

SENATE BILL No. 1115

September 5, 2018, Introduced by Senator CASPERSON and referred to the Committee on Finance.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 4 (MCL 205.94), as amended by 2018 PA 114.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 (a) Property sold in this state on which transaction a tax is
4 paid under the general sales tax act, 1933 PA 167, MCL 205.51 to
5 205.78, if the tax was due and paid on the retail sale to a
6 consumer.

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

1 (c) All of the following:

2 (i) Property purchased for resale. Property purchased for
3 resale includes promotional merchandise transferred pursuant to a
4 redemption offer to a person located outside this state or any
5 packaging material, other than promotional merchandise, acquired
6 for use in fulfilling a redemption offer or rebate to a person
7 located outside this state.

8 (ii) Property purchased for lending or leasing to a public or
9 parochial school offering a course in automobile driving except
10 that a vehicle purchased by the school shall be certified for
11 driving education and shall not be reassigned for personal use by
12 the school's administrative personnel.

13 (iii) Property purchased for demonstration purposes. For a new
14 vehicle dealer selling a new car or truck, exemption for
15 demonstration purposes shall be determined by the number of new
16 cars and trucks sold during the current calendar year or the
17 immediately preceding calendar year, without regard to specific
18 make or style, according to the following schedule but not to
19 exceed 25 cars and trucks in 1 calendar year for demonstration
20 purposes:

21 (A) 0 to 25, 2 units.

22 (B) 26 to 100, 7 units.

23 (C) 101 to 500, 20 units.

24 (D) 501 or more, 25 units.

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

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

5 (e) Property the sale or use of which was already subjected to
6 a sales tax or use tax equal to, or in excess of, that imposed by
7 this act under the law of any other state or a local governmental
8 unit within a state if the tax was due and paid on the retail sale
9 to the consumer and the state or local governmental unit within a
10 state in which the tax was imposed accords like or complete
11 exemption on property the sale or use of which was subjected to the
12 sales or use tax of this state. If the sale or use of property was
13 already subjected to a tax under the law of any other state or
14 local governmental unit within a state in an amount less than the
15 tax imposed by this act, this act shall apply, but at a rate
16 measured by the difference between the rate provided in this act
17 and the rate by which the previous tax was computed.

18 (f) Except as otherwise provided under subsection (3),
19 property sold to a person engaged in a business enterprise that
20 uses or consumes the property, directly or indirectly, for either
21 the tilling, planting, draining, caring for, maintaining, or
22 harvesting of things of the soil or the breeding, raising, or
23 caring for livestock, poultry, or horticultural products, including
24 the transfers of livestock, poultry, or horticultural products for
25 further growth.

26 (g) Property or services sold to the United States, an
27 unincorporated agency or instrumentality of the United States, an

1 incorporated agency or instrumentality of the United States wholly
2 owned by the United States or by a corporation wholly owned by the
3 United States, the American Red Cross and its chapters or branches,
4 this state, a department or institution of this state, or a
5 political subdivision of this state.

6 (h) Property or services sold to a school, hospital, or home
7 for the care and maintenance of children or aged persons, operated
8 by an entity of government, a regularly organized church,
9 religious, or fraternal organization, a veterans' organization, or
10 a corporation incorporated under the laws of this state, if not
11 operated for profit, and if the income or benefit from the
12 operation does not inure, in whole or in part, to an individual or
13 private shareholder, directly or indirectly, and if the activities
14 of the entity or agency are carried on exclusively for the benefit
15 of the public at large and are not limited to the advantage,
16 interests, and benefits of its members or a restricted group. The
17 tax levied does not apply to property or services sold to a parent
18 cooperative preschool. As used in this subdivision, "parent
19 cooperative preschool" means a nonprofit, nondiscriminatory
20 educational institution, maintained as a community service and
21 administered by parents of children currently enrolled in the
22 preschool that provides an educational and developmental program
23 for children younger than compulsory school age, that provides an
24 educational program for parents, including active participation
25 with children in preschool activities, that is directed by
26 qualified preschool personnel, and that is licensed pursuant to
27 1973 PA 116, MCL 722.111 to 722.128.

