

SENATE BILL NO. 97

March 01, 2023, Introduced by Senator BELLINO and referred to the Committee on Finance, Insurance, and Consumer Protection.

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

1 ultimate use in and is used in industrial processing by an
2 industrial processor.

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

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

9 (i) A computer used in operating industrial processing
10 equipment.

11 (ii) Equipment used in a computer assisted manufacturing
12 system.

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

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

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

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

29 (2) The property under subsection (1) is exempt only to the

1 extent that the property is used for the exempt purpose stated in
 2 this section. The exemption is limited to the percentage of exempt
 3 use to total use determined by a reasonable formula or method
 4 approved by the department.

5 (3) Industrial processing includes the following activities:

6 (a) Production or assembly.

7 (b) Research or experimental activities.

8 (c) Engineering related to industrial processing.

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

13 (e) Planning, scheduling, supervision, or control of
 14 production or other exempt activities.

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

17 (g) Remanufacturing.

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

20 (i) Recycling of used materials for ultimate sale at retail or
 21 reuse.

22 (j) Production material handling.

23 (k) Storage of in-process materials.

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

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

29 (a) Property that becomes an ingredient or component part of

1 the finished product to be sold ultimately at retail or affixed to
2 and made a structural part of real estate **located in another state.**

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

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

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

13 (e) Fuel or energy used or consumed for an industrial
14 processing activity.

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

24 (g) Office equipment, including data processing equipment,
25 used for an industrial processing activity.

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

1 (i) Notwithstanding anything to the contrary in subsection
2 (6) (d), property that performs an industrial processing activity
3 upon an aggregate product or material that will be used as an
4 ingredient or component part for the construction, maintenance,
5 repair, or reconstruction of real property in this state if that
6 aggregate product or material is subject to the tax levied under
7 this act.

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

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

17 (b) Office equipment, including data processing equipment used
18 for nonindustrial processing purposes.

19 (c) Office furniture or office supplies.

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

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

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

28 (g) Vehicles, including special bodies or attachments,
29 required to display a vehicle permit or license plate to operate on

1 public highways, except for a vehicle bearing a manufacturer's
2 plate or a specially designed vehicle, together with parts, used to
3 mix and agitate materials at a plant or job site in the concrete
4 manufacturing process.

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

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

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

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

16 (6) Industrial processing does not include the following
17 activities:

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

19 (b) Sales, distribution, warehousing, shipping, or advertising
20 activities.

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

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

24 (e) Plant security, fire prevention, or medical or hospital
25 services.

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

29 (a) **Not later than 30 days after the effective date of the**

1 amendatory act that added this subsection, the department shall
2 cancel all outstanding balances related to such industrial
3 processing activities and property on notices of intent to assess
4 that were issued under section 21 of 1941 PA 122, MCL 205.21, for
5 the tax levied under this act and that were issued before the
6 effective date of the amendatory act that added this subsection.

7 (b) Not later than 30 days after the effective date of the
8 amendatory act that added this subsection, the department shall
9 cancel all outstanding balances related to such industrial
10 processing activities and property on final assessments that were
11 issued under section 22 of 1941 PA 122, MCL 205.22, for the tax
12 levied under this act and that were issued before the effective
13 date of the amendatory act that added this subsection.

14 (c) After the effective date of the amendatory act that added
15 this subsection, the department shall not issue any new assessments
16 for the tax levied under this act on such industrial processing
17 activities and property for any tax period before the effective
18 date of the amendatory act that added this subsection that is open
19 under the statute of limitations provided in section 27a of 1941 PA
20 122, MCL 205.27a.

21 (8) ~~(7)~~—As used in this section:

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

25 (b) ~~(a)~~—"Industrial processing" means the activity of
26 converting or conditioning tangible personal property by changing
27 the form, composition, quality, combination, or character of the
28 property for ultimate sale at retail, ~~or~~ for use in the
29 manufacturing of a product to be ultimately sold at retail or to be

1 affixed to and made a structural part of real estate located in
2 another state, **or for the exempt purposes described in subsection**
3 **(3) (l) or (4) (i)**. Industrial processing begins when tangible
4 personal property begins movement from raw materials storage to
5 begin industrial processing and ends when finished goods first come
6 to rest in finished goods inventory storage.

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

13 (d) ~~(e)~~—"Product", as used in subdivision ~~(e)~~, ~~(f)~~, includes,
14 but is not limited to, a prototype, pilot model, process, formula,
15 invention, technique, patent, or similar property, whether intended
16 to be used in a trade or business or to be sold, transferred,
17 leased, or licensed.

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

21 (f) ~~(e)~~—"Research or experimental activity" means activity
22 incident to the development, discovery, or modification of a
23 product or a product related process. Research or experimental
24 activity also includes activity necessary for a product to satisfy
25 a government standard or to receive government approval. Research
26 or experimental activity does not include the following:

27 (i) Ordinary testing or inspection of materials or products for
28 quality control purposes.

29 (ii) Efficiency surveys.

1 (iii) Management surveys.

2 (iv) Market or consumer surveys.

3 (v) Advertising or promotions.

4 (vi) Research in connection with literacy, historical, or
5 similar projects.

6 Enacting section 1. This amendatory act does not take effect
7 unless Senate Bill No. 98 of the 102nd Legislature is enacted into
8 law.