

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5107

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
9 excluding telephone service by coin-operated installations,

1 switchboards, concentrator-identifiers, interoffice circuitry and
2 their accessories for telephone answering service, and directory
3 advertising proceeds.

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

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

1 ~~of 6%~~ THIS SUBDIVISION DOES NOT APPLY TO AN 800 PREFIX SERVICE OR
2 SIMILAR TYPE SERVICE. BEFORE JANUARY 1, 2006, this subdivision does
3 not apply to a wide area telecommunication service or a similar
4 type service, ~~an 800 prefix service or similar type service,~~ an
5 interstate private network and related usage charges, or an
6 international call either inbound or outbound. BEGINNING JANUARY 1,
7 2006, A WIDE AREA TELECOMMUNICATION SERVICE OR A SIMILAR TYPE
8 SERVICE, AN INTERSTATE PRIVATE NETWORK AND RELATED USAGE CHARGES,
9 OR AN INTERNATIONAL CALL EITHER INBOUND OR OUTBOUND IS TAXED UNDER
10 THIS ACT IN THE SAME MANNER AS INTERSTATE TELEPHONE COMMUNICATIONS.

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

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

22 (f) For a manufacturer who affixes its product to real estate
23 and maintains an inventory of its product that is available for
24 sale to others by publication or price list, the direct production
25 costs and indirect production costs of the product affixed to the
26 real estate that are incident to and necessary for production or
27 manufacturing operations or processes, as defined by the

1 department.

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

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

21 (3) If charges for intrastate telecommunications services or
22 telecommunications services between this state and another state
23 and other billed services not subject to the tax under this act are
24 aggregated with and not separately stated from telecommunications
25 services that are subject to the tax under this act, a customer may
26 not rely upon the nontaxability of those telecommunications
27 services and other billed services unless the customer's service

1 provider separately states the charges for nontaxable
2 telecommunications services and other nontaxable billed services
3 from taxable telecommunications services or the service provider
4 elects, after receiving a written request from the customer in the
5 form required by the provider, to provide verifiable data based
6 upon the service provider's books and records that are kept in the
7 regular course of business that reasonably identify the nontaxable
8 services.

9 (4) As used in this section:

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

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

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

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

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

23 (b) Property, the storage, use, or other consumption of which
24 this state is prohibited from taxing under the constitution or laws
25 of the United States, or under the constitution of this state.

26 (c) Property purchased for resale, demonstration purposes, or,
27 **BEFORE JANUARY 1, 2006**, lending or leasing to a public or parochial

1 school offering a course in automobile driving except that a
2 vehicle purchased by the school shall be certified for driving
3 education and shall not be reassigned for personal use by the
4 school's administrative personnel. **AFTER DECEMBER 31, 2005, A**
5 **VEHICLE PURCHASED FOR LENDING OR LEASING TO A PUBLIC OR PAROCHIAL**
6 **SCHOOL OFFERING A COURSE IN AUTOMOBILE DRIVING SHALL BE SUBJECT TO**
7 **THE TAX LEVIED UNDER THIS ACT.** For a dealer selling a new car or
8 truck, exemption for demonstration purposes shall be determined by
9 the number of new cars and trucks sold during the current calendar
10 year or the immediately preceding year without regard to specific
11 make or style according to the following schedule of 0 to 25, 2
12 units; 26 to 100, 7 units; 101 to 500, 20 units; 501 or more, 25
13 units; but not to exceed 25 cars and trucks in 1 calendar year for
14 demonstration purposes. Property purchased for resale includes
15 promotional merchandise transferred pursuant to a redemption offer
16 to a person located outside this state or any packaging material,
17 other than promotional merchandise, acquired for use in fulfilling
18 a redemption offer or rebate to a person located outside this
19 state.

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

24 (e) Property the sale or use of which was already subjected to
25 a sales tax or use tax equal to, or in excess of, that imposed by
26 this act under the law of any other state or a local governmental
27 unit within a state if the tax was due and paid on the retail sale

1 to the consumer and the state or local governmental unit within a
2 state in which the tax was imposed accords like or complete
3 exemption on property the sale or use of which was subjected to the
4 sales or use tax of this state. If the sale or use of property was
5 already subjected to a tax under the law of any other state or
6 local governmental unit within a state in an amount less than the
7 tax imposed by this act, this act shall apply, but at a rate
8 measured by the difference between the rate provided in this act
9 and the rate by which the previous tax was computed.

