

HOUSE BILL NO. 5863

June 26, 2024, Introduced by Rep. Tisdell 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 2023 PA 94.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) 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

1 **includes** the plural as well as the singular number, unless the
2 intention to give a more limited meaning is disclosed by the
3 context.

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

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

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

27 (e) "Purchase" means to acquire for a consideration, whether
28 the acquisition is effected by a transfer of title, of possession,
29 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) to (vii) and excludes subparagraphs (viii) to
14 ~~(xv)~~ **(xvi)** :

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

16 (ii) ~~Cost~~ **Except as otherwise provided in subparagraph (xvi)** ,
17 **cost** of materials used, labor or service cost, interest, losses,
18 costs of transportation to the seller, taxes imposed on the seller
19 other than taxes imposed by this act, and any other expense of the
20 seller.

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

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

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

1 (iv) Except as otherwise provided in subparagraph (xv),
2 delivery charges. A seller is not liable under this act for
3 delivery charges allocated to the delivery of exempt property.

4 (v) Except as otherwise provided in subparagraph (xv),
5 installation charges.

6 (vi) Except as otherwise provided in subparagraphs (xi), (xii),
7 and (xiv), credit for any trade-in.

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

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

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

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

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

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

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

1 organization.

2 (III) The price reduction or discount is identified as a third
3 party price reduction or discount on the invoice received by the
4 purchaser or on a coupon, certificate, or other documentation
5 presented by the purchaser.

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

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

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

15 (xi) Beginning November 15, 2013, credit for the agreed-upon
16 value of a titled watercraft used as part payment of the purchase
17 price of a new titled watercraft or used titled watercraft
18 purchased from a watercraft dealer if the agreed-upon value is
19 separately stated on the invoice, bill of sale, or similar document
20 given to the purchaser. This subparagraph does not apply to leases
21 or rentals.

22 (xii) Beginning December 15, 2013, credit for the agreed-upon
23 value of a motor vehicle or recreational vehicle used as part
24 payment of the purchase price of a new motor vehicle or used motor
25 vehicle or recreational vehicle purchased from a dealer if the
26 agreed-upon value is separately stated on the invoice, bill of
27 sale, or similar document given to the purchaser. This subparagraph
28 does not apply to leases or rentals. Except as otherwise provided
29 under subparagraph (xiv), for purposes of this subparagraph, the

1 agreed-upon value of a motor vehicle or recreational vehicle used
2 as part payment is limited as follows:

3 (A) Beginning December 15, 2013, subject to sub-subparagraphs

4 (B) and (C), the lesser of the following:

5 (I) \$2,000.00.

6 (II) The agreed-upon value of the motor vehicle or
7 recreational vehicle used as part payment.

8 (B) Beginning January 1, 2015 and each January 1 thereafter
9 through December 31, 2018, the amount under sub-subparagraph (A) (I)
10 is increased by an additional \$500.00 each year.

11 (C) Beginning January 1, 2019, subject to sub-subparagraphs

12 (D) and (E), the lesser of the following:

13 (I) \$5,000.00.

14 (II) The agreed-upon value of the motor vehicle used as part
15 payment.

16 (D) Beginning January 1, 2020 and each January 1 thereafter,
17 the amount under sub-subparagraph (C) (I) is increased by an
18 additional \$1,000.00 each year.

19 (E) Beginning on January 1, in the year in which the amount
20 under sub-subparagraph (C) (I) exceeds \$14,000.00 and each January 1
21 thereafter, there is no limitation on the agreed-upon value of the
22 motor vehicle used as part payment.

23 (xiii) Beginning January 1, 2017, credit for the core charge
24 attributable to a recycling fee, deposit, or disposal fee for a
25 motor vehicle or recreational vehicle part or battery if the
26 recycling fee, deposit, or disposal fee is separately stated on the
27 invoice, bill of sale, or similar document given to the purchaser.

28 (xiv) Beginning January 1, 2018, credit for the agreed-upon
29 value of a recreational vehicle used as part payment of the

1 purchase price of a recreational vehicle purchased from a dealer if
2 the agreed-upon value is separately stated on the invoice, bill of
3 sale, or similar document given to the purchaser. This subparagraph
4 does not apply to leases or rentals.

