

HOUSE BILL No. 5254

September 19, 2007, Introduced by Reps. Meisner, Gillard, Alma Smith, Warren, Wojno, Bieda, Cushingberry, Clack, Angerer, Kathleen Law, Byrnes, Tobocman and Condino and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending sections 3a, 4, 4a, 4d, 4g, 4k, 4l, 4o, 4x, and 9a (MCL 205.93a, 205.94, 205.94a, 205.94d, 205.94g, 205.94k, 205.94l, 205.94o, 205.94x, and 205.99a), sections 3a, 4, 4a, 4d, 4o, and 9a as amended by 2004 PA 172, section 4g as added by 1985 PA 66, section 4k as amended by 2006 PA 18, section 4l as added by 1993 PA 239, and section 4x as added by 2002 PA 614.

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

1 local telephone exchange and long distance telephone service that
2 both originates and terminates in Michigan, and telegraph, private
3 line, and teletypewriter service between places in Michigan, but
4 **BEFORE OCTOBER 1, 2007** excluding telephone service by coin-operated
5 installations, switchboards, concentrator-identifiers, interoffice
6 circuitry and their accessories for telephone answering service,
7 and directory advertising proceeds.

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

25 (c) Except as provided in section 3b, interstate telephone
26 communications that either originate or terminate in this state and
27 for which the charge for the service is billed to a Michigan

1 service address or phone number by the provider either within or
2 outside this state, including calls between this state and any
3 place within or without the United States of America outside of
4 this state. ~~However, if the tax under this act is levied at a rate~~
5 ~~of 6% THIS SUBDIVISION DOES NOT APPLY TO AN 800 PREFIX SERVICE OR~~
6 **SIMILAR TYPE SERVICE. BEFORE JUNE 1, 2007,** this subdivision does
7 not apply to a wide area telecommunication service or a similar
8 type service, ~~an 800 prefix service or similar type service, an~~
9 interstate private network and related usage charges, or an
10 international call either inbound or outbound. **BEGINNING JUNE 1,**
11 **2007, A WIDE AREA TELECOMMUNICATION SERVICE OR A SIMILAR TYPE**
12 **SERVICE, AN INTERSTATE PRIVATE NETWORK AND RELATED USAGE CHARGES,**
13 **OR AN INTERNATIONAL CALL EITHER INBOUND OR OUTBOUND IS TAXED UNDER**
14 **THIS ACT IN THE SAME 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 to
12 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 under the general sales tax act, 1933 PA 167, MCL 205.51 to
25 205.78, if the tax was due and paid on the retail sale to a
26 consumer.

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

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 lending or leasing to a public or parochial school offering a
5 course in automobile driving except that a vehicle purchased by the
6 school shall be certified for driving education and shall not be
7 reassigned for personal use by the school's administrative
8 personnel. For a dealer selling a new car or truck, exemption for
9 demonstration purposes shall be determined by the number of new
10 cars and trucks sold during the current calendar year or the
11 immediately preceding year without regard to specific make or style
12 according to the following schedule of 0 to 25, 2 units; 26 to 100,
13 7 units; 101 to 500, 20 units; 501 or more, 25 units; but not to
14 exceed 25 cars and trucks in 1 calendar year for demonstration
15 purposes. Property purchased for resale includes promotional
16 merchandise transferred pursuant to a redemption offer to a person
17 located outside this state or any packaging material, other than
18 promotional merchandise, acquired for use in fulfilling a
19 redemption offer or rebate to a person located outside this 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, religious
10 ~~—~~or fraternal organization, a veterans' organization, or a
11 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~~

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

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

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

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

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

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

(l) A newspaper ~~or periodical~~ classified under federal postal laws and regulations effective September 1, 1985 as second-class mail matter or as a controlled circulation publication or qualified to accept legal notices for publication in this state, as defined by law, or any other newspaper or periodical of general circulation, established at least 2 years, and published at least once a week, and a copyrighted motion picture film **OR, BEFORE OCTOBER 1, 2007, A PERIODICAL CLASSIFIED UNDER FEDERAL POSTAL LAWS**

1 AND REGULATIONS EFFECTIVE SEPTEMBER 1, 1985 AS SECOND-CLASS MAIL

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

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

1 on public highways or property used in the transmitting to or
2 receiving from an artificial satellite.