10 (f) Property sold to a person engaged in a business enterprise
11 and using and consuming the property in the tilling, planting,
12 caring for, or harvesting of the things of the soil or in the
13 breeding, raising, or caring for livestock, poultry, or
14 horticultural products, including transfers of livestock, poultry,
15 or horticultural products for further growth. This exemption
16 includes agricultural land tile, which means fired clay or
17 perforated plastic tubing used as part of a subsurface drainage
18 system for land used in the production of agricultural products as
19 a business enterprise and includes a portable grain bin, which
20 means a structure that is used or is to be used to shelter grain
21 and that is designed to be disassembled without significant damage
22 to its component parts. This exemption does not include transfers
23 of food, fuel, clothing, or similar tangible personal property for
24 personal living or human consumption. This exemption does not
25 include tangible personal property permanently affixed to and
26 becoming a structural part of real estate.

27 (g) Property or services sold to the United States, an

1 unincorporated agency or instrumentality of the United States, an
2 incorporated agency or instrumentality of the United States wholly
3 owned by the United States or by a corporation wholly owned by the
4 United States, the American red cross and its chapters or branches,
5 this state, a department or institution of this state, or a
6 political subdivision of this state.

7 (h) Property or services sold to a school, hospital, or home
8 for the care and maintenance of children or aged persons, operated
9 by an entity of government, a regularly organized church,
10 religious, or fraternal organization, a veterans' organization, or
11 a corporation incorporated under the laws of this state, if not
12 operated for profit, and if the income or benefit from the
13 operation does not inure, in whole or in part, to an individual or
14 private shareholder, directly or indirectly, and if the activities
15 of the entity or agency are carried on exclusively for the benefit
16 of the public at large and are not limited to the advantage,
17 interests, and benefits of its members or a restricted group. The
18 tax levied does not apply to property or services sold to a parent
19 cooperative preschool. As used in this subdivision, "parent
20 cooperative preschool" means a nonprofit, nondiscriminatory
21 educational institution, maintained as a community service and
22 administered by parents of children currently enrolled in the
23 preschool that provides an educational and developmental program
24 for children younger than compulsory school age, that provides an
25 educational program for parents, including active participation
26 with children in preschool activities, that is directed by
27 qualified preschool personnel, and that is licensed ~~by the~~

1 ~~department of consumer and industry services~~ pursuant to 1973 PA
2 116, MCL 722.111 to 722.128.

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

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

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

11 (j) A vessel designed for commercial use of registered tonnage
12 of 500 tons or more, if produced upon special order of the
13 purchaser, and bunker and galley fuel, provisions, supplies,
14 maintenance, and repairs for the exclusive use of a vessel of 500
15 tons or more engaged in interstate commerce.

16 (k) Property purchased for use in this state where actual
17 personal possession is obtained outside this state, the purchase
18 price or actual value of which does not exceed \$10.00 during 1
19 calendar month.

20 (l) A newspaper or periodical classified under federal postal
21 laws and regulations effective September 1, 1985 as second-class
22 mail matter or as a controlled circulation publication or qualified
23 to accept legal notices for publication in this state, as defined
24 by law, or any other newspaper or periodical of general
25 circulation, established at least 2 years, and published at least
26 once a week, and a copyrighted motion picture film. Tangible
27 personal property used or consumed in producing a copyrighted

