

HOUSE BILL No. 5397

January 17, 1990, Introduced by Reps. Profit, Jondahl, Kosteva, Joe Young, Sr., Jonker and DeMars and referred to the Committee on Taxation.

A bill to amend sections 2 and 5 of Act No. 94 of the Public Acts of 1937, entitled as amended

"Use tax act,"

section 2 as amended by Act No. 506 of the Public Acts of 1988, being sections 205.92 and 205.95 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2 and 5 of Act No. 94 of the Public
2 Acts of 1937, section 2 as amended by Act No. 506 of the Public
3 Acts of 1988, being sections 205.92 and 205.95 of the Michigan
4 Compiled Laws, are amended to read as follows:

5 Sec. 2. As used in this act:

6 (a) "Person" means an individual, firm, partnership, joint
7 venture, association, social club, fraternal organization,
8 municipal or private corporation whether or not organized for
9 profit, company, estate, trust, receiver, trustee, syndicate, the

1 United States, this state, county, or any other group or
2 combination acting as a unit, and the plural as well as the sin-
3 gular number, unless the intention to give a more limited meaning
4 is disclosed by the context.

5 (b) "Use" means the exercise of a right or power over tangi-
6 ble personal property incident to the ownership of that property
7 including transfer of the property in a transaction where posses-
8 sion is given.

9 (c) "Storage" means a keeping or retention in this state for
10 any purpose after losing its interstate character.

11 (d) "Seller" means the person from whom a purchase is made
12 and includes every person selling tangible personal property or
13 services for storage, use, or other consumption in this state.
14 If, in the opinion of the department, it is necessary for the
15 efficient administration of this act to regard a salesperson,
16 representative, peddler, or canvasser as the agent of a dealer,
17 distributor, supervisor, or employer under whom the person oper-
18 ates or from whom he or she obtains tangible personal property or
19 services, sold by him or her for storage, use, or other consump-
20 tion in this state, irrespective of whether or not he or she is
21 making the sales on his or her own behalf or on behalf of the
22 dealer, distributor, supervisor, or employer, the department may
23 so consider him or her, and may consider the dealer, distributor,
24 supervisor, or employer as the seller for the purpose of this
25 act. A SELLER INCLUDES A PERSON WHO ENGAGES IN REGULAR OR SYS-
26 TEMATIC SOLICITATION OF A CONSUMER MARKET IN THIS STATE BY THE
27 DISTRIBUTION OF CATALOGS, PERIODICALS, ADVERTISING FLYERS, OR

1 OTHER ADVERTISING; BY MEANS OF PRINT, RADIO, OR TELEVISION MEDIA;
2 OR BY MAIL, TELEGRAPHY, COMPUTER DATA BASE, CABLE, OPTIC, MICRO-
3 WAVE, OR OTHER COMMUNICATION SYSTEM. A SELLER NOT MAINTAINING A
4 PLACE OF BUSINESS IN THIS STATE SHALL NOT BE REQUIRED TO COLLECT
5 USE TAX IMPOSED BY ANY LOCAL GOVERNMENTAL UNIT OR SUBDIVISION OF
6 THIS STATE. THE USE TAX REQUIRED TO BE COLLECTED BY THE SELLER
7 CONSTITUTES A DEBT OWED BY THE RETAILER TO THIS STATE AND SHALL
8 BE A DEBT FROM THE PURCHASER TO THE SELLER RECOVERABLE AT LAW IN
9 THE SAME MANNER AS OTHER DEBTS.

10 (e) "Purchase" means acquired for a consideration, whether
11 the acquisition was effected by a transfer of title, of posses-
12 sion, or of both, or a license to use or consume; whether the
13 transfer was absolute or conditional, and by whatever means the
14 transfer was effected; and whether consideration is a price or
15 rental in money, or by way of exchange or barter.

16 (f) "Price" means the aggregate value in money of anything
17 paid or delivered, or promised to be paid or delivered, by a con-
18 sumer to a seller in the consummation and complete performance of
19 the transaction by which tangible personal property or services
20 were purchased or rented for storage, use, or other consumption
21 in this state, without a deduction for the cost of the property
22 sold, cost of materials used, labor or service cost, interest or
23 discount paid, or any other expense. The price of tangible per-
24 sonal property, for affixation to real estate, withdrawn by a
25 construction contractor from inventory available for sale to
26 others or made available by publication or price list as a
27 finished product for sale to others is the finished goods

1 inventory value of the property. For contracts entered into
2 after March 31, 1989, if a construction contractor manufactures,
3 fabricates, or assembles tangible personal property prior to
4 affixing it to real estate, the price of the property shall be
5 equal to the sum of the materials cost of the property and the
6 cost of labor to manufacture, fabricate, or assemble the property
7 but shall not include the cost of labor to cut, bend, assemble,
8 or attach property at the site of affixation to real estate. For
9 the purposes of the preceding sentence, for property withdrawn by
10 a construction contractor from inventory available for sale to
11 others or made available by publication or price list as a fin-
12 ished product for sale to others, the materials cost of the prop-
13 erty means the finished goods inventory value of the property.
14 For purposes of this subdivision, "manufacture" means to convert
15 or condition tangible personal property by changing the form,
16 composition, quality, combination, or character of the property;
17 and "fabricate" means to modify or prepare tangible personal
18 property for affixation or assembly. Beginning January 1, 1984
19 and until July 3, 1984, if a purchase is made of or a qualified
20 purchase agreement is entered into for the purchase of a motor
21 vehicle or trailer coach with an exchange of a used motor vehicle
22 or a used trailer coach or if a purchase is made of or a quali-
23 fied purchase agreement is entered into for the purchase of a
24 titled watercraft with an exchange of a used titled watercraft,
25 the price shall be the difference between the agreed upon value
26 of the motor vehicle, trailer coach, or titled watercraft used as
27 part payment of the purchase price and the full retail price of

