

HOUSE SUBSTITUTE FOR SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4564

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 4 (MCL 205.94), as amended by 2017 PA 218.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 (a) Property sold in this state on which transaction a tax is
4 paid under the general sales tax act, 1933 PA 167, MCL 205.51 to
5 205.78, if the tax was due and paid on the retail sale to a
6 consumer.

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

10 (c) All of the following:

1 (i) Property purchased for resale. Property purchased for
2 resale includes promotional merchandise transferred pursuant to a
3 redemption offer to a person located outside this state or any
4 packaging material, other than promotional merchandise, acquired
5 for use in fulfilling a redemption offer or rebate to a person
6 located outside this state.

7 (ii) Property purchased for lending or leasing to a public or
8 parochial school offering a course in automobile driving except
9 that a vehicle purchased by the school shall be certified for
10 driving education and shall not be reassigned for personal use by
11 the school's administrative personnel.

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

20 (A) 0 to 25, 2 units.

21 (B) 26 to 100, 7 units.

22 (C) 101 to 500, 20 units.

23 (D) 501 or more, 25 units.

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

27 (d) Property that is brought into this state by a nonresident

1 person for storage, use, or consumption while temporarily within
2 this state, except if the property is used in this state in a
3 nontransitory business activity for a period exceeding 15 days.

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

17 (f) ~~Property~~ **EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTION**
18 **(3), PROPERTY** sold to a person engaged in a business enterprise ~~and~~
19 ~~using and consuming~~ **THAT USES OR CONSUMES** the property, ~~in the~~
20 ~~tilling, planting, draining, caring for, or harvesting of the~~
21 ~~things of the soil, in the breeding, raising, or caring for~~
22 ~~livestock, poultry, or horticultural products, including transfers~~
23 ~~of livestock, poultry, or horticultural products for further~~
24 ~~growth, or in the direct gathering of fish, by net, by line, or~~
25 ~~otherwise only by an owner-operator of the business enterprise, not~~
26 ~~including a charter fishing business enterprise. This exemption~~
27 ~~includes machinery that is capable of simultaneously harvesting~~

~~1 grain or other crops and biomass and machinery used for the purpose
2 of harvesting biomass. This exemption includes agricultural land
3 tile, which means fired clay or perforated plastic tubing used as
4 part of a subsurface drainage system for land, and subsurface
5 irrigation pipe, if the land tile or irrigation pipe is used in the
6 production of agricultural products as a business enterprise. This
7 exemption includes a portable grain bin, which means a structure
8 that is used or is to be used to shelter grain and that is designed
9 to be disassembled without significant damage to its component
10 parts. This exemption includes grain drying equipment and the fuel
11 or energy source that powers that equipment for agricultural
12 purposes. This exemption also includes tangible personal property
13 affixed to or to be affixed to and directly used in the operation
14 of either a portable grain bin or grain drying equipment. This
15 exemption also includes the sale or acquisition of agricultural
16 land tile, portable grain bins, and grain drying equipment
17 purchased or acquired by a person in the business of constructing,
18 altering, repairing, or improving real estate for others to the
19 extent that it is affixed to or made a structural part of real
20 estate used for a purpose exempt under this subsection. This
21 exemption does not include transfers of food, fuel, clothing, or
22 similar tangible personal property for personal living or human
23 consumption. Except for agricultural land tile, subsurface
24 irrigation pipe, portable grain bins, and grain drying equipment,
25 this exemption does not include tangible personal property
26 permanently affixed to and becoming a structural part of real
27 estate. As used in this subdivision, "biomass" means crop residue~~

1 ~~used to produce energy or agricultural crops grown specifically for~~
2 ~~the production of energy.~~ **DIRECTLY OR INDIRECTLY, FOR EITHER THE**
3 **TILLING, PLANTING, DRAINING, CARING FOR, MAINTAINING, OR HARVESTING**
4 **OF THINGS OF THE SOIL OR THE BREEDING, RAISING, OR CARING FOR**
5 **LIVESTOCK, POULTRY, OR HORTICULTURAL PRODUCTS, INCLUDING THE**
6 **TRANSFERS OF LIVESTOCK, POULTRY, OR HORTICULTURAL PRODUCTS FOR**
7 **FURTHER GROWTH.**