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

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

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

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

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

18 (s) ~~Tangible~~ **BEFORE OCTOBER 1, 2007, TANGIBLE** personal
19 property purchased and installed as a component part of a water
20 pollution control facility for which a tax exemption certificate is
21 issued pursuant to part 37 of the natural resources and
22 environmental protection act, 1994 PA 451, MCL 324.3701 to
23 324.3708, or an air pollution control facility for which a tax
24 exemption certificate is issued pursuant to part 59 of the natural
25 resources and environmental protection act, 1994 PA 451, MCL
26 324.5901 to 324.5908.

27 (t) Tangible real or personal property donated by a

1 manufacturer, wholesaler, or retailer to an organization or entity
2 exempt pursuant to subdivision (h) or (i) or section ~~4a(a)~~**4A(1)(A)**
3 or (b) of the general sales tax act, 1933 PA 167, MCL 205.54a.

4 (u) ~~The~~**BEFORE OCTOBER 1, 2007, THE** storage, use, or
5 consumption of an aircraft by a domestic air carrier for use solely
6 in the transport of air cargo, passengers, or a combination of air
7 cargo and passengers, that has a maximum certificated takeoff
8 weight of at least 6,000 pounds. For purposes of this subdivision,
9 the term "domestic air carrier" is limited to a person engaged
10 primarily in the commercial transport for hire of air cargo,
11 passengers, or a combination of air cargo and passengers as a
12 business activity. The state treasurer shall estimate on January 1
13 each year the revenue lost by this act from the school aid fund and
14 deposit that amount into the school aid fund from the general fund.

15 (v) ~~The~~**BEFORE OCTOBER 1, 2007, THE** storage, use, or
16 consumption of an aircraft by a person who purchases the aircraft
17 for subsequent lease to a domestic air carrier operating under a
18 certificate issued by the federal aviation administration under 14
19 CFR part 121, for use solely in the regularly scheduled transport
20 of passengers.

21 (w) Property or services sold to an organization not operated
22 for profit and exempt from federal income tax under section
23 501(c)(3) or 501(c)(4) of the internal revenue code, 26 USC 501; or
24 to a health, welfare, educational, cultural arts, charitable, or
25 benevolent organization not operated for profit that has been
26 issued before June 13, 1994 an exemption ruling letter to purchase
27 items exempt from tax signed by the administrator of the sales,

1 use, and withholding taxes division of the department. The
2 department shall reissue an exemption letter after June 13, 1994 to
3 each of those organizations that had an exemption letter that shall
4 remain in effect unless the organization fails to meet the
5 requirements that originally entitled it to this exemption. The
6 exemption does not apply to sales of tangible personal property and
7 sales of vehicles licensed for use on public highways, that are not
8 used primarily to carry out the purposes of the organization as
9 stated in the bylaws or articles of incorporation of the exempt
10 organization.

11 (x) The use or consumption of services described in section
12 ~~3a(a)~~**3A(1) (A)** or (c) or 3b by means of a prepaid telephone calling
13 card, a prepaid authorization number for telephone use, or a charge
14 for internet access.

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

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

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

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

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

2 (v) Production washroom equipment and mending and packaging
3 supplies and equipment.

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

6 (vii) Wastewater pretreatment equipment and supplies and
7 related maintenance and repair services.

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

13 Sec. 4a. The following are exempt from the tax under this act:

14 (a) Rental receipts if the tangible personal property rented
15 or leased was previously subject to 1 of the following when
16 purchased by the lessor:

17 (i) This act.

18 (ii) The general sales tax act, 1933 PA 167, MCL 205.51 to
19 205.78.

20 (b) Rental receipts if the tangible personal property rented
21 or leased was previously taxed under a sales or use tax act of
22 another state or a political subdivision of another state levied at
23 a rate of 6% or more.