1 the motor vehicle, trailer coach, or titled watercraft being
2 purchased. A qualified purchase agreement means a purchase
3 agreement presented to the secretary of state at the time the
4 vehicle is registered in this state for a transfer of ownership
5 that shall occur on or before February 1, 1985. Beginning
6 July 3, 1984, the price of a motor vehicle, trailer coach, or
7 titled watercraft shall be the full retail price of the motor
8 vehicle, trailer coach, or titled watercraft being purchased.
9 The tax collected by the seller from the consumer or lessee under
10 this act shall not be considered as a part of the price, but
11 shall be considered as a tax collection for the benefit of the
12 state, and a person other than the state shall not derive a bene-
13 fit from the collection or payment of this tax. A price does not
14 include an assessment imposed pursuant to either the convention
15 and tourism marketing act, Act No. 383 of the Public Acts of
16 1980, being sections 141.881 to 141.889 of the Michigan Compiled
17 Laws, or the community convention and tourism marketing act, Act
18 No. 395 of the Public Acts of 1980, being sections 141.871 to
19 141.880 of the Michigan Compiled Laws, which was added to charges
20 for rooms or lodging otherwise subject, pursuant to section 3a,
21 to tax under this act. Price does not include specific charges
22 for technical support or for adapting or modifying prewritten,
23 standard, or canned computer software programs to a purchaser's
24 needs or equipment if the charges are separately stated and
25 identified. Tax imposed pursuant to this act shall not be com-
26 puted or collected on rental receipts when the tangible personal

1 property rented or leased has previously been subjected to a
2 Michigan sales or use tax when purchased by the lessor.

3 (g) "Consumer" means the person who has purchased tangible
4 personal property or services for storage, use, or other consump-
5 tion in this state and includes a person acquiring tangible per-
6 sonal property when engaged in the business of constructing,
7 altering, repairing, or improving the real estate of others.

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

11 (i) "Department" means the revenue division of the depart-
12 ment of treasury.

13 (j) "Tax" includes all taxes, interest, or penalties levied
14 under this act.

15 (k) "Tangible personal property" includes, beginning
16 December 28, 1987, computer software offered for general use by
17 the public or software modified or adapted to the user's needs or
18 equipment by the seller, only if the software is available from a
19 seller of software on an as is basis or as an end product without
20 modification or adaptation. Tangible personal property does not
21 include computer software originally designed for the exclusive
22 use and special needs of the purchaser. As used in this subdivi-
23 sion, "computer software" means a set of statements or instruc-
24 tions that when incorporated in a machine usable medium is
25 capable of causing a machine or device having information pro-
26 cessing capabilities to indicate, perform, or achieve a
27 particular function, task, or result.

1 Sec. 5. (1) ~~(a)~~ Every person when engaged in the business
 2 of selling tangible personal property for storage, use, or other
 3 consumption in this state ~~—~~ shall register with the department
 4 ~~and give~~ GIVING the name and address of each agent operating in
 5 this state, the location of any and all distribution or sales
 6 houses or offices ~~—~~ or other places of business in this state,
 7 IF ANY, and ~~such~~ other information ~~as~~ the department ~~may~~
 8 ~~require~~ REQUIRES with respect to matters pertinent to the
 9 enforcement of this act. ~~—, but it shall not be~~ HOWEVER, IT IS
 10 NOT necessary for a seller holding a license obtained pursuant to
 11 the ~~provisions of~~ GENERAL SALES TAX ACT, Act No. 167 of the
 12 Public Acts of 1933, ~~as amended~~ BEING SECTIONS 205.51 TO 205.78
 13 OF THE MICHIGAN COMPILED LAWS, to register with the department as
 14 provided in this act. Every ~~such~~ seller shall collect the tax
 15 imposed by this act from the consumer.

16 (2) ~~(b)~~ The corporation and securities ~~commission~~ BUREAU
 17 shall not issue to any foreign corporation engaged in the busi-
 18 ness of selling tangible personal property a certificate of
 19 authority to do business in this state or approve and file the
 20 proposed articles of incorporation submitted to it by any domes-
 21 tic corporation authorizing or permitting ~~such~~ THE corporation
 22 to conduct ~~any~~ A business of selling ~~of~~ tangible personal
 23 property unless ~~such corporations shall submit~~ THE CORPORATION
 24 SUBMITS with an application for ~~said~~ THE certificate of author-
 25 ity or proposed articles of incorporation ~~—~~ an application for
 26 registration of ~~said~~ THE corporation under the provisions of
 27 this act, or an application for license under the provisions of

1 Act No. 167 of the Public Acts of 1933, ~~as amended,~~ which
2 application shall be transmitted to the department by ~~said~~ THE
3 corporation and securities ~~commission~~ BUREAU.

4 (3) The corporation and securities ~~commission~~ BUREAU shall
5 withhold the issuance of ~~any~~ A certificate of dissolution or
6 withdrawal ~~in the case of any~~ FOR A corporation organized under
7 the laws of this state or organized under the laws of another
8 state and admitted to do business in this state until the receipt
9 of a notice from the department to the effect that all taxes
10 levied under this act against ~~any such~~ THAT corporation have
11 been paid, or until it ~~shall be~~ IS notified by the department
12 that the applicant is not indebted for any taxes levied
13 ~~hereunder~~ UNDER THIS ACT.