8 (g) Property or services sold to the United States, an
9 unincorporated agency or instrumentality of the United States, an
10 incorporated agency or instrumentality of the United States wholly
11 owned by the United States or by a corporation wholly owned by the
12 United States, the American Red Cross and its chapters or branches,
13 this state, a department or institution of this state, or a
14 political subdivision of this state.

15 (h) Property or services sold to a school, hospital, or home
16 for the care and maintenance of children or aged persons, operated
17 by an entity of government, a regularly organized church,
18 religious, or fraternal organization, a veterans' organization, or
19 a corporation incorporated under the laws of this state, if not
20 operated for profit, and if the income or benefit from the
21 operation does not inure, in whole or in part, to an individual or
22 private shareholder, directly or indirectly, and if the activities
23 of the entity or agency are carried on exclusively for the benefit
24 of the public at large and are not limited to the advantage,
25 interests, and benefits of its members or a restricted group. The
26 tax levied does not apply to property or services sold to a parent
27 cooperative preschool. As used in this subdivision, "parent

1 cooperative preschool" means a nonprofit, nondiscriminatory
2 educational institution, maintained as a community service and
3 administered by parents of children currently enrolled in the
4 preschool that provides an educational and developmental program
5 for children younger than compulsory school age, that provides an
6 educational program for parents, including active participation
7 with children in preschool activities, that is directed by
8 qualified preschool personnel, and that is licensed pursuant to
9 1973 PA 116, MCL 722.111 to 722.128.

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

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

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

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

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

27 (l) A newspaper or periodical classified under federal postal

1 laws and regulations effective September 1, 1985 as second-class
2 mail matter or as a controlled circulation publication or qualified
3 to accept legal notices for publication in this state, as defined
4 by law, or any other newspaper or periodical of general
5 circulation, established at least 2 years, and published at least
6 once a week, and a copyrighted motion picture film. Tangible
7 personal property used or consumed in producing a copyrighted
8 motion picture film, a newspaper published more than 14 times per
9 year, or a periodical published more than 14 times per year, and
10 not becoming a component part of that film, newspaper, or
11 periodical is subject to the tax. After December 31, 1993, tangible
12 personal property used or consumed in producing a newspaper
13 published 14 times or less per year or a periodical published 14
14 times or less per year and that portion or percentage of tangible
15 personal property used or consumed in producing an advertising
16 supplement that becomes a component part of a newspaper or
17 periodical is exempt from the tax under this subdivision. A claim
18 for a refund for taxes paid before January 1, 1999 under this
19 subdivision shall be made before June 30, 1999. For purposes of
20 this subdivision, tangible personal property that becomes a
21 component part of a newspaper or periodical and consequently not
22 subject to tax, includes an advertising supplement inserted into
23 and circulated with a newspaper or periodical that is otherwise
24 exempt from tax under this subdivision, if the advertising
25 supplement is delivered directly to the newspaper or periodical by
26 a person other than the advertiser, or the advertising supplement
27 is printed by the newspaper or periodical.

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

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

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

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

17 (q) Water when delivered through water mains, water sold in
18 bulk tanks in quantities of not less than 500 gallons, or the sale
19 of bottled water.

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

23 (s) Tangible personal property purchased and installed as a
24 component part of a water pollution control facility for which a
25 tax exemption certificate is issued pursuant to part 37 of the
26 natural resources and environmental protection act, 1994 PA 451,
27 MCL 324.3701 to 324.3708, or an air pollution control facility for

1 which a tax exemption certificate is issued pursuant to part 59 of
2 the natural resources and environmental protection act, 1994 PA
3 451, MCL 324.5901 to 324.5908.

