

HOUSE BILL No. 5495

February 14, 1990, Introduced by Reps. Hood, O'Neill, Bennane, Wallace, DeMars, Murphy, Hollister, Watkins, Kilpatrick, Saunders, Maynard, Bartnik, Hunter, Leland, Harrison, Stallworth, Keith and Hertel and referred to the Committee on Taxation.

A bill to permit the imposition, revival, and continued collection by cities of a population of 1,000,000 or more of a utility users tax; to provide the procedure for, and to require the adoption of a prescribed uniform city utility users tax ordinance by cities desiring to impose and collect such a tax; to limit the rate of such tax; to prescribe the powers and duties of the state commissioner of revenue; and to provide for appeals.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 1

CITY UTILITY USERS TAX

Sec. 1. This act shall be known and may be cited as the "city utility users tax act".

Sec. 2. (1) The governing body of a city having a population of 1,000,000 or more, by a lawfully adopted ordinance which incorporates by reference the uniform city utility users

1 tax ordinance set forth in chapter 2, may levy, assess, and
2 collect from those users in that city a utility users tax as pro-
3 vided in the ordinance. However, a uniform city utility users
4 tax ordinance containing substantially the same provisions pro-
5 vided for in chapter 2 adopted by the governing body of a city
6 before the effective date of this act that has not been rescinded
7 by that governing body is considered an ordinance adopted under
8 this act and a tax imposed and collected under that ordinance is
9 revived. The governing body shall set the rate of tax in incre-
10 ments of 1/4 of 1% which shall not exceed 5%.

11 (2) A uniform city utility users tax ordinance may be law-
12 fully adopted or rescinded by the governing body at any time and
13 its adoption shall become effective on the first day of any
14 month, following adoption of the ordinance, as specified in the
15 ordinance. The ordinance may thereafter be rescinded at any time
16 by the governing body in the same manner in which the ordinance
17 was adopted and with appropriate enforcement, collection, and
18 refund provisions with respect to liabilities incurred before the
19 effective date of its rescission. The ordinance shall not be
20 amended except as provided by the legislature. A village and a
21 city under 1,000,000 population shall not impose and collect a
22 utility users tax. A city which adopts or rescinds the tax shall
23 notify within 7 days by certified mail all public utilities or
24 resale customers affected by the action of the governing body.
25 Except as otherwise provided in this section, a city now having
26 or which may hereafter attain a population of 1,000,000 or more
27 may not impose a utility users tax except by adopting the entire

1 uniform city utility users tax ordinance as set forth in chapter
2 2.

3 (3) The administrator, as defined by chapter 2, of the tax
4 shall file a report indicating the total amount of revenue col-
5 lected in the prior fiscal year with the state revenue commis-
6 sioner by August 1 of each year, beginning on August 1, 1985.
7 The administrator shall make the report available to the public
8 at the same time.

9 (4) The first \$45,000,000.00 of revenue generated from this
10 tax shall be used exclusively to retain or hire police officers.

11 (5) If the amount of revenue collected in a fiscal year is
12 in excess of \$45,000,000.00 and if the amount of excess funds
13 collected equals or exceeds 5% of \$45,000,000.00, the city shall
14 comply with 1 of the following:

15 (a) The rate of tax imposed for the following fiscal year
16 shall be lowered in decrements of $1/4$ of 1% for each full 5% col-
17 lected in excess of \$45,000,000.00. By August 1 of a fiscal year
18 following a fiscal year in which the amount of revenue collected
19 was in excess of \$45,000,000.00, the city shall notify by certi-
20 fied mail each collector of the tax subject to this act and the
21 state revenue commissioner of the rate of tax to be applied. The
22 rate shall become effective for bills issued beginning October 1
23 of a fiscal year following a fiscal year in which the amount of
24 revenue collected was in excess of \$45,000,000.00. If the tax
25 expires, an adjustment shall not be made for an excess or defi-
26 ciency in collections for a fiscal year or other period not
27 already adjusted pursuant to this section.

1 (b) The amount collected in excess of \$45,000,000.00 shall
2 be dedicated and used exclusively to hire and retain additional
3 police officers over the level of police officers employed on
4 November 1, 1984. The hiring and retaining of additional police
5 shall be limited to police officers, investigators, and police
6 sergeants. The governing body or any other official of the city
7 shall not intentionally lay off any police officers in anticipa-
8 tion of rehiring the officers with the additional revenue from
9 this tax nor shall the general fund contribution towards the
10 police budget be reduced from the prior year.

