

HOUSE BILL No. 5054

July 15, 1997, Introduced by Rep. Profit and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 4 (MCL 205.94), as amended by 1996 PA 436.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 4. The tax levied does not apply to the following:
- 2 (a) Property sold in this state on which transaction a tax
- 3 is paid under the general sales tax act, ~~Act No. 167 of the~~
- 4 ~~Public Acts of 1933, being sections 205.51 to 205.78 of the~~
- 5 ~~Michigan Compiled Laws~~ 1933 PA 167, MCL 205.51 TO 205.78, if the
- 6 tax was due and paid on the retail sale to a consumer.
- 7 (b) Property, the storage, use, or other consumption of
- 8 which this state is prohibited from taxing under the constitution
- 9 or laws of the United States, or under the constitution of this
- 10 state.

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

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

24 (e) Property the sale or use of which was already subjected
25 to a sales tax or use tax equal to, or in excess of, that imposed
26 by this act under the law of any other state or a local
27 governmental unit within a state if the tax was due and paid on

1 the retail sale to the consumer and the state or local
2 governmental unit within a state in which the tax was imposed
3 accords like or complete exemption on property the sale or use of
4 which was subjected to the sales or use tax of this state. If
5 the sale or use of property was already subjected to a tax under
6 the law of any other state or local governmental unit within a
7 state in an amount less than the tax imposed by this act, this
8 act shall apply, but at a rate measured by the difference between
9 the rate provided in this act and the rate by which the previous
10 tax was computed.

11 (f) Property sold to a person engaged in a business enter-
12 prise and using and consuming the property in the tilling, plant-
13 ing, caring for, or harvesting of the things of the soil or in
14 the breeding, raising, or caring for livestock, poultry, or
15 horticultural products, including transfers of livestock, poul-
16 try, or horticultural products for further growth. At the time
17 of the transfer of that tangible personal property, the trans-
18 feree shall sign a statement, in a form approved by the depart-
19 ment, stating that the property is to be used or consumed in con-
20 nection with the production of horticultural or agricultural pro-
21 ducts as a business enterprise. The statement shall be accepted
22 by the courts as prima facie evidence of the exemption. This
23 exemption includes agricultural land tile, which means fired clay
24 or perforated plastic tubing used as part of a subsurface drain-
25 age system for land used in the production of agricultural pro-
26 ducts as a business enterprise and includes a portable grain bin,
27 which means a structure that is used or is to be used to shelter

1 grain and that is designed to be disassembled without significant
2 damage to its component parts. This exemption does not include
3 transfers of food, fuel, clothing, or similar tangible personal
4 property for personal living or human consumption. This exemp-
5 tion does not include tangible personal property permanently
6 affixed and becoming a structural part of real estate.

7 (g) Property sold to the following:

8 (i) An industrial processor for use or consumption in indus-
9 trial processing. Property used or consumed in industrial pro-
10 cessing does not include tangible personal property permanently
11 affixed and becoming a structural part of real estate; office
12 furniture, office supplies, and administrative office equipment;
13 or vehicles licensed and titled for use on public highways other
14 than a specially designed vehicle, together with parts, used to
15 mix and agitate materials added at a plant or jobsite in the con-
16 crete manufacturing process. Industrial processing does not
17 include receipt and storage of raw materials purchased or
18 extracted by the user or consumer, or the preparation of food and
19 beverages by a retailer for retail sale. As used in this subdi-
20 vision, "industrial processor" means a person who transforms,
21 alters, or modifies tangible personal property by changing the
22 form, composition, or character of the property for ultimate sale
23 at retail or sale to another industrial processor to be further
24 processed for ultimate sale at retail. Sales to a person per-
25 forming a service who does not act as an industrial processor
26 while performing the service may not be excluded under this
27 subdivision, except as provided in subparagraph (ii).

1 (ii) A person, whether or not the person is an industrial
2 processor, when the property is a computer used in operating
3 industrial processing equipment; equipment used in a computer
4 assisted manufacturing system; equipment used in a computer
5 assisted design or engineering system integral to an industrial
6 process; or a subunit or electronic assembly comprising a compo-
7 nent in a computer integrated industrial processing system.

