



HOUSE BILL No. 5048

September 14, 1995, Introduced by Reps. McNutt, Randall, Schroer, McBryde, Bush, Voorhees, Rhead, Martinez and Tesanovich and referred to the Committee on Tax Policy.

A bill to amend section 4 of Act No. 94 of the Public Acts of 1937, entitled as amended

"Use tax act,"

as amended by Act No. 424 of the Public Acts of 1994, being section 205.94 of the Michigan Compiled Laws; and to add section 40.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 4 of Act No. 94 of the Public Acts of
2 1937, as amended by Act No. 424 of the Public Acts of 1994, being
3 section 205.94 of the Michigan Compiled Laws, is amended and
4 section 40 is added to read as follows:

5 Sec. 4. The tax levied does not apply to the following:

6 (a) Property sold in this state on which transaction a tax
7 is paid under the general sales tax act, Act No. 167 of the
8 Public Acts of 1933, ~~as amended,~~ being sections 205.51 to

1 205.78 of the Michigan Compiled Laws, if the tax was due and paid
2 on the retail sale to a consumer.

3 (b) Property, the storage, use, or other consumption of
4 which ~~—~~ this state is prohibited from taxing under the consti-
5 tution or laws of the United States, or under the constitution of
6 this state.

7 (c) Property purchased for resale, demonstration purposes,
8 or lending or leasing to a public or parochial school offering a
9 course in automobile driving except that a vehicle purchased by
10 the school shall be certified for driving education and shall not
11 be reassigned for personal use by the school's administrative
12 personnel. For a dealer selling a new car or truck, exemption
13 for demonstration purposes shall be determined by the number of
14 new cars and trucks sold during the current calendar year or the
15 immediately preceding year without regard to specific make or
16 style according to the following schedule of 0 to 25, 2 units; 26
17 to 100, 7 units; 101 to 500, 20 units; 501 or more, 25 units; but
18 not to exceed 25 cars and trucks in 1 calendar year for demon-
19 stration purposes. ~~For tax years beginning after December 31,~~
20 ~~1987, property~~ PROPERTY purchased for resale includes promo-
21 tional merchandise transferred pursuant to a redemption offer to
22 a person located outside this state.

23 (d) Property that is brought into this state by a nonresi-
24 dent person for storage, use, or consumption while temporarily
25 within this state, except if the property is used in this state
26 in a nontransitory business activity for a period exceeding 15
27 days.

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

15 (f) Property sold to a person engaged in a business enter-
16 prise and using and consuming the property in the tilling, plant-
17 ing, caring for, or harvesting of the things of the soil or in
18 the breeding, raising, or caring for livestock, poultry, or
19 horticultural products, including transfers of livestock, poul-
20 try, or horticultural products for further growth. At the time
21 of the transfer of that tangible personal property, the trans-
22 feree shall sign a statement, in a form approved by the depart-
23 ment, stating that the property is to be used or consumed in con-
24 nection with the production of horticultural or agricultural
25 products as a business enterprise. The statement shall be
26 accepted by the courts as prima facie evidence of the exemption.
27 This exemption includes agricultural land tile, which means fired

1 clay or perforated plastic tubing used as part of a subsurface
2 drainage system for land used in the production of agricultural
3 products as a business enterprise and includes a portable grain
4 bin, which means a structure that is used or is to be used to
5 shelter grain and that is designed to be disassembled without
6 significant damage to its component parts. This exemption does
7 not include transfers of food, fuel, clothing, or similar tangi-
8 ble personal property for personal living or human consumption.
9 This exemption does not include tangible personal property per-
10 manently affixed and becoming a structural part of real estate.

