

HOUSE BILL No. 5146

November 3, 2011, Introduced by Reps. MacGregor, Haveman, Roy Schmidt and Lyons and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 3a (MCL 205.93a), as amended by 2008 PA 439.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3a. (1) The use or consumption of the following services
2 is taxed under this act in the same manner as tangible personal
3 property is taxed under this act:

4 (a) Except as provided in section 3b, intrastate
5 telecommunications services that both originate and terminate in
6 this state, including, but not limited to, intrastate private
7 communications services, ancillary services, conference bridging
8 service, 900 service, pay telephone service other than coin-
9 operated telephone service, and value-added nonvoice data service,
10 but excluding 800 service, coin-operated telephone service, fixed

1 wireless service, 1-way paging service, prepaid calling service,
2 telecommunications nonrecurring charges, and directory advertising
3 proceeds.

4 (b) Rooms or lodging furnished by hotelkeepers, motel
5 operators, and other persons furnishing accommodations that are
6 available to the public on the basis of a commercial and business
7 enterprise, irrespective of whether or not membership is required
8 for use of the accommodations, except rooms and lodging rented for
9 a continuous period of more than 1 month. As used in this act,
10 "hotel" or "motel" means a building or group of buildings in which
11 the public may obtain accommodations for a consideration,
12 including, without limitation, such establishments as inns, motels,
13 tourist homes, tourist houses or courts, lodging houses, rooming
14 houses, nudist camps, apartment hotels, resort lodges and cabins,
15 camps operated by other than nonprofit organizations but not
16 including those licensed under 1973 PA 116, MCL 722.111 to 722.128,
17 and any other building or group of buildings in which
18 accommodations are available to the public, except accommodations
19 rented for a continuous period of more than 1 month and
20 accommodations furnished by hospitals or nursing homes.

21 (c) Except as provided in section 3b, interstate
22 telecommunications services that either originate or terminate in
23 this state and for which the charge for the service is billed to a
24 service address in this state or phone number by the provider
25 either within or outside this state including, but not limited to,
26 ancillary services, conference bridging service, 900 service, pay
27 telephone service other than coin-operated telephone service, and

1 value-added nonvoice data services, but excluding interstate
2 private communications service, 800 service, coin-operated
3 telephone service, fixed wireless service, 1-way paging service,
4 prepaid calling service, telecommunications nonrecurring charges,
5 and international telecommunications service.

6 (d) The laundering or cleaning of textiles under a sale,
7 rental, or service agreement with a term of at least 5 days. This
8 subdivision does not apply to the laundering or cleaning of
9 textiles used by a restaurant or retail sales business. As used in
10 this subdivision, "restaurant" means a food service establishment
11 defined and licensed under the food law of 2000, 2000 PA 92, MCL
12 289.1101 to 289.8111.

13 (e) The transmission and distribution of electricity, whether
14 the electricity is purchased from the delivering utility or from
15 another provider, if the sale is made to the consumer or user of
16 the electricity for consumption or use rather than for resale.

17 (f) For a manufacturer who affixes its product to real estate
18 **IN THIS STATE** and maintains an inventory of its product that is
19 available for sale to others or who makes its product available for
20 sale to others by publication or price list, the **PRICE IS THE**
21 direct production costs and indirect production costs of the
22 product affixed to the real estate **IN THIS STATE** that are incident
23 to and necessary for production or manufacturing operations or
24 processes, as defined by the department.

25 (g) For a manufacturer who affixes its product to real estate
26 **IN THIS STATE** but does not maintain an inventory of its product
27 available for sale to others or make its product available for sale

1 to others by publication or price list, **THE PRICE IS** the sum of the
2 materials cost of the property and the cost of labor to
3 manufacture, fabricate, or assemble the property **AFFIXED TO THE**
4 **REAL ESTATE IN THIS STATE**, but not the cost of labor to cut, bend,
5 assemble, or attach the property at the site for affixation to real
6 estate **IN THIS STATE**.

7 (2) If charges for intrastate telecommunications services or
8 telecommunications services between this state and another state
9 and other billed services not subject to the tax under this act are
10 aggregated with and not separately stated from charges for
11 telecommunications services that are subject to the tax under this
12 act, the nontaxable telecommunications services and other
13 nontaxable billed services are subject to the tax under this act
14 unless the service provider can reasonably identify charges for
15 telecommunications services not subject to the tax under this act
16 from its books and records that are kept in the regular course of
17 business.

18 (3) If charges for intrastate telecommunications services or
19 telecommunications services between this state and another state
20 and other billed services not subject to the tax under this act are
21 aggregated with and not separately stated from telecommunications
22 services that are subject to the tax under this act, a customer may
23 not rely upon the nontaxability of those telecommunications
24 services and other billed services unless the customer's service
25 provider separately states the charges for nontaxable
26 telecommunications services and other nontaxable billed services
27 from taxable telecommunications services or the service provider

1 elects, after receiving a written request from the customer in the
2 form required by the provider, to provide verifiable data based
3 upon the service provider's books and records that are kept in the
4 regular course of business that reasonably identify the nontaxable
5 services.

