

HOUSE BILL No. 5263

November 5, 2003, Introduced by Reps. Stahl, Nofs, Wenke, Huizenga and Bisbee and referred to the Committee on Commerce.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 2 (MCL 205.92), as amended by 2002 PA 669.

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
8 the plural as well as the singular number, unless the intention
9 to give a more limited meaning is disclosed 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
5 interstate 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
13 operates or from whom he or she obtains tangible personal
14 property or services sold by him or her for storage, use, or
15 other consumption in this state, irrespective of whether or not
16 he or she is making the sales on his or her own behalf or on
17 behalf of the dealer, distributor, supervisor, or employer, the
18 department may so consider him or her, and may consider the
19 dealer, distributor, supervisor, or employer as the seller for
20 the purpose of this act.

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

27 (f) "Price" means the aggregate value in money of anything

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9 withdrawn by a construction contractor from inventory available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

1 to modify or prepare tangible personal property for affixation or
2 assembly. The price of a motor vehicle, trailer coach, or titled
3 watercraft is the full retail price of the motor vehicle, trailer
4 coach, or titled watercraft being purchased. The tax collected
5 by the seller from the consumer or lessee under this act is not
6 considered part of the price, but is a tax collection for the
7 benefit of the state, and a person other than the state shall not
8 derive a benefit from the collection or payment of this tax. A
9 price does not include an assessment imposed under the convention
10 and tourism marketing act, 1980 PA 383, MCL 141.881 to 141.889,
11 1974 PA 263, MCL 141.861 to 141.867, the state convention
12 facility development act, 1985 PA 106, MCL 207.621 to 207.640,
13 the regional tourism marketing act, 1989 PA 244, MCL 141.891 to
14 141.900, 1991 PA 180, MCL 207.751 to 207.759, or the community
15 convention or tourism marketing act, 1980 PA 395, MCL 141.871 to
16 141.880, that was added to charges for rooms or lodging otherwise
17 subject, pursuant to section 3a, to tax under this act. Price
18 does not include specific charges for technical support or for
19 adapting or modifying prewritten, standard, or canned computer
20 software programs to a purchaser's needs or equipment if the
21 charges are separately stated and identified. The tax imposed
22 under this act shall not be computed or collected on rental
23 receipts if the tangible personal property rented or leased has
24 previously been subjected to a Michigan sales or use tax when
25 purchased by the lessor.

26 (g) "Consumer" means the person who has purchased tangible
27 personal property or services for storage, use, or other

1 consumption in this state and includes a person acquiring
2 tangible personal property if engaged in the business of
3 constructing, altering, repairing, or improving the real estate
4 of others.

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

8 (i) "Department" means the ~~revenue division of the~~
9 department of treasury.

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

12 (k) "Tangible personal property" includes computer software
13 offered for general use by the public or software modified or
14 adapted to the user's needs or equipment by the seller, only if
15 the software is available from a seller of software on an as is
16 basis or as an end product without modification or adaptation.
17 Tangible personal property does not include computer software
18 originally designed for the exclusive use and special needs of
19 the purchaser. As used in this subdivision, "computer software"
20 means a set of statements or instructions that when incorporated
21 in a machine usable medium is capable of causing a machine or
22 device having information processing capabilities to indicate,
23 perform, or achieve a particular function, task, or result.

24 (l) "Tangible personal property" beginning September 20,
25 1999, includes electricity, natural or artificial gas, or steam
26 and also the transmission and distribution of electricity used by
27 the consumer or user of the electricity, whether the electricity

1 is purchased from the delivering utility or from another
2 provider.

3 (m) "Tangible personal property" does not include a
4 commercial advertising element if the commercial advertising
5 element is used to create or develop a print, radio, television,
6 or other advertisement, the commercial advertising element is
7 discarded or returned to the provider after the advertising
8 message is completed, and the commercial advertising element is
9 custom developed by the provider for the purchaser. As used in
10 this subdivision, "commercial advertising element" means a
11 negative or positive photographic image, an audiotape or
12 videotape master, a layout, a manuscript, writing of copy, a
13 design, artwork, an illustration, retouching, and mechanical or
14 keyline instructions. "Tangible personal property" includes
15 black and white or full color process separation elements, an
16 audiotape reproduction, or a videotape reproduction.

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

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

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

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