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

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

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

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

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

18 (l) A newspaper or periodical classified under federal postal
19 laws and regulations effective September 1, 1985 as second-class
20 mail matter or as a controlled circulation publication or qualified
21 to accept legal notices for publication in this state, as defined
22 by law, or any other newspaper or periodical of general
23 circulation, established at least 2 years, and published at least
24 once a week, and a copyrighted motion picture film. Tangible
25 personal property used or consumed in producing a copyrighted
26 motion picture film, a newspaper published more than 14 times per
27 year, or a periodical published more than 14 times per year, and

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

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

26 (n) A person who is a resident of this state who purchases an
27 automobile in another state while in the military service of the

1 United States and who pays a sales tax in the state where the
2 automobile is purchased.

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

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

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

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

14 (s) Tangible personal property purchased and installed as a
15 component part of a water pollution control facility for which a
16 tax exemption certificate is issued pursuant to part 37 of the
17 natural resources and environmental protection act, 1994 PA 451,
18 MCL 324.3701 to 324.3708, or an air pollution control facility for
19 which a tax exemption certificate is issued pursuant to part 59 of
20 the natural resources and environmental protection act, 1994 PA
21 451, MCL 324.5901 to 324.5908.

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

26 (u) The storage, use, or consumption of an aircraft by a
27 domestic air carrier for use solely in the transport of air cargo,

1 passengers, or a combination of air cargo and passengers, that has
2 a maximum certificated takeoff weight of at least 6,000 pounds. For
3 purposes of this subdivision, the term "domestic air carrier" is
4 limited to a person engaged primarily in the commercial transport
5 for hire of air cargo, passengers, or a combination of air cargo
6 and passengers as a business activity. The state treasurer shall
7 estimate on January 1 each year the revenue lost by this act from
8 the school aid fund and deposit that amount into the school aid
9 fund from the general fund.

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

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

1 sales of vehicles licensed for use on public highways, that are not
2 used primarily to carry out the purposes of the organization as
3 stated in the bylaws or articles of incorporation of the exempt
4 organization.

5 (x) The use or consumption of services described in section
6 3a(1)(a) or (b) or 3b by means of a prepaid telephone calling card,
7 a prepaid authorization number for telephone use, or a charge for
8 internet access.

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

11 (i) Textiles and disposable products including, but not
12 limited to, soap, paper, chemicals, tissues, deodorizers and
13 dispensers, and all related items such as packaging, supplies,
14 hangers, name tags, and identification tags.

15 (ii) Equipment, whether owned or leased, used to repair and
16 dispense textiles including, but not limited to, roll towel
17 cabinets, slings, hardware, lockers, mop handles and frames, and
18 carts.

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

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

23 (v) Production washroom equipment and mending and packaging
24 supplies and equipment.

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

27 (vii) Wastewater pretreatment equipment and supplies and

1 related maintenance and repair services.

2 (z) Property purchased or manufactured by a person engaged in
3 the business of constructing, altering, repairing, or improving
4 real estate for others, to the extent that the property is affixed
5 to and made a structural part of real estate located in another
6 state, regardless of whether sales or use tax was due and paid in
7 the state in which the property is affixed to real estate.

8 (aa) The sale of a dental prosthesis.

9 (bb) Except as otherwise provided under subsection (3), a sale
10 of any of the following to a person engaged in a business
11 enterprise that uses or consumes the following for purposes as
12 described in subdivision (f):

13 (i) Machinery that is capable of simultaneously harvesting
14 grain or other crops and biomass and machinery used for the purpose
15 of harvesting biomass.

16 (ii) Agricultural land tile and subsurface irrigation pipe.

17 (iii) Portable grain bins, including tangible personal
18 property affixed or to be affixed to portable grain bins and
19 directly used in the operation of a portable grain bin.

20 (iv) Grain drying equipment and the fuel or energy source that
21 powers that equipment, including tangible personal property affixed
22 or to be affixed to that equipment and directly used in the
23 operation of grain drying equipment.

24 (v) Tangible personal property purchased and installed as a
25 component part of a structure such as a barn or shop, including,
26 but not limited to, a water supply system, heating and cooling
27 system, lighting system, milking system, or any other appurtenance

1 used for purposes described in this subdivision or subdivision (f),
2 including the maintenance or improvement of existing structures, to
3 the extent that it is not permanently affixed to and does not
4 become a structural part of real estate. For purposes of this
5 subparagraph and subsection (3), property installed as a component
6 part of a structure as provided in this subparagraph is not
7 permanently affixed to or a structural part of real estate if it is
8 assembled and installed in a manner that it can be disassembled
9 without affecting the physical structural functionality of the
10 original structure and reassembled and reused for any of the
11 purposes described in this subdivision or subdivision (f).

12 (vi) Greenhouses, including tangible personal property affixed
13 to or to be affixed to greenhouses and directly used in the
14 operation of a greenhouse. For purposes of subsection (3), a
15 greenhouse is not permanently affixed to or a structural part of
16 real estate if it is assembled and installed in a manner that it
17 can be disassembled and reassembled without affecting the
18 functionality of the greenhouse upon being reassembled.