6 (4) All of the following apply in the case of a bundled
7 transaction that includes telecommunications service, ancillary
8 service, internet access, or audio or video programming:

9 (a) If the purchase price is attributable to products that are
10 taxable and products that are nontaxable, the portion of the
11 purchase price attributable to the nontaxable products may be
12 subject to tax unless the provider can identify by reasonable and
13 verifiable standards that portion from its books and records that
14 are kept in the regular course of business for other purposes,
15 including, but not limited to, nontax purposes.

16 (b) The provisions of this subsection apply unless otherwise
17 provided by federal law.

18 (5) As used in this section:

19 (a) "Ancillary services" means services that are associated
20 with or incidental to the provision of telecommunications services,
21 including, but not limited to, detailed telecommunications billing,
22 directory assistance, vertical service, and voice mail services.

23 (b) "Bundled transaction" means the purchase of 2 or more
24 distinct and identifiable products, except real property and
25 services to real property, where the products are sold for a single
26 nonitemized price. A bundled transaction does not include the sale
27 of any products in which the sales price varies, or is negotiable,

1 based on the selection by the purchaser of the products included in
2 the transaction. As used in this subdivision:

3 (i) "Distinct and identifiable products" does not include any
4 of the following:

5 (A) Packaging, such as containers, boxes, sacks, bags, and
6 bottles or other materials such as wrapping, labels, tags, and
7 instruction guides, that accompany the purchase of the products and
8 are incidental or immaterial to the purchase of the products,
9 including grocery sacks, shoeboxes, dry cleaning garment bags, and
10 express delivery envelopes and boxes.

11 (B) A product provided free of charge with the required
12 purchase of another product. A product is provided free of charge
13 if the sales price of the product purchased does not vary depending
14 on the inclusion of the product provided free of charge.

15 (C) Items included in purchase price.

16 (ii) "Purchase price" means the price paid by the seller for
17 the property.

18 (iii) "Sales price" means that term as defined in section 1 of
19 the general sales tax act, 1933 PA 167, MCL 205.51.

20 (iv) "Single nonitemized price" does not include a price that
21 is separately identified by product on binding sales or other
22 supporting sales-related documentation made available to the
23 purchaser in paper or electronic form, including, but not limited
24 to, an invoice, bill of sale, receipt, contract, service agreement,
25 lease agreement, periodic notice of rates and services, rate card,
26 or price list.

27 (v) Bundled transaction does not include any of the following:

1 (A) The purchase of tangible personal property and a service
2 if the tangible personal property is essential to the use of the
3 service and is provided exclusively in connection with the service
4 and the true object of the transaction is the service.

5 (B) The purchase of services if 1 service is provided that is
6 essential to the use or receipt of a second service and the first
7 service is provided exclusively in connection with the second
8 service and the true object of the transaction is the second
9 service.

10 (C) A transaction that includes taxable and nontaxable
11 products and the purchase price of the taxable products is de
12 minimis. As used in this sub-subparagraph, "de minimis" means the
13 seller's purchase price or sales price of the taxable products is
14 10% or less of the total purchase price or sales price of the
15 products. A seller shall use the full term of a service contract to
16 determine if the taxable products are de minimis. A seller shall
17 use either the purchase price or the sales price of the products to
18 determine if the taxable products are de minimis. A seller shall
19 not use a combination of the purchase price and sales price of the
20 products to determine if the taxable products are de minimis.

21 (D) The retail sale of exempt tangible personal property and
22 taxable tangible personal property if all of the following
23 conditions are satisfied:

24 (I) The transaction includes food and food ingredients,
25 prescription or over-the-counter drugs, durable medical equipment,
26 mobility enhancing equipment, medical supplies, or prosthetic
27 devices.

1 (II) Where the seller's purchase price or sales price of the
2 taxable tangible personal property is 50% or less of the total
3 purchase price or sales price of the bundled tangible personal
4 property. A seller may not use a combination of the purchase price
5 and sales price of the tangible personal property when making the
6 50% determination for a transaction.

7 (c) "Coin-operated telephone service" means a
8 telecommunications service paid for by inserting money into a
9 telephone that accepts direct deposits of money to operate.

10 (d) "Conference bridging service" means an ancillary service
11 that links 2 or more participants of an audio or video conference
12 call and may include the provision of a telephone number, but does
13 not include the telecommunications services used to reach the
14 conference bridge.

15 (e) "Detailed telecommunications billing service" means an
16 ancillary service of separately stating information pertaining to
17 individual calls on a customer's billing statement.

18 (f) "Directory assistance" means an ancillary service of
19 providing telephone number information or address information.

20 (g) "Fabricate" means to modify or prepare tangible personal
21 property for affixation or assembly.

22 (h) "Fixed wireless service" means a telecommunications
23 service that provides radio communication between fixed points.