8 (h) Property or services sold to the United States, an unin-
9 corporated agency or instrumentality of the United States, an
10 incorporated agency or instrumentality of the United States
11 wholly owned by the United States or by a corporation wholly
12 owned by the United States, the American red cross and its chap-
13 ters or branches, this state, a department or institution of this
14 state, or a political subdivision of this state.

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

1 subdivision, "parent cooperative preschool" means a nonprofit,
2 nondiscriminatory educational institution, maintained as a commu-
3 nity service and administered by parents of children currently
4 enrolled in the preschool that provides an educational and devel-
5 opmental program for children younger than compulsory school age,
6 that provides an educational program for parents, including
7 active participation with children in preschool activities, that
8 is directed by qualified preschool personnel, and that is
9 licensed ~~by the department of consumer and industry services~~
10 pursuant to ~~Act No. 116 of the Public Acts of 1973, being sec-~~
11 ~~tions 722.111 to 722.128 of the Michigan Compiled Laws 1973 PA~~
12 116, MCL 722.111 TO 722.128.

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

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

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

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

26 (l) Property purchased by a person engaged in the business
27 of constructing, altering, repairing, or improving real estate

1 for others to the extent the property is affixed to and made a
2 structural part of the real estate of a nonprofit hospital or a
3 nonprofit housing entity qualified as exempt pursuant to section
4 15a of the state housing development authority act of 1966, ~~Act~~
5 ~~No. 346 of the Public Acts of 1966, being section 125.1415a of~~
6 ~~the Michigan Compiled Laws~~ 1966 PA 346, MCL 125.1415A. A non-
7 profit hospital or nonprofit housing includes only the property
8 of a nonprofit hospital or the homes or dwelling places con-
9 structed by a nonprofit housing entity, the income or property of
10 which does not directly or indirectly inure to the benefit of an
11 individual, private stockholder, or other private person. FOR
12 TAXES LEVIED AFTER DECEMBER 31, 1991, AS USED IN THIS SUBSECTION,
13 "HOSPITAL" MEANS A SEPARATELY ORGANIZED ENTITY, OR A GROUP OF
14 ENTITIES SUFFICIENTLY RELATED TO BE CONSIDERED A SINGLE EMPLOYER
15 FOR PURPOSES OF SECTION 414 OF THE INTERNAL REVENUE CODE, THE
16 PRIMARY PURPOSE OF WHICH IS TO PROVIDE MEDICAL, OBSTETRICAL, PSY-
17 CHIATRIC, OR SURGICAL CARE OR NURSING. NURSING INCLUDES CARE
18 PROVIDED BY SKILLED NURSES IN A LONG-TERM CARE FACILITY.

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

23 (n) A newspaper or periodical classified under federal
24 postal laws and regulations effective September 1, 1985 as second
25 class mail matter or as a controlled circulation publication or
26 qualified to accept legal notices for publication in this state,
27 as defined by law, or any other newspaper or periodical of

1 general circulation, established at least 2 years, and published
2 at least once a week, and a copyrighted motion picture film.
3 Tangible personal property used or consumed, and not becoming a
4 component part of a copyrighted motion picture film, newspaper or
5 periodical, except that portion or percentage of tangible per-
6 sonal property used or consumed in producing an advertising sup-
7 plement that becomes a component part of a newspaper or periodi-
8 cal is subject to tax. For purposes of this subdivision, tangi-
9 ble personal property that becomes a component part of a newspa-
10 per or periodical and consequently not subject to tax, includes
11 an advertising supplement inserted into and circulated with a
12 newspaper or periodical that is otherwise exempt from tax under
13 this subdivision, if the advertising supplement is delivered
14 directly to the newspaper or periodical by a person other than
15 the advertiser, or the advertising supplement is printed by the
16 newspaper or periodical.