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

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

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

24 (w) Property or services sold to an organization not operated
25 for profit and exempt from federal income tax under section
26 501(c)(3) or 501(c)(4) of the internal revenue code, 26 USC 501; or
27 to a health, welfare, educational, cultural arts, charitable, or

1 benevolent organization not operated for profit that has been
2 issued before June 13, 1994 an exemption ruling letter to purchase
3 items exempt from tax signed by the administrator of the sales,
4 use, and withholding taxes division of the department. The
5 department shall reissue an exemption letter after June 13, 1994 to
6 each of those organizations that had an exemption letter that shall
7 remain in effect unless the organization fails to meet the
8 requirements that originally entitled it to this exemption. The
9 exemption does not apply to sales of tangible personal property and
10 sales of vehicles licensed for use on public highways, that are not
11 used primarily to carry out the purposes of the organization as
12 stated in the bylaws or articles of incorporation of the exempt
13 organization.

14 (x) The use or consumption of services described in section
15 3a(1)(a) or (b) or 3b by means of a prepaid telephone calling card,
16 a prepaid authorization number for telephone use, or a charge for
17 internet access.

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

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

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

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

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

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

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

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

11 (z) Property purchased or manufactured by a person engaged in
12 the business of constructing, altering, repairing, or improving
13 real estate for others, to the extent that the property is affixed
14 to and made a structural part of real estate located in another
15 state, regardless of whether sales or use tax was due and paid in
16 the state in which the property is affixed to real estate.

17 (aa) The sale of a dental prosthesis.

18 **(BB) EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTION (3), A SALE**
19 **OF ANY OF THE FOLLOWING TO A PERSON ENGAGED IN A BUSINESS**
20 **ENTERPRISE THAT USES OR CONSUMES THE FOLLOWING FOR PURPOSES AS**
21 **DESCRIBED IN SUBDIVISION (F):**

22 **(i) MACHINERY THAT IS CAPABLE OF SIMULTANEOUSLY HARVESTING**
23 **GRAIN OR OTHER CROPS AND BIOMASS AND MACHINERY USED FOR THE PURPOSE**
24 **OF HARVESTING BIOMASS.**

25 **(ii) AGRICULTURAL LAND TILE AND SUBSURFACE IRRIGATION PIPE.**

26 **(iii) PORTABLE GRAIN BINS, INCLUDING TANGIBLE PERSONAL**
27 **PROPERTY AFFIXED OR TO BE AFFIXED TO PORTABLE GRAIN BINS AND**

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1 DIRECTLY USED IN THE OPERATION OF A PORTABLE GRAIN BIN.

2 (iv) GRAIN DRYING EQUIPMENT AND THE FUEL OR ENERGY SOURCE THAT
3 POWERS THAT EQUIPMENT, INCLUDING TANGIBLE PERSONAL PROPERTY AFFIXED
4 OR TO BE AFFIXED TO THAT EQUIPMENT AND DIRECTLY USED IN THE
5 OPERATION OF GRAIN DRYING EQUIPMENT.

6 (v) TANGIBLE PERSONAL PROPERTY PURCHASED AND INSTALLED AS A
7 COMPONENT PART OF A STRUCTURE [SUCH AS A BARN OR SHOP], INCLUDING, BUT
8 NOT LIMITED TO, A
9 [] WATER SUPPLY SYSTEM, HEATING AND COOLING SYSTEM,
10 LIGHTING SYSTEM, MILKING SYSTEM, OR ANY OTHER APPURTENANCE USED FOR
11 PURPOSES DESCRIBED IN THIS SUBDIVISION OR SUBDIVISION (F),
12 INCLUDING THE MAINTENANCE OR IMPROVEMENT OF EXISTING STRUCTURES, TO
13 THE EXTENT THAT IT IS NOT PERMANENTLY AFFIXED TO AND DOES NOT
14 BECOME A STRUCTURAL PART OF REAL ESTATE. FOR PURPOSES OF THIS
15 SUBPARAGRAPH AND SUBSECTION (3), PROPERTY INSTALLED AS A COMPONENT
16 PART OF A STRUCTURE AS PROVIDED IN THIS SUBPARAGRAPH IS NOT
17 PERMANENTLY AFFIXED TO OR A STRUCTURAL PART OF REAL ESTATE IF IT IS
18 ASSEMBLED AND INSTALLED IN A MANNER THAT IT CAN BE DISASSEMBLED
19 WITHOUT AFFECTING THE PHYSICAL STRUCTURAL FUNCTIONALITY OF THE
20 ORIGINAL STRUCTURE AND REASSEMBLED AND REUSED FOR ANY OF THE
21 PURPOSES DESCRIBED IN THIS SUBDIVISION OR SUBDIVISION (F).

