

# HOUSE BILL NO. 4204

February 19, 2019, Introduced by Reps. Kahle and Afendoulis and referred to the Committee on Tax Policy.

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

**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.



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

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

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

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

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

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

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



1 following:

2 (i) Required to be labeled as a dietary supplement identifiable  
3 by the ~~"supplemental"~~ **"supplement** facts" box found on the label as  
4 required by 21 CFR 101.36.

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

6 (A) A vitamin.

7 (B) A mineral.

8 (C) An herb or other botanical.

9 (D) An amino acid.

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

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

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

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

28 (i) "Drug" means a compound, substance, or preparation, or any  
29 component of a compound, substance, or preparation, other than food



1 or food ingredients, dietary supplements, or alcoholic beverages,  
2 intended for human use that is 1 or more of the following:

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

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

8 (iii) Intended to affect the structure or any function of the  
9 body.

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

14 (i) Can withstand repeated use.

15 (ii) Is primarily and customarily used to serve a medical  
16 purpose.

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

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

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

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

26 (m) "Lease or rental" means any transfer of possession or  
27 control of tangible personal property for a fixed or indeterminate  
28 term for consideration and may include future options to purchase  
29 or extend. This definition applies only to leases and rentals



1 entered into after September 1, 2004 and has no retroactive impact  
 2 on leases and rentals that existed on that date. Lease or rental  
 3 does not include the following subparagraphs (i) ~~through to~~ (iii) and  
 4 includes subparagraph (iv):

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

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

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

19 (iv) An agreement covering motor vehicles or trailers if the  
 20 amount of consideration may be increased or decreased by reference  
 21 to the amount realized upon sale or disposition of the property as  
 22 defined in **section 7701(h)(1) of the internal revenue code of 1986,**  
 23 26 USC 7701(h)(1).

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

29 (i) Primarily and customarily used to provide or increase the



1 ability to move from 1 place to another and is appropriate for use  
2 at home or on a motor vehicle.

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

4 (o) "Prescription" means an order, formula, or recipe, issued  
5 in any form of oral, written, electronic, or other means of  
6 transmission by a licensed physician or other health professional  
7 as defined in section 3501 of the insurance code of 1956, 1956 PA  
8 218, MCL 500.3501. For a hearing aid, prescription includes an  
9 order, instruction, or direction of a hearing aid dealer or  
10 salesperson licensed under article 13 of the occupational code,  
11 1980 PA 299, MCL 339.1301 to 339.1309.

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

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

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

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



1 software, that person is considered to be the author or creator of  
2 only that person's modifications or enhancements.

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

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

9 (ii) Prevent or correct a physical deformity or malfunction of  
10 the body.

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

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

14 Enacting section 1. This amendatory act is retroactive and is  
15 effective beginning July 31, 2018.

