which was already subjected to
7 a sales tax or use tax equal to, or in excess of, that imposed by
8 this act under the law of any other state or a local governmental
9 unit within a state if the tax was due and paid on the retail sale
10 to the consumer and the state or local governmental unit within a
11 state in which the tax was imposed accords like or complete
12 exemption on property the sale or use of which was subjected to the
13 sales or use tax of this state. If the sale or use of property was
14 already subjected to a tax under the law of any other state or
15 local governmental unit within a state in an amount less than the
16 tax imposed by this act, this act shall apply, but at a rate
17 measured by the difference between the rate provided in this act
18 and the rate by which the previous tax was computed.

19 (f) Property sold to a person engaged in a business enterprise
20 and using and consuming the property in the tilling, planting,
21 caring for, or harvesting of the things of the soil or in the
22 breeding, raising, or caring for livestock, poultry, or
23 horticultural products, including transfers of livestock, poultry,
24 or horticultural products for further growth. This exemption
25 includes agricultural land tile, which means fired clay or
26 perforated plastic tubing used as part of a subsurface drainage
27 system for land used in the production of agricultural products as

1 a business enterprise and includes a portable grain bin, which
2 means a structure that is used or is to be used to shelter grain
3 and that is designed to be disassembled without significant damage
4 to its component parts. This exemption does not include transfers
5 of food, fuel, clothing, or similar tangible personal property for
6 personal living or human consumption. This exemption does not
7 include tangible personal property permanently affixed to and
8 becoming a structural part of real estate.

9 (g) Property or services sold to the United States, an
10 unincorporated agency or instrumentality of the United States, an
11 incorporated agency or instrumentality of the United States wholly
12 owned by the United States or by a corporation wholly owned by the
13 United States, the American red cross and its chapters or branches,
14 this state, a department or institution of this state, or a
15 political subdivision of this state.

16 (h) Property or services sold to a school, hospital, or home
17 for the care and maintenance of children or aged persons, operated
18 by an entity of government, a regularly organized church,
19 religious, or fraternal organization, a veterans' organization, or
20 a corporation incorporated under the laws of this state, if not
21 operated for profit, and if the income or benefit from the
22 operation does not inure, in whole or in part, to an individual or
23 private shareholder, directly or indirectly, and if the activities
24 of the entity or agency are carried on exclusively for the benefit
25 of the public at large and are not limited to the advantage,
26 interests, and benefits of its members or a restricted group. The
27 tax levied does not apply to property or services sold to a parent

1 cooperative preschool. As used in this subdivision, "parent
2 cooperative preschool" means a nonprofit, nondiscriminatory
3 educational institution, maintained as a community service and
4 administered by parents of children currently enrolled in the
5 preschool that provides an educational and developmental program
6 for children younger than compulsory school age, that provides an
7 educational program for parents, including active participation
8 with children in preschool activities, that is directed by
9 qualified preschool personnel, and that is licensed ~~by the~~
10 ~~department of consumer and industry services~~ pursuant to 1973 PA
11 116, MCL 722.111 to 722.128.

12 (i) Property or services sold to a regularly organized church
13 or house of religious worship except the following:

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

16 (ii) Sales of vehicles licensed for use on the public highways
17 other than a passenger van or bus with a manufacturer's rated
18 seating capacity of 10 or more that is used primarily for the
19 transportation of persons for religious purposes.

20 (j) A vessel designed for commercial use of registered tonnage
21 of 500 tons or more, if produced upon special order of the
22 purchaser, and bunker and galley fuel, provisions, supplies,
23 maintenance, and repairs for the exclusive use of a vessel of 500
24 tons or more engaged in interstate commerce.

25 (k) Property purchased for use in this state where actual
26 personal possession is obtained outside this state, the purchase
27 price or actual value of which does not exceed \$10.00 during 1

1 calendar month.

2 (l) A newspaper or periodical classified under federal postal
3 laws and regulations effective September 1, 1985 as second-class
4 mail matter or as a controlled circulation publication or qualified
5 to accept legal notices for publication in this state, as defined
6 by law, or any other newspaper or periodical of general
7 circulation, established at least 2 years, and published at least
8 once a week, and a copyrighted motion picture film. Tangible
9 personal property used or consumed in producing a copyrighted
10 motion picture film, a newspaper published more than 14 times per
11 year, or a periodical published more than 14 times per year, and
12 not becoming a component part of that film, newspaper, or
13 periodical is subject to the tax. After December 31, 1993, tangible
14 personal property used or consumed in producing a newspaper
15 published 14 times or less per year or a periodical published 14
16 times or less per year and that portion or percentage of tangible
17 personal property used or consumed in producing an advertising
18 supplement that becomes a component part of a newspaper or
19 periodical is exempt from the tax under this subdivision. A claim
20 for a refund for taxes paid before January 1, 1999 under this
21 subdivision shall be made before June 30, 1999. For purposes of
22 this subdivision, tangible personal property that becomes a
23 component part of a newspaper or periodical and consequently not
24 subject to tax, includes an advertising supplement inserted into
25 and circulated with a newspaper or periodical that is otherwise
26 exempt from tax under this subdivision, if the advertising
27 supplement is delivered directly to the newspaper or periodical by

1 a person other than the advertiser, or the advertising supplement
2 is printed by the newspaper or periodical.

3 (m) Property purchased by persons licensed to operate a
4 commercial radio or television station if the property is used in
5 the origination or integration of the various sources of program
6 material for commercial radio or television transmission. This
7 subdivision does not include a vehicle licensed and titled for use
8 on public highways or property used in the transmitting to or
9 receiving from an artificial satellite.

