

1998 PUBLIC AND LOCAL ACTS

[No. 452]

(HB 4742)

AN ACT to amend 1937 PA 94, entitled "An act to provide for the levy, assessment and collection of a specific excise tax on the storage, use or consumption in this state of tangible personal property and certain services; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act," by amending section 4 (MCL 205.94), as amended by 1998 PA 366.

The People of the State of Michigan enact:

205.94 Exemptions. [M.S.A. 7.555(4)]

Sec. 4. The tax levied does not apply to the following:

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

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

(c) Property purchased for resale, demonstration purposes, or lending or leasing to a public or parochial school offering a course in automobile driving except that a vehicle purchased by the school shall be certified for driving education and shall not be reassigned for personal use by the school's administrative personnel. For a dealer selling a new car or truck, exemption for demonstration purposes shall be determined by the number of new cars and trucks sold during the current calendar year or the immediately preceding year without regard to specific make or style according to the following schedule of 0 to 25, 2 units; 26 to 100, 7 units; 101 to 500, 20 units; 501 or more, 25 units; but not to exceed 25 cars and trucks in 1 calendar year for demonstration purposes. Property purchased for resale includes promotional merchandise transferred pursuant to a redemption offer to a person located outside this state or any packaging material, other than promotional merchandise, acquired for use in fulfilling a redemption offer or rebate to a person located outside this state.

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

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

(f) Property sold to a person engaged in a business enterprise and using and consuming the property in the tilling, planting, caring for, or harvesting of the things of the soil or in the breeding, raising, or caring for livestock, poultry, or horticultural products, including transfers of livestock, poultry, or horticultural products for further growth. At the time of the transfer of that tangible personal property, the transferee shall sign a statement, in a form approved by the department, stating that the property is to be used or consumed in

connection with the production of horticultural or agricultural products as a business enterprise. The statement shall be accepted by the courts as prima facie evidence of the exemption. This exemption includes agricultural land tile, which means fired clay or perforated plastic tubing used as part of a subsurface drainage system for land used in the production of agricultural products as a business enterprise and includes a portable grain bin, which means a structure that is used or is to be used to shelter grain and that is designed to be disassembled without significant damage to its component parts. This exemption does not include transfers of food, fuel, clothing, or similar tangible personal property for personal living or human consumption. This exemption does not include tangible personal property permanently affixed and becoming a structural part of real estate.

(g) Property sold to the following:

(i) An industrial processor for use or consumption in industrial processing. Property used or consumed in industrial processing does not include tangible personal property permanently affixed and becoming a structural part of real estate; office furniture, office supplies, and administrative office equipment; or vehicles licensed and titled for use on public highways other than a specially designed vehicle, together with parts, used to mix and agitate materials added at a plant or jobsite in the concrete manufacturing process. Industrial processing does not include receipt and storage of raw materials purchased or extracted by the user or consumer, or the preparation of food and beverages by a retailer for retail sale. As used in this subdivision, "industrial processor" means a person who transforms, alters, or modifies tangible personal property by changing the form, composition, or character of the property for ultimate sale at retail or sale to another industrial processor to be further processed for ultimate sale at retail. Sales to a person performing a service who does not act as an industrial processor while performing the service may not be excluded under this subdivision, except as provided in subparagraph (ii).

(ii) A person, whether or not the person is an industrial processor, when the property is a computer used in operating industrial processing equipment; equipment used in a computer assisted manufacturing system; equipment used in a computer assisted design or engineering system integral to an industrial process; or a subunit or electronic assembly comprising a component in a computer integrated industrial processing system.

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

(i) Property or services sold to a school, hospital, or home for the care and maintenance of children or aged persons, operated by an entity of government, a regularly organized church, religious, or fraternal organization, a veterans' organization, or a corporation incorporated under the laws of this state, if not operated for profit, and if the income or benefit from the operation does not inure, in whole or in part, to an individual or private shareholder, directly or indirectly, and if the activities of the entity or agency are carried on exclusively for the benefit of the public at large and are not limited to the advantage, interests, and benefits of its members or a restricted group. The tax levied does not apply to property or services sold to a parent cooperative preschool. As used in this subdivision, "parent cooperative preschool" means a nonprofit, nondiscriminatory educational institution, maintained as a community service and administered by parents of children currently enrolled in the preschool that provides an educational and developmental program for children younger than compulsory school age, that provides an educational program for parents, including active participation with children in preschool activities, that is directed by qualified preschool personnel, and that is licensed by the department of consumer and industry services pursuant to 1973 PA 116, MCL 722.111 to 722.128.

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

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

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

(k) A vessel designed for commercial use of registered tonnage of 500 tons or more, if produced upon special order of the purchaser, and bunker and galley fuel, provisions, supplies, maintenance, and repairs for the exclusive use of a vessel of 500 tons or more engaged in interstate commerce.

(l) Property purchased by a person engaged in the business of constructing, altering, repairing, or improving real estate for others to the extent the property is affixed to and made a structural part of the real estate of a nonprofit hospital or a nonprofit housing entity qualified as exempt pursuant to section 15a of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1415a. A nonprofit hospital or nonprofit housing includes only the property of a nonprofit hospital or the homes or dwelling places constructed by a nonprofit housing entity, the income or property of which does not directly or indirectly inure to the benefit of an individual, private stockholder, or other private person. For taxes assessed after December 31, 1990 and before January 1, 1996, as used in this subdivision, "hospital" includes, but is not limited to, an entity that meets all of the following qualifications:

(i) Is a separately organized entity, or a group of entities sufficiently related to be considered a single employer for purposes of section 414 of the internal revenue code of 1986, the primary purpose of which is to provide medical, obstetrical, psychiatric, or surgical care or nursing. Nursing includes care provided by skilled nurses in a long-term care facility.

