

SENATE BILL No. 126

February 9, 2011, Introduced by Senators ROBERTSON, BRANDENBURG, PROOS, MARLEAU, PAPPAGEORGE, GREEN, PAVLOV, HILDENBRAND, JANSEN, MOOLENAAR and CASPERSON and referred to the Committee on Finance.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 2 (MCL 205.92), as amended by 2008 PA 439.

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 (vii) and excludes subparagraphs (viii)
13 through ~~(x)~~—(xii) :

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 subject to the tax levied under this act from the seller
4 to the purchaser.

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

8 (vi) ~~Credit~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPHS (xi)**
9 **AND (xii), CREDIT** for any trade-in.

10 (vii) Except as otherwise provided in subparagraph (x),
11 consideration received by the seller from third parties if all of
12 the following conditions are met:

13 (A) The seller actually receives consideration from a party
14 other than the purchaser and the consideration is directly related
15 to a price reduction or discount on the sale.

16 (B) The seller has an obligation to pass the price reduction
17 or discount through to the purchaser.

18 (C) The amount of the consideration attributable to the sale
19 is fixed and determinable by the seller at the time of the sale of
20 the item to the purchaser.

21 (D) One of the following criteria is met:

22 (I) The purchaser presents a coupon, certificate, or other
23 documentation to the seller to claim a price reduction or discount
24 where the coupon, certificate, or documentation is authorized,
25 distributed, or granted by a third party with the understanding
26 that the third party will reimburse any seller to whom the coupon,
27 certificate, or documentation is presented.

1 (II) The purchaser identifies himself or herself to the seller
2 as a member of a group or organization entitled to a price
3 reduction or discount. A preferred customer card that is available
4 to any patron does not constitute membership in a group or
5 organization.

6 (III) The price reduction or discount is identified as a third
7 party price reduction or discount on the invoice received by the
8 purchaser or on a coupon, certificate, or other documentation
9 presented by the purchaser.

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

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

17 (x) Beginning January 1, 2000, employee discounts that are
18 reimbursed by a third party on sales of motor vehicles.

19 (xi) **THE AGREED-UPON VALUE OF A TITLED WATERCRAFT USED AS PART**
20 **PAYMENT OF THE PURCHASE PRICE OF A NEW TITLED WATERCRAFT OR USED**
21 **TITLED WATERCRAFT IF THE AGREED-UPON VALUE IS SEPARATELY STATED ON**
22 **THE INVOICE, BILL OF SALE, OR SIMILAR DOCUMENT GIVEN TO THE**
23 **PURCHASER.**

24 (xii) **THE AGREED-UPON VALUE OF A MOTOR VEHICLE USED AS PART**
25 **PAYMENT OF THE PURCHASE PRICE OF A NEW OR USED MOTOR VEHICLE IF THE**
26 **AGREED-UPON VALUE IS SEPARATELY STATED ON THE INVOICE, BILL OF**
27 **SALE, OR SIMILAR DOCUMENT GIVEN TO THE PURCHASER. AS USED IN THIS**

1 SUBPARAGRAPH, "NEW MOTOR VEHICLE" MEANS THAT TERM AS DEFINED IN
2 SECTION 33A OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.33A.

3 (g) "Consumer" means the person who has purchased tangible
4 personal property or services for storage, use, or other
5 consumption in this state and includes, but is not limited to, 1 or
6 more of the following:

7 (i) A person acquiring tangible personal property if engaged in
8 the business of constructing, altering, repairing, or improving the
9 real estate of others.

10 (ii) A person who has converted tangible personal property or
11 services acquired for storage, use, or consumption in this state
12 that is exempt from the tax levied under this act to storage, use,
13 or consumption in this state that is not exempt from the tax levied
14 under this act.

15 (h) "Business" means all activities engaged in by a person or
16 caused to be engaged in by a person with the object of gain,
17 benefit, or advantage, either direct or indirect.

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

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

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

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

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

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

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

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

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

17 (q) "Convert" means putting a service or tangible personal
18 property acquired for a use exempt from the tax levied under this
19 act at the time of acquisition to a use that is not exempt from the
20 tax levied under this act, whether the use is in whole or in part,
21 or permanent or not permanent. A motor vehicle purchased for resale
22 by a new vehicle dealer licensed under section 248(8)(a) of the
23 Michigan vehicle code, 1949 PA 300, MCL 257.248, and not titled in
24 the name of the dealer shall not be considered to be converted
25 prior to sale or lease by that dealer.