

HOUSE BILL No. 4882

June 7, 2007, Introduced by Rep. Bieda and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending sections 2, 3, and 7 (MCL 205.92, 205.93, and 205.97),
sections 2 and 3 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. **CONVERTING TANGIBLE PERSONAL PROPERTY ACQUIRED**
5 **FOR A USE EXEMPT FROM THE TAX LEVIED UNDER THIS ACT TO A USE NOT**
6 **EXEMPT FROM THE TAX LEVIED UNDER THIS ACT IS A TAXABLE USE.**

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

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

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

1 effected; and whether consideration is a price or rental in money,
2 or by way of exchange or barter. **PURCHASE INCLUDES CONVERTING**
3 **TANGIBLE PERSONAL PROPERTY ACQUIRED FOR A USE EXEMPT FROM THE TAX**
4 **LEVIED UNDER THIS ACT TO A USE NOT EXEMPT FROM THE TAX LEVIED UNDER**
5 **THIS ACT.**

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

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

15 (ii) Cost of materials used, labor or service cost, interest,
16 losses, costs of transportation to the seller, taxes imposed on the
17 seller other than taxes imposed by this act, and any other expense
18 of the seller.

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

21 (A) An amount received or billed by the taxpayer for
22 remittance to the employee as a gratuity or tip, if the gratuity or
23 tip is separately identified and itemized on the guest check or
24 billed to the customer.

25 (B) Labor or service charges involved in maintenance and
26 repair work on tangible personal property of others if separately
27 itemized.

1 (iv) Delivery charges incurred or to be incurred before the
2 completion of the transfer of ownership of tangible personal
3 property from the seller to the purchaser.

4 (v) Installation charges incurred or to be incurred before the
5 completion of the transfer of ownership of tangible personal
6 property from the seller to the purchaser.

7 (vi) Credit for any trade-in.

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

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

15 (g) "Consumer" means the person who has purchased tangible
16 personal property or services for storage, use, or other
17 consumption in this state and includes, ~~a~~**BUT IS NOT LIMITED TO, 1**
18 **OR MORE OF THE FOLLOWING:**

19 (i) **A** person acquiring tangible personal property if engaged in
20 the business of constructing, altering, repairing, or improving the
21 real estate of others.

22 (ii) **A PERSON WHO HAS CONVERTED TANGIBLE PERSONAL PROPERTY OR**
23 **SERVICES ACQUIRED FOR STORAGE, USE, OR CONSUMPTION IN THIS STATE**
24 **THAT IS EXEMPT FROM THE TAX LEVIED UNDER THIS ACT TO STORAGE, USE,**
25 **OR CONSUMPTION IN THIS STATE THAT IS NOT EXEMPT FROM THE TAX LEVIED**
26 **UNDER THIS ACT.**

27 (h) "Business" means all activities engaged in by a person or

1 caused to be engaged in by a person with the object of gain,
2 benefit, or advantage, either direct or indirect.

3 (i) "Department" means the department of treasury.

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

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

10 (l) "Textiles" means goods that are made of or incorporate
11 woven or nonwoven fabric, including, but not limited to, clothing,
12 shoes, hats, gloves, handkerchiefs, curtains, towels, sheets,
13 pillows, pillowcases, tablecloths, napkins, aprons, linens, floor
14 mops, floor mats, and thread. Textiles also include materials used
15 to repair or construct textiles, or other goods used in the rental,
16 sale, or cleaning of textiles.

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

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

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

26 (p) "Sale" means a transaction by which tangible personal
27 property or services are purchased or rented for storage, use, or

1 other consumption in this state.

2 Sec. 3. (1) There is levied upon and there shall be collected
3 from every person in this state a specific tax for the privilege of
4 using, storing, or consuming tangible personal property in this
5 state at a rate equal to 6% of the price of the property or
6 services specified in section 3a or 3b. **THE TAX LEVIED UNDER THIS**
7 **ACT APPLIES TO A PERSON WHO ACQUIRES TANGIBLE PERSONAL PROPERTY OR**
8 **SERVICES THAT ARE SUBJECT TO THE TAX LEVIED UNDER THIS ACT FOR ANY**
9 **TAX-EXEMPT USE WHO SUBSEQUENTLY CONVERTS THE TANGIBLE PERSONAL**
10 **PROPERTY OR SERVICE TO A TAXABLE USE, INCLUDING AN INTERIM TAXABLE**
11 **USE. IF TANGIBLE PERSONAL PROPERTY OR SERVICES ARE CONVERTED TO A**
12 **TAXABLE USE, THE TAX LEVIED UNDER THIS ACT SHALL BE IMPOSED WITHOUT**
13 **REGARD TO ANY SUBSEQUENT TAX-EXEMPT USE.** Penalties and interest
14 shall be added to the tax if applicable as provided in this act.
15 For the purpose of the proper administration of this act and to
16 prevent the evasion of the tax, all of the following shall be
17 presumed:

18 (a) That tangible personal property purchased is subject to
19 the tax if brought into this state within 90 days of the purchase
20 date and is considered as acquired for storage, use, or other
21 consumption in this state.

22 (b) That tangible personal property used solely for personal,
23 nonbusiness purposes that is purchased outside of this state and
24 that is not an aircraft is exempt from the tax levied under this
25 act if 1 or more of the following conditions are satisfied:

26 (i) The property is purchased by a person who is not a resident
27 of this state at the time of purchase and is brought into this

1 state more than 90 days after the date of purchase.

