

# HOUSE BILL No. 5937

September 20, 2012, Introduced by Rep. MacGregor and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled "Use tax act," by amending sections 3a, 4, and 4o (MCL 205.93a, 205.94, and 205.94o), section 3a as amended by 2012 PA 299, section 4 as amended by 2008 PA 314, and section 4o as amended by 2010 PA 115.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 3a. (1) The use or consumption of the following services  
2 is taxed under this act in the same manner as tangible personal  
3 property is taxed under this act:

4       (a) Except as provided in section 3b, intrastate  
5 telecommunications services that both originate and terminate in  
6 this state, including, but not limited to, intrastate private  
7 communications services, ancillary services, conference bridging  
8 service, 900 service, pay telephone service other than coin-  
9 operated telephone service, **PAGING SERVICE**, and value-added

1 nonvoice data service, but excluding 800 service, coin-operated  
2 telephone service, fixed wireless service, ~~1-way paging service,~~  
3 prepaid calling service, telecommunications nonrecurring charges,  
4 and directory advertising proceeds.

5 (b) Rooms or lodging furnished by hotelkeepers, motel  
6 operators, and other persons furnishing accommodations that are  
7 available to the public on the basis of a commercial and business  
8 enterprise, irrespective of whether or not membership is required  
9 for use of the accommodations, except rooms and lodging rented for  
10 a continuous period of more than 1 month. As used in this act,  
11 "hotel" or "motel" means a building or group of buildings in which  
12 the public may obtain accommodations for a consideration,  
13 including, without limitation, such establishments as inns, motels,  
14 tourist homes, tourist houses or courts, lodging houses, rooming  
15 houses, nudist camps, apartment hotels, resort lodges and cabins,  
16 camps operated by other than nonprofit organizations but not  
17 including those licensed under 1973 PA 116, MCL 722.111 to 722.128,  
18 and any other building or group of buildings in which  
19 accommodations are available to the public, except accommodations  
20 rented for a continuous period of more than 1 month and  
21 accommodations furnished by hospitals or nursing homes.

22 (c) Except as provided in section 3b, interstate  
23 telecommunications services that either originate or terminate in  
24 this state and for which the charge for the service is billed to a  
25 service address in this state or phone number by the provider  
26 either within or outside this state including, but not limited to,  
27 ancillary services, conference bridging service, 900 service,

1 **PAGING SERVICE**, pay telephone service other than coin-operated  
2 telephone service, and value-added nonvoice data services, but  
3 excluding interstate private communications service, 800 service,  
4 coin-operated telephone service, fixed wireless service, ~~1-way~~  
5 ~~paging service~~, prepaid calling service, telecommunications  
6 nonrecurring charges, and international telecommunications service.

7 (d) The laundering or cleaning of textiles under a sale,  
8 rental, or service agreement with a term of at least 5 days. This  
9 subdivision does not apply to the laundering or cleaning of  
10 textiles used by a restaurant or retail sales business. As used in  
11 this subdivision, "restaurant" means a food service establishment  
12 defined and licensed under the food law of 2000, 2000 PA 92, MCL  
13 289.1101 to 289.8111.

14 (e) The transmission and distribution of electricity, whether  
15 the electricity is purchased from the delivering utility or from  
16 another provider, if the sale is made to the consumer or user of  
17 the electricity for consumption or use rather than for resale.

18 (f) For a manufacturer who affixes its product to real estate  
19 in this state and maintains an inventory of its product that is  
20 available for sale to others or who makes its product available for  
21 sale to others by publication or price list, the price is the  
22 direct production costs and indirect production costs of the  
23 product affixed to the real estate in this state that are incident  
24 to and necessary for production or manufacturing operations or  
25 processes, as defined by the department.

26 (g) For a manufacturer who affixes its product to real estate  
27 in this state but does not maintain an inventory of its product

1 available for sale to others or make its product available for sale  
2 to others by publication or price list, the price is the sum of the  
3 materials cost of the property and the cost of labor to  
4 manufacture, fabricate, or assemble the property affixed to the  
5 real estate in this state, but not the cost of labor to cut, bend,  
6 assemble, or attach the property at the site for affixation to real  
7 estate in this state.