11 (g) Property sold to the following:

12 (i) An industrial processor for use or consumption in indus-
13 trial processing. Property used or consumed in industrial pro-
14 cessing does not include tangible personal property permanently
15 affixed and becoming a structural part of real estate; office
16 furniture, office supplies, and administrative office equipment;
17 or vehicles licensed and titled for use on public highways other
18 than a specially designed vehicle, together with parts, used to
19 mix and agitate materials added at a plant or jobsite in the con-
20 crete manufacturing process. Industrial processing does not
21 include receipt and storage of raw materials purchased or
22 extracted by the user or consumer, or the preparation of food and
23 beverages by a retailer for retail sale. As used in this subdi-
24 vision, "industrial processor" means a person who transforms,
25 alters, or modifies tangible personal property by changing the
26 form, composition, or character of the property for ultimate sale
27 at retail or sale to another industrial processor to be further

1 processed for ultimate sale at retail. Sales to a person
2 performing a service who does not act as an industrial processor
3 while performing the service may not be excluded under this sub-
4 division, except as provided in subparagraph (ii).

5 (ii) A person, whether or not the person is an industrial
6 processor, when the property is a computer used in operating
7 industrial processing equipment; equipment used in a computer
8 assisted manufacturing system; equipment used in a computer
9 assisted design or engineering system integral to an industrial
10 process; or a subunit or electronic assembly comprising a compo-
11 nent in a computer integrated industrial processing system.

12 (h) Property or services sold to the United States, an unin-
13 corporated agency or instrumentality of the United States, an
14 incorporated agency or instrumentality of the United States
15 wholly owned by the United States or by a corporation wholly
16 owned by the United States, the American red cross and its chap-
17 ters or branches, this state, a department or institution of this
18 state, or a political subdivision of this state.

19 (i) Property or services sold to a school, hospital, or home
20 for the care and maintenance of children or aged persons, oper-
21 ated by an entity of government, a regularly organized church,
22 religious, or fraternal organization, a veterans' organization,
23 or a corporation incorporated under the laws of this state, if
24 not operated for profit, and if the income or benefit from the
25 operation does not inure, in whole or in part, to an individual
26 or private shareholder, directly or indirectly, and if the
27 activities of the entity or agency are carried on exclusively for

1 the benefit of the public at large and are not limited to the
2 advantage, interests, and benefits of its members or a restricted
3 group. The tax levied ~~shall~~ DOES not apply to property or
4 services sold to a parent cooperative preschool. As used in this
5 subdivision, "parent cooperative preschool" means a nonprofit,
6 nondiscriminatory educational institution, maintained as a commu-
7 nity service and administered by parents of children currently
8 enrolled in the preschool that provides an educational and devel-
9 opmental program for children younger than compulsory school age,
10 that provides an educational program for parents, including
11 active participation with children in preschool activities, that
12 is directed by qualified preschool personnel, and that is
13 licensed by the department of social services pursuant to Act
14 No. 116 of the Public Acts of 1973, ~~as amended,~~ being sections
15 722.111 to 722.128 of the Michigan Compiled Laws.

16 (j) Property or services sold to a regularly organized
17 church or house of religious worship except THE FOLLOWING:

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

20 (ii) Sales of vehicles licensed for use on the public high-
21 ways other than a passenger van or bus with a manufacturer's
22 rated seating capacity of 10 or more that is used primarily for
23 the transportation of persons for religious purposes.

24 (k) A vessel designed for commercial use of registered ton-
25 nage of 500 tons or more, if produced upon special order of the
26 purchaser, and bunker and galley fuel, provisions, supplies,

1 maintenance, and repairs for the exclusive use of a vessel of 500
2 tons or more engaged in interstate commerce.

