## SENATE BILL No. 126

February 9, 2011, Introduced by Senators ROBERTSON, BRANDENBURG, PROOS, MARLEAU, PAPPAGEORGE, GREEN, PAVLOV, HILDENBRAND, JANSEN, MOOLENAAR and CASPERSON and referred to the Committee on Finance.

A bill to amend 1937 PA 94, entitled "Use tax act,"

by amending section 2 (MCL 205.92), as amended by 2008 PA 439.

## 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
- 9 a more limited meaning is disclosed by the context.

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- 1 (b) "Use" means the exercise of a right or power over tangible
- 2 personal property incident to the ownership of that property
- 3 including transfer of the property in a transaction where
- 4 possession is given. Converting tangible personal property acquired
- 5 for a use exempt from the tax levied under this act to a use not
- 6 exempt from the tax levied under this act is a taxable use.
- 7 (c) "Storage" means a keeping or retention of property in this
- 8 state for any purpose after the property loses its interstate
- 9 character.
- 10 (d) "Seller" means the person from whom a purchase is made and
- 11 includes every person selling tangible personal property or
- 12 services for storage, use, or other consumption in this state. If,
- in the opinion of the department, it is necessary for the efficient
- 14 administration of this act to regard a salesperson, representative,
- 15 peddler, or canvasser as the agent of a dealer, distributor,
- 16 supervisor, or employer under whom the person operates or from whom
- 17 he or she obtains tangible personal property or services sold by
- 18 him or her for storage, use, or other consumption in this state,
- 19 irrespective of whether or not he or she is making the sales on his
- 20 or her own behalf or on behalf of the dealer, distributor,
- 21 supervisor, or employer, the department may so consider him or her,
- 22 and may consider the dealer, distributor, supervisor, or employer
- 23 as the seller for the purpose of this act.
- 24 (e) "Purchase" means to acquire for a consideration, whether
- 25 the acquisition is effected by a transfer of title, of possession,
- 26 or of both, or a license to use or consume; whether the transfer is
- 27 absolute or conditional, and by whatever means the transfer is

- 1 effected; and whether consideration is a price or rental in money,
- 2 or by way of exchange or barter. Purchase includes converting
- 3 tangible personal property acquired for a use exempt from the tax
- 4 levied under this act to a use not exempt from the tax levied under
- 5 this act.
- 6 (f) "Purchase price" or "price" means the total amount of
- 7 consideration paid by the consumer to the seller, including cash,
- 8 credit, property, and services, for which tangible personal
- 9 property or services are sold, leased, or rented, valued in money,
- 10 whether received in money or otherwise, and applies to the measure
- 11 subject to use tax. Purchase price includes the following
- 12 subparagraphs (i) through (vii) and excludes subparagraphs (viii)
- 13 through  $\frac{(x)}{(xii)}$ :
- 14 (i) Seller's cost of the property sold.
- 15 (ii) Cost of materials used, labor or service cost, interest,
- 16 losses, costs of transportation to the seller, taxes imposed on the
- 17 seller other than taxes imposed by this act, and any other expense
- 18 of the seller.
- 19 (iii) Charges by the seller for any services necessary to
- 20 complete the sale, other than the following:
- 21 (A) An amount received or billed by the taxpayer for
- 22 remittance to the employee as a gratuity or tip, if the gratuity or
- 23 tip is separately identified and itemized on the guest check or
- 24 billed to the customer.
- 25 (B) Labor or service charges involved in maintenance and
- 26 repair work on tangible personal property of others if separately
- 27 itemized.