11 (6) If a city fails to comply with subsection (5) by
12 August 1 in any fiscal year following a fiscal year in which the
13 amount of revenue is in excess of \$45,000,000.00, the state reve-
14 nue commissioner shall implement the provisions of
15 subsection (5)(a).

16 Sec. 3. The state commissioner of revenue shall publish
17 uniform rules in accordance with and subject to Act No. 306 of
18 the Public Acts of 1969, being sections 24.201 to 24.328 of the
19 Michigan Compiled Laws, governing the form and manner of appeal
20 from a final determination by a city affecting a utility, resale
21 customer, utility user, or other person and purporting to be made
22 under or in administration of the uniform city utility users tax
23 ordinance. The rules shall provide for at least 30 days after
24 notice of a final assessment, denial of claim for refund, or spe-
25 cial ruling in which the appeal may be filed. They shall provide
26 to the utility, resale customer, utility user, or other person or
27 his or her duly authorized representative and to the city an

1 opportunity to present evidence and argument and to examine
2 witnesses relating to the matter under appeal. Promptly after
3 completion of the hearing, the commissioner shall affirm, reverse
4 or modify by written order the action of the city which is the
5 subject matter of the appeal, and shall furnish a copy of his or
6 her order and opinion thereon to the utility, resale customer,
7 utility user, or other person and to the duly authorized official
8 of the city.

9 Sec. 4. (1) The parties, within 30 days after receipt of
10 the order of the state commissioner of revenue, shall fully
11 comply with all directions and requirements of the order unless
12 theretofore excused therefrom during or as a result of a final
13 determination pursuant to an appeal from the order of the commis-
14 sioner as hereinafter provided. If the utility, resale customer,
15 utility user, or other person or the city is aggrieved by any
16 such order of the commissioner, he or she may appeal within 90
17 days after receipt of notice of the order to the circuit court
18 for the county in which the taxing jurisdiction is located.

19 (2) If a utility, resale customer, utility user, or other
20 person, as the result of an appeal, is found entitled to recover
21 any sums paid, they shall be paid from the general fund of the
22 city. The city shall promptly and uniformly comply with a final
23 order upon appeal hereunder affecting the interpretation, admin-
24 istration, or application of the ordinance.

25 Sec. 5. The uniform city utility users tax ordinance does
26 not apply to a person or corporation as to whom or which it is

1 beyond the power of the city to impose the tax therein provided
2 for.

3 Sec. 6. The uniform city utility users tax ordinance is as
4 set forth in chapter 2.

5 Sec. 7. This act shall be applied retroactively beginning
6 July 1, 1988. All actions and proceedings taken by a city rela-
7 tive to the imposition, collection, and enforcement of a city
8 utility users tax before the effective date of this act are vali-
9 dated and ratified.

10 Sec. 8. This act is intended to eliminate the confusion
11 surrounding the legal status of Act No. 198 of the Public Acts of
12 1970 resulting from an opinion of the attorney general regarding
13 the validity of enactment of various public acts, OAG, 1987-1988,
14 No 6438, p 80 (May 21, 1987) and a circuit court decision in the
15 matter of Ace Tex Corp v Detroit rendered on February 2, 1990
16 (Wayne County Circuit Court Case No. 88-807858-CZ), as to which
17 an appeal is pending, and to resolve legislatively the issues
18 raised by the appeal. Before that circuit court decision, the
19 legislature had been advised by the attorney general's office in
20 May 1987 that legislative action was not necessary to authorize
21 the collection of the city utility users tax after July 1, 1988
22 under Act No. 198 of the Public Acts of 1970. In light of the
23 circuit court decision of February 2, 1990, which is presently on
24 appeal, it appears that legislative action is advisable to clar-
25 ify the authorization for and to ratify the collection of the tax
26 from July 1, 1988, to authorize the continued collection of the
27 tax, and to resolve legislatively the issues raised by appeal.

1 The legislature by enactment of this act intends to validate,
2 ratify, and revive effective from July 1, 1988 a city utility
3 users tax. This act is remedial and curative and is intended to
4 revive and assure an uninterrupted continuation of the authority
5 to collect a city utility users tax. The legislature finds the
6 city utility users tax was authorized by law on the date when
7 section 31 of article IX of the state constitution of 1963 was
8 ratified.