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

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

1 (q) A vehicle for which a special registration is secured in
2 accordance with section 226(12) of the Michigan vehicle code,
3 ~~Act No. 300 of the Public Acts of 1949, being section 257.226 of~~
4 ~~the Michigan Compiled Laws 1949 PA 300, MCL 257.226.~~

5 (r) A hearing aid, contact lenses if prescribed for a spe-
6 cific disease ~~which~~ THAT precludes the use of eyeglasses, or
7 any other apparatus, device, or equipment used to replace or sub-
8 stitute for any part of the human body, or used to assist the
9 disabled person to lead a reasonably normal life when the tangi-
10 ble personal property is purchased on a written prescription or
11 order issued by a health professional as defined by section 4 of
12 former ~~Act No. 264 of the Public Acts of 1974~~ 1974 PA 264, or
13 section 21005 of the public health code, ~~Act No. 368 of the~~
14 ~~Public Acts of 1978, being section 333.21005 of the Michigan~~
15 ~~Compiled Laws~~ 1978 PA 368, MCL 333.21005, or eyeglasses pre-
16 scribed or dispensed to correct the person's vision by an oph-
17 thalmologist, optometrist, or optician.

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

20 (t) The purchase of machinery and equipment for use or con-
21 sumption in the rendition of any combination of services, the use
22 or consumption of which is taxable under section 3a(a) or (c)
23 except that this exemption is limited to the tangible personal
24 property located on the premises of the subscriber and to central
25 office equipment or wireless equipment, directly used or consumed
26 in transmitting, receiving, or switching or the monitoring of
27 switching of a 2-way interactive communication. As used in this

1 subdivision, central office equipment or wireless equipment does
2 not include distribution equipment including cable or wire
3 facilities.

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

7 (v) Tangible personal property purchased and installed as a
8 component part of a water pollution control facility for which a
9 tax exemption certificate is issued pursuant to part 37 (water
10 pollution control facilities; tax exemption) of the natural
11 resources and environmental protection act, ~~Act No. 451 of the~~
12 ~~Public Acts of 1994, being sections 324.3701 to 324.3708 of the~~
13 ~~Michigan Compiled Laws~~ 1994 PA 451, MCL 324.3701 TO 324.3708, or
14 an air pollution control facility for which a tax exemption cer-
15 tificate is issued pursuant to part 59 (air pollution control
16 facility; tax exemption) of ~~Act No. 451 of the Public Acts of~~
17 ~~1994, being sections 324.5901 to 324.5908 of the Michigan~~
18 ~~Compiled Laws~~ THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
19 ACT, 1994 PA 451, MCL 324.5901 TO 324.5908.

20 (w) Tangible real or personal property donated by a manufac-
21 turer, wholesaler, or retailer to an organization or entity
22 exempt pursuant to subdivision (i) or (j) or section 4a(a) or (b)
23 of ~~Act No. 167 of the Public Acts of 1933, being section 205.54a~~
24 ~~of the Michigan Compiled Laws~~ 1933 PA 167, MCL 205.54A.

25 (x) The storage, use, or consumption by a domestic air car-
26 rier of an aircraft purchased after December 31, 1992 for use
27 solely in the transport of air cargo that has a maximum

1 certificated takeoff weight of at least 12,500 pounds. For
2 purposes of this subdivision, the term "domestic air carrier" is
3 limited to entities engaged in the commercial transport for hire
4 of cargo or entities engaged in the commercial transport of pas-
5 sengers as a business activity.

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

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

23 (aa) Property or services sold to a health, welfare, educa-
24 tional, cultural arts, charitable, or benevolent organization not
25 operated for profit that has been issued before June 13, 1994 an
26 exemption ruling letter to purchase items exempt from tax signed
27 by the administrator of the sales, use, and withholding taxes

1 division of the department. The department shall reissue an
2 exemption letter to each of those organizations after June 13,
3 1994 that shall remain in effect unless the organization fails to
4 meet the requirements that originally entitled it to this exemp-
5 tion; or to an organization not operated for profit and exempt
6 from federal income tax under section 501(c)(3) or 501(c)(4) of
7 the internal revenue code of 1986, 26 U.S.C. 501. The exemption
8 does not apply to sales of tangible personal property and sales
9 of vehicles licensed for use on public highways, that are not
10 used primarily to carry out the purposes of the organization as
11 stated in the bylaws or articles of incorporation of the exempt
12 organization.