

SENATE BILL No. 336

April 26, 2011, Introduced by Senators PROOS, PAPPAGEORGE, MARLEAU, COLBECK,
ROBERTSON, JANSEN, NOFS and BRANDENBURG and referred to the Committee on Finance.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2b. As used in this act:

2 (a) "Alcoholic beverage" means a beverage suitable for human
3 consumption that contains 1/2 of 1% or more of alcohol by volume.

4 (b) "Computer" means an electronic device that accepts
5 information in digital or similar form and manipulates it for a
6 result based on a sequence of instructions.

7 (c) "Computer software" means a set of coded instructions
8 designed to cause a computer or automatic data processing equipment
9 to perform a task.

10 (d) "Delivered electronically" means delivered from the seller

1 to the purchaser by means other than tangible storage media.

2 (e) "Delivery charges" means charges by the seller for
3 preparation and delivery to a location designated by the purchaser
4 of tangible personal property or services. Delivery charges
5 include, but are not limited to, transportation, shipping, postage,
6 handling, crating, and packing. Beginning September 1, 2004,
7 delivery charges do not include the charges for delivery of direct
8 mail if the charges are separately stated on an invoice or similar
9 billing document given to the purchaser. If a shipment includes
10 both exempt property and taxable property, the seller shall
11 allocate the delivery charge using 1 of the following methods:

12 (i) Multiply the delivery price by a fraction, the numerator of
13 which is the total sales prices of the taxable property and the
14 denominator of which is the total sales prices of all property in
15 the shipment.

16 (ii) Multiply the delivery price by a fraction, the numerator
17 of which is the total weight of the taxable property and the
18 denominator of which is the total weight of all property in the
19 shipment.

20 (f) "Dietary supplement" means any product, other than
21 tobacco, intended to supplement the diet that is all of the
22 following:

23 (i) Required to be labeled as a dietary supplement identifiable
24 by the "supplemental facts" box found on the label as required by
25 21 CFR 101.36.

26 (ii) Contains 1 or more of the following dietary ingredients:

27 (A) A vitamin.

1 (B) A mineral.

2 (C) An herb or other botanical.

3 (D) An amino acid.

4 (E) A dietary substance for use by humans to supplement the
5 diet by increasing the total dietary intake.

6 (F) A concentrate, metabolite, constituent, extract, or
7 combination of any ingredient listed in sub-subparagraphs (A)
8 through (E).

9 (iii) Intended for ingestion in tablet, capsule, powder,
10 softgel, gelcap, or liquid form, or if not intended for ingestion
11 in 1 of those forms, is not represented as conventional food or for
12 use as a sole item of a meal or of the diet.

13 (g) "Direct mail" means printed material delivered or
14 distributed by United States mail or other delivery service to a
15 mass audience or to addresses on a mailing list provided by the
16 purchaser or at the direction of the purchaser when the cost of the
17 items is not billed directly to the recipients, including tangible
18 personal property supplied directly or indirectly by the purchaser
19 to the direct mail seller for inclusion in the package containing
20 the printed material but not including multiple items of printed
21 material delivered to a single address.

22 (h) "Drug" means a compound, substance, or preparation, or any
23 component of a compound, substance, or preparation, other than food
24 or food ingredients, dietary supplements, or alcoholic beverages,
25 intended for human use that is 1 or more of the following:

26 (i) Recognized in the official United States pharmacopoeia,
27 official homeopathic pharmacopoeia of the United States, or

1 official national formulary, or in any of their supplements.

2 (ii) Intended for use in the diagnosis, cure, mitigation,
3 treatment, or prevention of disease.

4 (iii) Intended to affect the structure or any function of the
5 body.

6 (i) "Durable medical equipment" means equipment for home use,
7 other than mobility enhancing equipment, dispensed pursuant to a
8 prescription, including durable medical equipment repair or
9 replacement parts, that does all of the following:

10 (i) Can withstand repeated use.

11 (ii) Is primarily and customarily used to serve a medical
12 purpose.

13 (iii) Is not useful generally to a person in the absence of
14 illness or injury.

15 (iv) Is not worn in or on the body.

16 (j) "Durable medical equipment repair or replacement parts"
17 includes all components or attachments used in conjunction with
18 durable medical equipment.

19 (k) "Electronic" means relating to technology having
20 electrical, digital, magnetic, wireless, optical, electromagnetic,
21 or similar capabilities.