19 (cc) The sale of agricultural land tile, subsurface irrigation
20 pipe, portable grain bins, greenhouses, and grain drying equipment
21 to a person in the business of constructing, altering, repairing,
22 or improving real estate for others to the extent that it is
23 affixed to and made a structural part of real estate for others and
24 is used for an exempt purpose described under subdivision (f) or
25 (bb).

26 (dd) The sale of tangible personal property used in the direct
27 gathering of fish, by net, line, or otherwise, by an owner-operator

1 of a business enterprise, not including a charter fishing business
2 enterprise.

3 (ee) A sale of tangible personal property that is specifically
4 designed for, and directly used in, the harvesting of aquatic
5 vegetation from the waters of the state, including parts and
6 materials used for repairs of that tangible personal property, to a
7 person engaged in a business enterprise of harvesting aquatic
8 vegetation and ultimately used for purposes described in
9 subdivision (f) or (bb). This exemption does not include a motor
10 vehicle licensed or required to be licensed for use on the public
11 roads or highways of this state or tangible personal property
12 permanently affixed to and becoming a structural part of real
13 estate.

14 (FF) A SALE OF TANGIBLE PERSONAL PROPERTY NOT FOR RESALE TO A
15 FORMER MUNICIPAL HEALTH FACILITIES CORPORATION THAT IS ACQUIRED BY
16 A BUSINESS ORGANIZATION PURSUANT TO SECTION 306A OF THE MUNICIPAL
17 HEALTH FACILITIES CORPORATIONS ACT, 1987 PA 230, MCL 331.1306A, FOR
18 A PERIOD OF NOT MORE THAN 12 YEARS BEGINNING ON THE DATE OF THE
19 SALE OR TRANSFER OF OWNERSHIP OF THE MUNICIPAL HEALTH FACILITIES
20 CORPORATION TO THAT BUSINESS ORGANIZATION. AS USED IN THIS
21 SUBDIVISION, "BUSINESS ORGANIZATION" AND "MUNICIPAL HEALTH
22 FACILITIES CORPORATION" MEAN THOSE TERMS AS DEFINED UNDER THE
23 MUNICIPAL HEALTH FACILITIES CORPORATIONS ACT, 1987 PA 230, MCL
24 331.1101 TO 331.1507.

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 (3) The exemptions under subsection (1)(f), (bb), (cc), and
4 (dd) do not include the transfers of food, fuel, clothing, or any
5 similar tangible personal property for personal living or human
6 consumption or tangible personal property permanently affixed to
7 and becoming a structural part of real estate unless it is
8 agricultural land tile, subsurface irrigation pipe, a portable
9 grain bin, or grain drying equipment.

10 (4) ~~Subsections~~ **SUBSECTION** (1)(f), (bb), and (cc) as amended
11 by ~~the amendatory act that added this subsection are~~ **2018 PA 114 IS**
12 intended to be retroactive and to apply to all periods open under
13 section 27a of 1941 PA 122, MCL 205.27a, but ~~do~~ **DOES** not apply to
14 any refund claims filed prior to April 9, 2018.

15 (5) As used in this section:

16 (a) "Agricultural land tile" means fired clay or perforated
17 plastic tubing used as part of a subsurface drainage system for
18 land.

19 (b) "Algae" means any of the group of nonvascular aquatic
20 plants which do not have stems, flowers, leaves, and roots, and
21 which are single-celled, colonial, or filamentous forms.

22 (c) "Aquatic vegetation" means both algae and higher aquatic
23 plants.

24 (d) "Biomass" means crop residue used to produce energy or
25 agricultural crops grown specifically for the production of energy.

26 (e) "Greenhouse" means a structure covered with transparent or
27 translucent materials for the purpose of admitting natural light

1 and controlling the atmosphere for growing horticultural products.
2 Greenhouse does not include a structure primarily used to grow
3 marihuana.

4 (f) "Higher aquatic plant" means any of the group of
5 vascularized plants which have true stems, flowers, leaves, and
6 roots, which live in water, and which belong to the class
7 Angiospermae.

8 (g) "Portable grain bin" means a structure that is used or is
9 to be used to shelter grain and that is designed to be disassembled
10 without significant damage to its component parts.

11 (h) "Waters of the state" means that term as defined in
12 section 3302 of the natural resources and environmental protection
13 act, 1994 PA 451, MCL 324.3302.

14 Enacting section 1. This amendatory act does not take effect
15 unless Senate Bill No. 1114

16 of the 99th Legislature is enacted into law.