8 (2) If charges for intrastate telecommunications services or  
9 telecommunications services between this state and another state  
10 and other billed services not subject to the tax under this act are  
11 aggregated with and not separately stated from charges for  
12 telecommunications services that are subject to the tax under this  
13 act, the nontaxable telecommunications services and other  
14 nontaxable billed services are subject to the tax under this act  
15 unless the service provider can reasonably identify charges for  
16 telecommunications services not subject to the tax under this act  
17 from its books and records that are kept in the regular course of  
18 business.

19 (3) If charges for intrastate telecommunications services or  
20 telecommunications services between this state and another state  
21 and other billed services not subject to the tax under this act are  
22 aggregated with and not separately stated from telecommunications  
23 services that are subject to the tax under this act, a customer may  
24 not rely upon the nontaxability of those telecommunications  
25 services and other billed services unless the customer's service  
26 provider separately states the charges for nontaxable  
27 telecommunications services and other nontaxable billed services

1 from taxable telecommunications services or the service provider  
2 elects, after receiving a written request from the customer in the  
3 form required by the provider, to provide verifiable data based  
4 upon the service provider's books and records that are kept in the  
5 regular course of business that reasonably identify the nontaxable  
6 services.

7 (4) All of the following apply in the case of a bundled  
8 transaction that includes telecommunications service, ancillary  
9 service, internet access, or audio or video programming:

10 (a) If the purchase price is attributable to products that are  
11 taxable and products that are nontaxable, the portion of the  
12 purchase price attributable to the nontaxable products may be  
13 subject to tax unless the provider can identify by reasonable and  
14 verifiable standards that portion from its books and records that  
15 are kept in the regular course of business for other purposes,  
16 including, but not limited to, nontax purposes.

17 (b) The provisions of this subsection apply unless otherwise  
18 provided by federal law.

19 (5) As used in this section:

20 (a) "Ancillary services" means services that are associated  
21 with or incidental to the provision of telecommunications services,  
22 including, but not limited to, detailed telecommunications billing,  
23 directory assistance, vertical service, and voice mail services.

24 (b) "Bundled transaction" means the purchase of 2 or more  
25 distinct and identifiable products, except real property and  
26 services to real property, where the products are sold for a single  
27 nonitemized price. A bundled transaction does not include the sale

1 of any products in which the sales price varies, or is negotiable,  
2 based on the selection by the purchaser of the products included in  
3 the transaction. As used in this subdivision:

4 (i) "Distinct and identifiable products" does not include any  
5 of the following:

6 (A) Packaging, such as containers, boxes, sacks, bags, and  
7 bottles or other materials such as wrapping, labels, tags, and  
8 instruction guides, that accompany the purchase of the products and  
9 are incidental or immaterial to the purchase of the products,  
10 including grocery sacks, shoeboxes, dry cleaning garment bags, and  
11 express delivery envelopes and boxes.

12 (B) A product provided free of charge with the required  
13 purchase of another product. A product is provided free of charge  
14 if the sales price of the product purchased does not vary depending  
15 on the inclusion of the product provided free of charge.

16 (C) Items included in purchase price.

17 (ii) "Purchase price" means the price paid by the seller for  
18 the property.

19 (iii) "Sales price" means that term as defined in section 1 of  
20 the general sales tax act, 1933 PA 167, MCL 205.51.

21 (iv) "Single nonitemized price" does not include a price that  
22 is separately identified by product on binding sales or other  
23 supporting sales-related documentation made available to the  
24 purchaser in paper or electronic form, including, but not limited  
25 to, an invoice, bill of sale, receipt, contract, service agreement,  
26 lease agreement, periodic notice of rates and services, rate card,  
27 or price list.

1 (v) Bundled transaction does not include any of the following:

2 (A) The purchase of tangible personal property and a service  
3 if the tangible personal property is essential to the use of the  
4 service and is provided exclusively in connection with the service  
5 and the true object of the transaction is the service.

6 (B) The purchase of services if 1 service is provided that is  
7 essential to the use or receipt of a second service and the first  
8 service is provided exclusively in connection with the second  
9 service and the true object of the transaction is the second  
10 service.