- 1 (iv) Delivery charges incurred or to be incurred before the
- 2 completion of the transfer of ownership of tangible personal
- 3 property subject to the tax levied under this act from the seller
- 4 to the purchaser.
- 5 (v) Installation charges incurred or to be incurred before the
- 6 completion of the transfer of ownership of tangible personal
- 7 property from the seller to the purchaser.
- 8 (vi) Credit EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPHS (xi)
- 9 AND (xii), 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 (xi) THE AGREED-UPON VALUE OF A TITLED WATERCRAFT USED AS PART
- 20 PAYMENT OF THE PURCHASE PRICE OF A NEW TITLED WATERCRAFT OR USED
- 21 TITLED WATERCRAFT IF THE AGREED-UPON VALUE IS SEPARATELY STATED ON
- 22 THE INVOICE, BILL OF SALE, OR SIMILAR DOCUMENT GIVEN TO THE
- 23 PURCHASER.
- 24 (xii) THE AGREED-UPON VALUE OF A MOTOR VEHICLE USED AS PART
- 25 PAYMENT OF THE PURCHASE PRICE OF A NEW OR USED MOTOR VEHICLE IF THE
- 26 AGREED-UPON VALUE IS SEPARATELY STATED ON THE INVOICE, BILL OF
- 27 SALE, OR SIMILAR DOCUMENT GIVEN TO THE PURCHASER. AS USED IN THIS

- 1 SUBPARAGRAPH, "NEW MOTOR VEHICLE" MEANS THAT TERM AS DEFINED IN
- 2 SECTION 33A OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.33A.
- 3 (g) "Consumer" means the person who has purchased tangible
- 4 personal property or services for storage, use, or other
- 5 consumption in this state and includes, but is not limited to, 1 or
- 6 more of the following:
- 7 (i) A person acquiring tangible personal property if engaged in
- 8 the business of constructing, altering, repairing, or improving the
- 9 real estate of others.
- 10 (ii) A person who has converted tangible personal property or
- 11 services acquired for storage, use, or consumption in this state
- 12 that is exempt from the tax levied under this act to storage, use,
- 13 or consumption in this state that is not exempt from the tax levied
- 14 under this act.
- 15 (h) "Business" means all activities engaged in by a person or
- 16 caused to be engaged in by a person with the object of gain,
- 17 benefit, or advantage, either direct or indirect.
- (i) "Department" means the department of treasury.
- 19 (j) "Tax" includes all taxes, interest, or penalties levied
- 20 under this act.
- 21 (k) "Tangible personal property" means personal property that
- 22 can be seen, weighed, measured, felt, or touched or that is in any
- 23 other manner perceptible to the senses and includes electricity,
- 24 water, gas, steam, and prewritten computer software.
- (l) "Textiles" means goods that are made of or incorporate
- 26 woven or nonwoven fabric, including, but not limited to, clothing,
- 27 shoes, hats, gloves, handkerchiefs, curtains, towels, sheets,

- 1 pillows, pillowcases, tablecloths, napkins, aprons, linens, floor
- 2 mops, floor mats, and thread. Textiles also include materials used
- 3 to repair or construct textiles, or other goods used in the rental,
- 4 sale, or cleaning of textiles.
- 5 (m) "Interstate motor carrier" means a person who operates or
- 6 causes to be operated a qualified commercial motor vehicle on a
- 7 public road or highway in this state and at least 1 other state or
- 8 Canadian province.
- 9 (n) "Qualified commercial motor vehicle" means that term as
- 10 defined in section 1(i), (j), and (k) of the motor carrier fuel tax
- 11 act, 1980 PA 119, MCL 207.211.
- 12 (o) "Diesel fuel" means that term as defined in section 2(p)
- 13 of the motor fuel tax act, 2000 PA 403, MCL 207.1002.
- 14 (p) "Sale" means a transaction by which tangible personal
- 15 property or services are purchased or rented for storage, use, or
- 16 other consumption in this state.
- 17 (q) "Convert" means putting a service or tangible personal
- 18 property acquired for a use exempt from the tax levied under this
- 19 act at the time of acquisition to a use that is not exempt from the
- 20 tax levied under this act, whether the use is in whole or in part,
- 21 or permanent or not permanent. A motor vehicle purchased for resale
- 22 by a new vehicle dealer licensed under section 248(8)(a) of the
- 23 Michigan vehicle code, 1949 PA 300, MCL 257.248, and not titled in
- 24 the name of the dealer shall not be considered to be converted
- 25 prior to sale or lease by that dealer.