24 (c) Specific charges for technical support or for adapting or
25 modifying prewritten computer software programs to a purchaser's
26 needs or equipment if those charges are separately stated and
27 identified.

1 (d) The sale of computer software originally designed for the
2 exclusive use and special needs of the purchaser.

3 (e) The sale of a commercial advertising element if the
4 commercial advertising element is used to create or develop a
5 print, radio, television, or other advertisement, the commercial
6 advertising element is discarded or returned to the provider after
7 the advertising message is completed, and the commercial
8 advertising element is custom developed by the provider for the
9 purchaser. As used in this subdivision, "commercial advertising
10 element" means a negative or positive photographic image, an
11 audiotape or videotape master, a layout, a manuscript, writing of
12 copy, a design, artwork, an illustration, retouching, and
13 mechanical or keyline instructions. This exemption does not include
14 black and white or full color process separation elements, an
15 audiotape reproduction, or a videotape reproduction.

16 (f) The sale of oxygen for human use dispensed pursuant to a
17 prescription.

18 (g) The sale of insulin for human use.

19 (h) ~~A-BEFORE OCTOBER 1, 2007, A~~ meal provided free of charge
20 or at a reduced rate to an employee during work hours by a food
21 service establishment licensed ~~by the department of agriculture~~
22 **UNDER THE FOOD LAW OF 2000, 2000 PA 92, MCL 289.1101 TO 289.8111.**

23 (i) The sale of diesel fuel to a person who is an interstate
24 motor carrier for use in a qualified commercial motor vehicle.

25 Sec. 4d. (1) The following are exempt from the tax under this
26 act:

27 (a) Sales of drugs for human use that can only be legally

1 dispensed by prescription or food or food ingredients, except
2 prepared food intended for immediate human consumption **AND, AFTER**
3 **JUNE 1, 2007, FOOD AND FOOD INGREDIENTS SOLD FROM A VENDING**
4 **MACHINE.**

5 (b) The deposit on a returnable container for a beverage or
6 the deposit on a carton or case that is used for returnable
7 containers.

8 (c) Food or tangible personal property purchased under the
9 federal food stamp program or meals eligible to be purchased under
10 the federal food stamp program.

11 (d) Fruit or vegetable seeds and fruit or vegetable plants if
12 purchased at a place of business authorized to accept food stamps
13 by the food and nutrition service of the United States department
14 of agriculture or a place of business that has made a complete and
15 proper application for authorization to accept food stamps but has
16 been denied authorization and provides proof of denial to the
17 department of treasury.

18 (e) Live animals purchased with the intent to be slaughtered
19 for human consumption.

20 (2) ~~Food~~ **BEFORE OCTOBER 1, 2007, FOOD** or drink heated or
21 cooled mechanically, electrically, or by other artificial means to
22 an average temperature above 75 degrees Fahrenheit or below 65
23 degrees Fahrenheit before sale and sold from a vending machine,
24 except milk, nonalcoholic beverages in a sealed container, and
25 fresh fruit, is subject to the tax under this act. The tax due
26 under this act on the sale of food or drink from a vending machine
27 selling both taxable items and items exempt under this subsection

1 shall be calculated under this act after December 31, 1994 based on
2 1 of the following as determined by the taxpayer:

3 (a) Actual gross proceeds from sales at retail.

4 (b) Forty-five percent of proceeds from the sale of items
5 subject to tax under this act or exempt from the tax levied under
6 this act, other than from the sale of carbonated beverages.

7 (3) "Food and food ingredients" means substances, whether in
8 liquid, concentrated, solid, frozen, dried, or dehydrated form,
9 that are sold for ingestion or chewing by humans and are consumed
10 for their taste or nutritional value. Food and food ingredients do
11 not include alcoholic beverages and tobacco.

12 (4) "Prepared food" means the following:

13 (a) Food sold in a heated state or that is heated by the
14 seller.

15 (b) Two or more food ingredients mixed or combined by the
16 seller for sale as a single item.

17 (c) Food sold with eating utensils provided by the seller,
18 including knives, forks, spoons, glasses, cups, napkins, straws, or
19 plates, but not including a container or packaging used to
20 transport the food.