11 (C) A transaction that includes taxable and nontaxable  
12 products and the purchase price of the taxable products is de  
13 minimis. As used in this sub-subparagraph, "de minimis" means the  
14 seller's purchase price or sales price of the taxable products is  
15 10% or less of the total purchase price or sales price of the  
16 products. A seller shall use the full term of a service contract to  
17 determine if the taxable products are de minimis. A seller shall  
18 use either the purchase price or the sales price of the products to  
19 determine if the taxable products are de minimis. A seller shall  
20 not use a combination of the purchase price and sales price of the  
21 products to determine if the taxable products are de minimis.

22 (D) The retail sale of exempt tangible personal property and  
23 taxable tangible personal property if all of the following  
24 conditions are satisfied:

25 (I) The transaction includes food and food ingredients,  
26 prescription or over-the-counter drugs, durable medical equipment,  
27 mobility enhancing equipment, medical supplies, or prosthetic

1 devices.

2 (II) Where the seller's purchase price or sales price of the  
3 taxable tangible personal property is 50% or less of the total  
4 purchase price or sales price of the bundled tangible personal  
5 property. A seller may not use a combination of the purchase price  
6 and sales price of the tangible personal property when making the  
7 50% determination for a transaction.

8 (c) "Coin-operated telephone service" means a  
9 telecommunications service paid for by inserting money into a  
10 telephone that accepts direct deposits of money to operate.

11 (d) "Conference bridging service" means an ancillary service  
12 that links 2 or more participants of an audio or video conference  
13 call and may include the provision of a telephone number, but does  
14 not include the telecommunications services used to reach the  
15 conference bridge.

16 (e) "Detailed telecommunications billing service" means an  
17 ancillary service of separately stating information pertaining to  
18 individual calls on a customer's billing statement.

19 (f) "Directory assistance" means an ancillary service of  
20 providing telephone number information or address information.

21 (g) "Fabricate" means to modify or prepare tangible personal  
22 property for affixation or assembly.

23 (h) "Fixed wireless service" means a telecommunications  
24 service that provides radio communication between fixed points.

25 (i) "International" means a telecommunications service that  
26 originates or terminates in the United States and terminates or  
27 originates outside the United States, respectively. United States



1 includes the District of Columbia and any possession or territory  
2 of the United States.

3 (j) "Interstate" means a telecommunications service that  
4 originates in 1 United States state, territory, or possession and  
5 terminates in a different United States state, territory, or  
6 possession.

7 (k) "Intrastate" means a telecommunications service that  
8 originates in a United States state, territory, or possession and  
9 terminates in the same United States state, territory, or  
10 possession.

11 (l) "Manufacture" means to convert or condition tangible  
12 personal property by changing the form, composition, quality,  
13 combination, or character of the property.

14 (m) "Manufacturer" means a person who manufactures,  
15 fabricates, or assembles tangible personal property.

16 (n) "Paging service" means a telecommunications service that  
17 provides transmission of coded radio signals for the purpose of  
18 activating specific pagers, which may include messages or sounds.

19 (o) "Pay telephone service" means a telecommunications service  
20 provided through any pay telephone.

21 (p) "Prepaid calling service" means the right to access  
22 exclusively telecommunications services that must be paid for in  
23 advance and that enables the origination of calls using an access  
24 number or authorization code, whether manually or electronically  
25 dialed, and that is sold in predetermined units or dollars that  
26 decline with use in a known amount.

27 (q) "Private communications service" means a

1 telecommunications service that entitles the customer to exclusive  
2 or priority use of a communications channel or group of channels  
3 between or among termination points, regardless of the manner in  
4 which that channel or group of channels are connected, and includes  
5 switching capacity, extension lines, stations, and any other  
6 associated services that are provided in connection with the use of  
7 that channel or group of channels.

8 (r) "Telecommunications nonrecurring charges" means an amount  
9 billed for the installation, connection, change, or initiation of  
10 telecommunications service received by the customer.

11 (s) "Telecommunications service" means the electronic  
12 transmission, conveyance, or routing of voice, data, audio, video,  
13 or any other information or signals to a point, or between or among  
14 points, including a transmission, conveyance, or routing in which  
15 computer processing applications are used to act on the form, code,  
16 or protocol of the content for purposes of transmission,  
17 conveyance, or routing without regard to whether that service is  
18 referred to as voice over internet protocol services or is  
19 classified by the federal communications commission as enhanced or  
20 value added. Telecommunications service does not include any of the  
21 following:

22 (i) Data processing and information services that allow data to  
23 be generated, acquired, stored, processed, or retrieved and  
24 delivered by an electronic transmission to a purchaser where the  
25 purchaser's primary purpose for the underlying transaction is the  
26 processed data or information.