24 (i) "International" means a telecommunications service that
25 originates or terminates in the United States and terminates or
26 originates outside the United States, respectively. United States
27 includes the District of Columbia and any possession or territory

1 of the United States.

2 (j) "Interstate" means a telecommunications service that
3 originates in 1 United States state, territory, or possession and
4 terminates in a different United States state, territory, or
5 possession.

6 (k) "Intrastate" means a telecommunications service that
7 originates in a United States state, territory, or possession and
8 terminates in the same United States state, territory, or
9 possession.

10 (l) "Manufacture" means to convert or condition tangible
11 personal property by changing the form, composition, quality,
12 combination, or character of the property.

13 (m) "Manufacturer" means a person who manufactures,
14 fabricates, or assembles tangible personal property.

15 (n) "Paging service" means a telecommunications service that
16 provides transmission of coded radio signals for the purpose of
17 activating specific pagers, which may include messages or sounds.

18 (o) "Pay telephone service" means a telecommunications service
19 provided through any pay telephone.

20 (p) "Prepaid calling service" means the right to access
21 exclusively telecommunications services that must be paid for in
22 advance and that enables the origination of calls using an access
23 number or authorization code, whether manually or electronically
24 dialed, and that is sold in predetermined units or dollars that
25 decline with use in a known amount.

26 (q) "Private communications service" means a
27 telecommunications service that entitles the customer to exclusive

1 or priority use of a communications channel or group of channels
2 between or among termination points, regardless of the manner in
3 which that channel or group of channels are connected, and includes
4 switching capacity, extension lines, stations, and any other
5 associated services that are provided in connection with the use of
6 that channel or group of channels.

7 (r) "Telecommunications nonrecurring charges" means an amount
8 billed for the installation, connection, change, or initiation of
9 telecommunications service received by the customer.

10 (s) "Telecommunications service" means the electronic
11 transmission, conveyance, or routing of voice, data, audio, video,
12 or any other information or signals to a point, or between or among
13 points, including a transmission, conveyance, or routing in which
14 computer processing applications are used to act on the form, code,
15 or protocol of the content for purposes of transmission,
16 conveyance, or routing without regard to whether that service is
17 referred to as voice over internet protocol services or is
18 classified by the federal communications commission as enhanced or
19 value added. Telecommunications service does not include any of the
20 following:

21 (i) Data processing and information services that allow data to
22 be generated, acquired, stored, processed, or retrieved and
23 delivered by an electronic transmission to a purchaser where the
24 purchaser's primary purpose for the underlying transaction is the
25 processed data or information.

26 (ii) Installation or maintenance of wiring or equipment on a
27 customer's premises.

1 (iii) Tangible personal property.

2 (iv) Advertising, including, but not limited to, directory
3 advertising.

4 (v) Billing and collection services provided to third parties.

5 (vi) Internet access service.

6 (vii) Radio and television audio and video programming
7 services, including, but not limited to, cable service as defined
8 in 47 USC 522(6) and audio and video programming services delivered
9 by commercial mobile radio service providers as defined in 47 CFR
10 20.3, regardless of the medium, including the furnishing of
11 transmission, conveyance, and routing of those services by the
12 programming service provider.

13 (viii) Ancillary services.

14 (ix) Answering services, if the primary purpose of the
15 transaction is the answering service rather than message
16 transmission.

17 (x) Digital products delivered electronically, including, but
18 not limited to, software, music, video, reading materials, or ring
19 tones.

20 (t) "Value-added nonvoice data service" means a
21 telecommunications service in which computer processing
22 applications are used to act on the form, content, code, or
23 protocol of the information or data primarily for a purpose other
24 than transmission, conveyance, or routing.

25 (u) "Vertical service" means an ancillary service that is
26 offered in connection with 1 or more telecommunications services
27 that offers advanced calling features that allow customers to

1 identify callers and to manage multiple calls and call connections,
2 including conference bridging services.

3 (v) "Voice mail service" means an ancillary service that
4 enables the customer to store, send, or receive recorded messages,
5 but does not include any vertical services that the customer may be
6 required to have in order to utilize the voice mail service.

7 (w) "800 service" means a telecommunications service that
8 allows a caller to dial a toll-free number without incurring a
9 charge for the call, typically marketed under the designation
10 "800", "855", "866", "877", or "888" toll-free calling, or any
11 subsequent number designated by the federal communications
12 commission.

13 (x) "900 service" means an inbound toll telecommunications
14 service purchased by a subscriber that allows the subscriber's
15 customers to call in to the subscriber's prerecorded announcement
16 or live service, typically marketed under the designation "900"
17 service, and any subsequent number designated by the federal
18 communications commission, but does not include a charge for
19 collection services provided by the seller of the
20 telecommunications services to the subscriber, or the service or
21 product sold by the subscriber to the subscriber's customer.

22 Enacting section 1. This amendatory act is retroactive and is
23 effective January 1, 2006.