1 motion picture film, a newspaper published more than 14 times per
2 year, or a periodical published more than 14 times per year, and
3 not becoming a component part of that film, newspaper, or
4 periodical is subject to the tax. After December 31, 1993, tangible
5 personal property used or consumed in producing a newspaper
6 published 14 times or less per year or a periodical published 14
7 times or less per year and that portion or percentage of tangible
8 personal property used or consumed in producing an advertising
9 supplement that becomes a component part of a newspaper or
10 periodical is exempt from the tax under this subdivision. A claim
11 for a refund for taxes paid before January 1, 1999 under this
12 subdivision shall be made before June 30, 1999. For purposes of
13 this subdivision, tangible personal property that becomes a
14 component part of a newspaper or periodical and consequently not
15 subject to tax, includes an advertising supplement inserted into
16 and circulated with a newspaper or periodical that is otherwise
17 exempt from tax under this subdivision, if the advertising
18 supplement is delivered directly to the newspaper or periodical by
19 a person other than the advertiser, or the advertising supplement
20 is printed by the newspaper or periodical.

21 (m) Property purchased by persons licensed to operate a
22 commercial radio or television station if the property is used in
23 the origination or integration of the various sources of program
24 material for commercial radio or television transmission. This
25 subdivision does not include a vehicle licensed and titled for use
26 on public highways or property used in the transmitting to or
27 receiving from an artificial satellite.

1 (n) A person who is a resident of this state who purchases an
2 automobile in another state while in the military service of the
3 United States and who pays a sales tax in the state where the
4 automobile is purchased.

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

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

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

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

16 (s) Tangible personal property purchased and installed as a
17 component part of a water pollution control facility for which a
18 tax exemption certificate is issued pursuant to part 37 of the
19 natural resources and environmental protection act, 1994 PA 451,
20 MCL 324.3701 to 324.3708, or an air pollution control facility for
21 which a tax exemption certificate is issued pursuant to part 59 of
22 the natural resources and environmental protection act, 1994 PA
23 451, MCL 324.5901 to 324.5908.

24 (t) Tangible real or personal property donated by a
25 manufacturer, wholesaler, or retailer to an organization or entity
26 exempt pursuant to subdivision (h) or (i) or section ~~4a(a)~~
27 **4A(1)(A)** or (b) of the general sales tax act, 1933 PA 167, MCL

1 205.54a.

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

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

18 (w) Property or services sold to an organization not operated
19 for profit and exempt from federal income tax under section
20 501(c)(3) or 501(c)(4) of the internal revenue code, 26 USC 501; or
21 to a health, welfare, educational, cultural arts, charitable, or
22 benevolent organization not operated for profit that has been
23 issued before June 13, 1994 an exemption ruling letter to purchase
24 items exempt from tax signed by the administrator of the sales,
25 use, and withholding taxes division of the department. The
26 department shall reissue an exemption letter after June 13, 1994 to
27 each of those organizations that had an exemption letter that shall

1 remain in effect unless the organization fails to meet the
2 requirements that originally entitled it to this exemption. The
3 exemption does not apply to sales of tangible personal property and
4 sales of vehicles licensed for use on public highways, that are not
5 used primarily to carry out the purposes of the organization as
6 stated in the bylaws or articles of incorporation of the exempt
7 organization.

8 (x) The use or consumption of services described in section
9 ~~3a(a)~~ **3A(1)(A)** or (c) or 3b by means of a prepaid telephone
10 calling card, a prepaid authorization number for telephone use, or
11 a charge for internet access.

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

14 (i) Textiles and disposable products including, but not limited
15 to, soap, paper, chemicals, tissues, deodorizers and dispensers,
16 and all related items such as packaging, supplies, hangers, name
17 tags, and identification tags.

18 (ii) Equipment, whether owned or leased, used to repair and
19 dispense textiles including, but not limited to, roll towel
20 cabinets, slings, hardware, lockers, mop handles and frames, and
21 carts.

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

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

26 (v) Production washroom equipment and mending and packaging
27 supplies and equipment.

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

3 (vii) Wastewater pretreatment equipment and supplies and
4 related maintenance and repair services.

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

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

13 (a) House Bill No. 4972.

14 (b) House Bill No. 4980.

15 (c) House Bill No. 5095.

16 (d) House Bill No. 5096.

17 (e) House Bill No. 5097.

18 (f) House Bill No. 5098.

19 (g) House Bill No. 5106.

20 (h) House Bill No. 5108.

21 (i) Senate Bill No. 633.

22 (j) Senate Bill No. 634.