27 (ii) Installation or maintenance of wiring or equipment on a

1 customer's premises.

2 (iii) Tangible personal property.

3 (iv) Advertising, including, but not limited to, directory  
4 advertising.

5 (v) Billing and collection services provided to third parties.

6 (vi) Internet access service.

7 (vii) Radio and television audio and video programming  
8 services, including, but not limited to, cable service as defined  
9 in 47 USC 522(6) and audio and video programming services delivered  
10 by commercial mobile radio service providers as defined in 47 CFR  
11 20.3, regardless of the medium, including the furnishing of  
12 transmission, conveyance, and routing of those services by the  
13 programming service provider.

14 (viii) Ancillary services.

15 (ix) Answering services, if the primary purpose of the  
16 transaction is the answering service rather than message  
17 transmission.

18 (x) Digital products delivered electronically, including, but  
19 not limited to, software, music, video, reading materials, or ring  
20 tones.

21 (t) "Value-added nonvoice data service" means a  
22 telecommunications service in which computer processing  
23 applications are used to act on the form, content, code, or  
24 protocol of the information or data primarily for a purpose other  
25 than transmission, conveyance, or routing.

26 (u) "Vertical service" means an ancillary service that is  
27 offered in connection with 1 or more telecommunications services

1 that offers advanced calling features that allow customers to  
2 identify callers and to manage multiple calls and call connections,  
3 including conference bridging services.

4 (v) "Voice mail service" means an ancillary service that  
5 enables the customer to store, send, or receive recorded messages,  
6 but does not include any vertical services that the customer may be  
7 required to have in order to utilize the voice mail service.

8 (w) "800 service" means a telecommunications service that  
9 allows a caller to dial a toll-free number without incurring a  
10 charge for the call, typically marketed under the designation  
11 "800", "855", "866", "877", or "888" toll-free calling, or any  
12 subsequent number designated by the federal communications  
13 commission.

14 (x) "900 service" means an inbound toll telecommunications  
15 service purchased by a subscriber that allows the subscriber's  
16 customers to call in to the subscriber's prerecorded announcement  
17 or live service, typically marketed under the designation "900"  
18 service, and any subsequent number designated by the federal  
19 communications commission, but does not include a charge for  
20 collection services provided by the seller of the  
21 telecommunications services to the subscriber, or the service or  
22 product sold by the subscriber to the subscriber's customer.

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

25 (a) Property sold in this state on which transaction a tax is  
26 paid under the general sales tax act, 1933 PA 167, MCL 205.51 to  
27 205.78, if the tax was due and paid on the retail sale to a

1 consumer.

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

5 (c) All of the following:

6 (i) Property purchased for resale. Property purchased for  
7 resale includes promotional merchandise transferred pursuant to a  
8 redemption offer to a person located outside this state or any  
9 packaging material, other than promotional merchandise, acquired  
10 for use in fulfilling a redemption offer or rebate to a person  
11 located outside this state.

12 (ii) Property purchased for lending or leasing to a public or  
13 parochial school offering a course in automobile driving except  
14 that a vehicle purchased by the school shall be certified for  
15 driving education and shall not be reassigned for personal use by  
16 the school's administrative personnel.

17 (iii) Property purchased for demonstration purposes. For a new  
18 vehicle dealer selling a new car or truck, exemption for  
19 demonstration purposes shall be determined by the number of new  
20 cars and trucks sold during the current calendar year or the  
21 immediately preceding calendar year, without regard to specific  
22 make or style, according to the following schedule but not to  
23 exceed 25 cars and trucks in 1 calendar year for demonstration  
24 purposes:

25 (A) 0 to 25, 2 units.

26 (B) 26 to 100, 7 units.

27 (C) 101 to 500, 20 units.

1 (D) 501 or more, 25 units.

2 (iv) Motor vehicles purchased for resale purposes by a new  
3 vehicle dealer licensed under section 248(8)(a) of the Michigan  
4 vehicle code, 1949 PA 300, MCL 257.248.

5 (d) Property that is brought into this state by a nonresident  
6 person for storage, use, or consumption while temporarily within  
7 this state, except if the property is used in this state in a  
8 nontransitory business activity for a period exceeding 15 days.

