

HOUSE BILL No. 5873

March 15, 2006, Introduced by Rep. Caswell and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending sections 2 and 3a (MCL 205.92 and 205.93a), as amended
by 2004 PA 172.

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

1 (b) "Use" means the exercise of a right or power over tangible
2 personal property incident to the ownership of that property
3 including transfer of the property in a transaction where
4 possession is given.

5 (c) "Storage" means a keeping or retention of property in this
6 state for any purpose after the property loses its interstate
7 character.

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

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

1 (f) "Purchase price" or "price" means the total amount of
2 consideration paid by the consumer to the seller, including cash,
3 credit, property, and services, for which tangible personal
4 property or services are sold, leased, or rented, valued in money,
5 whether received in money or otherwise, and applies to the measure
6 subject to use tax. Purchase price includes the following
7 subparagraphs (i) through (vi) and excludes subparagraphs (vii)
8 through (viii):

9 (i) Seller's cost of the property sold.

10 (ii) Cost of materials used, labor or service cost, interest,
11 losses, costs of transportation to the seller, taxes imposed on the
12 seller other than taxes imposed by this act, and any other expense
13 of the seller.

14 (iii) Charges by the seller for any services necessary to
15 complete the sale, other than the following:

16 (A) An amount received or billed by the taxpayer for
17 remittance to the employee as a gratuity or tip, if the gratuity or
18 tip is separately identified and itemized on the guest check or
19 billed to the customer.

20 (B) Labor or service charges involved in maintenance and
21 repair work on tangible personal property of others if separately
22 itemized.

23 (iv) Delivery charges incurred or to be incurred before the
24 completion of the transfer of ownership of tangible personal
25 property from the seller to the purchaser.

26 (v) Installation charges incurred or to be incurred before the
27 completion of the transfer of ownership of tangible personal

1 property from the seller to the purchaser.

2 (vi) Credit for any trade-in.

3 (vii) Interest, financing, or carrying charges from credit
4 extended on the sale of personal property or services, if the
5 amount is separately stated on the invoice, bill of sale, or
6 similar document given to the purchaser.

7 (viii) Any taxes legally imposed directly on the consumer that
8 are separately stated on the invoice, bill of sale, or similar
9 document given to the purchaser.

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

15 (h) "Business" means all activities engaged in by a person or
16 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 department of treasury.

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

21 (k) "Tangible personal property" means personal property that
22 can be seen, weighed, measured, felt, or touched or that is in any
23 other manner perceptible to the senses and includes electricity,
24 water, gas, steam, and prewritten computer software.

25 (l) "Textiles" means goods that are made of or incorporate
26 woven or nonwoven fabric, including, but not limited to, clothing,
27 shoes, hats, gloves, handkerchiefs, curtains, towels, sheets,

1 pillows, pillowcases, tablecloths, napkins, aprons, linens, floor
2 mops, floor mats, and thread. Textiles also include materials used
3 to repair or construct textiles, or other goods used in the rental,
4 sale, or cleaning of textiles.

5 (m) "Interstate motor carrier" means a person who operates or
6 causes to be operated a qualified commercial motor vehicle on a
7 public road or highway in this state and at least 1 other state or
8 Canadian province.

9 (n) "Qualified commercial motor vehicle" means that term as
10 defined in section 1(i), (j), and (k) of the motor carrier fuel tax
11 act, 1980 PA 119, MCL 207.211.

12 (o) "Diesel fuel" means that term as defined in section 2(p)
13 of the motor fuel tax act, 2000 PA 403, MCL 207.1002.

14 (p) "Sale" means a transaction by which tangible personal
15 property or services are purchased or rented for storage, use, or
16 other consumption in this state.

17 **(Q) "PREMANUFACTURED MODULAR BUILDING UNIT" MEANS A BUILDING**
18 **DESIGNED AND CONSTRUCTED PURSUANT TO THE STILLE-DEROSSETT-HALE**
19 **SINGLE STATE CONSTRUCTION CODE ACT, 1972 PA 230, MCL 125.1501 TO**
20 **125.1531, THAT IS MANUFACTURED IN 1 OR MORE SECTIONS IN A FACTORY**
21 **FOR INSTALLATION ON A PERMANENT FOUNDATION AT ITS FINAL LOCATION.**
22 **PREMANUFACTURED MODULAR BUILDING UNIT DOES NOT INCLUDE A MOBILE**
23 **HOME OR A MANUFACTURED HOME THAT IS CONSTRUCTED ON A PERMANENT**
24 **CHASSIS IN COMPLIANCE WITH THE NATIONAL MANUFACTURED HOUSING**
25 **CONSTRUCTION AND SAFETY STANDARDS ACT OF 1974, 42 USC 5401 TO 5426.**

