

HOUSE BILL No. 5138

June 23, 2009, Introduced by Reps. Melton, Kowall, Mayes, Coulouris, Angerer, Sheltroun,
Roy Schmidt and Meadows and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending sections 2 and 4 (MCL 205.92 and 205.94), section 2 as
amended by 2008 PA 439 and section 4 as amended by 2008 PA 314.

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,
4 municipal or private corporation whether or not organized for
5 profit, company, limited liability company, estate, trust,
6 receiver, trustee, syndicate, the United States, this state,
7 county, or any other group or combination acting as a unit, and the
8 plural as well as the singular number, unless the intention to give

1 a more limited meaning is disclosed by the context.

2 (b) "Use" means the exercise of a right or power over tangible
3 personal property incident to the ownership of that property
4 including transfer of the property in a transaction where
5 possession is given. Converting tangible personal property acquired
6 for a use exempt from the tax levied under this act to a use not
7 exempt from the tax levied under this act is a taxable use.

8 (c) "Storage" means a keeping or retention of property in this
9 state for any purpose after the property loses its interstate
10 character.

11 (d) "Seller" means the person from whom a purchase is made and
12 includes every person selling tangible personal property or
13 services for storage, use, or other consumption in this state. If,
14 in the opinion of the department, it is necessary for the efficient
15 administration of this act to regard a salesperson, representative,
16 peddler, or canvasser as the agent of a dealer, distributor,
17 supervisor, or employer under whom the person operates or from whom
18 he or she obtains tangible personal property or services sold by
19 him or her for storage, use, or other consumption in this state,
20 irrespective of whether or not he or she is making the sales on his
21 or her own behalf or on behalf of the dealer, distributor,
22 supervisor, or employer, the department may so consider him or her,
23 and may consider the dealer, distributor, supervisor, or employer
24 as the seller for the purpose of this act.

25 (e) "Purchase" means to acquire for a consideration, whether
26 the acquisition is effected by a transfer of title, of possession,
27 or of both, or a license to use or consume; whether the transfer is

1 absolute or conditional, and by whatever means the transfer is
2 effected; and whether consideration is a price or rental in money,
3 or by way of exchange or barter. Purchase includes converting
4 tangible personal property acquired for a use exempt from the tax
5 levied under this act to a use not exempt from the tax levied under
6 this act.

7 (f) "Purchase price" or "price" means the total amount of
8 consideration paid by the consumer to the seller, including cash,
9 credit, property, and services, for which tangible personal
10 property or services are sold, leased, or rented, valued in money,
11 whether received in money or otherwise, and applies to the measure
12 subject to use tax. Purchase price includes the following
13 subparagraphs (i) through (vii) and excludes subparagraphs (viii)
14 through (x):

15 (i) Seller's cost of the property sold.

16 (ii) Cost of materials used, labor or service cost, interest,
17 losses, costs of transportation to the seller, taxes imposed on the
18 seller other than taxes imposed by this act, and any other expense
19 of the seller.

20 (iii) Charges by the seller for any services necessary to
21 complete the sale, other than the following:

22 (A) An amount received or billed by the taxpayer for
23 remittance to the employee as a gratuity or tip, if the gratuity or
24 tip is separately identified and itemized on the guest check or
25 billed to the customer.

26 (B) Labor or service charges involved in maintenance and
27 repair work on tangible personal property of others if separately

1 itemized.

2 (iv) Delivery charges incurred or to be incurred before the
3 completion of the transfer of ownership of tangible personal
4 property subject to the tax levied under this act from the seller
5 to the purchaser.

6 (v) Installation charges incurred or to be incurred before the
7 completion of the transfer of ownership of tangible personal
8 property from the seller to the purchaser.

9 (vi) Credit for any trade-in.

10 (vii) Except as otherwise provided in subparagraph (x),
11 consideration received by the seller from third parties if all of
12 the following conditions are met:

13 (A) The seller actually receives consideration from a party
14 other than the purchaser and the consideration is directly related
15 to a price reduction or discount on the sale.