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

22 (f) Property sold to a person engaged in a business enterprise  
23 and using and consuming the property in the tilling, planting,  
24 caring for, or harvesting of the things of the soil or in the  
25 breeding, raising, or caring for livestock, poultry, or  
26 horticultural products, including transfers of livestock, poultry,  
27 or horticultural products for further growth. This exemption

1 includes machinery that is capable of simultaneously harvesting  
2 grain or other crops and biomass and machinery used for the purpose  
3 of harvesting biomass. This exemption includes agricultural land  
4 tile, which means fired clay or perforated plastic tubing used as  
5 part of a subsurface drainage system for land used in the  
6 production of agricultural products as a business enterprise and  
7 includes a portable grain bin, which means a structure that is used  
8 or is to be used to shelter grain and that is designed to be  
9 disassembled without significant damage to its component parts.  
10 This exemption does not include transfers of food, fuel, clothing,  
11 or similar tangible personal property for personal living or human  
12 consumption. This exemption does not include tangible personal  
13 property permanently affixed to and becoming a structural part of  
14 real estate. As used in this subdivision, "biomass" means crop  
15 residue used to produce energy or agricultural crops grown  
16 specifically for the production of energy.

17 (g) Property or services sold to the United States, an  
18 unincorporated agency or instrumentality of the United States, an  
19 incorporated agency or instrumentality of the United States wholly  
20 owned by the United States or by a corporation wholly owned by the  
21 United States, the American red cross and its chapters or branches,  
22 this state, a department or institution of this state, or a  
23 political subdivision of this state.

24 (h) Property or services sold to a school, hospital, or home  
25 for the care and maintenance of children or aged persons, operated  
26 by an entity of government, a regularly organized church,  
27 religious, or fraternal organization, a veterans' organization, or

1 a corporation incorporated under the laws of this state, if not  
2 operated for profit, and if the income or benefit from the  
3 operation does not inure, in whole or in part, to an individual or  
4 private shareholder, directly or indirectly, and if the activities  
5 of the entity or agency are carried on exclusively for the benefit  
6 of the public at large and are not limited to the advantage,  
7 interests, and benefits of its members or a restricted group. The  
8 tax levied does not apply to property or services sold to a parent  
9 cooperative preschool. As used in this subdivision, "parent  
10 cooperative preschool" means a nonprofit, nondiscriminatory  
11 educational institution, maintained as a community service and  
12 administered by parents of children currently enrolled in the  
13 preschool that provides an educational and developmental program  
14 for children younger than compulsory school age, that provides an  
15 educational program for parents, including active participation  
16 with children in preschool activities, that is directed by  
17 qualified preschool personnel, and that is licensed pursuant to  
18 1973 PA 116, MCL 722.111 to 722.128.

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

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

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

27 (j) A vessel designed for commercial use of registered tonnage



1 of 500 tons or more, if produced upon special order of the  
2 purchaser, and bunker and galley fuel, provisions, supplies,  
3 maintenance, and repairs for the exclusive use of a vessel of 500  
4 tons or more engaged in interstate commerce.

5 (k) Property purchased for use in this state where actual  
6 personal possession is obtained outside this state, the purchase  
7 price or actual value of which does not exceed \$10.00 during 1  
8 calendar month.

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

1 subdivision shall be made before June 30, 1999. For purposes of  
2 this subdivision, tangible personal property that becomes a  
3 component part of a newspaper or periodical and consequently not  
4 subject to tax, includes an advertising supplement inserted into  
5 and circulated with a newspaper or periodical that is otherwise  
6 exempt from tax under this subdivision, if the advertising  
7 supplement is delivered directly to the newspaper or periodical by  
8 a person other than the advertiser, or the advertising supplement  
9 is printed by the newspaper or periodical.

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

17 (n) A person who is a resident of this state who purchases an  
18 automobile in another state while in the military service of the  
19 United States and who pays a sales tax in the state where the  
20 automobile is purchased.

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

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

26 (q) Water when delivered through water mains, water sold in  
27 bulk tanks in quantities of not less than 500 gallons, or the sale

1 of bottled water.

