

# HOUSE BILL NO. 6376

September 15, 2022, Introduced by Rep. Outman and referred to the Committee on Regulatory Reform.

A bill to amend 1937 PA 94, entitled  
"Use tax act,"  
by amending sections 2b, 4a, and 5c (MCL 205.92b, 205.94a, and  
205.95c), section 2b as amended by 2020 PA 47, section 4a as  
amended by 2004 PA 172, and section 5c as added by 2019 PA 144.

## **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) "Car sharing program agreement" means that term as defined

1 under section 3 of the peer-to-peer car sharing program act.

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

5 (d) ~~(e)~~ "Computer software" means a set of coded instructions  
6 designed to cause a computer or automatic data processing equipment  
7 to perform a task.

8 (e) ~~(d)~~ "Delivered electronically" means delivered from the  
9 seller to the purchaser by means other than tangible storage media.

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

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

24 (ii) Multiply the delivery price by a fraction, the numerator  
25 of which is the total weight of the taxable property and the  
26 denominator of which is the total weight of all property in the  
27 shipment.

28 (g) ~~(f)~~ "Dental prosthesis" means a bridge, crown, denture, or  
29 other similar artificial device used to repair or replace intraoral

defects such as missing teeth, missing parts of teeth, and missing soft or hard structures of the jaw or palate.

(h) ~~(g)~~—"Dietary supplement" means any product, other than tobacco, intended to supplement the diet that is all of the following:

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

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

(A) A vitamin.

(B) A mineral.

(C) An herb or other botanical.

(D) An amino acid.

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

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

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

(i) ~~(h)~~—"Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser if the cost of the items is not billed directly to the recipients, including tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing

1 the printed material but not including multiple items of printed  
2 material delivered to a single address.

3 (j) ~~(i)~~—"Drug" means a compound, substance, or preparation, or  
4 any component of a compound, substance, or preparation, other than  
5 food or food ingredients, dietary supplements, or alcoholic  
6 beverages, intended for human use that is 1 or more of the  
7 following:

8 (i) Recognized in the official United States Pharmacopoeia,  
9 official homeopathic pharmacopoeia of the United States, or  
10 official national formulary, or in any of their supplements.

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

13 (iii) Intended to affect the structure or any function of the  
14 body.

15 (k) ~~(j)~~—"Durable medical equipment" means equipment for home  
16 use, other than mobility enhancing equipment, dispensed pursuant to  
17 a prescription, including durable medical equipment repair or  
18 replacement parts, that does all of the following:

19 (i) Can withstand repeated use.

20 (ii) Is primarily and customarily used to serve a medical  
21 purpose.

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

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

25 (l) ~~(k)~~—"Durable medical equipment repair or replacement parts"  
26 includes all components or attachments used in conjunction with  
27 durable medical equipment.

28 (m) ~~(l)~~—"Electronic" means relating to technology having  
29 electrical, digital, magnetic, wireless, optical, electromagnetic,

1 or similar capabilities.

2       **(n)** ~~(m)~~—"Lease or rental" means any transfer of possession or  
 3 control of tangible personal property for a fixed or indeterminate  
 4 term for consideration and may include future options to purchase  
 5 or extend. This definition applies only to leases and rentals  
 6 entered into after September 1, 2004 and has no retroactive impact  
 7 on leases and rentals that existed on that date. **Lease or rental**  
 8 **includes peer-to-peer car sharing pursuant to a car sharing program**  
 9 **agreement.** Lease or rental does not include the following  
 10 subparagraphs (i) to (iii) and includes subparagraph (iv):

11       (i) A transfer of possession or control of tangible personal  
 12 property under a security agreement or deferred payment plan that  
 13 requires the transfer of title upon completion of the required  
 14 payments.

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

20       (iii) The provision of tangible personal property along with an  
 21 operator for a fixed or indeterminate period of time, if that  
 22 operator is necessary for the equipment to perform as designed. To  
 23 be necessary, an operator must do more than maintain, inspect, or  
 24 set up the tangible personal property.

25       (iv) An agreement covering motor vehicles or trailers if the  
 26 amount of consideration may be increased or decreased by reference  
 27 to the amount realized upon sale or disposition of the property as  
 28 defined in section 7701(h)(1) of the internal revenue code of 1986,  
 29 26 USC ~~7701(h)(1)~~-**7701**.