22 (vi) GREENHOUSES, INCLUDING TANGIBLE PERSONAL PROPERTY AFFIXED
23 TO OR TO BE AFFIXED TO GREENHOUSES AND DIRECTLY USED IN THE
24 OPERATION OF A GREENHOUSE. FOR PURPOSES OF SUBSECTION (3), A
25 GREENHOUSE IS NOT PERMANENTLY AFFIXED TO OR A STRUCTURAL PART OF
26 REAL ESTATE IF IT IS ASSEMBLED AND INSTALLED IN A MANNER THAT IT
27 CAN BE DISASSEMBLED AND REASSEMBLED WITHOUT AFFECTING THE
FUNCTIONALITY OF THE GREENHOUSE UPON BEING REASSEMBLED.

1 (CC) THE SALE OF AGRICULTURAL LAND TILE, SUBSURFACE IRRIGATION
2 PIPE, PORTABLE GRAIN BINS, GREENHOUSES, AND GRAIN DRYING EQUIPMENT
3 TO A PERSON IN THE BUSINESS OF CONSTRUCTING, ALTERING, REPAIRING,
4 OR IMPROVING REAL ESTATE FOR OTHERS TO THE EXTENT THAT IT IS
5 AFFIXED TO AND MADE A STRUCTURAL PART OF REAL ESTATE FOR OTHERS AND
6 IS USED FOR AN EXEMPT PURPOSE DESCRIBED UNDER SUBDIVISION (F) OR
7 (BB) .

8 (DD) THE SALE OF TANGIBLE PERSONAL PROPERTY USED IN THE DIRECT
9 GATHERING OF FISH, BY NET, LINE, OR OTHERWISE, BY AN OWNER-OPERATOR
10 OF A BUSINESS ENTERPRISE, NOT INCLUDING A CHARTER FISHING BUSINESS
11 ENTERPRISE.

12 (EE) A SALE OF TANGIBLE PERSONAL PROPERTY THAT IS SPECIFICALLY
13 DESIGNED FOR, AND DIRECTLY USED IN, THE HARVESTING OF AQUATIC
14 VEGETATION FROM THE WATERS OF THE STATE, INCLUDING PARTS AND
15 MATERIALS USED FOR REPAIRS OF THAT TANGIBLE PERSONAL PROPERTY, TO A
16 PERSON ENGAGED IN A BUSINESS ENTERPRISE OF HARVESTING AQUATIC
17 VEGETATION AND ULTIMATELY USED FOR PURPOSES DESCRIBED IN
18 SUBDIVISION (F) OR (BB) . THIS EXEMPTION DOES NOT INCLUDE A MOTOR
19 VEHICLE LICENSED OR REQUIRED TO BE LICENSED FOR USE ON THE PUBLIC
20 ROADS OR HIGHWAYS OF THIS STATE OR TANGIBLE PERSONAL PROPERTY
21 PERMANENTLY AFFIXED TO AND BECOMING A STRUCTURAL PART OF REAL
22 ESTATE.

