

# HOUSE BILL No. 4060

February 5, 1991, Introduced by Rep. Profit 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 THE REGULAR OR  
26 SYSTEMATIC 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~~ TO ACQUIRE for a considera-  
11 tion, whether the acquisition ~~was~~ IS effected by a transfer of  
12 title, of possession, or of both, or a license to use or consume;  
13 whether the transfer ~~was~~ IS absolute or conditional, and by  
14 whatever means the transfer ~~was~~ IS effected; and whether con-  
15 sideration is a price or rental in money, or by way of exchange  
16 or barter.

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

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11 property withdrawn by a construction contractor from inventory  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

~~1 watercraft used as part payment of the purchase price and the~~  
~~2 full retail price of the motor vehicle, trailer coach, or titled~~  
~~3 watercraft being purchased. A qualified purchase agreement means~~  
~~4 a purchase agreement presented to the secretary of state at the~~  
~~5 time the vehicle is registered in this state for a transfer of~~  
~~6 ownership that shall occur on or before February 1, 1985.~~

~~7 Beginning July 3, 1984, the~~ THE price of a motor vehicle,  
8 trailer coach, or titled watercraft ~~shall be~~ IS the full retail  
9 price of the motor vehicle, trailer coach, or titled watercraft  
10 being purchased. The tax collected by the seller from the con-  
11 sumer or lessee under this act shall not be considered as a part  
12 of the price, but shall be considered as a tax collection for the  
13 benefit of the state, and a person other than the state shall not  
14 derive a benefit from the collection or payment of this tax. A  
15 price does not include an assessment imposed pursuant to either  
16 the convention and tourism marketing act, Act No. 383 of the  
17 Public Acts of 1980, being sections 141.881 to 141.889 of the  
18 Michigan Compiled Laws, or the community convention ~~and~~ OR  
19 tourism marketing act, Act No. 395 of the Public Acts of 1980,  
20 being sections 141.871 to 141.880 of the Michigan Compiled Laws,  
21 ~~which~~ THAT was added to charges for rooms or lodging otherwise  
22 subject, pursuant to section 3a, to tax under this act. Price  
23 does not include specific charges for technical support or for  
24 adapting or modifying prewritten, standard, or canned computer  
25 software programs to a purchaser's needs or equipment if the  
26 charges are separately stated and identified. ~~Tax~~ THE TAX  
27 imposed pursuant to this act shall not be computed or collected

1 on rental receipts when the tangible personal property rented or  
2 leased has previously been subjected to a Michigan sales or use  
3 tax when purchased by the lessor.

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

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

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

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

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

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

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

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

1 application for registration of ~~said~~ THE corporation under the  
2 provisions of this act, or an application for license under the  
3 provisions of Act No. 167 of the Public Acts of 1933, ~~as~~  
4 ~~amended,~~ which application shall be transmitted to the depart-  
5 ment by ~~said~~ THE corporation and securities ~~commission~~  
6 BUREAU.

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