1        **(o)** ~~(n)~~ "Mobility enhancing equipment" means equipment, other  
2 than durable medical equipment or a motor vehicle or equipment on a  
3 motor vehicle normally provided by a motor vehicle manufacturer,  
4 dispensed pursuant to a prescription, including repair or  
5 replacement parts for that equipment, that is all of the following:

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

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

10       **(p)** "Peer-to-peer car sharing" means that term as defined  
11 under section 3 of the peer-to-peer car sharing program act.

12       **(q)** "Peer-to-peer car sharing program" means that term as  
13 defined under section 3 of the peer-to-peer car sharing program  
14 act.

15       **(r)** ~~(e)~~ "Prescription" means an order, formula, or recipe,  
16 issued in any form of oral, written, electronic, or other means of  
17 transmission by a licensed physician or other health professional  
18 as defined in section 3501 of the insurance code of 1956, 1956 PA  
19 218, MCL 500.3501. For a hearing aid, prescription includes an  
20 order, instruction, or direction of a hearing aid dealer or  
21 salesperson licensed under article 13 of the occupational code,  
22 1980 PA 299, MCL 339.1301 to 339.1309.

23       **(s)** ~~(p)~~ "Prewritten computer software" means computer  
24 software, including prewritten upgrades, that is delivered by any  
25 means and that is not designed and developed by the author or other  
26 creator to the specifications of a specific purchaser. Prewritten  
27 computer software includes all of the following:

28       (i) Any combination of 2 or more prewritten computer software  
29 programs or portions of prewritten computer software programs.

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

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

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

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

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

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

(u) ~~(r)~~—"Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

Sec. 4a. The following are exempt from the tax under this act:

(a) Rental receipts, **including, but not limited to, peer-to-peer car sharing receipts under a car sharing program agreement**, if the tangible personal property rented or leased was previously subject to 1 of the following when purchased by the lessor:

1 (i) This act.

2 (ii) The general sales tax act, 1933 PA 167, MCL 205.51 to  
3 205.78.

4 (b) Rental receipts, **including, but not limited to, peer-to-**  
5 **peer car sharing receipts under a car sharing program agreement,** if  
6 the tangible personal property rented or leased was previously  
7 taxed under a sales or use tax act of another state or a political  
8 subdivision of another state levied at a rate of 6% or more.

9 (c) Specific charges for technical support or for adapting or  
10 modifying prewritten computer software programs to a purchaser's  
11 needs or equipment if those charges are separately stated and  
12 identified.

13 (d) The sale of computer software originally designed for the  
14 exclusive use and special needs of the purchaser.

15 (e) The sale of a commercial advertising element if the  
16 commercial advertising element is used to create or develop a  
17 print, radio, television, or other advertisement, the commercial  
18 advertising element is discarded or returned to the provider after  
19 the advertising message is completed, and the commercial  
20 advertising element is custom developed by the provider for the  
21 purchaser. As used in this subdivision, "commercial advertising  
22 element" means a negative or positive photographic image, an  
23 audiotape or videotape master, a layout, a manuscript, writing of  
24 copy, a design, artwork, an illustration, retouching, and  
25 mechanical or keyline instructions. This exemption does not include  
26 black and white or full color process separation elements, an  
27 audiotape reproduction, or a videotape reproduction.

28 (f) The sale of oxygen for human use dispensed pursuant to a  
29 prescription.



1 (g) The sale of insulin for human use.

2 (h) A meal provided free of charge or at a reduced rate to an  
3 employee during work hours by a food service establishment licensed  
4 by the department of agriculture.

5 (i) The sale of diesel fuel to a person who is an interstate  
6 motor carrier for use in a qualified commercial motor vehicle.

7 Sec. 5c. (1) Notwithstanding anything to the contrary in this  
8 act, a marketplace facilitator that has nexus in this state shall  
9 collect and remit the tax due under this act on ~~all~~ **both of the**  
10 **following:**

11 (a) **All** taxable sales made by the marketplace facilitator or  
12 facilitated for marketplace sellers to a purchaser in this state  
13 regardless of whether the marketplace seller for whom sales are  
14 facilitated has nexus with this state.

15 (b) **All taxable peer-to-peer car sharing transactions under a**  
16 **car sharing program agreement facilitated by a marketplace**  
17 **facilitator as part of a peer-to-peer car sharing program.**

18 (2) A marketplace facilitator is a person liable for the tax  
19 imposed under this act, regardless of whether the marketplace  
20 facilitator makes only facilitated sales for marketplace sellers or  
21 a combination of direct and facilitated sales, **or facilitates peer-**  
22 **to-peer car sharing**, and has all the rights and duties of a  
23 taxpayer under this act.