3 (l) Property purchased by a person engaged in the business
4 of constructing, altering, repairing, or improving real estate
5 for others to the extent the property is affixed to and made a
6 structural part of the real estate of a nonprofit hospital or a
7 nonprofit housing entity qualified as exempt pursuant to section
8 15a of the state housing development authority act of 1966, Act
9 No. 346 of the Public Acts of 1966, ~~as amended,~~ being section
10 125.1415a of the Michigan Compiled Laws. ~~A~~ EXCEPT AS OTHERWISE
11 PROVIDED IN THIS SUBDIVISION, A nonprofit hospital or nonprofit
12 housing includes only the property of a nonprofit hospital or the
13 homes or dwelling places constructed by a nonprofit housing
14 entity, the income or property of which does not directly or
15 indirectly inure to the benefit of an individual, private stock-
16 holder, or other private person. FOR TAX YEARS ENDING AFTER
17 DECEMBER 31, 1990, NONPROFIT HOUSING INCLUDES A MULTIPLE UNIT
18 DWELLING OWNED BY A CITY, VILLAGE, TOWNSHIP, OR COUNTY, THE
19 INCOME OR PROPERTY OF WHICH DOES NOT DIRECTLY OR INDIRECTLY INURE
20 TO THE BENEFIT OF AN INDIVIDUAL, PRIVATE STOCKHOLDER, OR OTHER
21 PRIVATE PERSON.

22 (m) Property purchased for use in this state where actual
23 personal possession is obtained outside this state, the purchase
24 price or actual value of which does not exceed \$10.00 during 1
25 calendar month.

26 (n) A newspaper or periodical classified under federal
27 postal laws and regulations effective September 1, 1985 as second

1 class mail matter or as a controlled circulation publication or
2 qualified to accept legal notices for publication in this state,
3 as defined by law, or any other newspaper or periodical of gen-
4 eral circulation, established at least 2 years, and published at
5 least once a week, and a copyrighted motion picture film.

6 Tangible personal property used or consumed, and not becoming a
7 component part of a copyrighted motion picture film, newspaper or
8 periodical, except that portion or percentage of tangible per-
9 sonal property used or consumed in producing an advertising sup-
10 plement that becomes a component part of a newspaper or periodi-
11 cal is subject to tax. For purposes of this subdivision, tangi-
12 ble personal property that becomes a component part of a newspa-
13 per or periodical and consequently not subject to tax, includes
14 an advertising supplement inserted into and circulated with a
15 newspaper or periodical that is otherwise exempt from tax under
16 this subdivision, if the advertising supplement is delivered
17 directly to the newspaper or periodical by a person other than
18 the advertiser, or the advertising supplement is printed by the
19 newspaper or periodical.

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

1 (p) A person who is a resident of this state who purchases
2 an automobile in another state while in the military service of
3 the United States and who pays a sales tax in the state where the
4 automobile is purchased.

5 (q) A vehicle for which a special registration is secured in
6 accordance with section 226(12) of the Michigan vehicle code, Act
7 No. 300 of the Public Acts of 1949, ~~as amended,~~ being section
8 257.226 of the Michigan Compiled Laws.

9 (r) A hearing aid, contact lenses if prescribed for a spe-
10 cific disease which precludes the use of eyeglasses, or any other
11 apparatus, device, or equipment used to replace or substitute for
12 any part of the human body, or used to assist the disabled person
13 to lead a reasonably normal life when the tangible personal prop-
14 erty is purchased on a written prescription or order issued by a
15 health professional as defined by section 4 of former Act No. 264
16 of the Public Acts of 1974, or section 21005 of the public health
17 code, Act No. 368 of the Public Acts of 1978, being section
18 333.21005 of the Michigan Compiled Laws, or eyeglasses prescribed
19 or dispensed to correct the person's vision by an ophthalmolo-
20 gist, optometrist, or optician.

21 (s) Water when delivered through water mains or in bulk
22 tanks in quantities of not less than 500 gallons.

23 (t) The purchase of machinery and equipment for use or con-
24 sumption in the rendition of a service, the use or consumption of
25 which is taxable under section 3a(a) except that this exception
26 is limited to the tangible personal property located on the
27 premises of the subscriber and the necessary exchange equipment.

1 (u) A vehicle not for resale used by a nonprofit corporation
2 organized exclusively to provide a community with ambulance or
3 fire department services.

