

Act No. 103  
Public Acts of 2007  
Approved by the Governor  
October 1, 2007  
Filed with the Secretary of State  
October 1, 2007  
EFFECTIVE DATE: September 30, 2002

**STATE OF MICHIGAN  
94TH LEGISLATURE  
REGULAR SESSION OF 2007**

Introduced by Rep. Bieda

# **ENROLLED HOUSE BILL No. 4882**

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 sections 2, 3, 4, and 7 (MCL 205.92, 205.93, 205.94, and 205.97), sections 2, 3, and 4 as amended by 2004 PA 172.

*The People of the State of Michigan enact:*

Sec. 2. As used in this act:

(a) "Person" means an individual, firm, partnership, joint venture, association, social club, fraternal organization, municipal or private corporation whether or not organized for profit, company, limited liability company, estate, trust, receiver, trustee, syndicate, the United States, this state, county, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

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

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

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

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

(f) “Purchase price” or “price” means the total amount of consideration paid by the consumer to the seller, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, and applies to the measure subject to use tax. Purchase price includes the following subparagraphs (i) through (vi) and excludes subparagraphs (vii) through (viii):

(i) Seller’s cost of the property sold.

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

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

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

(B) Labor or service charges involved in maintenance and repair work on tangible personal property of others if separately itemized.

(iv) Delivery charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property from the seller to the purchaser.

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

(vi) Credit for any trade-in.

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

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

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

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

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

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

(i) “Department” means the department of treasury.

(j) “Tax” includes all taxes, interest, or penalties levied under this act.

(k) “Tangible personal property” means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses and includes electricity, water, gas, steam, and prewritten computer software.

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

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

(n) “Qualified commercial motor vehicle” means that term as defined in section 1(i), (j), and (k) of the motor carrier fuel tax act, 1980 PA 119, MCL 207.211.

(o) “Diesel fuel” means that term as defined in section 2(p) of the motor fuel tax act, 2000 PA 403, MCL 207.1002.

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

(q) “Convert” means putting a service or tangible personal property acquired for a use exempt from the tax levied under this act at the time of acquisition to a use that is not exempt from the tax levied under this act, whether the use is in whole or in part, or permanent or not permanent. A motor vehicle purchased for resale by a new vehicle dealer licensed under section 248(8)(a) of the Michigan vehicle code, 1949 PA 300, MCL 257.248, and not titled in the name of the dealer shall not be considered to be converted prior to sale or lease by that dealer.

Sec. 3. (1) There is levied upon and there shall be collected from every person in this state a specific tax for the privilege of using, storing, or consuming tangible personal property in this state at a rate equal to 6% of the price of the property or services specified in section 3a or 3b. The tax levied under this act applies to a person who acquires tangible

personal property or services that are subject to the tax levied under this act for any tax-exempt use who subsequently converts the tangible personal property or service to a taxable use, including an interim taxable use. If tangible personal property or services are converted to a taxable use, the tax levied under this act shall be imposed without regard to any subsequent tax-exempt use. Penalties and interest shall be added to the tax if applicable as provided in this act. For the purpose of the proper administration of this act and to prevent the evasion of the tax, all of the following shall be presumed:

(a) That tangible personal property purchased is subject to the tax if brought into this state within 90 days of the purchase date and is considered as acquired for storage, use, or other consumption in this state.

(b) That tangible personal property used solely for personal, nonbusiness purposes that is purchased outside of this state and that is not an aircraft is exempt from the tax levied under this act if 1 or more of the following conditions are satisfied:

(i) The property is purchased by a person who is not a resident of this state at the time of purchase and is brought into this state more than 90 days after the date of purchase.

(ii) The property is purchased by a person who is a resident of this state at the time of purchase and is brought into this state more than 360 days after the date of purchase.

(2) The tax imposed by this section for the privilege of using, storing, or consuming a vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft shall be collected before the transfer of the vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft, except a transfer to a licensed dealer or retailer for purposes of resale that arises by reason of a transaction made by a person who does not transfer vehicles, ORVs, manufactured housing, aircraft, snowmobiles, or watercraft in the ordinary course of his or her business done in this state. The tax on a vehicle, ORV, snowmobile, and watercraft shall be collected by the secretary of state before the transfer of the vehicle, ORV, snowmobile, or watercraft registration. The tax on manufactured housing shall be collected by the department of consumer and industry services, mobile home commission, or its agent before the transfer of the certificate of title. The tax on an aircraft shall be collected by the department of treasury. The price tax base of a new or previously owned car or truck held for resale by a dealer and that is not exempt under section 4(1)(c) is the purchase price of the car or truck multiplied by 2.5% plus \$30.00 per month beginning with the month that the dealer uses the car or truck in a nonexempt manner.