9 CHAPTER 2

10 UNIFORM CITY UTILITY USERS TAX ORDINANCE

11 Sec. 1. This ordinance shall be known and may be cited as
12 the "uniform city utility users tax ordinance".

13 Sec. 2. For the purposes of this ordinance:

14 (1) The words, terms and phrases set forth below and their
15 derivations have the meanings given therein. When not inconsis-
16 tent with the context, words used in the present tense include
17 the future, words in the plural number include the singular
18 number, and in the singular number include the plural. "Shall"
19 is always mandatory and not merely directory. "May" is always
20 directory.

21 (2) "Administrator" means the official designated by the
22 city to administer the provisions of this ordinance.

23 (3) "Billed or ordinarily billable to locations within the
24 taxing city" means the location of the premises of the user for
25 the usage of the public utility services.

26 (4) "Month" means a calendar month.

1 (5) "Person" means a natural person, partnership, fiduciary,
2 association, corporation, or other entity. When used in any
3 provision imposing a criminal penalty, "person" as applied to an
4 association means the parties or members thereof, and as applied
5 to a corporation, the officers thereof.

6 (6) "Public utility services" means the providing, perform-
7 ing or rendering of public service of a telephone, electric,
8 steam, or gas nature, the rates or other charges for which are
9 subjected to regulation by state public utility regulatory
10 bodies, federal public utility or regulatory bodies or both, or
11 the rendering of public service of an electric or gas nature by a
12 government owned facility.

13 (7) "Public utility" means a person who provides public
14 utility services.

15 (8) "Resale customer" means a person that purchases utility
16 services or property from a public utility for resale to a util-
17 ity user.

18 (9) "Utility user" or "user" means a person required to pay
19 a tax imposed under the provisions of this ordinance.

20 Sec. 3. Subject to the exclusions, adjustments, and exemp-
21 tions herein provided, a city utility users tax at the rate of
22% for general revenue purposes is hereby imposed on and
23 shall be paid by the utility user. This tax shall be measured by
24 the amounts paid, not including any existing or hereafter enacted
25 taxes (including, but not limited to federal, state, city, and
26 other local taxes, directly added to or directly passed on in the
27 users' billing) paid by users for the public utility services as

1 hereinafter provided, billed or ordinarily billable to locations
2 within the taxing city:

3 (a) The tax shall be imposed on all intrastate telephone
4 communication services, furnished by a public utility. The term
5 "intrastate telephone communication services" shall not include
6 any telephone service originating or terminating outside
7 Michigan, telephone services by coin-operated installations,
8 directory advertising proceeds, telephone services not taxable
9 under section 4251 of Title 26 of the United States Code as of
10 December 31, 1969, as amended, centrex and multi-line key switch-
11 ing systems, mobile telephone service, and any types of services
12 or equipment, furnished by telephone companies subject to public
13 utility regulation, during any period in which such services or
14 equipment are in competition with services or equipment furnished
15 by or available from persons other than telephone companies
16 subject to public utility regulation.

17 (b) The tax shall be on all electrical energy and steam pro-
18 vided by a public utility or a resale customer. The term
19 "electrical energy and steam provided" shall include amounts paid
20 for metered energy and steam, and minimum charges for service,
21 including user charges, service charges, demand charges, standby
22 charges, and annual and monthly charges. The term shall not
23 include electrical energy or steam sold to or exchanged with for
24 resale by, another public utility, or used or consumed in the
25 conduct of the business of an electric or steam public utility or
26 a combination gas and electric utility.

1 (c) The tax shall be on all gas, natural or artificial
2 provided by a public utility or a resale customer. The term
3 "gas, natural or artificial provided" shall not include any gas
4 sold for use in the generation of electrical energy by a public
5 utility, any gas sold to or exchanged with for resale by, another
6 gas public utility, or any gas used or consumed in the conduct of
7 the business of a gas public utility or a combination gas and
8 electric utility.

9 Sec. 4. (1) The taxes imposed under this ordinance shall
10 be billed by the public utility or resale customer as provided in
11 section 3 herein, and they may imprint upon the face of the bill
12 the amount of the tax and the name of the taxing city, commencing
13 with the first regular billing period applicable to that person
14 which starts on or after the date this ordinance is made opera-
15 tive for the taxing city, and shall be paid by the user along
16 with the amounts billed for public utility services furnished.

17 (2) Any tax required to be paid by a user under this ordi-
18 nance shall be deemed a debt owed by the user to the taxing city,
19 and deemed delinquent from the time due until paid.