4 (v) Tangible personal property purchased and installed as a
5 component part of a water pollution control facility for which a
6 tax exemption certificate is issued pursuant to Act No. 222 of
7 the Public Acts of 1966, ~~as amended,~~ being sections 323.351 to
8 323.358 of the Michigan Compiled Laws, or an air pollution con-
9 trol facility for which a tax exemption certificate is issued
10 pursuant to Act No. 250 of the Public Acts of 1965, ~~as amended,~~
11 being sections 336.1 to 336.8 of the Michigan Compiled Laws.

12 (w) Tangible real or personal property donated by a manufac-
13 turer, wholesaler, or retailer to an organization or entity
14 exempt pursuant to subdivision (i) or (j) or section 4a(a) or (b)
15 of ~~the general sales tax act,~~ Act No. 167 of the Public Acts of
16 1933, ~~as amended,~~ being section 205.54a of the Michigan
17 Compiled Laws.

18 (x) The storage, use, or consumption by a domestic air car-
19 rier of an aircraft purchased after December 31, 1992 for use
20 solely in the transport of air cargo that has a maximum certifi-
21 cated takeoff weight of at least 12,500 pounds. For purposes of
22 this subdivision, the term "domestic air carrier" is limited to
23 entities engaged in the commercial transport for hire of cargo or
24 entities engaged in the commercial transport of passengers as a
25 business activity.

26 (y) The storage, use, or consumption by a domestic air
27 carrier of an aircraft purchased after June 30, 1994 that is used

1 solely in the regularly scheduled transport of passengers. For
2 purposes of this subdivision, the term "domestic air carrier" is
3 limited to entities engaged in the commercial transport for hire
4 of cargo or entities engaged in the commercial transport of pas-
5 sengers as a business activity.

6 (z) The storage, use, or consumption by a domestic air car-
7 rier of an aircraft, other than an aircraft described under
8 subdivision (y), purchased after December 31, 1994, that has a
9 maximum certificated takeoff weight of at least 12,500 pounds and
10 that is designed to have a maximum passenger seating configura-
11 tion of more than 30 seats and used solely in the transport of
12 passengers. For purposes of this subdivision, the term "domestic
13 air carrier" is limited to entities engaged in the commercial
14 transport for hire of cargo or entities engaged in the commercial
15 transport of passengers as a business activity.

16 (aa) Property or services sold to a health, welfare, educa-
17 tional, cultural arts, charitable, or benevolent organization not
18 operated for profit that has been issued before June 13, 1994 an
19 exemption ruling letter to purchase items exempt from tax signed
20 by the administrator of the sales, use, and withholding taxes
21 division of the department. The department shall reissue an
22 exemption letter to each of those organizations after June 13,
23 1994 that shall remain in effect unless the organization fails to
24 meet the requirements that originally entitled it to this exemp-
25 tion; or to an organization not operated for profit and exempt
26 from federal income tax under section 501(c)(3) or 501(c)(4) of
27 the internal revenue code OF 1986, 26. U.S.C. 501. The exemption

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

6 SEC. 40. A CITY, VILLAGE, TOWNSHIP, OR COUNTY THAT PAID THE
7 TAX LEVIED UNDER THIS ACT IN TAX YEARS ENDING AFTER DECEMBER 31,
8 1990 ON PROPERTY AFFIXED TO AND MADE A STRUCTURAL PART OF NON-
9 PROFIT HOUSING THAT IS A MULTIPLE UNIT DWELLING OWNED BY THAT
10 CITY, VILLAGE, TOWNSHIP, OR COUNTY, THE INCOME OR PROPERTY OF
11 WHICH DOES NOT DIRECTLY OR INDIRECTLY INURE TO THE BENEFIT OF AN
12 INDIVIDUAL, PRIVATE STOCKHOLDER, OR OTHER PRIVATE PERSON, MAY
13 FILE A CLAIM FOR A REFUND OF THAT TAX WITH THE DEPARTMENT OF
14 TREASURY WITHIN 60 DAYS OF THE EFFECTIVE DATE OF THE AMENDATORY
15 ACT THAT ADDED THIS SECTION.