5 (xv) Delivery or installation charges if such charges are
6 separately stated on the invoice, bill of sale, or similar document
7 provided to the purchaser, and the taxpayer maintains its books and
8 records to show separately the transactions used to determine the
9 tax levied by this act. This subdivision does not apply to delivery
10 or installation charges involving or relating to the sale of
11 electricity, natural gas, or artificial gas by a utility.

12 **(xvi) A credit card surcharge. As used in this subparagraph,**
13 **"credit card surcharge" means a surcharge or other fee imposed for**
14 **the use of a credit card.**

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

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

22 (ii) A person who has converted tangible personal property or
23 services acquired for storage, use, or consumption in this state
24 that is exempt from the tax levied under this act to storage, use,
25 or consumption in this state that is not exempt from the tax levied
26 under this act.

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

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

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

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

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

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

19 (n) "Qualified commercial motor vehicle" means that term as
20 defined in section 1(l), (m), and (n) of the motor carrier fuel tax
21 act, 1980 PA 119, MCL 207.211.

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

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

27 (q) "Convert" means putting a service or tangible personal
28 property acquired for a use exempt from the tax levied under this
29 act at the time of acquisition to a use that is not exempt from the

1 tax levied under this act, whether the use is in whole or in part,
2 or permanent or not permanent. A motor vehicle purchased for resale
3 by a new vehicle dealer licensed under section 248(8)(a) of the
4 Michigan vehicle code, 1949 PA 300, MCL 257.248, and not registered
5 in the name of the dealer is not considered to be converted before
6 sale or lease by that dealer.

7 (r) "New motor vehicle" means that term as defined in section
8 33a of the Michigan vehicle code, 1949 PA 300, MCL 257.33a.

9 (s) "Recreational vehicle" means that term as defined in
10 section 49a of the Michigan vehicle code, 1949 PA 300, MCL 257.49a.

11 (t) "Dealer" means that term as defined in section 11 of the
12 Michigan vehicle code, 1949 PA 300, MCL 257.11.

13 (u) "Watercraft dealer" means a dealer as that term is defined
14 in section 80102 of the natural resources and environmental
15 protection act, 1994 PA 451, MCL 324.80102.

16 (v) "Utility" means either of the following:

17 (i) A person regulated by the Michigan public service
18 commission as a utility.

19 (ii) A person that operates equipment or facilities for
20 producing, generating, transmitting, delivering, or furnishing
21 electricity within this state for the public for compensation,
22 regardless of the person's owner, ownership structure, or
23 regulation by the Michigan public service commission.

24 (2) Notwithstanding anything to the contrary in this act, the
25 following applies only to delivery and installation charges
26 described in subsection (1)(f)(iv) or (v), except that this
27 subsection does not apply to delivery and installation charges
28 involving or relating to the sale of electricity, natural gas, or
29 artificial gas by a utility:

1 (a) Not later than July 25, 2023, the department shall cancel
2 all outstanding balances related to such delivery and installation
3 charges on notices of intent to assess that were issued under
4 section 21 of 1941 PA 122, MCL 205.21, for the tax levied under
5 this act and that were issued before April 26, 2023.

6 (b) Not later than July 25, 2023, the department shall cancel
7 all outstanding balances related to such delivery and installation
8 charges on final assessments that were issued under section 22 of
9 1941 PA 122, MCL 205.22, for the tax levied under this act, and
10 that were issued before April 26, 2023.

11 (c) Beginning April 26, 2023, the department shall not issue
12 any new assessments for the tax levied under this act on such
13 delivery and installation charges for any tax period before April
14 26, 2023, that is open under the statute of limitations provided in
15 section 27a of 1941 PA 122, MCL 205.27a.

16 **(3) Notwithstanding anything to the contrary in this act,**
17 **subsection (1) (f) (xvi) is intended to be retroactive and to apply to**
18 **all periods open under section 27a of 1941 PA 122, MCL 205.27a.**