

HOUSE BILL No. 4100

January 18, 2011, Introduced by Rep. Meadows and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled "Use tax act," by amending sections 4 and 20 (MCL 205.94 and 205.110), section 4 as amended by 2008 PA 314 and section 20 as added by 2004 PA 172, and by adding sections 3g and 4b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 3G. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS ACT,
2 BEGINNING ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
3 THIS SECTION, THE USE OR CONSUMPTION OF ALL SERVICES IN THIS STATE
4 SHALL BE TAXED UNDER THIS ACT IN THE SAME MANNER AS TANGIBLE
5 PERSONAL PROPERTY IS TAXED UNDER THIS ACT.

6 (2) SERVICES SUBJECT TO THE TAX UNDER THIS ACT AS PROVIDED IN
7 THIS SECTION SHALL BE SOURCED UNDER SECTION 20.

8 Sec. 4. (1) The following are exempt from the tax levied under
9 this act, subject to subsection (2):

1 (a) Property **OR SERVICES** sold in this state on which
2 transaction a tax is paid under the general sales tax act, 1933 PA
3 167, MCL 205.51 to 205.78, if the tax was due and paid on the
4 retail sale to a consumer.

5 (b) Property **OR SERVICES**, the storage, use, or other
6 consumption of which this state is prohibited from taxing under the
7 constitution or laws of the United States, or under the
8 constitution of this state.

9 (c) All of the following:

10 (i) Property purchased for resale. Property purchased for
11 resale includes promotional merchandise transferred pursuant to a
12 redemption offer to a person located outside this state or any
13 packaging material, other than promotional merchandise, acquired
14 for use in fulfilling a redemption offer or rebate to a person
15 located outside this state.

16 (ii) Property purchased for lending or leasing to a public or
17 parochial school offering a course in automobile driving except
18 that a vehicle purchased by the school shall be certified for
19 driving education and shall not be reassigned for personal use by
20 the school's administrative personnel.

21 (iii) Property purchased for demonstration purposes. For a new
22 vehicle dealer selling a new car or truck, exemption for
23 demonstration purposes shall be determined by the number of new
24 cars and trucks sold during the current calendar year or the
25 immediately preceding calendar year, without regard to specific
26 make or style, according to the following schedule but not to
27 exceed 25 cars and trucks in 1 calendar year for demonstration

1 purposes:

2 (A) 0 to 25, 2 units.

3 (B) 26 to 100, 7 units.

4 (C) 101 to 500, 20 units.

5 (D) 501 or more, 25 units.

6 (iv) Motor vehicles purchased for resale purposes by a new
7 vehicle dealer licensed under section 248(8)(a) of the Michigan
8 vehicle code, 1949 PA 300, MCL 257.248.

9 (d) Property that is brought into this state by a nonresident
10 person for storage, use, or consumption while temporarily within
11 this state, except if the property is used in this state in a
12 nontransitory business activity for a period exceeding 15 days.

13 (e) Property **OR SERVICES** the sale or use of which was already
14 subjected to a sales tax or use tax equal to, or in excess of, that
15 imposed by this act under the law of any other state or a local
16 governmental unit within a state if the tax was due and paid on the
17 retail sale to the consumer and the state or local governmental
18 unit within a state in which the tax was imposed accords like or
19 complete exemption on property the sale or use of which was
20 subjected to the sales or use tax of this state. If the sale or use
21 of property **OR SERVICES** was already subjected to a tax under the
22 law of any other state or local governmental unit within a state in
23 an amount less than the tax imposed by this act, this act shall
24 apply, but at a rate measured by the difference between the rate
25 provided in this act and the rate by which the previous tax was
26 computed.

27 (f) Property **OR SERVICES** sold to a person engaged in a

1 business enterprise and using and consuming the property in the
2 tilling, planting, caring for, or harvesting of the things of the
3 soil or in the breeding, raising, or caring for livestock, poultry,
4 or horticultural products, including transfers of livestock,
5 poultry, or horticultural products for further growth. This
6 exemption includes machinery that is capable of simultaneously
7 harvesting grain or other crops and biomass and machinery used for
8 the purpose of harvesting biomass. This exemption includes
9 agricultural land tile, which means fired clay or perforated
10 plastic tubing used as part of a subsurface drainage system for
11 land used in the production of agricultural products as a business
12 enterprise and includes a portable grain bin, which means a
13 structure that is used or is to be used to shelter grain and that
14 is designed to be disassembled without significant damage to its
15 component parts. This exemption does not include transfers of food,
16 fuel, clothing, or similar tangible personal property for personal
17 living or human consumption. This exemption does not include
18 tangible personal property permanently affixed to and becoming a
19 structural part of real estate. As used in this subdivision,
20 "biomass" means crop residue used to produce energy or agricultural
21 crops grown specifically for the production of energy.

