



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5198 (as enacted)
Sponsor: Representative Steve Tobocman
House Committee: Tax Policy
Senate Committee: Finance

PUBLIC ACT 93 of 2007

Date Completed: 10-4-07

CONTENT

The bill amends the Use Tax Act to add certain services to the list of property and services taxed under the Act, and to appropriate \$100,000 to the Department of Treasury for the implementation of the bill's requirements.

The bill will take effect on December 1, 2007. It is described in detail below.

Services Subject to Tax

The Act imposes a specific tax for the privilege of using, storing, or consuming tangible personal property in the State at a rate of 6% of the price of property or services specified in the Act. Penalties and interest are added to the tax if applicable and as provided in the Act.

Under the bill, the tax is extended to the use or consumption of the following services, as described in the North American Industry Classification System (NAICS), 2002 as produced by the United States Office of Management and Budget:

- Carpet and upholstery cleaning services.
- Business service center services.
- Consulting services.
- Investigation, guard, and armored car services.
- Investment advice services.
- Janitorial services.
- Office administration services.
- Landscaping services.
- Travel and reservation services.
- Scenic transportation services.
- Skiing services.

- Tour operator services.
- Warehousing and storage services.
- Packaging and labeling services.
- Specialized design services.
- Transit and ground passenger transport services.
- Courier and messenger services.
- Personal care services, except hair care services.
- Security system services.
- Document preparation services.
- Miniwarehouse services and self-storage unit services.

Each of these services is subject to tax under the bill based on the description of that service in the applicable NAICS code and not the classification of the establishment providing that service.

The bill also imposes the tax on the use or consumption of the following personal services:

- Astrology services.
- Baby shoe bronzing services.
- Bail bonding services.
- Balloon-o-gram services.
- Coin-operated blood pressure testing machine services.
- Bondsperson services.
- Check room services.
- Coin-operated personal service machine services.
- Comfort station operation services.
- Concierge services.
- Consumer buying services.
- Credit card notification services.
- Dating services.
- Discount buying services.

- Social escort services.
- Fortune-telling services.
- Genealogical investigation services.
- House sitting services.
- Social introduction services.
- Coin-operated rental locker services.
- Numerology services.
- Palm reading services.
- Party planning services.
- Pay telephone services.
- Personal fitness trainer services.
- Personal shopping services.
- Coin-operated photographic machine services.
- Phrenology services.
- Porter services.
- Psychic services.
- Rest room operation services.
- Shoeshine services.
- Singing telegram services.
- Wedding chapel services, but not churches.
- Wedding planning services.

In addition, the bill extends the use tax to service contract services in which the seller, in exchange for the buyer's single payment, agrees to provide repair, maintenance, or replacement of one or more items of tangible personal property during a specified period of time, which services the buyer is not required to buy in connection with the purchase of tangible personal property.

Appropriation

The bill appropriates \$100,000 to the Department of Treasury for the 2006-07 State fiscal year to begin implementing the requirements of the bill. Any portion of this amount that is not spent in the 2006-07 State fiscal year may not lapse to the General Fund but must be carried forward in a work project account that is in compliance with the Management and Budget Act for the following State fiscal year.

Registration

Under the Use Tax Act, except as otherwise provided, a person engaged in the business of selling tangible personal property for storage, use, or other consumption in the State must register with the Department of Treasury and give the name and address of each agent operating in this State, the location of all distribution or sales houses or offices or other places of business in the State, and any other information that the

Department requires relevant to the enforcement of the Act. A seller holding a sales tax license obtained under the General Sales Tax Act is not required to register separately with the Department.

Under the bill, these provisions apply to a person subject to the tax under the Use Tax Act, rather than a person engaged in the business of selling tangible personal property.

Sourcing Requirements

The Act requires every seller to source sales in accordance with Section 20 and collect the use tax from the consumer. Under the bill, this applies to every person subject to the tax under the Act. Additionally, the services set forth in the bill must be sourced as products as provided in Section 20.

(Under Section 20, for sourcing a sale subject to the use tax, the following apply:

- If a product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
- If a product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where the product is received by the purchaser or the purchaser's designee, including the location indicated by instructions for delivery to the purchaser, known to the seller.
- If either of the above provisions does not apply, the sale is sourced to the location indicated by an address for the purchaser available from the seller's business records maintained in the ordinary course of the seller's business, provided use of the address does not constitute bad faith.
- If none of the above provisions apply, the sale is sourced to the location indicated by an address for the purchaser obtained at the completion of the sale, including the address of the purchaser's payment instrument if no other address is available, provided use of the address does not constitute bad faith.
- If none of the above provisions apply or the seller has insufficient information to apply any of the above provisions, the sale will be sourced to the location indicated by the address from which the tangible personal property was shipped or from which computer software delivered

electronically was first available for transmission by the seller.)

