

HOUSE BILL No. 5435

January 31, 1990, Introduced by Rep. Bryant and referred to the Committee on Taxation.

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

"Use tax act,"

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 2 of Act No. 94 of the Public Acts of
2 1937, as amended by Act No. 506 of the Public Acts of 1988, being
3 section 205.92 of the Michigan Compiled Laws, is amended to read
4 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. SELLER INCLUDES A PERSON ENGAGED IN THE REGULAR AND SYSTEM-
26 ATIC SOLICITATION OF ORDERS FOR TANGIBLE PERSONAL PROPERTY FOR
27 STORAGE, USE, OR CONSUMPTION IN THIS STATE BY MAIL, THE DELIVERY

1 OF A CATALOG; THE USE OF A TOLL-FREE TELEPHONE NUMBER FOR
2 RESIDENTS OF THIS STATE; ADVERTISING IN PUBLICATIONS PUBLISHED
3 PRIMARILY FOR RESIDENTS OF THIS STATE; A SALES OR PROMOTIONAL
4 REPRESENTATIVE, AGENT, OR ACTIVITY IN THIS STATE; AN ORDER
5 ACCEPTING PERSON OR FACILITY IN THIS STATE; OR A CONTEST OPEN TO
6 OR AWARDS MADE TO RESIDENTS OF THIS STATE; IF THE PERSON BENEFITS
7 FROM ANY BANKING, FINANCING, DEBT COLLECTION, TELECOMMUNICATION,
8 OR MARKETING ACTIVITIES OCCURRING IN THIS STATE OR BENEFITS FROM
9 AN AUTHORIZED INSTALLATION, SERVICING, OR REPAIR FACILITY, A
10 STORAGE OR DISTRIBUTION FACILITY, OR A SALES OUTLET LOCATED IN
11 THIS STATE.

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

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26 sonal property, for affixation to real estate, withdrawn by a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

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

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

1 act shall not be computed or collected on rental receipts ~~when~~
2 IF the tangible personal property rented or leased has previously
3 been subjected to a Michigan sales or use tax when purchased by
4 the lessor.

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

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

13 (i) "Department" means the revenue division of the depart-
14 ment of treasury.

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

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

1 processing capabilities to indicate, perform, or achieve a
2 particular function, task, or result.