

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Reps. MacGregor, Haveman, Roy Schmidt and Lyons

ENROLLED HOUSE BILL No. 5146

AN ACT to amend 1937 PA 94, entitled "An act to provide for the levy, assessment, and collection of a specific excise tax on the storage, use, or consumption in this state of tangible personal property and certain services; to appropriate the proceeds of that tax; to prescribe penalties; and to make appropriations," by amending section 3a (MCL 205.93a), as amended by 2008 PA 439.

The People of the State of Michigan enact:

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

(a) Except as provided in section 3b, intrastate telecommunications services that both originate and terminate in this state, including, but not limited to, intrastate private communications services, ancillary services, conference bridging service, 900 service, pay telephone service other than coin-operated telephone service, and value-added nonvoice data service, but excluding 800 service, coin-operated telephone service, fixed wireless service, 1-way paging service, prepaid calling service, telecommunications nonrecurring charges, and directory advertising proceeds.

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

(c) Except as provided in section 3b, interstate telecommunications services that either originate or terminate in this 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 this state including, but not limited to, ancillary services, conference bridging service, 900 service, pay telephone service other than coin-operated telephone service, and value-added nonvoice data services, but excluding interstate private communications service, 800 service, coin-operated telephone service, fixed wireless service, 1-way paging service, prepaid calling service, telecommunications nonrecurring charges, and international telecommunications service.

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

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

(f) For a manufacturer who affixes its product to real estate in this state and maintains an inventory of its product that is available for sale to others or who makes its product available for sale to others by publication or price list, the price is the direct production costs and indirect production costs of the product affixed to the real estate in this state that are incident to and necessary for production or manufacturing operations or processes, as defined by the department.

(g) For a manufacturer who affixes its product to real estate in this state but does not maintain an inventory of its product available for sale to others or make its product available for sale to others by publication or price list, the price is the sum of the materials cost of the property and the cost of labor to manufacture, fabricate, or assemble the property affixed to the real estate in this state, but not the cost of labor to cut, bend, assemble, or attach the property at the site for affixation to real estate in this state.

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

(3) If charges for intrastate telecommunications services or telecommunications services between this state and another state and other billed services not subject to the tax under this act are aggregated with and not separately stated from telecommunications services that are subject to the tax under this act, a customer may not rely upon the nontaxability of those telecommunications services and other billed services unless the customer's service provider separately states the charges for nontaxable telecommunications services and other nontaxable billed services from taxable telecommunications services or the service provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the service provider's books and records that are kept in the regular course of business that reasonably identify the nontaxable services.

(4) All of the following apply in the case of a bundled transaction that includes telecommunications service, ancillary service, internet access, or audio or video programming:

(a) If the purchase price is attributable to products that are taxable and products that are nontaxable, the portion of the purchase price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards that portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes.

(b) The provisions of this subsection apply unless otherwise provided by federal law.

(5) As used in this section:

(a) "Ancillary services" means services that are associated with or incidental to the provision of telecommunications services, including, but not limited to, detailed telecommunications billing, directory assistance, vertical service, and voice mail services.

(b) "Bundled transaction" means the purchase of 2 or more distinct and identifiable products, except real property and services to real property, where the products are sold for a single nonitemized price. A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction. As used in this subdivision:

(i) "Distinct and identifiable products" does not include any of the following:

(A) Packaging, such as containers, boxes, sacks, bags, and bottles or other materials such as wrapping, labels, tags, and instruction guides, that accompany the purchase of the products and are incidental or immaterial to the purchase of the products, including grocery sacks, shoeboxes, dry cleaning garment bags, and express delivery envelopes and boxes.

(B) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge.

(C) Items included in purchase price.

(ii) "Purchase price" means the price paid by the seller for the property.

(iii) "Sales price" means that term as defined in section 1 of the general sales tax act, 1933 PA 167, MCL 205.51.

(iv) "Single nonitemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the purchaser in paper or electronic form, including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

(v) Bundled transaction does not include any of the following:

(A) The purchase of tangible personal property and a service if the tangible personal property is essential to the use of the service and is provided exclusively in connection with the service and the true object of the transaction is the service.