24 (3) A marketplace facilitator shall report its direct sales  
25 and the sales it facilitates to purchasers in this state in a  
26 manner as prescribed by the department.

27 (4) A class action shall not be brought against a marketplace  
28 facilitator in any court of this state on behalf of purchasers  
29 arising from or in any way related to an overpayment of use tax

1 collected and remitted on sales facilitated by the marketplace  
2 facilitator, regardless of whether that claim is characterized as a  
3 tax refund claim. Nothing in this subsection affects a purchaser's  
4 right to seek a refund as provided under section 14b.

5 (5) Nothing in this section affects the obligation of a  
6 purchaser to remit the tax imposed by this act for a taxable  
7 transaction on which a marketplace facilitator or marketplace  
8 seller does not remit sales or use tax.

9 (6) Except as otherwise provided in this subsection, if a  
10 marketplace facilitator is required to collect and remit tax under  
11 subsection (1), the department shall audit only the marketplace  
12 facilitator for sales made by marketplace sellers that were  
13 facilitated by the marketplace facilitator. The department shall  
14 not audit a marketplace seller for sales facilitated by a  
15 marketplace facilitator required to collect and remit tax under  
16 subsection (1) unless the marketplace seller fails to provide the  
17 marketplace facilitator with sufficient information to the extent  
18 that the marketplace facilitator is not liable under subsection  
19 (7).

20 (7) A marketplace facilitator is relieved of liability under  
21 this section for failure to collect and remit the correct amount of  
22 tax to the extent that the marketplace facilitator demonstrates, to  
23 the satisfaction of the department, that the failure was due to  
24 incorrect or insufficient information given to the marketplace  
25 facilitator by the marketplace seller. The relief under this  
26 subsection does not apply if the marketplace seller is an affiliate  
27 of the marketplace facilitator.

28 (8) A marketplace facilitator is relieved of liability under  
29 this section if the marketplace facilitator demonstrates, to the

1 satisfaction of the department, that the tax levied under this act  
 2 on a sale facilitated by the marketplace facilitator was paid to  
 3 the department by the marketplace seller or provides a claim of  
 4 exemption provided by the marketplace seller's purchaser.

5 (9) A marketplace seller is not liable for the tax imposed by  
 6 this act on sales made through a marketplace facilitator required  
 7 to collect and remit tax under subsection (1) unless the  
 8 marketplace seller fails to provide the marketplace facilitator  
 9 with sufficient information to the extent that the marketplace  
 10 facilitator is not liable under subsection (7).

11 (10) This section applies regardless of whether the  
 12 marketplace facilitator has a physical presence in this state.

13 (11) As used in this section:

14 (a) "Affiliate" means an affiliated person as that term is  
 15 defined in section 5a.

16 (b) "Marketplace facilitator" means a person that meets the  
 17 requirements of subparagraph (i), but does not include a person  
 18 described in subparagraph (ii), (iii), or (iv):

19 (i) A person is a marketplace facilitator if the person  
 20 facilitates ~~a~~**either of the following:**

21 **(A) A** retail sale by a marketplace seller by listing or  
 22 advertising for sale by a marketplace seller in a marketplace,  
 23 tangible personal property or taxable services and either directly  
 24 or indirectly through agreements or arrangements with third parties  
 25 or its affiliates collecting payment from the customer and  
 26 transmitting that payment to the marketplace seller for  
 27 consideration.

28 **(B) Peer-to-peer car sharing pursuant to a car sharing program**  
 29 **agreement.**

1           (ii) Marketplace facilitator does not include a person who  
2 operates a platform or forum that provides internet, print,  
3 electronic, or any other form of advertising services, including  
4 listing tangible personal property or services for sale, if the  
5 person does not also engage directly or indirectly, through 1 or  
6 more affiliates, in the activities described in subparagraph (i).

7           (iii) A person is not a marketplace facilitator with respect to  
8 the sale of or charges for rooms, lodgings, or accommodations  
9 described in section 3a if the rooms, lodgings, or accommodations  
10 are provided by a hotelkeeper, motel operator, or other person that  
11 is registered under section 5 or licensed under section 3 of the  
12 general sales tax act, 1933 PA 167, MCL 205.53.

13           (iv) A person is not a marketplace facilitator with respect to  
14 the sale of telecommunications services as described in section 3a.

15           (c) "Marketplace seller" means a person that makes retail  
16 sales through a physical or electronic marketplace operated by a  
17 marketplace facilitator.

18           Enacting section 1. This amendatory act does not take effect  
19 unless House Bill No. 4917 of the 101st Legislature is enacted into  
20 law.