

HOUSE BILL No. 5581

February 18, 1998, Introduced by Reps. Profit and Gagliardi and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 2 (MCL 205.92), as amended by 1995 PA 208.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Person" means an individual, firm, partnership, joint
3 venture, association, social club, fraternal organization, munic-
4 ipal or private corporation whether or not organized for profit,
5 company, estate, trust, receiver, trustee, syndicate, the United
6 States, this state, county, or any other group or combination
7 acting as a unit, and the plural as well as the singular number,
8 unless the intention to give a more limited meaning is disclosed
9 by the context.

10 (b) "Use" means the exercise of a right or power over
11 tangible personal property incident to the ownership of that

1 property including transfer of the property in a transaction
2 where possession is given.

3 (c) "Storage" means a keeping or retention of property in
4 this state for any purpose after the property loses its inter-
5 state character.

6 (d) "Seller" means the person from whom a purchase is made
7 and includes every person selling tangible personal property or
8 services for storage, use, or other consumption in this state.

9 If, in the opinion of the department, it is necessary for the
10 efficient administration of this act to regard a salesperson,
11 representative, peddler, or canvasser as the agent of a dealer,
12 distributor, supervisor, or employer under whom the person oper-
13 ates or from whom he or she obtains tangible personal property or
14 services sold by him or her for storage, use, or other consump-
15 tion in this state, irrespective of whether or not he or she is
16 making the sales on his or her own behalf or on behalf of the
17 dealer, distributor, supervisor, or employer, the department may
18 so consider him or her, and may consider the dealer, distributor,
19 supervisor, or employer as the seller for the purpose of this
20 act.

21 (e) "Purchase" means to acquire for a consideration, whether
22 the acquisition is effected by a transfer of title, of posses-
23 sion, or of both, or a license to use or consume; whether the
24 transfer is absolute or conditional, and by whatever means the
25 transfer is effected; and whether consideration is a price or
26 rental in money, or by way of exchange or barter.

1 (f) "Price" means the aggregate value in money of anything
2 paid or delivered, or promised to be paid or delivered, by a
3 consumer to a seller in the consummation and complete performance
4 of the transaction by which tangible personal property or serv-
5 ices are purchased or rented for storage, use, or other consump-
6 tion in this state, without a deduction for the cost of the prop-
7 erty sold, cost of materials used, labor or service cost, inter-
8 est or discount paid, or any other expense. The price of tangi-
9 ble personal property, for affixation to real estate, withdrawn
10 by a construction contractor from inventory available for sale to
11 others or made available by publication or price list as a fin-
12 ished product for sale to others is the finished goods inventory
13 value of the property. If a construction contractor manufac-
14 tures, fabricates, or assembles tangible personal property before
15 affixing it to real estate, the price of the property is equal to
16 the sum of the materials cost of the property and the cost of
17 labor to manufacture, fabricate, or assemble the property but
18 does not include the cost of labor to cut, bend, assemble, or
19 attach property at the site of affixation to real estate. For
20 the purposes of the preceding sentence, for property withdrawn by
21 a construction contractor from inventory available for sale to
22 others or made available by publication or price list as a fin-
23 ished product for sale to others, the materials cost of the prop-
24 erty means the finished goods inventory value of the property.
25 For purposes of this subdivision, "manufacture" means to convert
26 or condition tangible personal property by changing the form,
27 composition, quality, combination, or character of the property