20 (3) Subject to extensions which may be granted for good
21 cause shown, and to a utility collection fee of 1% of the tax
22 amounts involved, all tax amounts under this ordinance billed by
23 the public utility or resale customer in a given month shall be
24 remitted to the taxing city on or before the last day of the fol-
25 lowing month, along with a return in such form as may be pre-
26 scribed by the taxing city, showing such information as may be
27 necessary for the proper administration of this ordinance

1 provided that tax amounts based on billings shall be subject to
2 adjustment for tax moneys not actually collected by the public
3 utility or resale customer. Any such tax amounts not so remitted
4 shall be deemed delinquent. An annual return for each year shall
5 be filed by the public utility and resale customer on or before
6 the end of the fourth month following the end of the tax year.

7 Sec. 5. (1) The administrator may adopt, amend and repeal
8 rules relating to the administration and enforcement of this
9 ordinance, but not in conflict with the ordinance, subject to the
10 approval of the city governing body. The rules, amendments and
11 repeals, after approval by the city governing body, shall become
12 effective upon being published in the official newspaper of the
13 city.

14 (2) The administrator shall enforce this ordinance and the
15 rules. The administrator shall prepare, adopt and make available
16 to taxpayers and other persons all forms necessary for compliance
17 with this ordinance.

18 (3) The city treasurer shall collect all taxes and payments
19 due under this ordinance and deposit them in a designated city
20 depository.

21 (4) A taxpayer, public utility, or resale customer desiring
22 a special ruling on a matter pertaining to this ordinance or
23 rules shall submit in writing to the administrator all the facts
24 involved and the ruling sought. A taxpayer, public utility, or
25 resale customer, aggrieved by a special ruling may appeal as pro-
26 vided in section 14.

1 (5) The administrator or his or her duly authorized agent
2 may examine the books, papers and records of any person, public,
3 utility, resale customer, taxpayer or his or her agent or repre-
4 sentative, for the purpose of verifying the accuracy and com-
5 pleteness of a return filed, or, if no return was filed, to
6 ascertain the tax, penalties or interest due under this
7 ordinance.

8 Sec. 6. (1) Information gained by the administrator, or
9 any other city official, agent, or employee as a result of a
10 return, investigation, hearing or verification required or autho-
11 rized by this ordinance is confidential, except for official pur-
12 poses in connection with the administration of the ordinance and
13 except in accordance with a proper judicial order.

14 (2) Any person who divulges this confidential information,
15 except for official purposes, is guilty of a violation of this
16 ordinance and subject to a fine not exceeding \$500.00 or impris-
17 onment for a period not exceeding 90 days, or both, for each
18 offense. In addition, an employee of the city who divulges this
19 confidential information is subject to discharge for misconduct.

20 Sec. 7. (1) A person shall furnish, within 10 days follow-
21 ing a request of the administrator or his or her duly authorized
22 agent, the means, facilities, and opportunity for making such
23 reasonable examinations and investigations as are authorized by
24 this ordinance, and shall present himself or herself for examina-
25 tion under oath when so ordered by the administrator. The
26 request or order of the administrator or his or her duly

1 authorized agent may be made verbally unless the person requests
2 that the request or order be addressed to him or her in writing.
3 (2) Refusal by any person to submit to such examination or
4 investigation, when requested or ordered by the administrator, is
5 a violation of this ordinance, punishable by such penalties as
6 are provided in the ordinance.

7 Sec. 8. (1) All delinquent tax amounts shall be subject to
8 interest from the due date at the rate of $1/2$ of 1% per month or
9 fraction thereof until paid.

10 (2) A user failing to pay the tax, or any public utility or
11 resale customer failing to remit moneys billed and due the city,
12 when due, or file a return when due, is liable, in addition to
13 the interest, to a penalty of 1% of the amount of the unpaid tax,
14 or moneys unremitted, for each month or fraction thereof, not to
15 exceed a total penalty of 25% of the unpaid tax. The administra-
16 tor may abate the penalty or a part thereof for just cause. If
17 the total interest or interest and penalty to be assessed is less
18 than \$2.00, the administrator, in lieu thereof, may assess a pen-
19 alty in the amount of \$2.00. Interest, interest and penalty, or
20 the minimum charge shall be computed separately for each month or
21 billing period.

22 (3) Interest and penalties applicable to users shall not be
23 subject to public utility or resale customer billing procedures
24 but shall be recovered only by the taxing city directly from
25 users.