21 (5) Prepared food does not include the following:

22 (a) Food that is only cut, repackaged, or pasteurized by the
23 seller.

24 (b) Raw eggs, fish, meat, poultry, and foods containing those
25 raw items requiring cooking by the consumer in recommendations
26 contained in section 3-401.11 of part 3-4 of chapter 3 of the 2001
27 food code published by the food and drug administration of the

1 public health service of the department of health and human
2 services, to prevent foodborne illness.

3 (c) Food sold in an unheated state by weight or volume as a
4 single item, without eating utensils.

5 (d) Bakery items, including bread, rolls, buns, biscuits,
6 bagels, croissants, pastries, doughnuts, danish, cakes, tortes,
7 pies, tarts, muffins, bars, cookies, and tortillas, sold without
8 eating utensils.

9 (6) "Prepared food intended for immediate **HUMAN** consumption"
10 means prepared food **AND, AFTER OCTOBER 1, 2007, FOOD AND FOOD**
11 **INGREDIENTS SOLD FROM A VENDING MACHINE.**

12 Sec. 4g. (1) The tax levied shall not apply to property
13 purchased from a seller or transferor if the property is part of
14 the purchase or transfer of a business.

15 (2) The exemption provided by this section shall not apply to
16 all of the following:

17 (a) The purchase or transfer of tangible personal property
18 that is stock-in-trade or other property of a kind which would
19 properly be included in the inventory of the seller or transferor
20 if on hand at the close of the seller's or transferor's tax period
21 or property held by the seller or transferor for sale to customers
22 in the ordinary course of its trade or business.

23 (b) ~~The~~ **BEFORE OCTOBER 1, 2007, THE** purchase or transfer of a
24 motor vehicle, ORV, mobile home, aircraft, snowmobile, or
25 watercraft.

26 (3) As used in this section, "purchase or transfer of a
27 business" means 1 or more of the following:

1 (a) The purchaser or transferee has acquired and intends to
2 use the seller's or transferor's trade name or good will.

3 (b) The purchaser or transferee intends to continue all or
4 part of the business of the seller or transferor at the same
5 location or at another location.

6 (c) The purchaser or transferee acquired at least 75% of the
7 seller's or transferor's tangible personal property at 1 or more of
8 the seller's or transferor's business locations.

9 Sec. 4k. (1) ~~The~~ **BEFORE OCTOBER 1, 2007, THE** tax levied under
10 this act does not apply to parts and materials, excluding shop
11 equipment or fuel, affixed to or to be affixed to an aircraft owned
12 or used by a domestic air carrier that is any of the following:

13 (a) An aircraft for use solely in the transport of air cargo
14 or a combination of air cargo and passengers that has a maximum
15 certificated takeoff weight of at least 12,500 pounds for taxes
16 levied before January 1, 1997 and at least 6,000 pounds for taxes
17 levied after December 31, 1996.

18 (b) An aircraft that is used solely in the regularly scheduled
19 transport of passengers.

20 (c) An aircraft other than an aircraft described in
21 subdivision (b), that has a maximum certificated takeoff weight of
22 at least 12,500 pounds for taxes levied before January 1, 1997 and
23 at least 6,000 pounds for taxes levied after December 31, 1996, and
24 that is designed to have a maximum passenger seating configuration
25 of more than 30 seats and is used solely in the transport of
26 passengers.

27 (2) ~~The~~ **BEFORE OCTOBER 1, 2007, THE** tax levied under this act

1 does not apply to the sale of parts or materials, excluding shop
2 equipment or fuel, affixed or to be affixed to an aircraft that
3 meets all of the following conditions:

4 (a) The aircraft leaves this state within 15 days after the
5 sooner of the issuance of the final billing or authorized approval
6 for final return to service, completion of the maintenance record
7 entry, and completion of the test flight and ground test for
8 inspection as required under 14 CFR 91.407.

9 (b) The aircraft was not based in this state or registered in
10 this state before the parts or materials are affixed to the
11 aircraft and the aircraft is not based in this state or registered
12 in this state after the parts or materials are affixed to the
13 aircraft.

