

**SUBSTITUTE FOR
SENATE BILL NO. 97**

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 4o (MCL 205.94o), as amended by 2015 PA 204.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4o. (1) The tax levied under this act does not apply to
2 property sold to the following after March 30, 1999, subject to
3 subsection (2):

4 (a) An industrial processor for use or consumption in
5 industrial processing.

6 (b) A person, whether or not the person is an industrial
7 processor, if the tangible personal property is intended for
8 ultimate use in and is used in industrial processing by an
9 industrial processor.

1 (c) A person, whether or not the person is an industrial
2 processor, if the tangible personal property is used by that person
3 to perform an industrial processing activity for or on behalf of an
4 industrial processor.

5 (d) A person, whether or not the person is an industrial
6 processor, if the tangible personal property is 1 of the following:

7 (i) A computer used in operating industrial processing
8 equipment.

9 (ii) Equipment used in a computer assisted manufacturing
10 system.

11 (iii) Equipment used in a computer assisted design or
12 engineering system integral to an industrial process.

13 (iv) A subunit or electronic assembly comprising a component in
14 a computer integrated industrial processing system.

15 (v) Computer equipment used in connection with the computer
16 assisted production, storage, and transmission of data if the
17 equipment would have been exempt had the data transfer been made
18 using tapes, disks, CD-ROMs, or similar media by a company whose
19 business includes publishing doctoral dissertations and information
20 archiving, and that sells the majority of the company's products to
21 nonprofit organizations exempt under section 4(1) (w).

22 (vi) Equipment used in the production of prewritten computer
23 software or software modified or adapted to the user's needs or
24 equipment by the seller, only if the software is available for sale
25 from a seller of software on an as-is basis or as an end product
26 without modification or adaptation.

27 (2) The property under subsection (1) is exempt only to the
28 extent that the property is used for the exempt purpose stated in
29 this section. The exemption is limited to the percentage of exempt

1 use to total use determined by a reasonable formula or method
2 approved by the department.

3 (3) Industrial processing includes the following activities:

4 (a) Production or assembly.

5 (b) Research or experimental activities.

6 (c) Engineering related to industrial processing.

7 (d) Inspection, quality control, or testing to determine
8 whether particular units of materials or products or processes
9 conform to specified parameters at any time before materials or
10 products first come to rest in finished goods inventory storage.

11 (e) Planning, scheduling, supervision, or control of
12 production or other exempt activities.

13 (f) Design, construction, or maintenance of production or
14 other exempt machinery, equipment, and tooling.

15 (g) Remanufacturing.

16 (h) Processing of production scrap and waste up to the point
17 it is stored for removal from the plant of origin.

18 (i) Recycling of used materials for ultimate sale at retail or
19 reuse.

20 (j) Production material handling.

21 (k) Storage of in-process materials.

22 **(l) Production, manufacturing, or recycling of aggregate by the**
23 **property, and for the purpose, described in subsection (4) (i) if**
24 **that aggregate is subject to the tax levied under this act.**

25 (4) Property that is eligible for an industrial processing
26 exemption includes the following:

27 (a) Property that becomes an ingredient or component part of
28 the finished product to be sold ultimately at retail or affixed to
29 and made a structural part of real estate **located in another state.**

1 (b) Machinery, equipment, tools, dies, patterns, foundations
2 for machinery or equipment, or other processing equipment used in
3 an industrial processing activity and in their repair and
4 maintenance.

5 (c) Property that is consumed or destroyed or that loses its
6 identity in an industrial processing activity.

7 (d) Tangible personal property, not permanently affixed and
8 not becoming a structural part of real estate, that becomes a part
9 of, or is used and consumed in installation and maintenance of,
10 systems used for an industrial processing activity.

11 (e) Fuel or energy used or consumed for an industrial
12 processing activity.

13 (f) Machinery, equipment, or materials used within a plant
14 site or between plant sites operated by the same person for
15 movement of tangible personal property in the process of
16 production. Property exempt under this subdivision includes front
17 end loaders, forklifts, pettibone lifts, skidsters, multipurpose
18 loaders, knuckle-boom log loaders, tractors, and log loaders used
19 to unload logs from trucks at a saw mill site for the purpose of
20 processing at the site and to load lumber onto trucks at a saw mill
21 site for purposes of transportation from the site.

22 (g) Office equipment, including data processing equipment,
23 used for an industrial processing activity.

24 (h) Tangible personal property used or consumed in an
25 industrial processing activity to produce alcoholic beverages that
26 are sold at retail by that industrial processor through its own
27 locations.

28 **(i) Notwithstanding anything to the contrary in subsection**
29 **(6) (d), property that performs an industrial processing activity**

1 upon an aggregate product or material that will be used as an
2 ingredient or component part for the construction, maintenance,
3 repair, or reconstruction of real property in this state if that
4 aggregate product or material is subject to the tax levied under
5 this act.

6 (5) Property that is not eligible for an industrial processing
7 exemption includes the following:

8 (a) Tangible personal property permanently affixed and
9 becoming a structural part of real estate in this state including
10 building utility systems such as heating, air conditioning,
11 ventilating, plumbing, lighting, and electrical distribution, to
12 the point of the last transformer, switch, valve, or other device
13 at which point usable power, water, gas, steam, or air is diverted
14 from distribution circuits for use in industrial processing.

15 (b) Office equipment, including data processing equipment used
16 for nonindustrial processing purposes.

17 (c) Office furniture or office supplies.

18 (d) An industrial processor's own product or finished good
19 that it uses or consumes for purposes other than industrial
20 processing.

21 (e) Tangible personal property used for receiving and storage
22 of materials, supplies, parts, or components purchased by the user
23 or consumer.