26 **(R) "MANUFACTURED HOME" MEANS THAT TERM AS DEFINED IN SECTION**
27 **9102(1)(AAA) OF THE UNIFORM COMMERCIAL CODE, 1962 PA 174, MCL**

1 **440.9102.**

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

5 (a) Except as provided in section 3b, intrastate telephone,
6 telegraph, leased wire, and other similar communications, including
7 local telephone exchange and long distance telephone service that
8 both originates and terminates in Michigan, and telegraph, private
9 line, and teletypewriter service between places in Michigan, but
10 excluding telephone service by coin-operated installations,
11 switchboards, concentrator-identifiers, interoffice circuitry and
12 their accessories for telephone answering service, and directory
13 advertising proceeds.

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

1 accommodations are available to the public, except accommodations
2 rented for a continuous period of more than 1 month and
3 accommodations furnished by hospitals or nursing homes.

4 (c) Except as provided in section 3b, interstate telephone
5 communications that either originate or terminate in this state and
6 for which the charge for the service is billed to a Michigan
7 service address or phone number by the provider either within or
8 outside this state including calls between this state and any place
9 within or without the United States of America outside of this
10 state. However, if the tax under this act is levied at a rate of
11 6%, this subdivision does not apply to a wide area
12 telecommunication service or a similar type service, an 800 prefix
13 service or similar type service, an interstate private network and
14 related usage charges, or an international call either inbound or
15 outbound.

16 (d) The laundering or cleaning of textiles under a sale,
17 rental, or service agreement with a term of at least 5 days. This
18 subdivision does not apply to the laundering or cleaning of
19 textiles used by a restaurant or retail sales business. As used in
20 this subdivision, "restaurant" means a food service establishment
21 defined and licensed under the food law of 2000, 2000 PA 92, MCL
22 289.1101 to 289.8111.

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

27 (f) For a manufacturer who affixes its product to real estate

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

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

15 **(H) FOR A MANUFACTURER OF A PREMANUFACTURED MODULAR BUILDING**
16 **UNIT OR A MANUFACTURED HOME, IF THE PREMANUFACTURED MODULAR**
17 **BUILDING UNIT OR THE MANUFACTURED HOME IS PERMANENTLY AFFIXED TO**
18 **REAL ESTATE AND THE MANUFACTURER DOES NOT MAINTAIN AN INVENTORY OF**
19 **ITS PRODUCT AVAILABLE FOR SALE TO OTHERS, THE SUM OF THE MATERIALS**
20 **COST OF THE PREMANUFACTURED MODULAR BUILDING UNIT OR MANUFACTURED**
21 **HOME AND THE COST OF LABOR TO MANUFACTURE, FABRICATE, OR ASSEMBLE**
22 **THE PREMANUFACTURED MODULAR BUILDING UNIT OR MANUFACTURED HOME, BUT**
23 **NOT INCLUDING THE COST OF LABOR TO CUT, BEND, ASSEMBLE, OR ATTACH**
24 **THE PREMANUFACTURED MODULAR BUILDING UNIT OR MANUFACTURED HOME AT**
25 **THE SITE FOR AFFIXATION TO REAL ESTATE. IF THE MANUFACTURER OF A**
26 **PREMANUFACTURED MODULAR BUILDING UNIT OR MANUFACTURED HOME SELLS**
27 **THE PREMANUFACTURED MODULAR BUILDING UNIT OR MANUFACTURED HOME TO**

1 ANOTHER FOR PERMANENT AFFIXATION TO REAL ESTATE, THE MANUFACTURER
2 IS NOT REQUIRED TO PERFORM THE AFFIXATION OF THE PREMANUFACTURED
3 MODULAR BUILDING UNIT OR MANUFACTURED HOME TO THE REAL ESTATE IF
4 THE PREMANUFACTURED MODULAR BUILDING UNIT OR MANUFACTURED HOME IS
5 PERMANENTLY AFFIXED TO THE REAL ESTATE BY THE PURCHASER.

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

17 (3) If charges for intrastate telecommunications services or
18 telecommunications services between this state and another state
19 and other billed services not subject to the tax under this act are
20 aggregated with and not separately stated from telecommunications
21 services that are subject to the tax under this act, a customer may
22 not rely upon the nontaxability of those telecommunications
23 services and other billed services unless the customer's service
24 provider separately states the charges for nontaxable
25 telecommunications services and other nontaxable billed services
26 from taxable telecommunications services or the service provider
27 elects, after receiving a written request from the customer in the

1 form required by the provider, to provide verifiable data based
2 upon the service provider's books and records that are kept in the
3 regular course of business that reasonably identify the nontaxable
4 services.

5 (4) As used in this section:

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

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

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

13 Enacting section 1. This amendatory act takes effect January
14 1, 2006.