14 (3) The tax levied under this act does not apply to the sale
15 of an aircraft temporarily located in this state for the purpose of
16 prepurchase evaluation or the purpose of prepurchase evaluation and
17 postsale customization if all of the following conditions are
18 satisfied:

19 (a) The aircraft leaves this state within 15 days after
20 authorized approval for final return to service, completion of the
21 maintenance record entry, and completion of the test flight and
22 ground test for inspection as required under 14 CFR 91.407.

23 (b) The aircraft was not based in this state or registered in
24 this state before the prepurchase evaluation or prepurchase
25 evaluation and postsale customization are completed and the
26 aircraft is not based in this state or registered in this state
27 after the prepurchase evaluation or prepurchase evaluation and

1 postsale customization are completed.

2 (4) For taxes levied after December 31, 1992 **AND BEFORE**
3 **OCTOBER 1, 2007**, the tax levied under this act does not apply to
4 the storage, use, or consumption of rolling stock used in
5 interstate commerce and purchased, rented, or leased by an
6 interstate fleet motor carrier. A refund for taxes paid before
7 January 1, 1997 shall not be paid under this subsection if the
8 refund claim is made after June 30, 1997.

9 (5) For taxes levied after December 31, 1996 and before May 1,
10 1999, the tax levied under this act does not apply to the product
11 of the out-of-state usage percentage and the price otherwise
12 taxable under this act of a qualified truck or a trailer designed
13 to be drawn behind a qualified truck, purchased, rented, or leased
14 in this state by an interstate fleet motor carrier and used in
15 interstate commerce.

16 (6) As used in this section:

17 (a) "Based in this state" means hangared or stored in this
18 state for not less than 10 days in not less than 3 nonconsecutive
19 months during the immediately preceding 12-month period.

20 (b) "Domestic air carrier" means a person engaged primarily in
21 the commercial transport for hire of air cargo, passengers, or a
22 combination of air cargo and passengers as a business activity.

23 (c) "Interstate fleet motor carrier" means a person engaged in
24 the business of carrying persons or property, other than
25 themselves, their employees, or their own property, for hire across
26 state lines, whose fleet mileage was driven at least 10% outside of
27 this state in the immediately preceding tax year.

1 (d) "Out-of-state usage percentage" is a fraction, the
2 numerator of which is the number of miles driven outside of this
3 state in the immediately preceding tax year by qualified trucks
4 used by the taxpayer and the denominator of which is the total
5 miles driven in the immediately preceding tax year by qualified
6 trucks used by the taxpayer. Miles driven by qualified trucks used
7 solely in intrastate commerce shall not be included in calculating
8 the out-of-state usage percentage.

9 (e) "Prepurchase evaluation" means an examination of an
10 aircraft to provide a potential purchaser with information relevant
11 to the potential purchase.

12 (f) "Postsale customization" means any improvement,
13 maintenance, or repair that is performed on an aircraft following a
14 transfer of ownership of the aircraft.

15 (g) "Qualified truck" means a commercial motor vehicle power
16 unit that has 2 axles and a gross vehicle weight rating in excess
17 of 10,000 pounds or a commercial motor vehicle power unit that has
18 3 or more axles.

19 (h) "Registered in this state" means an aircraft registered
20 with the state transportation department, bureau of aeronautics or
21 registered with the federal aviation administration to an address
22 located in this state.

23 (i) "Rolling stock" means a qualified truck, a trailer
24 designed to be drawn behind a qualified truck, and parts affixed to
25 either a qualified truck or a trailer designed to be drawn behind a
26 qualified truck.

27 Sec. 4/. ~~The~~ **BEFORE OCTOBER 1, 2007, THE** tax levied under this

1 act does not apply to the storage, use, or consumption of rail
2 freight or passenger cars, locomotives or other rolling stock,
3 roadway machines and work equipment primarily of a flanged wheel
4 nature, accessories, attachments including parts and materials used
5 for repair, lubricants, or fuel, used in rail operations. This
6 exemption does not include vehicles licensed and titled for use on
7 public highways.

