

HOUSE BILL NO. 5255

August 17, 2021, Introduced by Rep. Clements and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 4o (MCL 205.94o), as amended by 2015 PA 204.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4o. (1) The tax levied under this act does not apply to
2 property sold to the following after March 30, 1999, subject to
3 subsection (2):

4 (a) An industrial processor for use or consumption in
5 industrial processing.

1 (b) A person, whether or not the person is an industrial
2 processor, if the tangible personal property is intended for
3 ultimate use in and is used in industrial processing by an
4 industrial processor.

5 (c) A person, whether or not the person is an industrial
6 processor, if the tangible personal property is used by that person
7 to perform an industrial processing activity for or on behalf of an
8 industrial processor.

9 (d) A person, whether or not the person is an industrial
10 processor, if the tangible personal property is 1 of the following:

11 (i) A computer used in operating industrial processing
12 equipment.

13 (ii) Equipment used in a computer assisted manufacturing
14 system.

15 (iii) Equipment used in a computer assisted design or
16 engineering system integral to an industrial process.

17 (iv) A subunit or electronic assembly comprising a component in
18 a computer integrated industrial processing system.

19 (v) Computer equipment used in connection with the computer
20 assisted production, storage, and transmission of data if the
21 equipment would have been exempt had the data transfer been made
22 using tapes, disks, CD-ROMs, or similar media by a company whose
23 business includes publishing doctoral dissertations and information
24 archiving, and that sells the majority of the company's products to
25 nonprofit organizations exempt under section 4(1)(w).

26 (vi) Equipment used in the production of prewritten computer
27 software or software modified or adapted to the user's needs or
28 equipment by the seller, only if the software is available for sale
29 from a seller of software on an as-is basis or as an end product

1 without modification or adaption.

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

7 (3) Industrial processing includes the following activities:

8 (a) Production or assembly.

9 (b) Research or experimental activities.

10 (c) Engineering related to industrial processing.

11 (d) Inspection, quality control, or testing to determine
12 whether particular units of materials or products or processes
13 conform to specified parameters at any time before materials or
14 products first come to rest in finished goods inventory storage.

15 (e) Planning, scheduling, supervision, or control of
16 production or other exempt activities.

17 (f) Design, construction, or maintenance of production or
18 other exempt machinery, equipment, and tooling.

19 (g) Remanufacturing.

20 (h) Processing of production scrap and waste up to the point
21 it is stored for removal from the plant of origin.

22 (i) Recycling of used materials for ultimate sale at retail or
23 reuse.

24 (j) Production material handling.

25 (k) Storage of in-process materials.

26 (4) Property that is eligible for an industrial processing
27 exemption includes the following:

28 (a) Property that becomes an ingredient or component part of
29 the finished product to be sold ultimately at retail, **used for a**

1 **purpose that subjects the property to the tax under this act,** or
2 affixed to and made a structural part of real estate.

3 (b) Machinery, equipment, tools, dies, patterns, foundations
4 for machinery or equipment, or other processing equipment used in
5 an industrial processing activity and in their repair and
6 maintenance.

7 (c) Property that is consumed or destroyed or that loses its
8 identity in an industrial processing activity.

9 (d) Tangible personal property, not permanently affixed and
10 not becoming a structural part of real estate, that becomes a part
11 of, or is used and consumed in installation and maintenance of,
12 systems used for an industrial processing activity.

13 (e) Fuel or energy used or consumed for an industrial
14 processing activity.

15 (f) Machinery, equipment, or materials used within a plant
16 site or between plant sites operated by the same person for
17 movement of tangible personal property in the process of
18 production. Property exempt under this subdivision includes front
19 end loaders, forklifts, pettibone lifts, skidsters, multipurpose
20 loaders, knuckle-boom log loaders, tractors, and log loaders used
21 to unload logs from trucks at a saw mill site for the purpose of
22 processing at the site and to load lumber onto trucks at a saw mill
23 site for purposes of transportation from the site.

24 (g) Office equipment, including data processing equipment,
25 used for an industrial processing activity.

26 (h) Tangible personal property used or consumed in an
27 industrial processing activity to produce alcoholic beverages that
28 are sold at retail by that industrial processor through its own
29 locations.

