

HOUSE BILL NO. 4166

February 13, 2019, Introduced by Reps. Yancey, Elder, Koleszar, Garza, Anthony, Rabhi, Kennedy, Shannon, Hood, Chirkun, Pohutsky, Stone, Hertel, Sowerby, Peterson, Coleman, Warren, Brixie, Wittenberg, Clemente, Hammoud, Tate, Sabo, Paquette, Hope, Sneller, Cambensy, Robinson, Ellison, Kuppa, Pagan, Yaroch and Haadsma and referred to the Committee on Tax Policy.

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.

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

4 (c) All of the following:

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

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

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

24 (A) 0 to 25, 2 units.

25 (B) 26 to 100, 7 units.

26 (C) 101 to 500, 20 units.

27 (D) 501 or more, 25 units.

28 (iv) Motor vehicles purchased for resale purposes by a new
29 vehicle dealer licensed under section 248(8)(a) of the Michigan

1 vehicle code, 1949 PA 300, MCL 257.248.

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

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

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

27 (g) Property or services sold to the United States, an
28 unincorporated agency or instrumentality of the United States, an
29 incorporated agency or instrumentality of the United States wholly

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

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

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

29 (i) Sales in which the property is used in activities that are

1 mainly commercial enterprises.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (u) The storage, use, or consumption of an aircraft by a
20 domestic air carrier for use solely in the transport of air cargo,
21 passengers, or a combination of air cargo and passengers, that has
22 a maximum certificated takeoff weight of at least 6,000 pounds. For
23 purposes of this subdivision, the term "domestic air carrier" is
24 limited to a person engaged primarily in the commercial transport
25 for hire of air cargo, passengers, or a combination of air cargo
26 and passengers as a business activity. The state treasurer shall
27 estimate on January 1 each year the revenue lost by this act from
28 the school aid fund and deposit that amount into the school aid
29 fund from the general fund.

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

6 (w) Property or services sold to an organization not operated
7 for profit and exempt from federal income tax under section
8 501(c)(3) or ~~501(e)(4)~~ **(4)** of the internal revenue code **of 1986**, 26
9 USC 501; or to a health, welfare, educational, cultural arts,
10 charitable, or benevolent organization not operated for profit that
11 has been issued before June 13, 1994 an exemption ruling letter to
12 purchase items exempt from tax signed by the administrator of the
13 sales, use, and withholding taxes division of the department. The
14 department shall reissue an exemption letter after June 13, 1994 to
15 each of those organizations that had an exemption letter that shall
16 remain in effect unless the organization fails to meet the
17 requirements that originally entitled it to this exemption. The
18 exemption does not apply to sales of tangible personal property and
19 sales of vehicles licensed for use on public highways, that are not
20 used primarily to carry out the purposes of the organization as
21 stated in the bylaws or articles of incorporation of the exempt
22 organization.

23 (x) The use or consumption of services described in section
24 3a(1)(a) or ~~(b)~~ **(c)** or 3b by means of a prepaid telephone calling
25 card, a prepaid authorization number for telephone use, or a charge
26 for internet access.

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

29 (i) Textiles and disposable products including, but not limited

1 to, soap, paper, chemicals, tissues, deodorizers and dispensers,
2 and all related items such as packaging, supplies, hangers, name
3 tags, and identification tags.

4 (ii) Equipment, whether owned or leased, used to repair and
5 dispense textiles including, but not limited to, roll towel
6 cabinets, slings, hardware, lockers, mop handles and frames, and
7 carts.

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

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

12 (v) Production washroom equipment and mending and packaging
13 supplies and equipment.

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

16 (vii) Wastewater pretreatment equipment and supplies and
17 related maintenance and repair services.

18 (z) Property purchased or manufactured by a person engaged in
19 the business of constructing, altering, repairing, or improving
20 real estate for others, to the extent that the property is affixed
21 to and made a structural part of real estate located in another
22 state, regardless of whether sales or use tax was due and paid in
23 the state in which the property is affixed to real estate.