8 Sec. 4o. (1) The tax levied under this act does not apply to
9 property sold to the following after March 30, 1999, subject to
10 subsection (2):

11 (a) An industrial processor for use or consumption in
12 industrial processing.

13 (b) A person, whether or not the person is an industrial
14 processor, if the tangible personal property is intended for
15 ultimate use in and is used in industrial processing by an
16 industrial processor.

17 (c) A person, whether or not the person is an industrial
18 processor, if the tangible personal property is used by that person
19 to perform an industrial processing activity for or on behalf of an
20 industrial processor.

21 (d) ~~A—BEFORE OCTOBER 1, 2007, A~~ person, whether or not the
22 person is an industrial processor, if the tangible personal
23 property is 1 of the following:

24 (i) A computer used in operating industrial processing
25 equipment.

26 (ii) Equipment used in a computer assisted manufacturing
27 system.

1 (iii) Equipment used in a computer assisted design or
2 engineering system integral to an industrial process.

3 (iv) A subunit or electronic assembly comprising a component in
4 a computer integrated industrial processing system.

5 (v) Computer equipment used in connection with the computer
6 assisted production, storage, and transmission of data if the
7 equipment would have been exempt had the data transfer been made
8 using tapes, disks, CD-ROMs, or similar media by a company whose
9 business includes publishing doctoral dissertations and information
10 archiving, and that sells the majority of the company's products to
11 nonprofit organizations exempt under section 4(1)(z).

12 (vi) Equipment used in the production of prewritten computer
13 software or software modified or adapted to the user's needs or
14 equipment by the seller, only if the software is available for sale
15 from a seller of software on an as-is basis or as an end product
16 without modification or adaption.

17 (2) The property under subsection (1) is exempt only to the
18 extent that the property is used for the exempt purpose stated in
19 this section. The exemption is limited to the percentage of exempt
20 use to total use determined by a reasonable formula or method
21 approved by the department.

22 (3) Industrial processing includes the following activities:

23 (a) Production or assembly.

24 (b) Research or experimental activities.

25 (c) Engineering related to industrial processing.

26 (d) Inspection, quality control, or testing to determine
27 whether particular units of materials or products or processes

1 conform to specified parameters at any time before materials or
2 products first come to rest in finished goods inventory storage.

3 (e) Planning, scheduling, supervision, or control of
4 production or other exempt activities.

5 (f) Design, construction, or maintenance of production or
6 other exempt machinery, equipment, and tooling.

7 (g) Remanufacturing.

8 (h) Processing of production scrap and waste up to the point
9 it is stored for removal from the plant of origin.

10 (i) Recycling of used materials for ultimate sale at retail or
11 reuse.

12 (j) Production material handling.

13 (k) Storage of in-process materials.

14 (4) Property that is eligible for an industrial processing
15 exemption includes the following:

16 (a) Property that becomes an ingredient or component part of
17 the finished product to be sold ultimately at retail.

18 (b) Machinery, equipment, tools, dies, patterns, foundations
19 for machinery or equipment, or other processing equipment used in
20 an industrial processing activity and in their repair and
21 maintenance.

22 (c) Property that is consumed or destroyed or that loses its
23 identity in an industrial processing activity.

24 (d) Tangible personal property, not permanently affixed and
25 not becoming a structural part of real estate, that becomes a part
26 of, or is used and consumed in installation and maintenance of,
27 systems used for an industrial processing activity.

1 (e) Fuel or energy used or consumed for an industrial
2 processing activity.

3 (f) Machinery, equipment, or materials used within a plant
4 site or between plant sites operated by the same person for
5 movement of tangible personal property in the process of
6 production.

7 (g) Office equipment, including data processing equipment,
8 used for an industrial processing activity.

9 (5) Property that is not eligible for an industrial processing
10 exemption includes the following:

11 (a) Tangible personal property permanently affixed and
12 becoming a structural part of real estate including building
13 utility systems such as heating, air conditioning, ventilating,
14 plumbing, lighting, and electrical distribution, to the point of
15 the last transformer, switch, valve, or other device at which point
16 usable power, water, gas, steam, or air is diverted from
17 distribution circuits for use in industrial processing.