Tie-Bars

The bill is tie-barred to the following bills:

- Senate Bill 1 (Public Act 100 of 2007), which amended the Social Welfare Act to require the Department of Community Health to create incentives for Medicaid recipients who practice positive health behaviors.
- Senate Bills 395, 396, 397, and 398 (Public Acts 99, 96, 97, and 98 of 2007), which amended the Legislative Council Act to create the Legislative Commission on Government Efficiency and the Legislative Commission on Statutory Mandates, and require the Commissions to report to the Legislature.
- Senate Bill 418 (Public Act 106 of 2007), which created the Public Employees Health Benefits Act, and Senate Bills 419, 420, and 421 (Public Acts 107, 108, and 109 of 2007), which amended several other statutes, to allow public employers to provide health benefits through pooled plans, and require the sharing of claims utilization and cost information under certain circumstances.
- Senate Bills 546 and 547 (Public Acts 110 and 111 of 2007), which amended the Public School Employees Retirement Act to revise provisions concerning contribution rates, the payment of health coverage premiums, and the purchase of service credit.
- Senate Bill 549 (Public Act 101 of 2007), which amended the Revised School Code to require an intermediate school district and its constituent districts to adopt a common school calendar.
- Senate Bill 622 (Public Act 112 of 2007), which amended the Mental Health Code to allow the Department of Corrections to contract with third-party providers to operate the corrections mental health program.
- Senate Bill 632 (Public Act 102 of 2007), which amended the Correctional Industries Act to allow correctional industries products that are cut and sewn textiles to be sold to any business or individual only if a comparable product is not manufactured by a private business in the State.
- House Bill 4800 (Public Act 95 of 2007), which amended the State Employees'

Retirement Act to require the forfeiture of a State retirant's retirement allowance during a period of employment with the State.

MCL 205.93a et al.

BACKGROUND

Currently Taxed Services

The use or consumption of the following services is taxed under the Act under certain conditions:

- Intrastate telephone, telegraph, leased wire, and other similar communications.
- Interstate telephone communications that either originate or terminate in the State and for which the charge for the service is billed to a service address in this State or phone number by the provider either within or outside the State.
- Rooms or lodging furnished by hotelkeepers, motel operators, and others furnishing accommodations that are available to the public on the basis of a commercial and business enterprise.
- The laundering or cleaning of textiles under a sale, rental, or service agreement with a term of at least five days.
- The transmission and distribution of electricity, if the sale is made to the consumer or user of the electricity for consumption or use rather than for resale.
- For a manufacturer that affixes its product to real estate and maintains an inventory of its product that is available for sale to others by publication or price list, the direct and indirect production costs that are incident to and necessary for production or manufacturing operations or processes.
- For a manufacturer that affixes its product to real estate but does not maintain an inventory available for sale to others or make its product available for sale to others by publication or price list, the sum of the materials cost of the property and the cost of labor to manufacture, fabricate, or assemble the property.
- Mobile telecommunications services.

Exemptions

Under the Act, to the extent that the property or services are used for the exempt purpose, the following are exempt from the use tax:

- Property or services sold to the United States, an unincorporated agency or instrumentality of the United States, an incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States, the American Red Cross and its chapters or branches, the State, a department or institution of this State, or a political subdivision of the State.
- Property or services sold to a school, hospital, or home for the care and maintenance of children or aged individuals, operated by an entity of government, a regularly organized church, religious, or fraternal organization, a veterans' organization, or a corporation incorporated under the laws of this State, if not operated for profit, and if the income or benefit from the operation does not inure to an individual or private shareholder, and the activities of the entity or agency are carried on exclusively for the benefit of the public at large.
- Property or services sold to a regularly organized church or house of religious worship except when prohibited.
- Property or services sold to an organization not operated for profit and exempt from Federal income tax under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, or to a health, welfare, educational, cultural arts, charitable, or benevolent organization not operated for profit and meeting other requirements.

In addition, the use tax does not apply to a transaction or a portion of a transaction if the transferee or purchaser is the spouse, mother, father, brother, sister, child, stepparent, stepchild, stepbrother, stepsister, grandparent, grandchild, legal ward, or a legally appointed guardian, of the transferor.

The Act also exempts a transaction or a portion of a transaction if the transfer is a gift to a beneficiary in the administration of an estate.

Legislative Analyst: Craig Laurie

FISCAL IMPACT

The bill will generate an estimated \$613.8 million in FY 2007-08, based on the effective date of December 1, 2007. Of this amount, \$409.2 million will go to the General Fund and \$204.6 million will go to the School Aid Fund. For FY 2008-09, it is estimated that expanding the use tax to selected services will generate \$751.3 million, which reflects a full fiscal year impact. Of this amount, \$500.9 million will go to the General Fund and \$250.4 million to the School Aid Fund. This bill will not have any direct fiscal impact on local government.