22 (g) Property or services sold to the United States, an
23 unincorporated agency or instrumentality of the United States, an
24 incorporated agency or instrumentality of the United States wholly
25 owned by the United States or by a corporation wholly owned by the
26 United States, the American red cross and its chapters or branches,
27 this state, a department or institution of this state, or a

1 political subdivision of this state.

2 (h) Property or services sold to a school, hospital, or home
3 for the care and maintenance of children or aged persons, operated
4 by an entity of government, a regularly organized church,
5 religious, or fraternal organization, a veterans' organization, or
6 a corporation incorporated under the laws of this state, if not
7 operated for profit, and if the income or benefit from the
8 operation does not inure, in whole or in part, to an individual or
9 private shareholder, directly or indirectly, and if the activities
10 of the entity or agency are carried on exclusively for the benefit
11 of the public at large and are not limited to the advantage,
12 interests, and benefits of its members or a restricted group. The
13 tax levied does not apply to property or services sold to a parent
14 cooperative preschool. As used in this subdivision, "parent
15 cooperative preschool" means a nonprofit, nondiscriminatory
16 educational institution, maintained as a community service and
17 administered by parents of children currently enrolled in the
18 preschool that provides an educational and developmental program
19 for children younger than compulsory school age, that provides an
20 educational program for parents, including active participation
21 with children in preschool activities, that is directed by
22 qualified preschool personnel, and that is licensed pursuant to
23 1973 PA 116, MCL 722.111 to 722.128.

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

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

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

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

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

14 (l) A newspaper or periodical classified under federal postal
15 laws and regulations effective September 1, 1985 as second-class
16 mail matter or as a controlled circulation publication or qualified
17 to accept legal notices for publication in this state, as defined
18 by law, or any other newspaper or periodical of general
19 circulation, established at least 2 years, and published at least
20 once a week, and a copyrighted motion picture film. Tangible
21 personal property used or consumed in producing a copyrighted
22 motion picture film, a newspaper published more than 14 times per
23 year, or a periodical published more than 14 times per year, and
24 not becoming a component part of that film, newspaper, or
25 periodical is subject to the tax. After December 31, 1993, tangible
26 personal property used or consumed in producing a newspaper
27 published 14 times or less per year or a periodical published 14

1 times or less per year and that portion or percentage of tangible
2 personal property used or consumed in producing an advertising
3 supplement that becomes a component part of a newspaper or
4 periodical is exempt from the tax under this subdivision. A claim
5 for a refund for taxes paid before January 1, 1999 under this
6 subdivision shall be made before June 30, 1999. For purposes of
7 this subdivision, tangible personal property that becomes a
8 component part of a newspaper or periodical and consequently not
9 subject to tax, includes an advertising supplement inserted into
10 and circulated with a newspaper or periodical that is otherwise
11 exempt from tax under this subdivision, if the advertising
12 supplement is delivered directly to the newspaper or periodical by
13 a person other than the advertiser, or the advertising supplement
14 is printed by the newspaper or periodical.

15 (m) Property purchased by persons licensed to operate a
16 commercial radio or television station if the property is used in
17 the origination or integration of the various sources of program
18 material for commercial radio or television transmission. This
19 subdivision does not include a vehicle licensed and titled for use
20 on public highways or property used in the transmitting to or
21 receiving from an artificial satellite.

22 (n) A person who is a resident of this state who purchases an
23 automobile in another state while in the military service of the
24 United States and who pays a sales tax in the state where the
25 automobile is purchased.