24 (aa) The sale of a dental prosthesis.

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

29 (i) Machinery that is capable of simultaneously harvesting

1 grain or other crops and biomass and machinery used for the purpose
2 of harvesting biomass.

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

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

7 (iv) Grain drying equipment and the fuel or energy source that
8 powers that equipment, including tangible personal property affixed
9 or to be affixed to that equipment and directly used in the
10 operation of grain drying equipment.

11 (v) Tangible personal property purchased and installed as a
12 component part of a structure such as a barn or shop, including,
13 but not limited to, a water supply system, heating and cooling
14 system, lighting system, milking system, or any other appurtenance
15 used for purposes described in this subdivision or subdivision (f),
16 including the maintenance or improvement of existing structures, to
17 the extent that it is not permanently affixed to and does not
18 become a structural part of real estate. For purposes of this
19 subparagraph and subsection (3), property installed as a component
20 part of a structure as provided in this subparagraph is not
21 permanently affixed to or a structural part of real estate if it is
22 assembled and installed in a manner that it can be disassembled
23 without affecting the physical structural functionality of the
24 original structure and reassembled and reused for any of the
25 purposes described in this subdivision or subdivision (f).

26 (vi) Greenhouses, including tangible personal property affixed
27 to or to be affixed to greenhouses and directly used in the
28 operation of a greenhouse. For purposes of subsection (3), a
29 greenhouse is not permanently affixed to or a structural part of

1 real estate if it is assembled and installed in a manner that it
2 can be disassembled and reassembled without affecting the
3 functionality of the greenhouse upon being reassembled.

4 (cc) The sale of agricultural land tile, subsurface irrigation
5 pipe, portable grain bins, greenhouses, and grain drying equipment
6 to a person in the business of constructing, altering, repairing,
7 or improving real estate for others to the extent that it is
8 affixed to and made a structural part of real estate for others and
9 is used for an exempt purpose described under subdivision (f) or
10 (bb).

11 (dd) The sale of tangible personal property used in the direct
12 gathering of fish, by net, line, or otherwise, by an owner-operator
13 of a business enterprise, not including a charter fishing business
14 enterprise.

15 (ee) A sale of tangible personal property that is specifically
16 designed for, and directly used in, the harvesting of aquatic
17 vegetation from the waters of the state, including parts and
18 materials used for repairs of that tangible personal property, to a
19 person engaged in a business enterprise of harvesting aquatic
20 vegetation and ultimately used for purposes described in
21 subdivision (f) or (bb). This exemption does not include a motor
22 vehicle licensed or required to be licensed for use on the public
23 roads or highways of this state or tangible personal property
24 permanently affixed to and becoming a structural part of real
25 estate.

26 **(ff) The sale of feminine hygiene products after June 30,**
27 **2019. As used in this subdivision, "feminine hygiene products"**
28 **means tampons, sanitary napkins, and other similar tangible**
29 **personal property.**

1 (2) The property or services under subsection (1) are exempt
 2 only to the extent that the property or services are used for the
 3 exempt purposes if one is stated in subsection (1). The exemption
 4 is limited to the percentage of exempt use to total use determined
 5 by a reasonable formula or method approved by the department.

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

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

18 (5) As used in this section:

19 (a) "Agricultural land tile" means fired clay or perforated
 20 plastic tubing used as part of a subsurface drainage system for
 21 land.

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

25 (c) "Aquatic vegetation" means both algae and higher aquatic
 26 plants.

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

29 (e) "Greenhouse" means a structure covered with transparent or

1 translucent materials for the purpose of admitting natural light
2 and controlling the atmosphere for growing horticultural products.
3 Greenhouse does not include a structure primarily used to grow
4 marihuana.

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

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

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

15 Enacting section 1. The legislature shall annually appropriate
16 sufficient funds from the state general fund to the state school
17 aid fund created in section 11 of article IX of the state
18 constitution of 1963 to fully compensate for any loss of revenue to
19 the state school aid fund resulting from the enactment of this
20 amendatory act.