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

5 (s) Tangible personal property purchased and installed as a  
6 component part of a water pollution control facility for which a  
7 tax exemption certificate is issued pursuant to part 37 of the  
8 natural resources and environmental protection act, 1994 PA 451,  
9 MCL 324.3701 to 324.3708, or an air pollution control facility for  
10 which a tax exemption certificate is issued pursuant to part 59 of  
11 the natural resources and environmental protection act, 1994 PA  
12 451, MCL 324.5901 to 324.5908.

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

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

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

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

23 (x) The use or consumption of services described in section  
24 3a(1)(a) or (b) or 3b by means of a prepaid telephone calling card,  
25 a prepaid authorization number for telephone use, or a charge for  
26 internet access.

27 (y) The purchase, lease, use, or consumption of the following

1 by an industrial laundry after December 31, 1997:

2 (i) Textiles and disposable products including, but not limited  
3 to, soap, paper, chemicals, tissues, deodorizers and dispensers,  
4 and all related items such as packaging, supplies, hangers, name  
5 tags, and identification tags.

6 (ii) Equipment, whether owned or leased, used to repair and  
7 dispense textiles including, but not limited to, roll towel  
8 cabinets, slings, hardware, lockers, mop handles and frames, and  
9 carts.

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

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

14 (v) Production washroom equipment and mending and packaging  
15 supplies and equipment.

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

18 (vii) Wastewater pretreatment equipment and supplies and  
19 related maintenance and repair services.

20 **(Z) PROPERTY PURCHASED OR MANUFACTURED BY A PERSON ENGAGED IN**  
21 **THE BUSINESS OF CONSTRUCTING, ALTERING, REPAIRING, OR IMPROVING**  
22 **REAL ESTATE FOR OTHERS, TO THE EXTENT THAT THE PROPERTY IS AFFIXED**  
23 **TO AND MADE A STRUCTURAL PART OF REAL ESTATE LOCATED IN ANOTHER**  
24 **STATE, REGARDLESS OF WHETHER SALES OR USE TAX WAS DUE AND PAID IN**  
25 **THE STATE IN WHICH THE PROPERTY IS AFFIXED TO REAL ESTATE.**

26 (2) The property or services under subsection (1) are exempt  
27 only to the extent that the property or services are used for the

1 exempt purposes if one is stated in subsection (1). The exemption  
2 is limited to the percentage of exempt use to total use determined  
3 by a reasonable formula or method approved by the department.

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

7       (a) An industrial processor for use or consumption in  
8 industrial processing.

9       (b) A person, whether or not the person is an industrial  
10 processor, if the tangible personal property is intended for  
11 ultimate use in and is used in industrial processing by an  
12 industrial processor.

13       (c) A person, whether or not the person is an industrial  
14 processor, if the tangible personal property is used by that person  
15 to perform an industrial processing activity for or on behalf of an  
16 industrial processor.

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

19       (i) A computer used in operating industrial processing  
20 equipment.

21       (ii) Equipment used in a computer assisted manufacturing  
22 system.

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

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

27       (v) Computer equipment used in connection with the computer

1 assisted production, storage, and transmission of data if the  
2 equipment would have been exempt had the data transfer been made  
3 using tapes, disks, CD-ROMs, or similar media by a company whose  
4 business includes publishing doctoral dissertations and information  
5 archiving, and that sells the majority of the company's products to  
6 nonprofit organizations exempt under section 4(1)(w).

7 (vi) Equipment used in the production of prewritten computer  
8 software or software modified or adapted to the user's needs or  
9 equipment by the seller, only if the software is available for sale  
10 from a seller of software on an as-is basis or as an end product  
11 without modification or adaptation.

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

17 (3) Industrial processing includes the following activities:

18 (a) Production or assembly.

19 (b) Research or experimental activities.

20 (c) Engineering related to industrial processing.

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

25 (e) Planning, scheduling, supervision, or control of  
26 production or other exempt activities.

27 (f) Design, construction, or maintenance of production or

## House Bill No. 5937 as amended November 28, 2012

1 other exempt machinery, equipment, and tooling.

2 (g) Remanufacturing.

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

5 (i) Recycling of used materials for ultimate sale at retail or  
6 reuse.

7 (j) Production material handling.

8 (k) Storage of in-process materials.

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

11 (a) Property that becomes an ingredient or component part of  
12 the finished product to be sold ultimately at retail **[OR AFFIXED TO AND  
MADE A STRUCTURAL PART OF REAL ESTATE]**.