(B) The purchase of services if 1 service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service.

(C) A transaction that includes taxable and nontaxable products and the purchase price of the taxable products is de minimis. As used in this sub-subparagraph, "de minimis" means the seller's purchase price or sales price of the taxable products is 10% or less of the total purchase price or sales price of the products. A seller shall use the full term of a service contract to determine if the taxable products are de minimis. A seller shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. A seller shall not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis.

(D) The retail sale of exempt tangible personal property and taxable tangible personal property if all of the following conditions are satisfied:

(I) The transaction includes food and food ingredients, prescription or over-the-counter drugs, durable medical equipment, mobility enhancing equipment, medical supplies, or prosthetic devices.

(II) Where the seller's purchase price or sales price of the taxable tangible personal property is 50% or less of the total purchase price or sales price of the bundled tangible personal property. A seller may not use a combination of the purchase price and sales price of the tangible personal property when making the 50% determination for a transaction.

(c) "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone that accepts direct deposits of money to operate.

(d) "Conference bridging service" means an ancillary service that links 2 or more participants of an audio or video conference call and may include the provision of a telephone number, but does not include the telecommunications services used to reach the conference bridge.

(e) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(f) "Directory assistance" means an ancillary service of providing telephone number information or address information.

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

(h) "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points.

(i) "International" means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia and any possession or territory of the United States.

(j) "Interstate" means a telecommunications service that originates in 1 United States state, territory, or possession and terminates in a different United States state, territory, or possession.

(k) "Intrastate" means a telecommunications service that originates in a United States state, territory, or possession and terminates in the same United States state, territory, or possession.

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

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

(n) "Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers, which may include messages or sounds.

(o) "Pay telephone service" means a telecommunications service provided through any pay telephone.

(p) "Prepaid calling service" means the right to access exclusively telecommunications services that must be paid for in advance and that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars that decline with use in a known amount.

(q) "Private communications service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which that channel or group of channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of that channel or group of channels.

(r) "Telecommunications nonrecurring charges" means an amount billed for the installation, connection, change, or initiation of telecommunications service received by the customer.

(s) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, including a transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether that service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. Telecommunications service does not include any of the following:

(i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information.

(ii) Installation or maintenance of wiring or equipment on a customer's premises.

(iii) Tangible personal property.

(iv) Advertising, including, but not limited to, directory advertising.

(v) Billing and collection services provided to third parties.

(vi) Internet access service.

(vii) Radio and television audio and video programming services, including, but not limited to, cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers as defined in 47 CFR 20.3, regardless of the medium, including the furnishing of transmission, conveyance, and routing of those services by the programming service provider.

(viii) Ancillary services.

(ix) Answering services, if the primary purpose of the transaction is the answering service rather than message transmission.

(x) Digital products delivered electronically, including, but not limited to, software, music, video, reading materials, or ring tones.

(t) "Value-added nonvoice data service" means a telecommunications service in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

(u) "Vertical service" means an ancillary service that is offered in connection with 1 or more telecommunications services that offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

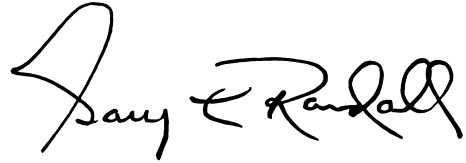
(v) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages, but does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

(w) "800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call, typically marketed under the designation "800", "855", "866", "877", or "888" toll-free calling, or any subsequent number designated by the federal communications commission.

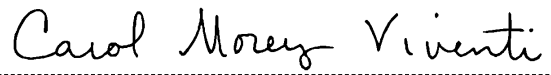
(x) "900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service, typically marketed under the designation "900" service, and any subsequent number designated by the federal communications commission, but does not include a charge for collection services provided by the seller of the telecommunications services to the subscriber, or the service or product sold by the subscriber to the subscriber's customer.

Enacting section 1. This amendatory act is retroactive and is effective January 1, 2006.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor