

HOUSE BILL NO. 4940

May 27, 2021, Introduced by Reps. Tate, Slagh, Kahle, Borton, O'Malley, Allor, Markkanen, Peterson, Hall, Filler, Thanedar, Sabo, Liberati, Aiyash, Young, Outman, Bezotte, Steckloff, Bollin, Sneller, Brenda Carter, Paquette, Wozniak, Cambensy, Damoose and Yancey and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending sections 2 and 21 (MCL 205.92 and 205.111), section 2
as amended by 2018 PA 1 and section 21 as amended by 2020 PA 30.

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

1 profit, company, limited liability company, estate, trust,
2 receiver, trustee, syndicate, the United States, this state,
3 county, or any other group or combination acting as a unit, and the
4 plural as well as the singular number, unless the intention to give
5 a more limited meaning is disclosed by the context.

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

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

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

1 (e) "Purchase" means to acquire for a consideration, whether
2 the acquisition is effected by a transfer of title, of possession,
3 or of both, or a license to use or consume; whether the transfer is
4 absolute or conditional, and by whatever means the transfer is
5 effected; and whether consideration is a price or rental in money,
6 or by way of exchange or barter. Purchase includes converting
7 tangible personal property acquired for a use exempt from the tax
8 levied under this act to a use not exempt from the tax levied under
9 this act.

10 (f) "Purchase price" or "price" means the total amount of
11 consideration paid by the consumer to the seller, including cash,
12 credit, property, and services, for which tangible personal
13 property or services are sold, leased, or rented, valued in money,
14 whether received in money or otherwise, and applies to the measure
15 subject to use tax. Purchase price includes the following
16 subparagraphs (i) ~~through~~ to (vii) and excludes subparagraphs (viii)
17 ~~through (xiv) :~~ to (xv) :

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

19 (ii) Cost of materials used, labor or service cost, interest,
20 losses, costs of transportation to the seller, taxes imposed on the
21 seller other than taxes imposed by this act, and any other expense
22 of the seller.

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

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

29 (B) Labor or service charges involved in maintenance and

1 repair work on tangible personal property of others if separately
2 itemized.

3 (iv) Delivery charges incurred or to be incurred before the
4 completion of the transfer of ownership of tangible personal
5 property subject to the tax levied under this act from the seller
6 to the purchaser.

7 (v) Installation charges incurred or to be incurred before the
8 completion of the transfer of ownership of tangible personal
9 property from the seller to the purchaser.

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

12 (vii) Except as otherwise provided in subparagraph (x) **or** (xv),
13 consideration received by the seller from third parties if all of
14 the following conditions are met:

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

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

20 (C) The amount of the consideration attributable to the sale
21 is fixed and determinable by the seller at the time of the sale of
22 the item to the purchaser.

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

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

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

6 (III) The price reduction or discount is identified as a third
7 party price reduction or discount on the invoice received by the
8 purchaser or on a coupon, certificate, or other documentation
9 presented by the purchaser.

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

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

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

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

26 (xii) Beginning December 15, 2013, credit for the agreed-upon
27 value of a motor vehicle or recreational vehicle used as part
28 payment of the purchase price of a new motor vehicle or used motor
29 vehicle or recreational vehicle purchased from a dealer if the

1 agreed-upon value is separately stated on the invoice, bill of
 2 sale, or similar document given to the purchaser. This subparagraph
 3 does not apply to leases or rentals. Except as otherwise provided
 4 under subparagraph (xiv), for purposes of this subparagraph, the
 5 agreed-upon value of a motor vehicle or recreational vehicle used
 6 as part payment ~~shall be~~ **is** limited as follows:

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

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

9 (I) \$2,000.00.

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

12 (B) Beginning January 1, 2015 and each January 1 thereafter
 13 through December 31, 2018, the amount under sub-subparagraph (A) (I)
 14 ~~shall be~~ **is** increased by an additional \$500.00 each year.

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

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

17 (I) \$5,000.00.

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

20 (D) Beginning January 1, 2020 and each January 1 thereafter,
 21 the amount under sub-subparagraph (C) (I) ~~shall be~~ **is** increased by
 22 an additional \$1,000.00 each year.

23 (E) Beginning on January 1, in the year in which the amount
 24 under sub-subparagraph (C) (I) exceeds \$14,000.00 and each January 1
 25 thereafter, there ~~shall be~~ **is** no limitation on the agreed-upon
 26 value of the motor vehicle used as part payment.

27 (xiii) Beginning January 1, 2017, credit for the core charge
 28 attributable to a recycling fee, deposit, or disposal fee for a
 29 motor vehicle or recreational vehicle part or battery if the

1 recycling fee, deposit, or disposal fee is separately stated on the
2 invoice, bill of sale, or similar document given to the purchaser.

3 (xiv) Beginning January 1, 2018, credit for the agreed-upon
4 value of a recreational vehicle used as part payment of the
5 purchase price of a recreational vehicle purchased from a dealer if
6 the agreed-upon value is separately stated on the invoice, bill of
7 sale, or similar document given to the purchaser. This subparagraph
8 does not apply to leases or rentals.

9 (xv) **Beginning on January 1, 2022, manufacturer rebates on**
10 **motor vehicles.**

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

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

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

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

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

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

29 (k) "Tangible personal property" means personal property that

1 can be seen, weighed, measured, felt, or touched or that is in any
2 other manner perceptible to the senses and includes electricity,
3 water, gas, steam, and prewritten computer software.

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

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

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

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

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

23 (q) "Convert" means putting a service or tangible personal
24 property acquired for a use exempt from the tax levied under this
25 act at the time of acquisition to a use that is not exempt from the
26 tax levied under this act, whether the use is in whole or in part,
27 or permanent or not permanent. A motor vehicle purchased for resale
28 by a new vehicle dealer licensed under section 248(8)(a) of the
29 Michigan vehicle code, 1949 PA 300, MCL 257.248, and not titled in

1 the name of the dealer ~~shall is~~ not be considered to be converted
2 ~~prior to~~ **before** sale or lease by that dealer.

3 (r) "New motor vehicle" means that term as defined in section
4 33a of the Michigan vehicle code, 1949 PA 300, MCL 257.33a.

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

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

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

12 Sec. 21. (1) Except as **otherwise** provided in ~~subsections (2),~~
13 ~~(3), (4), and (5),~~ **this section**, all money received and collected
14 under this act must be deposited by the department of treasury in
15 the state treasury to the credit of the general fund, to be
16 disbursed only by appropriations by the legislature.

17 (2) The collections from the use tax imposed at the additional
18 rate of 2% approved by the electors on March 15, 1994 must be
19 deposited in the state school aid fund. ~~established in section 11~~
20 ~~of article IX of the state constitution of 1963.~~

21 (3) ~~From~~ **In addition to the money deposited in the state**
22 **school aid fund under subsection (2), from** the money received and
23 collected under this act for the state share, an amount equal to
24 ~~all the sum of the following, as determined by the department, must~~
25 **be deposited into the state school aid fund:**

26 (a) **All** revenue lost under the state education tax act, 1993
27 PA 331, MCL 211.901 to 211.906, ~~all as a result of the exemption of~~
28 **personal property under sections 9m, 9n, and 9o of the general**
29 **property tax act, 1893 PA 206, MCL 211.9m, 211.9n, and 211.9o.**

1 **(b) All** revenue lost from basic school operating mills as a
 2 result of the exemption of personal property under sections 9m, 9n,
 3 and 9o of the general property tax act, 1893 PA 206, MCL 211.9m,
 4 211.9n, and 211.9o. ~~and all~~

5 **(c) All** revenue lost to the school aid fund as a result of the
 6 exemption under section 4cc. ~~as determined by the department,~~
 7 ~~must be deposited into the state school aid fund established by~~
 8 ~~section 11 of article IX of the state constitution of 1963. Funds~~
 9 ~~deposited into the state school aid fund under this subsection must~~
 10 ~~not include the portion of the state share of the use tax imposed~~
 11 ~~at the additional rate of 2% approved by the electors of this state~~
 12 ~~on March 15, 1994 and dedicated for aid to schools under subsection~~
 13 ~~(2).~~ A person that claims an exemption under section 4cc shall
 14 report the purchase price of the data center equipment as defined
 15 in section 4cc and any other information necessary to determine the
 16 amount of revenue lost to the school aid fund as a result of the
 17 exemption under section 4cc annually on a form at the time and in a
 18 manner prescribed by the department. The

19 **(d) All revenue lost to the state school aid fund as a result**
 20 **of the exclusion under section 2(f)(xv).** A person that excludes a
 21 manufacturer rebate from the purchase price of a motor vehicle
 22 under section 2(f)(xv) for purposes of calculating the tax due under
 23 this act shall report the amount of the manufacturer rebate and any
 24 other information necessary to determine the amount of revenue lost
 25 to the school aid fund as a result of the exclusion under section
 26 2(f)(xv) on a form at the time and in a manner prescribed by the
 27 department.

28 **(4) A** report required under ~~this subsection shall~~ **(3) must** not
 29 include any remittance for tax and does not constitute a return or

1 otherwise alleviate the person's obligations under section 6.

2 **(5)** ~~(4)~~—Money received and collected under this act for the
3 local community stabilization share is not state funds, must not be
4 credited to the state treasury, and must be transmitted to the
5 authority for deposit in the treasury of the authority, to be
6 disbursed by the authority only as authorized under the local
7 community stabilization authority act, 2014 PA 86, MCL 123.1341 to
8 123.1362. The local community stabilization share is a local tax,
9 not a state tax, and money received and collected for the local
10 community stabilization share is money of the authority and not
11 money of this state.

12 **(6)** ~~(5)~~—Beginning October 1, 2016 and the first day of each
13 calendar quarter thereafter, from the money received and collected
14 under this act for the state share, an amount equal to the
15 collections for the calendar quarter that is 2 calendar quarters
16 immediately preceding the current calendar quarter of the tax
17 imposed under this act at the additional rate of 2% approved by the
18 electors on March 15, 1994 from the use, storage, or consumption of
19 aviation fuel must be distributed as follows:

20 (a) An amount equal to 35% of the collections of the tax
21 imposed at a rate of 2% on the use, storage, or consumption of
22 aviation fuel must be deposited in the state aeronautics fund and
23 must be expended, on appropriation, only for those purposes
24 authorized in the aeronautics code of the state of Michigan, 1945
25 PA 327, MCL 259.1 to 259.208.

26 (b) An amount equal to 65% of the collections of the tax
27 imposed at a rate of 2% on the use, storage, or consumption of
28 aviation fuel must be deposited in the qualified airport fund and
29 must be expended, on appropriation, only for those purposes

1 authorized under section 35 of the aeronautics code of the state of
2 Michigan, 1945 PA 327, MCL 259.35.

3 (7) ~~(6)~~—The department shall, on an annual basis, reconcile
4 the amounts distributed under subsection ~~(5)~~—(6) during each fiscal
5 year with the amounts actually collected for a particular fiscal
6 year and shall make any necessary adjustments, positive or
7 negative, to the amounts to be distributed for the next successive
8 calendar quarter that begins January 1. The state treasurer or his
9 or her designee shall annually provide to the operator of each
10 qualified airport a report of the reconciliation performed under
11 this subsection. The reconciliation report is subject to the
12 confidentiality restrictions and penalties provided in section
13 28(1)(f) of 1941 PA 122, MCL 205.28.

14 (8) ~~(7)~~—As used in this section:

15 (a) "Aviation fuel" means fuel as that term is defined in
16 section 4 of the aeronautics code of the state of Michigan, 1945 PA
17 327, MCL 259.4.

18 (b) "Qualified airport" means that term as defined in section
19 109 of the aeronautics code of the state of Michigan, 1945 PA 327,
20 MCL 259.109.

21 (c) "Qualified airport fund" means the qualified airport fund
22 created in section 34(2) of the aeronautics code of the state of
23 Michigan, 1945 PA 327, MCL 259.34.

24 (d) "State aeronautics fund" means the state aeronautics fund
25 created in section 34(1) of the aeronautics code of the state of
26 Michigan, 1945 PA 327, MCL 259.34.

27 (e) **"State school aid fund" means the state school aid fund**
28 **established in section 11 of article IX of the state constitution**
29 **of 1963.**