16 (B) The seller has an obligation to pass the price reduction
17 or discount through to the purchaser.

18 (C) The amount of the consideration attributable to the sale
19 is fixed and determinable by the seller at the time of the sale of
20 the item to the purchaser.

21 (D) One of the following criteria is met:

22 (I) The purchaser presents a coupon, certificate, or other
23 documentation to the seller to claim a price reduction or discount
24 where the coupon, certificate, or documentation is authorized,
25 distributed, or granted by a third party with the understanding
26 that the third party will reimburse any seller to whom the coupon,
27 certificate, or documentation is presented.

1 (II) The purchaser identifies himself or herself to the seller
2 as a member of a group or organization entitled to a price
3 reduction or discount. A preferred customer card that is available
4 to any patron does not constitute membership in a group or
5 organization.

6 (III) The price reduction or discount is identified as a third
7 party price reduction or discount on the invoice received by the
8 purchaser or on a coupon, certificate, or other documentation
9 presented by the purchaser.

10 (viii) Interest, financing, or carrying charges from credit
11 extended on the sale of personal property or services, if the
12 amount is separately stated on the invoice, bill of sale, or
13 similar document given to the purchaser.

14 (ix) Any taxes legally imposed directly on the consumer that
15 are separately stated on the invoice, bill of sale, or similar
16 document given to the purchaser.

17 (x) Beginning January 1, 2000, employee discounts that are
18 reimbursed by a third party on sales of motor vehicles.

19 (g) "Consumer" means the person who has purchased tangible
20 personal property or services for storage, use, or other
21 consumption in this state and includes, but is not limited to, 1 or
22 more of the following:

23 (i) A person acquiring tangible personal property if engaged in
24 the business of constructing, altering, repairing, or improving the
25 real estate of others.

26 (ii) A person who has converted tangible personal property or
27 services acquired for storage, use, or consumption in this state

1 that is exempt from the tax levied under this act to storage, use,
2 or consumption in this state that is not exempt from the tax levied
3 under this act.

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

7 (i) "Department" means the department of treasury.

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

10 (k) "Tangible personal property" means personal property that
11 can be seen, weighed, measured, felt, or touched or that is in any
12 other manner perceptible to the senses and includes electricity,
13 water, gas, steam, and prewritten computer software.

14 (l) "Textiles" means goods that are made of or incorporate
15 woven or nonwoven fabric, including, but not limited to, clothing,
16 shoes, hats, gloves, handkerchiefs, curtains, towels, sheets,
17 pillows, pillowcases, tablecloths, napkins, aprons, linens, floor
18 mops, floor mats, and thread. Textiles also include materials used
19 to repair or construct textiles, or other goods used in the rental,
20 sale, or cleaning of textiles.

21 (m) "Interstate motor carrier" means a person who operates or
22 causes to be operated a qualified commercial motor vehicle on a
23 public road or highway in this state and at least 1 other state or
24 Canadian province.

25 (n) "Qualified commercial motor vehicle" means that term as
26 defined in section 1(i), (j), and (k) of the motor carrier fuel tax
27 act, 1980 PA 119, MCL 207.211.

1 (o) "Diesel fuel" means that term as defined in section 2(p)
2 of the motor fuel tax act, 2000 PA 403, MCL 207.1002.

3 (p) "Sale" means a transaction by which tangible personal
4 property or services are purchased or rented for storage, use, or
5 other consumption in this state.

6 (q) "Convert" means putting a service or tangible personal
7 property acquired for a use exempt from the tax levied under this
8 act at the time of acquisition to a use that is not exempt from the
9 tax levied under this act, whether the use is in whole or in part,
10 or permanent or not permanent. A motor vehicle purchased for resale
11 by a new vehicle dealer **OR A USED OR SECONDHAND VEHICLE DEALER**
12 licensed under section ~~248(8)(a)~~**248(8)** of the Michigan vehicle
13 code, 1949 PA 300, MCL 257.248, and not titled in the name of the
14 dealer shall not be considered to be converted prior to sale or
15 lease by that dealer.