(3) The following transfers or purchases are not subject to use tax:

(a) A transaction or a portion of a transaction if the transferee or purchaser is the spouse, mother, father, brother, sister, child, stepparent, stepchild, stepbrother, stepsister, grandparent, grandchild, legal ward, or a legally appointed guardian with a certified letter of guardianship, of the transferor.

(b) A transaction or a portion of a transaction if the transfer is a gift to a beneficiary in the administration of an estate.

(c) If a vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft that has once been subjected to the Michigan sales or use tax is transferred in connection with the organization, reorganization, dissolution, or partial liquidation of an incorporated or unincorporated business and the beneficial ownership is not changed.

(d) If an insurance company licensed to conduct business in this state acquires ownership of a late model distressed vehicle as defined in section 12a of the Michigan vehicle code, 1949 PA 300, MCL 257.12a, through payment of damages in response to a claim or when the person who owned the vehicle before the insurance company reacquires ownership from the company as part of the settlement of a claim.

(4) The department may utilize the services, information, or records of any other department or agency of state government in the performance of its duties under this act, and other departments or agencies of state government are required to furnish those services, information, or records upon the request of the department.

(5) Any decrease in the rate of the tax levied under subsection (1) on services subject to tax under this act shall apply only to billings rendered on or after the effective date of the decrease.

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

(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) All of the following:

(i) Property purchased for resale. 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.

(ii) Property purchased for 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.

(iii) Property purchased for demonstration purposes. For a new vehicle 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 calendar year, without regard to specific make or style, according to the following schedule but not to exceed 25 cars and trucks in 1 calendar year for demonstration purposes:

- (A) 0 to 25, 2 units.
- (B) 26 to 100, 7 units.
- (C) 101 to 500, 20 units.
- (D) 501 or more, 25 units.

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

(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. 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 to and becoming a structural part of real estate.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(l) 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 in producing a copyrighted motion picture film, a newspaper published more than 14 times per year, or a periodical published more than 14 times per year, and not becoming a component part of that film, newspaper, or periodical is subject to the tax. After December 31, 1993, tangible personal property used or consumed in producing a newspaper published 14 times or less per year or a periodical published 14 times or less per year and 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 exempt from the tax under this subdivision. A claim for a refund for taxes paid before January 1, 1999 under this subdivision shall be made before June 30, 1999. 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.

(m) 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.

(n) 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.

(o) 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.

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

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

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

(s) 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 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 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5901 to 324.5908.

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

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

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

(w) Property or services sold 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, 26 USC 501; or 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 after June 13, 1994 to each of those organizations that had an exemption letter that shall remain in effect unless the organization fails to meet the requirements that originally entitled it to this exemption. 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.

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

(y) 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.

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

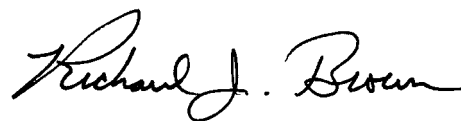
Sec. 7. (1) Each person storing, using, or consuming in this state tangible personal property or services is liable for the tax levied under this act, and that liability shall not be extinguished until the tax levied under this act has been paid to the department.

(2) A person who acquires tangible personal property or services for any tax-exempt use who subsequently converts the tangible personal property or service to a taxable use, including an interim taxable use, is liable for the tax levied under this act. If tangible personal property or services are converted to a taxable use, the tax levied under this act shall be imposed without regard to any subsequent tax-exempt use. The payment to the department of the tax, interest, and any penalty assessed by the department relieves the seller, who sold the property or services with regard to the storing, use, or consumption on which the tax was paid from the payment of the amount of the tax that he or she may be required under this act to collect from the purchaser.

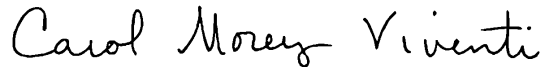
Enacting section 1. It is the intent of the legislature that this amendatory act clarify that a person who acquires tangible personal property for a purpose exempt under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, who subsequently converts that property to a use taxable under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, is liable for the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111.

Enacting section 2. This amendatory act is curative and intended to prevent any misinterpretation of the ability of a taxpayer to claim an exemption from the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, based on the purchase of tangible personal property or services for resale that may result from the decision of the Michigan court of appeals in Betten Auto Center, Inc v Department of Treasury, No. 265976, as affirmed by the Michigan Supreme Court. This amendatory act is retroactive and is effective beginning September 30, 2002 and for all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved \_\_\_\_\_

\_\_\_\_\_  
Governor