26 (o) A vehicle for which a special registration is secured in
27 accordance with section 226(9) of the Michigan vehicle code, 1949

1 PA 300, MCL 257.226.

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

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

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

10 (s) Tangible personal property purchased and installed as a
11 component part of a water pollution control facility for which a
12 tax exemption certificate is issued pursuant to part 37 of the
13 natural resources and environmental protection act, 1994 PA 451,
14 MCL 324.3701 to 324.3708, or an air pollution control facility for
15 which a tax exemption certificate is issued pursuant to part 59 of
16 the natural resources and environmental protection act, 1994 PA
17 451, MCL 324.5901 to 324.5908.

18 (t) Tangible real or personal property donated by a
19 manufacturer, wholesaler, or retailer to an organization or entity
20 exempt pursuant to subdivision (h) or (i) or section 4a(1)(a) or
21 (b) of the general sales tax act, 1933 PA 167, MCL 205.54a.

22 (u) The storage, use, or consumption of an aircraft by a
23 domestic air carrier for use solely in the transport of air cargo,
24 passengers, or a combination of air cargo and passengers, that has
25 a maximum certificated takeoff weight of at least 6,000 pounds. For
26 purposes of this subdivision, the term "domestic air carrier" is
27 limited to a person engaged primarily in the commercial transport

1 for hire of air cargo, passengers, or a combination of air cargo
2 and passengers as a business activity. The state treasurer shall
3 estimate on January 1 each year the revenue lost by this act from
4 the school aid fund and deposit that amount into the school aid
5 fund from the general fund.

6 (v) The storage, use, or consumption of an aircraft by a
7 person who purchases the aircraft for subsequent lease to a
8 domestic air carrier operating under a certificate issued by the
9 federal aviation administration under 14 CFR part 121, for use
10 solely in the regularly scheduled transport of passengers.

11 (w) Property or services sold to an organization not operated
12 for profit and exempt from federal income tax under section
13 501(c)(3) or 501(c)(4) of the internal revenue code, 26 USC 501; or
14 to a health, welfare, educational, cultural arts, charitable, or
15 benevolent organization not operated for profit that has been
16 issued before June 13, 1994 an exemption ruling letter to purchase
17 items exempt from tax signed by the administrator of the sales,
18 use, and withholding taxes division of the department. The
19 department shall reissue an exemption letter after June 13, 1994 to
20 each of those organizations that had an exemption letter that shall
21 remain in effect unless the organization fails to meet the
22 requirements that originally entitled it to this exemption. The
23 exemption does not apply to sales of tangible personal property and
24 sales of vehicles licensed for use on public highways, that are not
25 used primarily to carry out the purposes of the organization as
26 stated in the bylaws or articles of incorporation of the exempt
27 organization.

1 (x) The use or consumption of services described in section
2 3a(1)(a) or (b) or 3b by means of a prepaid telephone calling card,
3 a prepaid authorization number for telephone use, or a charge for
4 internet access.

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

7 (i) Textiles and disposable products including, but not limited
8 to, soap, paper, chemicals, tissues, deodorizers and dispensers,
9 and all related items such as packaging, supplies, hangers, name
10 tags, and identification tags.

11 (ii) Equipment, whether owned or leased, used to repair and
12 dispense textiles including, but not limited to, roll towel
13 cabinets, slings, hardware, lockers, mop handles and frames, and
14 carts.

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

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

19 (v) Production washroom equipment and mending and packaging
20 supplies and equipment.

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

23 (vii) Wastewater pretreatment equipment and supplies and
24 related maintenance and repair services.

25 (2) The property or services under subsection (1) are exempt
26 only to the extent that the property or services are used for the
27 exempt purposes if one is stated in subsection (1). The exemption

1 is limited to the percentage of exempt use to total use determined
2 by a reasonable formula or method approved by the department.

3 **SEC. 4B. BEGINNING JANUARY 1, 2011, THE SALE OF THE FOLLOWING**
4 **SERVICES ARE EXEMPT FROM THE TAX UNDER THIS ACT:**

5 **(A) SERVICES PROVIDED TO A BUSINESS ENTITY.**

6 **(B) EDUCATIONAL SERVICES.**

7 **(C) SERVICES PROVIDED BY A NONPROFIT ORGANIZATION.**

8 Sec. 20. (1) For sourcing a sale subject to tax under this
9 act, the following apply:

10 (a) If a product **OR SERVICE** is received by the purchaser at a
11 business location of the seller, the sale is sourced to that
12 business location.