10 (n) A person who is a resident of this state who purchases an
11 automobile in another state while in the military service of the
12 United States and who pays a sales tax in the state where the
13 automobile is purchased.

14 (o) A vehicle for which a special registration is secured in
15 accordance with section 226(12) of the Michigan vehicle code, 1949
16 PA 300, MCL 257.226.

17 (p) The sale of a prosthetic device, durable medical
18 equipment, or mobility enhancing equipment.

19 (q) Water when delivered through water mains, water sold in
20 bulk tanks in quantities of not less than 500 gallons, or the sale
21 of bottled water.

22 (r) A vehicle not for resale used by a nonprofit corporation
23 organized exclusively to provide a community with ambulance or fire
24 department services.

25 (s) Tangible personal property purchased and installed as a
26 component part of a water pollution control facility for which a
27 tax exemption certificate is issued pursuant to part 37 of the

1 natural resources and environmental protection act, 1994 PA 451,
2 MCL 324.3701 to 324.3708, or an air pollution control facility for
3 which a tax exemption certificate is issued pursuant to part 59 of
4 the natural resources and environmental protection act, 1994 PA
5 451, MCL 324.5901 to 324.5908.

6 (t) Tangible real or personal property donated by a
7 manufacturer, wholesaler, or retailer to an organization or entity
8 exempt pursuant to subdivision (h) or (i) or section ~~4a(a)~~
9 **4A(1)(A)** or (b) of the general sales tax act, 1933 PA 167, MCL
10 205.54a.

11 (u) The storage, use, or consumption of an aircraft by a
12 domestic air carrier for use solely in the transport of air cargo,
13 passengers, or a combination of air cargo and passengers, that has
14 a maximum certificated takeoff weight of at least 6,000 pounds. For
15 purposes of this subdivision, the term "domestic air carrier" is
16 limited to a person engaged primarily in the commercial transport
17 for hire of air cargo, passengers, or a combination of air cargo
18 and passengers as a business activity. The state treasurer shall
19 estimate on January 1 each year the revenue lost by this act from
20 the school aid fund and deposit that amount into the school aid
21 fund from the general fund.

22 (v) The storage, use, or consumption of an aircraft by a
23 person who purchases the aircraft for subsequent lease to a
24 domestic air carrier operating under a certificate issued by the
25 federal aviation administration under 14 CFR part 121, for use
26 solely in the regularly scheduled transport of passengers.

27 (w) Property or services sold to an organization not operated

1 for profit and exempt from federal income tax under section
2 501(c) (3) or 501(c) (4) of the internal revenue code, 26 USC 501; or
3 to a health, welfare, educational, cultural arts, charitable, or
4 benevolent organization not operated for profit that has been
5 issued before June 13, 1994 an exemption ruling letter to purchase
6 items exempt from tax signed by the administrator of the sales,
7 use, and withholding taxes division of the department. The
8 department shall reissue an exemption letter after June 13, 1994 to
9 each of those organizations that had an exemption letter that shall
10 remain in effect unless the organization fails to meet the
11 requirements that originally entitled it to this exemption. The
12 exemption does not apply to sales of tangible personal property and
13 sales of vehicles licensed for use on public highways, that are not
14 used primarily to carry out the purposes of the organization as
15 stated in the bylaws or articles of incorporation of the exempt
16 organization.

17 (x) The use or consumption of services described in section
18 ~~3a(a)~~ **3A(1)(A)** or (c) or 3b by means of a prepaid telephone
19 calling card, a prepaid authorization number for telephone use, or
20 a charge for internet access.

21 (y) The purchase, lease, use, or consumption of the following
22 by an industrial laundry after December 31, 1997:

23 (i) Textiles and disposable products including, but not limited
24 to, soap, paper, chemicals, tissues, deodorizers and dispensers,
25 and all related items such as packaging, supplies, hangers, name
26 tags, and identification tags.

27 (ii) Equipment, whether owned or leased, used to repair and

1 dispense textiles including, but not limited to, roll towel
2 cabinets, slings, hardware, lockers, mop handles and frames, and
3 carts.

4 (iii) Machinery, equipment, parts, lubricants, and repair
5 services used to clean, process, and package textiles and related
6 items, whether owned or leased.

7 (iv) Utilities such as electric, gas, water, or oil.

8 (v) Production washroom equipment and mending and packaging
9 supplies and equipment.

10 (vi) Material handling equipment including, but not limited to,
11 conveyors, racks, and elevators and related control equipment.

12 (vii) Wastewater pretreatment equipment and supplies and
13 related maintenance and repair services.

14 (2) The property or services under subsection (1) are exempt
15 only to the extent that the property or services are used for the
16 exempt purposes if one is stated in subsection (1). The exemption
17 is limited to the percentage of exempt use to total use determined
18 by a reasonable formula or method approved by the department.

19 Enacting section 1. This amendatory act does not take effect
20 unless all of the following bills of the 93rd Legislature are
21 enacted into law:

22 (a) House Bill No. 4342.

23 (b) House Bill No. 4972.

24 (c) House Bill No. 4973.

25 (d) House Bill No. 4980.

26 (e) House Bill No. 5095.

27 (f) House Bill No. 5096.

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- 1 (g) House Bill No. 5097.
- 2 (h) House Bill No. 5098.
- 3 (i) House Bill No. 5106.
- 4 (j) House Bill No. 5108.
- 5 (k) Senate Bill No. 633.
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