22 (l) "Lease or rental" means any transfer of possession or
23 control of tangible personal property for a fixed or indeterminate
24 term for consideration and may include future options to purchase
25 or extend. This definition applies only to leases and rentals
26 entered into after September 1, 2004 and has no retroactive impact
27 on leases and rentals that existed on that date. Lease or rental

1 does not include the following subparagraphs (i) through (iii) and
2 includes subparagraph (iv):

3 (i) A transfer of possession or control of tangible personal
4 property under a security agreement or deferred payment plan that
5 requires the transfer of title upon completion of the required
6 payments.

7 (ii) A transfer of possession or control of tangible personal
8 property under an agreement requiring transfer of title upon
9 completion of the required payments and payment of an option price
10 that does not exceed \$100.00 or 1% of the total required payments,
11 whichever is greater.

12 (iii) The provision of tangible personal property along with an
13 operator for a fixed or indeterminate period of time, where that
14 operator is necessary for the equipment to perform as designed. To
15 be necessary, an operator must do more than maintain, inspect, or
16 set up the tangible personal property.

17 (iv) An agreement covering motor vehicles or trailers if the
18 amount of consideration may be increased or decreased by reference
19 to the amount realized upon sale or disposition of the property as
20 defined in 26 USC 7701(h)(1).

21 (m) "Mobility enhancing equipment" means equipment, other than
22 durable medical equipment or a motor vehicle or equipment on a
23 motor vehicle normally provided by a motor vehicle manufacturer,
24 dispensed pursuant to a prescription, including repair or
25 replacement parts for that equipment, that is all of the following:

26 (i) Primarily and customarily used to provide or increase the
27 ability to move from 1 place to another and is appropriate for use

1 at home or on a motor vehicle.

2 (ii) Not generally used by a person with normal mobility.

3 (n) "Prescription" means an order, formula, or recipe, issued
4 in any form of oral, written, electronic, or other means of
5 transmission by a licensed physician or other health professional
6 as defined in section 3501 of the insurance code of 1956, 1956 PA
7 218, MCL 500.3501. For a hearing aid, prescription includes an
8 order, instruction, or direction of a hearing aid dealer or
9 salesperson licensed under article 13 of the occupational code,
10 1980 PA 299, MCL 339.1301 to 339.1309.

11 (o) "Prewritten computer software" means computer software,
12 including prewritten upgrades, that is delivered by any means and
13 that is not designed and developed by the author or other creator
14 to the specifications of a specific purchaser. **PREWRITTEN COMPUTER**
15 **SOFTWARE DOES NOT INCLUDE GRANTING THE RIGHT TO USE PREWRITTEN**
16 **COMPUTER SOFTWARE INSTALLED ON ANOTHER PERSON'S SERVER.** Prewritten
17 computer software includes all of the following:

18 (i) Any combination of 2 or more prewritten computer software
19 programs or portions of prewritten computer software programs.

20 (ii) Computer software designed and developed by the author or
21 other creator to the specifications of a specific purchaser if it
22 is sold to a person other than that specific purchaser.

23 (iii) The modification or enhancement of prewritten computer
24 software or portions of prewritten computer software where the
25 modification or enhancement is designed and developed to the
26 specifications of a specific purchaser unless there is a
27 reasonable, separately stated charge or an invoice or other

1 statement of the price is given to the purchaser for the
2 modification or enhancement. If a person other than the original
3 author or creator modifies or enhances prewritten computer
4 software, that person is considered to be the author or creator of
5 only that person's modifications or enhancements.

6 (p) "Prosthetic device" means a replacement, corrective, or
7 supportive device, other than contact lenses and dental prosthesis,
8 dispensed pursuant to a prescription, including repair or
9 replacement parts for that device, worn on or in the body to do 1
10 or more of the following:

11 (i) Artificially replace a missing portion of the body.

12 (ii) Prevent or correct a physical deformity or malfunction of
13 the body.

14 (iii) Support a weak or deformed portion of the body.

15 (q) "Tobacco" means cigarettes, cigars, chewing or pipe
16 tobacco, or any other item that contains tobacco.

17 Enacting section 1. Section 2b of the use tax act, 1937 PA 94,
18 MCL 205.92b, as amended by this amendatory act, is curative and is
19 intended to express the original intent of the legislature
20 concerning the taxation of prewritten computer software under the
21 use tax act, 1937 PA 94, MCL 205.91 to 205.111.