2 (ii) The property is purchased by a person who is a resident of
3 this state at the time of purchase and is brought into this state
4 more than 360 days after the date of purchase.

5 (2) The tax imposed by this section for the privilege of
6 using, storing, or consuming a vehicle, ORV, manufactured housing,
7 aircraft, snowmobile, or watercraft shall be collected before the
8 transfer of the vehicle, ORV, manufactured housing, aircraft,
9 snowmobile, or watercraft, except a transfer to a licensed dealer
10 or retailer for purposes of resale that arises by reason of a
11 transaction made by a person who does not transfer vehicles, ORVs,
12 manufactured housing, aircraft, snowmobiles, or watercraft in the
13 ordinary course of his or her business done in this state. The tax
14 on a vehicle, ORV, snowmobile, and watercraft shall be collected by
15 the secretary of state before the transfer of the vehicle, ORV,
16 snowmobile, or watercraft registration. The tax on manufactured
17 housing shall be collected by the department of consumer and
18 industry services, mobile home commission, or its agent before the
19 transfer of the certificate of title. The tax on an aircraft shall
20 be collected by the department of treasury. The price tax base of a
21 new or previously owned car or truck held for resale by a dealer
22 and that is not exempt under section 4(1)(c) is the purchase price
23 of the car or truck multiplied by 2.5% plus \$30.00 per month
24 beginning with the month that the dealer uses the car or truck in a
25 nonexempt manner.

26 (3) The following transfers or purchases are not subject to
27 use tax:

1 (a) A transaction or a portion of a transaction if the
2 transferee or purchaser is the spouse, mother, father, brother,
3 sister, child, stepparent, stepchild, stepbrother, stepsister,
4 grandparent, grandchild, legal ward, or a legally appointed
5 guardian with a certified letter of guardianship, of the
6 transferor.

7 (b) A transaction or a portion of a transaction if the
8 transfer is a gift to a beneficiary in the administration of an
9 estate.

10 (c) If a vehicle, ORV, manufactured housing, aircraft,
11 snowmobile, or watercraft that has once been subjected to the
12 Michigan sales or use tax is transferred in connection with the
13 organization, reorganization, dissolution, or partial liquidation
14 of an incorporated or unincorporated business and the beneficial
15 ownership is not changed.

16 (d) If an insurance company licensed to conduct business in
17 this state acquires ownership of a late model distressed vehicle as
18 defined in section 12a of the Michigan vehicle code, 1949 PA 300,
19 MCL 257.12a, through payment of damages in response to a claim or
20 when the person who owned the vehicle before the insurance company
21 reacquires ownership from the company as part of the settlement of
22 a claim.

23 (4) The department may utilize the services, information, or
24 records of any other department or agency of state government in
25 the performance of its duties under this act, and other departments
26 or agencies of state government are required to furnish those
27 services, information, or records upon the request of the

1 department.

2 (5) Any decrease in the rate of the tax levied under
3 subsection (1) on services subject to tax under this act shall
4 apply only to billings rendered on or after the effective date of
5 the decrease.

6 Sec. 7. (1) Each ~~consumer~~**PERSON** storing, using, or otherwise
7 consuming in this state tangible personal property or services
8 ~~purchased for or subsequently converted to such purpose or purposes~~
9 ~~shall be~~**IS** liable for the tax ~~imposed by~~**LEVIED UNDER** this act,
10 and ~~such~~**THAT** liability shall not be extinguished until the tax
11 **LEVIED UNDER THIS ACT** has been paid to the department.

12 (2) **A PERSON WHO ACQUIRES TANGIBLE PERSONAL PROPERTY OR**
13 **SERVICES FOR ANY TAX-EXEMPT USE WHO SUBSEQUENTLY CONVERTS THE**
14 **TANGIBLE PERSONAL PROPERTY OR SERVICE TO A TAXABLE USE, INCLUDING**
15 **AN INTERIM TAXABLE USE, IS LIABLE FOR THE TAX LEVIED UNDER THIS**
16 **ACT. IF TANGIBLE PERSONAL PROPERTY OR SERVICES ARE CONVERTED TO A**
17 **TAXABLE USE, THE TAX LEVIED UNDER THIS ACT SHALL BE IMPOSED WITHOUT**
18 **REGARD TO ANY SUBSEQUENT TAX-EXEMPT USE.** The payment to the
19 department of the tax, interest, and any penalty assessed by the
20 department ~~shall relieve~~**RELIEVES** the seller, who sold the property
21 or services with regard to the storing, use, or ~~other~~ consumption
22 on which the tax was paid from the payment of the amount of the tax
23 ~~which~~**THAT** he **OR SHE** may be required under this act to collect from
24 the purchaser.

25 Enacting section 1. It is the intent of the legislature that
26 this amendatory act clarify that a person who acquires tangible
27 personal property for a purpose exempt under the use tax act, 1937

1 PA 94, MCL 205.91 to 205.111, who subsequently converts that
2 property to a use taxable under the use tax act, 1937 PA 94, MCL
3 205.91 to 205.111, is liable for the tax levied under the use tax
4 act, 1937 PA 94, MCL 205.91 to 205.111.

5 Enacting section 2. This amendatory act is retroactive and is
6 effective beginning September 30, 2002 and for all tax years that
7 are open under the statute of limitations provided in section 27a
8 of 1941 PA 122, MCL 205.27a.