

**SUBSTITUTE FOR
HOUSE BILL NO. 4204**

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 2b (MCL 205.92b), as amended by 2017 PA 220,
and by adding section 4ff.

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



1 to perform a task.

2 (d) "Delivered electronically" means delivered from the seller
3 to the purchaser by means other than tangible storage media.

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

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

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

22 (f) "Dental prosthesis" means a bridge, crown, denture, or
23 other similar artificial device used to repair or replace intraoral
24 defects such as missing teeth, missing parts of teeth, and missing
25 soft or hard structures of the jaw or palate.

26 (g) "Dietary supplement" means any product, other than
27 tobacco, intended to supplement the diet that is all of the
28 following:

29 (i) Required to be labeled as a dietary supplement identifiable



1 by the ~~"supplemental"~~ **"supplement** facts" box found on the label as
2 required by 21 CFR 101.36.

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

4 (A) A vitamin.

5 (B) A mineral.

6 (C) An herb or other botanical.

7 (D) An amino acid.

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

10 (F) A concentrate, metabolite, constituent, extract, or
11 combination of any ingredient listed in sub-subparagraphs (A)
12 ~~through~~ **to** (E).

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

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

26 (i) "Drug" means a compound, substance, or preparation, or any
27 component of a compound, substance, or preparation, other than food
28 or food ingredients, dietary supplements, or alcoholic beverages,
29 intended for human use that is 1 or more of the following:



1 (i) Recognized in the official United States Pharmacopoeia,
2 official homeopathic pharmacopoeia of the United States, or
3 official national formulary, or in any of their supplements.

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

6 (iii) Intended to affect the structure or any function of the
7 body.

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

12 (i) Can withstand repeated use.

13 (ii) Is primarily and customarily used to serve a medical
14 purpose.

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

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

18 (k) "Durable medical equipment repair or replacement parts"
19 includes all components or attachments used in conjunction with
20 durable medical equipment.

21 (l) "Electronic" means relating to technology having
22 electrical, digital, magnetic, wireless, optical, electromagnetic,
23 or similar capabilities.

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



1 does not include the following subparagraphs (i) ~~through~~ to (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~~ if 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 **section 7701(h) (1) of the internal revenue code of 1986,**
 21 26 USC 7701(h) (1).

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

27 (i) Primarily and customarily used to provide or increase the
 28 ability to move from 1 place to another and is appropriate for use
 29 at home or on a motor vehicle.



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

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

10 (p) "Prewritten computer software" means computer software,
 11 including prewritten upgrades, that is delivered by any means and
 12 that is not designed and developed by the author or other creator
 13 to the specifications of a specific purchaser. Prewritten computer
 14 software includes all of the following:

15 (i) Any combination of 2 or more prewritten computer software
 16 programs or portions of prewritten computer software programs.

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

20 (iii) The modification or enhancement of prewritten computer
 21 software or portions of prewritten computer software ~~where~~ **if** the
 22 modification or enhancement is designed and developed to the
 23 specifications of a specific purchaser unless there is a
 24 reasonable, separately stated charge or an invoice or other
 25 statement of the price is given to the purchaser for the
 26 modification or enhancement. If a person other than the original
 27 author or creator modifies or enhances prewritten computer
 28 software, that person is considered to be the author or creator of
 29 only that person's modifications or enhancements.



1 (q) "Prosthetic device" means, **except as provided in section**
2 **4ff**, a replacement, corrective, or supportive device, other than
3 contact lenses and dental prosthesis, dispensed pursuant to a
4 prescription, including repair or replacement parts for that
5 device, worn on or in the body to do 1 or more of the following:

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

7 (ii) Prevent or correct a physical deformity or malfunction of
8 the body.

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

10 (r) "Tobacco" means cigarettes, cigars, chewing or pipe
11 tobacco, or any other item that contains tobacco.

12 **Sec. 4ff. (1) The sale to a hospital or freestanding surgical**
13 **outpatient facility of a prosthetic device for implantation into a**
14 **human is exempt from the tax imposed by this act.**

15 (2) As used in this section:

16 (a) "Freestanding surgical outpatient facility" means a
17 facility licensed under part 208 of the public health code, 1978 PA
18 368, MCL 333.20801 to 333.20821.

19 (b) "Hospital" means a hospital licensed under part 215 of the
20 public health code, 1978 PA 368, MCL 333.21501 to 333.21571.

21 (c) "Prosthetic device" means a replacement, corrective, or
22 supportive device, other than contact lenses and dental prosthesis,
23 including repair or replacement parts for that device, worn on or
24 in the body to do 1 or more of the following:

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

26 (ii) Prevent or correct a physical deformity or malfunction of
27 the body.

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