13 (b) Machinery, equipment, tools, dies, patterns, foundations  
14 for machinery or equipment, or other processing equipment used in  
15 an industrial processing activity and in their repair and  
16 maintenance.

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

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

23 (e) Fuel or energy used or consumed for an industrial  
24 processing activity.

25 (f) Machinery, equipment, or materials used within a plant  
26 site or between plant sites operated by the same person for  
27 movement of tangible personal property in the process of



## House Bill No. 5937 as amended November 28, 2012

1 production. Property exempt under this subdivision includes front  
2 end loaders, forklifts, pettibone lifts, skidsters, multipurpose  
3 loaders, knuckle-boom log loaders, tractors, and log loaders used  
4 to unload logs from trucks at a saw mill site for the purpose of  
5 processing at the site and to load lumber onto trucks at a saw mill  
6 site for purposes of transportation from the site.

7 (g) Office equipment, including data processing equipment,  
8 used for an industrial processing activity.

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

11 (a) Tangible personal property permanently affixed and  
12 becoming a structural part of real estate [IN THIS STATE] including  
building  
13 utility systems such as heating, air conditioning, ventilating,  
14 plumbing, lighting, and electrical distribution, to the point of  
15 the last transformer, switch, valve, or other device at which point  
16 usable power, water, gas, steam, or air is diverted from  
17 distribution circuits for use in industrial processing.

18 (b) Office equipment, including data processing equipment used  
19 for nonindustrial processing purposes.

20 (c) Office furniture or office supplies.

21 (d) An industrial processor's own product or finished good  
22 that it uses or consumes for purposes other than industrial  
23 processing.

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

27 (f) Tangible personal property used for receiving or storage

1 of natural resources extracted by the user or consumer.

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

8 (h) Tangible personal property used for the preparation of  
9 food or beverages by a retailer for ultimate sale at retail through  
10 its own locations.

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

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

16 (k) Tangible personal property used in the production of  
17 computer software originally designed for the exclusive use and  
18 special needs of the purchaser.

19 (6) Industrial processing does not include the following  
20 activities:

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

22 (b) Sales, distribution, warehousing, shipping, or advertising  
23 activities.

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

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

27 (e) Plant security, fire prevention, or medical or hospital

1 services.

2 (7) As used in this section:

3 (a) "Industrial processing" means the activity of converting  
4 or conditioning tangible personal property by changing the form,  
5 composition, quality, combination, or character of the property for  
6 ultimate sale at retail or for use in the manufacturing of a  
7 product to be ultimately sold at retail **OR AFFIXED TO AND MADE A**  
8 **STRUCTURAL PART OF REAL ESTATE LOCATED IN ANOTHER STATE**. Industrial  
9 processing begins when tangible personal property begins movement  
10 from raw materials storage to begin industrial processing and ends  
11 when finished goods first come to rest in finished goods inventory  
12 storage.

13 (b) "Industrial processor" means a person who performs the  
14 activity of converting or conditioning tangible personal property  
15 for ultimate sale at retail or use in the manufacturing of a  
16 product to be ultimately sold at retail **OR AFFIXED TO AND MADE A**  
17 **STRUCTURAL PART OF REAL ESTATE LOCATED IN ANOTHER STATE**.

18 (c) "Product", as used in subdivision (e), includes, but is  
19 not limited to, a prototype, pilot model, process, formula,  
20 invention, technique, patent, or similar property, whether intended  
21 to be used in a trade or business or to be sold, transferred,  
22 leased, or licensed.

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

26 (e) "Research or experimental activity" means activity  
27 incident to the development, discovery, or modification of a

1 product or a product related process. Research or experimental  
2 activity also includes activity necessary for a product to satisfy  
3 a government standard or to receive government approval. Research  
4 or experimental activity does not include the following:

5 (i) Ordinary testing or inspection of materials or products for  
6 quality control purposes.

7 (ii) Efficiency surveys.

8 (iii) Management surveys.

9 (iv) Market or consumer surveys.

10 (v) Advertising or promotions.

11 (vi) Research in connection with literacy, historical, or  
12 similar projects.

13 Enacting section 1. This amendatory act is retroactive and is  
14 effective January 1, 2006.