13 (b) If a product **OR SERVICE** is not received by the purchaser
14 at a business location of the seller, the sale is sourced to the
15 location where the product **OR SERVICE** is received by the purchaser
16 or the purchaser's designee, including the location indicated by
17 instructions for delivery to the purchaser, known to the seller.

18 (c) If subdivision (a) or (b) does not apply, the sale is
19 sourced to the location indicated by an address for the purchaser
20 available from the seller's business records maintained in the
21 ordinary course of the seller's business, provided use of the
22 address does not constitute bad faith.

23 (d) If subdivisions (a) through (c) do not apply, the sale is
24 sourced to the location indicated by an address for the purchaser
25 obtained at the completion of the sale, including the address of
26 the purchaser's payment instrument if no other address is
27 available, provided use of the address does not constitute bad

1 faith.

2 (e) If subdivisions (a) through (d) do not apply or the seller
3 has insufficient information to apply subdivisions (a) through (d),
4 the sale will be sourced to the location indicated by the address
5 from which the tangible personal property was shipped, **FROM WHICH**
6 **THE SERVICE ORIGINATED**, or from which the computer software
7 delivered electronically was first available for transmission by
8 the seller.

9 (2) For sourcing the lease or rental of tangible personal
10 property, other than property included in subsection (3) or (4),
11 subject to tax under this act, the following apply:

12 (a) For a lease or rental requiring recurring periodic
13 payments, the first payment is sourced in the same manner provided
14 for a sale in subsection (1). Subsequent payments shall be sourced
15 to the primary property location for each period covered by the
16 payment as indicated by the address of the property provided by the
17 lessee and available to the lessor from the lessor's records
18 maintained in the ordinary course of business, when use of this
19 address does not constitute bad faith. The property location is not
20 considered altered by intermittent use at different locations such
21 as business property that accompanies employees on business trips
22 or service calls.

23 (b) For a lease or rental not requiring recurring periodic
24 payments, the payment is sourced in the same manner provided for a
25 sale in subsection (1).

26 (3) For sourcing the lease or rental of motor vehicles,
27 trailers, semitrailers, or aircraft that are not transportation

1 equipment, the following apply:

2 (a) For a lease or rental requiring recurring periodic
3 payments, each payment is sourced to the primary property location
4 as indicated by the address of the property provided by the lessee
5 and available to the lessor from the lessor's records maintained in
6 the ordinary course of business, when use of this address does not
7 constitute bad faith. The property location is not considered
8 altered by intermittent use at a different location.

9 (b) For a lease or rental not requiring recurring periodic
10 payments, the payment is sourced in the same manner provided for a
11 sale in subsection (1).

12 (4) The lease or rental of transportation equipment shall be
13 sourced in the same manner provided for a sale in subsection (1).

14 (5) Subsections (2) and (3) do not affect the imposition or
15 computation of the tax under the general sales tax act, 1933 PA
16 167, MCL 205.51 to 205.78, on leases or rentals based on a lump-sum
17 or accelerated basis or on the acquisition of property for lease.

18 (6) As used in this section:

19 (a) "Receive" and "receipt" mean 1 or more of the following
20 but exclude possession by a shipping company on behalf of the
21 purchaser:

22 (i) Taking possession of tangible personal property.

23 (ii) Making first use of services.

24 (b) "Transportation equipment" means 1 or more of the
25 following:

26 (i) Locomotives and railcars utilized for the carriage of
27 persons or property in interstate commerce.

1 (ii) Trucks and truck-tractors with a gross vehicle weight
2 rating of 10,001 pounds or greater, trailers, semitrailers, or
3 passenger buses, which are registered through the international
4 registration plan and operated under authority of a carrier
5 authorized and certificated by the United States department of
6 transportation or another federal authority to engage in the
7 carriage of persons or property in interstate commerce.

8 (iii) Aircraft operated by air carriers authorized and
9 certificated by the United States department of transportation or
10 other federal or foreign authority to transport air cargo or
11 passengers in interstate or foreign commerce.

12 (iv) Containers designed for use on or component parts attached
13 or secured to the equipment included in subparagraphs (i) to (iii).

14 (7) A person may deviate from the sourcing requirements under
15 this section as provided in section ~~12 or~~ 13.