24 (f) Tangible personal property used for receiving or storage
25 of natural resources extracted by the user or consumer.

26 (g) Vehicles, including special bodies or attachments,
27 required to display a vehicle permit or license plate to operate on
28 public highways, except for a vehicle bearing a manufacturer's
29 plate or a specially designed vehicle, together with parts, used to

1 mix and agitate materials at a plant or job site in the concrete
2 manufacturing process.

3 (h) Tangible personal property used for the preparation of
4 food or beverages by a retailer for ultimate sale at retail through
5 its own locations, except as provided in subsection (4) (h).

6 (i) Tangible personal property used or consumed for the
7 preservation or maintenance of a finished good once it first comes
8 to rest in finished goods inventory storage.

9 (j) Returnable shipping containers or materials, except as
10 provided in subsection (4) (f).

11 (k) Tangible personal property used in the production of
12 computer software originally designed for the exclusive use and
13 special needs of the purchaser.

14 (6) Industrial processing does not include the following
15 activities:

16 (a) Purchasing, receiving, or storage of raw materials.

17 (b) Sales, distribution, warehousing, shipping, or advertising
18 activities.

19 (c) Administrative, accounting, or personnel services.

20 (d) Design, engineering, construction, or maintenance of real
21 property and nonprocessing equipment.

22 (e) Plant security, fire prevention, or medical or hospital
23 services.

24 **(7) Notwithstanding anything to the contrary in this act, the**
25 **following applies only to industrial processing activities and**
26 **property described in subsection (3) (l) or (4) (i):**

27 **(a) Not later than 90 days after the effective date of the**
28 **amendatory act that added this subsection, the department shall**
29 **cancel all outstanding balances related to such industrial**

1 processing activities and property on notices of intent to assess
2 that were issued under section 21 of 1941 PA 122, MCL 205.21, for
3 the tax levied under this act and that were issued before the
4 effective date of the amendatory act that added this subsection.

5 (b) Not later than 90 days after the effective date of the
6 amendatory act that added this subsection, the department shall
7 cancel all outstanding balances related to such industrial
8 processing activities and property on final assessments that were
9 issued under section 22 of 1941 PA 122, MCL 205.22, for the tax
10 levied under this act and that were issued before the effective
11 date of the amendatory act that added this subsection.

12 (c) After the effective date of the amendatory act that added
13 this subsection, the department shall not issue any new assessments
14 for the tax levied under this act on such industrial processing
15 activities and property for any tax period before the effective
16 date of the amendatory act that added this subsection that is open
17 under the statute of limitations provided in section 27a of 1941 PA
18 122, MCL 205.27a.

19 (8) Notwithstanding anything to the contrary in this act, from
20 the money received and collected under this act that would
21 otherwise be deposited in the general fund under section 21, an
22 amount equal to all revenue lost to the state school aid fund as a
23 result of the exemption under this section for industrial
24 processing activities and property described in subsection (3) (l) or
25 (4) (i), as determined by the department, must be deposited in the
26 state school aid fund. As used in this subsection, "state school
27 aid fund" means the state school aid fund established in section 11
28 of article IX of the state constitution of 1963.

29 (9) ~~(7)~~—As used in this section:

1 (a) "Aggregate" means common variety building materials like
2 sand, gravel, crushed stone, slag, recycled concrete, recycled
3 asphalt, and geosynthetic aggregates.

4 (b) ~~(a)~~—"Industrial processing" means the activity of
5 converting or conditioning tangible personal property by changing
6 the form, composition, quality, combination, or character of the
7 property for ultimate sale at retail, ~~or~~ for use in the
8 manufacturing of a product to be ultimately sold at retail or **to be**
9 affixed to and made a structural part of real estate located in
10 another state, **or for the exempt purposes described in subsection**
11 **(3) (l) or (4) (i)**. Industrial processing begins when tangible
12 personal property begins movement from raw materials storage to
13 begin industrial processing and ends when finished goods first come
14 to rest in finished goods inventory storage.

15 (c) ~~(b)~~—"Industrial processor" means a person who performs the
16 activity of converting or conditioning tangible personal property
17 for ultimate sale at retail, ~~or~~ **for** use in the manufacturing of a
18 product to be ultimately sold at retail or **to be** affixed to and
19 made a structural part of real estate located in another state, **or**
20 **for the exempt purposes described in subsection (3) (l) or (4) (i)**.

21 (d) ~~(c)~~—"Product", as used in subdivision ~~(c)~~, ~~(f)~~, includes,
22 but is not limited to, a prototype, pilot model, process, formula,
23 invention, technique, patent, or similar property, whether intended
24 to be used in a trade or business or to be sold, transferred,
25 leased, or licensed.

26 (e) ~~(d)~~—"Remanufacturing" means the activity of overhauling,
27 retrofitting, fabricating, or repairing a product or its component
28 parts for ultimate sale at retail.

29 (f) ~~(e)~~—"Research or experimental activity" means activity

1 incident to the development, discovery, or modification of a
2 product or a product related process. Research or experimental
3 activity also includes activity necessary for a product to satisfy
4 a government standard or to receive government approval. Research
5 or experimental activity does not include the following:

6 (i) Ordinary testing or inspection of materials or products for
7 quality control purposes.

8 (ii) Efficiency surveys.

9 (iii) Management surveys.

10 (iv) Market or consumer surveys.

11 (v) Advertising or promotions.

12 (vi) Research in connection with literacy, historical, or
13 similar projects.

14 Enacting section 1. This amendatory act does not take effect
15 unless House Bill No. 4055 of the 102nd Legislature is enacted into
16 law.