The following tables summarize the estimated fiscal impact by type of service for FY 2007-08 and provide a brief description of each of the services that will be taxed under this bill.

Fiscal Analyst: Jay Wortley

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

H.B. 5198 (PUBLIC ACT 93 of 2007)
 Estimated Fiscal Impact by Type of Service: FY 1007-08
 (millions of dollars)

Services	Estimated New Revenue Effective 12-1-2007			Cumulative Total
	Consumers	Business	Total	
Business service centers	\$0.0	\$9.5	\$9.5	\$9.5
Carpet & upholstery cleaning	1.2	4.0	5.2	14.7
Miniwarehouse/self storage	3.9	0.0	3.9	18.6
Security system	4.2	10.0	14.2	32.8
Investigation, guard & armored car	3.0	24.0	27.0	59.8
Investment advice	12.6	4.2	16.8	76.5
Janitorial	5.2	38.7	43.8	120.3
Landscaping	24.3	16.2	40.5	160.8
Office administration	0.0	79.2	79.2	240.0
Service contracts	23.5	0.0	23.5	263.5
Personal care (no haircuts)	14.1	0.0	14.1	277.6
Other personal services	48.2	0.0	48.2	325.8
Other travel & reservation	6.7	0.0	6.7	332.4
Scenic transportation	0.6	0.0	0.6	333.0
Skiing	1.8	0.4	2.2	335.2
Tour operators	2.6	0.0	2.6	337.8
Couriers & messengers	0.0	3.1	3.1	340.8
Transit & ground passenger	4.2	6.3	10.5	351.3
Specialized design (interior design)	4.2	23.6	27.8	379.1
Consulting	0.0	188.2	188.2	567.3
Packaging and labeling	0.0	20.8	20.8	588.1
Document preparation	0.5	4.3	4.8	592.8
Warehousing & storage	0.0	21.0	21.0	613.8
Total Selected Services @ 6%	\$160.5	\$453.3	\$613.8	----
Prepared by Senate Fiscal Agency based on data from Michigan Department of Treasury. 10/1/2007				

DESCRIPTION OF SERVICES TAXED UNDER H.B. 5198 (PUBLIC ACT 93 OF 2007)

Service	NAICS Code	Description
Business service centers	56143	Mailbox rental, copy centers, office support (mailing, copying, on-site PC rental)
Carpet & upholstery cleaning	56174	Cleaning and dyeing used rugs, carpets, and upholstery
Miniwarehouse/self storage	53113	Renting/Leasing space for self-storage
Security system	56162	Services related to selling security systems and remote monitoring of electronic alarm systems
Investigation, guard & armored car	56161	Providing investigation and detective services
Investment advice	52393	Providing customized investment advice to clients on a fee basis
Janitorial	56172	Cleaning building interiors, interiors of transportation equipment or windows
Landscaping	56173	Providing landscape care/maintenance along with design/construction of landscaped exteriors
Office administration	5611	Providing day-to-day administrative services (billing/record-keeping, personnel, financial planning)
Service contracts	----	Optional warranties sold with tangible personal property
Personal care (no haircuts)	8121	Appearance care services except hair cutting and styling (nails, diet and weight management)
Other personal services	----	See footnote below.
Other travel & reservation	56159	Travel arrangements and reservation services provided other than travel agents/tour operators
Scenic transportation	487	Using transportation to provide recreation and entertainment (steam trains/charter boats)
Skiiing	71392	Operating downhill, cross-country, or related skiiing areas and ski lifts and tows
Tour operators	56152	Arranging and assembling tours sold through travel agencies or tour operators
Couriers & messengers	482	Providing intercity and/or local delivery of parcels
Transit & ground passenger	4853	Taxi and limousine services
Specialized design (interior design)	5414	Planning, designing, and administering projects in interior spaces
Consulting	5416	Providing assistance on management, financial, marketing, environmental, scientific & technical issues
Packaging & labeling	56191	Packaging client-owned materials and labeling and/or imprinting packages
Document preparation	56141	Letter/resume writing, editing/proofreading, typing/word processing, transcription
Warehousing & storage	4931	Operating warehousing and storage facilities for general items/refrigerated goods/other products

Services included in Other Personal Services are astrology, baby shoe bronzing, bail bonding, balloon-o-grams, coin-operated personal service machines, comfort station operations, concierge, consumer buying, credit card notification, dating, discount buying, social escort, fortune telling, genealogical investigation, house sitting, social introduction, coin-operated rental lockers, numerology, palm reading, party planning, pay telephone, personal fitness trainer, personal shopping, coin-operated photographic machines, phrenology, porter, psychic, rest room operations, shoeshine, singing telegram, wedding chapel (not churches), and wedding planning services.

Senate Fiscal Agency
10/1/2007