23 (2) The property or services under subsection (1) are exempt
24 only to the extent that the property or services are used for the
25 exempt purposes if one is stated in subsection (1). The exemption
26 is limited to the percentage of exempt use to total use determined
27 by a reasonable formula or method approved by the department.

1 (3) THE EXEMPTIONS UNDER SUBSECTION (1) (F), (BB), (CC), AND
2 (DD) DO NOT INCLUDE THE TRANSFERS OF FOOD, FUEL, CLOTHING, OR ANY
3 SIMILAR TANGIBLE PERSONAL PROPERTY FOR PERSONAL LIVING OR HUMAN
4 CONSUMPTION OR TANGIBLE PERSONAL PROPERTY PERMANENTLY AFFIXED TO
5 AND BECOMING A STRUCTURAL PART OF REAL ESTATE UNLESS IT IS
6 AGRICULTURAL LAND TILE, SUBSURFACE IRRIGATION PIPE, A PORTABLE
7 GRAIN BIN, OR GRAIN DRYING EQUIPMENT.

8 (4) SUBSECTIONS (1) (F), (BB), AND (CC) AS AMENDED BY THE
9 AMENDATORY ACT THAT ADDED THIS SUBSECTION ARE INTENDED TO BE
10 RETROACTIVE AND TO APPLY TO ALL PERIODS OPEN UNDER SECTION 27A OF
11 1941 PA 122, MCL 205.27A, BUT DO NOT APPLY TO ANY REFUND CLAIMS
12 FILED PRIOR TO APRIL 9, 2018.

13 (5) AS USED IN THIS SECTION:

14 (A) "AGRICULTURAL LAND TILE" MEANS FIRED CLAY OR PERFORATED
15 PLASTIC TUBING USED AS PART OF A SUBSURFACE DRAINAGE SYSTEM FOR
16 LAND.

17 (B) "ALGAE" MEANS ANY OF THE GROUP OF NONVASCULAR AQUATIC
18 PLANTS WHICH DO NOT HAVE STEMS, FLOWERS, LEAVES, AND ROOTS, AND
19 WHICH ARE SINGLE-CELLED, COLONIAL, OR FILAMENTOUS FORMS.

20 (C) "AQUATIC VEGETATION" MEANS BOTH ALGAE AND HIGHER AQUATIC
21 PLANTS.

22 (D) "BIOMASS" MEANS CROP RESIDUE USED TO PRODUCE ENERGY OR
23 AGRICULTURAL CROPS GROWN SPECIFICALLY FOR THE PRODUCTION OF ENERGY.

24 (E) "GREENHOUSE" MEANS A STRUCTURE COVERED WITH TRANSPARENT OR
25 TRANSLUCENT MATERIALS FOR THE PURPOSE OF ADMITTING NATURAL LIGHT
26 AND CONTROLLING THE ATMOSPHERE FOR GROWING HORTICULTURAL PRODUCTS.
27 GREENHOUSE DOES NOT INCLUDE A STRUCTURE PRIMARILY USED TO GROW

1 MARIHUANA.

2 (F) "HIGHER AQUATIC PLANT" MEANS ANY OF THE GROUP OF
3 VASCULARIZED PLANTS WHICH HAVE TRUE STEMS, FLOWERS, LEAVES, AND
4 ROOTS, WHICH LIVE IN WATER, AND WHICH BELONG TO THE CLASS
5 ANGIOSPERMAE.

6 (G) "PORTABLE GRAIN BIN" MEANS A STRUCTURE THAT IS USED OR IS
7 TO BE USED TO SHELTER GRAIN AND THAT IS DESIGNED TO BE DISASSEMBLED
8 WITHOUT SIGNIFICANT DAMAGE TO ITS COMPONENT PARTS.

9 (H) "WATERS OF THE STATE" MEANS THAT TERM AS DEFINED IN
10 SECTION 3302 OF THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
11 ACT, 1994 PA 451, MCL 324.3302.

12 Enacting section 1. This amendatory act does not apply to a
13 claim for a refund filed prior to April 9, 2018.