26 Sec. 9. (1) If the administrator determines that a user
27 has failed to pay the full amount of the tax due under this

1 ordinance, the administrator may, or if he or she determines that
2 a public utility or resale customer has failed to remit the
3 amount of tax moneys received from users, and due the city, the
4 administrator shall issue a proposed assessment showing the
5 amount due and unpaid, together with interest and penalties that
6 may have accrued thereon. The proposed assessment shall be
7 served upon the user, public utility, or resale customer in
8 person, or by mailing by registered or certified mail to his or
9 her last known address. Proof of mailing the proposed assessment
10 is prima facie evidence of a receipt thereof by the addressee.

11 (2) A user, public utility, or resale customer has 30 days
12 after receipt of a proposed assessment within which to file a
13 written protest with the administrator, who shall then give the
14 user, public utility, or resale customer or his or her duly
15 authorized representative an opportunity to be heard and present
16 evidence and arguments in his or her behalf.

17 Sec. 10. (1) After the hearing the administrator shall
18 issue a final assessment setting forth the total amount found due
19 in the proposed assessment and any adjustment he or she may have
20 made as a result of the protest. The final assessment shall be
21 served in the same manner as a proposed assessment. Proof of
22 mailing of the final assessment is prima facie evidence of a
23 receipt thereof by the addressee.

24 (2) If a protest is not filed in respect to a proposed
25 assessment, a user, public utility, or resale customer is deemed
26 to have received a final assessment 30 days after receipt of the
27 proposed assessment.

1 Sec. 11. If the public utility or resale customer
2 determines and reports to the administrator that a utility user
3 has refused to pay the tax due, the public utility or resale cus-
4 tomer is relieved of the obligation to rebill the tax amount
5 involved. In this event the administrator may, but is not
6 required to, issue a proposed assessment or a final assessment
7 against the user. The administrator may issue a 10-day demand
8 for payment and if no payment or satisfactory evidence of payment
9 is made in the 10 days he or she may thereafter recover the tax
10 with interest and penalties thereon in the name of the city in
11 any court of record as other debts are recoverable, or prosecute
12 for violation of this ordinance under section 17, or both.

13 Sec. 12. Except in case of fraud, failure to file a
14 return, or omission of substantial portions of tax due on a
15 return, an additional assessment shall not be made after 3 years
16 from the date the return was due, including extensions thereof,
17 or the tax was paid, whichever is later.

18 Sec. 13. (1) Except as otherwise provided in this ordi-
19 nance, a tax erroneously paid shall not be refunded unless a
20 claim for refund is made within 3 years from the date the payment
21 was made to the city or the annual return was due, including
22 extensions thereof, whichever is later. Upon denial of a refund,
23 a taxpayer may follow the procedure for appeal as provided in
24 section 14.

25 (2) A tax deficiency as finally determined and interest or
26 penalties thereon shall be paid within 30 days after receipt of a
27 final assessment where no appeal is made.

1 Sec. 14. Any person aggrieved by a rule adopted by the
2 administrator, denial in whole or in part of a claim for refund,
3 or a special ruling, may file a timely appeal therefrom to the
4 state commissioner of revenue in such form and manner as the com-
5 missioner shall prescribe. Within 30 days after a final order of
6 the commissioner upon the appeal, such person shall pay the city
7 the taxes, interest, and penalty found due to the city, and the
8 city shall refund any amount found to have been overpaid.

9 Sec. 15. If a taxpayer, public utility, resale customer,
10 person, or city is aggrieved by a decision of the state commis-
11 sioner of revenue, the aggrieved party may bring an action within
12 90 days in the circuit court for the county in which the taxing
13 jurisdiction is located to obtain a judicial determination of the
14 matter.

15 Sec. 16. If a person is found entitled by a decision on an
16 appeal to recover any sum paid and no further appeal has been
17 taken within the time limited, the sum shall be paid from the
18 general fund of the city.

19 Sec. 17. Each of the following violations of this ordi-
20 nance is punishable, in addition to the interest and penalties
21 provided under the ordinance, by a fine not exceeding \$500.00, or
22 imprisonment for a period not exceeding 90 days or both:

23 (a) Refusal or willful failure or neglect to file a return
24 required by the ordinance.

25 (b) Refusal or willful failure or neglect to pay the tax,
26 penalty, or interest imposed by the ordinance.

1 (c) Willful failure of a public utility or resale customer
2 to remit to the city tax moneys received as required by the
3 ordinance.

4 (d) Refusal to permit the city or an agent or employee
5 appointed by the administrator in writing to examine the books,
6 records, and papers of a person subject to the ordinance.

7 (e) Knowingly filing an incomplete, false, or fraudulent
8 return or other tax document.