18 (b) Office equipment, including data processing equipment used
19 for nonindustrial processing purposes.

20 (c) Office furniture or office supplies.

21 (d) An industrial processor's own product or finished good
22 that it uses or consumes for purposes other than industrial
23 processing.

24 (e) Tangible personal property used for receiving and storage
25 of materials, supplies, parts, or components purchased by the user
26 or consumer.

27 (f) Tangible personal property used for receiving or storage

1 of natural resources extracted by the user or consumer.

2 (g) Vehicles, including special bodies or attachments,
3 required to display a vehicle permit or license plate to operate on
4 public highways, except for a vehicle bearing a manufacturer's
5 plate or a specially designed vehicle, together with parts, used to
6 mix and agitate materials at a plant or job site in the concrete
7 manufacturing process.

8 (h) Tangible personal property used for the preparation of
9 food or beverages by a retailer for ultimate sale at retail through
10 its own locations.

11 (i) Tangible personal property used or consumed for the
12 preservation or maintenance of a finished good once it first comes
13 to rest in finished goods inventory storage.

14 (j) Returnable shipping containers or materials, except as
15 provided in subsection (4)(f).

16 (k) Tangible personal property used in the production of
17 computer software originally designed for the exclusive use and
18 special needs of the purchaser.

19 (6) Industrial processing does not include the following
20 activities:

21 (a) Purchasing, receiving, or storage of raw materials.

22 (b) Sales, distribution, warehousing, shipping, or advertising
23 activities.

24 (c) Administrative, accounting, or personnel services.

25 (d) Design, engineering, construction, or maintenance of real
26 property and nonprocessing equipment.

27 (e) Plant security, fire prevention, or medical or hospital

1 services.

2 (7) As used in this section:

3 (a) "Industrial processing" means the activity of converting
4 or conditioning tangible personal property by changing the form,
5 composition, quality, combination, or character of the property for
6 ultimate sale at retail or for use in the manufacturing of a
7 product to be ultimately sold at retail. Industrial processing
8 begins when tangible personal property begins movement from raw
9 materials storage to begin industrial processing and ends when
10 finished goods first come to rest in finished goods inventory
11 storage.

12 (b) "Industrial processor" means a person who performs the
13 activity of converting or conditioning tangible personal property
14 for ultimate sale at retail or use in the manufacturing of a
15 product to be ultimately sold at retail.

16 (c) "Product", as used in subdivision (e), includes, but is
17 not limited to, a prototype, pilot model, process, formula,
18 invention, technique, patent, or similar property, whether intended
19 to be used in a trade or business or to be sold, transferred,
20 leased, or licensed.

21 (d) "Remanufacturing" means the activity of overhauling,
22 retrofitting, fabricating, or repairing a product or its component
23 parts for ultimate sale at retail.

24 (e) "Research or experimental activity" means activity
25 incident to the development, discovery, or modification of a
26 product or a product related process. Research or experimental
27 activity also includes activity necessary for a product to satisfy

1 a government standard or to receive government approval. Research
2 or experimental activity does not include the following:

3 (i) Ordinary testing or inspection of materials or products for
4 quality control purposes.

5 (ii) Efficiency surveys.

6 (iii) Management surveys.

7 (iv) Market or consumer surveys.

8 (v) Advertising or promotions.

9 (vi) Research in connection with literacy, historical, or
10 similar projects.

11 Sec. 4x. (1) ~~The~~ **BEFORE OCTOBER 1, 2007, THE** tax under this
12 act does not apply to the sale of a motor vehicle, recreational
13 watercraft, snowmobile, or all terrain vehicle, not for resale, to
14 a resident tribal member if the motor vehicle, recreational
15 watercraft, snowmobile, or all terrain vehicle is for personal use
16 and is principally garaged, berthed, or stored within that resident
17 tribal member's tribe agreement area.