16 Sec. 4. (1) The following are exempt from the tax levied under
17 this act, subject to subsection (2):

18 (a) Property sold in this state on which transaction a tax is
19 paid under the general sales tax act, 1933 PA 167, MCL 205.51 to
20 205.78, if the tax was due and paid on the retail sale to a
21 consumer.

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

25 (c) All of the following:

26 (i) Property purchased for resale. Property purchased for
27 resale includes promotional merchandise transferred pursuant to a

1 redemption offer to a person located outside this state or any
2 packaging material, other than promotional merchandise, acquired
3 for use in fulfilling a redemption offer or rebate to a person
4 located outside this state.

5 (ii) Property purchased for lending or leasing to a public or
6 parochial school offering a course in automobile driving except
7 that a vehicle purchased by the school shall be certified for
8 driving education and shall not be reassigned for personal use by
9 the school's administrative personnel.

10 (iii) Property purchased for demonstration purposes. For a new
11 vehicle dealer selling a new car or truck **OR A USED OR SECONDHAND**
12 **VEHICLE DEALER SELLING A USED OR SECONDHAND CAR OR TRUCK**, exemption
13 for demonstration purposes shall be determined by the number of ~~new~~
14 cars and trucks sold during the current calendar year or the
15 immediately preceding calendar year, without regard to specific
16 make or style, according to the following schedule but not to
17 exceed 25 cars and trucks in 1 calendar year for demonstration
18 purposes:

19 (A) 0 to 25, 2 units.

20 (B) 26 to 100, 7 units.

21 (C) 101 to 500, 20 units.

22 (D) 501 or more, 25 units.

23 (iv) Motor vehicles purchased for resale purposes by a new
24 vehicle dealer **OR USED OR SECONDHAND VEHICLE DEALER** licensed under
25 section ~~248(8)(a)~~**248(8)** of the Michigan vehicle code, 1949 PA 300,
26 MCL 257.248.

27 (d) Property that is brought into this state by a nonresident

1 person for storage, use, or consumption while temporarily within
2 this state, except if the property is used in this state in a
3 nontransitory business activity for a period exceeding 15 days.

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

17 (f) Property sold to a person engaged in a business enterprise
18 and using and consuming the property in the tilling, planting,
19 caring for, or harvesting of the things of the soil or in the
20 breeding, raising, or caring for livestock, poultry, or
21 horticultural products, including transfers of livestock, poultry,
22 or horticultural products for further growth. This exemption
23 includes machinery that is capable of simultaneously harvesting
24 grain or other crops and biomass and machinery used for the purpose
25 of harvesting biomass. This exemption includes agricultural land
26 tile, which means fired clay or perforated plastic tubing used as
27 part of a subsurface drainage system for land used in the

1 production of agricultural products as a business enterprise and
2 includes a portable grain bin, which means a structure that is used
3 or is to be used to shelter grain and that is designed to be
4 disassembled without significant damage to its component parts.
5 This exemption does not include transfers of food, fuel, clothing,
6 or similar tangible personal property for personal living or human
7 consumption. This exemption does not include tangible personal
8 property permanently affixed to and becoming a structural part of
9 real estate. As used in this subdivision, "biomass" means crop
10 residue used to produce energy or agricultural crops grown
11 specifically for the production of energy.

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

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

1 of the public at large and are not limited to the advantage,
2 interests, and benefits of its members or a restricted group. The
3 tax levied does not apply to property or services sold to a parent
4 cooperative preschool. As used in this subdivision, "parent
5 cooperative preschool" means a nonprofit, nondiscriminatory
6 educational institution, maintained as a community service and
7 administered by parents of children currently enrolled in the
8 preschool that provides an educational and developmental program
9 for children younger than compulsory school age, that provides an
10 educational program for parents, including active participation
11 with children in preschool activities, that is directed by
12 qualified preschool personnel, and that is licensed pursuant to
13 1973 PA 116, MCL 722.111 to 722.128.