1 and "fabricate" means to modify or prepare tangible personal
2 property for affixation or assembly. The price of a motor vehi-
3 cle, trailer coach, or titled watercraft is the full retail price
4 of the motor vehicle, trailer coach, or titled watercraft being
5 purchased. The tax collected by the seller from the consumer or
6 lessee under this act is not considered part of the price, but is
7 a tax collection for the benefit of the state, and a person other
8 than the state shall not derive a benefit from the collection or
9 payment of this tax. A price does not include an assessment
10 imposed under the convention and tourism marketing act, ~~Act~~
11 ~~No. 383 of the Public Acts of 1980, being sections 141.881 to~~
12 ~~141.889 of the Michigan Compiled Laws, Act No. 263 of the Public~~
13 ~~Acts of 1974, being sections 141.861 to 141.867 of the Michigan~~
14 ~~Compiled Laws~~ 1980 PA 383, MCL 141.881 TO 141.889, 1974 PA 263,
15 MCL 141.861 TO 141.867, the state convention facility development
16 act, ~~Act No. 106 of the Public Acts of 1985, being~~
17 ~~sections 207.621 to 207.640 of the Michigan Compiled Laws~~ 1985
18 PA 106, MCL 207.621 TO 207.640, the regional tourism marketing
19 act, ~~Act No. 244 of the Public Acts of 1989, being~~
20 ~~sections 141.891 to 141.900 of the Michigan Compiled Laws, Act~~
21 ~~No. 180 of the Public Acts of 1991, being sections 207.751 to~~
22 ~~207.759 of the Michigan Compiled Laws~~ 1989 PA 244, MCL 141.891
23 TO 141.900, 1991 PA 180, MCL 207.751 TO 207.759, or the community
24 convention or tourism marketing act, ~~Act No. 395 of the Public~~
25 ~~Acts of 1980, being sections 141.871 to 141.880 of the Michigan~~
26 ~~Compiled Laws~~ 1980 PA 395, MCL 141.871 TO 141.880, that was
27 added to charges for rooms or lodging otherwise subject, pursuant

1 to section 3a, to tax under this act. Price does not include
2 specific charges for technical support or for adapting or modify-
3 ing prewritten, standard, or canned computer software programs to
4 a purchaser's needs or equipment if the charges are separately
5 stated and identified. The tax imposed under this act shall not
6 be computed or collected on rental receipts if the tangible per-
7 sonal property rented or leased has previously been subjected to
8 a Michigan sales or use tax when purchased by the lessor. FOR
9 PURPOSES OF LEASED EQUIPMENT, PRICE DOES NOT INCLUDE A CHARGE FOR
10 PROPERTY TAX BILLINGS UNDER THE GENERAL PROPERTY TAX ACT, 1893 PA
11 206, MCL 211.1 TO 211.157, ON THE EQUIPMENT IF THE LESSOR ITEM-
12 IZES THAT CHARGE ON THE RENTAL RECEIPT GIVEN TO THE LESSEE.

13 (g) "Consumer" means the person who has purchased tangible
14 personal property or services for storage, use, or other consump-
15 tion in this state and includes a person acquiring tangible per-
16 sonal property if engaged in the business of constructing, alter-
17 ing, repairing, or improving the real estate of others.

18 (h) "Business" means all activities engaged in by a person
19 or caused to be engaged in by a person with the object of gain,
20 benefit, or advantage, either direct or indirect.

21 (i) "Department" means the revenue division of the depart-
22 ment of treasury.

23 (j) "Tax" includes all taxes, interest, or penalties levied
24 under this act.

25 (k) "Tangible personal property" includes computer software
26 offered for general use by the public or software modified or
27 adapted to the user's needs or equipment by the seller, only if

1 the software is available from a seller of software on an as is
2 basis or as an end product without modification or adaptation.
3 Tangible personal property does not include computer software
4 originally designed for the exclusive use and special needs of
5 the purchaser. As used in this subdivision, "computer software"
6 means a set of statements or instructions that when incorporated
7 in a machine usable medium is capable of causing a machine or
8 device having information processing capabilities to indicate,
9 perform, or achieve a particular function, task, or result.

10 (1) "Tangible personal property" does not include a commer-
11 cial advertising element if the commercial advertising element is
12 used to create or develop a print, radio, television, or other
13 advertisement, the commercial advertising element is discarded or
14 returned to the provider after the advertising message is com-
15 pleted, and the commercial advertising element is custom devel-
16 oped by the provider for the purchaser. As used in this subdivi-
17 sion, "commercial advertising element" means a negative or posi-
18 tive photographic image, an audiotape or videotape master, a
19 layout, a manuscript, writing of copy, a design, artwork, an
20 illustration, retouching, and mechanical or keyline
21 instructions. "Tangible personal property" includes black and
22 white or full color process separation elements, an audiotape
23 reproduction, or a videotape reproduction.