18 (2) The tax under this act does not apply to the sale of a
19 mobile home, not for resale, to a resident tribal member if the
20 mobile home is to be used as that resident tribal member's
21 principal residence and the mobile home is located within that
22 resident tribal member's tribe agreement area.

23 (3) As used in this section, "resident tribal member" means an
24 individual who meets all of the following criteria:

25 (a) Is an enrolled member of a federally recognized tribe.

26 (b) The individual's tribe has an agreement with this state
27 pursuant to section 30c of 1941 PA 122, MCL 205.30c, that is in

1 full force and effect.

2 (c) The individual's principal place of residence is located
3 within the agreement area as designated in the agreement under
4 subdivision (b).

5 Sec. 9a. (1) In computing the amount of tax levied under this
6 act for any month, **BEFORE OCTOBER 1, 2007**, a seller may deduct the
7 amount of bad debts from his or her gross sales, rentals, or
8 services used for the computation of the tax. The amount of gross
9 sales, rentals, or services deducted must be charged off as
10 uncollectible on the books and records of the seller at the time
11 the debt becomes worthless and deducted on the return for the
12 period during which the bad debt is written off as uncollectible in
13 the claimant's books and records and must be eligible to be
14 deducted for federal income tax purposes. For purposes of this
15 section, **BEFORE OCTOBER 1, 2007**, a claimant who is not required to
16 file a federal income tax return may deduct a bad debt on a return
17 filed for the period in which the bad debt becomes worthless and is
18 written off as uncollectible in the claimant's books and records
19 and would be eligible for a bad debt deduction for federal income
20 tax purposes if the claimant was required to file a federal income
21 tax return. If a consumer or other person pays all or part of a bad
22 debt with respect to which a seller claimed a deduction under this
23 section, the seller is liable for the amount of taxes deducted in
24 connection with that portion of the debt for which payment is
25 received and shall remit these taxes in his or her next payment to
26 the department. Any payments made on a bad debt shall be applied
27 proportionally first to the taxable price of the property and the

1 tax on the property and second to any interest, service, or other
2 charge.

3 (2) Any claim for a bad debt deduction under this section
4 shall be supported by that evidence required by the department. The
5 department shall review any change in the rate of taxation
6 applicable to any taxable sales, rentals, or services by a seller
7 claiming a deduction pursuant to this section and shall ensure that
8 the deduction on any bad debt does not result in the seller
9 claiming the deduction recovering any more or less than the taxes
10 imposed on the sale, rental, or service that constitutes the bad
11 debt.

12 (3) If a certified service provider assumed filing
13 responsibility under the streamlined sales and use tax
14 administration act, the certified service provider may, **BEFORE**
15 **OCTOBER 1, 2007**, claim, on behalf of the seller, any bad debt
16 allowable to the seller and shall credit or refund that amount of
17 bad debt allowed or refunded to the seller.

18 (4) If the books and records of a seller under the streamlined
19 sales and use tax act ~~act~~ **AGREEMENT UNDER THE STREAMLINED SALES AND USE**
20 **TAX ACT, 2004 PA 174, MCL 205.801 TO 205.833**, that claims a bad
21 debt allowance support an allocation of the bad debts among member
22 states of that agreement, the seller may allocate the bad debts.

23 (5) As used in this section, "bad debt" means any portion of a
24 debt resulting from a seller's collection of the use tax under this
25 act on the purchase of tangible personal property or services that
26 is not otherwise deductible or excludable and that is eligible to
27 be claimed, or could be eligible to be claimed if the seller kept

1 accounts on an accrual basis, as a deduction pursuant to section
2 166 of the internal revenue code, 26 USC 166. A bad debt does not
3 include any of the following:

4 (a) Interest, finance charge, or use tax on the purchase
5 price.

6 (b) Uncollectible amounts on property that remains in the
7 possession of the seller until the full purchase price is paid.

8 (c) Expenses incurred in attempting to collect any account
9 receivable or any portion of the debt recovered.

10 (d) Any accounts receivable that have been sold to and remain
11 in the possession of a third party for collection.

12 (e) Repossessed property.