1 (5) Property that is not eligible for an industrial processing
2 exemption includes the following:

3 (a) Tangible personal property permanently affixed and
4 becoming a structural part of real estate in this state including
5 building utility systems such as heating, air conditioning,
6 ventilating, plumbing, lighting, and electrical distribution, to
7 the point of the last transformer, switch, valve, or other device
8 at which point usable power, water, gas, steam, or air is diverted
9 from distribution circuits for use in industrial processing.

10 (b) Office equipment, including data processing equipment used
11 for nonindustrial processing purposes.

12 (c) Office furniture or office supplies.

13 (d) An industrial processor's own product or finished good
14 that it uses or consumes for purposes other than industrial
15 processing.

16 (e) Tangible personal property used for receiving and storage
17 of materials, supplies, parts, or components purchased by the user
18 or consumer.

19 (f) Tangible personal property used for receiving or storage
20 of natural resources extracted by the user or consumer.

21 (g) Vehicles, including special bodies or attachments,
22 required to display a vehicle permit or license plate to operate on
23 public highways, except for a vehicle bearing a manufacturer's
24 plate or a specially designed vehicle, together with parts, used to
25 mix and agitate materials at a plant or job site in the concrete
26 manufacturing process.

27 (h) Tangible personal property used for the preparation of
28 food or beverages by a retailer for ultimate sale at retail through
29 its own locations, except as provided in subsection (4) (h).

1 (i) Tangible personal property used or consumed for the
2 preservation or maintenance of a finished good once it first comes
3 to rest in finished goods inventory storage.

4 (j) Returnable shipping containers or materials, except as
5 provided in subsection (4) (f).

6 (k) Tangible personal property used in the production of
7 computer software originally designed for the exclusive use and
8 special needs of the purchaser.

9 (6) Industrial processing does not include the following
10 activities:

11 (a) Purchasing, receiving, or storage of raw materials.

12 (b) Sales, distribution, warehousing, shipping, or advertising
13 activities.

14 (c) Administrative, accounting, or personnel services.

15 (d) Design, engineering, construction, or maintenance of real
16 property and nonprocessing equipment.

17 (e) Plant security, fire prevention, or medical or hospital
18 services.

19 (7) As used in this section:

20 (a) "Industrial processing" means the activity of converting
21 or conditioning tangible personal property by changing the form,
22 composition, quality, combination, or character of the property for
23 ultimate sale at retail or for use in the manufacturing of a
24 product to be ultimately sold at retail, **used for a purpose that**
25 **subjects the property to the tax under this act**, or affixed to and
26 made a structural part of real estate located in another state.
27 Industrial processing begins when tangible personal property begins
28 movement from raw materials storage to begin industrial processing
29 and ends when finished goods first come to rest in finished goods

1 inventory storage.

2 (b) "Industrial processor" means a person who performs the
3 activity of converting or conditioning tangible personal property
4 for ultimate sale at retail or use in the manufacturing of a
5 product to be ultimately sold at retail, **used for a purpose that**
6 **subjects the property to the tax under this act**, or affixed to and
7 made a structural part of real estate located in another state.

8 (c) "Product", as used in subdivision (e), includes, but is
9 not limited to, a prototype, pilot model, process, formula,
10 invention, technique, patent, or similar property, whether intended
11 to be used in a trade or business or to be sold, transferred,
12 leased, or licensed.

13 (d) "Remanufacturing" means the activity of overhauling,
14 retrofitting, fabricating, or repairing a product or its component
15 parts for ultimate sale at retail.

16 (e) "Research or experimental activity" means activity
17 incident to the development, discovery, or modification of a
18 product or a product related process. Research or experimental
19 activity also includes activity necessary for a product to satisfy
20 a government standard or to receive government approval. Research
21 or experimental activity does not include the following:

22 (i) Ordinary testing or inspection of materials or products for
23 quality control purposes.

24 (ii) Efficiency surveys.

25 (iii) Management surveys.

26 (iv) Market or consumer surveys.

27 (v) Advertising or promotions.

28 (vi) Research in connection with literacy, historical, or
29 similar projects.

1 Enacting section 1. This amendatory act clarifies that
2 existing law as originally intended provides that the tax levied
3 under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, does not
4 apply to property that is used or consumed in the activity of
5 converting or conditioning tangible personal property by changing
6 the form, composition, quality, combination, or character of the
7 property if the finished product is subject to sales tax under the
8 general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, or use
9 tax under the use tax act, 1937 PA 94, MCL 205.91 to 205.111.