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

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

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

22 (j) A vessel designed for commercial use of registered tonnage
23 of 500 tons or more, if produced upon special order of the
24 purchaser, and bunker and galley fuel, provisions, supplies,
25 maintenance, and repairs for the exclusive use of a vessel of 500
26 tons or more engaged in interstate commerce.

27 (k) Property purchased for use in this state where actual

1 personal possession is obtained outside this state, the purchase
2 price or actual value of which does not exceed \$10.00 during 1
3 calendar month.

4 (l) A newspaper or periodical classified under federal postal
5 laws and regulations effective September 1, 1985 as second-class
6 mail matter or as a controlled circulation publication or qualified
7 to accept legal notices for publication in this state, as defined
8 by law, or any other newspaper or periodical of general
9 circulation, established at least 2 years, and published at least
10 once a week, and a copyrighted motion picture film. Tangible
11 personal property used or consumed in producing a copyrighted
12 motion picture film, a newspaper published more than 14 times per
13 year, or a periodical published more than 14 times per year, and
14 not becoming a component part of that film, newspaper, or
15 periodical is subject to the tax. After December 31, 1993, tangible
16 personal property used or consumed in producing a newspaper
17 published 14 times or less per year or a periodical published 14
18 times or less per year and that portion or percentage of tangible
19 personal property used or consumed in producing an advertising
20 supplement that becomes a component part of a newspaper or
21 periodical is exempt from the tax under this subdivision. A claim
22 for a refund for taxes paid before January 1, 1999 under this
23 subdivision shall be made before June 30, 1999. For purposes of
24 this subdivision, tangible personal property that becomes a
25 component part of a newspaper or periodical and consequently not
26 subject to tax, includes an advertising supplement inserted into
27 and circulated with a newspaper or periodical that is otherwise

1 exempt from tax under this subdivision, if the advertising
2 supplement is delivered directly to the newspaper or periodical by
3 a person other than the advertiser, or the advertising supplement
4 is printed by the newspaper or periodical.

5 (m) Property purchased by persons licensed to operate a
6 commercial radio or television station if the property is used in
7 the origination or integration of the various sources of program
8 material for commercial radio or television transmission. This
9 subdivision does not include a vehicle licensed and titled for use
10 on public highways or property used in the transmitting to or
11 receiving from an artificial satellite.

12 (n) A person who is a resident of this state who purchases an
13 automobile in another state while in the military service of the
14 United States and who pays a sales tax in the state where the
15 automobile is purchased.

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

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

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

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

27 (s) Tangible personal property purchased and installed as a

1 component part of a water pollution control facility for which a
2 tax exemption certificate is issued pursuant to part 37 of the
3 natural resources and environmental protection act, 1994 PA 451,
4 MCL 324.3701 to 324.3708, or an air pollution control facility for
5 which a tax exemption certificate is issued pursuant to part 59 of
6 the natural resources and environmental protection act, 1994 PA
7 451, MCL 324.5901 to 324.5908.

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

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

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

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

18 (x) The use or consumption of services described in section
19 3a(1)(a) or (b) or 3b by means of a prepaid telephone calling card,
20 a prepaid authorization number for telephone use, or a charge for
21 internet access.

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

24 (i) Textiles and disposable products including, but not limited
25 to, soap, paper, chemicals, tissues, deodorizers and dispensers,
26 and all related items such as packaging, supplies, hangers, name
27 tags, and identification tags.

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

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

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

9 (v) Production washroom equipment and mending and packaging
10 supplies and equipment.

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

13 (vii) Wastewater pretreatment equipment and supplies and
14 related maintenance and repair services.

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

20 Enacting section 1. This amendatory is retroactive and is
21 effective September 30, 2002.