(ii) Prior to January 1, 1996, initiated an appeal of taxes assessed under this act on tangible personal property used to construct a facility after December 31, 1990 and before January 1, 1996, the primary purpose of which is to provide medical, obstetrical, psychiatric, or surgical care or nursing. Nursing includes a long-term care facility.

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

(n) A newspaper or periodical classified under federal postal laws and regulations effective September 1, 1985 as second class mail matter or as a controlled circulation publication or qualified to accept legal notices for publication in this state, as defined by law, or any other newspaper or periodical of general circulation, established at least 2 years, and published at least once a week, and a copyrighted motion picture film. Tangible personal property used or consumed, and not becoming a component part of a copyrighted motion picture film, newspaper or periodical, except that portion or percentage of tangible personal property used or consumed in producing an advertising supplement that becomes a component part of a newspaper or periodical is subject to tax. For purposes of this subdivision, tangible personal property that becomes a component part of a newspaper or periodical and consequently not subject to tax, includes an advertising supplement inserted into and circulated with a newspaper or periodical that is otherwise exempt from tax under this subdivision, if the advertising supplement is delivered directly to the newspaper or periodical by a person other than the advertiser, or the advertising supplement is printed by the newspaper or periodical.

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

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

(q) A vehicle for which a special registration is secured in accordance with section 226(12) of the Michigan vehicle code, 1949 PA 300, MCL 257.226.

(r) A hearing aid, contact lenses if prescribed for a specific disease that precludes the use of eyeglasses, or any other apparatus, device, or equipment used to replace or substitute for any part of the human body, or used to assist the disabled person to lead a reasonably normal life when the tangible personal property is purchased on a written prescription or order issued by a health professional as defined by section 4 of former 1974 PA 264, or section 21005 of the public health code, 1978 PA 368, MCL 333.21005, or eyeglasses prescribed or dispensed to correct the person's vision by an ophthalmologist, optometrist, or optician.

(s) Water when delivered through water mains or in bulk tanks in quantities of not less than 500 gallons.

(t) The purchase of machinery and equipment for use or consumption in the rendition of any combination of services, the use or consumption of which is taxable under section 3a(a) or (c) except that this exemption is limited to the tangible personal property located on the premises of the subscriber and to central office equipment or wireless equipment, directly used or consumed in transmitting, receiving, or switching or the monitoring of switching of a 2-way interactive communication. As used in this subdivision, central office equipment or wireless equipment does not include distribution equipment including cable or wire facilities.

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

(v) Tangible personal property purchased and installed as a component part of a water pollution control facility for which a tax exemption certificate is issued pursuant to part 37 (water pollution control facilities; tax exemption) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.3701 to 324.3708, or an air pollution control facility for which a tax exemption certificate is issued pursuant to part 59 (air pollution control facility; tax exemption) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5901 to 324.5908.

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

(x) The storage, use, or consumption by a domestic air carrier of an aircraft purchased after December 31, 1992 for use solely in the transport of air cargo that has a maximum certificated takeoff weight of at least 12,500 pounds. For purposes of this subdivision, the term "domestic air carrier" is limited to entities engaged in the commercial transport for hire of cargo or entities engaged in the commercial transport of passengers as a business activity.

(y) The storage, use, or consumption by a domestic air carrier of an aircraft purchased after June 30, 1994 that is used solely in the regularly scheduled transport of passengers. For purposes of this subdivision, the term "domestic air carrier" is limited to entities engaged in the commercial transport for hire of cargo or entities engaged in the commercial transport of passengers as a business activity.

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(z) The storage, use, or consumption by a domestic air carrier of an aircraft, other than an aircraft described under subdivision (y), purchased after December 31, 1994, that has a maximum certificated takeoff weight of at least 12,500 pounds and that is designed to have a maximum passenger seating configuration of more than 30 seats and used solely in the transport of passengers. For purposes of this subdivision, the term "domestic air carrier" is limited to entities engaged in the commercial transport for hire of cargo or entities engaged in the commercial transport of passengers as a business activity.

(aa) Property or services sold to a health, welfare, educational, cultural arts, charitable, or benevolent organization not operated for profit that has been issued before June 13, 1994 an exemption ruling letter to purchase items exempt from tax signed by the administrator of the sales, use, and withholding taxes division of the department. The department shall reissue an exemption letter to each of those organizations after June 13, 1994 that shall remain in effect unless the organization fails to meet the requirements that originally entitled it to this exemption; or to an organization not operated for profit and exempt from federal income tax under section 501(c)(3) or 501(c)(4) of the internal revenue code of 1986, 26 U.S.C. 501. The exemption does not apply to sales of tangible personal property and sales of vehicles licensed for use on public highways, that are not used primarily to carry out the purposes of the organization as stated in the bylaws or articles of incorporation of the exempt organization.

(bb) The use or consumption of services described in section 3a(a) or (c) by means of a prepaid telephone calling card, a prepaid authorization number for telephone use, or a charge for internet access.

(cc) The purchase, lease, use, or consumption of the following by an industrial laundry after December 31, 1997:

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

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

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

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

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

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

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

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5053 of the 89th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved December 29, 1998.

Filed with Secretary of State December 30, 1998.

Compiler's note: House Bill No. 5053, referred to in enacting section 1, was filed with the Secretary of State December 30, 1998, and became P.A. 1998, No. 451, Imd. Eff. Dec. 30, 1998.